

9 Cycle of offending

The recommendations in this chapter relate to: improving the criminal justice system: Aboriginal people and police (214-233); and breaking the cycle: Aboriginal youth (234-245).

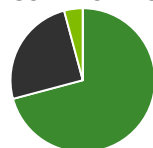
Key themes from recommendations (32 recommendations)

- Initiatives can be undertaken to improve relations between Aboriginal and Torres Strait Islander people and police services. There are several policy options that can assist with reducing the number of Aboriginal and Torres Strait Islander people who are placed in police custody.
- It is important to ensure that any Aboriginal and Torres Strait Islander people who contribute to the administration of community policing schemes are recognised and appropriately compensated.
- Certain jurisdictions such as the Northern Territory and Queensland have undertaken specific policing schemes, which require further attention.
- There are opportunities to increase youth empowerment in Aboriginal and Torres Strait Islander communities and divert young people away from the criminal justice system. In particular, it is important to have deep family and community involvement in developing support programs, and provide appropriate assistance for young people in custody.

Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

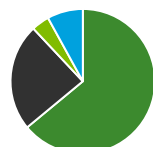
Commonwealth | Key actions: The Commonwealth has developed several programs in collaboration with ATSIC to prevent the detention of youths, and has offered enhanced youth support through welfare programs and legal representation. The AFP has also taken steps to improve relations with communities in the ACT and Jervis Bay Territory.

Remaining gaps: The Commonwealth has yet to report on implementation of customary law, as per recommendations outlined in a report published by the ALRC. In addition, the AFP has not acted to provide bridging courses for the entry of Aboriginal and Torres Strait Islander people into police services. Further consideration of options to respond to the detainment of a young person are also required to meet the recommendations.



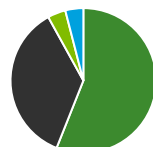
New South Wales | Key actions: The NSW Government has established relevant bodies and roles, such as the Aboriginal Community Liaison Officer State Coordinator, to improve relations between Aboriginal people and the NSW Police. NSW has also introduced legislative measures under the *Young Offenders Act 1997*, along with Police Commissioner's Instructions, to reduce the incarceration of Aboriginal youths.

Remaining gaps: New South Wales has yet to respond to any of the recommendations outlined in the ALRC report on implementing customary law. In addition, further progress is required to improve community policing and community relations with the police.



Victoria | Key actions: The Victorian Government has sought to improve support for community policing and engagement of Aboriginal and Torres Strait Islander communities through the establishment of Regional Aboriginal Justice Advisory Committees. Victoria has also implemented protocols to ensure that the Victorian Aboriginal Legal Service and Aboriginal Community Justice Panels are notified when a person is bought into custody.

Remaining gaps: The Victorian Government has not responded to the ALRC report on implementing customary law. The Victorian Police Force should provide greater priority on the implementation of positive discrimination measures as recommended, such as the introduction of education opportunities for prospective Aboriginal and Torres Strait Islander recruits.



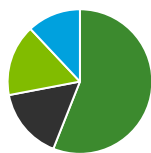
Queensland | Key actions: The Queensland Government requires all of the Queensland Police Service's relevant policies to be developed in consultation with Aboriginal and Torres Strait Islander stakeholders and has employed Police Liaison Officers to support relationship building. Queensland has also implemented clear protocols for the notification of the Aboriginal and Torres Strait Legal Service when people are arrested or detained.

Remaining gaps: The Queensland Government is required to undertake further efforts with respect to the implementation of recommendations from the ALRC report on customary law, the establishment of



policy and development units within the police service to relate to Aboriginal people, and ongoing negotiation with Aboriginal and Torres Strait Islander communities.

South Australia | Key actions: The SAPOL has established a dedicated Aboriginal and Multicultural Unit and employed Aboriginal Liaison Officers to improve stakeholder engagement. Clear procedures for a range of matters are also defined in four Memorandums of Administrative Arrangement with the Department of Human Services, and in sections of the *Young Offenders Act 1993 (SA)* and the *Youth Justice Administration Act 2016 (SA)*.



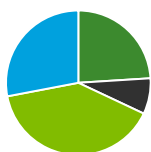
Remaining gaps: The South Australian Government has not addressed the ALRC's report on implementation of customary law or the remuneration of Aboriginal people who are involved in community and police initiated schemes. Youth justice should also be prioritised to ensure that Aboriginal Legal Services are appropriately funded.

Western Australia | Key actions: Western Australia has addressed recommendations relating to representation of Aboriginal and Torres Strait Islanders within the police force by establishing a special governance committee and the Aboriginal and Community Diversity Unit. Community engagement and youth justice support is also provided.



Remaining gaps: Western Australia has not addressed the ALRC's report on implementation of customary law or the remuneration or the recommendations related to the attendance of carers where detainees are questioned by police.

Tasmania | Key actions: The Tasmanian Police have sought to improve relations with local communities through Aboriginal Liaison Officers and regular consultation via the Police Commissioner's Consultative Committee. Protections for juveniles in the justice system have also been enshrined in the *Children, Young Persons and their Families Act 1997*.



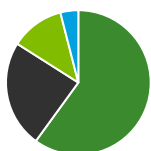
Remaining gaps: Tasmania has yet to establish a dedicated Aboriginal and Torres Strait Islander-specific policy and development unit within its police service or address remuneration of Aboriginal people involved in community and police initiated schemes. A further review of police complaint protocols, as well as of cultural training initiatives in the Tasmanian Police Service, is also needed to ensure that they address the concerns and cultural needs of Aboriginal and Torres Strait Islander communities.

Northern Territory | Key actions: The NT Police Force has implemented initiatives to address relations between the police and local communities such as the Community Engagement Police Officer program. The Northern Territory has also taken jurisdiction-specific action by incorporating the now defunct Aboriginal Community Justice Project's objectives into practice.



Remaining gaps: Further action is required to ensure Aboriginal and Torres Strait Islander people are employed and appropriately trained for the implementation of youth programs and strategies. Focus should also be given to support for ALS in dealing with juveniles, adequate remuneration for Aboriginal and Torres Strait Islander people involved in police and community initiated schemes, and the implementation of recommendations from the ALRC report.

Australian Capital Territory | Key actions: The AFP established continuous liaisons between AFP staff at Jervis Bay Territory and the local Aboriginal Community Council and employed Community Liaison Officers to sustain positive cross-cultural engagement. In addition, the AFP has implemented strong internal governance processes to ensure police proceed with caution when apprehending juvenile offenders, in line with the RCIADIC recommendations.



Remaining gaps: The ACT Government has not addressed the employment and training of Aboriginal and Torres Strait Islander people for roles in the juvenile welfare and justice systems or the provision of sufficient resources to support this. In addition, further consideration is required for the development of a dedicated policy and development unit for the Jervis Bay Territory.

9.1 Improving the criminal justice system: Aboriginal people and police (214-233)

Recommendation 214

The emphasis on the concept of community policing by Police Services in Australia is supported and greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live.

Background information

The RCIADIC Report found that while Aboriginal and Torres Strait Islander people accept the need for police services, it was a common experience to feel powerless in the face of police and to wish for a voice at a local level in how their community is policed.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation


The **Commonwealth** and **ACT** Governments have undertaken the following actions in response to Recommendation 214. The *1992-92 Annual Report* noted that there had been continuous liaison between the AFP staff at Jervis Bay Territory and the local Aboriginal Community Council in relation to the continuation of implementation of this recommendation.

The ACT Policing Aboriginal and Torres Strait Islander Community Liaison Officer assists with active community engagement and the development of practices to support Aboriginal and Torres Strait Islander people. This officer is actively engaged with the communities to help inform policing practices.


 *The Commonwealth and ACT Governments have implemented Recommendation 214 through their work in Jervis Bay Territory and the Community Liaison Officer in the ACT.*

In **New South Wales**, a survey was distributed to all Aboriginal communities in 1993 inviting comment as to the quality, adequacy and appropriateness of the policing effort within their own patrols in order to assist patrol commanders with identifying areas of misunderstanding or misconception. In 1994, New South Wales expanded the Aboriginal Community Liaison Officer scheme, by appointing an Aboriginal Client Consultant and four Regional Aboriginal Coordinators.

In addition, New South Wales has established relevant bodies and roles, such as the Police Commissioner's AAC and the Aboriginal Community Liaison Officer State Coordinator. From 2007-2011, NSW Police advocated for the establishment of Local Area Command Aboriginal Consultative Committees in areas with a high proportion of Aboriginal population. The current policy (2012-2017) continues this work by monitoring, reporting and implementing action plans.


 *New South Wales has implemented Recommendation 214 by implementing initiatives and establishing roles to support the greater involvement of Aboriginal communities in community policing policy.*

Victoria established an Aboriginal Justice Forum in 2000 with senior members of police and Aboriginal and Torres Strait Islander communities. Additionally, there exist nine Regional Aboriginal Justice Advisory Committees that are currently active, which are a government priority under the AJAs. Aboriginal Community Justice Panels supplement the role of community policing in Victoria. These panels aim to promote better understanding, interaction and cooperation between the police force and the Aboriginal and Torres Strait Islander community.

 *Victoria has implemented Recommendation 214 by developing community policing forums.*

In **Queensland**, the Queensland Police Service requires that all its policies be developed in consultation with committees which seek to identify issues facing policing in Aboriginal and Torres Strait Islander communities. There were also a number of Aboriginal and Torres Strait Islander people directly employed by the Queensland Police Service, as per the 1994 implementation report.

Queensland has more recently established a Cultural Support Unit to promote and maintain relationships with multicultural communities while Police Liaison Officers have been employed to establish and maintain a positive rapport between Aboriginal and Torres Strait Islander people and police officers.

 *Queensland has implemented Recommendation 214 by requiring all policies regarding policing in Aboriginal and Torres Strait Islander communities to be developed in consultation with relevant committees.*


Following the RCIADIC report, **South Australia** established a dedicated Aboriginal and Multicultural Unit (within the South Australia Police) to work with the SA Government and Aboriginal and Torres Strait Islander community groups and oversee multicultural engagement to ensure services are delivered in a respectful, professional and impartial manner. The South Australia implementation report (1994) noted the intention for a Prevention of Aboriginal Deaths in Custody Forum to be held by the Aboriginal Services Unit at different prisons every six weeks.

Aboriginal Liaison Officers are currently employed by the South Australia Police and community policing is supported by the employment of Aboriginal Police Aids, Community Constables and the use of Aboriginal and Torres Strait Islander/police committees in community initiatives, including Police Aboriginal Advisory Groups (PAAG), which have been formed over the past two years.


 *South Australia has implemented Recommendation 214 by establishing a dedicated Aboriginal and Multicultural Unit and employing community representatives.*

Western Australia implemented the *Western Australian Strategic Policy on Police and Aboriginal People* in 2009 which required that police work in partnership with Aboriginal and Torres Strait Islander people to develop strategies that increase safety and security. The Western Australian police force played a significant role in the establishment of Wardens schemes in remote Aboriginal and Torres Strait Islander communities and the commencing of Aboriginal Street Patrols in towns open to the general community.

The Western Australian Government has indicated that it continues to support a range of community policing initiatives that include: Aboriginal Police Liaison Officers, Community Relations Officers, Community Patrols, and the Martu Leadership Program. Within the Western Australia Police Force, the Aboriginal and Community Diversity Unit provides cultural consultancy support and engagement with communities that includes dealing with complaints and concerns.


 *Western Australia has implemented Recommendation 214 by establishing the Aboriginal and Community Diversity Unit and requiring that police work in partnership with Aboriginal and Torres Strait Islander people to develop strategies that increase safety and security.*

Tasmania employs regional Liaison Officers that work to communicate, and hold meetings, with local Aboriginal and Torres Strait Islander community groups. The Tasmanian Department of Police, Fire and Emergency Management's *Aboriginal Strategic Plan 2014-2022* includes improving communication and liaison between the Department and the Aboriginal and Torres Strait Islander community, and ensuring members of the Department receive appropriate training to enhance positive relationships with the Aboriginal and Torres Strait Islander community, as key objectives.

 *Tasmania has partially implemented Recommendation 214 by employing regional Liaison Officers but has not expressly addressed the involvement of Aboriginal and Torres Strait Islander people in devising appropriate policing procedures.*

In the **Northern Territory**, a number of agreements were established or planned between Aboriginal and Torres Strait Islander organisations and police in remote communities as of 1995. The NT government notes that the Northern Territory Police Force (NTPF) has implemented a number of

internal programs and activities, including the development of an Indigenous Recruitment Program and the inception of a Community Engagement Police Officer (CEPO) program since 2011, which seeks to promote crime prevention through community involvement, ownership and leadership.

 *The Northern Territory has implemented Recommendation 214 by developing the Indigenous Recruitment Program and the CEPO program.*

Recommendation 215

That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including:

- a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;*
- b. Any problems perceived by Aboriginal people; and*
- c. Any problems perceived by police. Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.*

Background information


The RCIADIC Report noted that Aboriginal and Torres Strait Islander people often feel powerless in the presence of police and wished to increase their input into how their local community is policed. For this reason, a number of suggestions were made to improve the relationship between Aboriginal and Torres Strait Islander communities and police.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **ACT** Governments' actions in Recommendation 214 also apply to this recommendation.


 *The Commonwealth and ACT Governments have implemented Recommendation 215 through their work in Jervis Bay Territory and the Community Liaison Officer in the ACT.*

In 1993, **New South Wales** supported and implemented this recommendation by arranging for Patrol Officers to consult and work with Aboriginal Community Liaison Officers and Community Consultative Groups. The NSW Police Aboriginal Strategic Plan required individual patrol commanders to develop and maintain links with all sections of the local community. The level and type of complaints made against police by Aboriginal organisations is monitored on an ongoing basis.

Currently, the *Aboriginal Strategic Direction 2012-17* is the overarching document that guides the NSW Police Force in its management of Aboriginal issues. It seeks to achieve Aboriginal community ownership and involvement through a consultative and proactive approach.


 *New South Wales has implemented Recommendation 215 by supporting local consultations and engagements between the police and Aboriginal communities.*

As per Recommendation 214, **Victoria** employs Community Justice Panels, Local Aboriginal/Police Liaison Committees and Police Community Consultative Committees to improve the level of understanding between police and local Aboriginal and Torres Strait Islander communities.


 *Victoria has implemented Recommendation 215 by developing community policing forums.*

The **Queensland** Police Service (QPS) Community Consultative Committees and Aboriginal and Torres Strait Islander liaison committees provide a forum addressing the key issues in this recommendation. Consultation and negotiation on these issues is conducted by Aboriginal Liaison Officers in tandem with local police and Aboriginal and Torres Strait Islander community police.

The QPS Operational Procedures Manual (OPM) outlines a range of 'Community based policing strategies', including community policing boards. The QPS is required, by the *Police Service Administration Act 1990 (QLD)*, to act in partnership with the community at large.


 *Queensland has fully implemented Recommendation 215 by introducing strategies and requirements for the QPS to engage with the community.*

Following the RCIADIC, as part of the Community Policing partnership approach **South Australia** incorporated a problem solving approach to the issues raised in this recommendation, involving all representatives of the local community. This is achieved through consultation with key groups at the local level as well as the use of Community Constables to assist in community policing initiatives.

 *South Australia has implemented Recommendation 215 by incorporating inputs from all relevant members of the local community to address relevant issues, and utilising Community Constables to assist in service delivery.*


As of 1993, the **Western Australian** Government previously took action to address this recommendation by establishing a special government committee on Aboriginal and Torres Strait Islander, police and community relations. This has been used to encourage open dialogue between police and members of Aboriginal and Torres Strait Islander communities at the local level.

Since the RCIADIC Western Australia has also implemented various programs relating to this recommendation. A recent example is the Martu Leadership Program, which was developed in partnership between the Western Australia Police Force and Martu Rangers, to drive more community and culturally attuned policing activity.


 *Western Australia has implemented Recommendation 215 by establishing a special government committee on Aboriginal and Torres Strait Islander, police and community relations. In addition to this, programs encouraging more community and culturally attuned policing activity have been implemented.*

In response to this recommendation, in 1995 **Tasmania** Police formed a working party to visit major Aboriginal and Torres Strait Islander population areas in an effort to discuss perceived problems and police methods. Consequently, Aboriginal Liaison Officers were employed for three geographical areas and currently regularly consult with local Aboriginal and Torres Strait Islander organisations to provide information on Tasmania Police practices and procedures to local groups. Consultation between police and Aboriginal and Torres Strait Islander communities has also been facilitated via the Police Commissioner's Consultative Committee.

As noted in its response to Recommendation 214, the Tasmanian Department of Police, Fire and Emergency Management is committed to improving communication and liaison between the Department and the Aboriginal and Torres Strait Islander community.

 *Tasmania has implemented Recommendation 215 by supporting local consultations and engagements between the police and Aboriginal and Torres Strait Islander communities.*

The requirements of this recommendation were already common procedure in the **Northern Territory** community policing policy at the time of the RCIADIC report. One of the strategies used to encourage police involvement with the community was to recognise the legitimate needs and aspirations of the Aboriginal and Torres Strait Islander people of the Northern Territory, and implement these needs at the local level. Police officers in charge of a station or unit are expected to establish and maintain links with the Aboriginal and Torres Strait Islander population in their area to determine needs and discuss problems. This has more recently been supported by the NT Police Regional and Remote Policy Model, which provides a framework for ongoing engagement between police and community members.

 *The Northern Territory had already implemented Recommendation 215 as part of common procedure, and more recently through establishing the NT Police Regional and Remote Policy Model to support engagement and negotiation at the local level.*

Recommendation 216

That the Northern Territory Department of Correctional Services should, at the conclusion of the review of the Aboriginal Community Justice Project, establish regular meetings with Magistrates to monitor the effective operation of the program and establish a mechanism to ensure that the views of the Aboriginal communities in which the program operates are considered in the context of these meetings.

Background information

The RCIADIC Report noted that the Northern Territory's Community Justice Project was designed to ensure that the view of the Indigenous community was included when considering sentencing issues. As per the RCIADIC report, the Community Justice Project was replaced with the Northern Territory Community Court, which is a specialist Court of the Northern Territory Magistrates Courts.


Responsibility

The recommendation is solely the responsibility of the Northern Territory Government.

Key actions taken and status of implementation

In the **Northern Territory**, as at 1997 Aboriginal and Torres Strait Islander communities, organisations and relevant criminal justice agencies were previously involved in a review of the Aboriginal Community Justice Project. The *Change the Record* report notes that informal meetings with magistrates were held to determine the approach for implementation of this recommendation. The Aboriginal Community Justice Project no longer exists and the Community Courts have not been in operation since 2009.

In November 2016, Community Corrections commenced attending Court Users Meetings on a regular basis, and Probation and Parole Officers commenced attending circuit courts across the Northern Territory to undertake assessments on offenders and to provide advice to the court and other stakeholders.

 *The Northern Territory has implemented Recommendation 216 by establishing regular meetings and mechanisms for incorporating the views of Aboriginal communities.*

Recommendation 217

That the review of the Aboriginal Community Justice Project should undertake a detailed consideration of the resources required by the Project to operate effectively. Consideration should be given to the creation of specific liaison officer positions employing Aboriginal people to facilitate communications between the court and the community.

Background information

The RCIADIC Report noted that the Northern Territory's Community Justice Project was designed to ensure that the view of the Indigenous community was included when considering sentencing issues. As per the RCIADIC report, the Community Justice Project was replaced with the Northern Territory Community Court, which is a specialist Court of the Northern Territory Magistrates Courts.

Responsibility

The recommendation is solely the responsibility of the Northern Territory Government.

Key actions taken and status of implementation

The **Northern Territory** reported in their 1995 implementation report that additional funding was being sought for the liaison function of Aboriginal Community Corrections Officers. This role involves facilitation of communication between the Court and the community. The Aboriginal Community Justice Project no longer exists and the Community Courts have not been in operation since 2009. Community Corrections Officers continue to convey community opinion where possible in sentencing

submissions and Probation and Parole Officers similarly consult with family, friends, Elders and other stakeholders when preparing assessments and reports for sentencing authorities.

● *While the Aboriginal Community Justice Project no longer exists, the Northern Territory has achieved the objectives of Recommendation 217 through its Community Corrections Officers.*

Recommendation 218

That in reviewing the Aboriginal Community Justice Project the Northern Territory Department of Correctional Services should undertake extensive consultations with all Aboriginal communities which wish to participate in the program. In pursuing this consultation, care should be given to canvassing the entire range of community opinions and the means by which these may be brought, in any relevant case, to the Court's attention.

Background information

The RCIADIC Report reported that the Aboriginal Community Justice Project would be further improved through consultation and notice of opinion from various Aboriginal and Torres Strait Islander communities.

Responsibility

The recommendation is solely the responsibility of the Northern Territory Government.

Key actions taken and status of implementation

The **Northern Territory** reported in their 1995 implementation report that this recommendation was incorporated into the review as per Recommendation 216. Trial community supervision received ministerial endorsement in 1995 to involve responsible members of the community in looking after offenders who are on community based Court Orders. The completed review was included in the Intjartnama Consultancy which has now formed the *Law and Justice Strategy for Aboriginal Territorians*. The Aboriginal Community Justice Project no longer exists. However, Community Corrections Officers continue to convey community opinion where possible in sentencing submissions and Probation and Parole Officers similarly consult with family, friends, Elders and other stakeholders when preparing assessments and reports for sentencing authorities, such as courts and parole boards.

● *The Northern Territory has implemented Recommendation 218 by ensuring that Community Corrections Officers undertake extensive consultation with all relevant Aboriginal and Torres Strait Islander communities and stakeholders.*

Recommendation 219

The Australian Law Reform Commission's Report on the Recognition of Aboriginal Customary Law was a significant, well-researched study. The Royal Commission received requests from Aboriginal people through the Aboriginal Issues Units regarding the progress in implementation of the recommendations made by the Australian Law Reform Commission and in some cases from communities which had made proposals to the Law Reform Commission. This Commission urges government to report as to the progress in dealing with this Law Reform Report.

Background information

The RCIADIC Report noted that the initiatives relating to Aboriginal and Torres Strait Islander community justice provide opportunities for the functional recognition of Aboriginal and Torres Strait Islander customary law. Functional recognition had been favoured by the ALRC in its report on the subject.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires the Commonwealth, and the States and Territories to respond on their progress in dealing with the ALRC report.

Key actions taken and status of implementation

In 1996 the **Commonwealth** released a report into the implementation of the ALRC Aboriginal Customary Laws report in response to Recommendation 219.

- The Commonwealth has completed Recommendation 219 by responding to and reporting on recommendations of the report into the implementation of the ALRC Aboriginal Customary Laws.*

New South Wales had previously been involved in reviewing the issues under the guidance of the Australian Aboriginal Affairs Council. Customary law was noted in the 1993 implementation report to not be a major issue by the NSW Government. The NSW Government does not report on the implementation of this report, noting that it was completed some time ago. Notwithstanding, the NSW Government has amended various relevant laws including amendments to the *Adoption Act 2000 (NSW)* to take into account cultural heritage when placing Aboriginal and Torres Strait Islander children in adoption.

- New South Wales has not implemented any response to the ALRC report or to Recommendation 219.*

Victoria does not appear to have made any significant action in response to this recommendation, as it was considered to be of limited relevance to the Victorian context. The Victorian Government reported in their 1994 implementation report that traditional Aboriginal and Torres Strait Islander systems of law were broken down soon after settlement. To address cultural differences that Aboriginal and Torres Strait Islander persons may experience with the justice system, appropriate support was to be provided through Aboriginal and Torres Strait Islander organisations, Aboriginal Community Justice Panel representatives and other cross-cultural awareness training for Aboriginal and Torres Strait Islander offenders.

- Victoria has not implemented any response to the ALRC report or to Recommendation 219.*

The **Queensland Legislative Standards Act 1992** (Qld) requires that Bills before the parliament have sufficient regard to rights and liberties of individuals including whether the proposed legislation has sufficient regard to Aboriginal tradition and Island custom.

- Queensland has not implemented any response to the ALRC report or to Recommendation 219.*

South Australia currently considers some aspects of customary law when sentencing Aboriginal and Torres Strait Islander offenders, particularly on the Anangu Pitjantjatjara Yankunytjatjara lands, as well as cultural considerations through Aboriginal Sentencing Courts, Nunga Courts and Aboriginal Sentencing Conferences, which legislated under section 22 of the Sentencing Act 2017.

- South Australia has not implemented Recommendation 219 as it has not provided any evidence of a response to the ALRC report or to the recommendation.*

The **Western Australian** Government has not accepted the recommendations in the Australian Law Reform Commission's (ALRC) Recognition of Aboriginal Customary Laws Report to date and, accordingly, they have not been implemented. In 2006, the Law Reform Commission of Western Australia conducted a detailed review of the ALRC report, but no actions appear to have been taken as a result. The Western Australian Government has indicated that the Department of Justice will again review the recommendations of the ALRC Report in the context of more recent developments.

- Western Australia has not implemented any response to the ALRC report or to Recommendation 219.*

Tasmania indicated its support for this recommendation in the 1995 implementation report.

- Tasmania has not implemented any response to the ALRC report or to Recommendation 219.*


The **Northern Territory** indicated that it supports this recommendation in the 1994-95 implementation report, and that it was considering the issues as part of the Attorney-General's Aboriginal and Torres Strait Islander law reform program. No further detail on subsequent progress in the NT was identified.

- The Northern Territory has not implemented any response to the ALRC report or to Recommendation 219.*

The **Australian Capital Territory's** 1997 implementation report notes that the ALRC's recommendations were in the process of being implemented into policy pertaining to domestic relationships and education. The ACT Aboriginal and Torres Strait Islander Advisory Council was referred to for advice and consideration on these matters.

Since this time, the ACT Government has not made any direct progress toward implementation of Recommendation 219. However it has made some progress in related areas such as including implementing an Aboriginal Child Placement Principle in relation to children in care, and recognition of Aboriginal and Torres Strait Islander culture and experience in sentencing.

The ACT has a Galambany Circle Sentencing Court, which provides a culturally relevant sentencing option in the ACT Magistrates Court jurisdiction for eligible Aboriginal and Torres Strait Islander people who have offended.

 *The Australian Capital Territory has not implemented any direct response to the ALRC report or to Recommendation 219.*

Recommendation 220

That organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates.

Background information

Community justice programs play an important role in reinforcing social control mechanisms based on traditional Aboriginal and Torres Strait Islander values, and provide a service to local communities. They are also viewed as a potential solution to reducing the numbers of Aboriginal and Torres Strait Islander people entering the criminal justice system.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Recommendation 220 calls for the Commonwealth to work in cooperation with States and Territories in funding Community Justice Panels and associated programs.


Key actions taken and status of implementation

The **Commonwealth** Department of Prime Minister and Cabinet, under the IAS, is administering over \$1 billion of funding over four years for activities to improve community safety and justice outcomes for Aboriginal and Torres Strait Islander people. This includes funding for evidence-based, local community-led projects such as restorative justice and mediation and crime prevention activities.


The Commonwealth is also providing funding for Community Night Patrols to operate in communities across Australia. Julalikari Council is funded under the IAS to run a Community Night Patrol.

 *Recommendation 220 has been completely implemented by the Commonwealth.*


The 1993 implementation report noted that the **New South Wales** Government had established community justice panels in three Aboriginal communities (Dubbo, Taree and Wellington). These panels work with the Office of Juvenile Justice to help divert young Aboriginal people from the formalised court system. More recently, the New South Wales government considers that Recommendation 220 is not applicable to NSW.

 *New South Wales has not implemented Recommendation 220, as it appears that the Community Justice Panels are no longer current. NSW considers this recommendation to not be applicable to NSW.*


Victoria notes in the 1994 implementation report that Victoria supports the use of Aboriginal Community Justice Panels and will continue to fund their existence and development. In 1993-94, the Victorian Government provided \$332,000 for the administration of these panels. More recently, the AJA provides for the continued funding for a number of relevant community policing and justice initiatives.

 *Victoria has implemented Recommendation 220 by developing and funding community justice initiatives.*

The **Queensland** Government registered its support for this recommendation in the 1994 implementation report and subsequently developed the Community Justice Group Program, under the Department of Justice and Attorney-General, to address Aboriginal and Torres Strait Islander overrepresentation in the court system by providing support to those in the criminal justice system and to victims of crime.


 *Queensland has implemented Recommendation 220 by developing and funding the Community Justice Group Program.*

South Australia noted in the 1994 implementation report that the objectives of this recommendation are within community policing philosophies as per Recommendation 215. Local issues were to be addressed via the deployment of local police liaison officers.


 *South Australia has implemented Recommendation 220 by addressing its objectives under its existing community policing philosophies.*

Western Australia established relevant schemes to address the intended outcomes of Recommendation 214. The Western Australian Government also intended, as of 1997, to establish further Warden Schemes at Coonana, Blackstone, Warakurna, Wingelina, Jigalong and Warburton.


Western Australia continues to support a range of community policing initiatives. This includes: district and local police working with specialised resources such as the WA Police Force Community Engagement Division's Aboriginal Unit; Aboriginal Police Liaison Officers; Community Relations Officers; and community patrols on local and regional initiatives. An example of this is the Martu Leadership Program. This Martu initiated a program involves the community working closely with police, lawyers, prison and the Pilbara Magistrate to form a different and new relationship with key agencies in the criminal justice system to reduce contact.

 *Western Australia has implemented Recommendation 220 by addressing its objectives under the Western Australian community policing initiatives.*

Tasmania noted that, as of 1993, there were no Aboriginal and Torres Strait Islander funding requirements for community policing programs. As such, the Tasmanian government considers this recommendation to not be applicable to Tasmania.

 *Tasmania has not implemented Recommendation 220. The Tasmanian Government considers this recommendation to not be applicable to Tasmania.*

In the **Northern Territory**, Aboriginal and Torres Strait Islander communities have previously been encouraged to become involved in community policing, with 22 communities (as of 1994) having warden schemes and/or night patrols being conducted. An established Advisory Committee on Community Policing was established by the NT Government to assist and encourage Aboriginal and Torres Strait Islander communities to take more responsibility in dealing with local social justice law and order issues. The NT has also formed a partnership with the Jawoyn Association to develop a strategic plan for the Maranboy Police District. This involved transitioning the role of Officer in Charge of the police station to a selected Aboriginal and Torres Strait Islander person. More recently, the Northern Territory has been assisted by the use of the CEPO program in remote communities.

 *The Northern Territory has implemented Recommendation 220 by providing ongoing funding for active engagement with community policing.*

In the **Australian Capital Territory**, a Community Justice Panel was intended to be considered as part of the Integrated Crime Prevention Strategy. The now-established Community Safety strategy works to address issues of concern to Aboriginal and Torres Strait Islander people as they arise. The committee features at least one Aboriginal and Torres Strait Islander representative.

Currently, the Australian Capital Territory Government funds programs delivered by the Aboriginal Legal Service, as a part of its community safety strategy. Programs include; The Front up program supporting individuals with warrants or in breach of bail; Interview Friends for individuals requiring support during formal police interviews; Galambany court support for individuals going through the circle sentencing process and additional support for individuals recently released from prison eligible for the ACT Corrective Services Extended Through care program.

 *The Australian Capital Territory has implemented Recommendation 220 by addressing its objectives through the Community Safety strategy.*

Recommendation 221

That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal affairs budget.

Background information


The RCIADIC noted that it was necessary to adequately remunerate Aboriginal and Torres Strait Islander people for their involvement in the schemes that were proposed in Recommendation 220.

Responsibility


The recommendation is the responsibility of the State and Territory Governments.

Key actions taken and status of implementation

The **New South Wales** Government noted in its 1993 implementation report that it has developed budgets for the various panels. This report noted that members of the Koori Community Justice Council in Taree and the Wellington Juvenile Justice Panel are paid sitting fees. In addition, remuneration is considered on a case-by-case basis, following consultation with Aboriginal communities. For example, Circle Sentencing involves Elders who receive travel and catering costs, but not sitting fees. This approach was adopted following consultation with relevant Elders, who advised that it was more appropriate that sitting fees were not provided.

 *New South Wales has implemented Recommendation 221 by remunerating Aboriginal and Torres Strait Islander individuals involved in community and police initiatives.*


In **Victoria**, the criminal justice portfolio provides funding for Aboriginal Community Justice Panels. Panel members receive personal and travel expenses related to their work.

 *Victoria has implemented Recommendation 221 by remunerating Aboriginal Community Justice Panel members.*


The **Queensland** Government Department of Justice and Attorney-General funds 39 Community Justice Groups. From 1 July 2017, funding arrangements were moved to a triennial basis which reduces the administrative burden on the Community Justice Groups.

 *Queensland has implemented Recommendation 221 by funding 39 Community Justice Groups.*


Mobile Assistant Patrols (MAP) in **South Australia** employed Aboriginal and Torres Strait Islander workers, who received funding through SA Health. Additionally, community constables and Police Liason Officers are funded through South Australia Police. Aboriginal Volunteers in the Aboriginal Visitors Scheme receive honorarium payments.

 *South Australia does not appear to have taken any relevant action to respond to Recommendation 221.*


In **Western Australia**, the former Community Development Employment Program provided funding for the remote community patrols programs. However, open community patrols, such as the Aboriginal Street Patrols have historically operated on an unpaid volunteer basis with a few minor exceptions. It was noted in the 1995 implementation report that funding for these schemes does not come under the police budget. The Western Australian Government has noted that it supports a range of initiatives that rely on both volunteers and paid staff. Paid staff are all fairly remunerated.

 *Western Australia does not appear to have taken any relevant action to respond to Recommendation 221.*

Tasmania noted in 1993 that this recommendation is not relevant to the state.


 *Tasmania has not taken any action to respond to Recommendation 221, and considers that it is not relevant to Tasmania.*

The **Northern Territory** Government noted in their 1995 implementation report that remuneration is contrary to the basic principles of community policing, and that providing funding to community policing inputs could potentially jeopardise the current Aboriginal and Torres Strait Islander community policing programs. All Aboriginal and Torres Strait Islander employees of the Northern Territory Police Force are remunerated as per the relevant Northern Territory awards.

 *The Northern Territory has not implemented Recommendation 221.*

The **Australian Capital Territory** Government's Justice and Community Safety Directorate remunerates Aboriginal and Torres Strait Islander people through their contracts with existing local Aboriginal and Torres Strait Islander organisations to provide community justice programs. Programs include: the Front Up program supporting individuals with warrants or in breach of bail; Interview Friends for individuals requiring support in formal police interviews; and Galambany court support for individuals going through the circle sentencing process; and additional support for individuals recently released from prison eligible for the ACT Corrective Services Extended Throughcare program.

The Aboriginal-Police Friends call-out roster, which existed as of 1997, operated on a voluntary basis, however the issue of remuneration had been previously raised with the ACT Government. This matter was stated to require further consideration and consultation between the ACT Government and the Aboriginal and Torres Strait Islander Consultative Council.

 *The Australian Capital Territory has partially implemented Recommendation 221, as it not clear whether all Aboriginal and Torres Strait Islander people involved in community and police initiated schemes are appropriately remunerated.*

Recommendation 222

That the National Police Research Unit make a particular study of efforts currently being made by Police Services to improve relations between police and Aboriginal people with a view to disseminating relevant information to Police Services and Aboriginal communities and organisations, as to appropriate initiatives which might be adopted.

Background information

The RCIADIC Report noted that several Aboriginal and Torres Strait Islander communities felt that their relationship with the police had not improved. Further to this, Aboriginal and Torres Strait Islander communities suggested that meetings and good communications with the police would be crucial to the successful implementation of this recommendation.


Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. This recommendation is addressed to the National Police Research Unit, which was a Commonwealth body.

Key actions taken and status of implementation

The **Commonwealth's** National Indigenous Law and Justice Framework 2009 demonstrated a recognition by the AGD and Attorneys-General of each State and Territory, of the need to improve relations between police services and Aboriginal and Torres Strait Islander communities. In May 1992, the Australian Police Ministers' Council (APMC) noted a consolidated report of Australian initiatives to improve relations between police and Aboriginal and Torres Strait Islander people.

The Australia New Zealand Policing Advisory Agency, formed in 2007 to supersede the National Police Research Unit, has published a number of relevant publications relating to improving relationships with Aboriginal and Torres Strait Islander people, including a *Practical Reference to Religious and Spiritual Diversity for Operational Police*. The AGD noted that this guide includes an overview of Aboriginal and Torres Strait Islander culture, and provides guidance for police on interviewing, searching and detaining Aboriginal and Torres Strait Islander people.

 *The Commonwealth had addressed Recommendation 222 through the National Police Research Unit (now the Australia New Zealand Policing Advisory Agency), and evidence of the report being disseminated to relevant bodies is provided through the National Indigenous Law and Justice Framework.*

Recommendation 223

That Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of:

- a. Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained;*
- b. The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication;*
- c. Concerns of the local community about local policing and other matters; and*
- d. Processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their communities.*

Background information

The RCIADIC Report noted that having written protocols is significant as they represent a negotiation by bodies which each have an important role to play in the criminal justice system.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have addressed Recommendation 223 through the following policy changes and programs. The AFP ACT Regional Instruction – 1/92 – Watch House requires that the Officer in Charge Watch House ensures that the Aboriginal Liaison Committee or Aboriginal Legal Aid Officer was notified of any Aboriginal and Torres Strait Islander person placed in custody. ACT Regional Instructions also apply in Jervis Bay Territory. However, as there was no Aboriginal Liaison Committee in Jervis Bay Territory at the time every effort was made to notify the family/community.


The ACT Aboriginal and Torres Strait Islander Justice Partnership 2015-18 – between ACT Policing, ACT Legal Aid, and the Aboriginal Legal Service – sets out the governing arrangements aimed at reducing Aboriginal and Torres Strait Islander over-representation in the ACT criminal justice system as both victims and perpetrators.

The *1993-94 Annual Report* also mentioned that the act of drunkenness was decriminalised in the ACT and intoxicated persons were placed in protective custody for up to eight hours or until they become sober, whichever came first. This remains in place as at 2018.

Under the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991*, Aboriginal and Torres Strait Islander legal organisations must be given notification when an Aboriginal and Torres Strait Islander person is arrested.

The Police/Aboriginal Liaison Committee – established in April 1990 – was a principle avenue through which the Aboriginal community met with police, raised issues of concern and worked together to achieve common objectives. The Committee met on a bi-monthly basis, however there have not met since February 1993. The Australian Capital Territory Government has noted that ACT Policing regularly engage with the Aboriginal and Torres Strait Islander community through community forums for the purpose of ensuring that ACT Policing adequately provide policing services and support to the Aboriginal and Torres Strait Islander community. The Chief Police Officer attends these community forums on a three-monthly basis and Aboriginal and Torres Strait Islander liaison officers work with Aboriginal and Torres Strait Islander elders and community members daily.


The Aboriginal/Police Liaison Committee was reviewed with the advice of the ACT Aboriginal and Torres Strait Islander Advisory Council. As of 1993, the development of a protocol was being considered by the Liaison committee. The *1993-94 Annual Report* also mentioned that the act of drunkenness was decriminalised in the ACT and intoxicated persons were placed in protective custody for up to eight hours or until they become sober, whichever came first.

 *The Commonwealth and Australian Capital Territory Governments have taken several actions to implement Recommendation 223; however, it is considered mostly complete since there is no evidence to suggest that paragraph (d) of Recommendation 223 has been addressed in the Jervis Bay Territory Community. It is important to note that the AFP considers that paragraph (d) is not relevant to the ACT, given the geographic size of the AFP and that there are no discrete Aboriginal and Torres Strait Islander communities in the ACT.*

In **New South Wales** cl37 of *Law Enforcement (Powers and Responsibilities) Regulation 2016* requires police to immediately contact the Aboriginal Legal Service's Custody Notification Service when an Aboriginal person is arrested or detained.


In response to part (b) of this recommendation, public intoxication is not an offence in NSW. Police are required to place intoxicated persons into the custody of a responsible adult, convey them to a designated Proclaimed Place, to detain them in police cells without charge, where an appropriate level of observation must be maintained until release.

With regards to the communication of concerns of the local community about local policing, the NSW Police employs community members as Aboriginal Community Liaison Officers to represent community interests and to voice their concerns at the local patrol level. Currently, there is no formal mechanism for direct participation by local community members in the selection or placement of individual police officers.

 *New South Wales has mostly implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal individuals who become involved in the justice system. However, New South Wales has not implemented a response in relation to part (d) of this recommendation.*


In **Victoria**, the Victorian Aboriginal Legal Service Cooperative and Police developed protocols to address part (a), (b) and (c) of this recommendation. These components were addressed through consultation with established Aboriginal Community Justice Panels and Police Community Consultative Committees. When any Aboriginal and Torres Strait Islander person is taken into custody for any reason, the police member responsible must notify D24 (Emergency Communications) as soon as possible, who will then contact the Victorian Aboriginal Legal Service, or where local arrangements exist, notify the Aboriginal Community Justice Panel directly. These matters were addressed by the Police Aboriginal Liaison Unit, these panels, and community consultative committees.

VicPol advised in the 2005 Implementation Review that part d) of this recommendation is not a workable model. VicPol has indicated that there may be some scope for the selection of liaison officers to have community input within the limits of staffing available. However, as these positions are intended to be at a level of Sergeant or above these positions have a limited pool of candidates. Part d) has not been implemented.


 *Victoria has mostly implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system. However, Victoria has not implemented a response in relation to part (d) of this recommendation.*

The **Queensland** Police Service has established community consultative committees and Aboriginal and Torres Strait Islander liaison committees. Section 16.21.10 of the QPS OPM sets out a clear protocol for the Aboriginal and Torres Strait Islander Legal Service be notified when an Aboriginal and Torres Strait Islander is arrested or detained. In addition, it also sets out a protocol for the Aboriginal and Torres Strait Islander Legal Service to seek information and interviews.

The Anungara Rules set out additional safeguards in the event that an Aboriginal and Torres Strait Islander person is taken into custody, whereby police need to ensure that they are fluent in English, understand what is happening, and have an Aboriginal and Torres Strait Islander support person. In addition, the Cultural Support Unit exists to promote and maintain relationships with multicultural and Aboriginal and Torres Strait Islander communities. For matters relating to decriminalisation of drunkenness, the Custody Manual previously provided that diversionary facilities were referenced.

 *Queensland has mostly implemented Recommendation 223 by establishing protocols to address key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system. However, Queensland has not implemented a response in relation to part (d) of this recommendation and has not provided evidence of further action in response to part (b) of this recommendation.*

In **South Australia**, the South Australia Police's (SAPOL) General Arrest Orders instructs officers to notify the Aboriginal Legal Rights Movement when an Aboriginal and Torres Strait Islander person is arrested or taken into custody. There also exist clear guidelines regarding the circumstances under which Aboriginal and Torres Strait Islander individuals are taken into protective custody by virtue of intoxication. In addition, SAPOL have established Aboriginal and Torres Strait Islander support and focus groups, such as the Aboriginal/Police Liaison Group to discuss community concerns regarding policing practices. There is also an Aboriginal Justice Consultative Committee which provides community representatives with a forum through which to raise matters in relation to policing within their communities.


 *South Australia has fully implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system.*

The **Western Australian** Police developed protocols in 1995 in response to this recommendation where Local Aboriginal/Police Liaison Committees were used to resolve issues at the local level. Part (d) of this recommendation was not intended to be implemented as it was deemed inappropriate to suggest that present decision making processes for police officers be diminished in any way. Currently, there is no statutory obligation requiring the police to notify the Aboriginal Legal Service when an Aboriginal and Torres Strait Islander person is arrested.

The Western Australian Government has indicated it is currently exploring a Custody Notification System to improve access for Aboriginal and Torres Strait Islander people to early legal advice. The state has noted that within the Western Australia Police Force, the Aboriginal and Community Diversity Unit provides cultural consultancy support and engagement with communities, including dealing with complaints and concerns.


 *Western Australia has partially implemented Recommendation 223, but has not addressed key elements of the recommendation in its response*

Tasmania noted its support for this recommendation in the 1995 implementation report, and reported that procedures are in place for interaction between Tasmania Police and the Aboriginal and Torres Strait Islander community including for the notification of the arrest or detention of an Aboriginal and Torres Strait Islander person.

 *Tasmania has partially implemented Recommendation 223, but has not addressed key elements of the recommendation in its response.*

In the **Northern Territory**, part (a) of this recommendation was already in place at the time of the RCIADIC at major centres where Aboriginal Legal Services operate, noting that this is not always feasible at remote localities. Regarding part (b), protocols were put in place to address this, with more protocols being developed as of 1994. Part (c) of this recommendation was reported to be fundamental to the Northern Territory Community Policing policy, and if not already in existence, was to be developed in each community. Aboriginal Community Police selection has involved the community since the inception of the Police Aide Scheme in 1979.

In recent years, a new position of Aboriginal Liaison Officer has been introduced where officers, who are sourced from communities, act as dedicated liaisons between the police and Aboriginal and Torres Strait Islander community members.

 *The Northern Territory has fully implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system.*

Recommendation 224

That pending the negotiation of protocols referred to in Recommendation 223, in jurisdictions where legislation, standing orders or instructions do not already so provide, appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person other than such arrests or detentions for which it is agreed between the Aboriginal Legal Services and the Police Services that notification is not required.

Background information

The RCIADIC Report discussed evidence which shows that liaison officers can be effective in defusing situations which might otherwise lead to conflict between police and Aboriginal and Torres Strait Islander people.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The actions taken by the **Commonwealth** and **Australian Capital Territory** Governments in response to Recommendation 223 also apply to this recommendation. AGD noted that the Australia New Zealand Policing Advisory Agency has published a number of relevant publications relating to improving relationships with Aboriginal and Torres Strait Islander people (see Recommendation 222). Additionally, amendments as part of the Crimes Legislation (Powers, Offences and Other Measures) Bill 2017 seek to clarify the timing, content, and discrete nature of the obligation to notify an Aboriginal and Torres Strait Islander legal assistance organisation prior to commencing questioning of an arrestee.

Additionally, the Commonwealth Minister for Indigenous Affairs has extended an offer to all states and territories to fund a Custody Notification Service for three years on the condition that the jurisdictions introduce legislation mandating its use and agree to take on funding responsibility at the end of that period.

For all states and territories, the actions taken in response to Recommendation 223 also apply to this recommendation.

- *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 224 through the actions outlined in response to Recommendation 223.*

In **New South Wales**, informal arrangements were already existing in a number of locations. Currently, the Custody Notification Service, which is operated by the Aboriginal Legal Service, provides support to Aboriginal people who are in custody awaiting bail. NSW is the only state to legislate the Custody Notification Service.

- *New South Wales has implemented Recommendation 224 via the legislation of the Custody Notification Service.*

Victoria noted in the 1997 implementation report that police are responsible for notifying the Victorian Aboriginal Legal Service Cooperative when an Aboriginal and Torres Strait Islander person is taken into custody. If an Aboriginal Community Justice Panel exists in that area, the police are also required to notify the appropriate panel.

- *Victoria has implemented Recommendation 224 by requiring that police notify the Victorian Aboriginal Legal Service and Aboriginal Community Justice Panels when an Aboriginal and Torres Strait Islander person is brought into custody.*

Queensland Police has implemented the protocols referred to in Recommendation 223, including a clear protocol for the notification of the Aboriginal and Torres Strait Islander Legal Service when people are arrested or detained.

- *Queensland has implemented Recommendation 224 by requiring that police notify the Aboriginal and Torres Strait Islander Legal Service when an Aboriginal and Torres Strait Islander person is brought into custody.*

In **South Australia**, the SAPOL General Orders Arrest directs officers to notify the Aboriginal Legal Rights Movement on the arrest of an Aboriginal and Torres Strait Islander person.

- *South Australia has implemented Recommendation 224 by requiring that police notify the Aboriginal Legal Rights Movement when an Aboriginal and Torres Strait Islander person is brought into custody.*

While no statutory obligation exists for the **Western Australian** Police to advise the Aboriginal Legal Service when an Aboriginal and Torres Strait Islander person is arrested or detained, the arrested/detained individuals do have the opportunity for the ALS or other nominated persons to be advised of their whereabouts and charges laid against them. In 1994, the Commissioner of Police introduced policy pertaining to the rights of persons detained in custody, including allowances for detainees to communicate with persons or organisations outside the lockup.


The Western Australia Police Force has trialled an agreed operational protocol with the Aboriginal Legal Service. However this was discontinued due to the arrangements proving problematic for the ALS. The State has indicated it is currently exploring a Custody Notification System as part of its ongoing commitment to find more effective and efficient ways of working.

- *Western Australia has taken limited steps towards implementing Recommendation 224, by introducing a policy pertaining to the rights of persons detained in custody, including allowances for detainees to communicate with persons or organisations outside the lockup.*

In **Tasmania**, Tasmania Police Standing Order No. 144 requires that the police notify the Aboriginal Legal Service in the event of an arrest of an Aboriginal and Torres Strait Islander person.

- *Tasmania has implemented Recommendation 224 by requiring that police notify the Aboriginal Legal Service when an Aboriginal and Torres Strait Islander person is brought into custody.*

In the **Northern Territory**, General Order Custody Part IV (OP-C3) 370 stipulates that the NT Police are to make reasonable efforts to establish protocols at local level that address notification to Aboriginal Legal Aid when an Aboriginal and Torres Strait Islander person is arrested or detained, with the permission of the person in custody.

 *The Northern Territory has partially implemented Recommendation 224, its protocols only require police to make reasonable efforts to notify Aboriginal Legal Aid when an Aboriginal and Torres Strait Islander person is brought into custody.*

Recommendation 225

That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate.

Background information

The RCIADIC Report noted that the quality of relations between police and Aboriginal and Torres Strait Islander people depends on the personality of the patrol commander and his or her ability to relate to Aboriginal and Torres Strait Islander people. The ability of the police commander to understand and recognise the distinctive nature of the Aboriginal and Torres Strait Islander community, and the commander's ability to listen to Aboriginal and Torres Strait Islander people, are also considered to be significantly important.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following activities. At the November 1993 APMC meeting, the AFP noted that progress had been made to develop an Aboriginal and Torres Strait Islander employment strategy for the AFP which aimed to attract and retain Aboriginal and Torres Strait Islander employees.


In the ACT, the Aboriginal and Torres Strait Islander Community Liaison Officer assists with the development of policy and legislation which may impact upon Aboriginal and Torres Strait Islander communities. This is also discussed in Recommendation 214. In addition to this, the Australian Capital Territory Justice and Community Safety Directorate is currently working with ACT Policing to facilitate the placement of an embedded Aboriginal and Torres Strait Islander policy officer to work within its policy team. The aim of this placement is to provide ACT Policing with improved understanding of Aboriginal and Torres Strait Islander issues when developing policing policies and programs.

 *The Commonwealth and Australian Capital Territory Governments have mostly implemented Recommendation 225 through the creation of the Aboriginal and Torres Strait Islander Community Liaison Officer. However, a similar role for the Jervis Bay Territory Community does not appear to have been created.*


New South Wales appointed an Aboriginal Client Group Consultant in the police force to advise on Aboriginal issues following the release of the RCIADIC report. This position was part of the senior administration and provided access to the Commissioner of Police through the Office of Strategic Services.

Currently, there is no single Aboriginal Policy Unit in the NSW Police Force. Each region employs a coordinator to provide strategic advice to the Region Commander on Aboriginal policy and operational issues. An Aboriginal Client Group Consultant continues to be employed to liaise with the Region Coordinators and community groups and organisations state-wide, to provide similar assistance to the


State Commander, Commissioner and Police Board. In addition, senior representatives of Aboriginal communities and organisations are able to have direct access to the Commissioner via the Commissioner's Police Aboriginal Council, while all Aboriginal staff of the NSW Police Force are able to engage with the Commissioner through the Koori network support group.

 *While New South Wales has not established a single unit to address Aboriginal policy issues, it has fully implemented Recommendation 225 by establishing appropriate channels and forums for Aboriginal individuals to contribute to policing policies and programs.*

As of 1994, the **Victorian** Police Force had previously worked with the Police Aboriginal Affairs Unit (led by the Police Aboriginal Liaison Officer who is of Aboriginal and Torres Strait Islander descent) to develop policy and programs which relate to Aboriginal and Torres Strait Islander people. Development of these policy and programs was supplemented by Police Community Consultative Committees and Aboriginal Community Justice Panels.


 *Victoria has implemented Recommendation 225 by establishing a number of forums where Aboriginal and Torres Strait Islander individuals develop policies and programs relating to policing issues.*

In **Queensland**, a Cultural Support Unit has been established by the Queensland Police Service to address policies and programs that relate to Aboriginal and Torres Strait Islander people. However, the unit is not headed by an Aboriginal and Torres Strait Islander person at this time.

 *Queensland has partially implemented Recommendation 225 by establishing a Cultural Support Unit to address policies and programs that relate to Aboriginal and Torres Strait Islander people but has not employed an Aboriginal and Torres Strait Islander person to head this unit.*


Following the release of the RCIADIC report, **South Australian** police aides were required to provide advice at the Regional and divisional level. Aboriginal and Torres Strait Islander persons who were members of the police force were stationed within Multicultural Services to provide liaison and advice on Aboriginal and Torres Strait Islander issues.

In 2000, the SAPOL established the Indigenous Employment Support Unit which is accountable for the implementation of SAPOL's Indigenous Employment Strategy and which reports via the Director of Human Resources Service to the Senior Executive. The SAPOL has also developed an Indigenous Strategic Plan, which oversees Aboriginal and Torres Strait Islander initiatives such as fostering community partnerships and reducing the number of Aboriginal and Torres Strait Islander people in the justice system.

 *South Australia has partially implemented Recommendation 225 by establishing the Indigenous Employment Support Unit and implementing the Indigenous Strategic Plan. However, evidence does not state whether an Aboriginal and Torres Strait Islander person heads this unit.*

Western Australia took action to address this recommendation by creating an Aboriginal Affairs Branch to liaise with Government and other Aboriginal and Torres Strait Islander agencies to address any policing related issues with the Aboriginal and Torres Strait Islander community, and to develop policies and programs that relates to the needs of the Aboriginal and Torres Strait Islander community. In 1994, existing programs were beginning to be expanded, and maintained by the Aboriginal Police Aide scheme, which was staffed by Aboriginal and Torres Strait Islander people.

Currently The Western Australia Police Force's Aboriginal and Community Diversity Unit is responsible for State-wide monitoring of Aboriginal and Torres Strait Islander service delivery matters, including policy and procedures, program development, and the provision of specialised support services. The Unit also provides support and advice on engagement and coordination, including contributing to policy and legislative matters.

 *Western Australia has partially implemented Recommendation 225 by establishing an Aboriginal Affairs Branch and Aboriginal and Community Diversity Unit. However, it is not clear whether an Aboriginal and Torres Strait Islander person heads these groups.*

Tasmania reported in the 1993 implementation report that they consider this recommendation to be “unjustified” (p. 84). No rationale was provided for this assessment.

○ *Tasmania has not implemented Recommendation 225.*

Within **Northern Territory** Police, an Aboriginal, Ethnic and Youth Affairs Unit was established following the RCIADIC report to offer guidance and advice on matters pertaining to police interaction with Aboriginal and Torres Strait Islander people. Currently, a discrete unit no longer exists. Instead, responsibility for interaction now lies with the relevant Police Command with constancy of approach assured through internal governance structures.

○ *The Northern Territory has not implemented Recommendation 225 as its policy and development unit has been superseded by a different approach to developing policies and programs that relate to Aboriginal and Torres Strait Islander people.*

Additional commentary

With regards to the **Commonwealth** and **Australian Capital Territory** Governments’ response to Recommendation 225, under the *Directions Program Traineeship* and the *Indigenous Graduate Program*, Aboriginal and Torres Strait Islander people are recruited in groups, with the cohort going to training and development sessions together. While the members may be working in different areas, the AFP notes that they are unified as a group through the training and opportunities provided for mentoring and support. The *Malunggang Indigenous Officers Network* also delivers cultural awareness training which aims to raise awareness and understanding of the historical and contemporary issues experienced by Aboriginal and Torres Strait Islander people.

Recommendation 226

That in all jurisdictions the processes for dealing with complaints against police need to be urgently reviewed. The Commission recommends that legislation should be based on the following principles:

- a. That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services;*
- b. That the name of a complainant should remain confidential (except where its disclosure is warranted in the interests of justice), and it should be a serious offence for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint;*
- c. That where it is decided by the independent authority to hold a formal hearing of a complaint, that hearing should be in public;*
- d. That the complaints body report annually to Parliament;*
- e. That in the adjudication of complaints made by or on behalf of Aboriginal persons one member of the review or adjudication panel should be an Aboriginal person nominated by an appropriate Aboriginal organisation(s) in the State or Territory in which the complaint arose. The panel should also contain a person nominated by the Police Union or similar body;*
- f. That there be no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint;*
- g. That Aboriginal Legal Services be funded to ensure that legal assistance, if required, is available to any Aboriginal complainant*
- h. That the complaints body take all reasonable steps to employ members of the Aboriginal community on the staff of the body;*
- i. That the investigation of complaints should be undertaken either by appropriately qualified staff employed by the authority itself, or by police officers who are, for the purpose of and for the duration of the investigation, under the direction of and answerable to, the head of the independent authority;*

- j. *That in the course of investigations into complaints, police officers should be legislatively required to answer questions put to them by the head of the independent authority or any person acting on her/his behalf but subject to further legislative provisions that any statements made by a police officer in such circumstances may not be used against him/her in other disciplinary proceedings;*
- k. *That legislation ensure that the complaints body has access to such files, documents and information from the Police Services as is required for the purpose of investigating any complaint.*

Background information

The RCIADIC Report noted that Aboriginal and Torres Strait Islander people made little use of any formal mechanisms for raising complaints with police due to previous encounters that Aboriginal and Torres Strait Islander people had with police services in the past.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of the responsibility of Recommendation 226 falls upon the States and Territories. The Commonwealth is responsible for paragraph (g) that relates to the funding of ATSIILSs.

Key actions taken and status of implementation


The **Commonwealth** Government's ATSIILSs received over \$29 million in grant funding in the 1993-94 financial year. This funding was provided for a range of services, including legal representation and advice to Aboriginal and Torres Strait Islander complainants. ATSIILSs continue to receive funding through the Indigenous Legal Assistance Programme, which totals over \$370 million from 2015 to 2020.

PM&C advised that although ATSIILSs are funded to provide a range of legal services, the majority of these services are provided for criminal law matters, followed by civil law and family law and child protection matters. Under current funding agreements, ATSIILSs are required to prioritise services to 'priority clients', which means that *any Aboriginal complainant* (as specified in the recommendation) may not necessarily be guaranteed legal representation by an ATSIILS.

 *Recommendation 226 has been mostly implemented at the Commonwealth level. ATSIILSs continue to receive funding from the Commonwealth Government which allows for the provision of legal representation, however it does not guarantee that funding is available to all complainants.*

New South Wales established the Police Integrity Commission to prevent, detect and investigate serious police misconduct in response to this recommendation. This process occurs independently of the NSW police force and so complaints may be made directly to the Commission or the NSW Ombudsman. There does not appear to be a specific requirement that any members of each review panel be of Aboriginal descent.

In 2017, the Law Enforcement Conduct Commission was established as a permanent independent investigative commission to provide oversight of the NSW Police Force and NSW Crime Commission. It replaces the Police Integrity Commission and the Police Compliance Branch of the NSW Ombudsman with a single oversight body with two clearly defined functions: detecting and investigating misconduct and corruption, and overseeing complaints handling.

 *New South Wales has partially implemented Recommendation 226 by establishing the Law Enforcement Conduct Commission but has not expressly addressed provisions for Aboriginal complainants.*

The Independent Broad-Based Anti-Corruption Commission (IBAC) in **Victoria** was established in 2014 to replace the Office of Police Integrity. This new Commission works to provide independent oversight of the police, and had substantial powers. Serious complaints must always be referred to the Commission, even if initially made to the Police. The Victorian Government has indicated that the Victoria Police complaint handling and discipline system is currently under review, with the aim of

simplifying the current system and becoming more responsive to victims and complainants of police misconduct. It is expected that a reformed system will begin operation in 2018.

In relation to part (a) handling of police complaints is a mixed arrangement between the IBAC and Victoria Police. Most complaints about Victoria Police are managed by directly by Victoria Police. The Professional Standards Command within Victoria Police investigates complaints that are more serious. IBAC can also investigate serious police misconduct. While legislation permits the IBAC to investigate matters that are not criminal nature, in practice, the IBAC limits its direct investigations to the most serious criminal allegations, with less serious allegations passed on to Victoria Police. The IBAC also has a review function and regularly reviews individual complaint investigations, and also from a systemic perspective.

For part (b) of this recommendation, the Victorian Government has noted that an agreement between the Victorian Aboriginal Legal Service and Victoria Police has been reached for the confidential handling of particular complaints. While Victoria Police considers the identity of the complainant of a police complaint is confidential police information, disclosure of the identity of the complainant may occur to certain employees in order to conduct appropriate investigation.

For part (c) of this recommendation, the Victorian Government has noted that complaints investigations are not normally conducted by way of formal hearing. Rather, complaints follow a private investigative process, as the Victorian Government considers that doing otherwise would be detrimental to the integrity of the investigation and outcome. Complaint investigations may result in either formal court proceedings, which are generally open to the public. The current complaints and discipline system in Victoria are also under review by the Victorian Government in the context of the wider review of the *Police Regulation Act 1958*.

For part (d) Victoria Police and IBAC both report annually to Parliament. The Victoria Police annual report includes complaint data.

The Victorian Government does not consider recommendation part (e) to be relevant for the current model of complaint handling. The process is considered to be investigative/recommendatory rather than an adjudicative function.

In part (f), the present system of investigation of police complaints is that there is no financial cost imposed on the complainant.

In regard to part (g), the Victorian Government has noted that the Victorian Aboriginal Legal Service regularly assists members of the Aboriginal and Torres Strait Islander community in the making of complaints and is closely involved in determining how those complaints should best be handled.

In regards to Part (h), the Commission noted in the 1994 implementation report that the employment of Aboriginal and Torres Strait Islander persons on the complaints body required further consultation. Since this time, Victoria Police has encouraged employment of Aboriginal and Torres Strait Islander people within Victoria police through an active Aboriginal and Torres Strait Islander employment program. However, Professional Standards Command does not specifically employ Aboriginal and Torres Strait Islander staff. If necessary, a senior Aboriginal and Torres Strait Islander staff member from Victoria Police would be co-opted for assessment and advice.

In response to Part (i), the Commission noted that investigations have been undertaken by qualified staff at the Ombudsman's office or by police officers. Investigators of criminal complaints appointed to Professional Standards Command must be qualified detectives and have previous investigative experience. Investigators also usually hold supervisory ranks. Investigators employed directly by the IBAC have previous experience usually at a police agency.


In its response to Part (j), the Commission detailed that a police officer in Victoria cannot be expected to provide answers regarding criminal conduct which may be directly or indirectly self-incriminating.

Currently the right to not answer questions or self-incriminate remains for a police employee under investigation for a criminal offence. For the purposes of an investigation into a complaint, any police

officer or protective services officer may also be directed to give information, produce a document or answer questions. Any response given is not admissible in evidence before a court or tribunal.

Part (k) was addressed under the *Police Regulation Act 1958 (Vic)* whereby the Deputy Ombudsman has the authority to access this information detailed in the recommendation. The Victorian Government has indicated that in investigations of complaints or criminality in Victoria Police, investigators have available the full suite of investigative tools including search warrants, surveillance, telephone and other communication intercept warrants and coercive hearings to obtain evidence. Victoria Police staff are also expected to assist investigators with the provision of files, documents and other evidence held by Victoria Police without the need to resort to a search warrant.

The Victorian Government also noted that it completed legislative changes in 2004. These extended the powers available for the independent oversight of Victoria Police. This enabled investigations into corruption or misconduct or into police policies, practices and procedures to be initiated on the Director's own motion whereas previously investigations could only be activated by complaints. The new legislative arrangements were accompanied by significant increases in the budget for oversight of the police.

 *Victoria has mostly implemented Recommendation 226, however, has not satisfied part (e) of the recommendation.*

Complaints in **Queensland** are typically handled by the Assistant Commissioner, Ethical Services Command as part of the Commissioner for Police. Serious complaints are investigated by the Crime and Corruption Commission, thus addressing part (a) of the recommendation. This Commission includes an Aboriginal and Torres Strait Islander engagement strategy which includes strategies for the employment of and engagement of Aboriginal and Torres Strait Islander people, thus addressing part (h) of the recommendation. The Crime and Corruption Commission includes a complaints division by which complaints of official misconduct by public sector employees (including police officers) can be made. There has not been evidence of further actions taken in response to Parts (b), (c), (d), (e), (f), (g), (i), (j), or (k) of the recommendation.

In relation to part (a) of the recommendation, the Criminal Justice Commission (an independent statutory body) was established in 1989, following the Fitzgerald Inquiry (1987-89). One of the Commission's primary functions was to investigate alleged or suspected misconduct by the police force. The Crime and Corruption Commission established in 2001 under the *Crime and Corruption Act 2001* has now taken over the functions of the commission and is the primary oversight body of the Queensland Police Service for police misconduct and corrupt conduct. The Police Commissioner is required to notify the Crime and Corruption Commission of complaints about suspected police misconduct or corrupt conduct.

In relation to part (b) the public may complain directly to the Crime and Corruption Commission, or lodge a complaint with the Queensland Police Service. The Crime and Corruption Commission accepts anonymous complaints and as far as possible, the complainant's identifying particulars are kept confidential. However, it may be apparent given the nature of the complaint who the complainant is.

Part (c) of the recommendation has been addressed by Section 177 of the *Crime and Corruption Act 2001*. This section allows the Crime and Corruption Commission to hold public hearings where it considers that closing the hearing to the public would be unfair to a person or contrary to the public interest. The Crime and Corruption Commission has extensive coercive powers to compel evidence during an investigation and any hearings.

In relation to part (d) of the recommendation, the Crime and Corruption Commission reports annually to Parliament by tabling and publishing its Annual Report. The *Crime and Corruption Act 2001* also establishes the Parliamentary Crime and Corruption Committee to monitor and review the performance of the Commission. The Committee has a statutory duty to conduct a review of the activities of the Commission and table a report to Parliament on its operation every five years.

The Queensland Government does not appear to have taken action in relation to part (e) of the recommendation.


For part (f) there is no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint.

For part (g) the Queensland Government considers this to not be a responsibility of the state, as Aboriginal Legal Services in Queensland are funded by the Commonwealth.


For part (h), the Queensland Crime and Corruption Commission has developed an Aboriginal and Torres Strait Islander engagement strategy, which includes strategies for the employment of and engagement of Aboriginal and Torres Strait Islander people.

For part (i), the Queensland Government has indicated that all investigations of complaints are undertaken by qualified staff employed by the Crime and Corruption Commission and police officers who are engaged by, and reportable to, the Crime and Corruption Commission


In relation to part (j) and (k), during an investigation, the Crime and Corruption Commission has the powers to enter premises and inspect, seize and copy documents as well as the power to conduct coercive hearings that compel people to attend and give evidence and produce documents, when undertaking investigations into corrupt conduct.

 *Queensland has mostly implemented Recommendation 226, with the exception of part (e).*


In **South Australia**, the *South Australian Police Act 1985* generally addresses this recommendation, with a review of the Act following the RCIADIC report finding that this recommendation has been mostly addressed. The Police Complaints Authority (PCA) receives complaints from members of the public about the actions of police officers and the procedures and policies of the police force, thus fulfilling part (a) of the recommendation. It also monitors the investigation of those complaints by the Internal Investigation Branch of the SAPOL and in certain circumstances, will conduct independent investigations. In addition, the PCA receives and considers reports of those investigations and determines any further action, thus fulfilling part, considers Freedom of Information applications relevant to the PCA, and conducts external reviews of the Freedom of Information applications made to the SAPOL, thus fulfilling part (k) of the recommendation.

 *South Australia has partially implemented Recommendation 226 by addressing parts (a) and (k) of the recommendation.*

In Western Australia, there is a robust internal investigation system for complaints against police officers. All allegations are assessed by the Police Conduct Investigation Unit and referred for investigation as appropriate. The Corruption and Crime Commission are notified of every complaint received. Complaints can also be taken directly to the Corruption and Crime Commission or the State Ombudsman, who may conduct their own investigation. Statistics on police complaints are available to the public on the Western Australia Police Force web site.

 *Western Australia has mostly implemented Recommendation 226. However, it is unclear whether every aspect of Recommendation 226 has been implemented from the response.*

Tasmania noted in the 1995 implementation report that processes for dealing with complaints against police were satisfactory, as per the central functions of the Ombudsman and its oversight role over all investigations into Tasmanian Police. Currently, police complaint investigations are reviewed regularly by the Tasmanian Integrity Commission. Complaints about investigations of complaints against police can be given and subsequently reviewed by the Ombudsman or by the Commission.


 *Tasmania has partially implemented Recommendation 226 by establishing procedures for review of complaints by the Tasmanian Integrity Commission but has not expressly addressed provisions for Aboriginal and Torres Strait Islander complainants.*

In the **Northern Territory**, a complaints system exists within the police system alongside the administrative provisions of the Ombudsman Act. This is reported in the 1997 implementation report to cover the majority of the issues listed in this recommendation, with the exception that complaints against police must be investigated by and adjudicated upon by a body independent of the police service and the Ombudsman.

As per the NT Police General Order, all Complaints Against Police are subjected to a thorough, professional and objective investigation, fulfilling part (a). In addition, 6.2 of the General Order recognises the need to maintain community confidence in the ethics and integrity of the Northern Territory Police Force, in accordance with part (b). Section 14A of the Police Administration Act stipulates that members are to obey any relevant Instructions, general Orders, Code of Conduct and any other instruction or order issued from or by the Commissioner of Police, partially fulfilling part (j).

 *The Northern Territory has partially implemented Recommendation 226 by addressing parts (a), (b) and (j) of the recommendation.*

Community policing services in the **Australian Capital Territory** are provided by the Australian Federal Police. ACT Policing members remain officers of the Commonwealth and the Australian Federal Police Commissioner retains responsibility for the general administration, and control of the operations of the Australian Federal Police. As such, administrative arrangements (including complaints processes) of ACT Policing members are subject to the same integrity framework as the AFP more broadly (including Australian Federal Police Professional Standards, the Commonwealth Ombudsman, and the Australian Commission for Law Enforcement Integrity).

 *As Recommendation 226 has been mostly implemented at the Commonwealth level and policing services are provided by the Commonwealth, the Australian Capital Territory has in effect mostly implemented Recommendation 226.*

Recommendation 227

That the Northern Territory Police Service School-based Program be studied by other Police Services and that the progress and results of the program should be monitored by those services.

Background information

The RCIADIC Report highlighted the positive comments by Aboriginal and Torres Strait Islander people for the Northern Territory Police Service School-based Program. The school-based program represents a contribution to the teaching of Aboriginal and Torres Strait Islander students and other students about the function of police in society, laws of the community and the community aspects of policing.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.


Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments undertook the following actions in response to Recommendation 227. The *1993-94 Annual Report* noted that the AFP had implemented its own Police Service School-based Program in Canberra. As police involvement with schools in Jervis Bay Territory was considered to be sufficient by the AFP, no such similar program was implemented in the Jervis Bay Territory community.


ACT Policing's Constable Kenny Koala is aimed at educating childcare and primary-aged school children on a range of safety messages, and encouraging them to turn to police for help and advice.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 227 through the introduction of the AFP's program in the ACT, and consideration of a program in the Jervis Bay Territory.*


This program has been trialled in **New South Wales**, with schools being serviced by General Duty Youth Officers and Beat Police. After a review of the program following the release of the RCIADIC report, these positions were transitioned into the role of Youth Liaison Officers. Youth Liaison Officers visit schools, develop crime prevention workshops, provide support for the Safety House scheme and generally promote police relations and foster ideals of citizenship with students and teachers.

 *New South Wales has fully addressed Recommendation 227 by implementing a number of programs in line with the approach of the Police Service School-based Program.*


Victoria reported in the 1997 implementation report that they support this recommendation and have implemented the "Police Schools Involvement Program" which was monitored over several years. Special lectures were given at schools by members of the Police Aboriginal Liaison Unit and the Manager of the Aboriginal Community Justice Panel program. The AJA 3 includes a number of youth programs delivered in partnership with schools, encouraging positive engagement with the justice system.

 *Victoria has fully addressed Recommendation 227 by implementing a number of programs in line with the approach of the Police Service School-based Program.*

Queensland reported in the 1994 implementation report that they support this recommendation and have been monitoring the NT program. Queensland has implemented a School Based Policing Program that draws on the findings of the Northern Territory program and is a joint initiative between the QPS and Queensland Department of Education. The Program focuses on helping teachers to develop and present curriculum materials that meet police and school community needs and undertake initial response and investigations of offences within school perimeters.

 *Queensland has fully addressed Recommendation 227 by implementing a joint initiative with the QLD DET in line with the approach of the Police Service School-based Program.*

In **South Australia**, the SAPOL has developed a number of school based programs in conjunction with the SA Department of Education, Training and Employment, which seek to meet local community needs and are overseen by a dedicated Schools Programs Co-ordinator. In addition, the SAPOL's Schools Programs Section offers resources including lesson plans and singular programs which cover various topics with a crime reduction focus.


 *South Australia has fully addressed Recommendation 227 by implementing a number of school-based programs in line with the approach of the Police Service School-based Program.*

As of 1994, **Western Australia** has previously taken action to address this recommendation by deploying a Schools Based Program which involves 28 police officers servicing 33 senior high schools and 165 primary schools throughout the state. This involved contact with approximately 102,000 students and followed the NT model.


Currently, the Youth Crime Intervention Officer program provides a holistic approach to facilitating better outcomes for offenders and the community, and reducing demand on police services. There are 17 metropolitan-based and 32 regionally based YCIOs that continue to produce positive results in the reduction of youth offending. Local police and specialist business units also engage with schools on a broader needs and issues basis.

 *Western Australia has fully addressed Recommendation 227 by implementing a school-based programs in line with the approach of the Police Service School-based Program.*

Tasmania noted that a full roll-out of the NT scheme would be impracticable for Tasmania, however noted in the 1993 implementation report the need for more Aboriginal Liaison Officers to be appointed in each of the three geographical districts to assist with the Home School Liaison Scheme.

 *Tasmania has partially implemented Recommendation 227 by considering the appointment of more Aboriginal Liaison Officers but has not provided further evidence of actions taken in its response.*

The **Northern Territory** is not required to respond to this recommendation.

 *Recommendation 227 is out of scope for the Northern Territory.*

Recommendation 228

That police training courses be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions. Furthermore, such training should incorporate information as to:

- a. *The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;*
- b. *The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and*
- c. *The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation.*

Background information

The RCIADIC Report noted that many police and prison officers whose work involves significant contact with Aboriginal and Torres Strait Islander people have had little or no education concerning Aboriginal and Torres Strait Islander people and their culture.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.


Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 228. The *1993-94 Annual Report* noted that the AFP new member training addressed the issues faced in this recommendation. Similarly, a program of two day workshops were conducted by the Aboriginal Educational Consultative Group with Technical and Further Education which was offered to sergeants and constables. These initiative were funded under the 1992-93 Commonwealth Budget.

All new AFP employees, including contractors, must undertake up to four hours of induction training related to diversity, cultural awareness (including Aboriginal and Torres Strait Islander culture), and unconscious bias prior to entering the workforce. The AFP Malunggang Indigenous Officers Network also delivers cultural awareness training which aims to raise awareness and understanding of the historical and contemporary issues experienced by Aboriginal and Torres Strait Islander people.

-  *The Commonwealth and Australian Capital Territory Governments have fully implemented Recommendation 228 through the AFP's training of new members.*

As cited in the 1993 implementation report, **New South Wales** took action to address this recommendation by running a staff development workshop aimed at improving the interaction between police and Aboriginal communities. Currently, Aboriginal studies has become an important element of all NSW Police Force Academy-based training, particularly in the Police Recruit Education Programme, the Safe Custody Course, and the Patrol Commanders and Patrol Tacticians courses. The training has been developed in consultation with Aboriginal people and is aimed at improving cultural awareness and interactions between the police and Aboriginal communities.

-  *New South Wales has addressed Recommendation 228 by providing training relating to interaction between police and Aboriginal people.*

Victoria has been progressively training up recruits and more senior members of the police force in interacting with Aboriginal and Torres Strait Islander people. In 1993, the Victorian Government proposed a major upgrade in training to address cross cultural awareness issues, including field visits to Aboriginal and Torres Strait Islander communities. A "Kooris and Cops" video was made to play a major role in this program. The AJA includes a number of initiatives relating to improving the relationship between police and Aboriginal and Torres Strait Islander persons.

- *Victoria has addressed Recommendation 228 by implementing training for police on Aboriginal and Torres Strait Islander history and culture.*

Queensland introduced university based training courses for police recruits in 1991. The Queensland Police Service has also been involved in developing Aboriginal and Torres Strait Islander awareness training as part of initiatives funded by the Aboriginal and Torres Strait Islander Commission. The QPS has a range of training courses that are designed to support police to work with Aboriginal and Torres Strait Islander people, including the following courses – Government and the Law, Multicultural Awareness in QLD, and Custody Management.

Queensland has also advised that the courses mentioned cover all topics outlined in this recommendation.

- *Queensland has implemented Recommendation 228 by providing training relating to interaction between police and Aboriginal and Torres Strait Islander people.*

The **South Australian** Police have developed and implemented a number of cultural training initiatives. The SAPOL's Aboriginal and Multicultural Unit, in conjunction with Aboriginal and Multicultural Liaison Officers and Community Constables, has been conducting training with Police Cadets regarding Aboriginal and Torres Strait Islander issues. Aboriginal Cultural Awareness training sessions cover issues of racism and discrimination, their effects on individuals and communities, Aboriginal and Torres Strait Islander history culture, and SAPOL objectives and directions in relation to Aboriginal and Torres Strait Islander Australians, and seek to promote positive behavioural change amongst SAPOL's employees.

- *South Australia has addressed Recommendation 228 by implementing training for police on Aboriginal and Torres Strait Islander history and culture.*

In 1992-1993, **Western Australia** deployed a state-wide *Cultural Awareness Programme* which involved 146 Aboriginal and Torres Strait Islander people as trainers in the program involving both the Police Department and the Department of Education and Training. Additional training initiatives were also under review and exploration as of 1994. More recently, the Western Australia Police Force contracted the University of Notre Dame to undertake an independent review of police training curriculum and policies pertaining to engagement with Aboriginal and Torres Strait Islander people. This report will provide recommendations to guide the transition of current training beyond cultural awareness towards a more comprehensive program both at the entry level as well as throughout a staff member's career.

- *Western Australia has partially addressed Recommendation 228 by implementing training for police on Cultural Awareness. However, it is unclear whether provided training covers all topics outlined in this recommendation.*

In **Tasmania**, Cultural Awareness and Cultural Sensitivity Programs form part of the Tasmania Police Recruit Training syllabus.

- *Tasmania has partially implemented Recommendation 228 by providing training relating to interaction between police and Aboriginal and Torres Strait Islander people. However, evidence has not been found as to whether provided training covers all topics outlined in this recommendation.*

The training provided to **Northern Territory** police to incorporate the objectives outlined in this recommendation was noted in the 1995 implementation report. The NTFP has developed recruit training packages in accordance with this recommendation while cultural education is built into the Diploma of Policing.

- *The Northern Territory has addressed Recommendation 228 by implementing and incorporating training for police on Aboriginal and Torres Strait Islander history and culture into its recruit training packages and Diploma of Policing.*

Recommendation 229

That all Police Services pursue an active policy of recruiting Aboriginal people into their services, in particular recruiting Aboriginal women. Where possible Aboriginal recruits should be taken in groups.

Background information

The RCIADIC Report stressed the importance of recruiting Aboriginal and Torres Strait Islander people into police services, and for police service in any community to be reflective of the composition of the community.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 229. As noted in the *1992-93 Annual Report*, the Commonwealth funded States and Territories to employ a consultant to develop Aboriginal and Torres Strait Islander employment strategies.

The AFP's Equal Employment Opportunity Program was developed to increase the number of Aboriginal and Torres Strait Islander men and women appointed to the AFP as members and staff members. The AFP continues to actively promote the recruitment of Aboriginal and Torres Strait Islander people by providing specific employment pathways for Aboriginal and Torres Strait Islander people to join the AFP.


The AFP has a number of recruitment strategies aimed at recruiting Aboriginal and Torres Strait Islander people into the AFP. The Indigenous Entry Level Traineeship and the Indigenous Graduate program are two programs run to enhance numbers of Aboriginal and Torres Strait Islander persons in the AFP. The AFP's Directions Program Traineeship is a recruitment strategy which seeks to increase Aboriginal and Torres Strait Islander workforce representation. The Traineeship runs as a 12-month full-time, administrative entry-level program for Aboriginal and Torres Strait Islander people who have a career interest with the AFP. Trainees are linked with a mentor who is a police officer, to provide guidance and support with information relating to sworn recruitment gateways.

Through the Directions Program Traineeship and the Indigenous Graduate program, new staff are recruited in groups, with the cohort attending training and development sessions together.

Long-term targets of the AFP Cultural Reform-Diversity and Inclusion Strategy 2016-2026 include:

- Aboriginal and Torres Strait Islander people to increase to 2.5% by 2018;
- Women to comprise a minimum of 50% of applicants considered as part of all external recruitment processes;
- Women in sworn policing and protective service officer roles to increase to 35% by 2021; and
- Women to represent 50% of the total AFP workforce by the end of 2026.


The Australian Capital Territory has also noted that the Australian Federal Police have employed 22 Aboriginal and Torres Strait Islander trainees in the 2017-18 period. Of these trainees, 17 were female and 5 were male. At 21 June 2018, 21 of the 22 trainees are continuing in their employment and study towards a nationally recognised qualification. All 22 trainees were recruited at the same time.

 *The Commonwealth and Australian Capital Territory Governments have fully implemented Recommendation 229 through various initiatives to actively pursue the recruitment of Aboriginal and Torres Strait Islander people into the AFP, and to recruit them in groups where possible.*

The **New South Wales** police force employs an active recruitment program for Aboriginal people. Officers within the Recruitment Unit specialise in Aboriginal recruiting and have received specific


training. An Aboriginal police officer is employed as the coordinator of this program. The NSW Government has also targeted female Aboriginal high school students for recruitment.

As of 30 June 2017, the NSWPF had 580 NSWPF staff identified as Aboriginal employees while women represented 42.4% of all Aboriginal staff. The last five intakes of the Associate Degree in Policing Practice have had strong Aboriginal enrolments.

 *New South Wales has mostly implemented Recommendation 229 by introducing an Aboriginal police recruitment plan and actively recruiting Aboriginal employees, including women, however there is no provision made that recruitment take place in groups where possible.*


The **Victoria** Police Aboriginal and Torres Strait Islander Employment Plan 2014-2018 was developed to facilitate employment and career development opportunities for Aboriginal and Torres Strait Islander people wanting to pursue a career within Victoria Police. Victoria Police has also established the Aboriginal School-based Traineeships that aims to support Aboriginal and Torres Strait Islander students (in Years 11 & 12) with paid employment in a Police Station one day per week, contributing towards a Certificate 3 in Business Administration.

The Victorian Government has also indicated that an Aboriginal Inclusion Strategy and Action Plan will be developed and implemented in 2018, incorporating a revised Aboriginal Employment Plan.


 *Victoria has mostly implemented Recommendation 229 by introducing an Aboriginal and Torres Strait Islander police recruitment plan, however there is no provision made that recruitment take place in groups where possible.*

In **Queensland**, the Recruiting Section of the Queensland Police Service has been undertaking processes to develop strategies for the recruitment of officers from Aboriginal and Torres Strait Islander communities. A bridging course is offered at Johnstone College of TAFE Innisfail and at the Kangaroo Point College of TAFE Brisbane. The courses assist Aboriginal and Torres Strait Islander people meet the entry standards for the Queensland Police Service. The QPS also has recruiting guidelines in place, such as the Culturally and Linguistically Diverse Recruit Preparation Program and the Indigenous Recruit Preparation Program.


The Queensland Police Service offers positions for Aboriginal and Torres Strait Islander people in its Indigenous Recruit Preparation Program. Successful participants provide direct entry into the Recruit Training program. In 2016, the Queensland Police Service introduced a 50/50 gender quota for recruiting.

 *Queensland has mostly implemented Recommendation 229 by developing Aboriginal and Torres Strait Islander recruitment programs and created a 50/50 gender quota for recruitment, however there is no provision made that recruitment take place in groups where possible.*

In **South Australia**, the SAPOL has established a range of recruitment, training and career development programs, such as the Community Constable Scheme and, in 2000, the Indigenous Employment Support Unit, which is attached to the Human Resources Service. The Unit seeks to recruit, train and retain Aboriginal and Torres Strait Islander individuals in policy, strategy and operations. The SAPOL also has a policy statement, whereby its Indigenous Employment Strategy seeks to achieve and maintain a 2% Aboriginal and Torres Strait Islander participation rate.

 *South Australia has partially implemented Recommendation 229 by establishing an Indigenous Employment Support Unit and setting a goal for a 2% participation rate, however there is no provision made that recruitment take place in groups where possible or for active recruitment of women.*


The **Western Australian** Aboriginal Affairs Branch works to employ Aboriginal and Torres Strait Islander people to serve in the police force. No distinction was made in the 1994 implementation report as to whether female recruits were favoured over male recruits. In order to identify potential police officers, a special Aboriginal Police Cadet Scheme was introduced. In addition to this, bridging courses are offered to assist applicants who might not otherwise achieve minimum entry standards.

 *Western Australia has partially implemented Recommendation 229 by developing Aboriginal and Torres Strait Islander recruitment programs, however there is no provision made that recruitment take place in groups where possible or for active recruitment of women.*

Tasmania Police reported in the 1994 implementation report that they were actively engaged in recruiting police members from all community groups, including Aboriginal and Torres Strait Islander people, on the basis of merit.

 *Tasmania has not implemented Recommendation 229.*

The **Northern Territory** Government has employed Aboriginal and Torres Strait Islander people into the police service for a number of years as an equal opportunity employer. However, the standard of educational attainment has been an inhibitor to aspiring Aboriginal and Torres Strait Islander applicants, as per statements made in the 1997 implementation report. To combat this, a bridging course was provided around the time of this implementation report for Aboriginal and Torres Strait Islander people through the Centre for Aboriginal and Islander studies at the then Northern Territory University. The NTFP currently has a dedicated Indigenous Recruitment team.

 *The Northern Territory has partially implemented Recommendation 229 by establishing a dedicated Indigenous Recruitment Team, however there is no provision made that recruitment take place in groups where possible or for active recruitment of women.*

Recommendation 230

That where Aboriginal applicants wish to join a service who appear otherwise to be suitable but whose general standard of education is insufficient, means should be available to allow those persons to undertake a bridging course before entering upon the specific police training.

Background information

The RCIADIC Report explained that while many police officers supported the concept of employing Aboriginal and Torres Strait Islander people, a number expressed opposition to any system of lowering educational or other standards to accommodate Aboriginal and Torres Strait Islander recruitment. For this reason, the RCIADIC Report suggested that bridging courses be made available for Aboriginal and Torres Strait Islander people to improve their education before entering the specific police training.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation


The **Commonwealth** and **Australian Capital Territory** Governments' response to Recommendation 230 was that the AFP's *Indigenous Entry Level Traineeship* provides an opportunity for Aboriginal and Torres Strait Islander people to join the AFP in a professional capacity and develop skills.

The Australian Capital Territory Government has noted that the Australian Federal Police has committed to review its recruitment processes to explore the opportunity of bridging courses for persons with an insufficient level of education.

 *The Commonwealth and Australian Capital Territory Governments have partially implemented Recommendation 230 through the Indigenous Entry Level Traineeship. However, the AFP has advised that there are no provisions for people to join the AFP as a sworn member without meeting the academic requirements.*


In 1992, the **New South Wales** Government offered bridging courses for Aboriginal people who aspired to police employment. New South Wales implemented the "Indigenous Police Recruitment Our Way Delivery" which is a specialist training program aimed at assisting Aboriginal people obtain entry to the NSW Police Force recruitment program. Currently, bridging courses are available through

Goulburn TAFE for all Aboriginal applicants for police employment who meet all of the requirements except for education.


 *New South Wales has addressed Recommendation 230 by supporting Aboriginal applicants through bridging courses.*

The **Victorian** Police Force's view, as per the 1997 implementation report, is that all persons, irrespective of race, are encouraged to apply for entry to the Force but that no positive discrimination measures would be introduced. Victoria has an agreement which supports projects for Aboriginal and Torres Strait Islander persons to study in legal and justice related areas, and the public sector.


Since this time, Victoria Police has created a designated position within the Human Resources Division of Victoria Police to proactively promote Victoria Police as an employer of choice and support Aboriginal and Torres Strait Islander applicants throughout the application process, including the provision of additional support to meet entry requirements. Since the creation of the designated position within the division, the numbers of applicants applying for, and being successful in attaining, employment within Victoria Police has increased.

 *Victoria has made initial steps towards implemented Recommendation 230 through support and training provided to Aboriginal and Torres Strait Islander applicants. However, Victoria does not appear to have any provision to allow people to become sworn members of the Police Force without meeting academic requirements.*

The **Queensland** Police Service has an Aboriginal and Torres Strait Islander cadetship program which provides a specific route of entry into the Queensland Police Service recruitment stream for Aboriginal and Torres Strait Islander applicants, known specifically as the Indigenous Recruit Preparation Program. The Queensland Aboriginal and Torres Strait Islander Police program also works to provide Aboriginal and Torres Strait persons with suitable education to become a police force recruit.

 *Queensland has addressed Recommendation 230 by supporting Aboriginal and Torres Strait Islander applicants through the Indigenous Recruit Preparation Program.*

In **South Australia**, the SAPOL Recruiting Section, in conjunction with the Indigenous Employment Support Unit, assists Aboriginal and Torres Strait Islander applications through the pre-entry standard recruitment procedures. If a recruit has not met the pre-entry standard requirements, but demonstrates the potential to do so within a six-month period, they can participate in the Indigenous Employee Development Program.


 *South Australia has addressed Recommendation 230 by supporting Aboriginal and Torres Strait Islander applicants through the Indigenous Employee Development Program.*

The **Western Australia** Government, through the-then Department of Training, made appropriate curriculum material in the years following 1994 for the Police Department in order to assist the increase in the number of Aboriginal and Torres Strait Islander people undertaking police training.


The North Metropolitan TAFE continues to offer Police Preparation courses to assist applicants to achieve the required police recruit or police auxiliary officer entry standard. In addition, the Western Australia Police Force Aboriginal Cadet Program is open to Aboriginal and Torres Strait Islander applicants 17 to 25 years of age, which includes this training program.

 *Western Australia has addressed Recommendation 230 by supporting Aboriginal and Torres Strait Islander applicants through the Aboriginal Cadet Program.*

The **Tasmanian** Government noted in the 1993 implementation report that Recommendation 230 was rejected on the grounds that it would lower the standards applicable to police recruits. Currently, the Tasmania Police consider, on a case-by-case basis, the suitability of an Aboriginal and Torres Strait Islander applicant who lacks the general standard of education required. Consideration is given if all other standards are sufficiently met and the individual demonstrates the potential to bridge the gap while in training.

-  *Tasmania has partially implemented Recommendation 230 by considering applicants on a case-by-case basis but has not formalised a process for such instances in its response.*

In the **Northern Territory**, TAFEs currently provide numeracy and literacy courses designed for Aboriginal and Torres Strait Islander people. This initiative assists with the career advancement of members within the Aboriginal Community Police. Aboriginal Community Police Officers are sworn police officers who provide communication and liaison with local Aboriginal and Torres Strait Islander communities.

-  *The Northern Territory has addressed Recommendation 230 by providing Aboriginal and Torres Strait Islander applicants with bridging courses via TAFEs to assist in their recruitment to the NTFP.*

Recommendation 231

That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances.

Background information

The RCIADIC Report suggested that improving the relationship between the police and Aboriginal and Torres Strait Islander people will make police services appear less “alien” to Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth’s responsibilities relate to the AFP’s provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 231. As a result of the RCIADIC Report, the AFP was funded to modify and improve existing AFP training courses.

The *1993-94 Annual Report* noted that the AFP ran a number of two-day courses in the ACT, Melbourne and Sydney that provided an overview of Aboriginal and Torres Strait Islander culture in regard to health, education, land rights, customary law, economy, racism, art, language and identity.


The ACT’s Community Liaison Officer (see Recommendation 214) liaises with the Aboriginal and Torres Strait Islander community to establish and maintain positive relationships and foster mutual understanding.

-  *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 231 through actions taken by the AFP to improve relations between the police and Aboriginal and Torres Strait Islander people. These included improving existing training courses, implementing new courses, and employing an Aboriginal and Torres Strait Islander community liaison officer.*


In their 1992 annual report, it was noted that the **New South Wales** Government supported 32 Aboriginal Community Liaison Officers attached to the Police Service. This facilitated informal consultation between the police and the Aboriginal Client Consultant. Aboriginal Client Consultants conducted research, provided information and promoted the development of programs and policies for the police force to foster positive relationships and interactions between the police force and Aboriginal persons.

In addition, other initiatives that have been implemented by the NSW Police Force to meet this recommendation include the Commissioner’s Aboriginal Council, development of the NSW Police Force Aboriginal Policy Statement and Aboriginal Strategic Plan, involvement of Aboriginal community


groups with Patrol Commanders, the Aboriginal Community Liaison scheme, and Juvenile Justice Panels.

 *New South Wales has implemented Recommendation 231 through a number of initiatives aimed at improving relations between police and the Aboriginal community, including the Commissioner's Aboriginal Council and the Aboriginal Community Liaison scheme.*


In order to improve relationships between the Aboriginal and Torres Strait Islander population and the police force, the **Victorian** Government established, following the release of the RCIADIC report, local Police and Aboriginal Liaison Committees, Police Community Consultative Committees and Aboriginal Community Justice Panels.

 *Victoria has implemented Recommendation 231 through a number of programs aimed at improving relations between police and the Aboriginal and Torres Strait Islander community.*

In **Queensland**, the QPS has implemented a range of initiatives aimed at improving relations, including Community Based Policing Strategies and the establishment of the Cultural Support Unit, which seeks to promote and maintain relationships with Aboriginal and Torres Strait Islander communities. In addition, the QPS follows an Aboriginal and Torres Strait Islander Annual Action Plan which contributes to a range of national, state and local initiatives for Closing the Gap on Indigenous Disadvantage.


 *Queensland has implemented Recommendation 231 by developing several initiatives aimed at improving relations between police and the Aboriginal and Torres Strait Islander community, including Community Based Policing Strategies and a Cultural Support Unit.*

In **South Australia**, the SAPOL employs Community Constables to address local Aboriginal and Torres Strait Islander community needs. The SAPOL has also developed Community Program Units to coordinate programs at a local level and formed the Indigenous Support Unit to provide further assistance. The SAPOL has also adopted recommendations following a review of the Community Constables program, including enhanced training and recruitment initiatives.


 *South Australia has implemented Recommendation 231 by facilitating improved communication between the SAPOL and the Aboriginal and Torres Strait Islander community through the employment of Community Constables and the development of Community Program Units.*

Western Australia previously employed a number of Aboriginal Police Liaison Officers. Additionally, the Aboriginal Street Patrols Scheme and the Remote Communities Warden Scheme were actively expanded in 1994.

The Western Australia Government has indicated that the Western Australian Police Force continues to consider options for improving Aboriginal and Torres Strait Islander employment pathways in order to best serve the community. Western Australia is currently piloting a system of Community Relations Officers to work with Aboriginal and Torres Strait Islander communities, families and individuals, to encourage and support participation in appropriate programs, strategies and initiatives with a view to community building.

 *Western Australia has implemented Recommendation 231 by employing Aboriginal Police Liaison Officers and Community Relations Officers to work with Aboriginal communities, families and individuals.*

The **Tasmanian** Police Force includes Aboriginal Liaison Officers, who play a key role in developing and providing courses in cultural sensitivity to police officers.

 *Tasmania has implemented Recommendation 231 through the employment of Aboriginal Liaison Officers.*

The **Northern Territory** actively recruits and trains Aboriginal Community Police Officers, as per Recommendation 230, and has a non-sworn member recruitment program for Aboriginal Liaison

Officers, who help facilitate positive community engagement and provide communication and interpreting to victims and witnesses.

- *The Northern Territory has implemented Recommendation 231 through its implementation of the Aboriginal Liaison Officers program.*

Recommendation 232

That the question of Community Police in Queensland and the powers and responsibilities of Community Councils in relation to them be urgently reviewed.

Background information

The RCIADIC Report recommended that the Queensland Government review the question of Community Police and the powers and responsibilities of Community Councils following raised concern about policing practices in Aboriginal and Torres Strait Islander communities.

Responsibility

Recommendation 232 is solely the responsibility of the Queensland Government.

Key actions taken and status of implementation

The **Queensland** Police Service conducted a detailed review of the powers and responsibility of Community Police and Community Councils. As per Recommendations 228-231, Queensland has since implemented different initiatives in relation to policing in Aboriginal and Torres Strait Islander communities. Queensland Aboriginal and Torres Strait Islander Police Officers have powers to enforce local laws and 'special constable' appointments.

- *Queensland has implemented Recommendation 232 by reviewing and implementing recommendations regarding the powers and responsibilities of Community Police.*

Recommendation 233

That the question of Aboriginal police aides in Western Australia be given urgent consideration in light of recent developments, including the Police Aides Review (1987), the development of programs for police aides in other jurisdictions and the investigations into the work of police aides reported in the report of Commissioner Dodson and in this National Report and the recommendations of this report. In the consideration of Aboriginal police aides special attention should be given to the wisdom of police aides being engaged to work in communities other than those from which they were recruited.

Background information

Aboriginal and Torres Strait Islander police aides constituted a direct organisation of Aboriginal and Torres Strait Islander people into police work. The RCIADIC report viewed it as being of fundamental importance for Aboriginal and Torres Strait Islander communities and individuals to be involved in the administration of community law enforcement. Recommendation 233 calls for the Western Australia Government to consider the use of Aboriginal police aides.

Responsibility

Recommendation 233 is solely the responsibility of the Western Australian Government.

Key actions taken and status of implementation

The **Western Australia** Government formed the Aboriginal and Ethnic Employment Advisory and Review Committee to implement the *Aboriginal and Torres Strait Islander Employment Strategy* in Western Australia. Currently, the powers and responsibilities of police aides are limited under the *Police Administration Manual* to matters relating to Aboriginal and Torres Strait Islander people. There is no provision that Aboriginal and Torres Strait Islander people be used only in their own communities.

Western Australia's 1994 compliance report noted that this recommendation was completed. The Western Australia Police Force continues to actively recruit Aboriginal and Torres Strait Islander people as police officers, Community Relations Officers and Police Cadets.

- *Western Australia has implemented Recommendation 233 through the Aboriginal and Torres Strait Islander Employment Strategy.*

9.2 Breaking the cycle: Aboriginal youth (234-245)

Recommendation 234

That Aboriginal Legal Services throughout Australia be funded to such extent as will enable an adequate level of legal representation and advice to Aboriginal juveniles.

Background information

The RCIADIC Report envisaged that ALSs would have a key role to play in the provision of education to Aboriginal and Torres Strait Islander youth about their legal rights and obligations. It further noted that an adequate level of legal representation and advice to young Aboriginal and Torres Strait Islander people is essential, and the ALS, being best placed to provide it, should be adequately funded.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Although funding to ATSILSs is predominately provided at the Commonwealth level via AGD, funding is also provided on a State and Territory basis.

Key actions taken and status of implementation

In 1993-94, the **Commonwealth** Government-funded ALSs received \$9 million special funding provided as a response to the RCIADIC Report recommendations. This allowed for more adequate levels of legal representation and advice to Aboriginal and Torres Strait Islander youth. In July 2014, the Commonwealth introduced the *Indigenous Legal Assistance Program Guidelines*. The objectives of the program were to deliver culturally sensitive, responsive, accessible, equitable and effective legal assistance and related services to Aboriginal and Torres Strait Islander people.

The AGD also commented that the Commonwealth, through the Indigenous Legal Assistance Programme, will provide over **\$370 million in funding to ATSILSs** over the period 2015 to 2020. Under these funding arrangements, ATSILSs are required to plan and target services to priority clients whose ability to resolve legal problems are compromised by circumstances of vulnerability or disadvantage. Aboriginal and Torres Strait Islander children and young people (up to 24 years) are identified as priority clients.

- *The Commonwealth has provided funding to ATSILSs to address Recommendation 234.*

In the 1992-93 implementation report, the **New South Wales** Government provides that this recommendation is primarily a matter for the Commonwealth, which funds the Aboriginal Legal Service. NSW has provided funding to support legal representation through Legal Aid. Currently, approximately 11% of Legal Aid's clients are Aboriginal people. The *Justice Reinvestment for Aboriginal Young People Campaign* (2012) provided funding to communities with a high concentration of young offenders.

- *New South Wales has implemented Recommendation 234 by providing funding to support legal representation through Legal Aid, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

The **Victorian** Government introduced a range of measures to support Aboriginal and Torres Strait Islander youth in accessing the justice system. In 1993, the Koori Justice Project employed six workers to cooperate with Aboriginal and Torres Strait Islander youth who were either at risk of offending or in contact with the criminal justice system. The Victorian Government noted that funding of ALSs is the responsibility of the Commonwealth.

- *Victoria has implemented Recommendation 234 by implementing programs to support Aboriginal and Torres Strait Islander youth in accessing the justice system, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

In **Queensland**, Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service are capable of providing legal representation and advice to juveniles without charge.

- *Queensland has implemented Recommendation 234 by ensuring that Aboriginal and Torres Strait Islander juveniles can access legal representation and advice without charge.*

The **South Australian** Government considered Recommendation 234 to be a matter of the Commonwealth as per the 1994 implementation report. Funding cuts were reversed in the 2017-2018 Federal Budget.

- *South Australia has not implemented Recommendation 234.*

In **Western Australia**, the *Young Offenders Act 1994* (WA) recognises that Aboriginal and Torres Strait Islander families and community groups are crucial sources of advice in justice related matters. The Western Australia Government has also provided funding for legal representation, in line with the intent of Recommendation 234.

- *Western Australia has implemented Recommendation 234 by implementing programs to support Aboriginal and Torres Strait Islander youth in accessing the justice system, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

The **Tasmanian** Government has not provided any evidence of significant action in response to the recommendation.

- *Tasmania has not implemented Recommendation 234.*

The **Northern Territory** noted in the 1993-94 implementation report that Recommendation 234 was the responsibility of the Commonwealth. The Northern Territory Government has noted that it is supportive of additional resources being provided by the Commonwealth to facilitate legal representation and advice to young people.

- *The Northern Territory has not implemented Recommendation 234.*

The **Australian Capital Territory** Government noted that Recommendation 234 was primarily the responsibility of the Commonwealth as the Commonwealth provides the primary funding for Aboriginal Legal Services. However, the Justice and Community Safety Directorate funds the Aboriginal Legal Service through a number of community program contracts such as the Community Justice Programs deed, Duty Lawyer deed and Yarrabi Bamir. These programs provide for an increased level of legal representation and advice to Aboriginal and/or Torres Strait Islander youth in the Australian Capital Territory.

- *The Australian Capital Territory has implemented Recommendation 234 by implementing programs to support Aboriginal and Torres Strait Islander youth in accessing the justice system, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

Recommendation 235

That policies of government and the practices of agencies which have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies.

Background information

The RCIADIC report endorsed the role of families and community organisations in teaching Aboriginal and Torres Strait Islander culture, and considering the needs of Aboriginal and Torres Strait Islander youth in order to build their self-esteem and reinforce their identity. In this vein, Recommendation 235 requires that legislation should recognise the primary role of families and community groups in providing advice about the interests and welfare of Aboriginal and Torres Strait Islander juveniles.


Responsibility

The recommendation is the responsibility of the State and Territory Governments. Recommendation 235 relates solely to legislation at the State and Territory level.


Key actions taken and status of implementation

Prior to the RCIADIC report, the **New South Wales** Government implemented policy directed at the objectives of Recommendation 235 through the *Community Welfare Act 1987* (NSW) which provides that children in need of care should not be placed by Community Services except by way of consultation with the child's family and appropriate Aboriginal organisations. This legislation also recognises the rights of Aboriginal people in raising and protecting their own children, and to be involved in decision-making processes that impact them and their families.


Currently, Juvenile Justice NSW and FACS consult with Aboriginal communities through the Juvenile Justice Aboriginal Strategic Advisory Committee. Four Aboriginal Regional Advisory Committees also advise on relevant services, planning and support while Aboriginal Consultative Committees similarly advise Juvenile Detention Centres on relevant local issues. New South Wales also funds the Aboriginal Child, Family and Community Care State Secretariat (AbSec), which provides child protection and OOH policy advice on issues affecting Aboriginal children, young people, families and carers.

 *New South Wales has implemented Recommendation 235 through the provisions of the Community Welfare Act 1987.*


In **Victoria**, the *Children, Youth and Families Act 2005* (Vic) provides that relevant members of the Aboriginal and Torres Strait Islander community, including community organisations, be involved in decisions involving placement of an Aboriginal and Torres Strait Islander child in welfare proceedings, and other community service interactions. The Children's Koori Court, which deals with young Aboriginal and Torres Strait Islander people who have been found guilty of committing a criminal offence, takes submissions from elders, respected persons, and a family member of the young person.

 *Victoria has implemented Recommendation 235 through the provisions of the Children, Youth and Families Act 2005 (Vic) and the establishment of the Children's Koori Court.*

Queensland's *Juvenile Justice Act 1992* (Qld) places emphasis on the importance of recognising families and Aboriginal and Torres Strait Islander communities in the provision of services targeted at the rehabilitation and re-integration of children who commit offences. In 2017, the Queensland Parliament passed amendments to the *Child Protection Act 1999* which inserted an additional principle recognising the right of Aboriginal and Torres Strait Islander people to self-determination, broadened the range of entities or individuals that may support the provision of cultural advice relevant to an offender, and enabled the chief executive to delegate some or all of their functions or powers to a suitable individual within an appropriate Aboriginal or Torres Strait Islander entity.

 *Queensland has implemented Recommendation 235 through the Youth Justice Act 1992 (QLD) and recent amendments to the Child Protection Act 1999.*


In **South Australia**, the *Youth Justice Administration Act 2016* includes specific provisions that require assessment and case planning to consider the cultural identity and unique needs of Aboriginal and Torres Strait Islander young people, include representations made by the young person and their guardian, relative or carer, and include relevant Aboriginal and Torres Strait Islander people or organisations. In addition, the *Child Protection Act 1993* (SA) provides for the convening of family care meetings which are intended to provide a child's family with the proper opportunity to make informed decisions as to arrangements to secure the care and protection of the child.

 *South Australia has implemented Recommendation 235 through the Youth Justice Administration Act 2016 and the Children's Protection Act 1993.*


The **Western Australia** Government noted in the 1994 implementation report that the *Aboriginal Child Placement Policy* and the *Reciprocal Placement Policy* with Yorganop established the Government's commitment to ensuring that families and communities of juveniles are the prime sources of advice.

The Western Australian Government has noted that the *The Children and Community Services Act 2004 (WA)* has been implemented. Under the Act, Aboriginal and Torres Strait Islander families and community groups are able to participate in decision-making processes. Section 13 of the Act also states that Aboriginal and Torres Strait Islander people should participate in the protection and care of their children with as much self-determination as possible. The Western Australian Government has also noted that these provisions in the Act are likely to be further strengthened following a legislative review in 2017.

The Western Australian Government has also noted that the Western Australian Department of Justice has policies in relation to Aboriginal and Torres Strait Islander young people involved in the criminal justice system that recognises the role of responsible adults, families and communities in supporting the interests and welfare of young persons, and ensures that young persons are dealt with in culturally appropriate ways. This is consistent with *The Young Offenders Act 1994*.


 *Western Australia has implemented Recommendation 235 through The Children and Community Services Act 2004 and The Young Offenders Act 1994.*

Under **Tasmania's** *Child, Young Persons and their Families Act 1997 (Tas)*, welfare officers must seek advice from families, community groups and Aboriginal and Torres Strait Islander organisations when dealing with Aboriginal and Torres Strait Islander juveniles.

 *Tasmania has implemented Recommendation 235 through the Child, Young Persons and their Families Act 1997.*

In the **Northern Territory**, the practices of the Department of Correctional Services were compliant with Recommendation 235 at the time of the RCIADIC, as noted in the 1997 implementation report. Consultation with local communities, organisations including Aboriginal and Torres Strait Islander childcare agencies, and family members took place when appropriate. However, no information could be found on the Northern Territory Government's legislative response towards implementing Recommendation 235.


The Northern Territory Government has also noted that in conjunction with its response to the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is reviewing the provisions of the *Care and Protection of Children Act and Youth Justice Act (NT)*. This will consider the role of family, community and specialist organisations in relation to juveniles in the welfare and criminal justice systems.

 *The Northern Territory has mostly implemented Recommendation 235 but has not yet implemented a legislative response.*

The **Australian Capital Territory** Government's 1997 implementation reported noted its support for the involvement of Aboriginal and Torres Strait Islander families, community groups and specialist organisations in the welfare of young Aboriginal and Torres Strait Islander people within the welfare and juvenile justice systems.

In the Australian Capital Territory, the ACT Children and Young People Act 2008 (ACT) includes specific provisions for Aboriginal and Torres Strait Islander children and young people. When making decisions regarding Aboriginal and Torres Strait Islander children and young people, decision makers, must consider the following principles:

- the need to maintain a connection with the lifestyle, culture and traditions of the person's Aboriginal and Torres Strait Islander community;
- submissions about the child or young person made by or on behalf of any Aboriginal and Torres Strait Islander people or groups; and
- Aboriginal and Torres Strait Islander people in the person's family or kinship group and the community with which the child or young person has the strongest affiliation.

 *The Australian Capital Territory has implemented Recommendation 235 and has demonstrated evidence of a legislative response.*

Recommendation 236

That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding.

Background information

The RCIADIC Report noted that it is essential that Aboriginal and Torres Strait Islander youth programs incorporate community input in order to maximise the impact of the programs on Aboriginal and Torres Strait Islander youth.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation applies to all Aboriginal and Torres Strait Islander youth programs at both the Commonwealth and jurisdictional level.


Key actions taken and status of implementation

Following the RCIADIC Report, the **Commonwealth** Government's ATSIC developed the following programs:

- The Inwork Traineeship Program provided Aboriginal and Torres Strait Islander unemployed school leavers with on-the-job training from Aboriginal and Torres Strait Islander organisations.
- The Youth Bail Accommodation Plan was developed to reduce the rate at which young Aboriginal and Torres Strait Islander people were remanded in police custody or juvenile detention centres.
- The Young Persons' Sport and Recreation Development Program provided funding to the jurisdictions for the employment of Aboriginal Sport and Recreation Development Officers.
- The Young People's Development Program aimed to provide programs to address the disadvantage faced by young Aboriginal and Torres Strait Islander people.

Current funding is contributed by PM&C under the IAS which encompasses negotiations with communities in relation to their needs and opportunities. Young people are also targeted through a number of diversionary initiatives or re-engagement in education, training and employment. The IAS stands alongside other Commonwealth initiatives, including the Higher Education Support Act and the National Partnership Agreement on Remote Aboriginal Investments. These programs involve government at a number of levels in the implementation of Recommendation 236.

PM&C is currently undertaking work to develop a model of Youth Throughcare through co-design with existing providers, state and territory representatives and key experts, with the intention to engage an expert Aboriginal and Torres Strait Islander advisory panel with significant experience in supporting vulnerable young people with complex needs in the justice system.

 *Initially, ATSIC developed youth programs to address Recommendation 236. The Commonwealth provides continued funding through IAS toward ongoing implementation.*

In **New South Wales**, the Office of Youth Affairs funded a number of Aboriginal youth programs in the early 1990s which were developed in consultation with communities. The Koori Youth Program sought to improve the literacy, numeracy, self-esteem and cultural awareness of young people at risk of leaving school early. Initiatives including the Youth Arts and Skills Festival, and Youth Week provided a forum to showcase and develop the skills of young people and to discuss pertinent issues. In 2005 the *Tirkandi Inaburra Cultural and Development Centre* was established to provide on-site schooling for young Aboriginal men.


Currently, agencies involved in the delivery of services to Aboriginal children and young people regularly engage with local communities to leverage their knowledge and expertise. For example, as part of its Aboriginal Education Policy, the Department of Education is committed to engaging with local Aboriginal communities to deliver education services. The Aboriginal Education Council partners with the NSW Aboriginal Education Consultative Group through the '*Together we are, Together we can, Together we will*' 2010-2020 Partnership Agreement.

FACS also works with Grandmothers Against Removal to implement the *Guiding Principles for Strengthening the Participation of Local Aboriginal Community in Child Protection Decision Making* and has also provided intensive implementation support for local communities that want to establish a Local Advisory Group. The NSW Advocate for Children and Young People also consults extensively with Aboriginal children and young people to devise youth programs which service their needs and respects the importance of connection to culture.


Juvenile Justice NSW uses consultative committees, such as their Juvenile Justice Aboriginal Strategy Advisory Committee, which provides advice and guidance on policy, programs and Aboriginal issues across the agency. Four Aboriginal Regional Advisory Committees advise on relevant services, planning and support. There are also a number of Aboriginal Consultative Committees, with representatives from local organisations and services, which advise the Juvenile Detention Centres on relevant local issues to support Aboriginal young people. This is also relevant to services and programs for Aboriginal young people exiting custody or completing a community supervision order.

 *New South Wales has implemented Recommendation 236 by working extensively with local Aboriginal communities to design and deliver youth programs.*

It is the **Victorian** Government's policy, as stated in the 1997 implementation report, is that any programs which impact on Aboriginal and Torres Strait Islander people should be developed through negotiation with, and delivered by, local community organisations. In 1993, the Victorian Government supported the Victorian Aboriginal Youth Sport and Recreation Cooperative as its primary point of contact with the Victorian Aboriginal and Torres Strait Islander community, and as a channel for funding assistance and local community program development. The AJA and the Frontline Youth initiatives grant program fund a number of youth community-based programs, for instance, the Songlines Music Aboriginal Corporation, which enables Aboriginal and Torres Strait Islander youth to develop as musicians.


 *Victoria has implemented Recommendation 236 through its policies around negotiation and delivery for youth programs.*

The **Queensland** Government's 1994 implementation report notes that it encourages and supports the development of community-based youth strategies. Youth Justice, in partnership with the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP), has committed to trialling a Justice Reinvestment Initiative in Cherbourg, which seeks to reallocate investment earmarked for detention centres and prisons to prevention, early intervention and diversion initiatives in communities instead.

 *Queensland has partially implemented Recommendation 236 by committing to trialling a Justice Reinvestment Initiative in Cherbourg. However, no evidence was observed that the principles of Recommendation 236 have been implemented across the Queensland Government.*

The 1994 implementation report notes that the **South Australian** Government developed 26 Aboriginal Youth Action Committees with the purpose of encouraging young people as leaders by assuming the responsibility of meeting their own recreation and social needs with guidance and support from community leaders. The *Young Peoples Development Plan* (1993) guided the allocation of funding for youth programs which contributed to the economic and social development of young people.

In 2014, youth program delivery was transferred from the-then Department for Communities and Social Inclusion (DCSI) to the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council, which receives funding from the DCSI through the APY Lands Task Force. The DCSI works in partnership with the NPY Women's Council to deliver youth programs in Amata, Pipalyatjara, Pukatja, Mimili, Kalka and Fregon.

 *South Australia has partially implemented Recommendation 236 by funding the NPY Women's Council to assist with the delivery of youth services. However, no evidence was observed that the principles of Recommendation 236 have been implemented across the South Australian Government.*


In 1994, the **Western Australia** Government supported a range of initiatives including the development of junior football, community games, and street sports in various regions. This included the establishment of a reference group for Aboriginal and Torres Strait Islander sport and recreation, and the provision of ongoing training and support for community recreation officers.

In addition to this, the Western Australian Government has noted that a key principle of all government programs and services is that they should be co-designed with local communities and users. This principle is particularly important for Aboriginal and Torres Strait Islander programs (including Aboriginal and Torres Strait Islander youth programs).


The Western Australian Government has noted that more broadly, changes in the State have seen the creation of the Aboriginal Policy Unit within the Department of the Premier and Cabinet. The primary aim of this unit is to transform the relationship between Aboriginal and Torres Strait Islander people and government in Western Australia, to deliver mutual and enduring benefits. Location-based solutions, including across regional and remote communities, is another focus of the unit.

 *Western Australia has partially implemented Recommendation 236 by funding a range of initiatives targeted at Aboriginal and Torres Strait Islander youth. However, no evidence was observed that a process of negotiating with Aboriginal and Torres Strait Islander communities and organisations has been implemented.*

In 1992-93 and 1993-94, the **Tasmanian** Government provided \$150,000 to the *Tasmanian Aboriginal Centre Aboriginal Youth Program* in support of community-based programs. Currently, the Tasmanian Government follows the *Youth at Risk Strategy* to devise a long-term, financially sustainable, whole of government way to respond to the safety and rehabilitative needs of young people. Aboriginal and Torres Strait Islander young people were consulted in its development. Relevant actions under the Strategy involve working with all levels of government to develop a range of innovative consultative mechanisms and more inclusive practices targeted at youth in risk in Tasmania, and improving the service system to ensure that it is flexible, responsive and inclusive.

 *Tasmania has partially implemented Recommendation 236 by funding the Tasmanian Aboriginal Centre Aboriginal Youth Program and by committing to the Youth at Risk Strategy but has not addressed negotiating with the Aboriginal and Torres Strait Islander community to devise relevant procedures.*

The **Northern Territory** government, through Territory Families is currently participating in intergovernmental approaches to developing place-based responses to community capacity building, local decision making, partnering and service provision for children, young people and families.

 *The Northern Territory has partially implemented Recommendation 236 through place-based responses to community capacity building. However there is no evidence that a process of negotiating with Aboriginal and Torres Strait Islander communities and organisations has been implemented more broadly.*

The **Australian Capital Territory's** *Young Person's Sport: A Recreation Development Program* was established following the release of the RCIADIC report to address the principles, roles and responsibilities of government in relation to Recommendation 236. The Aboriginal Sport and Recreation Development Officers also contributed to the establishment of a network for Aboriginal and Torres Strait Islander community organisations to reduce barriers to participation in community sports and recreation.

The Australian Capital Territory also funds services under the Child, Youth and Family Services Program assist vulnerable children, young people and their families. The program comprises a mix of services from group programs to case management. While all services funded under the program work with Aboriginal and Torres Strait Islander children, young people and their families, there are some organisations that receive dedicated funding to work with Aboriginal and Torres Strait Islander communities. As part of the Directorate's Early Intervention by Design project and planning for future procurement, consideration is being given to how programs can ensure flexible contracting arrangements which embed collaboration with local communities to develop service offerings.

● *The Australian Capital Territory has implemented Recommendation 236 by introducing recreational youth programs and youth support programs. In the planning and procurement of organisations to provide these programs, consideration is given to contracting arrangements, which embed collaboration with local communities.*

Recommendation 237

That at all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both government and community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy.

Background information

The RCIADIC Report concluded that employing Aboriginal and Torres Strait Islander people in the youth welfare and justice systems would improve rehabilitation prospects for youth and reduce their likelihood of being incarcerated as an adult.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The Commonwealth, and the States and Territories are jointly responsible for oversight of programs in the juvenile welfare and justice systems.

Key actions taken and status of implementation

Similar to Recommendation 236, the **Commonwealth** Government's Inwork Traineeship Program, the Young Persons' Sport and Recreation Development Program and the Young People's Development Program are all relevant to addressing Recommendation 237.

Through the IAS, PM&C currently administers a number of programs that provide intensive case management for prisoners to assist adult prisoners to address the underlying causes of their offending behaviour, and equip them with greater capacity to manage the transition out of prison and back into the community. These programs employ Aboriginal and Torres Strait Islander people.

The Commonwealth also contributes to funding for Community Night Patrol, as discussed in Recommendation 220.

● *Recommendation 237 has been completely implemented by the Commonwealth, as primary responsibility for employment in the juvenile justice system resides with jurisdictional governments.*


The **New South Wales** Government responded to Recommendation 237 in 1992-93 by establishing a number of Aboriginal positions within Juvenile Justice Centres and Juvenile Justice Community Services. Currently, approximately 10% of the total Juvenile Justice workforce identify as Aboriginal, in roles ranging across administrative, managerial and frontline areas. In addition, FACS has responded to Recommendation 237 through its *Aboriginal Employment Strategy 2016-2018*, which has three focus areas: to attract and recruit Aboriginal people, to build capabilities and careers, and to promote cultural competency.

FACS also conducts culturally appropriate recruitment campaigns to attract Aboriginal candidates for child protection caseworker roles as well as a range of other identified roles and offers Aboriginal traineeships at the different levels including school and TAFE based traineeships.

● *New South Wales has implemented Recommendation 237 by actively recruiting Aboriginal staff to juvenile justice and welfare programs.*


The **Victorian** *Public Service Aboriginal Employment Strategy* (1993) sought to promote the recruitment of Aboriginal and Torres Strait Islander people to a variety of public sector positions and to assist with the development of training programs. Aboriginal and Torres Strait Islander people were also employed across Juvenile Justice Centres and Juvenile Justice Units. Currently, the Victorian Government provides young people with traineeships and apprenticeships across the public service as

part of the *Youth Employment Scheme*. In addition to recruitment policies, the Department of Human Services aims to fund Aboriginal and Torres Strait Islander service organisations to provide the Department's programs and initiatives wherever possible.

 *Victoria has implemented Recommendation 237 by actively recruiting Aboriginal and Torres Strait Islander persons and by providing services through Aboriginal and Torres Strait Islander organisations.*


In their 1993 implementation report, the **Queensland** Government noted that funding had been provided for the employment of youth workers and the provision of competency-based training, including for a range of Aboriginal and Torres Strait Islander positions. Training opportunities for Aboriginal and Torres Strait Islander health workers and trainers were administered by the Youth Sector Training Council.

The 2012 *Youth At Risk* initiative further aimed to employ Aboriginal and Torres Strait Islander workers and ensure the inclusion of, and access to, Aboriginal and Torres Strait Islander people. In addition, Youth Justice actively promotes all advertised vacancies through the established Aboriginal and Torres Strait Islander employment network and attends community events to promote employment opportunities.

 *Queensland has implemented Recommendation 237 by actively recruiting Aboriginal and Torres Strait Islander persons for youth worker positions and administering training opportunities for health workers and trainers through the Youth Sector Training Council.*

The **South Australian** Government responded to this recommendation in 1994 through the *State Youth Affairs* program. Under this initiative, the South Australian Government contributed to the employment of Aboriginal Project Officers in policy and program branches, and supported an Aboriginal Youth Worker Training Program.


More recently, funding has been provided as part of the *Aboriginal Youth Development Program* for the employment of community based youth workers and the positive engagement of young Aboriginal and Torres Strait Islander people in skill development. The Department of Human Services also has an Aboriginal Employment Pool that provides opportunities for Aboriginal and Torres Strait Islander candidates to be considered for a range of targeted roles, prior to their mainstream advertisement.

 *South Australia has implemented Recommendation 237 by supporting the Aboriginal Youth Worker Training Program and the employment of Aboriginal Project Officers in policy and program branches.*

Following the RCIADIC, the **Western Australian** Government supported the recruitment and retention of Aboriginal and Torres Strait Islander people within the-then Department for Community Development, including in roles such as Policy Officers for Aboriginal Employment and Development, and Youth Activities Officers. In 1994, 9.5% of the Department's staff members were Aboriginal and Torres Strait Islander people.


More recently, Western Australia has continued its commitment to the employment of Aboriginal and Torres Strait Islander people. As part of the Department of Justice's Reconciliation Action Plan for the period 2017/2018 to 2020/2021, there is a strong focus on increasing the number of Aboriginal and Torres Strait Islander employees across the Department.

The Western Australian Government has also indicated that the Department of Communities is currently in the process of setting internal Aboriginal and Torres Strait Islander employment, procurement and contracting targets, including its contracted youth programs.

 *Western Australia has mostly implemented Recommendation 237, however has not provided evidence of a vigorous recruitment and training strategy targeting the employment Aboriginal people as youth workers.*

In 1993, the **Tasmanian** Government implemented a strategy with the-then Department of Community and Health Services to contribute to employment of Aboriginal and Torres Strait Islander


people within the positions identified by Recommendation 237. Currently, the *Tasmanian State Service Aboriginal Employment Strategy*, which aims to identify and implement effective strategies to attract, develop and support Aboriginal and Torres Strait Islander employees to the Tasmanian State Service, is in development.

 *Tasmania has partially implemented Recommendation 237 by taking steps towards improving the employment of Aboriginal and Torres Strait Islander employees in the Tasmanian State Service but has not expressly addressed the appointment of Aboriginal and Torres Strait Islander youth workers.*

In their 1993-94 implementation report, the **Northern Territory** Government noted that 8% of all Community Correction and Juvenile Justice staff were Aboriginal and Torres Strait Islander people. Further initiatives were introduced to bolster the employment of Aboriginal and Torres Strait Islander people, including as Aboriginal Community Correction Officers. This included conjoint training and recruitment programs with the Commonwealth.


In 2017, juvenile detention was re-assigned to the Territory Families agency, with the supervision of youth offenders to follow similar reassignment in 2018. NT Correctional Services applies Special Measures when undertaking recruitment with a view to increasing Aboriginal and Torres Strait Islander employment and development opportunities in the department as part of its Justice Matter Strategies.

The Northern Territory Government has noted that Territory Families has recently implemented Aboriginal and Torres Strait Islander special measures for agency recruitment activity and is supporting the worker development and capacity building of Aboriginal Community Controlled Organisations.

 *The Northern Territory has implemented Recommendation 237 by implementing initiatives to bolster the employment of Aboriginal and Torres Strait Islander people, including conjoint training and recruitment programs with the Commonwealth.*

In the **Australian Capital Territory**, the ACT Bureau of Sport, Recreation and Racing appointed Aboriginal and Torres Strait Islander officers in 1994 to develop links with community members and to facilitate the development of sporting and recreation opportunities for Aboriginal and Torres Strait Islander youth.

In addition to this, the Bimberi Youth Justice Centre has a Family Engagement Officer and two casual youth workers who are of Aboriginal and Torres Strait Islander heritage. The manager of Narrabundah House (Residential Care property) is of Aboriginal and Torres Strait Islander heritage.

 *The Australian Capital Territory has partially implemented Recommendation 237, by employing and training Aboriginal and Torres Strait Islander people as youth workers in some parts of the juvenile welfare and justice systems.*

Recommendation 238

That once programs and strategies for youth have been devised and agreed, after negotiation between governments and appropriate Aboriginal organisations and communities, governments should provide resources for the employment and training of appropriate persons to ensure that the programs and strategies are successfully implemented at a local level. In making appointment of trainers preference should be given to Aboriginal people with a proven record of being able to relate to, and influence, young people even though such candidates may not have academic qualifications.

Background information

The RCIADIC Report stressed the importance of having well-structured programs and instructors that can relate to Aboriginal and Torres Strait Islander youth. Such programs should be aimed at improving the training and employment for Aboriginal and Torres Strait Islander youth.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The Commonwealth, and the States and Territories are jointly responsible for oversight of programs in the juvenile welfare and justice systems.

Key actions taken and status of implementation

The **Commonwealth** Government's Inwork Traineeship Program, the Young Persons' Sport and Recreation Development Program and the Young People's Development Program, discussed in Recommendation 236, are all relevant to the implementation of Recommendation 238.


Under IAS, the Department of Prime Minister and Cabinet administers funding of over \$312 million across Australia in 2016-17 targeted at activities aimed at supporting Aboriginal and Torres Strait Islander children and youth to improve community safety, wellbeing, and education outcomes. Funded organisations under the IAS are required to employ Aboriginal and Torres Strait Islander in the delivery of their programs.

 *Recommendation 238 has been mostly implemented. While the Commonwealth Government has developed programs for the employment and training of Aboriginal and Torres Strait Islander people, program guidelines do not require that preference be given to employing Aboriginal and Torres Strait Islander trainers who have a proven record in relating to young people, even if they lack academic qualifications.*


In 1993, the-then **New South Wales** Office of Juvenile Justice (currently Juvenile Justice NSW) employed an Aboriginal Juvenile Justice Officer and youth workers, and utilised the services of an Aboriginal Chaplain and an Aboriginal Official Visitor. This included the development of culturally-relevant training for staff in responding to Aboriginal youth.

As outlined in NSW's response to Recommendation 237, there exist a variety of programs and strategies to support engagement with Aboriginal communities in the design and delivery of youth programs. In addition, the NSW Government provides funding to AbSec to support sector development including training and development within the child and family sector.

Through its Targeted Earlier Intervention program reforms, FACS is also developing a strategy to focus investment on Aboriginal families through Aboriginal-led service delivery. Over time this strategy will increase the number of Aboriginal people working with young people as well as the cultural safety of that work.

 *New South Wales has mostly implemented Recommendation 238 by providing funding and support through AbSec and other avenues but has not addressed giving preference to Aboriginal people as trainers.*


Within **Victoria's** Koori Justice Project and the AJA, Aboriginal and Torres Strait Islander workers were responsible for program delivery. The appointment of workers was determined by Aboriginal and Torres Strait Islander communities, and the worker was responsible to the community for service delivery.

 *Victoria has mostly implemented Recommendation 238 by ensuring Aboriginal and Torres Strait Islander persons are responsible for service delivery but has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*

In 1993, the **Queensland** Government, through the-then Department of Family Services and Aboriginal and Islander Affairs, provided a 1.5% subsidy into all youth program grants for the provision of coordinated training for all workers in funded community organisations. The Supported Accommodation Assistance Program supported the integration of training and the administration of funding arrangements in line with the intent of Recommendation 238. This included the employment of training officers to assist with service development. A number of these new services were funded in Aboriginal and Torres Strait Islander communities.


Currently, Youth Services ensures that where services are being delivered within Aboriginal and Torres Strait Islander communities, staff will be recruited from the community in the first instance. All Youth

Justice program delivery roles require cultural capability, which is assessed at recruitment through selection tools and references from an Aboriginal and Torres Strait Islander person recognised within the community. It is also highly recommended that selection panels for all youth justice roles include an Aboriginal and Torres Strait Islander panel member.

 *Queensland has mostly implemented Recommendation 238 by ensuring Aboriginal and Torres Strait Islander persons are recruited where services are being delivered within Aboriginal and Torres Strait Islander communities but has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*


The 1994 implementation report noted that the **South Australian** Government, through State Youth Affairs, had provided: measures for the employment of an Aboriginal Youth Worker; financial support to attend conferences for Workers with Aboriginal Youth; and support for the Northern Area Aboriginal Neighbourhood House. The South Australian Government also extended training opportunities for staff in these programs through TAFE and community organisations. In 1994, the policy of the then Department of Family and Community Services was to employ Aboriginal and Torres Strait Islander staff in areas where contact with Aboriginal and Torres Strait Islander young people can be expected.

Currently, the Department of Human Services employs Aboriginal and Torres Strait Islander staff in various roles and classifications via an Aboriginal Employment Pool that provides opportunities for candidates, prior to the mainstream advertisement of these roles.


 *South Australia has mostly implemented Recommendation 238 by supporting Aboriginal and Torres Strait Islander persons to deliver services, as evidenced by support for training opportunities, preferential policies and an Aboriginal Employment Pool. However, South Australia has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*

In 1994, the **Western Australia** Government supported a range of training and employment initiatives for Aboriginal and Torres Strait Islander people engaged in sports and recreation services. This included the provision of funding and the development and administration of relevant staff training programs.


The Western Australian Department of Justice provides currently contracts seven Aboriginal and Torres Strait Islander organisations to deliver programs in the areas of health, rehabilitative, recreational, cultural and educational needs. The procurement process required demonstration of cultural competence and included requirements in relation to partnerships with Aboriginal and Torres Strait Islander Elders, their communities and Aboriginal and Torres Strait Islander controlled organisations. This initiative increased the number of Aboriginal and Torres Strait Islander employees and organisations delivering services.

 *Western Australia has mostly implemented Recommendation 238 by contracting Aboriginal and Torres Strait Islander organisations to deliver programs and implementing a range of training and employment initiatives for Aboriginal and Torres Strait Islander people. However, Western Australia has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*

As noted in its response to Recommendation 236, **Tasmania** has developed a *Youth at Risk Strategy* which provides the Tasmanian Government with strategic direction regarding approaches to addressing youth at risk in Tasmania. No further information could be found on Tasmania's implementation of Recommendation 238.

 *Tasmania does not appear to have taken relevant actions to address Recommendation 236.*


The **Northern Territory** Government has indicated that in conjunction with responses to recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is engaging with Aboriginal and Torres Strait Islander organisations to improve local responses and support capacity building.

 *The Northern Territory has not implemented Recommendation 238.*

Following the RCIADIC, the **Australian Capital Territory** developed an employment and career development strategy for Aboriginal and Torres Strait Islander people engaged with the-then Housing and Community Services Bureau. It aimed to increase the employment of Aboriginal and Torres Strait Islander people within the Department, and at the various levels of the Bureau. The ACT Government extended this emphasis on Aboriginal and Torres Strait Islander employment and training through various other Departmental initiatives in the early 1990s.

The Australian Capital Territory Government has noted that since this time, the Canberra Institute of Technology has provided opportunities for Aboriginal and Torres Strait Islander people who have experience and skills working with young people to gain qualifications through skills recognition, with an Indigenous Scholarship program available.

The institute also encourages Aboriginal and Torres Strait Islander people to apply to the Casual Trainer register. It also has dedicated Aboriginal and Torres Strait Islander vocational education and training as well as an Aboriginal and Torres Strait Islander student support hub.

 *The Australian Capital Territory has mostly implemented Recommendation 238 through providing resources for employing and training of Aboriginal and Torres Strait Islander people at a local level and encouraging the employment of Aboriginal and Torres Strait Islander trainers. However, no evidence has been provided that explicit preference is given for Indigenous trainers even if they lack academic qualifications.*

Recommendation 239

That governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary. The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.

Background information

In order to divert Aboriginal and Torres Strait Islander juveniles away from the court process, the RCIADIC Report encouraged the implementation of a caution for punishment instead of arresting children for their offence. Additionally, the presence of family, or other supporting persons, should be present when such cautions were delivered.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both Commonwealth, and State and Territory governments have legislative oversight of this policy area. The work of the AFP in the ACT and Jervis Bay Territory is also relevant to this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 239. The Australian Capital Territory implemented the *Children and Young People Act 2008* (ACT) which provides that young people should be detained only as a last resort. There are no considerations as to whether cautioning is preferred to formal caution or progression to Court.

The *Crimes (Search Warrants and Powers of Arrest) Amendment Bill 1993* was enacted which inserted Sections 3V into the *Crimes Act 1914* and came into effect in December 1994. The AGD noted that under this action, police officers were required to consider the most appropriate means of preserving the safety or well-being of a person when contemplating the use of an arrest power.


The AFP's *General Instruction 13* explicitly states that, where practical, proceedings against juveniles shall be initiated by way of summons, as opposed to arrest. The AFP have stringent provisions which

define the circumstances under which members may proceed by way of arrest. Each arrest is reviewed by the watch house sergeant, and if the circumstances do not warrant an arrest, then the charge is not accepted. ACT Policing also has internal governance that outlines the circumstances and process by which members may issue a criminal caution, or refer a matter through the restorative justice process.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 239 through legislative amendment of the Crimes Act 1914, and regional instruction from the AFP.*


In **New South Wales**, the *Young Offenders Act 1997* (NSW) states that criminal proceedings should not be instituted against a child if there are alternative and appropriate means of dealing with the matter, including a warning or caution. The Act also addresses the conditions in which warnings and cautions should be issued. For Aboriginal offenders, a caution may be given by a respected member of the Aboriginal community to which the offender belongs, at the request of the police officer as per Police Commissioner's Instructions and provisions in the *Children and Young Persons (Care and Protection) Act 1998*.

Police training has been implemented, both field and NSW Police Force Academy-based, that stresses the use of 'cautions' as a preferred option when dealing with certain classes of child offenders. There is a general rule that if a juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.


 *New South Wales has implemented Recommendation 239 by allowing for youth offender cautioning in the Young Offenders Act 1997.*

Victoria's *Children, Youth and Families Act 2005* (Vic) details that a warrant to arrest a child must only occur in "exceptional" cases. The *Change the Record* report notes that Victoria is the only state in Australia that does not formally accommodate police cautioning within its juvenile justice legislation, despite a police cautioning program existing in the Victorian Police Operating Procedures. Police in Victoria are instructed to handle young offenders in the following manner: no further action; a caution under the police cautioning program; proceed by summons; charge and consider bail; or charge and remand in custody by court or bail justice. Arrest and detention of young person must be authorised by the Senior Sergeant or above for extreme cases. The AJA also provides for the continuation of the Koori Youth Cautioning Program, which aims to grow the number of Aboriginal and Torres Strait Islander youths who are cautioned for offences, and collect better data on the use of cautions.

The Victorian Government has indicated that the relevant section of the Victoria Police Manual (Procedures and Guidelines - Disposition of Offenders) provides guidance on the application of Victoria Police Policy consistent with this recommendation. It is also noted that Victoria maintains separate adult and youth justice systems with separate legislative and service systems covering arrest, bail, remand, sentencing and parole.

 *Victoria has mostly implemented Recommendation 239 in the Children, Youth and Families Act 2005, however, does not allow for youth offender cautioning in its legislative framework.*

Queensland implemented the *Youth Justice Act 1992* (Qld) whereby section 11 provides that prior to starting proceedings against a child for an offence (that is not a serious offence), a police officer must proceed in the following manner: take no action; administer a caution; refer the offence to a conference; if involving a minor drugs offence, refer the child to a drug diversion assessment program; or if involving a graffiti offence, attend a graffiti removal program. This assessment is based on the circumstances of the offence, the individual's criminal history, and any other relevant matters. If the child is of Aboriginal and Torres Strait Islander descent, the police officer must also consider whether there is a respected person of the Aboriginal and Torres Strait Islander community who is available and willing to administer the caution.


 *Queensland has implemented Recommendation 239 by allowing for youth offender cautioning in the Youth Justice Act 1992.*

South Australia implemented the *Young Offenders Act 1993 (SA)* where section 6 provides that if a youth admits to committing a minor offence, a police officer may decide that the matter does not warrant any formal action and therefore hand down an informal warning rather than formal cautioning, diversion or arrest. South Australia requires the consent of a commissioned officer before a juvenile can be arrested. A young person also cannot be detained in a cell if the area has not been previously deemed as suitable for a young person to inhabit.

SAPOL General Orders state that an officer must consider a youth's age, antecedents and welfare when deciding whether to arrest. Before arresting or detaining a youth, authorisation must be given from a sergeant or member above the rank of sergeant, or from the LSA commander, under section 78(2) of the *Summary Offences Act*. Police General Order 8980, *Young Offenders Act* also sets out guidelines for the issuing of both formal and informal cautions and family conference and youth court provisions.


 *South Australia has implemented Recommendation 239 by allowing for youth offender cautioning in the Young Offenders Act 1993.*

Western Australia implemented the *Young Offenders Act 1994 (WA)* which provides that the detention of a young person should be a last resort and any such detention should be for the shortest time possible. When determining how to proceed with a young offender, their cultural background must also be considered and dealt with in a way that assists young people. In the majority of cases, a caution is preferred over laying a charge, unless it would be inappropriate considering the seriousness of the offence and the number of previous offences. Additionally, the Act states that a police officer must consider whether a caution is not appropriate in dealing with a young person convicted of making an offence. Issuing a notice to attend court is preferred in all appropriate circumstances to summon a young person to court or to detain a young person in custody.

 *Western Australia has implemented Recommendation 239 through the Youth Offenders Act 1994, which states that police should make use of cautions as a preference.*

Tasmania implemented the *Youth Justice Act 1997 (Tas)* which provides that a young person should only be detained in custody as a last resort and for as short a time as necessary. There is an additional focus on maintaining family relationships for the young person; to not withdraw a young person from their family environment; to not impair a young person's sense of racial, ethnic or cultural identity; and, to be dealt with in a manner that involves their cultural community.


This Act provides the Police Force with the ability to provide young offenders with an informal caution as an alternative to a formal caution where the matter is not serious enough to warrant an arrest, reference to diversion programs, or progression to Court. Formal and informal cautions may be delivered to Aboriginal and Torres Strait Islander youths by an Aboriginal and Torres Strait Islander Elder or a representative of a recognised Aboriginal and Torres Strait Islander organisation. A young person would only be arrested in cases of very limited circumstances. A caution can also be considered available after an arrest, if an arrest has been necessary and is reviewed by Inspectors and trained youth diversionary police officers.

 *Tasmania has implemented Recommendation 239 by allowing for youth offender cautioning in the Youth Justice Act 1997.*

The **Northern Territory** implemented the *Youth Justice Act 2006 (NT)* which provides that young people should only be kept in custody for an offence as a last resort, and for the shortest period of time possible. If the young person is of Aboriginal and Torres Strait Islander descent, efforts must also be made to deal with the offence in a manner that involves the individual's community. However, under some circumstances they will be unable to merely receive a written or verbal warning, or be processed to a diversion program. In these cases, the young person would be directed to Court. The *Youth Justice Act* was amended as of 2017 to include additional principles providing for the further protection of youths.

In addition to this Section 39 of the Youth Justice Act provides a range of alternates to charging young people with offences, such as verbal and written warnings and, youth justice conferences.

The Northern Territory Government has also noted that, in conjunction with responses to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is reviewing the provisions of the *Youth Justice Act 2006 (NT)* and will consider appropriate provisions to address the application of police powers of arrest.

 *The Northern Territory has implemented Recommendation 239 by allowing youth offender cautioning under the Youth Justice Act 2006.*

Recommendation 240

That:

- a. *Police administrators give police officers greater encouragement to proceed by way of caution rather than by arrest, summons or attendance notice;*
- b. *That wherever possible the police caution be given in the presence of a parent, adult relative or person having care and responsibility for the juvenile; and*
- c. *That if a police caution is given other than in the presence of any such person having care and responsibility for the juvenile such person be notified in writing of the fact and details of the caution administered.*

Background information

The RCIADIC Report emphasised the importance of police officers administering cautions to, as opposed to arresting, Aboriginal and Torres Strait Islander youth in order to prevent detention.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to 240. In addition to the actions noted in Recommendation 239, the AFP has internal governance processes in place relating to circumstances when an offender can be issued a criminal caution for an offence. For example, when a police caution is issued to a juvenile, a parent/guardian must be present and must consent to the caution. However, while AFP staff are encouraged to adhere to these processes, they are not binding on staff.


Additionally, the *Children's Services Act 1986 (ACT)* provides for interviews of juveniles to take place in the presence of a parent, and for the giving of a previous caution to be a matter to be taken into account when deciding whether to instigate criminal proceedings. The *Liquor (Amendment) Act 1987 (ACT)* makes specific provision for using cautions to juveniles, including providing a copy of the caution to the young person or his/her parent or guardian. Similar to Recommendation 239, the *Crimes (Search Warrants and Powers of Arrest) Amendment Bill 1993*, which enacted Sections 3V into the *Crimes Act 1914* and the AFP's General Instruction 13 are both relevant to Recommendation 240.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 240 by addressing all parts of the recommendation.*

In **New South Wales**, the 1996 implementation report states that police instructions require that a person responsible for the young person is present when a formal caution is administered. A young person that has committed an offence would be entitled to be dealt a caution if they are not eligible for a warning or if a warning is deemed inappropriate. In making this decision, the police officer must consider the seriousness of the offence, the degree of violence involved, the harm caused to any victim, and any previous offences and interactions of the young person with the justice system.


More recently, police training, both field and NSW Police Force Academy-based, stresses the use of 'cautions' as a preferred option with dealing with certain cases of child offenders, as included in

Commissioner's Instruction 75 – Child Offenders. Any caution is to be administered in the presence of a person responsible for the child. If a responsible person is not available, a mutually acceptable time and date should be selected within a 28-day period.

 *New South Wales has mostly implemented Recommendation 240 through the Commissioner's Instruction 75 – Child Offenders but has not addressed part (c) of the recommendation.*


In **Victoria**, the 1994 implementation report states that young people who are first offenders are typically cautioned in the presence of an adult, by an officer who is ranked as a Sergeant or above. However, cautioning may be carried out without the presence of a responsible adult (either a parent or independent person). With regards to part (a) of this recommendation, the Koori Youth Cautioning Program serves as a system-level approach to encouraging the use of cautions against Aboriginal and Torres Strait Islander youth.

The Victorian Government has also noted that a specific Koori Youth Cautioning model is being developed for implementation within the life of Aboriginal Justice Agreement Phase Four.

 *Victoria has mostly implemented Recommendation 240, however no evidence of the implementation of part (c) has been provided.*

Current arrangements in **Queensland** allow police officers to caution young offenders. Cautions are not limited to first time offenders, but are dependent on the individual circumstances of each offence. Cautions are typically implemented by appointment and in the presence of a parent of each young offender. The *Youth Justice Act 1992* (Qld) provides for police cautioning to be administered where practicable in the presence of a person chosen by the child or a parent of the child, or a person chosen by the parent of the child.

This Act also allows for Aboriginal and Torres Strait Islander Elders (or a respected Aboriginal and Torres Strait Islander person) of the community to administer cautioning to young Aboriginal and Torres Strait Islander offenders. For each young person that receives a caution, they are to receive a certification that details the facts and details of the caution. A charge made against by a young person may be dismissed at the Children's Court if the court is satisfied that the young person should have been cautioned instead of charged. These issues are also addressed in the *Police Powers and Responsibilities Act 2000* and the QPS OPM.


 *Queensland has implemented Recommendation 240 by addressing these considerations in the Youth Justice Act 1992 (QLD), the Police Powers and Responsibilities Act 2000 and the QPS OPM.*

In **South Australia**, section 6 and 7 of the *Young Offenders Act 1993* (SA) assign a statutory power to the sub-categories raised in this recommendation. The provisions set out in Recommendation 240 have been accordingly incorporated into General Order 8980 and SAPOL General Orders Youths.


 *South Australia has implemented Recommendation 240 by incorporating these provisions into General Order 8980 and SAPOL General Orders Youths.*

In **Western Australia**, the *Young Offenders Act 1994* (WA) instructs police officers to:


- caution young people rather than arrest, summons or attendance notice;
- where possible, give the caution in the presence of a person having care and responsibility for the juvenile; and
- if not administered in their presence, such person be notified in writing of the details of the caution.

 *Western Australia has implemented Recommendation 240 by incorporating these provisions into the Young Offenders Act 1994 (WA).*

As per the **Tasmanian** Government's response to Recommendation 239, the *Youth Justice Act 1997* provides the Police Force with the ability to provide young offenders with an informal caution as an alternative to a formal caution where the matter is not serious enough to warrant an arrest.

-  *Tasmania has partially implemented Recommendation 240 but has not addressed parts (b) or (c) in its response.*

In the **Northern Territory**, the established policy of the Northern Territory Police at the time of the RCIADIC was already in accordance with this recommendation, as per the General Order for Children (Code C3). Additional provisions have been accounted for in the *NT Police General Order – Arrest* as of 2017, which pertain to arrest of youths, as well as the *General Order Youth* and *General Order Youth Pre-Court Diversion*. The *Youth Justice Act 2005* legislates a presumption for diversion which places an obligation on police to divert all youth offenders unless certain criteria exist or the offences are excluded from the diversion process.

-  *The Northern Territory has implemented Recommendation 240 by incorporating these provisions into NT Police General Orders.*

Recommendation 241

The Commission notes that in some jurisdictions (in particular South Australia and Western Australia) Children's Aid Panels or Screening Panels apply. These panels provide an option lying between police cautions, on the one hand, and appearances in children's courts, on the other hand. The Commission is unable to recommend that such panels be established in places where they do not presently exist, nor that panels be abolished in places where they do exist. The Commission, however, draws attention to evidence suggesting that the potential benefits which may flow from the provision of such panels are not fully realised in the case of Aboriginal juveniles. The Commission draws attention to the desirability of studies being done on a wide scale to determine the efficacy of such initiatives. The Commission recommends that for South Australia and Western Australia the following matters should be made clear by legislation, standing orders or administrative directions so as to provide:

- That the fact of arrest is not to be taken into account in determining whether a child is referred to a Children's Court as opposed to being referred to an alternative body such as a Children's Aid Panel;*
- That the decision to proceed by way of summons or attendance notice rather than by cautioning a juvenile should not be influenced by the existence of such panels;*
- That there should be adequate representation of Aboriginal people on the list of panel members;*
- That the panels should be so constituted that there be adequate representation of Aboriginal members of the panel on any occasion in which an Aboriginal juvenile's case is being considered;*
- That in no case should there be consideration of the case of an Aboriginal juvenile unless one member, at least, of the panel is an Aboriginal person; and*
- That an Aboriginal juvenile should not be denied consideration by a Children's Aid Panel by virtue of the juvenile's inability, on financial grounds, to make restitution for property lost, stolen or damaged.*

Background information

The RCIADIC Report recommended that studies be conducted in South Australia and Western Australia to determine the efficacy of Children's Aid Panels or Screening Panels, so as to reduce disadvantages experienced by young Aboriginal and Torres Strait Islander people.


Responsibility

This recommendation is the responsibility of the South Australian and Western Australian Governments.


Key actions taken and status of implementation

In **South Australia**, the *Youth Court Act 1993* (SA) abolished Screening Panels and Children's Aid Panels and the *Children's Protection Act* and the *Young Offenders Act* came into existence, which

established a two-tiered system of pre-court diversion. This system included police cautioning and family conferencing being implemented to deal with minor offences. The instituted diversion program of Family Conferencing holds SAPOL as the 'gatekeepers' of the system whereby they determine which matters will be referred directly to Family Conference and which will be formally laid with the Court. The young person must be pleading guilty to the alleged offending to enter a Family Conference.

 *Recommendation 241 does not apply to South Australia, as they abolished Screening Panels and Children's Aid Panels.*

In **Western Australia**, Children's Panels have been replaced with Juvenile Justice Teams, which facilitate group meetings to discuss the young person and their offence. A young person that admits to committing the offence may be referred to a juvenile justice team in lieu of a court, as per section 25(4) of the *Young Offenders Act 1994* (WA). Young offenders may still proceed to court in cases where there is sufficient evidence to charge a person with the commission of an offence, in circumstances where an infringement notice is inappropriate or not preferable. Members of an approved Aboriginal and Torres Strait Islander community may be nominated by the community council to form a part of the Juvenile Justice Team.

 *Recommendation 241 does not apply to Western Australia, as they replaced Children's Panels with Juvenile Justice Teams. Members of the Aboriginal and Torres Strait Islander community are invited to participate in team meetings for Aboriginal and Torres Strait Islander young people.*

Recommendation 242

That, except in exceptional circumstances, juveniles should not be detained in police lockups. In order to avoid such an outcome in places where alternative juvenile detention facilities do not exist, the following administrative and, where necessary, legislative steps should be taken:

- a. *Police officers in charge of lockups should be instructed that consideration of bail in such cases be expedited as a matter of urgency;*
- b. *If the juvenile is not released as a result of a grant of bail by a police officer or Justice of the Peace then the question of bail should be immediately referred (telephone referral being permitted) to a magistrate, clerk of Court or such other person as shall be given appropriate jurisdiction so that bail can be reconsidered;*
- c. *Government should approve informal juvenile holding homes, particularly the homes of Aboriginal people, in which juveniles can lawfully be placed by police officers if bail is in fact not allowed; and*
- d. *If in the event a juvenile is detained overnight in a police lock-up every effort should be made to arrange for a parent or visitor to attend and remain with the juvenile whether pursuant to the terms of a formal cell visitor scheme or otherwise.*

Such steps should be in addition to notice that the officer in charge of the station should give to parents, the Aboriginal Legal Service or its representative.

Background information

The RCIADIC Report highlighted that the United Nations' guidelines and conventions offer important basic principles for the administration of juvenile justice. Conventional custodial options, namely in youth detention centres, should only be used when all other avenues have been exhausted. The placement of youth in police lookups should, save for exceptional circumstances, not constitute a custodial option.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 242.

In relation to part a) of the recommendation, ACT Policing members are provided with a clear understanding that alternatives to detention are to be considered, and the welfare of the juvenile is balanced with the need to protect the community. The *Children and Young People Act 2008* s.94 establishes that the detention of a juvenile is to be the option of last resort, and for the minimum amount of time necessary. The AFP's General Instruction 8 requires that where a child or young person is in custody, the officer in charge of the police station shall, after satisfying themselves that the person will appear in court, admit that person to bail with surety from a parent, guardian or responsible adult.


In relation to part b) of the Recommendation, ACT Policing must in accordance with the *Bail Act* bring the accused before a court as soon as practicable or within 48 hours after having been taken into custody. However, the ACT does not have an after-hours bail application process for juveniles (or adults) whereby a Magistrate can be called to make bail applications

In relation to part c) of the Recommendation, a trial of the Ngurrambai bail support program has been implemented.


In relation to part d) ACT Policing have noted that juveniles are very rarely (if ever) detained in police cells overnight. ACT Policing policy is to transport juveniles to Bimberi Youth Justice Center as soon as they have been charged and processed.

There is an After Hours Bail Support Service, established and run through the ACT Justice and Community Services Directorate that is contacted each time a young person is detained. This service assists to ensure young people are afforded the best opportunity to receive police bail by helping to address factors that may prevent bail.

ACT Policing do not currently publish publicly any statistics or information regarding people passing through police cells. Police will notify ATSILS and the Aboriginal and Torres Strait Islander Elected Body of all Aboriginal and Torres Strait Islander people taken into the custody of ACT Policing.

 *The Commonwealth and the Australian Capital Territory Governments have mostly addressed of Recommendation 242. However part b) of this recommendation has not been fully implemented as there is currently no permanent after-hours bail application process for juveniles and no informal juvenile holding homes. Additionally, in relation to part d) no provisions have been made to allow a parent or visitor to attend and remain with the juvenile when in custody, although it is noted that ACT Policing policy is to transport juveniles to Bimberi Youth Justice Center as they have been charged and processed, which may allow visitors.*

In **New South Wales**, parts, a), b), and d) have been incorporated in the Police Commissioner's instructions. These are included in the New South Wales Police Force Commissioner's Instruction 155.09 – Child Offenders and 155.11 – Care and supervision of prisoners. The NSW Police Force complies with *Law Enforcement (Powers and Responsibilities) Regulation 2016*, Part 2, Clause 5, which states that 1) *An Aboriginal person or Torres Strait Islander who is a child should not be placed in a police cell except in exceptional circumstances that make it necessary for the well-being of the child* and 2) *If it is necessary to detain such a child overnight in a police cell, the custody manager for the child should arrange for a support person to remain with the child unless it is not reasonably practicable to do so*. As such, all young people transferred to the Department of Juvenile Justice are not kept overnight unless absolutely unavoidable. If a child is left overnight, every effort is made to ensure a family member, friend, Aboriginal volunteer or Aboriginal Community Liaison Officer spends as much time with the young person as possible. The young person is never left unattended by police.

 *New South Wales has mostly implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, it has not addressed part (c) in their response.*

In **Victoria**, the *Children, Youth and Families Act 2005 (Vic)* provides that young people should only be held in custody after all options have been exhausted or that the nature of the offence is such that community placement is inappropriate.


According to the *Bail Act 1977 (Vic)*, when making a bail decision in Victoria, the decision maker must take into account the need to:

- consider all options before remanding a child in custody;
- preserve and strengthen the relationship between a child and their family; and
- minimise stigma and not be refused bail if the sole ground is that they do not have adequate housing.

In Victoria, Central After Hours Bail Support Services enable bail decisions to be made in all hours (including overnight), so that housing and bail support issues can be resolved in the event that a child is granted bail and needs accommodation. Proposed bills to allow police to remand accused for up to 48 hours will exclude children and other vulnerable accused. In the event a child or young person is apprehended, Bail Justices need to be called for those accused and a member of the police force must ensure a parent or guardian of the young person or an independent person is present when considering the question of bail. The decision by a bail justice after hours to remand a child or young person will enable a child or young person to be transported to a Youth Detention facility instead of being held in police cells overnight.


In some instances, children may be held in custody pending a bail decision -- for example, when they have committed the most serious types of offences for which only a court may grant bail, or if a bail justice has refused bail and remands the child to appear at court. The Bail Amendment (Stage Two) Bill 2017 clarifies that these children will be required to be placed in a remand centre (within the meaning of the *Children, Youth and Families Act 2005*) within a certain period of time, rather than police cells.

Police are also required to call a parent guardian or independent third person to be present in the event that a child is questioned in relation to the commission of a criminal offence in Victoria.

 *Victoria has mostly implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, provisions have not been made for informal juvenile holding homes. No evidence of provisions to allow parents or visitors to attend and remain with the juvenile in a police lockup have been provided.*

The **Queensland** Government noted in its 1993 implementation report that young people should only be held in watch houses after all other options have been exhausted. In 1993, priority was given to providing additional funding to the development of community-based alternatives to detention centres, in line with part (c) of the recommendation.


The QPS OPM provides that a young person should not be held in custody unless all other reasonable alternative arrangements are considered to be inappropriate. The *Youth Justice Act 1992 (QLD)* provides that a young person should be brought promptly before a court to be dealt with. If this is not possible, the police officer must consider releasing the child from custody by way of notice to appear on bail, in line with part (a) of the recommendation. Procedures require police officers to arrange and allow for visitors to the young person by the young person's family, in addition to departmental officers including those under the official community visitor scheme, thus fulfilling part (d).

 *Queensland has mostly implemented Recommendation 242 by ensuring that young people are only placed in custody if all reasonable alternative arrangements are considered to be inappropriate but has not addressed part (b) of this recommendation.*


The Government of **South Australia** noted in its 1994 implementation report that the requirements of this recommendation have been in practice in South Australia for many years. In addition, supplementary emergency and bail accommodation options have been established.

Currently, a dedicated Police Custody unit is located at the Adelaide Youth Training Centre. A Memorandum of Administrative Arrangement with SAPOL outlines how and when young people can be


held in police facilities. Young people may only be detained in specifically approved police facilities, except in situations of necessity in accordance with section 15(2) of the *Young Offenders Act 1993*. In such situations, the person in charge of the police facility must take reasonably practicable steps to keep the young person from encountering any adult person detained in the facility.

 *South Australia has implemented Recommendation 242, as requirements of this recommendation have been in practice in South Australia for many years.*

In **Western Australia**, the *Bail Act 1982* (WA) requires police members to consider whether a young person can be considered for bail, conditional on eleven guiding principles, aimed to reduce the number of young people held in custody wherever possible. Police orders require that parents, Juvenile Justice Division officers and Aboriginal Visitors scheme members be notified when a young person is detained. Additionally, all young people who are detained in police lock-ups must have a visitor once they have been arrested. In addition to this, Metropolitan Youth Bail Services, Youth at Risk Facilities and juvenile prisoner transport are used to reduce the number of young people held in custody.


 *Western Australia has mostly implemented Recommendation 242 through the *Bail Act 1982*, which seeks to reduce the number of young people in custody, requiring visitors to attend once young people have been arrested and establishing Youth at Risk Facilities. However, no evidence was provided as to whether the question of bail should be immediately referred.*

The **Tasmania** Police Standing Order 109.7 requires that young people are not detained “without good cause”. Additionally, Standing Order 144 requires that a member of the Aboriginal Legal Service or a parent be present to assist with the bailing of an Aboriginal and Torres Strait Islander youth. Currently, the Tasmanian *Youth Justice Act 1997* and Youth Justice Act Instructions and Guidelines govern the implementation of parts (a) and (b) of this recommendation. Youths cannot be detained without seeking authorisation from the Inspector of Police. Part (c) remains the remit of the Department of Health and Human Services.

 *Tasmania has partially implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, there has been no further information provided on addressing parts (c) and (d) of the recommendation.*

In the **Northern Territory** the General Order Children – Code C3 was amended to more fully reflect the requirements of this recommendation. The NT Police General Order – Bail stipulates that if a youth has been charged with an offence and is not admitted to bail, a member is to as soon as practicable, apply to the Court or a Local Court Judge for an order that the youth be detained at a detention centre or other place approved by the Minister for the purpose. The Youth General Order states that if a youth has been charged with an offence and not admitted to bail, a police officer must as soon as practicable, apply to the Court or a Magistrate for an order that the youth be detained at a detention centre or other place approved by the Minister for the purpose.

The Northern Territory Government has noted that in response to the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is reviewing the provisions of the *Youth Justice Act* and the *Bail Act* to provide for more suitable bail considerations for young people.

 *The Northern Territory has partially implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, there has been no further information addressing parts (a), (b) and (d) of the recommendation.*

Recommendation 243

That where an Aboriginal juvenile is taken to a police station for interrogation or as a result of arrest, the officer in charge of the police station at which the juvenile is detained should be required to immediately advise the relevant Aboriginal Legal Service and the parent or person responsible for the care and supervision of the juvenile of the fact of the child being detained at the police station (without prejudice to any obligation to advise any other person).

Background information


The RCIADIC Report recognised the hardship faced by Aboriginal and Torres Strait Islander juveniles, and their families, after being placed in detention. The presence of an ALS member and/or parent/guardian while the Aboriginal and Torres Strait Islander juvenile is being interrogated has been found to reduce the hardship faced by the youth.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.


Key actions taken and status of implementation

The following actions are relevant to the **Commonwealth** and **Australian Capital Territory** Governments. The AFP advised that its Guidelines require that the Aboriginal Legal Service be notified of every Aboriginal and Torres Strait Islander detainee, including young people. Additionally, section 80 of the *Children and Young Persons Act 2008* (ACT) requires that a young person's parent/guardian be notified when the young person is taken into custody.


 *The Commonwealth and Australian Capital Territory Governments have fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per AFP Guidelines.*

New South Wales requires that when a young person is questioned at a police station, police must notify and wait for a parent or guardian to arrive before they can proceed. As of June 1995, amendment was made to the Commissioner's Instruction 155 to require notification of the Aboriginal Legal Service. Compliance is monitored by Local Area Commanders, local supervisors and Aboriginal Legal Service officers and solicitors.


Currently, the Juvenile Justice Bail Assistance Line exists as an early intervention program with the primary aim of reducing the number of young people entering custody on remand by diverting them into safe, cost effective accommodation in the community. While NSW Police are the primary referral source, the service also receives referrals from children's Courts, Juvenile Justice centres and community offices.

 *New South Wales has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal juvenile is detained, due to an amendment to the Commissioner's Instruction 155, and that monitoring procedures are in place to ensure compliance.*


In **Victoria**, section 64C of the *Crimes Act 1958* (Vic) provides that prior to questioning or investigation, an investigating officer must inform the person in custody that he or she may communicate with or attempt to communicate with a legal practitioner. For all Aboriginal and Torres Strait Islander juveniles taken into custody, police are responsible for notification of the Victorian Aboriginal Legal Service Cooperative. As per section 464E of the *Crimes Act 1958* (Vic), police must not question a young person until a parent, guardian or independent person is present.

 *Victoria has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per section 464E of the Crimes Act 1958.*


In **Queensland**, for indictable offences, section 420 of the *Police Powers and responsibilities Act 2000* (Qld) requires the police officer to, as soon as reasonably practicable, notify or attempt to notify a representative of a legal aid organisation to advise of the whereabouts of the young person. Section 392 of the *Police Powers and Responsibilities Act 2000* (Qld) applies to any offence and requires the arresting officer to promptly advise a parent of the child, the chief executive or a person who holds an office within the department nominated by the chief executive, of the purpose of the arrest and whereabouts of the young person. Amendments have been made to section 5.6.4 of the QPS OPM regarding requirements to notify Aboriginal Legal Services about a child's arrest or notice to appear.

 *Queensland has fully implemented Recommendation 243 by requiring police officers to notify Aboriginal Legal Services and parents/guardians when an Aboriginal and Torres Strait Islander juvenile is arrested.*


In **South Australia**, the 1994 implementation report notes that a parent or responsible person is always contacted by the Police, however Aboriginal Legal Services are only notified with the approval of the detainee.

 *South Australia has mostly implemented Recommendation 243 as Aboriginal Legal Services are only notified with the approval of the detainee.*


Western Australia requires that the parent or person responsible for the young person is notified. However, in 1994 it was not yet formally required that the Aboriginal Legal Service is notified when an Aboriginal and Torres Strait Islander young person is detained. In 1994 the police service instigated a multi-agency working party in response to this, which made recommendations to the Police Service Command in relation to young Aboriginal and Torres Strait Islander persons being arrested. No further details on the outcome of this working party were identified.

 *Western Australia has partially implemented Recommendation 243. Although a responsible adult must be notified, as soon as a juvenile is taken into custody, there is no requirement to notify the relevant Aboriginal Legal Service, in the case where the juvenile is Aboriginal and Torres Strait Islander.*

In **Tasmania**, this recommendation has been addressed by Tasmania Police Standing Orders No 109.5. Order 109.5 provides that when a young person commits or is charged with an offence, both parents if available should be informed of the fact that proceedings may be taken against the child. Alternatively, a guardian of the young person may be informed. Under the *Child Welfare Act 1960* (Tas), section 16(7) requires that a parent or guardian be warned to attend the court before a young person can appear. In addition, Tasmania Police policy requires that the Aboriginal Legal Service be notified anytime an Aboriginal and Torres Strait Islander person (juvenile or otherwise) is taken into custody or interviewed.

 *Tasmania has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per Tasmania Police Standing Order No 109.5.*

In the **Northern Territory**, the 1997 implementation report cites that when a young Aboriginal and Torres Strait Islander person is interviewed the police are required to advise the Aboriginal Legal Aid service before the interview commences. Both the parent/guardian of the young offender and the Aboriginal Legal Service must be notified if they are detained at the police station. These provisions are enshrined in the NT Police Force Youth General Orders. The Northern Territory Government has also noted that Territory Families is developing specific provisions to support and improve this practice.

 *The Northern Territory has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per NT Police Force Youth General Orders.*

Recommendation 244

That no Aboriginal juvenile should be interrogated by a police officer except in the presence of a parent, other person responsible for the care and supervision of the child or, in the absence of a parent or such other person, an officer of an agency or organisation charged with responsibility for the care and welfare of Aboriginal juveniles.

Background information


The RCIADIC Report noted that it is in the best interest of Aboriginal and Torres Strait Islander youth that they be accompanied by a parent/guardian or appropriate Aboriginal and Torres Strait Islander organisation member when being interrogated by a police officer.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation


In the **Australian Capital Territory**, and as part of the **Commonwealth** Government's jurisdiction, section 23K of the *Crimes Act 1914* (Cth) requires that an "interview friend" – defined as a parent/guardian, or relative or friend who is acceptable to the person – be present when a person aged under 18 years is questioned by an investigating official.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 244, by requiring an "interview friend" to be present if a juvenile is questioned by police.*

Section 13(1) of the **New South Wales** *Children (Criminal Proceedings) Act 1987* (NSW) is consistent with Recommendation 244 as it provides that a statement made to the police by a child can only be admitted as evidence in criminal proceedings if an appropriate adult was present at the time the statement was made. This applies to young people aged under 16 years and has the exception that a confession not made in the presence of an adult responsible for the child may be admitted in criminal proceedings if the police can provide an explanation acceptable as to why such an adult was not present.


 *New South Wales has implemented Recommendation 244, by requiring a support person to be present if a juvenile is questioned by police.*

Victoria's *Crimes Act 1958* (Vic) provides under section 464E that a child is not to be interrogated by police except in the presence of a parent, guardian or independent person. However, there is no requirement that the independent person is an officer of an agency or organisation that has responsibility for the care or welfare of Aboriginal and Torres Strait Islander young people.


 *Victoria has mostly implemented Recommendation 244, with the exception of requiring the independent person be from an agency that has responsibility for the care and welfare of Aboriginal and Torres Strait Islander juveniles.*

In **Queensland**, under section 421 of the *Police Powers and Responsibilities Act* (PPRA), police officers must not question a child for an indictable offence unless a support person is present. Before the commencement of questioning, if practicable, the officer must also allow for the young person to speak with a support person as chosen by the young person. If that young person is then arrested, police are required to notify relevant bodies within the Queensland Government.

During criminal proceedings for an indictable offence, section 29 of the *Juvenile Justice Act 1992* (Qld) requires that a court must not admit a statement into evidence against a defendant unless the court is satisfied that the statement was made or given in the presence of a support person of the young person.


 *Queensland has implemented Recommendation 244, by requiring a support person to be present if a juvenile is questioned by police.*

South Australia has previously addressed this recommendation as per the *Summary Offences Act 1953* (SA). Section 79A(1a) provides that an investigating police officer must ensure that a young person is not interrogated or investigated until they have secured the presence of an independent adult representing the young person's interests. These provisions have been incorporated into SAPOL General Orders Youths and General Order 8980.


 *South Australia has mostly implemented Recommendation 244. While it is a requirement that an independent adult be present if a juvenile is questioned by police, there are no requirements on who the independent adult should be.*

Following the RCIADIC, the **Western Australian** Government issued instructions to police concerning the interviewing of young offenders. Section 20 of the *Young Offenders Act 1994* (WA) requires that police officers inform a parent or responsible adult orally or in writing of the intention to question a young person about an offence and that if such notice is not given the police officer must explain in writing to the Chief Executive Officer why the notice was not given.


Standing orders require that interrogations of young people must be in the presence of a parent, responsible adult or another police officer not involved in the case. Police officers are also required to comply with section 49 of the *Aboriginal Affairs Planning Authority Act 1972* (WA) when conducting interviews. All juveniles in the care of the Department of Justice are accompanied by a staff member when being interviewed by police, to ensure that the young person is advised of their rights prior to commencement of the interview.

 *Western Australia has not implemented Recommendation 244. Although a responsible adult must be notified of the intent to question a young person (although exemptions apply), there is no requirement for the person responsible for the young person's care or supervision to be present.*

Tasmania's Standing Order No. 109.14 provides that wherever practicable, a young person is interviewed at home in the presence of a parent, guardian or other responsible person. A young person may be interviewed at school, given that approval of the school principal is obtained and the interview is conducted in the presence of the principal or their nominated representative.

 *Tasmania has mostly implemented Recommendation 245 by requiring a support person to be present if a juvenile is questioned by police. However, there are no stipulations regarding who the support person should be.*

The **Northern Territory** Government amended the Northern Territory Police General Orders following the release of the RCIADIC report to reflect this recommendation. The General Order now implies that no Aboriginal and Torres Strait Islander youth be interrogated by a police officer except in the presence of a parent, other person responsible for the care and supervision of the child or, in the absence of a parent or such other person, an officer of an agency or organisation charged with responsibility for the care and welfare of Aboriginal and Torres Strait Islander youths. The Northern Territory Government has also noted that Territory Families is developing specific provisions to support and improve this practice.

 *The Northern Territory has implemented Recommendation 244, by requiring a support person to be present if a juvenile is questioned by police.*

Recommendation 245

That legislation, regulations and/or police standing orders, as may be appropriate, be amended so as to require compliance with the above recommendations.

Background information

This recommendation refers directly to recommendations 242, 243 and 244.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. As per the three previous recommendations, the majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The responses of all parties to Recommendation 245 are per their responses to Recommendations 242, 243 and 244.


The **Commonwealth** and **Australian Capital Territory** Governments have responded to this recommendation through the aforementioned recommendations, the AFP's Guidelines, and s23 of the *Crimes Act 1914* (Cth) to ensure compliance with the requirements of these recommendations.

 *The Commonwealth and Australian Capital Territory Governments have mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


New South Wales addressed this recommendation as per section 13(1) of the *New South Wales Children Criminal Proceedings Act 1987* (NSW), the Commissioner's Instructions and *Law Enforcement (Powers and Responsibilities) Regulation 2016*.

 *New South Wales has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


Victoria addressed this recommendation through existing legislation, regulation and standing orders.

 *Victoria has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


Queensland has implemented legislation and General Instructions as noted in the previous recommendations.

 *Queensland has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


South Australia has altered General Orders, the *Young Offenders Act 1993* and policies and practices in accordance with this recommendation.

 *South Australia has mostly implemented Recommendation 245, as it has amended General Orders, legislation, and practices accordingly, with the exception of relevant aspects of Recommendations 243 and 244.*


Western Australia has altered policy, practice and procedure in line with some of the requirements of this recommendation, with the exception of aspects of Recommendations 242 and 243, and all of Recommendation 244.

 *Western Australia has partially implemented Recommendation 245, as it has amended policies and practices accordingly, with the exception of some relevant aspects of Recommendations 242, 243 and 244.*

Tasmania has actioned the aforementioned recommendations to address this recommendation.

 *Tasmania has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242 and 244.*

The **Northern Territory** amended the Northern Territory Police General Order to reflect the requirements of these recommendations.

 *The Northern Territory has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*