Royal Commission into Aboriginal Deaths in Custody Recommendation

102. Summons for breach of non-custodial sentencing order

That, in the first instance, proceedings for a breach of a non-custodial order should ordinarily be commenced by summons or attendance notice and not by arrest of the offender.[1]

Background[2]	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) emphasised the need for arrest to be used only as a sanction of last resort. In the context of a breach of a non-custodial order, it is desirable to avoid unnecessary arrest, for both the person on the non-custodial orders, and for family and friends, who may be impacted by an arrest and consequent police custody of their family member.
Intent	Ensure default response for breach of non-custodial order is summons rather than arrest.
Responsibility	All state and territory governments.
Key contacts	Victoria Police; Department of Justice and Community Safety (DJCS).
Key action taken	
2005 Review[3]	The Department of Justice assessed Recommendation 102 as **fully implemented**. **Department of Justice** The recommendation was implemented, and the standard practice for breach proceedings was to proceed by summons. Under the *Sentencing Act 1991* (Vic), breaches of non-custodial orders (community-based orders, suspended sentences, and intensive correction orders) could be addressed either by summons or arrest warrant. In practice, authorities used summons. Under Section 61 of the *Magistrates' Court Act 1989* (Vic), a warrant application must be supported by evidence on oath or affidavit. Victoria Police Operating Procedures stated that a warrant to arrest may be issued at the time of filing or before the mention date if the defendant was unlikely to respond to a summons, had absconded, or was avoiding service.
2018 Review[4]	Deloitte concluded that Recommendation 102 was **mostly implemented**, as summons were generally used first for breaches of non-custodial orders when offenders could be located, but not when their whereabouts were unknown.

[1] *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) vol 3, 80 ('*RCIADIC*').

[2] Ibid vol 3, 71-78.

[3] Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) vol 6, 475-476 ('2005 Review').

[4] Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 201-202 ('2018 Review').

102. Summons for breach of non-custodial sentencing order	
	Breaches of parole or pre-release permits required arrest warrants, while arrest warrants for unpaid fines were issued only after individuals had the chance to address payment or seek community-based alternatives through the courts.
Since then	Under the *Sentencing Act 1991* (Vic), breaches of non-custodial orders may be dealt with by summons or arrest warrant, though summons are typically used in practice. Under section 83AD, an offender subject to a community correction order must not breach its conditions without a reasonable excuse, with a maximum penalty of three months' imprisonment. Proceedings for such contraventions, as well as related offences under sections 83AC, 83ADA, and 83ADB, may be initiated by summons or warrant. A summons must direct the offender to appear at the appropriate court based on where the original order was made—either the Magistrates', County, or Supreme Court. Warrants must comply with Part 4 of the *Magistrates' Court Act 1989* (Vic) and authorise the arresting officer to bring the offender before a bail justice or sentencing court for legal processing.[5]
Evidence of impact	
Authorising documents	***Sentencing Act 1991* (Vic)[6]** The *Sentencing Act 1991* (Vic) sets out the principles, purposes, and procedures for sentencing offenders in Victoria, including the types of sentences courts can impose and the factors judges must consider when deciding an appropriate penalty.
Outputs	Provisions in the *Sentencing Act 1991* (Vic) and *Magistrates' Court Act 1989* (Vic).
Outcomes	The Project Team could not find any evidence beyond what is stated in legislation. We were not provided any examples where individuals were arrested for breaching orders instead of being issued a summons.
Community views	**Apryl Day[7]** *Where arrest is the default, there's always a risk of us not coming home, and that's a really sad reality for our families.*

[5] *Magistrates' Court Act 1989* (Vic) ('*Magistrates' Court Act*').

[6] *Sentencing Act 1991* (Vic) ('*Sentencing Act*').

[7] Tahnee Jash and Stephanie Boltje, 'Six hundred lives lost since Royal Commission into Aboriginal Deaths in Custody', *ABC News* (online, 29 July 2025) <https://www.abc.net.au/news/2025-07-29/600-aboriginal-deaths-in-custody-since-the-royal-commission/105567164>.

102. Summons for breach of non-custodial sentencing order

Related recommendations

2005 Review[8]	**Recommendation 104** That the Victorian Government continue to implement and monitor Recommendation 102 and Recommendation 103 (relating to remuneration for work carried out under Community Service Orders) through any monitoring process established as a consequence of this Review.

Assessment summary[9]

The intent of Recommendation 102 was to ensure breaches of non-custodial orders are dealt with via summons rather than arrest. Under the *Sentencing Act 1991* (Vic), breaches of non-custodial orders may be dealt with by summons or arrest warrant, however summons is typically used in practice. A summons must direct the offender to appear at the appropriate court based on where the original order was made—either the Magistrates' Court, Supreme Court, or County Court. If a warrant to arrest is issued, it authorises the arresting officer to bring someone before a bail justice or the sentencing court for legal proceedings.

We could not find any examples where individuals were arrested for breaching orders instead of being issued a summons. This suggests that practice aligns with the intent of the legislation. However, due to the lack of data to confirm this, we considered this recommendation a moderate priority for further work. It supports the RCIADIC principles that arrest and imprisonment should be measures of last resort. Individuals should not be arrested unnecessarily, especially when a summons to attend court is a viable alternative.

> *We don't want anyone to go to jail unless they have to.* (Merle Miller, Victorian Aboriginal Education Association Incorporated)

Assessment of Recommendation 102

Is the intent of the recommendation accurately described? Yes ☑ No ☐

Does the action taken align with the intent of the recommendation?

0 – No action taken
1 – Action taken is of little relevance to the intent of the recommendation
2 – Action taken partially aligns with the intent of the recommendation
3 – Action taken fully aligns with the intent of the recommendation

2 (Score out of 3)

Is there evidence of the desired impact or outcome/s?

0 – No evidence
1 – Evidence of output rather than outcome
2 – Some evidence action contributed to outcome/s
3 – Clear link between action and impact or outcome/s

1 (Score out of 3)

[8] *2005 Review*, vol 6, 507.

[9] Meeting with Aboriginal Justice Caucus (Project Team, In Person, 23 September 2025) ('*AJC Meeting (23 September 2025)*'); Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 1 September 2025) ('*Working Group Meeting (1 September 2025)*').

How relevant is the recommendation in the current context?

0 – No relevance – refers to practices, agencies or laws that no longer exist
1 – Low – some relevance, but most aspects of the recommendation no longer apply
2 – Moderate – remains relevant, but some aspects of recommendation no longer apply
3 – High – entirely relevant to current context

3
(Score out of 3)

Does full implementation have the potential to reduce incarceration, increase safety in custody and/or progress Aboriginal self-determination?

0 – No potential to improve Aboriginal justice outcomes
1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified
2 – Moderate – potential to progress one or two of the outcomes identified
3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

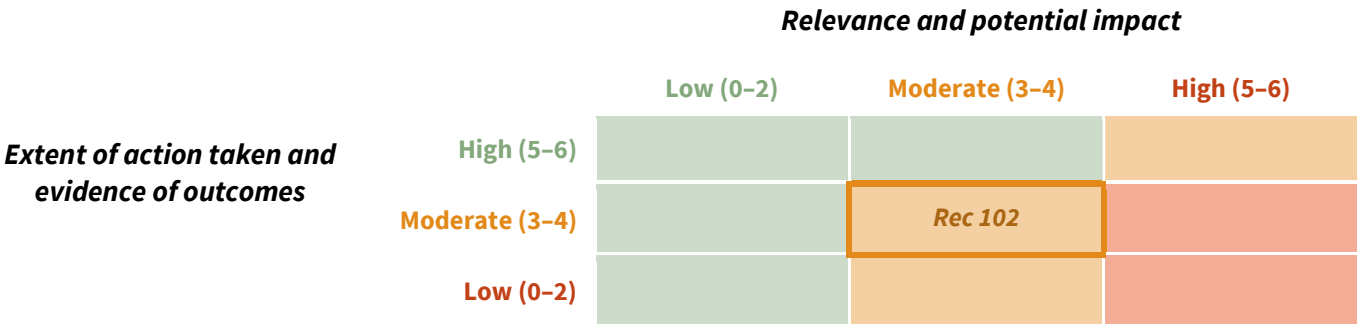
1.5
(Score out of 3)

Potential actions for further work

Additional data

Courts Services Victoria to provide any relevant data to demonstrate that breaches of non-custodial orders are dealt with by summons issued by the Magistrates', County or Supreme Courts.

Moderate priority for further work



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Magistrates' Court Act 1989 (Vic)

Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991)

Sentencing Act 1991 (Vic)