REPORTS ON ABORIGINAL WITNESSES AND POLICE WATCHHOUSES: STATUS OF RECOMMENDATIONS

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Dear Sirs

In accordance with section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its publication *Reports on Aboriginal Witnesses and Police Watchhouses: Status of Recommendations*, which examines how agencies have responded to the recommendations made in the CJC's June 1996 report *Aboriginal Witnesses in Queensland's Criminal Courts* and August 1996 report *Report on Police Watchhouses in Queensland.*

Yours faithfully

F J CLAIR
Chairperson

Contents

Abbreviations

AIJA	Australian Institute of Judicial Administration
AJAC	Aboriginal Justice Advisory Committee (now disbanded and its functions absorbed into the Indigenous Advisory Council)
ATSI	Aboriginal and Torres Strait Islander
ATSIC	Aboriginal and Torres Strait Islander Commission
CJC	Criminal Justice Commission
CLE	Continuing Legal Education
GMO	Government Medical Officer
LAO	Legal Aid Office (now known as the LAQ)
LAQ	Legal Aid Queensland (formerly the LAO)
ODPP	Office of the Director of Public Prosecutions
QCSC	Queensland Corrective Services Commission
QMEC	Queensland Medical Education Centre
QPS	Queensland Police Service

Acts mentioned in this publication:

Bail Act 1980

Corrective Services Act 1988

Criminal Justice Act 1989

Disposal of Unexecuted Warrants Act 1985

Evidence Act 1977

Penalties and Sentences (Serious Violent Offences) Amendment Act 1997

Introduction

On 9 July and 5 September 1996, respectively, the Criminal Justice Commission (CJC) tabled its reports *Aboriginal Witnesses in Queensland's Criminal Courts* and *Report on Police Watchhouses in Queensland.* On 14 February 1997, the Parliamentary Criminal Justice Committee advised that it would not be reporting on these publications because it believed that to examine the issues further would simply duplicate the Commission's work and, 'In our view there is no perceived advantage in further public discussion which the Committee could facilitate'.

Under section 21 (1) (a) of the *Criminal Justice Act 1989*, the CJC has a general responsibility to:

> continually monitor, review, coordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice.

Further, under section 23 of the Act:

> The responsibilities of the Commission include—
>
> …
>
> (e) researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State;
>
> …
>
> (l) taking such action as the Commission considers to be necessary or desirable in respect of such matters as, in the Commission's opinion, are pertinent to the administration of criminal justice.

Consequently, the Commission resolved to provide a progress report to Parliament on the responses by the Government and various agencies to the recommendations of each report. Part A of this publication considers the responses to *Aboriginal Witnesses in Queensland's Criminal Courts*, and Part B the responses to *Report on Police Watchhouses in Queensland.*

Part A: *Aboriginal Witnesses in Queensland's Criminal Courts*

Findings of the report

The report was prepared by the CJC following concerns raised by the 'Pinkenba case'[1] and several other prominent Queensland cases involving Aboriginal people. It documented various cultural and linguistic issues affecting interaction between Aboriginal people and the court system that may lead to misunderstanding. In particular, there was widespread agreement among those consulted of the importance of increasing cross-cultural awareness among judicial officers, lawyers and court staff, and the need for better familiarisation of Aboriginal people with court processes and the court environment.

The report made 38 recommendations for legislative and other change, including:

- establishment of a pilot Aboriginal court liaison officer program
- creation of a statutory right to an interpreter for all witnesses, unless the witness can understand and speak English sufficiently well to make an adequate reply to questions
- increased funding for training of interpreters in Aboriginal languages
- statutory recognition, where appropriate, of the narrative method of giving evidence, rather than the more rigid 'question and answer' format
- tighter controls on the use of leading questions and questions that are inappropriate because of a witness's cultural background
- cross-cultural awareness training for lawyers, police prosecutors, judicial officers and court staff, with particular emphasis on gender issues and the use of support persons for witnesses in court
- ensuring that lawyers have adequate preparation time
- a review by the State Government of funding of Aboriginal legal services, including indigenous women's legal services
- a review of the law of expert evidence to identify and address barriers to the admission of evidence on cultural and linguistic issues.

Consultation

After the report was tabled in Parliament, the Chairperson of the CJC wrote to all agencies nominated in the recommendations to seek their comments and feedback on the implementation of any of the recommendations. A follow-up letter was sent in March 1997 to several agencies that had not responded.

In October 1997, a draft summary of responses was forwarded to agencies to allow them to check and update the information they had provided. Their responses are detailed under each recommendation, with comment by the CJC where it appears that agencies have not addressed the recommendation.

No response was received from the Bar Association or the Queensland Aboriginal and Islander Legal Services Secretariat.

1 *Crawford v. Venardos & ors* (PS 2615–2620 of 1994, Magistrates Court Brisbane, 24 February 1995, unreported).

Developments since the report was tabled

One of the priorities identified by the report was cross-cultural awareness training for legal professionals. The CJC had recommended that the Aboriginal Justice Advisory Committee (AJAC) would be the most appropriate body to undertake a range of tasks, including the development of a resource kit for judicial officers and the organisation of regional symposia for those involved in the legal system and members of local Aboriginal communities. Since the report was tabled, AJAC has been disbanded and its functions have been absorbed into the Indigenous Advisory Council. There has been no indication from the Government about which body would be the most appropriate to oversee the implementation of the recommendations. Consequently, some of the recommendations, such as the development of a resource kit for judicial officers, have not been addressed.

Nevertheless, it is encouraging that several of the key agencies, such as Legal Aid Queensland (LAQ) and the Office of the Director of Public Prosecutions (ODPP), have expressed their support for the recommendations and their intention to implement relevant recommendations as time and resources permit. The Commissioner of Police has also supported many of the recommendations.

Particularly welcome have been reports from agencies such as the ODPP and LAQ on cross-cultural training sessions for their staff during the past twelve months. The Commissioner of Police has also noted that, from February 1998, trainee police prosecutors' courses will include a component on relevant Aboriginal cultural issues. The implementation of such training should assist in addressing one of the major concerns identified in the report — that is, the need for lawyers, prosecutors and other personnel in the criminal justice system to be more aware of relevant cultural and linguistic issues.

The ODPP's moves to improve its services to victims of crime, particularly in rural and remote areas, also merit praise. Such initiatives as the planned trial of the Community Outreach Project in an indigenous community in 1997–98 have the potential to greatly assist witnesses.

The CJC notes that the District Court has recently established an Aboriginal and Torres Strait Islander Committee, whose goals include improving liaison and understanding between the court and indigenous communities, and keeping judges and the communities informed of developments.

The CJC notes also that the *Evidence Act 1977* is currently being reviewed by the Department of Justice, and hopes that many relevant CJC recommendations, which are recognised by the evidence laws of the Commonwealth and New South Wales, will be adopted in Queensland. The CJC has made a separate submission to the department's review.

However, many other recommendations remain outstanding, particularly in relation to the obvious need for more interpreters who are qualified in Aboriginal languages. Another disappointing omission has been the failure so far to pilot the recommended Aboriginal court liaison officer scheme. While many agencies are constrained by restricted funding, the CJC believes that many of the recommendations could be implemented at a relatively low cost, or by reallocation of existing funding.

The CJC reinforces its strong recommendation that implementation of these recommendations must be carried out in consultation with Aboriginal people, particularly where initiatives will involve local communities. The CJC is also concerned that there appears to have been no progress on the final recommendation of the report, which proposes that, as the report concentrated on Aboriginal people, the Attorney-General should consult with representatives of the Torres Strait Islander community to ascertain to what extent the recommendations should be modified to take account of issues specific to that community.

Status of recommendations

Recommendation 3.1: Judicial officers' cross-cultural awareness resource kit

That AJAC, in conjunction with members of the judiciary and magistracy, develop and maintain a resource kit for judicial officers concerning the aspects of language and culture that affect the way Aboriginal people in Queensland give evidence and the way that evidence is interpreted and understood in court.

RESPONSE

Since the publication of the report, AJAC has been disbanded and its functions absorbed into a new body, the Indigenous Advisory Council. The Council is currently considering the recommendations.

The response from the Attorney-General, received on 13 August 1996, stated:

> Where considered appropriate [CJC] recommendations will be introduced in accordance with the priorities of the Government and the budget constraints under which the Government is required to operate.

Comments were sought from the Chief Justice, who responded on 3 September 1997:

> If at a later stage the Hon. the Attorney-General considers that the Government would be assisted by hearing from the Court on any particular aspect, no doubt he will then communicate directly with me. I feel that any response from the Court can be left until then.

The Chief Stipendiary Magistrate's only comment (3 September 1997) was, 'No kit developed to date'.

The Commissioner of Police supported the concept of the cross-cultural awareness resource kit in his response of 5 August 1996.

No other response has been received.

CJC comment

It is unfortunate that this recommendation appears not to have been taken up following the disbanding of AJAC. The cross-cultural awareness sessions, run under the auspices of the Australian Institute of Judicial Administration (AIJA) in 1995, were only intended as a first step in promoting awareness of Aboriginal customs, traditions and other relevant issues. The CJC considered on the basis of submissions made during the course of the report that additional Queensland-specific material such as the resource kit would be useful. Without a key agency taking responsibility for such activities, it is likely that this recommendation will not be implemented.

Recommendation 3.2: National judicial orientation program

That the Queensland Government support the development of the national judicial orientation program for new judges and magistrates and that such a program include indigenous cross-cultural awareness issues.

RESPONSE

No response has been received, other than the general comment from the Attorney-General noted above.

The CJC notes that the third judicial orientation program, run by AIJA, was held in November 1997, and included a session on indigenous cross-cultural issues in the courtroom.

Recommendation 3.3: Regional symposia

That AJAC organise regional symposia involving judicial officers, prosecutors, legal practitioners and members of local Aboriginal communities. Matters to be covered in these symposia may include local cultural traditions, availability of sentencing options in the local area and concerns about the administration of criminal justice in that area. Appropriate resources must be provided to the Committee to enable it to perform this role.

RESPONSE

The Indigenous Advisory Council (which absorbed the functions of AJAC when it was disbanded) is currently considering the recommendations.

The Department of Justice in its response on 28 April 1997 commented only that it would be up to the judiciary to decide whether it wished to participate in the symposia. The department did not comment on the funding implications.

The Chief Stipendiary Magistrate's response of 3 September 1997 stated that magistrates had previously attended the seminars conducted under the auspices of AIJA, and noted that AJAC had not organised any symposia.

The Commissioner of Police supported the recommendation, stating:

> It would appear appropriate for [AJAC] to organise regional symposia which would involve the people suggested in the recommendation. Consideration might also be given by AJAC to the development of a suitable training package that encompasses Aboriginal concerns in the matters listed.

Neither the ODPP nor the LAQ commented on the recommendation.

Recommendation 3.4: Cross-cultural awareness training for lawyers

That the ODPP, the LAQ and Aboriginal Legal Services ensure that any of their legal practitioners who are likely to come into contact with Aboriginal clients or witnesses undergo cross-cultural awareness training. That training should address aspects of language and culture that may affect the way in which Aboriginal people respond to questioning and give evidence. Private practitioners who are funded by those agencies to conduct cases involving Aboriginal clients or witnesses should be encouraged to attend. Attendance at such training should be a factor to be taken into account by those agencies when deciding which practitioners should be funded to provide the services. Training should be devised in consultation with AJAC and could be run jointly by those organisations, or in conjunction with appropriate bodies such as the Queensland Law Society.

RESPONSE

The ODPP advised on 7 April 1997 that, as a result of the CJC's report and its own report *Indigenous Women within the Criminal Justice System*, the Office was planning conferences in Brisbane and Townsville in June 1997 to deal with Recommendations 3.4, 4.3 and 5.9. On 3 November 1997, the ODPP advised that those training conferences had been carried out and had included a one-day training session on cross-cultural awareness. The sessions had been developed and presented by men and women from indigenous communities, and the topics covered included:

> culture, law and country, communication (including differences and meaning, the adversarial process, communication strategies and interpreters), racism and conflict, and integrating diversity

The ODPP noted that the sessions prompted much discussion and staff participation to the extent that not all topics were able to be fully covered in the time. The ODPP saw the need for further training in this area, particularly about the use of sections 20, 21 and 21A of the *Evidence Act* in relation to Aboriginal witnesses.

The LAQ advised on 19 September 1996 that it proposed to run some further cross-cultural training for staff, following training sessions in 1995 for staff in south-east Queensland and Cairns. The Office stated that it had an ongoing commitment to improving its efforts consistent with the tenor of the CJC's recommendations. It said that the officer developing the training programs was of Aboriginal descent, and that the LAQ hoped to run such training programs at least every two years.

On 4 November 1997, the LAQ advised that cultural awareness training had been conducted in October for call centre staff.

Although no further formal sessions on cross-cultural awareness were planned for the near future, the LAQ advised that some funding might be available in 1998 to conduct further sessions. The LAQ pointed to a range of measures to promote awareness of relevant issues — regular articles on indigenous issues on the internal web, ongoing features in the staff newsletter on subjects such as Aboriginal English and activities in indigenous communities, and a forthcoming series of lunchtime lectures on reconciliation.

The Queensland Law Society stated in its response on 15 April 1997 that the Continuing Legal Education (CLE) Department's Seminar Manager tried to integrate cross-cultural issues into all aspects of the CLE program where appropriate, but the Law Society did not give details. Its response also stated that cross-cultural awareness training was currently being considered by CLE curriculum planners for inclusion in a criminal law workshop. On 4 November 1997, the Law Society advised that the topic had not generated sufficient interest and was therefore abandoned.

As a side issue, the Society noted that it participated with Griffith University in the mentor program for indigenous students. The Society did not initially respond to the CJC's suggestion of working with the nominated criminal justice agencies to develop training for legal practitioners. In its second response, the Society noted that the CLE Department:

> … would be pleased to work with any nominated 'Criminal Justice Agency' to design a Cross-cultural Awareness Training Program for legal practitioners. However, before the CLE Department would allocate resources for developing and implementing such a program, they would need to be assured of significant practitioner interest in this specialised area.

Recommendation 3.5: Police prosecutors

That the agencies organising the cross-cultural awareness training outlined in Recommendation 3.4 should invite police prosecutors to participate. The Queensland Police Service should make arrangements to ensure that police prosecutors are able to attend.

Response

The Commissioner of Police acknowledged (5 August 1996) that there was merit in police prosecutors and trainee police prosecutors becoming well versed in cross-cultural awareness programs and that provision could be made to have an appropriate cross-cultural segment incorporated into trainee prosecutors' courses. On 13 November 1997, the Commissioner advised that arrangements were being made for an additional cross-cultural segment to be incorporated into future prosecutors' courses, in conjunction with 'ATSI specialists'. It was intended that the next Trainee Police Prosecutors' Course, commencing on 16 February 1998, would include this segment. The Commissioner also noted that all cross-cultural training for police was to be reviewed and that it was expected that the review would be undertaken by external consultants. The Commissioner noted that matters relating to violence and gender should be included in any training package (see Recommendation 7.1).

CJC comment

The CJC welcomes the decision to include specific training on indigenous issues in the police prosecutors' training course.

Recommendation 3.6: Expert evidence

That the Attorney-General and Minister for Justice request the Queensland Law Reform Commission to conduct a general review of the law of expert evidence in Queensland, having regard to the issues identified in this report.

RESPONSE

The general response from the Attorney-General received on 13 August 1996 is outlined in the response to Recommendation 3.1.

While there has been no further reference to the Queensland Law Reform Commission on expert evidence, the CJC notes that, in August 1997, the Department of Justice called for submissions on Queensland's evidence laws generally as part of the department's evaluation of the *Evidence Act 1977*.

Recommendation 3.7: Information for the court

That, in cases involving Aboriginal witnesses who are speakers of Aboriginal English or Torres Strait Creole, the proposed form of information for juries that appears as Appendix 4 to this report:

(a) be used by judicial officers as a basis for informing juries in criminal trials where such information may be necessary for the jury to assess Aboriginal witnesses' evidence fairly; and

(b) be included in the cross-cultural awareness resource kit referred to in Recommendation 3.1 above.

RESPONSE

The Department of Justice in its response on 28 April 1997 commented only that it would be up to the judiciary to decide whether they wished to use this document.

The Chief Justice's response is outlined in the response to Recommendation 3.1.

CJC comment

It appears that this recommendation, like Recommendation 3.1, has not been implemented following the disbanding of AJAC and the failure of any agency to take responsibility for developing those materials. The CJC urges the Attorney-General to write to the Chief Justice on these matters.

Recommendation 3.8: State Funding for Aboriginal Legal Services

That once current reviews of Aboriginal Legal Services in Queensland have been finalised and the funding situation is clarified, the Queensland Government take steps to ensure that funding to Aboriginal Legal Services is sufficient to properly implement the Royal Commission into Aboriginal Deaths in Custody's Recommendation 108 (that it be recognised that lawyers need adequate time to take instructions and prepare cases, particularly in remote communities).

RESPONSE

The Department of Justice in its response of 28 April 1997 commented:

> The consideration of timing for lawyers to meet clients may affect the circuits of judges and magistrates. Assuming only one duty solicitor is available for the circuit, additional time must be made available at each location to ensure Recommendation 108 is met. In practice this may mean that sittings are extended by one day in each location. Whilst this recommendation appears meritorious it needs to be remembered that the courts are also regularly criticised for 'down time'.

The Attorney-General on 9 August 1996 advised that funding for Aboriginal legal aid services would undoubtedly be one of the many issues considered in negotiations with the Commonwealth

on legal aid funding generally over the coming months. No further response has been received from the Attorney-General, but the Department of Justice commented on 20 November 1997 that the funding for Aboriginal legal aid services was essentially a Commonwealth responsibility and therefore a matter for the Commonwealth Attorney-General's Department and relevant agencies such as ATSIC.

CJC comment

It is disappointing that there has been a reluctance at State level to take responsibility for ensuring that Aboriginal people throughout Queensland receive proper legal services. The CJC's consultations with legal practitioners and other legal service staff revealed grave concerns about the adequacy of services in remote areas, due in large part to high case loads and lack of adequate preparation time (see the CJC's report, pp. 45–46).

Recommendation 4.1: Evidence in narrative form

That the *Evidence Act 1977* be amended to include a provision that a witness may give evidence-in-chief wholly or partly in narrative form and that a court may direct that evidence be given in this form.

RESPONSE

The Attorney-General's response is outlined in response to Recommendation 3.1.

The Department of Justice advised on 28 April 1997 that the CJC's recommendations on the *Evidence Act* 'would be fully considered in an assessment of the Evidence Regulation' by the department. In August 1997, the department called for submissions on Queensland's evidence laws generally.

Recommendation 4.2: Leading questions in cross-examination

That the *Evidence Act 1977* be amended to include a provision that a party may put a leading question to a witness in cross-examination unless the court disallows the question or directs the witness not to answer it. In determining whether to disallow a question, the court should be required to take into account, among other things, the extent to which the witness's cultural background or use of language may affect his or her answers.

RESPONSE

See response to Recommendation 4.1.

Recommendation 4.3: Instructions to prosecutors about control of questioning

That the Director of Public Prosecutions and the Commissioner of the Queensland Police Service instruct Crown prosecutors and police prosecutors respectively to object to questions asked of an Aboriginal witness which, because of the witness's linguistic and cultural background, are inappropriate. The basis for such objections may be either the court's discretionary power to control cross-examination or sections 20 or 21 of the *Evidence Act 1977*.

RESPONSE

See discussion regarding ODPP response in Recommendation 3.4.

The response from the QPS (13 November 1997) stated that past and present trainee police prosecutors' courses had specifically addressed section 21A, and that the training includes instruction about witnesses who would be likely to be disadvantaged because of cultural differences.

Recommendation 4.4: Control of questioning

That section 21 of the *Evidence Act 1977* be amended to require the court, in deciding whether a question is indecent, scandalous, insulting, annoying or offensive under section 21(1) or 21(2), to take account of the witness's cultural background.

RESPONSE

See response to Recommendation 4.1.

Recommendation 5.1: Witness's right to an interpreter to have statutory recognition

That the *Evidence Act 1977* be amended to include a provision that a witness may give evidence about a fact through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand, and make an adequate reply to, questions that may be put about the fact.

RESPONSE

See response to Recommendation 4.1.

CJC comment

The recent report by the Bureau of Ethnic Affairs and Department of Justice *Interpreters and the Courts* noted that the department was developing legislation along these lines (1997, p. 33).

The Commissioner of Police noted in his response of 13 November 1997 that he had issued an instruction authorising the implementation of strategies for accredited interpreters to be used by police where appropriate. Further, he said the QPS had developed 'a comprehensive policy on the "Use of Interpreters", which had been promulgated to all police'. No details were given.

Recommendation 5.2: Interpreter to be provided where there is a doubt as to the witness's English language proficiency

That the proposed amendment entitling a witness to an interpreter include a provision that, where a court has any reason to doubt the capacity of a witness both to understand and speak Standard Australian English, proceedings should not continue until an interpreter is provided.

RESPONSE

See response to Recommendation 4.1.

Recommendation 5.3: Information about assessment of language needs

That AJAC, in preparing the cross-cultural resource kit for judicial officers referred to in Recommendation 3.1 and the training for lawyers referred to in Recommendation 3.4, work with suitable organisations (such as the Bureau of Ethnic Affairs and the Centre for Applied Linguistics and Languages) to prepare materials on working with interpreters in court and on assessing the proficiency of speakers of English as a second language.

RESPONSE

The Indigenous Advisory Council (which absorbed the functions of AJAC when it was disbanded) is currently considering the recommendation.

There were no comments on this recommendation from any agency, other than the Bureau of Ethnic Affairs, which stated that the Bureau would be happy to provide advice to the AJAC on the development of assessment techniques.

Recommendation 5.4: Cost of interpreter

That the Government, through the Department of Justice, pay for the cost of interpreters for prosecution and defence witnesses, and defendants, in criminal proceedings.

Response

The response from the Department of Justice dated 28 April 1997 was as follows:

> This recommendation is intended to deal with the claim that: 'A person's entitlement to an interpreter should not depend on his or her ability to pay ... [and to] avoid putting interpreters in a position of possible conflict of interest and duty …'
>
> With regard to the first point, while it is expected by the court that the defence will organise their own interpreters, if a defendant is unable to provide an interpreter, for him/herself or a witness, the court may order that an interpreter be provided and paid for by the registry.
>
> Secondly, transferring responsibility for payment of interpreters from the DPP to Courts Division would not be feasible under current arrangements.

CJC comment

There is no explanation by the Department of Justice as to why the transfer of responsibility would not be 'feasible'. The department's response also does not address the concerns raised by the ODPP about the present practice whereby the ODPP generally pays for interpreters for all witnesses in criminal trials. This arrangement raises a potential conflict of interest for the interpreter (see discussion in the CJC's report, pp. 71–72).

The CJC also notes that difficulties about payment for interpreters has been discussed in the recent report by the Bureau of Ethnic Affairs and Department of Justice *Interpreters and the Courts* (1997, pp. 36–37).

Recommendation 5.5: Qualification of interpreters

That, where at all possible, interpreters in legal proceedings be required to be accredited at least to NAATI Interpreter level (formerly Level 3). Where no qualified interpreter is available to assist a person who is entitled to an interpreter in court, the court or legal representatives should invite local Aboriginal community groups to nominate a suitable person to act as interpreter.

Response

No agency commented on this recommendation.

CJC comment

The general issues about availability and training of legal interpreters have been discussed in the recent report by the Bureau of Ethnic Affairs and Department of Justice *Interpreters and the Courts* (1997, pp. 49–55), although that report concentrated on languages other than indigenous languages.

Recommendation 5.6: Training of interpreters

That the Queensland Government increase its allocation of resources to the training of interpreters of Aboriginal languages (including Aboriginal English and Torres Strait Creole) for use in legal proceedings, and that the agency responsible for that training negotiate with Aboriginal organisations in the planning and carrying out of the training. Careful consideration should be given to concentrating the training in relevant regional centres, particularly as regards traditional languages. Training programs should include (at least as a trial) a condensed short course designed for people who already have bicultural competence and are bilingual, to give them particular skills as legal interpreters.

Response

No agency commented on this recommendation.

Recommendation 5.7: Material about working with interpreters

That the Queensland Law Society and the Bar Association of Queensland, as part of their continuing legal education activities, consider making available for circulation to interested members material about working with interpreters. This material could be based on the Law Society of New South Wales's *Guide to Best Practice* for lawyers and interpreters working in a legal environment.

RESPONSE

The Queensland Law Society noted on 15 April 1997 that it had conducted a seminar on working with interpreters in 1995. The emphasis of that seminar was mainly on family law, but the use of interpreters in other jurisdictions was considered.

The Law Society did not refer to the suggestion about the use of the New South Wales Law Society's Guide or the circulation of other material relating to the use of interpreters.

There has been no response from the Bar Association.

Recommendation 5.8: Content of training about working with interpreters

That the training workshops for lawyers about working with interpreters conducted by the Bureau of Ethnic Affairs should:

(a) particularly address ways of identifying individuals who may require the assistance of an interpreter, and

(b) so far as the workshops concern indigenous language and interpreter issues, be devised in consultation with AJAC.

RESPONSE

The response from the Bureau of Ethnic Affairs (11 December 1996) suggested that the recommendation would require the redevelopment of the Bureau's existing training course and suggested the development of a new training program specialising in indigenous interpreting, on which the Bureau would be happy to advise. The Bureau commented:

> To achieve maximum benefit the Bureau would strongly suggest that a program of on-site training courses be delivered which are tailored to the needs of the legal profession in regard to indigenous interpreting issues. Such a program would appropriately be funded by the agencies concerned.

The response also stated that the Bureau would be happy to advise on the development of techniques to assess English proficiency, noting that this issue had been highlighted in the research which formed the basis of the recent report by the Bureau of Ethnic Affairs and Department of Justice *Interpreters and the Courts* (1997).

Recommendation 5.9: Training for lawyers about working with interpreters

That the ODPP, the LAO and Aboriginal Legal Services ensure that any of their legal practitioners who are likely to come into contact with Aboriginal clients attend the Bureau of Ethnic Affairs workshops on working with interpreters, or similar workshops. Private practitioners who are funded by those agencies to conduct cases involving Aboriginal witnesses should also be encouraged by those agencies to attend.

RESPONSE

As noted above in the response to Recommendation 3.4, the ODPP advised on 3 November 1997 that training conferences had been carried out in Brisbane and Townsville and had included a one-day training session on cross-cultural awareness. The topics covered included communication,

'including differences and meaning, the adversarial process, communication strategies and interpreters'. The ODPP did not address the issue of training of private practitioners funded by the Office.

The response from the LAQ (25 September 1996) advised that some training sessions for lawyers had been run in Brisbane and south-east Queensland. Those sessions focused on making a preliminary assessment of whether a client needed an interpreter when giving instructions or when questioned by police. A second part of the training, which focused on people who speak English as a second language, concerned the Translating and Interpreting Service and how to use an interpreter. The LAQ noted that the Office does not have the resources to conduct training programs for private practitioners who do legal aid work, but said that those practitioners would be considered for attendance when relevant in-house training sessions are held. As noted in response to Recommendation 3.4, the LAQ stated that it had an ongoing commitment to improving its efforts consistent with the tenor of the CJC's recommendations. On 4 November 1997, the LAQ advised that no officers had attended the Bureau of Ethnic Affairs courses or similar workshops on working with interpreters, but noted that the series of articles in the staff newsletter on Aboriginal English attempted to highlight some of the differences in language usage.

See also the response to Recommendation 5.8 for comments from the Bureau of Ethnic Affairs on the implications for their training.

Recommendation 6.1: Location of courts in Aboriginal communities

That, in Aboriginal communities, where at all practicable, courts sit at some suitable location determined in consultation with the community, and not at the police station.

Response

The Chief Stipendiary Magistrate's response of 3 September 1997 stated:

> With the exception of three centres (Coen, Kowanyama and Doomadgee), the Court sits at the Court House. It is not practicable to sit elsewhere and at the three centres mentioned above, the Court experiences difficulties operating away from the Registry.

No further details were given.

The Department of Justice noted in its response of 28 April 1997 that the Courts Division was awaiting Crown Law opinion on procedural requirements for the need for registry services wherever a court was constituted. Depending on this advice, the department said, there could be significant resource implications.

The Chief Justice's response is outlined in Recommendation 3.1.

Recommendation 6.2: Design of court buildings

That, in considering the design of future court facilities, the Government have regard to the needs of hearing impaired persons, and the high incidence of hearing impairment among Aboriginal people.

Response

The Department of Justice advised on 28 April 1997 that induction hearing loops, which assist in the use of hearing aids, are incorporated in the design of all new court buildings. The more general matter of improving acoustics for those people without hearing aids was not discussed.

Recommendation 6.3: Judges' and barristers' wigs and robes:

That, in cases involving Aboriginal witnesses, the judge should discuss with counsel the appropriate court dress, given the nature of the case, the location of the court and the circumstances of the witnesses.

RESPONSE

The Chief Justice's response is outlined in the response to Recommendation 3.1.

Recommendation 6.4: Aboriginal Court Liaison Officer Scheme

That the Department of Justice run a pilot program for Aboriginal court liaison officers in two areas with significant Aboriginal populations. The general aims of the program should be to improve the way in which Aboriginal people understand and use the justice system. The department should negotiate other aims, the venues for the pilot, the role of the liaison officers and the selection of individual liaison officers with a working party comprising representatives of the local Aboriginal community and AJAC.

The role of liaison officers should be to:

- liaise with prosecution and defence agencies to find out in advance the details of Aboriginal people who are due to appear in court as witnesses or defendants
- liaise with those Aboriginal people, and familiarise them with the court environment and process, by providing an explanation of the positions and roles of the various people in court
- improve Aboriginal community awareness about the structures and processes of the criminal justice system.

At the conclusion of the pilot program, a public report should be made on the effectiveness of the program, and recommendations should be made to the Attorney-General and Minister for Justice as to the viability of establishing such programs in other communities.

RESPONSE

The response from the Department of Justice was not clear. The department said that 'court staff should not give legal advice', and that in practice staff 'are tempted to give advice regarding the possible outcomes of a case'.

The department noted that a similar program was currently operating with the child-protection group Protect All Children Today, and that in this situation the court did not deal with the clients but 'facilitates' the ODPP, LAQ and QPS 'giving the primary advice and dealing with witnesses directly'.

CJC comment

The CJC believes that any instance of staff exceeding their role by giving legal advice could be resolved by proper training, and notes that examination of a similar Court Liaison Officer scheme in New South Wales did not raise this as a problem. In the CJC's view there is much merit in conducting a pilot program, where such concerns could be explored.

Recommendation 6.5: Familiarisation of witnesses

That the Director of Public Prosecutions, the LAO and the Commissioner of the Queensland Police Service instruct their officers who prepare matters for court, or appear in court, to take appropriate steps to ensure that Aboriginal witnesses are familiarised with the physical environment and the procedure of the court.

Response

The ODPP advised on 7 April 1997 that, where possible, it aimed to acquaint victims of violent crime with the court environment before trial. It said it was impractical, considering its staffing, to extend this service to all witnesses.

On 3 November 1997, the ODPP gave details of further developments. Its report *Indigenous Women within the Criminal Justice System* highlighted the need for the Office to respond more effectively to the needs of indigenous people who come into contact with the criminal justice system, particularly those living in rural and remote areas who do not meet ODPP staff until the day of, or the day before, the trial. A recently completed feasibility study into the development of a Community Outreach Project recommends the employment of a community outreach worker to develop links and networks within indigenous communities and the contractual employment of community agency workers or other community members to provide victim support services. The program is intended to be trialled in an indigenous community in Far North Queensland in 1997–98.

The ODPP reported also that the Victim Support Service had produced a video entitled 'Violent Crimes: the Legal Process', which is aimed at informing victims in rural and remote areas who do not have direct access to the Victim Support Service about the court process and procedures. The video will be supplied to many police stations and community agencies throughout Queensland. The ODPP also plans to produce a second video in 1997–98 to address specifically the needs of indigenous people, following consultation with representatives of indigenous communities.

The LAQ agreed with the recommendation and stated that the issue would be emphasised in future training. On 4 November 1997, the LAQ responded further that:

> Where possible officers … try to ensure that Aboriginal witnesses are familiarised with the physical environment and procedures of the court. A checklist will be devised as part of future cultural awareness sessions that emphasise client concerns and quality client service.

The QPS in its response of 5 August 1996 observed that the recommendation would be beneficial to the court and witnesses and that this familiarisation would be enhanced by an Aboriginal court liaison officer scheme. In its response of 13 November 1997, the QPS said:

> As a matter of preparation and presentation police prosecutors ensure that steps are taken to familiarise *all* witnesses with the court environment and procedures.

No details were given of the 'steps' taken.

CJC comment

The steps that agencies have taken to familiarise witnesses with the court environment and procedures are to be praised. In particular, the ODPP's recent initiatives through the Victim Support Service will provide a valuable service for victims of violent crimes, especially those in rural and remote areas whom ODPP staff will not be able to meet personally much in advance of the trial.

However, the assertion by the QPS that police prosecutors ensure that steps are taken to familiarise all witnesses would seem to be overstating the case, given the extent of witnesses' confusion and intimidation as reported by many people during consultations for the CJC's report. Clearly, there is still room for improvement.

Recommendation 6.6: Aboriginal employment strategy

That the Department of Justice expand its Aboriginal Employment Strategy to place Aboriginal court staff in client-contact positions in centres with significant Aboriginal populations, for example, at registry counters and in courtrooms.

RESPONSE

The Department of Justice responded on 28 April 1997 that 29 people were employed in the Magistrates Court Branch under the Aboriginal and Torres Strait Islander Employment Strategy, and that all of these people spent time on the counter and in the courtroom because all court clerical staff were rotated through the duties of the courthouse.

Recommendation 6.7: Cross-cultural awareness training for court staff

That the Department of Justice, as a matter of priority, implement cross-cultural training on indigenous issues for court staff whose duties bring them into contact with Aboriginal people. This training should be provided regularly for new staff.

RESPONSE

The Department of Justice advised on 28 April 1997 that options for the provision of such training were being investigated but that no satisfactory service provider had yet been found. On 20 November 1997, the department advised that a service provider had been selected and that some training had been conducted. No further details were given of the content, regularity or extent of the training.

Recommendation 6.8: Information for lawyers about special witnesses

That information about section 21A of the *Evidence Act 1977* concerning special witnesses, and the applicability of this section to Aboriginal witnesses, be included in cross-cultural awareness training proposed in Recommendation 3.4.

RESPONSE

The ODPP in its response of 7 April 1997 stated that legal staff were aware of section 21A of the *Evidence Act* and that this issue was being considered for inclusion in the next staff training. On 3 November 1997, the ODPP advised that staff training conferences had been carried out in Brisbane and Townsville and had included a one-day training session on cross-cultural awareness (see response to Recommendation 3.4). The ODPP noted the need for further training, particularly about the use of sections 20, 21 and 21A of the *Evidence Act* in relation to Aboriginal witnesses.

The LAQ advised on 19 September 1996 that it proposed to run some further cross-cultural training for staff, but did not specifically address the issue of section 21A of the *Evidence Act*. On 4 November 1997, the LAQ advised that this issue would be further developed as part of a checklist for client service.

Recommendation 6.9: Information for prosecutors about special witnesses

That the ODPP distribute material to Crown prosecutors and police prosecutors about section 21A of the *Evidence Act 1977* (special witnesses) and its applicability to Aboriginal witnesses. The Director of Public Prosecutions should also encourage Crown prosecutors and police prosecutors to consider the applicability of section 21A in cases involving Aboriginal witnesses.

RESPONSE

The ODPP in its response of 7 April 1997 stated that section 21A of the *Evidence Act* was being considered for inclusion in the next staff training. On 3 November 1997, the ODPP advised that a one-day training session on cross-cultural awareness had been carried out and that the need for further training on these issues had been identified (see response to Recommendation 6.8).

The response from the QPS of 13 November 1997 noted that past and present training courses for prosecutors have specifically addressed section 21A.

Recommendation 6.10: Special witnesses legislation

That section 21A of the *Evidence Act 1977* be amended to clarify that an order under subsection (2) may be made at any time, whether before or after the witness has begun to give evidence.

RESPONSE

No agency commented on this recommendation.

CJC comment

As mentioned in the response to Recommendation 4.1, in August 1997 the Department of Justice called for submissions on Queensland's evidence laws generally.

Recommendation 7.1: Cross-cultural awareness of gender issues

That Aboriginal cross-cultural awareness programs for judicial officers, prosecutors and legal practitioners should include education about gender issues, particularly in relation to violence. Aboriginal women must be fully involved in the development and presentation of training materials.

RESPONSE

The ODPP (7 April 1997) stated:

> … in matters involving Aboriginal women who are complainants in sexual offence matters, the Office has in place protocols to ensure a sensitive, appropriate response …

On 3 November 1997, the ODPP advised that the one-day training sessions on cross-cultural awareness had been developed and presented by both men and women from indigenous communities (see the response to Recommendation 3.4 for further details).

The LAQ in its response of 19 September 1996 stated that it proposed to run some further cross-cultural awareness training. As noted above in response to Recommendation 3.4, the LAQ advised on 4 November 1997 that some funds might be available for further sessions on cultural awareness in 1998, and that equity and gender training sessions planned for the Legal Practice division would of necessity cover cultural issues. The LAQ did not provide any further details of those sessions.

The QPS noted that matters relating to violence and gender issues should be included in any training package for trainee prosecutors (see Recommendation 3.5).

The Chief Stipendiary Magistrate (3 September 1997) noted that Aboriginal women were involved

in the preparation and presentation of the cross-cultural seminars conducted under the auspices of AIJA in 1995.

The Indigenous Advisory Council (which absorbed the functions of AJAC when it was disbanded) is currently considering the recommendations.

Recommendation 7.2: Representation of Aboriginal women

That any Aboriginal advisory or consultative groups with which the courts and other legal agencies deal include representation by Aboriginal women, to ensure that their views are properly considered.

RESPONSE

The Chief Stipendiary Magistrate in his response of 3 September 1997 noted:

> This recommendation may have relevance to Clerks of Court. Magistrates are generally members of advisory groups.

The meaning of this response was not clear.

The response from the Chief Justice is outlined in the response to Recommendation 3.1.

The response from the QPS dated 13 November 1997 noted that the QPS had developed regular contact with the indigenous communities through the Service's Cultural Advisory Unit, but did not comment on the representation of indigenous women in those consultations.

Recommendation 7.3: Funding of indigenous women's legal services

That the Queensland Government examine the funding of indigenous women's legal services within twelve months of their commencement. If the funding is found to be inadequate, the Government should provide additional funding.

RESPONSE

The response from the Attorney-General received on 13 August 1996 stated:

> Where considered appropriate [CJC] recommendations will be introduced in accordance with the priorities of the Government and the budget constraints under which the Government is required to operate.

There has been no further response.

CJC comment

In August 1997 the Minister for Families, Youth and Community Care approved a one-off grant of $81,000 to the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service in Brisbane, through the Local Justice Initiatives Program.

At this stage, there appears to be no State Government commitment to ongoing funding of indigenous women's legal services.

Recommendation 7.4: Lawyers' preparation time

That prosecuting and legal aid agencies ensure that lawyers conducting cases involving Aboriginal women have sufficient preparation time to allow for sensitive issues to be fully canvassed and for the particular experiences of Aboriginal women to be explored.

RESPONSE

The ODPP's response of 7 April 1997 stated that it wished to have sufficient preparation time for all matters but that this depended on funding for the Office. In relation to Aboriginal female complainants in sexual offence matters, the ODPP said:

> … the Office has in place protocols to ensure a sensitive, appropriate response. Difficulties still arise where people live in remote parts of Queensland and where protocol interviews cannot be conducted in the desired manner. The Victim Support Service is presently developing a project that will improve our response to indigenous people living in remote areas of Queensland.

Details of the Community Outreach Project are set out in response to Recommendation 6.5.

The LAQ in its response of 19 September 1996 agreed with the recommendation and stated that staff were aware of the need to ensure that they had adequate preparation time.

The QPS response of 13 November 1997 noted that it was the desire of QPS Management that police prosecutors had sufficient preparation time for *all* matters, but that this was dependant on prioritisation and resources.

CJC comment

Agencies have indicated awareness of the issues. The key to resolving the difficulties raised during the CJC's consultations for its report is to develop practices that ensure sufficient time *is* available.

Recommendation 7.5: Use of support persons

That discussion of the use of support persons for Aboriginal women witnesses, particularly in cases of violence, should be included in the cross-cultural awareness training for prosecutors and legal practitioners proposed in Recommendation 3.4.

RESPONSE

The QPS response of 5 August 1996 supported this recommendation, stating:

> Where matters relating to sensitive issues involving Aboriginal women come before a court, it is imperative that these Aboriginal witnesses are accompanied by a person of their choice ... This issue could also be extended to apply to other women with a cultural disadvantage.

See response from the ODPP outlined in Recommendations 6.5 and 7.4.

Recommendation 7.6: Funding for support persons for women from remote communities

That funding should be made available to ensure that Aboriginal women from remote communities who are witnesses in cases involving violence against them may be accompanied by a person of their choosing when required to give evidence at distant locations.

RESPONSE

The Attorney-General's general response is outlined in the response to Recommendation 3.1. There has been no further response.

Recommendation 8.1: Consultation with the Torres Strait Islander community

That the Attorney-General, through AJAC, consult with representatives of the Torres Strait Islander community to ascertain how, and to what extent, the recommendations contained in this report should be modified to take account of language and cultural issues specific to Torres Strait Islanders.

RESPONSE

The Indigenous Advisory Council (which absorbed the functions of AJAC when it was disbanded) is currently considering the recommendations.

Apart from the general comments outlined in the response to Recommendation 3.1, there has been no response from the Attorney-General to this recommendation.

Part B: *Report on Police Watchhouses in Queensland*

Findings of the report

The report was prepared after the CJC and other agencies had identified problems in many watchhouses. The report confirmed that conditions were below acceptable standards. Poor conditions were exacerbated by overcrowding and lengthy stays by prisoners awaiting placement in a prison. In early 1996, the Minister for Police and Corrective Services and Minister for Racing directed that offenders destined for prison were to spend no more than seven days in a police watchhouse. This direction soon eased much of the pressure in watchhouses, although it did not directly lessen the other concerns identified.

The report made 22 recommendations for legislative and other changes, including:

- enactment of a statutory provision to minimise the length of stay by prisoners in watchhouses
- reviewing the manner in which fine defaulters are dealt with, to minimise the use of detention in watchhouses or prison
- introducing initiatives to reduce the need to hold remanded prisoners in watchhouses
- addressing any concerns that the judiciary may have about the operation of community corrections alternatives to imprisonment
- publication of information about factors affecting the prison population, such as sentencing data
- developing strategies for improving medical services to watchhouses, including psychiatric services
- implementing initiatives to improve watchhouse management practices and the status of watchhouse staff
- accelerated replacement and refurbishment of watchhouses across the State.

Consultation

After the report was tabled in Parliament, the Chairperson of the CJC wrote to State Government Ministers and agencies likely to have responsibility for implementing the recommendations to ask them to advise the CJC of any action taken or proposed. A follow-up letter was sent in April 1997 to those who had either not responded or not provided a detailed response, and a third letter was sent in September 1997. At this time, a draft summary of responses was forwarded to those who had provided information, to allow them to check and update their responses. Information since received has been incorporated in the following sections.

Developments since the report was tabled

The responses received were generally positive, indicating either that moves are now under way to implement some of the recommendations, or that most other recommendations are at least supported in principle. To improve the conditions of watchhouses, this support will need to be translated into action at the service-delivery level. Importantly, the Government has allocated funds to watchhouses to upgrade facilities and medical services.

The response of Queensland Health to the report was encouraging, and recent correspondence has indicated that several initiatives have now been implemented. There should be significant

improvements to medical services to watchhouses, especially the larger and busier ones, when all the proposals described become operational.

The QPS has also made progress towards implementing relevant recommendations and generally improving the standard of its custodial services. In particular, continued substantial funding of watchhouse infrastructure development should, in the longer term, address several of the deficiencies identified in the report. Police watchhouse managers advised the CJC that positive changes had occurred at watchhouses over the past year, but also expressed concern that some initiatives were yet to have an impact at the operational level. It was claimed that some perceived problems were continuing to cause concern, at least in some locations (for example, refer to Recommendations 5.3, 7.1 and 7.3 below).

The Minister for Police and Corrective Services and Minister for Racing, in responding on behalf of the Corrective Services portfolio, indicated support for relevant recommendations, although with reservations about the recommendation for legislative change to specify a maximum period of detention in watchhouses for prisoners en route to a correctional facility.

The Department of Justice advised that progress has been made with some recommendations, and provided a brief outline of initiatives. The department's response also indicated support for other recommendations relevant to the Justice policy area, but outlined constraints on their implementation. Of particular note is the intention not to amend the *Bail Act 1980* (Recommendation 5.2).

The following describes in more detail the responses of Ministers and agencies to each watchhouse report recommendation, and gives a brief commentary, where appropriate.

Status of recommendations

Recommendation 4.1: Responsibility for watchhouse management

That the QPS should retain responsibility for the management of watchhouses.

RESPONSE

The response from the Deputy Commissioner of Police (12 June 1997) stated that the QPS would continue to have responsibility for watchhouses until otherwise directed by Government.

Recommendation 4.2: Amendment to Section 32 of the *Corrective Services Act 1988*

That section 32 of the *Corrective Services Act 1988* be amended to provide that:

- the QCSC is the criminal justice agency responsible for accommodating people sentenced to a term of imprisonment or required by law to be detained in custody for a period
- a person sentenced to a term of imprisonment or required by law to be detained in custody for a period shall be transferred as soon as possible, at the convenience of the police, to a correctional centre, but in any case shall not be detained in a watchhouse for more than a period of three days after the commencement of such sentence or period of detention, except in the circumstances set out below
- where a watchhouse is located a substantial distance from the nearest correctional centre and there are circumstances which prevent the police from conveniently transferring the detained person to a correctional centre (such as the unavailability of police officers to transfer the detained person to a correctional centre, or a short adjournment which makes the transfer of the person to a correctional centre and back to the court impractical), the person may be detained in a watchhouse for a period longer than three days.

Response

The response from the Minister for Police and Corrective Services and Minister for Racing (1 July 1997) stated that the principle of keeping the duration of stays in watchhouses to an absolute minimum was fully supported. However, the Minister suggested that limiting the maximum stay of prisoners to three days was not achievable. The reasons he gave were that a three-day maximum might seriously jeopardise court attendance by prisoners, cause a large number of prisoners serving very short periods of time (i.e. fine defaulters) to be admitted to prison, and increase the cost to the taxpayer (admissions to secure custody cost an estimated $1,500 each time). The Minister suggested that any legislative amendment should not make three-day maximum stays mandatory, as ministerial direction 'sufficiently provides for a mechanism to reduce the stay of prisoners in watchhouses prior to admission to (prison) custody'.

The Minister further advised (3 November 1997) that no progress had been made towards legislative amendment of section 32. The Minister said he did not support:

> … the inclusion of a clause defining the QCSC as the agency responsible for people detained in custody and to reduce the period for detaining prisoners in watchhouses to no more than three days. This responsibility is already defined in section 33 and the proposed amendment has potential for significant resource implications.

According to the Minister, the prison system does not have the capacity to provide additional double-up accommodation, given the current level of growth in prisoner numbers.

CJC comment

Recommendation 4.2 is considered to be a key recommendation for dealing with the problems of overcrowding and lengthy stays by people in unsatisfactory conditions in police watchhouses. It requires legislative change aimed at:

- Nominating the QCSC as the agency primarily responsible for accommodating people sentenced to imprisonment or required by law to be detained for a period. This was considered important because of the way section 33 of the *Corrective Services Act* appeared to be used in practice.[2]
- Ensuring that prisoners destined for QCSC custody are transferred to a QCSC facility as soon as possible, at the convenience of the police. A maximum period of detention in police watchhouses of three days was specified, with exceptions allowable under certain circumstances. A maximum stay of three days was considered to be fair and workable in most cases.

Recommendation 4.2 was made on the basis that:

- police watchhouses are designed to be places for short-term detention only
- the QCSC is the agency with the resources to provide appropriate services to prisoners, although it is acknowledged that for some years these resources have been under great pressure from growing prisoner numbers (chapter 5 of the CJC report described strategies for alleviating this chronic problem);
- police resources should not be unnecessarily diverted to custodial functions.

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2 Section 33 commences by stating: (1) A person, upon being admitted to a prison for detention there, is deemed to be in the custody of the Commission …' Paragraph (4) extends this to include prisoners en route to a prison who are in the custody of a correctional officer. Police watchhouse staff interviewed by the CJC during the project believed that section 33 allowed the QCSC to adopt a position of minimal responsibility or obligation towards prisoners who are required to be detained in custody (i.e. serve a prison sentence, a period on remand, or a period in default of fine payment) until they are admitted to a prison or placed in the custody of a correctional officer. Watchhouse staff believed that section 33 was, in effect, a legal loophole that obliged them to keep and care for prisoners in police custody until the QCSC was prepared to take them into custody. Apart from refunding meal monies to the QPS, the QCSC allocated negligible or no resources to these prisoners, as section 33 does not compel any obligation prior to admission to prison/correctional custody, and the QCSC dictated who was to be admitted and when.

The Minister's strong support for the general thrust of Recommendation 4.2 is acknowledged. However, the CJC considers the position adopted in the report remains appropriate. The CJC notes that there has been a generally high level of compliance with the ministerial direction to the QCSC specifying a maximum stay of seven days by QCSC prisoners in watchhouses, although exceptions are not uncommon. Such a direction, however, is not permanent and has no force of law. The proposed legislative change allows for exceptions to the three-day maximum stay. Such exceptions could include prisoners who must re-attend court within a few days, or prisoners serving short periods of detention. Recommendation 4.3 requires the monitoring of the use of exceptions, to allow any problems that arise to be identified. Further, the safety and welfare of people was the primary concern of the watchhouse report, not financial cost. In any case, delaying the admission of prisoners to prison may not save the taxpayer much money, as police resources are used in lieu of corrections resources.

However, should Recommendation 4.2 be unacceptable to the Government, a compromise could be considered, perhaps along the following lines:

- the legislative amendment could include more specific details of the circumstances where exceptions are permitted
- the maximum stay could be set at a slightly longer period (but no longer than the current seven-day period specified by the Minister's direction)

The operational impact of such a legislative amendment would need to be monitored closely, to ensure that the duration of stays in watchhouses is kept to a minimum (refer to Recommendation 4.3).

Recommendation 4.3: Monitoring the exceptions to the three-day rule

That:

- where police detain a person in a watchhouse for more than three days, they must record in the custody index the reasons for the person being detained beyond that time
- the use of the exception to the three-day rule should be monitored to determine whether the legislative provisions need to be tightened further to minimise the periods of time prisoners spend in watchhouses.

Response

The Deputy Commissioner of Police advised that the QPS will implement this recommendation when Recommendation 4.2 is implemented.

The Minister for Police and Corrective Services and Minister for Racing advised (17 October 1997) that the QPS was continuing to monitor the length of time that prisoners remain in watchhouses.

Recommendation 5.1: Review of options for fine defaulters

That the Government conduct a comprehensive review of the manner in which the criminal justice system deals with fine defaulters and that the review consider, among other things, the following proposals:

- a review of the conversion rate for fines
- allowance for default periods to be served concurrently
- availability of Fine Option Orders on Saturdays
- an amnesty on some or all outstanding warrants
- the installation of EFTPOS facilities in watchhouses
- the cancellation of drivers' licences as an alternative to imprisonment
- the use of civil debt recovery procedures
- restricting the courts' authority to impose in default imprisonment in the first instance.

Response

The response of the Deputy Commissioner of Police noted that the majority of the proposals are the responsibility of the Department of Justice, that the QPS is making EFTPOS increasingly available in watchhouses and that the QPS also has a policy of destroying some older warrants (pursuant to *Disposal of Unexecuted Warrants Act 1985*). The QPS has recently advised that EFTPOS facilities are being trialled in some police stations and in some police vehicles. This is reported to have significantly reduced the number of people being arrested for outstanding warrants, in those areas with access to EFTPOS.

On 20 October 1997, the Attorney-General and Minister for Justice advised that the Department of Justice would respond to this and other relevant recommendations. The Director-General of the department advised (16 October 1997) that the department had conducted a comprehensive review of the system of fines, infringement notice penalties and other debts and had proposed a 'reformed system'. The Director-General advised that the scope of the review was wider than 'the effect of holding fine defaulters in watchhouses', but that the specific issues listed in this recommendation had been considered. The department's proposal has been referred to an interdepartmental steering committee for the development of appropriate legislation. The CJC has not yet received information about the proposal.

CJC comment

Some States appear to be successful in diverting fine defaulters from prison, most notably Victoria, which admits very few to prison.[3] The CJC understands that a large number of warrants are outstanding in Queensland, indicating that a continuing flow of fine defaulters into custody can be expected unless alternatives are found. It is to be hoped that the Justice Department proposal can alleviate the problems of fine defaulting and detention of fine defaulters in watchhouses or prisons. The CJC will comment on the proposal after receiving the details.

Recommendation 5.2: Amendments to the *Bail Act 1980*

That the amendments to the *Bail Act 1980* recommended by the Queensland Law Reform Commission (1993) be implemented.

Response

The Department of Justice has advised that it does not presently propose to implement the Law Reform Commission recommendations.

CJC comment

It is now four years since the Law Reform Commission recommendations were made. The CJC remains of the view that the *Bail Act* provisions are in need of reform. The CJC notes that the number of people on remand in Queensland prisons grew by 154 per cent between mid-1992 and mid-1996 (the number of sentenced prisoners grew by 68 per cent over the same period).[4] The increasing population of people on remand appears likely to continue to place pressure on the custodial system.

3 ABS *National Correctional Statistics: Prisons, June Quarter 1997*.

4 Source: ABS *Prisoners in Australia 1995* and CJC *Criminal Justice System Monitor volume 2*.

Recommendation 5.3: Review of court listing practices

That courts in areas in which the prison is not nearby review their listing practices to ascertain if they can coordinate the appearances of each remanded prisoner who is facing more than one set of charges.

RESPONSE

The Department of Justice's response agreed that coordination of court appearances of remanded prisoners was desirable, but said that it was not generally in the control of the listing clerks. According to the department, a number of factors affect the capacity to coordinate appearances:

- the court's reliance on the prosecution and defence representatives to alert the court of the existence of more than one set of charges
- judges' preferences as to when sentencing matters are arranged
- the need to facilitate the availability of defence counsel on circuit.

CJC comment

Watchhouse managers have advised that court listing practices continue to cause prisoners in some locations to be held in watchhouses for lengthy periods. The CJC accepts that there are constraints on listing practices, but the Department of Justice's response does not outline what action, if any, it proposes to take on this issue.

Recommendation 5.4: Use of video-linking facilities

That the evaluation of the video linking in Brisbane being conducted by the Department of Justice specifically consider the needs of remanded prisoners in more remote areas.

RESPONSE

The Department of Justice said that they intended to expand video-linking facilities to other locations in the State, and that the needs of remanded prisoners in remote areas would be a most relevant consideration in setting priorities.

CJC comment

The expansion of video-linking facilities should have several benefits, including reducing the need for transporting Corrective Services prisoners to watchhouses for court appearances.

Recommendation 5.5: Consultation on the use of community corrections orders

That the QCSC consult with representatives of the judiciary on the use of Community Corrections Orders to determine what action, if any, is required to address the concerns of the judiciary.

RESPONSE

The response of the Minister for Police and Corrective Services stated that the QCSC had held several discussions with the judiciary and briefings of judges on this matter. The QCSC had not been advised of any specific concerns held by the judiciary, but the Minister stated that, should any issues be raised:

> … a process of consultation would be implemented to achieve a thorough understanding of the concerns and efforts to allay these concerns would be initiated.

Efforts would be made to maintain communication with the judiciary, the Minister said, and to respond to any concerns raised. Relevant QCSC guidelines had been reviewed and a manual — the Community Supervision Practices and Procedures Manual — developed to guide Community Corrections Officers.

CJC comment

Volume 2 of the CJC's Criminal Justice System Monitor series showed that the rate of use of Community Corrections Orders by the judiciary has been steadily declining in recent years. For this reason, it is important that the QCSC continue the process of consultation with the judiciary. Further, the Department of Justice may wish to become involved in these consultations, to take account of any concerns expressed by the judiciary. Monitoring by the CJC of the use of Community Corrections Orders will continue.

Recommendation 5.6: Publication of sentencing information

That the Crime Statistics Unit of the Government Statistician's Office give priority to collecting and publishing detailed sentencing information for Magistrates Courts and higher courts.

RESPONSE

The Government Statistician's Office has advised that the collection of sentencing information is being addressed. An analysis of sentencing trends is currently being undertaken by the Crime Statistics Unit of the Government Statistician's Office. An information session focusing on the associated methodological issues was presented to the National Centre for Crime and Justice Statistics Convention in Brisbane on 15 October 1997. A full report will be released possibly by the end of 1997.

Recommendation 5.7: Effect of administrative transfers on prison population

That the QCSC include in its published data on the prison population information about the number of administrative transfers [to approved programs outside the prison] and their effect on the prison population.

RESPONSE

The response of the Minister for Police and Corrective Services stated that such information was available at any time, but that, given the volume of transfers over a twelve-month period, this data would not provide relevant information on the effect on prison populations if only reported annually.

CJC comment

This recommendation was made in response to a concern that the QCSC's published prisoner numbers data did not give a clear indication of the impact, over time, of administrative transfers on prisoner population levels. It is possible that the level of administrative transfers could change over the longer term. If it did, it would have an impact on the prison population. It would be important, for policy and planning purposes, to be able to measure the extent of any such impact.

Minor alterations to the QCSC Annual Report, to include both the average number of prisoners administratively transferred over the year and the number of prisoners on administrative transfer at 30 June, would assist the monitoring of trends over time.

Recommendation 5.8: Impact of abolition of remissions

That, prior to implementing any policy to abolish or limit the use of remissions, the Government should undertake and publish an analysis of the likely impact of such a policy on the prison population.

RESPONSE

The Minister for Police and Corrective Services advised that Cabinet decided in June 1997 to abolish remission and has directed the QCSC to act on this. The QCSC is currently assessing the implications of the decision, including the potential impact on the prison population. A policy discussion paper is being prepared, for consultation with community stakeholders.

The Justice Department's response drew attention to the effect of the *Penalties and Sentences (Serious Violent Offences) Amendment Act 1997* in relation to the non-availability of remissions in certain cases.

CJC comment

The CJC acknowledges that a discussion paper is being prepared, but is concerned that this paper is being prepared *after* the decision to abolish remissions has already been made.

Recommendation 5.9: Publication of outcomes of community corrections boards decisions

That information about the decisions of Community Corrections Boards be publicly available, including:

- the number and types of applications considered and determined
- the number and types of applications granted and refused
- the number and types of orders suspended or cancelled.

RESPONSE

The initial response of the Minister for Police and Corrective Services was that the Board of the QCSC would consider this recommendation. In a later letter, however, the Minister noted that section 141 of the *Corrective Services Act* required the Board to report some of the above information to the Minister, specifically the number of persons released on parole, and the number returned to prison on cancellation or suspension of parole. (The number of persons declared habitual criminals who were released on parole is also to be reported.)

The QCSC has also reported this information in its annual reports. The Minister advised that this information will, from 1996–97, be reported to the Minister in a separate annual report by community corrections boards.

CJC comment

Unless the full scope of information described in the recommendation is publicly reported (in particular, applications granted *and refused*), any trends in decision making by the boards will remain beyond public knowledge.

Recommendation 5.10: Establishment of a strategic planning committee

That Recommendation 13.1 of the *Report of the Queensland Commission of Audit: Operating Budget Outlook, June 1996* — that a strategic planning committee be established to coordinate policy advice, research and planning among criminal justice agencies — be implemented. One of the priorities of the committee should be to address the problem of prison overcrowding.

RESPONSE

The Department of Justice advised that it has established an interdepartmental committee to coordinate criminal justice initiatives, including the coordination of policy advice and the assessment of the system-wide impact of any proposed changes. This committee is in the process of selecting issues for consideration and the issue of prison overcrowding will be drawn to the committee's attention.

The Minister for Police and Corrective Services advised that the committee held its inaugural meeting on 25 August 1997, at which the committee's role and function was discussed and terms of reference proposed.

The Deputy Commissioner of Police noted that options for criminal justice coordination have been developed within the QPS and passed to the Minister for consideration.

CJC comment

On the information given to the CJC it is unclear whether the proposed committee can supply the direction and impetus required to make significant improvements to the operation of the criminal justice system. In the CJC's view, to be effective the committee must have representation by the relevant government agencies, at chief executive level.

Recommendation 5.11: Publication of impact statements

That, pending the establishment of the strategic planning committee, any changes to policy that will impact upon other agencies in the criminal justice system be accompanied by a public statement of the effect that the changes will have on other agencies and on the number of people in custody.

RESPONSE

The Minister for Police and Corrective Services and Minister for Racing advised that the issue of identifying policy or practice changes that may have an impact on other criminal justice agencies was identified as a committee function at the inaugural meeting of the criminal justice strategic planning committee (see response to Recommendation 4.10).

CJC comment

In addition to identifying such changes, the committee should determine and document the likely effects of the changes and publicly disseminate this information.

Recommendation 6.1: Provision of medical services

That QPS and Queensland Health jointly develop a strategy for the provision of medical services to prisoners in watchhouses that includes:

- the availability of Government Medical Officers to all 24-hour watchhouses on a daily basis
- the availability of appropriately trained nursing staff to all 24-hour watchhouses on a regular basis (the required number of shifts or calls per day may vary from watchhouse to watchhouse) (QMEC 7.8.1)
- a system for the safe provision of medication to be implemented in all 24-hour watchhouses (QMEC Recommendation 7.8.2)
- minimal facilities for medical care to be provided in all 24-hour watchhouses including a separate room with a couch, desk, locked cupboard, phone, and basic equipment including that required for resuscitation (QMEC Recommendation 7.8.3).

RESPONSE

In a letter dated 30 October 1996, the Minister for Health outlined the broad approach being taken and advised that Queensland Health would follow-up with more details. The response from the Director-General of Queensland Health (6 December 1996) gave the following information (which has been updated after further correspondence dated 24 October 1997):

- The Chief Government Medical Officer position has been upgraded to Director, GMO Services Queensland, with added responsibilities for training and professional support to part-time GMOs. A new Deputy-Director position at Brisbane has been created and filled, and a GMO position for Logan–Beenleigh–Ipswich has also been filled. A new Deputy-Director position and two GMO positions at Townsville have been created, with the successful applicants about to be appointed. These positions will have responsibility for northern Queensland, and will be based at the new Government Medical Office in Townsville.
- Funds have also been allocated for specific enhancements to the GMO Service, including an education and training program (training manuals have been published and distributed,

and the initial phase of workshop sessions has been completed), and a new fee structure, designed to remunerate GMOs adequately, as well as to enhance recruitment in areas of need, has been implemented.

The Minister for Health and the Minister for Police and Corrective Services and Minister for Racing made a joint announcement in July of this year that an annual amount of $240,000 had been allocated to the Nurses in Watchhouses project, which would provide regular nursing services to 18 watchhouses throughout Queensland.

The Minister for Police and Corrective Services and Minister for Racing advised that the recommendation was supported and in effect provides a minimum standard. More recent advice from the Minister noted that the visiting nurses clinic commenced at the Brisbane City Watchhouse on 30 June 1997, and the selection of service providers at other watchhouses around the State was nearing completion. Queensland Health recently advised that the nursing service attends Brisbane Watchhouse for two hours every day, and a nurse assesses prisoners, reviews medication, and calls a GMO if required.

CJC comment

The implementation of the Nurses in Watchhouses program is a positive development and it is hoped that it will be a success. Queensland Health and the QPS are encouraged to evaluate the program at an appropriate time, to facilitate its permanent establishment.

The enhancements to the GMO Services have the potential to greatly benefit medical service provision to watchhouses. The appointment of a GMO to service the Logan–Beenleigh–Ipswich area is to be commended, as the lack of a GMO had long been a concern to watchhouse managers in those districts.

Recommendation 6.2: Provision of psychiatric services

That a protocol be established between the QPS and Psychiatric Services, Queensland Health to enable watchhouse staff to directly access psychiatric services for prisoners in defined circumstances.

RESPONSE

Queensland Health advised the following:

- The completion of a Queensland Forensic Mental Health Policy Statement is a priority for 1997–98. The policy will 'define a model of service delivery which aims to promote, improve and maintain the mental health of those people … who have a mental disorder or serious mental health problem and are involved in the criminal justice system'. Statewide consultation of a draft policy has commenced. The final policy will 'provide the basis for Queensland Health to seek additional resources to support the implementation process.'
- Substantial progress has been made in drafting new mental health legislation, with the final draft currently undergoing review. The legislation will facilitate improved access to mental health services for watchhouse prisoners. It will contain provisions for designated medical practitioners (in addition to GMO's and psychiatrists) to have the authority to have a person transferred to hospital for treatment, and to authorise police to take a person in custody to a local mental health service for assessment.

Also, the Deputy Commissioner of Police advised that a component of the nursing clinic is the establishment of a local medical advisory committee, designed to advise on medical issues in the watchhouse and to establish and maintain a network of local medical service providers to watchhouses.

CJC comment

During the Watchhouse Managers' Workshop earlier this year (see Recommendation 7.2), watchhouse managers were advised in broad terms of the Queensland Health proposal. Managers were keen to see changes implemented. However, they expressed concern that, despite the above proposals, prisoners who exhibit behaviour that makes them very difficult for police to manage, but who are not diagnosed as 'mentally ill', may remain in police cells and not receive more appropriate management and care. After the policy and legislation becomes operational, an assessment of its adequacy can be made.

Recommendation 6.3: Funding for improved medical services

That the Government urgently provide adequate funds to the QPS and Queensland Health to enable these agencies to implement the above recommendations by December 1996.

RESPONSE

Refer to Recommendations 6.1 and 7.3 (watchhouse replacement includes the provision of improved medical facilities).

CJC comment

As noted earlier in this report, provision will need to be made for funding to continue for initiatives that are successfully implemented.

Recommendation 7.1: Improved watchhouse management practices

That:

- Wherever practicable, watchhouse staff leave corridor lights on and turn cell lights off at night.
- Each morning watchhouse staff monitor who is to appear in court that day and allow those prisoners to have first access to showers and to shave, where it is safe to allow the prisoner access to a razor.
- Hygiene packs be provided to all prisoners who are held in the watchhouse overnight or for more than twelve hours. The QCSC should provide these packs to QCSC prisoners.
- Watchhouse staff allow prisoners to have access to a clean set of clothes — preferably their own clothes supplied by friends or relatives — if they are to appear before the court. If prisoners are to be held for longer than three days, prisoners should be provided with 'prison browns'.
- If prisoners are to be denied sheets for safety reasons, the mattresses and blankets be cleaned after each prisoner has used them. All mattresses should have covers to enable them to be cleaned.
- The QPS review the meal allowance in order to establish whether it is adequate to attract outside contractors.
- The QPS make it clear to watchhouse staff that they are to provide meals to all prisoners. It is acceptable that prisoners be allowed to receive *additional* food from friends, relatives or others if it is not a security risk, and also to pay for extra food if they wish.
- Prisoners in the watchhouse should be able to make telephone calls to their legal representatives and receive visits from their legal representatives. Prisoners who are held in the watchhouse for longer than three days should be entitled to make a daily telephone call to, and receive weekly visits from, a family member or friend. If prisoners are to be kept in watchhouses for more than three days, watchhouses will have to be fitted out, where necessary, with secure non-contact visiting facilities.
- Prisoners who have been in the watchhouse for more than three days should be given supervised access to writing materials.

RESPONSE

The Deputy Commissioner of Police advised that the above issues were referred to the May 1997 Watchhouse Managers' Workshop. A later response from the Minister advised that the current review by the QPS of its custody procedures (which arose from the Review of the QPS in 1996) would include examining and dealing with these issues.

An officer from the CJC attended the workshop (see Recommendation 7.2, below) and reported that participants agreed in principle with most of the above. Practices in most watchhouses incorporate at least some of the above. Watchhouse managers explained that some factors, including security and safety considerations, watchhouse budgets, facility limitations at older watchhouses, prisoner numbers and staffing levels, may place constraints on their ability to comply with all aspects of the recommendation. It was noted that the QCSC continues to provide few resources for QCSC prisoners (those prisoners held pending acceptance into a prison) and QPS meal allowances for prisoners were considered by some participants to be inadequate in some parts of the State.

The Minister's response supported prisoners having access to hygiene packs, but noted that responsibility for providing these should be shared between the QCSC and the QPS. The Minister later advised that no resources had been allocated to the QCSC to allow this recommendation to proceed.

CJC comment

It is not clear what changes will be implemented, and how consistently they will be implemented across the State. The CJC referred to this recommendation in its recent submission to the QPS review of custody procedures, and is awaiting a response.

Recommendation 7.2: Watchhouse Managers' Workshop

That the Watchhouse Managers' Workshop continue to receive a high level of support from the QPS.

RESPONSE

The Deputy Commissioner's response advised that the third annual QPS Watchhouse Managers' Workshop would be held in May 1997 at the new police station/watchhouse complex at Bundaberg.

CJC comment

The workshop was held as advised and a CJC representative was invited to address managers about progress made towards the implementation of watchhouse report recommendations. A representative of an interstate police service also attended to share information about relevant topics.

The QPS has recently advised that, after an internal organisational restructure, the officer-in-charge of the Brisbane Watchhouse has been given responsibility for coordinating the organisation of future Watchhouse Managers' Workshops. The next workshop is likely to held in Cairns.

Recommendation 7.3: Accelerated replacement and refurbishment of watchhouses

That the QPS receive increased funding to enable the Service to accelerate the replacement and refurbishment of watchhouses throughout the State, especially the 24-hour watchhouses.

RESPONSE

The QPS received significant funding in the 1997–98 State Budget for both new construction and the Watchhouse Upgrade Program. The QPS has advised that all new facilities conform to international best practice standards. The Deputy Commissioner of Police provided an outline of work completed in 1996–97 within the Watchhouse Upgrade Program. (It appears that a

considerable amount of work has been completed through the Upgrade Program, with a focus on the installation of closed-circuit television for supervision of prisoners.)

CJC comment

The response of the Government and the QPS is to be commended. Several new facilities and further upgrades are planned for completion within the next three years. It should be noted, however, that for reasons including funding levels, QPS-wide priorities for capital works, and co-location of some watchhouses with courts, some facilities are unlikely to receive much-needed upgrades or replacement within that period.

Recommendation 7.4: Consultation in watchhouse planning

That the QPS use appropriate consultative mechanisms in planning the replacement of watchhouses.

RESPONSE

The Deputy Commissioner of Police has advised that the QPS Properties and Facilities Branch has an expanded consultation process in place.

CJC comment

The CJC and other agencies were consulted in the planning stages of the development of the proposed new Brisbane Watchhouse, which was a positive sign that the expanded consultation process is operating. It was also notable that those consulted were later informed about the action taken relative to any advice provided.

Recommendation 8.1: Enhancing the status of watchhouse staff

That the QPS develop and implement strategies for enhancing the status of watchhouse staff.

RESPONSE

The Deputy Commissioner of Police advised that:

- specific training for watchhouse staff is being developed
- the number of permanent watchhouse positions has been increased
- watchhouse manager positions at larger watchhouses have been upgraded to Senior Sergeant rank.

CJC comment

These are positive developments. The CJC was interested to learn that the New South Wales Police Service has been considering adopting the 'Custody Officer' model, given that our watchhouse report had suggested this as an option for Queensland. The CJC will attempt to monitor the results of this initiative in New South Wales, should it be implemented.

Conclusion

There has been some notable progress made in the year since the report was tabled. Recommendations that can be considered as substantially implemented are Recommendations 4.1, 5.1, 5.4, 5.5, 5.6, 5.10, 5.11, 6.1, 6.3, 7.2, 7.3, 7.4 and 8.1. The implementation of several other recommendations is at an early stage, and it is hoped that momentum towards implementation can be maintained. As noted earlier in this report, improvements at the service-delivery level will be the measure of success. The implementation of Recommendation 4.2 is particularly important to guard against a return to the problems experienced in watchhouses before 1996.

The CJC will continue to monitor the implementation of the watchhouse report recommendations, and has the option of reporting again to Parliament on this issue at some time in the future. Other interested parties, such as the Watchhouse Register Groups (which acted as advisory groups to our watchhouse project) and Amnesty International (which published a report on Australia recently) are also likely to continue to monitor police custody issues.