6 Findings on Over-Representation in the Criminal Justice System

6.1 Summary

- Section 6 provides the Review's findings in relation to the Royal Commission's Recommendations about the criminal justice system and its agencies. The findings are grouped in four parts:
  - Police;
  - Courts;
  - Corrections; and
  - Juvenile Justice.

- The Recommendations within the four categories are further grouped by theme. At the start of each grouping the intention of the Royal Commission with regard to the Recommendations is summarised, followed by a table of the Recommendations, together with their implementation status as determined by Victorian Government agencies. Next the self-assessment responses received from these agencies are presented next. The views and experiences of the Indigenous community follow. The Review's comments and recommendations then come at the end.

- As described in the self-assessment responses, criminal justice agencies have addressed the Recommendations in many ways: by changing or enacting new legislation, by ensuring the Recommendations or their intent is incorporated into policy and procedural guidelines, by making changes in the physical environment, in particular in the case of prison or police cells, and by changing staffing practices, particularly in relation to the duty-of-care when detaining Indigenous persons.

- Community views and experiences related to a range of issues, from the way police treat Indigenous persons, to the conditions in prisons and the care received there. Issues also included the difficulties experienced by Indigenous people in attempting to make complaints about how they are dealt with as well as the lack of cultural awareness and understanding of staff about Indigenous people in the criminal justice system. Efforts to recruit Indigenous persons for positions within the criminal justice system were welcomed as was the range of initiatives being implemented under the VAJA, such as the establishment of the Koori Court, the Aboriginal Justice Forum and the Regional Aboriginal Justice Advisory Committee network across Victoria.

- Statistical information (presented in Volume 2) indicates that over-representation of Indigenous people in contact with the criminal justice system is continuing, although in general the proportion of Indigenous persons dealt with by the various justice agencies has remained relatively stable over time. Key points in the statistical analysis include the increase in numbers of Indigenous women apprehended by police and the high proportion of younger Indigenous persons coming into contact with the criminal justice system.
The Royal Commission repeatedly stressed that the numbers of Aboriginal people dying in custody was an outcome of the over-representation of Aboriginal persons in detention. It was equally convinced that the main explanation (and solution) for this problem was to be found in the underlying factors, including education, employment and economic status; housing; families and children; health and well-being; alcohol and other substances; community capacity; land needs and cultural survival; and reconciliation. The Review has addressed these issues and made recommendations with regard to them in Section 5.

However, the Commission was insistent that these underlying factors were not the whole story, and that change was also necessary in the criminal justice system; from the way police operate, through the court system to correctional practices, with special emphasis on how these systems deal with juveniles. The Commission saw reforms at this level as in some ways the most immediate and in many ways the least difficult (Royal Commission, 1991b, Vol. 1, 1.6.1). It went on to explain that:

... one can start at the level of law reform [with] diversion schemes ... which occur before a defendant gets before the court and concerns the interaction with police, the arrest or charge on summons, the questions of bail. Very important to all these matters is the relationship between police and Aboriginal people. Where there is less tension and less bitterness, what might be an arrest or a charge might become a caution. What might be an arrest becomes a summons to attend court. What might be a summons to attend court does not become an arrest because matters such as indecent language or resisting enter into the course of the dealing (Royal Commission, 1991b, Vol. 1, 1.6.5).

The Commission found it heartening to note the improvements that are taking place in many parts of Australia in police and Aboriginal relationships (Royal Commission, 1991b, Vol. 1, 1.6.5) and went on to point to the many diversionary schemes available at the court level, the many sentencing options and also the responses to breaches of community based orders. But it also noted that the success or otherwise of these schemes depends to a very large extent – and often wholly – upon the involvement of Aboriginal people, organisations and communities (Royal Commission, 1991b, Vol. 1, 1.6.10).

More recently, questions have been asked in the context of continued over-representation: is the level of Indigenous over representation in police custody, courts and prisons an actual reflection of offending levels? Are there so many Aboriginal people in the criminal justice system simply because they commit more offences than other people? Or alternatively, does policing itself (and one could add the operation of courts and the correctional system here) inevitably influence the extent to which particular individuals are drawn into the criminal justice system? (Cunneen 2001a: 18)29.

This also raises the issue of whether there continues to be police violence against Indigenous people in Australia (Cunneen 2001a: 127, 154) and, more generally, whether those who compulsorily detain, sentence and supervise Indigenous persons comply with the human rights obligations they are subject to. The related issues of human rights of people in custody and the responsibilities of the State were introduced in Section 4 and underpin much of the later discussion in this section.

Section 6 of the Review Report deals with the Royal Commission’s many findings about the criminal justice system and how its Recommendations in this area have been implemented.

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29 Further discussion of this issue is found in Weatherburn et al (2003) and Hunter (2001).
in Victoria. The Review's findings are presented in four subsections - police, courts (including the Coroner's Court), corrections and juvenile justice. It should be noted that where there are Royal Commission Recommendations, such as those relating to duty-of-care in custody, there may be responses from more than one agency and this will be clearly indicated.
6.2 Police

If I've been pulled over by the police or stopped on the street I feel guilt even though I haven't done anything wrong. My heart races and the adrenalin starts (Regional Victoria).

Police should be made to pass a test where there are significant numbers of Koories live. This should be conditional upon their placement in that region. There are some good genuine police around but as soon as they show an interest in our business they quickly get shipped off to another place (Regional Victoria).

Police are not interested in resolving complaints. All they want to do is break your spirit (Regional Victoria).

The Royal Commission recognised that once analysis moves beyond the underlying influences that propel Aboriginal people towards the criminal justice system, the first and critical point is contact with police.

Diversion at this point of the process was seen as all the more important given the proximate causes of most Aboriginal detention:

In a sense it begins before the criminal justice system takes effect. By far the largest number of Aboriginal people in police lockups, are those who are detained for what is often called protective custody, that is those who are found drunk in a public place - which in most jurisdictions is no longer a criminal offence - but who are detained and taken to police cells and kept there for a number of hours until they are thought to be sufficiently sober to be released. And these numbers are added to by those who are arrested for the offence of public drunkenness where drunkenness has not been decriminalised ... There are also large numbers of Aboriginal people in custody, mainly police custody and occasionally prison custody for street offences and, comparatively speaking, a small number in prison custody for serious offences ... There is much potential for diverting Aboriginal - and other - people from custody (Royal Commission, 1991b, Vol. 1, 1.6.2-1.6.4).

These diversionary issues aside, the Royal Commission commented on a wide range of policing contexts that might impinge directly or indirectly on the matter of Aboriginal deaths in custody. These included the physical and social demeanour of police in their interaction with Aboriginal people and their relationships with the Aboriginal community; police practices in relation to custody, including attention to the duty-of-care and medical matters, complaints procedures, the recruitment of Aboriginal people to the police force, police training and the collection of adequate police data.

With reference to the implementation of Recommendations on all of these matters, the present Review has proceeded in a thematic fashion. Recommendations sharing a common theme have been dealt with in clusters, rather than taking all of the Commission’s Recommendations and dealing with them individually. This means that the mode of presentation in this Section differs somewhat from that in Section 5. For this subsection on Police, the clusters relate to:
Section 6: Findings on Over-Representation in the Criminal Justice System

(a) Arrest as a Last Resort and use of Cautioning;
(b) Police and Juveniles;
(c) Aboriginal Community Justice Panels;
(d) Police Custody, Bail, Duty-of-care, Family Access and Respect;
(e) Public Drunkenness, Public Drinking and Offensive Language;
(f) Preventative and Community Policing;
(g) Eliminating Racist Attitudes and Abusive Behaviour towards Indigenous People;
(h) Complaints Procedures;
(i) Recruitment of Indigenous People into Policing;
(j) Training in Health Issues and Aboriginal Cultural Awareness; and
(k) Data Collection.

Responses elicited through the process of consultation with Aboriginal people in the course of the Review very often had a direct bearing on the matters covered by Commission’s Recommendations and the government responses. However, the way that they emerged in discussion means that they do not always easily lend themselves to categorisation under the headings used for Commission Recommendations and Government responses. The mode of their presentation therefore differs, reflecting the emphases and concerns of the community rather than any rigidly pre-formatted pattern of response. It was the view of the Review Team that presentation in this fashion preserves the authenticity of community responses while, at the same time, casting vital light on policing issues.

Where Recommendations are also of relevance and have been responded to by Court Services, Corrections Victoria and Juvenile Justice, all of which have custodial responsibilities, their responses are found in Sections 6.3, 6.4 and 6.5 respectively.

The relevant Recommendations and the self-assessed implementation status reports from Victorian Government departments are set out below in full and constitute the basis upon which the implementation status was determined. It should be noted that for a number of Royal Commission Recommendations, implementation is primarily a Commonwealth responsibility. However, where the Victorian Government has taken action that contributes to the implementation it is reported here against those Recommendations.

This material represents the reports on progress in addressing the Recommendations and is made available to the community through this Review. Community responses and the Review comments and recommendations follow.

### 6.2.1 Royal Commission Recommendations and Implementation Status

**(a) Arrest as a Last Resort and use of Cautioning**

The following cluster of Recommendations address the issue of Aboriginal over-representation in custody by attempting to ensure that arrest becomes the police action of last resort.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>87</td>
<td>That:</td>
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<tr>
<td>(a) All Police Services should adopt and apply the principle of arrest being the sanction</td>
<td>Fully implemented</td>
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<tr>
<td>Recommendation</td>
<td>Implementation status 2003</td>
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<td>----------------</td>
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<tr>
<td>(b) Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;</td>
<td>(VicPol)</td>
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<tr>
<td>(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:</td>
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<td>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;</td>
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<td>ii. a statistical database 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;</td>
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<td>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;</td>
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<tr>
<td>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</td>
<td></td>
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<tr>
<td>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</td>
<td></td>
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<tr>
<td>(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.</td>
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239 That governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary. The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected. | Partially implemented (LP-DOJ) | Partially implemented (CP&J-J-DHS) |

240 That: | Fully implemented (VicPol) |
| (a) Police administrators give police officers greater encouragement to proceed by way of caution rather than by arrest, summons or attendance notice; | |
| (b) That wherever possible the police caution be given in the presence of a parent, adult relative or person having care and responsibility for the juvenile; and | |
| (c) That if a police caution is given other than in the presence of any such person having care and responsibility for the juvenile such person be notified in writing of the fact and details of the caution administered. | |
Operating Procedures 7.3.1, arrest being the last resort and General Police Operational Resource Management and Ethical Standards Department, *Discipline Procedures* (Chapter 5). Victoria Police further advised monitoring of offences and offenders has been greatly enhanced with enhanced supervision from sub-officers (251) and senior sergeant (265) supervisory duties.

There are no barriers to preventing police from proceeding by way of summons rather than arrest for Indigenous persons and summons is a preferred method of handling these situations. Again, public demand for the prevention or continuation of offences is taken into consideration when determining the methods of handling offenders/suspects. Given the increased number of persons in police cell complexes, police take into consideration accommodation issues when weighing up arrest against summons matters.

**Recommendation 239: Review legislation and police standing orders on the arrest of Aboriginal juveniles**

**Legal Policy (DOJ)**[^30] advised the Review that the Police Operating Procedures provide for a Police Cautioning Program which relates to adults as well as children.

Despite the fact there have been many programs and policies in relation to youth issues, Aboriginal youth are over-represented in the criminal justice system, further, Victorian Indigenous children are ten times more likely to be involved in placement and support services than the general Victorian child population. This demonstrates that the solutions are complex and require the tackling of underlying issues.

In relation to youth cautioning the statistics show that Aboriginal youth compared with non-Aboriginal youth are still under-cautioned by police despite the Police Cautioning Program.

**Child Protection & Juvenile Justice (DHS)** advised the Review that the Victorian Justice system has a strong diversionary focus. At a local level, Juvenile Justice staff and Koori Juvenile Justice workers liaise regularly with police through local networks to discuss and look for solutions to emerging issues within the community. Most of the Koori Juvenile Justice workers report that, when requested either by the client, family or police, they support local Aboriginal people when in contact with the police. One worker is trained as an Independent Person and other workers have expressed interest in being trained. The responsibilities of the Independent Person at a police interview can place a worker in a ‘conflict of interest’ situation if the client is known to them. The Koori JJ worker will also attempt to make contact with VALS who offer 24 hour services to ensure legal representation is available to the client. As part of the ongoing development work for the Koori Juvenile Justice Program, Juvenile Justice has met with VALS’ representatives to look at ways of improving liaison between VALS and the Koori Juvenile Justice workers for early notification and representation for Aboriginal clients at the point of police interview, summons or arrest for appearance in court.

Crime Prevention Victoria is to pilot an Independent Persons program in Metropolitan Melbourne and one rural region (Shepparton). DOJ is establishing a Community Justice Koori Youth Diversionary Pilot Project to run in two rural locations. Juvenile Justice, police and VALS are represented on the central Steering Committee and will be represented on the local Steering Committees.

As part of the Juvenile Justice diversionary role, the following services are offered:

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[^30]: Legal Policy has been restructured since this response was provided. There are now two separate business units, Criminal Law Policy and Civil Law Policy.
- Providing support to young people at Court and for bail applications – Juvenile Justice has a role in facilitating the release of young people on bail where appropriate, whether they are currently the subject of a statutory order or not. Juvenile Justice workers will assist in identifying and facilitating the provision of services that will provide an alternative to a custodial remand;
- Providing supervision, support and referrals for young people on supervised bail or deferral of sentences, if ordered by the Court;
- The Central After Hours Assessment and Bail Service (CAHABPS) – Provides state-wide advice and accommodation options to police and Bail Justices at after hours bail hearings (see Recommendation 242). CAHABPS staff provide briefings and information on the CAHABPS service to Bail Justices and to police;
- The Adult Court Advice and Support Service (ACAS) – Diverts young people away from adult prison by provision of support to offenders and assessment and advice to the adult Court on suitability for sentencing to a Juvenile Justice Centre as part of the dual track system for young people aged 17 to 20 years;
- Koori Juvenile Justice Workers provide support to young people (and their family) when involved with the justice system;
- Aboriginal Liaison Officers at the three Juvenile Justice Custodial Centres provide cultural support to Aboriginal young people on remand and work with clients, their families and community to identify possible options to support bail hearings and, where appropriate, work with families and other workers to look at options available to the young person to support a recommendation for a community based orders at sentencing.

Group conferencing provides a restorative justice approach and pre-sentence diversionary option for working with the young person, their family, community and victim and for developing a plan to address the offending related needs and to divert the young person away from the justice system.

**Recommendation 240: Use of cautions**

Victoria Police referred the Review to the Police Cautioning Program and Victoria Police Manual (VPM), 113.9. Victoria Police further advised the Review that:

- Identification rating for Aboriginality in Law Enforcement Assistance Program (LEAP) is not accurate and will affect data;
- Some specific cautioning data released has been provided to the AJF regarding cautioning of young people in Shepparton;
- The nature of the offence affects whether cautions can be given. Informal cautions (anecdotal) are given when possible as are two or three cautions;
- A pilot project is about to commence which will trial diversion options and use of cautioning in two locations – Mildura and Morwell. Victoria Police, DOJ, Juvenile Justice and VALS are the key stakeholders in this undertaking.

Victoria Police advised a more complete evaluation of the cautioning program would need to be done, as some regions caution more comprehensively than others (Morwell 100 per cent compliance). Victoria Police referred the Review to a VALS paper on the issue.
(b) Police and Juveniles

A cluster of Recommendations was developed by the Commission with the intention of improving relations between Police and Aboriginal juveniles and of dealing with aspects of juvenile detention. These Recommendations address such matters as the teaching of Aboriginal and other students about the function of police in society, detention of juveniles in police lockups, procedures when an Aboriginal juvenile is taken to a police station and interrogated (Recommendations 227, 241, 242, 243 and 244), and the possible need to amend legislation, regulations and police standing orders (Recommendation 245).

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<tr>
<th>Recommendation</th>
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<tr>
<td>227</td>
<td>Partially implemented</td>
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<td></td>
<td>(VicPol)</td>
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<tr>
<td>241</td>
<td>Partially implemented</td>
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<td></td>
<td>(VicPol)</td>
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<tr>
<td>242</td>
<td>Fully implemented</td>
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<tr>
<td>a)</td>
<td>(VicPol)</td>
</tr>
<tr>
<td>b)</td>
<td>a) Fully implemented,</td>
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<tr>
<td>c)</td>
<td>b), c) and d) partially</td>
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<tr>
<td>d)</td>
<td>implemented (CCD-DHS)</td>
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<tr>
<td>243</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>244</td>
<td>Fully implemented (VicPol)</td>
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<td></td>
<td>(CP &amp; JJ-DHS)</td>
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Government Responses on Implementation

**Recommendation 227: Study the Northern Territory Police School-based Program**

The Review sought advice from Victoria Police on whether the Police Schools Improvement Program (PSIP) covers communities with high concentrations of Indigenous people. The police advised of PSIP in Shepparton, Mildura (Robinvale), Bairnsdale, Sale (part-time), Warrnambool, Echuca, Horsham, Moe, Warragul, Traralgon, Swan Hill and Wodonga. The content is not prescribed but is linked to local community needs.

An independent evaluation recommended the retention of the PSIP as an effective means of working with and engaging young people in school communities with police.

**Recommendation 241: Children’s aid or screening panels**

Victoria Police advised the Review that Recommendation 241 is not relevant to Victoria, however Victoria Police support proactive Justice measures such as Family Group Conferences in the Children’s Court.

A list of some of the Victoria Police youth programs include:

- Victoria Police Youth Corp
- Police Citizens Youth Clubs
- Police Schools Involvement Program
- High Risk Adolescent Referral Programs – there are a range of these throughout the State
- Campaspe Young Persons Resource and Support Scheme (CYPRASS)
- Operation Newstart – Western, Southern, Northern and proposed in Mildura
- High Challenge
- Juvenile Justice Group Conferencing
- Victoria Police Cautioning Program
- Various Station Youth Officer Activities – camps, sport, Street Surfer Bus
- Transit Police Youth Officer – variety of programs
- Operation Emmett
- Onside Soccer
- Boronia High Ropes Program
- Knox link – Cautioning Program
- Blue Light
- Derby Hill Youth Camp
- Protective Behaviours Program
See Section 6.5 - Juvenile Justice for Child Protection & Juvenile Justice (DHS) response to this Recommendation.

Recommendation 242: Detention of juveniles in police lockups

Community Care Division (CCD) (DHS) advised the Review that the Children and Young Person's Act 1989 stipulates that juveniles should only be held in custody after all options have been exhausted or that the nature of the offence is such that community placement is inappropriate. Police must take an apprehended child before the Children's Court within twenty-four hours, or if no convenient Court sits within that time, before a Bail Justice.

The Bert Williams Hostel in Melbourne provides accommodation for Aboriginal young people, including those who are homeless and require accommodation as a matter of bail. The Child Protection and Juvenile Justice fund a Central After Hours Assessment and Bail Placement Service, designed where appropriate, to facilitate accommodation required to divert young offenders from being remanded. During 2001, 14.2 per cent of referrals were made to the service on behalf of Aboriginal young people. This program is being reviewed by the Juvenile Justice Section with the aim of providing an enhanced service to young people at risk of remand.

CCD (DHS) further advised the Review that Juvenile Justice has a state-wide CAHABPS. This is a service available to police and to Bail Justices when a young person is arrested after hours. The service works with the police and the young person (and their family) to identify bail options. The police standing orders require police to make contact with CAHABPS.

An internal report on CAHAPBS service is being drafted (not completed or for external release). The service was established in 1994 (metropolitan) and extended to rural Victoria in May 1997. The service responds through telephone and outreach interventions to assess young people’s suitability for community placement as an alternative to remand.

CAHABPS is in operation between 5pm and 3am on business days and 9.30am and 3.00am on weekends and public holidays. Although data on Aboriginal clients is not available for this period, a summary of CAHABPS service from January 2003 to December 2003 shows:

- 251 referrals made
- 113 required a CAHABPS outreach visit (64 metropolitan and 49 rural).

Between 1999 and 2001, Aboriginal young people comprised 11 per cent of referrals to CAHABPS. When responding to a request for a service for an Aboriginal young person, CAHABPS will try to ensure that a Koori Justice Panel member or a representative from VALS has been contacted either by the police or by the CAHABPS worker prior to a bail hearing.

Victoria Police advised the Review that:

(a) children are not detained in police lockups,
(b) Bail Justices are utilised for circumstances of this nature, and
(c) VALS is immediately notified in circumstances of this nature. Victoria Police drew the Review's attention to VPM 113.1.

Legal Policy (DOJ) advised the Review that the Police Operating Procedures provides for a Police Cautioning Program which relates to adults as well as children.
Legal Policy (DOJ) further advised the Review that the Sentencing Review 2002 made the following recommendation:

Recommendation 33
That s.49 of the Magistrates’ Court Act 1989 be amended and legislation introduced to empower all levels of courts to remand a young offender in a youth training centre.

An Interdepartmental Committee convened by DPC, with representation from DHS, DOJ and DFT has been examining custodial service provision to 17-20 year old offenders in Juvenile Justice and adult corrections.

Criminal Law Policy (DOJ) advised the Review that the Children and Young Persons (Age Jurisdiction) Amendment Act 2004 increases the age jurisdiction of the Criminal Division of the Children’s Court to hear offences alleged to have been committed by a child aged between 10 and 18. The increase in age jurisdiction will come into effect on 1 July 2005.

See Recommendation 239 for the remaining part of Legal Policy (DOJ) response to this Recommendation.

Recommendation 243: Immediate advice to Aboriginal legal services and parents
Community Care Division (DHS) advised the Review that some of the Koori Juvenile Justice Workers also act as ‘Independent Persons’ in regards to Aboriginal young people questioned by police. Police Standing Instructions make police responsible for notifying Victorian Aboriginal Legal Service Cooperative, when an Aboriginal young person is taken into custody. Juvenile Justice does not have a role in monitoring this.

Victoria Police advised the Review that the procedures involving persons who are interviewed and who identify themselves as Aboriginal or Torres Strait Islanders is provided for in the VPM 113.1 which requires police to:

- Complete the attendance register and notify VALS immediately;
- Notify the Aboriginal Community Justice Panel – this area of responsibility includes the provision of all notification of relatives, the organising of legal representation, notifications of welfare and medical information if relevant.

Recommendation 244: Procedure to interrogate an Aboriginal juvenile
Victoria Police advised the Review that this procedure is in place, and made reference to VPM 112.3.6 and s464 E(1) Crimes Act 1958.

The procedures for investigation of offences and interviewing of Aboriginal children do not differ from that of any juvenile (under the age of 17 years). Section 464E(1) Crimes Act 1958 requires that for a person in custody who is under 17 years of age, a parent/guardian or independent person must be present before any interview is conducted and that person must be given the opportunity to speak with the child prior to the interview being commenced. The only exceptions to this rule apply to drink driving offences and where the person is not in custody and initial inquiries are being made to establish whether an offence(s) has been committed.
CCD (DHS) advised the Review that individual workers employed as Koori Juvenile Justice Workers provide this service as part of their role, or act as an ‘Independent Person’ as part of their broader role within the Aboriginal community. As reported under Recommendation 239, most of the Koori Juvenile Justice workers report that they support local Aboriginal young people when in contact with the police. One worker is trained as an Independent Person and other workers have expressed interest in being trained.

The responsibilities of the Independent person at a police interview can place a worker in a ‘conflict of interest’ situation if the client is known to them. Because of their role, the Koori Juvenile Justice worker, as with a Juvenile Justice worker, may have a statutory supervisory role with the young person and as such there may well be a conflict of interest if they were to act as an Independent Person for that client.

VALS should be contacted by police when an Aboriginal young person is to be interviewed or charged. The Koori JJ worker will also contact with VALS who offer 24-hour services to ensure legal representation is available to the client. As part of the on-going development work for the Koori Juvenile Justice Program, Juvenile Justice has met with VALS representatives to look at ways of improving liaison between VALS and the Koori Juvenile Justice workers for early notification and representation for Aboriginal clients at the point of police interview and summons or arrest for appearance in court.

Crime Prevention Victoria (DOJ) is piloting a Youth Referral and Independent Persons for Young people under 17 years of age with a particular focus on refugee, newly arrived and Indigenous young people. Nine 24-hour police stations operate across local government areas of Darebin, Hume, Maribyrnong, Brimbank, Greater Dandenong and Shepparton.

Legal Policy (DOJ) advised the Review that Section 129 Children and Young Person Act 1989 implements this Recommendation.

See Recommendation 239 for the remaining part of Legal Policy (DOJ) response.

Recommendation 245: Changes to the law to achieve compliance
Legal Policy (DOJ) advised the Review that despite the fact that there have been many programs and policies in relation to youth issues, Aboriginal youth are over-represented in the criminal justice system. Further, Victorian Indigenous children are ten times more likely to be involved in placement and support services than the general Victorian child population. This demonstrates that the solutions are complex and require the tackling of underlying issues.

In relation to youth cautioning the statistics show that Aboriginal youth compared with non-Aboriginal youth are still under-cautioned by police despite the Police Cautioning Program.

See Legal Policy’s (DOJ) comments to Recommendation 239.

Victoria Police advised the Review that standing orders/regulations are in place to support this Recommendation. Victoria Police drew the Reviews attention to the VPM 113.9.

(c) Aboriginal Community Justice Panels

These Recommendations recognise that ACJP offer significant promise in generating a community-based response in which the Aboriginal community and police actively participate in settling law and order matters (Recommendation 220). The
Recommendations address the need to provide the Panels with adequate and ongoing funding, including the need for Aboriginal people involved in community and police initiated schemes to receive adequate remuneration (Recommendation 221).

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>220</td>
<td>That organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates. Fully implemented (VicPol)</td>
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<tr>
<td>221</td>
<td>That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal affairs budget. Fully implemented (VicPol)</td>
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Government Responses on Implementation

**Recommendation 220: Funding Community Justice Panels**

**Victoria Police** advised the Review that there are 12 ACJP state-wide currently. An additional panel is being funded in Sale until the ACJP Review 2004 Recommendations are implemented. However, funding is still at the level set ten years ago. The findings of the current ACJP Review will fulfill this Recommendation’s suggestion of looking at different approaches that may be required even within Victoria. Support of the ACJP financially will encourage members of the ACJP if the programs they operate as volunteers were resourced.

**Recommendation 221: Remuneration of Aboriginal people involved in community and police initiated schemes**

**Victoria Police** advised the Review that the ACJP is a voluntary scheme supported financially by the Victorian Government with assistance from the Victorian Police, AAU. The police advised of strong views by the majority of ACJP members that the scheme should remain voluntary.

The ACJP are volunteers. The level of funding received via the DOJ has not increased since its inception over sixteen years ago. The funds basically reimburse out of pocket expenses, may cover mobile phone and vehicle maintenance. Some project money is available to all panels to put in submissions for annually. The program would benefit from funding of a coordinator’s position (full time) and project money.

The AAU currently provides secretariat services and support as well as managing funds in close partnership with the ACJP Executive.

(d) Police Custody, Bail, Duty-of-care, Family Access and Respect

One intention of this cluster of Recommendations is to improve the operation of bail legislation. The intent of the others is to improve the care of people in custody and to reduce the occurrence of deaths in custody. More specifically, these Recommendations
address the relevance of bail and the detention of Aboriginal people, with the Commission noting that the lack of flexibility of bail procedure and the difficulty Aboriginal people face in meeting bail criteria, contribute to needless detention. The Recommendations address monitoring the operation of bail legislation (Recommendation 89), actions to be taken when police bail is denied, and proposals to amend bail legislation (Recommendations 90 and 91).

Other Recommendations in this cluster relate to the legal duty-of-care to persons in custody (Recommendation 122), mechanisms for effecting change, including the establishment of clear policies and enforceable instructions, staff training (Recommendation 123), and debriefing following an important incident (Recommendation 124).

A large group of Recommendations are directed at improving the delivery of medical services to people in police custody (Recommendations 127 and 128), evaluation of equipment (Recommendation 129), transfer of information about the physical or mental condition of an Aboriginal person (Recommendation 130 and 131), communication of information about the well-being of prisoners or detainees between shifts (Recommendation 132), transportation and provision of medical aid to unconscious persons or persons in a similar condition (Recommendations 135 and 136), the checking of all detainees (Recommendations 137 and 139), alarm or intercom systems (Recommendation 140), personal supervision (Recommendation 141), discontinued use of padded cells (Recommendation 142), provision of meals (Recommendation 143), and accommodating an Aboriginal person with another Aboriginal person (Recommendation 144).

Other Recommendations deal with cell visitor schemes, encouraging visitors, and the notification of relatives (Recommendations 145, 146 and 147). The Recommendations also address the relative priority of initiatives to reduce the call on outmoded cells (Recommendation 148), and the need to permit flexible custodial arrangements (Recommendation 149).

A number of Recommendations address the first priority for officers finding a person who is apparently dead (Recommendation 158), resuscitation equipment, training, and the immediate seeking of medical advice (Recommendations 159, 160 and 161).

Several Recommendations are on the laws relating to the discharge of firearms, and training in the use of firearms and restraint techniques (Recommendations 162 and 163).

Two Recommendations address the elimination of equipment and facilities which might cause harm or self-harm (Recommendation 165) and the exchange of information about the care of prisoners (Recommendation 166).

Finally, two Recommendations are directed at the formulation of standard guidelines for police custodial facilities across Australia, and the International Convention on Civil and Political Rights (Recommendations 332 and 333).

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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tr>
<td>89</td>
<td>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.</td>
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<tr>
<td>90</td>
<td>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</td>
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<td>Recommendation</td>
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<td>notified of that fact;</td>
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<td>(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</td>
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<td>(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.</td>
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<td><strong>91</strong> That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation:</td>
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<td>(a) to enable the same or another police officer to review a refusal of bail by a police officer,</td>
<td>a) and b) Fully implemented, c) no progress (VicPol)</td>
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<td>(b) to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and</td>
<td>Partially implemented (LP-DOJ)</td>
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<td>(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.</td>
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<td><strong>122</strong> That Governments ensure that:</td>
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<td>(a) Police services, Corrective Services, and authorities in charge of juvenile centres recognise that they owe a legal duty-of-care to persons in their custody;</td>
<td>Fully implemented (CV-DOJ)</td>
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<tr>
<td>(b) That the standing instructions to the officers of these authorities specify that each officer involved in the arrest, incarceration or supervision of a person in custody has a legal duty-of-care to that person, and may be held legally responsible for the death or injury of the person caused or contributed to by a breach of that duty; and</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>(c) That these authorities ensure that such officers are aware of their responsibilities and trained appropriately to meet them, both on recruitment and during their service.</td>
<td>Fully implemented (CP &amp; JJ-DHS)</td>
</tr>
<tr>
<td><strong>123</strong> That Police and Corrective Services establish clear policies in relation to breaches of departmental instructions. Instructions relating to the care of persons in custody should be in mandatory terms and be both enforceable and enforced. Procedures should be put in place to ensure that such instructions are brought to the attention of and are understood by all officers and that those officers are made aware that the instructions will be enforced. Such instructions should be available to the public.</td>
<td>Fully implemented (VicPol)</td>
</tr>
<tr>
<td><strong>124</strong> That Police and Corrective Services should each establish procedures for the conduct of debriefing sessions following incidents of importance such as deaths, medical emergencies or actual or attempted suicides so that the operation of procedures, the actions of those involved and the application of instructions to specific situations can be discussed and assessed with a view to reducing risks in the future.</td>
<td>Fully implemented (CV-DOJ)</td>
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<td><strong>127</strong> That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following:</td>
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<tr>
<td>(a) The introduction of a regular medical or nursing presence in all principal watch-houses in capital cities and in such other major centres as have substantial numbers detained;</td>
<td>a) Fully implemented, b) fully implemented, c) no progress, d) fully implemented, e) partially implemented, and f) fully implemented (VicPol)</td>
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<td>(b) In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness injury or self-harm at the time of reception;</td>
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<td>(c) The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;</td>
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<td>(d) The establishment of locally based protocols between police, medical and para-medical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises;</td>
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<td>(e) The establishment of proper systems of liaison between Aboriginal Health Services and police so as to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody; and</td>
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<td>(f) The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by</td>
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<td>officers with respect to the management of:</td>
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<td>i. intoxicated persons;</td>
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<td>ii. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions;</td>
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<td>iii. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour;</td>
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<td>iv. persons with an impaired state of consciousness;</td>
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<td>v. angry, aggressive or otherwise disturbed persons;</td>
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<td>vi. persons suffering from mental illness;</td>
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<td>vii. other serious medical conditions;</td>
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<td>viii. persons in possession of, or requiring access to, medication; and</td>
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<td>ix. such other persons or situations as agreed.</td>
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<td>128 That where persons are held in police watch-houses on behalf of a Corrective Services authority, that authority arrange, in consultation with Police Services, for medical services (and as far as possible other services) to be provided not less adequate than those that are provided in correctional institutions.</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>129 That the use of breath analysis equipment to test the blood alcohol levels at the time of reception of persons taken into custody be thoroughly evaluated by Police Services in consultation with Aboriginal Legal Services, Aboriginal Health Services, health departments and relevant agencies.</td>
<td>No progress (VicPol)</td>
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<td>130 That:</td>
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<td>(a) Protocols be established for the transfer between Police and Corrective Services of information about the physical or mental condition of an Aboriginal person which may create or increase the risks of death or injury to that person when in custody;</td>
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<tr>
<td>(b) In developing such protocols, Police Services, Corrective Services and health authorities with Aboriginal Legal Services and Aboriginal Health Services should establish procedures for the transfer of such information and establish necessary safe-guards to protect the rights of privacy and confidentiality of individual prisoners to the extent compatible with adequate care; and</td>
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<tr>
<td>(c) Such protocols should be subject to relevant ministerial approval.</td>
<td>Fully implemented (CV-DOJ) a) Fully implemented, b), and c) partially implemented (VicPol)</td>
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<tr>
<td>131 That where police officers in charge of prisoners acquire information relating to the medical condition of a prisoner, either because they observe that condition or because the information is voluntarily disclosed to them, such information should be recorded where it may be accessed by any other police officer charged with the supervision of that prisoner. Such information should be added to the screening form referred to in Recommendation 126 or filed in association with it.</td>
<td>Fully implemented (VicPol)</td>
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<td>132 That:</td>
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<td>(a) Police instructions should require that the officer in charge of an outgoing shift draw to the attention of the officer in charge of the incoming shift any information relating to the well being of any prisoner or detainee and, in particular, any medical attention required by any prisoner or detainee;</td>
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<td>(b) A written check list should be devised setting out those matters which should be addressed, both in writing and orally, at the time of any such handover of shift; and</td>
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<td>(c) Police services should assess the need for an appropriate form or process of record keeping to be devised to ensure adequate and appropriate notation of such matters.</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>135 In no case should a person be transported by police to a watchhouse when that person is either unconscious or not easily roused. Such persons must be immediately taken to a hospital or medical practitioner or, if neither is available, to a nurse or other person qualified to assess their health.</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>136 That a person found to be unconscious or not easily rousable whilst in a watch-house or cell must be immediately conveyed to a hospital, medical practitioner or a nurse. (Where quicker medical aid can be summoned to the watch-house or cell or there are reasons for believing that movement may be dangerous for the health of the detainee, such medical attendance should be sought.)</td>
<td>Fully implemented (VicPol)</td>
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<td>137 That:</td>
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<td>(a) Police instructions and training should require that regular, careful and thorough checks of all detainees in police custody be made:</td>
<td>Fully implemented (VicPol)</td>
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<td>(b) During the first two hours of detention, a detainee should be checked at intervals of not greater than fifteen minutes and that thereafter checks should be conducted at intervals of no greater than one hour;</td>
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<td>(c) Notwithstanding the provision of electronic surveillance equipment, the monitoring of such persons in the periods described above should at all times be made in person. Where a detainee is awake, the check should involve conversation with that person. Where the person is sleeping the officer checking should ensure that the person is breathing comfortably and is in a safe posture and otherwise appears not to be at risk. Where there is any reason for the inspecting officer to be concerned about the physical or mental condition of a detainee, that person should be woken and checked; and</td>
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<tr>
<td>(d) Where any detainee has been identified as, or is suspected to be a prisoner at risk then the prisoner or detainee should be subject to checking which is closer and more frequent than the standard.</td>
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<td>139 The Commission notes recent moves by Police Services to install TV monitoring devices in police cells. The Commission recommends that:</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>(a) The emphasis in any consideration of proper systems for surveillance of those in custody should be on human interaction rather than on high technology. The psychological impact of the use of such equipment on a detainee must be borne in mind, as should its impact on that person's privacy. It is preferable that police cells be designed to maximise direct visual surveillance. Where such equipment has been installed it should be used only as a monitoring aid and not as a substitute for human interaction between the detainee and his/her custodians; and</td>
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<td>(b) Police instructions specifically direct that, even where electronic monitoring cameras are installed in police cells, personal cell checks be maintained.</td>
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<td>140 That as soon as practicable, all cells should be equipped with an alarm or intercom system which gives direct communication to custodians. This should be pursued as a matter of urgency at those police watch-houses where surveillance resources are limited.</td>
<td>Fully implemented (VicPol)</td>
</tr>
<tr>
<td>141 That no person should be detained in a police cell unless a police officer is in attendance at the watch-house and is able to perform duties of care and supervision of the detainee. Where a person is detained in a police cell and a police officer is not so available then the watch-house should be attended by a person capable of providing care and supervision of persons defined.</td>
<td>Fully implemented (VicPol)</td>
</tr>
<tr>
<td>142 That the installation and/or use of padded cells in police watch-houses for punitive purposes or for the management of those at risk should be discontinued immediately.</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>143 All persons taken into custody, including those persons detained for intoxication, should be provided with a proper meal at regular meal times. The practice operating in some jurisdictions of excluding persons detained for intoxication from being provided with meals should be reviewed as a matter of priority.</td>
<td>Fully implemented (VicPol)</td>
</tr>
<tr>
<td>144 That in all cases, unless there are substantial grounds for believing that the well being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a police cell. Wherever possible an Aboriginal detainee should be accommodated with another Aboriginal person. The views of the Aboriginal detainee and such other detainee as may be affected should be sought. Where placement in a cell alone is the only alternative the detainee should thereafter be treated as a person who requires careful surveillance.</td>
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<td>Partially implemented (VicPol)</td>
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### Recommendation

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<tr>
<td>145 That:</td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>(a) In consultation with Aboriginal communities and their organisations, cell visitor schemes (or schemes serving similar purposes) should be introduced to service police watch-houses wherever practicable;</td>
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<td>(b) Where such cell visitor schemes do not presently exist and where there is a need or an expressed interest by Aboriginal persons in the creation of such a scheme, government should undertake negotiations with local Aboriginal groups and organisations towards the establishment of such a scheme. The involvement of the Aboriginal community should be sought in the management and operation of the schemes. Adequate training should be provided to persons participating in such schemes. Governments should ensure that cell visitor schemes receive appropriate funding;</td>
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<tr>
<td>(c) Where police cell visitor schemes are established it should be made clear to police officers performing duties as custodians of those detained in police cells that the operation of the cell visitor scheme does not lessen, to any degree, the duty-of-care owed by them to detainees; and</td>
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<tr>
<td>(d) Aboriginal participants in cell visitor schemes should be those nominated or approved by appropriate Aboriginal communities and/or organisations as well as by any other person whose approval is required by local practice.</td>
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<td>146 That police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody.</td>
<td>Fully implemented (VicPol)</td>
</tr>
<tr>
<td>147 That police instructions should be amended to make it mandatory for police to immediately notify the relatives of a detainee who is regarded as being ‘at risk’, or who has been transferred to hospital.</td>
<td>Partially implemented (VicPol)</td>
</tr>
<tr>
<td>148 That whilst there can be little doubt that some police cell accommodation is entirely substandard and must be improved over time, expenditure on positive initiatives to reduce the number of Aboriginal people in custody discussed elsewhere in this report constitutes a more pressing priority as far as resources are concerned. Where cells of a higher standard are available at no great distance, these may be able to be used. More immediate attention must be given to programs diverting people from custody, to the provision of alternative accommodation to police cells for intoxicated persons, to bail procedures and to proceeding by way of summons or caution rather than by way of arrest. All these initiatives will reduce the call on outmoded cells. The highest priority is to reduce the numbers for whom cell accommodation is required. Where, however, it is determined that new cell accommodation must be provided in areas of high Aboriginal population, the views of the local Aboriginal community and organisations should be taken into account in the design of such accommodation. The design or redesign of any police cell should emphasise and facilitate personal interaction between custodial officers and detainees and between detainees and visitors.</td>
<td>Fully implemented (VicPol)</td>
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<td>149 That Police Services should recognise, by appropriate instructions, the need to permit flexible custody arrangements which enable police to grant greater physical freedoms and practical liberties to Aboriginal detainees.</td>
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<td>The Commission recommends that the instructions acknowledge the fact that in appropriate circumstances it is consistent with the interest of the public and also the well being of detainees to permit some freedom of movement within or outside the confines of watch-houses.</td>
<td>No progress (VicPol)</td>
</tr>
<tr>
<td>158 That, while recognising the importance of preserving the scene of a death in custody for forensic examination, the first priority for officers finding a person, apparently dead, should be to attempt resuscitation and to seek medical assistance.</td>
<td>Fully implemented (CV-DOJ)</td>
</tr>
<tr>
<td>159 That all prisons and police watch-houses should have resuscitation equipment of the safest and most effective type readily available in the event of emergency and staff who are trained in the use of such equipment.</td>
<td>Fully implemented (VicPol)</td>
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<td>Implementation status 2003</td>
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<td>160 That: (a) All police and prison officers should receive basic training at recruit level in resuscitative measures, including mouth to mouth and cardiac massage, and should be trained to know when it is appropriate to attempt resuscitation; and (b) Annual refresher courses in first aid be provided to all prison officers, and to those police officers who routinely have the care of persons in custody.</td>
<td>a) Fully implemented, and b) partially implemented (CV-DOJ) Fully implemented (VicPol)</td>
</tr>
<tr>
<td>161 That police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee's condition.</td>
<td>Fully implemented (CV-DOJ) Fully implemented (VicPol)</td>
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<tr>
<td>162 That governments give careful consideration to laws and standing orders or instructions relating to the circumstances in which police or prison officers may discharge firearms to effect arrests or to prevent escapes or otherwise. All officers who use firearms should be trained in methods of weapons retention that minimise the risk of accidental discharge.</td>
<td>Fully implemented (LP-DOJ) Fully implemented (VicPol)</td>
</tr>
<tr>
<td>163 That police and prison officers should receive regular training in restraint techniques, including the application of restraint equipment. The Commission further recommends that the training of prison and police officers in the use of restraint techniques should be complemented with training which positively discourages the use of physical restraint methods except in circumstances where the use of force is unavoidable. Restraint aids should only be used as a last resort.</td>
<td>Fully implemented (CV-DOJ) Fully implemented (VicPol)</td>
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<tr>
<td>165 The Commission notes that prisons and police stations may contain equipment which is essential for the provision of services within the institution but which may also be capable, if misused, of causing harm or self-harm to a prisoner or detainee. The Commission notes that in one case death resulted from the inhalation of fumes from a fire extinguisher. Whilst recognising the difficulties of eliminating all such items which may be potentially dangerous the Commission recommends that Police and Corrective Services authorities should carefully scrutinise equipment and facilities provided at institutions with a view to eliminating and/or reducing the potential for harm. Similarly, steps should be taken to screen hanging points in police and prison cells.</td>
<td>Partially implemented (CV-DOJ) Fully implemented (VicPol)</td>
</tr>
<tr>
<td>166 That machinery should be put in place for the exchange, between Police and Corrective Services authorities, of information relating to the care of prisoners.</td>
<td>Fully implemented (CV-DOJ) Fully implemented (VicPol)</td>
</tr>
<tr>
<td>332 That the Commonwealth State and Territory Ministers for Police should formulate and adopt standard guidelines for police custodial facilities throughout Australia.</td>
<td>No progress (VicPol)</td>
</tr>
<tr>
<td>333 While noting that in no case did the Commission find a breach of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, it is recommended that the Commonwealth Government should make a declaration under Article 22 of the Convention and take all steps necessary to become a party to the Optional Protocol to the International Convention on Civil and Political Rights in order to provide a right of individual petition to the Committee Against Torture and the Human Rights Committee, respectively.</td>
<td>Classified as not relevant to Victoria</td>
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**Government Responses on Implementation**

**Recommendation 89: Monitoring operation of bail legislation; and factors relevant to the granting of bail**

**Victoria Police** advised the Review of the relevant legislative provisions in the *Bail Act 1977.*
Legal Policy (DOJ) advised the Review that the Victorian Law Reform Commission (VLRC) investigated *Failure to Appear in Court in Response to Bail* (June 2002) as their first community law reform program. The Report recommended a minor statutory amendment that was indicated to be particularly significant for the Aboriginal community and will also improve the operation of the bail system for members of other disadvantaged groups. The VLRC investigation was in response to concerns raised by the Victorian Aboriginal Legal Service. The VLRC recommended that section 4(2)(c) of the *Bail Act 1977* be repealed. Section 4 of the *Bail Act 1977* contains a general entitlement to bail. An exception to this general rule is provided by Section 4(2)(c) which requires the decision-maker to remand a defendant who has failed to appear unless the defendant can satisfy the court that the failure to appear was due to causes beyond their control. The section does not permit the decision-maker to take into account any considerations and does not say that the failure to appear in court must have been beyond the defendant’s control but that the causes of the failure must have been beyond their control. The Report noted that in many cases it is likely to be difficult to apply these words literally. (The Report also highlighted the unfair result of the application of this section in other circumstances). The Report referred to this Recommendation and the difficulties that may be experienced by Aboriginal people in relation to undertakings of bail. Repealing this section as recommended will improve the operation of the bail system especially for members of the Aboriginal community and members of other disadvantaged groups.

The recommendation of the VLRC in its report *Failure to Appear in Court in Response to Bail* was accepted by the Government and section 4(2)(c) of the *Bail Act* was repealed in May 2004.

Legal Policy further advised that also relevant to the issue of bail is the Aboriginal Bail Justice Program discussed under the VAJA. It is envisaged that if the Koori Court Pilot Program is evaluated as successful it will proceed to hear bail applications.

There is an opportunity for the AJF in conjunction with Government Departments (specifically Legal Policy) as well as Victoria Police and the Victorian Aboriginal Legal Service to:

- Progress the implementation of this Recommendation by reviewing the Victorian Law Reform Commission Report and developing an appropriate initiative to progress the Recommendation; and
- Consider an evaluation of the overall operation of bail legislation in relation to Aboriginal people.

Legal Policy further advised the Review that the Attorney-General’s *Justice Statement 2004* indicates that there will be a review of the *Bail Act 1977*, and the Aboriginal Bail Justice Program will be evaluated in 2004 to ascertain whether the Program has met and continues to meet its intended objectives. It should be noted that Bail Justices who graduate from the Aboriginal Bail Justice Program hear both Indigenous and non-Indigenous matters. This initiative under the VAJA was designed to ensure maximum Indigenous participation in the administration of justice.

Criminal Law Policy (DOJ) advised the Review that in November 2004, the Attorney-General asked the VLRC to review the *Bail Act 1977* and make recommendations for any procedural, administrative and legislative changes that may be necessary to ensure the bail system functions simply, clearly and fairly. As part of the review, the VLRC has also been asked to look at the over-representation of Indigenous Australians held on remand, the
needs of marginalised and disadvantaged groups and the impact of the bail system on these people.

**Recommendation 90: Actions to be taken when bail is denied**

*Victoria Police* advised the Review of its policy and procedure set out in the VPM 113.6.

*Victoria Police* also advised that VALS is notified if an Aboriginal person is taken into custody. Delays have occurred in the past and still do. An in depth analysis of these delays commenced in August 2003 and is continuing. Findings are not yet available. A partnership between VALS, AAU and CJEP has been addressing issues as they arise with the new systems with some positive outcomes. A mandatory field for Indigenous, (must ask) means that if ticked email is not only sent to Statistical Records but also directly to VALS. There are some teething problems that are still requiring work as with any new system, but long term it is hoped that the vast majority of delays will no longer occur.

Bail offence data is not available through the Statistical Services Department of Victoria Police.

**Recommendation 91: Amendments to bail legislation**

*Victoria Police* advised the Review that there is an option for a Bail Justice to attend for an out of sessions hearing. On bail refusal, a form highlighting their options is given to the offender. *Victoria Police* drew the Review's attention to Section 7.7 of the VPM 113.6. A prisoner can be bailed from any location, practically speaking it generally occurs at a Police Station or Court House.

See Section 6.3 – Courts for *Legal Policy (DOJ)* response to this Recommendation.

See Recommendation 89 for *Criminal Law Policy (DOJ)* response to this Recommendation.

**Recommendation 122: Duty-of-care in custody**

*Victoria Police* drew the Review's attention to the Chief Commissioner's Instruction, VPM 115.2 – Care of Prisoners and that a review of in-service training is being addressed as part of the CCP Care of Prisoner Project.

Since 1991, police procedures have been greatly enhanced in dealing with custody issues. Reviews of safety in police watch houses and cells, particularly in terms of supervision and monitoring of prisoners. Closed Circuit Television (CCTV) monitors have been introduced at police complexes, increased watch house staff at police complexes housing prisoners. The introduction and support provided by the Custodial Medicine Unit for enhanced medical support when and where required. The Victoria Police supervision policy was introduced where thorough monitoring, checking and recording of prisoners has had an enormous impact on incidents at police watch houses.

Recruit and Constable training courses have been enhanced in terms of handling and supervision of prisoners. This training extends through training programs up to supervisory levels within the organisation, for example Sergeant/Sub-Officers’ Courses. The Custodial Medicine Unit produced the Coma Scale which is displayed in all police receptions areas for the identification and information of police members in the handling of persons in custody. The introduction of resuscitation equipment at watch houses has been introduced along with the training of police members in the handling of prisoners.
The VPM, Section 115-2 Care of Prisoners Sections 4 - 10.8 provides comprehensive
instructions and policy in terms of handling prisoners in police custody. In addition the
Manual at Section 103-7 is very specific in dealing with the arrest, transportation and
handling of prisoners/suspects who may be ill, injured or deceased and includes details of
the Coma Scale.

See Section 6.5 – Juvenile Justice for Child Protection and Juvenile Justice (DHS)
response to this Recommendation.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this
Recommendation.

**Recommendation 123: Breaches of instructions on the care of persons in
custody**

Victoria Police advised the Review that clear policies are already defined and policed -
VPM 201.1, Ethical Standards.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this
Recommendation.

**Recommendation 124: De-briefing services following an important
incident**

Victoria Police drew the Review’s attention to VPM 104.4 - Debriefs and that debriefing
occurs regularly.

Victoria Police further advised the Review that it has introduced policy whereby all incidents
as described above, and other incidents are to be subject to incident debriefs. Police policy
provides that a full de-brief report is to be submitted at the conclusion of each incident and
the format is to be conducted in terms of the Safety Principles described in the Police
Manual. Online Incident Fact Sheets have been introduced to enable police management
and all staff to have an awareness of the issues being dealt with by operational police on a
day-to-day basis. OSTT debrief database also can assist changes occurring as appropriate.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this
Recommendation.

**Recommendation 127: Examination of the delivery of medical services
to people in police custody**

Victoria Police advised the Review of the Custodial Joint Project between Victoria Police
and DHS. However, ongoing funding difficulties may reduce the service provided.

Victoria Police advised police watch-houses have access to on-call Doctors. All prisoners –
not just Aboriginal prisoners – are cared for by Custodial Nursing Staff. However, there has
been little enthusiasm from Aboriginal Health Service to attend their patients when in police
custody, despite offering to fund each visit. People in watch houses have access to visiting
Doctors or Nurses. They can also be taken to hospitals by the police or by ambulance.
Victoria Police staff will liaise with all other health providers to obtain relevant medical
information. Protocols are in place covering these issues in operating procedures.

Victoria Police subsequently provided an addendum giving further details of and updating
developments relating to this Recommendation. This will be taken into account by the
Section 6: Findings on Over-Representation in the Criminal Justice System

Review in coming to its conclusions on this matter. The principal items reported in this addendum were:

- The introduction of a regular medical or nursing presence in all principal watch-houses in capital cities and in such other major centres as have substantial number detained;
- In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness, injury or self-harm at the time of reception;
- The involvement of Aboriginal Health Service in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;
- The establishment of locally based protocols between police, medical and para-medical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises;
- The establishment of proper systems of liaison between Aboriginal Health Service and police so as to ensure the transfer of information relevant of the health, medical needs and risk status of Aboriginal persons taken into police custody; and
- The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by officers with respect to the management of:
  i. intoxicated persons;
  ii. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions;
  iii. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour,
  iv. persons with an impaired state of consciousness;
  v. angry, aggressive, otherwise disturbed persons;
  vi. persons suffering from mental illness;
  vii. other serious medical conditions;
  viii. persons in possession of, or requiring access to, medication; and
  ix. such other persons or situations as agreed.

Recommendation 128: Standard of medical services

Victoria Police advised the Review that custodial nurses are provided. Victoria Police also advised that this matter had been dealt with under the addendum to Recommendation 127, above.

Protocols have been put in place in Mildura with the Aboriginal Health Service to share information and to refer clients to the Health Service upon release from the watch house.

The Custodial Medicine Unit will contact the appropriate Aboriginal Health Service as required for relevant information. In Mildura, a station with a high Aboriginal population, contact with the Aboriginal Health Service occurs on a frequent basis. The Custodial Health and Alcohol Drugs nurse in Mildura regularly attends meetings with the local health service.
Recommendation 129: Evaluation of breath analysis equipment to test blood alcohol levels
Victoria Police advised the Review that there is no substitute to medical examination.

Victoria Police further advised the Review that the suggestion made by this Recommendation is not deemed an issue following discussions with Dr Edward Ogden. Research conducted in USA where blood alcohol contents registered on breathalyser instruments showed they cannot determine sobriety. There are no legislative provisions available to utilise breathalyser machines for persons not in charge or driving motor vehicles.

Recommendation 130: Transfer of health information
Victoria Police advised the Review that a Person Warning Flag Form 292 applies to all Indigenous persons and Corrections is notified via police forms. If a person identifies as Aboriginal or Torres Strait Islander, they are flagged by Prisoner Management Unit (Victoria Police) as a risk. Informal protocols operate well between Victoria Police and Corrections via the Corrections Aboriginal Liaison Officer (ALO) at MAP who will contact them with any concerns. A copy of the Watch House Prisoner List is supplied to the AAU daily so that the movement of Aboriginal prisoners can be monitored.

In terms of protocols – none currently stand with VALS but they have been proposed in the near future. Informal protocols exist with the Aboriginal Health Service. These are being formalised into forms for use in Mildura.

All health information is recorded and transferred with the prisoner. Consent is obtained by nursing staff for such transfer and sharing.

The advent of CJEP, whilst not fully implemented will mean some of this information is accessible online by the prison system.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.

Recommendation 131: Recording and communication of information
Victoria Police advised the Review that a policy in place within the Custodial Nurses’ records. In practice this procedure works extremely well given the details of prisoner medical information available to police members. The varying police members is not an issue as each outgoing watch house keeper provides a briefing to the incoming watch house keeper and highlights through the screening form the details of the prisoner. Supervising sergeants and senior sergeants also check these forms along with the physical condition of the prisoner.

Recommendation 132: Transfer of information between shifts
Victoria Police advised the Review that procedures are in place (VPM 115.1.6), and that the watch house book is used for such notations.

The Custodial Medical Unit has nurses in location where they are able to check on prisoners.

Victoria Police further advised that it is policy for the outgoing watch house keeper to brief the incoming watch house keeper on the status and condition of prisoners in custody. A physical check of all prisoners is to take place with appropriate entries being made in the watch house keepers charge book. It is also the duty of the outgoing/incoming section
sergeant to physically check and note the condition of all prisoners in custody. A copy of
the lodgement page has been provided to the Review.

**Recommendation 135: Transportation of unconscious or persons in a
similar condition**

*Victoria Police* advised the Review that all transportation of unconscious prisoners are
handled by ambulance services. Normal medical procedures are implemented in cases
involving sick, injured or unconscious suspects. No unconscious prisoners are lodged in
police cells. They receive urgent medical attention and are lodged at secure hospitals under
police guard. Reference was also made to VPM 115.2.

**Recommendation 136: Medical aid to persons found in an unconscious
or similar condition**

*Victoria Police* advised the Review that procedures are in place, and made reference to
VPM 103.7 and Intoxicated procedures.

Procedures for sick and injured prisoners are sound. Police will implement first aid
procedures following calls to paramedics. In the case of lodgement of prisoners at medical
centres or hospital, a police guard is mandatory until they can be conveyed to secure
medical attention locations.

**Recommendation 137: Regular and thorough checks of all detainees**

*Victoria Police* advised the Review that procedures are strictly adhered to in the
supervision of prisoners and by supervising sergeants and senior sergeants, and made
reference to VPM 115.2 - Care of Prisoners. All sleeping prisoners must be woken and a
response received from them prior to leaving the cells. An entry is then made in the
Register of Prisoners and Duty Officers’ visit book as to the condition of prisoners.

**Recommendation 139: Importance of personal cell checks**

*Victoria Police* advised the Review that all police cells that house prisoners are equipped
with CCTV monitors. Two watch house keepers are designated to Category A cells.
Reference was made to VPM 115.2.

**Recommendation 140: Alarm and intercom systems**

*Victoria Police* advised the Review that cameras are in place, and duress alarm bells are
present in all cells containing prisoners. Watch house keepers can comfortably
communicate with prisoners either verbally or by means of electronic systems.

**Recommendation 141: Personal supervision**

*Victoria Police* advised the Review that it has, for some years, complied with this
Recommendation. The detention of a person(s) in police cells is governed by strict custody
procedures outlined in the VPM. Police cells are categorised according to their
accommodation and supervision requirements with appropriate staff being allocated
accordingly. All police cells are monitored by at least two watch house keepers and there is
generally a supervising sub-officer present at the station where the cells are contained.

**Recommendation 142: Immediate discontinued use of padded cells**

*Victoria Police* advised the Review that there are no padded cells in police watch houses.
Two padded cells in Melbourne Custody Centre are outsourced to private providers.
**Recommendation 143: Provisions of meals**

*Victoria Police* advised the Review that procedures are in place. Reference was made to VPM 115.2.5.

*Victoria Police* further advised that in practice, suspects lodged for drunkenness are released after a period of four hours or depending on their state of sobriety. Once they are in a condition to be released than bail occurs. Prisoners lodged for drunkenness and other offences are entitled to meals provided they are serving longer term sentences.

**Recommendation 144: Accommodating an Aboriginal person with another Aboriginal person**

*Victoria Police* advised the Review that difficulties are experienced where the prisoner is behaving in an anti-social manner and is a danger to the prisoners.

The VPM does not discriminate for race, creed or colour. Where any prisoner is detained that is suicidal, ill or suffers mental problems that are covered under the VPM, they are not isolated or lodged alone. Strict criteria are applied in the monitoring of these persons and if it is practical to bail these offenders it is done at the earliest possible opportunity.

**Recommendation 145: Cell visitor schemes**

*Victoria Police* advised the Review that to allow Aboriginal communities a degree of control in the treatment of its members in the Criminal Justice System, in 1988, the government announced the provision of funding to finance the ACJP throughout Victoria. The ACJP program has been operating voluntarily for over 16 years and has been a key factor in forging closer relationships between police and communities. Key roles include:

- Work with all legal and welfare agencies to maximise the delivery of services to Aboriginal people in the criminal justice system;
- Minimise the contact of Aboriginal persons with the criminal justice system throughout Victoria by working with the police and other agencies on appropriate diversionary programs;
- To assist Police in assuring the safety of Aboriginal persons in Police custody;
- To advise and participate in the supervision of community based orders, pre-release programs and parole orders;
- To provide advice to courts on sentencing matters, in relation to Aboriginal people and cultural matters;
- To assist prison and youth training authorities in ensuring the welfare of Aboriginal people in custody;
- To assist Aboriginal persons in post custodial stage;
- To increase awareness in the Aboriginal community about the criminal justice system and sensitise criminal justice agencies to Aboriginal cultural issues;
- Assist in welfare matters such as arranging bail, obtaining securities and providing Aboriginal people with relevant information;
- Ascertain if clients wish to inform family/friend of their situation and where required make relevant contacts.

It must be stressed that these people are volunteers and do what they are able to do around other commitments. VALS staff (paid) are available 24 hours, seven days a week to assist, as are police. The ACJP Review did not conclude by September 2004. The final
ratification of the public document will occur in March 2005. The previous ACJP review has been provided to the Review Team by Victoria Police.

Victoria Police also drew the Review’s attention to VPM 113.1 ‘Taking a person into custody’ and VPM 115.2 ‘Care of Prisoners’.

**Recommendation 146: Visitors**

*Victoria Police* advised the Review that the VPM is clear in the instruction in relation to visits and supervision of prisoner. Visits by relatives and legal representatives are available and is covered in VPM 115.2.10.

**Recommendation 147: Immediate notification of relatives**

*Victoria Police* advised the Review that prisoner warning flags are submitted on all prisoners who are *at risk or a risk* whilst in Police custody. This is to protect both prisoner and Police. Outside of VPM requirements to notify VALS and ACJP, no formal requirements exist for notification to family and friends of Indigenous persons detained in custody. Privacy issues may exist. Station-level instructions may vary from this.

**Recommendation 148: Initiatives to reduce the call on outmoded cells**

*Victoria Police* advised the Review that new police stations are being commissioned in all areas of the State and will be built when finance is available. A number have already been completed. These new facilities are built with ease of access relating to prisoner visitors. The cells are designed for security of both prisoners and police. The view of the local Aboriginal community should not influence and compromise this security.

There are currently no police cells that are substandard. All cells that house prisoners now come with CCTV monitors and two watch house keepers are allocated to stations with prisoners. Enhanced supervision is in place with custody issues. Reference was made to VPM 113.4 – Disposition of persons in custody and VPM 115.2 – Care of Prisoners.

A total of 11 new police stations have been completed across the state in this time period and a total of 9 police stations have been upgraded in this time period.

**Recommendation 149: Flexible custodial arrangements**

*Victoria Police* advised the Review that implementation of this Recommendation is not possible. It is not suitable in this State. Allowing prisoners to leave the environment of cell block or watch house would breach Victoria Police Policy on security.

**Recommendation 158: First priority to be resuscitation and seeking medical assistance**

*Victoria Police* advised the Review that it is part of police procedure to preserve all crime scenes and offer all assistance to persons requiring medical attention under the Human Right – Duty-of-care. In addition to administering First Aid, online medical services are immediately requested. Police procedures clearly put the first imperative as to save lives; the crime scene is a secondary consideration. Reference was made to VPM, 115.2, Correctional Policy, ‘Care of Prisoners’.

See Section 6.4 – Corrections for *Corrections Victoria (DOJ)* response to this Recommendation.
Recommendation 159: Safe and effective resuscitation equipment

Victoria Police advised the Review that police cells have this equipment ready and are trained to use it. Use of equipment and the methods of application are covered by virtue of First Aid training by St John Ambulance. Training is provided by Rural Ambulance Victoria.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.

Recommendation 160: Training in resuscitation and first aid

Victoria Police advised the Review that first aid training takes place every three years with a twelve month refresher in Cardiac Pulmonary Resuscitation (CPR). This is conducted during the time allocated for Operation Safety and Tactics Training (OSTT) but does not form part of OSTT. Police also undergo first aid training as part of the OSTT and are awarded the appropriate First Aid Certificates. Reference was made to VPM 101.4.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.

Recommendation 161: Immediate seeking of medical attention

Victoria Police advised the Review to refer to VPM, 115.2 – Care of Prisoners (subsection 7 – Any prisoner requiring treatment). Victoria Police also noted that all clinical contacts are recorded on a database including Indigenous specific instructions which can be obtained.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.

Recommendation 162: Law relating to the discharge of firearms

Victoria Police advised the Review that: Procedures in place – Crimes Act 462A; use of force VPM 101.4 – 16/17; Project Beacon in 1993-94; Changes Force training over the culture of firearm use have occurred.

Victoria Police advised the Review that both recruit and operational training in firearms and baton techniques have been greatly enhanced. The introduction of Oleoresin Spray (OC) has been introduced as an alternative to the use of firearms. Conflict resolution training and operational safety tactics through Operations Beacon 1993-94 occurred across Victoria Police as a means of enhancing skills in confrontational situations. Reference was made to the Crime Act s462A.

See Section 6.4 – Corrections for Legal Policy (DOJ) response to this Recommendation.

Recommendation 163: Training in restraint

Victoria Police advised the Review that OSTT training techniques in addition to firearms and weapons training has included restraint techniques and revised techniques in the use of handcuffs. Restraints are only used as a last resort depending on the extent of violence police are faced with. Reference was made to VPM 101.2 - Operation Safety and Tactics Training - Training every six months. OSTT training always had an emphasis on problem solving whilst resorting to the minimus level of forces to achieve the purpose.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.
Recommendation 165: Elimination of equipment and facilities which might cause harm or self-harm

Victoria Police advised the Review that all cells with potential hanging points are closed until rectified. All open cells have had hanging points eliminated. Fire extinguishers and protection equipment are essential and are kept away from prisoners. There is no intention to re-introduce non-commissioned cells that are ‘suspect’ in terms of safety to prisoners.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.

Recommendation 166: Exchange of information on the care of prisoners

Victoria Police advised the Review that procedures ‘Custodial Medicine: Risk Management and Police Cells Data base’ are in place and are monitored by the Industrial Disputations and Prisoner Management Unit in conjunction with police custody centres.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.

Recommendation 332: Standard Australia-wide guidelines for police custodial facilities

Victoria Police advised the Review that this is an issue for Australasian Police Ministers’ Council (AMPC). Victoria Police further advised the Review that they are not aware of progress on this matter.

Recommendation 333: International Convention on Civil and Political Rights

This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

(e) Public Drunkenness, Public Drinking and Offensive Language

The intent of this cluster of Recommendations is to reduce the number of people in custody for drunkenness, public drinking and offensive language.

These Recommendations address procedures relating to policing from the period of time when an Aboriginal person comes under notice of the police and enters that of the courts. Particular attention is given to public drunkenness and street offences, policing practices and policy which can have significance for either increasing or decreasing the numbers of people in custody, alternatives to arrest, and the use of bail where arrest is affected.

The Recommendations propose the abolition of the offence of public drunkenness where this has not been done (Recommendation 79), establishment of non-custodial facilities for intoxicated persons (Recommendation 80), legislation to require police to consider and utilise alternatives to police cells (Recommendation 81), monitoring the effects of dry areas declarations (Recommendation 82), review of legislation that deals with the public consumption of alcohol (Recommendation 83), the development, through negotiation, of a plan to address public drinking (Recommendation 84), and the monitoring of the effect of legislation which decriminalises drunkenness (Recommendation 85). The Recommendations also address the use of offensive language charges (Recommendation 86).
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>79</td>
<td>That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.</td>
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<td></td>
<td>Partially implemented (LP-DOJ)</td>
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<td>Partially Implemented (VicPol)</td>
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<td>80</td>
<td>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.</td>
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<td></td>
<td>Partially implemented (DP&amp;S-DHS)</td>
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<tr>
<td></td>
<td>Partially Implemented (LP-DOJ)</td>
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<tr>
<td>81</td>
<td>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.</td>
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<td></td>
<td>Partially implemented (LP-DOJ)</td>
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<tr>
<td>82</td>
<td>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.</td>
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<td></td>
<td>Partially implemented (LP-DOJ)</td>
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<td>83</td>
<td>That:</td>
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<td></td>
<td>(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</td>
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<td></td>
<td>(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.</td>
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<tr>
<td></td>
<td>a) Classified as not relevant to Victoria,</td>
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<td></td>
<td>b) partially Implemented (DP&amp;S-DHS)</td>
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<tr>
<td></td>
<td>Partially implemented (LP-DOJ)</td>
</tr>
<tr>
<td>84</td>
<td>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.</td>
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<td></td>
<td>No progress (VicPol)</td>
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<td>85</td>
<td>That:</td>
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<td></td>
<td>(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;</td>
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<tr>
<td></td>
<td>(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</td>
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<td></td>
<td>(c) The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public.</td>
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<td>No progress (VicPol)</td>
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<tr>
<td>86</td>
<td>That:</td>
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<tr>
<td></td>
<td>(a) The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and</td>
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<td></td>
<td>(b) Police services should examine and monitor the use of offensive language charges.</td>
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<td></td>
<td>No progress (VicPol)</td>
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**Government Responses on Implementation**

**Recommendation 79: Legislate to decriminalise and abolish the offence of public drunkenness**

**Legal Policy (DOJ)** advised the Review that the offence of drunkenness has not been decriminalised. The offence of ‘Habitual Drunk’ (Section 15 of the *Summary Offences Act 1966*) was, however, repealed in 1998.
The Drugs and Crime Prevention Committee conducted an *Inquiry into Public Drunkenness*. The *Final Report* (which is an extensive report including issues in relation to the Royal Commission), completed in June 2001, recommended that public drunkenness be decriminalised but not until adequate sobering up centres are established, legislation with regard to civil apprehension and detention is enacted and comprehensive training for police officers and sobering-up centre staff with regard to the new legislation and any protocols and guidelines associated with it is undertaken. The report makes further detailed recommendations in relation to public drunkenness and the *Summary Offences Act 1966* as well as other matters. It is important to note the report also recommends that Recommendations 79-84 of the Royal Commission be generally implemented.

The recommendations of the *Final Report* are under consideration by the Government which has indicated it will consult with stakeholders and make an official response.


**Victoria Police** advised the Review that there is one Sobering-up Centre in the Metropolitan region and five regionally. VPM 113.1 states that if Aboriginal people are arrested for being ‘drunk’ then the Sobering-Up Centre must be notified. The AAU is currently supplying contact details of all Sobering-Up Centres to stations on their receipt.

Regionally, the ACJP play an important and effective role in assisting police with drunken clients. DOJ is instigating a broader, regional Night Patrol service that will assist in this matter.

**Victoria Police** advised the Review that the issue of public drunkenness has been addressed by the Operations Department – Drugs and Crime Prevention Committee (DCPC) (*Inquiry into Public Drunkenness – Operations Response*). The Review has been provided with a copy of the issues paper and with the briefing paper provided by Victoria Police for DOJ in this Commission.

**Recommendation 80: Provision of non-custodial facilities for intoxicated persons**

**Drugs Policy and Strategy (DHS)** advised the Review that the offence of public drunkenness has not been repealed. However, seven Sobering-up Centres (called Koori Community Alcohol and Drug Resource Centres in Victoria) were established in the early 1990’s in response to the Royal Commission. There are only three centres which operate 24 hours, seven days a week. The remaining operates normal day time hours.

DHS is part of a working group formed to look at the implications of repealing the law of public drunkenness, according to the recommendations made by the DCPC: *Inquiry into Public Drunkenness, Final Report* (June 2001). In relation to the Indigenous Alcohol and Drug Resource Services (Sobering-up Centres) DCPC Recommendation 12 stated, *Where appropriate, sobering-up centres be established specifically for Indigenous people.* Recommendation 13 stated *Consideration should be given to wherever possible to sobering-
up centres established for Indigenous people forming part of a holistic ‘treatment service’ or ‘healing centre’.

DHS is addressing the following questions, based on the DCPC recommendations, in relation to setting up sobering-up centres throughout the state of Victoria:

- Exactly what type of facility provides the most appropriate response to people apprehended due to public drunkenness;
- The resource implications of the Committee’s recommendations.

Commonwealth (COAG) Illicit Drug Diversion Initiative in Victoria:

**Police Diversion**

Koori clients who are detected for use and/or possession of illicit drugs may be cautioned by the Police and diverted into drug education, assessment and treatment without detention in custody. A caution for use and/or possession of cannabis can be provided by Police on the street whilst use and/or possession of other illicit drugs requires the client to be taken back to the Police station where an appointment is made at a drug assessment and treatment agency when the caution is issued.

**Court Diversion**

Diversion programs, such as Court Referral and Evaluation Drug Treatment (CREDIT) or the Rural Outreach Diversion Worker, are available from Magistrates’ Courts across Victoria at the point of bail for non-violent offenders with a substance misuse issue. Clients undergo drug assessment and treatment as a condition of bail. Progress in treatment is taken into account when the matter is heard.

Koori A&D diversion workers are also available at specialist Koori Courts to link Koori clients coming before the court who have substance misuse issues into drug assessment and treatment either in a mainstream agency or with the Koori A&D worker at the Aboriginal Cooperative.

An Evaluation of the Koori Community Alcohol and Drug Resource Services conducted by Turning Point Alcohol and Drug Centre in 2001, found that:

- Clients were mostly males, in their late twenties and using alcohol and/or cannabis;
- Clients usually used the service once, however, some agencies identified a group of chronically homeless people who had repeat visits;
- Other groups who used the KCA&DRS included young people at risk of alcohol and drug misuse, transients, and women and children escaping domestic violence;
- The buildings used are family homes with minimal alterations to accommodate male and female clients and live-in coordinators;
- Most services reported good relationships with Police, an essential referral source.

The issues raised specifically about the KCA&DRS were:

- Ill-defined service role in need of operational guidelines that should include principles of good practice, standards for service provision, criteria for clients appropriate for the service and appropriate use of premises;
- Definition of an episode of care needs clarification;
The wide range of client issues, other than drug and alcohol, presenting at these services that workers are expected to respond to;

Limited referral options, particularly as most of these services were based in rural areas with inadequate withdrawal and residential rehabilitation services;

The need for better linkages with mainstream services; and

The need to review funding for staffing and operational costs.

See Recommendation 79 for Legal Policy (DOJ) response to this Recommendation.

**Recommendation 81: Statutory duty of police**

See Recommendation 79 for Legal Policy (DOJ) response to this Recommendation.

**Recommendation 82: Monitor the impact of local restriction on alcohol**

See Recommendation 79 for Legal Policy (DOJ) response to this Recommendation.

**Recommendation 83: Consider NT laws on local agreements**

Drugs Policy and Services (DHS) advised the Review that Public Drunkenness has not been repealed in Victoria. However, there are currently seven Sobering-up Centres (called Koori Community Alcohol & Drug Resource Centres) set up throughout Victoria, which serve the Indigenous community. These centres were set up as a response to the Royal Commission into Aboriginal Deaths in Custody. There are only three centres which operate 24 hours, seven days a week. The remaining four centres have normal day time hours. The current model of service provision is under review by the DHS, Drugs Policy and Services Branch.

See Recommendation 79 for Legal Policy (DOJ) response to this Recommendation.

**Recommendation 84: Development of a plan to address public drinking**

Victoria Police advised the Review that public drinking is not an offence, council by-laws only. Victoria Police advised the Review that further information on this Recommendation is available through the DCPC (Inquiry into Public Drunkenness - Operations Response); a copy of which has been provided to the Review.

**Recommendation 85: Monitoring effects of decriminalisation of drunkenness**

Victoria Police advised the Review that further information on this Recommendation is available through the DCPC (Inquiry into Public Drunkenness - Operations Response), a copy of which has been provided to the Review.

**Recommendation 86: Offensive language**

Victoria Police advised the Review that this is generally governed by what is accepted by normal community standards. Victoria Police further advised that police will utilise their discretionary powers in matters of offensive language in matters generally involving drunkenness. The charges of offensive language will only ever be considered depending upon the circumstances of each incident under investigation and in modern times are generally restricted to offences where the presence of women or children are present. Police members are more tolerant in modern times to offences of this nature.
(f) Preventative and Community Policing

The intention of this cluster of Recommendations is to increase the level of preventative or community policing. These Recommendations address the importance of community policing, the allocation of police resources to community policing (Recommendation 88), and the importance of involving Aboriginal communities in devising procedures for the sensitive policing where it is known that substantial numbers of Aboriginal people gather or live (Recommendation 214). The Recommendations address the introduction of procedures whereby negotiations should take place with Aboriginal communities on policing methods (Recommendation 215). The Recommendations also address matters that should be considered in the review of the Aboriginal Community Justice Project (Recommendation 217). Recommendations 216, 218 and 232 concern specific matters in Northern Territory and Queensland.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>88</td>
<td>Fully implemented (VicPol)</td>
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<td></td>
<td>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:</td>
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<td>(a) There is over policing or inappropriate policing of Aboriginal people in any city or regional centre or country town;</td>
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<td>(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</td>
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<td></td>
<td>(c) There is sufficient emphasis on crime prevention and liaison work and training directed to such work.</td>
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<tr>
<td>214</td>
<td>Fully implemented (VicPol)</td>
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<td></td>
<td>The emphasis on the concept of community policing by Police Services in Australia is supported and greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live.</td>
</tr>
<tr>
<td>215</td>
<td>Partially implemented (VicPol)</td>
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<td></td>
<td>That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including:</td>
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<td>(a) The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;</td>
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<td>(b) Any problems perceived by Aboriginal people; and</td>
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<td></td>
<td>(c) Any problems perceived by police. Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.</td>
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<td>216</td>
<td>Classified as not relevant to Victoria</td>
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<td></td>
<td>That the Northern Territory Department of Correctional Services should, at the conclusion of the review of the Aboriginal Community Justice Project, establish regular meetings with Magistrates to monitor the effective operation of the program and establish a mechanism to ensure that the views of the Aboriginal communities in which the program operates are considered in the context of these meetings.</td>
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<tr>
<td>217</td>
<td>Partially implemented (VicPol)</td>
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<td></td>
<td>That the review of the Aboriginal Community Justice Project should undertake a detailed consideration of the resources required by the Project to operate effectively. Consideration should be given to the creation of specific liaison officer positions employing Aboriginal people to facilitate communications between the court and the community.</td>
</tr>
<tr>
<td>218</td>
<td>Classified as not relevant to Victoria</td>
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<td></td>
<td>That in reviewing the Aboriginal Community Justice Project the Northern Territory Department of Correctional Services should undertake extensive consultations with all Aboriginal communities which wish to participate in the program. In pursuing this consultation, care should be given to canvassing the entire range of community opinions and the means by which these may be brought, in any relevant case, to the Court's attention.</td>
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<tr>
<td>232</td>
<td>Classified as not relevant to Victoria</td>
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<td></td>
<td>That the question of Community Police in Queensland and the powers and responsibilities of Community Councils in relation to them be urgently reviewed.</td>
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</table>
Government Responses on Implementation

Recommendation 88: Allocation of police resources to community policing

**Victoria Police** provided the Review with information on Police ALO, and its involvement with the Aboriginal Community Justice Panel, the Victoria Police Aboriginal Advisory Policy Reference Group (VPAPRG), Local Safety Committees (LSCs), and Police Community Consultative Committees (PCCCs), as well as initiatives and other forums across the regions. ACJP Review 2002 was also provided by Victoria Police. An independent and more extensive review was carried out by SED Consultants and concluded in December 2004 and involved 21 focus community group meetings state-wide. The public review document will be presented at the Aboriginal Justice Forum in April 2005.

A review of PALOs has not occurred to date. Funding for a PALO forum to occur was gained. Victoria Police provided the ACJP Call-out Register. The Review was advised that any offence means an Aboriginal person is brought into custody in areas where ACJP exists means that they will be called out. There are no offences that will not require a call-out so they are as numerous as the types of offences that exist.

Recommendation 214: Emphasis on community policing, and involvement of Aboriginal communities

**Victoria Police** advised the Review that the four key focuses for its strategic direction *The Way Ahead Victoria Police Strategic Plan 2003-2008*, are Intelligent, Confident, Partnership and Community Policing. The AAU has worked in close consultation with the members of VPAPRG and community in the updating of the *Aboriginal Strategic Plan* was launched on 9 August 2004. An action plan stemming from this will provide real ways of implementing the plan. This is due to be released by December 2004. ACJP’s roles were addressed in the response to Recommendation 145. Some other recent practices undertaken by the ACJPs include:

- Cross cultural training and video production;
- Two-day leadership and self esteem forum with Ron Barassi;
- Youth cultural outings and High Challenge camps;
- Youth camp to Portsea;
- School holiday program for Lake Tyers Koori kids;
- Organising tours of the Police Academy with Indigenous regional kids; and
- Murray River Marathon combined police/ACJP/RAJAC/Indigenous kid’s team.

With respect to Local Priority Policing (LPP) practice on the ground, examples were provided by Victoria Police in its response to Recommendation 88. PALOs work closely with ACJPs and report to AAU and LPP Inspector via chain of command.

Recommendation 215: Negotiations on policing methods between police and Aboriginal organisations

**Victoria Police** advised the Review that from their inception, a senior ranking police officer has been invited to membership on the six RAJACs providing a conduit for regional issues to be raised. The overall police Indigenous Portfolio holder also attend the AJF. Up until recently Assistant Commissioner Kieran Walshe has fulfilled this role. He has been replaced by Commander Ashley Dickinson who also chairs VPAPRG and is Commander Operations.
Coordination Department for Victoria Police. Whether issues are raised or not is up to the membership.

Along with the AAU, PALOs and ACJP there are a number of ways communities and police consult and work together to solve issues. There is no set frequency but issues are dealt with as they occur.

If Indigenous people wish to make a complaint, they can do so via their local police station, Ethical Standards Department (ESD) or the Ombudsman.

The Regional ALO, Sergeant Greg Chandler, is available 24 hours a day, seven days week to provide a reactive response to members and community if issues arise. Victoria Police has great confidence in Sergeant Chandler’s ability to resolve these issues.

Recommendation 216: Northern Territory to establish regular meetings with magistrates
This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

Recommendation 217: Review of the Aboriginal Community Justice Panel
Victoria Police provided the Review with a copy of the 2002 Review of the ACJP.

The Review was also provided with a copy of the Terms of Reference of the current independent review of the ACJP, and the A Aboriginal Community Liaison Officer (ACLO) Consultation Paper and ACLO Consultation Feedback Paper. The findings of the current independent ACJP Review will be available post completion in September 2004. Two ACLO positions in a pilot project for three years have been funded, commencing 2004-05.

Recommendation 218: Northern Territory review of the Aboriginal Community Justice Project
This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

Recommendation 232: Queensland community police and community councils
This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

(g) Eliminating Racist Attitudes and Abusive Behaviour towards Indigenous People

The intention of this cluster of Recommendations is to improve relations between the Police and Aboriginal people.

These Recommendations address the steps that could be taken to eliminate violent or rough treatment or verbal abuse of Aboriginal persons, and the use of racist or offensive language or comments in log books and other documents by police officers (Recommendation 60), and the need for humane and courteous interaction with detainees (Recommendation 134). A Recommendation to the National Police Research Unit proposes a study of efforts being made by Police Services to improve relations between police and Aboriginal people.
(Recommendation 222). The Recommendations propose the development of a protocol between the police and Aboriginal people (Recommendation 223), the notification of Aboriginal Legal Services in the event of arrest or detention (Recommendation 224), and the setting up of policy and development units within Police Services to develop policies and programs that relate to Aboriginal people (Recommendation 225). The Recommendations also address the need for different jurisdictions to pursue their chosen initiatives for improving relations between police and Aboriginal people (Recommendation 231).

These Recommendations also address the use of units (such as the Special Operations Group) in circumstances affecting Aboriginal communities (Recommendation 61).

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>60</td>
<td>That Police Services take all possible steps to eliminate:</td>
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<td></td>
<td>(a) Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and</td>
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<td>(b) The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers.</td>
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<td>When such conduct is found to have occurred, it should be treated as a serious breach of discipline.</td>
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<td>Fully implemented (VicPol)</td>
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<tr>
<td>61</td>
<td>That all Police Services review their use of para-military forces such as the New South Wales SWOS and Tactical Response Groups units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.</td>
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<td>Fully implemented (VicPol)</td>
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<td>134</td>
<td>That police instructions should require that, at all times, police should interact with detainees in a manner which is both humane and courteous. Police authorities should regard it as a serious breach of discipline for an officer to speak to a detainee in a deliberately hurtful or provocative manner.</td>
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<td></td>
<td>Fully implemented (VicPol)</td>
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<tr>
<td>222</td>
<td>That the National Police Research Unit make a particular study of efforts currently being made by Police Services to improve relations between police and Aboriginal people with a view to disseminating relevant information to Police Services and Aboriginal communities and organisations, as to appropriate initiatives which might be adopted.</td>
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<td></td>
<td>No progress (VicPol)</td>
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<tr>
<td>223</td>
<td>That Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of:</td>
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<td>(a) Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained;</td>
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<td>(b) The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication;</td>
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<td>(c) Concerns of the local community about local policing and other matters; and</td>
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<td>(d) Processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their communities.</td>
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<td>a), b), and c) fully implemented, d) no progress (VicPol)</td>
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<tr>
<td>224</td>
<td>That pending the negotiation of protocols referred to in Recommendation 223, in jurisdictions where legislation, standing orders or instructions do not already so provide, appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person other than such arrests or detentions for which it is agreed between the Aboriginal Legal Services and the Police Services that notification is not required.</td>
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<td></td>
<td>Partially implemented (VicPol)</td>
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<tr>
<td>225</td>
<td>That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate.</td>
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<tr>
<td></td>
<td>Partially implemented (VicPol)</td>
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<tr>
<td>231</td>
<td>That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances.</td>
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<tr>
<td></td>
<td>Partially implemented (VicPol)</td>
</tr>
</tbody>
</table>
Government Responses on Implementation

**Recommendation 60: Elimination of violent or rough treatment, verbal abuse and racist or offensive language by police officers**

*Victoria Police* advised the Review that violent or rough treatment of any offender is not tolerated, neither is the use of racial or derogatory comments and any instances will be treated as a serious breach of discipline. Furthermore, all allegations are strenuously investigated. Reference was made to VPM - Discipline Procedures 211.1.

*Victoria Police* advised the Review that the Victoria Police *Equity & Diversity Corporate Five Year Plan* (2003-2008) identifies core strategies to be implemented to ensure anti-discrimination policies and principles are applied throughout the whole organisation and within the workplace. The Victoria Police *Aboriginal Strategic Plan & Policy* documents - strategies in the section 'Improving Safety in Custody' addresses this and will be translated into practice through the resulting *Action Plan*. The Review was advised of cross-cultural training of recruits, retention-phase Constables, and of new members to stations in areas of significant Indigenous populations. The ACLO program is to commence 2004-05.

*Victoria Police* advised that the VPAPRG provides an excellent forum for issues to be raised and dealt with through appropriate research by the AAU. Issues raised over a twelve month period include: perceived overuse of Oleoresin Capsicum Spray on Indigenous people in the Robinvale area, delays in VALS notifications, the process of complaints, role of ACLOs, inclusion of community consultation in the Victoria Police Strategic documents, as well as positive programs such as operating in Echuca.

**Recommendation 61: Use of Special Operations Group**

*Victoria Police* advised the Review that there have been no incidents where the Special Operations Group (SOG) has been required to specifically attend any incidents involving Aboriginal communities since 1991. Reference was made to VPM 106.2 (SOG). SOG deployment is authorised by the Commander (Specialist Support) or Regional Assistant Commissioner.

**Recommendation 134: Humane and courteous interaction with detainees**

*Victoria Police* advised the Review that this Recommendation is strictly complied with by virtue of incoming and outgoing watch house keeper procedures, visits by operational Sergeants 251 units, and backed up by visits and supervision by Senior Sergeants in the 265 roles. Reference was made to the VPM 211.1.

**Recommendation 222: Research and dissemination of information on initiatives to improve relations between Police and Aboriginal communities and organisations**

*Victoria Police* advised the Review that it appears that this recommendation refers to a study overseen by the National Police Research Unit (NPAU) looking into of efforts currently being made by Police Services to improve relations between police and Aboriginal people with a view to disseminating relevant information to Police Services and Aboriginal communities and organisations. It is imagined that Victoria Police would be approached by this body if such a study was undertaken. No progress was registered because, to date, Victoria Police has not been approached to provide this information. NPAU is now called Australasian Centre for Policing Research (ACPR). If a perceived need still, it should be
raised at the Senior Officers Group as part of the APMC. A request could be made to the Chief Commissioner (Victoria Police) to drive such research.

**Recommendation 223: Protocol between the Police, Aboriginal Legal Services, and Aboriginal organisations**

**Victoria Police** advised the Review that:

(a) Procedure is in place (VPM 113.1);
(b) see VPM 113.1;
(c) Local Police Manager updated in RAJAC;
(d) a full time PALO position has been instigated from August 2004 and is located at Warrnambool.

Victoria Police further advised the Review that the AAU and VALS have a good relationship with open communication and a partnership approach to dealing with issues such as delays in notification. The process can be frustrating and time consuming but Victoria Police hope to have a clear, evidence-based report on why these delays occur by mid-September after we have collated member reasons responses. There are no formal protocols between VALS and police excepting what is contained in the VPM (113-1, 4.3.5). Victoria Police have a protocol between Corrections and ACJP that it plans to adopt with necessary alterations for VALS/ACJP and possibly for Police/VALS. In terms of ease with which issues about local issues can be raised and resolved the normal pathways exist via Police complaint process and Ombudsman but matters that can be resolved locally to the satisfaction of all are ideal. This can be facilitated by the PALO or ACJP. In terms of part (d) of Recommendation 223, this is not a workable model. There may be some scope for the selection of PALOs to have community input within the limits of staffing available as these positions are intended to be Sergeant or above and some stations, being small, will have limited pool of candidates. The process of employing ACLOs is intended to include community input with a local community member on the selection panel in the locations of ACLO placement.

**Recommendation 224: Notification of Aboriginal Legal Services upon the arrest or detention of any Aboriginal person**

**Victoria Police** advised the Review that standing orders and instructions as outlined in Recommendation 223 exist and it is mandatory that VALS is notified when an Aboriginal person is taken into custody. Reference was made to VPM 113.1. With the development of CJEP, a function that makes the Aboriginality ‘box’ a mandatory field so that an email goes directly to VALS and Statistical Records Branch, Victoria Police simultaneously.

The CJEP custody model is implemented state-wide. The CJEP data capture and reporting processes have been refined to provide accurate information on delays. Explanations are sought from members to provide explanations for delays. CJEP system has now utilised state-wide by all police members. Plans are being developed to produce a simple, eye-catching ‘Ready Reckoner’ that will assist members in understanding their required commitments to Aboriginal people in custody.

**Recommendation 225: Establishment of a unit within the Police to develop policies and programs that relate to Aboriginal people**

**Victoria Police** advised the Review that the Aboriginal Advisory Unit has four positions, two of which are held by Aboriginal people.

**Victoria Police** further advised the Review that it set up the Aboriginal Advisory Unit in response to this Recommendation over 10 years ago. In that sense and in the sense that
the unit currently enjoys full access to senior management and reports to Commander Operations Coordination (next down from the Chief Commissioner) via the Superintendent of the Division. The AAU also seeks to employ Aboriginal people to the Unit. Currently the VPS 3 position is held by an Aboriginal person. The Manager’s position has, at times, been held by an Aboriginal person but the current manager is not Aboriginal. The succession management plan is for that to be the case. The ACLO program will be overseen by the AAU. These positions are identified Aboriginal.

The restructure of the Community & Cultural Division has led to a more equitable spread of personnel. To that end, we now have an additional five sworn members working at the AAU. Their key role is to support members in the region in terms of Indigenous matters.

**Recommendation 231: Initiatives for improving relations**

Victoria Police advised the Review that ACLO programs are being examined in other States.

Victoria Police further advised the Review that there has been considerable progress in terms of this Recommendation. Full community consultation has occurred. During the ACLO Feasibility Study, considerable research went into exploring and analysing the strategies of other jurisdictions in terms of Indigenous positions. Consultation occurred with community as to what model would fit best in Victoria. The NSW model (ACLOs) was seen to most closely match the needs of Victoria. There were serious concerns that police aides create a ‘cheap police force’ and that liaison officers, unsworn, would provide a positive link between police and community and have more chance of breaking down the barriers that exist.

The Consultation Paper and resulting Feedback Paper have been provided to the Review by Victoria Police.

Funding for four ACLO positions was provided and the positions were in fact advertised (as of November 2004).

**Complaints Procedures**

The intention of this Recommendation is to improve the accountability of Police and to ensure complaints are appropriately and independently dealt with. This Recommendation addresses the need to review the processes for dealing with complaints against the police.

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<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tr>
<td>226</td>
<td>That in all jurisdictions the processes for dealing with complaints against police need to be urgently reviewed. The Commission recommends that legislation should be based on the following principles:</td>
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<td>(a) That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services;</td>
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<td>(b) That the name of a complainant should remain confidential (except where its disclosure is warranted in the interests of justice), and it should be a serious offence for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint;</td>
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<td>(c) That where it is decided by the independent authority to hold a formal hearing of a complaint, that hearing should be in public;</td>
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<td>(d) That the complaints body report annually to Parliament;</td>
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<td>(e) That in the adjudication of complaints made by or on behalf of Aboriginal persons one member of the review or adjudication panel should be an Aboriginal person nominated by an appropriate Aboriginal organisation(s) in the State or Territory in</td>
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<td>Partially implemented (Ombudsman)</td>
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### Recommendation

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<th>Recommendation</th>
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<tr>
<td>(f) That the complaint arose. The panel should also contain a person nominated by the Police Union or similar body;</td>
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<td>(g) That there be no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint;</td>
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<td>(h) That Aboriginal Legal Services be funded to ensure that legal assistance, if required, is available to any Aboriginal complainant;</td>
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<td>(i) That the complaints body take all reasonable steps to employ members of the Aboriginal community on staff of the body;</td>
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<td>(j) That the investigation of complaints should be undertaken either by appropriately qualified staff employed by the authority itself, or by police officers who are, for the purpose of and for the duration of the investigation, under the direction of and answerable to, the head of the independent authority;</td>
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<td>(k) That in the course of investigations into complaints, police officers should be legislatively required to answer questions put to them by the head of the independent authority or any person acting on her/his behalf but subject to further legislative provisions that any statements made by a police officer in such circumstances may not be used against his/her in other disciplinary proceedings; and</td>
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<tr>
<td>(l) That legislation ensure that the complaints body has access to such files, documents and information from the Police Services as is required for the purpose of investigating any complaint.</td>
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### Government Responses on Implementation

**Recommendation 226: Legislative process for dealing with complaints against Police**

The **Ombudsman Victoria** and the **Deputy Ombudsman (Police Complaints)** advised the Review that essentially, there has been no change since 1996-97 of Part 1VA of the **Police Regulation Act 1958**, which sets out the legislative framework for the Police Complaints System and the handling of allegations of serious misconduct against police. However, the government is reviewing the operation of the **Police Regulation Act 1958** including the handling of complaints against police. Comment on each of the principles on which the Commission recommended that police complaints legislation should be based, is provided as follows:

(a) The statutory framework for dealing with complaints against police conduct in Victoria combines the practical advantages of using police experience and resources to investigate most complaints with the accountability advantage in having the Ombudsman as the independent civilian authority overseeing all of those investigations whilst at the same time having the power to take over those investigations or to conduct his own primary investigations in prescribed circumstances. For example, the Ombudsman must investigate from the outset, complaints made against officers of Assistant Commissioner rank and above. The Ombudsman may also conduct a primary investigation himself of complaints which he considers it is in the public interest to do so or if the complaint complained or is in accordance with established police practices and procedures which the Ombudsman believes should be reviewed.

Two Annual Reports have identified areas for improvement in the police complaints system and suggested the strengthening of the legislative framework underpinning
the present system. The Ombudsman has also sought additional resources to enable him to conduct more of his own investigations independently of the police.

Consideration of these matters by the government has been deferred pending the extensive review of the Police Regulation Act 1958.

(b) In the meantime his Office has, over the past year or so, initiated a number of measures to improve the system, particularly in relation to members of the Aboriginal community. For example, the Office has:

- Introduced an Outreach Program with particular emphasis on youth and ethnic and Aboriginal communities, following the appointment of a Community Access and Youth Liaison Officer.
- Notwithstanding the deferral of the question of providing additional significant resources, the Victorian Government has provided funding for the appointment of an Investigation Officer position dedicated to handling complaints (predominantly against police) from members of the Aboriginal community.
- Substantially increased the number of Ombudsman investigations conducted independently of police.
- Entered into arrangements with VALS whereby complaints are lodged with his Office on a strictly confidential basis on the understanding that no further action will be taken until the question of what, if any, action should be taken in particular cases has been discussed with the Service and/or the complainant. On other occasions, agreement has been reached that the Office would only make preliminary inquiries following the receipt of a complaint or simply file complaints without further action for *intelligence purposes only.*

In summary, the present legislative framework has proved sufficiently flexible to allow adjustment of the mix of the investigative and oversighting input by the Ombudsman to cater for the particular needs of the Aboriginal community. The ability of the Ombudsman to conduct his own investigations totally independent of police is dependent upon the resources available to him. With the appointment of a dedicated investigation officer for dealing with complaints and issues involving members of the Aboriginal community, it will be possible to handle most of these complaints totally independent of police.

(c) As indicated above, agreement has been reached with the VALS for the confidential handling of particular complaints. However, where formal investigation is required and agreed upon, it is virtually impossible to conduct an investigation without disclosing the identity of the complainant. In putting allegations to police and questioning them about their conduct towards the complainant, the complainant’s identity will invariably be disclosed.

It is a disciplinary offence under the Police Regulation Act 1958 for a police officer to take any detrimental action against a person by reason of that person having made a complaint.

Under the Whistleblowers Protection Act 2001 there are also criminal penalties of sixty penalty units or six months’ imprisonment or both for the offence of improperly revealing confidential information obtained or received in the course of or as a result of a protected disclosure or the investigation of a disclosed matter.
It is also an offence attracting a maximum penalty of two hundred and forty penalty points or two years imprisonment or both under the *Whistleblowers Protection Act 2001* for any person who takes detrimental action against a person in reprisal for making a *protected disclosure*. The Act also provides an action for damages in respect to any such detrimental action.

(d) Complaints investigations are not normally conducted by way of ‘formal hearing’ in Victoria. ‘Formal hearings’, whether public or otherwise, would normally follow the investigative process as to do otherwise would be detrimental to the integrity of the investigation and outcome. Of course, many complaint investigations result in either formal court proceedings, which are generally open to the public, or in discipline proceedings which currently in Victoria are not public proceedings. Again, the current complaints and discipline system in Victoria are under review in the context of the wider review of the *Police Regulation Act 1958*.

(e) The Ombudsman reports annually to Parliament and also on particular investigations. Victoria Police also submit an *Annual Report* to Parliament which includes information on complaints made to and investigated by the Ethical Standards Department.

(f) The Ombudsman has an investigative/recommnedatory rather than an adjudicative function. This recommendation is therefore not applicable to the current model of complaint handling in Victoria.

(g) There is no cost to the complainant involved in the making or investigation of a complaint in Victoria.

(h) VALS regularly assists members of the Aboriginal community in the making of complaints and is closely involved in determining how those complaints should best be handled.

(i) As indicated above, steps are being taken to recruit (preferably an Aboriginal person) to handle complaints and issues involving members of the Aboriginal community.

(j) All police complaint investigations in Victoria are undertaken by appropriately qualified staff within the Ombudsman’s Office or by police officers.

(k) In Victoria, a police officer cannot be directed to provide self-incriminating (directly or indirectly) answers to questions about criminal conduct. However, a police officer may be directed to answer questions relating to purely disciplinary offences and that evidence used in disciplinary proceedings.

The intent of the Recommendation is unclear but the effective implementation of this Recommendation would be that police would have their common law rights to ‘remain silent’ taken from them in criminal proceedings whilst any statement made by them could not be used against them in disciplinary proceedings.

(l) The Ombudsman has this power under the *Police Regulation Act 1958*. The Ombudsman has additional coercive powers under the *Evidence Act 1958* to obtain necessary evidence from persons outside of the police force.

Since November 2004, the Ombudsman and Deputy Ombudsman (Police Complaints) was replaced by the Office of Police Integrity (OPI).

The **OPI** advised the Review of the following new developments/program enhancements:
In 2004, amendments to the *Police Regulation Act 1958* came into effect. A new statutory office of Director, Police Integrity was created supported by an OPI functionally separate from the Office of the Ombudsman. The Director, Police Integrity is charged with ensuring that the highest ethical and professional standards are maintained in Victoria Police and ensuring that police corruption and serious misconduct is detected, identified and prevented.

The legislative changes of 2004 greatly extended the powers available for the independent oversight of Victoria Police. Now, investigations into corruption or misconduct or into police policies, practices and procedures can be initiated on the Director’s own motion whereas previously investigations could only be activated by complaints.

As well, there is a new and potent set of powers, accompanied by a strong penalty regime, to, for example, compel police and civilian witnesses to provide information, including in hearings which can be held in public or private, even if the answer may incriminate them, and for the use of a range of investigative tools of the kind available to law enforcement agencies.

The new legislative arrangements have been accompanied by very significant increases in the budget for oversight of the police and it is envisaged that, when fully staffed, OPI will have some 80 investigators, analysts and other specialists.

Fundamentally, the framework for receiving complaints remains as it has been since 1996-97. Victoria continues to use police to investigate most complaints; these investigations are and will continue to be overseen by OPI to determine that they are thorough and fair. Now, there is both a stronger suite of powers and significantly increased resources to enable OPI to investigate and resolve complaints. Although it is intended that the police will continue to maintain its core role in this area. OPI plans to investigate itself most complaints received from Aboriginal complainants, as has largely occurred over the past few years.

Special arrangements established in recent years to improve the operation of the police complaints system for members of the Aboriginal community will be continued and developed by OPI. A dedicated Aboriginal liaison officer has been employed for some time to facilitate contact between members of the Aboriginal community and OPI in relation to the conduct of police.

(i) **Recruitment of Indigenous People into Policing**

These Recommendation address the desirability of recruiting additional Aboriginal men and women into the police services (Recommendation 229 and 230), and Aboriginal Police Aides in Western Australia (Recommendation 233).

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>229</td>
<td>Partially implemented (VicPol)</td>
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<tr>
<td>230</td>
<td>Partially implemented (VicPol)</td>
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<tr>
<td>233</td>
<td>Classified as not relevant to Victoria (VicPol)</td>
</tr>
</tbody>
</table>
Government Responses on Implementation

Recommendation 229: Recruiting Aboriginal people, in particular Aboriginal women, into policing

Victoria Police advised the Review that it is not possible to give exact figures of how many sworn/unsworn members are Indigenous. This is for two reasons:

- people may or may not identify; and
- a cultural audit is to be carried out which again will only be as accurate as the desire of people to identify.

Victoria Police is negotiating targets for Indigenous unsworn employment levels. Sworn members are exempt from such targets at this stage. It is expected that these targets will be set. The ACLO program will go some way to addressing these targets. For these reasons, response to this recommendation is considered ‘partially implemented’ at this stage. As of November 2004 four ACLO positions were funded and advertised. It is expected that Aboriginal women will apply.

Inline with the Wur-cum barra Strategy requirements, Victoria Police has instigated the productions of an Indigenous Employment Strategy which is nearing completion. The AAU has had involvement in this document which is a Human Resources responsibility.

Recommendation 230: Availability of bridging courses for potential Police recruits

Victoria Police advised the Review that it is committed to Wur-cum barra. TAFE courses are available but not specific to Aborigines. Currently, avenues such as the AMES course (more suitable for those out of the education system for some time and designed more for multi-cultural people) and the TAFE bridging course which touches on subjects on police (Police Preparatory Course) are available to anyone (not Indigenous specific).

Recommendation 233: Aboriginal police aides in Western Australia

Victoria Police advised the Review that a Feasibility Study conducted May – September 2003 findings did not indicate that this program was suitable for use in Victoria, a much smaller state with remoteness being less of an issue. The ACLO program is due to commence this financial year. A copy of the ACLO Program Consultation Feedback paper was provided to the Review.

(j) Training in Health Issues and Aboriginal Cultural Awareness

The intention of this cluster of Recommendations is to increase the level of police training on health matters, and relations with Aboriginal people.

These Recommendations address training to enable Police officers to identify persons in distress or at risk of death or injury through illness, injury or self-harm, on the general health status of the Aboriginal population, the dangers and misconceptions associated with
intoxication, the dangers associated with detaining unconscious or semi-rousable persons, and the delivery of medical services to persons in police custody (Recommendation 133). The Recommendations also address the need to review police training to ensure training addresses appropriate interaction between the police and Aboriginal people (Recommendation 228).

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>133 That:</td>
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<tr>
<td>(a) All police officers should receive training at both recruit and in-service levels to enable them to identify persons in distress or at risk of death or injury through illness, injury or self-harm;</td>
<td>a) Fully implemented, b) fully implemented, c) no progress, and d) fully implemented (VicPol)</td>
</tr>
<tr>
<td>(b) Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining unconscious or semi-rousable persons and the specific action to be taken by officers in relation to those matters which are to be the subject of protocols referred to in Recommendation 127;</td>
<td></td>
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<tr>
<td>(c) In designing and delivering such training programs custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services; and</td>
<td></td>
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<tr>
<td>(d) Where a police officer or other person is designated or recognised by a police service as being a person whose work is dedicated wholly or substantially to cell guard duties then such person should receive a more intensive and specialised training than would be appropriate for other officers.</td>
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<tr>
<td>228 That police training courses be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions. Furthermore, such training should incorporate information as to:</td>
<td>Fully implemented (VicPol)</td>
</tr>
<tr>
<td>(a) The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;</td>
<td></td>
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<tr>
<td>(b) The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and</td>
<td></td>
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<tr>
<td>(c) The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation.</td>
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Government Responses on Implementation

**Recommendation 133: Police training in identifying distress**

**Victoria Police** advised the Review that all recruits and operational police are trained in identifying distressed suspects, which is subject to OSTT and recruit training. The introduction of the coma scale into police complexes and reiteration by police station supervisors assists junior members in identifying possible risks associated with the condition of suspects. Station Instructions include the importance of this issue. The training is ongoing and is revised from time to time. Enhanced training is also carried out by Rural Ambulance Victoria at OSTT courses. Permanent watch house keepers is not mandated, however a common practice. Permanent watch house keepers (for periods in excess of three months) has enabled consistency of effort and expertise in identifying prisoners at risk. Reference was made to VPM 113.1.4 (Aboriginal persons in custody).

**Recommendation 228: Review police training for appropriate interaction with Aboriginal people**

**Victoria Police** advised the Review that training is conducted by AAU, using community members and organisations. See response to Recommendation 210 (Section 4.10 - Reconciliation) that covers this. Evaluation by students is carried out at all courses.
(k) Data Collection

The intention of this cluster of Recommendations is to improve the quality of information on people who die in custody and includes identification of Indigenous status.

These Recommendations address the need for ongoing national monitoring, evaluating and publishing of statistics and other information on Aboriginal and non-Aboriginal deaths in custody (Recommendations 41, 42, 43, 44, 45, and 47).

The Recommendations also address the introduction of a screening form, the risk assessment of prisoners and detainees in police custody, and the recording and communication of information of detainees (Recommendation 125, 126, and 138).

Recommendation 95 addresses the need to identify programs to reduce the incidence of motor vehicle offences.

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<th>Recommendation</th>
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<tbody>
<tr>
<td>41</td>
<td>a) Fully implemented, b) not relevant to Victoria, and c) fully implemented (VicPol)</td>
</tr>
<tr>
<td>42</td>
<td>Fully implemented (VicPol)</td>
</tr>
<tr>
<td>43</td>
<td>Partially implemented (VicPol)</td>
</tr>
<tr>
<td>44</td>
<td>Classified as not relevant to Victoria (VicPol)</td>
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<tr>
<td>45</td>
<td>Fully implemented (CV-DOJ)</td>
</tr>
<tr>
<td>47</td>
<td>Fully implemented (CP &amp; JJ-DHS)</td>
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to the legal status of the persons so held (for example, on arrest; on remand for trial; on
remand for sentence; sentenced; for fine default or on other warrant; for breach of
non-custodial, court orders; protective custody or as the case may be), including whether the
persons detained were or were not Aboriginal or Torres Strait Islander people.

Recommendation 125
That in all jurisdictions a screening form be introduced as a routine element in the reception of
persons into police custody. The effectiveness of such forms and of procedures adopted with
respect to the completion of such should be evaluated in the light of the experience of the use
of such forms in other jurisdictions.

Recommendation 126
That in every case of a person being taken into custody, and immediately before that person is
placed in a cell, a screening form should be completed and a risk assessment made by a
police officer or such other person, not being a police officer, who is trained and designated as
the person responsible for the completion of such forms and the assessment of prisoners.
The assessment of a detainee and other procedures relating to the completion of the
screening form should be completed with care and thoroughness.

Recommendation 138
That police instructions should require the adequate recording, in relevant journals, of
observations and information regarding complaints, requests or behaviour relating to mental or
physical health, medical attention offered and/or provided to detainees and any other matters
relating to the well being of detainees. Instructions should also require the recording of all cell
checks conducted.

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.

Government Responses on Implementation

Recommendation 41: Ongoing national monitoring of Aboriginal and
non-Aboriginal deaths in custody

Victoria Police advised the Review that the Policy Planning and Quality Assurance Unit
maintains statistical data relating to deaths in custody, and the statistical input definitions
align with those outlined in the recommendation.
See Section 6.4 – Corrections for Corrections Victoria response to this Recommendation.

See Section 6.5 – Juvenile Justice for the Child Protection and Juvenile Justice (DHS)
response to this Recommendation.

Recommendation 42: Information on people passing through Police
cells

Victoria Police advised the Review that the information is annually reported in crime
statistics. Internal publishing is completed each day with details of all prisoners in Police
cells. Data on Indigenous prisoners in police cells in maintained via the E.*Justice and
POLCELL information system (risk factors). Data is collected via LEAP, annual crime
statistics, the mandatory field on E*Justice and the Risk factor on the POLCELL prison
information system.
Recommendation 43: Police custody improvement surveys
Victoria Police advised the Review of the AIC survey conducted in October 2002. This survey was to be completed in July 2004 and the results have not yet been released. As of November 2004, a draft had been commented on, however the final document has not been released.

Recommendation 44: Australian Institute of Criminology national surveys
Victoria Police advised the Review that this Recommendation does not relate to Victoria Police but the Australian Institute of Criminology.

Recommendation 45: Common national approach to data collection
Victoria Police advised the Review that it would support the Australian Police Ministers Council if it endorsed common national data capture. These issues will be addressed in a suitable manner through the introduction of all CJEP modules.

See Section 6.4 – Corrections for Corrections Victoria response to this Recommendation.

Recommendation 47: Reporting to the Parliaments
Victoria Police advised the Review that E*Justice in summary will be used by Victoria Police to record suspect detail on Attendance at a Police Station and the creation of a Brief of Evidence online. It will be used by Victoria Police and Corrections Victoria to manage prisoners in custody including the recording of electronic court outcomes (initially from Magistrates’ Court and then the County Court). It will be used by Community Corrections for managing the offender outside of custody including the creation of briefs on line for breaches. It will be used by the Office of Public Prosecutions.

It will be mandatory for users to record whether persons in E*Justice are or are not Aboriginal or Torres Strait Islander people.

It will not be recording persons held in juvenile centres nor record electronic outcomes from the courts other than Victorian Magistrates and County. Custodial outcomes from other jurisdictions will be recorded manually in E*Justice (not via an electronic message).

If the term ‘protective custody’ is referring to prisoners who are considered ‘protected’ then the reply will be yes, these prisoners can be counted.

E*Justice is a tool to manage people. For management reports of the type required by Recommendation 47, the data base can be reported against using a tool called ‘Crystal’ which can build a report meeting almost all the apparent requirements in Recommendations 47 except for juveniles.

E*Justice is being used by the Department of Justice and Victoria Police. Juveniles have not been included due to the Department of Human Services not being involved. Ideally they should be but according to the Project Director (IT & Knowledge Strategy Department of Justice), this would require another project.

The availability of the information will be incremental:

- Attendance information is available now for about 70 per cent of the state this should be 100 per cent within weeks.
- Brief information will not be available this year.
- Custody should be available this year.

The bottom line is that with the exception of juveniles the information that appears to be required should be available late this year to early next year.

E*Justice Custody model is fully implemented state-wide.

See Section 6.4 – Corrections for Corrections Victoria (DOJ) response to this Recommendation.

See Section 6.5 – Juvenile Justice for Child Protection and Juvenile Justice (DHS) response to this Recommendation.

**Recommendation 125: Police custody screening form**

Victoria Police advised the Review that a screening form is used in conjunction with lodgement folders, which also contain information regarding offenders. There is no specific form relating to Aboriginal or Torres Strait Islanders, however, they are mentioned on the Screening Form. A copy of the Heidelberg Police Station custody Risk Assessment screening form has been supplied to the Review. Custodial Nurses have medical checklists regarding medication etc that travels with the prisoner.

**Recommendation 126: Screen form and risk assessment of persons being taken into police custody**

Victoria Police advised the Review that when a person is taken into custody, very thorough procedures are in place to determine the welfare of the prisoner. No person suffering illness is placed into cells, and should illness develop whilst in custody, again strict procedures are adhered to under a duty-of-care to the individual involved. Risk assessments of prisoners is a critical component of police officers’ responsibilities prior to lodging a prisoner. Reference was made to VPM 115.1 Administration and Lodgement of Prisoners and VPM 115.2 Care of Prisoners.

See Section 6.4 – Corrections for Corrections Victoria response to this Recommendation.

See Section 6.5 – Juvenile Justice for Child Protection and Juvenile Justice (DHS) response to this Recommendation.

**Recommendation 138: Recording of observation and information on the health of detainees**

Victoria Police advised the Review that these practices occur currently. All comments and observations are recorded in the Officers Visit Book noting any comments, complaints etc. In the case of complaint, full complaint procedures are initiated following conversation with the prisoner. Details are also recorded on the supervisor’s ‘running sheet’ Register of Prisoners and in more serious cases an electronic Incident Fact Sheet is produced and published Force-wide for the information of Force Command and the Prisoner Management Unit, Operations Coordination. Reference was made to VPM 115.2 - Care of Prisoners.

**Recommendation 95: Reducing Motor Vehicle Offending**

Victoria Police advised the Review that Recommendation 95 is not really relevant in this State due to alternatives. Justice reviewing this Recommendation related to remote communities.
Victoria Police advised the Review that it does not discriminate between race creed or colour in terms of traffic offences. Custodial sentences for traffic offences relate to offences such as Culpable Driving or multiple drink driving, drive whilst disqualified as examples but sentences handed down for those offences relate to all community members. Transport Accident Commission (TAC) advertising, Local Safety Committees and public forums on road safety are means by which Victoria Police have developed strategies to combat rising road trauma.

See Section 6.3 – Courts for Legal Policy (DOJ) response to this Recommendation.

(I) Police Involvement in Coronial Investigations

The intention of this cluster of Recommendations is to assist the Coroner in the conduct and investigation of coronial inquiries into Indigenous deaths in custody. These Recommendations address the relationship between the lawyer assisting the coroner (Recommendation 31), the selection, involvement and qualifications of officers in coronial investigations (Recommendations 32, 33 and 34). Recommendations 35 and 36 relate to the conduct and structure of coronial investigations.

<table>
<thead>
<tr>
<th>Recommendation</th>
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| 31 That in performing the duties as lawyer assisting the Coroner in the inquiry into a death the lawyer assisting the Coroner be kept informed at all times by the officer in charge of the police investigation into the death as to the conduct of the investigation and the lawyer assisting the Coroner should be entitled to require the officer in charge of the police investigation to conduct such further investigation as may be deemed appropriate. Where dispute arises between the officer in charge of the police investigation and the lawyer assisting the Coroner as to the appropriateness of such further investigation the matter should be resolved by the Coroner. | Partially implemented (SCV)  
Partially implemented (VicPol) |
| 32 That the selection of the officer in charge of the police investigation into a death in custody be made by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank. | No progress (SCV)  
Fully implemented (VicPol) |
| 33 That all officers involved in the investigation of a death in police custody be selected from an Internal Affairs Unit or from a police command area other than that in which the death occurred and in every respect should be as independent as possible from police officers concerned with matters under investigation. Police officers who were on duty during the time of last detention of a person who died in custody should take no part in the investigation into that death save as witnesses or, where necessary, for the purpose of preserving the scene of death. | Fully implemented (SCV)  
Fully implemented (VicPol) |
| 34 That police investigations be conducted by officers who are highly qualified as investigators, for instance, by experience in the Criminal Investigation Branch. Such officers should be responsible to one, identified, senior officer. | Partially implemented (SCV)  
Fully implemented (VicPol) |
Recommendation 35: That police standing orders or instructions provide specific directions as to the conduct of investigations into the circumstances of a death in custody. As a matter of guidance and without limiting the scope of such directions as may be determined, it is the view of the Commission that such directions should require, inter alia, that:

(a) Investigations should be approached on the basis that the death may be a homicide. Suicide should never be presumed;
(b) All investigations should extend beyond an inquiry into whether death occurred as a result of criminal behaviour and should include inquiry into the lawfulness of the custody and the general care, treatment and supervision of the deceased prior to death;
(c) The investigations into deaths in police watch-houses should include full inquiry into the circumstances leading to incarceration, including the circumstances of arrest or apprehension and the deceased’s activities beforehand;
(d) In the course of inquiry into the general care, treatment or supervision of the deceased prior to death particular attention should be given to whether custodial officers observed all relevant policies and instructions relating to the care, treatment and supervision of the deceased; and
(e) The scene of death should be subject to a thorough examination including the seizure of exhibits for forensic science examination and the recording of the scene of death by means of high quality colour photography.

Government Responses on Implementation

Recommendation 31: Relationship between the lawyer assisting the Coroner and the officer in charge of the police investigation

Victoria Police advised the Review that there is no obvious information regarding police investigations not conforming to policy or failing to assist lawyers in the investigation or failing to further investigate matters at the request of lawyers assisting in the enquiry into deaths in custody. Contracted by the State Coroner Mr Graeme Johnstone who advised that the appointment of lawyers as assisting was a resourcing issue and lawyers were only utilised in problematic cases. There is a greater level of co-operation today in coronial matters and no specific issues are identified that co-operation was not afforded to counsel assisting the Coroner.

In most circumstances the State Coroner seeks assistance from the Victorian Government Solicitor’s Office and counsel is appointed from the Office of Public Prosecutions (OPP) to assist. The investigating member, usually from Homicide, liaises with counsel prior to and during the inquest

See Section 6.3 – Courts for the State Coroner’s response to this Recommendation.

Recommendation 32: Selection of the officer in charge of the police investigation

Victoria Police advised the Review that the Homicide Squad investigates all deaths in custody where there has been contact with Police or members of the public. The officer in charge of the Homicide Squad delegates who handles investigations of suspicious death or death in Police custody. The selection of the officer/unit in charge of police investigations into a death in custody is the Homicide Squad with oversight by the Ethical Standards
Department. In the case of a death in custody occurring at the Melbourne Custody Centre, the Prison Squad will also assist in the inquiry along with involvement from the Homicide Squad. A Memorandum of Agreement exists between the Homicide Squad and Ethical Standards Department in relation to these investigations. A copy of the Memorandum of Agreement was provided to the Review. Reference was made to VPM 108.4 – Crime Investigation Management and VPM 118.2 – Notification of the Coroner.

See Section 6.3 – Courts for the State Coroner’s response to this Recommendation.

Recommendation 33: Police officers involved in coronial investigations
Victoria Police advised the Review that the allocation of officers in charge of these investigations are drawn from the Homicide Squad in line with Section 5.6 - 108-5 (Operating Procedures Manual (OPM). They are totally independent from the members who were present at the scene and the investigation receives oversight from Ethical Standards Department. The officers who were at the scene preserve the scene and follow strict guidelines in terms of preserving the scene, contacting relevant medical authorities along with ensuring the Police Communications Centre is notified and all investigating officials are notified and attend. The investigation involves isolating witnesses and those who were present at the scene at the time. Reference was made to VPM 201.1.

See Section 6.3 – Courts for the State Coroner’s response to this Recommendation.

Recommendation 34: Qualifications of police officers as investigators
Victoria Police advised the Review that all Ethical Standards investigators are Detective Training School qualified. All Investigation Officers are responsible to one identified senior officer.

See Section 6.3 – Courts for the State Coroner’s response to this Recommendation.

Recommendation 35: Conduct of investigations
Victoria Police advised the Review that the procedures, policy and Standing Orders are described in VPM 108-1. Additionally, high quality colour photographs are taken at each scene, which receives the same amount of attention as any prescribed crime scene and investigation. There is strict adherence to this policy in the event of a death in custody. Reference was made to Homicide – VPM 108.5, Specialist Investigations.

See Section 6.3 – Courts for the State Coroner’s response to this Recommendation.

Recommendation 36: Structure of investigations to provide evidentiary information
Victoria Police referred the Review to VPM 108.5 – Investigative criteria of the State Crime Squads.

See Section 6.3 – Courts for the State Coroner’s response to this Recommendation.
6.2.2 Community Responses

Contact with police is probably the most immediate and personally disturbing experience that many Aboriginal people have with the criminal justice system and hence with the matters which were the concern of the Royal Commission. Not surprisingly therefore, the community response on the subject of police was much more extensive than it was on most of the indirect, albeit arguably more crucial underlying influences. For this reason, discussion of these responses will be broken up into discrete clusters, reflecting the relative weight community members appeared to attach to particular issues in the course of the consultative process and does not directly parallel the preceding clusters of departmental responses.

Relationships between Aboriginal people and police

Almost universally the officers of Victoria Police consulted in the course of this Review were of the opinion that relationships between police and Aboriginal people in Victoria are generally good and have improved over recent years. The following quotations from police during discussion with the Review Team are indicative:

*The local Koories here don't really cause us any problems* (Regional Police station).

*We have a reasonably good relationship with the Koori population in this region* (Regional Police station).

*I think that the relationship we have between the police and CJP is very good and it works both ways* (Regional Police station).

*We don't have a formal protocol because we don't need one* (Regional Police station).

*If there are issues that arise I go to him [member of the ACJP] and he comes to me* (Regional Police station).

*We don't have much of a problem in [Regional town] with the Koori community. They are not the highest offenders ... We meet regularly to discuss issues that may arise. The Royal Commission Recommendations became Force policy and I believe that our officers are well trained and aware of those Recommendations* (Regional Police station).

*I think that we have a good relationship with the Koori community* (Regional Police station).

A number of police from regional towns commented on what they believed were the noticeable changes for the better in Aboriginal/police relationships over the last decade, with particular emphasis on improved communication:

*I believe there is a vastly improved communication process between the community and police in general ... there is a greater willingness to talk between Koories and police than there was before ... in [Regional Police station], though, compared to ten years ago, I think that the overall relationship has improved fivefold. I think it's driven from departmental policy and grass roots level .... we have successful youth programs too* (Regional Police station).
I think I can say that we don’t have any real issues. I think there has been a real change with the Koori community here in [Regional Victoria] over the last 36 years. There’s not so much the ‘us and them’ situations there once used to be. I hope that as the Senior Sergeant at the station I am sending the right message to my people and that it is reflected in the way they conduct themselves (Regional Police station).

By and large I believe that the relationship between Police and the Koori community in [Regional Police station] is pretty good. The statistics of Koori over-representation in the justice system is high but [Regional Victoria] is a lot lower than the State average. We really only have problems with about three or four Koories in [Regional Police station] … I understand that 20 years ago Koories were afraid of police and they didn’t want to see a police car. 20-30 years ago police were probably more intolerant or had more intolerance toward bad behaviour in public. In the past, if we had a group who wanted to box on then police boxed on too (Regional Police station).

I’ve been here for 12½ years. We did have a few issues going on back then … group violence and factions between family groups, it didn’t matter what we did, no-one took any notice of us. I try to express my views with the new guys we have in the station and my view is that we need to build up the relationship with the community (Regional Police station).

And some police make it clear that it is about fair and equal treatment:

I think the relationship between police and Koories is fairly good in this region. I’d like to think that everyone is treated as fairly as possible (Regional Police station).

I won’t tolerate anyone being treated any differently. No major problems have been brought to my attention. I have seen a lot of things in my time on the force. I’ve seen a lot of changes too in relationships between police and Aboriginal relationships. We have got a long way to go but I think that things have improved immensely (Regional Police station).

However in several regional towns, police reported worsening relations and this may relate to new police coming in:

I think relationships have gone from up here to down here … I try to express my views with the new guys we have in the station and my view is that we need to build up the relationship with the community (Regional Police station).

We don’t get recruits straight from the police academy … they come here after two years but I guess they’re a bit junior and green in terms of policing here … I tell them to be patient with the Koories and listen to them … sometimes that’s all they want and I believe you need to communicate firstly and I think we’re successful like that. The person who comes into contact with you as a police officer, dictates how you treat that person … we give Koories more latitude … I always try and help someone and we don’t treat everyone the same…its about using your local
knowledge and taking a commonsense approach. For example, we had three [Indigenous] boys who caused $1,600 damage to the local school. [Name withheld] got the community together to work out how best to deal with the situation...there was a deal made to recover the money from the lad and he had a specified period of time in which to pay back that money. I am trying to work this way because two of the boys don't have a criminal record and I'm trying to avoid that from happening (Regional Police station).

There were also some signs of appreciation that the problems besetting police-Aboriginal relationships were a creature of history, just as the Royal Commission observed of the entire position of Indigenous people in relation to the criminal justice system:

*I know that as soon as I walk in there I have 150 years of history behind me and I know what the uniform means to an Aboriginal person* (Regional Police station).

*We need to mature as a country as well. That will take a long time too. I think the heritage Australia has in relation to the British rule has a lot to do with it* (Metropolitan Melbourne Police station).

This positive view of many police spoken to by the Review Team of the overall current situation was also shared by at least some Aboriginal groups and individuals:

*Our relationship with him [the local ALO] and Police is okay although some community members say Police are no good* (Regional Victoria).

*Some of the coppers are good but it just depends on who is there ... some of them have been there for years. [The] Sergeant [name withheld] was tough but he was good ... they should try and build up community relationships and know when to use force ...* (Regional Victoria).

*I think that Police and Aboriginal relationships are not bad. The majority of our community get on reasonably okay* (Regional Victoria).

*There are still some small pockets in the community who make it look bad for the rest of us. But all can still improve* (Regional Victoria).

*We work very closely with the police in this region. They come to us and ask us what they can do to build the relationships with the Koori community ... All the police in our region are about change* (Metropolitan Melbourne).

*At least the local police here contacted us to ask how they could be involved in NAIDOC activities ... I had an incident at home one night at 10.15pm. My kids started a 'Redfern' incident. The police sent over a copper we knew to calm the situation. He was good* (Regional Victoria).

*I suppose we have good relationships with the police and courts in [Regional town]. Every now and then though one of them will slip through the net but it's quickly fixed up ... The local coppers are good with us but it's just sometimes you get the new ones or the ones from out of town ... I'll tell you something, one day my son was playing football in the 13-14
year old team. Police showed up while the kids were playing football and the kids got distracted by all the police. They wanted to question one of the kids while the game was on. I went over and talked their talk. They s*** themselves and went away and returned when the game was over. I told them that they had embarrassed the lads and that it was part of their leisure/recreation time. I rang the boss and said they should get involved in the footy training sessions – they haven't done it yet (Regional Victoria).

We are also fortunate that we have some police who are committed to helping. The Police here were great in assisting the Co-op with some of our clients. From what I see I think that Melbourne has far more problems with police than we do here (Regional Victoria).

We want the police here to stop and talk to the young ones. I suppose at least they're trying now because before they didn't do it ... Police have said that they're interested in playing mixed teams with our kids and that's a good start (Regional Victoria).

Some of our kids even went on the High Challenge camp and that was good too (Regional Victoria).

Such statements referring to positive developments in police-Aboriginal relationships should not be discounted. At the same time, however, it must be acknowledged that they very much represent a minority among the many responses received by the Review from the Aboriginal community about their relationship with police. Indeed, it would be no exaggeration to say that the positive accounts put forward by police and some Aboriginal individuals or groups pale into virtual insignificance when set against what can only be described as the avalanche of complaints about police attitudes and behaviour received by the Review Team from the Aboriginal community. The content of these complaints about matters allegedly ranging from straightforward, systematic harassment to very serious acts of violence will be dealt with under subsequent headings. But it would be highly misleading to close off any summary of general police-Aboriginal relationships without conveying the strength of generally negative feeling in the community:

The only police in this region who adhere to the Royal Commission Recommendations is the Traffic Operations Group (Regional Victoria).

Police have just been let get away with things for too long. Us Koories are getting our backs up and we can't stand it anymore. We recently conducted a joint meeting with [Regional Police station] police and the community, non-Koori too, to discuss the concerns we have in relation to the treatment and behaviour of police in this area. We have lots of concerns about the policing here. I've only been back for 2-3 years and nothing has changed. It seems as though it's gotten worse ... A lot of crooked cops moved here and we have always had that problem. The older ones who moved away are back now. They were arseholes then but they're even worse now (Regional Victoria).

Us down here don't want to create any more division than we've already got. We want to work with police, but the rights of individuals are not being observed (Regional Victoria).
There’s still a lot of hate for police here ... you’ve grown men and women here who are frightened of the blue uniform because it was the uniform who took our kids away (Metropolitan Melbourne).

This treatment by police is across the board. They intimidate us until we react. I was fifteen years old when I was told by them that they were the Queen’s property and that we couldn’t do anything to harm them. What about us? (Regional Victoria).

And the message for police about being honest and fair in their relationship with the Indigenous community is made clear in this comment:

We just want you to tell the police to be honest with our mob ... I remember when [name withheld] was the ALO in [Regional town] the coppers there said that they didn’t care if you were black, white or whatever. I don’t think that what he said was good but at least he was honest (Regional Victoria).

Harassment and discrimination

Allegations of harassment and discrimination were probably the most frequently voiced complaint made to the Review by the Aboriginal community.

Numbers of Indigenous persons apprehended by police rose from 3,046 in 1993-94 to 5,012 in 2002-03 and represents an average increase of 6.3 per cent per annum over this period.

From 2001-02 and 2003-04, the growth of Indigenous people apprehended by police rose by 2.8 per cent. Over this same period non-Indigenous apprehensions decreased by 1.4 per cent.

In its most overt form, this behaviour was described in terms of outright racism:

I had an experience a couple of weeks ago and it made me really angry. I was having morning tea at the [Regional Police Station] and I was talking to a guy who has been around for about 18 years. He said, ‘I’ve been here for 18 years, those black mongrels, I wouldn’t do anything for those blackfellas. Don’t look to me for help – lock the black bastards up’. The way those coppers treat us and our kids is disgusting (Regional Victoria).

I worked in a regional Police Station and one of the officers wrote, ‘**** off coon’ in my workbook. I complained to the Senior Sergeant and wanted the matter dealt with. All he had to say to me was, ‘What do you want me to do? Do you want me to fingerprint your workbook?’ I was discouraged from taking the matter outside the police force and was told that if I did then ‘everyone will know it was you who complained and what was written. My work colleagues didn’t understand at all. All they could say to me is ‘Can’t you just get over it. It’s only words’. The situation was never resolved. I was so depressed I had to leave (Regional Victoria).
Reports of such overt racial harassment were rare, but this is not to say that racism or at least racialisation did not inform what was seen as the systematic harassment built into police operations with regard to the Aboriginal community. Allegations of harassment in this context were far too numerous to be quoted in their entirety. The following examples are indicative of how strongly this phenomenon is perceived and resented by Aboriginal people, particularly in relation to youth:

*I can remember as a young lad of this high we would see and hear the police coming. We'd all run and hide from them even though we were not guilty of committing any crimes. It's a sad thing that we still do that even nowadays. If the police see our young ones on the street and they seem to be fidgeting a bit the police will go over and pick them up for nothing (Regional Victoria).*

*I know of two people who have reported police treatment that is not lawful ... we had one woman last week who had a bench warrant issued. Police found out where she was living and went around her Auntie's place and searched the place without a warrant ... this was reported to the senior sergeant and nothing happened (Regional Victoria).*

*Some police will see you walking down the street and stop you and ask you 'What are you doing?' The darker you are the worse it is. Even if you are new to town too. Then when you say something back they say, 'Don't talk like that to me, don't get smart'. Another thing too is that the coppers always search cars just as someone is passing through town. They make you empty everything out of the car and then just leave you there to put it all back again. These people aren't even doing anything wrong. They're just passing through town (Regional Victoria).*

*Police here impose a curfew on our kids. If they are out on the street after 7.00pm at night and they don't have two dollars in their pockets they are told they have to get back home. All the Koori kids in [Regional Victorian town] are on a curfew. Why aren't the non-Koori kids on curfews too? The Police here enforce this all the time ... We have new recruits in [Regional Police Station] a lot. Our poor kids have to cop their attitudes all the time. Our kids feel as though they can't do anything without getting into trouble with them for no reason. Once the police pulled up outside this fella's house. All he was doing was listening to music. They said it was too loud and told him to turn it down. Of course he got upset about that and walked out the front gate to speak to the officers and they immediately threw him to the ground and handcuffed him. We are sick of the harassment we cop from police ... We have tried to get a meeting with police but they are just not interested. We feel harassed by them all the time (Regional Victoria).*

*Those coppers will ride you till you drop ... There were three Koories aged 18, 20 and 23 years in the local supermarket shopping and when they went to pay for their shopping an ex-neighbour came up to them and started screaming and shouting abuse at them. The boys came out of the supermarket and asked the staff to call the police. The mate of the person screaming attacked the 18 year old. You know the police took ten days to investigate that incident and nothing happened out of it anyway. I complained to the Ombudsman's Office and it turns out that the ex-
neighbour has only just been served with the summons one and a half years later! The police still ride those boys and it doesn't matter that they haven't done anything wrong either. That's harassment. I hear this harassment all the time. It's always the same (Metropolitan Melbourne).

Numbers of Indigenous persons processed by police over the last decade, as a proportion of the total persons processed, have not increased and has remained relatively stable at about 3 per cent.

Police always harass people in [Regional town]. They jump out of their cars and start asking you questions for nothing. Police have even strip-searched two young ones in the middle of the street. One time when I was at the pub I upped a policeman. Ever since that time I've been harassed (Regional Victoria).

They always get on your case 24 hours a day. My boss used to drop me off at home after work at 11.30 at night ... the coppers used to drive past my house all the time and then they would ask me if I had a curfew ... I'm 22 years old!!! (Regional Victoria).

Multiple incidents are recalled, although it is not always clear was how recently they had occurred:

Two years ago I had 17 coppers through my place looking for my nephew ... I was scared because it was the first time I had ever seen that many police ... at that time they made statements to my mother that they would shoot her and they pulled out their guns ... another time there was an incident with my son who was a little bit under the weather ... police stopped him on the street and told him to get out of his car and walk home ... and the police hit him with a torch ... I went down the next day and read them the riot act (Regional Victoria).

There was some evidence presented, too, that this alleged systemic harassment contributed to the vicious circle leading to over-representation in the criminal justice system and then in custody. As one respondent put it:

Police just go around charging our kids all the time and then when they front up to court it's bad because they have heaps of charges against their name (Regional Victoria).

There has been a marked increase in the number of female Indigenous persons processed by police from 537 in 1993-94 to 1,031 in 2002-03 (up 92 per cent).

Of all Indigenous persons processed by police, females represented 18 per cent in 1993-94 rising to 21 per cent in 2002-03 (the comparable figures for non-Indigenous females is 20 per cent and 19 per cent respectively).
And once convicted, the process allegedly continues thereafter:

There was also an incident when a young fella was released from [Regional] prison and caught the train home to [Metropolitan suburb] ... The police met him at the station and charged him with more offences ... He got an ICO and has to sign in in the police station ... When he went to sign in yesterday they charged him with offences dating back to 2002 (Metropolitan Melbourne).

Soon as I walk into [Regional town] the coppers start harassing you ... they always ask what you are doing in town ... the coppers ran my brother out of town ... the coppers follow you all the time for nothing ... I hate the coppers at [Regional town] (Regional Victoria).

We know of one young man [18 year old] who goes out at night and whenever there's trouble in town the police always come looking for him for no reason. Just because he had committed some minor offences in the past they target him now (Regional Victoria).

Indigenous persons are more likely to be processed multiple times and at an increasing rate compared to non-Indigenous persons between 1993-94 and 2002-03.

Every time I see a police officer I always have to think about my record. I always have to watch my back because no matter what you do they never let you forget your past. You are never allowed to get on with your life. The police accused me of thieving once. I don't thieve. It's horrifying you know - I see a copper and I clench my fist. I can't live free - I'm judged all the time (Regional Victoria).

Sometimes the impact of perceived harassment can even lead to internalisation of guilt, as well as to institutionalised fear:

Police think they are superior. When I have questioned them about what they do I've been told by them that if I raise my voice I'd be jailed. If I've been pulled over by the police or stopped on the street I feel guilt even though I haven't done anything wrong ... Most Koories do their shopping at night because they're too scared to come out during the daytime (Regional Victoria).

Police Violence

In the course of the process of gaining the perspectives of the Aboriginal community, the Review Team came across a number of allegations of unjustified violence on the part of the police. The Review cannot pass any judgement on the veracity of these claims, when and where they occurred, or assess the extent to which, on occasion, a degree of force may (or may not) have been justified in the context of restraining suspected offenders. What it can say, however, is that once again there was within the Indigenous community a fairly widespread perception of unwarranted violence and abuse of basic rights.
On occasion it was possible for the Review Team to take immediate remedial action to deal with some complaints but in others it was necessary to refer the issues to the appropriate authorities with the caveat that the agreement of the informant would have to be obtained. In several instances, moreover, the allegations were of such a serious nature as to defy any possible attempt at justification and to constitute, if proven, extremely grave violations of the criminal law.

Other allegations of unwarranted violence by police were less extreme but serious nonetheless. Again, verification was beyond both the capacity and the brief of the Review, but fidelity to the nature of the responses received in its course necessitates their citing here. The following are examples:

I've seen lots of people brought into the hospital who have sustained injuries inflicted by the police (Metropolitan Melbourne).

One night a police officer bashed a blackfella. I saw it happening and I tried to stop and I got yelled at. I tell you what, I feared for myself that night. It reminded me of the Rodney King incident in America. They tried to say that the blackfella had damaged their van. There wasn't even a scratch on it and I saw that (Regional Victoria).

Once my grandson was interrogated for three hours by police for not having a bicycle helmet on. They knocked him off his bike and held a gun to his head. We had some witnesses who saw this happen (Regional Victoria).

My son was bashed and drugged by police. A few years ago he was just coming out of the pub. They grabbed him and bashed him and threw him into the back of the divvy van. The white boys were running alongside the divvy van screaming for the police to let him out. Eventually they did. They threw him out of the van onto the ground and drugged him (Regional Victoria).

More detailed incidents were also described to the Review Team:

I was with my girlfriend and my mates in the pub having a few beers one night when I saw this bloke putting his arm around my girlfriend. I was okay; I wasn't even drunk or anything. I went to the toilet and these blokes followed me in there. I knew what they wanted and the blokes told me what they wanted to do to my girlfriend. I kept calm. When I came out of the toilet I saw this white fella with my girlfriend jammed up against the door. Well I don't have to tell you what happened then. I drilled him and his three other mates. Me and my girlfriend walked out and my two mates followed behind. I've known my mates for over 20 years and they're white fellas. You know what they did to me? They bashed me because they were friends with the guy who was trying to get with my girl. Some friends, hey? After 20 years of friendship they can only see your race and colour and they prefer to stick up for their own. As I was struggling to walk home after that the police got me. I told them I wasn't drunk and that I was groggy because I was bashed by some guys. I said, ‘Look, I give in mate.’ Then they handcuffed me. I said that I was used to being picked on by cops because I was black and one of the officers said to me ‘you try being a wog’. Then he hit me four times until my eye was split. I couldn't even defend myself. When they handcuffed me all I could do was just lie there (Regional Victoria).
And again:

I was assaulted by up to five Police officers on the street in [Regional town] two years ago. We had been out and were getting into our car at the time of the assault. My friend was driving and hadn’t been drinking. When the assault occurred a friend [who is a police officer] was standing on the corner talking with us and witnessed the incident. There had been an incident earlier in the evening and the Police were around in the pub in plain clothes drinking and looking for the offender. We met a friend on the corner and he is a Police officer. When the other officers came out of the pub and saw him talking to us they ran over and pushed us down to the ground. When the police officer friend asked the officers what was happening and if everything was okay he was told to leave. The Police used abusive and racist language and told [him] to ‘F… off home you black c***’ and ‘get the f… out of here.’ They threw me to the ground. I already had a sore arm and told the Police officers so they wouldn’t hurt me anymore. Instead of going easy they beat me more. Our friend [Police Officer] told them to stop but he was again told to leave, which he did. After the assault I couldn’t lift my arm and I had a black eye (Regional Victoria).

From Indigenous prisoners there were also many comments about the alleged violence inflicted by police:

I want to see the bashings stop. The bashings at police stations and prisons – it’s got to stop. It happens every time we get arrested. I can only speak for myself really but whenever I am arrested I get the living s*** kicked out of me at [Metropolitan Melbourne Police station]. One time when I got arrested I was bailed straight away but because the coppers are mongrels that got me angry and then my bail was pulled. The coppers just do it out of spite and it’s always the same ones … [the bashings] are an endemic problem. As long as you have black skin you will get flogged particularly in [Regional Police station] and [Regional Police station]. The coppers just like amusing themselves by bashing you and they are just ‘exercising their power’ (Indigenous male prisoner).

Even if there are other coppers who see these things happening to blackfellas, they’ll never lag on their copper mates (Indigenous male prisoner).

Anyway, once you start talking about the Royal Commission stuff, the police will just get smarter about flogging you (Indigenous male prisoner).

The many Recommendations of the Commission about the obligations of custodial staff under duty-of-care regulations while holding Indigenous people in custody are also relevant to specific comments about what happens when Indigenous people are held in police cells by Victoria Police:

I remember when I was sent to [location withheld], I got bashed by one of the screws in front of [name withheld]. All he said that he couldn’t do anything to help me ... Once I was locked up in the cells with another brother and the fella chucked a [epileptic] fit ... the coppers kicked the
s*** out of him ... you know what the coppers said? ‘Look at this spastic, what’s he doing?’ The poor fella was foaming at the mouth and they didn’t even know what was wrong with him ... the only way to beat off the coppers from bashing you is to tell them that you have AIDS ... when you say that watch them scatter (Indigenous male prisoner).

I was in the police cell for up to three days with no clothes ... the doctor came and asked what I was there for ... I told him I didn’t know ... I ended up slashing up ... I had no food, no doctor, no blankets ... I just paced the cells ... when I came of there they asked how far I’d walked ... There should be Koori doctors ... sometimes you can sit in police cells for a month at a time before you get moved (Indigenous male prisoner).

My [family member] was locked up for more than 30 days at [Metropolitan] Police station ... he wasn’t allowed to have a smoke either (Metropolitan Melbourne).

The number of Indigenous persons in custody (as recorded on Victoria Police’s attendance register) has increased from 5,204 in 2000-01 to 5,570 in 2002-03 (an increase of 7 per cent), although the increase in non-Indigenous persons over the same period was higher (up 11 per cent).

Indigenous persons as a proportion of all persons held in police custody (as recorded on the attendance register) represented a relatively stable 4 per cent between 2000-01 and 2002-03.

There is also the police perspective about custody in police cells:

Unfortunately our disabled shower has 27 hanging points which we have identified ... We do not use that shower at all except for storage ... The longest serving prisoner we have ever had in our cells is 45 days ... This is far too long ... In the end that situation became far too unmanageable the prisoner was eventually transferred to another facility ... I believe that prisoners are locked up here as punishment, not for punishment ... All our officers address all prisoners as ‘Mr’ ... We are proud of the presentation of our cells ... they are four years old and still look good ... If there is any damage to the cells we immediately fix it ... (Regional Police station).

The anger at what is seen as unjustified treatment by police can sometimes escalate the confrontation:

One time when I got arrested I was bailed straight away but because the coppers are mongrels that got me angry and then my bail was pulled ... the coppers just do it out of spite and its always the same ones (Indigenous male prisoner).

I do the first attack now because you know what’s going to happen to you so you might as well be first in ... I’m happy to get punched out because
they send me straight to St Vincent’s [Hospital] and then onto Melbourne Custody Centre ... that's better for me ... (Indigenous male prisoner).

Ironically, because the original intention was unequivocally benign in the context of the use of force, the frequency of resort to capsicum spray appears to be becoming something of a bone of contention between the community and the police. On the police side, its use was justified largely on conventional grounds:

We have had to use capsicum spray on offenders. I believe that it is a good tool to use on offenders in certain conditions. The effects of capsicum spray are immediate but not long lasting. The alternative to not using the spray is that there is the chance of physical confrontation between the offender and the officer. This confrontation can lead to injury to either police and/or offender (Regional Police station).

We’ve found that the use of capsicum spray has resulted in less assault police charges being laid. If we walk up to someone in the street and if it looks as though they are shaping up to box they get warned that we will use capsicum spray on them. You need to understand that our closest back-up is at least 45 minutes away. We have to protect them and ourselves. There is no actual physical pain with capsicum spray and it stops them from harming us (Regional Police station).

Around one third of incidents where police use force with Indigenous persons involved ‘street arrest’, followed by ‘domestic dispute’.

The total number of use of force incidents where the person involved was Indigenous, increased from 133 in 2000-01 to 244 in 2001-02 (up by 84 per cent) then decreased to 205 in 2002-03 (down by 16 per cent).

Not that the element of understandable self-interest was either absent or concealed in comments made by police:

This [confrontation] then leads on to complaints against police (Regional Police station).

We use capsicum spray when we have to. We [the police] are not here as punching bags ... The State Government is our employer and they have to provide a safe place for us to work in. I’m not here to be punched by anyone (Regional Police station).

On the other side of the equation, however, some members of the Aboriginal community clearly believe capsicum spray is over-used:

They use capsicum spray too much here ... We have had incidents where young ones have been sprayed too (Regional Victoria).

The coppers here use capsicum spray. There's a fella been sprayed a few times already but he's immune now ... The coppers seem to be using it more and more now (Regional Victoria).
I got sprayed twice with capsicum spray. The first time was at the scene of an incident in December 2003 and the second time was when they lodged me in the cells. I made a complaint to the Police Ombudsman's Office and have been told that they have enough evidence to hand over to the next stage. They [two police officers] pulled me up and tossed me to the ground. They sprayed me straight in the face. I was six weeks pregnant at the time. They took me back to the police station and threw me in the cell. They said that I was kicking and screaming so they sprayed me again. I was locked in the cells for four hours ... They tried to say that they had to spray me because I was kicking and screaming too much ... We know that police have continually threatened to spray a particular person. He's my brother and every time police tell him that he runs down to my place. He's frightened of them (Regional Victoria).

It was not possible for the Review to arrive at any definitive conclusion about the balance of evidence in relation to this emerging issue in relation to the police use of capsicum spray on Indigenous people. The police clearly believe that on several grounds their use of the spray is justified, although it was conceded in one consultation session that its use in towns along the Murray River is disproportionately high (Regional Police Station). Aboriginal people, on the other hand, seem to be moving towards seeing the use of such spray as becoming a matter of too early and too routine a response, though one pragmatist did offer the rather sad observation that:

It probably beats getting bashed or shot, hey? (Regional Victoria).

There did seem to be some confirmation from police sources of the routine resort to spraying:

We don't use handcuffs much here. Capsicum spray is used more and is more effective. It's better than using batons and hurting someone. [Regional Police station] use bucket loads compared to us (Regional Police station).

Cultural Awareness Training

The Aboriginal community consulted in the course of the Review felt that police cultural awareness training was inadequate and accompanied by ignorance about the Royal Commission and its Recommendations, and about the implementation requirements for Victoria Police:

I bet there are probably only three or four officers who know what the Royal Commission was all about (Metropolitan Melbourne).

Although the changes following the Royal Commission were acknowledged by some police:

Following the 1991 Report by the Commission, Victoria Police were required to notify the VALS whenever an Aboriginal or Torres Strait Islander person was taken into custody ... that's when real things started to happen ... When I worked in Melbourne, it was rare to have an Aboriginal offender identified in the summary [for prosecution], nowadays it is becoming more evident in police summaries, particularly with the Koori Court (Regional Police station).
Almost unanimously the Aboriginal respondents were of the strong opinion that the training offered at the Academy to police recruits is insufficient:

The time they have at the Academy is not enough. How can you expect to get a real understanding of what Aboriginal people have been through in the short time they get at the Academy? (Regional Victoria).

I go to the Academy and I only get a morning to talk to the recruits. In fact, all I really get is three hours to do it. The recruits go to Bunjilaka and all they do there is look at things - that's it (Metropolitan Melbourne).

Police need cultural awareness training - more than what is done at the Academy. It's just not enough (Regional Victoria).

For a lot of young coppers who come here they only get two to three hours cultural awareness training. Their first arrest could be a Koori person and they sure won't know how to deal with Koories. I think that you need at least two to three days cultural awareness training at the Academy (Regional Victoria).

The cultural awareness training for police is inadequate. All they get is a lecture at the Academy and then sent to Bunjilaka. It's just not enough. They just don't understand the issues and sensitivity of Koori business (Regional Victoria).

Some of the police views about Koories are not good. I lived in [Regional town] too but the coppers there are okay ... What you see happening is that when they come out of the Academy they start out good, but once they end up in a station with a bad sergeant then they change too ... The Koori kids know who the new recruits are and the recruits tell them that they will never treat them like that but our kids know better and just tell them to wait a bit longer and then they'll see the change (Regional Victoria).

Overwhelmingly, the solution proposed for this deficiency was not only more training, but local training with community involvement:

I believe that Victoria Police needs more cultural awareness training. They should bring the recruits to the Co-op to meet the workers and find out who is who in the region (Regional Victoria).

We think that the community should be involved in cultural awareness training for new police members to the area. There's no local training that happens in [Regional town] and we think it's necessary. Why aren't there any cultural officers at police stations? (Regional Victoria).

They should also get localised training too so they understand where we are coming from. Maybe it should even be for a full month or maybe they could have it initially for two weeks and then further follow-up again. Police should be taken to [Regional Police station] to let them see what really happens with blackfellas down there (Regional Victoria).
... then when they come out to the regions there should be opportunities for them to have more training at the local level. We got a lot of young coppers here (Regional Victoria).

*We need to have cultural awareness training through the Co-op and with Victoria Police. Police need to get out more and meet the Aboriginal community more ... Police always want to do things formally. I said to them that we didn't need to have formal meetings like this and that they should come down to the Co-op and see us. It should be made compulsory for new police in the area to come down and meet the community at the Co-op* (Regional Victoria).

One Aboriginal Learning Centre took the theme of compulsion further and advocated that police working in areas of significant Aboriginal concentration should be made to pass a cultural awareness test, their employment in the area being made contingent on their so doing. Other respondents were less optimistic about the prospects of police co-operation in the area of cultural awareness development:

*There's no cultural awareness training for police here. We tried to get Police to come down here and meet the workers and community members. That would help a lot in building relationships. Problem is that the Police don't seem to want to do it. Last year the Police ALO brought six to seven new recruits to [Regional Aboriginal Co-operative]. It hasn't happened again* (Regional Victoria).

*Police don't have enough cultural awareness training when it comes to Koories. They just don't seem to want to understand our history and what happened to us and is still happening today* (Regional Victoria).

Aboriginal people were happy to applaud police in several areas where, whether as a result of formal training or not, the relationship between the two was characterised by a fair degree of cultural awareness. Moreover, at least two of the regional police stations reported on what they saw as very successful cultural awareness programs. In one instance cultural awareness training is provided by local Indigenous community members, while in the other the program comprises a one-day introductory training for operational members. In both cases the initiative appeared to involve, if not depend upon, determined support from senior officers:

*I conduct conferences with my Sergeants on a regular basis. The Sergeants are the ones who run the stations. It's up to us to push the message home* (Regional Police station).

*We have had some feedback from members about the Cultural Awareness Training and it was said that there was some negativity on the way it was presented. They felt there was too much 'bad' stuff from community. My response to that is that they need to know the good, bad and the ugly. The general community needs to change their attitudes really. If you are treated like s*** by the [Koori community] then you're going to think you are after a while aren't you?* (Regional Police station).

Typically however, no additional cultural awareness training was reported as taking place at the local level. This sometimes meant that the issue of cultural awareness was apparently
given fairly scant attention beyond its presumed incorporation into operational command structures or the role of Aboriginal Liaison Officers:

I t’s the Sergeants who teach the recruits about Aboriginal people. I think that the recruits are much better educated now than they were before. In fact, I think holistically the community are better educated but there’s still a long way to go (Regional Police station).

W e do not have cultural awareness training at this station. I guess the Trainees used to get a lecture at the Academy but I’m not sure if that has been cut out now. We were supposed to have it but it fell by the wayside. Our Aboriginal Liaison Officer is a Leading Senior Sergeant. He also has responsibility for the Koori Court matters. We routinely ask whether the offender is Aboriginal or Torres Strait Islander. On the other side of that we sometimes have offenders express concern when we ask them that question (Metropolitan Melbourne Police Station).

W e don’t have cultural awareness training for new officers to [Regional Police station]. I give the new officers information about the station and what we do. I don’t shove the culture of the police station down their throat. I prefer to let them see how the station runs and let them fall into line. If they don’t fall into line, I’ll surely let them know how things are done here (Regional Police station).

W e provide on the job training for new recruits. I would tell them that the community like to be known as Koories and to treat them the way you would want to be treated yourself. It would probably be a good idea to have them introduce themselves to the Koori community (Regional Police station).

W e do not conduct any regular cultural awareness training in [Regional town]. I am aware that the Police Aboriginal Liaison Officer took some of the new recruits to [Regional Aboriginal Co-operative] last year but that has not continued. We could probably do more in that area (Regional Police station).

I n a significant number of cases, however, consultation with the police revealed, if not agreement with the Aboriginal community, at least considerable ambivalence within Victoria Police about the adequacy of current levels of training in cultural awareness:

T he recruits get what the department deems ‘sufficient’ training (Regional Victoria).

T here is some racism at this station but I am dealing with it. I have four Probationary Constables straight from the Academy here at the moment. They will spend two years here and then move on if they want. I would like to be able to conduct more cultural awareness training for our officers … There is a need for cultural awareness training especially for those who have been out of the Academy for four to five years. We have not run any cultural awareness training for officers for about the last twelve months. We are keen to work with [Regional Aboriginal Co-operative] to develop a cultural awareness package. I understand from the Police Aboriginal
Advisory Unit that in some places things are working well and police are doing a lot but in other places there's nothing (Regional Police station).

I don't think that the Cultural Awareness Training provided at the Academy is enough. The average age of the recruits these days is 27-28. They are more mature. It is difficult for those members who have had limited contact with the Koori community but I think that attitudes have progressed. I actually have two or three of those members who have those attitudes. That's okay as long as it doesn't impact on their job and the treatment of people (Regional Police station).

Unfortunately the training given at the Academy is not sufficient. It's also scary because the views expressed by some police members is more likely the views of the general population. I think that the country police members have a better relationship with the community. I don't think that our city police members do it so well because the city is just too big. The thing is the city police member might talk to you today and never see you again. We see our community people all the time (Regional Police station).

At the Academy they only get 80 minutes Cultural Awareness Training and its incorporated into the Multi-cultural Affairs part as well. That's not enough time to learn what you need to know when you get out here. There should be more education at the Academy (Regional Police station).

Only a few comments were made about the recruitment of Aboriginal people into the Victoria Police. One such comment was from a person who had previously worked there:

I was in the police force for a number of years ... it's not a lie to say that I was treated differently by fellow officers ... because I was a Koori they were always trying to get me to deal with Koori issues ... I refused to do it. They would expect me to arrest Koori offenders and sometimes expect that I would tell them where I could find someone they had a warrant or something ... They even probably expected me to treat Koories harder. They did expect that I was going to do them in too. I didn't ... I treated everyone fairly (Regional Victoria).

During my time in the force there were a few Koories locked up in cells but I think they were treated the same as everyone else [at least while I was present] ... I remember that whenever something went missing from a prisoner's bag I was always the first one interviewed ... I remember once the senior sergeant questioned my loyalties to Victoria Police and the Koori community ... Since he did that to me, he went and did [postgraduate course] in Aboriginal Studies ... I know his attitude is different now (Metropolitan Melbourne).

Complaints

Cultural awareness training might be thought of as a kind of prophylactic against generally poor relationships, harassment and even violence. Nonetheless, when outstandingly bad events are perceived as having taken place, the next obvious recourse is to complain. The official version of what happens thereafter was succinctly stated by one police officer:

If a complaint is made against an officer it is investigated. Depending upon the seriousness of the complaint it will be dealt with at different levels. It
may be that disciplinary action and/or counselling is deemed necessary. It may also be directed to the Ethical Standards Department [ESD]. We have not had any complaints about officers made to ESD in the last twelve months. We also use Public Incident Resolution to resolve complaints (Regional Police station).

Another senior officer offered his own personal interpretation of procedures:

If an officer in my station is brought to my attention they know they've transgressed. They get warned and if the behaviour continues then they get put on paper. If one of my officers was accused of bashing someone then an official complaint would be made and the matter would be referred to Melbourne. You'd have to be an idiot at my rank or Sergeant that would tolerate that kind of behaviour (Regional Police station).

Indigenous people's accounts about complaints given to the Review Team were very different. In part, their concern is at the allegedly slower response time of police in responding to Indigenous complaints about offences committed against their own people – an elderly woman was being threatened by a man with a knife; she called the police and forty five minutes later they still hadn’t responded (Metropolitan Melbourne), or how mentally ill people are treated:

Police treat mentally ill offenders badly ... they do not treat them carefully and we always have complaints about [police] manhandling them ... Police call on me as the mental health worker to diffuse bad situations ... There is no debriefing either for any of us workers who are called to these difficult situations ... We’re supposed to get on with it ... They use Section 11 of the Mental Health Act when they pick up someone who is mentally ill ... They use capsicum spray as well on people who are mentally ill ... That's not appropriate for people in that condition ... What happens if the offender has asthma or some other conditions that affects their breathing? Police don’t tend to use their negotiating skills anymore ... They just can’t be bothered because it’s too much trouble (Metropolitan Melbourne).

Almost one in three Indigenous Victorians (aged 15 years and over) reported they have been victim of physical or threatened violence in the last 12 months prior to the ABS Survey (2002).

Indigenous persons as a proportion of total victims who report crime to Victoria Police has been increasing from 0.4 per cent in 1993-94 to 0.6 per cent in 2002-03 for Indigenous females and from 0.1 per cent to 0.2 per cent for Indigenous males, and may in part reflect an increasing willingness to report victimisation to police.

But mostly Indigenous people found that trying to make a complaint about police actions is perceived to be futile; complaining against the police was even counter productive. Laying successful complaints against any authority is, of course, always notoriously difficult, particularly for would-be complainants who lack status, but according to the consultation process carried out in the course of this Review, it was found to be particularly so for Aboriginal people:
I’ve been spat on in [Metropolitan Melbourne] by a 30-year-old guy. I was too scared to complain because I probably would’ve copped it more (Metropolitan Melbourne).

About twelve months ago my nieces and nephews were walking back from [Regional town]. The [Regional Police station] police let their dogs out onto them. The dogs bit my niece on the back of her leg. A complaint was made but, like everything else, nothing was ever done about it. Why is it that you always hear all the bad things us Koories are supposed to have done and you never hear anything bad about what the police have done? (Regional Victoria).

When I got him home [my son] I begged him to go and get some x-rays done at the hospital. All he said was, ‘No mum, don’t worry about it, it’ll only make things worse for me’ (Regional Victoria).

When they handcuffed me all I could do was lie there. I tried to make a complaint against him but his partner accused me of fighting around. They got their stories right and I didn’t have a hope in hell (Regional Victoria).

And more incidents were reported demonstrating the overriding sense of hopelessness in attempting to complain:

When you try and report these things to police ESD they always come back with the same answer – ‘not enough evidence to support the allegation.’ It’s always the same thing. They just never want to believe you. Anyway, nothings gonna change ... You have a twofold problem though because most of the time a lot of the incidents are not reported because there’s just no point is there? If you’ve dealt with Ombudsman's office before then you will know that it’s all just a whitewash (Indigenous male prisoner).

They [police] have my granddaughter’s photo too. You know, they used to take Aboriginals upstairs in the police station to interview them and then they’d bash them. Somebody said that there was a photo of [name withheld] up there with [a drawing] of a gun to his head. There’s no use making a complaint against police because nothing ever happens (Regional Victoria).

We have no confidence at all in making a complaint against the Police here. Nothing is done. It happens all the time. We had a client who wanted to take out an Intervention Order against her partner. We went to the Police station and the police officer said, ‘I know your partner, he wouldn’t do anything like what you have accused him of doing’. How was that woman supposed to feel then? She didn't take the matter further. What was the point? She didn't even have enough confidence to make a complaint against that officer. She didn't see that there was any point. If you lodge complaints with the Ombudsman's office and it is referred to the ESD it’s a waste of time. ESD don’t even take your complaints seriously. ESD is Police investigating Police! Police are not interested in resolving complaints. All they want to do is break your spirit (Regional Victoria).
We never take Police complaints to [Regional Police station]. We advise clients to go directly to the Ombudsman’s Office instead. If clients want to make a complaint all they get told is that they can use PIR [Public Incident Resolution] because the Police don’t want to deal with anything. The only way PIR could work is if Victoria Police came to the party to try to address some of the issues instead of trying to avoid them. We have tried to raise these issues at RAJAC level. The concerns are noted in the minutes but never addressed (Regional Victoria).

We had made complaints to the Ombudsman’s Office and it would appear that the police version of events carries more weight. We have asked for statistics on how many Koories have made complaints but have never been able to get that information. We have given up on making complaints to the ESD - it's just a joke. The Ombudsman’s office doesn’t have any teeth anyway. Most of the time when we lodge complaints with the Ombudsman’s Office the response is usually the same - ‘not substantiated’ and ‘no further investigation required.’ The Ombudsman’s Office can’t take any action at all - they can only make recommendations. It’s obvious that police complaints are a difficult area and that you need a lot of patience and money to progress complaints (Regional Victoria).

The futility of trying to make a complaint about police, also leads one respondent to suggest that:

*We need an Aboriginal Ombudsman … Whenever you make a complaint against police you get the same answer - no evidence* (Indigenous male prisoner).

**Arrest and Cautioning**

The Royal Commission was very clear that arrest should very much be the last resort for police in relation to Aboriginal offenders, particularly juveniles. In this context, formal or informal cautioning was seen as something to be encouraged wherever possible. In its formal response, Victoria Police advised the Review that arrest is indeed always utilised as a last resort in terms of minor offences, the existence of arrest powers notwithstanding. One Senior Sergeant interviewed in the course of the Review described how the process of formal cautioning works in practice:

*Most cautions come before me as the Senior Sergeant. There are criteria that must be adhered to when a caution is to be considered. There are records kept of the briefs which are then converted to cautions. The offender must admit to the offence, be remorseful and be the first offence as far as that [type] of behaviour goes. The procedure is to then come back to the police station and, if the offender is under 18 years of age, either a parent or CJP member is contacted. The details of the offender are then entered onto the LEAP database system. If the offender does not have a prior history I can’t see why they wouldn’t receive a caution* (Regional Police station).

Compared to the use of summons and cautions, there has been a marked drop in the use of arrest for Indigenous persons over the decade to levels approaching those of non-Indigenous persons.
Just over half (53 per cent) of Indigenous alleged offenders were apprehended by police by way of arrest in 2002-03, compared to slightly less than 50 per cent of non-Indigenous alleged offenders. Ten years earlier in 1993-94, the proportion of arrests of Indigenous alleged offenders was considerably higher (67 per cent), while for non-Indigenous alleged offenders it was over 56 per cent.

The use of summons for Indigenous alleged offenders has increased from 26 per cent in 1993-94 to 37 per cent in 2002-03. This also corresponds to a similar increase in the use of summons for non-Indigenous alleged offenders.

There is a marked difference between the proportion of Indigenous alleged offenders processed by police by way of a caution compared to non-Indigenous alleged offenders. In 2002-03, one in twenty of the Indigenous alleged offenders were cautioned by the police, compared to two in twenty of non-Indigenous alleged offenders. This difference has persisted with virtually no change over the last 10 years.

The statement made above by a Senior Sergeant would seem to imply a high rate of cautioning, as would the claim by an officer from another region that the main urban centre in that area had come out very well in terms of cautioning rates. VALS entered an important caveat, however, indicating that from their research there was substantial variation across regions, maybe by as much as 10-12 per cent. Some Aboriginal respondents also indicated to the Review that the self-fulfilling prophecy whereby, in their view, unnecessary arrests and convictions for minor offences lead cumulatively to a serious record is still at work. While the appropriateness of cautioning for joy-riding in stolen cars can be disputed (one of the examples cited in the following extract), the other incident described is less ambiguous in that respect:

> We had some kids who were picked up by police in a stolen car. Some of those kids had managed to complete their VCE. They were arrested and all of those kids were charged. They all have records now. What are their chances of getting a job now? Why couldn't the police caution them or something? It was their first offence. There needs a lot more work to be done with police here. Our kids are always getting pulled up and questioned by police for no reason. They are not even cautioned. They always get charged no matter what. There was a case in [Regional town] recently where a young girl was charged and convicted for stealing a $1.50 hair tie. It should never have got that far. She should have been cautioned (Regional Victoria).

This last same incident may be one of those featuring in the next extract:

> Our biggest problem is our high rate of re-offenders. I remember when I was young and I stole some chewing gum – I got away with it. Nowadays that doesn't happen. We had a young girl who took a headband that was
worth $1.50. She was charged with that and now she has a criminal record. What about that? What happened to the use of police cautioning and what about the Magistrate too? Why wasn’t that just thrown out of court in the first place? We recently had one case where the person stole nappies for their kid and because they arked up at police they ended up with multiple charges. Most people who have a first offence get off with no conviction but if they catch you again then you’re gone. Then when you go to court they only highlight all the bad things you’ve done and not the good things (Regional Victoria).

The 2002-03 offence data shows that over three in five alleged Indigenous offenders (62 per cent) who were apprehended for ‘Assault’ were specifically charged for ‘Intentionally/Recklessly Cause Injury’ (23 per cent); ‘Unlawful Assault’ (21 per cent); and ‘Assault Police (Summary)’ (18 per cent).

More than four in five (82 per cent) alleged Indigenous offenders who were apprehended for a Justice Procedure offence were charged with ‘Fail to Answer Bail’ (29 per cent); ‘Breach Intervention Order’ (23 per cent); ‘Resist Police/Hinder Police (Summary)’ (21 per cent); and ‘Breach of Suspended Sentence Order’ (9 per cent).

And in a similar vein, previous convictions, necessary or not, are seen as compromising the possibility of diversion in the event of a further offence, however minor:

There was a young fella here who was fined and put on a 12-month bond for flicking a cigarette butt! That’s ridiculous. Diversion is not used much here. You can’t be considered for diversion if you have a prior conviction. It is up to the police informant to decide if you are eligible for a caution or diversion. I know of people who have pleaded guilty just to go to Koori Court to be heard and have the option of diversion (Regional Victoria).

The role of VALS, who are required to be notified when police apprehend an Aboriginal person, was also mentioned:

When the police pick us up, they know they have to ring VALS ... They get frustrated with that because they know that we can’t be interviewed until we speak to someone from VALS (Indigenous male prisoner).

When I got arrested I had to tell them that I wanted to call VALS ... They wouldn’t let me and they started the interview and I said nothing ... I just wanted a phone call (Indigenous male prisoner).

Proactive Prevention
Although the immediate link may be obscure, the police officer who reported good cautioning rates in the local town tied this fact unequivocally to proactive programs:
I’m aware of the police cautioning rates and I understand that [Regional town] has come out very well. That’s because we do a lot of proactive programs here such as the Torch Project. We have satellite Victorian Certificate of Adult Learning [VCAL] which engages young people who have dropped out of school or employment. We had the first meeting in October 2003 and it started again in February 2004 where we had 40 kids who had dropped out of school attend. That was great. We have police camps as well. There’s a lot of things that we do (Regional Police station).

Police in other regions agreed about the importance of preventative programs with Aboriginal youth, ranging from involvement with the Police Schools Involvement Program to a range of sporting and other activities:

We organise activities here in [Regional town] with the Koori community. We have a volleyball and basketball team with Police and Koories on both teams. We also have a ten-pin bowling team. The Murray River Marathon was a huge success. We were disappointed that we couldn’t get enough Koories interested in the Murray River Marathon and were not able to set up a crew to enter. We set up meetings but no Koories turned up. We learnt from that experience that we need to do more work and dedicate more time to get the Koories interested and on board with us. We’ll do better next year. We’ve already started to recruit interested people to participate in the next one (Regional Police station).

The Murray River Marathon is a perfect example of best practice. We had a young boy from [Regional town] who had never been spoken to properly by a police member before attend the marathon. After that event he hung around with the police and the rest of the time he was asking questions about what police do and everything (Regional Victoria).

And by and large the Aboriginal community appears to welcome these initiatives. Some doubts were expressed about the Police Schools Involvement Program – I think that rather than have police talk to the kids in schools they should have them involved in activities – but the rest of the preventative programs for youth seemed to be greeted with approbation and even the need for more of them was suggested:

We also had the Police High Challenge Camp with 20 kids attend. One of the kids had a big chip on his shoulder when he went there but since he’s come back he’s changed and he gets on better with the police now (Regional Victoria).

Assaults happen a lot around this region. I see programs in [Regional town] to address these same issues in their area. I can argue the point that we have twice as many kids here who need those programs (Regional Victoria).

There are not enough youth programs in [Regional town] at all. We don’t even have diversionary programs either and that’s really needed to keep our kids out of trouble and away from the attention of police. We need to let our kids know that they are appreciated and loved. We need programs so that our kids feel worthwhile. Everything doesn’t need to be focused on sports programs either. We recently set up a multi-cultural nursery where some of our kids were involved in the setting up of the garden. They need
to have ownership of the garden and build partnerships with other groups too (Regional Victoria).

It was about three or four years ago that the [Aboriginal Co-operative] instigated cultural awareness training for new recruits to [Regional town]. We found that this training helped build the relationship between the police and our young ones. The Victoria Police High Challenge in November 2003 was fantastic. We had 15-20 kids involved in the camp and then they were invited to visit the Police Academy. We had a mixed group of kids and some of those kids had previously had adverse contact with the police. The feedback that we received from the kids and the parents was fantastic. It was really well received and we believe that was a worthwhile exercise (Regional Victoria).

Time and again some ‘best practice’ examples were highlighted:

The Murray River Marathon was a huge success. The interaction with our kids and the officers from Police and Corrections was amazing. You could see that at the start of the marathon our kids were hesitant but by the time it was over they were all joking and laughing together. We saw it as a big challenge for our kids to interact with the police. Every night we had cultural awareness training around the campfire with the officers. Everyone is still talking about the Marathon. We've now formed a steering committee to do it all again (Regional Victoria).

Proactive initiatives by police with community involvement such as the above were clearly welcomed and remembered. However, they are often one-off efforts and there seems to be patchy coverage of these approaches across Victoria. Greater involvement in pro active initiatives through, for example, involvement of the community in PCCC and LSC, part of Victoria Police’s LPP program, were not identified during the consultations. What does emerge as a ‘best practice’ approach is that it is often good leadership by a police officer and/or a community leader that makes a more proactive approach more likely:

[Name withheld] has rung me a few times this week and she really gives me an ear bashing ... She's so good at her job and the community respect her ... I know there are some problems at the Co-op ... There is always a struggle going on there ... [but] since [name withheld] got in there as the CEO things are changing and he is very active in the community ... The last three Friday nights we've had some problems with people drinking and causing havoc ... [name withheld] been going out on patrol and picking up kids before we get called ... He's even been into the pub and spoken to the licensee and given them a list of contact numbers for them to contact the Co-op (Regional Police station).

The community was also prepared to be proactive, as long as their basic rights were respected:

Us down here don't want to create any more division than we've already got ... We want to work with police but the rights of individuals are not being observed ... The relationship with police depends on who you are ... Our ALO is [name withheld] and he is good ... I had an incident at home one night. At 10.15pm my kids started a 'Redfern' incident ... The police sent over a copper we knew to calm the situation ... He was good ... We
have a new superintendent ... He attends RAJAC meetings. We had a mentally ill person in town and [name withheld] came in to see me to see what police could do. We devised an action plan to work with him so that he wouldn’t get shot by police because of his behaviour (Regional Victoria).

But there is the reactive perspective in policing which clearly operates and sits uncomfortably along side the more proactive approaches of the LPP program:

I think there needs to be more meetings held with high ranking officers of Victorian Police to talk about the bullying tactics of some of the members ... What happens most of the time is that when police don’t hear what they want to hear from the Koori kids, then they will bash them. I heard of an incident where two officers took the two young ones down to the river at [Regional town] and bashed them. There was an elderly lady who witnessed everything and the police denied it ... The old lady got intimidated and was too scared to speak up after that (Regional Victoria).

We are reactive ... We need to respond to incidents but we are also flexible, we react to the way the other person is ... if he escalates, then we escalate ... Once we touch them, they are under arrest ... If there are five of them then it’s a bugger of a time. We need to get them subdued. The objective is to handcuff him (Regional Police station).

That the police officers’ lot is not a happy one comes from other comments:

Most coppers have kids and we are respectful ... We will usually just knock on the door and say we need to talk to you ... Trouble is that parents need to explain things to their kids too ... If they [parents] have done the wrong then they need to tell this to their kids so that when we come to the door it’s not always about us being the bastards (Regional Police station).

Police Aboriginal Liaison Officers and Aboriginal Community Liaison Officers

There are approximately 40 non-Indigenous Police ALOs, who also have other operational duties, stationed across Victoria. They are often (but not always) appreciated by the community.

Our ALO is [name withheld]. Our relationship with him and the police is okay, although some community members say the police are no good (Regional Victoria).

The ALO for [Regional town] is [name withheld] ... and I can ring him up when I want to ... He’s rung me a couple of times and asked if some of the boys they were looking for were with us ... I don’t like that because the last time I took some boys to the police station because they wanted to talk to them, they locked them up ... I don’t want to be involved in that sort of thing (Metropolitan Melbourne).

Our ALO doesn’t even attend community meetings ... It should be made mandatory for the police ALOs to attend meetings with the community ... There should also be more accountability for the ALOS (Metropolitan Melbourne).
The ALOs are not Koori though and I think that is no use ... Most of the time these ALOs don't even have an understanding of Koori culture ... They just look at us like we're a piece of s*** (Regional Victoria).

It's all well and good to have an ALO but the person needs to be one who is kid friendly (Regional Victoria).

Apart from one regional city where the police felt that, because of the smallness of numbers, an ACLO would be twiddling his thumbs, the few police with whom this issue was discussed were very positive. In one rural town station the current incumbent was described as doing a fantastic job, and in another there was enthusiastic support for such an appointment:

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\text{We would really welcome an ACLO position in [Regional town]. We think that [name withheld] is good and she would be suited to that position. She's picked up people and kids at any time of the day or night. It's that caring person that we need more of. I had an issue with her in the past and believe me there's nothing false about her and she pulls no punches when it comes to looking after the Koories. [Name withheld] is worth her weight in gold in this community. She can defuse a situation where we can't. She's welcome in here anytime and everyone appreciates her (Regional Police station).}
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Another station had sacrificed a position in order to have a PALO:

\[
\text{We value the work done in the PALO's role. We've sacrificed a position just to have [name withheld] in this role. We would love to have him do this job on a full-time basis because we see the value in having him in this position. Imagine if we didn't have someone like him in the role. The police force has gone to great lengths to improve Police/Aboriginal relationships and so has the Aboriginal community here. We are getting some runs on the board (Regional Victoria).}
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There were, however, some community responses that did not share such enthusiasm for the ALO program, at least as presently implemented:

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\text{We don't even know what the Aboriginal Liaison Officers are doing either. There are no key Performance Indicators and they are just token positions. Why give these positions out to them and then they have nothing to show for it (Metropolitan Melbourne).}
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\[
\text{We know that there is an ALO based at [Metropolitan Melbourne Police Station] but we've never seen anybody (Metropolitan Melbourne).}
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More frequently, however, the response was cautiously or conditionally positive. The cautious approval and principal conditions that Aboriginal people would like to see imposed can be discerned from the following comments:

\[
\text{There is no Police Aboriginal Liaison Officer at [Metropolitan Melbourne] and we desperately need one. The ALO's are not Koori though and I think that's no use. Most of the time these ALO's don't even have an understanding of Koori culture. They just look at us like we're a piece of s*** (Metropolitan Melbourne).}
\]
I think it would be good to have ACLOs in every police station. They would really assist police and the community whenever issues arise. They would be able to give advice to police when needed (Regional Victoria).

The Police Aboriginal Liaison Officer position should be full-time. Proper training should be given to the Police officer in that position too. It shouldn’t just be as a punishment or reward for the officer. Elders should be able to support the ALO too. That would be helpful for the ALO (Regional Victoria).

Our ALO in [Regional Police Station] is not a Koori. [Name withheld] is an Aboriginal fella and he wanted to be the ALO but he was told that he wasn’t allowed. He also asked to attend a Youth Workshop and was told that he wasn’t allowed (Regional Victoria).

[Name withheld] is the best policeman there is. We wanted him to be Aboriginal Liaison Officer. The police said no. [Name withheld] never intimidates our kids – he just likes to talk to you. You know he’s always right there for us Koories too (Regional Victoria).

If the police put in Aboriginal Community Liaison Officers then it is important that the person is a Koori. The ACLO can act as a go-between with the Koori community. There is a need for the development of a clear position description so that the person doesn’t end up having to do everything (Regional Victoria).

Aboriginal Community Justice Panels

The ACJP project, initially commenced in 1987, is a joint initiative of the Victorian Aboriginal community, the Victorian Aboriginal Legal Service and the Victorian Government to address the over-representation of Indigenous people in the criminal justice system. This program is now funded and administered by Victoria Police. The role of the ACJP is to:

- advise police of any know medical or behavioural background of the detainee;
- take custody of Aboriginal or Torres Strait Islanders for minor offences;
- converse with the detainee and assist in welfare matters;
- arrange legal assistance;
- notify relatives or friends; and
- liaise with police regarding problems existing within or confronting the Aboriginal and Torres Strait Islander community.

The Review notes that the ACJP program is the subject of an independent external review scheduled to report in December 2004, and any comments and observations made here should therefore be read in the light of that study’s findings.
Justice Panel] is very good and it works both ways ... We don't have a formal protocol because we don't need one. If there are issues that arise I go to him [CJP member] and he comes to me ... I think I can say that we don't have any real issues (Regional Police station).

Apart from a suggestion from one Aboriginal Co-operative that the coppers aren't interested in the CJP anyway, the police reaction to the CJPs was generally positive. One indicator of this attitude is that in several rural towns police were either seeking to establish or to expand the size of such a Panel. In one location, the CJP member was described by the police as doing a fantastic job.

Aboriginal reaction was also generally positive as far as the principle of CJPs is concerned, but this was tempered by a number of concerns about their operation. In one regional city, the Aboriginal Co-operative noted that there were two CJP members but the trouble is we never see them at the police station when they are needed. Other qualifications, as reflected in the following extracts from consultation sessions included inadequacy of numbers of CJP members with associated exhaustion and burn-out, lack of funding, the need for community control and the problem that the CJP can become dominated by one family or group of families:

I think politics plays too much of a part in the service (Regional Victoria).

A lot of people won't use the CJP here. The CJPs are meant for the whole community not just one family. It's a dangerous situation for us and we don't know how we will overcome it. The community don't want to use the CJP. The police contact them because they know they have to but our people don't want them to come. The Co-op has no funding for a worker with experience in that area (Regional Police station).

We have raised this at RAJAC meetings recently and were told that there was nothing wrong with the program. [Name withheld] got really defensive and said we were always complaining. He has made recommendations to the Aboriginal Advisory Unit and we don't know who we can go to now. He always refers to us as the 'warring factions.' He's only protecting the CJP members because it's his family! We need a proper functioning CJP here and it shouldn't just be left up to one family (Regional Victoria).

Yet the need for well-functioning and properly funded CJPs is strongly felt in the in the Community:

We should be looking at the Community Justice Panels. Their role is to play a key part between police and Aboriginal relations. CJPs should be doing it but it's only one person ... The CJPs are the ones who need to be involved and not for the obvious reasons [for example looking after their own family members]. The reality is that the CJPs are exhausted too. There's only a small number of people on the roster (Regional Victoria).

Anyway, the CJPs are not funded properly either. Sometimes when you're locked up you don't even want that representation because it's a conflict. The CJP is supposed to involve the community and the community needs to become more active (Regional Victoria).
We don’t have a CJP here in [Regional town]. We need one. If we had one, that CJP could also link in with the Elders (Regional Victoria).

When the CJP was not community controlled we found it hard. We weren’t called to the police station for Koories in custody. Now it’s all changed and we have a pool of volunteers (Regional Victoria).

We don’t have a formal CJP member here but we all try to assist when we can. We need to have one here because it will go along way to improve relationships. There shouldn’t be such an issue if a person wants to be a CJP member and they have a Criminal Registration Number. This is discriminatory. I think its crap too. I know a man in Melbourne who is highly respected and has the biggest criminal record ever yet he can go into any police station and get a Koori out. How do you suppose that works then? (Regional Victoria).

In the old days it used to be police versus blackfellas and you would always see a punch on in the streets. That's not happened since we got a CJP. The police know that they have to call the CJP and that the CJP is on call 24 hours per day. We think that it's absolutely ridiculous that the CJP is not paid. That's why some of our CJP will be looking at the ACLO positions when they come up in the police force (Regional Victoria).

Substance Abuse
Remarkably little comment emerged on the policing of substance abuse in the course of the community consultation conducted by the Review Team. Paradoxically, this may be because it is so much part of the taken for granted backdrop to police-Aboriginal relations that it was regarded as not warranting discussion. As seen in Section 4, moreover, alcohol and other substances are perceived as major problems by the community.

One issue of interest to emerge is that the problem of chroming was reported as being very geographically restricted. Only one community reported this form of substance abuse as a serious problem:

Chroming is still a very big issue for us in [Regional town]. We need a facility to be able to run programs for our youth. We even have some adults who do it too and the attitude is, ‘if you don’t chrome with us you’re not part of the mob’. I’ve been called to a few [street name withheld] places where the kids had been assaulted. Then the workers there threatened to have them charged. They took our youth program away from us now and we can’t do it anymore. Petrol sniffing is not a big issue (Regional Victoria).

Although not extensively discussed specifically in relation to policing, alcohol was perceived as a major issue. It formed part of the background to many of the stories recounted by members of the Aboriginal community and it was the subject of some disagreement between that community and police. The latter insisted that they try to avoid arrest and cell detention in cases of public drunkenness:

We don’t hold people in our cells for too long. We’ve seen people ram their heads into concrete walls when they’ve been drunk or affected by drugs ... Unfortunately, because we have no-place to take someone who is drunk we’re in a horrible position because you’ve got drunks who you
know are going to have domestic violence problems if you let them go (Regional Police station).

Locking up Aboriginal people in the cells is a last resort. We don't have a sobering-up centre either ... For any drunks, black or white, we try to find other options. We don't want them in the cells (Regional Police station).

I haven't really had too much trouble with Aboriginal people with the exception of one person ... [who] had a few too many one night and had nowhere else to put the person except in the cells ... We usually take people home because there is no benefit to keep them in the cells ... The only time we keep people in the cells is if its really serious ... we don't keep people in the cells here. We have to transport them (Metropolitan Police station).

Such protestations aside, the question of police approaches to drunkenness was a matter of some disagreement between them and the Aboriginal community members consulted. One issue of contention is whether the police target drunkenness in Indigenous people and are too quick to exercise their powers of arrest. This is a charge of which police are fully cognisant, but it is one which several members of the community were at pains to sustain:

Public drunkenness only applies to Koories in [Regional town]. I know of cases where a Koori will be sitting quietly waiting for the Night Patrol bus to come and pick them up and they end up getting arrested for just sitting there! There are three specific areas where Koories wait for the bus. Police know that and wait for them there. We are trying our best to address the Recommendations from the Royal Commission but the Police don't seem to want to do anything. Instead of arresting someone they should contact VALS or the CJP while they are on patrol and we will come and pick them up. The statistics for [Regional town] for drunks are high. Sometimes the person is walking home and they might only be two houses away and rather than let that person walk into their home they drag them back to the Police station. What's the point of that? We see Koories getting picked up all the time. The Police don't pick up non-Koories that much (Regional Victoria).

My nephew was having a drink at home a while ago. He was walking up the stairs to his house and then he stood on the lawn in front of his house. The police pulled up outside his house and because he stepped onto the footpath outside his gate they handcuffed him and said they were arresting him for being drunk and disorderly. He wasn't even drunk and the poor fella has a mental health issue. He didn't fight; he just went with them so they wouldn't hurt him (Metropolitan Melbourne).

I remember when I just turned 21 and I was out at night with my mates. We didn't do anything wrong but they got me for drunk and disorderly. They held me in the cells for nine hours. Dad went up to see them and they wouldn't let him in (Regional Victoria).

The other point of contention involves the question of utilising Aboriginal agencies for dealing with drunken people. In Section 4 the shortage of sobering-up centres was noted, but in the specific context of policing, the point at issue appears to be operation of the system whereby the police seek and receive assistance from Aboriginal community representatives in dealing with the situation. According to one police account the CJP don't
want to take prisoners, especially if they are drunk. Aboriginal agencies claim that they are either not called upon or, anyway, are not obliged to deal with the problem of drunkenness:

When police take drunks to the Melbourne Custody Centre they don't have any statutory power to bail because you need the Sergeant to attend. What will happen if someone dies in custody? When I've been called to Melbourne Custody Centre sometimes the client is there screaming and yelling abuse or hysterical. We refuse to take client when they are in that state and police don't understand that we still have the right to say no to someone. We've had complaints from the Custody Centre because of this. We've even taken in young Koori kids from time to time because the police call us. Technically speaking we're not supposed to pick them up but we do and then we take them home because we can't take them to the sobering-up centre (Metropolitan Melbourne).

We've been called out for everything ranging from deaths, mental health issues, lost children, etc. On the other side of the coin we get complaints from Koories who are in the cells because we haven't turned up. If we haven't it's because we weren't notified and they weren't put through the books (Metropolitan Melbourne).

The Local Agreement developed here in [Regional town] between the Police, VALS and CJP is not working. Initially Police agreed to contact VALS and CJP whenever they arrested someone for being drunk. They don't contact us. They always say that they don't want drunks in the cells - if that's the case then why don't they contact us like they should? (Regional Victoria).

The RAJAC plans also referred to the general need to improve and monitor contact with police and to enhance diversionary measures.

6.2.3 Review Comments and Recommendations

Victoria Police had been allocated 19 per cent of Recommendations (see Section 7– Findings on Monitoring Implementation) for implementation and their succinct self-assessment responses indicate, on the whole, that they had been implemented in general through incorporating them into the Victoria Police Manual which contains operating procedures and policies. What was not evident from the self-assessment responses of Victoria Police are how well the Recommendations are complied with or how effective the policies and procedures are in practice to address issues identified by the Royal Commission.

Arrest as a Last Resort and use of Cautioning

The Review noted the response from Victoria Police in relation to Recommendation 87 to the effect that arrest is always utilised as a last resort in the case of minor offences, and that summons is a preferred way for proceeding against Aboriginal persons. It also noted the existence of the Police Cautioning Program (Recommendation 239), as well as the statistical narrowing of the gap in use of arrest between Aboriginal and non-Aboriginal offenders (53 per cent and slightly less than 50 per cent) and the increase in the use of summons for Aboriginal people from 26 per cent to 37 per cent from 1993-94 to 2002-03.

Significantly, however, the rate of cautioning appears to have remained static with Aboriginal people being half as likely to be cautioned as their non-Aboriginal counterparts.
The work of Koori Juvenile Justice Workers and VALS in the post-apprehension phase was also noted, as was the existence of pilot programs for Independent Persons and the suggestion from the police that more information on cautioning, a complex area in terms of criteria, should be obtained.

The regional variation in cautioning rates pointed out by VALS would also support the case for further information being gathered in this connection, as would the suggestion from some members of the community that police are too ready to arrest and prosecute for minor offences and that this creates a vicious circle that progressively precludes offenders, particularly juveniles, from the utilisation of alternatives to arrest and prosecution.

It is understood that Koori Juvenile Justice workers report that, when requested either by the client, family or police, they support local Aboriginal people when in contact with the police. One worker is trained as an Independent Person and other workers have expressed interest in being trained. However, the responsibilities of the Independent Person at a police interview can place a worker in a conflict of interest situation if the client is known to them.

### Recommendation 34.

- That Victoria Police report to the Aboriginal Justice Forum on the explanations for the low levels of cautioning for Indigenous youth (Recommendations 87, 239 and 240) and advise on how these Recommendations could be fully implemented;
- That the Department of Justice (Indigenous Issues Unit) contract an independent agency to lead, in partnership with Victoria Police and the Victorian Aboriginal Legal Service, a detailed review of the use of cautioning across Victoria in relation to Indigenous youth;
- That the Departments of Human Services and Justice (Indigenous Issues Unit) report to the Aboriginal Justice Forum on what efforts are being directed to increase the appointment of Indigenous people as Independent Persons across all Indigenous communities;
- That the Department of Human Services (Juvenile Justice) report to the Aboriginal Justice Forum on the ongoing development of the Koori Juvenile Justice Program; and
- That the Victorian Government continue to implement and monitor Recommendations 87 (arrest as a last resort), 239 (arrest of Aboriginal juveniles) and 240 (use of cautions) through any monitoring process established as a consequence of this Review.

**Police and Juveniles**

The Review notes that an independent review had recommended the continuation of the PSIP (Recommendation 227) and questions had been raised by the Aboriginal community regarding access to the PSIP.
Recommendation 35.

- That Victoria Police:
  
  (a) continue with and/or introduce the Police Schools Involvement Program (Recommendation 227) in areas where there is a high population of Indigenous school children and young people;
  
  (b) continue to monitor the impact of resourcing of local police involved with the Police Schools Involvement Program;
  
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
  
- That the Victorian Government continue to implement and monitor Recommendation 227 (relating to the Police Schools Involvement Program) through any monitoring process established as a consequence of this Review.

The Review notes the advice from Victoria Police that Recommendation 241 relating to children’s Aids or Screening Panels is not relevant to Victoria. However, Victoria Police advised that they support proactive justice measures.

The Review notes the advice that children are not detained in police lockups and that, under current legislation, juveniles can only be held in custody after all other options have been exhausted (Recommendation 242). It also noted, however, that the exploration and implementation of such options are often highly contingent on the successful operation of local liaison arrangements between community organisations and police and that, in the course of the Review, attention had been drawn to some difficulties in the operation of such local arrangements. Some difficulties were also encountered in regard to attendance of community representatives at police stations in other contexts (Recommendations 243 and 244).

Recommendation 36.

- That Victoria Police:
  
  (a) undertake an independent review of local Aboriginal/Police liaison arrangements regarding what options are available to avoid juveniles being held in custody;
  
  (b) provide a report to the Aboriginal Justice Forum on (a); and
  
- That the Victorian Government continue to implement and monitor Recommendation 242 (relating to the detention of juveniles in police lockups) and Recommendations 243 and 244 (relating to the presence of Independent Persons at interview for juveniles) through any monitoring process established as a consequence of this Review.

Aboriginal Community Justice Panels

The Review notes the existence of twelve CJPs across the State and the ongoing review into their operations, including their funding and the question of remuneration for members (Recommendations 220 and 221). It also noted a number of difficulties raised by local community members with regard to CJPs and trusts that these difficulties will be mitigated or misgivings allayed following the current Review.
Recommendation 37.

- That Victoria Police:
  (a) provide adequate funding to support the Aboriginal Community Justice Panel program to ensure that they are fully operational across Victoria;
  (b) monitor the findings and implementation of the ongoing review of Community Justice Panels and ensure that the difficulties drawn to the attention of this Review by local community members are addressed;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendations 220 and 221 (relating to the funding of Community Justice Panels and the remuneration of Aboriginal people involved in community and police initiated schemes) through any monitoring process established as a consequence of this Review.

Police Custody, Bail, Duty-of-care, Family Access and Respect

The Review notes amendments to the Bail Act 1977 designed to increase flexibility in the granting of bail (Recommendation 89), arrangement for the notification of VALS when Aboriginal persons are taken into custody (Recommendation 90), provision for informing of offenders denied bail, and for the attendance of Bail Justices (Recommendation 91). It also noted that difficulties had been encountered on both sides in the administration of these arrangements and that various enquiries into, or proposals for, remedying these problems were in hand, including the VALS, AAU and CJEP partnership, the imminent review of the Bail Act 1977 and an evaluation of the Aboriginal Bail Justice Program.

Recommendation 38.

- The Department of Justice (Criminal Law Policy):
  (a) conduct an evaluation of the overall operation of bail legislation in relation to Aboriginal people;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 89 (relating to the monitoring and granting of bail), Recommendation 90 (relating to action to be taken when bail is denied and Recommendation 91 in relation to the amendment to bail legislation) through any monitoring process established as a consequence of this Review.

The Review notes the Chief Commissioner’s Instructions, 10.3, General Care of Prisoners and the various steps that have been put in place to enhance the performance of Victoria Police in relation to its duty-of-care. It also noted that a review of in-service training is being carried out.
Recommendation 39.

- That Victoria Police provide a report to the Aboriginal Justice Forum on the review of in-service training relating to duty-of-care of persons held in custody (Recommendation 122); and
- That the Victorian Government continue to implement and monitor Recommendation 122 (relating to duty-of-care) through any monitoring process established as a consequence of this Review.

The Review notes the response from Victoria Police in relation to breaches of instructions on the duty-of-care of persons in custody (Recommendation 123).

The Review notes the procedures put in place by Victoria Police in relation to debriefing services after important incidents (Recommendation 124).

Recommendation 40.

- That the Victorian Government continue to implement and monitor Recommendation 123 (relating to the breaches of instructions on the care of persons in custody) and Recommendation 124 (relating to de-briefing services following an important incident) through any monitoring process established as a consequence of this Review.

The Review notes the steps taken by Victoria Police in relation to the provision of adequate medical services for Aboriginal people in custody, and noted funding as well as liaison problems with Aboriginal Health Services (Recommendations 127 and 128).

Recommendation 41.

- That Victoria Police:
  (a) take urgent steps to address any funding issues in Recommendation 127 relating to the provision of adequate medical services for Aboriginal people in police custody;
  (b) report on the implementation of locally based protocols between police, medical and para-medical agencies;
  (c) report on the establishment of appropriate systems of liaison between the Aboriginal Health Service to ensure the transfer of relevant health, medical and risk status of Indigenous persons in police custody;
  (d) provide a report on (a)-(c) to the Aboriginal Justice Forum; and
- That the Victorian Government continue to implement and monitor Recommendations 127 and 128 (relating to the provision and standards of medical services for Aboriginal people in custody) through any monitoring process established as a consequence of this Review.

The Review notes that Victoria Police were not progressing Recommendation 129 on the use of breath analysis equipment to determine the sobriety of persons taken into custody because it had been advised that the equipment is not suitable for this purpose. This is an
issue of importance, given the position by Victoria Police on retaining powers of arrest in relation to drunkenness.

**Recommendation 42.**

- That Victoria Police, in partnership with the Victorian Aboriginal Legal Service and any other relevant agencies, provide a report to the Aboriginal Justice Forum detailing any progress of discussions on the evaluation of breath analysis equipment to test blood alcohol levels of persons taken into custody; and
- That the Victorian Government continue to implement and monitor Recommendation 129 (relating to the use of breath analysis equipment) through any monitoring process established as a consequence of this Review.

It is noted that the E*Justice system, part of the CJEP, is to be introduced and will involve the transfer of relevant medical information between police and other agencies. Full roll-out of CJEP is scheduled for early 2005 and also relates to the responses under Recommendation 130 (transfer of health information).

**Recommendation 43.**

- That Victoria Police and the Department of Justice (Criminal Law Policy):
  (a) monitor the operation of the E*Justice system as a means of sharing relevant medical information between police and other agencies; and
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 130 (relating to the use of breath analysis equipment) through any monitoring process established as a consequence of this Review.

The Review notes the procedures adopted by Victoria Police for the collection, recording and onward communication between shifts of relevant medical information about persons in custody (Recommendations 131 and 132).

**Recommendation 44.**

That the Victorian Government continue to monitor the implementation of Recommendations 131 and 132 (relating to the transfer of information between police shifts) through any monitoring process established as a consequence of this Review.

The Review notes police procedures with regard to the handling and transfer of unconscious prisoners and the practice of all such transportation being handled by ambulance services (Recommendations 135 and 136).
Recommendation 45.

That the Victorian Government continue to monitor the implementation of Recommendations 135 and 136 (relating to the transportation of and medical aid to unconscious persons) through any monitoring process established as a consequence of this Review.

The Review notes the procedures put in place by Victoria Police for the checking of detainees in cells. (Recommendations 137, 139, 140, and 141). It also noted, however, that in one recent incident, what may have been faulty and even outmoded equipment may have played a part in what could have become another Indigenous death in custody.

Recommendation 46.

- That Victoria Police provide a report to the Aboriginal Justice Forum on compliance with Recommendations 137, 139, 140-141 in relation to the need for personal checks of detainees in cells; and
- That the Victorian Government continue to implement and monitor Recommendation 137 (relating to regular and thorough checks of all detainees), Recommendation 139 (relating to the importance of personal cell checks), Recommendation 140 (relating to alarm and intercom systems), and Recommendation 141 (relating to the personal supervision of detainees) through any monitoring process established as a consequence of this Review.

The Review notes that padded cells are no longer in use in police watch houses (Recommendation 142).

The Review notes the response of Victoria Police in relation to the provision of meals and the difficulties attendant upon always avoiding placement of Indigenous detainees alone in cells (Recommendations 143 and 144).

The Review notes that in relation to cell visitor schemes, the CJP program is currently under review (Recommendation 145). It also notes the response of Victoria Police on the encouragement and facilitation of cell visits by relatives and friends ( Recommendation 146). It also notes, however, that the latter does not spell out in what ways such visits are encouraged.

Recommendation 47.

- That Victoria Police provide a report to the Aboriginal Justice Forum detailing the ways in which cell visits are facilitated and encouraged (Recommendation 146 relating to cell visits by relatives and friends); and
- That the Victorian Government continue to implement and monitor Recommendation 145 (relating to cell visitor scheme) and Recommendation 146 (relating to the encouragement and facilitation of cell visits by relatives and friends) through any monitoring process established as a consequence of this Review.
The limits imposed by privacy requirements on the capacity of police to notify relatives of prisoners at risk or transferred to hospital are noted (Recommendation 147). However, the Review believes that where such considerations do not arise in practice, police should take requisite steps beyond notification of VALS and the CJP to include families.

**Recommendation 48.**

- That Victoria Police:
  (a) amend the *Victoria Police Manual* to include the notification to family member(s) or guardian(s) of Indigenous persons detained in custody (Recommendation 147);
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 147 (relating to the immediate notification of relatives) through any monitoring process established as a consequence of this Review.

The Review notes the response of Victoria Police to Recommendation 148 on sub-standard police cells and the statement that the view of the local Aboriginal community should not influence and compromise this security (in the design of new cells) was also noted. However, no information was provided on the extent of Aboriginal consultation falling outside security considerations. The Review accepts that very substantial progress has been made in this respect.

The Review, however, reiterates its comments under Recommendation 49 regarding the incident whereby there was almost another Indigenous death in custody.

**Recommendation 49.**

- That Victoria Police:
  (a) report on the standard of its cells and take immediate remedial action where it is required (Recommendation 148);
  (b) provide details on the form and extent of Indigenous consultation over facility design issues not involving security;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 148 (relating to initiatives to reduce the use of outmoded cells) through any monitoring process established as a consequence of this Review.

The Review notes that Victoria Police do not believe that Recommendation 149 concerning flexible custody arrangements is possible in Victoria and would breach police policy on security.

The Review notes the response of Victoria Police to Recommendations 158-161 pertaining to the procedures to be followed in the event of medical emergencies involving Aboriginal persons in custody.
The steps taken by Victoria Police in relation to the discharge of firearms were noted (Recommendation 162). In particular, it was noted that the *Victoria Police Manual* prohibits the drawing of firearms except when extreme danger is anticipated, and that oleoresin capsicum spray has been introduced as an alternative to the use of firearms. At the same time, the Review received a number of accounts from the community suggesting that firearms had been drawn on occasions when extreme danger was not to be anticipated. It also received reports from police themselves to suggest that capsicum spray was not thought of as an alternative to firearms so much as an alternative to the use of handcuffs.

The Review notes the response of Victoria Police in relation to Recommendation 163 on training in relation to techniques of restraint.

**Recommendation 50.**

- That Victoria Police:
  (a) undertake a review on the circumstances in which firearms have been drawn by Victoria Police in dealing with Indigenous people in the past twelve months; and
  (b) report on the use of Oleoresin Capsicum Spray by Victoria Police when dealing with Indigenous people in the past twelve months;
  (c) undertake a review of training in relation to techniques of restraint (Recommendation 163);
  (d) subject to the findings above, amend the *Victoria Police Manual* and the *Operational Procedures Manual*;
  (e) provide a report the Aboriginal Justice Forum on (a)-(d); and
- That the Victorian Government continue to implement and monitor Recommendation 162 (relating to the laws regarding the discharge of firearms) and Recommendation 163 (relating to techniques of restraint) through any monitoring process established as a consequence of this Review.

The Review notes the advice of Victoria Police that all cells with hanging points are closed until rectified (Recommendation 165). It is not clear whether this advice pre- or post-dates the information given to the Review by one responsible officer to the effect that his station had numerous hanging points on doors, walls, light fittings and exposed wiring.

**Recommendation 51.**

- That Victoria Police:
  (a) urgently check the accuracy of its response to, and compliance with, Recommendation 165 relating to the elimination of equipment and facilities which might cause harm or self-harm;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 165 (relating to the elimination of equipment) through any monitoring process established as a consequence of this Review.
The Review notes that in relation to the exchange of information (Recommendation 166), the E*Justice system is scheduled to come into effect in 2005 along with the Criminal Justice Enhancement Program.

It was noted that Victoria Police reported no progress by Ministers on the development of standard guidelines for police custodial facilities throughout Australia (Recommendation 332).

**Recommendation 52.**

- That Department of Justice:
  - (a) draw the attention of the Minister of Police to Recommendation 332 relating to the development of standard Australia-wide guidelines for police custodial facilities
  - (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 332 (relating to the development of standard Australia-wide guidelines for police custodial facilities) through any monitoring process established as a consequence of this Review.

The Review notes that the International Conventions, and Australia’s position with regard to their adoption, is a matter for the Commonwealth Government. The International Convention on Civil and Political Rights outlines the basic civil and political rights of all individuals (including Indigenous peoples). It was signed by Australia and came into force on November 13, 1980, except Article 41, which came into force for January 28, 1993.

**Recommendation 53.**

- That in the context of the Australian Police Ministers Council, Recommendation 333 (relating to the International Convention on Civil and Political Rights) be considered relevant to Victoria; and
- That the Victorian Government report on the implementation of Recommendation 333 (relating to the International Convention of Civil and Political Rights) through any monitoring process established as a consequence of this Review.

Public Drunkenness, Public Drinking and Offensive Language

The Review notes that, following production of the Drug and Crime Prevention Committee’s Inquiry in 2001, which recommended the decriminalisation of drunkenness as a criminal offence under certain conditions, the Government nominated the Departments of Justice and Human Services to continue work on the issues raised in the report. The Department of Justice has put forward four options ranging from retaining the status quo, through decriminalisation with adequate sobering-up centres, to decriminalisation without sobering-up centres but with police given civil detention powers. DHS is also part of the working group established to look at the implications of repealing the law on public drunkenness. The Government’s final position on the matter is still to be announced.

Victoria Police provided the Review with its position paper on these matters, in which it presents an additional alternative to those already canvassed, namely, the provision of al
alternative civil apprehension and detention power coupled with extension of the Custodial Health and Drug Nurses Project. Crucially this would require adequate funding, and failing its adoption, Police favour retention of the status quo. This is preferred even to decriminalisation in tandem with the provision of a network of sobering-up centres.

The Review notes that these matters arising from Recommendations 79 and 80 of the Royal Commission have now been dragging on for a considerable period of time.

**Recommendation 54.**

- That the Victorian Government:
  - proceed, as a matter of urgency, to abolish the offence of public drunkenness (Recommendations 79-80)
  - establish appropriately resourced Aboriginal run Sobering-Up Centres, which operate twenty-four hours, seven days a week; and
- That the Victorian Government implement and monitor Recommendations 79 and 80 (relating to the decriminalisation and abolition of the offence of public drunkenness) through any monitoring process established as a consequence of this Review.

The Review notes the successful informal initiatives adopted by the Victoria Police for avoiding taking drunken Aboriginal people into custody, including taking them home, placing them in the care of a friend or relative and transporting them to sobering-up centres, where available. Recommendation 81 proposed that such alternatives should be considered and utilised as a matter of statutory duty.

**Recommendation 55.**

- That Victoria Police consider and utilise alternatives to custody as matter of statutory responsibility when dealing with intoxicated people in police cells (Recommendation 81); and
- That the Victorian Government continue to implement and monitor Recommendation 81 (relating to statutory duty of police) through any monitoring process established as a consequence of this Review.

The Review notes the response from Legal Policy (Recommendation 82) on monitoring the impact on local restrictions on alcohol.
Recommendation 56.

- That Victoria Police and the Department of Justice (Liquor Licensing Victoria):
  (a) report on the impact on Indigenous people in enforcing local restrictions on alcohol (Recommendation 82 relating to the monitoring of dry area declarations);
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government report on implementation and monitor Recommendation 82 (relating to the monitoring of dry area declarations) through any monitoring process established as a consequence of this Review.

The Review agrees that Recommendation 83 about the Northern Territory and the two kilometer law is not relevant to Victoria.

The Review notes that Victoria Police reported no progress on negotiations between police, local government bodies and Aboriginal organisations, including VALS (Recommendation 84) about issues of public drinking.

Recommendation 57.

- That Victoria Police:
  (a) report on the reasons for the lack of progress on Recommendation 84 relating to negotiations between police, local government bodies and Aboriginal organisations, including the Victorian Aboriginal Legal Service on public drinking;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 84 (relating to negotiations between police, local government bodies and Aboriginal organisations, including the Victorian Aboriginal Legal Service on public drinking) through any monitoring process established as a consequence of this Review.

The Review agreed that Recommendation 85 on monitoring the effects of decriminalising drunkenness does not apply to Victoria as such legislative change has not been made in this State.

The Review notes the approach being adopted to offensive language (Recommendation 86) by Victoria Police in the context of this response.
Recommendation 58.

- That Victoria Police:
  (a) provide quantitative evidence on how offensive language is dealt with in relation to charges laid;
  (b) report to the Aboriginal Justice Forum detailing the numbers of Indigenous people that are charged with offensive language as a result of being detained for public drunkenness; and
- That the Victorian Government continue to implement and monitor Recommendation 86 relating to offensive language through any monitoring process established as a consequence of this Review.

Preventative and Community Policing

The Review notes the wide array of activities, procedures, initiatives and reviews currently taking place in the context of developing sensitive, negotiated, community-based policing and preventative strategies in areas of high Aboriginal population (Recommendations 88, 214, 215). It also noted that, while the program of Police Aboriginal Liaison Officers has still to be fully developed and evaluated, the CJP Review is due to report later in 2005 and that an Aboriginal Action Plan was to be developed for the Victoria Police Aboriginal Strategic Plan by the end of 2004.

The Review notes that Recommendation 217 called for detailed consideration of the resources required by the Aboriginal Community Justice Panel program.

Racist Attitudes, Abusive Behaviour and Improving Police/Aboriginal Relations

The Review notes Victoria Police’s formal response with regard to its intolerance of any form of abusive behaviour, physical or verbal. It also noted the Victoria Police Equity and Diversity Corporate Five Year Plan, the Aboriginal Strategic Plan and Policy, the commencement of the ACLO program, the role of the Victoria Police Aboriginal Policy Reference Group and the cross-cultural training of recruits and other officers (Recommendations 60 and 134).

On the other hand, the Review cannot ignore the responses received from members of the Aboriginal community about a substantial number of concerns ranging from racism, through harassment to violence on the part of police. It must also report that, contrary to the formal response, a significant number of respondents, both Aboriginal and police, gave their view that current levels of cross-cultural awareness training were inadequate at both the levels of training and local practice.

The Review is not in a position to make any definitive pronouncement on either the existence or the extent of racism and abusive behaviour towards Aboriginal people within the Victoria Police. It is persuaded, however, that to the extent that such practices do exist, a part solution lies in improved recruitment procedures, enhanced cultural awareness training and rigorous enforcement of Victoria Police Discipline Procedures. Victoria Police already stresses its commitment to the latter, and the former was widely acclaimed as a necessity by both Aboriginal people and police members consulted in the course of the Review.

The Review has not been advised of any reviews that have taken place to assess compliance with this Recommendation.
Recommendation 59.

- That Victoria Police:
  (a) monitor the operation of and compliance with its disciplinary policies and procedures in respect of racist behaviours by members;
  (b) cross-cultural awareness training be expanded at both the Academy and local levels, with appropriate input and participation from the Aboriginal community;
  (c) introduce a cultural awareness competence certification process for all officers serving in areas of significant Aboriginal population; and
- That the Victorian Government continue to implement and monitor Recommendation 60 (relating to the elimination of violent or rough treatment, verbal abuse and racist or offensive language by police officers) and Recommendation 134 (relating to humane and courteous interaction with detainees) through any monitoring process established as a consequence of this Review.

The Review notes that the SOG has not been required to attend any incidents specifically involving Victorian Aboriginal communities since 1991 (Recommendation 61).

The Review notes that Victoria Police had not been approached by the National Police Research Unit (now the Australasian Centre for Policing Research) with regard to any study of current efforts to improve relations between police and Aboriginal people and to disseminate relevant information (Recommendation 222). It was also noted that the Conference of Police Commissioners of Australasian and South West Pacific Nations is considering a National Police Advisory body.

Recommendation 60.

That Victoria Police pursue the need for an over-arching national study and information dissemination strategy within the appropriate national forum on ways of improving relations between police and Indigenous people (Recommendation 222).

The Review notes that Victoria Police has introduced protocols between itself, VALS and CJJP which are under active consideration and that it is awaiting an evidence-based report from the Aboriginal Advisory Unit on issues such as delays in notification (Recommendations 223 and 224). It also notes that notification processes should improve consequent upon the introduction of CJJP and that strategies for addressing delays will be addressed in the light of the AAU research. These initiatives are commended.
Recommendation 61.

- That Victoria Police:
  (a) in partnership with the Victorian Aboriginal Legal Service, report on progress of an evidence-based report on the reasons for the delay in notification to Victorian Aboriginal Legal Service when an Indigenous person is taken into custody (Recommendations 223 and 224);
  (b) develop locally based protocols on a regional basis, in partnership with the Indigenous community, through Local Priority Policing, with these protocols to be facilitated by the Aboriginal Justice Forum and the Regional Aboriginal Justice Advisory Committee network;
  (c) report on the status of the plan to develop a ‘Ready Reckoner’ to assist police members in understanding their required commitments to Aboriginal people arrested or in custody;
  (d) provide a report to the Aboriginal Justice Forum on (a)-(c); and
- That the Victorian Government continue to implement and monitor Recommendation 223 (relating to the protocol between Police, Aboriginal Legal Services and Aboriginal organisations) and Recommendation 224 (relating to the notification of the Aboriginal Legal Service upon the arrest or detention of any Aboriginal person) through any monitoring process established as a consequence of this Review.

The Review notes that a unit in Victoria Police for the development of policies and programs relating to Aboriginal people has been in existence for more than a decade (Recommendation 225). It also notes that the succession management plan for the Aboriginal Advisory Unit envisages the Manager’s position being held by an Aboriginal person. The Review strongly encourages Victoria Police to pursue the employment and retention of Indigenous people in the Unit and to appoint an Indigenous person as Manager.

Recommendation 62.

- That Victoria Police:
  (a) detail the succession management plan for the Aboriginal Advisory Unit;
  (b) make a commitment to the employment of Indigenous persons, both sworn and unsworn, throughout Victoria Police;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 225 (relating to the unit within Police to develop policies and programs for Aboriginal people) through any monitoring process established as a consequence of this Review.

Throughout this Review, various initiatives for improving relations between police and Aboriginal people, including the appointment of Aboriginal Community Liaison Officers, have been touched on (Recommendation 231). The Review has formed the impression that, while a wide range of activities in Victoria Police are taking place with regard to improvement in this area, little by way of overall co-ordination or consolidated review is taking place. It is difficult to ascertain how well it is working, particularly at the local level.
Recommendation 63.

- That Victoria Police:
  (a) consolidate an across-the-board review of initiatives and investigations currently taking place with regard to the improvement of liaison between police and Aboriginal communities;
  (b) identify strategies for the general improvement of police/Aboriginal relations at the local level;
  (c) and provide a report to the Aboriginal Justice Forum (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 231 (relating to initiatives for improving relations between police and Indigenous people) through any monitoring process established as a consequence of this Review.

Complaints Procedures

The Ombudsman Victoria provided the Review with a full statement of the situation regarding legislative processes for dealing with complaints against police (Recommendation 226). The Review notes the advice from the Office of Police Integrity that amendments to the *Police Regulation Act 1958* came into effect in November 2004. The Ombudsman’s Office has taken steps to enhance its capacity in relation to complaints from Aboriginal people and compliance with the Recommendations of the Commission including the appointment of an Investigation Officer dedicated to handling complaints from members of the Aboriginal community, an increase in the numbers of Ombudsman investigations conducted independently of police, and an arrangement with the Victorian Aboriginal Legal Service on the matter of confidentiality. Nevertheless, there are levels of doubt in the Indigenous community as to the independence and responsiveness of the Ombudsman’s Office and, particularly, the Office of Police Integrity when following up on complaints from Indigenous persons. The Review anticipates that the amendments to *Police Regulation Act 1958* will go some way towards allaying the fears and disillusionment expressed to the Review Team by members of the Aboriginal community.

Recommendation 64.

- That Victoria Police (Ethical Standards Department):
  (a) be required to ask each complainant if they are Aboriginal and/or Torres Strait Islander. Where there is an affirmative response, the Ethical Standards Department must then formally notify the Director, Indigenous Issues Unit, Department of Justice;
  (b) provide quarterly reports to the Aboriginal Justice Forum detailing the type, status and outcome of any complaint received from Indigenous persons;
  (c) employ a full-time Koori Liaison Officer to assist Indigenous complainants in lodging complaints; and
- That the Victorian Government continue to implement and monitor Recommendation 226 (relating to legislative processes for dealing with complaints against police) through any monitoring body established as a consequence of this Review.
Recruitment of Indigenous People into Policing

The Review notes the difficulty experienced by Victoria Police in providing exact figures on the recruitment of Aboriginal people, especially women, into Victoria Police (Recommendation 229). It also noted that targets were expected to be set for unsworn numbers and the imminent impact of the ACLO program. The endorsement of *Wur-cum barra* by Victoria Police was also noted, as was the existence of various courses for persons interested in joining Victoria Police (Recommendation 230). The response did not, however, provide any details of a pro-active policy with regard to Indigenous recruitment and retention.

**Recommendation 65.**

- That Victoria Police:
  - (a) detail the proactive steps are being taken to recruit and retain Indigenous people into Victoria Police;
  - (b) in conjunction with appropriate educational bodies, provide suitable bridging programs to facilitate that objective;
  - (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 229 (relating to the recruitment of Aboriginal people, especially women, into the police service) and Recommendation 230 (relating to the availability of bridging courses for potential police recruits) through any monitoring process established as a consequence of this Review.

The Review agrees that Recommendation 233 pertaining to Aboriginal police aides in Western Australia is not relevant to Victoria.

Training in Health Issues and Aboriginal Cultural Awareness

The Review notes the steps taken by Victoria Police to instruct its members in identifying distressed and at-risk suspects (Recommendation 133). The response did not, however, indicate whether training covered general information on the health status of the Aboriginal population, the dangers and associated actions to be taken in connection with intoxicated, unconscious or semi-rousable persons, or whether, in designing training programs, the advice and assistance of Aboriginal Health and Legal Services were sought.
Recommendation 66.

- That Victoria Police:
  (a) advise whether current training (Recommendation 133 relating to the identification of distressed and at risk suspects) covers general information on the health status, dangers and associated actions to be taken in connection with intoxicated, unconscious or semi-rousable persons;
  (b) whether in designing training programs, the advice and assistance of Victorian Aboriginal Health Service and the Victorian Aboriginal Legal Service are sought when dealing with Indigenous persons;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 133 (relating to the identification of distressed and at risk suspects) through any monitoring process established as a consequence of this Review.

Data Collection

The Review notes that the Policy Planning and Quality Assurance Unit of Victoria Police maintain statistical data in relation to deaths in police custody (Recommendation 41).

Recommendation 67.

- That the Victorian Government continue to implement and monitor Recommendation 41 (relating to the ongoing national monitoring of Aboriginal and non-Aboriginal deaths in custody) through any monitoring process established as a consequence of this Review.

The Review notes that no reliable Aboriginal-specific data is currently maintained on prisoners in police cells (Recommendation 42) but that the new CJEP will rectify this omission.

Recommendation 68.

- That Victoria Police:
  (a) maintain data on the monthly number of Indigenous prisoners held in police cells, their location, sex, age and reasons for custody;
  (b) provide the Director, Indigenous Issues Unit, Department of Justice with monthly data on the number of prisoners held in police cells, their location, sex, age and reasons for custody;
  (c) provide a current report to every Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to monitor and implement Recommendation 42 (relating to information on people passing through police cells) through any monitoring process established as a consequence of this Review.
Victoria Police advised the Review that a *National Police Custody Survey* has been carried out by the Australian Institute of Criminology, with a draft commented on in November 2004, but the results of this survey have not yet been released (Recommendation 43).

Victoria Police advised the Review that Recommendation 44 relating to Australian Institute of Criminology national surveys does not relate to Victoria Police.

Victoria Police advised the Review that it would support common national data capture (Recommendation 45), if endorsed by the APMC (Australasian Police Ministers Council).

**Recommendation 69.**

1. That Victoria Police develop a proactive position on the establishment of a common national data capture for Indigenous people in contact with police and pursue this through the Australian Police Ministers Council; and
2. That the Victorian Government continue to implement and monitor Recommendation 45 (relating to a common national approach to data collection) through any monitoring process established as a consequence of this Review.

As far as Police Ministers reporting on the numbers of Aboriginal persons held specifically in police custody is concerned (Recommendation 47), Victoria Police envisage this matter being dealt with under the auspices of the new E*Justice system being developed as part of the CJEP.

The Review notes that a screening form (Recommendation 125) is routinely used as part of the procedure for reception into police custody, but that there is no separate form for Aboriginal people.

The Review notes that, under Victoria Police Operating Procedures, risk assessment is routinely carried out as part of the duty-of-care prior to lodgement of prisoners in cells (Recommendation 126).

The Review notes the procedures adopted by Victoria Police for recording observations and information regarding complaints, requests or behaviours relating to the mental or physical health of those in custody (Recommendations 138).

The Review notes that Recommendation 95 relating to motor vehicle offences is not relevant in Victoria due to alternatives.
Recommendation 70.

- That Victoria Police:
  (a) report on compliance with Recommendations 47, 125-126 and 138;
  (b) provide a report to the Aboriginal Justice Forum on (a); and

- That the Victorian Government continue to implement and monitor Recommendation 47 (relating to reporting to Parliament), Recommendation 125 (relating to police custody screening forms), Recommendation 126 (relating to screening forms and risk assessment of persons being taken into custody) and Recommendation 138 (relating to the recording of observation of and information about police detainees) through any monitoring process established as a consequence of this Review.

Police Involvement in Coronial Investigations

It was noted that Recommendation 32, requiring police officers in charge of investigations to be appointed by an officer of Chief, Deputy or Assistant Commissioner rank, had not been implemented in the strictest sense of the intent of the Royal Commission Recommendation. However, the Review notes the response from Victoria Police advising that this Recommendation has been fully implemented with a delegated officer appointed from the Homicide Squad to investigate all suspicious deaths and deaths in police custody.

Recommendation 71.

- That Victoria Police provide a report to the Aboriginal Justice Forum in relation to the implementation of Recommendation 32, with particular reference to how the current arrangements fit in with the requirements of this Recommendation; and

- That the Victorian Government continue to implement and monitor Recommendation 32 (relating to the selection of the officer in charge of the police investigation by personnel of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank) through any monitoring process established as a consequence of this Review.

The Review notes the arrangements in place for ensuring the independence of investigating police officers from operational areas in which deaths in custody occur (Recommendation 33).

The Review notes that Victoria Police advised that all Ethical Standards Investigators are qualified from Detective Training School (Recommendation 34).

Recommendation 72.

That the Victorian Government continue to implement and monitor Recommendation 33 (relating to police officers involved in an investigation) and Recommendation 34 (relating to qualification of police officers as investigators), through any monitoring process established as a consequence of this Review.
The Review notes the response from Victoria Police that there is strict adherence to policies and procedures relating to the investigation of a death in custody (Recommendation 35). The Review also notes the advice from the State Coroner (see Section 6.3 – Courts) that the Prison Squad’s Charter of Operations and Standard Operating Procedures is under review (Recommendation 35).

**Recommendation 73.**

- That Victoria Police provide a report to the Aboriginal Justice Forum on the review of its Prison Squads Charter of Operations and Standard Operating Procedures (Recommendation 35); and
- That the Victorian Government continue to implement and monitor Recommendation 35 (relating to the conduct of investigations) through any monitoring process established as a consequence of this Review.

The Review was referred to the Victoria Police Manual 108.5 – Investigative Criteria of the State Crime Squads (Recommendation 36).

**Recommendation 74.**

That the Victorian Government continue to implement and monitor Recommendation 36 (relating to the structure of investigations to provide evidentiary information) through any monitoring process established as a consequence of this Review.
6.3 Courts

You [Indigenous offender] present an extremely difficult sentencing problem. The offences for which you must be sentenced are serious indeed and your sentence must reflect that seriousness. On the other hand it is not difficult to characterise your life as being one of extreme sadness, robbed at an early age of meaning, ambition or realistic hope. This is due partly to an early introduction to alcohol and its subsequent long term abuse, and partly to the immense social deprivation of being a virtual orphan in a community in which so many Indigenous people like you suffer a completely dislocated and dysfunctional existence for reasons which have been much examined but which are far too complex to go into in these sentencing remarks.

Suffice to say, they are undoubtedly a product of unjust and immoral social alienation to which Indigenous people have been subject in this country for far too long. Until these issues are seriously addressed there will be many more offenders like you who will have to be sentenced to long prison terms because this society generally neither knows nor cares how to do any better.

... sentences as I am about to impose on you are no help in seriously tackling the problem of which your offending is only a small part. As a judge, however, I am able to do nothing else but obey the law's commands. The remedy, if there is one, lies elsewhere (Extract from Submission, Edney, 2004, in the matter of R v Wordie [2002] Victorian SC 202 at para [31] per Bongiorno J).

While the Royal Commission made a number of specific Recommendations relating to the coronial process investigating Indigenous deaths in custody, it also considered the broader court processes, including sentencing and the legislative underpinnings which impact on Indigenous people when they appear in court. The Royal Commission was emphatic that:

The ways in which the court process and particularly the sentencing process may contribute to this over-representation in the criminal justice system (Royal Commission, 1991b, Vol. 3, Intro: 59).

It further noted that:

The reduction in the rate of imprisonment can be achieved at many levels ... there are a variety of legislative and procedural reforms which can be taken with the result that persons who may otherwise have been sentenced to a term of imprisonment avoid the sentencing option by being diverted from the court process. But once the person has come before a court the considerations which arise will be different. At this point we need to consider the extent to which the sentencing process itself militates against the principle of sentencing as a last resort (Royal Commission, 1991b, Vol. 3, 22.1.4).
The Commission went on to ask:

To what extent, if at all, are Aboriginal people peculiarly disadvantaged in the sentencing process ... Prior convictions are an important factor in determining the nature and length of sentence which a person may receive from a court. Does the fact of itself lead to discrimination in the sentencing process? Given the extraordinary disadvantages which Aboriginal people face in their dealing with non-Aboriginal society, in their opportunity to pursue employment, in the economic options available and, in particular, in the fact that their lives are very much in public view and with constant police surveillance, is it not inevitable that they will present before the courts with prior convictions? Does the sentencing process reflect awareness that the fact of prior convictions must be offset against those other factors? (Royal Commission, 1991b, Vol. 3, 22.1.5).

And it asked further:

... When presenting themselves for sentencing, are the court procedures such that Aboriginal people are generally disadvantaged in their ability and opportunity to present a case against their imprisonment? (Royal Commission, 1991b, Vol. 3, 22.1.10).

The current Review has examined the evidence for implementation of the Commission’s Recommendations relation to courts in a thematic fashion, as was done in the previous Section 6.2 – Police. For this subsection on courts, the clusters relating to government self-assessment responses are:

(a) Coroner’s Court and Post-Death Investigations;
(b) Custody Disciplinary Offences;
(c) Court Processes, Granting Bail, Sentencing and Legal Representation;
(d) Court Services and Court Administration;
(e) Cultural Awareness Training for Court Staff
(f) Recruitment of Indigenous Court Officers;
(g) Aboriginal Legal Services;
(h) Recognition of Aboriginal Customary Law; and
(i) Reducing Motor Vehicle Offending.

Where these Recommendations are also of relevance and have been responded to by Victoria Police, these responses can be found in Section 6.2 – Police.

In this section on courts, the relevant Recommendations and the self-assessed implementation status reports from Victorian Government departments are set out below in full and constitute the basis upon which the implementation status was determined. It should be noted that for a number of Recommendations, implementation is primarily a Commonwealth responsibility. However, where the Victorian Government has taken action that contributes to the implementation it is reported here against those Recommendations. This material represents the reports on progress in addressing the Recommendations and is made available to the community through this Review. Community responses and the Review comments and recommendations follow.
### 6.3.1 Royal Commission Recommendations and Implementation Status

**(a) Coroner’s Court and Post Death Investigations**

The intention of this cluster of Recommendations is to improve post-death procedures and, as a matter of urgency, ensure thorough, open and impartial post-death investigation procedures which respect the rights of the family of the person who died (see also Section 4 – Victorian Aboriginal Deaths in Custody).

The Recommendations address the definition of death (Recommendation 6), the responsibility of the Coroner to inquire into all deaths in custody (including quality of care, treatment and supervision) (Recommendations 7, 8, 9 and 12), the responsibility to notify the Coroner of a death in custody (Recommendation 10), the holding of a formal, public inquest (Recommendation 11), the nature and distribution of the Coroner’s findings and recommendations (Recommendations 13 and 14), implementation of findings and recommendations (Recommendations 15, 16 and 17), and reports made to the Attorney-General (Recommendations 17 and 18).

These Recommendations address who should be notified about the death of an Aboriginal person and the holding of a coronial inquest (Recommendations 19, 20, 21 and 22), and representation at the inquest (Recommendation 23). The Recommendations also address the nature of inquiries undertaken by the Coroner (Recommendation 24), and the rights of families to view the body and scene of death, to have an independent observer at a post-mortem or conduct a further post-mortem, and to receive a copy of the post-mortem report (Recommendation 25).

These Recommendations also deal with the conduct of the inquiry into the death (Recommendations 26, 27, 28, 29, 30, 31 and 36), including the appointment of a lawyer to assist the Coroner, the selection of the officer in charge of the police investigation (Recommendation 32), the selection of Police officers (Recommendations 33 and 34), the contents of relevant Police standing orders (Recommendation 35), and the involvement of a specialist forensic pathologist (Recommendation 37).

The Recommendations further stress the need for, development and use of a protocol to guide cultural matters involved in the conduct of inquiries and autopsies (Recommendations 38 and 39). The Recommendations also address the establishment of a uniform data base throughout Australia (Recommendation 40).

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>4 That if and where claims are made in respect of the deaths based on the findings of Commissioners: (a) Governments should not, in all the circumstances, take the point that a claim is out of time as prescribed by the relevant Statute of Limitation; and (b) Governments should, whenever appropriate, make the effort to settle claims by negotiation so as to avoid further distress to families by litigation.</td>
<td>Classified as not relevant to the State Coroner (SCV)</td>
</tr>
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<td>5 That governments, recognising the trauma and pain suffered by relatives, kin and friends of those who died in custody, give sympathetic support to requests to provide funds or services to enable counselling to be offered to these people.</td>
<td>Fully implemented (MH-DHS)</td>
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<td>6 That for the purpose of all recommendations relating to post-death investigations the definition of deaths should include at least the following categories:</td>
<td>Fully implemented (SCV)</td>
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<td>Recommendation</td>
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<tr>
<td>(a) The death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile; (b) The death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention; (c) The death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and (d) The death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.</td>
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<tr>
<td>7 That the State Coroner, or, in any State or Territory where a similar office does not exist, a Coroner specially designated for the purpose, be generally responsible for inquiry into all deaths in custody. (in all recommendations in this report the words 'State Coroner' should be taken to mean and include the Coroner so specially designated).</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>8 That the State Coroner be responsible for the development of a protocol for the conduct of coronial inquiries into deaths in custody and provide such guidance as is appropriate to Coroners appointed to conduct inquiries and inquests.</td>
<td>Partially implemented (SCV)</td>
</tr>
<tr>
<td>9 That a Coroner inquiring into a death in custody be a Stipendiary Magistrate or a more senior judicial officer.</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>10 That custodial authorities be required by law to immediately notify the Coroners Office of all deaths in custody, in addition to any other appropriate notification.</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>11 That all deaths in custody be required by law to be the subject of a coronial inquiry which culminates in a formal inquest conducted by the Coroner into the circumstances of the death. Unless there are compelling reasons to justify a different approach the inquest should be conducted in public hearings. A full record of the evidence should be taken at the inquest and retained.</td>
<td>Fully implemented (SCV)</td>
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<tr>
<td>12 That a Coroner inquiring into a death in custody be required by law to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death.</td>
<td>Partially implemented (SCV)</td>
</tr>
<tr>
<td>13 That a Coroner inquiring into a death in custody be required to make findings as to the matters which the Coroner is required to investigate and to make such recommendations as are deemed appropriate with a view to preventing further custodial deaths. The Coroner should be empowered, further, to make such recommendations on other matters as he or she deems appropriate.</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>14 That copies of the findings and recommendations of the Coroner be provided by the Coroners Office to all parties who appeared at the inquest, to the Attorney-General or Minister for Justice of the State or Territory in which the inquest was conducted, to the Minister of the Crown with responsibility for the relevant custodial agency or department and to such other persons as the Coroner deems appropriate.</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>15 That within three calendar months of publication of the findings and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister of the Crown with responsibility for that agency or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person.</td>
<td>No progress (SCV)</td>
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<tr>
<td>16 That the relevant Ministers of the Crown to whom responses are delivered by agencies or departments, as provided for in Recommendation 15, provide copies of each such response to all parties who appeared before the Coroner at the inquest, to the Coroner who conducted the inquest and to the State Coroner. That the State Coroner be empowered to call for such further explanations or information as he or she considers necessary, including reports as to further action taken in relation to the recommendations.</td>
<td>No progress (SCV)</td>
</tr>
<tr>
<td>17 That the State Coroner be required to report annually in writing to the Attorney-General or Minister for Justice, (such report to be tabled in Parliament), as to deaths in custody generally within the jurisdiction and, in particular, as to findings and recommendations made by Coroners pursuant to the terms of Recommendation 13 above and as to the responses to such findings and recommendations provided pursuant to the terms of Recommendation 16 above.</td>
<td>No progress (SCV)</td>
</tr>
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<td>18 That the State Coroner, in reporting to the Attorney-General or Minister for Justice, be empowered to make such recommendations as the State Coroner deems fit with respect to</td>
<td>No progress (SCV)</td>
</tr>
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<td>Recommendation</td>
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<td>the prevention of deaths in custody.</td>
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<td>19</td>
<td>That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known.</td>
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<td>20</td>
<td>That the appropriate Aboriginal Legal Service be notified immediately of any Aboriginal death in custody.</td>
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<td>21</td>
<td>That the deceased’s family or other nominated person and the Aboriginal Legal Service be advised as soon as possible, and, in any event, in adequate time, as to the date and time of the coronial inquest.</td>
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<tr>
<td>22</td>
<td>That no inquest should proceed in the absence of appearance for or on behalf of the family of the deceased unless the Coroner is satisfied that the family has been notified of the hearing in good time and that the family does not wish to appear in person or by a representative. In the event that no clear advice is available to the Coroner as to the family’s intention to appear or be represented no inquest should proceed unless the Coroner is satisfied that all reasonable efforts have been made to obtain such advice from the family, the Aboriginal Legal Service and/or from lawyers representing the family.</td>
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<tr>
<td>23</td>
<td>That the family of the deceased be entitled to legal representation at the inquest and that government pay the reasonable costs of such representation through legal aid schemes or otherwise.</td>
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<tr>
<td>24</td>
<td>That unless the State Coroner or a Coroner appointed to conduct the inquiry otherwise directs, investigators conducting inquiries on behalf of the Coroner and the staff of the Coroner’s Office should at all times endeavour to provide such information as is sought by the family of the deceased, the Aboriginal Legal Service and/or lawyers representing the family as to the progress of their investigation and the preparation of the brief for the inquest. All efforts should be made to provide frank and helpful advice and to do so in a polite and considerate manner. If requested, all efforts should be made to allow family members or their representatives the opportunity to inspect the scene of death.</td>
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<tr>
<td>25</td>
<td>That unless the State Coroner, or a Coroner appointed to conduct the inquiry, directs otherwise, and in writing, the family of the deceased or their representative should have a right to view the body, to view the scene of death, to have an independent observer at any post-mortem that is authorised to be conducted by the Coroner, to engage an independent medical practitioner to be present at the post-mortem or to conduct a further post-mortem, and to receive a copy of the post-mortem report. If the Coroner directs otherwise, a copy of the direction should be sent to the family and to the Aboriginal Legal Service.</td>
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<td>26</td>
<td>That as soon as practicable, and not later than forty-eight hours after receiving advice of a death in custody the State Coroner should appoint a solicitor or barrister to assist the Coroner who will conduct the inquiry into the death.</td>
</tr>
<tr>
<td>27</td>
<td>That the person appointed to assist the Coroner in the conduct of the inquiry may be a salaried officer of the Crown Law Office or the equivalent office in each State and Territory, provided that the officer so appointed is independent of relevant custodial authorities and officers. Where, in the opinion of the State Coroner, the complexity of the inquiry or other factors, necessitates the engaging of counsel then the responsible government office should ensure that counsel is so engaged.</td>
</tr>
<tr>
<td>28</td>
<td>That the duties of the lawyer assisting the Coroner be, subject to direction of the Coroner, to take responsibility, in the first instance, for ensuring that full and adequate inquiry is conducted into the cause and circumstances of the death and into such other matters as the Coroner is bound to investigate. Upon the hearing of the inquest the duties of the lawyer assisting at the inquest, whether solicitor or barrister, should be to ensure that all relevant evidence is brought to the attention of the Coroner and appropriately tested, so as to enable the Coroner to make such findings and recommendations as are appropriate to be made.</td>
</tr>
<tr>
<td>29</td>
<td>That a Coroner in charge of a coronial inquiry into a death in custody have legal power to require the officer in charge of the police investigation to report to the Coroner. The Coroner should have power to give directions as to any additional steps he or she desires to be taken in the investigation.</td>
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<tr>
<td>30</td>
<td>That subject to direction, generally or specifically given, by the Coroner, the lawyer assisting</td>
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<tr>
<td>Recommendation</td>
<td>Implementation status 2003</td>
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<td>the Coroner should have responsibility for reviewing the conduct of the investigation and advising the Coroner as to the progress of the investigation.</td>
<td>(SCV)</td>
</tr>
<tr>
<td>31 That in performing the duties as lawyer assisting the Coroner in the inquiry into a death the lawyer assisting the Coroner be kept informed at all times by the officer in charge of the police investigation into the death as to the conduct of the investigation and the lawyer assisting the Coroner should be entitled to require the officer in charge of the police investigation to conduct such further investigation as may be deemed appropriate. Where dispute arises between the officer in charge of the police investigation and the lawyer assisting the Coroner as to the appropriateness of such further investigation the matter should be resolved by the Coroner.</td>
<td>Partially implemented (SCV)</td>
</tr>
<tr>
<td>32 That the selection of the officer in charge of the police investigation into a death in custody be made by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank.</td>
<td>No progress (SCV)</td>
</tr>
<tr>
<td>33 That all officers involved in the investigation of a death in police custody be selected from an Internal Affairs Unit or from a police command area other than that in which the death occurred and in every respect should be as independent as possible from police officers concerned with matters under investigation. Police officers who were on duty during the time of last detention of a person who died in custody should take no part in the investigation into that death save as witnesses or, where necessary, for the purpose of preserving the scene of death.</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>34 That police investigations be conducted by officers who are highly qualified as investigators, for instance, by experience in the Criminal Investigation Branch. Such officers should be responsible to one, identified, senior officer.</td>
<td>Partially implemented (SCV)</td>
</tr>
<tr>
<td>35 That police standing orders or instructions provide specific directions as to the conduct of investigations into the circumstances of a death in custody. As a matter of guidance and without limiting the scope of such directions as may be determined, it is the view of the Commission that such directions should require, inter alia, that:</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>(a) Investigations should be approached on the basis that the death may be a homicide. Suicide should never be presumed;</td>
<td>FULLY IMPLEMENTED (SCV)</td>
</tr>
<tr>
<td>(b) All investigations should extend beyond an inquiry into whether death occurred as a result of criminal behaviour and should include inquiry into the lawfulness of the custody and the general care, treatment and supervision of the deceased prior to death;</td>
<td>FULLY IMPLEMENTED (VicPol)</td>
</tr>
<tr>
<td>(c) The investigations into deaths in police watch-houses should include full inquiry into the circumstances leading to incarceration, including the circumstances of arrest or apprehension and the deceased's activities beforehand;</td>
<td>FULLY IMPLEMENTED (VicPol)</td>
</tr>
<tr>
<td>(d) In the course of inquiry into the general care, treatment or supervision of the deceased prior to death particular attention should be given to whether custodial officers observed all relevant policies and instructions relating to the care, treatment and supervision of the deceased; and</td>
<td>FULLY IMPLEMENTED (VicPol)</td>
</tr>
<tr>
<td>(e) The scene of death should be subject to a thorough examination including the seizure of exhibits for forensic science examination and the recording of the scene of death by means of high quality colour photography.</td>
<td>FULLY IMPLEMENTED (VicPol)</td>
</tr>
<tr>
<td>36 Investigations into deaths in custody should be structured to provide a thorough evidentiary base for consideration by the Coroner on inquest into the cause and circumstances of the death and the quality of the care, treatment and supervision of the deceased prior to death.</td>
<td>Partially implemented (SCV)</td>
</tr>
<tr>
<td>37 That all post-mortem examinations of the deceased be conducted by a specialist forensic pathologist wherever possible or, if a specialist forensic pathologist is not available, by a specialist pathologist qualified by experience or training to conduct such post-mortems.</td>
<td>Fully implemented (SCV)</td>
</tr>
<tr>
<td>38 The Commission notes that whilst the conduct of a thorough autopsy is generally a prerequisite for an adequate coronial inquiry some Aboriginal people object, on cultural grounds, to the conduct of an autopsy. The Commission recognises that there are occasions where as a matter of urgency and in the public interest the Coroner may feel obligated to order that an autopsy be conducted notwithstanding the fact that there may be objections to</td>
<td>No progress (SCV)</td>
</tr>
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</table>
that course from members of the family or community of the deceased. The Commission recommends that in order to minimise and to resolve difficulties in this area the State Coroner or the representative of the State Coroner should consult generally with Aboriginal Legal Services and Aboriginal Health Services to develop a protocol for the resolution of questions involving the conduct of inquiries and autopsies, the removal and burial of organs and the removal and return of the body of the deceased. It is highly desirable that as far as possible no obstacle be placed in the way of carrying out of traditional rites and that relatives of a deceased Aboriginal person be spared further grief. The Commission further recommends that the Coroner conducting an inquiry into a death in custody should be guided by such protocol and should make all reasonable efforts to obtain advice from the family and community of the deceased in consultation with relevant Aboriginal organisations.

39 That in developing a protocol with Aboriginal Legal Services and Aboriginal Health Services as proposed in Recommendation 38, the State Coroner might consider whether it is appropriate to extend the terms of the protocol to deal with any and all cases of Aboriginal deaths notified to the Coroner and not just to those deaths which occurred in custody.

40 That Coroners Offices in all States and Territories establish and maintain a uniform database to record details of Aboriginal and non-Aboriginal deaths in custody and liaise with the Australian Institute of Criminology and such other bodies as may be authorised to compile and maintain records of Aboriginal deaths in custody in Australia.

Government Responses on Implementation

Recommendation 4: Claims for compensation

The State Coroner advised the Review that this Recommendation is a matter that is appropriate for review of civil law processes and not a matter that is relevant to coronial practice and legislation.

Recommendation 5: Recognition of trauma and pain, and sympathetic support to requests for counselling support

Mental Health (DHS) advised the Review that the Recommendations contained within the Purra Birik discussion paper and the subsequent objectives contained in the Purra Birik Strategic Plan (1999) are designed to increase the capacity for Aboriginal Community Controlled Health Organisations to provide social and emotional support for each Koori community. Access to mainstream public mental health services has also been increased through the development of partnerships between Aboriginal Community Controlled Health Organisations and Area Mental Health Services.

The Victorian Mental Health Branch has provided funding for the expansion of social and emotional wellbeing services provided by Aboriginal Community Controlled Health Organisations for the Koori Community. These include:

- Koori Mental Health liaison positions established in all rural mental health services. The role of these positions includes:
  - Providing a link between Koori Community Health Services and Area Mental Health Services;
  - The provision of support and information to Koori people who are clients of the Area Mental Health Service;
  - Advising and training staff of specialist mental health services on culturally sensitive practice;
  - Contributing to the development and review of protocols between Koori Community Controlled Health Services and Area Mental Health Services;
- A Koori Liaison Service Development position has been established at the Royal Children’s Hospital.

- The review of the Aboriginal Mental Health Network (Fitzroy) resulted in major recommendations which have provided direction for the program shifting from a crisis support model to a home-based support model. This process allows for the provision of home-based outreach support to people with a mental health problem. The model of providing support within the home allows for a holistic approach to the provision of support that may include the family. The steering committee for this project continues to assist the development of this position and is seeking strategies to ensure ongoing retention of personnel recruited.

- Funding has been provided for an additional leadership position attached to the families program, Adult Mental Health Team, VAHS.

- The Victorian Aboriginal Adult Mental Health Team has been relocated to Northcote. Funding was provided by the Victorian Mental Health Branch for the relocation. The model of support has been further improved and is now called VAHS Family Counselling Service.

Relatives, kin and friends of Indigenous people who died in custody are encouraged to access the counselling services. However, the reason for a person attending counselling is not a statistic collected by Victorian Aboriginal Health Services. VAHS confirm that people do attend counselling because of a death in custody but are unable to report on frequency. Koori counsellors are employed as are non-Koories with appropriate cultural awareness training.

**Recommendation 6: Definition of death**

The State Coroner advised the Review that all deaths in custody are reported to the State Coroner’s Office and are subject to a detailed investigation under direction of the Coroner in accordance with the Coroners Act 1985.

**Recommendation 7: Responsibility of the State Coroner**

The State Coroner advised the Review that the State Coroner’s Office was established in 1985. Sometimes, for custodial deaths in country Victoria, the investigations and inquests are conducted by Magistrates (who are also Coroners) working in the particular Region. Whether or not custodial deaths should be investigated only by a full time Coroner is an open question.

**Recommendation 8: Conduct of coronial inquiries and inquests**

The State Coroner advised the Review that the Coroners Act 1985 provides that the State Coroner is responsible for the development of procedures and practices. Generally, all deaths in custody are investigated by full time coroners in Victoria and as the circumstances of the deaths are variable, protocols are not seen as appropriate. Also the State Coroner (or Deputy where the State Coroner is not available) is advised of each death in custody as a matter of standard practice and, generally, the State Coroner will attend the scene of the incident, along with the police unit investigating the matter, a Forensic Pathologist and the Crime Scene Forensic Team. For a death in custody from country Victoria, further investigation may be undertaken by a regional Magistrate/Coroner (Refer to the response to Recommendation 7).
Section 6: Findings on Over-Representation in the Criminal Justice System

Recommendation 9: Status of Coroners
The State Coroner advised the Review that all coroners in Victoria are also generally Magistrates. There are four full-time Coroners in Victoria (a State Coroner, Deputy State Coroner and two other full time Coroners. However, one Coroner is not a Magistrate and is appointed on a short-term basis. There is also one coroner working part-time at the State Coroners Officer who regularly relieves and assists the full-time Coroners where appropriate). Full-time coroners do not work as magistrates while working as full-time Coroners. Deaths in custody inquests are generally heard by the full time Coroners. The part-time relieving coroner occasionally also deals with death in custody cases (refer to response in Recommendations 7 and 8). A more senior judicial officer has not been appointed as a Coroner under the Coroners Act 1985 although the Act permits such an appointment.

Recommendation 10: Immediate notification of the Coroner of a death in custody
The State Coroner advised the Review that there has not been a problem in the coronial system in relation to any delays in notification of deaths in custody in Victoria in recent times.

Recommendation 11: Conduct of inquests
The State Coroner advised the Review that all deaths in custody are the subject of a compulsory inquest (Coroners Act 1985). A death in custody is construed broadly by Coroners to include a death during arrest, during a police shooting or in a police pursuit.

Recommendation 12: Extent of investigation
The State Coroner advised the Review that the Recommendation is generally followed as a matter of course (provided the inquiry is relevant to jurisdiction of the Coroner, for example, identity, the cause of death, and how the death occurred).

Recommendation 13: Nature of findings and recommendations
The State Coroner advised the Review that coronial inquiries into deaths in custody also may result in comments and recommendations dealing with systemic issues and aimed at preventing further custodial deaths (or injuries). The State Coroner advised that it is noted that one of the philosophical tenets of the Royal Commission is summarised in the quotation:

In human terms, thoroughly conducted coronial inquiries hold the potential to identify systemic failures in custodial practices and procedures which may, if acted on, prevent future deaths in similar circumstances. In the final analysis adequate post death investigations have the potential to save lives.

This philosophy has been adopted by the Victorian Coronial system. The Coroner’s process has a general focus on developing the learning from coronial investigations to help improve public health and safety (whether this needs to be enshrined in the legislation as part of the purpose of a coronial investigation is a matter that may need to be considered – see also the Attorney General’s Justice Statement 2004).

Recommendation 14: Distribution of findings and recommendations
The State Coroner advised the Review that generally the Coroner’s findings, recommendations and comments are forwarded to the Attorney-General, Ministers, Government and other relevant correctional or correctional health agencies.
The legislation may need to be amended to give a wider distribution power (see Coroners Act 1985 sec. 19(2) and linked to sec. 21 (1) and (2). See also the Attorney General's Justice Statement 2004).

**Recommendation 15: Response to findings and recommendations**

The State Coroner advised the Review that this Recommendation has not been followed in Victoria. It should be noted that a Coroner's recommendation was made on this issue in the 1999 Port Phillip Deaths in Custody inquiry. However, the Government decided that, as the reporting and response arrangements between the Correctional agencies and the Coroner were working well, further development of this Recommendation into legislation was at that time considered not to be necessary.

**Recommendation 16: Requests for further information**

The State Coroner referred to his response to Recommendation 15, and further advised that the Coroner does not have the power to request further explanations.

**Recommendation 17: Reports to the Attorney-General**

The State Coroner advised the Review that there is no such reporting to the Attorney-General on an annual basis. Individual findings, comments and recommendations are sent to the Attorney-General in each particular case. The New South Wales Coroner provides an annual report to his Attorney-General in the terms of Recommendation 17. The State Coroner advised, the New South Wales annual report is a useful document and it may be appropriate to provide a similar reporting system in Victoria, provided appropriate resources are made available.

**Recommendation 18: Nature of recommendations**

The State Coroner advised the Review that under the Coroners Act 1985, the State Coroner does not have the power to make additional recommendations, apart from a case by case investigatory process (where the State Coroner has been the judicial officer hearing the particular case).

**Recommendation 19: Notification of death**

The State Coroner advised the Review that generally Recommendation 19 is followed as a matter of course and such notification would apply to every death reported to the State Coroner's Office.

**Recommendation 20: Notification of appropriate Aboriginal legal service**

The State Coroner advised the Review that it is appropriate that the Victorian Aboriginal Legal Service is notified of an Aboriginal death in custody immediately on report of that death.

**Recommendation 21: Notification of coronial inquest**

The State Coroner advised the Review to refer to the responses made for Recommendations 19 and 20.

**Recommendation 22: Family representation during hearing**

The State Coroner advised the Review that generally all efforts are made to contact families of deceased persons and notify them of an inquest. Inquest hearings are not proceeded with until inquiries are made about the intention of the family.
**Recommendation 23: Legal representation**
The State Coroner advised the Review that this would seem to be both a sensible and desirable Recommendation. It is a matter for government and appropriate legal aid agencies. Coronal comments have been made on the necessity for legal aid in coroner’s inquests.

**Recommendation 24: Provision of advice and information to families and others**
The State Coroner advised the Review that this Recommendation is generally followed, however, a thorough investigation also may well require that this investigation should be undertaken with limited information being distributed to a range of parties, and this may include families. On completion of the brief, the full brief and all other documents are made available to the family (and other parties) prior to the inquest. If, on perusal of the brief, the family (or other parties) request further investigation on any issue, that is generally followed up before the case is finally listed for inquest. However, it should be noted that a family is entitled to be kept up to date with the progress of the investigation. General information will be provided to a family throughout the management and progress of a case.

There is a guide booklet for families explaining how the Coroners system works in Victoria and a leaflet is also provided explaining the Counselling and Support Service (see comments to Recommendation 25). The State Coroner’s Office is also to launch a web site (www.coronerscourt.vic.gov.au).

Inspection by family members or their representative of the death scene is generally impractical and would be difficult to organise. However, in particular cases, and with appropriate consideration to the rights of all involved, it may be possible to organise a scene inspection at a later stage.

Since March 2004, all next-of-kin of those families in Metropolitan Melbourne, are contacted by a trained counsellor to provide information and to assess needs. It is envisaged that this program will be implemented statewide.

**Recommendation 25: Rights of families**
The State Coroner advised the Review that subject to the comments for Recommendation 24, there is no difficulty with a family arranging for an independent pathologist as an observer at post mortem. A copy of the post mortem report is generally made available to families (subject to appropriate warnings and management processes to minimise any additional shock or grief from the viewing of such a document). It should be noted that there is a Counselling and Support Unit at the State Coroner’s Office and two counsellors are available to assist all families (and witnesses) in order to help them with the grieving process and provide information on coronial processes and general support.

**Recommendation 26: Lawyer assisting the Coroner**
The State Coroner advised the Review that this has generally not occurred. In the early stages the investigation is under the direction of the State Coroner (or Deputy State Coroner). Provided resourcing is made available, the addition of Counsel Assisting the Coroner, in the early stages of the investigation would be of assistance.

**Recommendation 27: Independent assistance**
The State Coroner referred the Review to his comment on Recommendation 26. He further advised, where police are involved in the incident, the Office of the Director of Public Prosecutions will provide Counsel to assist the Coroner at the inquest (sometimes counsel is
provided to assist with the managing of some aspects of the investigation). Counsel is generally instructed by a solicitor from the Office of the Public Prosecutor. In the majority of deaths in custody (except where police are involved in the incident or there is another reason for potential conflict), as a result of problems with resources, the Police Assistant’s Unit at the State Coroner’s Office has assisted the Coroner in the court process and in overseeing the investigation. On some occasions where deaths in custody involve correctional authorities (where the matter is complex or there may be a perceived potential for conflict), outside Counsel or the Office of Public Prosecutions will be briefed to assist the Coroner in the inquest. Earlier assistance in the investigation phase may be helpful (refer also to response to Recommendation 26).

Recommendation 28: Duties of the lawyer assisting the Coroner
The State Coroner advised the Review to refer to the responses made to Recommendations 26 and 27.

Recommendation 29: Direction to the Police
The State Coroner advised the Review that the Coroner has power to give directions to police. No problems have been encountered with police assisting the Coroner and investigating a wide range of matters under direction of the Coroner (on many occasions involving detailed, time consuming and resource intensive work).

Recommendation 30: Responsibility of the lawyer assisting the Coroner
The State Coroner advised the Review to refer to comments made to Recommendations 26, 27 and 28.

Recommendation 31: Relationship between the lawyer assisting the Coroner and the officer in charge of the police investigation
The State Coroner advised the Review that this generally occurs where lawyers are appointed to assist the Coroner. It was also stated that there was no obvious information regarding police investigators not conforming to policy or failing to assist lawyers in the investigation or failing to further investigate matters at the request of lawyers assisting in the inquiry into deaths in custody. The State Coroner advised that the appointment of lawyers as assisting was a resourcing issue and lawyers were only utilised in problematic cases (refer also to responses to Recommendations 26 and 27). There is a greater level of co-operation today in coronial matters and no specific issues are identified that co-operation was not afforded to counsel assisting the Coroner.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

Recommendation 32: Selection of the officer in charge of the police investigation
The State Coroner advised the Review that this does not occur as a general rule.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

Recommendation 33: Police officers involved in an investigation
The State Coroner Victoria advised the Review that generally, investigations involve either the Victoria Police Prisons Squad (correctional deaths) or where the death is in police custody, by Homicide Squad officers overseen by Internal Affairs Unit and the Coroner. Until 1 January 2003, the Police Unit assisting Coroner for deaths in correctional institutions was the Armed Offenders Squad. On that date the Prisons Squad was reformed (it had
been disbanded and its work taken over by the Armed Offenders Squad). The scene of the
death is viewed by the Coroner, Prison Squad, (or Homicide Squad and Internal Affairs Unit
officers), a Forensic Pathologist (Victorian Institute of Forensic Medicine) and officers from
Forensic Science Centre (crime scene investigators). In addition, the Correctional Services
Commissioner has set standards for internal investigation and review of all deaths in
correctional custody. These review reports are also available to the Coroner prior to the
inquest. Frequently the internal report makes a series of recommendations aimed at
correcting systemic issues identified during the internal investigation and described in the
internal report. Sometimes an internal report will also identify other aspects of the incident
requiring further investigation by the Coroner. Where an investigation into a death in
custody requires the examination of some aspect of the medical management of the
prisoner, this is undertaken with the help of clinicians having specialist knowledge of the
relevant area of medicine, by way of expert reports and evidence.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 34: Qualifications of Police officers as investigators**
The State Coroner advised the Review that this generally occurs.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 35: Conduct of investigations**
The State Coroner advised the Review that it is understood that the Prison Squad’s
Charter of Operations and Standard Operating Procedures is being reviewed by Police
Command (as the unit has been reformed). These investigations are overseen by the
Coroner and issues associated with identity, cause of death and how the death occurred are
reviewed. The scene of death is examined in detail by specialists. See comments on
Recommendation 33. As indicated, generally the State Coroner (and a Forensic Pathologist)
attends all deaths in custody scenes within a short time of the report of death.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 36: Structure of investigations to provide evidentiary
basis.**
The State Coroner advised the Review that this generally occurs. Under the Coroners Act
1985 the investigating Coroner is required to find identity, cause of death and how death
occurred.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 37: Conduct of post mortem examinations**
The State Coroner advised the Review that all-post mortem examinations into deaths in
custody are undertaken at the Coronial Services Centre, Southbank, by a Forensic
Pathologist employed by the Victorian Institute of Forensic Medicine. In all cases samples
are taken for toxicological testing and report.

The development of the family contact program by trained counsellors has meant that the
coroners are made more aware of any cultural sensitivities when decisions are made.

**Recommendation 38: Cultural matters**
The State Coroner advised the Review that under the Coroners Act 1985, a family has the
right to object to an autopsy. The objection is decided eventually by the Coroner (after a
documented review by a Forensic Pathologist). In the event that the Coroner refuses the application, the family has the right to take the matter to the Supreme Court of Victoria by way of review. Whilst it may be considered desirable for a protocol to be developed between Aboriginal Health Services and the Coroner, ultimately the decision whether to conduct an autopsy or not is a matter for the Coroner. Other issues associated with removal and testing of organs, burial and return of body are generally discussed with all families. There are detailed general procedures relating to organ or tissue testing and retention.

**Recommendation 39: Protocol with Aboriginal legal and health services**

The **State Coroner** advised the Review to refer to the comments made to Recommendation 38.

**Recommendation 40: National data base**

The **State Coroner** advised the Review that the Australasian Coroners Society has developed (with the assistance of Monash University Accident Research Centre, Department of Epidemiology and Preventative Medicine and the Victorian Institute of Forensic Medicine), a National Coroners Information System, which is now operated from the Coronial Services Centre in Victoria and collects data nationally on deaths in custody in a timely manner (as the deaths occur). The database collects information via the following documents – Initial Police Report of Death; Autopsy Report and Toxicology Report; Coroner’s Findings and Recommendations. As the initial Police Report of Death is loaded on the database soon after the incident happens, this enables a picture of deaths in custody across Australia to be undertaken almost on a daily basis.

It should be noted that the National Coroners Information System collects information on all deaths reported to Coroners in Australia (and is a world first coronial information system). Reported deaths of all Aboriginal and Torres Strait Islanders are recorded on the information system (access and privacy issues have been discussed with the appropriate ethics committees and are being refined further). This information system will also ensure that all deaths of Aboriginal and Torres Strait Islanders that occur in traumatic or preventable circumstances are rapidly identified and, with this knowledge, trends and systemic issues will have greater potential to be identified and addressed.

(b) Custody Disciplinary Offences

The intention of this Recommendation is to improve the operation of prison disciplinary systems. The Recommendation addresses the hearing of charges against prisoners.

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<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>180</td>
<td>Fully implemented (CS-DOJ)</td>
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<td>No longer relevant to Victoria (LP-DOJ)</td>
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**Government Responses on Implementation**

**Recommendation 180: Hearings by Magistrates**

Court Services (DOJ) advised the Review that as with Recommendation 98 and as noted in the previous Implementation Status Update 1996-97, this Recommendation has long
since been implemented in Victoria. The system of Visiting Justices (and of non-Magistrates such as Justices of the Peace being able to act as Visiting Justices) was phased out in the 1980s. Now there is an Official Prison Visitor Scheme which is part of the monitoring and review function of the Office of the Correctional Services Commissioner and thus falls outside the ambit of Court Services. It is worth noting, however, that Strategic Objective 1.4 of the VAJA provides for the appointment of Aboriginal visitors who will deal specifically with issues relating to, or arising from, the imprisonment of Aboriginals, the adequacy and standard of services for Aboriginal prisoners and the resolution [of] their complaints.

A joint media release from the Minister for Corrections, the Minister for Police and Emergency Services and the Office of the Attorney-General referred to this initiative: [The Minister for Police and Emergency Services] said that Koories for the first time will be appointed under the Corrections Act as official visitors to prisons (Regional Network for Koori Justice launch, 31 May 2001).

**Legal Policy (DOJ)** advised the Review that this Recommendation is no longer relevant as the Visiting Justice system no longer operates in Victoria.

(c) Court Processes, Granting Bail, Sentencing and Legal Representation

A series of Recommendations address the court processes, including the granting of bail, serving of warrants, sentencing options both custodial and non-custodial, as well as access to Aboriginal legal services.

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<tr>
<th>Recommendation</th>
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<tr>
<td>91</td>
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<td>a) and b) Fully implemented, c) no progress (VicPol)</td>
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<tr>
<td>92</td>
<td>Fully implemented (LP-DOJ)</td>
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<td>Partially implemented (LP-DOJ)</td>
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<td>Fully implemented (LP-DOJ)</td>
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<tr>
<td>104</td>
<td>Partially implemented (LP-DOJ)</td>
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</table>
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. Implementation status 2003
Partially implemented (LP-DOJ)

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.

Implementation status 2003
C'wlth responsibility

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.

Implementation status 2003
C'wlth responsibility

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.

Implementation status 2003
C'wlth responsibility

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.

Implementation status 2003
Partially implemented (LP-DOJ)

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.

Implementation status 2003
Partially implemented (LP-DOJ)

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.

Implementation status 2003
Fully implemented (LP-DOJ)

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.

Implementation status 2003
No progress (LP-DOJ)

Recommendation 120
That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.

Implementation status 2003
Partially implemented (LP-DOJ)

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;
(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.

Implementation status 2003
a) and b) Fully implemented (LP-DOJ)

Government Responses on Implementation

**Recommendation 91: Amendment of Bail Legislation**

**Legal Policy (DOJ)** advised the Review that Section 4(2)(c) of the Bail Act restricting courts in the circumstances they can take into account when deciding whether or not to grant bail has been repealed. The Victorian Law Reform Commission (VLRC) investigated *Failure to Appear in Court in Response to Bail* as their first community law reform program. The Report recommended a minor statutory amendment that was indicated to be:

*particularly significant for the Aboriginal community and will also improve the operation of the bail system for members of other disadvantaged groups.*
The VLRC investigation was in response to concerns raised by the Victorian Aboriginal Legal Service. The VLRC recommended that section 4(2)(c) of the Bail Act 1977 be repealed. Section 4 of the Bail Act 1977 contains a general entitlement to bail. An exception to this general rule is provided by Section 4(2)(c) which requires the decision-maker to remand a defendant who has failed to appear unless the defendant can satisfy the court that the failure to appear was due to "causes beyond" their control. The section does not permit the decision-maker to take into account any considerations and does not say that the failure to appear in court must have been beyond the defendant's control but that the causes of the failure must have been beyond their control. The Report noted that in many cases it is likely to be difficult to apply these words literally. (The Report also highlighted the unfair result of the application of this section in other circumstances). The Report referred to this Recommendation and the difficulties that may be experienced by Aboriginal people in relation to undertakings of bail. Repealing this section as recommended will improve the operation of the bail system especially for members of the Aboriginal community and members of other disadvantaged groups. This recommended amendment is currently under consideration by the Government.

Legal Policy (DOJ) further advised that also relevant to the issue of bail is the Aboriginal Bail Justice Program discussed under the VAJA. It is envisaged that if the Koori Court Pilot Program is evaluated as successful it will proceed to hear bail applicants.

There is an opportunity for the Aboriginal Justice Forum in conjunction with Government Departments (specifically Legal Policy) as well as Victoria Police and the Victorian Aboriginal Legal Service to:

- Progress the implementation of this Recommendation by reviewing the Victorian Law Reform Commission Report and developing an appropriate initiative to progress the Recommendation.
- Consider an evaluation of the overall operation of bail legislation in relation to Aboriginal people.

Legal Policy further advised the Review that the Attorney-General's Justice Statement 2004 indicates that there will be a review of the Bail Act 1977, and the Aboriginal Bail Justice Program will be evaluated in 2004 to ascertain whether the Program has met and continues to meet its intended objectives. It should be noted that Bail Justices who graduate from the Aboriginal Bail Justice Program hear both Indigenous and non-Indigenous matters. This initiative under the VAJA was designed to ensure maximum Indigenous participation in the administration of justice.

Criminal Law Policy (DOJ) advised the Review that in November 2004, the Attorney-General asked the VLRC to review the Bail Act 1977 and make recommendations for any procedural, administrative and legislative changes that may be necessary to ensure the bail system functions simply, clearly and fairly. As part of the review, the VLRC has also been asked to look at the over-representation of Indigenous Australians held on remand, the needs of marginalised and disadvantaged groups and the impact of the bail system on these people.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

Recommendation 92: Imprisonment as sanction of last resort

Legal Policy (DOJ) advised the Review that this Recommendation is implemented relying on section 5(4) Sentencing Act.
A court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a sentence that does not involve the confinement of the offender.

Additional to this provision, in October 2000 the Victorian Government commissioned a review of Victoria’s sentencing laws including sentencing options in general. Recommendation 11 of this review addresses the currently limited sentencing options available for breaches of certain orders (that is, a sentence of imprisonment upon a breach). If this recommendation is adopted it will further assist the implementation of Recommendation 92:

That, as a general principle, in responding to breaches of orders, courts should be given sufficient flexibility to allow them to respond to offenders and offending by taking into account any changed circumstances between the time of the sentence and the time when the breach is brought before the court and the extent to which they have complied with the order in the meantime.

The Sentencing Review makes a number of recommendations regarding substituted forms of imprisonment, such as the suspended sentence and the intensive correction order. The Review recommends that these orders be made more flexible by giving courts greater discretion in deciding whether an immediate prison term is appropriate upon breach of the order. These recommendations will inform the development of future sentencing reforms and consultation will occur with the Aboriginal community as part of this process.

The establishment of the Koori Court is also relevant to the implementation of this Recommendation. However, despite the fact that the principle of imprisonment as a last resort has been incorporated into statute it does not appear to have had the causal affect desired by the Royal Commission. The ratio of Indigenous to non-Indigenous rates of imprisonment (both sentenced and unsentenced) in Victoria was 12:3 for the March quarter 2002. This means that an Indigenous adult was about 12 times more likely to be imprisoned than a non-Indigenous adult. This figure increased from 11:5 in the December quarter, 2001.

Further, the imprisonment rate of Indigenous persons increased by 12 per cent in Victoria between the September quarters 2001 and 2002 (ABS: Corrective Services September Quarter 2002).

This demonstrates that the solutions are complex and not only involve the implementation of discrete Recommendations but also the tackling of underlying issues.

Fundamental to the VAJA is the desire to reduce the level of Aboriginal people within all levels of the criminal justice system (including levels of incarceration). An initiative under the VAJA was the establishment of the Koori Court. The Attorney General indicated in his Second Reading Speech that one of the Koori Court purposes is to divert Koori offenders away from imprisonment. The Magistrates’ Court (Koori Court) Act 2002 received Royal Assent on 12 June 2002 and commenced sitting on the 7 October 2002. The Koori Court Act created a new division of the Magistrates’ Court with jurisdiction to deal with Aboriginal defendants pleading guilty to minor criminal charges. According to the Act, the Koori Court is created with the objective of ensuring greater participation of the Aboriginal community in the sentencing process of the Magistrates’ Court.
The establishment of a Koori Court and the introduction of the *Koori Court Act* is the result of the continuing over-representation of Aboriginal people in the Victorian criminal justice system. The first Koori Court division of the Magistrates’ Court was established on 6 September 2002 at the Shepparton Magistrates’ Court. The first metropolitan Koori Court division of the Magistrates’ Court was established in February 2003 at the Broadmeadows Magistrates’ Court. Further, the Review of Victim services to the Aboriginal community which was a project recognised under the VAJA is relevant to this recommendation.

The rate of Aboriginal women in Victoria in the criminal justice system has increased greatly. Aboriginal female alleged offenders represented 21.6 percent of all Aboriginal offenders processed by police in 2000-01. It has been noted by commentators previously that the Royal Commission into Aboriginal Deaths in Custody made no recommendations specifically for Aboriginal women despite the fact that Aboriginal women (11 of 99) were amongst those investigated as deaths in custody. There has also been a link noted between being victims of crime and the likelihood of an Aboriginal person’s contact with the criminal justice system. This is noted in the soon to be released Review of Services to Victims of Crime which makes recommendations in relation to women in custody and related matters. High rates of Aboriginal women in the criminal justice system will obviously impact on all areas of life involving community, family and children.

There are at least four areas to examine with opportunities for policy initiatives through the Aboriginal Justice Forum in conjunction with Government Departments (including Legal Policy). They include:

- Dealing with underlying issues;
- Urgently examining issues in relation to the increase in representation of Aboriginal women in the criminal justice system and developing programs to address the issue;
- Examining and acting upon the recommendation of the Review of Victim’s Services; and
- Examining and acting upon the evaluation of the Koori Court Pilot Project (at the end of 2004).

**Legal Policy (DOJ)** further advised that it may be useful to refer to *the Systemic Racism in the Criminal Justice System as a Factor Contributing to Aboriginal Over-Representation* project overseen by the Equal Opportunity Commission generally. We note in the interim report that they observed and made comments regarding the Koori Court. We presume they will be observing the ordinary division of the Magistrates’ Court to observe and make comment about the operation of the Court in relation to its application to Koori defendants.

New developments and program enhancements include:

- The establishment of a new Koori Court in Warrnambool.
- Legislation was passed to establish a Children’s Koori Court to operate in the Criminal Division of the Children’s Court. Beginning as a pilot project, the Children’s Koori Court will focus on the individual through close collaboration with family, community service providers and criminal justice agencies. This partnership approach aims to assist Indigenous offenders to comply with sentencing orders, by enabling the Court to receive the appropriate advice to formulate sentences in a culturally appropriate manner.
Recommendation 93: Expungement of criminal records

Legal Policy (DOJ) advised the Review that under section 376 of the Crimes Act 1958, Children’s Court convictions going back more than 10 years may not be alleged against an offender in sentencing. In respect of young persons, there are limited provisions dealing with non-disclosure of prior convictions in court proceedings currently in operation. Under section 273 and 274 of the Children and Young Persons Act 1989 a person who has appeared before a Children’s Court charged with an offence who is called as a witness in any subsequent legal proceedings shall not be questioned with respect to that charge or conviction three years after the date of the charge or conviction, except in limited circumstances.

Legal Policy (DOJ), through the Standing Committee of Attorneys-General (SCAG) is currently involved in the issue of spent convictions which is relevant to this Recommendation. The issue of spent convictions arose not in the context of this Royal Commission Recommendations but as a result of concerns regarding the availability of criminal history online. A working group, headed by Victoria, developed an Issues Paper to be used by each jurisdiction as the basis for consultation, if they wished to do so. Enacting spent convictions legislation and enacting uniform spent convictions legislation were two of the options detailed in the Paper.

To date, Victoria is the only State to consult on the Issues Paper. Submissions were in favour of enacting spent convictions legislation and having uniform spent convictions legislation across Australia.

As a result of the consultations, Ministers agreed that further research and investigation be undertaken by officers into the nature of spent convictions legislation and whether or not uniform legislation is an appropriate option. Victoria has taken the lead in this research and will produce a paper for the new SCAG meeting in April 2003. The issue will be considered further at this time.

As noted above, the progress of implementing spent convictions legislation (although not as a result of Royal Commission Recommendations) has been hampered to a certain extent by the desire for a uniform approach across Australia. A uniform approach will improve any scheme that will ultimately be put in place but means that movement on the issue involves dealing with governments across Australia.

There is obviously an opportunity for the Aboriginal Justice Forum to address this Recommendation through the development of a link with Legal Policy which is informing SCAG to add a further dimension to the discussions around spent convictions. This may benefit both the progress on the Recommendation and the SCAG project. Given the severe impact this matter has on Aboriginal people and the fact that it is to be raised in April 2003, it should be accorded urgent priority.

Recommendation 102: Proceedings by summons or attendance notice for breaches of non-custodial orders

Legal Policy (DOJ) advised the Review that this Recommendation was implemented and that the standard procedure is that breach proceedings are pursued by summons.

Breach proceedings under the Sentencing Act 1991 for any of the following orders: order for release on adjournment (s.79), community-based order (s.47), suspended sentence (s.31) and intensive corrections order (s.26) all allow for either the issue of a summons to answer the charges or a warrant to arrest. (Note: The latter orders are not non-custodial orders). In practice, however, the breaching authority proceeds by way of summons.
Section 61 of the *Magistrates’ Court Act* requires that an application for a warrant must be supported by evidence on oath or by affidavit.

Further, Section 11.2.1.1 *Victoria Police Operating Procedures* indicates the following in relation to a Warrant to Arrest:

... a Warrant to Arrest in the first instance may be issued against a defendant at the time of filing the charge or anytime before the mention date if either:

- it is probable that the defendant will not answer a summons
- the defendant has absconded, is likely to, or is avoiding service of summons...

**Recommendation 103: Remuneration for work carried out under Community Service Orders**

Legal Policy (DOJ) advised the Review that this Recommendation was implemented but did not refer to any specific provision for support through Part (1) and (2) of Section 63 of the *Sentencing Act*.

**Terms of imprisonment or hours of unpaid work**

1. The term for which a person in default of payment of a fine or an installment order may be imprisoned is one day for each $100 or part of $100 then remaining unpaid with a maximum of 24 months.

2. The number of hours for which a person in default of payment of a fine or an installment order may be required to perform unpaid community work is one hour for each $20 or part of $20 then remaining unpaid up to $10,000 with a minimum of eight hours and a maximum of 500 hours.

The legislation specifies an amount by hours rather than a day value. However, on the basis of an eight hour day at $20 per hour the dollar value of a day’s service would be $160 which is greater that the dollar value of a day served in prison which is specified at $100.

**Recommendation 104: Consultation about sentencing in remote and discrete Aboriginal communities**

Legal Policy (DOJ) advised the Review that the 1996-97 Government Response indicated that the Recommendation was not relevant to Victoria. The previous Government Response was probably based on the view that there were no discrete or remote communities of Aboriginal people in Victoria as was intended in the recommendation. On the basis that another view may be argued, reference is made to the responses already provided to Recommendation 109 and 111 and the updated response regarding establishment of the Sentencing Advisory Council as addressing this Recommendation.

**Recommendation 105: Funding Aboriginal legal services**

Legal Policy (DOJ) advised the Review that whilst the responsibility for legal funding is predominantly a function of the Commonwealth Government, a common complaint is that current funding levels are inadequate.

Victoria Legal Aid (VLA) is a statutory body charged with the provision of legal aid and legal assistance to all Victorians, subject to eligibility. VLA is a mainstream provider of legal assistance and is not separately funded to provide services to Indigenous persons as a discrete class of client. However, Indigenous persons who reside in Victoria or who have a
legal problem situated within Victoria, may apply for and be granted legal assistance and have the same access to free legal aid services such as legal advice or duty lawyer services as would any other person.

VLA provides its services to a significant number of Indigenous people, across the full spectrum of service types, from casework pursuant to grants of legal assistance, to legal advice, duty lawyer services, telephone advice and information and community legal education. Services are provided to young Indigenous persons on a priority basis, in accordance with VLA’s general policy regarding the priority to be accorded to young persons facing criminal or family welfare proceedings.

Further, VLA has an important relationship with the main provider of legal services to the Indigenous community, VALS, which is facilitated by the VALS-VLA Statement of Cooperation. Under the Statement, each organisation provides a liaison officer whose duties include regular meetings, and a contact point for discussion about a range of operational issues. Under the Statement, VALS and VLA commit to providing referral support, inter-agency dialogue, and support for a range of projects such as community legal education.

VLA supports the principle that independent, community managed and properly funded Aboriginal and Torres Strait Islander Legal Services (ATSILS) are a critically important aspect of legal services delivery to the Indigenous community. VLA believes that funding levels should be sufficient to allow ATSILS to engage in research, law reform activity and community development.

In relation to Recommendations 105, 106, 107 and 108 this policy (DOJ) advise that the partnership project between DOJ and ATSIS has been delayed – primarily due to the demise of ATSIC but it is still expected to commence in July 2004. In relation to the Commonwealth proposal to tender out legal services contained in the Exposure Draft we advise that it has been widely opposed by government, legal aid, prosecutors etc.

**Recommendation 106: Representation and conflict of interest by Aboriginal legal services**

This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

However, this policy (DOJ) referred to Recommendation 108 in their response to Recommendation 105 above.

**Recommendation 107: Autonomous regional Aboriginal legal services**

This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

However, this policy (DOJ) referred to Recommendation 108 in their response to Recommendation 105 above.

**Recommendation 108: Adequate access to lawyers**

No progress reported as this Recommendation was not allocated to a Victorian Government Department.

However, this policy (DOJ) referred to Recommendation 108 in their response to Recommendation 105 above.
Recommendation 109: Available range of non-custodial options

Legal Policy (DOJ) advised the Review that the position stated in the 1996-97 State Government response was that the Recommendation had been implemented through the extensive range of sentencing options available under the Victorian Sentencing Act—ranging from imprisonment to non-custodial dispositions such as Intensive Correction Orders, Community Based Orders and fines with or without convictions which are aimed at diverting people from imprisonment. In 1997, following widespread community consultation, the Act was amended to make improvements to the existing sentencing system to deliver fair and effective sentencing laws. One amendment was the creation of a new sentencing order, the Combined Custody and Treatment Order which will enable periods of incarceration to be combined with intensive drug or alcohol treatment in the community, thus ensuring that offenders with drug or alcohol treatment needs are able to be assisted towards rehabilitation. Treatment conditions can also be attached to Intensive Correction Orders and Community Based Orders. In relation to suspended sentences, the 1997 amendments extended the upper limit of imprisonment which the Supreme and County Courts can suspend from two to three years.

In October 2000, the Victorian Government commissioned a review of Victoria’s sentencing laws including sentencing options in general. The Pathways to Justice Sentencing Review 2002:

The Review makes a number of recommendations which will have the effect of altering the current sentencing hierarchy by adding some new orders and re-focusing some existing ones. The Review suggests that rather than viewing the range of sentencing options as a one-dimensional hierarchy, the sentencing process, and the principles underlying it should be better be understood as multi-streamed ‘pathways’ which reflect the different purposes of sentencing and the different means of achieving the broad aims of reducing crime and protecting the community.

If the recommendations of this Review are implemented, sentencers will have a wider range of sentences to choose from, but will continue to be governed by the proportionality principle which links the sentence to the seriousness of the crime and by the hierarchy principle which requires them to be parsimonious in their use of sanctions.

The Sentencing Review promotes a flexible range of sentencing options and recommends changes to ensure that sentencing orders are more effective in addressing the underlying causes of offending behaviour. These recommendations will inform the development of future sentencing reforms. The Government intends to conduct consultations regarding the implementation of these recommendations with key stakeholders including the Aboriginal community.

The Sentencing Review further makes a recommendation for the establishment of a Sentencing Advisory Council. The Review suggests that its functions could include conducting research into sentencing, providing information about the availability and effectiveness of treatment programs, providing sentencing statistics, being involved in judicial and public education about sentencing statistics, being involved in judicial and public education about sentencing, monitoring sentencing trends and gauging public opinion. The Council could be made up of professional and lay persons. This Council will have the capacity to have Indigenous membership and therefore input. This further advances the implementation of this recommendation.
Further, Victoria established a Victorian Drug Court in 2001 which is located at the Dandenong Magistrates’ Court and is being trialled as a three-year pilot scheme.

Further, Victoria has provided a legislative basis for diversion proceedings in the Magistrates’ Court in s. 128A of the Magistrates’ Court Act 1989, which commenced operation on 19 June 2002. The legislation now permits Magistrates to adjourn a criminal proceeding to allow the defendant to undertake a diversion program. If the defendant completes the diversion program satisfactorily, the Court must then discharge him or her without any findings of guilt.

Further, the establishment of the Koori Court is also relevant to the implementation of this recommendation.

Further, an initiative under the VAJA is the development of an Aboriginal Residential Program.

Further, the Sentencing (Amendment) Act 2003 was enacted on 6 May 2003. This legislation was enacted to provide for the establishment of a Sentencing Advisory Council. The Council will consult with the general public on sentencing matters, conduct research into sentencing and provide information to the public and the judiciary on the operation of the sentencing system. Membership of the Council will include people with community and legal experience.

The VAJA identified the development of an Adult Residential Program as a priority with both the Victorian Government and the Aboriginal community recognising the need for an Indigenous specific diversionary program for Indigenous offenders. The primary government department responsible for this initiative is the Office of Correctional Services Commissioner (now Corrections Victoria). Reference should be made to their response regarding the development and progress of this initiative.

There is obviously opportunity for the AJF to ensure that they are aware of the contents of the Sentencing Review 2002 and opportunities to participate in consultations regarding the recommendations and take a position on the proposed Advisory Council. It should be noted that a representative of the VALS is on the AJF.

In relation to Recommendation 109 Legal Policy (DOJ) further advised that legislation to establish the Sentencing Advisory Council (SAC) to conduct research and gauge public opinion on sentencing matters was enacted and the Council (which has Indigenous representation) will commence operations by 1 July 2004. However, there is limited information available at present on the Council.

The SAC was established on 1 July 2004. There are currently 12 Council members who represent a range of perspectives and come from a broad spectrum of professional and community backgrounds. One of the Council members is a member of the Indigenous community who has worked in a policy environment developing a range of initiatives advocating improved social justice outcomes.

**Recommendation 111: Consultation on options for non-custodial sentences**

See Legal Policy (DOJ) response to Recommendation 109.
Recommendation 117: Determination of imprisonment for community service order breaches or fine default

Legal Policy (DOJ) advised the Review that this Recommendation had been implemented as Section 47 of the Sentencing Act allowed the full range for breaches of Community Based Orders.

Recommendation 118: Availability of home detention

Legal Policy (DOJ) advised the Review that the 1996-97 Government Implementation Report noted that this Recommendation had not been implemented.

Victoria does not have a home detention program and no plans for one at this stage. It should be noted that the Final Report of the Royal Commission noted that Victoria did not have home detention programs, but that it generally performs well in diverting people from custody.

In May 2001, the government introduced legislation for the purposes of establishing a home detention scheme (Correction and Sentencing (Home Detention) Bill 2001). This was the subject of extensive public and parliamentary debate but did not secure passage through Parliament. The Government resubmitted the legislation in the Autumn 2003 session of Parliament and the program commenced on 1 January 2004.

An initiative under the VAJA is the development of an Aboriginal Residential Program which is referred to below could also be considered relevant.

The focus of introducing home detention has not been for the purpose of implementing this Royal Commission Recommendation. Therefore any difficulties around its introduction have been about broader issues relating to the appropriateness/concept of home detention in the sentencing hierarchy.

See response to Recommendation 109 for the remaining part of Legal Policy (DOJ) response.

Recommendation 120: Amnesty for outstanding fine warrants

Legal Policy (DOJ) advised the Review that the Recommendation had been implemented:

Pursuant to section 58 of the Magistrates’ Court Act a warrant to imprison for non-payment of a fine or a penalty enforcement warrant is of no effect if it is more than five years old. A fresh warrant can only be issued with the leave of the court.

The relevance or effectiveness of section 58 of the Magistrates’ Court Act is dependent on the process for renewing the warrant. We have been advised that the process can be quite complicated. Apparently when the penalty enforcement warrant expires in most cases so does the enforcement order. This means that the order would need to be re-instated by the issuing agency and the Sheriff would then need to apply to a Magistrate to have the warrant re-issued. A good reason would be needed to justify this request. For example, assets belonging to the defendant that were eligible for seizure and sale by the Sheriff had now been located.

Since the last Government response there has been no amnesty on the execution of outstanding warrants for outstanding fines. We have been advised that the last amnesty occurred around 1994. In that case the amnesty lasted for about three months but required
the applicant to come forward themselves. We do not have information regarding whether Aboriginal people took advantage of this amnesty. If an amnesty occurs in future there would need to be adequate information provided to Aboriginal people and the necessary help to assist them access the process.

The establishment of the Koori Court under the VAJA is noted under other Recommendations. A component of the Koori Court’s operations is a link with the Sheriff’s Office to prevent Aboriginal people being incarcerated unnecessarily as well as assisting them through the Sheriff’s process.

A further initiative under the VAJA is the Sheriff’s Office Aboriginal Liaison Program. This program is designed to educate the Aboriginal community on the role of the Sheriff’s Office and develop positive relationships with the Aboriginal community. The Sheriff’s Office will also participate in the RAJAC Network. The Sheriff’s Office deals with outstanding warrants – given their commitment to providing culturally responsive programs to assist Aboriginal people in negotiating their outstanding warrants this could assist in the spirit of this recommendation.

As noted above, critical to any legal process will be the ability of Aboriginal people to access appropriate information about process. Strategic Objective 4 of the VAJA seeks to address the delivery of fair and equitable justice services. An initiative under this objective is the Review of Access to Legal Representation which is currently being undertaken. This may assist with ascertaining the implementation of the Recommendation.

There is an opportunity for the AJF to address this Recommendation in conjunction with government departments. Other data and information needs to be gathered to ascertain whether section 58 of the Magistrates’ Court Act is sufficient to address the intention of this Recommendation and whether there are existing problems with old warrants, lack of understanding of Sheriff’s process, service of warrants at inappropriate times (not able to go before a Magistrate or convert to community work at the time of arrest).

There may be scope to ascertain some of this information with the assistance of VALS, Aboriginal Prison Liaison Unit and other Aboriginal units and determine whether this recommendation needs to be adapted to the current situation. Further the results of the Review of Access to Legal Representation may also assist.

**Recommendation 121: Alternatives to imprisonment for fine default**

**Legal Policy (DOJ)** advised the Review that in Victoria, sentences of imprisonment are not automatically imposed in default of payment of a fine. Under the Sentencing Act 1991, in determining the amount and method of payment of a fine, the court is required to take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that its payment will impose. If a court decides to fine an offender, the Act enables the court to order that the fine be paid in instalments or if the court does not make an instalment order it may, at the time of imposing the fine, order that the offender be allowed time to pay the fine.

A court may vary or cancel an instalment order or time to pay order if it is satisfied that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with the order or that the circumstances of the offender were wrongly or inaccurately presented to the court. The Act also provides for an offender who has been fined by a court to apply for ‘time to pay order’, an instalment order or an order for the variation of the terms of an instalment order.
In addition, section 62(11) of the Act prohibits the court from gaoling a fine defaulter if the offender satisfies the court that he or she did not have the capacity to pay the fine or the instalment or had another reasonable excuse for the non-payment.

Where a natural person defaults in the payment of a fine or of any instalment under an instalment order, the Act provides for the issuing of a warrant against the person unless the person in default has consented to the making of a community-based order. However, the Act precludes a warrant being executed unless the fine or instalment or any part of the fine or instalment remains unpaid for seven days after a demand is made on the person in default and the person has not within that period obtained an instalment order or time to pay order or consented to the making by the court of a community based order.

The Magistrates’ Court Act 1989 contains a procedure for the enforcement of fines issued under the Penalty Enforcement by Registration of Infringement Notice (PERIN) system. Outstanding fines may be enforced by a penalty enforcement warrant which empowers the Sheriff to seize the personal property of a fine defaulter with imprisonment being a sanction of last resort. The Sheriff’s powers in this respect are similar to those which apply to the seizure of property in civil matters and similar safeguards apply. The Magistrates’ Court Act 1989 specifies a number of measures to ensure that a person is provided with every opportunity to pay a fine.

Pursuant to section 58 of the Magistrates’ Court Act a warrant to imprison for non-payment of a fine or a penalty enforcement warrant is of no effect if it is more than five years old. A fresh warrant can only be issued with the leave of the court.

Relevant to this recommendation is ensuring that Aboriginal defendants have adequate legal information/resources/assistance regarding the processes to enable them to navigate through the system. This is discussed briefly under the VAJA.

See Recommendation 120 for the remaining part of Legal Policy (DOJ) response.

(d) Court Services and Court Administration

Recommendations 98 and 99 deal with matters of court services and administration in dealing with Indigenous people.

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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tr>
<td>98</td>
<td>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.</td>
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<td>99</td>
<td>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.</td>
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Government Responses on Implementation

**Recommendation 98: Use of Justice of the Peace not to determine charges or impose penalties**

Court Services (DOJ) advised the Review that Recommendation 98 has long since been implemented in Victoria. The powers of Justices of the Peace were reduced prior to the
Section 6: Findings on Over-Representation in the Criminal Justice System

Royal Commission Report on the Inquiry into Aboriginal Deaths in Custody; the powers of Justices of the Peace to hear criminal charges and to conduct committal hearings were removed in 1984 by the *Magistrates' Court (Jurisdiction) Act 1984 (Vic).*

**Recommendation 99: Use of interpreters**

Court Services (DOJ) advised the Review that this Recommendation remains fully implemented – in this sense there has been *no progress* since the last Implementation Report.

Both the *Magistrates’ Court Act* and the *Victorian Civil and Administrative Tribunal Act* have legislative provisions which implement this Recommendation.

Section 40 of the *Magistrates’ Court Act 1989* provides as follows:

If –
(a) a defendant is charged with an offence punishable by imprisonment; and
(b) the Court is satisfied that the defendant does not have a knowledge of the English language that is sufficient to enable the defendant to understand, or participate in, the proceedings – the court must not hear and determine the proceeding without a competent interpreter interpreting it.

Section 63 of the *Victorian Civil and Administrative Tribunal Act 1998* provides:

Unless the tribunal directs otherwise, a party may be assisted in a proceeding by an interpreter or another person necessary or desirable to make the proceeding intelligible to that party.

While the *County Court* and *Supreme Court Acts* do not contain a legislative requirement to provide an interpreter, in practice interpreters are normally provided.

In practice, Aboriginal interpreters are rarely used in Victorian Courts as most Kooris speak English as their first language. However, many Kooris who do not require an interpreter may nevertheless have difficulties in understanding the court system. Court Services agrees with the comment made in response of Legal Policy to this Recommendation that:

... giving consideration to a defendant's ability to understand the proceedings and fully express him/herself [...] could be interpreted as wider than simply comprehending the English language but comprehending a different culturally based court system.

Initiatives such as the establishment of the Koori Court and the appointment of an Aboriginal Liaison Officer in the Magistrates’ Court assist in this regard.

Furthermore, given that Aboriginal interpreters are less in demand in states such as Victoria, consideration could be given to expanding this recommendation to encourage courts to develop initiatives to assist indigenous participants in the court process to fully understand the proceedings and express themselves by implementing a different culturally based court system (such as the Koori Court).

However, in 2002, further to the above legislative provision is the establishment of the Koori Court that supports this Recommendation, particularly if the Recommendation is given a less strict interpretation. Giving consideration to a defendant's ability to fully understand the proceedings and fully express him/herself, this could be interpreted more widely than simply...
comprehending the English language but comprehending a different culturally based court system. The Koori Court is discussed under the VAJA.

**Legal Policy (DOJ)** advised the Review that the 1996-97 State Government response referred to section 40 of the *Magistrates’ Court Act 1989* which requires an interpreter if the defendant has difficulty in communicating in English and if the offence is punishable by imprisonment. It was indicated that whilst there was no legislative requirement to provide an interpreter in the County Court or Supreme Court, in practice interpreters are normally provided.

However, in 2002, further to the above legislative provision is the establishment of the Koori Court, particularly if the Recommendation is given a less strict interpretation. Giving consideration to a defendant’s ability to fully understand the proceedings and fully express him or herself, this could be interpreted as wider than simply comprehending the English language but comprehending a different culturally based court system. The Koori Court is discussed below under the VAJA.

An initiative under the VAJA was the establishment of the Koori Court.

*In essence, the Koori court is an alternative way of administering sentences so that court processes are more culturally accessible, grounded in Aboriginal communities’ efforts to promote rehabilitation and impose sanctions which are acceptable and comprehensible to the Aboriginal community. The key emphasis is on creating an informal and accessible atmosphere and allowing greater participation by the Aboriginal Community through the Koori elder or respected person, Aboriginal justice worker, Indigenous offenders and their extended families or wide group of connected kin, and if desired, victims, in the court and sentencing process. It aims to reduce perceptions of intimidation and cultural alienation experienced by Aboriginal offenders* (Attorney-General, Second Reading Speech, 2002).

The *Magistrates’ Court (Koori Court) Act 2002* received Royal Assent on 12 June 2002. The Koori Court Act created a new division of the Magistrates’ Court with jurisdiction to deal with Aboriginal defendants pleading guilty to minor criminal charges. According to the Act, the Koori court is created with the objective of ensuring greater participation of the Aboriginal community in the sentencing process of the Magistrates’ court. The establishment of a Koori Court and the introduction of the Koori Court Act is the result of the continuing over-representation of Aboriginal people in the Victorian criminal justice system.

The *Aboriginal Elder or Respected Person* and *Koori Court Officer* (Aboriginal Justice Worker) are two positions defined under the Act. The Act allows for the Koori Court division to be informed by the Aboriginal Elder or Respected Person or a Koori Court Officer (Aboriginal Justice Worker) amongst other persons in its sentencing procedure.

To overcome difficulties experienced by and cultural alienation of Indigenous defendants, the Koori Court was established in 2002 and now sits in Shepparton, Warrnambool and Broadmeadows with plans under way to open a Children’s Koori Court and a Koori Court in Mildura and Gippsland in 2005.

See Recommendation 92 for the remaining part of **Legal Policy (DOJ)** response to this Recommendation.
The Koori Court will advance the spirit of this Recommendation because it allows an Aboriginal defendant to better understand the proceedings as well as better express him/herself through the model outlined by creating a more culturally responsive court.

The Koori Court was independently evaluated over a two year period by Dr Mark Harris of La Trobe University and covered the period from 7 October 2002 (first sitting day for the Shepparton Koori Court) to 7 October 2004. The evaluation examined operations of the Shepparton and Broadmeadows Koori Courts and did not include an examination of the Warrnambool Koori Court (it was excluded as it was not part of the original Pilot Program and started operations almost 16 months after the evaluation commenced.

The Evaluation report found that in virtually all of the stated aims of the Koori Court Pilot Program, it has been a resounding success. Specifically, the Evaluation report indicated that Koori Courts have:

- reduced levels of recidivism amongst Koori defendants, which in turn has direct ramifications for the levels of over-representation within the prison system. The Shepparton Koori Court had a recidivism rate of approximately 12.5 per cent for the two years of the Pilot Program and the Broadmeadows Koori Court’s re-offending rate was approximately 15.5 per cent. Both of these figures are significantly less than the general level of recidivism which is put at 29.4 per cent;
- Achieved reductions in the breach rates for Community Corrections Orders and the rates of Koori defendants failing to appear for their court dates;
- Increased the level of Koori community participation in, and ownership of, the administration of law;
- Provided a forum for the sentencing of defendants that is less alienating for them and which has allowed them to give their account of the reasons for their re-offending;
- Provided a mechanism whereby the sentencing process takes account of cultural considerations;
- Developed a particularly effective means of integrating the various service providers who might be involved in the tailoring of Community Based Orders;
- Reinforced the status and authority of Elders and Respected Persons, thereby strengthening the Koori community; and
- Effectively broadcast the vision of the Koori Courts, such that they have received support from some sectors that had previously been sceptical about initiatives such as the Koori Court.

### Cultural Awareness Training for Court Staff

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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>96</td>
<td>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.</td>
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<tr>
<td>97</td>
<td>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.</td>
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</tbody>
</table>
Government Responses on Implementation

**Recommendation 96: Appropriate training and development programs**

**Court Services (DOJ)** advised the Review that all Trainee Court Registrars in the Magistrates’ Court are required to participate in the one-day *Working Effectively with Diversity Course* offered by the Corporate Training Unit of the Department of Justice. Court Registrars who come into regular contact with members of the Indigenous community are encouraged to undertake the *Indigenous Awareness* course also offered as part of the Corporate Training program.

While not strictly court staff (Bail Justices are voluntary positions), Aboriginal Bail Justices are judicial officers who play a vital role in the justice system and are worthy of mention in any discussion of these recommendations. The Magistrates’ Court has undertaken two successful training programs for the 20 Aboriginal Bail Justices who have been appointed since 2001. The part of the training conducted by the court has duration of four days.

The Magistrates’ Court has, for many years, recognised the importance of awareness among its judicial and administrative officers of minority, ethnic and Indigenous issues. Prior to 2000, Indigenous Awareness training occurred annually at three day workshops conducted for Magistrates. This Indigenous training has not been included as a discrete item at more recent workshops, primarily because of other more pressing priorities and an expectation that cultural awareness training for judicial officers would be handled by the newly-formed Judicial College of Victoria. Also, the Court has embarked on numerous programs directly relevant to Indigenous awareness and improved protocols for handling Indigenous court users, including:

- the appointment of an ALO who *inter alia* brings cultural issues to the court’s attention if needed;
- a recent day-long session on Indigenous issues attended by approximately 20 staff and 30 Magistrates;
- the opening of the Koori Court in Shepparton which gave those Magistrates who attended an insight into Aboriginal culture/rituals and the opening of the Magistrates’ Court in Wodonga which also had substantial Aboriginal involvement;
- the mentor program whereby new Magistrates can ask more experienced Magistrates for advice on any issues they come across (including Indigenous issues);
- some Victorian judicial officers have also attended the National Judicial Orientation program of the annual Magistrates’ Orientation program conducted by the Judicial Commission of New South Wales. This program includes sessions in cultural awareness training on Indigenous issues.

In 2001, the Victorian Government enacted the Judicial College of Victoria Act 2001. Pursuant to that Act one of the primary functions of the College is to provide continuing education and training for judicial officers. The press release issued at the time by the Attorney-General stated that the Judicial College would, *assist the judiciary to remain in step with the community on non-legal issues, such as issues relating to minority groups [...]:* (Attorney-General, *$2.7 million for Judicial Education Press Release*, 15 May 2001).

In addition, the second reading speech and the records of the debate in the Victorian Parliament make it clear that education on diversity issues is one of the roles envisaged for the College. For example, the Attorney-General stated that educational and professional
development courses could include awareness of issues affecting the Indigenous community: (Victoria Parliamentary Debates, Legislative Assembly, 3 May 2001, 2033 (Attorney-General)).

The recently appointed Chief Executive Officer of the Judicial College has confirmed that in 2003, its first year of operation, the Judicial College of Victoria is planning to conduct education programs for judicial officers in cultural diversity including issues relating to Indigenous peoples and their culture. In devising such courses, the College will consult with relevant Indigenous organisations.

As noted above, training on Indigenous issues is expected to expand across all Victorian jurisdictions in 2003 as the Judicial College of Victoria becomes fully functional.

The Judicial College ran a two and half day Workshop for members of the judiciary. 46 Judicial officers from across the State attended including Judges, Magistrates and VCAT members. The Workshop called Aboriginal People and the Justice System included cross cultural training and a specific component on the Royal Commission into Aboriginal Deaths in Custody. The Workshop was developed in consultation with Koori people who were involved substantially in the delivery of the program. These types of workshops are considered core business of the Judicial College.

The Department of Justice’s Human Resources function has offered Indigenous awareness training to business units for at least the past decade. In response to the VAJA, this program was comprehensively reviewed, following consultation with the Aboriginal community. The revised program was introduced in October 2002, and is offered to all DOJ business units including the courts. Administrative staff in the courts is encouraged to attend this program, in addition to the compulsory Working Effectively with Diversity course.

**Recommendation 97: Consultation on appropriate courses**

See Recommendation 96 for Court Services (DOJ) response to this Recommendation.

(f) **Recruitment of Indigenous Court Officers**

The intention of this Recommendation is to increase the involvement of Aboriginal people at all levels of the courts and criminal law processes and also addresses the need to recruit and train Aboriginal people as court staff.

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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tr>
<td>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.</td>
<td>Partially implemented (CS-DOJ)</td>
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</table>

**Government Responses on Implementation**

**Recommendation 100: Recruit and train Aboriginal people as court staff**

Court Services (DOJ) advised the Review that two initiatives fall within the ambit of this Recommendation, namely the appointment of some twenty Aboriginal Bail Justices and of a Koori Liaison Officer at the Supreme Court.

The Aboriginal Bail Justice program is part of the VAJA and is designed to address the special needs of the Koori community, improve access to justice services and raise
awareness of individual legal rights among members of the Koori community. The first 13 Koori Bail Justices were appointed in November 2001 and came from a number of geographical areas throughout Victoria (Gippsland, Mildura and Swan Hill, Bendigo, Ballarat, Shepparton). Seven more Koori Bail Justices were appointed in October 2002 and are located in the regional and rural areas of Horsham, Geelong, Wodonga, Bairnsdale, Robinvale and Bendigo. Detailed information about the training/accreditation program provided to the new Bail Justices is provided in Court Services’ response to Recommendations 96 and 97. The appointment of Indigenous Bail Justices is a positive and valuable step to involve Aboriginal people in an important aspect of the justice system: Bail Justices determine whether a person arrested should remain in custody or released on bail and determine applications for interim accommodation orders under the Children and Young Persons Act 1989. Also worthy of mention is the Regional Network for Koori Justice which was involved in the planning of the Bail Justice program.

The appointment of Victoria’s first Koori Liaison Officer also arose out of the VAJA. The officer was appointed to the Melbourne Magistrates’ Court in April 2002. The Koori Liaison Officer’s job is to explain the court processes and implications of court orders to Indigenous defendants. This improves awareness of relevant cross-cultural issues relating to Aboriginal offenders and key stakeholders in the justice system. The Koori Liaison Officer also brings to the Court’s attention any cultural issues that need to be addressed in dealing with Koori defendants. Finally, he provides advice to the Court on services in the community available for Koories.

The Koori Liaison position is now held by a Gournditch-mara woman from the Western District.

There are now three Koori Court Officers employed by the Magistrates’ Court. They are attached to the Shepparton, Broadmeadows and Warrnambool Koori Courts.

In relation to the employment of Indigenous Staff the Department of Justice has made the majority of the employees noted above permanent which is consistent with the Wur-cum barra strategy. The Magistrates’ Court in the past has when advertising for Trainee Court Registrar positions advertised in the Koori Mail newspaper and will place further advertisements during the next major recruitment campaign scheduled for the end of 2005. The Magistrates’ Court continues to provide opportunities for young Aboriginal people through the YES.

Regional Victorian Courts continue to provide opportunities for young students to participate in the Magistrates’ Court work experience program.

(g) Aboriginal Legal Services

The intention of this Recommendation is to promote the role and funding of Aboriginal organisations, in particular, Aboriginal Legal Services, so that it can provide legal representation and advice to Aboriginal juveniles.

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<th>Recommendation</th>
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<tbody>
<tr>
<td>234</td>
<td>Partially implemented (LP-DOJ) C'wlth responsibility</td>
</tr>
</tbody>
</table>
Government Responses on Implementation

**Recommendation 234: Funding Aboriginal legal services**

See Recommendation 105 for **Legal Policy (DOJ)** response to this Recommendation.

(h) Recognition of Aboriginal Customary Law

The intention of this Recommendation is to progress continued consideration of recognition and local application of Aboriginal Customary Law and also addresses the status of the Australian Law Reform Commission’s Report on the Recognition of Aboriginal Customary Law.

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<th>Recommendation</th>
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<tbody>
<tr>
<td>219</td>
<td>No progress (LP-DOJ)</td>
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The Australian Law Reform Commission’s Report on the Recognition of Aboriginal Customary Law was a significant, well-researched study. The Royal Commission received requests from Aboriginal people through the Aboriginal Issues Units regarding the progress in implementation of the recommendations made by the Australian Law Reform Commission and in some cases from communities which had made proposals to the Law Reform Commission. This Commission urges government to report as to the progress in dealing with this Law Reform Report.

Government Responses on Implementation

**Recommendation 219: Status of ALRC report on Customary Law.**

**Legal Policy (DOJ)** advised the Review that there has never been a formal response to the Commonwealth Law Reform Report.

(i) Reducing Motor Vehicle Offending

Recommendation 95 addresses the need to identify programs to reduce incidence of motor vehicle offending.

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<th>Recommendation</th>
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<tr>
<td>95</td>
<td>Classified as not relevant to Victoria (LP-DOJ) No longer relevant (VicPol)</td>
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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.

Government Responses on Implementation

**Recommendation 95: Reducing motor vehicle offending**

**Legal Policy (DOJ)** advised the Review that the 1996-97 Government response noted that an analysis of the correctional services Prisoner Information System data base (PIMS) indicates that motor vehicle related offences are a relatively insignificant cause of imprisonment for Aboriginal offenders in Victoria. It then referred to the range of non-custodial sentencing options available under Victoria law and the availability of rehabilitation programs available as part of sentencing orders.

In 2002, an examination of Indigenous prisoners (sentenced and unsentenced) at 30 June from 1995 to 2000 reveals that for Indigenous people, numbers are low for motor and
traffic related offences. The percentage was approximately 3 per cent over that time. This Recommendation therefore has low significance for Victoria.

Comments in relation to the establishment of the Koori Court and the principle of imprisonment as a last resort are relevant and noted in answers in relation to Recommendation 92.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

6.3.2 Community Responses

The community consultation did not produce substantial information about general court processes and related matters of concern to the Royal Commission, with two exceptions. These exceptions were the Koori Court and the coronial processes. The latter was commented on by families of two of the Indigenous people who died in custody since 1991 and reported in Section 4 of the Review Report.

The lack of community responses on the general court experience and on the sentencing process is in stark contrast to the many reactions provided to the Review Team about police and about corrections, particularly imprisonment.

Post-death Investigation

VALS made a submission covering two of the Recommendations concerning the Coroner’s Court which involve the need for the development of protocols in relation to the conduct of coronial inquests (Recommendation 8) and of autopsies (Recommendation 38). In both instances the suggestions made by VALS were at variance with stated coronial practice and intentions with regard to the creation of protocols.

The current coronial investigation process is inadequate as it does not make provision for the above Recommendations, and instead leads to discrimination against people other than next-of-kin. The Coroner’s Act 1985 should be amended to reflect the following comments of Royal Commission into Aboriginal Deaths in Custody Commissioner Elliott Johnston QC, supported by Justice Beach:

‘No autopsy should be performed until the Coroner has made every reasonable effort to contact the deceased’s family and other interested persons to give them an opportunity to make representations in relation to the conduct of an autopsy’ (VALS, 2004: 14).

VALS notes that the Commission did not limit next-of-kin in a narrow sense but included ‘other interested persons’, which could incorporate Indigenous community members, Aboriginal Elders and respected persons.

With reference to post-death procedures, the Review also examined records from coronial inquests into an Indigenous death. In one case (2000) it was found that there had been a serious breakdown in communication between treatment assessors and Corrections about attendance at a treatment centre as a condition of parole, a defect that had subsequently been remedied by means of a revised protocol.

Interviews with relatives of two Aboriginal persons who have died in custody since the Royal Commission were also carried out by the Review Team and revealed a number of concerns
about post-death procedures (see Section 4 – Victorian Aboriginal Deaths in Custody). These included:

- Problems and even failure to notify relatives of deaths taking place in prison;
- Difficulties in securing representation at coronial inquests;
- Reluctance to acknowledge Aboriginal identity in the Coroner’s Court;
- Officers being excused from giving evidence on the grounds that they might incriminate themselves; and
- Cursory treatment of the case by the Coroner.

Koori Courts

The initiative to establish the Koori Court in Victoria was a direct result of the need to allow for greater participation by the Indigenous community in the court and in the sentencing process. In particular, the Koori Court aims to reduce perceptions of intimidation and cultural alienation experiences by Indigenous defendants. The results from the evaluation indicate that the aims of the Koori Court were being achieved leading to reduced levels of repeat offending and breaches of court orders.

The community consultations indicated strong support for the concept of Koori Court often coupled with comments on the way in which these courts worked through the establishment of respect for Elders and the shame that appearance before them entailed. The Humanist Society of Victoria in its submission to the Review also enthusiastically endorsed the concept of Koori Courts.

The following comments from the community are indicative:

*I think it’s fantastic that Elders have a role and that the respect is being acknowledged* (Regional Victoria).

Facing the Elders is a bit scary though. The way the Elders have made the court is good (Metropolitan Melbourne).

*Our people are not cohesive at the moment and the Koori Court could help with getting back respect for each other ... The shaming of the offender in the Koori Court is good, but I don’t think it would work unless the Elder is not a relative* (Regional Victoria).

*With the establishment of the Koori Court [for children] in [Regional town], the community would have more ownership and the kids would know that we knew what they were doing in the community. It would make them shamed to have to face their Elders and it would have more of an effect on them* (Regional Police station).

*The Koori Court is fantastic because it gives our people a voice to be heard. They are given more control over their lives than ever before* (Regional Victoria).

*I think the establishment of the Koori Court is fantastic. We see our people go in there and be shamed by their Elders. Being shamed by your Elders is a much better process than it is in the white man’s way ... I think that the fact that the Koori Court enforces respect for the Elders is a good thing* (Regional Victoria).
Not that the Koori Courts were seen as entirely unproblematic or without their problems. According to one Magistrate who did not approve of the concept, it was seen as creating separatist attitudes, a view said by members of one Aboriginal Co-operative to be shared by the general public. This perception was also confirmed by court staff:

*It is difficult though to bring the broader community with you in accepting and understanding the concept of the Koori Court ... The establishment of the Koori Court brought a lot of scepticism in the [Regional Victorian] community. The broader community holds certain views about it that it is a racist court. My experience ... has been seeing people come in and accept it as their court and that justice is being served ... The establishment of the Koori Court has provided recognition for the Elders of their role and status within the community. The wider community has also accepted their role and status. There needs to be more education of the broader community in relation culture, history and the Koori Court (Regional Victoria).*

The court workers conceded, however, that while there was as yet no backlog, *the amount of time it takes to hear cases is slower.* This additional pressure was confirmed at a meeting with VALS staff which pointed out that, while the concept was indeed excellent, it did impose additional burdens:

*Whilst the Koori Court is fantastic, it is also a burden on our resources, it takes more time to run the cases and it means that VALS has to attend Court twice in a fortnight. You also have fewer matters being heard in the Koori Court (Metropolitan Melbourne).*

Almost universally, however, the main complaint about the Court was that accused people have to plead guilty in order to appear before it:

*Koori Court is good but it isn't good that you have to plead guilty (Regional Victoria).*

*The plea of guilty to go to Koori Court is wrong (Metropolitan Melbourne).*

*The only problem with the Koori Court is that you have to plead guilty and I know that some people plead guilty just to be heard there (Metropolitan Melbourne).*

*We don't like the fact that to go to Koori Court you have to plead guilty ... I thought you were innocent until proven guilty (Regional Victoria).*

*We are concerned about the need to plead guilty to go to Koori Court to be heard (Regional Victoria).*

*The only problem is that you have to plead guilty. I don't think the guilty plea is good because if you are genuinely not guilty you need to be able to present your case (Regional Victoria).*

*You have to plead guilty to crimes you didn't commit, just to stand before the Koori Court – it's ridiculous (Regional Victoria).*

*I had one fella come up to me last week and ask what would happen if he contested the matter. I had to explain to him that you couldn't take*
contested matters before the Koori Court. He said to me ‘bugger that then, I’ll plead guilty. I just want to get it over with’ (Regional Victoria).

With the establishment of the Koori Court in Shepparton in October 2002 and in Warrnambool in early 2004, the number of cases VALS has represented in that specialised jurisdiction has risen from 9 in 2002 to 230 in 2004.

Sentencing and Aboriginal Legal Services

One in five Aboriginal Victorians aged 15 years and over (20 per cent) reported that they had used legal services in the last twelve months prior to the ABS survey.

The majority of Indigenous defendants represented by VALS appear in the Magistrates’ Court (78 per cent in 2002 and 75 per cent in 2003). Almost a quarter of appearances are in the Children’s Court, while very few appearances occur in the higher courts.

A former solicitor of VALS made a detailed submission relating to Recommendation 92 and Recommendations 106-108 (Edney, 2004). With regard to the former, he argued that resort to the common law principle of parsimony in recommending that imprisonment should be the sanction of last resort was not sufficient to meet the situation with regard to Aboriginal offending. Instead, he suggested that a compulsory pre-sentence report should be accompanied by an obligation only to impose a term of imprisonment if the court is satisfied that this is more likely than not to be of benefit to the offender. By way of precedent he referred to the treatment of drug-related offenders under Section 18x(2) of the Sentencing Act.

... a key recommendation of the Royal Commission into Aboriginal Deaths in Custody was that imprisonment be used as a sanction of last resort against Indigenous offenders. In one reading of this recommendation this particular phrase reflects the common law principle of parsimony. The Sentencing Act also has embedded within it that particular principle. The Discussion Paper states that this recommendation has been ‘fully implemented’.

I do not agree with this assessment. The problem with the reliance on the Sentencing Act in particular is that provision applies to all offenders and makes no distinction between Indigenous and non-Indigenous offenders. In that sense the Victorian legislature simply did nothing in relation to that principle as it has been a feature of the common law and was introduced in the Sentencing Act which was passed in 1991. In short, the Victorian government did not do anything positive in relation to that recommendation.
The failure to implement this recommendation in any meaningful manner may partly explain that indigenous imprisonment rates have not fallen since 1991 in Victoria and remain at dramatically high levels in comparison with the non-indigenous community.

To ensure that this fundamental and central recommendation of the Royal Commission into Aboriginal Deaths in Custody is implemented requires a change to the Sentencing Act 1991 so that the ‘custody threshold’ (that is, the point at which an indigenous person should be sentenced to a term of imprisonment) is higher. That could be achieved by amending the Sentencing Act 1991 so that has, for instance, a section such as follows:

In sentencing an indigenous person if the Court is considering an immediate term of imprisonment a Court must request a pre-sentence report on the effects of a sentence of imprisonment on the indigenous offender. The pre-sentence report should be prepared with the assistance of one or more of the following persons:

- the offender himself or herself
- offenders family
- Indigenous liaison officer
- psychologist or psychiatrist
- social worker
- alcohol or drug counsellor
- a respected indigenous person
- any other person the court deems relevant

Such a report must contain the following information:

- the previous terms of imprisonment, if applicable, of the offender
- the length and nature of those types of those imprisonment
- the offender’s, if having served a term of imprisonment previously, correctional history including the programs provided to the indigenous offender;
- an assessment of the impact that an immediate term of imprisonment would have on the offender and his or her family
- current treatment, if any, for any factors that may be connected to the offending behaviour
- the resources available in the community to assist the offender.

After receiving the pre-sentence report the Court should only impose an immediate term of imprisonment if and only if it is satisfied that the term of imprisonment is likely to be of more benefit than not for the offender (Edney, 2004: 2-4).

With regard to Recommendations 106-108 relating to Aboriginal legal services meeting the needs of communities, the submission did not agree that the issues were not relevant to
Victoria, outlining how conflicts of interest could occur (Recommendation 106) and stressing the pressures of distance and time in relation to Recommendations 107 and 108.

Between 1996-97 and 2002-03 there was a total of 61,095 Community Based Orders-Fine Default (CBO-FD) and 1,895 Community Custodial Permits (CCPs) registered with Community Correctional Services. Of these 217 (11 per cent) CCPs and 2,925 (5 per cent) CBO-FD offenders were identified as Aboriginal.

According to Corrections Victoria, of all offenders assessed by Enforcement Management to determine suitability for a CCP, a higher proportion of Aboriginal offenders were granted a CCP with 86 per cent, compared to 76 per cent of all offenders.

Aboriginal offenders demonstrated a higher level of CCP compliance with 69 per cent completing them successfully while the completion rate of all offenders was 63 per cent.

6.3.3 Review Comments and Recommendations

At a general level, given the relative lack of comments about courts by Indigenous community, it would be remiss for the Review not to acknowledge the range of initiatives that have been implemented in Victoria to address the Royal Commission’s concerns. As described above in the self-assessment responses of Department of Justice agencies, these include in addition to the Koori Court and its expansion, the establishment of the Aboriginal Bail Justice Program, the appointment of a Koori Liaison Officer to the Melbourne Magistrates’ Court, Indigenous representation on the Sentencing Advisory Council and the innovative approach to dealing with fine default by Corrections Victoria and the Sheriff’s Office. With rigorous evaluation of these developments, measurable change may thus be identified over time in the statistical information available on Indigenous contact with the criminal justice system.

The Review commends the State Coroner’s Office for the conciseness of its responses and notes that the overwhelming majority of recommendations relating to coronial processes from the Implementation Review take the form of requests for further information on selected issues.

Coroner’s Court and Post-Death Investigations

The Review notes that on the matter of claims for compensation (Recommendation 4) was reported not to be relevant to the State Coroner as it was more appropriate to civil law processes.
Recommendation 75.

- That Recommendation 4 relating to claims for compensation, while not relevant to the State Coroner, is relevant to Victorian civil law processes;
- That the State Coroner and Department of Justice (Court Services) provide a report to the Aboriginal Justice Forum on whether any claims have been made and the Victorian Government’s policy on this issue;
- That the Victorian Government continue to implement and monitor Recommendation 4 (relating to claims for compensation) through any monitoring process established as a consequence of this Review.

The Review notes the response of Mental Health (DHS) on the issue of counselling support (Recommendation 5) but it is unclear the extent to which its services have been accessed by Indigenous people.

Recommendation 76.

- That the Department of Human Services (Mental Health Branch):
  (a) maintain a record of the number of cases where counselling support is sought through the Victorian Aboriginal Health Service in connection with Indigenous deaths in custody;
  (b) report annually to the Aboriginal Justice Forum on the number of cases where counselling is sought in connection with Indigenous deaths in custody; and
- That the Victorian Government continue to implement and monitor Recommendation 5 (relating to the provision of funds or services for counselling for relatives, kin and friends of those who died in custody) through any monitoring process established as a consequence of this Review.

The Review notes that the State Coroner’s response embraces all deaths in custody and thus all the circumstances set out in Recommendation 6.

Recommendation 77.

- That the State Coroner:
  (a) clarify how Indigenous status of deceased persons is determined;
  (b) confirm how Indigenous status is recorded as a mandatory field on the database;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 6 (relating to post-death investigations) through any monitoring process established as a consequence of this Review.

The Review notes that in Victoria full-time Coroners investigate all deaths in custody (Recommendation 7).
**Recommendation 78.**

That the Victorian Government continue to implement and monitor Recommendation 7 (relating to the responsibility of the State Coroner) through any monitoring process established as a consequence of this Review.

The Review notes that although the State Coroner is responsible for the development of procedures and practices, no protocol for the investigation of deaths in custody has been established (Recommendation 8).

**Recommendation 79.**

- That the State Coroner:
  - (a) elaborate on the response to Recommendation 8 and, in particular, why variation in the circumstances of death renders such a protocol inappropriate;
  - (b) detail any specific procedures and practices that have been developed for the investigation of deaths in custody;
  - (c) detail whether the procedures and practices developed are communicated to the families of deceased persons;
  - (d) provide a report to the Aboriginal Justice Forum on (a)-(c); and
- That the Victorian Government continue to implement and monitor Recommendation 8 (relating to the conduct of coronial inquiries and inquests) through any monitoring process established as a consequence of this Review.

It is noted that in Victoria all Coroners are also Magistrates (Recommendation 9).

**Recommendation 80.**

That the Victorian Government continue to implement and monitor Recommendation 9 (relating to the status of Coroners) through any monitoring process established as a consequence of this Review.

The Review noted that no problems have been encountered in relation to delays in notifying the Coroner’s Office of deaths in custody. The Review is not clear as to what legal requirements or protocols cover this process or the exact range of circumstances it embraces (Recommendation 10).
Recommendation 81.

- That the State Coroner:
  (a) elaborate upon the implementation of Recommendation 10 and specify whether, when a patient is taken ill in custody and subsequently dies in hospital, or if a prisoner is on weekend leave, such cases are classified as a reportable death in custody;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 10 (relating to the immediate notification of the Coroner of a death in custody) through any monitoring process established as a consequence of this Review.

The Review notes that all deaths in custody, including those occurring during arrest, police shooting or pursuit, are the subject of compulsory inquest in Victoria (Recommendation 11).

Recommendation 82.

That the Victorian Government continue to implement and monitor Recommendation 11 (relating to the conduct of inquests on deaths in custody) through any monitoring process established as a consequence of this Review.

The Review notes that Recommendation 12, requiring investigation not only of causes and circumstances of death but also of quality of prior care, treatment and supervision, is 'generally' followed.

Recommendation 83.

- That the State Coroner:
  (a) elaborate on the circumstances in which coronial investigations, relating to quality of prior care treatment and supervision in custody, would not take place;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 12 (relating to the investigation of cause and circumstances of a death in custody, quality of care, treatment and supervision of the deceased prior to death) through any monitoring process established as a consequence of this Review.

It is noted that coronial findings and recommendations in Victoria may extend to systemic issues aimed at avoiding further custodial deaths (Recommendation 13).
**Recommendation 84.**

- That the State Coroner, the Departments of Justice (Corrections Victoria) and Human Services (Juvenile Justice) provide a report to the Aboriginal Justice Forum on situations where findings or recommendations have been made, and on their implementation (Recommendation 13); and
- That the Victorian Government continue to implement and monitor Recommendation 13 (relating to the nature and findings and recommendations) through any monitoring process established as a consequence of this Review.

The Review notes that in Victoria copies of findings and recommendations from the Coroner’s Court are routinely made available to the Attorney-General, Ministers, Government and relevant correctional agencies (Recommendation 14). The response did not, however, make it clear whether copies were made available to all parties, including families, appearing before the inquest or what processes were in place to ensure appropriate action by official agencies.

**Recommendation 85.**

- That the State Coroner provide a report to the Aboriginal Justice Forum specifying whether families are recipients of coronial findings and recommendations;
- That the Victorian Government consider amending the *Coroners Act 1985* (sec. 19(2) and linked to sec. 21(1) and (2)) to enable wider distribution powers of the Coroner’s findings and recommendations;
- That the Victorian Government continue to implement and monitor Recommendation 14 (relating to the distribution of findings and recommendations of the Coroner) through any monitoring process established as a consequence of this Review.

It is noted that Recommendation 15, which requires relevant agencies and departments to report within three months to the relevant Minister on their response to coronial findings and recommendations, has not been implemented in Victoria.

The State Coroner explained to the Review that his Office does not have the power to request further explanations on actions taken in response to findings and recommendations. Since the requirement is for agencies to report to Ministers on steps taken, Recommendation 16 has not been implemented in Victoria.
Recommendation 86.

- That the State Coroner, Victoria Police, and the Departments of Justice (Corrections Victoria) and Human Services (Juvenile Justice) provide a report to the Aboriginal Justice Forum on why the implementation of Recommendation 15, relating to reporting to the relevant Minister on its departmental response to the Coroner’s findings and recommendations, is not considered necessary; and
- That the Victorian Government:
  (a) clarify the grounds on which it considers the implementation of Recommendation 16 (relating to requests for further information from the Coroner) to be unnecessary in Victoria;
  (b) introduce appropriate legislation to empower the State Coroner to seek further information about action taken in relation to Recommendations 15 and 16 and to ensure that the findings and recommendations of the State Coroner are implemented; and
- That the Victorian Government continue to implement and monitor Recommendation 15 (relating to the responses to the Coroner’s findings and recommendations) and Recommendation 16 (relating to requests for further information from the Coroner) through any monitoring process established as a consequence of this Review.

The Review noted that while reporting to the Attorney-General takes place on a case by-case basis, there is no arrangement in Victoria for annual reporting to the Attorney-General or other Minister on deaths in custody, and that no annual report on this subject is tabled in Parliament (Recommendation 17).

Recommendation 87.

- That the State Coroner:
  (a) report annually to the Victorian Attorney-General and the Minister for Police and Emergency Services and the Minister for Corrections, (Recommendation 17); detailing the number of Indigenous deaths in custody, findings and recommendations of the Coroner, the responses to the findings and recommendations;
  (b) table the report in Parliament;
- That the Victorian Government provide appropriate resources to the State Coroner to facilitate the provision of annual reports as detailed above; and
- That the Victorian Government continue to implement and monitor Recommendation 17 (relating to reporting to the Attorney-General) through any monitoring process established as a consequence of this Review.

It is noted that the State Coroner in Victoria is not empowered to make recommendations about the prevention of Aboriginal deaths in custody as part of an annual reporting process (Recommendation 18).
Recommendation 88.

- That the State Coroner be empowered (as proposed in Royal Commission Recommendations 16-18) to make recommendations with a view to prevention of deaths in custody as part of a regular reporting process; and
- That the Victorian Government continue to implement and monitor Recommendation 18 (relating the power of the Coroner to make additional recommendations) through any monitoring process established as a consequence of this Review.

Recommendation 19 proposes immediate notification of families by custodial institutions of deaths in custody. It is noted that while such notification is said generally to be given, no details of the processes followed either by the State Coroner or custodial agencies were provided. Failure to give appropriate notification to family members was also one of the complaints raised by relatives of Indigenous persons who died in custody since the Royal Commission with the Review.

Recommendation 89.

- That the State Coroner, Victoria Police, and the Departments of Justice (Corrections Victoria) and Human Services (Juvenile Justice) provide a report to the Aboriginal Justice Forum elaborating upon their processes for notification of families in the event of an Indigenous death in custody (Recommendation 19); and
- That the Victorian Government continue to implement and monitor Recommendation 19 (relating to the notification of a death in custody to the family, or other nominated person) through any monitoring process established as a consequence of this Review.

It is noted that the State Coroner advised the Review that it is appropriate that the Victorian Aboriginal Legal Service is notified of an Aboriginal death in custody immediately on report of that death (Recommendation 20). This statement stops short of detailing what actually takes place in practice.

The Review notes the cross-referenced response of the State Coroner on the question of notification to families and the Victorian Aboriginal Legal Service of the date and time of coronial inquests (Recommendation 21).

The Review notes that generally all efforts are made to contact families about inquests and their intentions. This is taken to include enquiries about the wish for legal representation (Recommendation 22).
Recommendation 90.

- That the State Coroner:
  (a) provide advice on the process of notification to the Victorian Aboriginal Legal Service following an Indigenous death in custody since the Royal Commission (Recommendation 20);
  (b) in addition to the provision of notification of an Indigenous death in custody to the Victorian Aboriginal Legal Service, the death must also be immediately reported to the Director, Indigenous Issues Unit, Department of Justice;
  (c) detail the processes involved in contacting families (Recommendations 21 and 22);
  (d) provide a report to the Aboriginal Justice Forum on (a)-(c); and
- That the Victorian Government continue to implement and monitor Recommendation 20 (relating to the notification to the Victorian Aboriginal Legal Service), Recommendation 21 (relating to the notification of a coronial inquest) and Recommendation 22 (relating to family representation at inquests) through any monitoring process established as a consequence of this Review.

The Review notes that the State Coroner regards legal representation for the families of deceased persons to be both sensible and desirable, with costs being met through legal aid schemes or otherwise (Recommendation 23). It was also noted that in two of the Indigenous deaths to have occurred since the Royal Commission, relatives cited difficulties in securing legal representation (see Section 4 – Victorian Aboriginal Deaths in Custody).

Recommendation 91.

- That the State Coroner and the Victorian Aboriginal Legal Service provide a report to the Aboriginal Justice Forum on any problems involved in the provision of legal representation and assistance for relatives in the context of inquests into Indigenous deaths in custody (Recommendation 23); and
- That the Victorian Government continue to implement and monitor Recommendation 23 (relating to legal representation at an inquest) through any monitoring process established as a consequence of this Review.

The Review notes the steps taken by the Coroner’s Office to keep families apprised of coronial processes in cases of a death in custody (Recommendation 24). The Review also noted the State Coroner’s response in relation to the inspection of the scene of the death and the Coroner’s comment that it is generally impractical and difficult to organise.

Recommendation 92.

- That the Departments of Justice (Corrections Victoria) and Human Services (Juvenile Justice) and Victoria Police provide access to the scene of a death to family members (or their representatives) if requested (Recommendation 24); and
- That the Victorian Government continue to implement and monitor Recommendation 24 (relating to the provision of advice and information to families and others) through any monitoring process established as a consequence of this Review.
The Review notes the State Coroner’s views on implementation of the right to view the location of where the death occurred by families as impracticable, but that families are accorded the right to have an independent pathologist present at the post-mortem. Copies of the post-mortem report are reported to be generally made available to families (Recommendation 25). The Review also noted the Coroner’s response regarding the assistance provided to families and witnesses in the grieving process and the provision of information and support.

**Recommendation 93.**

- That the State Coroner employ an Indigenous counsellor to assist family members during an inquest and advise them on their rights (Recommendation 25); and
- That the Victorian Government continue to implement and monitor Recommendation 25 (relating to the rights of families and others) through any monitoring process established as a consequence of this Review.

The Review noted the particular arrangements made in Victoria for the appointment of Counsel to assist the State Coroner in investigation (Recommendations 26-28).

**Recommendation 94.**

- That the Victorian Government provide adequate resources to the State Coroner to appoint counsel to assist the coroners investigation of an Indigenous death in custody; and
- That the Victorian Government continue to implement and monitor Recommendation 26 (relating to the appointment of a lawyer), Recommendation 27 (relating to independent assistance) and Recommendation 28 (relating to the duties of the lawyer assisting Counsel) through any monitoring process established as a consequence of this Review.

The Review noted that in Victoria the State Coroner has power to give direction to police in relation to coronial investigations and that no problems in this respect have been encountered to date (Recommendation 29).

The Review noted the State Coroner’s detailed description of the circumstances in which Counsel is appointed to assist the Coroner in the conduct of investigations and inquests (Recommendation 30).

The Review noted that the State Coroner had encountered no specific issues involving the degree of co-operation between police and counsel where the latter are appointed (Recommendation 31).

The Review notes the response of the State Coroner that the selection of an officer in charge of a police investigation into a death in custody by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank does not occur as a general rule (Recommendation 32).
The Review notes the response of the State Coroner that investigations involve either the Victoria Police Prison Squad or by Homicide Squad officers overseen by Ethical Standards Department and the State Coroner (Recommendation 33).

**Recommendation 95.**

- That the Victorian Government continue to implement and monitor Recommendation 29 (relating to the Coroner’s power to give direction to police), Recommendation 30 (relating to the responsibility of the lawyer assisting the Coroner), Recommendation 31 (relating to the responsibility of the lawyer assisting the Coroner), Recommendation 32 (relating to the selection of the officer in charge of the police investigation), Recommendation 33 (relating to police officers involved in the investigation) through any monitoring process established as a consequence of this Review.

The Review noted that the State Coroner reported that generally, police investigations are conducted by officers who are highly qualified as investigators (Recommendation 34).

**Recommendation 96.**

- That the State Coroner:
  (a) elaborate on the response to Recommendation 34 (i.e. should the Coroner’s response be interpreted as meaning that investigating police are not, in all cases, trained investigators);
  (b) provide clarification on instances where this has occurred;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement Recommendation 34 (relating to the qualifications of police officers as investigators) through any monitoring process established as a consequence of this Review.

The Review notes the advice from the State Coroner that the Prison Squad’s *Charter of Operations and Standard Operating Procedures* is under review (Recommendation 35).

It was noted that, while Victoria Police report full implementation of Recommendation 36, which requires investigations to be structured in such a way as to provide a solid evidentiary base for a coronial inquest, the State Coroner again states that this *generally* occurs.

**Recommendation 97.**

- That the State Coroner:
  (a) elaborate on the response to Recommendation 36 (i.e. should the response be interpreted as meaning that there are exceptions to the rule of providing satisfactory evidentiary information);
  (b) provide clarification on instances where this has occurred;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 36 (relating to the structure of investigations to provide evidentiary basis) through any monitoring process established as a consequence of this Review.
The Review noted that in Victoria all post-mortem examinations following deaths in custody are carried out by forensic pathologists (Recommendation 37).

**Recommendation 98.**

That the Victorian Government continue to implement and monitor Recommendation 37 (relating to the conduct of post-mortem examinations) through any monitoring process established as a consequence of this Review.

The Review noted that Recommendation 38, which proposes a protocol between the State Coroner’s Office and Victorian Aboriginal Health Service and Victorian Aboriginal Legal Service covering cultural matters arising in connection with the conduct of inquiries and autopsies, has not been implemented. It is also noted that the State Coroner concedes that such a protocol might be considered desirable and that VALS called for the establishment of such a protocol in its submission to the Review.

The Review noted that no progress had been made on the suggestion that such a protocol might be extended to cover all Aboriginal deaths notified to the Coroner (Recommendation 39).

**Recommendation 99.**

- That the State Coroner:
  (a) commence immediate discussions with the Victorian Aboriginal Legal Service and the Victorian Aboriginal Community Controlled Health Organisation on the development and implementation of cultural protocols which should include, but are not limited to, issues relating to the conduct of inquiries and autopsies, the removal and burial of organs and the removal and return of the deceased body (Recommendation 38);
  (b) elaborate on the response to Recommendation 39 relating to the extension of the terms of the protocol referred to in (a) to include all cases of Indigenous deaths; and
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and

- That the Victorian Government continue to implement and monitor Recommendations 38 and 39 (relating to the development of culturally appropriate protocols) through any monitoring process established as a consequence of this Review.

The Review notes the development of the National Coroners Information System (Recommendation 40).

**Recommendation 100.**

That the Victorian Government continue to implement and monitor Recommendation 40 (relating to a national database) through any monitoring process established as a consequence of this Review.
Hearings by Magistrates regarding offences in prison

The Review noted the advice of Legal Policy (DOJ) that Recommendation 180 pertaining to Visiting Justices no longer applied to Victoria as this system no longer operates in Victoria. However, the Review notes the establishment of the Aboriginal Official Visitors Program by Corrections Victoria has been noted in this context.

Court Processes, Granting of Bail, Sentencing and Legal Representation

The Review notes that Section 4(2)(c) of the Bail Act restricting the circumstances that can be taken into account when deciding whether to grant bail has been repealed (Recommendation 91).

**Recommendation 101.**

That the Victorian Government continue to implement and monitor Recommendation 91 (relating to the amendment of bail legislation) through any monitoring process established as a consequence of this Review.

The Review notes that Recommendation 92 regarding legislation to enforce the principle of imprisonment as a last resort, has been implemented under Section 5(4) of the Sentencing Act and by various proposals brought forward under the Sentencing Review. Attention is drawn to the submission from Edney (2004) that sentencing parsimony should be replaced by the principle that, after appropriate pre-sentence reports, imprisonment should only be imposed if the court is satisfied that such a sentence is more likely than not to be of benefit to the offender.

VALS was also at pains to voice its support for abolition of Section 4(2)(c) of the Bail Act since it restricted the discretion of the court in deciding to grant bail in circumstances where failure to appear was not beyond the control of the defendant.

The Review notes that, as Legal Policy (DOJ) points out, legislative changes have not eradicated the very substantial differentials between rates of imprisonment for Aboriginal as opposed non-Aboriginal offenders, a fact that underlines the significance of attending to the complex set of underlying influences behind Aboriginal offending. Legal Policy also drew attention to the report, _Systemic Racism in the Criminal Justice System as a Factor Contributing to Aboriginal Over-Representation_, which has been carried out by the Equal Opportunity Commission, a draft of which was made available to the Review.

**Recommendation 102.**

- That the Victorian Government monitor closely any changes in sentencing practice emanating from legislative change for impact on Indigenous defendants; and
- That the Victorian Government continue to implement and monitor Recommendation 92 (relating to imprisonment as a last resort) through any monitoring process established as a consequence of this Review.
The Review noted that in accordance with Recommendation 93 there are already limits to the use of prior convictions in sentencing of children and young persons in Victoria. It also noted that a project aimed at the issue of uniform legislation on spent convictions, though not generated by the Royal Commission, is in train.

**Recommendation 103.**
- That the Department of Justice (Criminal Law Policy) provide a report to the Aboriginal Justice Forum in relation to the progress toward the enactment of uniform national legislation on spent convictions; and
- That the Victorian Government continue to implement and monitor Recommendation 93 (relating to the expungement of criminal records) through any monitoring process established as a consequence of this Review.

The Review notes that while breach proceedings in Victoria are reported to be normally dealt with by way of summons (Recommendation 102), no statistical information was presented to support this.

The Review notes that in Victoria, the rate of remuneration for work performed on Community Service Orders exceeds that for work performed in prison (Recommendation 103).

**Recommendation 104.**
That the Victorian Government continue to implement and monitor Recommendation 102 (relating to proceedings by summons or attendance notices for breaches of non-custodial orders) and Recommendation 103 (relating to remuneration for work carried out under Community Service Orders) through any monitoring process established as a consequence of this Review.

The Review notes that consultation with regard to the ranges of sentencing in discrete and remote Aboriginal communities had previously been deemed not to be relevant to Victoria (Recommendation 104). It also noted, however, that reference was also made by Legal Policy (DOJ) to the recently established Sentencing Advisory Council as a possible source of advice if a contrary view on relevance were to be adopted.

**Recommendation 105.**
- That Recommendation 104 relating to sentencing options in Indigenous communities be referred to the Sentencing Advisory Council for its advice and that the Sentencing Advisory Council provide a report to the Aboriginal Justice Forum; and
- That the Victorian Government continue to implement and monitor Recommendation 104 (relating to consultation about sentencing) through any monitoring process established as a consequence of this Review.
The Review notes the response of Legal Policy (DOJ) with regard to the role and support of Aboriginal Legal Services (Recommendations 105). It notes VALS-VLA Statement of Cooperation, VLA support for ATSILS engaging in research, law reform activity and community development, as well as Commonwealth plans to tender out legal services.

**Recommendation 106.**

- That the Aboriginal Justice Forum monitor closely the impact of proposed changes to the Victorian Aboriginal Legal Service (Recommendation 105) including, issues of conflict of interest in such services, the adequacy of provision in regional areas and the extent of adequate access to lawyers in rural communities, particularly in light of the Commonwealth’s decision to tender out Indigenous legal services; and
- That the Victorian Government monitor Recommendation 105 (relating to funding of Aboriginal Legal Services) through any monitoring process established as a consequence of this Review.

The Review notes that while Recommendations 106-107 were classified as not relevant to Victoria and Recommendation 108 was supported according to the Victorian Government 1996-97 Implementation Report, the Review found that in four of the six Regional Aboriginal Justice Advisory Committee Social Justice Plans the community identified a need for the establishment of regional Aboriginal Legal Services to enable timely access to legal representation.

Recommendation 106 relating to representation and conflict of interest by Aboriginal Legal Services, Recommendation 107 relating to autonomous regional Aboriginal Legal Services and Recommendation 108 relating to access to lawyers are considered relevant to Victoria.

**Recommendation 107.**

- That Recommendation 106 (relating to representation and conflict of interest by Aboriginal Legal Services), Recommendation 107 (relating to autonomous regional Aboriginal Legal Services) and Recommendation 108 (relating to access to lawyers) are relevant to Victoria; and
- That the Victorian Government monitor Recommendations 106, 107 and 108 through any monitoring process established as a consequence of this Review.

The Review notes the range of non-custodial sentencing options made available in Victoria, the report of the *Pathways to Justice Sentencing Review* and the establishment of the Sentencing Advisory Council (Recommendation 109).
 Recommendation 108.

- That the Sentencing Advisory Council, under reference from the Attorney-General:
  (a) undertake a review of equity in the sentencing of Indigenous Victorians,
  (b) closely monitor the impact of the different sentencing options on the patterns of sentences received by Indigenous offenders, in partnership with the Victorian Aboriginal Legal Service;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and

That the Victorian Government continue to implement and monitor Recommendation 109 (relating to the range of non-custodial sentencing options) through any monitoring body established as a consequence of this Review.

The Review notes that the Victorian Government intends to consult with stakeholders, including Aboriginal communities, on the recommendations of the Sentencing Review with regard to increasing non-custodial sentencing options (Recommendation 111).

 Recommendation 109.

- That the Department of Justice (Criminal Law Policy) provide a report to the Aboriginal Justice Forum detailing the outcome of consultations with the Indigenous community relating to the implementation of the recommendations from the Pathways to Justice Sentencing Review 2002; and

- That the Victorian Government continue to implement and monitor Recommendation 111 (relating to consultation on options for non-custodial sentences) through any monitoring process established as a consequence of this Review.

The Review noted that under Section 47 of the Sentencing Act a wide range of sentencing alternatives to imprisonment for breaches of Community Orders were now available in Victoria (Recommendation 117).

 Recommendation 110.

That the Victorian Government continue to implement and monitor Recommendation 117 (relating to the determination of imprisonment for Community Service Order breaches or fine default by a Judge or Magistrate) through any monitoring process established as a consequence of this Review.

The Review notes the introduction of the Correction and Sentencing (Home Detention) Bill 2001 and the proposals, under the auspices of the VAJA, for an Indigenous Adult Residential Program (Recommendation 118).
Recommendation 111.

- That the Department of Justice (Corrections Victoria):
  (a) report on the progress of the proposed Indigenous Adult Residential Program; 
  (b) provide a report to the Aboriginal Justice Forum on (a).
- That the Department of Justice (Criminal Law Policy):
  (a) monitor the operation of the *Correction and Sentencing (Home Detention) Bill 2001* with particular emphasis on breach rates of Indigenous offenders and the impact on Indigenous families; 
  (b) report on the breach rates of Indigenous offenders on Home Detention; 
  (c) provide a report to the Aboriginal Justice Forum on (c)-(d); and 

That the Victorian Government continue to implement and monitor Recommendation 118 (relating to home detention) through any monitoring process established as a consequence of this Review.

The Review notes that while there has been no amnesty for outstanding fine warrants since 1994 (Recommendation 120), Section 58 of the *Magistrates’ Court Act* renders any warrant for imprisonment for non-payment of fines or any penalty enforcement warrant ineffective if they are more than five years old. It is also noted that the extent to which Aboriginal people availed themselves of the last amnesty is unknown and that one major impediment to their doing so may be lack of adequate information and help in so doing. Introduction of the Koori Court was also reported to be aimed partially at establishing links with the Sheriff’s Office and at assisting Aboriginal people through the Sheriff’s process. The Sheriff’s Office Aboriginal Liaison Program, established under the *VAJA*, is also noted.

Recommendation 112.

- That the Victorian Government, in the event of any future amnesty for outstanding warrants being declared, make a careful assessment of the extent to which adequate information and assistance for Indigenous people in availing themselves of the amnesty before the amnesty process is commenced (Recommendation 120); and 
- That the Victorian Government continue to implement and monitor Recommendation 120 (relating to amnesty for outstanding warrants) through any monitoring process established as a consequence of this Review.

The Review notes that sentences of imprisonment are not automatically imposed in Victoria for default of payment of fines (Recommendation 121). The range of legislative impediments or alternatives to this course of sentencing action is noted.

Recommendation 113.

That the Victorian Government continue to monitor and implement Recommendation 121 (relating to alternatives to imprisonment for fine defaults) through any monitoring process established as a consequence of this Review.

Throughout the departmental responses on court processes, there were constant references to the Koori Court which was established in 2002. The Review notes that intimidation and cultural alienation have been common experiences reported by Koori defendants appearing in courts and the Koori Court was introduced to overcome this by providing an alternative way of administering sentences so that courts are culturally accessible, acceptable and
comprehensible to the Koori community, with a key emphasis being on creating an informal atmosphere which allows greater participation in the court and sentencing process. The Review notes that this initiative received almost universal approval from the community and that the operation of the first of these courts to be established has undergone an evaluation.

**Recommendation 114.**

That the Attorney-General consider the recommendations contained in the evaluation report of the Koori Court. In the event that this evaluation is positive, urgent attention be given to the expansion of the initiative, in consultation with the respective Indigenous community, to other areas of significant Indigenous population.

**Court Services and Court Administration**

The Review notes that the powers of the Justices of the Peace to hear criminal charges and to conduct committal hearings (Recommendation 98) were removed in Victoria by the *Magistrates’ Court Jurisdiction* Act 1984.

**Recommendation 115.**

- That the Department of Justice (Corrections Victoria):
  - (a) report on how any incidents involving criminal offences within prisons are dealt with (Recommendation 98);
  - (b) report to the Aboriginal Justice Forum on (a);
- That the Victorian Government continue to implement and monitor Recommendation 98 (relating to the use of the Justice of Peace not to determine charges) through any monitoring process established as a consequence of this Review.

The Review notes that both the *Magistrates’ Court Act* and the *Victorian Civil and Administrative Tribunal Act* have provisions which implement the requirement for interpreters as needed (Recommendation 99). While there is no such legislative provision in relation to the County Court or Supreme Court, such provision is made in practice. Nevertheless the capacity to understand proceedings extends beyond mere comprehension of the English language and attention to defendants’ understanding of court processes is important. The Review also notes the broader significance of initiatives such as the creation of the ALO Service and the Koori Court.
Recommendation 116.

- That the Department of Justice (Court Services):
  (a) develop appropriate initiatives to assist Indigenous participants to fully understand court processes;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 99 (relating to the use of interpreters) through any monitoring process established as a consequence of this Review.

Cultural Awareness Training for Court Staff

The Review notes the various initiatives that have been taken in relation to the above issue (Recommendation 96), and in particular it notes the establishment of the Judicial College of Victoria which will, among other things, conduct training for judges on issues relating to Indigenous people and their culture.

Recommendation 117.

- That the Judicial College of Victoria provide a report to the Aboriginal Justice Forum on the extent and content of the training it provides specifically on Aboriginal issues for Judges and Magistrates; and
- That the Victorian Government continue to implement and monitor Recommendation 96 (relating to cultural awareness training for court staff) through any monitoring process established as a consequence of this Review.

Recruitment of Indigenous Court Officers

The Review notes the appointment of approximately twenty Aboriginal Bail Justices and of Koori Liaison Officers (KLO) (Recommendation 100). These initiatives are commended.
Recommendation 118.

- That the Department of Justice (Indigenous Issues Unit), in conjunction with Court Services, undertake a review of the Aboriginal Bail Justice Program, particularly considering the number of attendances at hearings and the formula used for rostering and provide a report to the Aboriginal Justice Forum;
- That the Department of Justice (Court Services):
  (a) detail what pro-active steps are being taken under the Victorian Government’s Wur-cum barra Strategy Framework to encourage Aboriginal participation in other parts of the judicial system;
  (b) allocate a number of Trainee Court Registrar positions to the Indigenous and Culturally and Linguistically Diverse communities;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 100 (relating to the recruitment of Aboriginal Judicial Officers) through any monitoring process established as a consequence this Review.

Recognition of Aboriginal Customary Law

The Review notes that, according to Legal Policy (DOJ), there has never been a formal response to the Australian Law Reform Commission’s Report on the Recognition of Customary Law (Recommendation 219).

Recommendation 119.

- That the Department of Justice (Criminal Law Policy):
  (a) clarify whether the Australian Law Reform Commission’s Report on the recognition of Aboriginal Customary Law was considered by Victoria and, if so, with what outcome;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 219 (relating to the Australian Law Reform Commission’s Report on the recognition of Aboriginal Customary Law) through any monitoring process established as a consequence of this Review.
6.4 Corrections

In 2001, the screws found me hangin’. I could have been dead but I have a strong neck. It happened here. I was in the hospital, about 4 o'clock in the morning, they cut me down. I just seen the psych the next day (Indigenous male prisoner).

I’m in no rush to get out because I have nothing to get out to. My body and my soul is sick as a Koori woman (Indigenous female prisoner).

At least in prison we have a bed, our bills are paid and we are safe (Indigenous female prisoner).

The Royal Commission repeatedly stressed that the most important measures to reduce Aboriginal deaths in custody lay upstream in addressing the underlying social and economic situation of Aboriginal people. It was also realistic in its recognition that for many Indigenous people, changes at that level could only come too late to avert their involvement in the criminal justice system. Inevitably too, despite all the initiatives that might be taken in relation to cautioning, avoidance of arrest and appearance in court, a number of Aboriginal people were still going to end up in custody.

While the Commission’s hope was that even then, the utilisation of sentencing options such as Community Based Orders (CBO) might keep the use of imprisonment to a minimum, incarceration of Indigenous people would remain a significant feature of the criminal justice system. Based on this realisation, the Commission arrived at a series of Recommendations spanning issues, including community corrections and a number of crucial aspects of the custodial system such as health and welfare in custody, duty-of-care on the part of correctional authorities, recruitment of Aboriginal staff, cultural awareness provision, pre- and post-release programs for prisoners and the collection of relevant data.

Above all, the evidence considered by the Commission showed:

... the possible connections between the circumstances of imprisonment, poor physical and/or psychological health, a propensity for acts of self-harm and premature death (Royal Commission, 1991b, Vol. 3, 25.2.1).

Commissioner Wootten observed that:

Prisons are places of great stress and that all or at least a great many prisoners are subject to various risks of different kinds associated with the nature of their predicament and the nature of their environment both physical and psychological. It was recognised ... that people having any tendency towards suicidal ideation are generally at greater risk in a prison than outside prison (Royal Commission, 1991b, Vol. 3, 25.2.1).

The Commission further noted that there are also Aboriginal cultural factors which make the experience of prison especially difficult:
For example while the enforced separation from one’s friends, family and
domestic environment is undoubtedly traumatic for all prisoners, the
greater significance of kin and community relations in Aboriginal cultures
exacerbates the trauma of separation for Aboriginal people. Likewise
shyness and discomfort in the face of non-Aboriginal authority, a particular
and severe aversion to physical isolation ... have all emerged as factors ...
and which may predispose an Aboriginal prisoner to attempt self-harm in
prison or even premature death from natural causes (Royal Commission

Set out below are the Recommendations relating to corrections covering clusters on:

(a) Community Corrections and Diversionary Initiatives;
(b) Duty-of-Care in Prison;
(c) Health and Welfare in Custody;
(d) Recruitment of Aboriginal Staff;
(e) Training in Aboriginal Cultural Awareness;
(f) Pre- and Post-Release Programs; and
(g) Data Collection and Reporting.

It should be noted that, as well as the self-assessment responses provided on these
Recommendations by Corrections Victoria (previously the Office of the Correctional Services
Commissioner), there were also responses received from CORE (now part of Corrections
Victoria). As of 1 July 2003, CORE amalgamated with the Office of the Correctional Services
Commissioner and became Corrections Victoria, a single entity established to oversee the
correctional sector. Corrections Victoria is a business unit within the Department of Justice
and manages the eleven public prisons and contracts two private providers to provide
correctional services through the two private prisons in Victoria. The two private prisons
companies, Australasian Correctional Management (ACM) and Group 4, have been replaced
by Global Expertise in Outsourcing Group/Fulham Correctional Centre (GEO/FCC) and Global
Solutions Limited/Port Phillip Prison (GSL/PPP) on 14 January 2004 and 28 January 2004
respectively.

Where these Recommendations are also of relevance and have been responded to by
Victoria Police, Court Services and Juvenile Justice, both of which have custodial
responsibilities, their responses are found in Sections 6.2, 6.3 and 6.5 respectively.

The Recommendations in relation to Corrections and the self-assessed implementation
status reports from Victorian government departments are set out below in full and
constitute the basis upon which the implementation status was determined. It should be
noted that for some Recommendations, implementation is primarily a Commonwealth
responsibility. However, where the Victorian Government has taken action that contributes
to the implementation it is reported here against those Recommendations. This material
represents the reports on progress in addressing the Recommendations and is made
available to the community through this Review. Community responses and the Review
comments and recommendations follow.
6.4.1 Royal Commission Recommendations and Implementation Status

(a) Community Corrections and Diversionary Initiatives

The following cluster of Recommendations deal with non-custodial sentencing options and various diversionary programs designed to minimise the use of imprisonment.

<table>
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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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| 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. |
| a) Fully implemented b) partially implemented (CV-DOJ) |
| 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. |
| Fully implemented (CV-DOJ) |
| 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. |
| Fully implemented (CV-DOJ) |
| 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. |
| Fully implemented (CV-DOJ) |
| 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. |
| Partially implemented (CV-DOJ) |
| 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 Order should not, however, be performed at the expense of paid employment which would otherwise be available to members of the Aboriginal community. |
| Fully implemented (CV-DOJ) |
| 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. |
| Fully implemented (CV-DOJ) |
| 187 | That experiences in and the results of community corrections rather than institutional custodial corrections should be closely studied by Corrective Services and that the greater involvement of communities and Aboriginal organisations in correctional processes be supported. |
| Fully implemented (CV-DOJ) |

Government Responses on Implementation

**Recommendation 94: Community Service Orders**

**Corrections Victoria (DOJ)** advised the Review that:

(a) Offenders subject to Community Based Orders are able to access a range of work options that would satisfy the community work condition of the order. Offenders are able to be placed in community-based organisations to undertake:

- gardening activities;
- administrative work;
Indigenous offenders are provided with an opportunity to work in Indigenous organisations with Indigenous people, or to work with non-Indigenous agencies and people. CORE, in partnership with numerous Indigenous community agencies, is providing a variety of community work options.

As part of the development of any new community work site, Corrections Victoria spends considerable time ensuring that the site meets established criteria, that site staff are aware of Corrections Victoria's role and responsibilities and of their own role and responsibilities. This is finalised through a written agreement where expectations, roles and responsibilities are clearly articulated. Ongoing communication is integral to the management of the community work site and program.

However Corrections Victoria has, on occasions, experienced difficulties in securing the appropriate documentation regarding an offender's community work activity at the Indigenous community agency. In addition, consensus regarding the level of supervision required in the administration of the community work condition attached to an offender's Order has also been of concern on occasions.

Furthermore, in performing community work within the Indigenous community, it has been necessary to clarify expectations and boundaries. Agreement regarding expectations and boundaries has not always been mutually agreed upon between Corrections Victoria and the Indigenous community. For example, Corrections Victoria has determined that community work cannot be performed by an offender for a direct relative. This has not always been in agreement with the Indigenous community. Corrections Victoria is committed to working with the Indigenous community to fine tune community work operations into the future in order to maximise benefits to offenders and the broader community.

Under the current legislation, community work and personal development are separate conditions of the Community Based Order imposed by Courts. It should be noted that Corrections Victoria has provided input to legislative amendments arising from the Arie Frieberg Review of the Sentencing Act, (Arie Frieberg 1991). One such amendment sought has been for greater flexibility of the community work condition so as to allow for the crediting of other activities that also have a focus of assisting the process of reducing the risk of re-offending.

Nevertheless, in locating suitable placements for offenders to perform their allocated community work hours, Corrections Victoria makes every effort to build a community work program which is beneficial to the community and the offender and provides for the broad development of work-related skills by the offender. Some community work sites encompass a theoretical component that can afford the offender a TAFE Certificate such as in Horticulture.

Furthermore, as stated in the response above (a), Corrections Victoria endeavours to make available community work sites where Indigenous offenders can perform their hours at Indigenous community agencies.

For those offenders who enter a drug and alcohol residential agency whilst their order is in operation, practice provides that they can be credited towards community

- work in libraries, nursing homes and schools; and
- environmental projects.
work for that aspect of the residential treatment that requires them to undertake some community work element.

Corrections Victoria also provides personal development programs such as the Aboriginal Cultural Immersion Program (ACIP) that provides for Indigenous offenders to learn about their heritage and culture. The ACIP is based on the premise that it may well be more effective to address Indigenous people's offending behaviour through addressing their spirituality and identity issues rather than through traditional 'mainstream' courses. The aim is to steep Indigenous prisoners or offenders in their culture emphasising that offending behaviour is not consistent with (and indeed is alien to) a proud and honourable culture. Some of the ACIPs have included community work aspects, such as the cleaning of Aboriginal sacred sites. Offenders participating in such activity are credited those hours towards their community work condition.

Furthermore, Corrections Victoria has contributed to sentencing amendments that will facilitate the full implementation of this Recommendation.

The current review of community work programs (provided to this Review) is a generic document which includes key process improvement recommendations based on best practice models. A key recommendation, which is applicable to all offenders with community work conditions, is the introduction of a thorough assessment of the individual's education and training needs in an attempt to link them to a community work placement that can best address these gaps.

In addition to the above recommendation, other key considerations for the placement of Indigenous offenders include:

- Establishing culturally appropriate work sites that involve the local Indigenous community;
- Community Work sites that can provide opportunities for personal development and skill enhancement;
- Community work performed at the site will be to the benefit of the local Aboriginal community; and
- Strengthening relationships with Aboriginal community agencies so as to provide Aboriginal offenders with access to role models and mentors within their community.

Community Correctional Services initiated further efforts in September 2004 to achieve legislative amendments in relation to Intensive Corrections Orders (ICOs) to permit the full crediting of personal development programs against community work obligations.

An example of a program which meets the above criteria is the following pilot:

Cultural Appreciation Program and Environmental Scheme (CAPES)
The pilot project named CAPES has been developed by four TAFE students undertaking a field placement at Mildura Community Correctional Services during the course of completing a Diploma in Community Development. The project involves three external partners: Trust for Nature (Trustees of the station, Ned's Corner), Parks Victoria, and Sunraysia TAFE and involves Indigenous offenders undertaking community work of a cultural nature at Ned's Corner, (a culturally significant site), as well as skills development through the undertaking of TAFE modules relating to the environment. The program is conducted once per week.
and consists of ten modules. The offenders are bussed to Ned’s Corner by a Koori ranger from Parks Victoria. The ranger, who has extensive knowledge of the culturally significant sites at Ned’s Corner is a critical resource for the program. The pilot has since concluded and is currently subject to an evaluation which will inform the long-term feasibility and identify potential sources of funding for future projects.

**Recommendation 101: Advising courts on effectiveness of non-custodial sentence options**

**Corrections Victoria (DOJ)** advised the Review that Corrections Victoria has established a regular meeting schedule with local Magistrates, in addition to regular forums with the Chief Magistrate. These forums allow an exchange of information regarding developments in correctional practice and programs and the provision of data regarding program and order effectiveness. The forums also provide for discussion regarding tailoring programs and services to key groups such as Indigenous offenders, and updates relating to the trialling of alternative programs and services that meet the specific needs of Indigenous offenders.

In relation to advising sentencing authorities about the effectiveness of programs, CCS also creates other opportunities for the judiciary to express their views about how well CCS fulfils this function. CCS not only meets with the judiciary to advise them about what is occurring within the CCS environment, but also undertakes surveys. These surveys aim to determine the judiciary’s view of the role undertaken by CCS; any perceived gaps in terms of service, future directions and issues. Corrections Victoria also maintains regular stakeholder forums, and feedback from this process is forwarded to CCS for consideration.

In addition, the Offender Services Unit has recently surveyed a number of members of the judiciary about what they regard as the key performance measures for Corrections Victoria. These are being built into a revised set of performance measures.

CCS now has designated Court Advice Services workers at each location who have specialised training available to them to enhance their skills in court. This ensures consistency in personnel and the ability to develop relationships and the exchange of information in a timely manner. CCS has also established the Melbourne Court Services Unit and the Prosecutions Practice Committee in CCS. These forums further enhance communication regarding the effectiveness of CCS programs and services, and provide additional mechanisms for the provision of information.

Information regarding the effectiveness of programs and services delivered by CCS is also communicated to the judiciary via the RAJAC network. The RAJACs have representatives from court services and this allows a further forum for the communication of progress and issues.

The VAJA has provided a vehicle whereby the range of identified issues underpinning Indigenous over-representation in the criminal justice system is addressed through implementation of policies, programs and service. The VAJA’s whole-of-government approach and participation of the Indigenous community at all stages is a fundamental and significant achievement. In addition, the VAJA has provided a framework for Corrections Victoria’s participation in improving justice-related outcomes for Indigenous people within Community Correctional Services and Prisons.

The principles, strategic objectives and the range of initiatives contained within the VAJA will, and in some instance, have already assisted in the implementation of the Royal Commission recommendations. Since the launch of the VAJA in June 2000, various initiatives have been developed with full Indigenous community participation. For example,
Corrections Victoria has employed two Aboriginal Well-being Officers (formerly known as the Aboriginal Welfare Officers) following liaison with the Indigenous community in the design, development and implementation of the positions.

The VAJA has provided the impetus for a review of the implementation of the Royal Commission Recommendations and for recommencement of annual reporting. This will ensure that the focus remains on the implementation of Royal Commission’s Recommendations.

With the launch of the VAJA in June 2000, feedback from some Indigenous community agencies suggests that the pace of change and the rate of consultation has on occasions, been difficult to manage. Some Indigenous agencies have indicated that their ability to provide considered and strategic feedback is compromised when numerous agencies are engaging in consultative processes at the same time. In addition, concerns have been raised that in some instances, adherence to stringent timelines is compromising the effectiveness of initiatives.

The whole-of-government approach is a necessary aspect in ensuring that the over-representation of Indigenous people in the criminal justice system is addressed, but this may cause delays in implementing initiatives due to the range of stakeholders involved in the process. These issues may then impact the implementation of Royal Commission Recommendations.

Corrections Victoria is a member of the RAJAC network. This has resulted in the strengthening and in some instances, the development of collaborative working relationships with a number of Indigenous community agencies and individuals. Participation in the RAJAC has provided Corrections Victoria with a forum to educate participants and the community about what Corrections Victoria is all about, and has provided a process for consultation with the community.

Meeting with community agencies and individuals on a regular basis at their location has resulted in strong collaborative working relationships. Where community agencies are visiting prisons, it is important to ensure that the individual is aware of prison protocol and procedures in order to minimise anxiety associated with entering the prison environment. The AWOs, the Manager Indigenous Services or the Indigenous Services Officers (ISOs) always escort Indigenous community representatives through prisons and provide support during and after the visit. These strategies have assisted Corrections Victoria in working more efficiently with the Indigenous community.

Corrections Victoria advised the Review to refer to Recommendation 94 for further clarification.

**Recommendation 112: Adequate resourcing to ensure that non-custodial sentencing options are capable of implementation**

Corrections Victoria (DOJ) advised the Review that Community Correctional Services manages a range of community-based dispositions that aim to fulfil the obligations of the Courts and the Adult Parole Board (APB) and that provide opportunities for the rehabilitation of offenders. In order to achieve this, Corrections Victoria employs a range of staff that are skilled in the delivery of correctional services. In addition, initial and ongoing training is provided to ensure that staff is performing to the standard required by Corrections Victoria. Refer to Royal Commission Recommendation 119 for information regarding the training and resources available to CCS staff in order to support their ability to effectively supervise Indigenous offenders.
In May 2001, the State Government responded to the *Andersen Review Report* and other analyses of the correctional system with the injection of $334.5 million to overhaul it over four years. This included funding of $30.2 million for the development of rehabilitative and diversionary programs to reduce re-offending, and another $42.3 million was directly earmarked for the redevelopment of Community Correctional Services. The balance of $262 million was for the redevelopment of prison infrastructure, including the building of three new prisons, and the closure of three older prisons. This represented a greater than 60 per cent increase on the former funding baseline.

This has allowed CCS an increased capacity and an adequate resource to enhance infrastructure, and to develop more effective programs and services that will enable offenders to successfully complete their orders. For further information regarding the CCS Redevelopment Project, refer to Recommendation 119.

Rural and regional CCS locations have a strong relationship with Indigenous community agencies and organisations. Often, Indigenous offenders are able to complete their community work at these agencies, working with and for the Indigenous community. Indigenous community agencies are also often in a position to provide other forms of support to Indigenous offenders on community-based dispositions. This support includes drug and alcohol counselling, family support, cultural education, family history tracing.

In addition, all four CCS General Managers are part of the RAJAC network, participating in improving justice-related outcomes for Indigenous people. Participation in the RAJAC network also facilitates the development and enhancement of culturally appropriate programs and services, through the consultation and feedback from the range of members on the Committee, representing the views of the broader Indigenous community. CCS has invested resources in its endeavour to appropriately cater for the needs of Indigenous offenders. This has been achieved by the:

- development of a discussion paper for the supervision and management of Indigenous offenders by CCS;
- development of six Indigenous Community Corrections Officer (ICCO) positions;
- delivery of Aboriginal Cultural Immersion Programs in Prisons and CCS; and
- development and implementation of the Mentor Program for Aboriginal Women co-facilitated by Rumbalara in partnership with Shepparton CCS.

Overall, CCS is committed to providing opportunities, infrastructure and resources for staff to effectively supervise Indigenous offenders either in the metropolitan area or in regional and rural locations. However, no additional resources have been provided to CCS to develop and implement the range of programs, services and additional staff to support a more effective community-based experience for Indigenous offenders.

See Recommendation 101 for the remaining part of Corrections Victoria response.

As part of the redevelopment of Community Correctional Services, six ICCOs were employed at key locations. Four of the six ICCO positions are located in non-metropolitan CCS locations within Victoria (Mildura, Bendigo, Shepparton and Bairnsdale), coinciding with areas of relative concentration of Indigenous people. The ICCOs supervise Indigenous offenders, and have a focus on more strongly linking CCS to the Indigenous community, as well as educating the Indigenous community regarding the role and function of CCS.
In addition to the ICCO positions, most locations have nominated additional staff as Indigenous Services Officers to assist in the development of the portfolio and to build strong links with local Indigenous communities.

**Recommendation 113: Participation by the Aboriginal community in the planning and implementation of non-custodial sentencing orders**

Refer to Recommendation 94 part (a) for **Corrections Victoria (DOJ)** response to Recommendation 113.

Indigenous offenders subject to a personal development condition are able to access services provided by Indigenous community agencies, where such agencies provide these services. Indigenous offenders are also able to access programs and services offered by Koori Units within local TAFE campuses where available.

CCS is committed to continuing a collaborative approach with Indigenous community agencies in relation to the management of Indigenous offenders. As a result, all new key initiatives involving Indigenous offenders in CCS are now referred to the Corrections Indigenous Services Coordination Committee for endorsement, ensuring that they are satisfied with both the level of consultation that has taken place and with the aims/direction/content of the initiative. In addition, CCS is represented on each of the RAJAC committees, which also acts as second point of reference to ensure that our consultative processes have been adequate and appropriate.

Local ACJPs have also played a role in this matter. ACJPs will occasionally be involved in providing or supervising community work for Indigenous offenders and in suggesting sites that may be suitable for access to the community work program.

Refer to Recommendation 94 for supplementary information.

Refer to Recommendation 101 for **Corrections Victoria (DOJ)** response regarding the ways in which VAJA assists and hinders the Royal Commission Recommendations.

**Corrections Victoria (DOJ)** further advised the Review that a key role of the Indigenous Community Corrections Officer (ICCO) is to develop strong links with the local Indigenous community and in the process, invite input from these communities to provide better services to Indigenous offenders. ICCOs are also encouraged to contribute to the development and delivery of programs to Indigenous offenders utilising departmental and community resources. The role involves ICCOs consulting with and inviting input from local Indigenous community groups.

In addition, all ICCOs and the four CCS General Managers are part of the RAJAC network, participating in improving justice-related outcomes for Indigenous people. Participation in the RAJAC network also facilitates the development and enhancement of culturally appropriate programs and services, through the consultation and feedback from the range of members on the Committee, representing the views of the broader Indigenous community.

**Recommendation 115: Improvement of statistical data on rates of recidivism for Indigenous offenders**

**Corrections Victoria (DOJ)** advised the Review that Victoria currently provides recidivism data for the Report on Government Services (COAG), however this is not broken down for Indigenous status.
A review of the Community Corrections response to Indigenous clients considered the effectiveness of community based interventions in terms of participation and breach rates. This work has resulted in the following initiatives:

- Employment of six ICCOs at key locations across the State; and
- Introduction of more flexible approaches to supervision of orders.

However, there is a need for improved definition and counting rules for recidivism. These will be revised by Corrections Victoria in the short term with the National Corrections Advisory Committee (NCAC) to develop consistent definitions and counting rules across jurisdictions in the longer term. The small numbers involved for Aboriginal prisoners and offenders has also made it difficult to extract meaningful recidivism data for this group.

A further issue is the need for consistency between jurisdictions in relation to inquiring about and recording Indigenous status. This will be the subject of a national working group reporting to NCAC.

Corrections Victoria (DOJ) also reported that data on re-offending rates is currently not available due to the review of the recidivism measure (including the counting rules) by the National Corrections Advisory Group.

The breach data provided by Corrections Victoria for the period 2000-01 to 2003-04 suggests that the breach rates for Indigenous offenders on Community Based Orders (community work only and fine default orders) is similar to, or slightly lower than, that for non-Indigenous offenders. However, breaches of supervised orders (CBOs, ICOs, CCTOs, Parole Orders) are higher than for non-Indigenous offenders.

While breach rates for Indigenous offenders are generally higher than non-Indigenous offenders, there has been some improvement in the past 3.5 years (for both groups). However, it is too early to determine if this is due to the recent initiatives introduced by Community Corrections, for example, the employment of Indigenous Community Corrections Officers and the introduction of a more responsive approach to the management of non-compliance with conditions where no further offending has occurred.

Court Services (DOJ) advised the Review that the following comments relate to data collection by the Court Statistical Services Unit (DOJ). We make no comment on data collection by Corrections Victoria or the Victorian Bureau of Crime Statistics which were referred to in the Implementation Status Update 1996-97.

There is wide support within the courts for greater access to accurate and reliable statistical information on recidivism and the general effectiveness of non-custodial, restorative and therapeutic sentencing approaches. Court Services, in conjunction with the Courts, Victoria Police and Corrections Victoria are currently working on uniform case-management systems which will have the capacity in the future to provide reports on recidivism. Once this system is implemented, the issue of ethnicity would be recorded as a data field for all offenders.

The Koori Court is in a better position to collect relevant statistical information on those who pass through its doors. This information is currently being collected, but it should be noted that not all Koori defendants' cases are heard within the Koori Court – many defendants are
not willing to volunteer their ethnicity. The data from the Koori Court is therefore not considered comprehensive.

The Magistrates’ Court is currently piloting a number of programs involving restorative and therapeutic justice. These programs are designed to provide alternatives to conventional custodial sentencing orders, and, although they appear to be successful, formal evaluation of their overall effectiveness is yet to take place.

Victoria currently does not have reliable statistical information on recidivism or criminological information disaggregated by ethnicity. There will need to be considerable advances in data collection protocols adopted across several government departments before this will be achieved. Currently, this information relies on police systematically obtaining this information at the time of arrest.

The lack of reliable statistical information on Koori court appearances and sentencing has been identified as a significant gap, and it is suggested that collection of this data by the police is an issue which may need to be pursued by the Indigenous Issues Unit.

There has been significant progress in the collection of statistical information for Koori Court appearances. A Koori Court Data program has been developed, and through the evaluation process, further progress has been made regarding appropriate data collecting processes for the Koori Court.

**Recommendation 116: Work undertaken on Community Service Orders**

**Corrections Victoria (DOJ)** advised the Review that CCS is committed to ensuring that Indigenous offenders have the opportunity to undertake community work at an Indigenous community agency, if so desired, and to perform work that is regarded as valuable and meaningful. In order to achieve this, Community Work Co-ordinators at CCS locations regularly seek new sites that meet established criteria. In its community work site assessment, CCS ensures that work to be undertaken, should the site be accepted, is not undertaken by CCS at the expense of paid employment within the organisation.

Community work sites are not only identified by Community Work Co-ordinators. Potential sites are also referred to CCS by Indigenous community agencies, RAJACs, CJP’s, the Manager, Indigenous Services and the Indigenous Services Unit.

Indigenous community work sites are able to offer a range of work that is valuable to the community, and meaningful to the Indigenous offender undertaking the work. Indigenous community work sites are also able to connect the offender to other programs and services that are specific to Indigenous people. For some Indigenous offenders, working at an Indigenous community work site is the first real opportunity to re-connect with the Indigenous community.

Given the importance of having a range of community work sites and a range of different work opportunities, CCS is keen to identify and retain Indigenous work sites. Consequently, CCS undertakes regular visits to community work sites, and makes themselves available to address any queries or provide information as required.

CCS liaises with the RAJACs, the CJP’s, Indigenous community agencies, the Correctional Indigenous Support Coordinators Committee, the Indigenous Services Unit and the Manager, Indigenous Services to ensure that appropriate Indigenous community work sites are identified, utilised and appropriately supported in the provision of community work opportunities for Indigenous offenders.
Recommendation 119: Adequate provision of trained support staff for probation and parole

Corrections Victoria (DOJ) advised the Review that CCS manage a range of community based dispositions that aim to fulfil the obligations of the courts and the APB and to provide opportunities for the rehabilitation of offenders. In order to achieve this, Corrections Victoria employs a range of staff that are skilled in the delivery of correctional services. In addition, initial and ongoing training is provided to ensure that staff are performing to the standard required by Corrections Victoria.

Staff are able to access a range of extensive training either in block form, comprising seven weeks of training, or on a cyclical basis where staff attend training one day per week and are mentored whilst on the job. Staff are then also able to access a range of training opportunities on an ongoing basis. These training opportunities include: case management, offender induction, breach preparation, developing Individual Management Plans, managing non-compliance, special needs offenders, basic prosecutions, order management and conflict management.

In addition to the Corrections Victoria provided training programs for new and ongoing staff, CCS staff are able to access the range of training programs through the DOJ.

Requiring that CCS staff are fully trained initially and throughout their career in Corrections Victoria ensures that the courts and the APB are dealing with staff who are experienced and well-qualified in discharging their duties.

Corrections Victoria engages in regular forums with the courts and the APB. The forums provide an opportunity for information sharing, for providing updates on correctional initiatives and for raising and addressing issues. Corrections Victoria is confident that it has the support and confidence of the courts and the APB in the delivery of correctional services. Neither the courts nor the APB have raised concerns regarding the number of trained staff, not in relation to the infrastructure that is necessary for the monitoring of community-based dispositions.

Following the Andersen Review Report (December 2000), CCS aimed to more strategically position itself within the criminal justice system. In May 2001, the State Government responded to the Andersen Review Report and other analyses of the correctional system with the injection of $72.5 million to overhaul it over four years. This included funding for the development of rehabilitative and diversionary programs to reduce re-offending, of which $42.3 million was directly earmarked for the redevelopment of Community Correctional Services. This represented a greater than 60 per cent increase on the former funding baseline. To give effect to these changes, the Community Correctional Services Redevelopment Project was established in October 2001. The projects objectives include:

- To increase the confidence of the courts to make greater use of community-based sentencing options;
- To develop more effective management regimes that enable offenders to successfully complete their supervision orders;
- To assist offenders leaving prison to reintegrate into the community; and
To implement a differentiated offender case management system that individualises offender management plans according to their risk of re-offending, personal needs reflected in their offending behaviour, and other specific factors related to age, gender and ethnicity.

A draft strategy for a more culturally appropriate approach to the management of Aboriginal offenders has been developed in conjunction with the VAJA framework. It includes a recruitment strategy to increase the number of Aboriginal staff as well as a training regime to increase the understanding and sensitivity of all staff to Aboriginal issues.

Corrections Victoria advised the Review to refer to the data on Parole Board decisions and breach rates of Parole orders.

From data on decisions made by the Adult Parole Board to grant or deny parole there does not appear to be any difference in the way Indigenous and non-Indigenous offenders are treated. In the period 1 July 2000 to 31 December 2003, the APB made 15 decisions not to grant an Indigenous prisoner parole and 283 decisions to grant parole i.e. approximately 5 per cent are not granted – this proportion was the same for non-Indigenous prisoners. However, Indigenous parolees have a higher breach rate than non-Indigenous parolees and a higher proportion of Indigenous parolees are breached for non-compliance with conditions rather than further offending.

**Recommendation 187: Involvement of communities and Aboriginal organisations in correctional processes**

**Corrections Victoria (DOJ)** advised the Review that Corrections Victoria is a committed member of the RAJACs and provides representation at the highest level. Those representing Corrections Victoria at the RAJACs are General Managers within Community Correctional Services and Prisons. The RAJAC meetings have been a significant forum in which Corrections Victoria is able to engage with, and seek the views of, the Indigenous community in a range of initiatives Corrections Victoria is currently undertaking.

Corrections Victoria has sought the views of the Indigenous community, via the RAJACs, in relation to the:

- development of a framework for the supervision and management of Indigenous offenders by CCS;
- development of Indigenous Community Corrections Officers positions;
- recruitment and appointment of Aboriginal Well-being Officers;
- recruitment and appointment of the Manager, Indigenous Services;
- delivery of Aboriginal Cultural Immersion Programs in Prisons and CCS; and
- development and implementation of the Mentor Program for Aboriginal Women co-facilitated by Rumbalara in partnership with Shepparton CCS.

Corrections Victoria also engages the community in relation to CCS and Prisons via the Corrections Indigenous Services Coordinating Committee, convened by Corrections Victoria, with representation from key Indigenous organisations. Corrections Victoria has worked with Indigenous agencies as a participant in the development and implementation of the Koori Court now operational in Shepparton.

The Indigenous Services Unit (ISU), comprising the Manager, Indigenous Services, two Aboriginal Well-being Officers and one Indigenous Services Officer are committed to the
development of partnerships. Staff from the ISU regularly visit Indigenous community agencies and individuals, and facilitate access by these agencies and individuals to prisons and CCS locations. In addition, each CCS and prison location has at least one ISO. The ISO commonly has links with Indigenous community agencies and individuals. These links ensure that the Indigenous community has a voice in relation to public corrections.

Community work co-ordinators in CCS regularly liaise with Indigenous community agencies that provide community work placements for Indigenous offenders. The community work program develops as a result of this ongoing relationship.

Corrections Victoria has significant involvement with Indigenous communities and organisations that are mutually beneficial. Feedback from these agencies are utilised in the ongoing development and refinement of existing programs, or in the development of new initiatives. This ensures that programs and services provided by Corrections Victoria have been sanctioned by the Indigenous community as being appropriate in meeting the needs of Indigenous offenders.

The Mentor Program and the 12 month pilot Aboriginal Cultural Immersion Program in Mildura CCS are two examples where Corrections Victoria is working closely with the Indigenous community in the development and delivery of programs. Both programs were evaluated and outcomes of the evaluation will guide the future development of the program. The evaluation of these programs will, as a matter of course, involve the Indigenous community in addition to other relevant stakeholders.

Corrections Victoria has utilised the CCS re-development process as an opportunity to review the delivery of Community Correctional Services to Indigenous offenders. The CCS re-development process has generated a discussion paper on the supervision and management of Indigenous offenders, and has recommended the employment of a total of eight Indigenous Community Corrections Officers. Corrections Victoria has employed one Indigenous CCO to date. The development of the Discussion Paper and the role of the ICCO involved engaging Indigenous community discussion via the RAJACs and the Corrections Indigenous Services Coordinating Committee. The re-development is based on the premise that CCS needs to engage Indigenous offenders in a different manner, if it is to increase the successful completion of orders by Indigenous offenders.

Corrections Victoria is committed to continuing to review its performance and to seek the views of stakeholders in correctional services. This commitment is encompassed by engaging the Indigenous community at all stages of the project or initiative development through to implementation and evaluation.

However, some Indigenous communities and agencies are overwhelmed by the level of consultative activity. This is causing additional pressures on limited resources. In addition, diversity within the Indigenous community results in a diversity of opinion and difficulties in progressing initiatives in a timely manner.

(b) Duty-of-Care in Prison

A large number of Recommendations address the prison experience and focus on the duty-of-care of custodial staff in prisons, police cells and in juvenile detention centres. The intent of these Recommendations is to ensure proper policies, protocols and procedures are in place, and custodial staff are fully trained in their duty-of-care obligations and that they comply with them. Their interaction with Indigenous prisoners is also specifically addressed.
### Recommendation

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>122</td>
<td>That Governments ensure that:</td>
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<tr>
<td>(a)</td>
<td>Police services, Corrective Services, and authorities in charge of juvenile centres recognise that they owe a legal duty-of-care to persons in their custody;</td>
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<tr>
<td>(b)</td>
<td>That the standing instructions to the officers of these authorities specify that each officer involved in the arrest, incarceration or supervision of a person in custody has a legal duty-of-care to that person, and may be held legally responsible for the death or injury of the person caused or contributed to by a breach of that duty; and</td>
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| (c) | That these authorities ensure that such officers are aware of their responsibilities and trained appropriately to meet them, both on recruitment and during their service. | Fully implemented (CV-DOJ)  
Fully implemented (VicPol)  
Fully implemented (CP & JJ-DHS) |
| 123 | That Police and Corrective Services establish clear policies in relation to breaches of departmental instructions. Instructions relating to the care of persons in custody should be in mandatory terms and be both enforceable and enforced. Procedures should be put in place to ensure that such instructions are brought to the attention of and are understood by all officers and that those officers are made aware that the instructions will be enforced. Such instructions should be available to the public. | Fully implemented (CV-DOJ)  
Fully implemented (VicPol) |
| 124 | That Police and Corrective Services should each establish procedures for the conduct of debriefing sessions following incidents of importance such as deaths, medical emergencies or actual or attempted suicides so that the operation of procedures, the actions of those involved and the application of instructions to specific situations can be discussed and assessed with a view to reducing risks in the future. | Fully implemented (CV-DOJ)  
Fully implemented (VicPol) |
| 126 | That in every case of a person being taken into custody, and immediately before that person is placed in a cell, a screening form should be completed and a risk assessment made by a police officer or such other person, not being a police officer, who is trained and designated as the person responsible for the completion of such forms and the assessment of prisoners. The assessment of a detainee and other procedures relating to the completion of the screening form should be completed with care and thoroughness. | Fully implemented (CV-DOJ)  
Fully implemented (VicPol)  
Fully implemented (CP & JJ-DHS) |
| 130 | That: |
| (a) | Protocols be established for the transfer between Police and Corrective Services of information about the physical or mental condition of an Aboriginal person which may create or increase the risks of death or injury to that person when in custody; |
| (b) | In developing such protocols, Police Services, Corrective Services and health authorities with Aboriginal Legal Services and Aboriginal Health Services should establish procedures for the transfer of such information and establish necessary safe-guards to protect the rights of privacy and confidentiality of individual prisoners to the extent compatible with adequate care; and |
| (c) | Such protocols should be subject to relevant ministerial approval. | Fully implemented (CV-DOJ)  
a) Fully implemented,  
b) partially implemented and  
c) partially implemented (VicPol) |
| 162 | That governments give careful consideration to laws and standing orders or instructions relating to the circumstances in which police or prison officers may discharge firearms to effect arrests or to prevent escapes or otherwise. All officers who use firearms should be trained in methods of weapons retention that minimise the risk of accidental discharge. | Fully implemented (LP-DOJ)  
Fully implemented (VicPol) |
| 163 | That police and prison officers should receive regular training in restraint techniques, including the application of restraint equipment. The Commission further recommends that the training of prison and police officers in the use of restraint techniques should be complemented with training which positively discourages the use of physical restraint methods except in circumstances where the use of force is unavoidable. Restraint aids should only be used as a last resort. | Fully implemented (CV-DOJ)  
Fully implemented (VicPol) |
<p>| 164 | The Commission has noted that research has revealed that in a significant number of cases detainees or prisoners who had inflicted self-harm were subsequently charged with an offence arising from the incident. The Commission recommends that great care be exercised in laying any charges arising out of incidents of attempted self-harm and further recommends that no such charges be laid, at all, where self-harm actually results from the action of the prisoner or detainee (subject to a possible exception where there is clear evidence that the harm was occasioned for the purpose of gaining some secondary advantage). | Fully implemented (CV-DOJ) |
| 165 | The Commission notes that prisons and police stations may contain equipment which is essential for the provision of services within the institution but which may also be capable, if misused, of causing harm or self-harm to a prisoner or detainee. The Commission notes that | Partially implemented (CV-DOJ) |</p>
<table>
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<tr>
<th>Recommendation</th>
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<tbody>
<tr>
<td>166 That machinery should be put in place for the exchange, between Police and Corrective Services authorities, of information relating to the care of prisoners.</td>
<td>Fully implemented (CV-DOJ)</td>
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<tr>
<td>176 That consideration should be given to the establishment in respect of each prison within a State or Territory of a Complaints Officer whose function is:</td>
<td>Partially implemented (CV-DOJ)</td>
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<tr>
<td>(a) To attend at the prison at regular (perhaps weekly) intervals or on special request for the purpose of receiving from any prisoner any complaint concerning any matter internal to the institution, which complaint shall be lodged in person by the complainant;</td>
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<tr>
<td>(b) To take such action as the officer thinks appropriate in the circumstances;</td>
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<td>(c) To require any person to make enquiries and report to the officer;</td>
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<td>(d) To attempt to settle the complaint;</td>
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<td>(e) To reach a finding (if possible) on the substance of the complaint and to recommend what action if any, should be taken arising out of the complaint; and</td>
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<td>(f) To report to the complainant, the senior officer of the prison and the appointing Minister (see below) the terms of the complaint, the action taken and the findings made.</td>
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<td>This person should be appointed by, be responsible and report to the Ombudsman, Attorney-General or Minister for Justice. Complaints receivable by this person should include, without in any way limiting the scope of complaints, a complaint from an earlier complainant that he or she has suffered some disadvantage as a consequence of such earlier complaint.</td>
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<td>179 That procedures whereby a prisoner appears before an officer for the purpose of making a request, or for the purpose of taking up any matter which can appropriately be taken up by the prisoner before that officer, should be made as simple as possible and that the necessary arrangements should be made as quickly as possible under the circumstances.</td>
<td>Fully implemented (CV-DOJ)</td>
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<td>181 That Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention. In any event, Corrective Services authorities should provide certain minimum standards for segregation including fresh air, lighting, daily exercise, adequate clothing and heating, adequate food, water and sanitation facilities and some access to visitors.</td>
<td>Fully implemented (CV-DOJ)</td>
</tr>
<tr>
<td>182 That instructions should require that, at all times, correctional officers should interact with prisoners in a manner which is both humane and courteous. Corrective Services authorities should regard it as a serious breach of discipline for an officer to speak to a prisoner in a deliberately hurtful or provocative manner.</td>
<td>Fully implemented (CV-DOJ)</td>
</tr>
<tr>
<td>183 That Corrective Services authorities should make a formal commitment to allow Aboriginal prisoners to establish and maintain Aboriginal support groups within institutions. Such Aboriginal prisoner support groups should be permitted to hold regular meetings in institutions liaison with Aboriginal service organisations outside the institution and should receive a modest amount of administrative assistance for the production of group materials and services. Corrective service authorities should negotiate with such groups for the provision of educational and cultural services to Aboriginal prisoners and favourably consider the formal recognition of such bodies as capable of representing the interests and viewpoints of Aboriginal prisoners.</td>
<td>Partially implemented (CV-DOJ)</td>
</tr>
<tr>
<td>328 That as Commonwealth, State and Territory Governments have adopted Standard Guidelines for Corrections in Australia which express commitment to principles for the maintenance of humane prison conditions embodying respect for the human rights of prisoners, sufficient resources should be made available to translate those principles into practice.</td>
<td>Fully implemented (CV-DOJ)</td>
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### Government Responses on Implementation

**Recommendation 122: Duty-of-care to persons in custody**

**Corrections Victoria (DOJ)** advised the Review that:

(a) **Corrections Victoria**

Duty-of-care provisions are embodied in legislation, operating procedures, policies and practices. Sections 8A, 20(2), 21(1) and 23(1) of the *Corrections Act 1986* relate to duty-of-care.

Operating procedure No. 9.4 Conduct of Staff provides guidance to staff in relation to ethics, conflicts of interest, professional and personal conduct and accountability. In addition, Corrections Victoria’s Operating Procedure No. 1.2 ‘At Risk’ Prisoners provides guidance to staff regarding their duty-of-care in identifying and managing ‘at risk’ prisoners. Additional Operating Procedures that involve duty-of-care issues include section Numbers: 1.1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.17, 1.20, 2.2 and 2.3. Duty-of-care underpins every aspect of the delivery of correctional services.

Where appropriate, each Corrections Victoria prison has developed a range of Operating Procedures that stem from the Corrections Victoria Operating Procedures. These local procedures provide further guidance in relation to duty-of-care to prisoners, taking into account local issues and needs.

Corrections Victoria recognises its duty-of-care provisions by ensuring these issues are adequately covered in the initial training of prison officers and in ongoing training. The Suicide and Self-Harm training further reinforces duty-of-care issues to participating staff. Some staff are currently undertaking Certificate 3 in Correctional Practice. Duty-of-care, ethical behaviour, professional conduct and accountability issues are all addressed in this program.

Corrections Victoria’s values and behaviours require that staff take a professional approach to their duties, that they act in a just and humane manner, that they are responsible and accountable and that they adhere to policy and direction guidelines. Duty-of-care underpins Corrections Victoria’s values and behaviours.
Corrections Victoria’s Human Resources Policies also reinforce duty-of-care provisions. These policies include 8.1 Code of Conduct and 6.1 Occupational Health and Safety (OH&S) to name a few. Corrections Victoria’s Human Resources Policies relate to, and often overlap the Department of Justice Human Resources policies. Corrections Victoria is working with Department of Justice Human Resources to consolidate the human resources policies into one manual.

As a result of the above, Corrections Victoria Staff are trained, experienced and accountable in understanding duty-of-care issues and in operationalising this in a daily basis.

**ACM**

This responsibility is reflected in FCC’s Mission Statement, Philosophy, and all FCC’s Operating Policies and Procedures.

**Group 4**

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant include Statutory Powers of the Correctional Officer covers Duty-of-care with reference to the *Corrections Act 1986*.

(b) **Corrections Victoria**

Staff are trained in understanding the concept of duty-of-care, in operationalising duty-of-care and in understanding the potential consequences of breaching this duty-of-care. Duty-of-care responsibilities are communicated to staff as an expectation in a range of avenues, such as in employment conditions, training programs, publications such as Corrections Victoria’s ‘Values and Behaviours’, operating procedures, human resource policies and through newsletters such as ‘Corrections Victoria Weekly’.

Where it is clear that a staff member has failed to satisfactorily discharge their duty-of-care, disciplinary action will be initiated and if proven, appropriate sanctions will be imposed.

**ACM**

Reflected in Position Descriptions.

**Group 4**

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

- Statutory Powers of the Correctional Officer which covers Duty-of-Care with reference to the *Corrections Act 1986*;
- Legislation Relating to Prisons; and
- Criminal Justice System
Training is provided to staff at initial recruitment stage, and periodically throughout their career with Corrections Victoria. At initial training, emphasis is placed on ensuring new staff develop a sound understanding of what constitutes duty-of-care, what it means in practice and what is required of staff in upholding duty-of-care. Initial recruit training also involves the delivery of cross cultural awareness training by Corrections Victoria’s Aboriginal Well-being Officers.

Post recruitment, staff are reminded of duty-of-care issues during Suicide and Self-Harm training. This training is provided to staff who have regular and routine contact with prisoners. Staff undertaking Certificate III in Correctional Practice also visit this area of training as part of their studies. Corrections Victoria’s values and behaviours is also utilised to reinforce the expectation of professional and accountable behaviour of staff.

In addition, debriefs following significant events are often utilised to reinforce duty-of-care provisions. As mentioned above, duty-of-care information is provided to staff through a range of media including staff training, operating procedures, human resource policies and Corrections Victoria publications such as the ‘Values and Behaviour’ document and ‘Corrections Victoria Weekly’.

**ACM**

The responsibilities of caring for people in our custody is emphasised throughout the pre-service and in-service training programs. This emphasis can be found particularly in the Modules in Offender Management, Safety and Security, and OH&S.

The training on the care of indigenous offenders was prepared by, and presented by the Koori Education Unit of East Gippsland Institute of TAFE (EGIT).

**Group 4**

During recruitment the attendees are constantly made aware that they will be legally and morally responsible for prisoners in their care. During the six weeks basic training course the subject is covered by the sessions above and they also receive copies of:

- Code of Conduct;
- Contract of Employment; and
- Trainee Orientation Pack.

**Corrections Victoria (DOJ)** further reported that compliance with duty-of-care policies may be monitored by either the Corrections Inspectorate (established in 2004) which is the independent unit responsible for monitoring the delivery of correctional services in Victoria, or the Corrections Victoria, Review and Ethical Standards Unit.

The Corrections Inspectorate provided **Corrections Victoria (DOJ)** with the following information:

The Corrections Inspectorate is an independent unit of the DOJ which reports to the Secretary through the Executive Director Community Operations and Strategy. The Corrections Inspectorate is charged with:
• Monitoring and reporting on the compliance of all prisons and the prisoner transport provider with service delivery standards determined by the Government;

• Monitoring and reporting on the achievement of all prisons and the prisoner transport provider of Service Delivery Outcomes (SDOs) determined by the Government;

• The conduct of a program of whole-of-prison reviews against an agreed framework of best practice for the delivery of correctional services in Victoria employing the ‘Healthy Prisons’ methodology. The methodology incorporates a module specifically directed to Indigenous issues within prisons;

• The conduct of thematic (single subject) reviews of services or operations in response to known or anticipated failings or shortcomings;

• The conduct of announced and unannounced inspections of prisons and the prisoner transport provider;

• Providing proactive, timely advice to the Secretary on any matter which might have an adverse affect on the delivery of correctional services, or the confidence of the Government or the public, in the correctional services system; and

• The conduct or co-ordination of investigations or inquiries into serious incidents occurring within the correctional services system.

The Corrections Inspectorate works in close consultation with DOJ Indigenous policy advisers to ensure that the Inspectorate continues to address the needs of the Indigenous prisoner community in all its activities.

The Review and Ethical Standards Unit, Corrections Victoria (DOJ) provided the following information:

Duty-of-care policies are generally articulated through the Correctional Standards established by the Correctional Services Commissioner, and implemented through the Operating Manuals which apply to staff working in Prisons and Community Correctional Services.

Private prison operators have Operating Manuals which address the Correctional Standards and which are subject to approval by the Correctional Services Commissioner.

All recruits are provided with a copy of the relevant Operating Manual and recruit training is based on the procedures articulated in the Manual.

Compliance with duty-of-care policies can be demonstrated in two ways - through functional reviews which focus on staff compliance with written procedures, and secondly through response to incidents.

Corrections Victoria has an electronic system to record all incidents. In addition, the Review and Ethical Standards Unit (R&ESU) receives written copies of all Incident Reports and reports of officers involved in or responding to significant incidents. The unit reviews incidents and follows up any issues arising. In addition the unit is responsible for referring incidents to Victoria Police Prisons Squad where indicated, for example, all instances of assault are referred to police whether prisoner on prisoner, prisoner on staff, staff on prisoner.

An access data base of all significant incidents is maintained by R&ESU. This includes all assaults, self-harm incidents, serious injury, death, drug finds. Information is compiled in respect of self-harm incidents, and use of force.
The unit has offered to provide records kept by R&ESU to the Review to demonstrate compliance with duty-of-care policies.

See Section 6.2 - Police for Victoria Police response to this Recommendation.

See Section 6.5 - Juvenile Justice for Child Protection & Juvenile Justice (DHS) response to this Recommendation.

**Recommendation 123: Policies and processes for dealing with breaches of duty-of-care instructions**

Corrections Victoria (DOJ) advised the Review that:

**Corrections Victoria**

A number of Corrections Victoria Operating Procedures articulate the responsibility of staff in relation to the performance of their duties, the standard to which the duties are performed and the consequences of failing to discharge duties in the proper manner, or for engaging in misconduct. Operating Procedure 9.3 clearly defines the failure to adequately discharge the duty-of-care responsibility as a serious act of misconduct, and outlines the procedures involved in addressing this matter. Section 8 of Corrections Victoria’s Human Resources Policy Manual relates to employee relations and covers Corrections Victoria’s code of conduct, reporting unethical behaviour, addressing misconduct and under-performance management.

In addition Corrections Victoria’s Values and Behaviours, the Code of Conduct for the Victoria Public Sector and Corrections Victoria’s Operating Procedure 9.4 Conduct of Staff, all address issues relating to the performance of duties, consequences surrounding failure to adequately perform duties or breaches of policy and procedures.

Corrections Victoria ensures that where breaches of departmental instructions are alleged, that the matter is fully investigated and that appropriate sanctions are imposed if found proven. Individual confidentiality and privacy is maintained, yet balanced with the need to ensure that the process is observed by other staff as having been followed. This will ensure that staff are fully aware that follow-through will occur where acts of misconduct are alleged and proven.

**ACM**

This recommendation is reflected in ACM Code of Conduct, Training, and Position Description. Allegations of breaches are thoroughly investigated, and action taken on the balance of probabilities. Staff are informed that acting outside ACM guidelines could result in legal action.

**Group 4**

PPP’s Operational Instructions have been updated and accepted by the Commissioner’s Office. Relevant procedures are:

- Operational Instruction No. 69 – The Disciplinary process dealing with Prisoner discipline.
- From the Staff Code of Conduct – a document ‘Staff Disciplinary Hearings’.

Operational Instruction No. 69 and the Staff Code of Conduct cover all prisoners and staff disciplinary issues at PPP. The content of these documents is covered during the officers initial training course. These are “Open” documents.
Corrections Victoria further reported that it has written procedures which outline staff disciplinary processes. Staff are also bound by a Corrections Victoria Code of Conduct and the VPS Code of Conduct. Breaches of Operating Procedures and Director’s Instructions are dealt with in accordance with the staff disciplinary procedure.

Internal staff disciplinary matters are investigated by the Review and Ethical Standards Unit which also refers any issues of a potentially criminal nature, for example assaults, to the Victoria Police Prisons Squad.

Reports relating to these investigations are maintained in secure files by the Review and Ethical Standards Unit. Examples could be made available for the Review Team to examine.

A review of Corrections Victoria’s code of conduct was commenced in October 2004. The review is part of a continuous review process to ensure Corrections Victoria has a contemporary set of guidelines which promote compliance with Corrections Victoria’s values and behaviour.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 124: Arrangements in place across the correctional system for debriefing after critical incidents**

Corrections Victoria (DOJ) advised the Review that Commissioner’s Instruction No. 2001-5 sets out the requirements in relation to the review of prisoner deaths. This includes providing notification to Corrections Victoria as soon as practicable following a prisoner death. This is followed by a detailed incident report within 48 hours. All deaths due to apparent unnatural causes are the subject of a comprehensive review coordinated by Corrections Victoria. The review report is required to be completed within 60 days of the death. All deaths in custody are also subject to a Coronial Inquiry and a copy of the Correction Victoria review report is made available to the Coroner and Victoria Police to assist in their investigations.

Corrections Victoria provides a comprehensive program of counselling after traumatic events for staff and prisoners. Trauma Debriefing Services include services such as critical incident debriefing or defusing, and are provided by professionally qualified persons. Trauma debriefing services are designed to reduce or resolve the negative psychological impact of the traumatic event on the individual(s) involved. It is most effective when delivered promptly and, as such, should be organised as soon as the event occurs and before the staff member leaves the workplace or the incident. The senior workplace manager, on becoming aware of the occurrence of a traumatic event, assesses the seriousness of the situation in terms of:

- The level of trauma involved;
- The impact upon staff directly or indirectly involved;
- The nature of the incident; and
- The potential amount of stress that might be generated.

If considered appropriate, the senior workplace manager then arranges for a professional trauma debriefing service to attend and for affected staff members to be referred to the service. Affected staff member(s) are advised of the referral to the trauma debriefing service and of the associated benefits. The service provider is given appropriate information to enable optimum value to be gained from the debriefing service. Affected staff members
should receive sufficient debriefing services to address their needs. Normally this would be covered by a maximum of three sessions.

Prisoners who experience traumatic events are offered individual and/or debriefing and counselling services. These services are provided by Corrections Victoria psychologists. Often other prison program providers will support the work undertaken by the debriefers. In general, chaplains and other support staff will make themselves available to prisoners.

Corrections Victoria’s Clinical Services Unit is refining its debriefing services to prisoners. The prisoner debriefing service has been used on three occasions in the last 12 months. The Clinical Services Unit are in the process of developing training programs to relevant staff, eventually resulting in the capacity to provide a tailored and statewide service.

In addition to debriefing staff and prisoners following traumatic events, Corrections Victoria has processes and procedures in place that ensures debriefs occur following significant events. First, a defusing occurs as soon as practicable following the incident to address any immediate issues of concern. This is subsequently followed by a formal and fuller debrief of the incident at a later stage.

Policies and procedures in relation to debriefing are located in the Victorian Prison Emergency Management Plan, particularly Part six. Debriefs are conducted by prison staff and by the Operational and the Review and Inspections Unit. Clear processes are described to ensure consistency in debriefing sessions and to assist staff in obtaining optimal data from the process. Debriefing allows staff to examine the incident, the outcome, the decisions made, the strategies implemented, the application of operating procedure, (to name only a few) and to incorporate any learning into future operations. Debriefings enable continuous improvement to occur in practice and ensure that our duty-of-care is maximised.

ACM

- Policy 2.14.6 – Counselling for Prisoners following critical incident within 24 hours of the critical incident occurring.
- Policy 2.14.5 – Prisoner Support Program- selected peers trained and supervised by appropriately qualified staff.
- Psychologists and Counsellors – all prisoners including Aboriginal prisoners have access to counselling and psychology services at Fulham. They may self-refer or be referred by Koori Liaison Officer, Unit staff, Medical staff, Mental Health staff (psychiatric nurse/pyschiatrist), nursing staff, chaplain, etc.

Group 4

The following Operational Instructions apply:

- O/I No. 10 – Suicide and Self-harm (SASH) Prevention Policy.
- O/I No. 11 – the Suicide & Self-harm (SASH) Custodial Officer.
- O/I No. 68 – Deaths in Custody.
- O/I No. 3 – Incident Response.

Corrections Victoria (DOJ) reported that Prisons Emergency Management procedures specify that a debrief is held in relation to all significant incidents. There is an immediate debriefing after each incident, which includes all staff involved. A follow-up debrief for major incidents includes representatives from the Review and Ethical Standards Unit, other
agencies such as police, fire, ambulance, as well as custodial staff and health staff. Action plans form part of the debrief outcome, to address any deficiencies identified.

Copies of incident reports, including where applicable, minutes of debriefs are kept at each prison location. The R&ESU Access database also includes copies of reports of significant incidents. Examples could be made available for the Review Team to inspect.

Staff trauma counselling is offered to all staff involved in or affected by an incident. Corrections Victoria has contracted agencies to provide these support services. No formal review has been conducted of this service.

In addition to the above service, a number of prison locations offer a peer support program which includes support for staff affected by traumatic incidents.

The Clinical Services Pilot Program – Critical Incident Support Team for Prisoners (established October 2004), was introduced to support prisoners exposed to traumatic events (disasters, death from suicide or overdose, serious assaults or acts of self-harm). The service is not a debriefing service but is a process that can be characterised as half-way between defusing and debriefing. It provides bridging or linking process to ensure that any prisoner who may be unduly affected by critical incident is provided an opportunity to discuss their feelings, be given assistance to understand how they are feeling and be linked into further support if necessary. The service is not designed to provide support to Corrections Victoria’s staff. Corrections Victoria have arranged the provision of an employee Assistance Program as well as specialist Trauma Debriefing for staff.

At this stage this service will be provided to all Corrections Victoria Public Prisons. Whilst training has been provided to both Corrections Victoria Clinical Services Staff as well as staff from the private prisons, the Private Prisons have nominally elected to provide this service on an in-house basis. For the purposes of this service, a critical incident is deemed to be any unusual and unforeseen circumstance that has created a risk of acute trauma. The service is not designed to provide support that would typically be accessed through regular channels at the location (for example, chaplaincy, welfare, clinical services, and medical).

The Critical Incident Support Team for prisoners is comprised of staff from Corrections Victoria’s Clinical Services Unit. The aim of the team is to offer short-term intensive psychological support to prisoners immediately after a critical incident. The service is designed to offer and provide short-term support to all prisoners who may be affected by a critical incident, as well as to identify any individuals who may require ongoing support as a result of a critical incident. The service may provide added value to, but does not override, emergency response procedures or management of prisoners identified as being at risk of self-harm or suicide (Directions instruction 1.2; 1.18; 1.20). The service is designed to be provided on the same day or within close proximity to a traumatic event.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 126: Risk assessment and completion of a screening form**

Corrections Victoria (DOJ) advised the Review that the Prison Management Specifications for Private prisons and Standards for Corrections Victoria’s prisons require that:

- The reception process promptly identifies and assists prisoners assessed as being at risk of suicide or self-harm.
All Aboriginal and Torres Strait Islander prisoners are provided within 24 hours of reception into prison, with access to an Aboriginal or Torres Strait Islander contact person.

**Corrections Victoria (DOJ)** has developed an actuarial assessment tool to assist in identifying prisoners at risk of suicide or self-harm at the point of reception into the prison system (Structured Interview Tool for Understanding Prisoner Safety – SITUPS). The tool was developed by a clinical and forensic psychologist and an initial pilot study completed. The tool is currently the subject of a predictive validation study at the ‘front end’ prisons (MAP, PPP and DPFC) to compare the results of the tool with actual incidents of suicide and self-harm amongst prisoners. Corrections Victoria received a report outlining the findings of this study in June 2003.

This study report highlighted a number of recommendations aimed at revising the SITUPS tool. However, this validation study was conducted by the original developers of the tool. In order to create some independence around the initial validation study and thereby establish whether Corrections Victoria progress with these recommendations, an independent reanalysis of the original validation data was conducted in August 2004 by an expert in the area of suicide and self-harm. This independent re-analysis suggested that there was little predictive advantage to be had from using the SITUPS tool and recommended that SITUPS be replaced with a screening process that augments professional judgement. This recommendation has been accepted and the above-mentioned expert has been invited to put forward a proposal for such a screening process to sit across both prisons and CCS. Corrections Victoria have just received this proposal in early March 2005 and discussions have commenced. SITUPS is continuing to be used until such time as the above process is complete.

It is expected that SITUPS will assist in identifying those at risk of suicide and self-harm, and particular risk factors for those prisoners. In addition to this, SITUPS requires that all newly received Aboriginal and Torres Strait Islander prisoners are referred for psychiatric screening, regardless of the outcome of this assessment in recognition of the particular needs and vulnerability of Indigenous prisoners.

**Corrections Victoria**

Corrections Victoria manages both reception prisons. Almost all prisoners received into custody will first be received into the MAP or the DPFC. Given the small number of receptions at the DPFC, a range of assessments and screenings are conducted by trained staff using standard forms, prior to the prisoner’s placement in a cell.

In relation to the MAP, the spirit of this recommendation is reflected in the practices and procedures that aim to identify, minimise and address the at risk behaviour of all new receptions. On average, the MAP receives 15 new receptions on a daily basis, six days a week. With this large turnover, Corrections Victoria has implemented a range of processes and procedures that ensures an efficient reception process and one that is effective in identifying and managing prisoners with identified concerns. This routine process involves:

- Seeking information regarding prisoners, prior to their reception at the MAP, that may assist during the reception process;
- Access to the range of screenings conducted during reception; and
- Development of interim management plans.
As a standard operating procedure, all Indigenous prisoners undergo a psychiatric screening process upon reception to the DPFC or the MAP. This recognises the vulnerability of Indigenous prisoners and the impact of incarceration and separation from family have for these prisoners.

The information gleaned prior to the prisoner’s arrival to the MAP and the information obtained directly from Victoria Police and other sources obviate the need for a risk screening process to occur prior to placement in a cell. Historical data coupled with the most recent information provided by Victoria Police and other sources, has to date, been sufficient to ensure the safety of prisoners during their first few hours in a prison environment, and for the development of interim management plans, once all appropriate assessments have been completed.

Prior to transfer from police custody to prison custody, Corrections Victoria examines numerous sources to ascertain information regarding the soon-to-be-received prisoner. For those prisoners who have previously been in custody, staff check the Individual Management Plan (IMP) files as well as any data stored in PIMS and Offender Automated Search and Information System (OASIS). Where an offender has current Community Corrections contact, the Offender in Custody Report is also accessed if it is available at the point in time. Often information is also available from courts, the prisoner’s family, the Indigenous Services Unit, the Aboriginal Community Justice Panels or the Aboriginal Advisory Unit and Victoria Police. This information is then used to facilitate prisoners’ access to the range of assessment and services that are part of the reception process.

In preparation for the new reception, medical staff will access prisoner medical files in relation to those prisoners with a prior prison history. Medical staff are immediately able to access the medical files of those male prisoners with an incarceration history post-1999. These files are stored at the MAP. Medical files relating to male prisoners with a prison history pre-1999 are stored in file archives external to the MAP. These files are retrieved within one to three days of the request.

All medical files relating to women prisoners are stored at the DPFC. Consequently, immediate access is available.

Medical staff peruse the prisoner’s medical file and any other relevant information, in preparation for the prisoner’s reception. This information, in addition to any information provided by other sources as identified above, will form the basis of prioritising newly received prisoner’s access to assessment and screening processes.

Upon arrival to the reception prisons (MAP and DPFC), any pertinent information regarding the prisoner is immediately accessed from Victoria Police data that accompanies the prisoner. Prisoners with immediate needs, such as medical or psychiatric requirements, are given priority access to treatment services. This involves a medical and psychiatric assessment by appropriately trained and qualified staff, in addition to the standard risk assessment instrument administered by Corrections Victoria staff.

Where no concerns are identified prior to reception from the range of sources available, placement in a holding cell occurs until the reception process commences. Staff maintain regular observation of newly received prisoners in these cells, and are able to re-prioritise access where necessary.

As mentioned above, all Indigenous prisoners undergo a psychiatric screening process upon reception to the DPFC or the MAP, in recognition of the vulnerability of Indigenous prisoners and the impact of incarceration and separation from family.
In addition, the Indigenous Services Unit based at the MAP or the Aboriginal Liaison Officer at DPFC interview all newly received Indigenous prisoners, most often on the day of reception, and always within 24 hours of reception. This provides a further avenue of culturally specific information that is made available to medical and prison staff if necessary.

The medical and psychiatric assessments are conducted by appropriately trained medical staff: doctors and nurses additionally trained in psychiatric assessment and care. Interim case plans are developed following these initial consultations and ongoing medical and psychiatric care provided as required.

Where at risk concerns are identified, psychiatric health professionals are required to conduct a psychiatric screening within two hours of initial identification of risk. However, where at-risk concerns are identified during the reception process, the psychiatric screening process generally occurs well within the two hour framework.

Corrections Victoria staff complete a risk assessment, including SITUPS on all prisoners initially received into prison custody. Staff who undertake risk assessments are appropriately trained and provided with ongoing support in the development of assessment and interviewing skills. Staff who work in the reception area are aware of the importance of the assessments process in the prisoner’s ability to orient and integrate into the prison environment as smoothly and safely as possible. They are also aware that the reception process is the beginning of Corrections Victoria’s duty-of-care, and ensure that the assessments are conducted with the utmost care and skill.

ACM
Policy No. 2.11.2 – Reception Process – Prisoners transferred to Fulham

- Formal reception/orientation process involves immediate risk/needs assessment – counsellor/psychologist.
- After screening, prisoners deemed to be at risk to have an Interim risk treatment place devised to minimise their potential self-harm/suicide. To be seen by a (mental health professional), psychologist as soon as possible (within 2 hours of referral).
- HRAT (High Risk Assessment Team) – Risk Treatment Plan (RTP) may be formulated. (HRAT – psychologist, unit manager, mental health professional/nurse).

Group 4
At PPP in approximately 1998, a pool of correctional staff were identified and trained to provide a suicide and self-harm assessment upon admission into PPP. This process has been further expanded upon in 2001-2002 when two full-time SASH (Suicide and Self-harm Prevention) Custodial Officers (SCOs) were appointed and a back-up pool of seven other SCOs were selected. The SCOs at PPP are trained in suicide and self-harm prevention, the administration of SITUPS, and are coordinated by Psychological Services and receive regular support and supervision. Upon reception to PPP all inmates are currently screened by SITUPS and received a medical assessment which also includes a risk assessment. A communication strategy between the SCOs and medical services exists to ensure that information upon reception is shared. A process exists whereby any prisoners deemed at risk of self-harm are observed and cared for once admission is completed.

Corrections Victoria
As indicated above, the spirit of this recommendation has been implemented via the standards processes and procedures operational at the MAP and the DPFC. Information regarding prisoners to be received at either reception prison is actively sought by
Corrections Victoria staff. Access to historical data is supplemented by current data from a range of sources including Courts and Victoria Police, and is utilised to determine priority access to the range of assessments and screening processes.

**Corrections Victoria (DOJ)** advised the Review that this recommendation continues to be relevant but needs to take into account the logistical restraints at the principal reception prison for meal prisoners (MAP) as discussed above and the processes in place to ensure:

(a) that prisoners receive a comprehensive assessment upon reception; and
(b) that each prisoner's safety is ensured while the reception process takes place.

**Corrections Victoria (DOJ)** further advised the Review that all prisoners identified as at-risk, as part of the reception assessment, are referred to a mental health professional for further assessment. Classification and placement options will depend on the level of risk assigned based upon this further assessment. Newly received prisoners, assessed as being at high risk of suicide or self-harm are maintained under close observation at the receiving prison (MAP and PPP for males and DPFC for females) until the risk has been minimised. Prisoners in need of immediate psychiatric in-patient care, must be maintained at MAP and DPFC. Those requiring frequent psychiatric treatment/monitoring may also be placed at PPP. Prisoners suitable for local psychiatric services or with a history of psychiatric treatment can be transferred to any prison location commensurate with their security and management assessment. For prisoners at any location, placement may be affected if the prisoner displays any at-risk indicators and subsequently receives a suicide alert flag. In general, however, prisoners who have recently (this current sentence) had a psychiatric status ascribed or a suicide alert will not be placed in an open camp environment, rather they are placed where they may receive some level of medical/psychiatric intervention if required.

See Section 6.2 – Police for the **Victoria Police** response to this Recommendation.

See Section 6.5 – Juvenile Justice for the **Child Protection and Juvenile Justice (DHS)** response to this Recommendation.

**Recommendation 130: Transfer of information**

**Corrections Victoria (DOJ)** advised the Review that exchange of information between Police and Corrections is primarily achieved through the Prisoner Information Record (PIR) (Form 450) which is required to be completed for all prisoners lodged in police custody.

The PIR contains information relating to:

- the prisoner's medical condition including physical and psychological aspects;
- any security risk the prisoner may present at that time or in the future. This includes matters such as the likelihood of violence, suicide or escape; and
- the likelihood of the prisoner being subject to attack from other prisoners

The completion of the PIR is effectively the initial risk assessment for each prisoner. This Record accompanies the prisoner at all times and is available to Victoria Police, custodial officers and transport contractors.

On reception into prison, the prison reception staff review the PIR and:

- provide copies of relevant medical information to staff at the medical centre;
• provide copies of other reports to the Reception Supervisor, the assessing officer or senior officer if appropriate; and
• place the Record on the prisoner’s Individual Management Plan File (IMP).

Following reception, the Prisoner Information Record is retained (irrespective of whether the prisoner is a remand, trial or sentenced prisoner) on file and that form accompanies the prisoner:

• on every occasion that he/she is scheduled to appear before a Magistrate’s Court or is otherwise likely to be detained in Police custody; and
• to the prisoner’s next prison location when he/she is transferred.

**Polcells Database**

In addition to the above, the Polcells database was established in March 1999. The system is linked to the Corrections electronic database (PIMS) and enables the sharing of information between Police and Corrections involving prisoner locations, movements, risk factors and time spent in Police custody.

Implementation difficulties have mainly concerned differences in definitions between agencies. It was found that some risk items, although labelled similarly, could have different meanings for operational areas. Additionally, differences in risk assessment methods between agencies have been identified. To overcome these difficulties, a process was put into place to review risk definition and transfer. This was completed in early 2002.

It is planned that the above system will be replaced by an electronic ‘E*Justice’ system which will hold data relevant to the management of a person in custody anywhere within the criminal justice system, including information in relation to previous incidents of suicide and self-harm. This will greatly enhance the recording and transfer of information related to suicide risk as offenders pass between police, courts and prisons.

The ‘E*Justice’ system is part of the Criminal Justice Enhancement Program which was established in accordance with the recommendations of Project Pathfinder (1995-98). The project has a business improvement focus and is developing and implementing an integrated information environment across police, courts and corrections which provides ready access to common shared data. The common data includes personal information specifically relating to risk of self-harm. The project is developing new computer systems and interfacing existing systems. For Corrections Victoria, the existing CCS and prison systems (OASIS and PIMS systems) will be replaced.

Current progress has involved CCS, Prisons and Victoria Police agreeing upon the risks and recommended actions relating to risks that will be shared between agencies. (A working group, led by the CJEP Project Director, was formed in February 2001 to develop a common set of concepts, terms and definitions for utilising risk alerts in E*Justice which can be used and understood meaningfully by all users. The group had representatives from CCS, Prisons, Corrections Victoria, Policy and Standards and Victoria Police. In undertaking this task consideration was given to the wide ranging and dynamic issues presented by all persons in contact with the criminal justice system.

A mandatory field for Victoria Police and Corrections in the new application is the Aboriginal status of the offender. A history of the self-reported field will be maintained. Also, Magistrates’ and Judges’ comments relating to risk and the management of offenders will be passed electronically to relevant Corrections users.
The application, E*Justice, is currently (in 2004) in acceptance testing with plans for a CCS pilot well advanced.

The sharing of risk information between agencies has been deemed as not subject to privacy restrictions due to duty-of-care responsibilities. Designs for the new application have embedded procedures for transferring care information. In the new application, E*Justice, access to case information, for example Community Corrections and Prisons Individual Management Plans will be controlled on a case involvement basis, for example, access will be limited to Correctional case officers directly involved in the case. Access to Incident information will be restricted to officers directly involved with managing the offender.

The Victorian Privacy Commissioner has taken an interest in and has been briefed by the CJ EP project.

The Corrections Act 1986 authorises the sharing of certain information between agencies involved with the management of offenders. Amendments to the Act in July 2002 to accommodate CJ EP provided enhanced information sharing capabilities under Ministerial approval. (The relevant sections of the Act and Amendments do not specifically refer to Aboriginal persons). The E*Justice application will implement the information sharing arrangements as defined in the Corrections Act as amended.

Corrections Victoria (DOJ) also provided the following update in relation to CJ EP E*Justice:

Protocols have been established for the transfer of information between Victoria Police and Corrections based around risks and recommended actions. Corrections Victoria provided a copy of the Criminal Justice Enhancement Program Risk alerts for E*Justice- Project Document (June 2001) to the Review. The Project Document sets out the framework for defining and categorising risk alerts for accused persons. Corrections Victoria is in the process of developing Operating Procedures for Risk and Recommended Actions.

Note that in Section 1.4.10 of the Project Document, it was proposed that special indicators be incorporated to display special needs category of persons where there is likely to be a high incidence of risk factors or special needs present, eg Aboriginal and also intellectually disabled. The Director of the CJ EP Project has advised that the E*Justice Risk and Recommended Actions screens have been designed with a generic descriptor given the State has a duty-of-care to every person in custody irrespective of Aboriginality, ethnicity, gender, disability etc. A generic approach also covers the issue where an accused person does not self-declare their background.

While Aboriginality is not flagged through the Risk and Recommended Actions framework, Aboriginal status is flagged in the Person Details screen which will allow for Aboriginal prisoners to be referred to Aboriginal specific services, including the Aboriginal Liaison Officer following reception. This replicates the current PIMS system which does not flag Aboriginality as a risk, but does record Aboriginal status in the Prison Record screen.

Sitting above the Risk and Recommendation Actions framework are the provisions of the Criminal Justice Legislation (Miscellaneous Amendments) Act 2002 which provides the legislative basis for transfer of information between agencies.

There has been discussion with VALS and VAHS relating to the transfer of information between agencies. Any information held on E*Justice about the physical or mental
condition of any person is held in confidence although there are provisions for revealing matters relating to a person’s condition that impacts on their care in custody, eg epilepsy;

Given the information sharing provisions of the *Criminal Justice Legislation (Miscellaneous Amendments) Act 2002*, there is no need to seek further Ministerial approval. The previous Minister for Corrections signed an instrument of authorisation for exchange of information with Victoria Police for the purposes of CJEP. The Chief Commissioner of Police signed a parallel instrument of authorisation. The instruments comply with the *Corrections Act 1986*, the *Police Regulation Act 1958* and the *Information Privacy Act 2000*.

The prisons reception pilot ceased in April 2004 and the CCS functionality was rolled-out on 24 November 2004. Full roll-out of CJEP is now expected during 2005.

A working group has been developing risk and recommended actions protocols and are including them in operational procedures and manuals.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 162: Discharge of firearms to affect arrest or prevent escape**

*Legal Policy (DOJ)* advised the Review that the 1996-97 Government response was that this Recommendation was implemented:

*Correctional Policy and Standards for Men’s and Women’s Prisons in Victoria require the Prison Manager to ensure that:*

1. firearms are stored, carried and used in a safe and lawful manner;
2. not allow the staff to carry firearms in the normal operation of the prison;
3. ensure all firearms issued to staff are approved and in compliance with the requirements of the *Corrections Regulations 1988*; and
4. require staff responsible for the carrying and discharge of firearms to receive accredited training endorsed by the Registrar of Firearms and to the standards required by the Correction Services Commissioner from time to time.

In 2002, a prison officer is required to obtain a firearms licence before being permitted to use a firearm in the course of his or her duty. Under the *Firearms Act*, a licence will not be issued unless the applicant has completed a course of firearms safety approved by the Chief Commissioner and has good knowledge of firearms law (amongst other things).

Part 3 of the *Corrections Regulations* regulates the issue and discharge of firearms. Regulation 8 and 10 are the most relevant provisions. Regulation 8 provides:

*A Governor may only authorise the issue of a firearm to a prison officer in the following circumstances -*

(a) when the prison officer is undertaking duties as an armed escort or on patrols outside the prison;

(b) when the prison officer is undertaking special duties specified by the Governor;
(c) when the prison officer is undertaking duties at posts specified by the Governor at the times when prisoners are locked in cells;

(d) when the prison officer is undertaking firearms training under the direction of an approved instructor;

(e) at all times in cases of emergency.

Regulation 10 provides:

1) If a prisoner escapes or attempts to escape from custody, a prison officer may discharge a firearm at the prisoner if the prison officer believes on reasonable grounds that it is the only practicable way to prevent the escape of the prisoner.

2) A prison officer may discharge a firearm at a person who he or she is reasonably believes to be aiding a prisoner in escaping or attempting to escape from custody, if the prison officer believes on reasonable grounds that it is the only practicable way to prevent an escape.

3) A prison officer may discharge a firearm at a person if the person is using force or threatening force against—
   (a) another person in the prison; or
   (b) an officer (including the prison officer carrying the firearm) acting in the execution of his or her duties outside a prison; or
   (c) a prisoner outside a prison —

and the prison officer reasonably believes that shooting at the person using or threatening force is the only practicable way to prevent the person causing death or serious injury.

4) Before discharging a firearm at a person, the prison officer must —
   (a) if it is practicable to do so, give an oral warning to the effect that the person will be shot at if he or she does not stop escaping, attempting to escape or using or threatening force (as the case may be); and
   (b) satisfy himself or herself that shooting at the person does not create an unnecessary risk to any other person.

A major review of the use of force in the Victorian prison system was completed in 2003 by former Victoria Police Commissioner, Mr Neil Comrie. As a direct consequence of this review, a new overarching, systemic policy has been developed that clearly defines the organisational philosophy regarding the use of force. It is based on a risk management approach to the supervision and control of prisoners, and heightens awareness that the safety of staff, prisoners, offenders, and the community, is paramount. Corrections Victoria has expanded on the tactical options available to staff when conducting external prisoner escorts. A Commissioner's Requirement has been developed that prescribes appropriate Police Officers appropriate levels of restraint, accoutrements and staffing for external prisoners escorts.

**Police Officers**

The *Victoria Police Manual* provides standing orders in relation to both training and the justification for the use of firearms, for example, *Must not draw the firearm unless extreme danger is anticipated, may only discharge the firearm when they reasonably believe it is necessary to protect life or prevent serious injury. Warning shots should not be fired.* The
relevant sections of the Victoria Police Manual were provided to the Review. The above requirements adequately cover the implementation of this Recommendation. The use of oleoresin capsicum spray has also been introduced.

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 163: Regular training in restraint techniques**

**Corrections Victoria (DOJ)** advised the Review that restraint techniques may only be used within prisons in accordance with the *Corrections Act 1986* (s23) and the Standards set by Office of the Correctional Services Commissioner (OCSC). Among other things the Correctional Policy and Management Standards require that:

- an instrument of restraint may only be used: where it is strictly necessary to maintain the security of the Prisoner or prevent injury to any person; must be of the least restrictive type; applied for the minimum time necessary to control the prisoner; removed during medical tests and procedures providing this meets security and management requirements.
- all categories of instruments of restraint and chemical agents must have the written approval of the Commissioner prior to the prison manager making them available for use;
- the prison manager must record all matters where force is used and/or instruments of restraint or chemical agents are used and promptly forward those reports to the Commissioner.

**Corrections Victoria (DOJ)** is committed to utilising restraint equipment only as a last resort. For all new recruits, training is provided regarding restraint techniques and the application of restraint equipment. Following initial training, ongoing training is available only to staff from the Security and Emergency Services Group (SESG) and the Emergency Response Group (ERG) at each prison location. The application of restraints is regarded as a serious matter by Corrections Victoria, but necessary where no other options are available.

All SESG and ERG officers trained in the use of restraints are also trained in tactical communication, a process that aims to de-escalate situations through verbal communication. Tactical communication aims to reduce incidents and maintain safety by assessing the situation and de-escalating, using communication as the basis for non-physical resolution. The application of restraints, therefore, will only be used in certain circumstances, including some situations where tactical communication is not able to resolve the situation, and no other alternatives are available to staff.

**ACM**

All Operational Staff are trained – the application of restraints in accordance with Operating Policy 2.6.1.

**Group 4**

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is TAFE Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

- Inter-personal Skills particularly Communication, Leadership Skills and Group Dynamics, Counselling Skills, Dealing with Anger and Aggression, Conflict Management and Challenging Unacceptable behaviour.
All new staff are trained in Control and Restraint Techniques using only Corrections Victoria approved restraints and techniques, then they receive annual refreshers.

Corrections Victoria’s Prison Regions are currently developing protocols with their respective local hospitals regarding the restraint of prisoners receiving medical treatment within a hospital and will result in Memoranda of Understanding between the respective hospital administrations and Corrections Victoria. A Senior Prison Officer’s position has been established at St. Vincent’s Hospital to perform the task of co-ordinating prisoner movements.

Corrections Victoria has developed an integrated Tactical Options Training Package for Corrections Victoria custodial staff. It encourages a safety first approach to prisoner management. The selection of trainers is also being reviewed to ensure that trainers demonstrate a personal commitment to the organisational philosophy on the use of force.

A review of existing Corrections Legislation is being undertaken to determine what changes may be required to ensure that the legislation provides appropriate guidance regarding the circumstances in which force and lethal force can be used

See Section 6.2 – Police for Victoria Police response to this Recommendation.

**Recommendation 164: Laying of charges arising from incidents of self-harm**

**Corrections Victoria (DOJ)** advised the Review that:

**Corrections Victoria**

Corrections Victoria does not charge prisoners who have committed an act of self-harm with an offence relating to the self-harm behaviour. Engaging in self-harm behaviour requires the intervention of psychiatric and other professionals, as opposed to a punitive response.

However, where prisoners cause deliberate, extensive and costly damage to prison property whilst engaging in self-harm behaviour, consideration will be given by Corrections Victoria staff in laying charges against the prisoner. The actual laying of charges in these circumstances has been quite rare.

**ACM**

Refer to Policy Guidelines 3.2.7 on At Risk/Self-harm/Suicide Management.

All prisoners are screened and assessed for risk of self-harm or suicide upon arrival. High Risk Assessment Team assess and make recommendations. No charges are laid by FCC when a prisoner inflicts self-harm (unless the purpose is to gain a secondary advantage).

**Group 4**

Charges are not laid in relation to self-harming behaviour.

**Corrections Victoria (DOJ)** reported that there were 17 self-harm incidents involving eight Indigenous prisoners in 2003 and this compares with 157 incidents involving 118 non-Indigenous prisoners. None of the self-harm/attempted suicide incidents relating to Indigenous prisoners resulted in charges or disciplinary action.
Recommendation 165: Elimination and/or reduction of the potential for harm

Corrections Victoria (DOJ) advised the Review that significant development has occurred in relation to the redevelopment of a set of guidelines in both cell and content design which addresses the fundamental issue of removing obvious hanging points in newly constructed mainstream prison cells.

On 27 April 2000, the Victorian State Coroner handed down his findings in relation to the death of five prisoners at PPP. He found that the State of Victoria (by its agent the DOJ) and Group 4 Correction Services Pty Ltd (the private operators of PPP) had contributed to four of the five deaths by failing to minimise obvious hanging points in the construction of mainstream cells and prison hospital shower facilities.

The Coronial Inquiry made a number of recommendations in response to its findings, specifically Chapter 8, Recommendation 7 which stated that the Secretary, Department of Justice (with the Correctional Services Commissioner) consider the establishment of a specific and high level committee to examine the feasibility of developing initial guidelines (leading eventually to standards) in cell/cell furniture design aimed at eliminating the more obvious of the hanging points in prison general (or mainstream) cell and prison hospital wards.

In response to this and subsequent recommendations, Corrections Victoria established the Building Design Review Project (BDRP) Team. The aim of the project team was to develop guidelines (and eventually standards) in both cell design and content design which addressed the fundamental issue of removing obvious hanging points in newly constructed prison mainstream cells.

The Project Team also recognised the impact of other safety issues outside of those traditionally associated with self-harm or suicide. Therefore, fire related matters such as the provision of effective smoke detection sensors, alarms, smoke handling and air circulation systems, fire rated walls, floors and ceilings have also been incorporated into the BDRP Guidelines.

BDRP Guidelines 2000 formed the basis for all new correctional facility construction in the State of Victoria, including the expansion of existing mainstream maximum and medium security prisons. This project has resulted in a unique ‘world’s best practice design’, utilising the three key principles of security, safety and humane containment. The following features are a summary of the practical aspects of the cell design:

- no obvious hanging or ligature points;
- forced air circulation throughout the cell;
- exhaust boost for smoke or spill function;
- all edges are rounded;
- all knobs/taps are sloped;
- safety and security screws are used throughout;
- items such as the mirror and pin board sit flush on the surface of the wall;
- all joints and gaps are sealed with a non-pickable sealant; and
- all lighting is recessed.

In February 2004, the Cell and Fire Safety Guidelines Revision 2004 was released. These guidelines evolved from the BDRP Guidelines 2000. It was produced to present the policies
and philosophy of DOJ with respect to governing principles and interrelationships between cell safety, fire safety and correctional requirements.

Works recently completed under the Cell and Fire Safety Guidelines Revision 2004 include:

1. MAP (level 5 Cell and Fire Safety upgrade);
2. DPFC Centre (B4, A1 and A2);
3. Barwon Prison (Diosma, Acacia and Banksia units);
4. Ararat (64 upgraded cells);
5. redevelopment of Langi Kal Kal Prison along with cell and fire safety upgrade works;
6. fire upgrades were completed at Loddon Prison (Lauriston Unit);
7. the Fire Ring Main was upgraded at Dhurringile Prison;
8. currently MAP is undertaking the installation of an early warning smoke detection system and the DPFC is undergoing an upgrade of the Fire Ring Main; and
9. further BDRP works are scheduled to commence in 2005-2006.

These guidelines can be used to develop a fire safety solution as part of the:

- design of new buildings and existing buildings (where appropriate);
- design of specific fire safety protection measures within new and existing buildings;
- development of alternatives to prescriptive codes and standards requirements; and/or
- evaluation of facility fire safety design.

These fire safety guidelines provide:

- a process to develop a performance based facility specific fire safety solution; and
- fire safety principles and strategies based on expert advice to guide the development of facility specific fire solutions.

**BDRP Rectification Program:**

The Victorian State Government has allocated a total of $50 million over the next ten years to improve cell safety and fire prevention across the entire correctional facility. A risk audit has been conducted across all maximum and medium security prisons and a fire audit has been completed for all prisons. A BDRP Steering Committee comprising representatives from each prison has established a works priority list for implementation of the BDRP rectification program. In addition, supplies of fire related materials, including fire extinguishers, fire retardant mattresses, breathing apparatus and a fire fighting appliance have been purchased and distributed to the relevant prisons.

However, rectification of existing mainstream cells (maximum and medium security) will take some time to achieve. In recognition of this, $50m has been allocated over 10 years for this purpose. Significant logistical issues also need to be managed, for example, finding alternative accommodation within the system for prisoners housed in units while the rectification occurs.

See Section 6.2 – Police for Victoria Police response to this Recommendation.
Recommendation 166: Exchanging of information
See Recommendation 130 for Corrections Victoria (DOJ) response to this Recommendation.

 Corrections Victoria (DOJ) further advised that no recent issues have been identified regarding the current process for transfer of information between Police and Corrections. It is proposed that the E*Justice prisons release will roll out simultaneously with the Victoria Police Custody release during the first half of 2005.

There has been closer collaboration between Corrections Victoria and Victoria Police to ensure better alignment and increased information sharing between the agencies.

See Section 6.2 - Police for Victoria Police response to this Recommendation.

Recommendation 176: Appointment of a complaints officer
Corrections Victoria (DOJ) advised the Review that it coordinates a state-wide Official Visitor program in accordance with sections 35 & 36 of the Corrections Act 1986. This program commenced in 1986 with the stated purpose to provide a system of independent advice to the Minister for Corrections with respect to the operation of Victoria's prison system. Official Visitors are appointed to both public and private prisons, most having more than one Official Visitor.

The primary role of an Official Visitor is to provide the Minister for Corrections with independent advice regarding the operation of the prison to which the Visitor is appointed. Visitors are the 'eyes and ears' of the Minister and are expected to report any matter relating to the prison's operation which, the Visitor believes, the Minister or community would be concerned about or unhappy with. Visitors may also advise the Minister of any 'good news' relating to the prison.

A secondary role is to link the prison to the community by enabling members of the community to access the prison as observers. In this way, Official Visitors may also act as a conduit for community involvement with the prison, or to clarify matters about which the community may be confused. To perform their role, Visitors are permitted unrestricted access to a prison and are able to communicate freely with all staff and prisoners. Information gained by Visitors is confidential and must not be disclosed except for the purpose of performing duties as a Visitor.

Official Visitors' role is to be accessible to staff and prisoners to listen to their concerns, in particular those issues relating to the management and operation of the prison. On occasion, this may involve follow up on an issue relating to one or more individuals. Where the situation of a prisoner is considered unacceptable, this should be reported. Visitors are also sometimes used as independent observers at proceedings such as disciplinary hearings, to confirm that the process is fair and proper.

Indigenous prisoners have access to all Official Visitors. Nonetheless, a need for a specific service for Indigenous prisoners is recognised and Initiative 1.4 of the VAJA establishes the role of Aboriginal Official Visitor with reference to this Royal Commission into Aboriginal Deaths in Custody Recommendation. $10,000 is available in 2002-03 from VAJA funds to support these positions (primarily for reimbursement of expenses).

Corrections Victoria (DOJ) has co-ordinated a strategy to recruit at least seven Aboriginal Official Visitors, covering all prison locations. This has involved advertising in the
Koori Mail, local community radio and seeking expressions of interest via the RAJAC network.

The Official Prison Visitors Scheme has been administered by the Corrections Inspectorate (DOJ) since 1 July 2003 and provides a system of independent advice to the Minister for Corrections with respect to the operation of Victoria’s prison system. The Scheme has been operating in Victoria since 1986 and is co-ordinated by the Corrections Inspectorate.

As at 30 November 2004 there were 28 Official Prison Visitors appointed of whom three were Aboriginal Official Visitors (one male and two female) and one was a Vietnamese Visitor. Despite continued recruitment efforts in the period, it proved very difficult attract Aboriginal candidates. Visitors are appointed to both public and private prisons for a two-year term and are expected to visit on a monthly basis.

Two Aboriginal Official Visitors (AOVs) are currently visiting five prisons between them (Loddon, Tarrengower, Bendigo, Dhurringile and Beechworth). An additional AOV was appointed on 1 June 2004 to visit DPFC and Barwon Prison. With the active support of the Indigenous community, it is planned to recruit at least another four AOVs during 2001-04.

Official Visitors are given unlimited access to the prison to which they are appointed. They can communicate freely with staff and prisoners. They provide written reports to the Minister after each visit. The reports cover a range of issues in relation to prison policies and conditions.

Reports received from the AOVs have, to date, not raised any issues or complaints that have been specifically related to the Aboriginality of the prisoners concerned. Rather, they deal with the sorts of matters that are common to most prisoners.

However, AOVs, by virtue of their extended families and close community links, willingly and enthusiastically provide support and assistance to Indigenous prisoners and prisoners’ families and friends which go well beyond the formal duties of an Official Visitor.

No data is kept in relation to complaints from Indigenous prisoners. The Ombudsman’s Office provides Corrections Victoria with monthly reports on all complaints received, action taken and current status, however, this report does not identify complaints from Indigenous persons.

**Recommendation 179: Processing prisoner requests and complaints**

Corrections Victoria (DOJ) advised the Review to:

Refer to the Corrections Act 1986 (s47(1)(e)): *Each prisoner has the right to 'make complaints concerning prison management to the Minister, the Secretary, the Governor, an official visitor and the Ombudsman.'*

Corrections Victoria administers the Official Visitor program which provides an independent process for prisoners to take up complaints (refer to response to Recommendation 176).

Corrections Victoria acknowledges the right of prisoners to make requests and complaints and provides a formal process to address these issues fairly, openly and in a timely manner. Staff deal with prisoners’ requests and complaints in a fair and equitable manner while maintaining objectivity and confidentiality. Requests and complaints of prisoners are handled promptly and effectively.
Corrections Victoria’s Operating Procedure 4.1 Requests and Complaints provide staff with guidelines in the processing or prisoner requests and complaints. This Operating Procedure encourages staff to process requests and complaints in a timely and fair manner. Where possible, the staff member receiving the request or complaint will resolve the issue, referring on only in circumstances where the issue falls outside their role or authority.

Prisoners are advised of the requests and complaints process at reception at each prison location. Where prisoners are dissatisfied with the response, information is provided regarding their ability to refer the matter to alternative processes, such as referral to the Official Visitor, the Ombudsman etc.

Prisoners have also referred requests and complaints to other sources such as Official Visitors when they have been dissatisfied with the outcome, as opposed to where the request or complaint was unfairly or inappropriately dealt with. In addition, prisoners have occasionally complained in relation to what has been perceived as unacceptable delays in processing the request, when the timeliness has been appropriate given the tasks and processes involved.

**ACM**

Refer to Policy 2.21.2 – Services Provided for Aboriginal Prisoners.

Aboriginal Liaison Officer appointed to liaise with Aboriginal prisoners regarding their special needs and cultural considerations.

**Group 4**

The following documents apply:

- PPP Operational Instruction No. 71 – *Prisoner Requests and Complaints*.
- A selection of 23 Request Forms are available for perusal if required.

However, prisoners have referred requests and complaints to other sources such as Official Visitors as to why they have been dissatisfied with the outcome, as opposed to where the request or complaint was unfairly or inappropriately dealt with. In addition, prisoners have occasionally complained in relation to what has been perceived as unacceptable delays in processing the request, when the timelines have been appropriate given the tasks and processes involved.

**Corrections Victoria (DOJ)** further advised that no data is kept on complaints from Indigenous prisoners, and referred the Review to its response to Recommendation 176.

**Recommendation 181: Minimum standards for prisoners placed in segregation or isolation**

**Corrections Victoria (DOJ)** advised the Review that:

Approval must be given by the Sentence Management Unit before a prisoner is placed in a Management Unit as a result of a significant incident or for disciplinary purposes. Placements in a Management Unit are reviewed by Sentence Management on a weekly basis. Prison Managers are required to ensure that prisoners in Management Units have access to at least one hour of exercise in the open air.
When an Aboriginal prisoner is placed in a Management Unit, steps are taken to ensure that appropriate support is provided, eg: through referral to Aboriginal Well-being or Indigenous Liaison Officer, and other counselling or psychiatric services as required.

Corrections Victoria recognises the additional strains experienced by Indigenous prisoners when placed in segregation for a period of time. Where Indigenous prisoners are placed in segregation due to completion of sanctions arising from loss of privileges or as a result of concerns regarding suicide or self-harm, basic standards are maintained throughout the period of separation.

Indigenous prisoners who are separated will have access to fresh air, lighting, daily exercise and adequate clothing (unless this constitutes a concern due to potential suicide or self-harm behaviour). The accommodation will continue to maintain basic standards such as adequate heating and cooling and sanitation facilities. Access to food and water will continue in the usual manner. These are basic human rights that are not removed simply due to separation orders.

Prisoners completing a loss of privileges regime will not have access to visitors, but will continue to have access to necessary staff such as medical, psychological or psychiatric staff or the AWOs.

Prisoners separated due to concerns regarding at risk behaviour, may be permitted access to visitors such as families and chaplains. This will be at the discretion of medical and psychiatric staff, and prison staff.

Where prisoners are separated, the AWOs will be contacted and liaison will continue for the duration of the separation. Where possible, AWOs will visit the separated prisoner and provide support for the duration of the separation.

Staff are mindful of the incidence of Indigenous deaths in custody, and ensure a regime of observation that is consistent with the assessed risk.

**ACM**

Refer to Policy 2.25.1 - Separation - Where prisoners can be managed under the least restrictive conditions consistent with the reasons for placement and to minimise the risk of self-harm a review of prisoner's circumstances can be made.

In certain circumstances, there are no options apart from separation. In particular, in administering sanctions arising from proven charges, or as a result of concerns regarding at risk behaviour. In these circumstances, appropriate supervision and observation schedules will be implemented and rigidly adhered to. The collaboration between custodial staff, health staff and other staff such as the AWOs and chaplains is a practice associated with separation orders, that the prisoner's needs will continue to be met, despite the separation.

**Corrections Victoria (DOJ)** advised the Review that Corrections Victoria does keep data which identifies prisoner separations by Indigenous status. However, it is recognised that there has not been a detailed analysis on the circumstances where this occurs and whether Indigenous prisoners are placed in management/separation cells at a disproportionate rate to non-Indigenous prisoners.

For the security and good order of prisons, Indigenous prisoners have been separated following instances of assaults on staff or prisoners, to serve loss of privileges or pending investigation into incidents or threats/intimidation. Minimum standards are adhered to for
all prisoners in terms of fresh air, lighting, daily exercise, adequate clothing and heating, adequate food, water and sanitation facilities and some access to visitors.

At 21 May 2004 there were five Indigenous prisoners in management units (one long term placement, one for placement concerns, one for management reasons and two pending investigation). When considering an Indigenous prisoner for a long-term placement, such determination is made only after consultation with the Aboriginal Well-being Officer. The decision to classify an Indigenous prisoner as a long-term placement in a management unit may only be made upon the approval of the General Manager, Sentence Management Unit.

The Corrections Inspectorate conducted a Review of the Administration of Separation Orders – High Security and Management Units in late 2004. Procedural documentation in relation to the separation or classification of prisoners to High Security and Management Units is currently being reviewed to ensure that policies and procedures are up-to-date and consistently applied across the State.

As indicated, where an Indigenous prisoner is placed in the Management Unit the Indigenous Liaison Officer is contacted. In addition, wherever possible the Indigenous Liaison Officer attends when the prisoner is reviewed by Sentence Management.

**Recommendation 182: Humane and courteous treatment of prisoners**

Corrections Victoria (DOJ) advised the Review that:

In the daily delivery of correctional services, Corrections Victoria expects staff to treat all people, not just prisoners, in a humane and courteous manner. This expectation is communicated to staff from initial recruit training. It is reinforced through Corrections Victoria's Values and Behaviours, given that professionalism requires acting in a just and humane manner.

Staff have access to a range of training programs that assist in the development of skills to treat prisoners appropriately. Communication skills training, tactical communication, coaching and conflict management encourage staff to demonstrate skill development, analyse their practice and use the feedback to improve skill development.

The Corrections Regulations clearly articulate that staff working with prisoners must not use harsh or abusive language when dealing with prisoners. The requirement that staff behave in a humane and courteous manner with prisoners is also reinforced in Operating Procedure 4.1 Requests and Complaints. *Corrections Victoria Code of Conduct* (Operating Procedure 9.4) also articulates the manner in which it expects staff to behave in the discharge of their duties. Other human resources policies have application in this instance, particularly 8.5 Addressing Misconduct.

Where staff are alleged to have behaved inappropriately, having failed in a serious manner to behave in a humane and courteous manner, Corrections Victoria will investigate the alleged incident. Where such matters are proven, a range of sanctions are available to Corrections Victoria depending on the seriousness of the incident.

Corrections Victoria has in the past, instituted disciplinary proceedings against staff who have failed to discharge their duties to the standard required by Corrections Victoria in relation to humane and courteous interaction with prisoners.
ACM
Refer to Policy 1.3.01 - Code of Conduct which ensures that all ACM employees act in a professional and courteous manner to their supervisors, peers and in the treatment of prisoners during their daily routine.

Group 4
All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is TAFE Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

- throughout training the philosophy and ethos of Group 4 Correction Services in enforced; and

Internal disciplinary action will take place following a written complaint, investigation and proof that a serious breach has been made in the way that an individual has spoken to a prisoner in a deliberately hurtful or provocative manner.

Corrections Victoria (DOJ) advised the Review that it has policies and procedures in place to ensure that staff adopt models of appropriate behaviours and attitudes. The organisation also has written Values and Behaviours which are articulated in position descriptions applying to all staff. These values form part of the selection criteria for recruit staff.

In addition, training programs which have a focus on interpersonal skills have been extensively deployed throughout the organisation. These include Conflict Resolution, Ethics in Action, Setting the Scene, Motivational Interactions and Coaching for Superior Performance.

Where staff behaviour is inappropriate, prisoners have various avenues of complaints both internal through the prison management, Director and Commissioner, and external, for example, through the Official Visitors, Ombudsman, HR&EOC. These are articulated in the Operating Manual and form part of the prisoners orientation program in all prisons.

Examples of reports relating to allegations of misconduct and disciplinary procedures taken against officers can be provided by the Review and Ethical Standards Unit for inspection by the Review Team.

Recommendation 183: Aboriginal support groups
Corrections Victoria (DOJ) advised the Review that:

The AWOs work closely with Indigenous prisoners, custodial staff and programs staff. The AWOs maintain individual contact with Indigenous prisoners, and arrange for group meetings to occur. These group meetings, in effect, are Indigenous support groups. Facilities such as a venue and resources are provided to Indigenous prisoners wishing to meet as a group. Books, videos and other resources are also available to Indigenous prisoners through programs at each location.

The ACIP ensures that Indigenous (and in some programs, non-Indigenous) prisoners are able to meet and to continue providing support once the program has concluded. The ACIP
allows prisoners to share information in a safe environment, to learn new skills and to explore new avenues. This often acts as a motivator for Indigenous prisoners to informally continue the contacts that were originally commenced during the program.

In addition to prisoner support groups, Corrections Victoria encourages Indigenous community agencies to visit prisons to provide services to Indigenous prisoners. Services may include simply visiting prisoners in order to ensure connection to Indigenous culture, provision of educational services, access to legal advice and information, involvement in NAIDOC and Reconciliation Week activities, participation in ACIP, housing support.

Corrections Victoria facilitates visits from Indigenous community agencies by ensuring that the AWOS or the ISOs are in the prison to conduct escorts and to provide any assistance required during their attendance, that suitable facilities such as venues are booked, that green passes are provided where individuals meet the criteria and ensuring fee for service where appropriate.

Indigenous agencies regularly visiting prisoners develop an understanding of the unique issues facing Indigenous prisoners. These organisations are able to provide valuable information to Corrections Victoria regarding the needs of Indigenous prisoners. Organisations such as the Victorian Aboriginal Legal Service regularly provide feedback to Corrections Victoria. This feedback is evaluated and acted upon where possible.

However, Indigenous community agencies occasionally are unable to provide services to prisoners, or are only able to provide services infrequently due to a high demand and a consequential need to prioritise access to services. In addition, prison program funding on generic programs is often limited, consequently, fee-for-service arrangements are often inadequate.

**ACM**

Through the Peer Listener Support Program and the Koori Liaison Officer, a support group for Koori Prisoners has been established, Koori Elders recognised, within the Koori Population at Fulham. However, FCC has experienced difficulties in recruiting more Indigenous prisoners to the Peer Listener Support Program.

**Group 4**

The Indigenous Advisory Committee will review this policy in a formal way early in 2003. A range of specific programs allow for this cultural interaction to take place (Coorong Tongala, Indigenous Art Program, Cultural Immersion Program and NAIDOC activities).

**Corrections Victoria (DOJ)** also reported that Koori men’s groups have been operating at Ararat (fortnightly) and Barwon (weekly) Prisons for some time. The meetings provide an opportunity for discussion of issues and for cultural, art and craft activities. The Ararat groups includes meeting around a fire pit on occasions.

Commencing in April 2004, Barwon Prison has also introduced a monthly meeting between Koori prisoner representatives, the AWO and Prison Management to discuss any issues relevant to Koori prisoners.

A fortnightly meeting is held at DPFC between Koori women prisoners and visiting Elders.

The ACIP provides the major opportunity for Indigenous prisoners and offenders to meet together for mutual support and enhancement of cultural connection. The program is
funded under the VAJA to provide Indigenous-focused activities and resources to Indigenous prisoners and offenders in the Victorian criminal justice system.

The original program was prison-based and was developed by Ms Carmel Barry and others in 1998, in conjunction with Corrections Victoria’s Indigenous Services Unit (now the Indigenous Policy and Services Unit – IPSU).

Since 1998, the ACIP has been run at a variety of locations and in a variety of ways, including both prisons-based and community-based. The program was put on hold in March-April 2003 following feedback from the Koori community and other Indigenous staff that the program had evolved in such a way that some of the content was no longer reflective of Victorian Koori culture.

In the 2003-04 financial year, IPSU staff have been revising the ACIP, to increase the consistency of the program at different locations, increase its availability, and ensure that it meets the original needs of Indigenous prisoners and offenders.

The revisions have included consultation with the Indigenous community. Advisory workshops were held in November 2003 and March 2004. Representatives from each of the six RAJACs were nominated by their respective committees to participate and advise of the content of the revised program. Their input was of considerable value and has enabled the IPSU to develop gender specific, male and female, prison-based and a community-based ACIP model.

The program content has been revised to ensure that it is based on Victorian Koori culture and the advisory group has unanimously endorsed the local cultural content of the program.

An interim-model has also been developed to enable ACIP to be delivered in identified prison and CCS facilities prior to commencement of the statewide roll-out of the program in the early stages of the 2004-05 financial year.

Indigenous facilitators will be engaged to deliver the program with Indigenous guest speakers and other specialist guests invited to participate in the program.

The Aboriginal Well-being Officers and the Indigenous Service Officers within correctional facilities will be involved in the coordination of the program at the local level.

To accommodate implementation of the interim model, training for coordinators and facilitators for ACIP were held on 7 and 16 June 2004 respectively. Further training will be delivered to address the requirements for the Statewide rollout of the program.

Corrections Victoria has provided the Review with copies of the draft Program Manuals for Prisons and CCS (male and female).

Statewide delivery of the ACIP program did not commence in the early stages of 2004-05 financial year, it has commenced in the later part of that financial year which is outside the reporting period for this response.

Recommendation 328: Review of the national standards guidelines

Corrections Victoria (DOJ) advised the Review that the Standard Guidelines are incorporated into the Correctional Policy and Management Standards (applicable to Corrections Victoria prisons) and the Prison Management Specifications (applicable to
private prisons). These are, in turn, reflected in Prison Operating Procedures which are required to be endorsed by the Commissioner.

**Corrections Victoria (DOJ)** also confirmed that a National Working Party will recommend that the revised National Standards Guidelines be endorsed by the Community Services Ministers’ Conference (CSMC) at its next meeting on 29 June 2004. The National Standard Guidelines have been revised and were endorsed by the CSMC in 2004. They will be published in the near future.

The review of the National Standard Guidelines has not considered the development of specific guidelines for Indigenous prisoners. Guidelines for Indigenous offenders have instead been incorporated into a generic set of guidelines for offenders.

**Recommendation 329: Introduction of legislation embodying standard guidelines**

**Corrections Victoria (DOJ)** advised the Review that the CSMC of 2001 resolved that the Standard Guidelines be reviewed. This will be the first review of the Guidelines since 1996. A working party involving most Australian states and territories, including Victoria, has been involved in reviewing the guidelines. A draft has been produced and tabled at the 2002 CSMC. The CSMC resolved that a consultation process occur with stakeholders and a further report was tabled at the 2003 CSMC.

Furthermore, as noted in the 1996-97 response, the Standard Guidelines were never intended to be law, however, they do provide a base for protecting human rights in Australia and for the development of detailed standards at a state level. Prisoners’ rights are already outlined in the *Corrections Act 1986* (s47).

Corrections Victoria also referred the Review to its response to Recommendation 328 above for further developments.

**Recommendation 330: Consultation with Aboriginal organisations**

This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

**Recommendation 331: Formulation and adoption of guidelines**

**Corrections Victoria (DOJ)** advised the Review that the review of the National Standards Guidelines has not considered the development of specific guidelines. Guidelines for Indigenous offenders have instead been incorporated into a generic set of guidelines for offenders.

Corrections Victoria also referred the Review to its response to Recommendation 328 for further developments.

**Recommendation 333: International Convention on Civil and Political Rights**

This Recommendation was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report.

(c) Health and Welfare in Custody

The many Recommendations dealing with the health and welfare of prisoners held in custody are presented below and include Recommendations on mental health, on the
participation of Aboriginal health services, on the level of training of custodial staff in health and well-being policies and procedures and others relating to the well-being of Indigenous prisoners.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>150 That the health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public. Services provided to inmates of correctional institutions should include medical, dental, mental health, drug and alcohol services provided either within the correctional institution or made available by ready access to community facilities and services. Health services provided within correctional institutions should be adequately resourced and be staffed by appropriately qualified and competent personnel. Such services should be both accessible and appropriate to Aboriginal prisoners. Correctional institutions should provide twenty four hour a day access to medical practitioners and nursing staff who are either available on the premises, or on call.</td>
<td>Fully implemented (CV-DOJ)</td>
</tr>
<tr>
<td>151 That, wherever possible, Aboriginal prisoners or detainees requiring psychiatric assessment or treatment should be referred to a psychiatrist with knowledge and experience of Aboriginal persons. The Commission recognises that there are limited numbers of psychiatrists with such experience. The Commission notes that, in many instances, medical practitioners who are or have been employed by Aboriginal Health Services are not specialists in psychiatry, but have experience and knowledge which would benefit inmates requiring psychiatric assessment or care.</td>
<td>No progress (CV-DOJ)</td>
</tr>
<tr>
<td>152 That Corrective Services in conjunction with Aboriginal Health Services and such other bodies as may be appropriate should review the provision of health services to Aboriginal prisoners in correctional institutions and have regard to, and report upon, the following matters together with other matters thought appropriate:</td>
<td>a) Fully implemented, b) partially implemented, c) partially implemented, d) fully implemented, e) fully implemented, f) fully implemented, g) fully implemented (CV-DOJ)</td>
</tr>
<tr>
<td>(a) The standard of general and mental health care available to Aboriginal prisoners in each correctional institution;</td>
<td></td>
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<tr>
<td>(b) The extent to which services provided are culturally appropriate for and are used by Aboriginal inmates. Particular attention should be given to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal prisoners. Such programs should be provided, where possible, by Aboriginal people;</td>
<td></td>
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<tr>
<td>(c) The involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal prisoners;</td>
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<td>(d) The development of appropriate facilities for the behaviourally disturbed;</td>
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<tr>
<td>(e) The establishment of detailed guidelines governing the exchange of information between prison medical staff, corrections officers and corrections administrators with respect to the health and safety of prisoners. Such guidelines must recognise both the rights of prisoners to confidentiality and privacy and the responsibilities of corrections officers for the informed care of prisoners. Such guidelines must also be public and be available to prisoners; and</td>
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<tr>
<td>(f) The development of protocols detailing the specific action to be taken by officers with respect to the care and management of:</td>
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<tr>
<td>i. persons identified at the screening assessment on reception as being at risk or requiring any special consideration for whatever reason;</td>
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<td>ii. intoxicated or drug affected persons, or persons with drug or alcohol related conditions;</td>
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<tr>
<td>iii. persons who are known to suffer from any serious illnesses or conditions such as epilepsy, diabetes or heart disease;</td>
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<tr>
<td>iv. persons who have made any attempt to harm themselves or who exhibit, or are believed to have exhibited, a tendency to violent, irrational or potentially self-injurious behaviour;</td>
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<tr>
<td>v. apparently angry, aggressive or disturbed persons;</td>
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<tr>
<td>Recommendation</td>
<td>Implementation status 2003</td>
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| vi. persons suffering from mental illness;  
vii. other serious medical conditions;  
viii. persons on medication; and  
ix. such other persons or situations as agreed. | |
| 153 That:  
(a) Prison Medical Services should be the subject of ongoing review in the light of experiences in all jurisdictions;  
(b) The issue of confidentiality between prison medical staff and prisoners should be addressed by the relevant bodies, including prisoner groups; and  
(c) Whatever administrative model for the delivery of prison medical services is adopted, it is essential that medical staff should be responsible to professional medical officers rather than to prison administrators. | Fully implemented (CV-DOJ) |
| 156 That upon initial reception at a prison all Aboriginal prisoners should be subject to a thorough medical assessment with a view to determining whether the prisoner is at risk of injury, illness or self-harm. Such assessment on initial reception should be provided, wherever possible, by a medical practitioner. Where this is not possible, it should be performed within 24 hours by a medical practitioner or trained nurse. Where such assessment is performed by a trained nurse rather than a medical practitioner then examination by a medical practitioner should be provided within 72 hours of reception or at such earlier time as is requested by the trained nurse who performed such earlier assessment or by the prisoner. Whereupon assessment by a medical practitioner, trained nurse or such other person as performs an assessment within 72 hours of prisoners reception it is believed that psychiatric assessment is required then the Prison Medical Service should ensure that the prisoner is examined by a psychiatrist at the earliest possible opportunity. In this case, the matters referred to in Recommendation 151 should be taken into account. | Fully implemented (CV-DOJ) |
| 157 That, as part of the assessment procedure outlined in Recommendation 156, efforts must be made by the Prison Medical Service to obtain a comprehensive medical history for the prisoner including medical records from a previous occasion of imprisonment and where necessary, prior treatment records from hospitals and health services. In order to facilitate this process, procedures should be established to ensure that a prisoner’s medical history files accompany the prisoner on transfer to other institutions and upon re-admission and that negotiations are undertaken between prison medical, hospital and health services to establish guidelines for the transfer of such information. | Fully implemented (CV-DOJ) |
| 158 That, while recognising the importance of preserving the scene of a death in custody for forensic examination, the first priority for officers finding a person, apparently dead, should be to attempt resuscitation and to seek medical assistance. | Fully implemented (CV-DOJ)  
Partially implemented (VicPol) |
| 159 That all prisons and police watch-houses should have resuscitation equipment of the safest and most effective type readily available in the event of emergency and staff who are trained in the use of such equipment. | Fully implemented (CV-DOJ)  
Fully implemented (VicPol) |
| 160 That:  
(a) All police and prison officers should receive basic training at recruit level in resuscitative measures, including mouth to mouth and cardiac massage, and should be trained to know when it is appropriate to attempt resuscitation; and  
(b) Annual refresher courses in first aid be provided to all prison officers, and to those police officers who routinely have the care of persons in custody. | a) Fully implemented, and  
b) partially implemented (CV-DOJ)  
Fully implemented (VicPol) |
| 161 That police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee’s condition. | Fully implemented (CV-DOJ)  
Fully implemented (VicPol) |
<p>| 168 That Corrective Services effect the placement and transfer of Aboriginal prisoners according to the principle that, where possible, an Aboriginal prisoner should be placed in an institution as close as possible to the place of residence of his or her family. Where an Aboriginal prisoner is subject to a transfer to an institution further away from his or her family the prisoner | Fully implemented (CV-DOJ) |</p>
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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</thead>
<tbody>
<tr>
<td>169</td>
<td>That where it is found to be impossible to place a prisoner in the prison nearest to his or her family sympathetic consideration should be given to providing financial assistance to the family, to visit the prisoner from time to time.</td>
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<tr>
<td>170</td>
<td>That all correctional institutions should have adequate facilities for the conduct of visits by friends and family. Such facilities should enable prisoners to enjoy visits in relative privacy and should provide facilities for children that enable relatively normal family interaction to occur. The intervention of correctional officers in the conduct of such visits should be minimal, although these visits should be subject to adequate security arrangements.</td>
</tr>
<tr>
<td>171</td>
<td>That Corrective Services give recognition to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance.</td>
</tr>
<tr>
<td>172</td>
<td>That Aboriginal prisoners should be entitled to receive periodic visits from representatives of Aboriginal organisations, including Aboriginal Legal Services.</td>
</tr>
<tr>
<td>173</td>
<td>That initiatives directed to providing a more humane environment through introducing shared accommodation facilities for community living, and other means should be supported, and pursued in accordance with experience and subject to security requirements.</td>
</tr>
<tr>
<td>175</td>
<td>That consideration be given to the principle involved in the submission made by the Western Australian Prison Officers' Union that there be a short transition period in a custodial setting for prisoners prior to them entering prison routine.</td>
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**Government Responses on Implementation**

**Recommendation 150: Provision of health care to prisoners**

*Corrections Victoria (DOJ)* advised the Review that all prison health services are contracted to provide health services in line with the Victorian Corrections Health Care Standards. The health care standards must be complied with in a manner that facilitates good clinical practice and efficient operation, and in accordance with all applicable laws, regulations and guidelines. The DHS is responsible for monitoring health care standards in all prisons. Monitoring advice and reports are provided to the OCSC to ensure an integrated monitoring system. The relevant standards are:

1.2 General Health Service Requirements

(a) Health care and medical services to prisoners conform to accepted clinical standards and health care practices available in the community and take into account the special health care needs of prisoners.

(b) Each prison has a designated health service that is managed by a suitably qualified and experienced health professional. This professional could be either a clinical or health administrator.

(c) Prisoners have equivalent access, equity and quality of health care as available in the community.

(d) All prisons provide primary health care services which are defined below:

1. general medical practitioner services, including consultations and examinations;
2. general nursing services;
3. psychiatric nursing services;
4. consultant psychiatric services by a registered psychiatrist;
5. optometry, physiotherapy and dental services;
6. audiological assessment;
7. health promotion;
viii. pathology;
ix. first line radiology, including CT scans, ultrasounds, etc podiatry assessments and services;
x. referral to secondary care services as clinically indicated.

3.1 Access and availability
(e) In all prisons there is either 24-hour immediate emergency response procedures in place (with transfer to hospital if clinically indicated), or arrangements with a local hospital to provide 24-hour emergency health care.
(f) Medical treatment should not be denied to any prisoner on the basis of their culture, religion, political beliefs, gender, gender identity, age, sexual orientation, nature of their illness or reason for their imprisonment.
(g) Health staff involved in the provision of services to Aboriginal prisoners should, at all times, be aware of, and sensitive to, Aboriginal culture.
(h) Aboriginal prisoners are given a choice of utilising an Aboriginal health worker, where available, in addition to other prisoner health services.

4.1 Clinical Governance
There are clear lines of accountability for the overall clinical quality of prison health care services and, systems are in place to ensure that these services are continuously reviewed and are equitable with those available in the community.

4.2 Clinical management and Review
(b) Health care is delivered in a timely, safe and appropriate manner according to professional standards, medico-legal and statutory requirements and prison operations.
(c) Health care services take account of the specific needs of the population being served.
(d) Treatment for common and serious conditions are consistent with approaches adopted by most medical practitioners.

12 Compliance with Standards
(b) Health care facilities and services for prisoners are accredited by an agreed authority in health care standards, that is, the Australian Council of Health Standards or the Australian Health and Community Services Standards and maintains continuous accreditation.

In 2001, Corrections Victoria reviewed the provision of health care services across its prison environments and elected to outsource the provision of health care services at all 11 prisons. Medical and psychiatric services are provided by Pacific Shores Health (PSH) and Forensicare. All prisoners are able to access a range of health services, similar to that available in the community. Psychological and drug and alcohol services are provided by Corrections Victoria staff or contracted professionals and do not form part of the health care umbrella, although work closely with health care staff as required.

As part of the tender process, Corrections Victoria stipulated the requirement that health care services conform to accepted clinical standards and be consistent with accepted health care practices available in the community and also take into account the special health care needs of prisoners.

Prisoners have access to general practitioners, primary nursing and psychiatric nursing staff, consultant psychiatric sessions, dental services, psychological services, drug and alcohol services, radiology and pathology services, ambulance, optometrist, physiotherapy and podiatry services. These, typically, are services that are generally available to the
community. In addition, prisoners have the option of seeking these and other health services from private providers within the community, subject to conditions.

In re-tendering the range of health services, Corrections Victoria undertook an exhaustive analysis of the pattern of usage for a range of health services and sought feedback from a range of stakeholders (including Corrections Victoria staff, health staff and prisoners). The statistical data (such as occasions of service data) and qualitative data (stakeholder feedback) was utilised to determine the level of service required for each Corrections Victoria prison. In the majority of instances, the range of health services was increased to all Corrections Victoria prisons. As part of the re-tendering process, Corrections Victoria required the health provider to describe their ability to provide tailored services to Aboriginal prisoners. Aboriginal prisoners are afforded the option of seeing the prison's health care workers, or requesting to see a health care worker who specialises in Indigenous health. To date, only one prisoner has requested access to the latter.

In order to better meet the needs of Indigenous prisoners, PSH is currently negotiating with the Victorian Aboriginal Health Service for the delivery of services to Indigenous prisoners accommodated at the MAP and at the DPFC.

PSH has advised that it plans to provide health specific Indigenous cultural awareness training to its health care staff in prisons. This will ensure that health care providers are fully aware of the specific health care needs endemic to the Indigenous community.

All Corrections Victoria prisons have either on site, on call and call back facilities attached to the delivery of health care services provided by Forensicare and PSH.

However, access to health professionals who have experience in working with Indigenous people is limited. Similarly, attracting Indigenous people to positions within prison health care services has, to date, been unsuccessful and is a matter which needs further consideration both by Corrections Victoria and in the broader community context.

**Group 4**

(a) Health services at PPP are provided by St Vincent's Correctional Health Service (SVCHS) an Accredited Health organisation. SVCHS are contracted by Group 4 to provide Primary health care to the PPP site, secondary and tertiary care for all Victorian prisoners. Drug and Alcohol services are contracted to Moreland Hall by Group 4. Acute Mental Health services are provided by Forensicare at the MAP (Statewide service through Corrections Victoria the public prison provider).

(b) Nursing staff are available 24 hours a day seven days per week. Medical staff are rostered Monday to Friday 0900 to 1700 and Saturday for 4 hours. At all other times a medical officer is on call.

(c) The facility is composed of:
  - 30 bed inpatient psychosocial unit
  - 20 bed inpatient medical/surgical unit
  - 10 bed inpatient tertiary unit
  - Primary care service providing general practitioner services, nursing services, radiology, optometry, physiotherapy, dental, psychiatry services, and Koori Health worker.
Staffing is multidisciplinary in nature and is dependent on the Health unit profile. For example a psychologist and an occupational therapist are employed for the Psychosocial Unit.

Each prisoner, on reception, is assessed by a registered nurse on arrival to PPP. All Koori prisoners are referred to Koori Health Worker. In addition there is an Aboriginal Liaison Worker for general matters also available.

Referral to health staff can be self-referred, correctional staff referred or by any other staff member. As per contractual arrangements all health services are provided through SVCHS other than those specifically authorised by the Chief Medical Officer DHS. All medication prescription and administration is provided by SVCHS.

**Alcohol and Other Drug Treatment**

Uniting Care Moreland Hall is a Registered Training Organisation that provides a range of drug treatment services at PPP, including induction, education specialist programs and pre-release programs. These programs range from 12 hour to 24 hour programs and are facilitated by a team of qualified Social Work, Psychology and Youth Studies staff who are required to have a minimum two years experience in the alcohol and other drug field experience. Moreland Hall is also the primary alcohol and other drug treatment provider in the Northern Health region and provides a range of services for people in the community. Prisoners at PPP also have access to Alcoholics Anonymous.

**Programs for Aboriginal Prisoners**

All of these programs offered at PPP are available to Aboriginal prisoners, however, in response to low rates of participation, Moreland Hall have developed and designed programs specifically for Aboriginal prisoners. These programs have been developed in consultation with Aboriginal prisoners and the Koori Liaison representative at PPP, and are co-facilitated with Ngwala Aboriginal Alcohol and Drug Service. Each program has been developed following consultation with Aboriginal prisoners in focus groups and each program is evaluated with participants from the group and facilitators on completion of the program. Approximately 12 prisoners participate in each program and both youth and adult prisoners participate. The programs are designed to be culturally and linguistically diverse and focus on drug education, relapse prevention and have a spiritual development. Ngwala and Moreland Hall work in partnership with the community to ensure prisoners and their families are able to access treatment and support on release.

**Psychological/ Social Welfare Services**

A team of appropriately trained counselling staff operates at PPP. The KLO is incorporated in the Therapeutic Services Team, which includes: Psychology; D&A; Social Welfare; Koori Liaison and SASH (Suicide and Self-Harm Prevention) Custodial Officers. The KLO is perceived as a vital part of service provision to Aboriginal inmates and is called upon for support and advice. PPP also operates a strong peer support program of inmates (Prisoner Listener Scheme) which have a stated goal of suicide and self-harm prevention by addressing problems at a grass root level. The peer support program has active Koori inmate participants.

**ACM**

Fulham Correctional Centre is staffed 24 hours daily by nurses. Medical Officer on call 24 hours - Emergencies also referred to Central Gippsland Health Services. The local Aboriginal Health Service is available to supply information of relevant issues.
The local Aboriginal Health Service conduct bi-annual health screens on the Koori population at FCC and provide FCC with the results if the prisoner gives consents.

**Corrections Victoria (DOJ)** further advised that at the DPFC, PSH has independently sourced a female Aboriginal health worker who is a registered nurse and midwife, currently employed at Sunshine Hospital. A contract is in the process of being developed between DPFC and Tarrengower and Sunshine Hospital. Within the initial stages the health worker will attend DPFC and Tarrengower for two hours a month however, the long-term aim is for the health worker to attend DPFC and Tarrengower on a weekly basis. This service delivery will commence once Sunshine Hospital endorses the contract.

At the MAP, PSH has contacted Fitzroy Aboriginal Co-operative for advice in regard to obtaining an Aboriginal health worker, however has not yet received any response. Corrections Victoria will continue to support PSH in making contact with this agency, or other relevant agencies, in order to secure a Koori health worker. The GEO and PSH conduct Koori immunisation programs at all locations.

**Corrections Victoria (DOJ)** further advised the Review that:

- GEO/FCC is working on a plan to bring in Koori Health Workers fortnightly to provide ongoing healthcare in conjunction with the medical department. FCC is waiting for the Ramahyuck Co-operative to make provision in their plans to commence service.
- The Corrections Health Care Standards are under review and will be finalised in 2005.
- GEO/PSH has arrangements with Rumbalara Aboriginal Cooperative to provide Indigenous training to all PSH staff. Training commenced for staff in mid 2004 and will continue in 2005.

**Recommendation 151: Provision of access to medical professionals with knowledge and experience of Indigenous people**

**Corrections Victoria (DOJ)** advised the Review that:

All prison health services are contracted to provide services in line with the Victorian Corrections Health Care Standards. The health care standards must be complied with in a manner that facilitates good clinical practice and efficient operation, and in accordance with all applicable laws, regulations and guidelines. The DHS is responsible for monitoring health care standards in all prisons. Monitoring advice and reports are provided to the Office of the Correctional Services Commissioner to ensure an integrated monitoring system. The relevant standards are:

### 3.1 Access and Availability

1. **Aboriginal prisoners are given a choice of utilising an Aboriginal health worker, where available, in addition to other prisoner health care services.**  
2. **Health staff involved in the provision of services to Aboriginal prisoners should, at all times, be aware of, and sensitive to, Aboriginal culture.**

**Corrections Victoria**

Psychiatric services to Corrections Victoria prisons are provided by Forensicare through a contractual arrangement. Psychiatric services are not only provided by Psychiatrists, but also by Psychiatric Nurses and Psychiatric Registrars. Forensicare does not currently employ Indigenous staff in the delivery of psychiatric services to Corrections Victoria prisons.
In providing services to Indigenous prisoners, psychiatric professionals regularly liaise with the Indigenous Services Officers at each Corrections Victoria prison or with Corrections Victoria’s Aboriginal Well-being Officers. This ensures that cultural issues are being raised and addressed in the treatment of Aboriginal prisoners.

Closer links with the Victorian Aboriginal Health Service may result in access to psychiatric professionals who have experience in working with Indigenous people.

However, this recommendation has not been implemented due to the difficulty in accessing psychiatric professionals who have specialist knowledge and experience in working with Indigenous people. In addition, it has not been possible to attract suitably qualified Indigenous people to the provision of health care services in prisons.

**Group 4**

(a) all prisoners on arrival are assessed by a registered nurse. All Koori prisoners are then referred to the Koori Health Worker;

(b) any requirements/request by the Koori Health worker for additional services are addressed on a case by case basis; and

(c) all medical staff undertake an Orientation program which includes caring for Koories from a health provision perspective.

Current psychiatric services at PPP include a 30 bed inpatient unit, outpatient services includes both registered nurse and psychiatrist. The current Senior Psychiatrist employed by SVCHS has had previous experience in the provision of psychiatric services to the Indigenous population. Referral for psychiatric care can be self-initiated, or initiated by correctional staff or by other staff. SVCHS are also participants in the Psychiatric Registrar training Program in association with St Vincent's Health and Melbourne University. St Vincent's Health are contracted to provide a Koori Mental Health program through their Mental Health Service. In addition, SVCHS also provides clinical placements for undergraduate nursing students.

**ACM**

Prisoners are referred to our current psychiatrist as needed. Further referrals for Aboriginal prisoners may be made on a case by case basis.

Implementation difficulties encountered in respect to this recommendation have included the fact that appropriately trained psychology professionals are unavailable in Gippsland area.

FCC is working with Ramahyuck which may also assist FCC to identify problems with prisoners without sending them out for referrals. Ramahyuck may also assist FCC by working with Koori Liaison officer

**Corrections Victoria (DOJ)** further advised that currently, Forensicare employs a psychiatric nurse at the MAP who is experienced in working with Indigenous people. Forensicare has experienced difficulties in obtaining any Indigenous staff, however works closely with ALO and AWOs when working with Indigenous prisoners. This working relationship has proved to be both successful and mutually beneficial to the prisoner(s) and Forensicare staff.
Recommendation 152: Provision of health services to Indigenous prisoners

Corrections Victoria (DOJ) advised the Review that:

(a) Corrections Victoria

Refer to Corrections Victoria’s response to the implementation of Recommendation 150.

Group 4

Refer to Group 4’s response to Recommendation 150.

ACM

The Department of Human Services in conjunction with the OCSC conduct regular audits on all matters pertaining to the operation of Fulham Health Centre. These audits are however not Aboriginal specific (last audit December 2001).

(b) Corrections Victoria

Refer to Corrections Victoria’s responses to the implementation of Recommendations 105, 151, 154, 172, 174, 183, 184 and 186.

Corrections Victoria provides a range of drug and alcohol programs at all prisons, in addition to Bendigo Prison where intensive drug programs are provided within a therapeutic community environment. Indigenous prisoners are able to access these programs as required. Indigenous specific programs are also provided including Coorong Tongala, Koori Education, Training and Employment (KETE), Aboriginal Cultural Immersion Program (ACIP), art and craft and Koori resources such as videos and books. Aboriginal community agencies also regularly visit prisons including the Victorian Aboriginal Legal Service and local cooperatives. Indigenous prisoners are also able to access the AWOs as required. Indigenous prisoners are also able to access offence-specific programs such as the sex offender violence prevention programs.

Overall, Corrections Victoria provides some programs that are Indigenous-specific and are delivered by Indigenous people, whilst other programs are available to all prisoners including Indigenous prisoners.

Group 4

SVCHS is contracted by Group 4 to provide Primary Health care to the prisoners at PPP. They are also the secondary and tertiary health service providers for prisoners state-wide. This service is provided at both the Laverton and Fitzroy campus. Moreland Hall is contracted by Group 4 to provide the Drug and Alcohol services. Acute Mental Health services are provided at the MAP by their contractor Forensicare. Therapeutic services Group 4 provide psychological services at PPP.

(c) Corrections Victoria

Corrections Victoria health care providers are currently negotiating with the Victorian Aboriginal Health Service for the delivery of Indigenous specific health care services to Indigenous prisoners at the MAP and the DPFC. Currently, Indigenous prisoners are offered the opportunity to access Aboriginal health services. To complement the provision of Aboriginal health services, current health care staff will be trained to recognise and understand the health issues that are relevant to the Indigenous community. Refer to
Corrections Victoria's response to the implementation of Recommendations 150, 151 and 154.

**Group 4**

SVCHS provide a part time Koori Health worker. All Koori prisoners on arrival at PPP are referred to him. In addition a Koori Liaison officer is employed full time by Group 4.

**ACM**

Fulham Medical Department does exchange information with relevant outside authorities including Aboriginal Health Services (Ramahyuck) when a prisoner is released (with authority from patient) if there are medical reasons to do so. FCC does follow all policies on confidentiality. The local Aboriginal Health Service is available to supply information and advice on relevant issues. The local Aboriginal Health Service conduct bi-annual health screens on the Koori population at FCC and provide FCC with the results if the prisoner gives consent.

**(d) Corrections Victoria**

Corrections Victoria manages the Acute Assessment Unit (AAU) located at the MAP. The AAU accommodates psychiatrically ill prisoners who require intensive treatment within a custodial environment. The Unit is staffed with specially trained custodial staff, in addition to the range of medical and psychiatrically trained health professionals.

Indigenous prisoners accommodated in the AAU are able to access the range of Indigenous service providers available at the MAP, including AWOs. The facilities at the AAU are somewhat sensitive to Indigenous prisoners, with a mural in the outdoor area having been painted by an Indigenous artist. Female prisoners requiring intensive psychiatric evaluation are transferred to Thomas Embling Hospital as no Acute Assessment Units are readily available to female prisoners.

**Group 4**

SVCHS provide health services to the Psychosocial Unit at PPP. This unit is primarily for prisoners with mental illness who would benefit from further rehabilitation services.

**(e) Corrections Victoria**

Refer to Corrections Victoria's response to the implementation of Recommendation 157. Prison medical health services are able to access information from external health and medical agencies only where the prisoner has provided written consent for the exchange of such information. Where such consent is not provided, health services are unable to provide or seek information regarding the prisoner's health issues from external health and medical agencies. This ensures that prisoners' rights to privacy and confidentiality are not breached.

Information regarding current at risk concerns is the only area where information will be shared between prison and health care professionals without the proper consent of the prisoner.

**Group 4**

Please refer to response under Recommendation 157.
(f) **Corrections Victoria**

Operating Procedure 1.2 ‘At Risk Prisoners’, provides guidelines to staff in relation to the principles governing the exchange of information between prison staff and health care staff. In addition, staff are required to comply with the principles of the Information Privacy Act and the Health Services Records Act.

Upon reception to the MAP or DPFC, prisoners are invited to consent to information being exchanged between medical and prison staff. If consent is provided, health and prison staff are able to share basic information regarding the prisoner’s health condition. Where consent is not provided, medical staff will provide advice to prison staff in relation to how the prisoner’s condition may manifest itself in the prison environment. At no time is the prisoner’s medical condition disclosed to prison staff without the prisoner’s consent, instead, management information is exchanged allowing prison staff to implement any necessary strategies.

These guidelines assist staff in respecting the rights of the prisoners to confidentiality and privacy, whilst ensuring Corrections Victoria upholds its duty-of-care. Refer to Corrections Victoria’s response to the implementation of Recommendation 157.

**Group 4**

Please refer to Group 4’s response to Recommendation 157.

(g) **Corrections Victoria**

(i) Refer to Corrections Victoria’s responses to the implementation of Recommendations 126, 151, 156 and 157. Corrections Victoria’s Operating Procedure, 1.2 At Risk Prisoners, and each Corrections Victoria prison location specific At Risk Operating Procedure, provide guidelines to staff in managing newly received prisoners who are identified as at risk, or who have other issues requiring special consideration. Referral to other professionals in the reception process is available and contributes to the development of interim management plans that address immediate and urgent issues. Where necessary, accommodation in the AAU is available (where a vacancy exists), or transfer to St Augustine’s or the hospital facilities at PPP if hospitalisation is required. Depending on the identified needs, staff are able to develop interim management plans that will immediately address issues of concern. Reception staff are additionally trained in order to undertake the duties associated with reception. Additional training focuses on an understanding of reception processes, conducting risk assessments including SITUPS, and training in identifying and managing suicide and self-harm behaviour. Where prisoners are considered at risk, a psychiatric screening process must be conducted within two hours of the initial at-risk concerns being identified.

(ii) As part of the reception process, all prisoners will undergo a medical screening. Where medical staff identify alcohol or drug related issues, an interim management plan will be developed that addresses this immediate need. Medical staff will determine how to best manage the drug issues within the custodial environment, or whether hospitalisation is required.

(iii) Refer to Corrections Victoria’s responses to implementation of Recommendations 126, 150, 156 and 157. Medical staff are generally able
to access the medical files of those prisoners with a previous history of incarceration in Victoria, before their reception to the MAP or DPFC. Access to this data allows for a proactive approach and may be utilised in the development of health management plans. Upon initial reception, each prisoner is subject to a medical screening process that allows updated information to be collated and utilised in decisions regarding treatment.

(iv) Refer to Corrections Victoria’s responses to the implementation of Recommendations 122, 126, 150, 151, 156 and 157. Corrections Victoria has developed and implemented processes and procedures that ensure identification. Reception staff conduct initial risk assessments on all newly received prisoners, refer prisoners for psychiatric screening where appropriate, and facilitate the development and implementation of appropriate management strategies. Where concerns regarding at risk behaviour is identified post-reception, staff refer the prisoner concerned for psychiatric screening. Where at risk concerns are identified, psychiatric professionals will conduct a psychiatric screening within two hours of notification.

(v) Refer to Corrections Victoria’s responses to the implementation of Recommendations 126, 150, 156 and 157. All newly received prisoners undergo medical screenings upon reception. Serious medical conditions such as impaired state of consciousness will generate an immediate medical response and treatment.

(vi) Refer to Corrections Victoria’s responses to implementation of Recommendations 126, 156 and 157. Reception staff understand the range of emotions prisoners may display arising from incarceration and reception to a prison environment. Staff are trained to respond to the, at times, erratic behaviour of newly received prisoners. Staff will implement strategies to address these behaviours, including referral for psychiatric screening, de-fusing interviewing techniques and conflict management. Separation from other prisoners may be utilised in circumstances where other options have been utilised without success, or where other options are not appropriate.

(vii) Refer to Corrections Victoria’s responses to the implementation of Recommendations 126, 150, 151, 156 and 157. Corrections Victoria has implemented processes and practices that ensure that prisoners suffering form mental illness are identified and appropriate treatment and management strategies are implemented. Appropriately trained and qualified staff are available to ensure mentally ill prisoners are identified, assessed and appropriately managed.

(viii) Refer to Corrections Victoria responses to the implementation of Recommendations 126, 150, 156 and 157. Medical screenings are conducted upon a prisoner’s initial reception, and upon transfer to other prison locations as a standard practice. These screenings aim to identify and subsequently implement appropriate medical management practices.

(ix) Refer to Corrections Victoria’s responses to the implementation of Recommendations 126, 150, 156 and 157. Processes are in place that ensure that prisoners on medication continue receiving medication at the appropriate times. This occurs upon initial reception to the MAP or DPFC, following subsequent transfers to other locations, or whilst external to the prison, such as during a court appearance.
Corrections Victoria (DOJ) reported that along with PSH they have made significant progress within the past 6-12 months, in relation to attaining Koori health workers at public prisons.

Northern Region (Dhurringile/Beechworth): At Dhurringile Prison, PSH has created an agreement with Rumbalara Aboriginal Co-operative to provide a Koori liaison officer to service the prison one hour per week. It is envisaged that some Koori prisoners will find it easier to discuss issues with an individual from the same cultural background. It is further expected that this working relationship with Rumbalara will improve Koori health by addressing health related cultural sensitivities, facilitating prisoner’s access to and understanding of required health interventions.

Central Region (Bendigo/Loddon): PSH has employed a Koori Health nurse who is available to run clinics as required. Following discussions between the Koori Health Nurse and Koori representatives from Loddon Prison it was established that the preference was for clinics to be run on an as needed basis and peers would relay information to the medical centre as to when these clinics were required.

Barwon: At Barwon Prison, PSH has liaised with the Chief Executive Officer of Wathaaurong Aboriginal Co-operative, to attain the services of a Koori health worker. PSH has since forwarded a memo regarding the cost involved in this service delivery however is yet to receive confirmation of this. PSH will continue to liaise with this organisation.

Women’s Region (DPFC/Tarrengower): Please refer to the response for Recommendation 150 regarding DPFC/Tarrengower’s progress with attaining the service of a Koori health worker. However, Won Wron is due to be decommissioned in early 2005.

South East Region (MAP/Won Wron): Please refer to the response for Recommendation 150 regarding the MAP’s progress with attaining the service of a Koori health worker.

Despite efforts made Won Wron Prison does not currently have a Koori health care worker, however it works closely with the prison Koori Liaison Officer in order to receive support or guidance on Koori health matters. Corrections Victoria will continue to support PSH in liaising with appropriate agencies to obtain a Koori health care worker.

Western Region (Ararat & Langi Kal Kal): PSH has had in place an agreement with the Ballarat Aboriginal Co-operative, since November 2003, whereby the Koori health representative attends both prisons on a fortnightly basis at a sessional rate.

Recommendation 153: Ongoing review of prison medical services in all jurisdictions

Corrections Victoria (DOJ) advised the Review that all prison health services are contracted to provide health services in line with the Health Care Standards. The health care standards must be complied with in a manner that facilitates good clinical practice and efficient operation, and in accordance with all applicable laws, regulations and guidelines. The Department of Human Services (DHS) is responsible for monitoring health care standards in all prisons. Monitoring advice and reports are provided to the Office of the Correctional Services Commissioner to ensure an integrated monitoring system.
Section 6: Findings on Over-Representation in the Criminal Justice System

(a) Ongoing Reviews
Two major reviews, the independent *Investigation into the Management and Operations of Victoria’s Private Prisons* and the *Review of the Victorian Prisoners Health Service Delivery Model 2002* (‘the review’) have been commissioned through the DOJ (Vic). The latter review was the most extensive study of its kind undertaken in Australia and concentrated solely on the Victorian prisoner health service delivery system. The reviewers were directed to focus specifically on the problems within the system and how these could be addressed. The Corrections Health Board has completed its deliberations on the recommendations of the review and a business case is under preparation to implement the recommendations which focus on redesigning and targeting the service system to better respond to prisoners’ health needs.

A Victorian *Prisoner Health Status Study* is nearing completion. This study assessed the health of 470 Victorian prisoners. Deliberate over-sampling of Aboriginal and women prisoners occurred to ensure the soundness of the data collected on these two groups. The sample was stratified on eight bases, including older Aboriginal male, older Aboriginal females, younger Aboriginal males and younger Aboriginal females. The data from this study will inform the implementation of the Review of the *Victorian Health Service Delivery Model* (see above).

DHS is responsible for the ongoing monitoring of health care services to ensure compliance with the Victorian Corrections Health Care Standards. In addition, DHS is able to undertake clinical audits of health service practice. The relevant sections of the standards are:

(b) Confidentiality

3.2 Information and Communication

* e) Prisoners are able to access their medical files in accordance with accepted community standards.

3.4 Confidentiality and privacy

* a) The principle of confidentiality protects prisoners from disclosure of confidences entrusted to health or medical staff during the course of assessment or treatment and following treatment.
* b) There is a separate individual medical file from the prisoner’s correctional management file.
* c) Privacy and patient confidentiality is respected and maintained according to ethical standards.
* d) The health centre provides respectful care at all times and under all circumstances regardless of gender, gender identity, age, religion, culture, ethnicity, sexual orientation, reason for imprisonment or medical condition.
* e) Health staff treat all patients professionally with respect for their human dignity.
* f) Patients are interviewed and examined in a confidential environment designed to ensure privacy.
* g) Discussion or consultation involving patients is conducted in a confidential manner.
* h) All communications and records pertaining to patients are treated as confidential.

(c) Reporting
1.2 General Health Service Requirements
   b) Each prison has a designated health service that is managed by a suitably qualified and experienced health care professional. This professional could be either a clinical or health administrator.
   c) There is clear and defined separation between health service provision and correctional services.

4.2 Clinical Management and Review
   a) Health care services observe accepted clinical standards and health decisions are only determined by qualified health staff.

Corrections Victoria (DOJ) further informed the Review that the Victorian Prisoner Health Status Study was released 14 May 2002, and a copy has been provided by Corrections Victoria to the Review. The health information relating to Indigenous prisoners is stratified across male/female and old/young.

Indigenous prisoners and women prisoners were over-represented in the sample deliberately because of their small numbers. As a result, interpreting the data MUST be in accordance with the researchers’ instructions for it to be meaningful and for any comparisons to the non-Indigenous population to be made. There is a narrative about the differences where these occur.

The main finding was that the differences between prisoners and non-prisoners were more striking than any differences between the sub-populations sampled.

**Recommendation 156: Medical and risk assessments**

Corrections Victoria (DOJ) advised the Review that all prison health services are contracted to provide health services in line with the Victorian Corrections Health Care Standards. The health care standards must be complied with in a manner that facilitates good clinical practice and efficient operation, and in accordance with all applicable laws, regulations and guidelines. DHS is responsible for monitoring health care standards in all prisons. Monitoring advice and reports are provided to Corrections Victoria to ensure an integrated monitoring system. The relevant sections of the standards are:

2.1 Reception medical assessment
   The health service has a health screening reception system, which ensures that prisoners are cared for appropriately and in a timely manner.

   Reception prisons
   All prisoners initially received into the MAP or the DPFC are comprehensively assessed for their physical and mental health care needs as soon as possible after reception, and not later than 24 hours after reception by a registered medical practitioner.

   The health service has a system in place to prioritise prisoners seeking/requiring treatment on reception. The requirements of the initial reception medical screening include, but are not limited to, the following components:

   (a) a preliminary health screening conducted by a nurse on the day of reception;
   (b) an at risk assessment completed by health staff or correctional staff who are experienced and trained in assessing risk;
   (c) a full standard medical assessment for all new receptions completed by a medical practitioner as soon as possible after reception and not later than 24 hours following reception;
The initial reception medical assessment is to include, but not limited to:

i) a full medical and psychiatric history screening;

ii) inquiry into significant signs or symptoms especially of suicide, self-harm, infectious disease and substance abuse;

iii) physical examination with a full clinical examination;

iv) mental health examination including assessment of the patient’s general appearance and behaviour, thought processes, affect, memory, concentration, orientation, cognitive function and insight;

v) assessment for testing for infectious disease;

vi) assessment for vaccinations as clinically indicated, eg. Koori immunisation program;

vii) for women prisoners, inquiry into gynaecological history, current and past pregnancies and breast and cervical screening.

Standardised medical alert, health assessment and at risk assessment forms which are coherent, continuous and comprehensive, and are completed by reception health staff to assess prisoners on reception:

The reception health assessment ensures that the patient’s urgent and immediate health needs are met.

Non-reception prisons
All prisoners received into a prison on transfer from another prison location are medically screened as soon as possible after reception and not later than 24 hours after reception.

The requirements of this medical screening must include but is not limited to the following:

(a) a health screening conducted by a nurse or medical practitioner within 24 hours of reception;

(b) an at risk assessment completed by health staff or correctional staff who are experienced and trained in assessing risk within 24 hours of reception;

(c) referral to a medical practitioner where medical problems are identified on screening.

Prisoners returning from hospitals after inpatient admission
Prisoners returning to a prison location after an inpatient admission at an external hospital must be seen by a nurse or doctor before placement back into their accommodation unit.

Identification, assessment and management of prisoners at risk
There is a comprehensive system for the identification, assessment, management and documentation of prisoners deemed to be at risk of self-harm or suicide. This is a joint correctional and health responsibility and should be complementary.

It should be noted that an actuarial assessment tool is currently being developed. This will be used by trained correctional staff for the initial screening of prisoners on reception.

This system includes but is not limited to:

(a) A referral system to appropriate mental health professionals, which is easily accessible to staff around the prison;

(b) An initial at risk assessment tool, which is objective, comprehensive and has an actuarial component;
(c) The risk assessment form leads to an integrated management plan, which includes appropriate interventions, e.g., correctional, counselling or other therapy;

(d) The risk assessment form is colour coded or otherwise easily identifiable in the prisoner’s medical file;

(e) Prisoners referred for an assessment for risk of self-harm or suicide are assessed by a mental health professional (a person who has established experience and qualifications in the mental health field; a GP is considered a mental health professional) within 2 hours of referral. In country prisons, which do not have a 24-hour coverage by a mental health professional, adequate on call arrangements with an appropriate mental health professional are in place to ensure that a prisoner can be appropriately assessed for risk within 2 hours of notification of the referral;

(f) The time and date of referral and assessment and the assessor’s name, signature and outcome are recorded in an appropriate register;

(g) Psychiatric professionals who undertake risk assessments have appropriate training in assessment of self-harm and suicide risk;

(h) Appropriate health care staff actively contribute to the prison’s high-risk assessment team (HRAT - High Risk Assessment Team of SASH - Suicide and Self-harm);

(i) There are mechanisms in place to review and ensure timely follow up of prisoners who have previously been identified as at risk of self-harm or suicide;

(j) Immediate treatment is provided to prisoners who are at risk to themselves through self-injury or suicide, and referred for ongoing treatment services as clinically indicated;

(k) The principle of managing any suicidal person is supportive human contact and this arguably applies more so to those in prison;

(l) When a prisoner is identified as having any risk of suicide, the attending health staff should arrange for the prisoner to communicate with someone they trust, including family members;

(m) Direct observation and counselling are the main strategies for managing prisoners at risk of self-harm or suicide; and

(n) Careful placement and management of the suicidal prisoner is critical. Seclusion or placement in separated facilities of prisoners at risk of self-harm or suicide is used only when clinically indicated, or to ensure the immediate safety of the Prisoner.

2.3 Psychiatric Assessment and Treatment Services

(a) There is a systematic screening of psychiatric problems as part of the reception process;

(b) Prisoners are appropriately triaged for psychiatric need by qualified psychiatric health professionals and referred to a psychiatrist if deemed necessary in a timely manner.

(c) Prisoners who are in psychiatric crisis or who require emergency psychiatric care will receive immediate psychiatric assessment services;

(d) Prisoners with psychiatric disabilities, or who are at psychiatric risk will be appropriately managed and provided with clinical services and prior to discharge, are referred to the appropriate Area Mental Health Service;

(e) Seriously mentally ill prisoners will be assessed by a psychiatric professional and, when appropriate, referred to the Victorian Institute of Forensic Mental Health for consideration of admission to a secure hospital under the Mental Health Act; and
There is coordination and follow up with the relevant Area Mental Health Service for prisoners who have previously been case managed by that service.

Secondary Psychiatric Services
Health Contractors involved in the delivery of secondary psychiatric services to prisoners should comply with the relevant 'National Standards for Mental Health Services 1997'.

3.1 Access and availability
(d) At the reception prisons there is a 24 hour nursing cover seven days per week, and a minimum of 18 hours per day on site qualified mental health professionals to respond to prisoners at risk of self-harm or suicide. Adequate arrangements are in place to ensure that qualified mental health professionals are on call for the remaining hours.

Corrections Victoria
Upon initial reception to MAP or DPFC, Aboriginal prisoners are subject to a range of assessments designed to assess the risk and need, and these form the basis for the development of interim management plans.

All prisoners will undergo a medical assessment upon initial reception. Generally this is conducted by a General Practitioner. For those prisoners that are received outside of normal receptions hours, this medical screening will be conducted by a nurse, followed by a medical assessment by a General Practitioner within 24 hours of initial reception to the prison.

In addition, all Aboriginal prisoners are automatically referred for psychiatric screening upon reception to the MAP or the DPFC. This recognises the trauma often experienced by Indigenous people following incarceration and separation from family, and minimises the potential of injurious behaviour.

The psychiatric screening, the risk assessment conducted by Corrections Victoria staff, the medical assessment as well as any other relevant information (such as that provided by Victoria Police, the courts, PIMS, OASIS, IMP file, medical file, Offender in Custody Report etc) is used to determine risk and intervention strategies as required.

The psychiatric screening conducted by appropriately trained and qualified health staff will form the basis for referral to the Consultant Psychiatrist or Psychiatric Registrar if necessary. As previously mentioned, Forensicare does not currently employ Indigenous psychiatrists, or psychiatrists that are additionally trained and experienced in working with Indigenous people. However, the AWOs and the ISOs are available to assist and provide cultural information as required.

However, at this stage, health care providers have been unable to engage appropriately trained Indigenous health care workers for employment in prisons. In addition, health care workers specially trained, or with experience in working with Indigenous prisoners, are limited.
Group 4

Prisoners who are received into custody at PPP from police custody at St Vincent’s Hospital Melbourne (SVHM) are assessed by medical staff at SVHM. A copy of that assessment is placed on their prison medical record which then transfers with them to the prison.

All prisoners are assessed by a registered nurse on arrival at PPP (within 24 hours) if arriving from another prison location. This assessment includes a risk assessment. This assessment is recorded in the prisoner’s medical record. This record transfers between prisons with the prisoner, therefore, the information is readily accessible by all of the correctional health providers. In addition, on completion of the assessment (with the prisoner’s consent) a summary is forwarded to the Correctional provider for inclusion in their prison file.

Referral to the Koori Health worker is arranged for each Koori on arrival at PPP. In addition to the services of the Koori Health worker, PPP have a full time Aboriginal Liaison Officer. Both staff are utilised to ensure services delivered are culturally appropriate.

ACM

In accordance with current Service Delivery Outcomes, all Aboriginal prisoners at FCC have a Health Care Plan.

Recommendation 157: Obtaining comprehensive medical history

Corrections Victoria (DOJ) advised the Review that all prison health services are contracted to provide health services in line with the Victorian Corrections Health Care Standards. The health care standards must be complied with in a manner that facilitates good clinical practice and efficient operation, and in accordance with all applicable laws, regulations and guidelines. DHS is responsible for monitoring health care standards in all prisons. Monitoring advice and reports are provided to the Office of the Correctional Services Commissioner to ensure an integrated monitoring system. The relevant sections of the standards are:

7. Health Records

DHS is responsible for the control and possession of the prisoner medical files on behalf of the State of Victoria.

Prisoner medical files are initiated at the two reception prisons, MAP for men and the DPFC for women. Active prisoner medical files (up to five years after prisoner is released are stored at MAP for male prisoners and DPFC for female prisoners. If files are not used for 5 years they must be culled and archived at the DHS Archives or a DHS authorised contracted storage Contractor. MAP and DPFC are responsible for organising the retrieval of medical files when former prisoners re-enter the prison system.

There is a standardised medical file and all health Contractors are required to maintain the files in a consistent and coordinated way.

(a) Each patient’s medical file is comprehensive, sequential, well organised and legible.
(b) All health contacts and interventions are recorded in the patient’s individual medical file.
(c) Each patient’s medical file contains accurate information about each encounter, which is sufficient to allow another medical practitioner to carry on the management of that patient.
(d) Each patient’s medical file is stored securely within the health centre and can be easily retrieved by authorised health staff when required for clinical care.

(e) Access to the medical files is limited to the health Contractor.

(f) Prisoners have access to their medical file unless clinically indicated that access would be detrimental to the health of the prisoner.

(g) Medical files do not contain subjective comments of any kind, including derogatory, prejudicial or irrelevant statements about patients.

(h) When a prisoner is released from prison, health staff must update the medical file, seal it in the red security bag and arrange for its transfer back to MAP for male prisoners and DPFC for female prisoners.

i. A prisoner’s medical file contains but is not limited to:

ii. Completed reception health screening/assessment form;

iii. At risk assessment;

iv. Record of all prescribed medication and their administration;

v. Laboratory, x-ray and diagnostic results;

vi. Consent and refusal forms;

vii. Requests for medical practitioner appointments;

viii. Release of information forms;

ix. Place date and time of health contacts;

x. Referral information;

xi. Diagnoses and treatments;

xii. Dental charts;

xiii. Progress notes, including consultation notes;

xiv. Discharge summary of hospitalisation and other key clinical events including termination summaries;

xv. Date, signature and designation of each worker providing a service for every entry.

2.1 Reception Medical Assessment – Reception prisons

All prisoners initially received into the MAP or the DPFC are comprehensively assessed for their physical and mental health care needs as soon as possible after reception, and not later than 24 hours after reception by a registered medical practitioner.

The health service has a system in place to prioritise prisoners seeking/requiring treatment on reception. The requirements of the initial reception medical screening include, but are not limited to, the following components:

(a) a preliminary health screening conducted by a nurse on the day of reception;

(b) an at risk assessment completed by health staff or correctional staff who are experienced and trained in assessing risk;

(c) a full standard medical assessment for all new receptions completed by a medical practitioner as soon as possible after reception and not later than 24 hours following reception;

(d) the initial reception medical assessment is to include, but not limited to:

i. a full medical and psychiatric history screening;

ii. inquiry into significant signs or symptoms especially of suicide, self-harm, infectious disease and substance abuse;

iii. physical examination with a full clinical examination;

iv. mental health examination including assessment of the patient’s general appearance and behaviour, thought processes, affect, memory, concentration, orientation, cognitive function and insight assessment for testing for infectious disease;
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v. assessment for vaccinations as clinically indicated, eg. Koori immunisation program;

vi. for women prisoners, inquiry into gynaecological history, current and past pregnancies and breast and cervical screening;

(e) standardised medical alert, health assessment and at risk assessment forms which are coherent, continuous and comprehensive, and are completed by reception health staff to assess prisoners on reception.

(f) the reception health assessment ensures that the patient’s urgent and immediate health needs are met;

(g) after health assessment, appropriate referrals are made and a case/care plan is developed for each patient with identified health needs, which targets prioritised problem areas.

2.1 Reception Medical Assessment – Non-reception prisons

All prisoners received into a prison on transfer from another prison location are medically screened as soon as possible after reception and not later than 24 hours after reception.

The requirements of this medical screening must include but is not limited to the following:

(a) a health screening conducted by a nurse or medical practitioner within 24 hours of reception;

(b) an at risk assessment completed by health staff or correctional staff who are experienced and trained in assessing risk within 24 hours of reception;

3.3 Informed Consent

(b) Informed consent is obtained from the patient for all treatments and procedures and for the release of information on the medical file. Refusal of treatment is documented;

(c) Participation by patients in the gathering of identified personal health data for research projects occurs only with the explicit and written consent of the patient after receiving a written and oral explanation about the proposed research. Patients have the right to withdraw their consent at any time during this process.

3.4 Confidentiality and Privacy

There is a separate individual medical file from the prisoner’s correctional management file.

4.5 Coordination of Health Care Service

(a) Prison health Contractors work collaboratively with all other prison health Contractors to achieve a single integrated health care system for prisoners;

(b) The coordination of clinical management of a patient’s illness is guided by procedures and protocols;

(c) The health service has systems in place to effectively follow up outpatient and inpatient services;
(e) After notification of a pending transfer, health staff will ensure that a completed medical file and medications are ready at the appropriate time for transfer with the prisoner to the new location;

(g) There is appropriate pre-release discharge planning including discharge letters to community based health practitioners when the prisoner has given prior consent.

4.6 Coordination of external Secondary and Tertiary Care

(c) Any documentation, including referral letters, to other health care Contractors contains sufficient information to facilitate optimal patient care;

(d) All relevant medical documents or copies are made available to a hospital or clinic providing external outpatient or inpatient care;

(e) Copies of referral letters to external outpatient and other medical specialists from external health Contractors are placed on the patient’s medical file and any follow up action recorded on the patient’s medical file.

Corrections Victoria

Upon initial reception to MAP or DPFC, all prisoners undergo a comprehensive medical assessment. This is generally performed by a General Practitioner on the day of reception. Where prisoners are received outside of usual reception hours, a medical screening will be conducted by a registered nurse. A comprehensive medical assessment will subsequently be undertaken by a General Practitioner within 24 hours of reception in relation to those prisoners received outside usual reception times.

Corrections Victoria generally receives prior notification of a prisoner’s reception to the MAP or DPFC. Where prior notification is received, the medical files of prisoner’s with previous prison histories will be retrieved. For those male prisoners who have been in custody post-1999, these files are accommodated at the MAP and therefore will be available immediately upon the prisoner’s reception to the MAP. For those male prisoners with an incarceration history prior to 1999, files will be retrieved from an external repository. The Department of Human Services indicate that these file retrieval will take anywhere between one to three days. During this period, a ‘dummy’ file will be created and is used as the receptacle for all medical information, pending receipt of the original file.

In relation to women prisoners, medical files are located at the DPFC. Consequently, these files are available immediately upon the prisoner’s reception to the location.

For those prisoners with ongoing medical conditions, health staff will contact the health professionals who treated the prisoner in the community, upon receiving consent from the prisoner.

Upon reception to the MAP or DPFC, prisoners are invited to consent to information being exchanged between medical and prison staff. If consent is provided, health and prison staff are able to share basic information regarding the prisoner’s health condition. Where consent is not provided, medical staff will provide advice to prison staff in relation to how the prisoner’s condition may manifest itself in the prison environment. At no time is the prisoner’s medical condition disclosed to prison staff without the prisoner’s consent. Instead, management information is exchanged allowing prison staff to implement any necessary strategies.
Processes are in place to ensure that where prisoners are transferred to other prison locations, that the medical file (as well as their Individual Management Plan file) accompanies the prisoner as a matter of course. Upon reception to the transfer prison, prisoners will undergo a medical screening conducted by a registered nurse, who also accesses the prisoner’s file. Access to the prisoner’s medical file informs the conduct of the medical screening performed by the registered nurse, ensuring that pertinent matters are immediately addressed, and ongoing management plans commenced immediately.

However, on occasion, the prisoner’s medical file does not accompany the prisoner upon transfer to another location. Where this occurs, health staff from the receiving location will contact the prison of origin and obtain copies of the most recent progress notes and the medication chart of the prisoner concerned.

Furthermore, a balance between confidentiality and sharing information with prison staff has always been a difficult, and often times, grey area. Corrections Victoria has endeavoured to address this through regular communication with the health care providers and the cultivation of a collaborative approach to prisoner management. The implementation of the transfer of information form at reception has addressed the majority of issues regarding the exchange of information between the health care provider and Corrections Victoria.

**Group 4**
Koori health workers assist with following up external services on as needs basis. Aboriginal Liaison Worker is a full-time position that is provided through Group 4.

Process for medical record transfer ensures that at all times the file moves with the prisoner.

There is a policy that facilitates the transfer of information to other health providers with the consent of the prisoner.

Following the completion of each assessment on arrival and each inpatient unit stay, a summary sheet is forwarded with the consent of the prisoner to correctional staff for inclusion in the IMP file. This summarises any health concerns or reasons for health staff to be contacted.

**ACM**
All prisoners are screened on arrival at ACM and full psychiatric and medical history is obtained. Most prisoners have already had blood screening and comprehensive background checks done prior to arrival.

Prison medical records should always arrive with the prisoner; procedures have been established by the Prison Health Providers to ensure this occurs. Procedures have been put into place to ensure information is transferred by fax, phone or email as necessary.

**Corrections Victoria** advised that no current issues have been identified regarding transfer of medical records. Revised Guidelines for the Management of Prisoner Medical Records have been prepared by the Department of Human Services in consultation with health providers and issued in May 2004, and a copy has been provided by Corrections Victoria.
Recommendation 158: Responsibilities of officers to attempt resuscitation and seek medical assistance

Corrections Victoria (DOJ) advised the Review that:

Corrections Victoria

Operating Procedure 1.09 Preservation of Evidence confirms that *the preservation of life outweighs anything else at the scene of a crime/incident*. This is reinforced in First Aid training as well as SASH training. Through operating procedures, training programs and incident debriefing, Corrections Victoria reinforces its duty-of-care to staff, in this instance, ensuring that officers attempt to save and maintain life as the first priority.

ACM

Both FCC and Corporate Policies and Procedures emphasises the need to attempt resuscitation. This is clear in its policy and procedures.

Group 4

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is TAFE Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

- Sessions dealing with ‘Crime Scenes’ – delivered by the Armed Offender Squad of the Victoria Police.
- Emergency Orders clearly outline the imperative to save life and examples of the relevant ones are as follows:
  - Emergency Order No 3 – Prisoner Death/Attempted Suicide
  - Raise the Alarm
  - Attempt to save life
  - Call First Response (extra assistance)
  - Establish Crime Scene
  - Emergency Order No 10 – Serious Accident/Acute Illness
  - Raise the Alarm
  - Attempt to save life
  - Call First Response (extra assistance)
  - Establish Crime Scene

- An outside accredited provider teaches all new recruits Level 2 First Aid. Annual refresher training in First Aid and Cardio Pulmonary Resuscitation (CPR) is also provided.

Corrections Victoria (DOJ) provided the Review with a copy of an Internal Review in relation to all Aboriginal deaths in prison since 1991.

See Section 6.2 – Police for Victoria Police response to this Recommendation.
Recommendation 159: Ready access to resuscitation equipment

Corrections Victoria (DOJ) advised the Review that:

Corrections Victoria
All Corrections Victoria prison locations have Oxy Viva equipment situated in strategic locations within the prison environment. These are maintained by Corrections Victoria staff. All custodial staff are trained in the use of this equipment by fully qualified Corrections Victoria trainers. All locations have First Aid kits in particular locations throughout the prison, and an emergency bag is situated in the health care office at each prison ready for immediate response to emergencies.

Portable defibrillators are also located in all Corrections Victoria prisons. At this stage, only health staff are able to use the defibrillators, however, Corrections Victoria staff will soon be trained and therefore qualified to use this equipment in an emergency. In addition, all custodial staff are trained in First Aid, including cardio-pulmonary resuscitation. First Aid refresher training is also provided to custodial staff.

The Operating Manual for the Provision of Health Services in Corrections Victoria prisons contains several operating procedures that have relevance to this Recommendation. Corrections Victoria is committed to preserving life and in upholding its duty-of-care provisions by ensuring that appropriate equipment is available as required, that staff trained in the use of the equipment are available, and that staff are appropriately trained in life saving techniques.

ACM
ACM has 24 hour nursing service – All officers trained to Level 2 First Aid.

Resuscitation equipment is onsite and is tested regularly. It is effective for its purpose, to save lives.

Group 4
St John’s Hospital, operated by SVCHS and located at PPP, provides secondary level hospital treatment for all prisoners.

Each health unit has an emergency trolley which includes all resuscitative equipment. The contents are in line with SVCHS policy (available on request). The trolleys are checked daily by a registered nurse. All nursing staff undergo annual competency in CPR.

SVCHS have an automated defibrillator available for use in accommodation areas (stored in the Emergency Room in the Primary Care area). Nursing staff are currently participating in a formal training program provided by Red Cross in the use of automated defibrillation. Once staff have completed this program they are certified competent for a period of three years. Each new staff member will be registered for the next available training program. This program is in addition to the annual competency required for all nursing staff in use of a standard defibrillator.

Mobile emergency equipment is available in the primary care health area and is taken to the medical emergency by health staff for their use as clinically assessed.

However the implementation of ongoing training is a costly but necessary expense for Corrections Victoria. Staff rostered for training will be relieved by other staff, in effect
resulting in a double salary cost for those positions on the day of training. As a result, Corrections Victoria on occasions will lock down particular units in prisons to deliver training. This ensures that training is delivered as required, in the most efficient and effective manner possible.

See Section 6.2 – Police for the Victoria Police response to this Recommendation.

**Recommendation 160: Training of police and prison officers in resuscitative measures**

Corrections Victoria (DOJ) advised the Review that:

All new recruits are trained to First Aid Level 1. This includes training in resuscitative measures, including mouth to mouth and cardio-pulmonary resuscitation. Staff are trained in basic First Aid responses, in ensuring their own safety and the safety of others in the delivery of First Aid, and in determining the appropriated level of intervention required. Staff are trained to ensure that, apart from safety issues, preserving life is the first priority.

In the post-recruitment phase, identified prison staff at each Corrections Victoria location (such as Health Services Officers) complete additional First Aid Training to Levels 2 and 3.

Corrections Victoria is committed to providing refresher first aid training to all staff on an annual basis. Corrections Victoria is working state-wide towards full compliance in accordance with the required numbers of suitably trained First Aid staff.

An annual audit of all current and non-current First Aid trained people was conducted with remedial action to address all locations and staff who require refresher training or newly trained staff.

**ACM**

All Operational Staff are trained to Workplace First Aid Certificate 2 which includes E.A.R./S.P.R. Annual refresher training is provided as part of the 40 hours in service training provided.

**Group 4**

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is TAFE Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

- New recruits are trained to Level 2 First Aid by a registered, approved training provider;
- Operational Instructions; and
- Emergency Orders.

An outside-accredited provider teaches annual refresher courses in First Aid and CPR to all Correctional Staff.

See Recommendation 159 regarding the implementation difficulties of part (a) of this Recommendation. As indicated in Recommendation 159, it is difficult to ensure that all staff receive First Aid refresher training on an annual basis due to leave and rostering issues.

Corrections Victoria (DOJ) further advised the Review that the content of First Aid training is not varied according to demographic grouping, either for participants attending
training or for those requiring assistance from qualified first aiders. To date, no feedback from First Aid courses has been related to Indigenous persons or issues around their treatment.

However, as standard practice, any suggestions for improvements to any courses are evaluated and implemented where possible as part of a continuous improvement process.

See Section 6.2 - Police for Victoria Police response to this Recommendation.

**Recommendation 161: Provisions for police and prison officers to seek medical attention**

*Corrections Victoria (DOJ)* advised the Review that:

Prison staff are trained in various ways to ensure the safety of prisoners. Where staff have concerns regarding the safety of prisoners, they are required to take action. In most instances, this will involve referral to the most appropriate service, generally to medical or psychiatric professionals for assessment.

At initial recruitment training, staff are trained in understanding duty-of-care issues, and how this is manifested in daily operations. Training in reception procedures, in risk assessment and SITUPS, in suicide and self-harm behaviour, in First Aid training, in understanding mental illness etc all provide guidance to staff to seek assistance if concerns are raised regarding a prisoner’s safety or security. In addition, new recruits are trained and assessed in relation to emergency response procedures. Ongoing training in this area is provided to staff following the initial recruit training.

In supporting staff to respond to emergency situations, all locations have emergency response folders that guide staff in managing emergency responses.

In addition, various modules in the Certificate III in Correctional Practice emphasise to staff the need to take action where their assessment indicates that the prisoner’s safety and security may be at risk.

Where prisoners are deemed at risk by prison staff, medical services are required to conduct an assessment on the prisoner within two hours of initial referral.

**ACM**

This requirement is demonstrated in the ACM High Risk Assessment policies. This policy is not negotiable and is followed to the letter.

**Group 4**

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

Port Philip Prison’s
- Operational Instructions.
- Emergency Orders No. 3, 10, 16 & 17.
- Suicide and Self-Harm Policy and Procedures.
Corrections Victoria (DOJ) advised that referrals from custodial staff to health services are not identified by specific population groups.

See Section 6.2 - Police for Victoria Police response to this Recommendation.

Recommendation 168: Placement of Indigenous prisoners as close as possible to his/her residence or family

Corrections Victoria (DOJ) advised the Review that Aboriginal prisoners are placed in the prison closest to their family wherever possible. This is achieved by seeking the prisoner’s preference regarding placement. The prisoner’s request will normally be complied with unless there are other issues which prevent this placement. For example, it may not be possible to give priority to placement near family for a range of reasons:

- Classification level.
- Management or security issues.
- Protection needs.
- Programmatic needs.

However, where a prisoner is transferred to another location to participate in a specific program, he or she will normally be transferred back to the prison closest to their family following completion of the program.

Corrections Victoria (DOJ) advised that no data is maintained as to the number of requests regarding placement that are received and agreed to. In general, if there are no security concerns or placement issues (for example, protection) requests for specific locations from Indigenous prisoners are always met. In the case of the reclassification where the prisoner has posed management concerns, the choice of location may be limited. Liaison usually occurs between the Sentence Management Unit staff and the Aboriginal Well-being Officers on a needs basis for prisoners who cannot be located at their first preference.

Recommendation 169: Provision of financial assistance for family members to visit

Corrections Victoria (DOJ) advised the Review that the VAJA provides funding to assist the families of Aboriginal prisoners to visit their family members in custody. This program is administered by the Victorian Association for the Care and Resettlement of Offenders (VACRO). VACRO was provided with $20,000 in 2001-02 and $40,000 in 2002-03, with a further $40,000 for 2003-04. The programs provide for the cost of travel and accommodation to family members when visiting those in custody.


The above is effectively the continuation of a program previously funded by ATSIC and administered through VACRO. However, there was a slow take up of the program in its early stages. This was improved with the employment of Aboriginal Well-being Officers covering all prison locations, who have played an important role in promoting and supporting the program. All Indigenous prisoners are also provided with information of the program on reception into the prison system.
It is also possible that some family members may have been reluctant to seek assistance. The AWOs have also played an important role in supporting and advocating for families in order to ensure access to the program.

This program is an initiative of the VAJA (2.5 Family Visits Program). This reflects the importance of the program and supports its continuation through the provision of funding and the requirement to report on implementation to the Aboriginal Justice Forum on a regular basis.

An updated Indigenous specific brochure has been developed to promote the Family Visits Program.

**Recommendation 170: Provision of adequate visiting facilities**

**Corrections Victoria (DOJ)** advised the Review that:

**Corrections Victoria**

Each Corrections Victoria prison has designated areas for the conduct of personal and professional contact and non-contact visits.

Non-contact visits are accessed in cubicle style facilities allowing verbal communication, but preventing physical contact between the prisoner and visitor.

Each prison has indoor and outdoor contact visits facilities. These facilities are appropriately decorated without compromising the security or safety of the prison location. Light airy colours are utilised and paintings adorn the walls of the internal visit facilities. At some prisons, access to food and drink is available, whilst at other locations, prisoners are able to share a barbecue with their visitors.

The outdoor visit facilities are generally located in a garden environment, with some locations providing play equipment for any children visiting prisoners. Some locations also provide toys and other materials to assist in keeping children engaged and occupied during the visit.

Operating Procedure 2.4 acknowledges the importance to prisoners of maintaining family ties and friendships to assist them in maintaining their links to the community and the need to have access to prisoners by professional visitors. Staff will assist and encourage prisoners to maintain positive and supportive relationships with their families and the general community. Staff will treat all visitors with courtesy and with due regard to the privacy and dignity of visitors and prisoners.

Recognising the importance of family visits, staff undertake their duties as unobtrusively as possible. Staff have security as a first priority, but are also mindful of the need for privacy if normal family interaction is to occur. Consequently, staff intervention during the visit is at a minimum and only occurs when necessary, for example, providing advice that the visit is nearing completion or where security concerns are raised.

The DPFC, in addition to the usual visit programs, provides for specific visits for the children of prisoners. Once a week, children are permitted (where there are no court orders preventing children such contact) to access the prisoner parent without the presence of other adult carers. This enables mother and child(ren) to have quality time together, ensuring the family bonds are maintained wherever possible.
In addition, Corrections Victoria provides access to residential visit programs for prisoners at certain locations, where prescribed criteria are met.

Corrections Victoria recognises the importance of maintaining family ties as one mechanism for minimising reintegration issues following release from custody. In addition, connection to family is recognised as a protective factor against further offending. Consequently, Corrections Victoria provides a visit program that attempts to maintain prisoner contact with family members and significant others in a safe, secure, relaxed and open environment.

**ACM**

- Refer to Policy 2.18.1 - Visits.
- Refer to Policy 2.18.5 - Professional Visits to Prisoners.
- Refer to Policy 2.18.6 - Official Visits.
- Refer to Policy 2.21.2 - Services Provided for Aboriginal Prisoners which includes visitors and involvement by Indigenous community groups and Ramahyuck District Corporation.

**Group 4**

Indigenous prisoners at PPP enjoy the same visitation access through PPP visits procedure as all other prisoners, with the added support of the Aboriginal liaison and welfare program. The Aboriginal Liaison and Welfare Officers are fully versed in these policies.

Residential visit facilities have been incorporated into the design of Correctional Programs Centre and new remand centre to promote maintenance of family ties.

**Recommendation 171: Requests by prisoners for permission to attend funeral services**

**Corrections Victoria (DOJ)** advised the Review that:

The *Corrections Act 1986 (s57(1)(e))* provides allowance for a prisoner to attend a funeral of a person with whom a prisoner had a long standing relationship. This occurs through the issuing of a custodial community permit.

**Corrections Victoria (DOJ)** recognises the special kinship and family obligations of Indigenous prisoners that extend beyond the immediate family. This is reinforced through Cultural Awareness training and by the AWOs and the ISOs at each Corrections Victoria prison.

In practice, this means that Indigenous prisoners are afforded special consideration when requesting to attend funerals of relatives, recognising the unique family connection. These matters will be considered by Operations Managers and General Managers and where security matters are satisfactorily addressed, permission to attend the funeral will occur.

In assessing applications of this nature, relevant stakeholders in the application will be consulted. This usually includes the ISU, the AWOs and ISOs who will have also had contact with the prisoner’s family and other relevant individuals.

**Corrections Victoria (DOJ)** advised the Review that Interstate Leaves of Absence are now provided for by amendments to the *Corrections Act 1986*. A permit may be issued to enable a prisoner to travel to a participating State:
(a) to visit a person with whom the prisoner has a long-standing personal relationship if that person is seriously ill or in acute personal need; or
(b) to attend the funeral of a person with whom the prisoner has a long standing personal relationship; or
(c) for any other compassionate purpose (including, in the case of an Indigenous prisoner, to enable the prisoner to be present at an occasion of special significance to the prisoner’s immediate or extended family).

ACM

- Refer to Policy 2.21.2 – Services for Aboriginal Prisoners.
- Refer to Policy 2.16.2 – Custodial Community Permit Program where special needs and cultural differences of Aboriginal and Torres Strait Islanders are identified and acknowledged.

Group 4

Manager in charge of this field gives full consideration as part of the assessment process to recommendations from Koori Liaison and Welfare Officers.

Recommendation 172: Visits from representatives of Aboriginal organisations

Corrections Victoria (DOJ) advised the Review that:

Corrections Victoria endeavours to manage Indigenous prisoners in a manner that is sensitive to their cultural needs. In addition, Corrections Victoria provides an environment that fosters the maintenance of cultural and community links for Aboriginal and Torres Strait Islander prisoners. This is achieved by ensuring that Indigenous prisoners have unfettered access to the Aboriginal Well-being Officers, the Aboriginal Liaison Officer and the Indigenous Services Officers.

In addition, Corrections Victoria endeavours to create links and partnerships with a range of Indigenous community agencies and to facilitate visits between these agencies and prisoners. Representatives from Aboriginal organisations who visit prisons on a regular basis have received passes, ensuring ease of access to the prison and Indigenous prisoners. Some staff from the VALS have obtained passes at some Corrections Victoria prisons.

With the employment of Aboriginal Well-being Officers and the Manager, Indigenous Services, as well as participation in the RAJACs, Corrections Victoria’s relationship with the Indigenous community is strengthening. This is having a flow on effect in terms of the increase in Indigenous community members and agencies visiting prisons.

Corrections Victoria’s Operating Procedure 2.07 on Aboriginal and Torres Strait Islander Prisoners reinforces the importance of ensuring that representatives from Indigenous organisations are encouraged to access Indigenous prisoners accommodated in Corrections Victoria prisons.

However, with the high level of activity within the Indigenous community, it has not always been viable for Indigenous community agencies to provide services to Indigenous prisoners, even when invited by Corrections Victoria or Indigenous prisoners. Limited staff and other
resources, and competing demands has meant that a commitment to provide services to
prisoners has not always been able to be achieved due to the agency's need to prioritise
access to their services.

ACM
Refer to Policy 2.12.2 – Services Provided for Aboriginal Prisoners where involvement by
Indigenous community groups including Aboriginal and Torres Strait Islanders legal services
are encouraged.

Group 4
Indigenous prisoners at PPP enjoy the same visiting access through PPP visits procedures as
all other prisoners, with the added support of Aboriginal Liaison and Welfare program. Our
Aboriginal Liaison and Welfare Officer is fully versed in these policies.

However, a far better relationship with the justice and legal institutions in Melbourne is
required to ensure a faultless outcome for this recommendation. The Indigenous Advisory
Group (IAG) at PPP is addressing the communication strategies required with VALS, with the
possibility of partner training for Metropolitan Field Officers, thus allowing them independent
access into the prison.

The 1995-96 Prison Standards and Minimum Requirements for public prisons provide that
prisoners must have access to confidential meetings with professional visitors including
lawyers and that these visits are additional to personal visit entitlements. Corrections
Victoria’s Director’s Instruction 3.4 for public prisons ensures that lawyers acting in the
course of their law practice may enter a prison and visit a prisoner between 8.30am and
3.30pm, or at any other time with the permission of the General Manager.

Recommendation 173: Shared accommodation facilities
Corrections Victoria (DOJ) advised the Review that:

Corrections Victoria Standards (96.1 Prison Management) require that, prison management
effectively:

- Controls and supervises prisoners in a just and humane manner while maximising the
  protection of the community;
- Provides for the safety of staff and prisoners through a prison environment which aims
  to protect the physical and emotional well-being of individuals;
- Encourages prisoners to develop responsibility for their actions and to develop ethical
  values which reinforce law abiding and non-violent participation in the community; and
- Provides prisoners with the opportunity for rehabilitation.

Shared Accommodation/Community Living
A number of minimum and medium security prisons contain the option of shared, cottage
style accommodation for prisoners assessed as suitable according to classification and
security requirements.

Correctional Infrastructure Program
Planning and development is well advanced for the new 120 bed minimum security prison to
be constructed at Beechworth, a 600 bed Remand Centre at Ravenhall near Melbourne and
a 300 bed medium security Correctional Programs Centre at Lara as part of the Corrections
Long Term Management Strategy. The facility is due to open in early 2005.
The purpose of the new 120 bed prison is to prepare prisoners who are nearing the end of sentence for transition back into the community. This will be achieved through the development of operating regimes that focus on the development of vocational and practical living skills of individual prisoners within a framework of individual case management. The 600 bed facility will be a purpose built remand centre while the 300 bed facility will provide a unique opportunity to focus on programs to assist prisoners minimise the likelihood of their re-offending. The facility will offer programs that focus on violence, anger management, sex-offending and drug related offending.

The design of the new facilities will aim to create environments that reduce, as far as possible, the negative effects of imprisonment on individuals, such as the breakdown of family relationships, institutionalisation, and alienation, in particular on those people coming to prison for the first time.

Prison management will aim to create an environment that reflects community standards, based on open and honest communication between staff and prisoners, with a focus on consultation and ownership of decisions that affect staff and prisoners.

The following features have been included specifically for Indigenous prisoners at the 120 bed facility:

- An outdoor meeting place where Indigenous prisoners can gather. Maximum use will be made of natural light in all accommodation units that will provide a better living environment for all prisoners, but is of particular significance to the needs of Indigenous prisoners.
- A dedicated (shared) classroom space for Koori arts and crafts, that is capable of accommodating 15 prisoners.

The planned 600 bed Remand Centre will include:

- An outdoor meeting place where Indigenous prisoners can gather in a quiet area reflective of Aboriginal culture.
- A multi-purpose classroom/programs room/art and craft space, specifically for Indigenous prisoners, capable of accommodating up to 20 prisoners on remand.
- Office accommodation for an Aboriginal Well-being Worker.

The planned 300 bed Correctional Programs Centre will include:

- An outdoor meeting place where Indigenous prisoners can gather in a quiet area reflective of Aboriginal culture.
- A multi-purpose classroom/programs room/art and craft space, specifically for Indigenous prisoners, capable of accommodating up to 15 prisoners on remand.
- Office accommodation for an Aboriginal Well-being Worker.

Another major initiative of the Correctional Infrastructure Program is the rollout of the ten-year cell and fire safety program at all existing medium and maximum security facilities in the State. This initiative will see the upgrading of cells (where required) to ensure they meet the required standards and minimise the likelihood of self-harm (refer to response to Recommendation 165).
Corrections Victoria (DOJ) recognises the special kinship and family connections of Indigenous people and are able to support this where possible. All Corrections Victoria locations have some facilities for shared accommodation either in double cells, or units that accommodate four or more prisoners. These cells are targeted to prisoners who are in custody with family members (for example, fathers and sons) and to Indigenous prisoners. Shared accommodation is particularly encouraged at the MAP, where initial reception to prison is often a traumatic and daunting time for most prisoners. Being in shared accommodation with a family member or another Indigenous prisoner may alleviate some of the initial anxieties.

Corrections Victoria approves shared accommodation where prisoners consent to living in shared facilities, and where security concerns have been addressed. All cells comply with accommodation standards and prisoners are able to personalise their environment, depending on the security level of the prison.

However, shared/community living is not an option at maximum security locations although a small number of double cells and/or interconnecting cells are available for prisoners in need of support.

Shared accommodation facilities are not always available and not all Indigenous prisoners want to share accommodation with others. Consequently, Indigenous prisoners are afforded the opportunity of shared accommodation with other Indigenous prisoners, where facilities exist and placements are available.

ACM
Fulham Correctional Centre provides four types of accommodation:
- Single cell – medium security.
- Shared (2 bed) – medium security (buddy cells).
- 8 Bedroom (single bed) lodge accommodation – medium security.
- 4 Bedroom (single bed) cottage accommodation – minimum security.

Aboriginal prisoners have access to the full range of accommodation within the centre depending on their security classification.

Recommendation 175: Reception and orientation programs
Corrections Victoria (DOJ) advised the Review that:

All prisons have comprehensive reception and orientation programs designed to assist prisoners integrate into the prison environment, to identify issues of concern and to implement management plans that address immediate concerns. Information from the range of assessments conducted during the reception process are utilised to develop interim management plans.

Orientation programs are facilitated by custodial and non-custodial staff. The Indigenous Services Officer at each location also makes contact with newly received Indigenous prisoners, providing additional Indigenous specific information. Orientation programs address a range of issues including information about the prison, available programs and services, visits, health services, education and work opportunities, rules and regulations, access to phones and more. This information is provided verbally, written material is also provided and videos in relation to certain aspects of orientation are also available. Some locations also provide orientation information via the internal video channel.
The majority of Corrections Victoria prisons have dedicated orientation units. The exceptions are Beechworth, Won Wron and Tarrengower Prisons. Newly received prisoners are accommodated in these orientation units for two to five days. During this time, prisoners are additionally supported in adjusting to imprisonment. Staff provide additional information. Assist in liaising with family and refer newly received prisoners to appropriate programs and services. An IMP interview is conducted where further information is obtained, and a longer term plan is negotiated. This plan sets the direction for the prisoner’s time in custody.

However, at times where inception numbers are high, newly received prisoners will spend shorter periods of time in orientation units.

**ACM**

All prisoners arriving at Fulham undergo a five day Reception/Orientation process:

- Policy 2.11.2 – All prisoners transferred to Fulham Correctional Centre are to undergo a formal reception/orientation process.
- Policy 2.11.5 – Prisoners received into the centre shall undergo a full induction process.

Purpose: To ensure that all prisoners received have a full understanding of their rights, the running of the centre and what is available to them to address their offending behaviour. On arrival to the centre, Aboriginal prisoners have access to the Aboriginal Co-ordinator as required.

**Group 4**

All newly received prisoners to PPP are placed in the induction unit and receive a comprehensive induction program. Prisoners normally spend a minimum of 3-4 days in the induction unit.

(d) Recruitment of Aboriginal Staff

Three important Recommendations dealing with the need to recruit Aboriginal staff to work across the correctional system, both in the community-based sector and in prison and at all levels of employment, are presented below.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>114</td>
<td>That, 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.</td>
</tr>
<tr>
<td>174</td>
<td>That all Corrective Services authorities employ Aboriginal Welfare Officers to assist Aboriginal prisoners, not only with respect to any problems they might be experiencing inside the institution but also in respect of welfare matters extending outside the institution, and that such an officer be located at or frequently visit each institution with a significant Aboriginal population.</td>
</tr>
<tr>
<td>178</td>
<td>That Corrective Services make efforts to recruit Aboriginal staff not only as correctional officers but to all employment classifications within Corrective Services.</td>
</tr>
</tbody>
</table>
Government Responses on Implementation

**Recommendation 114: Recruitment and training of Indigenous staff**

Corrections Victoria (DOJ) advised the Review to refer to response under Recommendation 178 for information regarding the range of strategies that Corrections Victoria has implemented to attract and retain Indigenous people to employment within the correctional environment.

In addition to the above, Corrections Victoria, has filled six positions within Community Corrections Services. Corrections Victoria has recently advertised six new positions within Community Correctional Services. These positions are Indigenous Community Corrections Officers (ICCOs) and will be located within the Melbourne metropolitan area and key regional cities across the state (Mildura, Bairnsdale, Geelong, Shepparton, Bendigo and Broadmeadows). These positions will be responsible for the supervision of Indigenous offenders on community-based orders as well as the delivery of rehabilitation programs. Recognising the need to develop services that cater more sensitively to the needs of Koori offenders, these positions will develop and maintain links with local Koori agencies to ensure the department maximises opportunities for close consultation with Indigenous people.

It should be noted that four of the six positions are located in the non-Metropolitan CCS locations within Victoria, coinciding with areas of relative concentration of Indigenous people. The ICCOs will supervise Indigenous offenders, and will have a focus on more strongly linking CCS to the Indigenous community, as well as educating the Indigenous community regarding the role and function of CCS.

The Manager and staff of the Indigenous Services Unit also actively work with other Indigenous people within the organisation, and in the community to promote the role and function of CCS and to work towards self-determination from a programs and services perspective.

Apart from recruiting Indigenous staff, Indigenous specific programs and services delivered to Indigenous offenders are, in the main, facilitated by Indigenous people. Program development and innovation is also guided by the involvement of Indigenous staff, Indigenous offenders and the Indigenous community through a variety of forums. The Indigenous Services Unit works with Indigenous facilitators and agencies by providing mentoring and support services aiming to assist in building capacity within the community.

With the inception of a home detention program in January 2004, CCS is eager to ensure that Aboriginal people have equal opportunity to participate in this program. However, the fact that the program presently operates as pilot only in the metropolitan area, means that it is not yet available in many areas of higher concentration of Indigenous offenders. In striving to achieve this, CCS will consider the employment of an Indigenous CCO when recruiting staff to the program later this year. This will ensure that CCS is strongly placed to pro-actively facilitate Indigenous offenders’ participation and successful completion.

CCS is committed to ensuring that Indigenous people are employed in all aspects of business across Corrections Victoria, particularly those areas that have a strong interface with Indigenous issues. In addition, CCS is committed to an ongoing dialogue with the Indigenous community ensuring their active participation in any initiative involving Indigenous offenders.

However, with the high level of activity within the Indigenous community, it appears that suitably qualified Indigenous candidates have the ability to choose from a number of
positions currently available. Competition for suitably qualified candidates is therefore quite strong.

See Recommendation 101 for **Corrections Victoria’s (DOJ)** comments on the principles, strategic objectives and initiatives of the Victorian Aboriginal Justice Agreement, the comments on the development of on-going opportunities for Indigenous community input and possible enhancements to the relevance of individual Royal Commission Recommendations.

**Corrections Victoria (DOJ)** further advised that the Home Detention Program provides a direct substitution for a term of imprisonment by significantly restricting a person’s liberty while at the same time maximising opportunities for rehabilitation. The program operates as a court sentencing option and as an Adult Parole Board managed pre-release arrangement.

Home detention is restricted to non-violent, low-risk, low-security offenders. Offenders sentenced through the courts and prisoners serving a sentence will not be eligible if:

- They have been found guilty of offences involving rape, murder, manslaughter, threats to kill, serious drug offences or any offence which was sexually motivated or involved firearms and/or violence.
- They have breached an Intervention Order.

To be eligible, prisoners must have served two-thirds of their minimum sentence and:

- Must be eligible for parole or for release in six months or less.
- Must be held under minimum security conditions.

The Home Detention Pilot program commenced officially on 1 January 2004, with the first offenders commencing on the program in mid-March. On 7 June 2004 there were 12 offenders.

Aboriginal offenders who meet the program criteria are eligible to access the program although, as of 3 June 2004, no Aboriginal offenders had been admitted to the program. Given the small numbers of offenders involved to date, it is too early to comment on accessibility to Aboriginal offenders.

In its current pilot status, the program is only available in the Melbourne Metropolitan area (within 25kms of the GPO). This is to ensure a prompt response to any breaches of the program conditions. The program will be subject to a full evaluation within the next 12 months to determine its effectiveness and its ability to expand beyond the current geographical boundaries.

**Recommendation 174: Employment of Aboriginal Welfare Officers**

**Corrections Victoria (DOJ)** advised the Review that:

Recruitment and retention were initially problematic in terms of securing and retaining appropriately qualified staff. However, this now seems to have stabilised with the newest AWO having commenced ongoing employment with Corrections Victoria in October 2002.
Following the exemption for the advertisement of the positions under the Equal Opportunity Act 1995, two Aboriginal Welfare Officers were employed to operate primarily in Corrections Victoria prisons and to a lesser extent in CCS.

The Aboriginal Welfare Officers identified that their title, particularly the term 'welfare' had a very negative connotation within the Indigenous community. Historically, actions that adversely affected the Indigenous community were carried out under the banner of 'welfare'. Given this negative connotation, Corrections Victoria amended the title of these positions to the Aboriginal Well-being Officers, reflecting a holistic underpinning to the provision of their services.

The Aboriginal Well-being Officers:

- Liaise with prison management and relevant Indigenous organisations.
- Provide education and training advice.
- Assist with any problems they might be experiencing inside the facility.
- Assist in welfare matters extending outside the institution.
- Provide counselling services.
- Provide information on pre- and post-release programs.
- Assist with transport, accommodation and social security allowances.

ACM

Through the appointment of a Counsellor – Aboriginal programs, we have implemented the following programs:

- Marumali Program.
- Cultural Connection Program.
- Workshops - Koori Heritage Trust and Link Up Victoria.
- Coorong Tongala.
- Peer Listener Support Program.
- Family Re-Union.
- Interstate Visits.
- DHS Child Access Visit.

Group 4

PPP’s unique contractual arrangements with an independent Indigenous consultant provides the program oriented Aboriginal Liaison and Welfare Service.

Employment of Aboriginal Welfare Officers is also an initiative contained within the VAJA (initiative 2.13). The VAJA has provided additional impetus to implement this initiative. This involves regular reporting to the Aboriginal Justice Forum on implementation status.

Corrections Victoria (DOJ) indicated that there are currently three Aboriginal Well-being Officers employed across the 11 publicly operated prisons. In addition to this there is an Aboriginal Liaison Officer based at MAP.
Each public prison also utilises one or more Indigenous Services Officer (ISO). These are Prison Officers who carry an additional responsibility to provide support, assistance, information and advice to Indigenous prisoners, offenders and staff, and where possible, regularly liaise with local Indigenous community agencies.

PPP employs one full-time Koori Liaison Officer, Fulham Correctional Centre has one full-time Aboriginal Counsellor position. There are no current plans to increase the number of AWOs or change their role at this point in time.

**Recommendation 178: Employment of Indigenous staff in all employment classifications**

**Corrections Victoria (DOJ)** advised the Review that:

Corrections Victoria actively seeks to recruit Indigenous people at all levels and in all types of positions within its business, ranging form administrative to prison officer positions.

The Corrections Victoria *Wur-cum barra* representative no longer attends this working party due to DOJ HR centralisation. *Wur-cum barra* is the Victorian government's strategy for the employment of Indigenous people across the Victorian Public Sector. The Working Party is working towards developing strategies to attract and retain Indigenous people within all sectors and across all classifications within the Victorian public sector. In particular, the Working Party is focusing on selection, recruitment, induction and career development.

In order to attract Indigenous candidates, Corrections Victoria advertises positions in a range of media. All positions are now automatically listed with agencies that specialise in employment placement options for Indigenous people. In addition, advertisements are also placed in Indigenous newspapers such as the *Koori Mail*, the *Indigenous Times*, through VACSAL and there has been considerable recruitment of Indigenous Community Corrections Officers (six ongoing) state-wide via working with local RAJACS.

A state-wide revision of Position Descriptions has been completed with new job descriptions in use by November 2004.

All employment positions are also forwarded to the Co-ordinator, Koori Recruitment and Career Development Strategy (KR&CDS), Human Resource Management, DOJ. The KR&CDS ensures that details regarding these job opportunities within Corrections Victoria are forwarded to key organisations such as Aboriginal Affairs Victoria and a range of Indigenous community agencies and organisations. These strategies ensure that employment opportunities within Corrections Victoria are advertised broadly within the Indigenous community. Corrections Victoria actively supports the Koori Staff Network by encouraging Indigenous staff to attend the forums. In addition, a Corrections Victoria staff member has been invited to be a mentor for an Indigenous staff member also within Corrections Victoria.

Indigenous staff, particularly the AWOs and the Manager, Indigenous Services regularly visit Indigenous organisations and liaise with Indigenous staff within these organisations. This allows information about Corrections Victoria to be exchanged, and for the Indigenous community to develop an understanding of the philosophies underpinning Corrections Victoria’s practices. Corrections Victoria's participation at RAJACs has also resulted in closer connection with the Indigenous community. It is anticipated that this will improve Corrections Victoria's ability to attract and retain Indigenous candidates to the various types of employment opportunities within the organisation.
However, with the high level of activity within the Indigenous community, it appears that suitably qualified Indigenous candidates have the ability to choose from a number of positions currently available. Competition for suitably qualified candidates is quite strong. In addition, Corrections Victoria’s human resources electronic facilities currently do not have the capacity to record Indigenous status. Data is therefore manually kept and difficult to analyse.

**ACM**

ACM, by advertising in the Gippsland regional press, specifically target the numerous Aboriginal and Torres Strait Islander groups in the recruitment process.

Numerous representations have been made, and will continue to be made, to local employment agencies to shortlist suitable staff from the Aboriginal and Torres Strait Islander community groups in any recruitment opportunity. A recent example of this is the current effort that has been made to seek applications from interested individuals from these groups for staffing for the forthcoming 68 bed Community Transitional Program Unit.

The short listing process and interviews are free from discrimination, regulated via internal/external EEO policy and procedures.

**Group 4**

Group 4 is an Equal Opportunity Employer. We place adverts in a variety of State newspapers. Active recruitment of Indigenous staff will be addressed through the Indigenous Advisory Management Committee and by advertising in the Koori specific media.

**Corrections Victoria (DOJ)** indicated that there are currently twelve people employed by Corrections Victoria who identify as Indigenous:

- Manager, IPSU, VPS G5.
- Assistant Manager IPSU (currently filled on a temporary basis as VPS G4 & advertised as ongoing role as VPS G5).
- AWOs x 3, VPS G2.
- ICCOs x 5, VPS G2.
- Prison Officer, COG 2A.
- Admin Officer, VPs G1.

There are also a further 2 vacant identified positions within Corrections:

- Assistant Manager, IPSU, Operations (currently advertised).
- ICCO, VPC G2, Bendigo (ongoing occupant seconded to another role in (DOJ) and currently advertised to be filled in the interim).

**(e) Training in Aboriginal Cultural Awareness**

The importance of cultural awareness training for staff dealing with Indigenous prisoners or detainees is addressed in the three following Recommendations. These aim to ensure that not only custodial staff and medical staff in the custodial facilities understand and appreciate Aboriginal culture and history but also that, in recruiting staff, those holding racist views are screened out.
### Recommendation 154

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tr>
<td>That:</td>
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<tr>
<td>(a) All staff of Prison Medical Services should receive training to ensure that they have an understanding and appreciation of those issues which relate to Aboriginal health, including Aboriginal history, culture and lifestyle so as to assist them in their dealings with Aboriginal people;</td>
<td>Partially implemented (CV-DOJ)</td>
</tr>
<tr>
<td>(b) Prison Medical Services consult with Aboriginal Health Services as to the information and training which would be appropriate for staff of Prison Medical Services in their dealings with Aboriginal people; and</td>
<td></td>
</tr>
<tr>
<td>(c) Those agencies responsible for the delivery of health services in correctional institutions should endeavour to employ Aboriginal persons in those services.</td>
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</table>

**Government Responses on Implementation**

**Recommendation 154: Cultural awareness training among medical and other staff**

**Corrections Victoria (DOJ)** advised the Review that:

(a) **Corrections Victoria**

At this stage, neither PSH nor Forensicare provide training to their health care staff in relation to Indigenous health, history, culture and lifestyle issues. Both have indicated that they will work towards developing and implementing additional training to assist staff to better understand the range of issues affecting Indigenous people. Health care staff have access to the AWOs or the ISOs at each Corrections Victoria prison to assist in tailoring health care services to the needs of Indigenous prisoners.

**Group 4**

SVCHS is responsible for providing secondary and tertiary health care to all Victorian prisoners. Provision of health care to Koori patients is a component of the orientation program undertaken by Health staff at St Vincent’s Health. SVH employs a Koori Health worker. In addition SVCHS employ a Koori Health worker on a part-time basis.

**ACM**

GEO/FCC - Fulham Correctional Centre has a training program for all medical staff. Awareness of multicultural needs is a part of this program.
(b) **Corrections Victoria**  
PSH and Forensicare will liaise with Aboriginal health services providers in the design and development of training programs that would assist health care staff to better address the needs of Indigenous prisoners. In the meantime, health care staff will continue to access the AWOs and the ISOs until this is addressed. GEO/FCC - Rumbalara provides Indigenous training to PSH staff which includes: Indigenous health issues, history, culture and lifestyle issues.  

**Group 4**  
See (a) above.  

**ACM**  
The local Aboriginal Health Service is available to supply information and advice on relevant issues.  

The local Aboriginal Health Service conduct bi-annual health screens on the Koori population at FCC and provide FCC with the results if the prisoner gives consent.  

(c) **Corrections Victoria**  
Both PSH and Forensicare have indicated their commitment to employing Indigenous people in the delivery of health care services in prisons. In attempting to do so, alternative strategies will be implemented, such as advertising positions in Indigenous media such as the *Koori Mail*, or via agencies such as *Diversity@Work*, in order to attract Indigenous candidates.  

However, both healthcare providers have indicated difficulties in locating suitably qualified Indigenous people to positions within prison healthcare services.  

**Group 4**  
SVCHS employs a part time Koori Health Worker.  

**ACM**  
GEO/ FCC - Fulham does not have an Indigenous medical worker, but an Aboriginal prisoner may have access to an Indigenous worker wherever possible. The Koori Liaison Officer may be involved and a worker may be brought in from Ramahyuck when available.  

Additional information on the issue of cultural awareness training was supplied by **Corrections Victoria (DOJ)**, as follows:  

PSH currently provides all health care staff with cultural awareness training from Swinburne University of Technology. The same provider trains Corrections Victoria staff. In addition to this training, PSH are liaising with Rumbalara Aboriginal Co-operative to provide training to regional PSH locations, in order to reduce the need to travel great distances. PSH continues to work with Corrections Victoria’s Indigenous Services and Policy Unit in the interests of providing better service delivery to Indigenous prisoners.  

Forensicare do not currently have in place a formal training program in relation to Indigenous awareness, however, Corrections Victoria will work with Forensicare to ensure that staff are aware of issues in cultural awareness.
Recommendation 155: Training of prison officers to identify persons in distress or at risk

Corrections Victoria (DOJ) advised the Review that:

Initial recruit training involves the delivery of cross-cultural awareness training by Corrections Victoria’s Aboriginal Well-being Officers. At this stage, the training does not encompass information regarding the general health status of Aboriginal people designed to alert staff to the risk of Aboriginal people suffering from those illnesses. This is currently being addressed and all new recruits will be provided with the required information, thereby satisfying this recommendation.

Corrections Victoria has recommenced accessing the recently revised Indigenous Cultural Awareness training program offered by the Department of Justice. This program provides a basic overview of Indigenous issues, including health related matters specific to the Indigenous community. Indigenous Services Officers are required to attend this program as part of their introduction to the role. All other staff, custodial and non-custodial, are encouraged to avail themselves of this program.

Corrections Victoria delivers SASH training initially to all new recruits and also to all staff who have regular and routine contact with prisoners. SASH training requires two days of training commitment by participating staff. Refresher training is generally of one day’s duration. The training is delivered by a combination of trainers including prison staff, psychologists and staff from the prison’s health care services. This training manual is available for perusal upon request.

SASH training provides participants with an overview of matters relating to SASH behaviour, potential indicators of such behaviour, assessment skills, intervention and referral strategies. Staff are trained to identify the precursors of SASH behaviour and to conduct an assessment followed by referral to a mental health professional where concerns exist regarding the safety of prisoners. Staff are also supported in managing prisoners with active SASH tendencies, and work with mental health professionals in case management.

Staff working in reception or in high risk areas such as the Acute Assessment Unit at the MAP are additionally trained, given the higher risk level of prisoners in these areas. Staff are additionally trained in assessment and interviewing skills, in identifying and managing prisoners at risk of suicide and self-harm.

However, training prison staff is a costly exercise as it requires identified staff to be relieved of their usual duties to attend the training, and for a replacement staff member to undertake the training staff member’s usual duties. In practice, this means that Corrections Victoria’s costs are doubled to enable training to occur. Occasionally, prison lockdowns will occur in order to ensure that relevant staff undertakes the required training. This is not necessarily the preferred option, however, is occasionally necessary to deliver training in the most efficient manner possible.

ACM

Cultural awareness training forms a part of the Recruit Training Package delivered to all new officers. Refresher training in at risk prisoners is conducted regularly.

However, accessing appropriate qualified staff of Aboriginal background to deliver the cultural elements of the program can be difficult.
Group 4

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

- Suicide and Self-harm
- Induction (procedures for)
- Routines and Procedures
- Structured Days
- Interview and Counselling Skills
- Cultural Awareness (Aboriginal) delivered by Mr Phil Egan, Indigenous Contractor
- Several Operational Instructions are also relevant.

**Corrections Victoria (DOJ)** advised the Review that the role of Prison Officers in managing general health of prisoners is limited to the identification of issues and arranging for the affected prisoner/s to access PSH, the contract organisation responsible for prisoner health. In this respect, all prisoners (whether of Aboriginal background or otherwise) are dealt with according to the same processes.

In terms of the specific health issues which might be experienced by Indigenous prisoners, three further training programs are designed to highlight these concerns:

- Corrections Victoria’s in-house Suicide and Self-harm (SASH) training identifies Aboriginal and Indigenous prisoners as a particular risk group within the prison population, alerting Prison Officers of the need to be aware of their specific issues. This training is delivered as a two-day program which is a compulsory component of all new recruit training across Corrections Victoria.
- A Cultural Awareness training module of approximately four hours’ duration is also incorporated in all new recruit training programs. There is currently discussion around expanding the duration of this component of the recruit training.
- Further Cultural Awareness training is also provided to existing staff at selected locations as an ‘as needs’ basis (refer to response to Recommendation 210 for further details).

All new recruits are required to hold a Certificate I in First Aid (Respond to Medical Emergencies) and this training is incorporated in the recruit program.

Review of Cultural Awareness training module as part of pre-service Training for Prison Officers has commenced with increased time identified to be spent on this portion of the training packages. This training has been developed for staff newly promoted to Supervisor level and incorporates cultural awareness training components

**Recommendation 177: Implementation of appropriate screening procedures to eliminate racist behaviours**

**Corrections Victoria (DOJ)** advised the Review that:

Corrections Victoria has implemented a range of initiatives and policies to eliminate and prevent racial discrimination.
As part of the selection process, applicants are required to undergo a series of processes to determine suitability for employment by Corrections Victoria in custodial positions. These include behavioural interviewing and participation in an assessment centre process (re-commencing in 2003).

These processes are designed to assess an individuals’ suitability to the demands, duties and responsibilities associated with employment in a custodial environment. Traits that are inappropriate, such as racist views, are likely to be identified throughout these screening processes.

A range of Human Resource policies have been developed in relation to racism and managing diversity in Corrections Victoria. These policies reinforce Corrections Victoria’s views of the inappropriateness of racist behaviour by staff. In addition, Corrections Victoria promotes a range of values and behaviours and an expectation that staff embody and uphold these in everyday practice. Racist views and behaviour are contrary to Corrections Victoria’s values and behaviours.

During initial recruit training, cross cultural training is provided by the Indigenous Policy and Services Unit. This reinforces Corrections Victoria’s intolerance to racism by its staff members. In the post-recruitment phase, staff are able to access cross cultural training provided by the DOJ. Corrections Victoria is currently working with the DOJ regarding the possible extension of this training to tailor it to the needs of Corrections Victoria staff.

All new recruits participate in cultural awareness programs delivered by the IPSU. Post-recruitment, staff are able to access cultural awareness programs conducted by the IPSU or the Department of Justice. Both training programs are delivered by Indigenous people and aim to enhance staff skills in working with Indigenous people.

Where racist behaviour is displayed by staff, several options can be deployed, depending on the type and severity of the incident. Counselling, conciliation, education programs, cross-cultural training and disciplinary action are available to address racist behaviour.

Furthermore, victims of racism need to be encouraged to report racial harassment, and supported if reporting is followed through.

See Recommendation 155 regarding the cost difficulties associated with training prison staff.

**ACM**

ACM undertakes a comprehensive selection process, which is inclusive of, but not limited to, psychometric testing, and formal structured interview process.

New staff are progressively monitored on a monthly basis and appraised by a performance review. A mandatory three month probationary period is also applied after successful appointment or after promotion in any rank.

The Aboriginal Counsellor provides Cultural Awareness training for all staff including Correctional Officers and the training is focused enhancing skills in cross-cultural communication and being able to relate to all races including Aboriginal and Torres Strait Islander prisoners.

ACM also conducts regular EEO training seminars to ensure staff are trained and comply with the respective discrimination provisions. The above screening process and training helps ensure that all staff display appropriate behaviour free from racist influence whilst undertaking their professional duties at the centre.
Group 4
During recruitment we conduct tests and evaluations aimed at highlighting racial prejudice.

During Initial Training we constantly reinforce non-racist feelings/matters in a number of sessions - this is a large part of Group 4 Correction Services philosophy and ethos.

All Initial Training Courses for new Correctional Officers are in line with the Training Package for Correctional Services CSC98. The certificate attained is Certificate III 30198 in Correctional Practice (Custodial Practice). Sessions taught that are relevant:

- Royal Commission into Aboriginal Deaths in Custody and Cultural Awareness (Aboriginal) training are delivered by an Indigenous contractor.

Corrections Victoria further advises that training for recruits and staff is normally conducted by IPSU while training for ISOs has been organised through either Corrections Victoria or DOJ. In general, feedback form ISOs has been positive however there has been some discussion over the weighting between historical perspective and practical skills in these sessions.

A number of staff across CCS and Prisons have attended both locally-arranged and centrally co-ordinated cultural awareness training.

As an example of feedback received, Geelong CCS advised that central sessions attended by ISO staff were *valuable* and that sessions delivered locally by the ICCO are highly valued as they provide real insight into Aboriginal issues.

Feedback from Hume CCS indicated a preference for practical skills and information over historical content.

Barwon Prison advised that locally delivered sessions (run by their ISO) generated excellent feedback, noting that they provided practical information on how to relate to Aboriginal persons.

The centralised DOJ HR structure has reviewed all recruitment and selection policies and processes and re-issued revised Diversity policies and updated recruitment and selection skills training with emphasis on diversity in recruitment practices.

(f) Pre- and Post-Release Programs
A cluster of Recommendations are directed at the preparation for release from prison and cover the importance of education programs in prison to assist in post-release life.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>110</td>
<td>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.</td>
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<tr>
<td>184</td>
<td>That Corrective Services authorities ensure that all Aboriginal prisoners in all institutions have the opportunity to perform meaningful work and to undertake educational courses in self-development, skills acquisition, vocational education and training including education in</td>
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</tbody>
</table>
Aboriginal history and culture. Where appropriate special consideration should be given to appropriate teaching methods and learning dispositions of Aboriginal prisoners.

185 That the Department of Employment, Education and Training be responsible for the development of a comprehensive national strategy designed to improve the opportunities for the education and training of those in custody. This should be done in cooperation with state Corrective Services authorities, adult education providers (including in particular independent Aboriginal-controlled providers) and State departments of employment and education. The aim of the strategy should be to extend the aims of the Aboriginal Education Policy and the Aboriginal Employment Development Policy to Aboriginal prisoners, and to develop suitable mechanisms for the delivery of education and training programs to prisoners.

Commonwealth responsibility (DE&T)

Fully implemented (CV-DOJ)

186 That prisoners, including Aboriginal prisoners, should receive remuneration for work performed. In order to encourage Aboriginal prisoners to overcome the educational disadvantage, which most Aboriginal people presently suffer, Aboriginal prisoners who pursue education or training courses during the hours when other prisoners are involved in remunerated work should receive the same level of remuneration. (This recommendation is not intended to apply to study undertaken outside the normal hours of work of prisoners).

Fully implemented (CV-DOJ)

Government Responses on Implementation

**Recommendation 110: Pre- and post-release schemes**

**Corrections Victoria (DOJ)** advised the Review that they are aware that no national study has been undertaken in this area.

However, Corrections Victoria commissioned a study entitled *Transition from Custody to Community - June 2001*, prepared by Ms Lisa Ward. The report was informed by a review of relevant international research regarding the impact of transitional support services. The report concluded that, while the research base is rudimentary, there is solid evidence that transitional support services are effective in easing prisoners’ experience of the transition from custody to community. There is also good evidence that these services can assist in delaying or preventing further offending when provided as part of an integrated, systematic response.

This report will form the basis for development of an integrated transitional support service. This will also draw and build upon on *Bridging the Gap* pilot programs and evaluation of Housing and Employment pilots.

However, the work described above has not focused on the specific needs of Indigenous prisoners. This is being addressed through:

(a) Development of an Education, Employment and Training Strategy for Indigenous prisoners and offenders. A draft strategy has been developed and will be circulated to stakeholders in early 2004.

(b) Adaptation of the Housing Pilot to ensure that all Koori prisoners are assessed for eligibility for the program in recognition of their increased risk of homelessness.

(c) Development of a Framework for Transitional Services to include specific initiatives for Indigenous Prisoners.

**Corrections Victoria (DOJ)** further advised that Victoria's prison system delivers a number of transitional services in response to the diversity of risk and need levels in the prison population. A transitional framework is being developed which aims to ensure there are a series of graduated program options available; targeted at risk and need, and
responsive to particular issues and cultural and linguistic diversity. One of the principles of the transitional framework is that service delivery should be culturally appropriate and demonstrates an understanding of Indigenous communities and their needs, including the consultative process with Indigenous participants and communities. This principle is reflected in the development of all Victorian transitional programs including Bridging the Gap and the Correctional Services Employment Pilot Program.

For example, in an attempt to improve the responsiveness of other programs to Indigenous prisoners, the current tender specification for the Bridging the Gap programs states that within [program] sub-populations, funded agencies will also be expected to target and assist, consistent with current prison population proportions Indigenous prisoners. One of the key program principles stated in the specification is that service delivery should be culturally appropriate and demonstrate an understanding of Indigenous communities and their needs, including the consultative processes with Indigenous participants and communities. Importantly, the evaluation criteria against which agencies will be selected assesses the demonstrated ability of agencies to work with participants from culturally and linguistically diverse backgrounds, including Koories, and provided with a service tailored to their needs.

Of particular relevance to the Royal Commission into Aboriginal Deaths in Custody is the THM-Corrections Housing Pathways Initiative. As a standard program practice, all Indigenous prisoners are offered an assessment for their eligibility to the program and the Aboriginal Well-being Officer is consulted on every case. Program data shows that 6 per cent of participants who had access to a Housing Placement Worker were Indigenous and that 8.6 per cent of prisoners provided with a dedicated transitional property on release were Indigenous (compared with a rate of Indigenous representation amongst prisoners of approximately 4.5 – 5 per cent). The draft interim report by Deakin University on the housing program also reports that Indigenous participants were significantly more likely to achieve a stable housing outcome than individuals from other cultural groups (final report is expected to be available in July 2004).

Another significant development with regards to post-release planning is the signing of a protocol between Corrections Victoria and Centrelink in April 2004. The Protocol with Centrelink will ensure systematic debt prevention and pre-release assistance for all prisoners. The protocol will also ensure Centrelink provision of administrative services for Lawful Custody Allowance claims for reimbursement of eligible Indigenous prisoners’ study expenses. The protocol is currently being implemented.

The Koori Education, Training and Employment Strategy has been developed consistent with the Aboriginal Justice Agreement and the Corrections Long Term Management Strategy, to strengthen transitional programs for Indigenous prisoners and offenders by focusing on the specific needs of this group. Development of the Strategy has involved intensive consultation with Indigenous stakeholders through the RAJAC network, a range of service providers and Koori prisoners and offenders. The strategy is still in draft form and is currently being circulated to stakeholders for comment. Following this process, and consideration of comments the final document will be prepared. A copy of the draft Strategy has been provided to the Review Team.

**Recommendation 184: Access to meaningful work and educational courses**

**Corrections Victoria (DOJ)** advised the Review that:
All sentenced prisoners in Victoria have the opportunity, and are required, to work six hours each day, five days per week. The type of work varies across the 13 prisons, and includes metal fabrication, wooden and electrical products, agriculture, horticulture, community work gangs, as well as 'billet' positions for unit maintenance, kitchen and laundry work.

All correctional facilities also provide educational courses and programs, and in 2002, all prison locations with Aboriginal prisoners were funded by Corrections Victoria to run the Coorong Tongala (Certificate I in Koori Education) program. Coorong Tongala is designed to provide accredited training for Koori people wishing to gain training in a field relevant to their community and to develop skills for accessing further training, education or employment.

However, the key issue for implementation of this Recommendation is the fact that prisoner numbers have increased dramatically over the last decade, however education provisions have not increased in real terms. This means that the demand for education and training consistently exceeds supply of course and program places.

This is currently being addressed by the State-wide Review of Prison Education and Training, which will provide policy and practice guidance on access to, and the provision of, corrections education and training to ensure equitable and effective access to prison-based learning opportunities.

Corrections Victoria provides meaningful and productive work for all sentenced prisoners to assist them to develop useful employment skills that can be utilised in the wider labour market in the community. Vocational training programs are also available to supplement the practical experience gained in the prison workplace. Gainful employment of prisoners contributes significantly to the effective management of the prison environment and the safety of prisoners and staff.

Corrections Victoria provides work in a variety of industrial settings and in service industries and prisoners are given the opportunity to learn skills applicable to employment in the general community.

In addition, Corrections Victoria is committed to providing access to nationally recognised and accredited education and training programs that enhance employment opportunities release. Staff identify the education and training needs of prisoners and encourage participation in education and training programs. Staff work collaboratively with service providers to facilitate prisoner access to and completion of courses.

All Corrections Victoria prisons deliver Aboriginal Cultural Immersion Programs (ACIP). These programs are delivered by Indigenous facilitators and aim to expose Indigenous prisoners to Aboriginal history and culture. For some prisoners, this program represents the first real opportunity to learn about Indigenous culture and about their own history.

Most Corrections Victoria prisons deliver the Coroong Tongala or KETE Program through the local TAFE. Again, these programs are delivered by Indigenous facilitators, or staff who are additionally trained and experienced in working with Indigenous people. The Koori Departments at most TAFEs offer additional programming or units specifically developed for Indigenous people. Art and craft programs and music programs are occasionally delivered to Indigenous prisoners by TAFE.

Program delivery associated with the ACIP and the Indigenous specific TAFE programs reflects the learning needs and styles most appropriate to Indigenous people. Classroom based activities and lecture style delivery are not regarded as appropriate to the learning
styles and needs of Indigenous prisoners. Often, learning occurs through a medium such as music, art and craft or story telling.

Apart from Koori specific programs available, Indigenous prisoners are able to access the variety of programs offered by TAFE, including literacy and numeracy programs, computers etc.

All prison locations also offer other Indigenous specific programs and services, in addition to a range of mainstream programs available to all prisoners.

However, some locations, such as MAP, have limited employment opportunities given its reception function. Corrections Victoria must also be mindful that in securing work opportunities for prisoners, the needs of the external general community are not overridden.

**ACM**

Policy 2.19.1 – All prisoners are to be given opportunities to develop skills necessary for their effective participation in the labour market after their release.

Policy 2.19.2 – All prisoners at the centre are to be provided with the opportunities to obtain basic academic and/or vocational training targeted to meet identified needs.

Policy 2.19.3 – All prisoners are expected to participate in work education programs as essential components for both prisoner development and effective prison management.

Aboriginal specific programs conducted at FCC include:

- Certificate I in Koori Education (Coorong Tongala).
- Marumali program.
- Cultural Connection program.

However, difficulties have been experienced in gaining the services of suitably qualified Aboriginal staff for ongoing programs.

**Group 4**

As per prison policy and procedures - PPP provides specific educational services along with support programs. Educational programs include:

- Coorong Tongala.
- Koori Art Program.
- Cultural Immersion.

Coorong Tongala is included as a V4/A initiative (2.8 Youth Leadership in Custody). The V4/A provides a meaningful framework for the implementation of programs such as Coorong Tongala. In ensuring the program has continued funding in each location, Corrections Victoria has been able to cite the V4/A and its intentions, and this has been useful when liaising with education and training providers.

The V4/A also provides the framework for the assessment of Koori education and training needs as part of the Review of Prison Education and Training currently underway across the Victoria prison system. The V4/A strategic objective provide the context for what should be occurring across the system, and as assessment of current delivery and future requirements.
is occurring as part of the Review. This will inform future delivery and guide the future involvement of Koori learners in corrections settings.

The involvement of Corrections Victoria in the Aboriginal Justice Forum, and the Corrections Indigenous Issues Coordinating Committee will enable a closer working relationship between program designers and developers, and Indigenous communities. Good links between the OCSC and Koori workers at PPP, for example, will also strengthen community participation. The VAEAI representation on the Review of Prison Education and Training Reference Group (current) and the Correctional Services Employment Pilot Project (in train) will also be a valuable opportunity for input, participation and follow-up action.

What's clear from the increased employment, education and training activity in Victoria's correctional services system during 2002 is the need for a holistic, integrated approach which addresses the range of complex needs prisoners have. Offence-related and offence-specific interventions which are culturally appropriate and which provide an integrated, coordinated approach to tackling needs and reducing re-offending require attention during 2003, and will be incorporated into Corrections Victoria's Strategic Planning and Development Employment, Education and Training Unit work place for next year.

A strategic approach to program planning and implementation within Corrections Victoria would include reference to the VJA/A and Royal Commission into Aboriginal Deaths in Custody and demonstration of the ways in which each initiative reflects VJA/A principles. The demonstration of linkages between initiatives (noting the point above) would also strengthen program and service delivery, as well as outcomes for participants. This would have advantages for all communities.

**Corrections Victoria (DOJ)** further advises that the State-wide Review of Prison Education and Training Report (a copy of which has been provided by Corrections Victoria) was completed in 2003 and sets the way forward for corrections education and training in Victoria. It includes 29 recommendations on the purpose of, and practices relating to, corrections education and training.

Key findings of the Review were:

- The primary purpose for education and training in prisons must be to assist prisoners to gain employment, and thereby reduce the likelihood of re-offending;
- Prison education and training is a key element of the overall rehabilitation framework;
- Education and training in corrections is the responsibility of Corrections Victoria with the OTTE of the Department of Education & Training;
- Education and training – learning – should be integrated into other areas of prison operation (eg recognition of skill development in prison industries and coordination of industry and education activities);
- All prisoners should undergo an assessment of their education needs at the beginning of their sentence. This assessment should inform offender management arrangements, and be reflected in pre- and post-release activities;
- Priority access to education and training should be based on assessed needs, with greatest priority given to prisoners with basic skills needs (literacy and numeracy) to enhance employment opportunities. Vocational skill development should remain a key part of education provision; and
- Consideration should be given to the establishment of an independent advisory body representing the corrections and education sectors and stakeholders, to inform corrections education and training.
Key findings relating specifically to Indigenous prisoners were:

- Indigenous prisoners’ perception of their skills is that they are less skilled in all areas, and that this is statistically significant in the areas of reading, writing and maths skills. Indigenous prisoners were also significantly less likely to have completed courses in other prisons or to have completed any other training courses outside prison or school;
- As part of the education assessment process, and integral to education provision, the specific education and training needs of particular groups including Indigenous prisoners need to be recognised; and
- Education and training for Indigenous prisoners should be consistent with the directions embedded in the Yalca and Wurreker policy frameworks established by the Victorian Government.

The Review recommendations have been endorsed in principle by the Minister for Corrections and the Minister for Education and Training; and an Implementation Committee has been convened to plan, guide and advises on implementation of the recommendations. The Committee is chaired by the Commissioner, Corrections Victoria, and made up of key stakeholders in the education and training sector (including the Victorian Aboriginal Association Incorporated), the corrections system and the employment arm of the Commonwealth Government. The Committee will advise both Ministers on the implementation of each recommendation by 31 December 2004.

The Koori Education, Training and Employment Strategy will complement the recommendations of the Review but specifically focusing on the needs of Koori prisoners and offenders. A draft strategy has been developed and is currently being circulated to stakeholders for comment (a copy has been provided by Corrections Victoria). Refer response to Recommendation 110 for further information.

**Recommendation 185: National strategy for those in custody**

The **Department of Education and Training** advised the Review that this recommendation is a Commonwealth Government-led responsibility.

**Corrections Victoria (DOJ)** advised the Review that the National Strategy for Education and Training of Indigenous People in Custody is the guiding framework for provision of education and training funded by the DE&T. All corrections education and training in Victoria is funded by DE&T, and the Department’s commitment to both mainstream courses and specific courses designed to meet the needs of Koori learners is reflected in the range of courses/programs offered in each correctional location.

Specific education and training needs of Koori prisoners and offenders are currently being investigated as part of the Review of Prison Education and Training, the Offender Education and Training Needs Analysis Project was completed in April 2003.

In response to the Needs Analysis, a pilot initiative has been developed in partnership with the Adult Community and Further Education Division (ACFED) of the Department of Education and Training and will commence operation in January 2005. The Offender Education and Training in ACE initiative will bring together four pilot Community Correctional Services locations, local Adult Community Education (ACE) Providers and other community stakeholder groups to develop innovative education and training programs for offenders. Indigenous Offenders will be an important target group in this initiative, particularly in locations such as Mildura. This investigation is occurring through the prison-based and
community surveys of prisoners and offenders, and a Koori-specific focus group scheduled for January 2003.

However, the key issue with implementation of this recommendation is the fact that prisoner numbers have increased dramatically over the last decade, however education provisions have not increased in real terms. This means that the demand for education and training consistently exceeds supply of course and program places.

This is currently being addressed by the State-wide Review of Prison Education and Training, which will provide policy and practice guidance on access to, and the provision of, corrections education and training to ensure equitable and effective access to prison-based learning opportunities.

See Recommendation 184 for the ways in which the principles, strategic objectives and initiatives of the VAJA assist in the implementation of this Recommendation.

Recommendation 186: Remuneration to prisoners for work performed whilst in custody

Corrections Victoria (DOJ) advised the Review that:

All prisoners throughout the prison system in Victoria have the opportunity, and are required, to work six hours a day, five days per week (except prisoners who are ill or aged over 65). The type of work varies across the 13 prisons, and includes metal fabrication, wooden and electrical products, agriculture, horticulture, community work gangs, as well as ‘billet’ positions for unit maintenance, kitchen and laundry work. Prisoners are remunerated according to the type of work done, and the complexity of the task (ranging from $6.05 per day to $8.25 per day).

All correctional facilities also provide educational courses and programs, and in 2002, all prison locations with Aboriginal prisoners were funded by Corrections Victoria to run the Coorong Tongala (Certificate I in Koori Education) program. Coorong Tongala is designed to provide accredited training for Koori people wishing to gain training in a field relevant to their community and to develop skills for accessing further training, education or employment.

However, the key issue with implementation of this recommendation is the fact that prisoner numbers have increased dramatically over the last decade, however education provisions have not increased in real terms. This means that the demand for education and training consistently exceeds supply of course and program places.

This is currently being addressed by the State-wide Review of Prison Education and Training, which will provide policy and practice guidance on access to, and the provision of, corrections education and training to ensure equitable and effective access to prison-based learning opportunities.

A further issue warranting investigation in 2003 was the range of prison industries, and the extent to which industries provide meaningful work, and provide skills and experience which enhance the employability of prisoners. This is being examined as part of the Prison Industries Advisory Committee Employability Skills project.
Corrections Victoria

Each Corrections Victoria prison provides a select number of full-time education places or full-time program placements. These places are available to Indigenous and non-Indigenous prisoners. Prisoners undertaking an approved program or full-time education will receive level three payments in accordance with Operating Procedure 3.3 Prison Industries.

Prisoners enrolled in full time education or training will be paid the approved rate of pay during the college year, however, during semester breaks and TAFE College close-downs, prisoners will be expected to work to receive the full daily rate of pay. Prisoners who remain unemployed during these periods will receive the unemployed daily rate of pay.

Employed prisoners undertaking part-time education will be paid their assessed fully daily working rate on those days they attend half a day at industry and half a day at education.

Consequently, Corrections Victoria supports and encourages prisoners to undertake education activities, by ensuring that they are paid whilst studying.

ACM

- Refer to Policy 2.19.5 - Prisoner Wages, where prisoners receive remuneration for work done which also includes full time education.
- Refer to Policy 2.21.3 - ABSTUDY, where Aboriginal prisoners are given the opportunity to take advantage of ABSTUDY Grant.

Corrections Victoria (DOJ) further advises that the Prison Industries Employability Skills project is part of a group of projects which have looked at the extent to which prison industries provide meaningful work, and provide skills and experience which enhance the employability of prisoners. Other projects include the Review of Prison Education and Training, and the investigation of a traineeship model for prisoners. These projects have provided significant information to inform the redevelopment of prison industries and education, such that there is closer integration between the two areas and opportunities for skills development and formal recognition of skills in prison industries. Work on possible models for the integration of education and industries in prisons will continue throughout 2004-05.

The draft KETE Strategy also notes the importance of opportunities for skill development and recognition in prison industries. It actions links between prison industry placement and assessed employment needs; and links between prison industry activity and accredited vocational training for Koori prisoners.

See Recommendation 184 for the ways in which the principle, strategic objective and initiatives of the VAJA assist the implementation of this Recommendation.

A Review of the Remuneration Rates for Education, Training and Offending Behaviour Programs is currently underway and is due for completion in February 2005.

(g) Data Collection and Reporting

Three Recommendations address the area of data collection and reporting systems covering police custody, prisons and juvenile detention and involve other Australian jurisdictions, including the Commonwealth Government.
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tr>
<td>41</td>
<td>That statistics and other information on Aboriginal and non-Aboriginal deaths in prison, police custody and juvenile detention centres, and related matters, be monitored nationally on an ongoing basis. I suggest that responsibility for this be established within the Australian Institute of Criminology and that all custodial agencies cooperate with the Institute to enable it to carry out the responsibility. The responsibility should include at least the following functions:</td>
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<td></td>
<td>a) Maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders);</td>
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<td>b) Report annually to the Commonwealth Parliament; and</td>
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<td></td>
<td>c) Negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody. Such definition should include at least the following categories:</td>
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<td>i. the death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;</td>
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<td>ii. the death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention;</td>
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<td>iii. the death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and</td>
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<td>iv. the death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.</td>
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<td></td>
<td>a) Fully implemented, b) not relevant to Victoria, and c) fully implemented (VicPol)</td>
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<td></td>
<td>a) Fully implemented, b) not relevant to Victoria, and c) fully implemented (CV-DOJ)</td>
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<td>Fully implemented (CP &amp; JJ-DHS)</td>
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<td>45</td>
<td>That the appropriate Ministerial Councils strive to achieve a commonality of approach in data collections concerning both police and prison custody.</td>
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<td></td>
<td>Fully implemented (CV-DOJ)</td>
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<td></td>
<td>No Progress (VicPol)</td>
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<td>46</td>
<td>That the national deaths in custody surveys which I have recommended be undertaken by the Australian Institute of Criminology include the establishment of uniform procedures and methodologies which would not only enhance the state of knowledge in this area but also facilitate the making of comparisons between Australian and other jurisdictions, and facilitate communication of research findings.</td>
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<td>Fully implemented (CV-DOJ)</td>
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<td>47</td>
<td>That relevant Ministers report annually to their State and Territory Parliaments as to the numbers of persons held in police, prison and juvenile centre custody with statistical details as to the legal status of the persons so held (for example, on arrest; on remand for trial; on remand for sentence; sentenced; for fine default or on other warrant; for breach of non-custodial, court orders; protective custody or as the case may be), including whether the persons detained were or were not Aboriginal or Torres Strait Islander people.</td>
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<td></td>
<td>Fully implemented (CV-DOJ)</td>
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<td>Fully implemented (CP &amp; JJ-DHS)</td>
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<td></td>
<td>Partially implemented (VicPol)</td>
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**Government Responses on Implementation**

**Recommendation 41: Data collection**

**Corrections Victoria (DOJ)** advised the Review that it provides information to AIC on all deaths that occur in Victorian prisons. This includes identifying the death as relating to an Aboriginal or Torres Strait Islander prisoner where relevant. Corrections Victoria advised the Review that Part (b) of Recommendation 41 is a Commonwealth responsibility and therefore not relevant to Victoria. Corrections Victoria reports to AIC according to the established pro-forma. This includes the definition of deaths in custody as established by the AIC in accordance with the Royal Commission.

The database is maintained by the AIC as a direct outcome of Royal Commission into Aboriginal Deaths in Custody. The AIC produces regular reports which allow us to track trends in relation to rates of Aboriginal and Torres Strait Islander deaths in custody and to
make comparisons between jurisdictions. The VAJA assists in maintaining a profile for Royal Commission into Aboriginal Deaths in Custody.

**Corrections Victoria (DOJ)** has no issues with the definition of what constitutes a death in custody. The AIC has provided the following two definitions of an Aboriginal person, quoting from sections of the Royal Commission Report:

**11.13 Administrative Definition of Aboriginality**

11.13.1

According to the official formula, an Aboriginal person is someone of Aboriginal descent, who identifies as such and is recognised by the Aboriginal community to be so. The proportion of Aboriginal descent is not specified here. Recognition by the Aboriginal community - in practice, an Aboriginal community - usually entails being situated in a particular family and network of kinship and affinity. Thus certified, the proportion of Aboriginal ancestry is irrelevant; what counts is a kin connection to other Aboriginal people. Although this confirms broadly to Aboriginal practice outside the official framework, it is, ironically, also consistent with longstanding White Australian practice. At the turn of the century, anyone with a ‘touch of the tarbrush’ was Aboriginal, and still today in country towns, any member of an Aboriginal family is ‘black’, regardless of appearance.

**11.14 The Legal Interpretation of Aboriginality**

11.14.7

The result of this case is that those persons claiming Aboriginality would, as a matter of law, be Aboriginal provided they were descended, to a degree which was not trivial, from Aboriginal people. Where that question is uncertain then factors such as community acceptance and recognition, and the person's own identification as Aboriginal, could determine the issues.

The first definition is recommended as most appropriate in the corrections environment, ie: the person must be of Aboriginal descent, identify as such and be recognised by the Aboriginal community to be so. The rationale for this is that, in order to be treated as an Indigenous person and receive Indigenous specific services, a person must not only be of Aboriginal descent, but also identify as Indigenous.

See Section 6.2 - Police for **Victoria Police** response to this Recommendation

See Section 6.5 - Juvenile Justice for **Child Protection and Juvenile Justice (DHS)** response to this Recommendation.

**Recommendation 45: National collection of Indigenous status data**

**Corrections Victoria (DOJ)** advised the Review that all State and Territory jurisdictions collect and publish data on the Indigenous status of prisoners which complies with the ABS standard classification for Indigenous Status. However, a prisoner's Indigenous status is self-reported and therefore the extent of under-reporting is not known. Furthermore, prisoners whose Indigenous status is ‘unknown’ or ‘not reported’ are counted as ‘Non-Indigenous’ which again, may lead to under-reporting of Indigenous prisoners. The ABS has conducted a national corrections survey to establish if the ABS standard question to establish Indigenous status was being used.

**Corrections Victoria (DOJ)** further advised that in November 2003, the National Corrective Services Statistics Unit (NCSSU) of the ABS presented the results of their survey on the collection of Indigenous Status to the NCSSU Advisory Group. The survey found that
while Indigenous Status is collected by all jurisdictions for prisoners and offenders, variations of the ABS standard question are being used. A number of recommendations to standardise the data collection nationally were made and each jurisdiction, including Victoria, has nominated a representative to liaise with the NCSSU to implement them. Corrections Victoria is awaiting advice from NCSSU in order to progress this project to the next stage.

See Section 6.2 - Police for Victoria Police response to this Recommendation.

**Recommendation 46: Uniform survey procedures and methodology**

Corrections Victoria (DOJ) advised the Review, that it provides information to the AIC on all deaths in custody. AIC publishes regular reports which allow for comparisons between jurisdictions.

**Recommendation 47: Annual reporting to Parliament**

Corrections Victoria (DOJ) advised the Review that a range of statistics on prisoners is published annually by Corrections Victoria or by other agencies using data provided by the Office. These publications are publicly available and include the following:

- The DOJ Annual Report publishes statistics on all prisoners but not specifically on Indigenous prisoners. However, the Annual Report does make reference to the Corrections Victoria’s publication - Statistical Profile of the Victorian Prison System, which does provide statistics on Indigenous prisoners.
- Statistical Profile of the Victorian Prison System presents annual census stock data since 30 June 1995 and annual reception flow data since 1995-96. In relation to Indigenous prisoners, the following statistics are published:
  - The number of prisoners by Indigenous status;
  - Legal status (sentenced or unsentenced);
  - Gender;
  - Age;
  - Most serious offence/charge;
  - Imprisonment rates by gender;
  - Expected time to serve (for sentenced prisoners); and
  - Annual number of Indigenous prisoner receptions (sentenced and unsentenced) by most serious offence/charge.
- Report on Government Services - this annual publication provides the following national and jurisdictional-level statistics on Indigenous prisoners:
  - Daily average number;
  - Imprisonment rates; and
  - Number of deaths.

Statistics on the daily average number and rates for Indigenous persons under community-based supervision are also included in the report, and the Steering Committee for the Review of Commonwealth/State Service Provision (SCRCSSP) is currently working towards expanding the data collecting in relation to Indigenous prisoners/offenders.

The ABS annual publication *Prisoners in Australia* is a national census of the prisoners in each jurisdiction as at 30 June and includes statistics relating to the characteristics of
sentenced and unsentenced Indigenous prisoners similar to those published in the *Statistical Profile of the Victorian Prison System*.

The ABS quarterly publication Corrective Services publishes national and jurisdictional-level statistics on the legal status of Indigenous prisoners as well as daily average numbers, numbers on the first day of the month and Indigenous rates of imprisonment.

However, a prisoner's Indigenous status is self-reported and therefore the extent of under-reporting is unknown. Furthermore, prisoners whose Indigenous status is 'unknown or 'not reported’ are counted as 'Non-Indigenous' which again, may lead to under-reporting of Indigenous prisoners.

The VAJA establishes the broad context for which statistics can be used to support the development of the programs and services for the Aboriginal community who come into contact with the justice system, As stated above, these statistics are made available to the Aboriginal Justice Forum and assist in guiding discussions and decision making.

*Corrections Victoria (DOJ)* further advised that feedback from the Indigenous Liaison Officer at MAP and the Aboriginal Well-being Officers suggest that almost all Indigenous prisoners identify as such on reception. Those that do not are followed up by AWOs following reception.

See Section 6.2 – Police for *Victoria Police* response to this Recommendation.

See Section 6.5 – Juvenile Justice for *Child Protection and Juvenile Justice (DHS)* response to this Recommendation.

### 6.4.2 Community Responses

Although the Royal Commission went to extraordinary lengths to emphasise time and again that the fundamental questions relating to Aboriginal deaths in custody were the upstream, underlying issues behind over-representation of Aboriginal people in various forms of custody, understandably enough, community responses tended to focus heavily on the more proximate or immediate settings in which such events took place.

Thus, along with the areas of police, the prison experience attracted a substantial amount of community comment, particularly when compared with general issues like Aboriginal health, education and housing, thereby perhaps reflecting the Commission's (and this Review’s) major problem in achieving a major refocussing of attention on upstream issues. This said, however, the Commission did not belittle the importance of the imprisonment experience, and it went out of its way to stress the possibly unique significance it has unfortunately come to hold in Aboriginal society:

*Nevertheless, the evidence placed before this Commission indicates that the Aboriginal experience of imprisonment is itself also directly related to the level of Aboriginal imprisonment. The prison experience is both an immediate experience in the sense of defining a prisoner's day-to-day living environment, as well as often becoming a life style experience in the sense of becoming the typical social environment for many people throughout their lives* (Royal Commission, 1991b, Vol. 3, 25.1.2).

And further that:
The trauma and stress associated with the prison experience may well have an added effect on those who endure a long history of institutionalisation and, given what seems to be very high rates of recidivism amongst Aboriginal offenders, may be considered as self perpetuating (Royal Commission, 1991b, Vol. 3, 25.2.3).

The statistical information presented in Volume 2 acknowledges the continued over-representation in Victoria of Indigenous prisoners not only in prisons but also in police custody and in juvenile detention centres.

There has been a 45 per cent increase in the number of Indigenous prisoners from 128 in June 1995 to 186 in June 2004. However, during this period, non-Indigenous prisoner numbers also increased from 2,339 in June 1995 to 3,424 in June 2004, representing a 46 per cent increase.

Indigenous prisoners account for about 5 per cent of the total prisoner population and this proportion has remained relatively constant over the ten-year period from 1995 to 2004.

The highest number of Indigenous male prisoners (at 1 April 2004) were held in Port Phillip Prison (42), Fulham Correctional Centre (30), Barwon Prison (28), while 16 Indigenous female prisoners were held at Dame Phyllis Frost Centre.

Some of the community responses received were in relation to correctional issues in the form of written submissions. Thus in its submission to the Review, VALS warned about the dangers of complacency over Aboriginal deaths in custody in Victoria, emphasising in particular one near miss incident where an Indigenous person almost died in police custody (see Section 4 for further details) which took place in 2004. The submission called for the implementation of recommendations about education, training and strategies related to Indigenous people in police cells and which have also direct relevance to prisons and juvenile detention centres (VALS, 2004: 6).

VALS also addressed the issue of the negative impact of criminal records on the development of the Aboriginal Official Prison Visitors program. While welcoming the initiative to appoint such Visitors, VALS also called for legislative changes to guard against what it sees as discrimination in the discretionary appointment process. It also called for changes to the Equal Opportunity Act to prohibit discrimination on the basis of what it called irrelevant criminal records and spent records.

The Submission expressed concern that prison might be treated as a rite of passage by some Aboriginal people, prison providing a comfortable environment. This danger, the submission argued, could be reduced by an effective Aboriginal visiting system that again might involve rehabilitated persons with criminal records.

VALS argued further that the tough on crime approach of government impacted particularly adversely on Aboriginal people and their over-representation in custody. In respect of non-custodial programs, VALS noted that Community Based Orders had proved to be highly
problematic for Victorian Aboriginal people and welcomed the proposed introduction of an Indigenous Adult Residential Diversion Program.

On the basis of population rates (per 100,000 people) Indigenous persons in 2002-03 were 12.2 times more likely to be in prison than non-Indigenous persons, a slight increase from 11.3 times in 1999-00.

Between 1999-00 and 2002-03, the number of prisoner receptions for both Indigenous and non-Indigenous populations increased by 6 per cent and 5 per cent respectively.

Another submission (Edney, 2004) raised the question of whether the Royal Commission's Report had now assumed the status of a historical document or whether it could be used as a living document informing the practices of the contemporary criminal justice system, including correctional services. He illustrated its use in the latter context by providing a detailed analysis of one case in which Royal Commission Recommendations were cited by the Supreme Court Judge as a kind of normative standard in connection with how the criminal justice system and correctional services, in particular, had dealt with an Indigenous individual. Had implementation of some of the Recommendations occurred, it was argued in the judgement referred to in the submission, this might have assisted the defendant and prevented further offending. The Submission concluded that consideration of Royal Commission Recommendations are not yet routinely incorporated into the operation of the current criminal justice system, and:

... where there is fidelity to the Recommendations as practical edicts and codes of conduct ... then the potential for positive outcomes is greatly enhanced (Edney, 2004: 8).

More directly touching on the lives of Indigenous prisoners, the Koorie Unit of Gippsland Institute of TAFE outlined its experience in a written submission as a service provider to Won Wron Prison. Within this context the submission recommended strongly that:

... the appointed Koorie Liaison Officer facilitates regular contact for inmates from community visitors as well as family members;

... [that] financial assistance or support be given directly to support families to have regular visits and to access transport or to receive bus/rail vouchers;

That each release has a case-management approach to provide guidance, personal support to address immediate issues of accommodation, Centrelink support, personal support, and to adjust in relationships with family; and

That a plan of release is worked through prior to release and continues after release for a period of time and to engage longer term support (Gippsland Institute of TAFE, 2004: 3-5).

The Unit commented further on its generally good relationship with senior staff at the prison, on the provision of culturally supportive programs, on its contribution to cross-
cultural awareness and on the perceived benefits of its educational programs. The Submission argued strongly that any national strategy for the improvement of educational and training opportunities for those Indigenous persons in custody should:

- work hand in hand with social networks;
- involve an individualised tracking process to facilitate completion of studies at different institutions to which they may be sent; and
- provide adequate case management of releases to support ongoing education and training for individuals (Gippsland Institute of TAFE, 2004: 6).

Another written submission (Knight, 2004) received by the Review claimed that the increased attention and support given to Aboriginal prisoners as a result of the Royal Commission findings are resented by non-Aboriginal prisoners. He gave a number of examples of alleged Aboriginal privilege, but was at pains to point out that:

any resentment ... has been reduced when it is seen that findings of Royal Commission into Aboriginal Deaths in Custody are being implemented with respect to all prisoners and not just Aboriginal prisoners (Knight, 2004: 2).

A written response from Koori inmates of Loddon Prison (2004) gave the Review this valuable perspective on what was needed 'inside':

We, the Koori inmates of Loddon Prison want you to know:

- We need an Indigenous qualified counsellor to listen to our problems on a regular basis. (Boys are too frightened to speak to psych etc because ‘I was sent to AAU at MAP and I was put in canvas’ - ‘you know how we believe in things/our culture/spirits and they thought I was talking crap and going psycho’). We are not game enough to talk to the white fella.

- We don’t think the non-Koori counsellors can support us properly because they don’t know us or our welfare. If we can’t have a Koori counsellor then the non-Koories should be trained to understand our ways. (For example. ‘The warnings from birds - I told the psych nurse and she asked me if I was going to harm myself’).

- Our families are so far way and can’t visit much and sometimes I really do feel like doing it: ‘when they lock that door & you’re on your own’. When I started talking to the psych nurse and crying she gives me medication - keeps me doped up when all I want to do is talk and have someone listen.

- We talk to our brothers but we need someone that can really help us - that we can say what we want to - hold nothing back.

- This Koori counsellor could be shared among the jails in the area and in addition to ALO- whose role is very different - appreciated because her connectedness to outside but we are careful that we don’t dump too much personal stuff on her.
There should be more Koori-specific workshops available to us. Sometimes we just feel so alone and forgotten. A lot of our boys can’t read and write and need extra help. We would like more community visitors to just come and see us and talk to us. Why is there much a difference between state to state? For example, Queensland has more choices around Koori programs and support than we do. Kooris have a lot of choice there about programs.

A former Indigenous prison worker now employed at a Koori organisation made a lengthy submission emphasising a number of issues and making detailed suggestions on the following matters about imprisonment for Indigenous people:

- Lack of commitment to rehabilitation and harm reduction by prison management;
- The need to spell out an alternative process for establishing change;
- The need for ongoing support and guidance for Indigenous workers and management;
- The use of culturally inappropriate behavioural control and modification methodologies;
- Management’s punitive rather than rehabilitative attitude towards use of drugs by prisoners;
- The need for enhanced education and vocational training;
- The development of training programs, possibly built around marketing prisoners’ artwork etc, to enhance skills in the area of financial planning and management;
- Improved attention to physical and emotional well-being of Aboriginal prisoners;
- The development of a team approach including Koori Liaison Officers;
- Development of an ongoing reporting system that would incorporate trigger points for the initiation of appropriate action in a series of specified circumstances relating to prisoners; and
- Instigation of a management reporting system pertaining to specified issues relating to Aboriginal prisoners.

In another submission, (Alberts, 2004) recommended that the definition of Aboriginal deaths in custody should be extended to include the death of Aboriginal people who are held in custody as involuntary patients in psychiatric hospitals. The submission also presented a strong argument for the appointment of an Aboriginal Liaison Officer at Barwon Prison.

The proportion of Indigenous persons entering prison who are unsentenced (that is, who have not received bail) has increased from 50 per cent of all Indigenous receptions into prisons in 1999-00 to 61 per cent in 2002-03. The comparable figures for non-Indigenous receptions are 46 per cent and 53 per cent respectively.

Indigenous prisoners tend to serve more sentences for ‘assault, break and enter (burglary)’ and for ‘Justice ‘procedures’ offences (which include breaches of court orders). In contrast, non-Indigenous prisoners are more likely to be serving sentences for ‘murder, sex offences, robbery and drug offences’.
Indigenous prisoners served shorter sentences (in terms of median expected time to serve) than sentenced prisoners in general. This largely reflects the differences in the nature of the offences for which sentences are being served by Indigenous and non-Indigenous prisoners.

Health and Mental Health

Although the general Aboriginal community consulted in the course of this Review was somewhat reticent on the question of health in the broader Aboriginal community, such was not the case in relation to health issues associated with imprisonment. In many ways this is not surprising since the endemic health problems of the Aboriginal community are encapsulated and made worse in those members of that community who are in custody.

There has been an increase in Indigenous female prisoners from 8 in June 1995 to 10 in June 2004 (an increase of 25 per cent). Non-Indigenous female prisoners rose from 108 to 234 over the same period (up 117 per cent).

Indigenous female prisoners represented 6 per cent of total Indigenous prisoners in 1995 decreasing to 5 per cent in 2004. The comparable non-Indigenous female prisoner proportions are 5 per cent in 1995 rising to 7 per cent in 2004.

Male Indigenous prisoners increased from 120 in June 1995 to 176 in June 2004 (up 47 per cent) while non-Indigenous male prisoners increased from 2,231 to 3,190 (up 43 per cent).

Despite the extensive arrangements described in government responses on health issues, there were many negative comments on the standard of medical care in custody received by the Review.

This Review really needs to look at prisoner health (Metropolitan Melbourne).

This comment was one overarching view offered to the Review Team, while the provision of medical services to Koori prisoners was described by a community organisation as our biggest concern (Metropolitan Melbourne).

The above views were backed up by a numerous experiences recounted by the Indigenous community about specific health-related issues and standards of general care prevailing in the correctional system:

The prison side of things is changing for the positive but not the medical side. [name withheld] provides the medical service for [Regional Prison]. This service is only lip service and is tokenistic. I know of a fella who has not seen a doctor in prison for the last seven years. That's ridiculous. Some prisoners also don't have access to dental or optical because they
are not sentenced for a long period. How are they supposed to access education if they can't see? Prisoners don't even have Healthcare Cards or Medicare Cards. Medical treatment for prisoners is all about the budget and dollars. If a treatment is recommended by the prescribing doctor that may be expensive, the prison management don't like it (Regional Victoria).

More Indigenous respondents cited specific examples of where the care received was not what it should be and not in compliance with the Royal Commission's Recommendations:

_I know of one of our boys at [prison] who had hurt his back and didn't get any help or see a doctor until a week later (Metropolitan Melbourne)._  

_The provision of health services to prisons by [health service provider] is a huge problem. Our boys go in there and are treated as guinea pigs (Regional Victoria)._  

_One of our fellas went into prison and came out with enough stuff in his system to kill a horse (Regional Victoria)._  

_I know that there is a prisoner in [Regional prison] who had a heart attack prior to going to prison. Whilst he was there he never received any follow-up treatment (Regional Victoria)._  

_There was also another case where an Elder needed a hearing aid and it was not provided. He couldn't hear properly and when the prison officer spoke to him he didn't respond. He was slotted for that! (Metropolitan Melbourne)._  

There were also Indigenous prisoners who gave their comments about how they were treated in prison:

_I'm not really getting the best medical treatment here anyway and I would be better off if I could go to my own doctor for treatment. They say there's a shortage in money for our medical needs and they work to a budget. We come in here underweight and they don't even let us have Sustagen. I have arthritis and I can't even get the proper drugs for it. Like [prisoner], if he's in pain all he gets is Panadol. They won't give him any morphine or anything stronger either. The nurse comes in every morning and the doctor visits every fortnight. The prison scrutinises that and they make a judgement as to whether you need to see the doctor. It costs the prison money if you need to see a doctor. They only give us so much and then that's it. There was one poor fella who had an abscess for three days before they would even give him any medication. They watch what they say and do here. It's improved a bit here though. It's alright though when you compare it to other prisons (Indigenous male prisoner)._  

_When I came in here I had several spear wounds. It all started when I was arrested and taken to [Regional Police station]. I didn't get any medical treatment there or at Melbourne Assessment Prison either. Six weeks later I was transferred to [Regional prison] and it wasn't until I saw the Aboriginal health worker that she got treatment for me. I had got a bad infection too. Because I got treated by a white doctor my Elders will know when I go back home to the Northern Territory. The only time you
get medical attention in here is if you say you have a pain in your chest. Every other time you just get Panadol (Indigenous male prisoner).

I put my name down to see the dentist over 1½ weeks ago and I still haven't seen the dentist. I checked the list today and found that my name isn't even there. I've been told that unless you are sentenced for more than 12 months you can't get access to dental treatment or glasses. I complained about my legs when I was at [prison] and here and they just left me to get infected. Now I'm infected down below [genitals] too (Indigenous male prisoner).

I rang several times and told the nurse that I was concerned for her because of her behaviour. They didn't ever ask in Coroner's Inquest about those telephone calls. I was appalled at her treatment, she was drugged up and off her face (Interview with family A).

Of particular concern was what appeared to be the incidence of mental health issues among Aboriginal prisoners. According to one respondent:

Prisons need to have a mental health focus now because there are so many in prisons with mental illness and acquired brain injury (Metropolitan Melbourne).

Another Indigenous prisoner agreed that:

Mental health is the biggest challenge women prisoners face in the world (Metropolitan Melbourne).

Prisons were also said to be slow in responding to signs of mental illness:

There was another boy who was being sent from [one prison] to [another prison]. He was diagnosed prior to being imprisoned with mental health issues and was on medication. When he was put in prison he was taken off his meds for six weeks and had no psych follow-ups. Even after the prison was advised of his condition it still took two weeks for that fella to be seen (Metropolitan Melbourne).

I have some concerns about the medical assessment of prisoners received at Melbourne Assessment Prison and Melbourne Custody Centre. I had a family member received at the MCC with an undiagnosed mental illness. It was ages before his condition was diagnosed. How long does it take for them to initiate some sort of response if you know there's someone in there with mental illness? (Regional Victoria).

There were also more specific concerns expressed about the over-use of medication in the context of psychological problems. Sometimes this just took the form of complaints that prisoners were given medication without being told why, though this allegation was flatly refuted by one prison official. At other times, however, comments reflected a perception of other difficulties or even motivations surrounding medication and psychological treatment for Aboriginal prisoners. It was quite worrying, for example, for the Review Team to encounter instances where it was suggested that lack of cultural awareness by prison staff and mental health service providers could seriously impede or distort such treatment. Such concerns were voiced by one signatory to a submission, but this was not an isolated example:
There are no Koori counsellors in the prison and the boys are scared to talk to the psych nurses because they don’t understand where they are coming from (Regional Victoria).

The boys in prison need to have access to Koori health workers because non-Koori workers don’t understand where the boys are coming from (Regional Victoria).

There are no Koori counsellors or psychologists in prisons. The prison thinks it can introduce programs to help our boys, but they don’t realise that you could open up a Pandora’s box. How can non-Koori psychs provide culturally appropriate services to Koories in custody? Psychs won’t talk to the AWO’s in prison - it’s a hierarchy thing (Regional Victoria).

We also need more one-on-one counselling because we don’t like talking in big groups like they expect us to, and especially in front of Gubbs (Indigenous male prisoner).

Most concerning of all, however, were suggestions that medication was being used as an aid to control and manage prisoners rather than for therapeutic reasons:

We know that some of the forensic nurses use drugs to sedate some of our boys. This is a matter of using the Royal Commission’s Recommendations against our people but they think they are helping them (Koori Justice Worker).

When I first went to [prison] they made me take Doxapan. I don’t even take drugs on the outside so why would I start taking it now. That was back in 2002. They told me it would calm me down. I wasn’t even carrying on or anything. I spat it out down the toilet when they weren’t looking. I’ve had some big blues with the medical centre. They found out that I wrote a letter to the Health Commissioner complaining about the medical service and treatment. They put me on more medication. That’s bulls... They only put me on the medication to shut me up because I wrote the letter (Indigenous male prisoner).

They [Indigenous prisoners] can’t express their emotions, because if they do they know they’ll get medicated and then by the time they get out they are desensitised (Metropolitan Melbourne).

They give you drugs too so that you calm down and shut up. Then they wonder why you come out of prison hard and tough and it makes things worse for you (Regional Victoria).

The above comments on health provision for Aboriginal prisoners in Victoria must be read against the backdrop of major reviews and many new initiatives as well as the conceded difficulties reported previously by the relevant correctional authorities. In particular, it should be noted that Corrections Victoria claims significant recent progress in the appointment of Aboriginal health workers at public prisons, although recurrent difficulties have been encountered in attracting appropriately qualified staff in the psychological and psychiatric areas. This said, the community concerns voiced on this issue cannot be ignored, particularly in the mental health area, where prison officials, themselves, are acutely conscious of the strain the system is under:
We have also received prisoners who clearly have mental health issues and should not be in a maximum-security prison such as this. There is a grade scale for psychiatric alert [1-high through to 4 - history of psych illness]. We would previously not receive prisoners with these ratings; however, their risk assessment has been downgraded so that they can be sent here (Management, Regional Prison).

Ten years ago we didn’t have these sorts of numbers. Now we find all these people who have mental health issues in prison and it’s scary. We get them in here and we know that they shouldn’t be here (Management, Regional Prison).

Education in Prison

As previously noted, the Victorian Government has recently carried out a state-wide Review of Prison Education and Training, the outcome of which will be complemented by a Koori Education, Training and Employment Strategy focusing on the needs of Aboriginal prisoners and offenders. This strategy is designed, in part, to address some of the problems of transition referred to previously, problems which an earlier 2001 report had found to involve issues of extreme under-development of the support service framework. But the strategy also addresses educational requirements on a broader front, and there is no doubt that among the Indigenous people affected, improvement in this area would be appreciated:

We need to have more education programs in here (Indigenous male prisoner).

[Our] access to education programs inside is not enough (Indigenous female prisoner).

When they are inside, they should be able to do education programs and courses. Those courses should also lead to meaningful employment too (Metropolitan Melbourne).

What is the funding for education programs out there anyway? It’s bulls*** If we enrol for Koori programs, we can’t do anything else and we only get education from 9.00 am to 11.00 am. They say it’s because there’s not enough money for us. Aunty [name withheld] had to sit down and teach me to read. That’s sad isn’t it (Indigenous female prisoner).

I did 18 months here and I couldn’t get into an education course (Indigenous male prisoner).

On occasion, the lack of access to education was perceived as being linked to discrimination specifically against Aboriginal people:

Koori prisoners aren’t even eligible to receive ABSTUDY [Aboriginal Study Assistance Scheme]. It [Regional Prison] must be the only jail in Victoria that doesn’t let us have ABSTUDY … We are the least developed people in this jail. If Asians can get their own room, why can’t we? We can’t even get a tutor to teach basic English and Maths. You know that some of us boys can’t even read or write … The Asians have classrooms and four
computers. No-one else is allowed to get access. The Lebanese and Asians have everything - we have nothing (Indigenous male prisoner).

More frequently, however, the call was for more access to programs of particular relevance to Aboriginal culture:

There's no Koori education programs in here [prison] (Indigenous male prisoner).

Art programs are really important in prison. It helps the prisoners express their feelings. I still teach my language. You know, back in the old days it was evil to talk language back then. I think it's really important for kids to talk and know their language (Metropolitan Melbourne).

They need to let us have our own literature and cognitive skills courses (Indigenous male prisoner).

Aboriginal Prisoners and Aboriginal Contact

Two crucial aspects of the way in which appropriate Aboriginal contact can be made available to Aboriginal prisoners are through the appointment of Aboriginal personnel within the correctional system for that express purpose, on the one hand, and the maintenance of regular visits by Aboriginal family and community members on the other.

On the first of these scores, the community responses elicited in the course of the Review were remarkably quiet, save perhaps on one issue to be discussed below. The only reference to the recently implemented Aboriginal Official Visitor program initiated by government, for example, came from one prison official who said how much he would welcome such an appointment to cover his institution.

There was much discussion of the part played by AWOs – the need for ready access to them by prisoners and families and their status within the prison being the main issues of contention. A number of very positive references were also made to the work of what, from the context, could have been either AWO’s or Indigenous Services Officers (who are not necessarily Indigenous).

The main comments were reserved for the activities of the AWOs, and here the most commonly expressed view was that more appointments of this kind were needed:

We need more than one AWO. It's not right to expect one worker to cover four prisons. You need one in each prison (Indigenous male prisoner).

You really need more AWOs. There is an Aboriginal Well-being Officer who covers [regional prison]. It would be better if the person were able to spend more time (Regional Victoria).

The AWO should visit more than just once per fortnight. It's just not enough because there are too many of us in here with issues that need resolving. We need more on-call officers so that when things happen the Koori prisoners know that we can contact the AWO (Indigenous male prisoner).
Problems in relation to these few and valued Indigenous positions to cover the public prison system in Victoria, were raised with the Review Team and included issues such as salary parity conditions and work as well as community expectations and lack of culturally appropriate counselling and support:

*When you compare the salary rates of Indigenous workers in other states you see that they are paid much higher rates and have to undertake far less duties than the AWOs in Victoria. As an Aboriginal person in the role of AWO you put more into your job because at the end of the day it's your community you're working for. Why is it that everyone holds mainstream as the epitome of all things good? Why not Indigenous affairs? (Aboriginal Well-being Officers and Indigenous Services Officers).*

*There are a lot more pressures on AWOs and those additional pressures are never taken into account when it comes to salary. Most other workers in prisons just go home at the end of their shift and leave it all behind. At the end of our day we have to go home after work and still deal with the issues at any time of the night. We are expected to be on call to the prisons in case of emergencies. This doesn't just stop at the prison door either. We have to respond to community people who are concerned for their loved ones in jail (Aboriginal Well-being Officers and Indigenous Services Officers).*

*It's not right that we have to be on call 24 hours per day. It's against the Industrial Relations. We're always on edge. Our community people know who we are and what our role is. It is natural for them to expect us to help out no matter what it is or the time of the night either. Our jobs never finish at 5.00pm. Our work always extends far in excess of that time. Even when I was on leave I was approached by community members who asked me for help. There's a fine line when you work for your people before you eventually break down. Whilst this has been the most rewarding job I have ever had in the last 20 years it is also the most frustrating. Sometimes it's hard to get to see every prisoner. It's hard to judge who is in need of my visit more than the other. Sometimes we even miss prisoners because they've been slotted in the [Management Unit]. Our job is made even more difficult because if some of the prisoners don't receive visits from anyone they become frustrated and management problems happen. The end result is that the AWO is expected to handle that situation (Aboriginal Well-being Officers and Indigenous Services Officers).*

*Some days it can be very demanding for us. I have one fella in jail who thinks he's my son. He follows me around everywhere in here. He's never had a father so I guess he probably sees me as his dad. Sometimes it's really hard and you get personally involved with these boys. It's sad to see the same boys coming through the system time and time again. Our skills base and knowledge is not acknowledged by the Department. It seems that to be paid higher rates of pay you need to be in senior management positions. Our roles are on the ground and there's no recognition of this at all. This needs to be acknowledged. Our life experiences and skills need to be acknowledged on a scale of comparative analysis. We need more AWOs. It is unrealistic to expect two AWOs to cover nine prisons in Victoria (Aboriginal Well-being Officers and Indigenous Services Officers).*
You can't spend the time you need to at each location and that's just not good enough. I wish that I had more support from Corrections Management. I feel intimidated when I go and visit [Regional prison]. I've expressed my concern to Management but they don't listen. [Regional prison] is full of sex offenders. I've even been warned by our own boys in prison not to turn my back or be alone with those prisoners (Aboriginal Well-being Officers and Indigenous Services Officers).

For Indigenous prisoners, the other means of contact maintenance, regular visits by family, friends and Aboriginal community members, provoked considerably more comment. Several prisoner respondents reported positive experiences and official attitudes, such as one occasion when an Aboriginal organisation was able to go in and talk to our women in one prison:

The prison allowed us to do what we wanted and we worked with [another organisation]. The women discussed their issues around the table and we were able to resolve a lot of issues. People's tempers were calmed. We really need to be able to run days like this (Metropolitan Melbourne).

Certainly too, although policy and practice across Victoria with regard to the encouragement and ease of visiting was reported as very variable, at least some institutions professed a very positive attitude to the practice:

Mr [name withheld] is the Aboriginal Liaison Officer ... although he is not Koori. [He] grew up with the Koori community in [Regional town] and most of the boys know him. He has been very effective in liaising with the boys. He organises the BBQ and we have bush tucker days when we invite the community into the prison ... We really welcome community members to visit the prison. The [local] RAJAC had one of its meetings [here] and all the inmates attended. They were invited to raise any issues and it was a good meeting. It is also good for the community to visit the guys (Indigenous male prisoner).

Not surprisingly, however, problems were also reported by the community, particularly in connection with prison visits by individuals. Distance and, as a consequence, transport were referred to as major difficulties by several community members, and were confirmed by the following comment from one Aboriginal prisoner:

We used to be able to have visitors come here because they used to have a shuttle bus run here. A taxi costs you at least $15.00 from the station. Who's got that kind of money to come and visit out here? Most of us don't have any regular visitors. My family is only 50 kilometres from [Regional prison] and they sent me [here]. It's too far away (Indigenous male prisoner).

Above all, the same problem that may bedevil processes such as the appointment of Aboriginal Official Visitors or other Aboriginal people to positions within the correctional system, may also play its part in creating something of a “Catch 22” situation in this context. While some community members reported an element of discretion being employed with reference to criminal records, others found it an insuperable obstacle and prevented their active participation in volunteer work with Indigenous prisoners:

We have lots of problems when our Elders come to visit in prisons. Some of them don't fulfil the criteria of 100 [security system of] points because
they don't have a Birth Certificate. The poor things get really upset if they've travelled a long way to a prison and then can't get in. Prisons don't make allowances for our Elders in that regard (Metropolitan Melbourne).

But if you have a Criminal Registration Number you can't visit your relatives in jail (Metropolitan Melbourne).

I would love to be able to go to prisons and talk to the men about their issues. I'd love to be able to share my personal experiences with them and help them but I can't because of my criminal record. I've never done anything else wrong in my life - only that one time. There should be some allowances made for people like me. I still have a lot to offer (Metropolitan Melbourne).

I wouldn't really want to go and visit anyone at [Regional] Prison because I have a CRN and they would still treat me in the same way they used to before. I probably wouldn't even be allowed in anyway. You know that you are never allowed to forget your past. You'd have those same arrogant dogs telling you what to do. Only way I could do anything positive would be to talk to the young kids before they get themselves into trouble. Hopefully that would stop some of them getting into this damn system (Regional Victoria).

Visitors to the prisons is the most important and effective tool. It is especially effective and important when Elders visit prisons and talk to our boys. We know that the prison environment is intimidating for some of our Elders. Sometimes it's a shame thing because some of our Elders or others have a CRN and they are too scared to go near the place. We want to have a program where Elders can go in and visit at anytime (Regional Victoria).

Cultural Awareness

As discussed previously, the lack of cultural awareness was perceived by a number of those Indigenous people consulted as a major problem within the correctional system. Sometimes the issue was seen as general lack of understanding by prison authorities and staff:

This prison does not facilitate our cultural needs ... There's no understanding of men’s business ... What I've experienced here, and I've been in and out of prisons, none of them officers have had any cultural awareness training. The same goes for the medical staff too (Indigenous male prisoner).

There is a general lack of understanding there. I think that prison officers need more cultural awareness training (Regional Victoria).

I think it’s really important that cultural awareness training is conducted for prisoner and prison staff. There are not many Koories here at [prison] and the other women don’t understand where we are coming from when we talk about our culture (Indigenous female prisoner).
Failure to comprehend where Aboriginals are coming from culturally was, as already indicated, seen as a critical impediment to the operation of satisfactory and effective programs for Indigenous prisoners:

Mainstream providers just don’t understand Koori business. You just gotta walk away because they don’t understand the kinship ties (Metropolitan Melbourne).

When you talk to the case managers, it’s no use anyway. They don’t understand what we’re talking about and they’re gonna f*** you in the end (Indigenous male prisoner).

A Koori won’t go to a Gub [non-Indigenous] peer and tell them their business [Reference to the peer mentoring system] (Indigenous male prisoner).

One answer, of course, would be to have more appropriately staffed Aboriginal-specific programs, and this suggestion attracted some support. It was directly suggested as a necessity, for example, in the context of post-release programs, and the value of initiatives such as NAIDOC Day activities in prisons was also favourably commented upon. Several suggestions were made for the provision of culturally appropriate food for Aboriginals in prisons (Asians were claimed to receive this privilege) and one former prisoner was eloquent about the value of a Koori group activity day in prison:

Every jail should have a Koori group activity day to themselves. I remember that [Regional Prison] had something like this when I was there. It was a great day of re-educating ourselves and we had the chance to be together to discuss lots of issues. We even discussed our fears for when we left prison too. There were no screws allowed there unless we invited them in. We were able to resolve lots of issues ourselves that way (Metropolitan Melbourne).

Unfortunately, however, there were inevitably some allegations that within the Victorian correctional system cultural ignorance shades into straightforward racism:

There are quite a few problems in [prison] with the officers and racial discrimination (Indigenous male prisoner).

They are still kicking us in the arse. They will keep on doing it too because we can’t fight back. They tell us that we have to do things their way, and we do it their way and they still kick us in the arse. We can tell people until we are black and blue in the face. Still nothing happens (Indigenous male prisoner).

Nothing is ever done properly and it’s always us Koori fellas who cop it all the time. We all saw the incident in the canteen the other day. That’s s*** They’re provoking us. What, can they piss on us like that? They [prison management] should see it on an equal scale. We do, but they don’t. That’s why us Koories all stick together. We have to (Indigenous male prisoner).

When my son was in prison the prison officers treated Aboriginal people like dirt. One of the officers called him ‘Mabo’. My son got stuck into him and told him that he was racist and that it wasn’t proper to talk to people
like that. When I was at [X] prison, one of the wardens said, ‘You’re not Aboriginal, you’re not black enough’ (Indigenous male prisoner).

They’re punishing us for what we’re entitled to. It’s just another Koori thing they hold against us (Indigenous male prisoner).

With such a priority given by the community to matters regarding prisons during consultations there was a marked lack of comment about community corrections. While there have been many developments in this area reported on by Corrections Victoria (see Section 6.4.1 above), the evidence from a statistical perspective (see Volume 2) remains one of over-representation by Indigenous offenders.

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<td>There were 253 Indigenous offenders on Community Corrections Orders at 30 June 2001, rising to 339 at 30 June 2003 (up 34 per cent). The comparable figures for non-Indigenous are 5,882 and 6,716 respectively (up 14 per cent).</td>
</tr>
</tbody>
</table>

The proportion of Indigenous offenders on Community Corrections Orders has risen from 3.8 per cent of all offenders on orders in June 2001 to 4.5 per cent in June 2003.

Leaving Prison and Post-Release

The consultative process carried out as part of this Review produced some support for the concerns expressed earlier by VALS in relation to the institutionalisation of Aboriginal offenders. The concern is that imprisonment might become an entrenched or even ritualised part of the way of life for Aboriginal people. As the VALS submission put it:

VALS is concerned that the prison experience is treated as a rite of passage for Indigenous Australians. There is anecdotal evidence that some Indigenous Australians go to jail to get culture, feel comfortable in prison compared to the outside world. The problem is that prison is seductive to Indigenous Australians, as opposed to the outside world (VALS, 2004: 20).

The following extracts from interviews do little to suggest that this risk is exaggerated and tragically so:

Our boys are institutionalised. Prisons seem to be the safest place for them to be. There are no supports out there when they get out and things just get too hard for them. We need some sort of transitional programs to support them both pre- and post-release (Metropolitan Melbourne).

There is also an element of the prisoners who want to stay in prison because it’s safer inside (Regional Victoria).

There are no post-release programs to support our people when they are released from prison. Our biggest concern is that our boys become institutionalised. They don’t have any supports on the outside and they find
it too hard to deal with everyday things. They see that they are pretty well provided for whilst they are in prison. In fact, some of our boys even prefer to stay in prison (Regional Victoria).

I’ve been institutionalised. I was a ward of the state from the age of 8. I’m 31 now. I was adopted into a non-Koori family. They don’t want me and neither do my real family. Everything is already worked out for me in here. I know when I have to have breakfast, what time I have my medication, what my jobs are for the day, what time I have to go to bed. My decisions are already made for me. When I get out I don’t know how to make my own decisions (Indigenous male prisoner).

Prison is the only place where I fit (Indigenous male prisoner).

As indicated in two of the above comments, pre- and post-release programs designed to facilitate re-entry to ordinary life in the wider community are seen as part of the antidote to this process of institutionalisation and thus to re-offending. And in this respect there were some signs of positive progress. Thus, one prisoner reported on its experience of a new discharge program:

*We received funding from the DOJ for a Discharge Program. This program is conducted on a monthly basis and contains eight core modules. Five of those modules are targeted at housing, employment, drug and alcohol. The targeted modules are conducted over three days at two and a half hours per day. On the last day of the program there is a reward for those completing it where they are permitted to prepare their own food. We are also creating links with Centrelink and assisting with the establishment of a bank account, identification and Medicare Cards. We do not offer any day release programs due to the maximum security rating. We have NAIDOC Day activities and the boys are permitted to have up to four visitors each. We have also conducted the Muramali program and that went really great and had excellent feedback (Management, Regional Prison).*

Nor was it just prison staff who could discern some positive developments in this field. One Aboriginal organisation went out of its way to comment on the good relationship it had developed with Centrelink, while another noted how this Commonwealth agency worked pretty closely with two institutions, recognising that:

*It’s really important that we, as Aboriginal people, and a Koori organisation, work with the two prisons especially for pre- and post-release programs (Metropolitan Melbourne).*

Yet another community organisation described its ambitious plans for a 22-week pre-release program for those serving terms of three months or more, with follow-up for six to twelve months upon release:

*The program would provide employment, training, life skills and social and emotional well-being and would be located at [Regional Area]. It is proposed that the program would cater for 50-60 clients in the first year and drop to 30-40 in the second year ... The program will look at family/kinship to work together to bring about change and learn skills not able to be learnt earlier. The program would assist prisoners in integrating back into society. You must remember that inside they know what to*
expect and they don't have to plan out their day whereas once they are released they have to make decisions for themselves (Regional Victoria).

On balance, however, the evidence derived from the consultative process showed that criticism of pre- and post-release arrangements and programs was fairly widespread among those consulted. Such criticism included complaints about delays and failures in access to programs, such as psychological and other services, being made available:

There’s just too long a gap between being released from prison and being picked up by psych services. It’s just not good enough and we are losing our people everyday. When our boys are released from jail they are not getting enough access to programs. Upon their release they have to wait long periods [for] anger management, drug and alcohol and parenting programs (Metropolitan Melbourne).

There was one fella who was absolutely lost when he came out of prison. He had psych problems and he wasn’t even referred to any psych services (Metropolitan Melbourne).

Overwhelmingly, however, criticism was pitched at a much more basic and straightforward level to do with the problems of adjusting to everyday life in the world outside the prison:

What is happening for them when they come out? There’s nothing out here for them so that they know where they can go and how to do things (Metropolitan Melbourne).

There is also the realisation for those who’ve been in for five to six years that things have changed heaps in that time. When they come out after long periods of being incarcerated they don’t know what to expect. Some of them don’t even know how to get a key card to get money out of the ATM. There should be prisoner release programs to assist them prior to their release with these things (Regional Victoria).

We get calls from [Regional prison] telling us that so and so is getting out at 6.00am and expect that we’ll be able to accommodate them. They [ex-prisoners] get caught by the police hitch-hiking if we don’t go and pick them up. At [Regional Prison] there’s no transport to get them from ‘A’ to ‘B’. Our boys go and meet them at the gate with McDonalds even though it’s not their job ... [A Prisoner] got released from [Regional Prison] one morning and then one hour later he was picked up by the Jungais [police] for hitch hiking. Maybe we need a kit or pre-release plan so that they boys can check off the list things like Key Card, Accommodation, Bank Account details, Medicare Card and things like that. Who’s there to help them with this? No one really and they have to come out after being in there for who knows how long and they don’t even know how to do half these things anymore (Regional Victoria).

I’ve dealt with long-term prisoners in the past and found that they’ve been put out into the community and they just don’t know how to make their own decisions. Sometimes they can’t even cross the road. There are no plans put in place for prisoners exiting prisons (Metropolitan Melbourne).

What happens when prisoners are released? There’s no help or support for them and there’s no accommodation. They shouldn’t be put out of jail
until something is organised for them. They’re put out the front gate with their belongings in a black plastic bag and out they go. That’s the cycle that’s got to be broken. The first thing is the offence and jail is the second part of it. The third thing is the support. There’s nothing there for them at all (Regional Victoria).

And it was put very succinctly by another prisoner:

*Best thing you could do is to have help for when you get out of here* (Indigenous male prisoner).

A further complication with post-release was said to arise from the fact that, once released, Aboriginal ex-prisoners were not always made that welcome in the Aboriginal community. *In extremis* this was noted by one community organisation as a particular problem for Aboriginal sex offenders whose families may not want or easily receive them back, but the problem was also said to have more general application:

*Unfortunately Co-operatives are not good at accepting people back into the community once they have done time in prison. Prisoners do their time and come back to be judged again by their community. We need some sort of re-unification program to help with integration back into community. We’re not very friendly here either. When new Koories come to town there’s no one there to welcome them and tell them what services are available* (Regional Victoria).

This problem is compounded when, as is said to happen often, Aboriginal prisoners are released into areas other than their own community. Thus they can be left particularly disconnected, compelling one Aboriginal organisation to reflect upon its own community’s attitude to strangers:

*Those poor fellas come out of there as a complete wreck. They come out now and have no family and no connections* (Regional Victoria).

*The community needs to accept that the prison population is part of the community and those who are not from here should be treated as community visitors* (Regional Victoria).

### 6.4.3 Review Comments and Recommendations

The Review commends Corrections Victoria on its co-operation both in making the numerous visits by the Review Team to prisons across Victoria possible, and the access granted to Indigenous prisoners. It also notes the comprehensive written material and specific briefings on current developments provided for the purpose of the Review.

#### Community Corrections and Diversionary Initiatives

The Review notes the response of Corrections Victoria with regard to Community Service work and particularly the current general review and evaluation of pilot programs that are taking place (Recommendation 94).
Recommendation 120.

- That the Department of Justice (Corrections Victoria) provide a report to the Aboriginal Justice Forum in relation to the evaluation of the Cultural Appreciation Program and Environmental Scheme (CAPES) (Recommendation 94); and
- That the Victorian Government continue to implement Recommendation 94 (relating to community service orders) through any monitoring process established as a consequence of this Review.

The Review notes the various initiatives taken by Corrections Victoria with regard to advising sentencing authorities on the scope and effectiveness of non-custodial sentences (Recommendation 101). It particularly notes the development of key performance measures and the involvement of the RAJACs in the communication process.

Recommendation 121.

- That Department of Justice (Corrections Victoria):
  (a) conduct a review of the information provided to sentencing authorities on the scope and effectiveness of non-custodial sentences;
  (b) provide a report to the Aboriginal Justice Forum on the outcome of (a); and
- That the Victorian Government continue to implement and monitor Recommendation 101 (relating to the scope and effectiveness of non-custodial orders) through any monitoring process established as a consequence of this Review.

The Review notes the personnel and infrastructure resources made available to support non-custodial sentencing practice (Recommendation 112) and particularly the range of initiatives specifically aimed at Aboriginal offenders. It was surprised, however, to learn that despite a 60 per cent increase in the funding baseline for Community Correctional Services ($42.3m), Corrections Victoria advise that there have been no additional resources made available to support more effective Aboriginal programs in this field.

Recommendation 122.

- That the Department of Justice (Corrections Victoria) provide a report to the Aboriginal Justice Forum regarding budget provision for personnel and infrastructure to support non-custodial sentences for Indigenous offenders; and
- That the Victorian Government continue to implement and monitor Recommendation 112 (relating to the adequate resourcing to ensure that non-custodial sentencing options are capable of implementation) through any monitoring process established as a consequence of this Review.

The Review commends the action by the Victorian Government in the 2000 Budget to pilot, as part of the VAI A, an Indigenous Women's Mentoring Program for offenders on community-based orders. However, the Review is disappointed to learn that despite the successful delivery of the pilot project in Shepparton, the Government has failed to provide the necessary financial support for the statewide delivery of the program that would, based
on outcomes achieved to date, result in a significant reduction in the imprisonment of Indigenous people, particularly women.

The Review also notes that the development of such a pilot program was endorsed by the Victorian Government in the VAJA that was launched by Premier Steve Bracks, 1 June 2000 and has identified further issues for ongoing delivery across the state by the Network of RAJACs in 2003 in their respective Regional Social Justice Plans.

The Review also notes the range of strategies employed for the involvement of the Aboriginal community and its representatives in the implementation of requirements for community work or development (Recommendation 113). It also notes, however, that some difficulties have been encountered with the satisfactory implementation of this Recommendation.

### Recommendation 123.

- That the Department of Justice (Corrections Victoria):
  - (a) provide information on what steps are being taken to rectify the administrative difficulties being encountered in the implementation of Recommendation 113;
  - (b) undertake a review on the resources required for Aboriginal service providers to host Indigenous offenders on Community Based Orders;
  - (c) appropriately resource the community to successfully host Indigenous offenders on Community Based Orders;
  - (d) provide a report to the Aboriginal Justice Forum on (a)-(b):
- That the Victorian Government allocate sufficient funds of no less than $1.0 million per annum to the Victorian Aboriginal Justice Agreement for the establishment and recurrent operation of a statewide community-based Mentoring program for Indigenous offenders; and
- That the Victorian Government continue to implement and monitor Recommendation 113 (relating to participation by the Aboriginal community in the planning and implementation of non-custodial sentencing orders) through any monitoring process established as a consequence of this Review.

It is noted that various bodies, at national and State levels, are working on methods for the improvement of statistical data on rates of Aboriginal repeat offending (Recommendation 115).
Recommendation 124.

- That the Department of Justice (Corrections Victoria):
  (a) maintain a database of recidivism rates of Indigenous offenders;
  (b) provide a statistical report of relevant monthly Indigenous prisoner and offender numbers (including re-offending information);
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and
- That the Victorian Government continue to implement and monitor Recommendation 115 (relating to the improvement of statistical data on rates of recidivism for Indigenous offenders) through any monitoring process established as a consequence of this Review.

The Review notes that CCS attempts to ensure that work undertaken under Community Service Orders is valuable and meaningful to the local community and is not undertaken at the expense of paid employment within the supervising organisation (Recommendation 116). Furthermore, the use of community custodial permits for offenders who are in a position of fine default are important options for diversion. Some statistical information suggests positive outcomes (see Volume 2 – Statistical Information). In addition, the Review notes the current development of the Infringement Framework Project (Paper presented at the Aboriginal Justice Forum, April 2005) addressing systemic issues and which also impact significantly on the Indigenous community.

Recommendation 125.

That the Victorian Government continue to implement and monitor Recommendation 116 (relating to work undertaken under Community Service Orders) through any monitoring process established as a consequence of this Review.

It is noted that with regard to trained support staff for probation and parole (Recommendation 119), a draft strategy for the development of a more culturally appropriate approach to Aboriginal offenders includes a recruitment strategy to increase the number of Aboriginal staff as well as a training scheme to increase cultural sensitivity.
Recommendation 126.

- That the Department of Justice (Corrections Victoria):
  (a) finalise the development and implementation of the Indigenous Education, Training and Employment strategy as a priority;
  (b) commit and initiate action to recruit and train Indigenous people to positions throughout all Correctional facilities, not just in identified positions;
  (c) undertake immediate action to identify potential Indigenous workers throughout all areas of the new prisons being established; and
  (d) provide a report to the Aboriginal Justice Forum on (a)-(c); and
- That the Victorian Government continue to implement and monitor Recommendation 119 (relating to the adequate provision of trained support staff for probation and parole) through any monitoring process established as a consequence of this Review.

The steps being taken to involve communities and Aboriginal organisations in the development and evaluation of community corrections are noted (Recommendation 187), along with the comment that some Aboriginal communities and agencies are overwhelmed by the level of consultative activity.

Recommendation 127.

- That the Department of Justice (Corrections Victoria):
  (a) report on the extent to which Aboriginal organisations and other bodies are adequately resourced to meet the consultative demands being placed upon them;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 187 (relating to the involvement of communities and Aboriginal organisations in correctional processes) through any monitoring process established as a consequence of this Review.

Duty-of-Care in Prison

The Review notes that requirements for recognition of a legal duty-of-care, its incorporation into standing instructions and appropriate training were reported to have been fully implemented (Recommendation 122).

Arrangements for the establishment of clear policies and processes for dealing with breaches of duty-of-care instructions across the correctional system are noted by the Review (Recommendation 123).

The Review notes the arrangements put in place across the correctional system for debriefing processes after critical incidents (Recommendation 124).
Recommendation 128.

That the Victorian Government continue to implement and monitor Recommendation 122 (relating to duty-of-care for persons in custody), Recommendation 123 (relating to clear policies and processes for dealing with breaches of duty-of-care instructions across the correctional system), and Recommendation 124 (relating to arrangements in place across the correctional system for debriefing after critical incidents) through any monitoring process established as a consequence of this Review.

The Review notes the arrangements for risk assessment screening within the correctional system (Recommendation 126) including the development of the SITUPS.

Recommendation 129.

- That the Department of Justice (Corrections Victoria) provide the Aboriginal Justice Forum with details of progress on the deployment of the risk assessment screening system on prisoner safety; and
- That the Victorian Government continue to implement and monitor Recommendation 126 (relating to a risk assessment and completion of a screening form within the correctional system) through any monitoring process established as a consequence of this Review.

It is noted that an E*Justice system, part of the Criminal Justice Enhancement Program, is to be introduced and will involve the transfer of relevant risk information between agencies (Recommendation 130). Full roll out of CJEP is scheduled for 2005.

Recommendation 130.

- That the Aboriginal Justice Forum monitor the operation of the E*Justice System for improved data on Indigenous people in contact with the criminal justice system; and
- That the Victorian government continue to implement and monitor Recommendation 130 (relating to the transfer of information) through any monitoring process established as a consequence of this Review.

It is noted that a review of the use of force in the correctional setting has been conducted although the Review was not clear about the circumstances when lethal and non-lethal force may be used. It was also noted that the range of non-lethal force options available to prison officers has been extended, thereby reducing the need for resort to firearms (Recommendation 162).
Recommendation 131.

- That the Department of Justice (Corrections Victoria) provide a report to the Aboriginal Justice Forum in relation to the status of implementation of the recommendations from the review into the use of force in the correctional system; and
- That the Victorian Government continue to implement and monitor Recommendation 162 (relating to the discharge of firearms to effect arrest or prevent escape) through any monitoring process established as a consequence of this Review.

The Review notes the arrangements put in place across the correctional system in relation to the use of restraints by prison officers and training therein (Recommendation 163).

The Review notes that no charges are laid in Victoria in connection with self-harm incidents (Recommendation 164).

The Review notes the development of Building Design Review Project Guidelines by Corrections Victoria pertaining to both cell design and furniture (Recommendation 165).

The Review notes that Recommendation 166 relates to the establishment of appropriate mechanisms to enable the exchange of information between police and corrective services.

Recommendation 132.

That the Victorian Government continue to implement and monitor Recommendation 163 (relating to the regular training in restraint techniques), Recommendation 164 (relating to the laying of charges arising from incidents of self-harm), Recommendation 165 (relating to the elimination and/or reduction of the potential for harm), and Recommendation 166 (relating to the transfer of information) through any monitoring process established as a consequence of this Review.

The Review notes the initiation of the Aboriginal Official Visitor program (Recommendation 176) and was informed of a similar program in Western Australia.

Recommendation 133.

- That the Department of Justice (Corrections Victoria):
  (a) report on the appointment of Aboriginal Official Visitors and a summary of the reports prepared for Corrections Victoria by those already appointed;
  (b) provide regular debriefing for Aboriginal Official Visitors;
  (c) provide a report to the Aboriginal Justice Forum on (a)-(b);
- That the Department of Justice (Corrections Inspectorate) pro-actively promote, recruit, maintain a full list of Aboriginal Official Visitors; and
- That the Victorian Government continue to implement and monitor Recommendation 176 (relating to the appointment of a complaints officer) through any monitoring process established as a consequence of this Review.
The Review notes the processes across the correctional system for processing prisoner requests and complaints (Recommendation 179), but notes that neither that system nor the Ombudsman’s Office maintains data specifically about complaints from Aboriginal prisoners.

Procedures to be followed before prisoners can be placed in segregation (Management Unit) and for their treatment thereafter are noted (Recommendation 181).

The response to Recommendation 182, on humane and courteous treatment of prisoners within the correctional system, is noted. Comments received from prisoners and ex-prisoners also suggested, however, that at least on some occasions protocols relating to courtesy are not observed. Corrections Victoria have offered to make such reports available to the Review Team.

**Recommendation 134.**

- That the Department of Justice (Corrections Inspectorate):
  - (a) compile and maintain systematic data on complaints received from Aboriginal prisoners within the correctional system;
  - (b) compile and maintain data on Aboriginal prisoners placed in segregation (and the ratio of that number to non-Aboriginal prisoners placed in such circumstances);
  - (c) compile details of reports of allegations of misconduct and disciplinary procedures taken against officers in connection with their dealings with Aboriginal prisoners; and
  - (d) employ a full-time Indigenous Complaints Officer;
  - (e) provide regular data and a report to the Aboriginal Justice Forum on (a)-(d); and

- That the Victorian Government continue to implement and monitor Recommendation 179 (relating to the processing prisoner requests and complaints), Recommendation 181 (relating to minimum standards for prisoners placed in segregation or isolation), and Recommendation 182 (relating to the humane and courteous treatment of prisoners) through any monitoring process established as a consequence of this Review.

The Review notes the initiatives taken in relation to Aboriginal support groups, Aboriginal Cultural Immersion Programs, and other events such as during NAIDOC Week within institutions (Recommendation 183). The Review also noted the great importance attached by Indigenous prisoners to Indigenous-specific activities and meetings.
Recommendation 135.

- That the Department of Justice (Corrections Victoria):
  - (a) conduct a systematic review of its Indigenous-specific provisions for meetings and other events, for example NAIDOC activities, across the correctional system;
  - (b) provide a report on the status of the Aboriginal Cultural Immersion Program;
  - (c) provide a report to the Aboriginal Justice Forum on (a)-(b); and

- That the Victorian Government continue to implement and monitor Recommendation 183 (relating to Aboriginal support groups and other events within institutions) through any monitoring process established as a consequence of this Review.

The Review notes that the Review of National Standard Guidelines have been endorsed by Community Services Ministers’ Conference in June 2004 (Recommendation 328). While the National Standard Guidelines has not considered the development of specific guidelines for Indigenous prisoners, as Corrections Victoria advised that these guidelines have been incorporated into a generic set of guidelines for offenders.

The Review notes that legislation pertaining to prisoners’ rights (Recommendation 329) is not considered necessary since these are already outlined in the Corrections Act 1986 (s47) and the National Guidelines provide a basis for the protection of human rights within the correctional system.

The Review notes that no progress has been reported on Recommendation 331 in relation to the formulation and adoption of guidelines specifically directed to the needs of Indigenous prisoners. The Review reiterates its comments as contained under Recommendation 328.

Recommendation 136.

That the Victorian Government continue to implement and monitor Recommendations 328 (relating to a review of the national standards guidelines) Recommendation 329 (relating to the consideration of introducing legislation embodying standard guidelines) and Recommendation 331 (relating to the formulation and adoption of guidelines specifically directed to the needs of Indigenous prisoners) through any monitoring process established as a consequence of this Review.

The Review notes that Recommendation 330 relating to consultation with Aboriginal organisations was classified as not relevant to Victoria according to the Victorian Government 1996-97 Implementation Report as the responsibility for action rests with the National Standards Body.

The Review notes that Recommendation 333, pertaining to the International Convention on Civil and Political Rights, was classified not a Victorian responsibility but a Commonwealth Government matter.
**Recommendation 137.**

That the Department of Justice (Indigenous Issues Unit) seek information from the Commonwealth Government in relation to Recommendation 333 on the International Convention on Civil and Political Rights, and provide a report to the Aboriginal Justice Forum.

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**Health and Welfare in Custody**

The Review notes the health care arrangements in place across the correctional system and particularly the steps being taken specifically in relation to the health of Indigenous prisoners (Recommendation 150). At the same time, it is noted that considerable disquiet was expressed within the Indigenous community about the standard of health care in prisons.

**Recommendation 138.**

- That the Department of Justice (Corrections Victoria):
  - (a) further examine the Review of the *Victorian Prisoners Health Service Delivery Model* and the *Victorian Prisoner Health Status Study* (see Recommendation 153) to ascertain the extent to which they adequately address the issue of health care for Indigenous prisoners within the correctional system;
  - (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 150 (relating to the provision of health care to prisoners) through any monitoring process established as a consequence of this Review.

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The Review notes that implementation of Recommendation 151 relating to provision of psychiatric services appropriate to Indigenous prisoners has been impeded by difficulty in accessing professionals with the requisite knowledge and experience of working with Indigenous people in this field.

**Recommendation 139.**

- That the Department of Justice (Indigenous Issues Unit) in partnership with Corrections Victoria, prioritise scholarships targeting Indigenous students undertaking studies in the areas of psychology, psychiatry and mental health counselling;
- That Corrections Victoria liaise with the Department of Human Services and relevant medical authorities as to strategies which might be utilised to address the difficulties in prioritising scholarships targeting Indigenous students undertaking studies in the areas of psychology, psychiatry and mental health counselling; and
- That the Victorian Government continue to implement and monitor Recommendation 151 (relating to the provision of access to medical professionals with knowledge and experience of Indigenous people by prisoners) through any monitoring process established as a consequence of this Review.
The Review notes the detailed responses given by different components of the correctional system to items (a) to (g) of Recommendation 152 pertaining to a review of the provision of health services to Indigenous prisoners.

The Review notes the response from Corrections Victoria in relation to the ongoing review of prison medical services in all jurisdictions, and the issue of confidentiality and between prison medical staff and prisoners (Recommendation 153).

The Review notes the measures in place across the corrections system for medical and risk assessment upon reception (Recommendation 156) and that no current issues regarding transfer of medical records have been identified (Recommendation 157) between custodial services.

**Recommendation 140.**

That the Victorian Government continue to implement and monitor Recommendation 152 (relating to a review of the provision of health services to Indigenous prisoners), Recommendation 153 (relating to ongoing review of prison medical services in all jurisdictions, and confidentiality between prison medical staff and prisoners), Recommendation 156 (relating to medical and risk assessments) and Recommendation 157 (relating to the transfer of medical records) through any monitoring process established as a consequence of this Review.

The Review notes that measures are in place to prioritise resuscitation ahead of crime scene preservation, and that an Internal Review of all Aboriginal deaths in custody since 1991 has been carried out by Corrections Victoria (Recommendation 158).

The provision of resuscitation equipment in correctional facilities (Recommendation 159) is noted by the Review.

The provision of training for correctional staff in resuscitative measures (Recommendation 160) is noted by the Review.

Provisions for the seeking of medical attention where there is doubt about a prisoner’s condition are noted by the Review (Recommendation 161).

The Review notes the policy of placing Aboriginal prisoners in prisons as close as possible to their families and the institution of a program to provide funding assistance to families for purposes of visiting (Recommendations 168 and 169). These were both matters of concern raised with the Review by community members, but it is noted that the role of Aboriginal Well-being Officers in these matters is relatively recent, as is the commencement of the financial scheme itself.
Recommendation 141.

That the Victorian Government continue to implement and monitor Recommendation 158 (relating to officers attempting resuscitation and seeking medical attention), Recommendation 159 (relating to the ready access to resuscitation equipment), Recommendation 160 (relating to the training of police and prison officers in resuscitative measures), Recommendation 161 (relating to the provisions for police and prison officers to seek medical attention where there is doubt about a prisoner’s condition), Recommendations 168 (relating to the placement of Indigenous prisoners as close as possible to his/her residence or family) and Recommendation 169 (relating to the provision of financial assistance for family members to visit) through any monitoring process established as a consequence of this Review.

The provisions made by institutions for the conduct of visits by families and friends of prisoners are noted by the Review (Recommendation 170).

Recommendation 142.

- That the Department of Justice (Corrections Victoria):
  1. undertake a review of the Family Visits Program to ensure adequate program promotion and effectiveness;
  2. provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 170 (relating to the provision of adequate visiting facilities) through any monitoring process established as a consequence of this Review.

The Review acknowledges the difficulties that can arise in making arrangements for prisoners’ attendance at important family functions such as funerals (Recommendation 171).

Recommendation 143.

- That the Department of Justice (Corrections Victoria):
  (a) in recognition of the special kinship and family obligations of Indigenous prisoners and as part of an enhanced cultural awareness, make every effort to facilitate prisoner attendance at family events such as funerals;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 171 (relating to requests by prisoners for permission to attend funeral services) through any monitoring process established as a consequence of this Review.

The Review notes the arrangements in place to facilitate visits to Indigenous prisoners by Aboriginal organisations and Legal Services (Recommendation 172). It also notes, however, a previous criminal record is seen in the Aboriginal community as constituting a serious obstacle to this process.
Recommendation 144.

- That the Department of Justice (Criminal Law Policy) provide a report to the Aboriginal Justice Forum in relation to the progress toward the enactment of uniform national legislation on spent convictions;
- That the Department of Justice (Corrections Victoria) give consideration to the problem constituted by criminal records in relation to prison visits; and
- That the Victorian Government continue to implement and monitor Recommendation 172 (relating to visits from representatives of Aboriginal organisations, including legal services) through any monitoring process established as a consequence of this Review.

The Review notes the arrangements provided for shared accommodation in correctional institutions (Recommendation 173), and while acknowledging the difficulties that this can sometimes present, stresses the importance that shared ‘cultural space’ can hold for Aboriginal prisoners. The Review notes the reception and orientation programs in place within Victoria’s correctional facilities (Recommendation 175).

Recommendation 145.

That the Victorian Government continue to implement and monitor Recommendation 173 (relating to shared accommodation facilities) and Recommendation 175 (relating to reception and orientation programs in place within Victoria’s correctional facilities) through any monitoring process established as a consequence of this Review.

Recruitment of Aboriginal Staff

The Review notes the steps taken to increase Aboriginal employment (Recommendations 114, 174 and 178) and, in particular, the appointment of Indigenous Community Corrections Officers (ICCOs), the projected appointment of such an officer in connection with the home detention program, the creation of Aboriginal Well-being Officer positions, and the utilisation in prisons of Indigenous Services Officers (who are not necessarily Indigenous). Cognisance is also taken of the appointment of Aboriginal Official Visitors and that this is to be expanded.

It also notes, however, that in relation to the filling of some of these positions, there have been difficulties in securing and retaining appropriately qualified staff, partly because of the high level of demand within the Aboriginal community, and in some instances because of policy pertaining to prior criminal records.
Section 6: Findings on Over-Representation in the Criminal Justice System

### Recommendation 146.
- That the Department of Justice (Corrections Victoria):
  (a) liaise with the relevant educational authorities about the increased recruitment and training of Indigenous people in all fields pertaining to the operation of the correctional system;
  (b) in partnership with the Indigenous Issues Unit, prioritise tertiary scholarships under the Koori Recruitment and Career Development Strategy for psychology, psychiatry and counselling;
- That the Victorian Government give consideration to the proposal by the Victorian Aboriginal Legal Services to the removal of discrimination on the grounds of ‘irrelevant’ or ‘spent’ criminal records; and
- That the Victorian Government continue to implement and monitor Recommendation 114 (relating to recruitment and training of Indigenous staff), Recommendation 174 (relating to the employment of Aboriginal Welfare Officers) and Recommendation 178 (relating to the employment of Indigenous staff not only as correctional officers but to all employment classifications) through any monitoring process established as a consequence of this Review.

### Training in Cultural Awareness
The Review notes the steps taken to promote cultural awareness and non-racist attitudes and behaviours among medical and other staff within the correctional system (Recommendations 154, 155 and 177). It also notes the unevenness of the provision made in this respect and the difficulties associated with obtaining suitably qualified persons to deliver the training in question. It remains the case, however, that lack of cultural awareness across the system was drawn to the attention of the Review on a number of occasions by members of the Aboriginal community, and questions must therefore remain about the adequacy of current provision.

### Recommendation 147.
- That the Department of Justice (Corrections Victoria and Indigenous Issues Unit):
  (a) conduct a systematic review of the extent and adequacy of the cultural awareness training provided for its staff at all levels;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 154 (relating to cultural awareness training among medical and other staff within the correctional system), Recommendation 155 (relating to training of prison officers to identify persons in distress or at risk) and Recommendation 177 (relating to the implementation of appropriate screening procedures to eliminate racist behaviours) through any monitoring process established as a consequence of this Review.

### Pre and Post-Release Arrangements
The Review notes the development of the Koori Education, Training and Employment Strategy and of a Framework for Transitional Services (including specific provision for Aboriginal prisoners) in the absence of any national study of best practice in this field (Recommendation 110). The Review noted the response from Corrections Victoria in relation to access to meaningful work and educational courses (Recommendation 184).
It also notes that the recommendations of the State-wide Review of Prison Education and its findings in relation to Aboriginal prisoners have been endorsed in principle by the Minister for Corrections and the Minister for Education and Training (Recommendation 185). Developments consequent upon the Prison Industries Employability Skills Project (Recommendation 186) have also been noted.

Issues surrounding education, training and pre- and post-release schemes within the prison system were drawn to the Review's attention as a matter of major concern.

**Recommendation 148.**

- That the Department of Justice (Corrections Victoria):
  - (a) place more emphasis on the delivery of post-release programs for Indigenous prisoners commencing with the development of a national directory of Indigenous prison programs and services; and
  - (b) monitor the current developments in the field of education, training and transitional programs within the correctional system to ensure that they deliver the desired outcomes for Indigenous prisoners; and
- That the Victorian Government continue to implement and monitor Recommendation 110, (relating to pre- and post-release support schemes), Recommendation 184 (relating to access to meaningful work and educational courses), Recommendation 185 (relating to a national strategy for those in custody) and Recommendation 186 (relating to remuneration to prisoners for work performed whilst in custody) through any monitoring process established as a consequence of this Review.

**Data Collection and Reporting**

The Review noted the response provided by Corrections Victoria advising that Part (b) of the Recommendation 41 (relating to data collection) is not relevant to Victoria as the AIC maintains and produces regular reports.

It is noted that implementation of improvements to the national collection of Indigenous deaths in custody is continuing within the AIC and that a number of enhancements are currently under way for determining Indigenous status (Recommendation 45 and Recommendation 46).

The Review notes that a number of annual publications provide data on Aboriginal persons within Victoria's correctional system (Recommendation 47).
Recommendation 149.

- That the Department of Justice (Corrections Victoria) provide a report to the Aboriginal Justice Forum on progress of the implementation of the recommendations from the National Corrective Services Statistics Unit of the Australian Bureau of Statistics and the Australian Institute of Criminology; and
- That the Victorian Government continue to implement and monitor Recommendation 41 (relating to the ongoing national monitoring of Aboriginal and non-Aboriginal deaths in custody), Recommendations 45 and 46 (relating to the national collection of Indigenous status data) and Recommendation 47 (relating to annual reporting to Parliament) through any monitoring process established as a consequence of this Review.
6.5 Juvenile Justice

We're told we're worthless and we will amount to nothing ... (Indigenous juvenile in detention).

I'm twelve years old and I don't talk to the police. Whenever I see police I run the other way. They scare me and I don't want to talk to them (Regional Victoria).

It's sad that our kids run from coppers. We tell them they don't have to but they say that the police bait them all the time. The kids say that the coppers pull them up on the street and accuse them of things and say, 'it was you, you were there'. We go to speak to the Aboriginal Liaison Officer but we don't know if anything happens really (Regional Victoria).

My son is still at school in Year 10. I'm sick and tired of the police pulling him up all the time and accusing him of s*** (Regional Victoria).

I also have the same problem with my son. I've only had him back with me for twelve months and they are starting on him too. They are coming to my house all the time. Last time they came they accused him of stealing a mobile phone. He doesn't even have it. They just keep on harassing (Regional Victoria).

The Royal Commission was particularly concerned about the situation of Aboriginal juveniles, a significant group that it said warrants special consideration. Of the 99 deaths investigated by the Commission, 27 of the deceased were less than 25 years and:

... These young people, males and females, should have been in the prime of their lives. We must understand why this tragic loss of Aboriginal youth has occurred (Royal Commission, 1991b, Vol. 2, 14.1.1).

Whether in terms of prevention, police relations, custodial practices or the whole gamut of underlying influences contributing to the over-representation of Aboriginal people in custody, the problems affecting Indigenous juveniles are so widespread, and have such disastrous repercussions for the future that they must be given urgent priority. In consequence, discussion of the issue by the Commission, as by this Review, is a strong recurrent theme throughout and is referred to in many different contexts and under many different headings. (See in particular the Royal Commission National Report, Chapters 14, 16, 30 and 33).

According to the Royal Commission, to break the cycle of juvenile offending:

Special attention should be paid to proposals which emanate from the Aboriginal community, and in this respect, it is up to the non-Aboriginal community to lend strong and sensitive support. The most successful programs make a point of accommodating the cultural needs of Aboriginal youth and involving the Aboriginal community in the process (Royal Commission, 1991b, Vol. 4, 30.1.4).

The Commission noted that in Victoria:
Aboriginal communities see the lack of programs and activities for youth and children as a critical situation of which boredom, alcohol and harmful use of drugs are often symptomatic (Royal Commission, 1991b, Vol. 4, 30.1.5).

The Commission also saw the role of the family in the wider sense as a key part of the solution:

[One] would have to say that a priority must be placed on supporting programs and activities which enhance the ability of Aboriginal families to keep their children with them in close contact with their communities ...

Aboriginal and Torres Strait Islander families, kinship structures and communities must be given the power and the opportunity to control and assist their own families and children, and governments must not only respect those ambitions but ensure their realisation (Royal Commission, 1991b, Vol. 4, 30.1.5, 30.1.6).

Commissioner Dodson stressed the importance of addressing this fundamental unit in establishing juvenile programs:

It is apparent that the role of the family needs to be given a greater emphasis in program design and content to attend to the issue of Aboriginal juvenile offending. In this way the individual is not unnecessarily exposed to the elements that may persuade him/her away from the influence of his/her family. To the contrary, it could serve to consolidate the family unit, [providing the necessary resources and support structures are put in place] (Royal Commission, 1991b, Vol. 4, 30.1.6).

Some submissions to the Commission from Aboriginal communities had argued that:

... there is a need to bring the Aboriginal community to discipline their own children ... that there is a lack of appropriate models for children, models that could guide kids in the right direction (Royal Commission, 1991b, Vol. 4, 30.1.7).

The Commission commented on such submissions about families and children:

In the light of these expressed needs within the Aboriginal community, it may be appropriate for Aboriginal communities to institute programs which address the ‘family’ unit in order to re-institute controls here which have for many reasons been undermined, particularly, in recent times, by many years of reliance on the external controls of the welfare system (Royal Commission, 1991b, Vol. 4, 30.1.8).

An additional issue to consider when looking at the family structure in Aboriginal communities is the different cultural perceptions of what constitutes adequate child care – for instance, the independence given to Aboriginal children. However, cultural difference may at times be obscured by social issues, for instance, a lack of parental supervision over their children (Royal Commission, 1991b, Vol. 4, 30.1.9).

Another important reason for paying urgent attention to young Indigenous people is because of the demographic profile and population projections of the Aboriginal community
which show a higher proportion in the younger age groups. As the Royal Commission already noted in 1991:

[This] ... is one critical demographic factor which will impinge on these [diversionary] efforts. The Aboriginal populations is a very youthful one, much more so than the non-Aboriginal population, and the demographic trends are such that proportionately more Aboriginal people than non-Aboriginal people will be represented in those age categories which comprise the majority of people imprisoned (Royal Commission, 1991b, Vol. 3, 22.1.13).

The current Review has examined the evidence for implementation of the Commission’s Recommendations in relation to juvenile justice in a thematic fashion. For this sub-section on juvenile justice, the clusters relating to government self-assessment responses are:

(a) Reducing Juvenile Offending;
(b) Duty-of-Care in Detention;
(c) Data Collection and Risk Assessment;
(d) Children’s Aid Panels; and
(e) Police and Juveniles.

Where these Recommendations are also of relevance and have been responded to by Victoria Police, Court Services and Corrections, all of which have custodial responsibilities, their responses are found in Sections 6.2, 6.3 and 6.4 respectively.

In this section on juvenile justice, the relevant Recommendations and the self-assessed implementation status reports from Victorian Government departments are set out below in full and constitute the basis upon which the implementation status was determined. This material represents the reports on progress in addressing the Recommendations and is made available to the community through this Review. Community responses and the Review comments and recommendations follow.

6.5.1 Royal Commission Recommendations and Implementation Status

(a) Reducing Juvenile Offending
The intent of this major Recommendation is to give urgent recognition to the problems facing young Aboriginal people and their families, and for government and Aboriginal organisations to negotiate and to devise strategies to reduce the rate at which Aboriginal juveniles are involved in the child protection and criminal justice systems.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>62</td>
<td>That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.</td>
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</table>
**Government Responses on Implementation**

**Recommendation 62: Reducing juvenile offending**

*Legal Policy (DOJ)* advised the Review that the DOJ recognises the urgency of issues in relation to Aboriginal youth. This was highlighted in the VAJA which is discussed later.

Despite the fact that there have been many programs and policies in relation to youth issues, Koori youth continue to be over-represented in the criminal justice system. Further, Victorian Indigenous children are ten times more likely to be involved in placement and support services than the general Victorian child population. This demonstrates that the solutions are complex and require the tackling of underlying issues.

In relation to youth cautioning by police, statistics provided by Legal Policy show that Aboriginal youth compared with non-Aboriginal youth are still under-cautioned by police despite the Police Cautioning Program.

There is a joint project between DOJ and DHS to establish a Children's Koori Court (Criminal Division) in Victoria. The first meeting of the Reference Group occurred on 15 June 2004 and a copy of the Background Brief and Project Overview was provided to the Review on an in-confidence basis).

*Legal Policy (DOJ)* further advised the Review that legislation has also been passed to establish a Children's Koori Court to operate in the Criminal Division of the Children's Court. Beginning as a pilot project, the Children's Koori Court will focus on the individual through close collaboration with family, community service providers and criminal justice agencies. This partnership approach aims to assist Indigenous offenders to comply with sentencing orders, by enabling the Court to receive the appropriate advice to formulate sentences in a culturally appropriate manner.

The *Children and Young Persons (Age Jurisdiction) Amendment Act 2004* increases the age jurisdiction of the Criminal Division of the Children's Court to hear offences alleged to have been committed by a child aged between 10 and 18. The increase in age jurisdiction will come into effect on 1 July 2005.

*Child Protection and Juvenile Justice (DHS)* advised the Review that DHS is able to develop joint strategies addressing the over-representation of Aboriginal young people in the welfare and criminal justice systems as both Child Protection and Juvenile Justice are administratively with the one Branch. In addition, the establishment within the Branch of the Indigenous Issues Unit (IIU) has raised the profile of Indigenous issues. The IIU has portfolio responsibilities across the Branch and reporting responsibilities and functions across the Division.

In regard to Juvenile Justice, the over-representation of Aboriginal young people continues. The total number of Aboriginal young people across both custody and community Juvenile Justice programs as of September 2002 was approximately one hundred young people, with twenty being in custody and eighty being involved in community based Juvenile Justice programs.

DHS funds the Koori Justice Program (developed in 1992 in response to the findings of the Royal Commission) which aims to provide culturally appropriate juvenile justice programs designed to minimise the penetration of Aboriginal young people within the juvenile justice system, as well as supporting the re-integration of Aboriginal young people place in custody, within the community post release. This program also strengthens the links between
Aboriginal communities, the Juvenile Justice Program and other relevant services within the community. The Koori Justice Program initially serviced Robinvale, Swan Hill, Shepparton, Lake Tyers, Morwell and Warrnambool. However it was expanded in 1996-1997 to include Bairnsdale and the Northern Region of Metropolitan Melbourne. The Koori Justice Program was developed in conjunction with local Aboriginal communities. Funding arrangements supported the program to develop within a self-management model of operation with the only exception to this model being in Lakes Entrance where the program is auspiced through a mainstream agency. Additional funding has been allocated to ensure that the ongoing professional development needs of the Koori Justice workers are met.

Community Care continues to fund and support the VACSAL Bert Williams Centre. The program ensures that young Aboriginal people in contact with the juvenile justice system or at risk of such contact continue to receive appropriate support and supervision. Juvenile Justice sponsored the Wathaurong Sports Mentoring Program, located in the Barwon Region, aimed at engaging young Aboriginal people either at risk of offending or involved in offending, in sports programs.

Juvenile Justice funds a Group Conferencing Program which is operational across the Melbourne Metropolitan area. This program has been designed to divert young people, where appropriate, from receiving court supervisory sentences, whilst also addressing their rehabilitation needs. The program framework specifically considers the needs of young people of Indigenous and culturally diverse backgrounds. In the 2002-2003 budget, funds were allocated to pilot two further group conferencing programs in rural areas. Hume and Gippsland regions were selected based on the over-representation of Aboriginal young people in these regions. It is therefore expected that referrals to group conferencing in these regions will include Aboriginal young people.

To ensure the success of these programs, the services selected to provide the program in rural areas will be active in consulting with and including key local Aboriginal services in the development and implementation of the program. This will ensure issues impacting on the participation rate and successful outcomes for Aboriginal young people are addressed.

In recognition of the specific needs and issues of Aboriginal young people within the criminal justice system, Juvenile Justice also provides training to its workforce in regard to working with these young people.

In August 2000, the Ministerial Statement: *A Balanced Approach to Juvenile Justice in Victoria* was released, providing the framework for the Juvenile Justice Reform Strategy. As part of the overall strengthening of the Victorian Juvenile Justice System, funding was provided to develop and strengthen diversionary and rehabilitation initiatives, as well as expanding transition and post-release services to young people placed in custody. This reform has resulted in the development of general and specific programs for Aboriginal young people.

A number of initiatives have been developed that are not in response to the Royal Commission Recommendations but are entirely consistent with the Recommendations as they are targeted at reducing out-of-home placement of Aboriginal children involved with Child Protection and separation from family and community. There are no specific programs targeted at youth with the purpose of reducing the rate at which Aboriginal juveniles enter the care system, however, there are a number of general programs that are designed to reduce the rate of involvement of Aboriginal children/youth within the care system and separation from family and community.
There are two initiatives, the Aboriginal Child Specialist Advice and Support Service (ACSASS) (statewide) and AFDM Pilot AFDM (Shepparton only), which seek to improve decision-making in relation to Aboriginal children/youth involved with Child Protection. The underlying premise is that by improving decision-making and engagement with Aboriginal families and community, children/youth will be removed less frequently, and if they are removed, care arrangements will be more culturally appropriate and culturally supported. That is, children will remain connected to their family and community (see Recommendation 235 in Section 5.5 – Families and Children for more detail).

There are initiatives designed to prevent progression of Aboriginal children/youth through the Child Protection system thus reducing the rates of placement in the care system.

- Five AFPP across Victoria are funded to work intensively over a short period with Aboriginal families to prevent placement or facilitate reunification.
- Supporting Vulnerable Families IIP. In 2002-2003 two Aboriginal innovation pilot projects will be established in Shepparton and East Gippsland to address the over representation and re-notification of Indigenous children by developing fresh proactive approaches to supporting Indigenous families that are flexible, of varying intensity, targeted and culturally relevant.

There are programs that seek to retain the connection of Aboriginal children/youth to their family and community when placement in the care system becomes inevitable.

- Aboriginal Out-of-Home Care Services (AOOHCS) – In recognition of the importance of compliance with the Aboriginal Child Placement Principle, DHS funds five Aboriginal agencies across the State to provide Out-of-Home Care Services to Indigenous children placed away from home.

In support of these programs practice instructions have been issued to Child Protection workers and the following specific initiatives have been implemented in order to increase the recognition within the field of the importance of maintaining the connection of Aboriginal children to their family, community and culture:

- Aboriginal Child Placement Principle Guide - A guide has been developed to assist Child Protection and Out-of-home Care workers understand the importance of the Aboriginal Child Placement Principle and incorporate it within practice.
- Beginning Practice Indigenous Module-Induction Training Package – A specific Indigenous cultural awareness module has been included within the induction training package for Child Protection workers to improve the cultural sensitivity and awareness of Indigenous issues within the field.

A range of implementation difficulties exist that are associated with initiatives that are aimed at reducing care placements and separation from family and community. At a general level there are difficulties associated with the capacity of Aboriginal community organisations to deliver programs. This relates to infrastructure and resourcing, limited funding, how the funding is provided (given scale issues) and the skills base that exists within the organisations and that available in the wider Aboriginal community as a resource for the Aboriginal organisations. It has been identified that the overall performance of preventative programs is constrained by the absence of early intervention services and post-intensive support services. There are numerous difficulties associated with implementation of Aboriginal specific Out-of-Home Care responses. It has been identified that the program models themselves need to be re-assessed in light of their cultural applicability. Kinship care
has been identified as being inadequately supported but it is a more cultural appropriate form of care that is beneficial and desirable to Aboriginal communities. Similarly, a significant service gap has been identified whereby a large number of Aboriginal children/young people in care, approximately one third, are placed with mainstream service providers where planning around cultural continuity is not adequately addressed at present. There are also difficulties associated with the ongoing monitoring and reporting of care placements (see Recommendation 235 in Section 5.5 – Families and Children).

In response to recommendations made within the VAJA, Juvenile Justice commissioned a review of the Koori Justice Program in December 2001. The intention of this review was to inform Juvenile Justice of future program models based on ‘best practice’ and enhanced allocations of funds for initiatives for Aboriginal young people in the juvenile justice system. The review has been finalised and Juvenile Justice has considered its recommendations. The Australian Institute of Criminology and Professor Kevin Howells and Dr Andrew Day from the Forensic and Applied Psychology Research Group, University of South Australia have undertaken the Victorian Juvenile Justice Rehabilitation Review on behalf of Juvenile Justice. Whilst this review did not exclusively consider Aboriginal young people who offend, the specific issues and needs of this group were considered. This review required the researchers to consult with a range of key stakeholders within the community. There have also been evaluations conducted on Juvenile Justice Group Conferencing, the Aboriginal Family Preservation Program, the Supporting Vulnerable Families Indigenous Innovations Project and on Aboriginal Family Decision Making. Furthermore, there was a planned evaluation of the Aboriginal Case Management Positions.

The fundamental in-principle recognition of community involvement, self empowerment or self determination and the richness and diversity of Indigenous culture contained within principles 1, 2, 3(c) and 4 provide a sound underlying basis for future policy and program development that is consistent with and in support of the implementation of this Recommendation. Principles 5, 6, and 7 provide specific guidance to future development of ‘justice outcomes’ for Juvenile Justice programs. Principle 9 is relevant to this recommendation as it clearly articulates where the emphasis for future development of Juvenile Justice programs targeted at reducing over-representation should be placed (in prevention and early intervention).

This Recommendation is primarily relevant to Juvenile Justice in so far as it is concerned with the development of joint strategies and responses with Aboriginal organisations designed to reduce over-representation of Aboriginal young people with the criminal justice system and subsequent separation. As the recommendation is all encompassing every single strategic objective of the VAJA is directly or indirectly relevant. The principle, strategic objectives and initiatives assist implementation of the Royal Commission Recommendation in that they provide a framework, and processes supporting that framework, for the development of culturally appropriate programs and services.

Initiatives, programs and strategies targeted at reducing over representation whether by prevention or early intervention, or reduction in re-offending through educational re-integration. Initiatives targeted at increasing the effectiveness of services, programs and strategies by improving their cultural appropriateness and accessibility, by focusing on achievement of best practice in program/service delivery and by improving consultation and input from the Aboriginal communities of Victoria at all levels of design, development, implementation and evaluation.

The following are relevant to Community Care programs and services and this recommendation:
- Strategic objectives 1 and implementation initiatives 1.1, 1.3;
- Strategic objective 2 and implementation initiatives 2.7, 2.10, 2.11;
- Strategic objective 3 and implementation initiatives 3.1 to 3.7 in so far as the V4/A related to the core business of Community Care programs and the actions under the DHS Aboriginal Service Plan; and
- Strategic objective 5 and implementation initiative 5.1.

The Koori Justice Program
Local Aboriginal communities were totally involved in the design, development and implementation of this service within regions that received funding to develop a Koori Justice Program. Since its inception, agencies have been responsible for the development of the specific programs based on regional and local needs, with key performance indicators related to outcomes for young people.

In regards to the Review of the Koori Juvenile Justice Program, Indigenous key stakeholders such as Koori justice agencies and key Aboriginal organisations were involved.

A state-wide reference group, including key Aboriginal stakeholders and Aboriginal service providers, was convened to oversee the Review. Further, following the Review, a Development Plan was agreed to implement the key recommendations from the Review.

A further one day Koori Juvenile Justice Forum was held in May 2004. A Best Practice Guidelines document has been developed for the Koori Juvenile Justice Program. The Guidelines were informed from discussions held at the Forum and from consultation with the Koori Juvenile Justice workers and the Aboriginal community.

The Child Protection and Care Aboriginal Services Network provides a direct opportunity for Indigenous input into Community Care programs and initiatives. It is envisaged that the consultation structures and mechanisms created by the Aboriginal Services Plan will provide more effective opportunity for Aboriginal community input into children/young people involved with welfare services. See Recommendation 235 regarding the types of processes created in relation to ACSASS that provide community input.

The Royal Commission Recommendation is more relevant today than it was in 1996-97. Studies have revealed a trend whereby the characteristics of parents of children involved with Child Protection have become increasingly complex. There is an increase in the numbers of parents with multiple presenting characteristics and a high proportion of parents are presenting with substance abuse, alcohol abuse and family violence issues. The increased complexity of clients increases the probability of progression through Child Protection into the Out-of-Home care system.

Child Protection & Juvenile Justice (DHS) further advised the Review that the Koori Juvenile Justice Program undertaken in 2001 was overseen by a Steering Committee made up of Departmental representatives, members of the Aboriginal community, including representatives from RAJACs. Based on difficulties with aspects of the report, the Steering Committee received the review report in its draft form and from this an implementation strategy was developed. As a result of the Review, and to take up the recommendations in the Report, an initial implementation plan was developed and approved by the Steering Committee. Juvenile Justice also hosted a two-day Forum in June 2003. From this a discussion document was sent out for consultation. This document addresses the recommendations from the Review and from the Forum and has informed the current work
plan for the ongoing development of the Koori Juvenile Justice Program DHS provided the Review with a copy of the discussion document.

In 2002, the University of Ballarat were contracted to provide Certificate IV core competency training for the Koori Juvenile Justice Workers. This was funded by the DHS at a cost of $30,507. The seven workers who participated in the Certificate program were awarded their Certificates at the Koori Juvenile Justice Forum in June 2003.

In 2002, Wathaurong Aboriginal Co-operative sought funding of $22,500 to support ten Aboriginal young people to undertake a Sports Mentor program with Athlete Development Australia. No formal evaluation report is available.

The Juvenile Justice program provides and funds a range of services and programs to support diversion, reintegration and rehabilitation of young people who come into contact with the Juvenile Justice system. All services and programs are available to young Koori and every effort is made to ensure that services and programs are responsive to the needs of the client.

The needs of young Koories are actively considered and addressed as part of the planning and development of any new initiatives within Juvenile Justice.

The Department has not commissioned any reports relevant to the response. The Department released the Protecting Children: The Child Protection Outcomes Project (2003) which failed to address the issues associated with the protection of Aboriginal and Torres Strait Islander children. The Secretariat of the National Aboriginal and Islander Child Care (SNAICC) has been funded to conduct a literature review of current practices from local, national and international perspectives to provide input into the legislation review.

In relation to Indigenous specific funding, the total recurrent funding for the Koori Juvenile Justice program is now $1,014,000. This includes the increase in funding of $400,000 received over the 2002-2004 financial years. The increase in funding was mostly used to increase funding levels to support the existing Koori Juvenile Justice Worker positions and to provide for an additional three part-time positions. The funding allocation for 2003-04 is as follows: $888,400 to fund 11 Koori Juvenile Justice worker community positions and three Koori Liaison positions (Centre positions), $69,000 to provide additional community-based programs and services for Aboriginal young people in the Loddon Mallee Region, and $57,000 is held by the Juvenile Justice Section for the Koori Juvenile Justice worker network meetings, training and Forums. This represents an increase in funding of $323,162 to support the employment of Aboriginal workers and programs directly in the community.

There are currently:

- Eleven full or part-time Koori Juvenile Justice Workers employed by Aboriginal Cooperatives or Agencies in five regions throughout Victoria (three positions at VACSAL for Metropolitan Melbourne and State-wide assistance, three Workers in Gippsland (Moe, Morwell and Lakes Entrance), and one each at Shepparton, Warrnambool (incumbent is not Aboriginal), Geelong, Robinvale, and Echuca;
- One part time position is still to be established (Mildura);
- Three Koori Liaison Officers are employed – one at each of the three Juvenile Justice Centres.
Juvenile Justice (DHS) provided the Review with the following information:

- Juvenile Justice has developed a Drug Policy and Strategy. A strategy within this is to develop a co-ordinated response to drug and alcohol issues presented by Aboriginal Juvenile Justice clients (partially completed).
- Juvenile Justice and Mental Health Services have developed a Protocol to provide for better pathways to mental health services for Juvenile Justice clients (completed).
- Rehabilitation Review - The first stage of the implementation of the Rehabilitation Review has been completed. This involved the development of an assessment summary tool, the Offending Needs Indicator for Youth, to enhance the current client assessment and planning process. The tool assists Juvenile Justice workers to identify key offence related and personal issues that need to be addressed to assist clients in moving towards living an offending free lifestyle and to improve life outcomes. The second stage of the Rehabilitation Review has commenced will involve the development of a Framework for Rehabilitation with the development of supporting practice and program initiatives. A work program is being put in place to look specifically at the needs of Aboriginal clients and to monitor that initiatives are responsive to the needs of Aboriginal young people.
- An Indigenous Garden is being developed at the Parkville Juvenile Justice Centre to provide a cultural environment for running Koori art and other cultural or rehabilitative programs and as a place for clients to talk through issues with staff, family or members of the community.

(b) Duty-of-Care in Detention

The intent of the Commission’s Recommendations under this heading is to ensure that the custodial care practices, procedures and standards in juvenile centres were on a par with those being recommended for police and corrective services.

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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>122</td>
<td>Fully implemented (CP &amp; JJ-DHS)</td>
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<tr>
<td>(a) That Governments ensure that:</td>
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<td>(b) That the standing instructions to the officers of these authorities specify that each officer involved in the arrest, incarceration or supervision of a person in custody has a legal duty-of-care to that person, and may be held legally responsible for the death or injury of the person caused or contributed to by a breach of that duty; and</td>
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<tr>
<td>(c) That these authorities ensure that such officers are aware of their responsibilities and trained appropriately to meet them, both on recruitment and during their service.</td>
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</tr>
<tr>
<td>167</td>
<td>Fully implemented (CP &amp; JJ-DHS)</td>
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<tr>
<td>That the practices and procedures operating in juvenile detention centres be reviewed in light of the principles underlying the recommendations relating to police and prison custody in this report, with a view to ensuring that no lesser standards of care are applied in such centres.</td>
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Government Responses on Implementation

**Recommendation 122: Recognition of Duty-of-care**

Child Protection and Juvenile Justice (DHS) advised the Review that in respect to the Victorian Juvenile Justice Program, Duty-of-Care provisions are prescribed by departmental policy. Juvenile Justice employees across custodial and community based programs received training in regard to duty-of-care when this revised policy was released, and is reinforced through the Victorian Juvenile Justice Case Practice Standards Manual that exist for custodial and community based juvenile justice programs.
All new Juvenile Justice staff receive specific information regarding Duty-of-Care provisions as part of their induction training.

As this Recommendation is narrowly focused on recognition of a legal duty-of-care and ensuring that practice conforms to this duty, the only applicable principle of the VAJA is Principle 5 which acknowledged the benefit of whole-of-government responses. Initiatives 3.3 and 3.5 only appears to be indirectly relevant as they are targeted at improving the effectiveness of initiatives, programs and strategies by focusing on achievement of best practice in program/service delivery and accountability for service quality and outcomes.

**Child Protection and Juvenile Justice (DHS)** further advised that staff is made aware of their duty-of-care responsibilities when first employed through induction training and professional supervision. The Juvenile Justice Centre *Operations Manual and the Case Practice Standards Manual* covers duty-of-care responsibilities. Monitoring compliance with policy and procedures is undertaken in a range of ways that include professional supervision, case discussions, file checks and monitoring of activities in the unit. Forms for procedures involving duty-of-care responsibilities, such as observations, require management signature and are held on the client’s file. The case management approach taken by Juvenile Justice includes a comprehensive client assessment and planning process. This is checked by the manager and is subject to ongoing monitoring through supervision. In custody, all clients receive a health assessment and health service from qualified health staff. At induction, clients are informed of their rights and the process for making complaints.

There has not been a formal audit of compliance but a key performance measure relating to client service plans being in place within six weeks is reported on quarterly. This measure is being met.

In relation to custodial centres, other mechanisms assist in monitoring compliance with duty-of-care responsibilities. These include:

- Role of the Ombudsman, including client’s right of access to the Ombudsman and Ombudsman’s visits to the Centre;
- The role undertaken by the Chaplain and the Aboriginal Liaison Officer;
- Group meetings in the custodial units;
- Visitors and day-to-day contact with support staff such as health, program and TAFE staff;
- Complaints reporting and monitoring system.

DHS provided the Review with a copy of the *Duty-of-Care* paper and *Standards to Guide the Delivery of Services in Juvenile Justice Custodial Centres*.

See Section 6.2 – Police for the Victoria Police response to this Recommendation.

See Section 6.4 – Corrections for the Corrections Victoria (DOJ) response to this Recommendation.

**Recommendation 167: Practices and Procedures**

**Child Protection and Juvenile Justice (DHS)** advised the Review that the practices and procedures operating in juvenile justice centres were reviewed and revised to include specific Recommendations of the Royal Commission. The general practices are again being
reviewed in light of the changing nature of the client group with the aim of developing enhanced service responses to young people placed in custody. Aboriginal DHS staff will review the guidelines to ensure that they continue to comply with the Royal Commission Recommendations and broader ‘best practice’ frameworks for Aboriginal young people.

Koori Liaison Officers (KLO’s) are employed within each of Victoria’s three juvenile justice centres. The primary aim of these positions is to support young Aboriginal people in custody; however they also seek to develop:
- Culturally appropriate rehabilitation programs;
- Best practice models for other staff working with young Aboriginal people; and
- Networks with agencies and professionals to ensure young Aboriginal people have access to culturally supportive and responsive services.

The Australasian Juvenile Justice Administrators’ (AJJA) Design Guidelines: Juvenile Justice Facilities in Australia and New Zealand, underpin the design and construction of Juvenile Justice facilities in Victoria. These Guidelines are informed by a number of key national and international publications, including:
- United Nations, Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly Resolution 45/113, 1991, and

The strategic objectives and initiatives of the VAJA directly relevant to his recommendation are those specifically relevant to the delivery of culturally appropriate services/programs within juvenile detention centres. Initiatives targeted at improving the effectiveness of initiatives, programs and strategies by improving the culturally appropriateness and accessibility of initiative, by focusing on achievement of best practice in program/service delivery and by focusing on improving consultation and input from the Aboriginal communities of Victoria at all levels of design, development, implementation and evaluation support this recommendation indirectly.

**Child Protection and Juvenile Justice (DHS)** further advised that the review of policy and procedures relates to the rewrite of the Centre Operations Manual. This is in its final stages of development and is being rolled out incrementally to the three custodial centres. The roll out is being supported by an extensive briefing and training program.

An extensive staff consultation process was used during the development of the manual and a small number of Aboriginal staff were part of this. Comments and feedback from the consultation process were built into the Manual.

The Class A facility at MJJC was decommissioned in June 2003 to coincide with the commissioning and opening of a new 16-bed demountable unit at Malmsbury Juvenile Justice Centre. The bedroom wing of Class A was demolished as part of a capital investment project to build a 26-bed multipurpose unit at Melbourne Juvenile Justice Centre, which is due for completion in May 2005.

See Recommendation 62, paragraph 19 for **Child Protection and Juvenile Justice (DHS)** additional response to this Recommendation.
### Data Collection and Risk Assessment

The objective of the Recommendations under this heading is to ensure that the same requirements of reporting with regard to persons held in custody should apply to the juvenile justice system as to Victoria Police and Corrections Victoria, and that relevant data on risks should be collected for juveniles, like adults, when they are held in custody.

<table>
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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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| 41 | Fully implemented (CP & JJ-DHS);
| | a) Fully implemented, b) not relevant to Victoria, and c) fully implemented (VicPol) |
| 47 | Fully implemented (CP & JJ-DHS) |
| 126 | Fully implemented (CP & JJ-DHS) |

#### Government Responses on Implementation

**Recommendation 41: Ongoing national monitoring of Aboriginal and non-Aboriginal deaths in custody**

**Child Protection and Juvenile Justice (DHS)** advised the Review that it maintains a database, called the *Juvenile Justice Client Information System* that identifies all young Aboriginal offenders on custodial and non-custodial supervised dispositions. This system has the capacity to distinguish Aboriginal young people from Torres Strait Islander young people. DHS is in the process of developing an integrated information system across Child Protection, Juvenile Justice, Specialist Children's Services and Disability Services with the aim of enhancing case management within and across these programs. The *Juvenile Justice Branch* also contributes information to the Australian Institute of Criminology Deaths in Police Custody.
Custody Unit. The department will be implementing an integrated case management system across Community Care Division programs (including Child Protection, Juvenile Justice and Early Years) that will be connected to the community services sector. The identification of Aboriginal and Torres Strait Islander clients of Child Protection is consistent with the Juvenile Justice information collections. The questions used for identification of Aboriginal and Torres Strait Islander status are consistent with the ABS.

The design and build phase of the Integrated Client and Case Management System (ICCMS) will be completed in early April 2005, with the completion of the final systems walkthroughs, where relevant head office and regional staff have been provided with a demonstration of the system on a program by program basis. It will be piloted in the Southern Region and the JJ custodial centres before being rolled out to other regions in late 2005. Training of all users of the system will be provided just prior to the rollout in each region. Once the system has been rolled out, programs will have the capability to determine whether they have a shared client via a Common Client Layer, and cases will be able to be tracked across areas. However, there will be some restrictions in relation to Child Protection, due to the Children’s and Young Person’s Act and for Juvenile Justice, due to Privacy Legislation. The system uniformly seeks Indigenous status conforming it to the ABS definition. Accuracy of this information depends upon users entering the information accurately and completely, and on clients providing the information when requested.

The principles of the VAJA are only indirectly related to the implementation of this Recommendation. This Recommendation is concerned with implementation of a statistical monitoring regime whereas the principles of VAJA are concerned with the provision of a culturally appropriate response to the disadvantage and inequities facing Indigenous people in Victoria with respect of justice outcomes.

Only Strategic Objective 3 and Implementation Initiative 3.6 are directly related to implementation of this Royal Commission Recommendation, as they are concerned with the development of a coordinated and strategic approach and improvement of data collection systems respectively.

See Section 6.2 – Police for the Victoria Police response to this Recommendation.

See Section 6.4 – Corrections for the Corrections Victoria (DOJ) response to this Recommendation.

**Recommendation 47: Reporting to Parliament**

**Child Protection and Juvenile Justice (DHS)** advised the Review that it monitors the number of Aboriginal young people under the jurisdiction of the Children’s Court of Victoria (Criminal Division). General statistics are collected on young people subject to custodial or supervised community-based dispositions, and this information system also allows Juvenile Justice to specifically determine those young people of Aboriginal or Torres Strait Islander background. The Youth Parole/Residential Boards Annual Report includes information on the number of Aboriginal young people who come under the jurisdiction of the Boards. This report is tabled in Parliament.

See Recommendation 41 regarding the ways the VAJA assists the implementation of the Royal Commission Recommendations.

See Section 6.2 – Police for the Victoria Police response to this Recommendation.
Recommendation 126: Screen form and risk assessment of persons being taken into custody

Child Protection and Juvenile Justice (DHS) advised the Review that all three juvenile justice centres have strict admissions procedures to ensure the safety and well-being of clients being admitted. The procedures differ slightly at each centre to take account of the physical structure of the admissions area, the number of clients arriving at any one time and the age of the clients being received. Clients are escorted to the Centres by the Police or Group 4. The escorting officer will notify the centre staff if any client has been assessed as being at risk. During Admissions, all clients are observed closely.

When an Aboriginal young person is received into custody, (placed in a holding room) they are monitored at a minimum of every four minutes until assessed. This may be ongoing at this level or increased depending on the risk assessment. Group 4 (private provider for the Juvenile Justice Centres) will also provide other health related information such as suspected substance use and medication taken/required.

The Aboriginal Liaison Officer is to be notified immediately of the admission of an Aboriginal client and, as soon as practicable, will meet with and provide cultural support for that client during the admissions process.

As part of the initial admission process, initial health information is gathered and recorded on file. If any health issues are identified during this initial health check, health staff are informed immediately. A full health check is done by health staff within 12 hours of admission for Aboriginal young people. The Aboriginal Liaison Officer is to be notified immediately of the admission of an Aboriginal client and is available to produce cultural support for that client. If clients are admitted after “lock down” clients, will be placed in a locked bedroom and will be placed on close observations (four-minute observations) until the initial health assessment has been undertaken. Aboriginal clients are offered the opportunity of sharing a room with another client (Buddy system).

Any client considered at risk of suicide or self-harm will be assessed and supported by staff and placed on four-minute or continuous observations. Information is recorded in the client’s file and relevant floor staff are briefed. Information of client risk is provided to Police or Group 4 when a client is being transported back to Court. It is also provided to community-based staff when a client is being released from custody. All custodial staff receives training in suicide awareness and prevention and in the policy and procedures. Community based staff also receive training in suicide awareness. DHS provided the Review with an example of the observation and health forms.

See Section 6.2 - Police for the Victoria Police response to this Recommendation.

See Section 6.4 - Corrections for the Corrections Victoria response to this Recommendation.

(d) Children’s Aid Panels

While there are no Aboriginal Children’s Aid Panels in Victoria, two agencies responded to how the intent of this Recommendation was being implemented in Victoria in relation to Indigenous juvenile diversion from the criminal justice system.
The Commission notes that in some jurisdictions (in particular South Australia and Western Australia) Children's Aid Panels or Screening Panels apply. These panels provide an option lying between police cautions, on the one hand, and appearances in children's courts, on the other hand. The Commission is unable to recommend that such panels be established in places where they do not presently exist, nor that panels be abolished in places where they do exist. The Commission, however, draws attention to evidence suggesting that the potential benefits which may flow from the provision of such panels are not fully realised in the case of Aboriginal juveniles. The Commission draws attention to the desirability of studies being done on a wide scale to determine the efficacy of such initiatives. The Commission recommends that for South Australia and Western Australia the following matters should be made clear by legislation, standing orders or administrative directions so as to provide:

(a) That the fact of arrest is not to be taken into account in determining whether a child is referred to a Children's Court as opposed to being referred to an alternative body such as a Children's Aid Panel;
(b) That the decision to proceed by way of summons or attendance notice rather than by cautioning a juvenile should not be influenced by the existence of such panels;
(c) That there should be adequate representation of Aboriginal people on the list of panel members;
(d) That the panels should be so constituted that there be adequate representation of Aboriginal members of the panel on any occasion in which an Aboriginal juvenile's case is being considered;
(e) That in no case should there be consideration of the case of an Aboriginal juvenile unless one member, at least, of the panel is an Aboriginal person; and
(f) That an Aboriginal juvenile should not be denied consideration by a Children's Aid Panel by virtue of the juvenile's inability, on financial grounds, to make restitution for property lost, stolen or damaged.

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<tr>
<th>Recommendation</th>
<th>Implementation status 2003</th>
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<tbody>
<tr>
<td>241</td>
<td>Partially implemented (VicPol)</td>
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Government Responses on Implementation

**Recommendation 241: Children's Aid Panels**

**Child Protection & Juvenile Justice (DHS)** advised the Review that depending on the age and circumstances of the child, a child coming to the notice of the Police may prompt a notification to the Child Protection Service. When a Child Protection notification is made for an Aboriginal child or young person, an Aboriginal service is involved in the initial assessment process. This may result in no further action being taken on the offending behaviour. If the criminal matters do proceed to Court, then matters before the Family Court have precedence over matters in the Criminal Court.

The Koori Youth Diversionary Pilot (see Recommendation 239) will involve the local Koori community but not to the extent suggested in this Recommendation.

Department of Justice is currently looking at the option of establishing a pilot for a Koori Children's Court similar to that being piloted in the adult jurisdiction. The Department of Human Services, through the Juvenile Justice program, is a partner in this project.

See Section 6.2 – Police for the **Victoria Police** response to this Recommendation.

(e) Police and Juveniles

Recommendations 242 to 245 of the Royal Commission specifically dealt with issues pertaining to police procedures in relation to juveniles. For these Recommendations, the government and community responses thereto and the recommendations of the
Implementation Review can be found at Section 6.2 – Police, under the heading (b) Police and Juveniles.

6.5.2 Community Responses

While the community consultations elicited very few comments of direct application to the juvenile justice system, comments were given by Indigenous juvenile detainees to members of the Review Team when they visited the juvenile justice centres. Discussions revealed time and time again how the complex intersections between the underlying issues clashed with the criminal justice system and Indigenous young people. In particular, as the Royal Commission emphasised, this was also inextricably linked to the undermining of the Indigenous family, in the wider sense,

For Aboriginal people the family is really important. Today many family structures are breaking down without the guidance of the family, Aboriginal kids are becoming despondent, committing crimes and taking up substance abuse (Royal Commission, 1991b, Vol. 2, 14.4.39).

And as a consequence, as reported to the Review during community consultations:

Our Elders are burying our kids at such a young age nowadays (Regional Victoria).

Community groups appear to have largely addressed their remarks, overwhelmingly negative, to the performance of DHS in the Child Protection and Welfare areas rather than the juvenile justice system (see Section 5.5 – Families and Children). In this context, the main source of complaint was that, on the one hand, help could only be obtained after juveniles got into trouble, while on the other hand, DHS were too ready to move in and ‘blame’ parents:

Our young kids have to get into trouble with the police first before DHS will assist the family in addressing problems. It seems that once you are in system everything becomes available to you. We need to be able do something for kids before they get to that point (Metropolitan Melbourne).

It should also be noted that in the context of the proposed increase in the age of entry into the adult corrections system, and the current review of the Children and Young Persons Act, there must be more attention paid to the interface between the juvenile and adult justice systems, and the interface between the juvenile justice system and the child protection system. The following quote provides an example of the consequence of the former relationship:

I was the youngest person at [adult prison] when I was held on remand in December 2003. I was only 17 and I was held in an adult jail. I’ve been at [Juvenile Justice Centre] for burgs and thefts. I’ve been through the Children’s Court and the Magistrate’s Court. They couldn’t decide where I should belong because of my age (Regional Victoria).

The need for diversionary measures and programs was also strongly emphasised:

We don’t even have diversionary programs either and that’s really needed to keep our kids out of trouble and away from the attention of police (Regional Victoria).
There are not diversionary programs for youth in [Regional town]. There’s nothing to do for them to do (Regional Victoria).

Diversion – you see kids in here [Juvenile Detention Centre] for three weeks – what’s the sense in that? Why couldn’t they be diverted from jail in the first place instead of being sent here? It’s just stupid and doesn’t make any sense. It’s not cost effective to keep kids in jail either (Regional Victoria).

Clearly crucial to this:

We need to let our kids know that they are appreciated and loved (Regional Victoria).

We need programs so that our kids feel worthwhile (Regional Victoria).

Everything doesn’t need to be focused on sports programs either. We recently set up a multi-cultural nursery where some of our kids were involved in the setting up of the garden. They need to have ownership of the garden and build partnerships with other groups too (Regional Victoria).

You have to start with the youth to prevent them ending up in [adult prison] (Regional Victoria).

As the critical entry point into the juvenile justice system, the police and how they relate to Indigenous youth elicited many negative views:

I think that there needs to be more meetings held with high-ranking officers of Victoria Police to talk about the bullying tactics of some of the members. What happens most of the time is that when police don’t hear what they want to hear from the Koori kids then they will bash them (Regional Victoria).

I heard of an incident where two police officers took two young ones down to the river at [Regional Area] and bashed them. There was an elderly lady who witnessed everything and the police denied it. The old lady got intimidated and was too scared to speak up after that (Regional Victoria).

As soon as [names withheld] step outside that door they [Police] bang on extra charges or bring up all the outstanding charges so they end up back in here. That’s just not fair and the kids will never be able to get ahead when that happens all the time. Why can’t the police bring out those matters when they are still inside instead of waiting until their release date? (Regional Victoria).

Although the number of Indigenous young people in the juvenile justice system is low (107 in March 2004 compared to 828 non-Indigenous juveniles, they nevertheless represented 11 per cent.
Numbers of Indigenous juveniles in detention (on custodial orders) has been relatively stable – 22 in September 2002 and 26 in March 2004. Similar stability is seen for Community Juvenile Justice Orders – 79 and 81 over the same period.

Detainees, at juvenile detention centres, ex-detainees and parents and guardians thereof also voiced a number of complaints, principally about police harassment or violence:

- I have been bashed by coppers plenty of times. I went down to the police station in [Regional town] to report it to the Aboriginal Liaison Officer but he wasn’t on duty. I wanted to make a complaint about what the police had done to me but I didn’t in the end because I was too scared (Juvenile Justice Detention Centre).

- The Police bashed him to the point where he nearly lost his eye (Regional Victoria).

- Yeah, the police don’t like me. They pull my little brother up all the time and ask him if I’m in town. Why do they have to hassle him about me for? (Regional Victoria).

And the young Indigenous detainees recounted their truncated careers in the school system, which relates back to underlying issues:

- I didn’t like school very much at all. I always used to get picked on by the other kids and the teachers too. I can’t read or write and I didn’t get any help at school or anywhere else for that matter (Young Indigenous male detainee).

- The teachers thought I was so stupid they decided to take me out of English and Maths classes and they made me do woodwork and art instead. That was okay but it didn’t help with my reading and writing did it? (Young Indigenous male detainee).

- I ended up leaving school in Year 7 because I was always getting into too much trouble and fighting every-day. My family went down to the school to speak to the teachers and principal but the same s*** happened all over again (Young Indigenous male detainee).

- The best teacher I ever had was the Library teacher. She was nice and quiet and she spoke to me properly (Young Indigenous male detainee).

Another Indigenous youth in detention stated that all he wanted to do when he got out of the detention centre was to go to school. The need for legal and parent education for young people was also considered an important intervention:

- Our people don’t know enough about their legal rights. Our youth especially don’t know anything about their rights (Regional Victoria).

- I know that there are parenting programs for men and women in jails. There needs to be these programs in our Juvenile Justice Centres too because our young ones are having babies and becoming mothers and
fathers at early ages. If you had these types of programs then it would assist in building healthy families and strengthen community relationships (Metropolitan Melbourne).

Post-release services for young people were also needed:

There's nothing out there for our youth once they are released from Juvenile Justice (detention). If there was a transitional house I think that this would assist them greatly and could stop the re-offending behaviours (Metropolitan Melbourne).

As were programs which would offer assistance:

... to the families to ensure the person's re-settlement (Metropolitan Melbourne).

The complexity of issues facing Indigenous young people is well demonstrated by the comments of several Indigenous parents whose children were in juvenile detention:

He's been trying but it's not that easy, I've approached [private company] to ask for their help and they said no. My son's bored and he has drug and alcohol issues. There's nothing for them to do here. He's very artistic and he cooks and is good at computers. He desperately wants to get involved in something. At one stage he was even chroming but now he's off it. DHS are working with him too but I think he's given up on them though (Regional Victoria).

There's no programs here to help our kids. The Judge told my son that he was going down the ladder instead of up. I'd really like to see him improve his education. He's walking around with a big chip on his shoulder since his father and I split up. He went to live with his father for a while but he came back. I worry about my son. He has anger management issues and he's taken my kids and me to hell and back (Regional Victoria).

Other comments with a direct bearing on the operation of the Juvenile Justice system included a complaint from a former Juvenile Justice Centre detainee about juveniles being induced by staff to bash other inmates and about the irregularity of surveillance (45 minutes rather than 4 minutes) when chucked in the slot:

When I was in the juvenile justice centre I heard of the screws asking for kids to bash the other kids. They used to pay them off with cigarettes and cans of coke. They punish you by chucking you in the slot for a few hours if you don't do what they want. When I was chucked in the slot they checked me about every 45 minutes and not four minutes like they tell you they do (Regional Victoria).

The same respondent made a strong plea for the establishment within juvenile detention centres of a separate unit for Indigenous youth since it would be better if we could all be together. This issue was also raised during interviews with Indigenous youth by members of the Review Team.

The Review Team met with six Indigenous youths (out of a total of eight) detained at one juvenile justice centre. The following is a summary of the Review Team's observations and of the comments made to the Team by the young Indigenous detainees of their concerns and experiences in detention. It should be noted that the Review Team cannot pass any
judgement on the veracity of these claims, and they were recorded and reported in good faith.

The young Indigenous detainees raised major concerns specifically relating to the safety, conditions and isolation of residential units. They expressed feelings of being unsafe within the units, with one youth explaining that he was feeling quite vulnerable and at risk and was requesting to move units, or move to another Youth Residential Centre.

A staff member informed the Review Team that there had been an attempt by one of the youths to harm himself using a tee-shirt as a noose and wrapping it around the toilet bowl in his room. This incident may indicate that the potential for hanging points exists. When visiting the various units of the complex it was noted that there was insufficient lighting, including of the bathrooms of the units inspected. No surveillance cameras were observed within the centre. It was noted by one staff member that there are ‘blind spots’ within rooms and ‘time-out’ spaces.

As part of the consultation, the Review Team were advised that electrical power points have been used to light cigarettes within the units using two bits of wire which are inserted by the young people into the socket to allow them to ‘spark’ a fire to light cigarettes. This was evident to the Review Team from the black markings around power points in the units.

Living conditions were also considered by the young detainees to be unsatisfactory. One youth allowed the Review Team to visit his room, concerned to show the extensive amounts of graffiti and excrement on the walls and the condition of the bathroom. The young person expressed the wish for permission to re-paint his room to cover the graffiti which had been present in his room for approximately three years.

Isolation, and specifically cultural isolation, was reported by the young people as another significant issue. The need for an Indigenous-specific unit was reiterated by the Indigenous youth that the Review Team met with in each unit. They expressed concern over lack of communication or time spent together due to the separate living arrangements. There was little or no time/contact for the Indigenous youth of the Centre to spend together due to the different programmatic and residential arrangements.

The need for culturally appropriate education and mentoring programs was also considered important by the young people:

We would like to run an Indigenous specific group where all Indigenous youth at the Centre can participate in a workshop, or discussion group that would focus on issues surrounding our stay at Juvenile Justice. This could also extend to general and personal concerns (Young Indigenous male detainee).

The young people also indicated that they would like to form, or participate in, a young persons Koori mentor group perhaps with Indigenous sports people such as footballers, although emphasis on only sports people was also recognised as not being suitable for all detainees. Mentoring by role models was seen by the young detainees as crucial to support each other during their period of detainment and to provide guidance for the younger Indigenous youth at the Centre.

The Indigenous young people strongly expressed the desire to spend more time participating in, or having available, more Indigenous cultural education programs such as art, music, and culture. They were also keen to have the opportunity to cook and to have access to culturally specific foods such as are available to the Muslim or Asian detainees.
The Indigenous youth also expressed their need for an Indigenous male to come to the juvenile justice centre to discuss ‘men's business' with them.

The young people also expressed the need for a Koori Health Worker instead of having to go to non-Indigenous medical staff. The young detainees noted that on visits to hospital, the Koori Health Liaison Officer was often not available, or the hospital was not aware of their role or function.

The young people also reported that Kangan Batman Institute of TAFE, which currently holds the contract for providing a number of hours for education, was not seen as meeting their educational needs. A related issue of concern was access to education programs. Due to fluctuating numbers of detainees, some miss out on the Koori specific programs conducted by Juvenile Justice.

The young people would also like to have day release for activities such as football games, concerts or day release privileges to enable them to train and play with local football clubs.

There was also the suggestion for day release programs to the bush. This was seen by the detainees as a way to assist with depression, vent their frustrations and help them become more familiar with their cultural heritage. One young person felt that release programs to the bush could include participating in farm and bush activities and include participation of Elders.

The young detainees were concerned about the periods of time spent in 'time out'/safety cells (isolation). They reported that on a number of occasions time spent in 'time out' could amount to an overnight stay, or periods of time exceeding one hour for uncontrollable behaviour.

The Indigenous young people reported to the Review Team on the behaviour of staff towards them:

The last time I was slotted he [staff member] pushed me in the door and I slipped. He then slammed the door while my foot was there (Young Indigenous male detainee).

Can you tell me why they took my track suit pants off me and locked me in the slot? They left me in my boxer shorts and I was kept there for at least two days. I was freezing and they didn't even care when I complained to them about feeling cold (Young Indigenous male detainee).

Review Team members witnessed staff behaviour towards the young detainees which, in the Team's view, appeared inappropriate and rude.

The young people wanted a Children's Koori Court, but one where a guilty plea was not required. The plea of guilty required to appear in the Koori Court was seen as an obstacle for the young Indigenous offender because:

... you have to plead guilty for crimes you didn't commit, just to get to stand before the Koori Court ... it's ridiculous (Young Indigenous male detainee).

The young people acknowledged that they felt they were almost certainly going to re-offend and the lack of post-release support from family and community organisations was seen as
major factor in further offending. On top of this was their reluctance to go back to school because:

> What's the point of that [going back to school]? I've already been down that road and it never worked then so why will it now? (Young Indigenous male detainee).

One detention centre staff member noted that there had been improvement in Indigenous juvenile justice:

> About three or four years ago we had to transfer three of the Koori boys to prison because they were too violent ... There's no violence in these kids here now. We've learnt from our previous experience and have set up more Koori activities. We've become more focused too and it helps to have a full-time Aboriginal Liaison Officer on site. We have pre-release workers who support the Koori kids up until their parole date. Part of the workers' role is to liaise with the family too. That's how we ensure that the kids are going to be okay when they are released (Detention Centre staff).

Not all staff however were so positive:

> The trouble with the Koori community is that ten years ago I would have said that the Koori community support workers would have looked after the kids. Now that is not the case and the support given to the kids when they are released is pretty ordinary to say the least ... At one time you used to be able to go into the local Koori Co-ops and talk to the Elders and get their help. You used to be able to explain to them what the conditions of bail or parole were and the Elders would make sure that that it would happen just that way. Now that doesn't happen and sometimes the kids aren't even breached if they haven't fulfilled their obligations (Detention Centre staff).

> Diversion - you see kids in here for three weeks. What's the sense in that? Why couldn't they be diverted from jail in the first place instead of being sent here? It's just stupid and doesn't make any sense (Detention Centre staff).

The rate for Indigenous young people in juvenile detention was reported as 14.9 per 1,000 Indigenous people aged 10-17 years (compared to the non-Indigenous rate of 1.3) at 30 June 2003.

### 6.5.3 Review Comments and Recommendations

Reducing Juvenile Offending

The Review notes the numerous DHS initiatives outlined in various parts of this report with regard to reducing Indigenous juvenile offending. In particular it took account of the specific developments reported by DHS Juvenile Justice in relation to Recommendation 62 which refers to the widespread problems affecting Aboriginal juveniles, and the future repercussions of this. In this context, it noted the imminent establishment of a Children's...
Koori Court, the review of the Koori Juvenile Justice Program and the evaluations of Juvenile Justice Group Conferencing, the Aboriginal Family Preservation Program, the Supporting Vulnerable Families Indigenous Innovations Project and Aboriginal Family Decision Making. The developments in the training field and of the support for the employment of Aboriginal workers and programs in the community were also noted.

The Review commends the Department of Human Services (Child Protection and Juvenile Justice) on these initiatives and particularly on the strong evaluative component that appears to be built into its program development system. The Review reiterates its comments contained in Section 5.5 – Families and Children, specifically Review Recommendations 21(c)-(f).

Recommendation 150.

- That the Victorian Government continue to implement and monitor Recommendation 62 (relating to the over-representation of Indigenous youth in the juvenile justice system) through any monitoring process established as a consequence of this Review.

Duty-of-Care in Detention

The Review notes the steps taken by the Department of Human Services (Child and Protection and Juvenile Justice) in relation to recognition and assumption of a duty-of-care as well as appropriate training in this respect (Recommendation 122). It also noted, however, that there has been no formal audit of compliance with policy and procedures in keeping with the strong evaluative emphasis of the relevant Department in other respects, and that the comments from detainees identified a number of concerns.

The Review notes that the practices and procedures in juvenile justice centres are currently under review in connection with a rewrite of the Juvenile Justice Centre Operations Manual (Recommendation 167). The Review notes the extensive staff consultation process in the development of the revised Juvenile Justice Centre Operations Manual.

Recommendation 151.

- That the Department of Human Services (Child Protection and Juvenile Justice):
  (a) conduct a formal audit of compliance with the Operations Manual and Case Standards Manual with particular reference to the Department’s duty-of-care responsibilities;
  (b) provide a report to the Aboriginal Justice Forum on (a); and
- That the Victorian Government continue to implement and monitor Recommendation 122 (relating to duty-of-care) and Recommendation 167 (relating to practices and procedures) through any monitoring process established as a consequence of this Review.

Data Collection and Risk Assessment

The Review noted the current and contemplated systems for the collection of relevant data about Aboriginal young people within the juvenile justice system and that the Department of
Human Services reports annually to Parliament on the number of those subject to custodial and non-custodial dispositions supervised by Juvenile Justice (Recommendation 41).

The Review also noted that Child Protection and Juvenile Justice maintain a Juvenile Justice Client Information System and that introduction of an Integrated Client and Case Management System is imminent (Recommendation 41).

The Review noted the current and proposed systems for the collection of relevant data about Aboriginal young people within the juvenile justice system and that the Department reports annually to Parliament on the number of those subject to custodial and non-custodial dispositions supervised by Juvenile Justice (Recommendation 47). It also noted the lack of information about the interface between the juvenile justice system and child protection systems.

The Review noted the procedures followed in juvenile justice centres with regard to health-related information and the assessment of risk (Recommendation 126).

### Recommendation 152.

- That the Department of Human Services (Child Protection and Juvenile Justice):
  - (a) provide data on all Indigenous and non-Indigenous Juvenile Justice clients (detainees and non-detainees), including those in the group conferencing program to the Aboriginal Justice Forum;
  - (b) undertake an investigation on the child protection background of its Indigenous Juvenile Justice clients;
  - (c) report on the implementation status of the Integrated Client and Case Management System to enable monitoring of its Indigenous clients;
  - (d) provide a report to the Aboriginal Justice Forum on (a)-(c); and
- That the Victorian Government continue to implement and monitor Recommendation 41 (relating to ongoing monitoring of Aboriginal and non-Aboriginal deaths in custody), Recommendation 47 (relating to reporting to Parliament) and Recommendation 126 (relating to screening and risk assessment of persons being taken into custody) through any monitoring process established as a consequence of this Review.

### Children’s Aid Panels

The responses to Recommendation 241, on various diversionary initiatives in Victoria, are noted, even though this specific Recommendation is no longer relevant to Victoria. The Review notes the response of the Department of Human Services (Child Protection and Juvenile Justice) in relation of the option in establishing the Children’s Koori Court similar to the current Koori court pilot.
**Recommendation 153.**

- That the Departments of Justice (Court Services) and Human Services (Juvenile Justice):
  (a) consider the establishment of a Children's Koori Court as a matter of priority;
  (b) undertake an evaluation of the Children's Koori Court;
  (c) pending the results of the evaluation and in consultation with the Indigenous community, consider the roll-out of the Children's Koori Court;
  (d) provide a report to the Aboriginal Justice Forum on (a)-(c); and
- That the Victorian Government continue to implement and monitor Recommendation 241 (relating to Children's Aids Panels) through any monitoring process established as a consequence of this Review.

**Police and Juveniles**

See Section 6.2 – Police for Review comments and Recommendations addressing Royal Commission Recommendations 242-245 (relating to Police and Juveniles).