APPENDIX 5

BRINGING THEM HOME RECOMMENDATIONS

Recording testimonies

1. That the Council of Australian Governments ensure the adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of Indigenous people affected by the forcible removal policies who wish to provide their histories in audio, audio-visual or written form.

Procedure for implementation

2a. That the Council of Australian Governments establish a working party to develop a process for the implementation of the Inquiry's recommendations and to receive and respond to annual audit reports on the progress of implementation.

2b. That the Commonwealth fund the establishment of a National Inquiry audit unit in the Human Rights and Equal Opportunity Commission to monitor the implementation of the Inquiry's recommendations and report annually to the Council of Australian Governments on the progress of implementation of the recommendations.

2c. That ATSIC fund the following peak Indigenous organisations to research, prepare and provide an annual submission to the National Inquiry audit unit evaluating the progress of implementation of the Inquiry's recommendations: Secretariat of National Aboriginal and Islander Child Care (SNAICC), Stolen Generations National Secretariat, National Aboriginal Community Controlled Health Organisation (NACCHO) and National Aboriginal and Islander Legal Services Secretariat (NAILSS).

2d. That Commonwealth, State and Territory Governments undertake to provide fully detailed and complete information to the National Inquiry audit unit annually on request concerning progress on implementation of the Inquiry's recommendations.

Components of reparations

3. That, for the purposes of responding to the effects of forcible removals, `compensation' be widely defined to mean `reparation'; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures. Reparation should consist of,

1. acknowledgment and apology,

2. guarantees against repetition,

3. measures of restitution,

4. measures of rehabilitation, and

5. monetary compensation.

Claimants

4. That reparation be made to all who suffered because of forcible removal policies including,

1. individuals who were forcibly removed as children,

2. family members who suffered as a result of their removal,

3. communities which, as a result of the forcible removal of children, suffered cultural and community disintegration, and

4. descendants of those forcibly removed who, as a result, have been deprived of community ties, culture and language, and links with and entitlements to their traditional land.

Acknowledgment and apology - Parliaments and police forces

5a. That all Australian Parliaments

1. officially acknowledge the responsibility of their predecessors for the laws, policies and practices of forcible removal,

2. negotiate with the Aboriginal and Torres Strait Islander Commission a form of words for official apologies to Indigenous individuals, families and communities and extend those apologies with wide and culturally appropriate publicity, and

3. make appropriate reparation as detailed in following recommendations.

5b. That State and Territory police forces, having played a prominent role in the implementation of the laws and policies of forcible removal, acknowledge that role and, in consultation with the Aboriginal and Torres Strait Islander Commission, make such formal apologies and participate in such commemorations as are determined.

Acknowledgment and apology - Churches and others

6. That churches and other non-government agencies which played a role in the administration of the laws and policies under which Indigenous children were forcibly removed acknowledge that role and in consultation with the Aboriginal and Torres Strait Islander Commission make such formal apologies and participate in such commemorations as may be determined.

Commemoration

7a. That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, arrange for a national `Sorry Day' to be celebrated each year to commemorate the history of forcible removals and its effects.

7b. That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, seek proposals for further commemorating the individuals, families and communities affected by forcible removal at the local and regional levels. That proposals be implemented when a widespread consensus within the Indigenous community has been reached.

School education

8a. That State and Territory Governments ensure that primary and secondary school curricula include substantial compulsory modules on the history and continuing effects of forcible removal.

8b. That the Australian Institute of Aboriginal and Torres Strait Islander Studies be funded by the Commonwealth to develop these modules.

Professional training

9a. That all professionals who work with Indigenous children, families and communities receive in-service training about the history and effects of forcible removal.

9b. That all under-graduates and trainees in relevant professions receive, as part of their core curriculum, education about the history and effects of forcible removal.

Genocide Convention

10. That the Commonwealth legislate to implement the *Genocide Convention* with full domestic effect.

Assistance to return to country

11. That the Council of Australian Governments ensure that appropriate Indigenous organisations are adequately funded to employ family reunion workers to travel with clients to their country, to provide Indigenous community education on the history and effects of forcible removal and to develop community genealogies to establish membership of people affected by forcible removal.

Language, culture and history centres

12a. That the Commonwealth expand the funding of Indigenous language, culture and history centres to ensure national coverage at regional level.

12b. That where the Indigenous community so determines, the regional language, culture and history centre be funded to record and maintain local Indigenous languages and to teach those languages, especially to people whose forcible removal deprived them of opportunities to learn and maintain their language and to their descendants.

Indigenous identification

13. That Indigenous organisations, such as Link-Ups and Aboriginal and Islander Child Care Agencies, which assist those forcibly removed by undertaking family history research be recognised as Indigenous communities for the purposes of certifying descent from the Indigenous peoples of Australia and acceptance as Indigenous by the Indigenous community.

Heads of damage

14. That monetary compensation be provided to people affected by forcible removal under the following heads.

1. Racial discrimination.

2. Arbitrary deprivation of liberty.

3. Pain and suffering.

4. Abuse, including physical, sexual and emotional abuse.

5. Disruption of family life.

6. Loss of cultural rights and fulfilment.

7. Loss of native title rights.

8. Labour exploitation.

9. Economic loss.

10. Loss of opportunities.

National Compensation Fund

15. That the Council of Australian Governments establish a joint National Compensation Fund.

National Compensation Fund Board

16a. That the Council of Australian Governments establish a Board to administer the National Compensation Fund.

16b. That the Board be constituted by both Indigenous and non-Indigenous people appointed in consultation with Indigenous organisations in each State and Territory having particular responsibilities to people forcibly removed in childhood and their families. That the majority of members be Indigenous people and that the Board be chaired by an Indigenous person.

Procedural principles

17. That the following procedural principles be applied in the operations of the monetary compensation mechanism.

1. Widest possible publicity.

2. Free legal advice and representation for claimants.

3. No limitation period.

4. Independent decision-making which should include the participation of Indigenous decision-makers.

5. Minimum formality.

6. Not bound by the rules of evidence.

7. Cultural appropriateness (including language).

Minimum lump sum

18. That an Indigenous person who was removed from his or her family during childhood by compulsion, duress or undue influence be entitled to a minimum lump sum payment from the National Compensation Fund in recognition of the fact of removal. That it be a defence to a claim for the responsible government to establish that the removal was in the best interests of the child.

Proof of particular harm

19. That upon proof on the balance of probabilities any person suffering particular harm and/or loss resulting from forcible removal be entitled to monetary compensation from the National Compensation Fund assessed by reference to the general civil standards.

Civil claims

20. That the proposed statutory monetary compensation mechanism not displace claimants' common law rights to seek damages through the courts. A claimant successful in one forum should not be entitled to proceed in the other.

Destruction of records prohibited

21. That no records relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed.

Record preservation

22a. That all government record agencies be funded as a matter of urgency by the relevant government to preserve and index records relating to Indigenous individuals,

families and/or communities and records relating to all children, Indigenous or otherwise, removed from their families for any reason.

22b. That indexes and other finding aids be developed and managed in a way that protects the privacy of individuals and, in particular, prevents the compilation of dossiers.

Joint records taskforces

23. That the Commonwealth and each State and Territory Government establish and fund a Records Taskforce constituted by representatives from government and church and other non-government record agencies and Indigenous user services to,

1. develop common access guidelines to Indigenous personal, family and community records as appropriate to the jurisdiction and in accordance with established privacy principles,

2. advise the government whether any church or other non-government record-holding agency should be assisted to preserve and index its records and administer access,

3. advise government on memoranda of understanding for dealing with inter-State enquiries and for the inter-State transfer of files and other information,

4. advise government and churches generally on policy relating to access to and uses of Indigenous personal, family and community information, and

5. advise government on the need to introduce or amend legislation to put these policies and practices into place.

Inter-State enquiries

24. That each government, as advised by its Records Taskforce, enter into memoranda of understanding with other governments for dealing with inter-State enquiries and for the inter-State transfer of records and other information.

Minimum access standards

25. That all common access guidelines incorporate the following standards.

1. The right of every person, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same.

2. No application fee, copying fee or other charge of any kind to be imposed.

3. A maximum application processing period to be agreed by the Records Taskforce and any failure to comply to be amenable to review and appeal.

4. A person denied the right of access or having any other grievance concerning his or her information to be entitled to seek a review and, if still dissatisfied, to appeal the decision or other matter free of charge.

5. The right of every person to receive advice, both orally and in writing, at the time of application about Indigenous support and assistance services available in his or her State or Territory of residence.

6. The form of advice provided to applicants to be drafted in consultation with local Indigenous family tracing and reunion services and to contain information about the nature and form of the information to be disclosed and the possibility of distress.

7. The right of every person to receive all personal identifying information about himself or herself including information which is necessary to establish the identity of family members (for example, parent's identifying details such as name, community of origin, date of birth).

8. The right of every person who is the subject of a record, subject to the exception above, to determine to whom and to what extent that information is divulged to a third person.

FoI in the NT

26. That the Northern Territory Government introduce Freedom of Information legislation on the Commonwealth model.

Indigenous Family Information Service

27. That the Commonwealth and each State and Territory Government, in consultation with relevant Indigenous services and its Records Taskforce, establish an Indigenous Family Information Service to operate as a `first stop shop' for people seeking information about and referral to records held by the government and by churches. That these Services be staffed by Indigenous people. That to support these Services each government and church record agency nominate a designated contact officer.

Training

28. That the Commonwealth and each State and Territory Government institute traineeships and scholarships for the training of Indigenous archivists, genealogists, historical researchers and counsellors.

Indigenous repositories

29a. That, on the request of an Indigenous community, the relevant Records Taskforce sponsor negotiations between government, church and/or other non-government agencies and the relevant Indigenous language, culture and history centre for the transfer of historical and cultural information relating to that community and its members.

29b. That the Council of Australian Governments ensure that Indigenous language, culture and history centres have the capacity to serve as repositories of personal information that the individuals concerned have chosen to place in their care and which is protected in accordance with established privacy principles.

Establishment of family tracing and reunion services

30a. That the Council of Australian Governments ensure that Indigenous community-based family tracing and reunion services are funded in all regional centres with a significant Indigenous population and that existing Indigenous community-based services, for example health services, in smaller centres are funded to offer family tracing and reunion assistance and referral.

30b. That the regional services be adequately funded to perform the following functions.

1. Family history research.

2. Family tracing.

3. Support and counselling for clients viewing their personal records.

4. Support and counselling for clients, family members and community members in the reunion process including travel with clients.

5. Establishment and management of a referral network of professional counsellors, psychologists, psychiatrists and others as needed by clients.

6. Advocacy on behalf of individual clients as required and on behalf of clients as a class, for example with record agencies.

7. Outreach and publicity.

8. Research into the history and effects of forcible removal.

9. Indigenous and non-Indigenous community education about the history and effects of forcible removal.

10. Engaging the service of Indigenous experts for provision of genealogical information, traditional healing and escorting and sponsoring those returning to their country of origin.

11. Participation in training of Indigenous people as researchers, archivists, genealogists and counsellors.

12. Participation in national networks and conferences.

13. Effective participation on Record Taskforces.

14. Support of test cases and other efforts to obtain compensation.

Return of those removed overseas

31a. That the Commonwealth create a special visa class under the Migration Act 1951 (Cth) to enable Indigenous people forcibly removed from their families and from

Australia and their descendants to return to Australia and take up permanent residence.

31b: That the Commonwealth amend the Citizenship Act 1948 (Cth) to provide for the acquisition of citizenship by any person of Aboriginal or Torres Strait Islander descent.

31c: That the Commonwealth take measures to ensure the prompt implementation of the International Transfer of Prisoners Bill 1996.

Research

32. That the Commonwealth Government work with the national Aboriginal and Torres Strait Islander Health Council in consultation with the National Aboriginal Community Controlled Health Organisation (NACCHO) to devise a program of research and consultations to identify the range and extent of emotional and well-being effects of the forcible removal policies.

Indigenous well-being model

33a. That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives.

33b. That government funding for Indigenous preventive and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services.

33c. That all government-run mental health services work towards delivering specialist services in partnership with Indigenous community-based services and employ Indigenous mental health workers and community members respected for their healing skills.

Health professional training

34a. That government health services, in consultation with Indigenous health services and family tracing and reunion services, develop in-service training for all employees in the history and effects of forcible removal.

34b. That all health and related training institutions, in consultation with Indigenous health services and family tracing and reunion services, develop under-graduate training for all students in the history and effects of forcible removal.

Mental health worker training

35. That all State and Territory Governments institute Indigenous mental health worker training through Indigenous-run programs to ensure cultural and social appropriateness.

Parenting skills

36. That the Council of Australian Governments ensure the provision of adequate funding to relevant Indigenous organisations in each region to establish parenting and family well-being programs.

Prisoner services

37. That the Council of Australian Governments ensure the provision of adequate funding to Indigenous health and medical services and family well-being programs to establish preventive mental health programs in all prisons and detention centres and to advise prison health services. That State and Territory corrections departments facilitate the delivery of these programs and advice in all prisons and detention centres.

Private collections

38a. That every church and other non-government agency which played a role in the placement and care of Indigenous children forcibly removed from their families, at the request of an Indigenous language, culture and history centre, transfer historical and cultural information it holds relating to the community or communities represented by the centre.

38b. That churches and other non-government agencies which played a role in the placement and care of Indigenous children forcibly removed from their families identify all records relating to Indigenous families and children and arrange for their preservation, indexing and access in secure storage facilities preferably, in consultation with relevant Indigenous communities and organisations, in the National Library, the Australian Institute of Aboriginal and Torres Strait Islander Studies or an appropriate State Library.

38c. That every church and non-government record agency which played a role in the placement and care of Indigenous children forcibly removed from their families provide detailed information about its records to the relevant Indigenous Family Information Service or Services.

Application of minimum standards and common guidelines

39. That church and other non-government record agencies implement the national minimum access standards (Recommendation 25) and apply the relevant State, Territory or Commonwealth common access guidelines (Recommendation 23).

Counselling services

40a. That churches and other non-government welfare agencies that provide counselling and support services to those affected by forcible removal review those services, in consultation with Indigenous communities and organisations, to ensure they are culturally appropriate.

40b. That churches and other non-government agencies which played a role in the placement and care of Indigenous children forcibly removed from their families provide all possible support to Indigenous organisations delivering counselling and support services to those affected by forcible removal.

Land holdings

41. That churches and other non-government agencies review their land holdings to identify land acquired or granted for the purpose of accommodating Indigenous children forcibly removed from their families and, in consultation with Indigenous people and their land councils, return that land.

Social justice

42. That to address the social and economic disadvantages that underlie the contemporary removal of Indigenous children and young people the Council of Australian Governments,

1. in partnership with ATSIC, the Council for Aboriginal Reconciliation, the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner and Indigenous community organisations dealing with Indigenous family and children's issues, develop and implement a social justice package for Indigenous families and children, and

2. pursue the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody which address underlying issues of social disadvantage.

Self-determination

43a. That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation establishing a framework for negotiations at community and regional levels for the implementation of self-determination in relation to the well-being of Indigenous children and young people (national framework legislation).

43b. That the national framework legislation adopt the following principles.

1. That the Act binds the Commonwealth and every State and Territory Government.

2. That within the parameters of the Act Indigenous communities are free to formulate and negotiate an agreement on measures best suited to their individual needs concerning children, young people and families.

3. That negotiated agreements will be open to revision by negotiation.

4. That every Indigenous community is entitled to adequate funding and other resources to enable it to support and provide for families and children and to ensure that the removal of children is the option of last resort.

5. That the human rights of Indigenous children will be ensured.

43c. That the national framework legislation authorise negotiations with Indigenous communities that so desire on any or all of the following matters,

1. the transfer of legal jurisdiction in relation to children's welfare, care and protection, adoption and/or juvenile justice to an Indigenous community, region or representative organisation,

2. the transfer of police, judicial and/or departmental functions to an Indigenous community, region or representative organisation,

3. the relationship between the community, region or representative organisation and the police, court system and/or administration of the State or Territory on matters relating to children, young people and families including, where desired by the Indigenous community, region or representative organisation, policy and program development and the sharing of jurisdiction, and/or

4. the funding and other resourcing of programs and strategies developed or agreed to by the community, region or representative organisation in relation to children, young people and families.

National standards for Indigenous children

44. That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation binding on all levels of government and on Indigenous communities, regions or representative organisations which take legal jurisdiction for Indigenous children establishing minimum standards of treatment for all Indigenous children (national standards legislation).

National standards for Indigenous children under State, Territory or shared jurisdiction

45a. That the national standards legislation include the standards recommended below for Indigenous children under State or Territory jurisdiction or shared jurisdiction.

45b. That the negotiations for national standards legislation develop a framework for the accreditation of Indigenous organisations for the purpose of performing functions prescribed by the standards.

Standard 1: Best interests of the child - factors

46a. That the national standards legislation provide that the initial presumption is that the best interest of the child is to remain within his or her Indigenous family, community and culture.

46b. That the national standards legislation provide that in determining the best interests of an Indigenous child the decision maker must also consider,

1. the need of the child to maintain contact with his or her Indigenous family, community and culture,

2. the significance of the child's Indigenous heritage for his or her future well-being,

3. the views of the child and his or her family, and

4. the advice of the appropriate accredited Indigenous organisation.

Standard 2: When best interests are paramount

47. That the national standards legislation provide that in any judicial or administrative decision affecting the care and protection, adoption or residence of an Indigenous child the best interest of the child is the paramount consideration.

Standard 3: When other factors apply

48. That the national standards legislation provide that removal of Indigenous children from their families and communities by the juvenile justice system, including for the purposes of arrest, remand in custody or sentence, is to be a last resort. An Indigenous child is not to be removed from his or her family and community unless the danger to the community as a whole outweighs the desirability of retaining the child in his or her family and community.

Standard 4: Involvement of accredited Indigenous organisations

49: That the national standards legislation provide that in any matter concerning a child the decision maker must ascertain whether the child is an Indigenous child and in every matter concerning an Indigenous child ensure that the appropriate accredited Indigenous organisation is consulted thoroughly and in good faith. In care and protection matters that organisation must be involved in all decision making from the point of notification and at each stage of decision making thereafter including whether and if so on what grounds to seek a court order. In juvenile justice matters that organisation must be involved in all decisions at every stage including decisions about pre-trial diversion, admission to bail and conditions of bail.

Standard 5: Judicial decision making

50. That the national standards legislation provide that in any matter concerning a child the court must ascertain whether the child is an Indigenous child and, in every case involving an Indigenous child, ensure that the child is separately represented by a

representative of the child's choosing or, where the child is incapable of choosing a representative, by the appropriate accredited Indigenous organisation.

Standard 6: Indigenous Child Placement Principle

51a. That the national standards legislation provide that, when an Indigenous child must be removed from his or her family, including for the purpose of adoption, the placement of the child, whether temporary or permanent, is to be made in accordance with the Indigenous Child Placement Principle.

51b. Placement is to be made according to the following order of preference,

1. placement with a member of the child's family (as defined by local custom and practice) in the correct relationship to the child in accordance with Aboriginal or Torres Strait Islander law,

2. placement with a member of the child's community in a relationship of responsibility for the child according to local custom and practice,

3. placement with another member of the child's community,

4. placement with another Indigenous carer.

51c. The preferred placement may be displaced where,

1. that placement would be detrimental to the child's best interests,

2. the child objects to that placement, or

3. no carer in the preferred category is available.

51d. Where placement is with a non-Indigenous carer the following principles must determine the choice of carer,

1. family reunion is a primary objective,

2. continuing contact with the child's Indigenous family, community and culture must be ensured, and

3. the carer must live in proximity to the child's Indigenous family and community.

51e. No placement of an Indigenous child is to be made except on the advice and with the recommendation of the appropriate accredited Indigenous organisation. Where the parents or the child disagree with the recommendation of the appropriate accredited Indigenous organisation, the court must determine the best interests of the child.

Standard 7: Adoption a last resort

52. That the national standards legislation provide that an order for adoption of an Indigenous child is not to be made unless adoption is in the best interests of the child

and that adoption of an Indigenous child be an open adoption unless the court or other decision maker is satisfied that an open adoption would not be in the best interests of the child. The terms of an open adoption order should remain reviewable at any time at the instance of any party.

Standard 8: Juvenile justice

53a. That the national standards legislation incorporate the following rules to be followed in every matter involving an Indigenous child or young person.

53b. That the national standards legislation provide that evidence obtained in breach of any of the following rules is to be inadmissible against the child or young person except at the instance of the child or young person himself or herself.

Rule 1. Warnings

Arrest and charge are actions of last resort. Subject to Rule 2, a police officer is to issue a warning, without charge, to a child or young person reasonably suspected of having committed an offence without requiring the child or young person to admit the offence and without imposing any penalty or obligation on the child or young person as a condition of issuing the warning.

Rule 2. Summons, attendance notice

A child or young person may be charged with an offence when the alleged offence is an indictable offence. The charging officer must secure the suspect's attendance at the court hearing in relation to the charge by issuing a summons or attendance notice unless the officer has a reasonable belief that the suspect is about to commit a further indictable offence or, due to the suspect's previous conduct, that the suspect may not comply with a summons or attendance notice.

Rule 3. Notification

When a child or young person has been arrested or detained the responsible officer must notify the appropriate accredited Indigenous organisation immediately of the fact of the arrest and make arrangements for the attendance of a representative of that organisation.

Rule 4. Consultation

The responsible officer, in accordance with Standard 4, must consult thoroughly and in good faith with the appropriate accredited Indigenous organisation as to the appropriate means of dealing with every child or young person who has been arrested or detained.

Rule 5. Interrogation

No suspect or witness is to be interviewed in relation to an alleged offence unless,

a. a parent or person responsible for the suspect or witness is present, unless the suspect or witness refuses to be interviewed in the presence of such a person or such a person is not reasonably available,

b. a legal adviser chosen by the suspect or witness or, where he or she is not capable of choosing a legal adviser, a representative of the appropriate accredited Indigenous organisation is present, and

c. an interpreter is present in every case in which the suspect or witness does not speak English as a first language.

Rule 6. Caution

No suspect or witness is to be interviewed in relation to an alleged offence unless,

a. the caution has been explained in private to the suspect or witness by his or her legal adviser or representative,

b. the interviewing officer has satisfied himself or herself that the suspect or witness understands the caution, and

c. the suspect or witness freely consents to be interviewed.

Rule 7. Withdrawal of consent

The interview is to be immediately discontinued when the suspect or witness has withdrawn his or her consent.

Rule 8. Recording

Every interview must be recorded on audio tape or audiovisual tape. The tape must include the pre-interview discussions between the suspect or witness and the interviewing officer in which the officer must satisfy himself or herself that the suspect or witness understands the caution and freely consents to be interviewed.

Rule 9. Bail

Unconditional bail is a right. The right to bail without conditions can only be varied where conditions are reasonably believed due to the suspect's past conduct to be necessary to ensure the suspect will attend court as notified. The right to bail can only be withdrawn where it is reasonably believed, due to the nature of the alleged offence or because of threats having been made by the suspect, that remand in custody is necessary in the interests of the community as a whole.

Rule 10. Bail review

The suspect has a right to have the imposition of bail conditions or the refusal of bail reviewed by a senior police officer. In every case in which the senior officer refuses to release the suspect on bail, the officer must immediately notify a magistrate, bail justice or other authorised independent person who is to conduct a bail hearing

forthwith. The suspect is to be represented at that hearing by a legal adviser of his or her choice or, where incapable of choosing, by a representative of the appropriate accredited Indigenous organisation.

Rule 11. Bail hostels

When bail has been refused the suspect is to be remanded in the custody of an Indigenous bail hostel, group home or private home administered by the appropriate accredited Indigenous organisation unless this option is not available in the locality.

Rule 12. Detention in police cells

No suspect is to be confined in police cells except in extraordinary and unforeseen circumstances which prevent the utilisation of alternatives. Every suspect confined in police cells overnight is to be accompanied by an Indigenous person in a relationship of responsibility to the suspect.

Rule 13. Non-custodial sentences

Custodial sentences are an option of last resort. Every child or young person convicted of an offence who, in accordance with Rule 14 cannot be dismissed without sentence, is to be sentenced to a non-custodial program administered by the appropriate accredited Indigenous organisation or by an Indigenous community willing to accept the child. The child's consent to be dealt with in this way is required. The selection of the appropriate program is to be made on the advice of the appropriate accredited Indigenous organisation and, where possible, the child's family.

Rule 14. Sentencing factors

The sentencer must take into account,

a. the best interests of the child or young person,

b. the wishes of the child or young person's family and community,

c. the advice of the appropriate accredited Indigenous organisation,

d. the principle that Indigenous children are not to be removed from their families and communities except in extraordinary circumstances, and

e. Standard 3.

Rule 15. Custodial sentences

Where the sentencer, having taken into account all of the factors stipulated in Rule 14, determines that a custodial sentence is necessary, the sentence must be for the shortest appropriate period of time and the sentencer must provide its reasons in writing to the State or Territory Attorney General and the appropriate accredited Indigenous organisation. No child or young person is to be given an indeterminate custodial sentence or a mandatory sentence.

Family law

54. That the *Family Law Act 1975* (Cth) be amended by,

1. including in section 60B(2) a new paragraph (ba) `children of Indigenous origins have a right, in community with the other members of their group, to enjoy their own culture, profess and practice their own religion, and use their own language', and

2. replacing in section 68F(2)(f) the phrase `any need' with the phrase `the need of every Aboriginal and Torres Strait Islander child'.