

Appendices



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Appendix A:

List of Recommendations

Overcoming Aboriginal Disadvantage in Western Australia

Recommendation 1

[p 48] **Whole-of-government approach to Aboriginal service and program provision**

1. That the State of Western Australia adopt a genuine whole-of-government approach to the design, development and delivery of services and programs to Aboriginal people in Western Australia requiring the constructive communication between agencies at the state, regional and local levels and the consideration of cooperative multi-agency joint-funded programs to achieve real outcomes that effectively address the current state of Aboriginal disadvantage in Western Australia.
2. That, in recognition of the right of Aboriginal peoples to be involved in decision-making affecting their interests, the State of Western Australia put mechanisms in place to ensure the effective participation, consultation and consent of Aboriginal peoples in relation to the design and delivery of government services to Aboriginal communities in Western Australia.

Recommendation 2

[p 51] **Cultural awareness training for government employees and contractors**

1. That employees of Western Australian government agencies who work directly or have regular dealings with Aboriginal people be required to undertake cultural awareness training. Such training should:
 - (a) be designed and/or developed in consultation with local Aboriginal people, in particular traditional owners;
 - (b) draw upon existing local Aboriginal resources, networks and skills;
 - (c) be conducted or include presentations by Aboriginal people;
 - (d) be delivered at the regional or local level to allow programs to be appropriately adapted to take account of regional cultural differences and customs and concerns of local Aboriginal communities;
 - (e) include protocols and information specific to the role or position of the individual undertaking the training;
 - (f) be sufficiently long and detailed to meaningfully inform participants of matters necessary to the delivery of programs and services to Aboriginal clients; and
 - (g) be evaluated, updated and reinforced on a regular basis.
2. That *all* employees of Western Australian government agencies be offered, and encouraged to participate in, cultural awareness training programs regardless of their position or the frequency of their interactions with Aboriginal people.
3. That participation in agency-arranged cultural awareness training be a contractual condition where contractors or sub-contractors to any Western Australian government agency are required to work directly or have regular dealings with Aboriginal people.

Office of the Commissioner for Indigenous Affairs

Recommendation 3

[p 58] Establish an Office of the Commissioner for Indigenous Affairs

1. That the Western Australian government establish, by statute, an independent and properly resourced Office of the Commissioner for Indigenous Affairs to report directly to Parliament on:
 - (a) progress on implementation of the recommendations of the Law Reform Commission of Western Australia's Final Report into Aboriginal Customary Laws (2006) and the Report of the Royal Commission into Aboriginal Deaths in Custody (1991);
 - (b) departmental and agency participation in the whole-of-government approach;
 - (c) outcomes achieved in regard to reducing Aboriginal disadvantage and achieving reconciliation in Western Australia; and
 - (d) progress in the reduction of over-representation of Aboriginal people in the criminal justice system in Western Australia.
2. That the Office of the Commissioner for Indigenous Affairs be responsible for independent monitoring and evaluation of government initiatives directed toward Aboriginal people in Western Australia.
3. That the Office of the Commissioner for Indigenous Affairs be headed by an independent Aboriginal Commissioner, preferably from Western Australia.
4. That the Commissioner for Indigenous Affairs have the power to:
 - (a) require departments and agencies to provide information on request;
 - (b) require departments and agencies to report annually to the Commissioner on outcomes achieved in respect of Aboriginal issues and policies;
 - (c) establish joint working parties or collaborate with state or federal agencies and/or research bodies on issues affecting or relating to Aboriginal people in Western Australia;
 - (d) review laws and policies and provide advice to government;
 - (e) publish research, reports and information on issues relating to Aboriginal people in Western Australia;
 - (f) make findings and recommendations to Parliament or to any Western Australia government agencies in relation to any matter within the Commissioner's remit; and
 - (g) undertake investigations on matters as directed by the Premier of Western Australia from time-to-time.
5. That the Commissioner for Indigenous Affairs be appointed by the Governor on the recommendation of the Premier in consultation with Aboriginal people.
6. That the Commissioner for Indigenous Affairs' term of office be five years, renewable by both Houses of Parliament. The Commissioner should only be suspended or removed from office by the Governor on addresses from both Houses of Parliament.

Aboriginal Customary Law – Definitional Matters

Recommendation 4

[p 63] Definition of Aboriginal person and Torres Strait Islander person

That s 5 of the *Interpretation Act 1984* (WA) be amended to include the following standard definitions of 'Aboriginal person' and 'Torres Strait Islander person' for all written laws of Western Australia:

'Aboriginal person' means any person who is wholly or partly descended from the original inhabitants of Australia.

In determining whether a person is an Aboriginal person the following factors may be considered:

- (a) genealogical evidence;
- (b) evidence of genetic descent from a person who is an Aboriginal person;
- (c) evidence that the person identifies as an Aboriginal person; and
- (d) evidence that the person is accepted as an Aboriginal person in the community in which he or she lives.

‘Torres Strait Islander person’ means any person who is wholly or partly descended from the original inhabitants of the Torres Strait Islands.

In determining whether a person is a Torres Strait Islander person the following factors may be considered:

- (a) genealogical evidence;
- (b) evidence of genetic descent from a person who is a Torres Strait Islander person;
- (c) evidence that the person identifies as a Torres Strait Islander person; and
- (d) evidence that the person is accepted as a Torres Strait Islander person in the community in which he or she lives.

Recognition of Aboriginal Customary Law

Recommendation 5

[p 69] Recognition of customary law consistent with international human rights standards

That recognition of Aboriginal customary laws and practices in Western Australia must be consistent with international human rights standards and should be determined on a case-by-case basis. In all aspects of the recognition process particular attention should be paid to the rights of women and children and the right not to be subject to inhuman, cruel or unusual treatment or punishment under international law.

Recommendation 6

[p 74] Constitutional recognition of Aboriginal peoples

That, at the earliest opportunity, the Western Australian government introduce into Parliament a Bill to amend the *Constitution Act 1889 (WA)* to effect, in s 1, the recognition of the unique status of Aboriginal peoples as the descendants of the original inhabitants of this state. The Commission commends the following form, modelled on a similar provision in the *Constitution Act 1975 (Vic)*:

1. Recognition of Aboriginal peoples

- (1) The Parliament acknowledges that the Colony of Western Australia was founded without proper consultation, recognition or involvement of its Aboriginal peoples or due respect for their laws and customs.
- (2) The Parliament recognises that Western Australia's Aboriginal peoples, as the original custodians of the land on which the Colony of Western Australia was established —
 - (a) have a unique status as the descendants of Australia's first people;
 - (b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Western Australia; and
 - (c) have made a unique and irreplaceable contribution to the identity and wellbeing of Western Australia.
- (3) The Parliament does not intend by this section —
 - (a) to create in any person any legal right or give rise to any civil cause of action; or
 - (b) to affect in any way the interpretation of this Act or of any other law in force in Western Australia.

Aboriginal People and the Criminal Justice System

Recommendation 7

[p 86] Programs and services for Aboriginal people within the criminal justice system

1. That the Department of the Attorney General and the Department of Corrective Services immediately review the existing programs and services available for Aboriginal people in the criminal justice system.
2. That the Western Australian government provide resources to ensure that there are adequate and accessible culturally appropriate programs and services for Aboriginal people at all levels of the criminal justice system.
3. That when allocating resources for the provision of programs and services for Aboriginal people, priority should be given to establishing and supporting Aboriginal-owned programs and services.
4. Where it is not possible to establish an Aboriginal-owned program or service, the Western Australian government should ensure that Aboriginal people are involved in the design and delivery of government-owned programs and services.
5. That the Western Australian government pay particular attention to ensuring that there are adequate and accessible culturally appropriate services for Aboriginal victims of family violence and sexual abuse.

Recommendation 8

[p 87] Repeal mandatory sentencing laws for home burglary

That the mandatory sentencing laws for home burglary in Western Australia be repealed.

Recommendation 9

[p 90] Funding for the Aboriginal Legal Service of Western Australia

That the Western Australian government consult with the Aboriginal Legal Service with a view to providing funding for specific projects or to assist Aboriginal people obtain adequate legal representation as a consequence of the recommendations in this Report.

Recommendation 10

[p 91] Protocols for lawyers working with Aboriginal people

1. That the Western Australian government provide funding to the Law Society of Western Australia for the purpose of developing protocols for lawyers who work with Aboriginal people.
2. That in developing these protocols the Law Society should consult with relevant Aboriginal people and organisations including the Aboriginal Legal Service and Aboriginal interpreting services.

Recommendation 11

[p 92] Cultural awareness training for lawyers

1. That the Western Australian government provide resources for the development of Aboriginal cultural awareness training programs for lawyers.
2. That the Law Society of Western Australia should coordinate the development of Aboriginal cultural awareness training programs for lawyers.
3. That the Law Society should ensure that Aboriginal cultural awareness training programs are developed in conjunction with Aboriginal people and, where possible, they should be presented by Aboriginal people.

4. That the Law Society should apply for Aboriginal cultural awareness training programs to be accredited as approved programs under the Legal Practice Board's mandatory continuing legal education program (if and when it commences).

Recommendation 12

[p 93] **Cultural awareness training for staff and volunteers in the Department of the Attorney General and the Department of Corrective Services**

1. That employees of the Department of the Attorney General and the Department of Corrective Services who work directly with Aboriginal people (such as community corrections officers, prison officers and court staff) be required to undertake cultural awareness training.
2. That cultural awareness training be made available at no cost for volunteers who deal with Aboriginal people on behalf of the Department of the Attorney General or the Department of Corrective Services.
3. That cultural awareness training be specific to local Aboriginal communities and include programs presented by Aboriginal people.

Recommendation 13

[p 95] **Extraordinary drivers licences**

That the relevant criteria for an application for an extraordinary drivers licence as set out in s 76 of the *Road Traffic Act 1976 (WA)* be amended to include that:

1. Where there are no other feasible transport options, Aboriginal customary law obligations should be taken into account when determining the degree of hardship and inconvenience which would otherwise result to the applicant, the applicant's family or a member of the applicant's community.
2. When making its decision whether to grant an extraordinary drivers licence the court should be required to consider the cultural obligations under Aboriginal customary law to attend funerals and the need to assist others to travel to and from a court as required by a bail undertaking or other order of the court.

Recommendation 14

[p 96] **Application to cancel a licence suspension order**

That the *Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA)* be amended to provide that an Aboriginal person may apply to the registrar for the cancellation of a licence suspension order on the additional grounds that it would deprive the person or a member of his or her Aboriginal community of the means of obtaining urgent medical attention, travelling to a funeral or travelling to court.

Recommendation 15

[p 96] **Education and legal representation for traffic matters**

1. That the Western Australian government provide resources to the Aboriginal Legal Service for the purpose of providing educative strategies for Aboriginal people across the state (in particular in remote locations) about the changes to the criteria for applying for an extraordinary drivers licence or the cancellation of a licence suspension order.
2. That the Western Australian government provide resources to the Aboriginal Legal Service for the purpose of providing legal representation for Aboriginal people who are applying for an extraordinary drivers licence or for the cancellation of a licence suspension order.

Aboriginal Community Justice Groups

Recommendation 16

[p 109] Trespass

1. That the *Aboriginal Communities Act 1979* (WA) include a provision relating to the prohibition and restriction of people on community lands. This provision should state that the community council of a discrete community which has been declared under the Act has the right, subject to the laws of Australia, to refuse the entry of any person (who is not a member of the community) into their community and, if permission for entry is granted, to determine on what conditions the person may remain on the community. The provision should also state that it is an offence, without lawful excuse, to fail to comply with the conditions or enter without permission and that this offence has the same penalty as the offence of trespass under the *Criminal Code* (WA).
2. That the *Aboriginal Communities Act 1979* (WA) include a specific provision in relation to community members. This provision should state:
 - (a) That the community council of a discrete Aboriginal community which has been declared under Part II of the Act can, by giving reasonable notice, ask a member of the community to leave the community or part of the community for a specified period of time.
 - (b) That the community council can only ask a member of the community to leave if a majority of the community justice group in the community has recommended that the person be asked to leave.
 - (c) That the community council cannot ask a member of the community to leave if it would cause immediate danger to the health of safety of the person (or their dependents).
 - (d) That failure to leave the community within a reasonable time, or returning to the community during the specified period, without lawful excuse, constitutes an offence of trespass.
 - (e) That a lawful excuse includes that the person was required to stay in or enter the community for Aboriginal customary law purposes.
 - (f) That a member of the Western Australia Police can remove a person who has not complied, within a reasonable time, with the request of the community council to leave the community.

Recommendation 17

[pp 112–13] Community justice groups

1. That the *Aboriginal Communities Act 1979* (WA) provide for the establishment of community justice groups upon the application, approved by the Minister for Indigenous Affairs, of an Aboriginal community.
2. That the current provisions of the *Aboriginal Communities Act 1979* (WA) be incorporated into Part I and that there be a separate part (Part II) of the Act dealing with community justice groups.
3. That Part II of the *Aboriginal Communities Act 1979* (WA) distinguish between discrete Aboriginal communities and all other Aboriginal communities.
4. That for a discrete Aboriginal community to establish a community justice group the community must be declared as a discrete Aboriginal community under Part II of the *Aboriginal Communities Act 1979* (WA).
5. That the Minister for Indigenous Affairs is to declare that an Aboriginal community is a discrete Aboriginal community to which Part II of the Act applies, if satisfied, that
 - (a) A majority of the community supports the community justice group setting community rules and community sanctions; and
 - (b) That there are structures or provisions which require that the proposed community justice group consult with the members of the community in relation to the nature of the community rules and community sanctions.

6. That both discrete and non-discrete Aboriginal communities may apply to the Minister for Indigenous Affairs for approval of a community justice group.
7. That Part II of the *Aboriginal Communities Act 1979* (WA) provide that the Minister for Indigenous Affairs must approve a community justice group if satisfied:
 - (a) That the membership of the group provides for equal representation of all relevant family, social or skin groups in the community and equal representation of both men and women from each relevant family, social or skin group.
 - (b) That there has been adequate consultation with the members of the community and that a majority of community members support the establishment of a community justice group.
 - (c) That each proposed member of a community justice group must have a Working with Children Check and that at regular intervals the Minister for Indigenous Affairs review the membership to determine if all members are still eligible for a Working with Children Check.
8. That at regular intervals the Minister for Indigenous Affairs provide the community with an opportunity to approve the continuation of any existing members or alternatively, nominate new members for each relevant family, social or skin group.
9. That at regular intervals, the Minister for Indigenous Affairs provide the community with an opportunity to approve or otherwise the continuation of the community justice group
10. That Part II of the *Aboriginal Communities Act 1979* (WA) define what constitutes community lands.
 - (a) For communities with a crown reserve lease or pastoral lease the definition should state that the community lands are the entire area covered by the reserve or pastoral lease.
 - (b) For other communities the Minister is to declare the boundaries of the community lands in consultation with the community.
11. That Part II of the *Aboriginal Communities Act 1979* (WA) provide that the functions of a community justice group include but are not limited to the establishment of local justice strategies and crime prevention programs; the provision of diversionary options for offenders; the supervision of offenders subject to community-based orders, bail or parole; and the provision of information to courts.
12. That Part II of the *Aboriginal Communities Act 1979* (WA) provide that the functions of a community justice group in a discrete Aboriginal community include setting community rules and community sanctions and that these rules and sanctions are subject to the laws of Australia.
13. That Part II of the *Aboriginal Communities Act 1979* (WA) include an appropriate indemnity provision for members of a community justice group.
14. That the Western Australian government establish or appoint an Aboriginal Justice Advisory Council to oversee the implementation of this recommendation. The membership of the Aboriginal Justice Advisory Council should be predominantly Aboriginal people from both regional and metropolitan areas as well as representatives from relevant government departments and agencies including the Department of Indigenous Affairs, the Department of the Attorney General, the Department of Corrective Services, and the Western Australia Police. This council is to be established within a framework that provides that its role is to advise and support Aboriginal communities and that government representatives are involved to provide support based upon their particular expertise. The Aboriginal Justice Advisory Council be responsible for :
 - (a) Consultation with Aboriginal communities about their options under this recommendation.
 - (b) Providing advice and support to communities who wish to establish a community justice group.
15. That community justice group members be paid when performing functions within the Western Australian criminal justice system.
16. That the Department of Indigenous Affairs in conjunction with the Department of the Attorney General provide appropriate training for community justice group members.
17. That the Commissioner for Indigenous Affairs review and evaluate community justice groups at a time to be determined by the Commissioner for Indigenous Affairs.

Recommendation 18

[p 115] **Review of the by-law scheme under the *Aboriginal Communities Act 1979* (WA)**

1. That the Commissioner for Indigenous Affairs review and evaluate the by-law scheme under the *Aboriginal Communities Act 1979* (WA).
2. That the review take place at a time to be determined by the Commissioner for Indigenous Affairs but the review should take place approximately three to five years after the establishment of at least five community justice groups in Western Australia.
3. That this review should consider whether by-laws are still considered necessary and supported by Aboriginal people.
4. That in undertaking this review, the Commissioner for Indigenous Affairs consult with Aboriginal community council members, community justice group members and community members.
5. That if it is concluded that the by-law scheme should be abolished then the Commissioner for Indigenous Affairs consider whether any other legislative changes are required.

Recommendation 19

[p 116] **Statistics and records in relation to by-laws**

That in order to facilitate the review of the by-law scheme, the Department of the Attorney General immediately establish procedures to keep accurate statistics about all charges arising from a breach of a by-law enacted under the *Aboriginal Communities Act 1979* (WA) and that these records include the outcome of the court proceeding.

Recommendation 20

[p 117] **Definition of driving under s 73 of the *Road Traffic Act 1974* (WA)**

That in order to remove any doubt and ensure that Aboriginal people living in discrete Aboriginal communities are protected by the provisions of the *Road Traffic Act 1974* (WA), s 73 of the *Road Traffic Act 1974* (WA) be amended to bring the community lands of an Aboriginal community declared under the *Aboriginal Communities Act 1979* (WA) within the definition of 'driving'.

Recommendation 21

[p 120] **Community officers under the *Protective Custody Act 2000* (WA)**

1. That the Western Australia Police and the Department of Indigenous Affairs jointly review the option of community officers under s 27 of the *Protective Custody Act 2000* (WA).
2. That as part of this review the Western Australia Police and the Department of Indigenous Affairs consult with Aboriginal communities as to whether there are any community members who are willing and able to act as community officers under the *Protective Custody Act 2000* (WA).
3. That as part of this review the Western Australia Police and the Department of Indigenous Affairs consider the training and support requirements of and payment for community officers.
4. That as part of this review the Western Australia Police and Department of Indigenous Affairs consider in consultation with Aboriginal communities if it is necessary for the definition of public place to expressly include discrete Aboriginal communities (or parts of those communities) which have been declared under the *Aboriginal Communities Act 1979* (WA).

Recommendation 22

[p 122] **The prohibition or restriction of alcohol in discrete Aboriginal communities**

1. That the Director General of the Department of Indigenous Affairs can apply to the liquor licensing authority, on behalf of an Aboriginal community declared under the *Aboriginal Communities Act 1979* (WA), for regulations in relation to the restriction or prohibition of alcohol.

2. That the Director General of the Department of Indigenous Affairs ensure that prior to making the application he or she is satisfied that the regulations would not contravene the *Racial Discrimination Act 1975* (Cth).
3. That an application can only be made by the Director General if the majority of the community members support the application.
4. That the regulations provide that breaching the restrictions or prohibition imposed is an offence.
5. That any regulations made under this recommendation can only be amended with the support of the majority of the community.
6. That the Commissioner for Indigenous Affairs review (at a time to be determined by the Commissioner for Indigenous Affairs) the effectiveness of any regulations made under this recommendation.

Recommendation 23

[p 123] Sale or supply of alcohol in discrete Aboriginal communities

1. That the *Liquor Licensing Act 1988* (WA) be amended to provide that it is an offence to sell or supply liquor to a person in circumstances where the person selling or supplying the liquor knows, or where it is reasonable to suspect, that the liquor will be taken into an Aboriginal community which has prohibited the consumption of liquor through by-laws enacted under the *Aboriginal Communities Act 1979* (WA) and/or under the *Liquor Licensing Regulations 1989* (WA).
2. That the *Liquor Licensing Act 1988* (WA) provide that this provision is only applicable to a licensed supplier of alcohol if that person actually knows that the alcohol will be taken into an Aboriginal community which has prohibited the consumption of liquor through by-laws enacted under the *Aboriginal Communities Act 1979* (WA) and/or under the *Liquor Licensing Regulations 1989* (WA).

Aboriginal Courts

Recommendation 24

[p 136] Aboriginal courts

1. That the Western Australian government establish as a matter of priority Aboriginal courts for both adults and children in regional locations and in the metropolitan area.
2. That the location, processes and procedures of any Aboriginal court be determined in direct consultation with the relevant Aboriginal communities.
3. That the Western Australian government provide adequate resources for the appointment of additional judicial officers and court staff. In particular, each Aboriginal court should be provided with funding for an Aboriginal justice officer to oversee and coordinate the court.
4. That the Western Australian government provide ongoing resources for Aboriginal-controlled programs and services as well as culturally appropriate government-controlled programs and services to support the operation of Aboriginal courts in each location.
5. That Aboriginal Elders and respected persons should be selected either by or in direct consultation with the local Aboriginal community. Aboriginal Elders and respected persons should be provided with adequate culturally appropriate training about their role and the criminal justice system generally.
6. That Aboriginal Elders should be appropriately reimbursed with a sitting fee.
7. That participation in an Aboriginal court by an accused, victim or any other participant be voluntary.
8. That the Commissioner for Indigenous Affairs evaluate and report on each Aboriginal court after two years of operation and consider whether any legislative or procedural changes are required to improve the operation of Aboriginal courts in Western Australia.

Criminal Responsibility

Recommendation 25

[p 148] **Repeal the offence of unlawful wounding**

That the *Criminal Code* (WA) be amended to remove the offence of unlawful wounding in s 301(1).

Recommendation 26

[p 150] **Education about the criminal law and the criminal justice system**

1. That the Western Australian government provide resources for the development of educative initiatives to inform Aboriginal people about Western Australian criminal laws, court procedures, and services available in the criminal justice system.
2. That in developing these initiatives, particular attention be given to providing information about any criminal laws and international human rights standards that may potentially conflict with Aboriginal customary laws.
3. That these initiatives be developed in conjunction with Aboriginal communities and organisations.
4. That these initiatives be locally based and, where possible, be presented by Aboriginal people and delivered in local Aboriginal languages.

Recommendation 27

[p 155] **Duress**

1. That s 31(4) of the *Criminal Code* (WA) be repealed and the *Criminal Code* (WA) be amended to provide that a person is not criminally responsible for an offence if he or she reasonably believes that:
 - (a) a threat has been made that will be carried out unless the offence is committed;
 - (b) there is no reasonable way to make the threat ineffective; and
 - (c) the conduct is a reasonable response to the threat.
2. That the *Criminal Code* (WA) provide that the defence of duress does not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of carrying out conduct of the kind actually carried out.

Recommendation 28

[p 158] **Education about parenting and discipline of children under Australian law**

1. That the Western Australian government develop strategies to inform Aboriginal communities about their rights and responsibilities under Australian law in relation to the discipline of children, in particular to inform Aboriginal communities of their right to use physical correction that is reasonable in the circumstances.
2. That these educative strategies provide information to Aboriginal communities about effective alternative methods of discipline.
3. That these strategies be developed and presented by Aboriginal communities and organisations. In particular, Elders and other respected members, including members of a community justice group, should be involved in the design and delivery of any educational programs.
4. That the Western Australian government provide resources to the Department of Indigenous Affairs so that it can coordinate—in partnership with the Department of Community Development, Department of Health and the Department of Education and Training—the development of these programs.
5. That participation by Aboriginal people in these educational programs be voluntary.

Bail

Recommendation 29

[p 161] Responsible person bail for adults

1. That Clause 1(2) of Part D to the Schedule of the *Bail Act 1982* (WA) be amended to include, as a possible condition of bail, that a responsible person undertakes in writing in the prescribed form to ensure that the accused complies with any requirement of his or her bail undertaking.
2. That Clause 1(2) of Part D to the Schedule of the *Bail Act 1982* (WA) be amended to provide that the authorised officer or judicial officer must be satisfied that the proposed responsible person is suitable.
3. That Clause 1(2) of Part D to the Schedule of the *Bail Act 1982* (WA) be amended to provide that the condition of bail to a responsible person can only be used in circumstances that would, in the absence of the responsible person option, require a surety.

Recommendation 30

[p 162] Financial circumstances of the surety

That the *Bail Act 1982* (WA) be amended to provide that when setting the amount of a surety undertaking the financial means of any proposed surety should be taken into account.

Recommendation 31

[p 164] Telephone applications for bail

That the *Bail Act 1982* (WA) be amended to provide that where an adult or child has been refused bail by an authorised police officer, justice of the peace or authorised community services officer or the accused is unable to meet the conditions of bail that have been set by an authorised police officer, justice of the peace or authorised community services officer, the accused is entitled to apply to a magistrate for bail by telephone application if he or she could not otherwise be brought before a court (either in person or by video or audio link) by 4.00 pm the following day.

Recommendation 32

[p 165] Non-custodial bail facilities for children in remote and regional locations

That the Department of Corrective Services continue to develop, in partnership with Aboriginal communities, non-custodial bail facilities for Aboriginal children in remote and rural locations. In developing these facilities the Department of Corrective Services should work in conjunction with a local community justice group.

Recommendation 33

[p 167] Cultural background as a relevant factor for bail

That Clause 3(b) Part C of Schedule 1 to the *Bail Act 1982* (WA) be amended to provide that the judicial officer or authorised officer shall have regard to the following matters, as well as to any others which he considers relevant,

- (b) the character, previous convictions, antecedents, associations, home environment, family, social and cultural background, place of residence, and financial position of the accused.

Recommendation 34

[p 168] **The relevance of Aboriginal customary law and other cultural factors during bail proceedings**

1. That Clause 3 of Part C in Schedule 1 of the *Bail Act 1982* (WA) be amended to provide that the judicial officer or authorised officer shall have regard, where the accused is an Aboriginal person, to any known Aboriginal customary law or other cultural issues that are relevant to bail.
2. That Clause 3 of Part C in Schedule 1 of the *Bail Act 1982* (WA) provide that, without limiting the manner by which information about Aboriginal customary law or other cultural issues can be received by an authorised officer or judicial officer, the authorised officer or judicial officer shall take into account any submissions received from a representative of a community justice group in the victim's community and/or the accused person's community.

Recommendation 35

[p 170] **Improved bail and surety forms and notices**

1. That bail and surety forms and notices (including the bail renewal notice handed to an accused after each court appearance) be provided in plain English and clearly set out the relevant obligations of the accused or the surety.
2. That the Department of the Attorney General provide resources to suitable Aboriginal organisations to prepare culturally appropriate educational material in relation to the obligations of an accused on bail and the obligations of a surety. This material should include what an accused person can do if he or she is unable to attend court.
3. That the culturally appropriate educational material include, where possible, information provided in Aboriginal languages.

Sentencing

Recommendation 36

[p 173] **Cultural background of the offender as a relevant sentencing factor**

1. That the *Sentencing Act 1995* (WA) include as a relevant sentencing factor the cultural background of the offender.
2. That the cultural background of the offender be included in a list of other relevant sentencing factors.

Recommendation 37

[p 177] **Taking into account the circumstances of Aboriginal people when considering the principle that imprisonment is a sentence of last resort**

That the *Sentencing Act 1995* (WA) and the *Young Offenders Act 1994* (WA) be amended by including a provision that:

When considering whether a term of imprisonment (or a term of detention) is appropriate the court is to have regard to the particular circumstances of Aboriginal people.

Recommendation 38

[p 183] **Aboriginal customary law and sentencing**

That the *Sentencing Act 1995* (WA) and the *Young Offenders Act 1994* (WA) be amended to provide that when sentencing an Aboriginal offender a sentencing court must consider:

1. any known aspect of Aboriginal customary law that is relevant to the offence;

2. whether the offender has been or will be dealt with under Aboriginal customary law; and
3. the views of the Aboriginal community of the offender and/or the victim in relation to the offence or the appropriate sentence.

Recommendation 39

[p 184] Evidence of Aboriginal customary law during sentencing proceedings

That the *Sentencing Act 1995* (WA) and the *Young Offenders Act 1994* (WA) be amended to provide:

1. That when sentencing an Aboriginal person the court must have regard to any submissions made by a member of a community justice group, an Elder and/or respected member of any Aboriginal community to which the offender and/or the victim belong.
2. Submissions for the purpose of this section may be made orally or in writing on the application of the accused, the prosecution or a community justice group. The court sentencing the offender must allow the other party (or parties) a reasonable opportunity to respond to the submissions if requested.
3. That if an Elder, respected person or member of a community justice group provides information to the court then that person must advise the court of any relationship to the offender and/or the victim.

Recommendation 40

[p 186] Adjournment of sentencing

That s 16(2) of the *Sentencing Act 1995* (WA) be amended to provide that:

The sentencing of an offender must not be adjourned for more than 12 months after the offender is convicted.

Practice and Procedure

Recommendation 41

[p 189] Single-gender juries

That the *Criminal Procedure Act 2004* (WA) be amended by inserting s 104A as follows:

104A. Application for jury of one gender

- (1) A court may order, upon an application by the accused or the prosecution, that the jury be comprised of one gender.
- (2) A court may only make an order under s 104A(1) if satisfied that evidence that is gender-restricted under Aboriginal customary law is relevant to the determination of the case and necessary in the interests of justice.

Recommendation 42

[p 191] Fitness to plead

That s 129 of the *Criminal Procedure Act 2004* (WA) be amended by providing, that for all accused persons:

A court must not accept a plea of guilty unless, having considered whether there are any language, cultural or communication difficulties, the court is satisfied that the accused understands the nature of the plea and its consequences.

Police

Recommendation 43

[p 196] **Prosecutorial guidelines**

That the Western Australia Police Service, *COPs Manual*, and the Office of the Director of Public Prosecutions, *Statement of Prosecution Policy and Guidelines 2005*, should be amended:

1. To remove the reference to 'cultural views' in the list of factors which are stated to be irrelevant to a decision to charge or prosecute.
2. To provide that factors associated with an alleged offenders' membership of a particular race, sex or other group may be taken into account if those factors are relevant to the circumstances of the offence.
3. To include a specific guideline about Aboriginal customary law and that this guideline should contain information about the nature of Aboriginal customary law; the importance of obtaining reliable information or evidence about Aboriginal customary law: and the need to protect Aboriginal victims from family violence and sexual abuse.
4. To provide that any relevant aspect of Aboriginal customary law, including Aboriginal customary law processes for dealing with offenders, be considered when deciding whether to charge or prosecute an alleged offender.

Recommendation 44

[p 197] **Cautions**

That Part 5, Division 1 of the *Young Offenders Act 1994 (WA)* be amended to provide that a police officer must consider, in relation to an Aboriginal young person, whether it would be more appropriate for the caution to be administered by a respected member of the young person's community or a member of a community justice group.

Recommendation 45

[p 199] **Referring to previous cautions in subsequent court proceedings**

That the *Young Offenders Act 1994 (WA)* be amended to provide that any previous cautions issued under this Act can only be referred to in court for the purpose of determining whether the young person has previously been given an adequate opportunity for diversion and/or rehabilitation.

Recommendation 46

[p 200] **Referral by police to a juvenile justice team**

1. That s 29 of the *Young Offenders Act 1994 (WA)* be amended to provide that, subject to the young person's consent and acceptance of responsibility for the offence, a police officer must refer a young person to a juvenile justice team for a non-scheduled offence if the young person has not previously offended against the law, unless there are exceptional circumstances that justify not doing so.
2. That this section only applies if the police officer has first determined that it is not appropriate to take no action or to administer a caution pursuant to s 22 B of the *Young Offenders Act 1994 (WA)*.

Recommendation 47

[p 200] **Review categories of offences in Schedule 1 and Schedule 2 of the *Young Offenders Act 1994 (WA)***

That the Western Australian government's review of the categories of offences listed in Schedule 1 and Schedule 2 of the *Young Offenders Act 1994 (WA)* be immediately completed to enhance the availability of diversion to juvenile justice teams.

Recommendation 48

[p 201] **Referring to previous referrals to a juvenile justice team in subsequent court proceedings**

That the *Young Offenders Act 1994 (WA)* be amended to provide that any previous referrals to a juvenile justice team under this Act can only be referred to in court for the purposes of determining:

1. whether the young person has previously been given an adequate opportunity for diversion and/or rehabilitation; and/or
2. whether the young person should again be referred to a juvenile justice team.

Recommendation 49

[p 202] **Legislative criteria for the decision to arrest a young person**

That the *Young Offenders Act 1994 (WA)* include the relevant criteria (as set out in the *COPs Manual*) for determining whether to arrest a young person or alternatively to issue a notice to attend court.

Recommendation 50

[p 204] **Diversion to a community justice group**

1. That the Western Australian government establish a diversionary scheme for young Aboriginal people to be referred by the police to a community justice group.
2. That the Western Australian government provide adequate resources to community justice groups in order that they may develop and operate diversionary programs.
3. That the diversionary scheme be flexible and allow different communities to develop their own processes and procedures.
4. That the police fully explain to the young person (and responsible adult) the nature of the alleged offence and, that the young person has the right to seek legal advice before agreeing to participate in the diversionary scheme.
5. That the police ensure that the young person fully understands his or her options, if necessary by providing the services of an interpreter.
6. That any admissions made by the young person during the diversionary process cannot be used as evidence against the young person.
7. That a young person and an appropriate responsible adult must consent to any referral by the police to a diversionary scheme operated by a community justice group.
8. That, if the young person does not consent to be referred to a community justice group, if the community justice group does not agree to deal with the matter, or if the community justice group is not satisfied with the outcome, the matter can be referred back to police to be dealt with in the normal manner.
9. That the diversionary scheme provide that a referral to a community justice group does not count as a conviction against the young person and can only be referred to in a court for the purpose of considering whether the young person should again be referred to a community justice group or to determine if the young person has previously been given adequate opportunities for diversion and/or rehabilitation.

Recommendation 51

[p 205] **Evaluation of diversionary options for Aboriginal people**

That the Commissioner for Indigenous Affairs regularly review and evaluate all diversionary options available in Western Australia for Aboriginal people to determine whether:

1. There are effective diversionary options for Aboriginal people and, if not, the Commissioner for Indigenous Affairs should make recommendations to ensure that there are effective diversionary programs.
2. Aboriginal people are being diverted at the same rate as non-Aboriginal people.
3. Any legislative or procedural changes are required to ensure the effective diversion of Aboriginal people from the criminal justice system.

Recommendation 52

[p 206–207] **Legislative requirements for interviewing suspects**

That the following rights be protected in legislation so as to render inadmissible any confessional evidence obtained contrary to them save in exceptional circumstances:

1. That an interviewing police officer must caution a suspect and must not question the suspect until satisfied that the suspect understands the caution. In order to be satisfied that the suspect understands the caution the interviewing police officer must ask the suspect to explain the caution in his or her own words.
2. If the suspect does not speak English with reasonable fluency the interviewing police officer shall ensure that the caution is given or translated in a language that the suspect does speak with reasonable fluency and that an interpreter is available before any interview commences.
3. That before commencing an interview the interviewing police officer must advise the suspect that he or she has the right to contact a lawyer and provide a reasonable opportunity for the suspect to communicate (in private) with a lawyer.
4. In the case of a suspect who is an Aboriginal person the interviewing police officer must notify the Aboriginal Legal Service prior to the interview commencing and advise that the suspect is about to be interviewed in relation to an offence. The interviewing police officer must provide a reasonable opportunity for a representative of the Aboriginal Legal Service to communicate with the suspect. The interviewing police officer does not have to comply with this requirement if the suspect has already indicated that he or she is legally represented by another lawyer or if the suspect states that he or she does not want the Aboriginal Legal Service to be notified.
5. If the suspect does not wish for a representative of the Aboriginal Legal Service to attend or there is no representative available, the interviewing police officer must allow a reasonable opportunity for an interview friend to attend prior to commencing the interview. The interviewing police officer does not have to comply with this requirement if it has been expressly waived by the suspect.
6. That appropriate exceptions be included, such as an interviewing police officer is not required to delay the questioning in order to comply with this provision if to do so would potentially jeopardise the safety of any person.

Recommendation 53

[p 208] **Police protocols for determining whether an Aboriginal person requires an interpreter**

That the Western Australia Police, in conjunction with relevant Aboriginal interpreter services, develop a set of protocols (including linguistic guidelines) for the purpose of considering whether an Aboriginal person requires an interpreter during an interview.

Recommendation 54

[p 210] **Review of move-on laws**

1. That the Commissioner for Indigenous Affairs review and evaluate the move-on laws after two years of operation.
2. That the Commissioner for Indigenous Affairs consider and report to the Western Australian government about whether the laws should be amended or repealed.

Recommendation 55

[p 211] **Review of the Northbridge curfew policy**

That the Commissioner for Indigenous Affairs or the Commissioner for Children and Young People (whichever office is established sooner) review and evaluate the Western Australian government's Northbridge curfew policy as a matter of priority.

Recommendation 56

[p 212] **Cultural awareness training for police officers**

1. That the Western Australian government provide adequate resources to ensure that every police officer in Western Australia participates in Aboriginal cultural awareness training.
2. That every police officer who is stationed at a police station that services an Aboriginal community participates in relevant and locally based Aboriginal cultural awareness training.
3. That Aboriginal cultural awareness training should be presented by local Aboriginal people including, if appropriate, members of a community justice group.

Recommendation 57

[p 213] **Recording of ethnicity by police**

1. That the Western Australia Police ask all victims and alleged 'offenders' to state their ethnicity (including people who are issued with a move-on notice or otherwise dealt with without being formally charged) and if a response is provided, appropriately record that response.
2. That police officers inform the person of the reason they wish to record the person's ethnicity (that is, to enable accurate statistics to be kept) and advise that a response is voluntary.

Recommendation 58

[p 214] **Western Australia Police website**

That the Western Australia Police immediately update its website to include:

1. The current name and contact details of the Aboriginal Corporate Development Team.
2. The contact details for all staff who work for the Aboriginal Corporate Development Team.
3. The roles and responsibilities of the Aboriginal Corporate Development Team.
4. Relevant policies, guidelines and publications.

Prisons

Recommendation 59

[p 217] **Prison funeral attendance policies**

That the Department of Corrective Services immediately revise Policy Directive 9 and Juvenile Custodial Rule 802 in relation to attendance at funerals. The eligibility criteria should expressly include recognition of Aboriginal kinship and other important cultural relationships.

Recommendation 60

[p 218] **Application process for funeral attendance**

1. That the Department of Corrective Services, in conjunction with Aboriginal prisoners and Aboriginal communities, develop culturally appropriate policy and procedure manuals for all prisons to assist prisoners and prison officers with applications for attendance at funerals.
2. In drafting these manuals consideration be given to the potential role of community justice groups in assisting prisoners with the application process. In addition, community justice group members could provide advice to prison authorities about the significance of the prisoner's relationship with the deceased and the importance of the prisoner's attendance at the funeral.

Recommendation 61

[p 220] **Use of physical restraints on prisoners attending funerals**

1. That the Department of Corrective Services review and revise its current policy in relation to the use of physical restraints on prisoners during funeral attendances. The revised policy should recognise the importance of Aboriginal prisoners attending funerals in a dignified and respectful manner. The policy should also provide that any decision about the use of physical restraints should take into account any risk of the prisoner escaping or absconding during the funeral and any risk to the safety of the public. The policy should state that, if required, restraints should be as unobtrusive and as minimal as possible in all the circumstances.
2. That the Department of Corrective Services ensure that its policy in relation to the use of physical restraints on prisoners during funeral attendances provides that, unless there is a significant risk to the safety of the public, all minimum-security prisoners should not be physically restrained while attending a funeral. If necessary, the Department of Corrective Services should renegotiate its contract with AIMS Corporation to reflect this policy.

Recommendation 62

[p 221] **Escorting prisoners and detainees to funerals**

That the Department of Corrective Services revise, in conjunction with Aboriginal communities, its policy concerning the escorting of Aboriginal prisoners and detainees to funerals.

Recommendation 63

[p 222] **Parole Board and Supervised Release Review Board**

1. That the *Sentence Administration Act 2003* (WA) and the *Young Offenders Act 1994* (WA) be amended to provide that the Parole Board and the Supervised Release Review Board can request information or reports from an Elder, respected person or member of a community justice group from the offender's community and/or the victim's community.
2. That the *Sentence Administration Act 2003* (WA) and the *Young Offenders Act 1994* (WA) be amended to provide that when an Elder, respected person or member of a community justice group provides information to the relevant board that he or she must advise the relevant board of any relationship to the offender and/or the victim.

Recommendation 64

[p 223] **Transport arrangements for prisoners when released from custody**

That the Department of Corrective Services continue to develop, and provide adequate resources for, strategies to assist prisoners to return to their home communities upon release from custody.

Succession – Distribution of Property Upon Death

Recommendation 65

[p 236] Administration of intestate Aboriginal estates

1. That the present definition of 'person of Aboriginal descent' contained in s 33 of the *Aboriginal Affairs Planning Authority Act 1972* (WA) be deleted and that the standard definitions of 'Aboriginal person' and 'Torres Strait Islander person' contained in Recommendation 4 of this Report apply.
2. That the requirement in ss 34 and 35(1) of the *Aboriginal Affairs Planning Authority Act 1972* (WA) that all property of an intestate Aboriginal deceased be automatically vested in the Public Trustee be removed so that the family or next of kin of such deceased may have the choice to administer the estate of the deceased by grant of formal letters of administration under the *Administration Act 1903* (WA).
3. That s 35(2) of the *Aboriginal Affairs Planning Authority Act 1972* (WA) be repealed so that distribution of an estate of an intestate Aboriginal person shall follow the order of distribution contained in s 14 of the *Administration Act 1903* (WA).
4. That sub-regs 9(1)–(4) of the *Aboriginal Affairs Planning Authority Act Regulations 1972* (WA) be deleted and that any other consequential amendments be made.
5. That traditional Aboriginal marriage be recognised as a marriage and that children of a traditional Aboriginal marriage be recognised as issue of a marriage for the purposes of the *Administration Act 1903* (WA).
6. That, in consultation with the Supreme Court, provision be made that proceedings in relation to an intestate estate with a value of less than \$100,000, or an amount otherwise prescribed, be conducted speedily and with as little formality and technicality as is possible, and so as to minimise the costs to the parties.

Moral claims against intestate Aboriginal estates

7. That s 35(3) of the *Aboriginal Affairs Planning Authority Act 1972* (WA) dealing with moral claims be amended to read:

Where there is no person entitled to succeed to the estate of the deceased under s 14 of the *Administration Act 1903* (WA), and no valid claim is made to the balance of the estate within two years after the date of death of the deceased, the Governor may, on application, order that such balance be distributed beneficially amongst any persons having a moral claim thereto.
8. There should be legislative provision that, without limiting the factors to be taken into account in determining whether a moral claim exists, the Minister for Indigenous Affairs may consider as relevant that the applicant was in a classificatory kin relationship with the deceased under the deceased's customary law.
9. That sub-reg 9(5) of the *Aboriginal Affairs Planning Authority Act Regulations 1972* (WA) be amended to provide that a person alleging a moral claim against an undistributed Aboriginal deceased estate pursuant to s 35(3) of the *Aboriginal Affairs Planning Authority Act 1972* (WA) may apply to the administrator for an order for distribution of the whole estate or a portion of the estate.
10. That sub-reg 9(6) of the *Aboriginal Affairs Planning Authority Act Regulations 1972* (WA) be amended to provide that as soon as reasonably practicable after receiving an application referred to in sub-reg 9(5), the administrator shall provide a written report to the Minister for Indigenous Affairs in respect of the moral claim. In making a decision on the moral claim the Minister may request further information from the applicant or the administrator, compel any person, financial institution or government agency to produce relevant records or direct the Department of Indigenous Affairs to undertake any investigations it thinks fit. If satisfied that an order of distribution should be made in relation to the moral claim, the Minister shall make such recommendation to the Governor.

11. That a new s 35(4) be inserted into the *Aboriginal Affairs Planning Authority Act 1972* (WA) to read:

Where, after a period of four years of the date of grant of letters of administration for the deceased's estate, no order is made under s 35(3) or where such order is made in respect of a portion of the balance of the estate only, the administrator of the estate shall thereupon vest the estate in the Authority upon trust that it shall be used for the benefit of persons of Aboriginal descent.

Recommendation 66

[p 237] **Obligation to administer Aboriginal intestate estates**

That, as part of its community service role, the Public Trustee be obliged to administer intestate Aboriginal estates valued at less than \$100,000 when it is expedient to do so or when the family of the deceased requests it.

Recommendation 67

[p 238] **Proof of relationship to an Aboriginal deceased**

That a new s 35(6) be inserted into the *Aboriginal Affairs Planning Authority Act 1972* (WA) to provide:

1. That in circumstances where an Aboriginal person claims entitlement to distribution of an intestate Aboriginal estate under s 14 of the *Administration Act 1903* (WA) but has no proof of relationship to the deceased because his or her birth was not registered under Australian law or because the claimant was removed from his or her family pursuant to previous government policies in Western Australia, a notice in writing from the Minister for Indigenous Affairs should be taken as conclusive evidence of the claimant's identity and relationship to the deceased.
2. That an application for proof of relationship should be made to the administrator of the estate who shall provide a written report to the Minister for Indigenous Affairs in respect of the claim. In making a decision on the claim the Minister may request further information from the applicant or the administrator of the estate or, in case of partial intestacy, the executor or administrator with the will annexed, compel any person or organisation to produce relevant records, or direct the Department of Indigenous Affairs to undertake any investigations it thinks fit. If satisfied that the applicant is who he or she claims to be, the Minister shall produce a written notice to that effect.
3. That an application under (2) above may only be made in respect of an intestate Aboriginal estate of less than \$100,000 value at the date of the application.

Recommendation 68

[p 239] **Release of funds of intestate estates by financial institutions**

That the prescribed amount declared by proclamation pursuant to s 139(1) of the *Administration Act 1903* (WA) be reviewed and updated to an amount appropriate at the date of proclamation.

Recommendation 69

[p 240] **Wills education**

1. That the Department of Indigenous Affairs be funded to establish a program aimed at educating Aboriginal people about the value of wills and also about their entitlements, rights and responsibilities under Western Australian laws of succession.
2. That in devising this program the Department of Indigenous Affairs seek advice from the Public Trustee, the Aboriginal Legal Service and other relevant organisations and individuals.

Recommendation 70

[p 241] Will-making initiative

1. That the Department of Indigenous Affairs—in consultation with the Aboriginal Legal Service, the Public Trustee and regional legal practitioners—establish a will-making initiative for Aboriginal people in Western Australia.
2. That consideration be given to committing to this initiative the funds held in the Aboriginal Affairs Planning Authority's Intestate Trust Account by virtue of the operation of the intestate provisions of the *Aboriginal Affairs Planning Authority Act 1972 (WA)*.

Recommendation 71

[p 242] Claims for family provision against an Aboriginal estate

1. That the list of persons entitled to claim against a testate or intestate estate of an Aboriginal person under s 7 of the *Inheritance (Family and Dependants Provision) Act 1972 (WA)* be extended to include a person who is in a kinship relationship with the deceased which is recognised under the customary law of the deceased and who at the time of death of the deceased was being wholly or partly maintained by the deceased.
2. That traditional Aboriginal marriage be recognised as a marriage and that children of a traditional Aboriginal marriage be recognised as issue of a marriage for the purposes of the *Inheritance (Family and Dependants Provision) Act 1972 (WA)*.
3. That, in consultation with the Supreme Court, provision be made that proceedings in relation to an intestate estate with a value of less than \$100,000, or an amount otherwise prescribed, be conducted speedily and with as little formality and technicality as is possible, and so as to minimise the costs to the parties.

Guardianship and Administration

Recommendation 72

[p 244] Financial management protocols

1. That where an Aboriginal person who is beneficiary of a deceased estate administered by the Public Trustee seeks voluntarily to place the management of their financial and/or legal affairs or of their inheritance in the hands of the Public Trustee, the Public Trustee must, before accepting such management:
 - (a) ensure that the person is made aware of alternatives for the financial management of their inheritance by communicating this in a culturally appropriate way, with the assistance of an interpreter if required; and
 - (b) encourage the person to seek independent legal and/or financial advice and refer the person to appropriate agencies or organisations such as the Aboriginal Legal Service, Legal Aid, the Financial Counsellors Resource Project and the Department of Consumer and Employment Protection.
2. That the same protocol should apply to the Public Trustee in regard to accepting an enduring power of attorney on behalf of an Aboriginal person.

Recommendation 73

[p 246] Assessment of decision-making capacity of an Aboriginal person

That, as part of its assessment of its procedures and protocols for dealing with hearings involving Aboriginal people, the State Administrative Tribunal take steps to ensure that members are aware of Aboriginal perspectives in the process of assessing the decision-making capacity of an Aboriginal person who may be the subject of an order for guardianship or administration.

Recommendation 74

[p 247] **Regional partnerships**

That the Office of the Public Advocate and the Public Trustee establish links and develop partnerships with community justice groups and local Aboriginal-owned or run organisations to assist in acquiring necessary cultural information to better serve their clients.

Coronial Inquests

Recommendation 75

[p 252] **Time for objection to post-mortem examination**

1. That the *Guidelines for Coroners* (WA) be amended to state that in cases where a post-mortem examination does not have to be conducted immediately, a coroner should ensure that no post mortem examination is conducted until at least a period of 48 hours including one full working day has elapsed from the time when the coroner's brochure 'When a Person Dies Suddenly' has been provided to a next of kin to allow for any objections to be made pursuant to s 37 of the *Coroners Act 1996* (WA).
2. That the coroner's brochure 'When a Person Dies Suddenly' be amended to reflect the increase in time for objection to 48 hours.

Recommendation 76

[p 255] **Cultural, spiritual or customary beliefs to be taken into account in deciding whether to order post-mortem examination**

That the *Coroners Regulations 1997* (WA) be amended to provide that in making a decision whether or not to order a post-mortem examination of a deceased a coroner must take into account any known or communicated cultural, spiritual or customary beliefs of the deceased's family.

Recommendation 77

[p 256] **Expansion of Coronial Counselling Service to rural areas**

1. That resourcing for expansion of the Coronial Counselling Service in rural areas be investigated.

Employment of Aboriginal coronial counsellor/educator

2. That an Aboriginal counsellor/educator be employed on a full-time basis to assist the Coroner's Court in providing locally based and locally informed Aboriginal cultural awareness training to all coroners, including magistrates who act as coroners in country areas.
3. That the Aboriginal counsellor/educator be tasked to improve education about coronial processes in regional and remote areas and that this education include information about Aboriginal culture and customs relevant to the specific area.

Funerary Practices and Burial Rights

Recommendation 78

[p 262] **Burial instructions of deceased to be observed**

That the following section be inserted into Part IV of the *Cemeteries Act 1986* (WA):

13A Deceased's burial instructions to be observed

- (1) Provided they are not unlawful or against public policy, it shall be the duty of an executor or administrator of a deceased person's estate to use all reasonable endeavours to give effect to the

burial instructions contained or expressed in a will, including a codicil or any testamentary instrument or disposition.

- (2) If, having regard to the value and liabilities of the deceased's estate, the executor or administrator believes that carrying out the deceased's burial instructions would be unreasonable, the executor or administrator may apply to the Supreme Court for directions pursuant to s 45 of the *Administration Act 1903* (WA).
- (3) For the purposes of s 13(1) the term 'will' shall be taken to include any such instrument accepted by the Supreme Court as an informal will under the *Wills Act 1970* (WA).

Recommendation 79

[p 264] Forum for dealing with burial disputes

1. That provision be made for the Magistrates Court to deal with burial disputes where no burial instructions contained in a will (whether formal or informal) or other signed and attested written document have been left by the deceased.

Mediation between parties to burial disputes

2. That the hearing of burial disputes be preceded, wherever practicable, by mediation between the parties.
3. That the Department of the Attorney General undertake consultation with Aboriginal communities, the Aboriginal Legal Service and other relevant stakeholders to establish which organisation/s might be best equipped to offer culturally appropriate and immediate mediation to parties to a burial dispute in respect of an Aboriginal deceased.

Indigenous Cultural and Intellectual Property Rights

Recommendation 80

[p 266] Protocols for protection of Indigenous cultural and intellectual property

That protocols relating to the use, sale and protection of Indigenous cultural and intellectual property be developed and promoted in Western Australia. Such protocols should inform Western Australian government agencies and educational and cultural institutions in their dealings with Indigenous artists and the observance of these protocols by all Western Australian industries, companies and individuals should be actively encouraged by government. The protocols should recognise and appropriately reflect the cultural diversity of Aboriginal peoples in Western Australia and should be developed in close consultation with Aboriginal artists and communities.

Recommendation 81

[p 267] Protocols to regulate 'bioprospecting' of Aboriginal knowledge

That, at the earliest opportunity, the Western Australian government develop protocols aimed at addressing issues that arise from the 'bioprospecting' of Aboriginal knowledge; that is, the exploration of biodiversity for commercially valuable genetic and biochemical resources. These protocols should aim to safeguard Indigenous cultural and intellectual property by ensuring that those who seek to benefit from traditional cultural knowledge:

1. undertake direct consultation with Aboriginal people as to their customary law and other requirements;
2. ensure compliance with Aboriginal peoples' customary law and other requirements;
3. seek prior informed consent for the use of any Aboriginal knowledge from the custodians of that traditional knowledge;

4. seek free, prior and informed consent for access to Aboriginal land for any purposes, including collection;
5. ensure ethical conduct in any consultation, collection or other processes;
6. ensure the use of agreements on mutually agreed terms with Aboriginal people for all parts of the process;
7. devise equitable benefit-sharing arrangements; and
8. acknowledge the contribution of Aboriginal peoples.

Recommendation 82

[p 268] **State support for enhanced protection of Indigenous cultural and intellectual property**

That the Western Australian government support and encourage the review of Commonwealth intellectual property laws and the institution of special measures to provide better protection for Indigenous cultural and intellectual property.

Family Law

Recommendation 83

[p 274] **Definition of 'traditional Aboriginal marriage'**

That the following term be added to the *Interpretation Act 1984* (WA):

5. Definitions applicable to written laws

'Traditional Aboriginal marriage' means a relationship between two Aboriginal persons, over the age of 18 years, who are married according to the customs and traditions of the particular community of Aboriginals with which either person identifies.

Recommendation 84

[p 275] **Traditional Aboriginal marriage and other domestic relationships**

That the following section be inserted into the *Interpretation Act 1984* (WA):

13B. Definitions of certain domestic relationships

- (1) A reference in a written law to 'spouse', 'husband', 'wife', 'widow' and 'widower' will be taken to include the corresponding partner of a traditional Aboriginal marriage.
- (2) Section 13B(1) does not apply to the *Family Court Act 1997* (WA).

Recommendation 85

[p 275] **Part 5A of the *Family Court Act 1997* (WA) applies to traditional Aboriginal marriages**

That s 205U of the *Family Court Act 1997* (WA) be amended to read:

205U. Application of Part generally

- (1) This Part applies to de facto relationships and traditional Aboriginal marriages.
- (2) However, this Part does not apply to a de facto relationship or traditional Aboriginal marriage that ended before the commencement of this Part.
- (3) This Part does not authorise anything that would otherwise be unlawful.

Care and Custody of Aboriginal Children

Recommendation 86

[p 278] Consultation with child's extended family in consideration of adoption

That following clause 3 of Schedule 2A of the *Adoption Act 1994* (WA) a new paragraph be added:

In applying this principle all reasonable efforts must be made to establish the customary practice of the child's community in regard to child placement. Subject to the birth mother's signed direction to the contrary, this must include consultations with the child's extended family and community to ensure that, where possible, a placement is made with Aboriginal people who have the correct kin relationship with the child in accordance with Aboriginal customary law.

Recommendation 87

[p 280] Culturally appropriate information about services and benefits for extended family carers

That, recognising the custom in Aboriginal communities of making private arrangements to place a child in the care of members of the child's extended family (including classificatory kin) where necessary for the proper care and protection of the child, the Department for Community Development should make available to Aboriginal communities culturally appropriate information about support services and government benefits or subsidies (whether Commonwealth or state) to assist extended family carers.

Recommendation 88

[p 281] Enhance culturally appropriate service delivery in the Family Court of Western Australia

That the Western Australian government take immediate steps to implement Recommendation 23 of the Family Law Pathways Advisory Group's Report *Out of the Maze – Pathways to the Future for Families Experiencing Separation* to enhance culturally appropriate service delivery to Aboriginal clients of the Family Court of Western Australia.

Recommendation 89

[p 282] Functional recognition of non-biological primary carers

That the Western Australian government actively promote, at the national level, the cause of functional recognition of non-biological parents who have parental responsibility or primary care for a child, whether of Aboriginal or non-Aboriginal descent.

Family Violence and the Protection of Aboriginal Women and Children

Recommendation 90

[p 286] Education about legal rights of women and children and criminality of child sexual abuse

1. That the Western Australian government include in the educative initiatives planned in response to the Gordon Inquiry:
 - (a) information about the requirements under Australian law and international law of freedom of choice in marriage partners and the requirement of informed consent to marriage;
 - (b) information about the criminality of acts of sexual relations with children under the age of 16 regardless of marriage status under Aboriginal customary law; and
 - (c) information about the legal rights of women and children in the context of family violence and child sexual abuse or neglect and about the legal and related services available to assist women and children to exercise these rights.
2. That these initiatives be developed with the full and effective participation of Aboriginal people.

Recommendation 91

[p 290] **Community-based and community-owned Aboriginal family violence intervention and treatment programs**

1. That the Western Australian government actively encourage, support and resource the development of community-based and community-owned Aboriginal family violence intervention and treatment programs that are designed to respond to the particular conditions and cultural dynamics of the host community.
2. That, where community-based and community-owned Aboriginal family violence intervention and treatment programs can demonstrate appropriate outcomes within the host community in a reasonable timeframe, the Western Australian government commit to ongoing resourcing of such programs in preference to generic government-run programs.

Recommendation 92

[p 291] **Better provision and resourcing of men's counselling, education, treatment and accommodation services**

1. That the Western Australian government actively pursue the provision of new services, and better resourcing of existing services, for the counselling, education, treatment and short-term crisis accommodation of Aboriginal men in regional town centres and remote communities.
2. That, where possible, such services be provided in the same location to enable men to access counselling, activities, education, accommodation and treatment in a single visit without referral and be resourced to operate on a 24-hour basis.

Recommendation 93

[p 292] **Ongoing progress reporting and consultative evaluation of family violence initiatives**

That progress reporting and evaluation of programs and initiatives dealing with family violence and child abuse in Aboriginal communities be ongoing with an emphasis on positive, practical outcomes, and demonstrate genuine consultation with those responsible for frontline service delivery and adaptation of programs to suit the changing needs and cultural differences of client communities.

Recommendation 94

[p 294] **Working with children check**

That working with children checks be provided at no cost to staff and volunteers of not-for-profit Aboriginal community organisations and Aboriginal community initiatives such as community justice groups, school truancy patrols, drop-in centres and safe-houses.

Recommendation 95

[p 295] **Consultation with Aboriginal communities in review of the police order regime**

That, in undertaking the statutory review of Part 2, Division 3A of the *Restraining Orders Act 1997* (WA), the responsible Minister ensure that Aboriginal people are sufficiently consulted to gauge the effectiveness of the police order regime in addressing family violence in Aboriginal communities.

Customary Hunting, Fishing and Gathering Rights

Recommendation 96

[p 304] **Conservation to remain a priority in statutory recognition of customary harvesting**

That the statutory recognition of Aboriginal customary laws relating to hunting, fishing and gathering remain subject to the interests of conservation of Western Australia's diverse biological resources, but that they take a higher priority than commercial and recreational interests in the same resources.

Recommendation 97

[p 305] **Government to consult, engage with and involve Aboriginal people in relation to conservation programs**

That, in the development and application of conservation programs and in decision-making in respect of conservation of land and resources in Western Australia, the state government and its conservation bodies actively consult, engage with and involve Aboriginal people.

Recommendation 98

[p 306] **Enhancing communication of Aboriginal customary harvesting exemptions and restrictions**

1. That the Department of Fisheries and the Department of Environment and Conservation, in collaboration and consultation with the Department of Indigenous Affairs, take all reasonable steps to enhance communication of harvesting exemptions or rights of Aboriginal people and of any restrictions placed from time-to-time upon those exemptions or rights.
2. That these authorities consult with local Aboriginal people, groups and organisations to establish culturally and regionally appropriate methods and means of communicating this information to Aboriginal people.
3. That these authorities also consider means of raising awareness of Aboriginal harvesting exemptions and rights among non-Aboriginal people, particularly those engaging in similar harvesting activities under recreational or commercial licences.

Recommendation 99

[p 307] **Aboriginal customary harvesting exemption expanded to include taking of flora and fauna for other customary purposes**

That the Aboriginal customary harvesting exemption currently provided by s 23 of the *Wildlife Conservation Act 1950 (WA)* be subsumed into future wildlife and biological resource conservation legislation and be expanded to include the taking of flora and fauna (subject to conservation restrictions placed on certain species from time-to-time) for non-commercial purposes including for food, artistic, cultural, therapeutic and ceremonial purposes according to Aboriginal customary law.

Recommendation 100

[p 307] **Aboriginal customary harvesting exemption to apply to land designated under the *Conservation and Land Management Act 1984 (WA)***

That the Aboriginal customary harvesting exemption currently provided by s 23 of the *Wildlife Conservation Act 1950 (WA)*, and its successor in any future wildlife and biological resource conservation legislation, also apply to land designated under the *Conservation and Land Management Act 1984 (WA)*, but that such exemption be subject to the provisions of conservation management plans over such land.

Recommendation 101

[p 308] **Aboriginal customary harvesting exemptions and rights to remain applicable to introduced species of fauna and flora**

That the exemption currently provided by s 23 of the *Wildlife Conservation Act 1950 (WA)* and its successor in any future wildlife and biological resource conservation legislation remain applicable to all fauna and flora (subject to conservation restrictions), including introduced species.

Recommendation 102

[p 309] **Recognition of non-commercial barter and exchange of harvested fauna and flora pursuant to Aboriginal customary law**

That the exemption currently provided by s 23 of the *Wildlife Conservation Act 1950* (WA) and its successor in any future wildlife and biological resource conservation legislation be amended to permit the non-commercial barter and exchange of fauna and flora harvested pursuant to the exemption within and between Aboriginal communities so long as such barter or exchange is not for financial gain and is in accordance with the customary laws of the relevant communities.

Recommendation 103

[p 310] **Review of commercial harvesting licensing regime under the *Wildlife Conservation Act 1950* (WA)**

1. That, in conjunction with the Office of Aboriginal Economic Development, the Department of Environment and Conservation review the current commercial licensing regime under the *Wildlife Conservation Act 1950* (WA) (and in any other relevant wildlife and biological resource conservation legislation) to investigate ways that it can be improved to encourage and assist Aboriginal people to develop commercial harvesting opportunities in Western Australia.
2. That such review be undertaken in consultation with, and with the involvement of, Aboriginal people.

Recommendation 104

[p 311] **Education to avoid cruelty to animals taken under Aboriginal customary harvesting exemptions**

1. That the Department of Environment and Conservation institute programs or information services to raise awareness among Aboriginal hunters of means of avoiding cruelty to animals in the taking of fauna under the exemption provided by s 23 of the *Wildlife Conservation Act 1950* (WA) and its successor in any future wildlife and biological resource conservation legislation.
2. That the Department of Environment and Conservation consult with local Aboriginal people, groups and organisations to establish culturally and regionally appropriate methods and means of communicating this information to Aboriginal people.

Recommendation 105

[p 312] **Clarification of permissible use of firearms by Aboriginal people in customary harvesting**

1. That s 267 of the *Land Administration Act 1997* (WA) be amended to make clear the legislative intention in relation to the use of firearms for customary hunting on Crown land and pastoral leasehold land pursuant to exemptions contained in s 104 of the *Land Administration Act 1997* (WA) and s 23 of the *Wildlife Conservation Act 1950* (WA).
2. That the definition of 'land' in the *Land Administration Act 1997* (WA), which includes land seaward to three nautical miles, and its impact on fisheries interests and protection of marine fauna be considered in determining the permissible use of firearms under the *Land Administration Act 1997* (WA).
3. That the responsible Ministers institute a collaborative review of relevant legislation, including the *Firearms Act 1973* (WA), the *Land Administration Act 1997* (WA), the *Wildlife Conservation Act 1950* (WA) and the *Conservation and Land Management Act 1984* (WA) to ensure that permissible use of firearms in customary harvesting activity is clearly noted.

Recommendation 106

[p 314] **Adoption of the Aboriginal Fishing Strategy Working Group's definition of 'customary fishing'**

That, in proposed amendments to the *Fish Resources Management Act 1994* (WA), the definition of the term 'customary fishing' be as defined by the Aboriginal Fishing Strategy Working Group in recommendation 1 of Fisheries Management Paper No. 168.

Recommendation 107

[p 315] **Implementation of the Aboriginal Fishing Strategy Working Group's recommendations**

1. That the Western Australian government implement the recommendations of the Aboriginal Fishing Strategy Working Group as reported in Fisheries Management Paper No. 168.
2. That any amendments to the *Fish Resources Management Act 1994* (WA) that stray from the recommendations of the Aboriginal Fishing Strategy Working Group as reported in Fisheries Management Paper No. 168 be undertaken in consultation with, and with the involvement of, Aboriginal people.

Recommendation 108

[p 316] **Clarification of access by Aboriginal people to pastoral leasehold land for customary purposes**

That the recommendation of the Aboriginal Access and Living Areas Working Group final report regarding clarification of pastoral lease land access and rights and responsibilities of traditional owners and leaseholders under s 104 of the *Land Administration Act 1997* (WA) be implemented.

Evidence

Recommendation 109

[p 322] **Exclusion of the hearsay and opinion rules for evidence about Aboriginal customary law**

That the *Evidence Act 1906* (WA) be amended to provide:

1. An exception to the hearsay rule for evidence relevant to Aboriginal customary law.
2. An exception to the opinion rule for evidence relevant to Aboriginal customary law.
3. If a person has specialised knowledge, whether based on experience or otherwise, of Aboriginal customary law, then that person may give opinion evidence in relation to that matter where the opinion is wholly or substantially based on that knowledge.

Procedure

Recommendation 110

[p 327] **Funding to upgrade special witness facilities in regional areas**

That the Department of the Attorney General ensure that adequate facilities are available in every Western Australian court to enable witnesses to use the special witness measures provided for in the *Evidence Act 1906* (WA).

Recommendation 111

[p 327] **Special witness for reasons of customary law**

That s 106R of the *Evidence Act 1906* (WA) be amended to provide that a witness may be declared a special witness if for reasons of customary law they are not able to give evidence in the normal manner. This order can be made on the application of the witness, or on the initiative of the court.

Recommendation 112

[p 328] Sensitive information not referred to in court

That the *Evidence Act 1906 (WA)* be amended to provide that a court may order that certain information should not be referred to in proceedings if the court is satisfied that reference to that information would be offensive to an Aboriginal person or community because of Aboriginal customary law, provided that to do so is not contrary to the administration of justice.

Recommendation 113

[p 328] Suppression of information

That the *Evidence Act 1906 (WA)* be amended to provide:

1. On the application of a party or on its own initiative a court may make an order that prohibits the publication of any information if the court is satisfied that publication of, or reference to, the information would be offensive to an Aboriginal person by reason of matters concerned with customary law.
2. A court must not make such an order if it is satisfied that publication of, or reference to, the information is required in the interests of justice.

Recommendation 114

[p 330] Application for a judge or magistrate of a particular gender to be assigned to a matter

1. That the *Criminal Procedure Act 2004 (WA)* provide that an application can be made to the Chief Judicial Officer of the relevant jurisdiction for a judge or magistrate of a particular gender to be assigned to a matter in which gender-restricted evidence is likely to be heard.
2. That the *Supreme Court (General) Rules 2005 (WA)*, the *State Administrative Tribunal Rules 2004 (WA)* and the *Magistrates Court (Civil Proceedings) Rules 2005 (WA)* should provide that an application can be made to the Chief Judicial Officer of the relevant jurisdiction for a judge or magistrate of a particular gender to be assigned to a matter in which gender-restricted evidence is likely to be heard.

Recommendation 115

[p 331] Witnesses can give evidence in groups

That the *Evidence Act 1906 (WA)* provide that a court in the exercise of its discretion may allow witnesses to give evidence about Aboriginal customary law in groups, where it is required in the interests of justice.

Recommendation 116

[p 332] Evidence taken on country

That the *Evidence Act 1906 (WA)* provide that a court can allow evidence about Aboriginal customary law to be taken on country where it is required in the interests of justice.

Recommendation 117

[p 337] Establishment of a statewide Aboriginal languages interpreter service

1. That a statewide interpreter service for Aboriginal languages be established in accordance with the Aboriginal Legal Service of Western Australia proposal.
2. That the service be reviewed and evaluated by the Commissioner for Indigenous Affairs after it has been in operation for five years, with a view to expanding it to include all areas of communication, including, but not limited to education, training and welfare.

Recommendation 118

[p 338] **Establishment of a committee to oversee the use of interpreters in court**

That the Department of the Attorney General establish a committee to review and evaluate the use of Aboriginal interpreters in court. The Committee should be comprised of representatives from (at least) the judiciary, interpreter bodies, the Office of the Director of Public Prosecutions, Legal Aid and the Aboriginal Legal Service.

Recommendation 119

[p 339] **More training for Aboriginal language interpreters**

That the Department of the Attorney General, in conjunction with Aboriginal communities, TAFE and the National Accreditation Authority for Translators and Interpreters:

1. Provide funding for the training of Aboriginal language interpreters
2. Give consideration to a system that enables more Aboriginal people to attain accreditation as an interpreter.
3. Provide funding for the ongoing professional development of accredited Aboriginal language interpreters.
4. Give particular attention to training and professional development for Aboriginal language interpreters in regional Western Australia.

Recommendation 120

[p 340] **Right to an Interpreter in court proceedings**

That the *Evidence Act 1906 (WA)* provide that:

1. A party or witness to proceedings has the right to assistance from an interpreter, unless it can be established that he or she is sufficiently able to understand and speak English.
2. An accused in criminal proceedings who cannot sufficiently understand English be entitled to the services of an interpreter throughout the proceedings, whether or not he or she elects to give evidence.
3. Where a court is not satisfied that a witness or party to proceedings is sufficiently able to speak or understand English then the proceedings should not continue until an interpreter is provided, or until the court is satisfied that it is appropriate to continue.

Recommendation 121

[p 340] **State to provide interpreters in certain circumstances**

1. That the Western Australian government make funding available for:
 - (a) interpreters to be provided where required in criminal proceedings in all Western Australian courts for:
 - (i) all witnesses and accused persons; and
 - (ii) not-for-profit legal services to take instructions from their clients.
 - (b) interpreters to be provided in civil proceedings in all Western Australian courts and tribunals where:
 - (i) a judge or magistrate has decided that, in the interests of justice, a witness or party requires the services of an interpreter; and
 - (ii) the party is unable to pay the costs of the interpreter service.
2. That the Department of the Attorney General actively promote the amendment of the *Family Law Act 1975 (Cth)* to include similar provisions to (b) (i) and (ii) and that corresponding amendments

be made to the *Family Court Act 1997* (WA) (to ensure that the same provisions apply to proceedings involving children of a marriage and ex nuptial children).

Recommendation 122

[p 341] **The development of assessment guidelines to assist courts to determine if an interpreter is needed**

That the Department of the Attorney General employ a suitably qualified linguist to develop assessment guidelines (both oral and video) to be used to assist the court, lawyers and others to determine when a person appearing in court either as a witness or as an accused may require the services of an interpreter.

Recommendation 123

[p 342] **Department of the Attorney General provide education about the role of interpreters**

That the Department of the Attorney General, in conjunction with Aboriginal communities, provide education about the role of interpreters through community education, including the development of information videos to be distributed in communities and accessible at police stations, courts and prisons.

Recommendation 124

[p 342] **Department of the Attorney General establish guidelines for using Aboriginal language interpreters in court**

That the Department of the Attorney General establish guidelines for the use of Aboriginal language interpreters in court, including:

1. only using trained interpreters; and
2. providing information to prospective interpreters prior to engagement so that they can ensure there are no conflicting customary law considerations.

Recommendation 125

[p 344] **Evidence in narrative form**

That the *Evidence Act 1906* (WA) be amended to include a provision that a court may, on its own motion or an application, direct that a witness give evidence in narrative form and make orders for the way in which narrative evidence may be given.

Recommendation 126

[p 345] **Disallowing questions put to witnesses that are vulnerable by reason of their cultural background**

That s 26(3)(a) of the *Evidence Act 1906* (WA) include 'cultural background' as one of the matters which may inform a court in exercising its discretion to disallow a question or require that it not be answered pursuant to s 26(1).

Recommendation 127

[p 347] **Aboriginal liaison officers to be employed to work in courts**

That the Department of the Attorney General employ Aboriginal liaison officers in all Western Australia courts to provide assistance to Aboriginal people giving evidence in court and to ensure that regard is given to issues of customary law in court proceedings.

Recommendation 128

[p 348] **Cultural awareness training for judicial officers**

1. That all Western Australian courts and the State Administrative Tribunal continue Aboriginal cultural awareness training.
2. That the Western Australian government provide adequate resources to ensure that:
 - (a) effective programs can be developed;
 - (b) Aboriginal presenters can be engaged;
 - (c) training is local in character; and
 - (d) time is allocated to the training so that the work of the courts is not affected.

Aboriginal Community Governance

Recommendation 129

[p 354] **Accountability of local governments for 'Aboriginal' funding and grants**

1. That the Department of Local Government and Regional Development, in conjunction with the Western Australian Local Government Grants Commission, investigate ways of improving accountability of local governments for funding provided for the benefit of Aboriginal people in each local government area.
2. That mechanisms be put in place by the Department of Local Government and Regional Development to monitor and evaluate outcomes of local government service provision in Western Australian Aboriginal communities.

Recommendation 130

[p 355] **Allowing functional remote Aboriginal communities to access direct funding**

1. That the Western Australian government explore the possibility of accessing federal funding for discrete, remote Aboriginal communities under s 4 of the *Local Government (Financial Assistance) Act 1995* (Cth) with a view to offering this autonomous option to functional Aboriginal communities that are not currently well-served by their local governments and wish to build community capacity to provide and maintain basic essential services.
2. That such arrangements be preceded by programs aimed at building governing capacity within those communities and with appropriate initial government support.
3. That such arrangements only be pursued with the free, prior and informed consent of the relevant community.

Recommendation 131

[p 359] **Basic legislative framework for reform of Aboriginal community governance informed by key principles**

1. That the starting point for reform of Aboriginal community governance in Western Australia be limited to a basic legislative framework that can facilitate self-identifying and self-organising governance structures to emerge at a community level.
2. That reform of Aboriginal community governance in Western Australia be informed by the key principles of voluntariness and consent; community empowerment through effective participation, capacity building and devolved decision-making power; 'downwards accountability' to the community and flexibility of government funding; recognition of diversity and need for flexibility in structure of

governing institutions; balanced family, social or skin group, gender and traditional owner representation; and recognition of need for a long-term approach to community governance reform.

3. That Aboriginal communities be free to develop or choose a model of governance that is appropriate for their needs rather than have a model imposed on them by government without their consent.