Summary of Recommendations

Principles of Punishment

1. ***General Rationale.*** No single rationale of punishment can or should predominate in guiding reform of Commonwealth laws concerning sentencing. Punishment may, in varying degrees, take into account elements such as deterrence, the denunciation of abhorrent behaviour, the reinforcement of community moral and ethical values and, perhaps with less confidence than in the past and within limits required by just deserts, reformation of the offender and his restoration to society.

   (Para. 66)

2. ***Certainty, Consistency, Proportionality and Economy.*** Punishment for persons convicted of Federal offences should, as far as possible, be certain, consistent and proportional to the gravity of the crime for which the offender is being sentenced. The principle of economy in the imposition of punishment, which limits the amount of punishment imposed to the minimum necessary to achieve community objectives, should also be observed.

   (Para. 66)

3. ***Non-custodial Sentences.*** So far as is consistent with social protection, preference should be given to the use of non-custodial sentencing options and the use of such options should be facilitated by reform of Commonwealth law.

   (Para. 67)

4. ***Capital Punishment.*** No sufficient reason has been shown to re-introduce capital punishment in the jurisdictions of the Commonwealth or the A.C.T.

   (Para. 62)

5. ***Corporal Punishment.*** Corporal punishment should not be re-introduced as a penalty in the A.C.T. Nor should it be made available as a punishment for any offence committed against a law of the Commonwealth.

   (Para. 65)

Information and Statistical Data

6. ***The Need for Crime Statistics.*** Comprehensive Federal and Territorial statistics concerning offenders and offences against Commonwealth laws should be compiled as a matter of priority.

   (Para. 76)

7. ***National Uniform Crime Statistics.*** The Australian Bureau of Statistics should take a far more assertive role in the development of uniform crime statistics. Progress towards national crime statistics is far too slow and promises to continue at the pace of the most unwilling State unless bold action is taken at the Federal level.

   (Para. 76)

8. The Australian Bureau of Statistics should, as a matter of priority, institute, collect and publish national and uniform statistics which permit the tracing of

Federal, State and Territorial cases through the criminal justice system from the point of reporting to their ultimate disposition.

(Para. 76)

9. If necessary the Australian Bureau of Statistics should seek specific legislative power to expedite the development of national crime statistics. The Bureau should lead this effort in close collaboration with the Australian Federal Police which aleady has an important responsibility to prepare national statistics on drug abuse.

(Para. 76)

10. ***Sentencing Practices.*** Statistical data about sentencing practices designed to be easily read and interpreted by those engaged in the sentencing process should be published regularly by the Sentencing Council (see rec. 21, 25). Judicial officers, prosecutors, defence counsel, accused persons and the general public should all have access to this information. It should be accurate, reliable and readable.

(Para. 196)

11. ***State Statistics.*** State officers collecting crime statistics should be encouraged to separate data on Federal and State offences and offenders, so that the separate responsibilities of the Commonwealth can be identified and addressed.

(Para. 167)

12. ***Law Enforcement Activities.*** The Australian Federal Police should give a high priority to presenting to Parliament accurate and detailed figures about its law enforcement activities.

(Para. 73)

13. ***Register of Federal Prisoners.*** At present there are few accurate and comprehensive records of Federal prisoners. The Attorney-General should take steps to ensure the immediate implementation of appropriate administrative arrangements by which his officers establish and maintain an accurate, accessible and comprehensive register of all Federal prisoners. This register should include information as to the State or Territorial institutions in which each Federal offender is being held. Arrangements for the supply and updating of this information should be made with relevant State authorities. The Federal register should in the short term be kept in a computerised format facilitating access by appropriate authorised personnel. The Attorney-General's Department should publish in its Annual Report figures providing information about Federal prisoners and their offences. These figures should include, but not be limited to, a description of the offence, age, sex, previous record, occupation, ethnic background and length of sentence imposed on prisoners. Comment should be included on major trends and the need for consequential action as appropriate.

(Para. 171)

14. ***Prison Census.*** To provide a comprehensive picture of the Australian prison population, and specifically of Federal prisoners, a census should be instituted of all persons held in custody in Australia. The census should be conducted annually by the Australian Bureau of Statistics in collaboration with Federal, State and Territorial criminal justice authorities.

(Para. 173)

15. ***Manual for Federal Prisoners.*** The Attorney-General should cause his officers to prepare a concise booklet or pamphlet explaining to all Federal prisoners the consequences of being convicted of a Federal offence. This explanation should be written in a form which takes account of the fact that a significant proportion of prisoners have limited linguistic and reading skills. It should pay particular attention to issues such as their privileges; parole, remission and deportation criteria; complaint procedures; and after-care assistance and facilities. Consideration should be given to the preparation of translations of the above material into major ethnic languages.

(Para. 172, 338, 341)

Uniform Treatment of Federal Offenders

16. ***Principle of Uniform Treatment.*** Commonwealth laws should implement the principle that offenders against the laws of the Commonwealth should be treated as uniformly as possible throughout Australia. Commonwealth laws and procedures which hinder the achievement of uniformity should be changed to bring them into accord with this principle even if doing so results, for a time, in differences in the way in which Commonwealth and local offenders are treated within a State or Territory jurisdiction.

(Para. 151)

17. ***Information about Sentencing Practices.*** One of the great barriers to the achievement of uniformity in the treatment of Federal offenders and indeed all offenders in Australia is the lack of adequate statistical and like information about sentencing practices, and differential treatment of classes of offenders. Enough information is available to establish a lack of uniformity in respect of Federal offenders. Steps to promote greater uniformity should be taken without waiting for definitive evidence of the precise measure of disuniformity. To suggest that the Commonwealth wait for such proof is a formula for inaction and should not be accepted.

(Para. 440)

18. ***Federal Intervention.*** (By majority) A series of specific Federal interventions should be initiated in the handling of Federal criminal matters in order to secure greater uniformity and consistency in the punishment and sentencing of persons convicted of offences against Commonwealth law. The Federal interventions proposed should evidence the Commonwealth's legitimate separate concern about its criminal justice responsibilities and should seek to restrict, as far as possible, disparities occuring in the treatment of Federal offenders convicted and sentenced in different parts of Australia.

(Para. 153, 154)

19. ***Federal Criminal Justice System.*** (By majority) To avoid as far as practicable strict bifurcation of Federal and State criminal justice systems and the problems of artificial gaps and overlaps between them as have occurred in the United States, the present institutional arrangements should be improved, not renounced. Any other course would be unjustified on the data available. The present system should not be abandoned before an attempt has been made to make it work more justly.

(Para. 153)

20. (By minority) The only effective way to ensure that offenders against a law of the Commonwealth are treated uniformly is to establish an entirely separate Federal criminal justice system with separate police, prosecution, court, correctional, probation and other personnel dealing with Federal offenders. This should be done and the present use of State institutions and personnel should be phased out.

(Para. 155)

Sentencing Council of Australia

21. ***Establishment.*** A new and authoritative body should be established by the Commonwealth with the mandate not only to gather information about the existing sentencing practices of the courts as they concern Federal offences and offenders but also to review these sentencing practices, and in the light of the review to issue guidelines for judicial officers involved in the sentencing of Federal offenders. The body which should conduct the review and disseminate guidelines, as well as perform a number of other functions, is the Sentencing Council of Australia. Such a national Sentencing Council should be established by legislation. There is undoubted power in the Commonwealth to establish such a Council and it should do so by legislation without delay.

(Para. 441)

22. ***Composition.*** The Sentencing Council should comprise nine members, five of whom should be judges. The Council will be concerned (at least initially) only with Federal criminal matters. It should reflect this in its membership by including at least two and possibly three Federal Court judges. The inclusion of experienced State and Territorial judges and magistrates would also be desirable in view of the continuing role envisaged for State courts in the trial and sentencing of Federal offenders. The remaining non-judicial members of the Council should be drawn from a variety of backgrounds with a particular interest and relevant knowledge of criminal justice matters. Reflecting the Federal interests of the Council, at least two of the non-judicial members should have Federal responsibilities. Criminal justice administrators, corrections officers (including probation officers), legal practitioners and academics should be among those qualified for appointment as non-judicial members of the Council. All members, at least initially, should serve part-time.

(Para. 444)

23. ***Administrative and Research Support.*** A small full-time administrative and research staff is required to provide appropriate support services and facilities for the Sentencing Council. The nature of the functions to be performed by the Council suggest that these support services could best be provided by staff attached to the Australian Institute of Criminology, which already has substantial relevant experience and responsibility for criminal justice research and training.

(Para. 444)

24. ***Functions.*** The functions of the Sentencing Council should be provided for in Commonwealth legislation and should include in particular:

- The review of present sentencing practices concerning Federal offences and offenders and the development of non-mandatory sentencing guidelines.
(Para. 185, 190, 446, 448)
- The review of present charging and prosecution practices as they affect Federal offences and offenders and the development of policy guidelines in regard to these practices, including plea negotiations affecting Federal offenders.
(Para. 105, 126, 451)
- The review of existing statutory penalties provided in Commonwealth law concerning Federal offences.
(Para. 194, 428, 452)
- The monitoring of minimum standards for the treatment of Federal prisoners and offenders in State and Territory institutions and otherwise.
(Para. 257, 453)
- The development of guidelines in relation to parole, including, if parole is abolished, the consequential changes to sentencing practices relating to Federal offenders.
(Para. 340, 350, 450)
- The provision of various services to judicial officers including the development of studies in sentencing and the supply of detailed statistics concerning sentencing practices.
(Para. 446)

25. ***Study of Sentencing Practices and Development of Guidelines.*** The Sentencing Council should initiate a study of sentencing practices throughout Australia affecting Federal offences and offenders. Based on this study, the Council should develop and disseminate to all judicial officers involved in the sentencing of Federal offenders in Australia detailed information on Federal criminal matters, including a set of broad guidelines indicating the range of penalties that might be applied for specific categories of Federal offences and offenders. These guidelines should not be prescriptive, but should be intended and designed to assist rather than coerce the exercise of judicial discretion.
(Para. 446)

26. ***Role of Appeal Court in Developing Guidelines.*** Where an appeal court in a particular case reaches the conclusion that the guidelines were inapplicable or that the range of sentences proposed in the guidelines was inappropriate for a particular type of offence or offender, it should say so and indicate an alternative policy. This would exert an influence to modify the guidelines and facilitate the application of the general guideline statements to particular circumstances at first instance.
(Para. 449)

27. ***Development of Minimum Standards.*** In its function of reviewing the treatment of convicted Federal offenders, the Sentencing Council should not be limited to monitoring imprisonment standards. It should also formulate and monitor standards for the non-custodial treatment of Federal offenders. In areas such as probation, day training centres, work release and community work orders the

Council should have as one of its functions ensuring that the quality of the treatment of Federal offenders meets appropriate publicly stated criteria on such matters as case loads, quality of supervision, respect for offender dignity and privacy and the availability of counselling and allied services.

(Para. 453)

Guiding Judicial Discretion in Sentencing: Imprisonment

28. ***Use of Imprisonment.*** Neither retributive, deterrent nor reformative principles of punishment in themselves justify the use of imprisonment, except, where in all the circumstances of the case, it is the only suitable punishment. Imprisonment should be used only in cases:
    - where it is necessary for the protection of society;
    - where a lesser penalty would depreciate the seriousness with which society views the defendant's particular crime; or
    - where lesser sanctions have been applied in the past and ignored by the offender.

    (Para. 67)

    There will continue to be a group of offenders for whom deprivation of liberty will be required. Realistically, the abolition of imprisonment as a form of punishment as advocated by some people, remains an objective unlikely to be fulfilled in the foreseeable future.

    (Para. 160)

29. ***A Punishment of 'Last Resort'.*** Neither the history of imprisonment nor contemporary research lends any support to the view that the use of imprisonment leads to the diminution of crime either by way of deterrence or rehabilitation. Imprisonment as a sanction should be used only as a punishment of the last resort. By the expression 'last resort', the Commission means that so far as is consistent with the protection of society, courts should not resort to the use of imprisonment as a punishment unless no other sanction can achieve the objectives contemplated by law. Commonwealth laws and practices should encourage and facilitate full consideration being given to punishments alternative to imprisonment. Commonwealth laws should be amended to provide a greater variety of non-custodial sentencing options. This is not to deny that in relation to some categories of offence imprisonment is necessary for the protection of society.

    (Para. 160)

30. ***De-institutionalisation of Punishment.*** Immediate measures should be adopted by the Commonwealth to implement, in proper cases, the principle that imprisonment is generally a punishment which is to be used exclusively where, in all the circumstances of the case, it is the only suitable form of punishment. In particular this should be done by:
    - provision of a legislative directive that imprisonment is a punishment of last resort;
    - provision of a wider range of non-custodial sentencing options;
    - provision of a more realistic range and gradation of statutory penalties for offences;

- provision of a single supervisory court to deal with Federal criminal appeals; and
- provision of sentencing guidelines based upon an analysis and review of present sentencing practices by a Sentencing Council.

(Para. 185)

31. ***Guidelines for Use of Imprisonment.*** A law of the Commonwealth should be enacted specifying the general criteria which a court sentencing a Federal offender shall take into account before imposing a sentence of imprisonment. Such criteria should include whether:
    - the offender has committed a serious offence endangering the life or personal security of others;
    - the offender has committed an offence of such a nature that the court is convinced that no other sanction is sufficiently strong to underline the seriousness of the harm done and a lesser sentence would depreciate the seriousness of the offence;
    - the offender is a persistent offender who has in the past been convicted of offences similar to that of which he is currently convicted and has failed to respond to lesser sanctions.

    (Para. 193)

32. ***Non-payment of Fines.*** Where a court is satisfied that an offender has wilfully and without just excuse failed to pay a fine imposed in respect of an offence against a law of the Commonwealth, the court may order that the offender be imprisoned. In all other cases, the court should have the power to extend the time specified for the payment of the fine, to adjust the level of the fine, or award punishment other than imprisonment as is appropriate in the circumstances of the case (see rec. 58, 59).

    (Para. 180)

33. Apart from general criteria, more detailed guidelines are required if the use of imprisonment in Federal cases is to be limited to appropriate circumstances and put on a rational, principled, consistent and uniform basis. Such guidelines should be developed by the Sentencing Council (see rec. 24).

    (Para. 190)

34. The so called 'short, sharp shock' use of imprisonment should be discouraged by Commonwealth law.

    (Para. 377)

35. ***Reasons for Imposing Prison Sentences.*** A law of the Commonwealth should be enacted providing that where a court sentences a person convicted of a Federal offence to imprisonment the court shall state and record the reason or reasons for its opinion that no other sentence is appropriate.

    (Para. 192)

36. ***Information on Use of Imprisonment.*** The extent to which imprisonment is used at present as a punishment for convicted Federal offenders and the precise areas for de-institutionalisation of punishment are unclear because of the lack of detailed crime statistics, and empirical research in Australia. Separate and general data

should be collected and maintained on the disposition of Federal offences in State and Territorial courts.

(Para. 167)

37. ***Costs of Imprisonment.*** The Attorney-General should call the economic costs of imprisonment to public attention and, where appropriate, to the attention of Parliament when laws providing for imprisonment are proposed. Parliamentary Counsel should call the costs of imprisonment to the attention of Departments instructing the preparation of legislation containing reference to imprisonment. The inclusion of alternatives, specifically appropriate to the unlawful conduct, should always be considered in the provision of sanctions in Federal legislation.

(Para. 182)

38. ***Police Lock-ups.*** The practice of the payment of a per capita meal allowance for prisoners held in police lock-ups is wrong in principle and open to abuse. It should therefore be terminated and alternative procedures adopted which contain no inducement or no appearance of inducement to increase the numbers held in lock-up custody. The Attorney-General should initiate discussions with State and Territory Attorneys-General to ensure that alternative procedures are adopted in respect of Federal prisoners and prisoners otherwise the special concern of the Commonwealth.

(Para 176)

Guiding Judicial Discretion in Sentencing: Non-custodial Sentencing Options

39. ***Consolidation of Sentencing Provisions.*** It is important that the law governing crime and punishment should be clear, precise, widely available and known. There is an urgent need to simplify the Commonwealth's legislation dealing with sentencing and punishment of persons convicted of offences. All general provisions on sentencing and punishment should be collected in a single Commonwealth statute.

(Para. 397)

40. ***Availability of Non-custodial Sentences.*** The Crimes Act 1914 (Cwlth) should be amended as a matter of priority to make provision for State and Territorial courts, when sentencing a person convicted of an offence against a law of the Commonwealth, to have the power to impose the same range of non-custodial sentences on the offender as that currently existing in the jurisdiction for those who offend against non-Federal laws. State and Territorial jurisdictions provide for work fine options, community service, day training and attendance centres and similar options, which are not presently available under Commonwealth law. These alternatives to imprisonment should become available for use by courts sentencing offenders against laws of the Commonwealth.

(Para. 186, 351, 380, 395)

41. ***Discharge Orders without Conviction.*** Whilst the power to discharge without a conviction would be rarely used by courts other than those of summary jurisdiction, such power should not be limited to the lower courts. Section 19B of the Crimes Act 1914 (Cwlth) should be amended to allow for all courts sentencing

convicted Federal offenders to have the power to discharge an offender without a conviction on the grounds or in the circumstances mentioned in the section.

(Para. 357)

42. ***Length of Order.*** Section 19B(d) of the Crimes Act 1914 (Cwlth) should be amended to provide for a maximum period of 12 months in the case of a discharge order imposed on an offender without proceeding to a conviction.

(Para. 362)

43. ***Appeals.*** Section 19B(d) of the Crimes Act 1914 (Cwlth) should be amended to provide in clear terms that the offender has a right of appeal against a discharge order imposed without proceeding to a conviction.

(Para. 362)

44. ***Variations of Orders.*** A Federal offender discharged without conviction should have the power himself to apply to the court to have a term or condition of a discharge order varied, or to have the order removed, on the ground that it is no longer appropriate to the circumstances of his case. The power should not be confined as at present to Commonwealth officers.

(Para. 362)

45. ***Discharge Orders Following Conviction.*** The provisions of s.20 of the Crimes Act 1914 (Cwlth) should be amended to permit different conditions to be associated with a discharge order requiring, for example, good conduct, regular reporting, permanent residence, and the performance of community service. The court should be required to explain in clear language to an offender receiving such a disposition the precise nature of the obligations imposed upon him. Federal offenders should also be provided with a written copy of the terms of the court's disposition.

(Para. 366)

46. ***Length of Order.*** A period of two years is sufficient maximum time for discharge orders following conviction including those involving supervision of an offender. The provision of a maximum period is preferable to the existing unlimited discretion given to courts when sentencing Federal offenders to set any time period they wish in regard to a discharge order following conviction. Section 20 of the Crimes Act 1914 (Cwlth) should be amended to provide for such a maximum period.

(Para. 369)

47. ***Appeals.*** The provisions of s.20 of the Crimes Act 1914 (Cwlth) should be amended to make it clear that a discharge order is a 'sentence' for the purposes of appeal. It should be subject to appeal. The split sentence provision of s.20(1) should be removed.

(Para. 371, 377)

48. ***Variation of Orders.*** The *de facto* termination of discharge orders by the probation service should be given statutory recognition and regulated. Where an offender is under the supervision of the probation service, that service should be able by a summary procedure to make application to the court which originally imposed the discharge order to have it terminated at an earlier date than that specified or varied in a particular way. As in the case of discharge orders made

without proceeding to conviction, an offender should also be able to apply to a court to have a term or condition of a discharge order following conviction varied, or have the order removed, on the ground that it is no longer appropriate to the circumstances of the case.

(Para. 370)

49. ***Discharge Orders and Restitution.*** The emphasis in the terms and conditions of a discharge order with or without conviction should be upon restitution by the offender to the victim. Section 21B of the Crimes Act 1914 (Cwlth) should be amended to ensure that in every case where it is within the means of the offender and the circumstances of the offence warrant it, the court should impose conditions requiring that the offender make restitution to the victim of the offence.

(Para. 361)

50. ***Selection of Appropriate Conditions.*** Courts dealing with convicted Federal offenders should be required by law to consider the use of the least onerous conditions, reserving more severe conditions for appropriate offences and offenders. Probation, institutional and supervisory conditions, which are obviously more onerous upon the offender and costly to the community, should be used only for offenders who will benefit from this type of disposition or whose conduct suggests that such a condition is necessary to protect society.

(Para. 368)

51. ***Terms and Conditions of Discharge Orders.*** Sections 19B(d) and 20 of the Crimes Act 1914 (Cwlth) should be amended so that the terms and conditions of discharge orders are spelt out with greater specificity and in greater detail. The terms and conditions should be capable of being readily understood by a typical offender and the consequences of particular breach should be made plain.

(Para. 360,365)

52. ***Restitution Orders.*** Courts in sentencing Federal offenders should give priority to the provision of restitution for the victims of crime. Where a choice exists between the provision of restitution and the payment of a fine, courts should be encouraged by law to favour and facilitate the payment of restitution. Administration of restitution payments ordered to be paid by a Federal offender should be subject to similar rules and procedures as the payment of other financial penalties including those in respect of default in payment of fines.

(Para. 387)

53. ***Deferred Sentences.*** The Crimes Act 1914 (Cwlth) should be amended to include a power in the court to defer sentences to a future time in terms equivalent to the common law power (which at present goes beyond the existing discharge provisions of the Act).

(Para. 375)

54. ***Suspended Sentences.*** Courts should possess clear and explicit power to suspend sentences of imprisonment imposed on Federal offenders. A provision similar to s.22 of the Powers of Criminal Courts Act 1973 (U.K.) relating to suspended sentences of imprisonment should be included in Federal sentencing legislation.

(Para. 388, 389)

55. ***Community Service Orders.*** Any money paid or benefits accrued in respect of community service ordered to be served by a Federal offender should not create a liability for taxation. The Commonwealth should make this position clear to State authorities and if necessary amend the Income Tax Assessment Act 1936 (Cwlth). The Attorney-General should in consultation with the Treasurer clarify this matter at an early date so that doubts about the liability to taxation do not impede the adoption by the States of desirable community service and work option schemes which may be made available in due course to Federal offenders.

(Para. 380)

56. ***Fines.*** As a long term aim, a day fine system, suitably modified to meet the needs and conditions of Australian society, should be introduced for the assessment of fines to be imposed on convicted Federal offenders. Pending the development of a day fine system, Federal legislation should be enacted requiring a court, when sentencing a Federal offender, to make an assessment of an offender's means to pay, whenever a fine is contemplated as a possible penalty.

(Para. 384, 385)

57. ***Means Inquiry.*** A standard check list of basic information, such as income, assets and liabilities, should be prepared for use in assessing the offender's means. The check list should be given by representatives of the Commonwealth to the offender, his defence counsel, where the offender is legally represented, or to a clerk of the court to complete. The completed list should be available to the court imposing a fine. If the matter is dealt with by way of summons and the offender intends to plead guilty without appearing in person, steps should be taken to incorporate the check list in the summons form.

(Para. 385)

58. ***Non-Payment of Fines.*** For offences against Commonwealth law, imprisonment for the non-payment of fines should be confined to those who wilfully and without just excuse disobey a court order to pay such a penalty. In other cases, methods which are alternative to imprisonment should be found to enforce the fine. Where a person sentenced to pay a fine for an offence against Commonwealth law defaults in such payment he should be brought before the court to explain his failure. The court should conduct a fresh assessment of the offender's situation where the default has arisen as a result of changes in the offender's ability to pay occurring after the original fine was imposed. Such procedures should be provided for in Commonwealth legislation. Automatic imprisonment for non-payment of fines imposed on Federal offenders should cease.

(Para. 380, 386)

59. ***Variation of Amount and Time to Pay.*** A procedure should be available to permit a Federal offender sentenced to pay a fine to apply to the court for a variation of the original penalty or the time to pay if his financial circumstances have so changed that he is no longer able to pay the fine imposed.

(Para. 386)

Guiding Judicial Discretion in Sentencing: Machinery to Achieve Uniformity

60. ***General Approach.*** Greater guidance should be given to judicial officers sentencing convicted Federal offenders. A more scientific and principled approach should be adopted which retains the best elements of judicial independence and discretion but incorporates institutions, information and procedures which encourage rationality, consistency, publicity and general uniformity of punishment for like offences.

(Para. 402)

61. ***Three Targets of Reform.*** Three broad areas of reform are required to guide judicial discretion in a way which will lead to a reduction in disparities in the sentencing of offenders convicted of offences against the laws of the Commonwealth whilst not removing a proper degree of judicial discretion in sentencing. These are:
    - the provision of more appropriate and consistent penalties in legislation;
    - the provision of a new right of appeal to the Federal Court of Australia in Federal criminal matters; and
    - the establishment of a Sentencing Council to review existing sentencing practices and to publish sentencing guidelines and statistical and other data for the guidance of judicial officers who sentence convicted Federal offenders in Australia (see rec. 21 above).

(Para. 408)

62. ***Revision of Statutory Penalties.*** The entire usage and structure of the penalties provided under Commonwealth laws which create offences should be reviewed. This task should be undertaken by the Sentencing Council. It should include review of the maximum penalties of imprisonment provided by Commonwealth laws to bring these penalties more into accord with modern conditions and with the normal sentencing practices of the courts. A comprehensive review of the penalties provided under Commonwealth legislation is an urgent necessity and should be carried out without delay to remove the inconsistencies and disparities in Commonwealth legislation.

(Para. 194, 414)

63. The Parliament should give clearer and more principled and consistent guidance to sentencing by judicial officers. A law of the Commonwealth should be enacted which reconciles both the consideration of equalising the impact of fines (for example, by units such as 'day fines') with the provision of *maxima* which are calculated according to a scale which reflects the relative gravity of the criminal conduct. In particular, legislation should specify not only the respective role of fines and imprisonment but also indicate where other non-custodial sanctions fit within the available range of sentencing options. Proposing a principled approach to the ratio between fines and imprisonment should be a task for the Sentencing Council.

(Para. 428)

64. ***Mandatory Sentences.*** Whilst comprehensive reforms should be made to the penalty provisions of Commonwealth laws dealing with offences, other

contemporary moves towards increased and detailed legislative involvement in the sentencing process should not be followed in Australia. In particular, the use of mandatory penalties should not be adopted as a regular procedure in penalty provisions of the laws of the Commonwealth. Their use should be confined to the most exceptional cases and even then be under constant revision. In so far as Commonwealth Acts provide mandatory sentences they should be reviewed by the Sentencing Council and, where appropriate, alternative penalties should be proposed.

(Para. 429)

65. ***Appeals to the Federal Court of Australia.*** If uniform and consistent national principles of punishment for Federal offences and offenders are to be attained by the traditional method of appeal court review there should be a court, below the High Court of Australia, which reviews Federal sentences. This court should be the Federal Court of Australia, which already has a limited criminal jurisdiction in specialised areas and more generally hears appeals against the conviction and sentence from Territorial courts. The Federal Court should also hear appeals brought against conviction and sentence from decisions of the various State Supreme Courts and intermediate courts in the case of persons convicted and sentenced of offences against laws of the Commonwealth.

(Para. 435)

66. ***Power to Transfer to State Courts.*** The Federal Court should be empowered to transfer a case to a State Supreme Court if it considers that the case would more appropriately and conveniently be dealt with by the State Court. The exercise of such a transfer would ensure avoidance of unwarranted multiple hearings or any abuse of the appeals process, particularly in the case of conviction for both Federal and State offences.

(Para. 439)

67. ***Leave to Appeal.*** Appeals to the Federal Court of Australia against conviction or sentence in Federal criminal matters should, for a period of five years, be as of right and should not require the leave or special leave of that Court. The need for leave or special leave of the Federal Court of Australia in such cases should be reviewed after 5 years in the light of experience, the number of criminal and sentencing appeals and the perceived growth in consistency of sentencing of Federal offenders.

(para. 436)

68. ***Legal Aid.*** Legal aid should be available in all appropriate cases and in particular in the early days of the operation of the new appeal system for Federal criminal matters, so that the Court may have the assistance of experienced counsel in developing quickly and clearly the principles to be applied by the courts throughout Australia in the sentencing of Federal offenders.

(Para. 438)

69. ***Establishment of Guidelines.*** The Federal Court should not only set guidelines of principle but should also ensure that the principles are applied reasonably and consistently to produce appropriate and just sentences for Federal offenders, wherever they may be convicted in any part of Australia. Legislation should be

enacted by the Commonwealth to make plain the Court's novel and wider function in the matter of Federal criminal and sentencing appeals.

(Para. 437)

70. ***Discretion to Alter Sentence.*** Section 28 of the Federal Court of Australia Act 1976 (Cwlth) should be amended to provide in effect that, if the court is of the opinion that some other sentence (whether more or less severe) is warranted in law and should have been passed, it shall have an unfettered discretion to pass the sentence which it believes to be the appropriate one. The section should also specify that not only an error of principle, or mistake of fact, will give the court on appeal power to alter the sentence but also:

> [t]he case where the trial judge has applied the correct principle, enunciated it accurately, and taken all proper matters into account, but nevertheless arrived at a result in the opinion of the court on appeal is wrong. (The Mitchell Committee, First Report, 36).

(Para. 437)

Prosecution of Federal Offenders

71. ***Attorney-General's Prosecution Guidelines.*** The Attorney-General should issue guidelines to Federal prosecutors establishing the lawful policy to be adopted by them in exercising their discretion whether or not to initiate criminal proceedings under Commonwealth statutes, and in reviewing and settling charges.

(Para. 103)

72. ***Publication of Guidelines.*** Guidelines for Federal prosecutors should be prepared and declared publicly so that they are available to be reviewed and criticised where appropriate. Rules which so vitally affect decisions governing the administration of criminal justice should no longer be secret and exempt from informed critical comment.

(Para. 107)

73. ***Guidelines for Other Federal Prosecutors.*** The development of guidelines similar to those which it is proposed should be published by the Attorney-General should also be prepared and published by other Commonwealth Departments and agencies where public officials are responsible for initiating or approving the initiation of criminal proceedings.

(Para. 104)

74. ***Restructuring the Charging Process.*** A restructuring of the charging and prosecution process within the Crown Solicitor's office and other Federal departments is required. Before firm proposals could be made for restructuring this process, a sustained and unrestricted examination of current practice is necessary.

(Para. 102)

75. ***Sentencing Council and Judicial Review of Prosecution Discretions.*** The Sentencing Council, which would include among its members judicial officers, and a prosecutor, should assume the task of collecting relevant data and developing policy guidelines for Federal prosecutors. It should propose the restructuring of the Federal charging and prosecution process. The Council should also make

recommendations on the extent to which, if at all, there should be specific judicial review of the exercise of a prosecutor's discretion, as for example by the application to it of the Administrative Decisions (Judicial Review) Act 1977 (Cwlth) or of like principles to those contained in the Act. Before firm proposals on judicial review of the exercise of prosecution discretion can be made, there is a need to secure far more information about the way in which existing prosecutorial decisions are made.

(Para. 105, 109)

Plea Bargaining

76. ***Prohibition or Regulation.*** It would be unrealistic and possibly undesirable at this time to recommend the total prohibition of plea bargaining (where the accused enters an agreement with the representative of the Crown, the police or the court to plead in return for the promise of some benefit). Nevertheless, the practice of plea bargaining as it affects Federal offenders should as a minimum be made far more visible and principled than it is at present. The manner in which these objectives can be achieved requires further examination. More knowledge is needed about the details of the existing practice of plea bargaining in Australia and especially those aspects which relate to police charging procedures.

(Para. 123)

77. ***Examination by Sentencing Council.*** The responsibility for gathering more data on the incidence of plea bargaining with Federal offenders and their representatives and the responsibility for proposing appropriate open procedures should be amongst the functions performed by the Sentencing Council. The Council should be guided by the principle that agreements made between the prosecution and defence should not remain secret 'deals' struck between them. These agreements (if any) should be recorded in open court thereby allowing the possibility of subsequent review by a judicial officer. If this practice cannot be secured by administrative arrangement, legislation should require it.

(Para. 125, 126)

Prison Conditions

78. ***The Commonwealth's Responsibility.*** The conditions under which some Federal prisoners are being kept in Australia fall below acceptable standards. In some cases, they fall well below the United Nations' Standard Minimum Rules for the Treatment of Prisoners and infringe relevant Articles in the International Covenant on Civil and Political Rights. Although by no means universal or even necessarily typical, the very existence of such conditions is a rebuke to a civilised, confident and relatively prosperous country. It is not necessary that the unsatisfactory conditions be universal or typical for reform measures to be required. That these conditions exist at all, in significant degree, suggests that action is needed by the Commonwealth. This action should ensure that prisoners who are the Commonwealth's responsibility are not kept in such conditions following conviction of a Federal offence and sentence to imprisonment. (Unanimously) The Commonwealth should not continue to ignore its clear and separate constitutional responsibilities for the conditions under which Federal

prisoners are held and the way in which Federal offenders are dealt with generally. To do so is highly unacceptable especially because of the Commonwealth's position as the international representative of Australia when issues such as these are considered in the international community.

(Para. 206, 250)

79. ***Minimum Standards of Treatment.*** The Commonwealth should ensure that Federal prisoners, even those held in State or Territory prisons, are not subjected to uncivilised or otherwise unacceptable standards of treatment or conditions of detention. The Commonwealth has a clear responsibility for the treatment of persons convicted of offences against its laws. Such responsibility should not be passed off to other governments but should be recognised and followed by action to the extent of the Commonwealth's constitutional power.

(Para. 241, 242)

80. ***Promotion of Australian Guidelines.*** The Commonwealth should actively support as a matter of urgency the Australian Institute of Criminology's project for the development of Australian Guidelines for the treatment of prisoners. In respect of Federal prisoners, the Attorney-General should take appropriate steps to ensure that the Australian Guidelines, when finalised, are immediately implemented for those imprisoned for offences against Federal law.

(Para. 242)

81. The Commonwealth's approach to the provision and enforcement of minimum standards of treatment and minimum conditions for Federal prisoners should be guided, at least, by the following principles:
    - The punishment associated with imprisonment is removal from the community and loss of liberty. There is no justification to deny to prisoners minimum civilised living conditions.
    - Offenders sentenced to imprisonment are entitled to humane conditions and should be treated with as much dignity as incarceration permits.

(Para. 239, 241)

82. ***Uniform State Implementation.*** In the interests of promoting greater uniformity in the treatment of Federal prisoners in Australia all States should be encouraged to bring conditions in their prisons into line with the minimum standards. The Commonwealth should lend its influence and persuasion to support this end.

(Para. 244)

83. ***Commonwealth Action.*** The Commonwealth should, without delay, arrange for an inquiry to be held to ascertain the needs of the several States to bring the prisons in which Federal prisoners are held into line with the minimum standards for Australian prisons. The inquiry should be conducted by or under the direction of the Sentencing Council as proposed below and should be one of its first responsibilities. It should report on the costs of improving State and Territory prison facilities so that they reach the minimum standards. Upon receipt of the report the Commonwealth should consult the States to seek their support for a program of Federal grants in aid specifically to upgrade prison conditions in a uniform fashion throughout Australia.

(Para. 247, 249, 251)

84. In default of prompt action, by which is meant action within the space of no more than five years, to bring the State prisons up to the minimum standards for Australian prisons the Commonwealth should enact legislation requiring that Federal prisoners be held in conditions which comply with the adopted minimum standards. The Commonwealth should in such legislation prescribe certain minimum standards for the treatment of Federal prisoners.

(Para. 249)

85. ***Independent Review of Prison Conditions.*** Apart from the urgent need to upgrade prison conditions in Australia there will be a need for an authority to provide continuing scrutiny of prison conditions and to report to Parliament on compliance with the Australian Guidelines. Such authority should be independent of prison administrators in order to command the respect of prisoners, corrections authorities and the community generally. It is appropriate that the Sentencing Council perform this task.

(Para. 252, 257)

86. The Sentencing Council should regularly inspect conditions in prisons in which Federal offenders are held. It should be required to report to the Attorney-General and Parliament on a regular basis concerning the prison conditions as they affect Federal prisoners. The Council should inform the Attorney-General of the current state of prison conditions and point to areas in which specific improvements should be made to bring conditions in which Federal prisoners are held into line with the agreed minimum standards for Australian prisons.

(Para. 257)

87. ***Police Lock-ups.*** There is a clear and immediate need to upgrade the conditions in police lock-ups in remote areas of Australia.

(Para. 177)

Prisoner Grievance Mechanisms

88. ***Independent Complaint Mechanism.*** The handling of the complaints of Federal prisoners concerning prison administration should not be undertaken by authorities who are intimately involved in the day-to-day administration of prisons and who may be the very people complained of.

(Para. 265)

89. ***Jurisdiction of Ombudsmen.*** Complaints by Federal prisoners concerning administrative actions undertaken by Commonwealth Departments and officials should continue to be handled by the Commonwealth Ombudsman. Their complaints concerning State prison management should be handled by State Ombudsmen while Federal prisoners remain in State prisons.

(Para. 275)

90. ***Transfer of Complaints.*** Where the Commonwealth Ombudsman receives a complaint from a Federal prisoner concerning prison administration, he should continue to refer the complaint to the relevant State Ombudsman. Likewise, State Ombudsmen should refer complaints from prisoners concerning actions

undertaken by Commonwealth Departments and officers to the Commonwealth Ombudsman. In both cases, the consent of the prisoner should be obtained.

(Para. 275)

91. ***Pre-conditions for Complaints to Ombudsmen.*** It should not be necessary for Federal prisoners to lodge their complaints in the first instance with grievance resolution authorities within the prison before approaching the Ombudsman, particularly in cases where the complaints involve actions undertaken by named prison officers.

(Para. 277)

92. ***Confidentiality.*** In States where a prisoner does not have the right by statute to communicate with the Ombudsman by means of a sealed envelope, steps should be taken to secure this right for Federal prisoners. As an immediate measure, the Commonwealth Ombudsman should discuss with his State counterparts appropriate administrative arrangements to secure the right of protected correspondence with the Ombudsman for all Federal prisoners in Australia, wherever detained. As a practical interim measure, all Federal prisoners should be told of their right to correspond by means of a sealed envelope with the Commonwealth Ombudsman who can forward their complaints to the relevant State Ombudsman.

(Para. 279)

93. ***Specialisation by Ombudsmen.*** It would be preferable for complaints by Federal prisoners concerning prison administration to be handled by a specialist within the Ombudsman's office. If economic or other considerations prevent the appointment of a separate Federal Corrections Ombudsman, complaints by prisoners concerning prison administration and related matters should be handled by a specifically nominated officer or section in the Ombudsman's office. Steps should be taken to inform Federal prisoners about the existence of such specifically nominated person(s).

(Para. 270)

94. ***Personal Handling of Complaints.*** Complaints by Federal prisoners concerning prison administration should be investigated personally by an identified officer of the relevant Ombudsman's office and not conducted by officers of the department responsible for the administrative action complained of.

(Para. 278)

95. ***Resolution of Complaints.*** Generally, in respect of a prisoner complaint, the views of the Ombudsman will be accepted by the departmental head. But they may disagree. Where there is disagreement, the Ombudsman, as an independent and external guardian of rights, should have a reserve power to conduct his own inquiry and investigation and to require appropriate proceedings to be instituted. Implementation of these proposals would require amendment of current Ombudsmen Acts both Commonwealth and State.

(Para. 280)

96. ***Consultation with the States.*** The reforms proposed for the handling of the complaints of Federal prisoners should be discussed between relevant officers of the Commonwealth and States. The Commonwealth Minister administering the

Ombudsman Act 1976 (Cwlth) should cause discussion with State officers to be initiated.

(Para. 276)

97. ***Prisoners' Access to Courts.*** There should be no absolute procedural impediment in the way of access by Federal prisoners to the courts in respect of claimed breaches of the law. Commonwealth legislation should be enacted to remove doubts about such rights of access and to clarify the consequential arrangements necessary concerning legal aid, access to counsel, handling of Federal prisoners' property and the like. Legislation should repeal the common law rules of attainder, forfeiture and corruption of the blood and like legal restrictions as they affect Federal prisoners initiating civil proceedings anywhere in Australia. The legislation should also contain consequential provisions concerning the commencement of legal actions and access to legal advice.

(Para. 286, 287)

Parole Abolition

98. ***Unsatisfactory Nature of Federal Parole.*** Of all the unsatisfactory Australian systems of parole, that for convicted Federal offenders is the most unsatisfactory. Parole for Federal prisoners should be abolished. It should be replaced by a more rational, uniform, determinate and fair system for the release of Federal prisoners which would apply to Federal offenders wherever convicted throughout Australia.

(Para. 295, 312, 342, 344, 350)

99. ***Adjustment to Prison Sentences.*** The abolition of Federal parole should not be permitted to adversely affect offenders currently imprisoned for offences arising from Commonwealth laws. Fair transitional provisions should be devised. The length of actual prison sentences imposed on Federal offenders should be reduced by appropriate margins which take account of the abolition of parole. To avoid unduly harsh prison sentences being imposed on Commonwealth offenders, parole should not be abolished until appropriate sentencing guidelines, which take account of the impact of parole abolition, have been developed by the Sentencing Council for application by courts sentencing Federal offenders.

(Para. 345, 350)

100. ***Explaining Adjustments to Lengths of Prison Sentences.*** Adjustments to the length of Federal prison sentences would need to be carefully explained to judicial officers, prisoners and the community. It should be emphasised quite frankly that the adjustments are being made only to compensate for the abolition of parole. In practical terms, the difficulties of adjustment to the new system could be reduced by distributing information to all judicial officers engaged in sentencing explaining the changes, together with additional information on the review of sentences by the Federal Court of Australia.

(Para. 346, 347)

101. ***Standardisation of Remissions.*** To maintain greater uniformity in the treatment of Federal offenders, remissions for Federal prisoners should be standardised throughout Australia. Federal prisoners should be granted remissions amounting

to one third of the length of their sentence. They should be able to earn additional remissions for good behaviour and industry. Federal prisoners should remain liable to lose remissions for breaches of prison rules. Decisions relating to loss of remissions by Federal prisoners should be reviewable by a single judge of the Federal Court of Australia according to defined criteria set out in appropriate Commonwealth legislation.

(Para. 344)

102. ***Release of Prisoners.*** A Federal prisoner should be released on completion of the sentence imposed by the court, less remissions. His release into the community should then be unconditional.

(Para. 344)

103. ***Supervision and After-care.*** As compulsory supervision is undesirable, parole services in each State should make special assistance and counselling available to ex-Federal prisoners only at their request.

(Para. 349)

104. ***Aggregation of Federal and State Sentences.*** If Federal parole were abolished but not State parole the Commonwealth Prisoners Act 1967 (Cwlth) should be amended to make it plain how Commonwealth and State sentences of imprisonment are to be aggregated in the case of a prisoner serving a sentence of imprisonment for both Federal and State offences.

(Para. 322)

Parole Reform if Parole is not Abolished

105. ***Aim of Parole Reform.*** If parole is not abolished, or pending a decision to abolish parole, urgent reforms are required to Federal parole. The aim of parole reform should be to make the Commonwealth system of parole more uniform, simple, open and fair.

(Para. 312)

106. ***Reforms not Recommended.*** Three forms of parole reform are not recommended. First 'judicial parole' i.e., parole decided by the sentencing judge, is not recommended. Secondly, parole decisions in relation to persons convicted of offences under Commonwealth law should not be handed over to State or Territorial Parole Boards. Thirdly, the costs of setting up and administering a Federal parole service are not justified by the number of Federal parolees and the very real doubts whether the expenditure involved would represent a useful investment. If, contrary to this view, a Federal parole service was formed, it would be realistic to include among its functions:

- direction of Federal offenders convicted and sentenced to community work;
- assistance to victims of Federal and Territory crime;
- supervision of probationers; and
- involvement in other related welfare work.

(Para. 330, 335, 337)

107. ***Uniform Application of Commonwealth Prisoners Act.*** The Commonwealth Prisoners Act 1967 (Cwlth) should be amended to clarify the duties of the court and the rights of the prisoner. Greater uniformity should be achieved (without

disturbing the trial of Federal offenders in State courts) by amending the terms of the Commonwealth Prisoners Act 1967 (Cwlth) in such a way that the Act applies to Federal offenders in all States and establishes a single and consistent requirement for sentencing and paroling of Federal offenders wherever convicted in Australia.

(Para. 321, 333)

108. ***Federal and State Sentences of Imprisonment.*** The provisions of the Commonwealth Prisoners Act 1967 (Cwlth) are specifically inadequate to deal with offenders convicted of offences arising under laws of both the Commonwealth and the States. The courts should be given more flexible powers so that Commonwealth and State sentences of imprisonment can be related to one another in a proper fashion. The Commonwealth Prisoners Act 1967 (Cwlth) should be amended to this end.

(Para. 332)

109. Where an offender is sentenced to more than one term of imprisonment for State and Commonwealth offences, separate non-parole periods should be required in respect of each sentence. The Commonwealth Prisoners Act 1967 (Cwlth) should be amended to permit a court to aggregate these periods where this is appropriate.

(Para. 324)

110. The Commonwealth Prisoners Act 1967 (Cwlth) should be amended to allow a State or Territory court, in respect of a Federal prisoner, to add a State or Territory prison sentence to that already being served for a Commonwealth offence.

(Para. 323)

111. ***Non-parole Periods.*** A standard non-parole period should be prescribed by the Commonwealth Prisoners Act 1967 (Cwlth) for Federal offenders wherever imprisoned in Australia. This period should be set at half the length of the prison sentence imposed by the court. Provision should be made in the Act to allow a court to vary the prescribed period in an exceptional case. Where the court considers it appropriate to vary the standard period, it should give its reasons in full.

(Para. 336, 341)

112. ***Refusal of Parole.*** Where a parole decision adverse to the prisoner is made, the prisoner should be given, on request, the reasons for the decision, a statement of the material facts found and a reference to evidence relied on.

(Para. 338)

113. ***Prisoner's Access to Records.*** Federal prisoners should have a general right of access to all reports and information considered by the Commonwealth parole authorities in connection with their application for parole, subject to exceptions specifically provided for by law such as a substantial ground of overriding public policy which warrants denial of access in a particular case.

(Para. 338, 341)

114. ***Parole Proceedings—Prisoners' Participation.*** A Federal prisoner should be given a reasonable opportunity to present his case and to challenge any reports and information adverse to him and the prisoner should be entitled to be represented,

including by legal counsel, at the parole hearing, particularly where the parole authority is inclined to refuse parole.

(Para. 338, 341)

115. ***Standard Remissions.*** Regardless of whether parole is abolished, a period of one third the length of a sentence of imprisonment imposed should be prescribed as the standard general remission for all Federal prisoners. Federal prisoners should be able to earn remissions for good behaviour and industry and should remain liable to lose remissions for breaches of the prison rules. However, decisions relating to loss of remissions should be reviewable by a single judge of the Federal Court of Australia according to defined criteria set out in appropriate Commonwealth legislation.

(Para. 336, 341)

116. ***Nomination of Commonwealth Officers.*** The Attorney-General should nominate an identified Commonwealth officer (or officers) in each State to assist Federal prisoners with matters relating to parole or other rights, privileges or duties relating to their sentence. This officer should counsel Federal offenders following their release from prison if advice is requested.

(Para. 334)

117. ***Guidelines for Parole.*** If parole is to survive for Federal offenders, even temporarily, the development of guidelines for use by courts, parole authorities and others is an urgent necessity. If guidelines for parole were prescribed in relation to Commonwealth parole decisions, it would be desirable for Federal prisoners to be informed about them so that they may be aware of the grounds on which parole decisions are to be made. The guidelines for Commonwealth parole decisions should be drawn up by or under the direction and with the approval of the Sentencing Council.

(Para. 339)

118. ***Commonwealth Parole Board.*** A Commonwealth Parole Board should be established as the Federal parole authority to hear applications for and relating to parole concerning Federal prisoners. This Board should be itinerant and should take over from Commonwealth parole authorities their present parole responsibilities.

(Para. 338, 341)

119. ***Revocation of Parole.*** Where parole for a Federal offender is revoked and the offender is returned to prison, the period during which the offender was on parole and complied with the conditions of parole should be considered in determining the length of time the offender is to remain in prison.

(Para. 327, 341)

120. ***Review Procedures.*** Review of all decisions concerning parole for Federal offenders (such as, setting or not setting a non-parole period, refusal of parole release and revocation of parole) should be available to Federal prisoners in the Federal Court of Australia, upon criteria and according to procedures established by law.

(Para. 337, 341)

Compensating Victims of Crime

121. ***A New General Emphasis.*** There should be a new and general emphasis in Commonwealth law concerning the imposition of punishment upon attempting to compensate more adequately the victims of crime (both by a greater use of compensation orders issued by sentencing courts ordering offenders to compensate their victims and by the establishment of a publicly funded criminal injuries compensation scheme) and to provide restitution for their loss.

(Para. 361)

122. ***Scope of Compensation: Violent Crime.*** As a long term aim, compensation should be provided for victims of all Federal crime, violent and non violent. However, for the present, the proposed Federal victim compensation program should be limited to apply only in respect of persons who die or suffer bodily harm as a result of offences committed against a law of the Commonwealth, the A.C.T. and the external Territories consequent upon breach of Commonwealth laws extending to such Territories. To provide for such persons, a Federal crime victim compensation scheme should be established. This scheme should be provided for in an Act of the Parliament of the Commonwealth, which should be in the form proposed in Appendix F to this report.

(Para. 466, 481)

123. ***National Compensation and Rehabilitation Program.*** In terms of desirable legal concept and overall social justice, victims of violent crime in all jurisdictions in Australia should ideally and logically be compensated within the framework of a national accident compensation and rehabilitation program. However, the introduction of a Federal victim compensation scheme should not be delayed pending the introduction of such a national compensation program.

(Para. 462)

124. ***Crimes Compensation Tribunal.*** A Commonwealth Crimes Compensation Tribunal should be established. Because of the small workload likely to be experienced by a tribunal reviewing claims by victims of Federal and Territory crimes, an entirely new body and staff to perform this function would not be required. Instead, claims should be made to a tribunal, constituted by a person who for the time being constitutes a Commonwealth Employees' Compensation Tribunal. There should be a right of review of the decisions of the Tribunal in the Administrative Appeals Tribunal. There should be an appeal to the Federal Court of Australia on questions of law. Following the making of an order for compensation, a successful applicant should be entitled to payment of the sum ordered as a debt due and payable by the Commonwealth to the applicant.

(Para. 482)

125. ***Amount of Compensation.*** The amount of compensation payable should be assessed by the Tribunal and should include recovery of expenses reasonably incurred and pecuniary losses, compensation for pain and suffering, mental distress, loss of the amenities or expectation of life and for loss or damage to clothing or personal effects. Awards of compensation to the victims of crime should not be limited by artificial ceilings as they are at present in each Australian

compensation scheme. The United Kingdom approach, which is to have no artificial maximum award, should be followed.

(Para. 485, 488)

126. Should the cost of the victim compensation program as proposed by the Commission be considered unacceptable, two alternatives exist. The first is to adopt a statutory maximum award as an interim measure but otherwise to follow the Commission's proposed scheme. If this were done (and it is a distinctly second best solution) the maximum compensation sum should be fixed at a more realistic figure than provided for in present Australian legislation. It should certainly be no less than the maximum provided in the Sporting Injuries Insurance Act 1978 (N.S.W.), namely $60 000.

(Para. 486)

127. A second, preferable, course would be for part of the substantial sums obtained from fines in the Commonwealth, A.C.T. and external Territory jurisdictions to be devoted to establishing a fund to provide compensation for crime victims. Such provisions should help to install a sense of equity in the members of the Australian public, increasingly and rightly concerned at the apparent indifference shown by our criminal justice system to the victims of crime. A general increase in the level of fines might be justified if the amount thereby secured, or a specified and substantial proportion of it, could be devoted to providing a fund for adequate compensation to the victims of Federal and Territory crime who are the Commonwealth's responsibility.

(Para. 486)

128. ***Publicity for the Scheme.*** The Attorney-General should make appropriate arrangements to bring to the notice of all crime victims who report Federal offences the existence and main provisions of the Federal crime victim compensation legislation. Written information about the scheme should be prepared and should be available in the major ethnic languages.

(Para. 487)

129. ***Study of Crime Victims by Sentencing Council.*** An exhaustive study should be initiated by the Sentencing Council to identify the victims of Federal and Territory crimes of violence, their needs, the costs of providing services and facilities to them and like matters. The introduction of a Federal victim compensation program should not be delayed pending the completion of such a study. Important questions of social principle are at stake. Present research suggests that neither in the Commonwealth nor Territory jurisdictions would the numbers of claims be large or the aggregate amount of Commonwealth liability be substantial.