

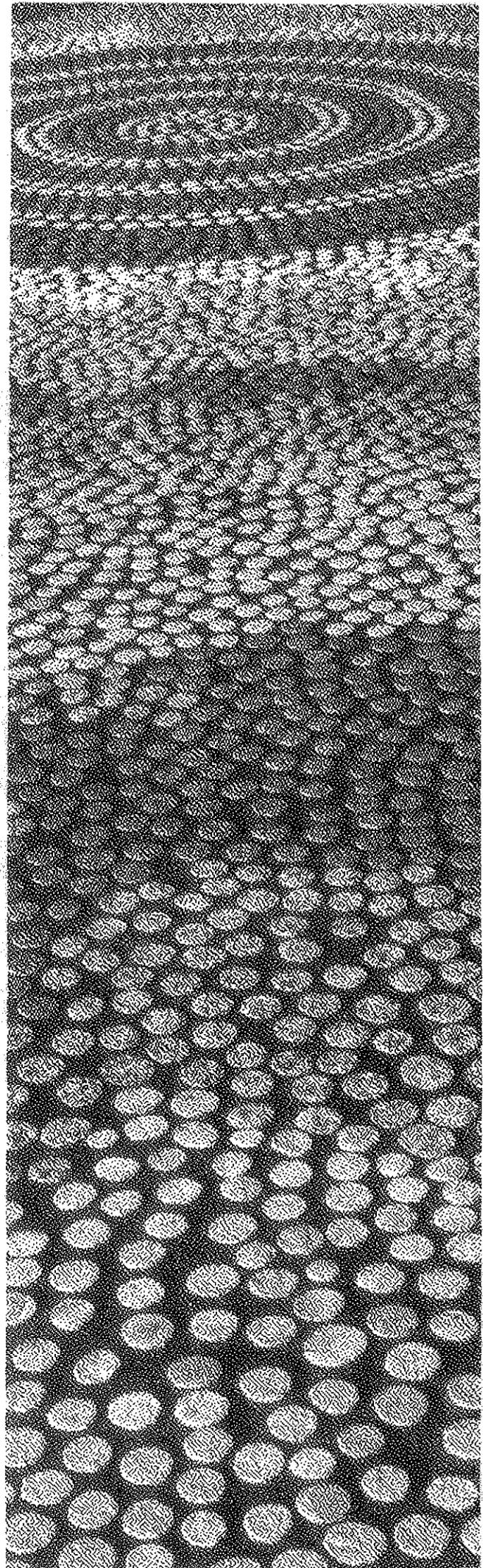


JUSTICE UNDER SCRUTINY

**Report of the Inquiry
into the
Implementation
by
Governments
of the
Recommendations
of the
Royal Commission
into
Aboriginal
Deaths in Custody**

**House of
Representatives
Standing Committee
on
Aboriginal and Torres
Strait Islander Affairs**

**NOVEMBER
1994**



House of Representatives Standing Committee on
Aboriginal and Torres Strait Islander Affairs

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*Report of the Inquiry into the Implementation
by Governments of the Recommendations of the
Royal Commission into Aboriginal Deaths in Custody*

November 1994

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The photograph on the cover is of the Mosaic Pavement of granite and mortar commissioned in 1987 for the forecourt of the New Parliament House.

Artist: Michael Tjakamarra Nelson

Produced by the Australian Government Publishing Service

*The official record keepers saw all,
recorded all,
and rarely knew well or at all the people they wrote about.*

Royal Commission into Aboriginal Deaths in Custody, National Report

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MEMBERSHIP OF THE COMMITTEE (37th Parliament)

<i>Chair</i>	Mr Garrie Gibson MP
<i>Deputy</i>	Mr Garry Nehl MP
<i>Members</i>	Hon Bob Brown MP Mr Peter Cleeland MP ² Mr Peter Dodd MP Mr Richard Evans MP Ms Marjorie Henzell MP Mr Bob Horne MP ² Mr Peter Nugent MP ¹ Mr Christopher Pyne MP ¹ Mr Les Scott MP Mr Barry Wakelin MP

Secretary to the Committee Mr Allan Kelly

¹ Mr Nugent replaced Mr Pyne on 31 May 1994

² Mr Cleeland replaced Mr Horne on 8 November 1994

TERMS OF REFERENCE

The first annual report of the implementation of the Commonwealth Government response to the Royal Commission into Aboriginal Deaths in Custody was referred to the Committee for inquiry on 1 March 1994. Subsequently annual implementation reports from the following states¹ and territories were referred to the Committee for inquiry:

Australian Capital Territory 1992-93
New South Wales 1992-93
Northern Territory 1992-93
Queensland 1993
South Australia 1993
Western Australia 1993

MEMBERSHIP OF THE SUB-COMMITTEE

Sub-committee Chair Ms Marjorie Henzell MP

Members Mr Garry Nehl MP
 Hon Bob Brown MP
 Mr Richard Evans MP
 Mr Christopher Pyne MP²
 Mr Les Scott MP

Secretary to the Sub-committee Mr Allan Kelly

Inquiry Staff Mr Craig Dukes
 Ms Gabrielle Jess
 Ms Penne Humphries
 Mr Peter Ratas

¹ Victoria and Tasmania had not produced their 1992-93 reports at the end of October 1994

² Mr Les Scott replaced Mr Pyne on 30 June 1994

CONDUCT OF INQUIRY

The Minister for Aboriginal and Torres Strait Islander Affairs, the Hon Robert Tickner MP after tabling on 1 March 1994, the *First Annual Report of the Implementation of the Commonwealth Government Responses to the Royal Commission into Aboriginal Deaths in Custody Report*, successfully moved for the referral of the report to this Committee for inquiry. As agreed to by governments, the implementation reports of state and territory governments were cross-tabled in the federal Parliament and subsequently referred to the Committee for examination. The Victorian and Tasmanian Government implementation reports for 1992-93 had not been tabled at the time the Committee finalised its report.

The Royal Commission's *National Report* in 1991 made 339 recommendations to address the unacceptable number of Aboriginal and Torres Strait Islander people who came in contact with the criminal justice system and to address the underlying issues as to the disadvantaged position of Aboriginal and Torres Strait Islander people in Australian society.

In part, Recommendation 1 of the Royal Commission, stressed the desirability of the attitude of governments to both the recommendations and their implementation being carried out in a public way as part of the process of education and reconciliation of the whole society. The production of annual implementation reports by governments also follows from that recommendation. The referral of these implementation reports to the Committee is part of ensuring the transparency and accountability of the implementation process. The Committee sought perceptions at the grass roots level on how governments have implemented the recommendations of the Royal Commission. The Committee also took evidence from Commonwealth, state and territory governments.

The Inquiry was advertised nationally on 5 March 1994 and letters were sent out inviting Aboriginal and Torres Strait Islander communities, a wide range of other organisations, Commonwealth Ministers and State and Territory governments to make written submissions. Seventy six submissions were received, these are listed at Appendix 1.

The Committee embarked upon an extensive program of visits, holding informal discussions with organisations listed at Appendix 4. Public hearings were held in Broome, Karratha, Kalgoorlie, Perth, Cairns, Brisbane, Canberra, Adelaide, Darwin, Sydney and Melbourne. The Committee took over 4000 pages of evidence. Taken together with all of the Royal Commission's regional and individual death reports and a range of government response and implementation reports there were many thousands of pages of material before the Committee.

The Committee wishes to thank those who have made submissions or who gave evidence at public hearings to the inquiry and to all those Aboriginals, Torres Strait Islanders and others who gave their time to have discussions with the Committee.

LIST OF RECOMMENDATIONS

The Committee recommends that:

- 1 The Commonwealth give urgent consideration to the establishment of a National Aboriginal Justice Advisory Committee, drawn from existing state and territory Aboriginal Justice Advisory Committees. The members of the national AJAC should be selected at the national AJAC conference. (*Paragraph 3.64*)
- 2 The national AJAC should be serviced by a small secretariat. This secretariat should be situated within the Commonwealth Attorney-General's department and provide the AJAC with independent policy advice on all Royal Commission recommendations. The secretariat will also provide administrative support to the national AJAC. The first priority of such a secretariat should be the servicing of the national AJAC. (*Paragraph 3.64*)
- 3 The terms of reference for the national AJAC is a matter to be negotiated between the Commonwealth and state and territory AJACs. The Committee suggests that matters which may be considered by the national AJAC include, but not be confined to:
 - a The implementation of the Recommendations made by the Royal Commission;
 - b The implementation of recommendations made by this report;
 - c Proposals for changes to policies which affect the operation of the criminal justice system;
 - d Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;
 - e Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and
 - f The dissemination of information on policies and programs between different agencies, and between parallel bodies in different states. (*Paragraph 3.64*)

- 4 A separate and independent Monitoring and Evaluation Unit be established under the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunity Commission. *(Paragraph 3.107)*
- 5 The major function of this Unit will be to monitor, evaluate and report on the progress of the implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody at the Commonwealth, state and territory levels. The Unit will be involved in the continuous monitoring and assessment of the programs of all Commonwealth, state and territory departments involved in implementing recommendations. It shall provide advice on an on-going basis to all such departments and agencies. *(Paragraph 3.107)*
- 6 The Commonwealth should seek the co-operation of states and territories in this process, through the Council of Australian Governments (COAG), for the establishment of an office of the Unit in each state and territory and the subsequent monitoring, evaluation and reporting arrangements. *(Paragraph 3.107)*
- 7 The work will be carried out by separate offices in each state and territory and the Commonwealth operating with the authority of the Aboriginal and Torres Strait Islander Social Justice Commissioner. Each state and territory office would be responsible for monitoring and evaluating implementation in that state or territory jurisdiction. The Aboriginal and Torres Strait Islander Social Justice Commissioner will become responsible for overseeing the monitoring and evaluation of the implementation of all the recommendations of the Royal Commission across Commonwealth, state and territory jurisdictions. Each state and territory office is to be part of a national monitoring and evaluation network. *(Paragraph 3.107)*
- 8 The Aboriginal and Torres Strait Islander Social Justice Commissioner will present the annual report of the Royal Commission into Aboriginal Deaths in Custody Monitoring and Evaluation Unit to the Council of Australian Governments, and it shall be tabled subsequently in the Australian Parliament and each state and territory parliament. *(Paragraph 3.107)*
- 9 This separate Unit must be established with sufficient resources from the Commonwealth, state and territory governments to enable it to effectively carry out its functions. This must be significantly greater than the resources currently allocated to ATSIC for the establishment of the Royal Commission Government Response Monitoring Unit. The Monitoring and Evaluation Unit would subsume the roles, staff allocation and funding currently provided to the ATSIC Monitoring Unit. Each state and territory government should assist in the funding of separate state units, through the transfer of existing resources involved in the monitoring process, to this new structure. *(Paragraph 3.107)*

- 10 The unit should also be in position to investigate concerns that Aboriginal and Torres Strait Islander individuals and organisations have in relation to breaches of Royal Commission recommendations at all levels. (*Paragraph 3.107*)
- 11 The Unit would operate for a period of five years, and should commence within the next four months. (*Paragraph 3.107*)
- 12 The Attorney-General introduce any necessary legislation to amend the *Human Rights and Equal Opportunity Commission Act 1986* to give effect to these recommendations. (*Paragraph 3.107*)
- 13 The Prime Minister table in Parliament as soon as possible a full Commonwealth Government response to Royal Commission Recommendation 188. (*Paragraph 4.20*)
- 14 The Minister for Finance and the Minister for Aboriginal and Torres Strait Islander Affairs immediately institute procedures to implement Recommendation 193 to simplify accounting procedures for Aboriginal and Torres Strait communities and organisations and to ensure they are in the least onerous and most convenient and simple forms as possible. (*Paragraph 4.73*)
- 15 The Minister for Aboriginal and Torres Strait Islander Affairs ensure that in future Annual Implementation Reports the response to Recommendation 197 is fully addressed by outlining the consultation that has taken place by ATSIC Councillors and Commissioners with Aboriginal and Torres Strait Islander organisations in the development of training programs providing appropriate management and accounting procedures. (*Paragraph 4.91*)
- 16 The Commonwealth at the next Corrective Services Ministers' Conference seek resolutions that the South Australian Government submit to the Australian Institute of Criminology, prison census data for 1993 and 1994 without any further delays. (*Paragraph 5.30*)
- 17 The Commonwealth at the next Corrective Services Ministers' Conference seek resolutions that all state and territory governments promptly submit prison census data to the Australian Institute of Criminology. (*Paragraph 5.30*)
- 18 The Prime Minister through the Council of Australian Governments gains a commitment that each state and the Northern Territory will immediately investigate the failure to reduce the over-representation of Aboriginal and Torres Strait Islander people in prison. (*Paragraph 5.34*)
- 19 The Prime Minister through the Council of Australian Governments ensure that the results of these investigations are made public together with a program of action to reduce the over-representation of Aboriginal and Torres

- Strait Islander people in prison. This should include target rates and timelines. The action to be implemented by each jurisdiction is to be published in their Annual Implementation Reports. (*Paragraph 5.34*)
- 20 The Australian Institute of Criminology continue to be funded to conduct research into the demographic and sentencing components of changes in Aboriginal and Torres Strait Islander imprisonment rates. (*Paragraph 5.45*)
- 21 The Institute include in future National Prison Census reports tables showing the rates of imprisonment by age, by sex and by Aboriginality. (*Paragraph 5.45*)
- 22 The Institute produce line graphs which show the projections, based on 1992 imprisonment data, on the numbers of indigenous people in prison to the year 2011. The graph should also progressively show each year the actual rates of imprisonment. Separate graphs are to be produced to show the position nationally and for each state and territory. The graphs should be published in the Commonwealth Government's Annual Implementation Report. (*Paragraph 5.45*)
- 23 At the next Australasian Police Ministers' Council meeting the Commonwealth move to have the Royal Commission's definition of a 'death in custody' accepted without further delay. The Commonwealth should also seek agreement that all deaths that fall within the definition are promptly notified to the AIC for recording and reporting to government. (*Paragraph 5.65*)
- 24 The Commonwealth through the Australasian Police Ministers' Council seek a commitment that all police services establish computerised systems for collecting and reporting police custody data without further delay. (*Paragraph 5.72*)
- 25 The Treasurer and the Attorney-General ensure that changes to the collection of correctional statistics:
- maintain the Australian Institute of Criminology's role in monitoring Royal Commission Recommendations; (*Paragraph 5.84*)
- 26 · do not increase delays in the availability of published statistics; (*Paragraph 5.84*)
- 27 · ensure that data collected is in sufficient detail to allow monitoring of the Royal Commission recommendations; (*Paragraph 5.84*)
- 28 · maintain the continuity of collection series affecting Royal Commission monitoring; (*Paragraph 5.84*)

- 29 provide access by the Australian Institute of Criminology to raw data;
(*Paragraph 5.84*) and
- 30 provide access by the Australian Institute of Criminology to the
necessary ABS data without charge. (*Paragraph 5.84*)
- 31 There be established in each state and territory, as a matter of urgency, a
services support system to provide legal advice, trauma support and necessary
material support to assist families to deal with the circumstances of a death
in custody. Services support teams should be available immediately following
notification of a death in custody and would include expertise from Aboriginal
and Torres Strait Health and Legal Services. (*Paragraph 6.10*)
- 32 The Attorney-General should, as a matter of urgency, table in Parliament a
response to the Australian Law Reform Commission's 1986 report on the
Recognition of Aboriginal Customary Laws including a detailed account of the
progress to date in implementing the recommendations contained in that
report. (*Paragraph 6.94*)
- 33 The Attorney-General take immediate steps to report on the current status
of the Australian Law Reform Commission report on the *Recognition of
Aboriginal Customary Laws* to those Aboriginal and Torres Strait Islander
people who made contributions to that inquiry. (*Paragraph 6.94*)
- 34 The Commonwealth funding of sobering-up shelters should be conditional on
there being no religious coercion of people who are intoxicated or religious
services performed in their presence. (*Paragraph 7.66*)
- 35 The Prime Minister through the Council of Australian Governments seek the
prompt implementation of Recommendation 81 of the Royal Commission
through the introduction by Western Australia of a statutory duty upon police
to consider and utilise alternatives to the detention of intoxicated people in
police cells. (*Paragraph 7.73*)
- 36 The Prime Minister, through the Council of Australian Governments, seek
the prompt implementation of Royal Commission Recommendation 85 by
Western Australia. (*Paragraph 7.78*)
- 37 The Prime Minister through the Council of Australian Governments seek, as
a matter of urgency, the implementation of state and territory commitments
to the Royal Commission recommendations dealing with public intoxication.
In particular state and territory governments should:
- . promote and fund more Aboriginal-run street patrols;
 - . increase the provision of sobering-up shelters;
 - . ensure that police services act in the spirit of the Royal Commission
by:

- minimising their contact with and detention of intoxicated people;
 - not utilising substitute charges, such as drinking in public, as some form of social control over Aboriginal people on the street. (*Paragraph 7.98*)
- 38 The Prime Minister, through the Council of Australian Governments, seek the immediate implementation by the Queensland Government of Royal Commission Recommendation 79. (*Paragraph 7.100*)
- 39 The Prime Minister, through the Council of Australian Governments, seek the immediate implementation by the Victorian Government of Royal Commission Recommendation 79. (*Paragraph 7.102*)
- 40 The Prime Minister, through the Council of Australian Governments, seek undertakings from state and territory governments that their agencies will not seek to divert resources from Commonwealth funded community organisations to provide state services. (*Paragraph 8.49*)
- 41 The Prime Minister, through the Council of Australian Governments, seek the agreement of the Queensland Government to address the poor liaison between police and Aboriginal and Torres Strait Islander communities. (*Paragraph 8.64*)
- 42 The Prime Minister through the Council of Australian Governments gain the agreement of the Western Australian Government to end the present prisoner meal allowance scheme and introduce a scheme which does not encourage arrest and incarceration. (*Paragraph 8.87*)
- 43 The Commissioner for Taxation examine the operations of the Western Australian meal allowance scheme for police prisoners to ensure that tax evasion has not been occurring. (*Paragraph 8.87*)
- 44 The Prime Minister, through the Council of Australian Governments gain an undertaking from Western Australia that the oppressive, inefficient and ineffective policing in Wiluna be discontinued immediately. (*Paragraph 8.99*)
- 45 The Prime Minister, through the Council of Australian Governments, seek the agreement of state and territory governments to fully implement those Royal Commission recommendations concerning the diversion of Aboriginal and Torres Strait Islander people from police custody. (*Paragraph 8.130*)
- 46 The Commonwealth give greater priority and commitment to the implementation of Royal Commission Recommendation 96. (*Paragraph 9.21*)

- 47 The Commonwealth Government introduce legislation within six months, which will protect the rights of Aboriginal and Torres Strait Islander peoples in accordance with Article 14, Clauses (a) (b) and (f) of the International Covenant on Civil and Political Rights. In addition, the legislation should guarantee that a person convicted of an offence will be informed promptly of that fact and the consequent penalty, in detail and in a language which that person understands. (*Paragraph 9.39*)
- 48 The Minister for Employment, Education and Training ensure that Royal Commission Recommendation 110 is implemented by undertaking the consultation called for in the Recommendation. (*Paragraph 9.47*)
- 49 The Minister for Employment Education and Training ensure that Royal Commission Recommendation 110 is implemented by undertaking the national study called for in the Recommendation. (*Paragraph 9.47*)
- 50 The Commonwealth seeks the agreement of the Corrective Services Ministerial Council for the Commonwealth to fund the Australian Institute of Criminology to further implement Royal Commission Recommendation 115. (*Paragraph 9.52*)
- 51 The Commonwealth promptly implement Part (a) of Royal Commission Recommendation 121. (*Paragraph 9.55*)
- 52 The Minister for Environment, Sport and Territories table in Parliament within 3 months Commonwealth responses to all recommendations of the Royal Commission as they relate to the Jervis Bay Territory. (*Paragraph 9.59*)
- 53 The Prime Minister, through the Council of Australian Governments, seek an undertaking from the Australian Capital Territory Government to implement Recommendations 93, 97, 103, 109, 120 and 121 of the Royal Commission without further delay. (*Paragraph 9.69*)
- 54 The Prime Minister, through the Council of Australian Governments, seek an undertaking from the Australian Capital Territory Government to expedite the implementation of Recommendation 115. (*Paragraph 9.69*)
- 55 Where necessary the Commonwealth renegotiate the agreements with state and territory governments on the provision of legal aid funding to ensure that Aboriginal and Torres Strait Islander people are not disadvantaged in using Aboriginal Legal Services compared with using the Legal Aid Commission. (*Paragraph 9.81*)
- 56 The Prime Minister, through the Council of Australian Governments, seek the cooperation of state and territory governments to ensure that all magistrates are aware of Recommendation 86 and its role in the 'trifecta' multiple charge syndrome. (*Paragraph 9.84*)

- 57 The Prime Minister, through the Council of Australian Governments, seek assurances from the New South Wales Government that Recommendations 150 and 152 of the Royal Commission are fully implemented. (*Paragraph 9.90*)
- 58 The Prime Minister, through the Council of Australian Governments, seek the agreement of the New South Wales Government to implement Recommendation 188 and 192 in relation to programs for Aboriginal prisoners and post-release schemes. (*Paragraph 9.97*)
- 59 The Prime Minister, through the Council of Australian Governments, seek the agreement of the South Australian Government to:
- implement Royal Commission Recommendations 93, 98, 100, 101, 102 and 121(a); (*Paragraph 9.113*)
- 60 expedite the implementation of Royal Commission Recommendations 94, 114 and 117; (*Paragraph 9.113*)
- 61 ensure that consultation with Aboriginal organisations occurs on Royal Commission Recommendation 109. (*Paragraph 9.113*)
- 62 The Prime Minister, through the Council of Australian Governments, seek the cooperation of the Northern Territory Government to ensure that legislative changes are in accordance with the Royal Commission recommendations and will result in fewer Aboriginal and Torres Strait Islander people being incarcerated. (*Paragraph 9.126*)
- 63 The Prime Minister, through the Council for Australian Governments, seek the co-operation of the Northern Territory Government to implement Royal Commission Recommendations 92, 94, 99, 100, 102, 103, 109, 111 and 171. (*Paragraph 9.134*)
- 64 The Prime Minister, through the Council of Australian Governments, seek the agreement of the Queensland Government to fully implement Recommendation 96 of the Royal Commission to ensure greater cultural sensitivity by judicial officers. (*Paragraph 9.140*)
- 65 The Prime Minister, through the Council of Australian Governments seek a commitment from the Queensland Government to implement Recommendation 108 particularly in conjunction with the full implementation of Recommendation 96. (*Paragraph 9.150*)
- 66 The Prime Minister, through the Council of Australian Governments, seek the cooperation of the Queensland Government to fully implement Royal Commission Recommendations 94, 95, 96, 99, 100, 108, 111, 117 and 118. (*Paragraph 9.156*)

- 67 The Prime Minister, through the Council of Australian Governments, seek the assurance of the Western Australian Government that the use of Justices of the Peace to determine cases cease as soon as possible. (*Paragraph 9.165*)
- 68 The Prime Minister through the Council of Australian Governments seek the agreement of the Western Australian Government to implement Recommendations 93, 95, 98, 99, 102, 103, 111, 117 and 121 without further delay. (*Paragraph 9.178*)
- 69 The Prime Minister, through the Council of Australian Governments, seek an assurance from the Western Australian Government that the staffing of courts will be reviewed and monitored to ensure that court staff and procedures do not act to the detriment or disadvantage of people coming before the court, in breach of the intent of legislation. (*Paragraph 9.181*)
- 70 Additional resources be provided to the Human Rights and Equal Opportunity Commission to allow a number of small task forces to be established. These task forces should be sent to trouble spots such as Cairns to gather evidence on human rights breaches that are regularly occurring and to launch prosecutions against offenders. (*Paragraph 10.40*)
- 71 The Prime Minister, through the Council of Australian Governments, seek the co-operation of the Queensland Government to a review being undertaken by the Human Rights and Equal Opportunity Commission to assess the level of institutionalised racism within the senior levels of the Queensland Police Service. (*Paragraph 10.50*)
- 72 The Human Rights and Equal Opportunity Commission scrutinise police activities in the inner Brisbane area to gather information on any breaches of the *Racial Discrimination Act* and to launch prosecutions against offenders. (*Paragraph 10.56*)
- 73 The Prime Minister, through the Council of Australian Governments, seek the cooperation of state and territory governments to urgently implement recruitment policies which will increase indigenous representation within Police Services. (*Paragraph 10.124*)
- 74 The Prime Minister, through the Council of Australian Governments, seek the cooperation of state and territory governments to urgently implement the community based policing recommendations of the Royal Commission. (*Paragraph 10.124*)
- 75 The Office of Indigenous Affairs be responsible for co-ordinating the development of a comprehensive National Aboriginal and Torres Strait Islander Youth Strategy across all relevant Commonwealth departments and agencies. The Strategy should be cognisant of the role of state and territory governments. (*Paragraph 11.17*)

- 76 Future Commonwealth, state and territory government Annual Implementation Reports should include evaluations by Aboriginal and Torres Strait Islander organisations and communities of the appropriateness and effectiveness of programs implemented in response to Recommendation 62. (*Paragraph 11.43*)
- 77 The Young Person's Sport and Recreation Development Program be reviewed to ensure that it maximises the role of Aboriginal and Torres Strait Islander organisations in the delivery of the program and maximises the empowerment of Aboriginal and Torres Strait Islander youth. (*Paragraph 11.64*)
- 78 The Prime Minister, through the Council of Australian Governments, gain agreement that future Annual Implementation Reports of Commonwealth, state and territory governments include information on:
- . the programs and strategies that are community based and devised which specifically target youth; (*Paragraph 11.76*)
 - 79 . the extent of negotiations with Aboriginal and Torres Strait Islander communities and organisations on the development of indigenous youth programs and strategies; (*Paragraph 11.76*)
 - 80 . the extent to which program guidelines and performance indicators were negotiated with Aboriginal and Torres Strait Islander people; (*Paragraph 11.76*) and
 - 81 . Aboriginal and Torres Strait Islander community assessment of the programs and strategies implemented for young indigenous people. (*Paragraph 11.76*)
- 82 The Prime Minister, through the Council of Australian Governments, seek agreement that:
- . police procedures and practices maximise the use of informal and formal cautioning of young people; (*Paragraph 11.92*)
 - 83 . data on the cautioning of young Aboriginal and Torres Strait Islander youths is collected and recorded by all police stations on the computerised custody data system; (*Paragraph 11.92*) and
 - 84 . statistics on the numbers of juveniles cautioned are included in Annual Implementation Reports. (*Paragraph 11.92*)

- 85 The Prime Minister, through the Council of Australian Governments seek agreement for:
- . the Family Group Conferencing program to be placed on the agenda of a number of Ministerial forums including the Australian Aboriginal Affairs Council and the Ministerial Council for Education, Employment, Training and Youth Affairs for consideration; (*Paragraph 11.109*) and
- 86 . an evaluation to be undertaken of the effectiveness and appropriateness of Family Group Conferencing in relation to Aboriginal and Torres Strait Islander youth with a view to the program being taken up by other states and territories. (*Paragraph 11.109*)
- 87 The Prime Minister, through the Council of Australian Governments seek undertakings from the Western Australian Government that prolonged and unnecessary detentions of young Aboriginal and Torres Strait Islander people be discontinued. (*Paragraph 11.130*)
- 88 The Prime Minister, through the Council of Australian Governments, gain undertakings from state and territory governments to provide bail accommodation for Aboriginal and Torres Strait Islander youths. (*Paragraph 11.156*)
- 89 The Prime Minister, through the Council of Australian Governments, seek the agreement of state and territory governments to:
- . develop an integrated approach to the prevention, screening and treatment of Otitis Media; (*Paragraph 12.18*)
- 90 . have schools better prepared to deal with the hearing impairment of Aboriginal and Torres Strait Islander children. (*Paragraph 12.18*)

CHAPTER 1

INTRODUCTION

BACKGROUND TO ROYAL COMMISSION

1.1 The Royal Commission into Aboriginal Deaths in Custody was one of the most extensive examinations of the issues affecting Aboriginal and Torres Strait Islander peoples ever undertaken in Australia. This chapter briefly summarises the background to the Royal Commission and the action that has been taken to date to implement the recommendations made by the Royal Commission report.

1.2 As the Royal Commission report and its recommendations is such an important document, the Committee has made comments throughout this report to the effect that the implementation of the recommendations must not be allowed to 'gather dust on the shelf'. Governments at all levels need to ensure that there is vigorous commitment within all relevant agencies to implement the recommendations made by the Royal Commission.

The Royal Commission into Aboriginal Deaths in Custody

1.3 The following extract from the *National Report* of the Royal Commission into Aboriginal Deaths in Custody provides some useful background information on why this Royal Commission was necessary:

This Royal Commission was established in October 1987 in response to a growing public concern that deaths in custody of Aboriginal people were too common and public explanations were too evasive to discount the possibility that foul play was a factor in many of them.

Public agitation for a Royal Commission was led by members of the Aboriginal community. It is a revealing commentary on the life experience of Aboriginal people in 1987 and of history that it would have been assumed by so many Aboriginal people that many, if not most, of the deaths would have been murder committed if not on behalf of the State at least by officers of the State. But disquiet and disbelief in official explanations was not only expressed by Aboriginal people; many non-Aboriginal people shared the assumption that police and prison officer misconduct would be disclosed by a Royal Commission. Thus many non-Aboriginal people, whilst not sharing the life of Aboriginal people, had seen and heard sufficient evidence of the mistreatment of Aboriginal people to share their expectation that

*Aboriginal people would suffer and die from the same discrimination and brutality as they experienced during life.*¹

1.4 The Royal Commission investigated the deaths of 99 Aboriginal and Torres Strait Islander people who died in custody between 1 January 1980 and 31 May 1989.

1.5 On 21 December 1988, Justice James Muirhead, the first Commissioner, released an *Interim Report* of his inquiries till then and made 56 recommendations in relation to practices and procedures which might alleviate the toll of custodial deaths. The point was made that only actions by governments could achieve this.

1.6 The Final Report of the Royal Commission was released in April 1991 and contained 339 recommendations which covered a broad range of issues, including measures to divert people from custody, strategies to address alcohol and substance abuse, self-determination, police-Aboriginal relations and improving the criminal justice system. The *National Report* comprised five volumes and was accompanied by a series of volumes of regional reports. There were also 99 individual death reports.

Governments' Responses to the Royal Commission

1.7 Governments responded to the Royal Commission's 339 recommendations in March 1992 and outlined the steps that they would undertake to implement the recommendations that they supported. It should be noted that not all recommendations were supported by all governments. Some received only qualified support, while others were not supported at all. These, however, were comparatively small in number. These March 1992 responses are contained in the 3 volume set *Aboriginal Deaths in Custody - Response by Governments to the Royal Commission*.²

1.8 The response by governments formed the basis for action and was developed co-operatively through the process of a Joint Ministerial Forum of Commonwealth, State and Territory Ministers with responsibility for responding to the Report of the Royal Commission. A response from Tasmania was not included in the initial response by governments as it was unavailable at the time.

1.9 In many instances, the March 1992 responses are included in the Commonwealth, state and territory governments 1992/93 implementation annual reports.

¹ Royal Commission into Aboriginal Deaths in Custody, *National Report*, AGPS, Canberra, 1991, Vol 1, p1

² *Aboriginal Deaths in Custody - Response by Governments to the Royal Commission*, AGPS, Canberra, 1992

1.10 In October 1992, the Commonwealth Government produced the booklet *Response to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - Commonwealth Funded Initiatives*³ which outlined the specific program allocations, the responsible Government agencies and the actions which had been taken and which were planned to implement the responses to the Royal Commission's recommendations.

1.11 It was stated in the *Commonwealth Funded Initiatives* booklet that:

*We will also need to monitor government actions in their commitment to the Report and its recommendations. This will require the ongoing involvement of Aboriginal and Torres Strait Islander peoples.*⁴

1.12 The *Commonwealth Funded Initiatives* booklet detailed the amounts of money that were to be provided in each financial year from 1992/93 to 1996/7 to implement the recommendations of the Royal Commission and is an important basis for assessing the distribution of funds from the Commonwealth, both to Commonwealth departments and agencies, and to the states and territories.

1.13 The *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - 1992-93 Interim Report* was released in September 1993. This report reiterated the commitment of the Commonwealth to implement the 338 of 339 Royal Commissions recommendations that were supported. In the Foreword to that report the following comments were made by the Minister for Aboriginal and Torres Strait Islander Affairs, the Hon Robert Tickner MP:

Governments must not be allowed to forget. They must have the determination to change things for the better, and must be held accountable for meeting their commitments. As I have repeatedly stressed, the responses of governments to recommendations of the Royal Commission must not be allowed to languish or gather dust on the shelf.

The Interim Report is the first step in documenting progress made by the Commonwealth Government in implementing its responses to the Royal Commission recommendations.

It has been produced by the Aboriginal and Torres Strait Islander Commission (ATSIC) in response to Recommendation One of the Royal Commission which highlights the need for monitoring progress in implementing its recommendations. The Commonwealth strongly

³ *Response to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - Commonwealth Funded Initiatives*, ATSIC, October 1992

⁴ *Commonwealth Funded Initiatives*, p5

*supported these recommendations, recognising that Aboriginal and Torres Strait Islander peoples, and the wider community, require detailed, open and accountable reporting.*⁵

1.14 According to ATSIC, both the *Commonwealth Funded Initiatives* booklet and the 1992-93 Interim Report were widely distributed to Aboriginal and Torres Strait Islander people and communities. This claim has been disputed by many Aboriginal and Torres Strait Islander people, who stated frequently that they were either unaware of or had not received a copy of these reports. Other evidence suggests that reports may have been sent to community organisations, along with other printed material and put aside as its significance was not made clear. In Chapter 3, the Committee questions ATSIC's approach on the provision of information to Aboriginal and Torres Strait Islander communities and makes recommendations as to how this process can be improved.

1.15 The latest process to date is the publication of the annual implementation reports of the Commonwealth, state and territory governments. These report on action that has been undertaken during 1992-93 to implement the recommendations of the Royal Commission.⁶ The state and territory implementation reports have been tabled in the Federal Parliament following their tabling in the respective state and territory parliaments. They have subsequently been referred to this Committee for examination, by the Minister for Aboriginal and Torres Strait Islander Affairs, the Hon Robert Tickner MP. This process has been seen as further ensuring transparency and accountability in the implementation reporting process.

Approach taken by the Committee

1.16 The examination by the Committee, of the effectiveness of the implementation of the recommendations of the Royal Commission was not an easy task and obviously entailed considerable resources, time and effort. It has been necessary to talk to as many Aboriginal and Torres Strait Islander people and organisations as was possible in the time available. A Sub-committee of the main Committee, chaired by Marjorie Henzell MP, was formed to undertake this Inquiry.

1.17 After the Inquiry was referred to it in March, the Committee resolved to report back to the House in early November so that its report could be taken into account when further implementation reports were being prepared. In the event, the report was not able to be completed and tabled before early December.

⁵ *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - 1992-93 Interim Report*, AGPS, Canberra, 1993, Foreword

⁶ The Commonwealth Report was tabled in the Parliament on 1 March 1994 and referred to this Committee for inquiry

1.18 In the short time available to the Committee, it was not possible to look at all of the recommendations if they were to be dealt with in sufficient detail. Instead, the Committee chose to concentrate on those recommendations which addressed the broad issues involved in diversion from custody. This is wider than the recommendations of the Royal Commission that fell under the heading 'Diversion from Police Custody'⁷ and includes areas such as imprisonment as a last resort, Aboriginal police relations, juvenile justice, and recognition of customary law.

1.19 Given the gross over-representation of indigenous people in both police and prison custody, the Committee was concerned to look at the implementation of those measures which sought to avoid or minimise the contact indigenous people have with the criminal justice system. The Committee also wanted to examine the implementation of those recommendations aimed at minimising the disproportionately adverse effects experienced when indigenous people come into contact with the criminal justice system.

1.20 The Committee saw it as being of major importance to pay particular attention to the monitoring of the implementation process. The Royal Commission itself saw this as a critical element and dealt with it in its first recommendation. The Committee is quite critical of the comprehensiveness and effectiveness of the mechanisms currently in place to deal with the monitoring processes. Another important area of examination was the extent to which Aboriginal and Torres Strait Islander people were involved in the process of implementing the recommendations made by the Royal Commission. This was also a critical element running through the Royal Commission report yet this appears to have been largely ignored in the implementation process.

1.21 The Sub-committee met with as many Aboriginal and Torres Strait Islander organisations and individuals as possible. This was seen as critical, as it was continually stressed throughout the Royal Commission's report that Aboriginal and Torres Strait Islander involvement is crucial to the successful implementation and monitoring of the recommendations. In addition, the views of Aboriginal and Torres Strait Islander people are an essential element of any evaluation of the effectiveness of the implementation process. They were able to advise the Committee on the extent to which they had been consulted in program design and delivery and also on the effectiveness of programs in their community.

1.22 Details of organisations and individuals the Sub-committee met with is listed in Appendix 4.

1.23 As agreed to by governments, the implementation reports of state and territory governments, where available, were cross-tabled in the federal Parliament and subsequently referred to the Committee for examination. It was important to be able to compare responses across governments to gauge the effectiveness of Commonwealth funded programs delivered through state and territory government

⁷ *Recommendations 79-91*

agencies, and also to follow-up on concerns that Aboriginal and Torres Strait Islander people have had in relation to state and territory issues.

1.24 The Royal Commission recommendations cover a mix of Commonwealth, state and territory responsibilities together with shared responsibilities. It was essential that an overall assessment be made of implementation across Australia together with a more critical evaluation of the implementation reports. The Committee is concerned that the implementation reports have glossed over deficiencies and not accurately portrayed the implementation process.

Timing of Annual Reports on the Implementation of the Royal Commission recommendations

1.25 The timing of the implementation annual reports is also of concern to the Committee. The reports document the measures that Commonwealth, state and territory governments have taken to implement the recommendations of one of the most important inquiries into the lives of Aboriginal and Torres Strait Islander people ever undertaken in this country. In many instances, the reports for the 1992-93 year were tabled in their respective parliaments in mid 1994. This delay in itself is unsatisfactory. However, that the Tasmanian and Victorian governments have not yet tabled their reports is inexcusable. This can only be interpreted by the Committee, and possibly by many Aboriginal and Torres Strait Islander people, as indicative of the lack of commitment by those governments to implement the Royal Commission recommendations and to Aboriginal and Torres Strait Islander affairs in general.

Accountability

1.26 The Committee is concerned that state and territory governments have not been fully accountable for the expenditure of funds provided by the Commonwealth to implement the recommendations made by the Royal Commission. A classic example of this is the use of Commonwealth funds by the states and territories, which were for counselling families of those who died in custody. This is dealt with in Chapter 6.

1.27 The Committee believes that there needs to be much more accountability by state and territory governments in expending funds, provided by the Commonwealth, to implement the recommendations of the Royal Commission.

1.28 It was noted on many occasions that Aboriginal and Torres Strait Islander organisations were required to be highly accountable for the expenditure of funds provided to them by government and for the timely and efficient use of those funds. On the other hand, it was seen by many Aboriginal and Torres Strait Islander people that government departments and agencies were not held accountable to the same degree.

1.29 The Committee also draws attention to the fact that funding to implement the recommendations made by the Royal Commission is only for a period of five years.

It is of concern to the Committee that there has been no mention of what is to happen once this period has expired. The Committee noted that there has not been any substantial change for Aboriginal and Torres Strait Islander people from the additional funding provided as a result of the Royal Commission. The main indicator is the continuing high incarceration rates for Aboriginal and Torres Strait Islander people.

1.30 At the grass roots there was a lack of awareness as to how 'Deaths in Custody' funding had been used. Aboriginal and Torres Strait Islander people the Committee met with consistently asked 'where has the money gone?' All too often Aboriginal people saw the outcome as being that there were now bigger and better police stations but that funds were not being provided at the community level.

CHAPTER 2

MAIN THRUSTS OF ROYAL COMMISSION RECOMMENDATIONS

2.1 The Report of the Royal Commission into Aboriginal Deaths in Custody is a monumental document providing one of the most significant analyses of the lives and issues affecting Aboriginal and Torres Strait Islander peoples, ever undertaken in Australia.

2.2 The Royal Commission found that the high number of Aboriginal and Torres Strait Islander deaths in custody was primarily due to the unacceptably high level of over-representation of Aboriginal and Torres Strait Islanders in both prison and police custody populations. It found that the rates of deaths in custody for Aboriginal and Torres Strait Islander people were comparable to those of non-Aboriginal people in custody.

2.3 As well as inquiring into the immediate cause of each death, the Royal Commission looked at the underlying factors that led to imprisonment. The Report dealt with the underlying social, cultural, historical, economic and legal factors which had a bearing on the deaths. A major thrust of the Royal Commission's recommendations was to address and overcome the disadvantages faced by Aboriginal and Torres Strait Islander people in all aspects of their lives. The Royal Commission strongly emphasised the need for Aboriginal and Torres Strait Islander people to be fully involved in the process of implementing its recommendations. Empowerment and self determination were seen as key elements in overcoming disadvantage.

2.4 Imprisonment as a last resort and reducing arrest rates were both recommended as fundamental principles to be adopted in dealings between Aboriginal and Torres Strait Islander people and the justice system. The Royal Commission also found that the decriminalisation of public drunkenness and the provision of services to address the problems of alcohol abuse and reduce its incidence, especially services by indigenous organisations, were important factors in reducing arrest rates. The Royal Commission noted that in some jurisdictions the number of police interventions and the number of indigenous people in custody had increased paradoxically after decriminalisation of drunkenness, particularly affecting Aboriginal and Torres Strait Islander people. This is explored further in Chapter 7.

2.5 The Royal Commission concluded that the most significant contributing factor bringing indigenous people into conflict with the criminal justice system, was the disadvantaged and unequal position in which they found themselves within the

wider society.¹ The Commission found that indigenous people had been dominated to an extraordinary degree by the non-indigenous society and that the disadvantage was a product of that domination.²

2.6 Commissioner Elliott Johnston summed up the Report's objectives:

*The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.*³

2.7 The Report outlined three essential pre-requisites to empowerment and self-determination:

- . the desire and capacity of indigenous people to put an end to their disadvantaged situation and to take control of their own lives;
- . assistance from the broader society; and
- . self-determination.

2.8 In terms of the first, the Commission found the will for renewal and for self-determination already existed. On the second pre-requisite, of assistance from the broader society, the Commission found that there was bipartisan support for this 'although inevitably there are some disputes about matters of detail, priorities and extent'.⁴

2.9 In terms of the third pre-requisite, the Commission saw this as a developing concept whereby the broader society can supply the assistance needed and indigenous societies can receive it while maintaining their independent status and without developing a welfare-dependency. The Commission stressed the right of indigenous groups to retain their cultures and identities, with self-determination being both the expression and the guarantee of that right.⁵

2.10 Commissioner Johnston summarised the broad intent of the Commission's Report:

¹ RCIADIC, *National Report, Overview and Recommendations*, p15

² RCIADIC, *National Report, Overview and Recommendations*, p15

³ RCIADIC, *National Report, Overview and Recommendations*, p15

⁴ RCIADIC, *National Report, Overview and Recommendations*, p18

⁵ RCIADIC, *National Report, Overview and Recommendations*, p20

*the whole thrust of this report is directed towards the empowerment of Aboriginal society on the basis of their deeply held desire, their demonstrated capacity, their democratic right to exercise, according to circumstances, maximum control over their own lives and that of their communities; that such empowerment requires that the broader society, on the one hand, makes material assistance available to make good past deprivations and on the other hand approaches the relationships with the Aboriginal society on the basis of the principles of self-determination.*⁶

2.11 The important role of Aboriginal and Torres Strait Islander organisations in empowerment and self determination was stressed in the Royal Commission's *National Report*. The report supports the continuation and extension of service provision through indigenous organisations in key areas and opposes the mainstreaming of those services.⁷ The existence of active, healthy, properly resourced indigenous organisations enables constructive dialogue to take place with mainstream agencies on a more equal footing. It was the view of all Commissioners that the need for mainstream agencies to negotiate with indigenous communities or organisations, along with the provision of resources on a non-dependency basis, were fundamental issues without which policies could not succeed.

2.12 The Royal Commission was quite concerned that there be an orderly process for dealing with its 339 recommendations covering such a broad range of issues. Its first three recommendations dealt with a monitoring and reporting process together with the need for consultations with appropriate indigenous organisations in the consideration and implementation of the recommendations.⁸ It recommended that, wherever appropriate, governments make use of the services of indigenous organisations in implementing the recommendations and that local organisations are consulted about local implementation.⁹ The Commission also sought the establishment of an Aboriginal Justice Advisory Committee (AJAC) in each state and territory to provide independent advice to each Government on Aboriginal and Torres Strait Islander perceptions of criminal justice matters and the implementation of the Commission's recommendations.¹⁰ It recommended that AJACs be assisted by a small secretariat.¹¹

⁶ RCIADIC, *National Report, Overview and Recommendations*, pp22-3

⁷ RCIADIC, *National Report, Overview and Recommendations*, p24

⁸ Recommendation 1(a), (b), & (c), *Overview and Recommendations*, p31

⁹ Recommendation 1(d) & (e), *Overview and Recommendations*, pp31-2

¹⁰ Recommendation 2, *Overview and Recommendations*, p32

¹¹ Recommendation 3, *Overview and Recommendations*, pp32-3

2.13 The Royal Commission Report attempted to expose to the wider non-Aboriginal population, the circumstances in which Aboriginal and Torres Strait Islander people live and the historical factors which have shaped their lives. It is all too frequently a history poorly understood by the non-Aboriginal community which lies at the root of many misunderstandings between Aboriginal and non-Aboriginal Australians. A sense of this history is stronger in contemporary Aboriginal cultures because its consequences continue to impact on daily life.

2.14 The Royal Commission Overview Report outlined some of that history as it impacted on those whose deaths the Commission investigated:

Aboriginal people have a unique history of being ordered, controlled and monitored by the State. For each individual there are files maintained by agents of the State; schools, community welfare, adoption, medical, police, prison, probation and parole and, finally, coroner's files document each life to a degree that few non-Aboriginal peoples lives would be recorded. Not infrequently the files contain false or misleading information; all too often the files disclose not merely the recorded life history of the Aboriginal person but also the prejudices, ignorance and paternalism of those making the record.

Through the files, Commissioners could trace the familiar pattern of State intervention into and control of Aboriginal lives. The files start from birth; perhaps recording a child adopted out, perhaps its birth merely noted as a costly additional burden; through childhood, perhaps forcibly removed from parents after having been categorized as having mixed racial origins and therefore being denied a loving upbringing by parents and family; through encounters at school, probably to be described as truant, intractable and unteachable; to juvenile courts, magistrates courts, possibly Supreme Court; through the dismissive entries in medical records ('drunk again'), and in the standard entries in the note books of police investigating death in a cell ('no suspicious circumstances').

The official record keepers saw all, recorded all, and rarely knew well or at all the people they wrote about.¹²

2.15 In the following chapters the Committee examines the extent to which the recommendations of the Royal Commission have been implemented. The Committee also examines the degree to which the major thrusts of the Report have been adopted by governments to underpin and guide their implementation of the recommendations and the development of policy.

¹² RCIADIC, *National Report, Overview and Recommendations*, pp4-5

CHAPTER 3

MONITORING THE IMPLEMENTATION OF THE RECOMMENDATIONS

3.1 This chapter addresses the first three recommendations of the Royal Commission concerning the monitoring and evaluation processes that have been established to ensure the implementation of the Royal Commission recommendations. The monitoring processes that have been established involve a number of different departments and agencies, as well as Aboriginal and Torres Strait Islander people and organisations. The role of the Aboriginal Justice Advisory Committees is one of the most important mechanisms in this process, however, the broader role of Aboriginal and Torres Strait Islander people and organisations cannot be over-emphasised. The Committee examines the involvement of Aboriginal and Torres Strait Islander people in the implementation process in Chapter 4.

3.2 A key issue during the course of the Inquiry, concerned who should be responsible for monitoring the progress in implementing the recommendations of the Royal Commission, a process established under Recommendation 1. The implementation of the 338 recommendations that were agreed to by the Commonwealth is a complex and difficult task. The monitoring of this is also difficult and necessarily involves a number of agencies.

3.3 Recommendation 1 of the Royal Commission is crucial in that it outlines the process of accountability in the consideration, implementation and progress of the implementation of the other 338 recommendations. It states:

That having regard to the great input which has been made to the work of the Commission, not only by governments and departments of government but also by Aboriginal communities, organisations and individuals, on the one hand, and non-Aboriginal organisations and individuals, on the other, it is highly desirable that the attitude of governments to the recommendations and the implementation of those adopted be carried out in a public way as part of the process of education and reconciliation of the whole society. To this end the Commission recommends:

- a that the Commonwealth Government and State and Territory Governments, in consultation with ATSIC, agree upon a process which ensures that the adoption or otherwise of recommendations and the implementation of the adopted recommendations will be reported upon on a regular basis with*

respect to progress on a Commonwealth, State and Territory basis;

- b that such reports should be made not less than annually and that, subject to the agreement of its Commissioners so to do, ATSIC be given special responsibility and funding to enable it to monitor the progress of the implementation of the adopted recommendations and to report thereon to the Aboriginal and Torres Strait Islander community;*
- c that governments consult with appropriate Aboriginal organisations in the consideration and implementation of the various recommendations in this report;*
- d that, wherever appropriate, governments make use of the services of Aboriginal organisations in implementing such recommendations; and*
- e ensure that local Aboriginal organisations are consulted about the local implementation of recommendations, and their services be used wherever feasible.*

3.4 The referral to this Committee of the *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - First Annual Report 1992-93*,¹ (Commonwealth Implementation Annual Report), as well as state and territory implementation reports, is part of the process of ensuring the accountability of governments to the adequate implementation of the Royal Commission recommendations.

3.5 As outlined in Chapter 1, the Committee sought the views of Aboriginal and Torres Strait Islander people and organisations as widely as possible in the time available. The Committee wanted to ensure that the intent of Recommendation 1 was being achieved in the implementation reports, and to check whether the recommendation was being followed in the implementation processes of governments.

Monitoring Groups

3.6 A number of different mechanisms exist for monitoring the implementation of the Royal Commission's recommendations. These include the following and will be considered in turn:

¹ *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - First Annual Report - 1992-93*, AGPS, 1994

- . ATSIIC's Royal Commission Government Response Monitoring Unit (RCGRMU);
- . ATSIIC Regional Councils;
- . the Department of the Prime Minister and Cabinet;
- . the Standing Group of Commonwealth Representatives;
- . the Aboriginal and Torres Strait Islander Social Justice Commissioner (SJC);
- . State based Aboriginal Justice Advisory Committee's (AJAC's);
- . State/Territory Monitoring Units or Overview Committees;
- . Deaths in Custody Watch Committees; and
- . the Australian Institute of Criminology's National Deaths in Custody Monitoring and Research Unit.

Aboriginal and Torres Strait Islander Commission - Royal Commission Government Response Monitoring Unit

3.7 The Aboriginal and Torres Strait Islander Commission was given the responsibility of monitoring the Commonwealth's implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. This role is clearly defined in the *Commonwealth Funded Initiatives*² Booklet:

The process of monitoring the implementation of Royal Commission recommendations will be performed by the RCIADIC Government Response Monitoring Unit which is located within ATSIIC. The Unit is a new creation arising out of the Royal Commission Report and will consist of six staff members.

*An ongoing consultative process will be developed with Regional Councils and key organisations to inform communities about the progress of implementing recommendations, to identify issues and concerns that need to be addressed by Government and to gain direction on the role of the Monitoring Unit.*³

² *Response to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - Commonwealth Funded Initiatives*, AGPS, 1992

³ *Commonwealth Funded Initiatives*, p67

3.8 In relation to the ongoing consultative process, the Committee received considerable evidence critical of the way in which Regional Councils were informed and consulted about Royal Commission implementation matters.

3.9 The following funding has been committed to ATSIC for the Royal Commission Government Response Monitoring Unit.

1992-93	1993-94	1994-95	1995-96	1996-97
\$0.904m	\$0.904m	\$0.904m	\$0.804m	\$0.804m

This is a total of \$4.32m over five years.

3.10 Of serious concern to the Committee is the fact that ATSIC had not utilised all of the resources provided as a result of the Cabinet decision for this task. The Committee understands that a total of 8 Average Staffing Levels (ASL) were approved by Cabinet to staff the Royal Commission Government Response Monitoring Unit. These included:

- . 1 Senior Executive Service level
- . 1 Senior Officer Grade B
- . 1 Senior Officer Grade C
- . 2 x Legal Officers
- . 1 Administrative Services Officer Grade 6
- . 1 Administrative Services Officer Grade 4
- . 1 Administrative Services Officer Grade 2

3.11 The Commonwealth Funded Initiatives booklet outlined the objectives of the Royal Commission Government Response Monitoring Unit as follows:

collect and collate data and reports that will form the basis of an annual report;

liaise with community organisations to ensure Aboriginal and Torres Strait Islander people have the opportunity to monitor and comment on progress; and

develop and maintain a consultative process involving ATSIC Regional Councils so that they can inform communities about progress and to identify issues and concerns that need to be addressed by governments.⁴

3.12 The 1992-93 Commonwealth Implementation Annual Report, although outlining the role of Regional Councils, fails to acknowledge the role of community organisations in the monitoring process and providing comment on the progress of implementation. Although the Commonwealth Implementation Annual Report has

⁴ Commonwealth Funded Initiatives, p67

fulfilled its functions in relation to the first objective, albeit without any critical assessment of the effectiveness of the implementation process, it has failed to address objectives two and three as outlined above.

3.13 The main focus of the ATSIC Monitoring Unit to date was outlined in the Commonwealth Implementation Annual Report:

- . *co-ordination between the Commonwealth and the States and Territories;*
- . *monitoring of implementation by a total of 24 Commonwealth Departments and agencies;*
- . *arrangements to obtain a report on implementation of each Recommendation for which there was a Commonwealth responsibility;*
- . *arrangements to obtain a report on each of the funded program initiatives which had been developed in response to Royal Commission Recommendations;*
- . *an assessment of 'progress of the implementation of the adopted Recommendations ...' (part (b) of Recommendation 1); and*
- . *a consistent focus on ensuring the maximum involvement possible of Aboriginal peoples and Torres Strait Islanders in all aspects of the implementation and monitoring processes.*⁵

3.14 In addition to the RCGRMU, ATSIC stressed in their submission the importance of National Program Managers, who are responsible for reporting on the recommendations, responses and programs within their area of responsibility. The ATSIC submission outlined their role as follows:

Where ATSIC is the lead agency, National Program Managers receive contributions of text from the other departments and agencies with joint responsibility and prepare a single report acceptable to all agencies, for submission to the RCGRMU. National Program Managers are responsible for ensuring that ATSIC contributions are provided to the relevant agency when ATSIC is not the lead agency.

The National Program Managers are assisted in the collection of information by State and Regional Office staff. Each State Office of ATSIC has a designated Royal Commission Monitoring Officer who is responsible for co-ordinating the collection of information from ATSIC databases and from Regional Offices for programs within their State,

⁵ Commonwealth Implementation Annual Report, Vol 1, p133

where that information is not routinely available to the National Program Manager.⁶

ATSIC Regional Councils

3.15 Regional Councils, established under the *Aboriginal and Torres Strait Islander Commission Act 1989* have an important role to play in the monitoring and implementation of the Royal Commission's recommendations. ATSIC's submission to this inquiry makes numerous references to this.

3.16 The Commonwealth Implementation Annual Report stated:

The elected arm of ATSIC ensures widespread and constant sources of authoritative and representative expression of indigenous peoples' views, and decisions on matters affecting their interests.

It also acknowledges that:

Further work with Regional Councils will be necessary to develop even more effective arrangements in future years.⁷

3.17 In relation to information provision to Regional Councils the ATSIC Annual Report for 1992-93 provides the following information:

The ATSIC Monitoring Unit in Canberra provides Regional Councils with quarterly reports on monitoring developments and issues. ATSIC Commissioners are kept informed of developments through papers provided at meetings of the Board. ATSIC is also considering arranging a meeting of representatives of national Aboriginal and Torres Strait Islander organisations with an interest in Royal Commission recommendations, such as SNAICC, NAILSS⁸ and the Federation of Land Councils. A number of Regional Council Chairpersons and Zone Commissioners may also be invited to this meeting.⁹

3.18 Despite this, the Committee was told by Regional Councillors, on numerous occasions, that there was a lack of information being provided to them from the

⁶ ATSIC, evidence, pS 599

⁷ *Commonwealth Implementation Annual Report*, Vol1, p134

⁸ SNAICC - Secretariat, National Aboriginal and Islander Child Care
NAILSS - National Aboriginal and Islander Legal Services Secretariat

⁹ *Aboriginal and Torres Strait Islander Commission, Annual Report 1992-92*, ATSIC, Canberra, 1993, p115

administrative arm of ATSIC on the allocation of money as a result of the Royal Commission and on the actual implementation process. The Committee was frequently asked 'Where has the Royal Commission money gone? We haven't seen any'.

3.19 Given this evidence it would seem that a review is needed of the effectiveness of the information exchange that is taking place within ATSIC to inform its elected members, particularly in relation to Royal Commission matters.

3.20 It is of great concern to the Committee that there was such widespread criticism from Aboriginal and Torres Strait Islander communities of the implementation processes to date, yet the administrative arm of ATSIC seems to accept that the processes in place at the moment are working well. This was highlighted in evidence provided to the Committee by Dr Peter Shergold, the then Chief Executive Officer of ATSIC:

I think you have got to look at monitoring at a various number of levels and some will develop over time. Monitoring of what governments are doing to implement the recommendations, who is responsible and the money that is being spent, I believe we are pretty well on top of. And that is really what the first reports give us. The next stage, which we should be able to proceed on pretty quickly, is a monitoring of outputs, in other words, how many houses were built, how many sewerage plants were put in.¹⁰

Mr Kerry Wisdom, Manager of the Royal Commission Government Response Monitoring Unit within ATSIC, gave the following evidence in relation to the process of information provision to Aboriginal and Torres Strait Islander people:

I can volunteer some information about what has been done to inform people at community level. Firstly, in September 1992 a booklet called Commonwealth Funded Initiatives arising from the Royal Commission was distributed throughout Australia, 15,000 copies, targeted to organisations as well as distributed generally, setting out for every bucket of money - not just ATSIC but other departments as well, so that all of the initiatives were in that booklet - who the responsible agency was, what the projected funding over five years was to be, and basic guidelines as to what kinds of projects would be accepted under each of those. That was distributed widely, as I say, in 1992. When we produced the interim Annual Report for 1992-93, that was distributed to about 2,000 Aboriginal organisations on our mailing list. Every Regional Councillor and Commissioner in ATSIC of the pre-election and also the post-election bodies, every local government authority in Australia received a copy. So some very substantial efforts running to 10,000 to 15,000 copies of the information booklet

¹⁰ Evidence, p24

*about the program, initiatives of the whole Commonwealth, the interim report and the annual report have been sent in that way.*¹¹

3.21 Used effectively, ATSIC's elected Regional Council structure should provide an important basis for ensuring greater emphasis is given to self-determination and empowerment of Aboriginal and Torres Strait Islander peoples in the implementation process.

3.22 The Committee believes that Regional Councils should be more clearly informed where funds are being provided as a result of the Royal Commission as distinct from other program funding. There also needs to be a more effective dissemination of information to Regional Councils on Royal Commission matters.

3.23 Although the role of Regional Councils is important, the role of Aboriginal and Torres Strait Islander community people and organisations should not be overlooked. The Commonwealth Implementation Annual Report makes much mention of the importance of Regional Councils and Commissioners, but there is a lack of evidence on the involvement of Aboriginal and Torres Strait Islander organisations. This issue is discussed further in Chapter 4.

Department of the Prime Minister and Cabinet

3.24 The Department of the Prime Minister and Cabinet (PM&C) defined its role in the implementation process:

*In keeping with its broad policy coordination role, PM&C has been allocated joint responsibility with ATSIC for convening a Standing Group of representatives of all departments and agencies having responsibility for implementation of Royal Commission into Aboriginal Deaths in Custody recommendations. To this end the Standing Group met in June, August, October and November 1993 following its initial meeting in February that year. Among its deliberations, the Standing Group considered outcomes of the meetings of the Aboriginal Affairs Advisory Council, delineation of Departmental/Agency responsibilities on implementation of Royal Commission recommendations, and the role and responsibilities of the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Commissioner's 'State of the Nation' report.*¹²

3.25 Other initiatives of the Department of the PM&C include drawing the attention of Ministerial Councils to Royal Commission issues. The Prime Minister wrote to all Commonwealth Ministers with portfolio responsibilities in implementing the recommendations of the Royal Commission suggesting that consideration be

¹¹ Evidence p25

¹² PM&C, evidence, pS 734

given to progress reports on the implementation of these recommendations being placed on the agenda of national ministerial and senior officer forums related to their portfolios.

3.26 The Prime Minister also wrote to all State Premiers and Chief Ministers seeking their support for this proposal.

3.27 Implementation of the Royal Commission's recommendations has been placed on the agenda of the following ministerial forums:

- Standing Committee of Attorneys-General
- The Australasian Police Ministers' Council
- The Corrective Service Ministers' Conference
- The Ministerial Council of Drug Strategy
- The Ministerial Council on Education, Employment, Training and Youth Affairs
- Health and Community Services Ministerial Council
- Standing Committee on Agriculture and Resource Management
- The Tourism Ministers Council
- Australian Standing Committee on Tourism
- The National Supply Group

3.28 The priorities or attention given to the Royal Commission's recommendations by these ministerial forums was very uneven. However, some details of the actions taken are given in the reports on specific recommendations contained in the Commonwealth Annual Implementation Report. While some councils have given a high priority to addressing the recommendations, on other councils the Royal Commission recommendations were languishing towards the bottom of the agenda.

Standing Group of Commonwealth Representatives

3.29 Some background to this Standing Group is provided below:

Officials representing Commonwealth departments and agencies with major responsibilities for implementing Royal Commission Recommendations met on 23 February 1993. This Standing Group of Commonwealth Representatives discussed the monitoring and reporting processes and arrangements necessary to produce an annual report on implementation.

The substantial amount of information to be prepared meant that producing an Annual Report would take months. The Standing Group therefore decided the Commonwealth would produce an Interim Report using information available at 30 June. That way, accountability would be achieved pending availability of the full report. The Standing Group met again on 16 June 1993 to finalise co-ordination for the two reports.

Most members of the Standing Group are those officials who are responsible for co-ordinating the various contributions to reports on implementation which their department or agency is undertaking. Those contributions relate to funded programs and individual Recommendations, so some degree of repetition is unavoidable where (as usually happens) a funded program contributes to implementation of several Recommendations.

The Standing Group also agreed to a schedule of responsibilities for assessing the policy effectiveness of implementing programs and Recommendations. Ten policy categories were taken from the Overview of the Response by Governments to the Royal Commission. Assessments are derived from the principal policy concerns expressed in the Royal Commission's report under Law and Justice; Empowerment; Aboriginal and Torres Strait Islander People and Australian Society; Young People; and others.¹³

3.30 There has been some concern expressed to the Committee about the Standing Group process, with alternatives suggested to alleviate the problems that have been experienced. Mr Michael Dillon, First Assistant Secretary, Department of the Prime Minister and Cabinet, made the following comments:

We also consider that the ATSIIC Monitoring Unit should take on a more pro-active role in critically assessing information provided by Commonwealth agencies on implementation. For example, it may be that there ought to be more bilateral work between the monitoring unit and particular agencies, rather than utilising quite unwieldy IDC [Interdepartmental Committees] structures, where there are 30 or 40 people in the room and not a high degree of interest for 90 per cent of them on any one particular issue.

Clearly though, line agencies are going to have to have a responsibility and have to own the work they do. I do sympathise with ATSIIC in its role. I am aware of the criticisms that have been made of ATSIIC as a postbox. I am not suggesting that they ought to go to the other end of the spectrum and unilaterally prepare the Commonwealth response, but I think there is a middle ground.¹⁴

3.31 This inter-departmental committee comprised approximately 24 departments and does not seem to allow for adequate discussion on the range of issues addressed in the Royal Commission. The process of a large interdepartmental committee examining Royal Commission recommendations presents a danger that the issues will not be examined in enough detail to allow adequate scrutiny.

¹³ Commonwealth Implementation Annual Report, p133-4

¹⁴ PM&C, evidence, p867

3.32 The Committee believes that the Standing Group of Commonwealth Representatives has failed to deliver an effective monitoring and evaluation process.

3.33 The evidence provided to the Committee confirmed the view that the ATSIC Government Response Monitoring Unit is seen largely as a post box for gathering the information supplied by Commonwealth departments and agencies. The Committee believes that there is an urgent need for independent critical analysis in the evaluation of the implementation of the recommendations of the Royal Commission. Otherwise, the process of annual reporting will continue to be seen as an exercise in bureaucratic activity and ATSIC will continue to be seen as a mailbox with little or no Aboriginal and Torres Strait Islander involvement.

3.34 A number of Aboriginal organisations were critical of the process of governments monitoring their own implementation activities. It is clear from the Committee's examination of Commonwealth, state and territory implementation reports that this criticism was well founded. As stated earlier, there is a tendency for agencies to describe their activities in the best light and to gloss over any deficiencies in the implementation of Royal Commission recommendations.

3.35 It is the Committee's view that there has not been enough commitment from government departments and agencies to provide an independent commentary on the implementation of the recommendations within their areas of responsibility.

3.36 In order to avoid the criticism of government monitoring government implementation and departments and agencies glossing over deficiencies, the Committee believes that an independent monitoring and evaluation commission needs to be established. The major function of this authority will be to provide an independent evaluation of the implementation of the Royal Commission recommendations at the Commonwealth, state and territory level. This needs to be supported at ministerial level with a commitment to ensuring that implementation of the Royal Commission recommendations is given high priority. The proposed structure is discussed in paragraphs 3.105 - 3.107.

Aboriginal and Torres Strait Islander Social Justice Commissioner

3.37 One of the functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner as set out in Section 46C of the Human Rights and Equal Opportunity Act is:

*..... to submit a report to the Minister, as soon as practicable after 30 June in each year, regarding the enjoyment and exercise of human rights of Aboriginal persons and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by those persons.*¹⁵

¹⁵ *Aboriginal and Torres Strait Islander Social Justice Commission. First Report 1993, AGPS, Canberra 1993, p129*

3.38 Other functions include the promotion, discussion and awareness of human rights and the undertaking of research and educational programs for promoting respect for the human rights of Aboriginals and Torres Strait Islanders.

3.39 The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Michael Dodson, outlined his role and concerns about the monitoring of the Royal Commission recommendations in his first Annual Report:

Another matter of concern to me is the impression that my Commission has the specific function, and consequently will be expected, to act as a primary means of monitoring the on-going implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody by Governments throughout Australia.

Given that many of the recommendations focus on issues which relate to the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples, there is an obvious and most important relationship between the work of my Commission and the implementation of the Royal Commission's recommendations.

As I have noted above, the establishment of the Aboriginal and Torres Strait Islander Social Justice Commission was in part, a response to the recommendation of the Royal Commission concerning the need for monitoring the progress in the implementation of the recommendations.

However, the necessary relationship between the work of my Commission and the effective implementation of the Royal Commission's recommendations, does not equate with my Commission having the specific role of overseeing the process of implementation.

The Aboriginal and Torres Strait Islander Commission has already established a specific Government Response Monitoring Unit.

The unit has substantial financial and human resources devoted entirely to the task. It clearly has prime carriage of the Commonwealth monitoring process. It would be wasteful and inappropriate for my Commission to attempt to duplicate the work of the Aboriginal and Torres Strait Islander Commission's unit. Once again, even if it were a sensible proposition, I do not have the resources to do so. Any attempt to monitor the implementation of three hundred and thirty-eight recommendations endorsed by the Commonwealth Government is a huge task. To do so adequately and to ensure that the implementation substantially fulfils the intentions of the Royal Commission is an even greater task.

In the course of undertaking the full range of my functions, it may, at various times, be appropriate for me to report on the implementation

of particular recommendations. The specific effect of implementation, or the failure of implementation, on the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander people will be my primary focus. It may also be appropriate for me to consider the adequacy of the monitoring process itself. The effectiveness of that process will have a comprehensive impact on the degree to which implementation of the Royal Commission recommendations actually improve the practical exercise and enjoyment of human rights throughout Aboriginal and Torres Strait Islander communities.

In my view, the critical aspects of the powers, functions and responsibilities entrusted to my Commission are to ensure that they are pursued in a balanced, independent fashion.¹⁶

3.40 ATSIC, in its submission, raised the issue of the wider involvement of the Aboriginal and Torres Strait Islander Social Justice Commissioner in the monitoring of the Royal Commission recommendations. ATSIC stated that an expanded role for the Aboriginal and Torres Strait Islander Social Justice Commissioner in the monitoring and reporting process could provide sharper focus on priority areas of concern which fall broadly within the description of human rights issues.

State based Aboriginal Justice Advisory Committees

3.41 Perhaps one of the most important means of monitoring the implementation of the Royal Commission's recommendations at the state and territory level is the establishment of Aboriginal Justice Advisory Committees in each State and Territory, as outlined in Recommendations 2 and 3 of the Royal Commission.

3.42 These Recommendations are important as they call for independent Aboriginal Justice Advisory Committees (AJACs) to provide governments with independent advice on Aboriginal perceptions of criminal justice matters and on the implementation of the recommendations contained in the Royal Commission report.

3.43 Recommendation 2 stated that the Aboriginal Justice Advisory Committee in each state should be drawn from, and represent, a network of similar local or regionally based committees which can provide the State Advisory Committee with views of indigenous people. The views of Aboriginal and Torres Strait Islander people outside urban centres was seen as essential in this process.

3.44 The Royal Commission report suggested that terms of reference should be negotiated with Aboriginal people and might include the following:

- a the implementation of the recommendations of this report, or such of them as receive the endorsement of the Government;*

¹⁶ Aboriginal and Torres Strait Islander Social Justice Commissioner, *First Report 1993*, AGPS, 1993, pp122-3

- b proposals for changes to policies which affect the operation of the criminal justice system;*
- c programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;*
- d programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and*
- e the dissemination of information on policies and programs between different agencies, and between parallel bodies in different States.¹⁷*

3.45 While Recommendation 2 called for the establishment of AJACs, Recommendation 3 outlined the establishment of secretariats, staffed by people with knowledge of the criminal justice system, to assist in the development of policy proposals and to liaise with other agencies on behalf of, and at the direction of the AJAC. It was recommended that these secretariats be located within either the Attorney-General's or Minister's for Justice departments but to be accountable to the Advisory Committee on terms to be negotiated.

3.46 As stated previously, it was also recommended that a network of similar local or regionally based committees be established to provide the state advisory committees with information on the views of Aboriginal and Torres Strait Islander people. Although the AJACs that have been established, have state wide representation in most instances, there is a distinct lack of local or regionally based committees to provide the state committees with the views of Aboriginal and Torres Strait Islander people at the local level.

3.47 The Committee examined the extent to which each of the state and territory governments have responded to these recommendations and the processes that are in place to establish and maintain the effectiveness of such committees. A summary of state and territory responses to these recommendations is provided below.

New South Wales

3.48 An AJAC has been established following approval by the Attorney-General. Representation is from the NSW Aboriginal Land Council, ATSIC, three Aboriginal community representatives and a nominee of each of the Minister of Police, the Minister for Justice and the Attorney-General. A secretariat has been formed within the Attorney-General's Department.

3.49 In Sydney, the Sub-committee met with members of the NSW AJAC who claimed that their AJAC has a much stronger influence on state government policy than any other AJAC in Australia. The NSW AJAC had put a series of

¹⁷ RCIADIC, *National Report*, Vol 1, p30

recommendations to the Attorney-General and responses were starting to filter back. These included representations regarding juvenile justice in western New South Wales towns and diversionary schemes to divert Aboriginal and Torres Strait Islander people away from the criminal justice system. The NSW AJAC would like to see other state and territory AJACs brought up to the level of theirs. It was encouraging that the funding for this Committee was considered reasonable and the Committee had a good relationship with the Attorney-General.

3.50 The NSW AJAC is funded by contributions from all of the law and justice departments: Police, Juvenile Justice, Corrective Services, Department of the Courts Administration and the Attorney-General's Department. The budget for the AJAC is approximately \$120,000 to \$130,000.¹⁸

South Australia

3.51 Initially the Committee comprised senior government officers and Aboriginal community representatives. However, to ensure the Committee was truly independent a statewide body of Aboriginal representatives was established with representatives drawn from local committees or organisations.

Western Australia

3.52 An AJAC has yet to be established and consideration is being given to its formation. An Aboriginal Affairs Council Royal Commission Reference Group has been acting as an interim AJAC and has provided advice on the most appropriate model to meet both the requirements of the government and those of Aboriginal people.

3.53 The Aboriginal Affairs Council Royal Commission Reference Group is an all-Aboriginal committee established by the Aboriginal Advisory Council to monitor and evaluate the implementation of the Royal Commission's recommendations and to advise the Government on Aboriginal priorities for implementation.

Queensland

3.54 An Aboriginal and Torres Strait Islander Overview Committee has been established to provide advice on those recommendation outside the criminal justice area. This overview committee comprises 12 community members who are nominated by the ATSIC Regional Councils. A secretariat has been established. In addition, the Minister for Justice and the Attorney-General appointed five indigenous representatives to comprise an AJAC on 5 May 1993. The five represent a wide cross-section of Aboriginal and Torres Strait Islander communities in Queensland. The Terms of Reference for the AJAC are confined to those recommendations concerning criminal justice matters.

¹⁸ NSW Government, evidence, pp1245-6

3.55 There have been some resignations from the Overview Committee in Queensland, with some dissatisfaction being expressed by some members that they were only being involved in implementation after the event. The Queensland AJAC, however, was apparently operating quite well apart from some funding limitations. The Committee met with members of the Queensland AJAC in Perth at the National AJAC conference (see below). They advised the Committee that their committee was operating quite effectively in conjunction with the Overview Committee.

3.56 Some concerns have been expressed on the level of funding for the AJAC in Queensland. It appears that funding is not provided for members to travel throughout their respective areas to consult with local Aboriginal and Torres Strait Islander people and organisations on the effectiveness of the implementation of the recommendations made by the Royal Commission.

Northern Territory

3.57 An AJAC is yet to be established. The Government was still considering the composition of the Committee and how activities will be funded.

3.58 The Committee is disappointed that the Northern Territory was still considering the composition of an AJAC and that its establishment was dependent upon funding from the Commonwealth. It is surprising that a Territory based committee such as this, overseeing Territory matters, would be waiting on funds to be provided by the Commonwealth.

Australian Capital Territory

3.59 An Aboriginal and Torres Strait Islander Advisory Council has been established with a secretariat being provided from within the Chief Minister's Department to advise on all Aboriginal and Torres Strait Islander issues, including monitoring the implementation of the Royal Commission's recommendations.

3.60 The Committee also met with the Aboriginal Justice Advisory Committee national conference in Perth. The conference made several recommendations to the Committee. Perhaps the most important recommendation made was the establishment of a national body of Aboriginal Justice Advisory Committees with a national spokesperson to speak on behalf of all AJACs on issues of concern. This would also allow adequate follow up of state and territory issues at the national level.

3.61 Several important recommendations were put to the Committee by the National AJAC Conference. A full list of these are at Appendix 6 with the major recommendations outlined below.

that AJACs be properly funded with chairs of such committees to be appointed on a full-time basis;

that AJACs be appropriately placed in a department such as Attorney-Generals or Ministry of Justice to ensure that they have the support and direct input in the development of policy in relation to the criminal justice system;

that there be a secretariat to all AJACs in every state/territory that is accountable to the committees and responsive to the directions of the AJAC; and

that the funding provided enables the AJACs to have an ability to undertake independent research and to report on the implementation of RCIADIC recommendations on an annual basis.¹⁹

3.62 The conference was also critical of government inaction in a number of areas:

there is still a disproportionate number of Aboriginal and Torres Strait Islander people in police custody;

juvenile justice is still an area of concern;

the apparent failure to implement non-custodial sentencing options;

the failure to recognise customary law in court processes and sentencing;

the failure to improve police and corrective services practices, complaints and investigations;

family violence;

bail procedures, particularly in the Northern Territory and Western Australia;

pre-release and post-release support for Aboriginal and Torres Strait Islander prisoners, particularly in relation to rehabilitation.²⁰

3.63 The view of the conference was reiterated in the NSW AJAC's submission to the inquiry. The NSW AJAC remained committed to ensuring that an independent National Aboriginal Justice Advisory Committee be established with its own secretariat. This secretariat should be situated within the Commonwealth Attorney-General's Department.

¹⁹ Evidence, pS2414

²⁰ Evidence, pS2416

3.64 The Committee recommends that:

- . the Commonwealth give urgent consideration to the establishment of a National Aboriginal Justice Advisory Committee, drawn from existing state and territory Aboriginal Justice Advisory Committees. The members of the national AJAC should be selected at the national AJAC conference; (Recommendation 1)
- . the national AJAC should be serviced by a small secretariat. This secretariat should be situated within the Commonwealth Attorney-General's department and provide the AJAC with independent policy advice on all Royal Commission recommendations. The secretariat will also provide administrative support to the national AJAC. The first priority of such a secretariat should be the servicing of the national AJAC; (Recommendation 2) and
- . *The terms of reference for the national AJAC is a matter to be negotiated between the Commonwealth and state and territory AJACs. The Committee suggests that matters which may be considered by the national AJAC include, but not be confined to:*²¹
 - a The implementation of the Recommendations made by the Royal Commission;
 - b The implementation of recommendations made by this report;
 - c Proposals for changes to policies which affect the operation of the criminal justice system;
 - d Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;
 - e Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and
 - f The dissemination of information on policies and programs between different agencies, and between parallel bodies in different states. (Recommendation 3)

²¹ In considering these matters the Committee relied on the terms of reference suggested in Recommendation 2 of the Royal Commission, for the establishment of state and territory based AJACs. RCIADIC, *National Report*, Vol 1, p30

3.65 The Commonwealth's Annual Report does not state that the AJACs are funded by ATSIC, however the Committee believes that some funding has been provided by the Commonwealth for this purpose.

3.66 It is also of concern to the Committee that the establishment of the Aboriginal Justice Advisory Committees has been such a long process in some states and territories. The establishment of such committees would seem to be a fairly simple process, even though there may be funding constraints. If governments were committed to the independent monitoring and implementation of recommendations, the establishment and funding of these committees should have been and should remain a high priority.

The Australian Institute of Criminology's National Deaths in Custody Monitoring and Research Unit

3.67 The Committee believes that the Australian Institute of Criminology (AIC) has an important role in monitoring of the trends in Aboriginal deaths in custody and in the collection of related statistics. The role of the AIC is discussed further in Chapter 5.

Deaths in Custody Watch Committees

3.68 An emerging group of organisations involved in the monitoring of the recommendations were the state based Deaths in Custody Watch Committees. These have been established so far, in New South Wales, Western Australia and Queensland.

3.69 The New South Wales Aboriginal Deaths in Custody Watch Committee was established in 1987. Mr Murray, Vice President of the Committee gave the following evidence at a public hearing in Sydney.

In 1987 our organisation was formed. It was formed by having a public meeting at the town hall in Sydney. It was formed because of Aboriginal people dying in custody. At that time, it amounted to 115 Aboriginal people who had died in police custody—not in one state but in the whole of Australia. There was a time that I suppose one had to say that, because of the brutality of how men and women were being treated by police and prison officers in custody, something had to be done so we decided to form our committee. It was a watchdog first of all then it came to be, as we say now, the Aboriginal Deaths in Custody Watch Committee. Because of those 115 people that died, something had to be done.

3.70 The establishment of the Western Australian and Queensland committees stem from an initiative that was first discussed in the *Partners for Justice* Conference in Sydney in 1993. This conference was jointly sponsored by the Australian Council of Trade Unions (ACTU) and the Evatt Foundation. Although the Western Australian and Queensland Watch Committees arose out of an ACTU

initiative, they see themselves as widely based community groups, being non-partisan as far as political parties are concerned. While the Western Australian and Queensland committees comprise predominantly non-indigenous people, the New South Wales committee has mainly Aboriginal people as representatives, largely the families of those who have died in custody. These groups have emphasised that the full implementation of the Royal Commission recommendations is something that the whole community should be demanding, not just Aboriginal and Torres Strait Islander people.

3.71 The Committee acknowledges that non-indigenous people have a role to play in the monitoring of the implementation of the Royal Commission's recommendations, highlighting the need for the wider community to be sensitive to the needs and values of Aboriginal and Torres Strait Islander people. However, it should be noted that the establishment of such committees should not detract from the importance of self-determination and self-management principles. Commissioner Elliot Johnston commented on this issue:

I have discussed this matter at length and to my great advantage with Commissioner Dodson who expresses the view that it is not only a question of the material assistance which the broader society makes available, not only the administrative arrangements which are put in place, but also the attitude of non-Aboriginal people. He puts it that it is important that non-Aboriginal people not try to impose on Aboriginal people their non-Aboriginal ideas of what is good, wise or moral, but to let the Aboriginal people feel their own way. In some cases, the way may be different, in many others-in the case of the core subjects mentioned above-the way may well be the same.

Commissioner Dodson stresses that, after what has happened to Aboriginal society, people need space, time and distance to think out very carefully what they want to do with their own communities and their lives.

In the ultimate, self-determination is basically about people having the right to make decisions concerning their own lives, their own communities, the right to retain their culture and to develop it.

I summarise by saying that the whole thrust of this report is directed towards the empowerment of Aboriginal society on the basis of their deeply held desire, their demonstrated capacity, their democratic right to exercise, according to circumstances, maximum control over their own lives and that of their communities; That such empowerment requires that the broader society, on the one hand, makes material assistance available to make good past deprivations and on the other

*hand approaches the relationships with the Aboriginal society on the basis of the principles of self-determination.*²²

3.72 A major concern of these committees is that, until they were established, all monitoring was being done through the public sector. This was seen as inadequate and inappropriate. Mr Woods from the Queensland Deaths in Custody Watch Committee stated that:

We recognise that the first two recommendations of the Royal Commission into Aboriginal Deaths in Custody dealt with the monitoring process, but we see that the initiatives to date are inadequate and inappropriate. We say that because until the community based watch committees were established, any monitoring process was being done through the public sector, as it was very much a public service based process. Our submission to you is that it is both unfair and unrealistic to expect public servants to keep a check on their political bosses.

Even where criticism can be shown to be valid, we would suggest to you that it is very unlikely that government departments are going to be prepared to openly criticise either other government departments or government agencies, whether that be at the state or federal level. That has certainly been my experience as a trade unionist. We would go so far as to say that in circumstances where one government department or agency is being criticised, from our experience it is likely that there will be a cover up of any deficiencies that are highlighted.

*We are also concerned that the indigenous communities here in Queensland appear to be criticising by their actions, any monitoring process that has been set up at the Queensland level. You may or may not be aware but there have been several resignations from the internal monitoring processes that were established here in Queensland.*²³

Independent and Critical Analysis

3.73 The Committee believes that it is essential that independent and critical analysis be undertaken of the implementation of the recommendations of the Royal Commission at the Commonwealth, state and territory level. The lack of such analysis has been a major criticism of the monitoring process to date. This is

²² RCIADIC, *National Report*, Vol 1, p22-23

²³ Evidence, p670

unlikely to occur if only undertaken by governments without any independent analysis being done by non-government organisations.

3.74 At present there are no formally established mechanisms for independent critical analysis of the information supplied to ATSIC for inclusion in the Annual Report. A similar situation exists for the state and territory annual reports. In Queensland, the Overview Committee had its independent report included with the Government's Implementation report. In that Report, the Overview Committee expressed concern that the progress to date in implementing recommendations had not been as fast as expected:

Regrettably, the Overview Committee expresses their disappointment that the implementation of the Queensland Government's response to the Final Report of the Royal Commission into Aboriginal Deaths in custody has not progressed as speedily as expected. Recent demonstrations by Aboriginal and Torres Strait Islander communities throughout Australia and particularly in Queensland suggest that considerable effort needs to be made by Government Departments and agencies to implement the Royal Commission recommendations and in so doing address the underlying causes of the incidence of Aboriginal deaths in custody.²⁴

3.75 Similarly, in Western Australia, the Aboriginal Advisory Council Royal Commission Reference Group made a separate report at the beginning of the Government's Annual Implementation report, which outlined concerns in a number of areas. This report did not provide any detailed analysis of the implementation process.

3.76 Some independent organisations and agencies, for example, the Aboriginal Legal Service of Western Australia (ALS of WA) and the Aboriginal and Torres Strait Islander Social Justice Commissioner, have also provided independent critical analysis.

3.77 The ALS of WA provided detailed examinations of both the Western Australian and the Commonwealth Governments' implementation reports. This was seen by several witnesses as a positive step in the involvement of Aboriginal organisations in the detailed monitoring of the progress of the implementation of the recommendations. ATSIC, in its submission to this inquiry made reference to this report:

An excellent example of effective monitoring by an Aboriginal organisation is the report prepared by the Aboriginal Legal Service of Western Australia entitled 'Striving For Justice'. The report analyses the WA Government's implementation of each Royal Commission

²⁴ RCIADIC, *Queensland Government Progress Report on Implementation to December 1993*, Vol 1 Summary, p25

recommendation, and brings a different perspective (often critical) to the Government's report on their implementation. Assessment of State Government reports by Commonwealth agencies is difficult without access to the local knowledge provided by such reports from community organisations. Aboriginal Legal Services received a substantial funding increase from additional funds made available as the Commonwealth response to the Royal Commission Report.²⁵

3.78 Although this examination of reports by the ALS of WA is important, it should also be noted that this review was undertaken after the reports were released and funded out of existing budgets. If the intention of Recommendation 1 was to be addressed, the ALS of WA, along with other Aboriginal and Torres Strait Islander organisations, should have been involved during the process of developing the implementation report, not merely evaluating the implementation report after it is tabled. This was pointed out in the ALS of WA's submission to this inquiry:

This service is of the view that there are a number of recommendations requiring Commonwealth implementation which specifically call for consultation with the Aboriginal Legal Service or an appropriate Aboriginal organisation, where such consultation has been inadequate to date. The Aboriginal Legal Service considers that the implementation of recommendations 97, 110, 212, 222 and 330 require substantial consultation with this Service and that little, if any, appropriate consultation has taken place. We submit that Government departments and agencies need to increase their commitment to consultation with Aboriginal organisations on the implementation of recommendations.²⁶

3.79 Due to the absence of an effective consultation process with Aboriginal and Torres Strait Islander organisations, groups such as the ALS of WA have had to allocate scarce resources to respond to both Commonwealth and the Western Australian Governments' Implementation Annual Reports. The resources of the ALS of WA could perhaps have been better utilised if there had been more thorough consultation with the ALS of WA in assessing the implementation of the recommendations prior to the government reports being released. The resources of the ALS of WA could then be used to provide increased legal representation and advice for Aboriginal and Torres Strait Islander people. The ALS of WA raised this issue in their submission:

Finally, the over-representation of Aboriginal people in the criminal justice system in Western Australia, the number of complaints against the Police and the lack of protection of the rights of both Aboriginal juveniles and adults in Police custody result in huge demands being

²⁵ Evidence, pS601

²⁶ Evidence, pS616

*placed on the resources of the Aboriginal Legal Service. The Commonwealth Government must give greater recognition to the resources needed by this Service to provide adequate legal services to the Aboriginal community in Western Australia. The Commonwealth funding provided to the Aboriginal Legal Service in 1993/94 remains totally inadequate. This results in the Aboriginal Legal Service being forced into choices between the provision of basic legal services to Aboriginal people and further investigation and research into areas of law reform and provision of community education which may affect long term issues and social justice for Aboriginal people.*²⁷

3.80 The Aboriginal Justice Advisory Committees, if established in accordance with Recommendations 2 and 3, should be in a position to provide an independent and critical analysis of the implementation of recommendations. More importantly they should be involved in the implementation planning process as well.

3.81 From the responses by governments to Recommendation 2, the autonomy and independence of the AJAC Committees was unclear. The AJACs should be seen to be making effective and independent contribution to the monitoring process. Therefore it is the view of this Committee that an effective independent structure is required to enable full participation by Aboriginal organisations in the monitoring and evaluation process.

3.82 ATSI claimed in a submission to the inquiry that:

*The Annual Report represents a factual reporting by Government of the implementation of the Recommendations made by the Royal Commission. It is wrong to regard it as simply the stapling together of unconsidered responses by agencies or as some sort of mindless letterbox exercise. The significance of the document is that it is produced and owned by Government; requires considerable thought and effort by 23 Commonwealth Departments and Agencies and ensures that the disadvantage and dispossession suffered by Aboriginal and Torres Strait Islander people is constantly before these agencies.*²⁸

3.83 While this may be correct in a general sense, the Committee was told on numerous occasions that the reporting process to date had been deficient and totally inadequate. Of particular concern to the Committee is the fact that some recommendations that require a response from the Commonwealth have not been included and that not all entries in the Commonwealth Annual Implementation Report are factually correct. Some instances are provided below.

²⁷ Evidence, pS615

²⁸ Evidence, pS1732

3.84 Recommendation 77 of the Royal Commission states:

That the distinction between communities with or without formal local government authority status should be abolished for purposes of access to Commonwealth roads funding. The Minister for Aboriginal Affairs and the Federal Minister for Local Government should establish a review of Commonwealth Local Road Funds and specific purpose funding with, amongst others, one specific term of reference being to find feasible solutions to the problem of inequity for Aboriginal people in the provision and maintenance area of roads.²⁹

3.85 It is incomprehensible that this was not picked up and responded to by the Royal Commission Government Response Monitoring Unit as it is an important recommendation. That there has been no comment on the absence of a response by the responsible agency confirms the view that ATSIC is seen as a postbox for the gathering of responses by Commonwealth departments and agencies for inclusion in the Annual Implementation Report.

3.86 Part of Recommendation 78 of the Royal Commission states:

The operation of the Aerodrome Local Ownership Scheme should be extended to Aboriginal Community Councils.³⁰

3.87 In the Committee's examination of the Auditor-General's Audit Report No. 36 of 1992-93,³¹ particular attention was paid to the Department of Transport's response to Recommendation 78. The Committee found that despite the Commonwealth supporting this recommendation in the initial whole of government response to the Royal Commission, it had in fact withdrawn from the Aerodrome Local Ownership Plan.

3.88 In the Commonwealth's initial response to the Royal Commission it is stated that:

The Commonwealth is aware that its decision to withdraw from the Aerodrome Local Ownership Plan (ALOP) may impinge on the access and equity needs of small and remote communities. The Commonwealth is therefore providing social benefit subsidies for non-

²⁹ RCIADIC Overview and Recommendations, p48

³⁰ RCIADIC, National Report, Vol 2, p556

³¹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Review of Auditor-General's Audit Report No. 36, 1992-93: Aboriginal & Torres Strait Islander Commission: Community Infrastructure, AGPS, 1994, pp10-13

*viable aerodromes where the aerodromes are essential for the maintenance of a reasonable level of social amenity.*³²

3.89 Although the Royal Commission recommendation called for an extension of the ALOP, the Commonwealth instead withdrew from the plan. Benefits under the Social Benefit Subsidies Scheme mentioned in the Commonwealth response were only available to some community participants in the Plan.

3.90 There are some more detailed reservations. The Commonwealth still has not addressed an extension of the Social Benefit Subsidies Scheme to those communities that were not participants in the ALOP. The Commonwealth needs to make up its mind whether it supports or does not support the recommendation. Despite the Committee having tabled its report in May 1994, there has still been no response from the Commonwealth.

3.91 Recommendation 110 called for a review of pre-release and post-release support schemes that are conducted by various agencies, such as Corrective Services. The recommendation specifically stated that it is most important that consultation take place with relevant Aboriginal organisations. The Commonwealth response stated:

*In conducting the study, the AIC (Australian Institute of Criminology) consulted widely with relevant Aboriginal and Torres Strait Islander organisations.*³³

3.92 Mr Michael Dodson, the Aboriginal and Torres Strait Islander Social Justice Commissioner, denied that consultations had taken place:

The other theme I think I should bring to the Committee's attention relates to references to consultations, and these must be seriously questioned. Unfortunately, on page 48 and 49, in relation to recommendation 110, we have another example of the failure of the Annual Report to make an evaluation of what has been done or to be even mildly self-critical let alone independently critical. For example, the Annual Report states that in conducting this study the AIC, the Australian Institute of Criminology, consulted widely with relevant Aboriginal and Torres Strait Islander organisations.

From the internal evidence in the report itself, this statement would appear to be simply untrue as far as the pre-release programs are concerned. This, in my submission, leaves the reader of the report with a very uncomfortable feeling about the reliability of other claims

³² Commonwealth Implementation Annual Report, Vol 2, p93

³³ Annual Report, p116

*of wide consultation with Aboriginal and Torres Strait Islander peoples and other things that cannot be as readily checked as this.*³⁴

3.93 The implementation of Recommendation 110 is a good example of the lack of consultation with Aboriginal and Torres Strait Islander people, which also received criticism from the ALS of WA:

The lack of consultation with Aboriginal individuals, groups and organisations in relation to pre-release schemes is apparent.....

*However, the report provides no information on how the pre-release and post-release schemes are viewed by the consumers of the service, ie. the prisoners on the inside and the ex-prisoners on the outside. It is the submission of this service that the views of persons using the services discussed are not only relevant but crucial to understanding the 'best features' of the existing schemes. Such an oversight by the researchers seems incredible.*³⁵

3.94 One of the strongest criticisms of the Commonwealth Implementation Annual Report process came from the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Michael Dodson:

One of my criticisms of the Report is that it provides irrelevant material which often does not address the recommendations. For example, page 28 deals with recommendation 56, one of the essential elements of which was that governments and the heritage authority should negotiate with Aboriginal communities and organisations to support local initiatives. The recommendation was specifically directed at the support for small local community initiatives such as museums and culture centres. The Annual Report gives a lengthy narration of what is largely irrelevant material. The response in the Annual Report to the specific point of the recommendation has been buried in a large mass of other material and even then it is inadequately addressed.

*..... The report, in my view, stresses bureaucratic processes as being in some way important or vital. It does not stress outcomes and, more seriously, provides no independent evaluation.*³⁶

3.95 ATSIC's submission to the inquiry makes the point that reporting of outcomes in the first year of a five year program is difficult. While this may be true of some programs, much of the Royal Commission funding is being used to extend programs that are already in place. If this is the case then mechanisms to monitor the

³⁴ Evidence, p836

³⁵ Evidence, pS626-7

³⁶ Evidence, p834-835

effectiveness of the programs, such as identified performance indicators should already be in place and being monitored.

3.96 The Committee also believes that more effort needs to be spent on the development of innovative programs to respond to the Royal Commission recommendations.

3.97 In ATSIC's submission to this Inquiry the following was offered to describe the input Aboriginal and Torres Strait Islander organisations should have in the monitoring process:

With regard to the involvement of Aboriginal organisations, as well as encouraging their involvement in monitoring Commonwealth initiatives, ATSIC has a role in ensuring that such involvement occurs at State and Territory level. Accordingly the Commonwealth has provided funding to allow State and Territory monitoring arrangements to involve elected Aboriginal and Torres Strait Islander representatives. ... States and Territories have generally been slow to develop these arrangements, especially at the level of individual departments and agencies. Funds have mainly been directed to centralised arrangements such as office staff and State-level committees.³⁷

3.98 Both the ATSIC submission and the Commonwealth Implementation Annual Report fail to state what involvement Aboriginal and Torres Strait Islander people have had in monitoring or evaluating the expenditure of the funds provided to state and territory governments.

3.99 Recommendation 1 of the Royal Commission called for the involvement of Aboriginal and Torres Strait Islander people in the implementation process and the need for governments to be accountable for the actions taken to implement those recommendations that they supported.

3.100 Part of the Commonwealth Implementation Annual Report's response to Recommendation 1 of the Royal Commission indicated that funding was provided by ATSIC, to state and territory governments to help meet the costs of enhanced involvement of elected Aboriginal and Torres Strait Islander community representatives in monitoring and reporting on the implementation of responses to Royal Commission recommendations.³⁸ Negotiations have been undertaken by the Commonwealth with all state and territory governments, with Victoria and Tasmania the only states not to have concluded agreements.

³⁷ Evidence, pS601

³⁸ *Commonwealth Implementation Annual Report*, Vol 1, p247

3.101 In the entire Commonwealth Implementation Annual Report there was no description of the outcomes of the negotiations that have taken place between the Commonwealth and the states and territories. There was also no mention of the enhanced involvement of Aboriginal and Torres Strait Islander people in the implementation and monitoring process. This is viewed by the Committee as a serious omission and further highlights the lack of sufficient detail in the reporting process.

3.102 The Committee believes that a more serious commitment to implement Recommendation 1 is needed with much wider consultation and involvement of Aboriginal and Torres Strait Islander people and organisations.

3.103 Many of the indigenous people who gave evidence to the Committee expressed frustration and cynicism with the process of implementation. They pointed out that Aboriginal and Torres Strait Islander people are still being incarcerated at an unacceptable and increasing rate. If the recommendations of the Royal Commission were being implemented effectively then the picture would be much better, with incarceration rates being reduced.

3.104 More accuracy in government reports are needed on the extent to which the recommendations are not being implemented and to detail those areas still needing to be addressed. This would provide some benchmarks in assessing whether the recommendations are being effectively implemented. There needs to be a 'warts and all' approach to reporting on the implementation of recommendations. Departmental officers must be prepared to describe their work in a way which reflects the real situation in Aboriginal and Torres Strait Islander affairs. The first responsibility of government departments should be to ensure that the interests of their clients are being met to the maximum extent possible and the extent to which they are not being met clearly spelt out.

3.105 It is quite apparent to the Committee that there are serious deficiencies in the implementation of the Recommendations of the Royal Commission and in the processes currently in place to monitor this implementation. The Committee believes that a new independent monitoring and evaluation process must be established if the Recommendations made by the Royal Commission are to be implemented more effectively and be subject to greater scrutiny. The Committee believes that the following proposed structure will offer both the independence and the authority to deal with important human rights issues affecting Aboriginal and Torres Strait Islander people at all levels of government.

3.106 It is proposed that the Aboriginal and Torres Strait Islander Social Justice Commissioner take on the responsibility of monitoring the implementation of the Royal Commission recommendations. This structure is proposed in Figure 3.1.

3.107 The Committee recommends that:

a separate and independent Monitoring and Evaluation Unit be established under the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunity Commission; (Recommendation 4)

the major function of this Unit will be to monitor, evaluate and report on the progress of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody at the Commonwealth, state and territory levels. The Unit will be involved in the continuous monitoring and assessment of the programs of all Commonwealth, state and territory departments involved in implementing recommendations. It shall provide advice on an on-going basis to all such departments and agencies; (Recommendation 5)

the Commonwealth should seek the co-operation of states and territories in this process, through the Council of Australian Governments (COAG), for the establishment of an office of the Unit in each state and territory and the subsequent monitoring, evaluation and reporting arrangements; (Recommendation 6)

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

(cont).

The Aboriginal and Torres Strait Islander Social Justice Commissioner will present the annual report of the Royal Commission into Aboriginal Deaths in Custody Monitoring and Evaluation Unit to the Council of Australian Governments, and it shall be tabled subsequently in the Australian Parliament and each state and territory parliament; (Recommendation 8)

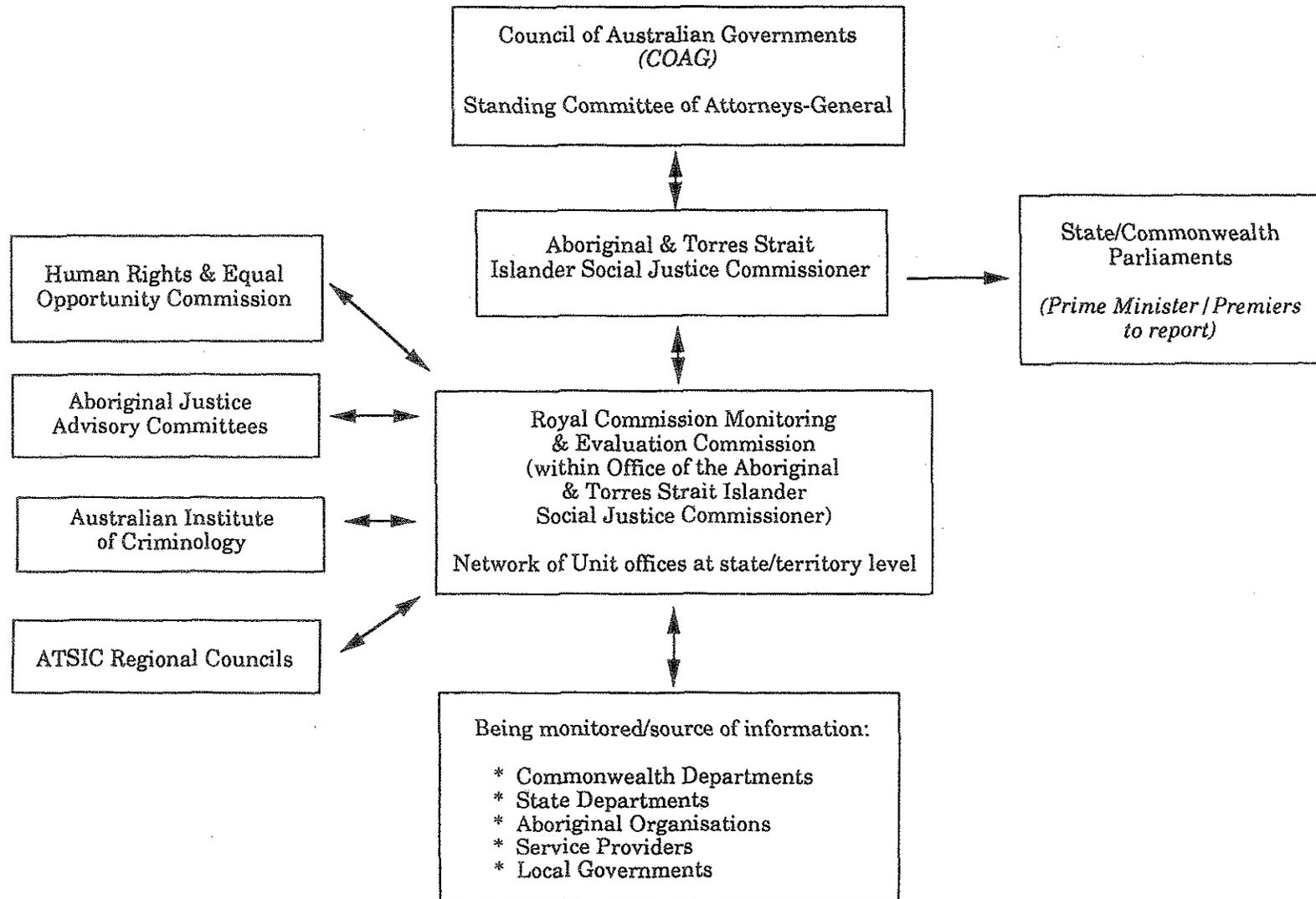
this separate Unit must be established with sufficient resources from the Commonwealth, state and territory governments to enable it to effectively carry out its functions. This must be significantly greater than the resources currently allocated to ATSIC for the establishment of the Royal Commission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

the unit should also be in position to investigate concerns that Aboriginal and Torres Strait Islander individuals and organisations have in relation to breaches of Royal Commission recommendations at all levels; (Recommendation 10)

the Unit would operate for a period of five years, and should commence within the next four months; (Recommendation 11)

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

Figure 3.1 Proposed Monitoring Structure



CHAPTER 4

THE PATH TO SELF-DETERMINATION

- Aboriginal and Torres Strait Islander involvement in the implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody

4.1 The central role of the involvement of Aboriginal and Torres Strait Islander people and organisations in the implementation and monitoring of the Royal Commission recommendations cannot be over-emphasised. This involvement is essential to the principles of self-determination and self-management and was a major theme of the Royal Commission report. The role of Aboriginal and Torres Strait Islander people in monitoring the progress of implementation was discussed in Chapter 3. This chapter discusses the role indigenous people and organisations can play in actually implementing recommendations.

4.2 The importance of this involvement was made clear in the *Interim Report* of the Royal Commission by Justice Muirhead:

Valuable submissions are being received from many sources, including Aboriginal sources, and there is, I believe, an increasing and general awareness that the Aboriginal people must become increasingly involved in both efforts to replace outdated attitudes and policies and the implementation of alternatives.¹

4.3 Commissioner Elliott Johnston in the *National Report* of the Royal Commission further stressed the importance of Aboriginal and Torres Strait Islander involvement in the implementation of the recommendations:

When dealing with what I called the first pre-requisite of the empowerment of Aboriginal society - The Will to Renewal and to Self-Determination - I referred to the tremendous energy, determination and strength being demonstrated by the Aboriginal people. This highlights the importance of the Aboriginal organisations. Throughout the report will be found literally hundreds of references to the work of such organisations, including community councils.²

¹ RCIADIC, *Interim Report*, AGPS, 1988, p2

² RCIADIC, *National Report*, Vol 1, p23

4.4 Most Aboriginal and Torres Strait Islander people the Committee spoke with emphasised the need for indigenous involvement in the monitoring and implementation process. For example the Yarrabah Community Council advised the Committee that indigenous people were expert in dealing with their own affairs. They stated that the only people who could and should deal with the problems of indigenous people were indigenous people themselves. Similar comments were made by many other organisations.³ Mr Sibosado, from the Mamabulangin Aboriginal Corporation in Broome, told the Committee that everyone else has had a go at determining the future of Aboriginal and Torres Strait Islander people and 'fixing things up' for them. He said that it was time for indigenous people to have a go at doing things for themselves.⁴

4.5 On the evidence heard by the Committee there needs to be a greater involvement of Aboriginal and Torres Strait Islander people and organisations in implementing the recommendations of the Royal Commission if governments are to meet their commitments. The *National Report* contained numerous recommendations in this regard. Recommendations 188-204 deal with consultation, funding arrangements, accountability and management procedures. Some of these issues are discussed below.

4.6 In the preamble to Chapter 27 of the Royal Commission's *National Report*, Commissioner Johnston made the following remarks:

Chapter 20 described the history of the movement towards recognition of self-determination as the central plank of government policy for Aboriginal affairs and the tentative efforts of government, so far, to define the concept and to make it a practical reality. This chapter takes the matter further by looking to the future to suggest what I believe may be some approaches which, if adopted, may result in a more meaningful application of the principle of self-determination.

The chapter points out that little agreement exists as to the definition of self-determination and the processes available to implement a policy of enhanced levels of self-determination, and suggests that these matters be settled at an early stage. It goes on to discuss the emerging role of the Aboriginal and Torres Strait Islander Commission (ATSIC), arguing that, although ATSIC has the potential to be a key vehicle for enhancing Aboriginal self-determination, it operates within a number of constraints militating against this role. Since the multiplicity of funding agencies that Aboriginal organisations deal with serves to thwart self-management and self-determination, I discuss the need for funding and accountability arrangements to be consolidated around a system of block grants, with the recipient Aboriginal organisations and

³ Informal discussions, Yarrabah

⁴ Informal discussions, Broome

*communities determining expenditure priorities. I argue that Aboriginal people have accepted the concept of representation through organisations and, as a result, specific service delivery through mainstream agencies. The delivery of local government services to Aboriginal people is discussed, and recommendations are presented on how greater equity in this area, between Aboriginal and non-Aboriginal communities, may be attained. The need for effective training and the opportunity to develop community and regional plans are mentioned, and the chapter concludes with some case studies on Aboriginal self-determination.*⁵

Commonwealth Departments and Agencies

4.7 All Commonwealth departments and agencies have some responsibilities in implementing recommendations made by the Royal Commission. These responsibilities are contained in the *Schedule of Commonwealth Commitments* provided by ATSIC in their submission to the Inquiry.

4.8 In ATSIC's submission, the role of this Schedule was given as follows:

*To identify its reporting responsibilities the RCGRMU utilised a Schedule of Commonwealth Commitments (Attachment B), which was originally compiled by the Department of the Prime Minister and Cabinet. The Schedule lists each recommendation for which the Commonwealth has a responsibility, and also lists which government department or authority is responsible for contributing to the implementation of each of these recommendations. Where two or more agencies share responsibility, a 'lead agency' was designated, whose function it is to combine the various agency reports into a single report. The Schedule was provided to all personnel involved in co-ordinating reporting on implementation, and it was the basic co-ordination document.*⁶

4.9 Reference will be made to the Schedule of Commitments throughout this chapter.

Recommendation 188

4.10 Recommendation 188 of the Royal Commission stated:

⁵ RCIADIC, *National Report*, Vol 4, p5

⁶ Evidence, pS597

That governments negotiate with appropriate Aboriginal organizations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.

4.11 The initial Commonwealth response to this recommendation stated:

This principle already underlies the Commonwealth approach and has been adopted by all States and Territories. The Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Plan process will provide the vehicle, through s. 97 of the Aboriginal and Torres Strait Islander Commission Act 1989, to ensure that it is adhered to in future dealings between Government and Aboriginal and Torres Strait Islander communities.

ATSIC's Office of Indigenous Women will work with Aboriginal and Torres Strait Islander women elected to Regional Councils to ensure that gender specific issues are adequately addressed in negotiations.⁷

4.12 Part of the 1992-93 response by the Commonwealth states:

Progress has been made in empowering Aboriginal peoples and Torres Strait Islanders in the development of Government policies and the design and delivery of programs and services that will affect them through the establishment in 1990, under Commonwealth legislation, of the Aboriginal and Torres Strait Islander Commission, with its structure of elected Regional Councils.⁸

4.13 The remainder of the 1992-93 response is largely about the establishment of and the role played by ATSIC. Almost half of the response is devoted more specifically to outcomes achieved by ATSIC's Office of Indigenous Women. The Contact Officer for this recommendation is from the Office of Indigenous Women.

4.14 The Committee is dismayed by this seriously incomplete response to such an important recommendation.

4.15 The *Schedule of Commonwealth Commitments* which was provided to the Committee as Attachment B to ATSIC's submission, was quite confused in relation to the implementation of Recommendation 188. It stated that:

⁷ *Response by Governments to the Royal Commission*, pp718-19

⁸ *Commonwealth Implementation Annual Report*, p168

ATSIC's Office of Indigenous Women will work with Aboriginal and Torres Strait Islander women elected to Regional Councils to ensure the gender specific issues are adequately addressed in negotiations.

4.16 The *Schedule of Commonwealth Commitments* omits to record a commitment from every relevant Commonwealth department and agency to implement this recommendation.

4.17 Both the *Schedule of Commonwealth Commitments* and the Commonwealth Implementation Annual Report ignore the important responsibilities of other departments and agencies which impact on Aboriginal and Torres Strait Islander peoples. Instead the response restricts itself to the role Regional Councils play in the decision and funding process stating that:

... more than half of the Commonwealth's funding for programs for Aboriginal peoples and Torres Strait Islanders is channelled through ATSIC, which also has the responsibility for developing policies to meet needs at the national, State, Territory and regional levels.⁹

4.18 The response needs to address the very substantial amount of Commonwealth funding which comes through other departments and agencies. The response also needs to address other departments and agencies responsible for 'any policy or program which will particular affect Aboriginal people'.

4.19 To say that 'This principle already underlies the Commonwealth approach is a quite empty assurance of compliance when, for example, the Department of Transport negates the effect of a recommendation (Recommendation 78) and does so with no negotiation with the communities affected. A more definite indication of compliance is required from each relevant department and agency so that the process is more transparent and accountable.

4.20 The Committee recommends that:

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

⁹ Commonwealth Implementation Annual Report, p168

4.21 Mr Michael Dodson, the Aboriginal and Torres Strait Islander Social Justice Commissioner, was critical of the Commonwealth's response to this Recommendation:

The response does not address the Recommendation. It consists of three elements. The first extols ATSIC and its Regional Councils as an instrument for empowering Aboriginal and Torres Strait Islander peoples. The second extols the benefits of and progress in regional and community planning and the third deals with the recognition of the important role of women.

One learns nothing from all this as to whether negotiations with Aboriginal and Torres Strait Islander organisations and communities to determine guidelines of the type referred to in Recommendation 188 have taken place.

The complete divergence of the response from the Recommendation is illustrated by the fact that the contact officer for the Recommendation is in the Office of Indigenous Women.¹⁰

4.22 The Commonwealth Implementation Annual Report states that all Commonwealth agencies delivering services to Aboriginal and Torres Strait Islander communities should be given the opportunity to contribute to, and be required to take account of, the framework of the Regional Council planning process.¹¹

4.23 However, the response fails to mention what these Commonwealth departments and agencies are doing to actively implement this Recommendation by involving Aboriginal and Torres Strait Islander people in the design and implementation of policies or programs that significantly affect indigenous people. This is a serious omission and gives the clear impression that this major recommendation is not being implemented in the way intended.

4.24 Such a limited response to a major recommendation is not acceptable. The majority of the *National Report* of the Royal Commission into Aboriginal Deaths in Custody stresses the need for governments to negotiate with Aboriginal and Torres Strait Islander people and organisations in all areas of indigenous affairs. This important theme seems to have been largely lost in the Commonwealth's response.

4.25 In previous reports this Committee has also placed considerable emphasis on negotiation, not just consultation, with Aboriginal and Torres Strait Islander communities. In the Committee's report *Our Future Our Selves* a great deal of emphasis was placed on a move away from the approach of 'consultation' to that of negotiation with Aboriginal and Torres Strait Islander people.

¹⁰ Evidence, pS2257

¹¹ *Commonwealth Implementation Annual Report*, p169

It is not just a matter, though, of setting guidelines. There is also a need to change the emphasis in the consultative processes from one of listening to, and advising, communities to one where communities have a more direct say in deciding final outcome. Instead of merely being involved, Aboriginal people must be integral to deciding policy and programs which directly affect their lives. This is the difference between consultation and negotiation as discussed earlier in the chapter.¹²

4.26 In a similar way the state and territory reports, with some exceptions, lack any detail on the way Aboriginal and Torres Strait Islander people are involved in meaningful way in the implementation of this Recommendation.

4.27 For example, the Northern Territory's response to Recommendation 188 stated that:

The Department (Correctional Services) has always adopted the principle of encouraging self-determination.¹³

4.28 The report fails to state in detail in what ways Aboriginal and Torres Strait Islander people and organisations have had meaningful input into the policies and programs that will significantly affect Aboriginal and Torres Strait Islander people within the Department of Correctional Services. More importantly, the report also fails to mention what other Territory departments and agencies are doing to actively involve Aboriginal and Torres Strait Islander people in the design and delivery of programs that affect them.

4.29 Most other state/territory Implementation Reports do report on advisory mechanisms established by various governments, but again fail to provide adequate details on the extent of Aboriginal and Torres Strait Islander involvement in the decisions. There is limited information on negotiations that take place with indigenous organisations in the design and delivery of policies and programs. Most bodies only seem to have an advisory role and the extent to which this advice is acted upon is unclear.

4.30 The response by the South Australian Government is equally limited. It states:

This philosophy is endorsed through the current advisory mechanisms established by the Government - for example, the Aboriginal Health Council, the South Australian Aboriginal Education and Training

¹² House of Representatives Standing Committee on Aboriginal Affairs, *Our Future Our Selves - Aboriginal and Torres Strait Islander Community Control, Management and Resources*, AGPS, Canberra, August 1990, p59

¹³ *Implementation of the Northern Territory Government responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody - 1992-3 Annual Report*, p104

*Advisory Committee, Aboriginal Housing Advisory Council and the Aboriginal Justice Advisory Committee. Consultation with the Chairperson of each Aboriginal and Torres Strait Islander Regional Council is encouraged by government.*¹⁴

4.31 From this response there is no requirement for government departments and agencies to negotiate with Aboriginal and Torres Strait Islander organisations in the development of policies and programs that will significantly affect them. There should be a requirement for Departments and agencies to undertake such negotiation where it is needed.

4.32 The response by the Queensland Government, although of greater detail than other States' responses, does not outline the nature or structure of negotiations between government agencies and Aboriginal communities. It states that:

The principles of self-determination underpin all programs administered by the Division of Aboriginal and Islander Affairs. In pursuit of this principle the Division has sought and obtained government approval for:

- . the transfer of the Aborigines Welfare Fund to Community Control;*
- . the transfer of cattle and other enterprises which were previously operated by the Department on remote communities, to community control; and*
- . the hand-over of local government functions previously administered by the Department in the Northern Peninsula Area, to the local Aboriginal and Islander Councils in this area.*

*Projects funded and supported by the Department are normally initiated at the community level and the guidelines and procedures imposed by the Department relating to these programs are designed to maximise the opportunities for self-determination.*¹⁵

4.33 The response also includes contributions by Queensland Health and the Department of Environment and Heritage.

4.34 In all there is no substantiation of these comments by any Aboriginal and Torres Strait Islander organisation or individual. There are no descriptions of any substantial outcomes of the negotiations that have taken place in Queensland to

¹⁴ RCIADIC - 1993 Implementation Report - South Australian Government, Department of State Aboriginal Affairs, April 1994, p143

¹⁵ Queensland Government Implementation Annual Report, pp199-200

date. It is also noted that other key service Departments such as Education, Housing, Employment and Local Government have not been mentioned.

Recommendation 190

4.35 Recommendation 190 dealt with the development of proposals between the Commonwealth and state/territory governments for implementing a system of block grant funding to Aboriginal communities and organisations, and also implementing a system whereby Aboriginal organisations and communities are provided with a minimum level of funding on a triennial basis.

4.36 The Committee believes the Commonwealth's response to this recommendation is inadequate. There are no details on the types of programs for which block grant funding is provided or if any Aboriginal or Torres Strait Islander communities receive block grant funding.

4.37 For example, the response by the then Department of Health, Housing, Local Government and Community Services provides information on the funding arrangements for block grants to Western Diagnostic Pathology and the Northern Territory District Medical Services and the Australian Council of the Royal Flying Doctor Service, which are of relevance to Aboriginal and Torres Strait Islander communities, but fails to outline any block grant funding to Aboriginal and Torres Strait Islander organisations. It also fails to mention any negotiations between the Commonwealth and state/territory governments, for example, in respect of the delivery of health services or the provision of housing to Aboriginal and Torres Strait Islander people or communities. In addition, the response does not provide any details of the progress in relation to providing block grant funding for Aboriginal and Torres Strait Islander community councils.

4.38 Considering that many of the state and territory responses indicate that implementation is dependent on negotiations between the states/territories and the Commonwealth, at the Heads of Government level, the Committee believes that this is an area which requires the Commonwealth to take on a more proactive role and show some leadership in the implementation of the recommendation.

4.39 There are examples where governments have introduced funding on a triennial basis. To the credit of the Western Australian Government, its response indicates that it is possible to institute a system of triennial funding arrangements. Their report states:

At a State level Community Programs Unit of the Department for Community Development has incorporated triennial funding agreements with all agencies that are in receipt of recurrent departmentally administered program funds. Presently funding agreements signed since June 1992 will expire on 30 June 1995. Triennial funding agreements are in place for all programs which includes joint Commonwealth/State funding programs such as SAAP and the Youth Social Justice Initiatives (Burdekin), and also State

*funding programs such as Family Support Program and Youth and Community Program.*¹⁶

4.40 The Queensland Government's response does not address the Recommendation providing no details of the extent to which the government has incorporated a system of block grant to Aboriginal and Torres Strait Islander communities and organisations. In addition, there is no mention of the steps that may be taken to institute funding arrangements on a triennial rather than an annual basis.

4.41 The response by the ACT government does not provide any details of the extent to which it is instituting a system of block grant funding for Aboriginal and Torres Strait Islander organisations on a triennial basis.

4.42 The Committee also draws attention to the experiences in Canada where block grant funding has been given to a number of indigenous communities covering a period of five years. Funding for the provision of services across all portfolio areas is provided annually, with the commitment by the Federal Government to provide funds for a period of five years. This funding is subject to normal auditing procedures by government but communities are free to make decisions for themselves about priorities and expenditure. It should be noted that this practice only occurs where communities are willing to proceed, with negotiations carried out between the communities and the Government. Not all communities are suited to this type of arrangement. Where these arrangements have been negotiated it has allowed for adequate planning and also for communities to make decisions on the types of projects that are to be undertaken.

4.43 The Committee believes that these funding arrangements deserve considerable attention by the Commonwealth Government with a view to examining their application to Aboriginal and Torres Strait Islander communities. These arrangements need to be negotiated with Aboriginal and Torres Strait Islander people.

Recommendation 191

4.44 The Recommendation called for the development of a means by which all sources of funds provided for, or identified as being available to, Aboriginal and Torres Strait Islander communities or organisations, be allocated wherever possible through a single source with one set of audit and financial requirements, by which the maximum devolution of power be given to communities and organisations to determine the priorities for the allocation of such funds.

4.45 The background to this recommendation was outlined in the *National Report*:

¹⁶ *RCLADIC - Government of Western Australia Implementation Report, Aboriginal Affairs Planning Authority, 1993, p102*

*The multiplicity of funding agencies, the obvious overlap between many programs from one department to another, the apparent competition for programs to be adopted by Aboriginal communities all present a grossly complex and unwieldy environment which is hardly conducive to effective self-determination and self-management. So far as I can see, no Aboriginal individual or organization, anywhere, has asked for this complex multi-layered, bureaucratic and organizational picture to be the reality of Aboriginal self-determination and self-management. All of these arrangements are the product of non-Aboriginal bureaucratic and political notions of the organizational needs and program needs for Aboriginal communities. There is a quite tragic waste of time and money involved in the maintenance of such a ludicrously complicated funding super-structure.*¹⁷

4.46 Over many years the Committee has received evidence critical of the multitude and uncertainty of the funding processes that indigenous organisations have to deal with and general confusion of where responsibility lies for funding particular areas. Many people feel that too much time is spent writing submissions and applications for funding. Previous reports of the Committee: *Our Future Our Selves, Mainly Urban* and *Access and Equity: Rhetoric or Reality?* made mention of these difficulties.

4.47 In considering this issue Commissioner Johnston, in Volume 4 of the National Report of the Royal Commission¹⁸ relied heavily on the Committee's *Our Future, Our Selves* report.

4.48 A key element of Recommendation 191 is the maximum devolution of power to communities and organisations to determine priorities for the allocation of funds. It is unclear from the Commonwealth's response to this Recommendation how much power has been devolved to Aboriginal and Torres Strait Islander communities and organisations through the implementation of mechanisms for single source funding. The fact that four different Commonwealth departments have replied, none explaining how they have tried to integrate their funding to Aboriginal and Torres Strait Islander communities, is indicative of the Recommendation not being addressed.

4.49 The Annual Report contains only minor reference to negotiations having taken place between the Commonwealth and state and territory governments in an effort to simplify funding procedures and sources. This reference is in the context of the *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal peoples and Torres Strait Islanders*¹⁹, whereby ATSIC was

¹⁷ RCIADIC, *National Report*, Vol 4 , p15

¹⁸ RCIADIC, *National Report*, Vol 4, pp12-21

¹⁹ Council of Australian Governments, *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders*, 1992

in the process of negotiating bilateral/trilateral agreements between state, territory and Commonwealth governments. The only apparent outcome to date is the earmarking of funds for Aboriginal rental housing under the Commonwealth-State Housing Agreement.

4.50 Despite the Commonwealth Implementation Annual Report stating that departments and agencies have been encouraged to take into account the Regional Council planning process, there has been limited reporting on the ways in which government departments and agencies have been actively involving Aboriginal and Torres Strait Islander Regional Councils in the design and delivery of policies and programs that affect indigenous peoples.

4.51 The Committee strongly endorses the critical role of Regional Councils in ensuring the progress of self-determination and self-management. There needs to be a more committed approach to the involvement of Aboriginal and Torres Strait Islander people, organisations and ATSIC structures in implementing recommendations.

4.52 The South Australian Government's response is inadequate. The Recommendation was specific in seeking the development of means by which all sources of funds were allocated through a single source. Despite supporting the Recommendation, the South Australian Government response states that multiple source funding will continue for Aboriginal communities and organisations. The report added that the state will co-operate with any Commonwealth proposals to rationalise funding sources and reporting requirements.²⁰ There has been no progress in implementing the recommendation as this is exactly the same response contained in the whole of government response to the Royal Commission in 1992.²¹ Again there is no mention of how power has been devolved to Aboriginal communities and organisations to determine the priorities for the allocation of such funds.

4.53 The Western Australian Government stated that this Recommendation is primarily for the Commonwealth to respond. It went on to indicate that the Community Programs Unit in the Department of Community Development, will be scaled down and will retain a policy co-ordination and administration role. The devolution of non-government funding to the districts will allow for more effective and responsive decisions at the local level.²²

4.54 By stating that it is primarily a Commonwealth responsibility indicates that the Western Australian Government assumes that the majority of funding for

²⁰ *1993 Implementation Report, South Australian Government*, p144

²¹ *Aboriginal Deaths in Custody, Response by Governments to the Royal Commission, Vol 2*, AGPS, Canberra, 1992, p731

²² *RCIADIC, Government of Western Australia Implementation Report 1993*, Aboriginal Affairs Planning Authority, 1993, p103

Aboriginal and Torres Strait Islander communities and organisations comes from the Commonwealth. This was reinforced in evidence from Mr Cedric Wyatt, Commissioner of the Aboriginal Affairs Planning Authority (AAPA) in response to a question on the abrogation of responsibilities in relation to funding of infrastructure development in Aboriginal communities:

In 1973 there was an agreement between the Prime Minister, Mr Whitlam, and the Premier of West Australia, Mr Tonkin, which ended up in a piece of legislation called 'Arrangements with the States' where the Commonwealth took over the responsibilities in Western Australia. We want them back. That legislation also transferred a whole state department, which became, in 1973-74 the Department of Aboriginal Affairs, from this state, and we have been stuck with that legacy for the last 25 years.

What we are saying in this report now is that we want our responsibilities back. We want to impose the responsibilities on local government and to provide the services to the Aboriginal communities that are provided to any other community in Western Australia. That legacy of 1973, in the heavy days of Aboriginal affairs, was an agreement between two governments and we want to undo that agreement. That legislation still exists. It is still on the record. The ATSIC legislation has not taken that away.

As Western Australians and Western Australian Aboriginal people, we want to work with our own people to improve the living conditions in those communities. I do not think it has been an abrogation of the state. Certainly there were agreements between governments. We want it back. We do not believe that ATSIC or the federal government should be doing some of the things which other citizens accept as a right. I believe that the social justice report²³ is going to give us the mechanism to do that. It is in there, but it is coming to the end of agreements that were previously made by previous governments.²⁴

4.55 The situation that Mr Wyatt claims is hindering Western Australian control no longer exists. It has not existed since 1984. The Western Australian Government's report *Task Force on Aboriginal Social Justice* states that:

In July 1984 the formal arrangements by which the Commonwealth Government had responsibility for administering the AAPA Act were repealed. The AAPA became independent of the Commonwealth Department of Aboriginal Affairs. The AAPA also became responsible

²³ *Task Force on Aboriginal Social Justice - Report of the Task Force*, Government of Western Australia, April 1994, p52

²⁴ Evidence, p367-368

*for administering the Aboriginal Communities Act, 1979. This Act was proclaimed in order to assist Aboriginal communities to manage and control their community lands.*²⁵

4.56 The Committee is concerned that Mr Wyatt, as the Commissioner of the AAPA, is unaware of the responsibility that the AAPA has held for the last ten years. It is quite wrong for the State to assume that the interests of Aboriginal and Torres Strait Islander people are the sole responsibility of the Commonwealth. The State has an obligation to look after the interests of all of its citizens, including Aboriginal and Torres Strait Islander people. Recommendation 191 made it clear that state and territory governments in conjunction with the Commonwealth should be working to provide single source funding to maximise the devolution of power to community organisations.

4.57 The Committee notes that the Task Force for Aboriginal Social Justice has a more realistic view of responsibilities:

*By convention and practice, the State takes the leading role in delivery of basic services to Aboriginal people in the areas such as health, education, housing, law enforcement, welfare services. The Commonwealth takes the leading role in areas such as further education and training, and employment programs. The State has responsibility for the provision of essential services to Aboriginal people as do others. In areas where the State takes the leading role, the Commonwealth sees its role as being to complement the activities of the State, although this can also be seen as replacing the State: the Commonwealth view would be that it has the responsibility of stepping in where State activity is held to be inadequate.*²⁶

Recommendation 192

4.58 This is another key recommendation of the Royal Commission. It required that programs and services, where possible, be delivered through Aboriginal and Torres Strait Islander organisations. It also required that where no such Aboriginal and Torres Strait Islander organisations were available, government agencies were to ensure that consultations be undertaken with Aboriginal and Torres Strait Islander communities to ensure that the processes adopted by the agency in the delivery of services, were appropriate to the needs of Aboriginal and Torres Strait Islander people and communities receiving such services.

4.59 This Recommendation placed particular emphasis on the employment of Aboriginal and Torres Strait Islander people by the agency in the delivery of such services and in the design and management of the processes adopted by the agency.

²⁵ *Task Force on Aboriginal Social Justice*, p52

²⁶ *Task Force on Aboriginal Social Justice*, p280

4.60 The response by ATSIC is almost identical to its response to Recommendation 188. It outlines the progress made in empowering Aboriginal and Torres Strait Islander people through the establishment of ATSIC. Other departments, such as DEET, DSS and Primary Industries and Energy, outline the procedures they have adopted in the delivery of services to Aboriginal and Torres Strait Islander people and communities, with no reference to consultation or negotiation.

4.61 There is limited information on the extent to which other Commonwealth agencies, apart from those listed, have negotiated with Aboriginal and Torres Strait Islander organisations and communities to enhance indigenous involvement in the delivery of services to their communities.

4.62 The Western Australian Government indicates in its implementation report that agencies continue to use Aboriginal organisations where possible in the development and delivery of services to Aboriginal and Torres Strait Islander people. The report also outlines the important role of the Department of Community Development (DCD) in the provision of services to Aboriginal communities, stating that DCD will become more of a facilitator for the development of services by Aboriginal peoples and communities as well as a direct service provider. One of the major objectives of DCD is to increase funding for Aboriginal initiatives and organisations.

4.63 The Committee received evidence contrary to this from some Aboriginal and Torres Strait Islander people in Western Australia, not only in relation to DCD but to other government agencies as well. For example, the Committee was told by the Bega Garnbirringu Aboriginal Health Service in Kalgoorlie, of the concerns they had in relation to the delivery of health services to Aboriginal people in prison.

4.64 Approximately 80 or 90 per cent of the prisoners in the prison at Kalgoorlie were Aboriginal people and almost all of them, prior to their imprisonment, were patients of the Bega Garnbirringu. The Committee was told that the service currently provided by the prison medical service is not culturally appropriate and was not consistent with the recommendations made by the Royal Commission which stated that Aboriginal people should have access to culturally appropriate medical services in prison.

4.65 Bega Garnbirringu can offer qualified health workers to assess prisoners' health and provide primary health care. Their doctors are trained in Aboriginal health and they offer other services such as Aboriginal counsellors. Counselling is a very important area, because of the mental health problems in prisons.

4.66 Once Aboriginal people are in prison they are no longer patients of the Aboriginal Health Service. Dr Dunn, from Bega Garnbirringu, made the following remarks:

What it means is that when these people go into prison they have tests which we may have already done. We know their medical history. We know their families. And yet they are seen by someone else and there

is basically no communication out of the prison. If the patient is treated for something in the prison we do not hear of it. All of these things go against the Royal Commission's recommendations.

We put in a submission that we could tender to the prison to provide medical services, including health worker services and our other various health service facets. We put that into the general ATSIC pool of moneys to see whether we could get some money from there, and that was rejected. About four or five months ago we had an approach from the head of the prison medical service in Perth saying, 'We know about these Royal Commission recommendations and we would like to talk to you about contracting you to provide some services.'

We expressed a lot of interest in that and it has just gone absolutely quiet. We have never had anything in writing. People came down to Kalgoorlie to talk with us and were very enthusiastic, but now they do not return our phone calls. We have heard nothing of it. The reason is, I suppose, that it is a bit of a political issue to change the health service provider to the prison.²⁷

4.67 The response by the Northern Territory Government to this Recommendation is considered by the Committee in the discussion on Recommendation 198.

Recommendation 193

4.68 This Recommendation concerns negotiation between the Commonwealth and appropriate Aboriginal and Torres Strait Islander organisations in devising procedures to enable these organisations to properly account to government for their funding in the least onerous, and in the most convenient and simple forms as possible.

4.69 In the 1992 Response the Commonwealth said:

The Commonwealth supports the adoption of simple and consistent procedures by all agencies. The Commonwealth will review accounting procedures and requirements across all departments and agencies with the aim of achieving simplicity and uniformity.²⁸

4.70 Despite the Department of Finance being the lead agency the response in the Annual Report stated:

²⁷ Evidence, p218

²⁸ *Aboriginal Deaths in Custody, Response by Governments to the Royal Commission, Vol 2, AGPS, Canberra, 1992, p738*

*The Department of Finance believes that it is both desirable and possible for simple accounting procedures to apply to Aboriginal and Torres Strait Islander community organisations that receive funding through ATSIC and other Commonwealth Departments and agencies, while at the same time meeting the accountability requirements for Commonwealth funds. If ATSIC chooses to review their procedures the outcome of such review could be passed on to other Commonwealth departments and agencies in order to foster a consistent approach.*²⁹

4.71 There was no mention of the involvement of Aboriginal and Torres Strait Islander organisations in the implementation of this recommendation. The process again was left up to the Aboriginal and Torres Strait Islander Commission to set a precedent for the development of appropriate procedures which could be followed by other departments. It was clearly the responsibility of the Department of Finance to institute actions to simplify accounting procedures. It should not have attempted to fob off its responsibilities to ATSIC.

4.72 This Recommendation also stated that state and territory governments adopt the same procedure, once agreed at the Commonwealth level, and with as few modifications as may be essential for implementation, in state and territory programs. The Committee finds it unacceptable that the Commonwealth has not implemented this recommendation, particularly where the further implementation relies on Commonwealth action. In most instances, the states and territories have stated their willingness to co-operate in the implementation of this Recommendation. It is up to the Commonwealth to ensure this happens as a matter of urgency.

4.73 The Committee recommends that:

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

Recommendation 194

4.74 This Recommendation deals with the development of performance indicators relevant to Aboriginal and Torres Strait Islander community organisations. It also recommended that funds be provided to allow development, application and

²⁹ Commonwealth Implementation Annual Report, Vol 2, p185

monitoring of these indicators. The Recommendation again called for adequate negotiation with indigenous people in its implementation.

4.75 The Commonwealth's response addressed the Recommendation in part, but there was only a response from four departments. For example, there is no detail on negotiations by the Department of Transport; Industry, Science and Technology; or Housing and Regional Development in the development of appropriate performance indicators for the programs they deliver to Aboriginal and Torres Strait Islander communities. Further it would seem appropriate for the Department of Finance to take a leading role in providing advice in the development of appropriate performance indicators. There is no mention of this in the Commonwealth response.

4.76 State and territory governments failed to respond to this Recommendation in any detail. For example, the South Australian response stated that the performance indicators developed should be acceptable to Commonwealth and State agencies to minimise the reporting burden on Aboriginal communities and organisations. There was no mention of the negotiations that have taken place, or whether Aboriginal and Torres Strait Islander communities or organisations have been funded to enable the appropriate level of infrastructure and training required to develop, apply and monitor performance indicators.

4.77 The Northern Territory response was equally inadequate, commenting only that:

*undoubtedly there will be costs associated with the development and implementation of performance indicators.*³⁰

4.78 The Western Australian Government's response only vaguely resembled the Recommendation and failed to mention negotiations that have occurred with Aboriginal and Torres Strait Islander communities and organisations.

4.79 The New South Wales and Queensland responses went some way to addressing the Recommendation, however there was still a lack of detail on the exact nature of negotiations with Aboriginal and Torres Strait Islander communities and organisations and the outcomes of those negotiations.

4.80 To the Australian Capital Territory's credit their response indicated that it would continue to consult with Aboriginal and Torres Strait Islander communities to ensure that performance indicators are in place for programs relevant to Aboriginal and Torres Strait Islander peoples. The response indicated that Aboriginal and Torres Strait Islander communities have been, and will continue to be, consulted in the implementation of this Recommendation.

³⁰ Northern Territory Government Responses 1992-93 Annual Report, p106

Recommendation 195

4.81 This Recommendation continued with the issue of triennial funding for Aboriginal and Torres Strait Islander communities and organisations, rather than on a quarterly or annual basis and is similar to Recommendation 190. The Committee reaffirms here the comments it made in relation to Recommendation 190.

Recommendation 196

4.82 The Commonwealth's response to Recommendation 196 is an extremely frustrating example of those responses that are irrelevant to the intent of the recommendation. The Recommendation specifically called for the prompt advice from government departments and agencies to Aboriginal and Torres Strait Islander people and organisations on decisions made on funding applications.

4.83 Despite the specific nature of the Recommendation the six Commonwealth departments and agencies who responded largely ignored the need for applications for funding to be processed promptly and efficiently, to allow for adequate planning and decision making by Aboriginal and Torres Strait Islander communities. The Aboriginal and Torres Strait Islander Social Justice Commissioner made the following remarks in his working paper:

All of them give accounts of commendable steps to ensure that their programs are made known and the conditions of grants set out in plain English. None of them say anything about measures to ensure that decisions on funding applications are given promptly in accessible language, and with explanations about the matters relevant to the assessment of application which would enable organisations to make more appropriate decisions.³¹

4.84 The response by the Department of Employment, Education and Training (DEET) was largely irrelevant, outlining that Aboriginal and Torres Strait Islander communities may be involved in the delivery of labour market programs and services, and information about improving the tendering process. There was no mention of DEET improving its services to Aboriginal and Torres Strait Islander people and communities by providing better advice on decisions made on funding applications.

4.85 The responses by the state and territory governments all indicated that they either supported or have implemented this Recommendation. The Committee did not receive sufficient evidence to comment meaningfully on whether the states and territories have implemented this Recommendation.

³¹ Evidence, pS2264

Recommendation 197

4.86 For far too long, Aboriginal and Torres Strait Islander organisations and communities have been funded without appropriate follow up or ongoing support in the provision of management or accounting procedures being built into the funding formula. The Committee has made several references to this issue in previous reports and it was also the subject of considerable attention during this inquiry. The Committee heard much evidence of situations where organisations are 'funded to fail' due to insufficient after-care or support provided by funding bodies, particularly in relation to the provision training in management and accounting practices.

4.87 The Royal Commission made reference to the constant and critical monitoring of Aboriginal and Torres Strait Islander organisations from government, officials and the media, among others, and the feelings of many towards this seemingly endless need to account for their actions. The *National Report* noted the need to minimise the incidence of management mistakes due either to inexperience or misjudgment. The *National Report* also indicated that Aboriginal and Torres Strait Islander organisations would willingly work with both Commissioners and Regional Councillors of ATSIC to establish a system for streamlining accounting and management procedures which would ensure that the integrity of the organisation was not compromised.³²

4.88 Recommendation 197 urged ATSIC Councillors and Commissioners to consult with Aboriginal organisations and communities to develop a program of training for staff of Aboriginal organisations and communities in appropriate management and accounting procedures.

4.89 In the Committee's view, the response by the Commonwealth was unsatisfactory because of its limited relationship to the Recommendation. The response outlined the transfer of the community sector projects of the Training for Aboriginals Program (TAP), from the Department of Employment, Education and Training to ATSIC. ATSIC then combined the major TAP elements into a single Community Training Program. This Community Training Program, administered at the regional level during 1992-93 provided grants to Aboriginal and Torres Strait Islander organisations to:

support the community development needs and aspirations and the enterprise plans of Aboriginal and Torres Strait Islander communities and their organisations through the provision of relevant training; and

enable communities to express their training needs through community training plans and to be the judge of, and place priorities on, those

³² RCIADIC, *National Report*, Vol 4, pp26-30

*training needs, thereby contributing to the goals of self-management and self-determination.*³³

4.90 The Commonwealth response made no mention of the steps that ATSIC had taken, through its Commissioners and Regional Councillors, for the development of a program of training staff of Aboriginal and Torres Strait Islander organisations and communities in appropriate management and accounting procedures to ensure the efficiency and integrity of the organisations in a culturally appropriate way.³⁴

4.91 The Committee recommends that:

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

Recommendation 198

4.92 Recommendation 198 stressed the need for governments to ensure that Aboriginal people were not discriminated against in the delivery of essential services and, in particular, are not disadvantaged by their low levels of income which reduce their ability to contribute to the provision of essential services. The Commonwealth outlined the steps that have been taken through the Office of Multicultural Affairs to address Access and Equity issues for Aboriginal and Torres Strait Islander people across all government agencies.

4.93 A review of the Access and Equity Strategy in 1992 found that it had failed to make a significant impact on the removal of linguistic, cultural, racial and religious barriers to fair and equitable government service delivery to Aboriginal and Torres Strait Islander people.³⁵ The Annual Report stated that the post-evaluation strategy had been strengthened and had a sharper focus on improving outcomes for Aboriginal and Torres Strait Islander people.

³³ *Commonwealth Implementation Annual Report*, pp195-6

³⁴ RCIADIC, *National Report*, Vol 4, p30

³⁵ *Access and Equity Evaluation Report 1992*, Department of the Prime Minister and Cabinet, Office of Multicultural Affairs, AGPS, Canberra, October 1992

4.94 In the Committee's previous report, *Access and Equity: Rhetoric or Reality?* the Committee was also highly critical of the outcomes of the Access and Equity Strategy for Aboriginal and Torres Strait Islander people and recommended that:

*The co-ordination of the Access and Equity Strategy for Aboriginal and Torres Strait Islander people be separated from the Office of Multicultural Affairs and be established as a separate unit, with appropriate resources, under the responsibility of the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunity Commission.*³⁶

4.95 At the time of writing, the Government has still not responded to this report. As the *Rhetoric or Reality?* report was tabled in the House of Representatives over 12 months ago, the Committee sees this as a further illustration of the Commonwealth's lack of commitment to the Access and Equity Strategy in relation to Aboriginal and Torres Strait Islander people.

4.96 The Northern Territory response to Recommendation 198 was similar to its response to Recommendation 192, outlining the Northern Territory Power and Water Authority's (PAWA) introduction of billing to consumers in Aboriginal communities from 1 January 1992 to ensure equity across the Northern Territory and to encourage more efficient use of resources. The response also outlined the mechanisms for involving communities in the billing process and in the appointment of agents on communities to deliver and administer services on behalf of PAWA. There was no discussion in the response on the negotiations that had taken place with Aboriginal communities in the Northern Territory or the potential negative affects the introduction of such measures would have had on Aboriginal communities.

4.97 The response went on to state that:

*Consumers in these communities have access to the range of concessions available to all PAWA consumers. Introduction of electricity charging on communities has been successful and significant reductions in generating costs have been achieved.*³⁷

4.98 There was no information on the effects of these actions on the indigenous communities, particularly where income levels are very low, which was the particular concern of the recommendation. The main thrust of the recommendation was for the provision of basic services to those lacking them. The Northern Territory Government's response was taken up with addressing the 'advances' in

³⁶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Access and Equity: Rhetoric or Reality? Report of the Inquiry into the Implementation of the Access and Equity Strategy*, AGPS, Canberra 1993, p56

³⁷ *Implementation of Northern Territory Government responses to the Royal Commission into Aboriginal Deaths in Custody - 1992-93 Annual Report*, p105

electricity and water charging, without any reference to the provision of other essential services such as housing, health, education and employment. The Northern Territory Government has failed to adequately address the Recommendation.

4.99 The South Australian Government's response is equally inadequate. It stated:

*The Works and Infrastructure Branch of the Department of State Aboriginal Affairs performs this role in identified Aboriginal communities.*³⁸

4.100 To what extent other government departments and agencies are involved in the provision of essential services is not clear from the response. The practical outcomes from the implementation of this Recommendation are not known from this response. To find information on the extent of the implementation of this Recommendation the reader must look elsewhere in the report.

Recommendation 199

4.101 The Commonwealth Annual Implementation Report totally ignores Recommendation 199, which stated:

*That governments recognise that a variety of organisational structures have developed or been adapted by Aboriginal people to deliver services, including local government type services to Aboriginal communities. These structures include community councils recognised as local government authorities, outstation resource centres, Aboriginal land councils and co-operatives and other bodies incorporated under Commonwealth, State and Territory legislation as councils or associations. Organisational structures which have received acceptance within an Aboriginal community are particularly important, not only because they deliver services in a manner which makes them accountable to the Aboriginal communities concerned but also because acceptance of the role of such organisations recognises the principle of Aboriginal self-determination. The Commission recommends that government should recognise such diversity in organisational structures and that funding for the delivery of services should not be dependent upon the structure of organisation which is adopted by Aboriginal communities for the delivery of such services.*³⁹

4.102 The Commonwealth supported this Recommendation in its 1992 response. If this response is still current it should be repeated in Annual Reports.

³⁸ RCIADIC - 1993 Implementation Report, South Australian Government, p147

³⁹ RCIADIC, National Report, Vol 4, p38

4.103 Throughout the Annual Report much emphasis was placed on the importance of the Regional Council structure established by the *Aboriginal and Torres Strait Islander Commission Act 1989*. There was a distinct lack of information on the extent to which Aboriginal and Torres Strait Islander organisations had been utilised by the Commonwealth in the monitoring and implementation of the recommendations made by the Royal Commission.

CHAPTER 5

DEATHS IN CUSTODY SINCE THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

5.1 The Royal Commission recommended that the Australian Institute of Criminology (AIC), nationally monitor Aboriginal and non-Aboriginal deaths in prison, police custody and juvenile detention centres through statistics and other information on an ongoing basis.¹ An initial allocation of \$284,500 from Royal Commission funding was provided to the AIC in 1991-92 to establish and resource a National Deaths in Custody Monitoring and Research Unit. An appropriation of \$1,082,500 for the next five years, 1992-1997, at \$216,500 per annum, has been committed to the program.

5.2 The National Deaths in Custody Monitoring and Research Unit (NDICM&RU) is required to report annually to the Commonwealth Parliament². In meeting this requirement, the Unit provides the lead chapter for the *Annual Report of the Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*.

5.3 As well, the Unit publishes research papers as part of the AIC's *Deaths in Custody, Australia* series. The information contained in the papers, provides governments, managers of custodial facilities and the public with information which will enable them to observe the trends in custodial deaths, both nationally and at the state and territory level.

Deaths in Custody

5.4 Data provided by the NDICM&RU indicates that between the 'cut off' date, for those deaths in custody investigated by the Royal Commission, of 31 May 1989 and 30 June 1994, an approximate five year period, 362 deaths have been reported as occurring in police custody, prison custody and juvenile detention centres in Australia.

¹ Recommendation 41

² Recommendation 41(b)

5.5 The 362 deaths comprise 59 Aboriginal and Torres Strait Islander people and 303 non-indigenous people. Of the Aboriginal and Torres Strait Islander deaths in custody, 8 were female and 51 were male.³

Trends in custodial deaths - 1980 to 1993

5.6 Table 5.1 below sets out details on the number of Aboriginal and Torres Strait Islander deaths in custody reported for each calendar year from 1980 to 1993 and the custodial environment in which the people died. The data are provided by the NDICM&RU and are presented in the Deaths in Custody, Australia, monograph series, *Australian Deaths in Custody - 1993*.⁴

5.7 The figures for the period 1980 to the end of 1989, are based on data received from the Royal Commission into Aboriginal Deaths in Custody's Criminology Unit. The definition of a death in custody for that period was somewhat restrictive compared to that recommended by the Royal Commission and adopted by all jurisdictions since 1 January 1990. The Royal Commission's broader definition is discussed at paragraph 5.54 in this chapter. The difference needs to be taken into account when comparing data on deaths in custody during the period 1980 to 1989 and post 1 January 1990.

5.8 Table 5.1 shows that the number of Aboriginal and Torres Strait Islander deaths reported each year from 1980 to 1986 was relatively low. A substantial increase in Aboriginal and Torres Strait Islander deaths occurred in 1987 when 15 Aboriginal adults died in police custody and 5 Aboriginal adults died in prison custody.⁵ This was the highest recorded for the 1980 to 1993 period. No Aboriginal juveniles died in detention during that year. This increase in adult Aboriginal deaths led to the appointment of the Royal Commission into Aboriginal Deaths in Custody.

5.9 It should be noted that during the same period, there was an accompanying increase in non-Aboriginal deaths. Seventy-five non-Aboriginal people died in a custodial setting making a total of 95 deaths in custody in 1987.

5.10 Following the abnormally high number of deaths in 1987, over the next four years, the number of Aboriginal custodial deaths remained high, declining in 1992. The total deaths in custody for non-Aboriginal and Aboriginal has remained high throughout 1988 to 1992, with an average of 64 deaths each year.

³ Australian Institute of Criminology, National Deaths in Custody Monitoring and Research Unit, database

⁴ Shona Morrison, David McDonald and Vicki Dalton, Deaths in Custody Australia, *Australian Deaths in Custody - 1993*, No. 7, Australian Institute of Criminology, June 1994

⁵ Australian Institute of Criminology, Deaths in Custody - Australia - No. 7, *Australian Deaths in Custody - 1993*, June 1994, Table 9, p14

Table 5.1 Deaths in Custody by Year of Death, Custodial Authority and Aboriginality, 1980 to 1993

YEAR	POLICE			PRISON			JUVENILE DETENTION			TOTAL		TOTAL
	Ab'l	Non- Ab'l	Total	Ab'l	Non- Ab'l	Total	Ab'l	Non- Ab'l	Total	Ab'l	Non- Ab'l	
1980	5	7	12	5	25	30	1	-	1	11	32	43
1981	3	12	15	1	27	28	1	-	1	5	39	44
1982	4	15	19	4	21	25	-	-	-	8	36	44
1983	6	10	16	5	26	31	-	1	1	11	37	48
1984	3	12	15	4	27	31	-	-	-	7	39	46
1985	6	16	22	4	22	26	-	-	-	10	38	48
1986	8	13	21	1	16	17	-	1	1	9	30	39
1987	15	26	41	5	48	53	-	1	1	20	75	95
1988	7	14	21	6	36	42	1	-	1	14	50	64
1989	10	11	21	3	37	40	-	1	1	13	49	62
1990	6	24	30	6	25	31	1	1	2	13	50	63
1991	4	22	26	8	31	39	-	-	-	12	53	65
1992	6	22	28	2	34	36	-	-	-	8	56	64
1993*	2	23	25	6	42	48	-	1	1	8*	66	74
Total	85	227	312	60	417	477	4	6	10	149	650	799

* Note: The number of deaths listed for 1993 is underreported. A fuller explanation is provided under *Unreported Deaths* at paras 5.11-14
 Source: AIC, Deaths in Custody - Australia, *Australian Deaths in Custody - 1993*, No. 7, June 1994, Table 9, p14

Unreported Deaths

5.11 The NDICM&RU noted that there were an additional six deaths in custody during 1993 which the Unit had knowledge of, but had not been notified by state and territory authorities. The Unit believed that the deaths fell within the definition of a 'death in custody' as described in Recommendations 6 and 41. However, as the deaths had not been formally notified to the Unit prior to 31 December 1993, the deaths were not included in the report.

5.12 The Unit indicated that of the six deaths, only three have subsequently been confirmed and that three deaths were still to be confirmed and reported for inclusion in the total deaths in custody in 1993. One death was of an Aboriginal person and two deaths were of non-Aboriginal people. The three deaths will be included in the forthcoming issue No. 8 of the *Deaths in Custody* series, where the 1993 deaths figure will be adjusted. This will show that 9 Aboriginal and Torres Strait Islander people died in custody during 1993. Three additional non-Aboriginal deaths were still to be confirmed. This will mean that the total number of non-Aboriginal deaths will rise to 71 for 1993 and the total of Aboriginal and non-Aboriginal deaths in custody will be 80.

5.13 Most of the Royal Commission recommendations were directed to minimising the number of Aboriginal people being taken into custody and caring for them while in a custodial environment. If the recommendations were being effectively implemented, beneficial outcomes such as the reduction in the number of Aboriginal people in all forms of custody, should be readily discernible.

5.14 The results are mixed. Indigenous incarceration rates in Australian prisons continue to be disproportionately high compared to non-Aboriginal people as is shown in Tables 5.2-5.4. These AIC statistics show that generally fewer Aboriginal deaths are occurring in a custodial environment. Simultaneously, non-Aboriginal deaths in police and prison environments are increasing at an alarming rate.⁶

Breaches of the Royal Commission Recommendations

5.15 A report to the National Committee to Defend Black Rights⁷ supported the widespread belief that many of the deaths that have occurred since the release of the Royal Commission *Interim Report* and *National Report* have involved breaches of the Royal Commission recommendations.

⁶ See *Australian Deaths in Custody - 1993*, No. 7, Table 9, p14

⁷ C Cunneen and J Behrendt, *Aboriginal and Torres Strait Islander Custodial Deaths between May 1989 and January 1984: A report to the National Committee to Defend Black Rights*, evidence, pp3394-412. A summary version of this paper appeared in the *Aboriginal Law Bulletin*, Vol 3, No.68, June 1994, pp4-6

5.16 The authors undertook an examination of the nature of the 55 Aboriginal and Torres Strait Islander custodial deaths between 31 May 1989 and January 1994, using coronial reports and submissions from Aboriginal Legal Services as the primary source material. Where neither was available, the authors relied on newspaper reports. The report to the National Committee to Defend Black Rights provided an overview of breaches of the Royal Commission recommendations.

5.17 Table 5 in the Cunneen and Behrendt report provided a summary of the recommendations found to have been breached for each individual death. Prior to the Royal Commission's *National Report*, an *Interim Report*⁸ was released detailing 56 recommendations for immediate implementation to prevent further deaths in custody. The Cunneen and Behrendt report provided a breakdown by jurisdictions and indicated whether the recommendations which have been breached were from the *Interim Report* or the *National Report*. The report concluded that many deaths may have been avoided if the Royal Commission recommendations had been acted upon promptly. This table is reproduced at Appendix 7.

5.18 There were a total of 26 breaches of recommendations from the *Interim Report*. Of the interim recommendations, the most frequently breached was number 28. This stated that police and prison officers involved in apprehensions and/or detention of people in custody should receive training to enable them to identify people in distress or at risk of a death through illness, injury or suicide.

5.19 Cunneen and Behrendt listed a total of 169 breaches of recommendations from the *National Report*. Recommendation 127 was the most frequently breached. Recommendation 127 required that police services 'move immediately' to examine the delivery of medical services to people in police custody.

5.20 Only one custodial death was identified as not involving any breach of the recommendations.

5.21 The Committee also noted that Tharpuntoo Legal Service Aboriginal Corporation in its submission to the Inquiry, highlighted a number of breaches in relation to the death of Mr Brian Docherty who died at the Townsville Correctional Centre in 1992.

5.22 It is a matter of grave concern to the Committee that while governments indicated support for the recommendations and claimed to have implemented them, deaths continue to occur due to breaches in their implementation. Some custodial agencies were disregarding the Royal Commission recommendations. Without reforms being implemented immediately, further deaths are inevitable

⁸ RCIADIC, *Interim Report*, 1988

Indigenous people in Adult Prisons - the current situation

5.23 Table 5.2 shows the numbers of indigenous and non-indigenous adult prisoners held in prison at 30 June 1992, by sex and jurisdiction.

5.24 According to the 1992 *National Prison Census*, which is the most recent available source providing figures on the number of prisoners held in Australian prisons⁹, of a total prison population of 15,559 there were 2223 people of known Aboriginal or Torres Strait Islander origin. Of these, 2086 were male and 137 female. There is no distinction between Aboriginals and Torres Strait Islanders in the figures.

Table 5.2 Numbers of Prisoners by Aboriginality, Sex and Jurisdiction, 30 June 1992

Aboriginality	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Aust
Males									
Ab'l & TSI	599	96	350	532	176	13	317	3	2086
Other	6391	2067	1591	1267	906	251	122	14	12609
Unknown	97	0	0	0	7	0	0	0	104
<i>Total</i>	<i>7087</i>	<i>2163</i>	<i>1941</i>	<i>1799</i>	<i>1089</i>	<i>264</i>	<i>439</i>	<i>17</i>	<i>14799</i>
Females									
Ab'l & TSI	49	10	20	42	11	0	5	0	137
Other	349	104	56	52	52	5	3	2	623
<i>Total</i>	<i>398</i>	<i>114</i>	<i>76</i>	<i>94</i>	<i>63</i>	<i>5</i>	<i>8</i>	<i>2</i>	<i>760</i>
Total Prisoners									
Ab'l & TSI	648	106	370	574	187	13	322	3	2223
Other	6740	2171	1647	1319	958	256	125	16	13232
Unknown	97	0	0	0	7	0	0	0	104
<i>Total</i>	<i>7485</i>	<i>2277</i>	<i>2017</i>	<i>1893</i>	<i>1152</i>	<i>269</i>	<i>447</i>	<i>19</i>	<i>15559</i>

Source: Australian Institute of Criminology

⁹ The 1993 National Prison Census has not been completed as yet. This has been due to the failure of the South Australian Government to provide the Census data for 30 June 1993. At present Census data are being collected by the AIC from all states and territories to compile the 1994 *National Prison Census* data.

5.25 Table 5.3 provided information on the trends in Aboriginal and Torres Strait Islander imprisonment since 1988. The data show the numbers of Aboriginal and Torres Strait Islander prisoners in custody on 30 June each year between 1988 and 1992. To provide figures for 1993 and 1994 to complete the table, the AIC have used the monthly *Australian Prison Trends* data.

Table 5.3 Aboriginal and Torres Strait Islander Prisoners in Custody, by Jurisdiction, 1988-1994¹⁰

YEAR	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUST
1988	385	65	431	528	114	10	276	0	1809
1989	415	86	412	558	102	9	243	0	1825
1990	579	88	367	585	124	12	286	0	2041
1991	664	91	346	577	150	10	328	0	2166
1992	648	106	370	574	187	13	322	3	2223
1993*	704	111	408	614	181	3	311	0	2332
1994**	813	123	490	687	222	24	350	0	2709

Sources: 1988-1992, National Prison Censuses - 30 June each year

*1993 *Australian Prison Trends*, June 1993. NSW figure adjusted to include estimated Aboriginal and Torres Strait Islander periodic detainee numbers.

***Australian Prison Trends*, March 1994. Figures represent March only (1 month). NSW figure adjusted to include estimated Aboriginal and Torres Strait Islander periodic detainee numbers.

5.26 Table 5.3 reveals that between 1988 and 1994 there have been considerable increases in the numbers of Aboriginal and Torres Strait Islanders in prison. Between 1988 and 1994, the total numbers of Aboriginal and Torres Strait Islander people held in prisons throughout Australia increased by 50 per cent.¹¹

5.27 Significantly, the table reveals that Aboriginals and Torres Strait Islanders continue to be imprisoned in increasing numbers. There have been no significant overall declines recorded in any of the jurisdictions, with the exception of the ACT, in the period since the Royal Commission's *Interim Report* in 1988 or since the *National Report* in 1991. More importantly, an extraordinarily high level of

¹⁰ Source: Australian Institute of Criminology - unpublished paper, forthcoming in *Commonwealth Implementation Annual Report - 1993-94*

¹¹ Source: AIC, unpublished paper, forthcoming in *Commonwealth Implementation Annual Report - 1993-94*

incarceration occurred in 1993 and 1994. The figures presented for these last two years are particularly disturbing and the Committee expresses its grave concerns for the future if these increases continue unabated. Reforms are crucial and implementation of the Royal Commission recommendations is even more critical given these current trends.

5.28 Some of this increase was due to the changing demographic profile of the Aboriginal and Torres Strait Islander population. The Committee deals further with these demographic effects later in the chapter.

5.29 The Committee notes the long delay by the South Australian Government to provide Census data for June 30 1993 *National Prison Census*, which have yet to be received by the AIC at the time of writing this Report. Survey results for 30 June 1994 are currently being received by the AIC from other correctional agencies around Australia. The Committee believes that these delays in submitting data for 1993 are quite unacceptable.

5.30 The Committee recommends that:

the Commonwealth at the next Corrective Services Ministers' Conference

· seek resolutions that the South Australian Government submit to the Australian Institute of Criminology, prison census data for 1993 and 1994 without any further delays;
(Recommendation 16)

· that all state and territory governments promptly submit prison census data to the Australian Institute of Criminology.
(Recommendation 17)

Over-representation of Aboriginal and Torres Strait Islander People in Prisons

5.31 One of the single most important findings of the Royal Commission was the gross over-representation of Aboriginal and Torres Strait Islander people in the prison populations. Table 5.4 shows the over-representation ratios for Aboriginal and Torres Strait Islander people in each jurisdiction since the Royal Commission's research began in the late 1980s.

5.32 The over-representation is the ratio of the rate of imprisonment for the Aboriginal and Torres Strait Islander adult population to that for the non-indigenous adult population. For example, if the over-representation is 11.4 then

an adult Aboriginal or Torres Strait Islander person is 11.4 times more likely to be in prison than a non-indigenous person in the same jurisdiction.

Table 5.4 Aboriginal and Torres Strait Islander Over-representation Ratios, by Jurisdiction, 1988-1994¹²

Year	NSW	Vic	Qld	WA	SA	Tas [#]	NT	ACT [#]	Aust
1988	11.4	12.8	12.4	23.8	19.5	3.1	11.4	0.0	16.0
1989	10.1	15.0	12.4	28.3	16.4	3.3	9.5	0.0	14.9
1990	12.1	14.3	11.3	26.5	18.8	4.4	9.2	0.0	15.2
1991	12.3	14.2	11.8	25.8	20.3	3.0	9.8	0.0	15.2
1992	10.6	16.3	14.2	22.3	22.8	3.5	10.3	37.8	14.2
1993 [*]	10.9	16.5	13.7	23.6	22.4	0.8	11.7	0.0	14.6
1994 ^{**}	17.1	18.9	16.3	25.9	25.7	7.9	13.0	0.0	19.4

^{*} Sources: 1988-1992, National Prison Censuses; *Australian Prison Trends*, June 1993

^{**} March 1994, NSW figure adjusted to include periodic detainee numbers. Aboriginal and Torres Strait Islander Population base figures interpolated between 1986 and 1991 Census figures and simple extrapolation used to project 1992, 1993 and 1994 estimates. Total population base figures from ABS.

[#] Not significant - based on very small numbers of prisoners.

5.33 Aboriginal and Torres Strait Islander people are over-represented in all states and territories, with the exception of the Australian Capital Territory. The figures provided for 1993 and 1994 are taken from the monthly *Australian Prison Trends* data. The March 1994 figures show Aboriginal and Torres Strait Islander people being increasingly over-represented in prisons throughout Australia compared with the previous figures in June 1993. This is a matter of concern in itself and demonstrates a failure to fully implement the Royal Commission's recommendations. The implications of this worsening pattern for the future of Aboriginal and Torres Strait Islander people, concerns the Committee deeply.

¹² Source: AIC, *Commonwealth Implementation Annual Report - 1993-94*, (forthcoming)

5.34 The Committee recommends that:

the Prime Minister through the Council of Australian Governments:

gains a commitment that each state and the Northern Territory will immediately investigate the failure to reduce the over-representation of Aboriginal and Torres Strait Islander people in prison; (Recommendation 18) and

ensure that the results of these investigations are made public together with a program of action to reduce the over-representation of Aboriginal and Torres Strait Islander people in prison. This should include target rates and timelines. The action to be implemented by each jurisdiction is to be published in their Annual Implementation Reports. (Recommendation 19)

Types of Offences

5.35 The type of offences committed by Aboriginal and Torres Strait Islander people is an important factor to consider when analysing Aboriginal and Torres Strait Islander incarceration rates.

5.36 Table 5.5 provides information on the numbers, percentages and the types of offences committed by Aboriginal and Torres Strait Islander prisoners. The *National Prison Census* does not provide details on all offences committed, or alleged to have been committed by prisoners, but it does provide data on the most serious offence, or charge, for which the person is in prison at the time the Census was held. Multiple offences committed by a prisoner are not recorded in the Census.

5.37 Aboriginal and Torres Strait Islander people in prison on 30 June 1992 totalled 2223. The main types of offences committed by indigenous people include assault, break and enter, sex offences, homicide and other theft. Many Aboriginal and Torres Strait Islander prisoners are on charges for justice procedures offences, which include breaches of court orders such as probation, community service orders or maintenance.

Table 5.5 Number and Percentage of Prisoners by Most Serious Offence/Charge and Aboriginality - Australia, 30 June 1992

OFFENCE/CHARGE	Abi & TSI		OTHER		UNKNOWN		TOTAL No.
	No.	%	No.	%	No.	%	
Homicide	195	12.9	1315	86.7	6	0.4	1516
Assault	400	26.8	1080	72.2	15	1.0	1495
Sex Offences	307	18.4	1351	81.0	10	0.6	1668
Other Against Person	34	16.6	170	82.9	1	0.5	205
Robbery	148	8.1	1669	91.5	8	0.4	1825
Extortion	0	0.0	37	100.0	0	0.0	37
Break and Enter	397	16.9	1945	82.8	7	0.3	2349
Fraud & Misappropriation	18	3.3	522	95.1	9	1.6	549
Receiving	25	7.9	293	91.8	1	0.3	319
Other Theft	194	14.6	1132	85.2	2	0.2	1328
Property Damage	30	14.8	173	85.2	0	0.0	203
Environmental Offence	1	20.0	4	80.0	0	0.0	5
Government Security	0	0.0	5	100.0	0	0.0	5
Justice Procedures	184	19.4	757	79.8	8	0.8	949
Possession of Weapon	7	13.5	45	86.5	0	0.0	52
Other Against Good Order	23	13.9	143	85.6	1	0.6	167
Possession, Use Drugs	13	5.9	203	92.7	3	1.4	219
Deal/Traffic/Drugs	24	2.1	1088	96.6	14	1.2	1126
Manufacture/Grow Drugs	5	2.9	162	93.6	6	3.5	173
Driving Offences	115	22.2	398	76.7	6	1.2	519
Licence, Registration	59	27.3	157	72.7	0	0.0	216
Other Traffic Offences	16	5.9	248	91.9	6	2.2	270
Other Offences/Unknown	28	7.7	335	92.0	1	0.3	364
TOTAL	2223	14.3	13232	85.0	104	0.7	15559

Source: National Prison Census, 1992

5.38 Table 5.6 provides information on the over-representation of Aboriginal and Torres Strait Islander people involved in specific types of offences or charges between 1988 and 1992. The most significant offences in which Aboriginal and Torres Strait Islander people are over-represented throughout the period include assault, sex offences, break and enter and other theft. A marked decline over time is shown in offences covered under Justice Procedures and 'Other against good order', which includes street offences usually related to drunkenness.

Table 5.6 National Over-representation of Indigenous Prisoners by Most Serious Offence/Charge, 30 June 1988-92

OFFENCE/CHARGE	1988	1989	1990	1991	1992
Homicide	14.5	13.3	14.9	16.2	13.0
Assault	45.5	40.4	38.7	43.4	32.5
Sex Offences	25.4	23.4	25.5	24.8	19.9
Other Against Person	7.0	19.3	17.7	19.0	17.6
Robbery	8.4	7.9	9.0	8.9	7.8
Break and Enter	18.3	20.6	20.4	23.1	24.7
Fraud & Misappropriation	3.2	3.8	5.1	2.7	3.0
Receiving	5.2	5.9	10.9	9.6	7.3
Other Theft	20.2	17.1	17.7	18.6	15.0
Property Damage	14.8	26.2	27.4	24.1	15.5
Justice Procedures	33.5	18.5	26.3	25.9	21.4
Offensive Behaviour*	32.0	36.0	na	na	na
Possession of Weapon	8.0	21.3	16.0	36.0	15.7
Other Against Good Order	33.5	36.7	25.9	15.3	14.1
Possession, Use Drugs	3.8	2.7	4.7	2.9	5.5
Deal/Traffic Drugs	1.0	1.8	1.7	1.7	1.9
Manufacture/Grow Drugs	2.7	1.5	1.6	2.2	2.8
Driving Offences	27.5	22.7	36.6	28.9	25.0
Licence, Registration	18.4	6.8	25.2	30.8	33.2
Other Traffic Offences	20.0	19.8	8.0	4.0	5.7
Other Offences/Unknown	10.7	2.2	5.2	7.3	7.3
TOTAL	16.8	16.6	17.6	18.2	14.7

Source: *National Prison Censuses*, rates based on people 17 years of age and over

* Not available separately for all years. Offensive behaviour included in Other Against Good Order after 1989

Demographic Trends

5.39 An increase in the numbers of Aboriginal and Torres Strait Islander people incarcerated was predicted by the Royal Commission, if imprisonment rates remained stable. The Royal Commission noted:

The Aboriginal population 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.*¹³

5.40 The Royal Commission quotes from a research paper by Dr Alan Gray and Dr H Tesfaghiorghis of the National Centre for Epidemiology and Population Health:

*Suppose, for example, that young Aboriginal adults continue to be imprisoned at rates similar to those prevailing now – because the Aboriginal population is growing much more quickly than the general population at young adult ages, there is a prospect that Aborigines will constitute even larger proportions of people in custody in the immediate future.*¹⁴

5.41 The AIC has prepared projections, based on 1992 imprisonment figures, on the numbers of Aboriginal and Torres Strait Islanders in prison to the year 2011.¹⁵ These projections are based on the assumption that age-specific rates of adult imprisonment remain at the levels of June 1992 and reflect the changes in the size of the different age groups of the population structure.

5.42 Actual imprisonment figures can be corrected for the effects of these demographic changes. A more accurate measurement can then be made of the impact of policy changes since the Royal Commission. The impact of policy changes is the difference between the projected figures and the actual figures. This differential figure should be a major performance indicator for the implementation of the Royal Commission's recommendations. It is such an important measurement of performance that the Committee believes it should be produced as a line graph so that it is more readily understandable to those who find statistics daunting. This includes many Aboriginal and Torres Strait Islander people who nonetheless wish to be able to gauge the effectiveness of the implementation of the Royal Commission measures.

5.43 If Royal Commission recommendations had been implemented effectively the actual figures should be less than the projected figures. However, actual figures to date have been much higher than the projected figures. This has been due to changes in legislation and sentencing policies which have been quite contrary to the major thrusts of the Royal Commission Report and to other inadequate implementations of the Royal Commission recommendations.

¹³ RCIADIC, *National Report, Vol 3, p63*

¹⁴ RCIADIC, *National Report, Vol 3, p64*

¹⁵ Unpublished projections prepared by Mr John Walker, Senior Criminologist, AIC, 1994

Table 5.7 Projected Numbers* of Aboriginals & Torres Strait Islanders in Adult Prisons - 1993 - 2011 assuming the 1992 of imprisonment

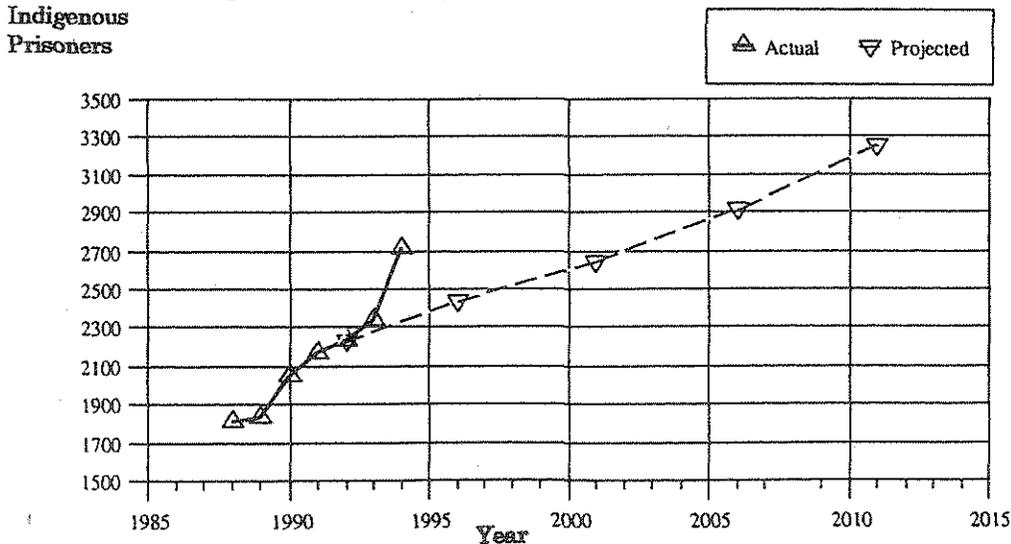
NUMBERS	1992 (Actual)	1996	2001	2006	2011
Males	2086	2281	2486	2743	3068
Females	137	149	159	169	184
TOTAL	2223	2430	2645	2912	3252

Source : Unpublished data, AIC

* The figures for 1992 are the total numbers of Aboriginal and Torres Strait Islander prisoners in custody on 30 June 1992. The projections through to 2011 assume that the age specific rates of imprisonment remain the same as at June 1992. The projections reflect the changes in the size of the different age groups of the population structure.

5.44 The Australian Institute of Criminology has prepared a line graph, Graph 5.1, showing the national level of performance in implementing the recommendations. This trend is of grave concern.

Graph 5.1 Comparisons of Actual Numbers of Indigenous Prisoners and Projected Numbers, Australia 1988-2011**



**Projections assume that age-specific rates of indigenous imprisonment remain at 1992 levels, and are based on demographic projections for each age group of the Aboriginal and Torres Strait Islander population by Gray and Tesfaghiorghis

5.45 The Committee recommends that:

the Australian Institute of Criminology continue to be funded to conduct research into the demographic and sentencing components of changes in Aboriginal and Torres Strait Islander imprisonment rates; (Recommendation 20)

the Institute include in future National Prison Census reports tables showing the rates of imprisonment by age, by sex and by Aboriginality; (Recommendation 21) and

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

Juvenile Deaths in Custody

5.46 Between 31 May 1989 and 30 June 1994, a total of 15 Aboriginal and Torres Strait Islander juvenile deaths¹⁶ were reported as occurring in police custody, prison custody and juvenile detention. In the same period, there were 33 non-Aboriginal juvenile deaths. Of the Aboriginal and Torres Strait Islander juvenile deaths, eight occurred in police cells, prison custody or a juvenile detention centre. Seven deaths occurred in a community setting, in the process of attempting to detain a person or whilst the person was attempting to escape from custody. The inclusion of a death in custody while in a community setting results from the application of the Royal Commission definition of a death in custody, introduced on 1 January 1990.

5.47 Of the 15 Aboriginal and Torres Strait Islander juvenile deaths, 1 was a female while 14 were male.

¹⁶ For the purposes of this analysis, a person under 19 years will be regarded as a juvenile. The data on deaths of juveniles in custody are provided by the AIC National Deaths in Custody Monitoring and Research Unit

5.48 During the Royal Commission investigation period from 1 January 1980 to 31 May 1988, 13 Aboriginal and Torres Strait Islander people under 19 years of age died in custody.¹⁷ This is an average of 1.4 per annum.

5.49 Since the Royal Commission, the 15 Aboriginal juvenile deaths in custody, represent an average of 3.0 per annum, over twice the annual average of the Royal Commission period. However, taking account of the broader definition of a death in custody, the comparable rate would be an average of 1.6, which is a small increase.

Adequacy of Information

5.50 This section concentrates on reviewing Recommendations 40-47 on the responsibilities of the AIC to provide statistical information on Aboriginal deaths in custody and to chart trends in incarceration of Aboriginal and Torres Strait Islander people.

5.51 Recommendation 40, required Coroners' Offices in all States and Territories to establish and maintain a uniform data base to record details of Aboriginal and non-Aboriginal deaths in custody, and liaise with the AIC and similar bodies to compile and maintain records of Aboriginal deaths in custody throughout Australia. This Recommendation has been implemented following successful discussions with State Coroners (or equivalent) in each jurisdiction and each jurisdiction's police, prisons and juvenile justice/juvenile welfare authorities. A high degree of commonality in the way that data on deaths in custody are reported to the AIC and are recorded by it, has now been established.¹⁸ A number of reports, based upon this uniform database, have been published as an outcome of this recommendation.¹⁹

5.52 Through the establishment of its National Deaths in Custody Monitoring and Research Unit, the AIC has implemented Recommendation 41. As indicated, it maintains the national uniform data base on deaths in custody as required under Recommendation 41(a).

5.53 Recommendation 41(b), which requires the AIC to report annually to the Commonwealth Parliament, is being fulfilled through the provision of the lead chapter to the *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* annual report. Other reports have been published by the AIC through its monograph series *Deaths in Custody Australia*.

¹⁷ RCIADIC, *National Report*, Vol 1, p39

¹⁸ Attorney-General's Department, evidence, pS72

¹⁹ Examples of published reports include: *Australian Deaths in Custody 1990-91*; *Deaths in Juvenile Detentions 1980-92*; *Australian Deaths in Custody 1992-93*

5.54 Recommendation 41(c) required that as part of the on-going monitoring of Aboriginal and Torres Strait Islander custodial deaths, the AIC negotiates with all custodial agencies to formulate a standard definition of a death in custody.²⁰ The Royal Commission said the definition should include at least the following:

- . the death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;
- . 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;
- . 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
- . 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.

5.55 This definition is broader than the range of deaths examined by the Royal Commission into Aboriginal Deaths in Custody.²¹ The use of the broader definition needs to be taken into account when comparing deaths in custody data during the Royal Commission period and more recent custodial death statistics. The Committee notes that in some recent police custody death statistics, deaths that fall under the extension to the definition are differentiated from those falling under the old definition.

5.56 The AIC indicated in its submission to the Committee²² that detailed negotiations with custodial authorities and coroners have resulted in the general acceptance and agreement in the application of the definition by all custodial authorities with the exception of the Queensland Police Service. The AIC Acting Director, Dr Grant Wardlaw, in evidence to the Committee on 2 June 1994, remarked that the acceptance of the broad definition is still being debated. He said:

I understand that the Australasian Police Ministers' Council at its meeting last week discussed this issue again. Although I have not had the official minutes from that meeting as yet, I understand that they are going to set up a working party to try to absolutely finalise national agreement on that definition. One jurisdiction, the

²⁰ RCIADIC, *National Report*, Vol 5, p 78

²¹ The Royal Commission extended the range towards the end of the period of inquiry by including the death of David Gundy

²² Evidence, ppS72-3

*Queensland Police, still have some difficulty with some aspects of the definition. We have been trying to work with them on that for the last couple of years and have been making some progress. But I think the opportunity provided by this working party should be able to try and sort out those difficulties.*²³

5.57 It is the Committee's understanding that negotiations are still continuing with the aim of producing a recommendation to be presented at the December 1994 meeting of the Australasian Police Ministers' Council. The recommendations will form the basis of the approach to be used in the future.

5.58 Two elements of the Aboriginal Deaths in Custody definition concern police services. Mr David McDonald, Senior Criminologist with the AIC, working in the National Deaths in Custody Monitoring and Research Unit, outlined the concerns raised by police services in negotiating the parameters of a death in custody:

*The difficulty has arisen with all police services that they are bothered by two elements of the definition. The first one that concerns them is point 3 in the definition that talks about the death, wherever occurring, [of a] person who dies or is fatally injured in the process of officers attempting to detain the person. So the keywords are: 'a death that occurs while people are attempting to detain.' This is a real problem for the police services.*²⁴

5.59 Mr McDonald told the Committee that the AIC relies heavily on the decision of the Full Bench of the Federal Court relating to death of Mr David Gundy who died from a police inflicted gunshot. The NSW police said Mr Gundy was not in custody. An appeal to the Full Bench resolved that 'a person is in custody if that person is not free to come and go'.²⁵

5.60 Clarification on the reporting of the death of Daniel Yock by the Queensland Police Service was sought by the Committee during its hearing with the AIC. Daniel Yock died in Brisbane on 7 November 1993, following apprehension and arrest by Queensland Police. He died in the rear of a police vehicle.

5.61 At the time the Committee took evidence from the AIC, the Queensland Government had accepted Mr Yock's death as a death in Police custody and had

²³ Evidence, p426

²⁴ Evidence, p432

²⁵ Evidence, p433

the death listed in its Annual Implementation Report.²⁶ However, the Queensland Police Service's position on the matter was different.²⁷

5.62 In mid-June this year, the AIC received confirmation of Daniel Yock's death from the Queensland Police Service as a death in custody. The Committee notes that it took almost 8 months for the Queensland Police Force to report Daniel Yock's death to the AIC Deaths in Custody monitoring unit.

5.63 Queensland Police were not isolated in their reluctance to accept the broad definition. Mr McDonald went on to say that:

*Western Australia is concerned about the definition, chary about the approach that I have just outlined, the breadth. The other states do not like it but they do report to us, we think, virtually all deaths that occur.*²⁸

5.64 In their respective Annual Implementation Progress reports, New South Wales, Northern Territory, Australian Capital Territory, South Australian and Western Australian Governments, have agreed on the broader definition of a death in custody.

5.65 The Committee recommends that:

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

5.66 Recommendation 42 required that governments publish information on the numbers and details of the people passing through all state and territory police cells.

²⁶ Queensland Government Progress Report, Vol 1, p8

²⁷ Mr David McDonald, AIC, evidence, pp433-4

²⁸ Evidence, p434

5.67 The Royal Commission found that there were serious deficiencies in the availability of data on people in police custody in all jurisdictions.²⁹ The Royal Commission found that none of Australia's eight police services collected information about the size and composition of the population in police custody.³⁰

5.68 Implementing this recommendation is primarily the responsibility of the states, Northern Territory and the Australian Federal Police.³¹ However, the AIC points out that 'none are doing this'. Mr David McDonald stated:

*The situation at the moment is that there is not a single police service in Australia that can tell you how many people have passed through its cells over a given period, let alone any characteristics of those people, such as the offences or whether they are Aboriginal or not. Furthermore, none can say how many people are in custody at a particular time - how many tonight, how many are likely to be in custody at the end of the month....and it is a very poor second best that we do a national survey to try to produce this information.*³²

Mr McDonald went on to add that:

*Three years after the Royal Commission's recommendations were brought down recommending that all state police authorities establish effective systems of knowing what is happening in their police lockups, not one has done it adequately as yet.*³³

5.69 The AIC reported that New South Wales, Western Australia and Victoria have commenced a system of computerised cell records.³⁴ This view is supported in the Western Australia and New South Wales State *Annual Implementation Progress Reports*. The Australian Capital Territory Government indicated in its Annual Implementation Progress Report an automated charging and data collection system is being introduced into Australian Capital Territory Watch Houses.³⁵ The Northern Territory stated that some of the information sought is currently provided through the Annual Police Report, and additional

²⁹ Evidence, p430

³⁰ RCIADIC, *National Report*, Vol 1, p195

³¹ Evidence, pS73

³² Evidence, pp 429-430

³³ Evidence, p430

³⁴ Evidence, p431

³⁵ *ACT Government Implementation Report 1992-93*, p36, and Australian Federal Police, evidence, p1315

information can be provided as appropriate, however, care needed to be taken to ensure the privacy of individuals is not transgressed.

5.70 South Australia has yet to implement the recommendation, stating that the Police Department has only been asked to prioritise this recommendation. The Queensland Police Service has begun to introduce a computerised custody index which provides details on people passing through police cells.

5.71 The Committee believes that an effective computerised charging and custody recording system is essential to achieve the implementation of Recommendation 42. The Committee is gravely concerned that mechanisms are not yet in place to ensure that police monitor their arrest and custody procedures on a day to day basis. This information is essential for monitoring the effectiveness of the implementation of other Royal Commission recommendations. Delays in the implementation of this recommendation suggests that governments have not given it sufficient priority.

5.72 The Committee recommends that:

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

The Royal Commission recommended, in Recommendations 43 and 44, that the AIC continue to conduct a National Police Custody Survey following the initial survey undertaken by the Royal Commission Criminology Research Unit in 1988.

5.73 The Institute conducted the second survey in August 1992. The results were released in March 1993 and disseminated widely.³⁶ These data provided important indicators of the degree to which Australia's police services had implemented the Royal Commission recommendations.

5.74 A preliminary report on the survey released in March 1993 revealed that 26,654 occasions of custody occurred during the survey period; that 29 per cent were indigenous people; that the occasions of custody had fallen 10 per cent

³⁶ Evidence, ppS73-4

between 1988 and 1992, but the proportion of cases that were Aboriginal and Torres Strait Islander people rose by 0.7 per cent.³⁷

5.75 A disadvantage of the National Police Custody Survey is that it is only conducted for one month (August) every two to four years. It is therefore critical that the installation of the computerised cell records system is undertaken without delay.

5.76 Recommendation 45 sought to achieve, through appropriate Ministerial Councils, a commonality of approach in data collections for both police and prison custody.

5.77 The AIC has been compiling continuous prison custody data for some time and the findings are published in the monthly *Australian Prison Trends* and *Australian Prisoners Reports*.³⁸ Police custody data have been obtained through the Police Custody Survey.

5.78 The National Deaths in Custody Monitoring and Research Unit and the Correctional Statistics³⁹ section of the AIC exchange police custody and prison custody data to facilitate research on Aboriginal and Torres Strait Islander people in the criminal justice system and research into deaths in custody.

Changes to Collection of Correctional Statistics

5.79 Changes are currently in progress to the collection of correctional statistics following a rationalisation of the roles and functions of law enforcement agencies, including the AIC.⁴⁰

5.80 *The Report of the Review of Commonwealth Enforcement Arrangement*, released in February 1994, recommended that the Australian Bureau of Statistics and its specialist units (such as the National Crime Statistics Unit) undertake the collection of correctional statistics. The Review recommended that the AIC concentrate principally on the interpretation of crime statistics.

³⁷ *Commonwealth Implementation Annual Report*, Vol 2, p27

³⁸ *Australian Prisoners* - contains the results of the National Prison Census conducted each year on 30 June. It is compiled on behalf of the Correctional Administrators and published by the AIC.

³⁹ Correctional statistics refers to data collected on people who have had some form of supervision imposed by the courts eg: imprisonment, probations, parole, community service orders or their equivalent such as home detention or work orders.

⁴⁰ Evidence, p426. *Report of the Review of Commonwealth Law Enforcement Arrangements*, February 1994. An independent review of the Australian Institute of Criminology was completed in May 1994.

5.81 With the transfer of responsibility for the collection of statistics to the ABS, the Committee sought clarification of the affect on the operations of the National Deaths in Custody Monitoring Unit. Dr Wardlaw of the AIC, indicated that:

I do not think it is the collection of data on deaths in custody itself that is in jeopardy; it is the interpretation of those data in the light of wider information about the throughput in the correctional system and the characteristics of people in custody generally. We can always continue to provide the information about deaths, but interpreting those trends and trying to understand what they mean is increasingly difficult without access to a wider range of correctional information. I think we have really been doing a very good job with the limited data that are available at the moment but, to increase that capacity so that we are really in a position to explain the nature of trends we need to get better quality and more timely information from the states and territories on their present populations.⁴¹

5.82 Should the ultimate responsibility be placed with the ABS to collect crime statistics there remains uncertainty about access by the AIC to quality raw data on crime statistics and its availability in a timely manner.

5.83 The Committee is concerned that timely, accurate and reliable data from the various corrective agencies remains available to enable the interpretation and publication of data on deaths in custody. The Committee believes that this will only occur in an environment of close co-operation between all parties involved in the collection of statistical data. The AIC has maintained strong working relationships with corrective agencies for many years. Those relations may be jeopardised in the transfer of responsibilities to the ABS, particularly if the ABS imposes burdensome data quality standards on agencies which provide the data.⁴² There has been a history of limited support by state and territory police departments in the past.

⁴¹ Evidence, p428

⁴² J Walker, *A Proposal for a Rational Approach to National; Crime and Justice Statistics in Australia*, footnote 4, evidence p S2134

5.84 The Committee recommends that:

the Treasurer and the Attorney-General ensure that changes to the collection of correctional statistics:

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