VOLUME 1

COMMONWEALTH AND NORTHERN TERRITORY GOVERNMENT

INPUT TO THE

NATIONAL RESPONSE TO RECOMMENDATIONS OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

NOVEMBER 1991 – DRAFT

THIS PAPER AIMS TO FACILITATE DISCUSSION AND CONSIDERATION OF THE RECOMMENDATIONS OF THE ROYAL COMMISSION. THE DRAFT RESPONSES TO RECOMMENDATIONS WITHIN THIS PAPER ARE ONLY AN EARLY RESPONSE OF INDIVIDUAL GOVERNMENT DEPARTMENTS AND AGENCIES; AND IN SOME INSTANCES ARE YET TO BE DISCUSSED WITH ABORIGINAL COMMUNITY ORGANISATIONS. THEY DO NOT NECESSARILY REPRESENT THE OFFICIAL ORICIAL OPINIONS OF STATE, TERRITORY OR COMMONWEALTH DEPARTMENTS.

THE PAPER HAS NOT BEEN ENDORSED BY MINISTERS, ATSIC MEMBERS OR REGIONAL COUNCILS AND DOES NOT COMMIT GOVERNMENTS ON MATTERS OF FUNDING.
ROYAL COMMISSION ON ABORIGINAL DEATHS IN CUSTODY
RECOMMENDATIONS LISTED BY THEME

(Blue Section)

IMPLEMENTING AND MONITORING THESE RECOMMENDATIONS
RECOMMENDATIONS 1 - 3

These recommendations are about how Commonwealth, State and Territory Governments should report on their implementation of the Royal Commission's recommendations. They suggest a special role for ATSIC and independent Aboriginal Justice Advisory Committees in each State and Territory.

(Pink Section)

FINDINGS OF THE COMMISSIONERS ABOUT THE DEATHS
RECOMMENDATIONS 4 - 5

These recommendations look at how governments should settle legal claims based on the Commissioners' findings and propose counselling for the families of people who die in custody.

(Green Section)

INVESTIGATIONS AFTER A DEATH IN CUSTODY
RECOMMENDATIONS 6 - 40

These recommendations look at how deaths in custody should be investigated, particularly at rules for Coroner's inquiries, entitlements of the family and the role of the Aboriginal Legal Service.

(Yellow Section)

ADEQUACY OF INFORMATION: STATISTICS TO BE KEPT
RECOMMENDATIONS 41 - 47

These recommendations suggest more useful statistics so that there is better information on the numbers of people in custody. It also suggests reporting to Parliament each year about this.

(Grey Section)

BETTER STATISTICAL INFORMATION ABOUT ABORIGINAL SOCIETY TODAY
RECOMMENDATIONS 48 - 51

These recommendations cover research and statistics about Aboriginal people and society, to ensure that there is participation and consultation with Aboriginal people.
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>AG's</td>
<td>Attorney-General's Department</td>
</tr>
<tr>
<td>AG's(T)</td>
<td>Attorney-General's Department (Territory responsibilities only)</td>
</tr>
<tr>
<td>AG's(P)</td>
<td>Attorney-General's Department (Commonwealth law and Australian Federal Police responsibilities only)</td>
</tr>
<tr>
<td>ATO</td>
<td>Australian Taxation Office</td>
</tr>
<tr>
<td>Archives</td>
<td>Australian Archives</td>
</tr>
<tr>
<td>ATSIC</td>
<td>Aboriginal and Torres Strait Islander Commission</td>
</tr>
<tr>
<td>DAS</td>
<td>Department of Administrative Services</td>
</tr>
<tr>
<td>DASETET</td>
<td>Department of the Arts, Sport, Environment, Tourism and Territories</td>
</tr>
<tr>
<td>DEET</td>
<td>Department of Employment, Education and Training</td>
</tr>
<tr>
<td>DFAT</td>
<td>Department of Foreign Affairs and Trade</td>
</tr>
<tr>
<td>DILGEA</td>
<td>Department of Immigration, Local Government and Ethnic Affairs</td>
</tr>
<tr>
<td>DIR</td>
<td>Department of Industrial Relations</td>
</tr>
<tr>
<td>DOF</td>
<td>Department of Finance</td>
</tr>
<tr>
<td>DSS</td>
<td>Department of Social Security</td>
</tr>
<tr>
<td>DTC</td>
<td>Department of Transport and Communications</td>
</tr>
<tr>
<td>HHCS</td>
<td>Department of Health, Housing and Community Services</td>
</tr>
<tr>
<td>PM&amp;C</td>
<td>Department of the Prime Minister and Cabinet</td>
</tr>
<tr>
<td>PSC</td>
<td>Public Service Commission</td>
</tr>
</tbody>
</table>
LIST OF RECOMMENDATIONS - POSITION/COMMENT - ACTION

OVERVIEW

(joint Commonwealth/State)

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

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

   b. That such reports should be made not less than annually and that, subject to the agreement of its Commissioners so to do, ATSIC be given special responsibility and funding to enable it to monitor the progress of the implementation of the adopted recommendations and to report thereon to the Aboriginal and Torres Strait Islander community;

   c. That governments consult with appropriate Aboriginal organizations in the consideration and implementation of the various recommendations in this report;

   d. That, wherever appropriate, governments make use of the services of Aboriginal organizations in implementing such recommendations; and

   e. Ensure that local Aboriginal organizations are consulted about the local implementation of recommendations, and their services be used wherever feasible.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported
ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's portfolio, with additional funding, has a capacity in cooperation with other jurisdictions to assist with monitoring implementation. The Human Rights and Equal Opportunity Commission has expressed interest in being involved. At this stage we would like to explore integrating this function with the Aboriginal Justice Advisory Committee mechanism which is primarily established at the State and Territory level.

The Department of the Prime Minister and Cabinet notes that the matter of monitoring implementation of the Royal Commission's recommendations has not been considered by the Joint Ministerial Forum or by the Commonwealth Government. It also notes that the ATSIC Commissioners have already agreed to accept a role in monitoring any recommendations accepted by the Commonwealth.

ATSIC

1(a) ATSIC suggests that:

. Agreement be sought with each Commonwealth department and agency, as well as each State and Territory Government, to include in annual reports a section on the progress made toward implementing the recommendations.

This information to be provided to ATSIC for inclusion in a compilation of all progress reports to form a specific report on action related to implementation of the report of the Royal Commission into Aboriginal Deaths in Custody to be prepared annually.

. Either ATSIC, or the Australian Aboriginal Affairs Council (AAAC), publish and distribute this report on Royal Commission-related action annually to relevant organisations. Using the AAAC as an appropriate forum would ensure that both Commonwealth and State responsibilities were recognised.

. Any such report could form the basis of a report to the Parliament. This would not detract from the requirement for individual departments and agencies to include in their annual reports a section on the progress made towards implementing the recommendations. There is a danger however that these reports might not receive the prominence necessary to ensure accountability.
The ATSIC Commissioners have agreed, subject to the allocation of additional funding and resources, to ATSIC accepting the role of monitoring the implementation of the Recommendations.

1(b) ATSIC will seek to establish, through negotiation, a monitoring mechanism within its administrative structure using established co-ordinating arrangements at Commonwealth level and with States/Territories. This will provide a focus for the development of monitoring processes for programs/projects involved in the implementation of specific recommendations and the implementation of Recommendations overall and report regularly to Regional Councils and the Board of Commissioners.

ATSIC suggests that each government agency involved in implementing recommendations should establish defined outcomes in consultation with ATSIC against which progress can be measured annually. These may be quantifiable in the form of performance indicators and/or qualitative. Inputs and outputs must also be clearly identified and reported on.

1(c) Consultation.

. ATSIC will establish a register of Aboriginal and Torres Strait Islander organisations which must be consulted.

. It is recommended that Commonwealth departments and agencies must:

- advise ATSIC Regional Councils of consultative actions and seek to involve ATSIC Regional Council and Regional Office representation and negotiation;

- include in annual reports a list of consultative actions taken that note the participants, and record the objectives and the outcomes.

. Whenever practical, Commonwealth and State/Territory agencies combine their consultation and negotiation requirements so that Regional Councils are able to consider a broad view of actions taken and are not required to deal with each and every agency at different times.

. Government to recognise that consultation is an ongoing and long term process.

1(d-e) ATSIC is committed and already adheres to these service delivery and consultation principles.
2. That subject to the adoption by governments of this recommendation and the concurrence of Aboriginal communities and appropriate organizations, there be established in each State and Territory an independent Aboriginal Justice Advisory Committee to provide each Government with advice on Aboriginal perceptions of criminal justice matters, and on the implementation of the recommendations of this report.

The Aboriginal Justice Advisory Committee in each State should be drawn, and represent, a network of similar local or regionally based committees which can provide the State Advisory Committee with information of the views of Aboriginal people. It is most important that the views of people living outside the urban centres be incorporated. The terms of reference of each State, local or regional Advisory Committee is a matter to be negotiated between governments and Aboriginal people. The Commission suggests however that matters which might appropriately be considered include, inter alia:

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

b. Proposals for changes to policies which affect the operation of the criminal justice system;

c. Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;

d. Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and

e. The dissemination of information on policies and programs between different agencies, and between parallel bodies in different States.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - A response to this recommendation will be provided following discussions with Aboriginal Legal Services.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's portfolio already has input from the Human Rights and Equal Opportunity Commission
and ATSIC and notes that the Royal Commission only envisaged
that the Committees would be established at the State and
Territory level. The Department will liaise with the State
and Territory Committees as we would expect some
Commonwealth issues could be channelled through the
Committees.
3. The Commission notes that some of the recommendations of this report particularly those relating to the custodial environment, are particularly detailed. The monitoring of the implementation of recommendations could only be carried out in close liaison with the authorities responsible for implementing them. In order to ensure that the State Criminal Justice Advisory Committee is able to give informed advice to the Attorney-General or Minister for Justice, it should be assisted by a small Secretariat, staffed by people with knowledge of Aboriginal interactions with the criminal justice system. The role of the Secretariat should be to provide information to the Advisory Committee, assist it in the development of policy proposals, and liaise on behalf (and at the direction of) the Committee with other agencies. The Secretariat should be located within the Department of Attorney-General or Minister for Justice but be accountable to the Advisory Committee on terms to be negotiated between government and Aboriginal people but with the maximum degree of autonomy from government as may be consistent with it fulfilling its function to assist the Advisory Committee to give informed, independent advice to government.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - A response to this recommendation will be provided following discussions with Aboriginal Legal Services.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's portfolio already has input from the Human Rights and Equal Opportunity Commission and ATSIC and notes that the Royal Commission only envisaged that the Committees would be established at the State and Territory level. The Department will liaise with the State and Territory Committees as we would expect some Commonwealth issues could be channelled through the Committees.
THE FINDINGS OF THE COMMISSIONERS AS TO THE DEATHS

(State/Territory)

4. That if and where claims are made in respect of the deaths based on the findings of Commissioners:

   a. Governments should not, in all the circumstances, take the point that a claim is out of time as prescribed by the relevant Statute of Limitation; and

   b. Governments should, whenever appropriate, make the effort to settle claims by negotiation so as to avoid further distress to families by litigation.

POSITION/COMMENTS:

COMMONWEALTH - No position

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

As there are no findings against the Commonwealth which could be the basis for a claim, this recommendation is for the States and Territories.

NORTHERN TERRITORY

a. Even if the limitation period is pleaded, the person making the claim is entitled to apply to the Courts under Section 44 of the Limitation Act to extend the limitation.

b. It is the practice of the Solicitor General for the Northern Territory to settle claims by negotiation wherever possible.
(State/Territory)

5. That governments, recognizing the trauma and pain suffered by relatives, kin and friends of those who died in custody, give sympathetic support to requests to provide funds or services to enable counselling to be offered to these people.

POSITION/COMMENT:

COMMONWEALTH - Supported
NORTHERN TERRITORY - Supported

ACTION:

ATSIC

State/Territory responsibility. ATSIC and the Attorney-General's Department share Commonwealth responsibility for catalysing action.
POST-DEATH INVESTIGATIONS

(joint Commonwealth/State)

6. That for the purpose of all recommendations relating to postdeath investigations the definition of deaths should include at least the following categories:

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

b. The death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention;

c. The death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and

d. The death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.

POSITION/COMMENT:

COMMONWEALTH - Qualified support

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

We have a minor qualification about (c) which is relevant to the collection of statistics in accordance with recommendation 41. In other respects the definition is adequate.

NORTHERN TERRITORY

a, b+d Included in Police General Order - Coroners and Inquests - Code C9, and Coroners Act.

Implemented

c A minor amendment to Police General Order - Coroners and Inquests - Code C9 is required to include the words in this recommendation.

In the process of implementation.
7. That the State Coroner or, in any State or Territory where a similar office does not exist, a Coroner specially designated for the purpose, be generally responsible for inquiry into all deaths in custody. (In all recommendations in this report the words 'State Coroner' should be taken to mean and include Coroner so specially designated.)

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Yet to be determined

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing the recommendation.

NORTHERN TERRITORY

At present all inquests in the Northern Territory are conducted by magistrates. The practice is that all magistrates are allocated the responsibility of conducting coronials in the Northern Territory, although in Darwin one magistrate has responsibility for listing and general conduct in the coronial area. The specific nature of these recommendations will be considered in the context of the Coroners Act review currently being carried out by the Northern Territory Department of Law.
8. That the State Coroner be responsible for the development of a protocol for the conduct of coronial inquiries into deaths in custody and provide such guidance as is appropriate to Coroners appointed to conduct inquiries and inquests.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Yet to be determined

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing the recommendation.

NORTHERN TERRITORY

At present all inquests in the Northern Territory are conducted by magistrates. The practice is that all magistrates are allocated the responsibility of conducting coronials in the Northern Territory, although in Darwin one magistrate has responsibility for listing and general conduct in the coronial area. The specific nature of these recommendations will be considered in the context of the Coroners Act review currently being carried out by the Northern Territory Department of Law.
9. That a Coroner inquiring into a death in custody be a Stipendiary Magistrate or a more senior judicial officer.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

Currently all coronials are conducted by a magistrate.
10. That custodial authorities be required by law to immediately notify the Coroners Office of all deaths in custody, in addition to any other appropriate notification.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

Notification of deaths in custody to the Coroners Office occurs automatically at present.

For police purposes a minor amendment to General Order - Coroners and Inquests - Code C9 is required to include the word immediately with respect to reporting a death in custody. To enshrine the principle in law will require legislative amendment to the Coroners Act.

Can be implemented, however consultation with the Coroner is required prior to actioning the recommendation.
11. That all deaths in custody be required by law to be the subject of a coronial inquiry which culminates in a formal inquest conducted by the Coroner into the circumstances of the death. Unless there are compelling reasons to justify a different approach the inquest should be conducted in public hearings. A full record of the evidence should be taken at the inquest and retained.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

Section 10(1)(i) of the Northern Territory Coroners Act already requires an inquest to be held where any person dies in custody, unless, pursuant to section 12(1) of the Act, the Coroner personally, upon consideration of the information furnished to him/her relating to the death of such a person, dispenses with the holding of the inquest. This power to dispense with the holding of the inquest does not apply where relatives of the deceased request the inquest to be held. Again, the full scale of the recommendation will be considered in the context of the Coroners Act review.
12. That a Coroner inquiring into a death in custody be required by law to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Qualified support

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

This recommendation will be considered in the context of the review of the Northern Territory Coroners Act. Initial thinking is that a Coroner should only be required to inquire into the medical cause of death. Such a narrow scope is consistent with the situation in some other Australian jurisdictions. Nevertheless, the Coroner will be provided with every assistance to investigate deaths in custody.
13. That a Coroner inquiring into a death in custody be required to make findings as to the matters which the Coroner is required to investigate and to make such recommendations as are deemed appropriate with a view to preventing further custodial deaths. The Coroner should be empowered, further, to make such recommendations on other matters as he or she deems appropriate.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Qualified support

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

This recommendation will be considered in the context of the review of the Northern Territory Coroners Act. Initial thinking is that a Coroner should only be required to inquire into the medical cause of death. Such a narrow scope is consistent with the situation in some other Australian jurisdictions. Nevertheless, the Coroner will be provided with every assistance to investigate deaths in custody.
14. That copies of the findings and recommendations of the Coroner be provided by the Coroners Office to all parties who appeared at the inquest, to the Attorney-General or Minister for Justice of the State or Territory in which the inquest was conducted, to the Minister of the Crown with responsibility for the relevant custodial agency or department and to such other persons as the Coroner deems appropriate.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - This recommendation will be considered in the context of the Coroners Act review being conducted by the Department of Law.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.
15. That within three calendar months of publication of the findings and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister of the Crown with responsibility for that agency or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person.

**POSITION/COMMENT:**

**COMMONWEALTH** - Supported

**NORTHERN TERRITORY** - This recommendation will be considered in the context of the *Coroners Act* review being conducted by the Department of Law.

**ACTION:**

**COMMONWEALTH**

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.
16. That the relevant Ministers of the Crown to whom responses are delivered by agencies or departments, as provided for in Recommendation 15, provide copies of each such response to all parties who appeared before the Coroner at the inquest, to the Coroner who conducted the inquest and to the State Coroner. That the State Coroner be empowered to call for such further explanations or information as he or she considers necessary, including reports as to further action taken in relation to the recommendations.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - The recommendation will be considered in the context of the Coroners Act review being conducted by the Department of Law.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

This recommendation will need to be considered in respect to possible litigation or compensation cases. The views of the Prison Officers Association and the Senior Prison Officers Association will also need to be sought.

The recommendation will also be considered in the context of the Coroners Act review being conducted by the Department of Law.
17. That the State Coroner be required to report annually in writing to the Attorney-General or Minister for Justice, (such report to be tabled in Parliament), as to deaths in custody generally within the jurisdiction and, in particular, as to findings and recommendations made by Coroners pursuant to the terms of Recommendation 13 above and as to the responses to such findings and recommendations provided pursuant to the terms of Recommendation 16 above.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - This recommendation will be considered in the context of the Coroners Act review being conducted by the Department of Law.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.
18. That the State Coroner, in reporting to the Attorney-General or Minister for Justice, be empowered to make such recommendations as the State Coroner deems fit with respect to the prevention of deaths in custody.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - This recommendation will be considered in the context of the Coroners Act review being conducted by the Department of Law.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.
19. That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known.

POSITION:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

Subject to what we take would be assumed exceptions (eg where notification could directly affect the investigation of the death), the AFP has implemented this recommendation, (General Instructions 19 and 20; ACT Regional Instruction 4/91; and Administrative Circular 2/81).

NORTHERN TERRITORY

The requirement to provide immediate notification is generally quite impractical due to the difficulties in locating the family. The word family also presents some difficulty due to the application of this word with many aboriginal people.

The relevant Police General Order Coroners and Inquests - Code C9 has been amended to include the words "as soon as possible" and "a family representative".

Implemented.
20. That the appropriate Aboriginal Legal Service be notified immediately of any Aboriginal death in custody.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The Australian Federal Police are responsible for police services at Jervis Bay and in relation to Commonwealth matters generally. The AFP recognises that it is desirable to extend an existing ACT regional instruction relevant to this recommendation nationally.

NORTHERN TERRITORY

Legal Aid Services will be notified immediately following any Aboriginal deaths in custody.

This instruction included in Police General Order - Coroners and Inquests - Code C9

Implemented.
21. That the deceased's family or other nominated person and the Aboriginal Legal Service be advised as soon as possible and, in any event, in adequate time, as to the date and time of the coronial inquest.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - The recommendation will be considered in the context of the Coroners Act review being carried out by the Department of Law.

ACTION:

COMMONWEALTH

The Australian Federal Police already has procedures which cover this recommendation (General Instruction 20). The AFP have recognised that the procedure could be improved and are taking steps to make the appropriate changes.

NORTHERN TERRITORY

The family or next of kin advised by a prisoner is always informed of a serious illness or death immediately. Advice concerning coronial inquests will be relayed to the deceased's family as soon as possible.

The practice in the Northern Territory is that when an inquest into a death is ready for hearing, then it is listed in a court callover. The relevant Aboriginal Legal Service is notified of the callover and a period of 4 weeks lapses between callover and hearing date to enable preparation of submissions, etc. by the Aboriginal Legal Service. This current practice and this recommendation will be considered in the context of the Coroners Act review being carried out by the Department of Law.
22. That no inquest should proceed in the absence of appearance for or on behalf of the family of the deceased unless the Coroner is satisfied that the family has been notified of the hearing in good time and that the family does not wish to appear in person or by a representative. In the event that no clear advice is available to the Coroner as to the family's intention to be appear or be represented no inquest should proceed unless the Coroner is satisfied that all reasonable efforts have been made to obtain such advice from the family, the Aboriginal Legal Service and/or from lawyers representing the family.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - The recommendation will be considered in the context of the Coroners Act review being carried out by the Department of Law.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

The family or next of kin advised by a prisoner is always informed of a serious illness or death immediately. Advice concerning coronial inquests will be relayed to the deceased's family as soon as possible.

The practice in the Northern Territory is that when an inquest into a death is ready for hearing, then it is listed in a court callover. The relevant Aboriginal Legal Service is notified of the callover and a period of 4 weeks lapses between callover and hearing date to enable preparation of submissions, etc. by the Aboriginal Legal Service. This current practice and this recommendation will be considered in the context of the Coroners Act review being carried out by the Department of Law.
23. That the family of the deceased be entitled to legal representation at the inquest and that government pay the reasonable costs of such representation through legal aid schemes or otherwise.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - The recommendation will be considered in the context of the Coroners Act review being carried out by the Department of Law.

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department notes that this recommendation suggests that the entitlement should apply to both Aboriginal and non-Aboriginal families. Further that the context of the relevant parts of the report and the recommendation implies that it only applies where there is a death in custody.

As legal aid is not normally granted for representation in coronial matters, guidelines will need to amended and additional specific funding obtained.

As the majority of persons in custody fall within State and Territory jurisdictions, funding for legal aid would be their responsibility as any decision along these lines would be a State/Territory initiative. However, in all State/Commonwealth Legal Aid Agreements, except NSW and the ACT, reference is made to separate Commonwealth funding for legal aid for Aboriginals through Aboriginal Legal Services. Some agreements also provide for consultations in the event of variation in this funding which may impact on the operations of Legal Aid Commission.

No legislative amendments would be needed to give a family member a right to legal representation and legal aid.

NORTHERN TERRITORY

The family or next of kin advised by a prisoner is always informed of a serious illness or death immediately. Advice concerning coronial inquests will be relayed to the deceased's family as soon as possible.

The practice in the Northern Territory is that when an inquest into a death is ready for hearing, then it is listed in a court callover. The relevant Aboriginal Legal Service is notified of the callover and a period of
4 weeks lapses between callover and hearing date to enable preparation of submissions, etc. by the Aboriginal Legal Service. This current practice and this recommendation will be considered in the context of the Coroners Act review being carried out by the Department of Law.
24. That unless the State Coroner or a Coroner appointed to conduct the inquiry otherwise directs, investigators conducting inquiries on behalf of the Coroner and the staff of the Coroners Office should at all times endeavour to provide such information as is sought by the family of the deceased, the Aboriginal Legal Service and/or lawyers representing the family as to the progress of their investigation and the preparation of the brief for the inquest. All efforts should be made to provide frank and helpful advice and to do so in a polite and considerate manner. If requested, all efforts should be made to allow family members or their representatives the opportunity to inspect the scene of death.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The AFP will develop national procedures to implement this recommendation through a designated information officer.

NORTHERN TERRITORY

An appropriate addition to Police General Order - Coroners and Inquests - Code C9 is required to reflect the requirement of the recommendation.

In process of implementation.

This recommendation will also be considered in the context of the review of the Coroner's Act.
25. That unless the State Coroner, or a Coroner appointed to conduct the inquiry, directs otherwise, and in writing, the family of the deceased or their representative should have a right to view the body, to view the scene of death, to have an independent observer at any post-mortem that is authorized to be conducted by the Coroner, to engage an independent medical practitioner to be present at the post-mortem or to conduct a further post-mortem, and to receive a copy of the post-mortem report. If the Coroner directs otherwise, a copy of the direction should be sent to the family and to the Aboriginal Legal Service.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported subject to security requirements.

ACTION:

COMMONWEALTH

The AFP will amend national procedures to implement this recommendation.

NORTHERN TERRITORY

The reason for this recommendation is to reduce suspicion towards the custodial authority regarding the cause of death. There are five principles involved. These are for the family of the deceased to have the right to:

- view the body;
- view the death scene;
- have an independent observer at any post-mortem;
- engage an independent medical practitioner to be present at the post-mortem (PM) or to conduct a further PM; and
- receive a copy of the PM report.

The last principle is a matter for the Coroner's Office and of no concern for police. However, some real difficulties for police are envisaged with the other four principles.

To not comply with any of the principles in a particular matter, the recommendation provides that the Coroner would have to "... direct(s) otherwise, and in writing, ...". However, this would generally prove to be quite impractical due to the need to immediately preserve the death scene for forensic purposes (bearing in mind that all custodial deaths are now initially treated as homicides).
The principles could be accommodated if the following words were added:

"providing such viewing does not prejudice the conduct of the investigation" or

"as soon as is reasonably practicable family representatives are to be permitted...".

Another difficulty would be the interpretation of the word "family", as in Aboriginal terms this could mean many people and control of this factor could impose a resource problem for police, particularly in remote areas.

Thus a limited number (i.e. two), should initially be imposed for family members attending at the death scene.

An appropriate paragraph in Police General Order Coroners and Inquests - Code C9 is required to reflect the wording of the recommendation.

The recommendation is supported subject to security requirements.

The recommendation will also be considered in the context of the Coroners Act review being carried out by the Department of Law.
26. That as soon as practicable, and not later than forty-eight hours after receiving advice of a death in custody the State Coroner should appoint a solicitor or barrister to assist the Coroner who will conduct the inquiry into the death.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - This recommendation will be considered in the context of the current review of the Coroners Act being carried out be the Department of Law.

ACTION:

COMMONWEALTH

Implementation will involve an amendment to the Commonwealth Director of Prosecutions Act 1983 and the powers of the Coroner at Jervis Bay.
27. That the person appointed to assist the Coroner in the conduct of the inquiry may be a salaried officer of the Crown Law Office or the equivalent office in each State and Territory, provided that the officer so appointed is independent of relevant custodial authorities and officers. Where, in the opinion of the State Coroner, the complexity of the inquiry or other factors, necessitates the engaging of counsel then the responsible government office should ensure that counsel is so engaged.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - This recommendation will be considered in the context of the current review of the Coroners Act being carried out by the Department of Law.

ACTION:

COMMONWEALTH

Implementation will involve an amendment to the Commonwealth Director of Prosecutions Act 1983 and the powers of the Coroner at Jervis Bay.
28. That the duties of the lawyer assisting the Coroner be, subject to direction of the Coroner, to take responsibility, in the first instance, for ensuring that full and adequate inquiry is conducted into the cause and circumstances of the death and into such other matters as the Coroner is bound to investigate. Upon the hearing of the inquest the duties of the lawyer assisting at the inquest, whether solicitor or barrister, should be to ensure that all relevant evidence is brought to the attention of the Coroner and appropriately tested, so as to enable the Coroner to make such findings and recommendations as are appropriate to be made.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - This recommendation will be considered in the context of the current review of the Coroners Act being carried out by the Department of Law.

ACTION:

COMMONWEALTH

Commonwealth interest in this recommendation also relates to the role of the DPP in Jervis Bay. The DPP follows the recommended approach.
(State/Territory)

29. That a Coroner in charge of a coronial inquiry into a death in custody have legal power to require the officer in charge of the police investigation to report to the Coroner. The Coroner should have power to give directions as to any additional steps he or she desires to be taken in the investigation.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to the Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing this recommendation.

NORTHERN TERRITORY

No substantial difficulty is envisaged with the requirements of this recommendation.

The purpose of the recommendation is to allay suspicion and mistrust which Aborigines may have regarding the investigation by police of a death in custody. A professionally conducted investigation seen to be directly involving the Coroner's Office should present no problems for the Police Service and could only enhance the Aboriginal confidence in police generally.

Amendment to Police General Order - Coroners and Inquests - Code C9 is required.

This recommendation is also being investigated in the context of the review of the Coroner's Act.
30. That subject to direction, generally or specifically given, by the Coroner, the lawyer assisting the Coroner should have responsibility for reviewing the conduct of the investigation and advising the Coroner as to the progress of the investigation.

POSITION/COMMENTS:
COMMONWEALTH - Supported
NORTHERN TERRITORY - Supported

ACTION:
COMMONWEALTH

Commonwealth interest in this recommendation also relates to the role of the DPP in Jervis Bay. The recommended approach often happens in practise, though there are no formal requirements. We have not yet determined whether there should be formal requirements, though it is the Territories portfolio that has responsibility for developing any changes to the Coroners legislation.

NORTHERN TERRITORY

No substantial difficulty is envisaged with the requirements of this recommendation.

The purpose of the recommendation is to allay suspicion and mistrust which Aborigines may have regarding the investigation by police of a death in custody. A professionally conducted investigation seen to be directly involving the Coroner's Office should present no problems for the Police Service and could only enhance the Aboriginal confidence in police generally.

Amendment to Police General Order - Coroners and Inquests - Code C9 is required.

This recommendation is also being investigated in the context of the review of the Coroner's Act.
31. That in performing the duties as lawyer assisting the Coroner in the inquiry into a death the lawyer assisting the Coroner be kept informed at all times by the officer in charge of the police investigation into the death as to the conduct of the investigation and the lawyer assisting the Coroner should be entitled to require the officer in charge of the police investigation to conduct such further investigation as may be deemed appropriate. Where dispute arises between the officer in charge of the police investigation and the lawyer assisting the Coroner as to the appropriateness of such further investigation the matter should be resolved by the Coroner.

POSITION/COMMENTS:

COMMONWEALTH - Supported
NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

Commonwealth interest in this recommendation also relates to the role of the DPP and the AFP in Jervis Bay. The recommended approach has been implemented (General Instruction 20)

NORTHERN TERRITORY

No substantial difficulty is envisaged with the requirements of this recommendation.

The purpose of the recommendation is to allay suspicion and mistrust which Aborigines may have regarding the investigation by police of a death in custody. A professionally conducted investigation seen to be directly involving the Coroner's Office should present no problems for the Police Service and could only enhance the Aboriginal confidence in police generally.

Amendment to Police General Order - Coroners and Inquests - Code C9 is required.

This recommendation is also being investigated in the context of the review of the Coroner's Act
32. That the selection of the officer in charge of the police investigation into a death in custody be made by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The AFP will implement this by an amendment to the relevant procedures for Jervis Bay and nationally.

NORTHERN TERRITORY

A minor amendment to Police General Order - Coroners and Inquests - Code C9, is required.

In process of implementation.
33. That all officers involved in the investigation of a death in police custody be selected from an Internal Affairs Unit or from a police command area other than that in which the death occurred and in every respect should be as independent as possible from police officers concerned with matters under investigation. Police officers who were on duty during the time of last detention of a person who died in custody should take no part in the investigation into that death save as witnesses or, where necessary, for the purpose of preserving the scene of death.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The AFP has substantially implemented this recommendation (ACT Regional Instruction 4/91, paras.21 & 23 and General Instruction 20 para.31) and will take steps to ensure full implementation following the completion of a review of relevant legislation.

NORTHERN TERRITORY

In place; Police General Order - Coroners and Inquests - Code C9 refers, and is sufficient notwithstanding that the word 'command' in Recommendation 33 could possibly be misconstrued so as to unnecessarily preclude the whole command under the relevant Assistant Police Commissioner. However, this does not appear to be the intention of the recommendation.

Implemented.
34. That police investigations be conducted by officers who are highly qualified as investigators, for instance, by experience in the Criminal Investigation Branch. Such officers should be responsible to one, identified, senior officer.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

AFP ACT Regional Instruction 4/91 (Deaths) adequately addresses this recommendation.

NORTHERN TERRITORY

Police General Order - Coroners and Inquests - Code C9 does not specify that the investigating officers be "highly qualified as investigators, for instance, by experience in CIB".

No change is recommended in view of the limited number of highly qualified investigators available in the Northern Territory Police, due to the relatively small size of the service.

Implemented.
35. That police standing orders or instructions provide specific directions as to the conduct of investigations into the circumstances of a death in custody. As a matter of guidance and without limiting the scope of such directions as may be determined, it is the view of the Commission that such directions should require, inter alia, that:

a. Investigations should be approached on the basis that the death may be a homicide. Suicide should never be presumed;

b. All investigations should extend beyond an inquiry into whether death occurred as a result of criminal behaviour and should include inquiry into the lawfulness of the custody and the general care, treatment and supervision of the deceased prior to death;

c. The investigations into deaths in police watch-houses should include full inquiry into the circumstances leading to incarceration, including the circumstances of arrest or apprehension and the deceased's activities beforehand;

d. In the course of inquiry into the general care, treatment or supervision of the deceased prior to death particular attention should be given to whether custodial officers observed all relevant policies and instructions relating to the care, treatment and supervision of the deceased; and

e. The scene of death should be subject to a thorough examination including the seizure of exhibits for forensic science examination and the recording of the scene of death by means of high quality colour photography.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

AFP ACT Regional Instruction 4/91 (Deaths), paragraphs.20 and 21, ACT RI 22/91 (Watch House) paragraphs.14 and 15, General Instructions.19 (Crime Scenes), 20 (Deaths) paragraphs.16 and 31, all ensure that a full and thorough investigation occurs. In fact ACT RI 4/91 replicates the wording in recommendation 35 and recommends that any death in custody be treated as a homicide. If every
death is investigated as a homicide and suicide is not presumed then the highest standard of investigatory techniques will be employed in the investigation. With regard to the lawfulness of the custody, that is a matter for consideration by the arresting officers and by the OIC of the Watch House.

It remains open for any person to question the legality of the arrest under the Complaints Act 1981, or by witness statements obtained and by further inquiry by the OIC of the investigation.

NORTHERN TERRITORY

a+c At recommendation 12 the Coroner is required "to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death.

Thus there are direct implications for police, involving all custodial deaths. General Order - Coroners and Inquests - Code C9 will need appropriate amendment.

In process of implementation.

d A minor addition is required to General Order - Coroners and Inquests - Code C9, to include the precise requirement of this recommendation.

In process of implementation.

e A minor amendment is required to General Order - Coroners and Inquests - Code C9, to more precisely reflect the requirement of this recommendation.

In process of implementation.
36. Investigations into deaths in custody should be structured to provide a thorough evidentiary base for consideration by the Coroner on inquest into the cause and circumstances of the death and the quality of the care, treatment and supervision of the deceased prior to death.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The AFP has implemented this recommendation through various General Instructions, ACT Regional Instructions and Training Courses.

NORTHERN TERRITORY

The requirement of this recommendation is generally reflected in Police General Order Coroners and Inquests - Code C9.

Implemented.
37. That all post-mortem examinations of the deceased be conducted by a specialist forensic pathologist wherever possible or, if a specialist forensic pathologist is not available, by a specialist pathologist qualified by experience or training to conduct such post-mortems.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing the recommendation.

NORTHERN TERRITORY

Whilst there is no internal instruction to Police regarding the use of a pathologist with a death in custody, the practice is to use a specialist forensic pathologist if available, or otherwise a specialist pathologist.

General Order - Coroners and Inquests - Code C9, make reference to a "forensic pathologist", but does not actually stipulate the use of a pathologist. A minor addition to C9 is required to correct this and should apply to all custodial deaths. However, even with an amendment to the General Order, in practical terms this would depend on the availability of a pathologist from interstate, on those occasions when one is not available in the Territory. No additional cost to police is involved.

In process of implementation.
38. The Commission notes that whilst the conduct of a thorough autopsy is generally a prerequisite for an adequate coronial inquiry some Aboriginal people object, on cultural grounds, to the conduct of an autopsy. The Commission recognizes that there are occasions where as a matter of urgency and in the public interest the Coroner may feel obligated to order that an autopsy be conducted notwithstanding the fact that there may be objections to that course from members of the family or community of the deceased. The Commission recommends that in order to minimize and to resolve difficulties in this area the State Coroner or the representative of the State Coroner should consult generally with Aboriginal Legal Services and Aboriginal Health Services to develop a protocol for the resolution of questions involving the conduct of inquiries and autopsies, the removal and burial of organs and the removal and return of the body of the deceased. It is highly desirable that as far as possible no obstacle be placed in the way of carrying out of traditional rites and that relatives of a deceased Aboriginal person be spared further grief. The Commission further recommends that the Coroner conducting an inquiry into a death in custody should be guided by such protocol and should make all reasonable efforts to obtain advice from the family and community of the deceased in consultation with relevant Aboriginal organizations.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing the recommendation.

NORTHERN TERRITORY

This recommendation requires the Coroner to ensure that the difficulties with respect to Aboriginal cultural and burial rites are minimised when ordering an autopsy. To assist this process the police involved should always be aware of the intention of Recommendation 38 and this may be achieved through training and by an appropriate reference in General Order - Coroners and Inquests - Code C9.
This recommendation is subject to the agreement of the Coroner.

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

**POSITION/COMMENTS:**

**COMMONWEALTH** - Supported

**NORTHERN TERRITORY** - This recommendation will be examined in the context of the review of the *Coroner's Act*.

**ACTION**

**COMMONWEALTH**

The Commonwealth Attorney-General's Department has a policy interest in this recommendation because it applies to Jervis Bay and other Territories. Nevertheless, the Territories portfolio has responsibility for implementing the recommendation.
40. That Coroners Offices in all States and Territories establish and maintain a uniform data base to record details of Aboriginal and non-Aboriginal deaths in custody and liaise with the Australian Institute of Criminology and such other bodies as may be authorised to compile and maintain records of Aboriginal deaths in custody in Australia.

**POSITION/COMMENTS:**

**COMMONWEALTH** - Supported

**NORTHERN TERRITORY** - This recommendation will be examined in the context of the review of the Coroner's Act.

**ACTION:**

**COMMONWEALTH**

This task is seen as a central part of work of the Deaths in Custody Monitoring and Research Unit which is to be established within the Australian Institute of Criminology which has been funded for this purpose in the 1991-1992 Budget.

The Territories portfolio is responsible for implementing this recommendation at the local level in Jervis Bay and other Territories.

The first step towards implementation of this recommendation will be taken in November 1991 when the Deputy Director of the Australian Institute of Criminology addresses a National Workshop on Coronial Services on this subject.
ADEQUACY OF INFORMATION

41. That statistics and other information on Aboriginal and non-Aboriginal deaths in prison, police custody and juvenile detention centres, and related matters, be monitored nationally on an ongoing basis. I suggest that responsibility for this be established within the Australian Institute of Criminology and that all custodial agencies co-operate with the Institute to enable it to carry out the responsibility. The responsibility should include at least the following functions:

a. Maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders);

b. Report annually to the Commonwealth Parliament; and

c. Negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody. Such definition should include at least the following categories:

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

   ii. the death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention;

   iii. the death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and

   iv. the death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported
ACTION:

COMMONWEALTH

Funding for the AIC to implement this recommendation by establishing an Aboriginal Deaths in Custody Monitoring and Research Unit has been approved. The AIC will make use of its extensive contacts with police, prison and juvenile justice authorities in order to obtain the cooperation that will be essential for the success of the initiative.

NORTHERN TERRITORY

All reporting requirements determined by the Australian Institute of Criminology in line with the recommendation will be complied with.

The cost implications are not likely to be significant.
42. That governments require the provision of and publish, on a regular and frequent basis, detailed information on the numbers and details of the people passing through their police cells.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The conduct of periodic National Police Custody Surveys is seen as a part of the work load of the Deaths in Custody Monitoring and Research Unit.

NORTHERN TERRITORY

Some of this information (numbers of people) is currently published in the Northern Territory Police Annual Report. The additional information (details of people) can be provided at minimum cost. However, there should be care taken to ensure that this task does not involve an excessive burden upon police.
43. That a survey such as the 1988 National Police Custody Survey be conducted at regular intervals of, say, two to five years, with the aim of systematically monitoring and evaluating the degree to which needed improvements in legislation, attitudes, policies and procedures that affect police custody are implemented.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The conduct of periodic National Police Custody Surveys is seen as a part of the work load of the Deaths in Custody Monitoring and Research Unit.

NORTHERN TERRITORY

The 1988 survey was sponsored by RCIADIC and it is envisaged that any future surveys will not be the responsibility of police (refer recommendation 44).
44. That the Australian Institute of Criminology co-
ordinate and implement the recommended series of national
surveys. The experience of the first national survey
points to the fact that careful planning with all the
relevant authorizes will be needed to ensure that the
maximum amount of useful information is derived from the
surveys.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

The conduct of periodic National Police Custody Surveys
is seen as a part of the work load of the Deaths in
Custody Monitoring and Research Unit.
45. That the appropriate Ministerial Councils strive to achieve a commonality of approach in data collections concerning both police and prison custody.

POSITION/COMMENTS:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The AIC will actively assist the achievement of this goal through the new Unit as well as through other bodies such as the National Correctional Statistics Committee.

This recommendation has been placed on the Agenda of the Australian Police Ministers Council which will meet on 22 November 1991.

NORTHERN TERRITORY

Attention will be paid to the need for uniform and meaningful collections of data. At present the Australian Institute of Criminology provides uniform collections of data and reports to conferences of Ministers and Administrators of Corrections.
46. That the national deaths in custody surveys which I have recommended be undertaken by the Australian Institute of Criminology include the establishment of uniform procedures and methodologies which would not only enhance the state of knowledge in this area but also facilitate the making of comparisons between Australian and other jurisdictions, and facilitate communication of research findings.

**POSITION/COMMENTS:**

**COMMONWEALTH** - Supported

**NORTHERN TERRITORY** - Supported

**ACTION:**

**COMMONWEALTH**

One of the tasks of the new Unit within the AIC will be to extend and improve upon the research paper "International Review of Deaths in Custody" (RCIACIC, p.15). It is anticipated that the United Nations will take an interest in this subject in the future, and therefore the formal AIC affiliation with the UN will be helpful.

**NORTHERN TERRITORY**

Data provided will be designed to enhance the making of comparisons and facilitate research findings.

The Northern Territory Police service will consider the proposal from the Australian Institute of Criminology when it is produced.
47. That relevant Ministers report annually to their State and Territory Parliaments as to the numbers of persons held in police, prison and juvenile centre custody with statistical details as to the legal status of the persons so held (for example, on arrest; on remand for trial; on remand for sentence; sentenced; for fine default or on other warrant; for breach of non-custodial court orders; protective custody or as the case may be), including whether the persons detained were or were not Aboriginal or Torres Strait Islander people.

POSITION/COMMENTS:

COMMONWEALTH - Supported
NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

The new Unit within the Australin Institute of Criminology should be able to provide State and Territory Ministers with most, if not all, of the data specified on the use of custody in each jurisdiction. Reports on the data will be tabled in the Commonwealth Parliament.

NORTHERN TERRITORY

The Minister responsible for Correctional Services currently provides the Territory Legislative Assembly with this detail by means of Departmental Annual Reports.

The remainder of the statistical data can be provided if required by Government.

Under consideration for implementation.
ABORIGINAL SOCIETY TODAY

(joint Commonwealth/State)

48. That when social indicators are to be used to monitor and/or evaluate policies and programs concerning Aboriginal people, the informed views of Aboriginal people should be incorporated into the development, interpretation and use of the indicators, to ensure that they adequately reflect Aboriginal perceptions and aspirations. In particular, it is recommended that authorities considering information gathering activities concerning Aboriginal people should consult with ATSIC and other Aboriginal organizations, such as NAIHO or NAILSS, as to the project.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

ABS data collection activities that provide information about Aboriginal people include the Population Census, the National Health Survey and birth and death statistics obtained through the various Registrars of Births, Deaths and Marriages. The ABS has had the practice of consulting with Aboriginal organisations in relation to these collections and will continue to do so.

Under the Australian Bureau of Statistics Act 1975, the ABS has the responsibility for coordination of the statistical activities of other Commonwealth Government agencies. Agencies considering information gathering activities concerning Aboriginal people should consult with the ABS. Paragraph 7(1)(h) of the ATSIC Act requires that agency to seek the concurrence of the ABS before undertaking the collection and publication of statistical information.

PSC - The Australian Bureau of Statistics and departments servicing the Aboriginal community produce social indicators. The PSC's role is restricted to the information it produces on the recruitment and employment of Aboriginal and Torres Strait Islander staff in the Public Service. The data are derived from the Continuous Record of Personnel or DEET recruitment information. These are not social indicators as such and further consultation on them, beyond what has already occurred with Aboriginal public servants, would not be warranted unless major changes were foreshadowed.
Relevant agencies should be required to note and implement the recommendation to the extent that the protocol is not currently followed.
49. That proposals for a special national survey covering a range of social, demographic, health and economic characteristics of the Aboriginal population with full Aboriginal participation at all levels be supported. The proposed census should take as its boundaries the ATSIC boundaries. The Aboriginal respondents to the census should be encouraged to nominate their traditional/contemporary language affiliation. I further recommend that the ATSIC Regional Councils be encouraged to use the special census to obtain an inventory of community infrastructure, assets and outstanding needs which can be used as data for the development of their regional plans.

POSITION/COMMENT:

COMMONWEALTH - Supported
NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

From discussions with major Commonwealth agencies including ATSIC the ABS has identified interest in a special national survey of the Aboriginal population. This would be a major statistical undertaking, the momentum for which would have to come from outside the ABS. Such a major survey would need a well justified case based on needs, setting out how the data will be used and how it relates to other statistics. The survey would need the support of the Aboriginal community, implying extensive prior consultation before it could be undertaken. The ABS budget would need to be augmented to cover the cost of the survey and a long lead time would be necessary for its development.

ATSIC

The recommendation confuses the terms "survey" which in statistical terms means a sample or incomplete enumeration, and "census" which means complete enumeration.

The substance of the recommendation is currently a matter for consideration by the Social Justice Committee of Cabinet in the context of a submission brought forward by the Minister for Aboriginal Affairs on Future Directions in Aboriginal and Torres Strait Islander Programs. The recommendation is for the Minister for Aboriginal Affairs to bring forward a Cabinet Submission to address the options for expanding the collection of socio-economic indicator data on Aboriginals and Torres Strait Islanders including improved use of Aboriginal identifiers in
existing surveys and/or the implementation of a special national Aboriginal social survey.

A national assessment of Aboriginal and Torres Strait Islander housing and infrastructure needs is currently being planned and is due to be in the field in October 1991.
50. That in the development of future national censuses and other data collection activity covering Aboriginal people, the Australian Bureau of Statistics and other agencies consult, at an early stage, with ATSIC to ensure that full account is taken of the Aboriginal perspective.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH

It is normal ABS practice to consult with interested groups prior to major data collection activity. During the lead up to the 1991 Population Census the ABS consulted with local Aboriginal councils and organisations in setting up appropriate enumeration procedures. A similar strategy is expected to be used for the 1996 Census.

ATSIC

The Australian Bureau of Statistics does consult with agencies in the planning stages of each Census. The ABS did consult with both the former Aboriginal Development Commission and Department of Aboriginal Affairs in 1988 for the 1991 Census. Planning has already commenced for the 1996 Census and we expect that ATSIC will be consulted.
(Joint Commonwealth/State)

51. That research funding bodies reviewing proposals for further research on programs and policies affecting Aboriginal people adopt as principal criteria for the funding of those programs:

a. The extent to which the problem or process being investigated has been defined by Aboriginal people of the relevant community or group;

b. The extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research;

c. The requirement that Aboriginal people from the relevant community or group receive the results of the research delivered in a form which can be understood by them; and

d. The requirement that the research include the formulation of proposals for further action by the Aboriginal community and local Aboriginal organizations.

POSITION/COMMENT:

COMMONWEALTH - Supported

NORTHERN TERRITORY - Supported

ACTION:

COMMONWEALTH - ATSIC

Research protocols affecting Aboriginal and Torres Strait Islander people have already been adopted by significant bodies such as the National Health and Medical Research Council and ATSIC will endeavour to ensure appropriate protocols are drawn to the attention of all prospective researchers.

ATSIC could include in its letters of offer for research activities the requirements specified in the recommendation. The criteria may need to be modified because on a reasonable reading of them, they may not always be capable of being achieved.

NORTHERN TERRITORY

Supported, with the removal of words "adopt as principal criteria" from first sentence and replaced with "take into consideration".