

**Review of the implementation of the
recommendations of the Royal Commission into
Aboriginal deaths in custody**

Department of the Prime Minister and Cabinet

August 2018

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Acknowledgments

Deloitte wishes to acknowledge the input from government agencies across all jurisdictions (a full list is provided at Appendix A) that provided input during the development of this report.

Glossary

Acronym	Definition
AAC	Aboriginal Advisory Council
AAPA	Aboriginal Affairs Planning Authority
ABC	Australian Broadcasting Corporation
ABS	Australian Bureau Of Statistics
Absec	Aboriginal Child, Family And Community Care State Secretariat
ACAT	Aboriginal Cultural Awareness Training
ACCHO	Aboriginal Community Controlled Health Organisation
ACCCHS	Aboriginal Community Controlled Health Service
ACCI	Australian Chamber Of Commerce And Industry
ACCO	Aboriginal Community Controlled Organisation
ACIP	Aboriginal Cultural Immersion Program
ACJP	Aboriginal Community Justice Panel
ACLO	Aboriginal Community Liaison Officers
ACMA	Australian Communications And Media Authority
ACT	Australian Capital Territory
ACTCS	ACT Corrective Services
ACTCT	ACT Courts & Tribunals
AECG	Aboriginal Education Consultative Group
AEDP	Aboriginal Employment Development Policy
AEW	Aboriginal Education Worker
AFP	Australian Federal Police
AGD	Attorney General's Department
AHCSA	Aboriginal Health Council Of South Australia
AHLO	Aboriginal Hospital Liaison Officer
AHO	Aboriginal Housing Organisation
AHRC	Aboriginal Health Resource Co-Operative
AHS	Aboriginal Health Service
AHW	Aboriginal Health Workers
AIATSIS	Australian Institute Of Aboriginal And Torres Strait Islander Studies
AIC	Australian Institute Of Criminology
AICA	Australian Indigenous Communications Association
AIDS	Acquired Immunodeficiency Syndrome
AIEW	Aboriginal And Torres Strait Islander Education Workers

Acronym	Definition
AJA	Aboriginal Justice Agreement
AJA 3	Victorian Aboriginal Justice Agreement Phase 3
AJAC	Aboriginal Justice Advisory Committee
AJIDC	Aboriginal Justice Interdepartmental Council
AJU	Aboriginal Justice Unit
ALRC	Australian Law Reform Commission
ALS	Aboriginal Legal Service
AMC	Alexander Maconochie Centre
AMP	Alcohol Management Plans
AMRC	Aboriginal Health Resources Committee
ANAO	Australian National Audit Office
ANCA	Australian Nature Conservation Agency
ANCD	Australian National Council On Drugs
AOD	Alcohol And Other Drugs
AODTS	Alcohol And Other Drugs Treatment Services Minimum Data Set
APIC	Aboriginal Procurement In Construction
APMC	Australian Police Ministers' Council
APS	Australian Public Service
APSC	Australian Public Service Commission
APSIES	Australian Public Service Indigenous Employment Strategy
APU	Aboriginal Policy Unit
APY	Anangu Pitjantjatjara Yankunytjatjara
ARIA	Australian Remote Indigenous Accommodation
ASPU	Aboriginal Strategy And Policy Unit
ASSPA	Aboriginal Student Support And Parent Awareness Program
ATILS	Aboriginal And Torres Strait Islander Legal Service
ATO	Australian Taxation Office
ATSIAB	Aboriginal And Torres Strait Islander Advisory Board
ATSIC	Aboriginal And Torres Strait Islander Commissioner
ATSILS	Aboriginal And Torres Strait Islander Education Action Plan
ATSILS	Aboriginal And Torres Strait Islander Legal Service
AYDC	Ashley Youth Detention Centre
BFS	Business Funding Scheme
CAA	Courts Administration Authority
CAALAS	Central Australian Aboriginal Legal Aid Service
CALM	Continuing Adolescent Life Management
CALM	Conservation And Land Management
CAR	Council For Aboriginal Reconciliation

Acronym	Definition
CAT	Centre For Appropriate Technology
CATSI	Corporations (Aboriginal And Torres Strait Islander)
CCC	Crime And Corruption Commission
CCTV	Closed Circuit Television
CDEP	Community Development Employment Projects
CDP	Community Development Programme
CEIDA	Centre For Education And Information On Drugs And Alcohol
CEO	Chief Executive Officer
CEPANCRM	Contract Employment Program For Aboriginals In Natural And Cultural Resource Management
CEPO	Community Engagement Police Officer
CHIP	Community Housing And Infrastructure Program
CIIT	Critical Incident Investigation Team
CIS	Centre For Independent Studies
COAG	Council Of Australian Governments
COPP	Custodial Operations Policy And Procedures
COPS	Computerised Operational Police System
CPR	Cardio-Pulmonary Resuscitation
CRC	COAG Reform Council
CRIME	Custody, Rights, Investigation, Management And Evidence
CSAC	Corrective Services Administrators' Council
CSAC	Corrective Services Administrators Council
CSMC	Corrective Services Ministerial Council
CSNSW	Corrective Services NSW
DATSIP	Department Of Aboriginal And Torres Strait Islander Partnerships
DCA	Department Of Culture And The Arts
DCA	Department Of Communications And The Arts
DCCSDS	Department Of Communities, Child Safety And Disability Services
DCS	Department For Correctional Services
DCS-ASU	Department For Correctional Services Aboriginal Services Unit
DCSI	Department For Communities And Social Inclusion
DCSP	Delivering Community Services In Partnership
DEET	Department Of Employment, Education And Training
DET	Department Of Education And Training
DFCS	Department Of Family And Community Services
DHFS	Department Of Health And Family Services (Historical)
DHHS	Department Of Health And Human Services
DHPW	Department Of Housing And Public Works
DHS	Department Of Human Services

Acronym	Definition
DILGP	Department Of Infrastructure, Local Government And Planning
DOEE	Department Of The Environment And Energy
DOH	Department Of Health
Doha	Department Of Health And Ageing (Historical)
DSS	Department Of Social Services
EAR	Expired Air Resuscitation
ECEC	Early Childhood Education And Care
EPBC	Environment Protection And Biodiversity Conservation
EPI	Employment Parity Initiative
FACS	Family And Community Services
FSG	Forensic Services Group
Gps	General Practitioners
HIV	Human Immunodeficiency Virus
HREC	Human Research Ethics Committee
HRIPA	Health Records And Privacy Act
IAHP	Indigenous Australians' Health Program
IAS	Indigenous Advancement Strategy
IBAC	Independent Broad-Based Anti-Corruption Commission
ICAP	Improving Care For Aboriginal Patients
ICT	Information Communication Technology
IJIS	Integrated Justice Information System
ILA	Indigenous Languages And Arts
ILC	Indigenous Land Corporation
ILGA	Independent Liquor & Gaming Authority
ILO	Indigenous Liaison Officer
IOP	Indigenous Opportunities Policy
IPP	Indigenous Procurement Policy
IRNA	Immediate Risks Needs Assessment
ISOBAR	Identify, Situation, Observations, Background, Agree To Plan, And Read Back
IVAIS	Indigenous Visual Arts Industry Support
JH&FMHN	Justice Health And Forensic Mental Health Network
JPRC	Justice Planning And Reform Committee
L&GNSW	Liquor And Gambling New South Wales
LAC	Local Area Command
LALC	Local Aboriginal Land Councils
LEPRA	Law Enforcement (Powers And Responsibilities) Act
LGA	Local Government Areas
LGMC	Local Government's Ministers' Conference

Acronym	Definition
LHD	Local Health District
MAIP	Mandatory Alcohol Interlock Program
MHR	My Health Record
MOU	Memorandum Of Understanding
NAAJA	North Australian Aboriginal Justice Agency
NAIDOC	National Aboriginal And Islanders Day Observance Committee
NAEP	National Aboriginal Education Policy
NAHS	National Aboriginal Health Strategy
NAIDOC	National Aboriginal And Islander Day Observance Committee
NATSIHP	National Aboriginal And Torres Strait Islander Health Plan
NATSIHS	National Aboriginal And Torres Strait Islander Health Survey
NATSISS	National Aboriginal And Torres Strait Islander Social Survey
NCADA	National Campaign Against Drug Abuse
NCIS	National Coronial Information System
NDS	National Drug Strategy
NDSHS	National Drug Strategy Household Survey
NEHTA	National E-Health Transition Authority
NGO	Non-Government Organisation
NHMRC	National Health And Medical Research Council
NIDAC	National Indigenous Drug And Alcohol Committee
NIMAA	National Indigenous Media Association Of Australia
NIRA	The National Indigenous Reform Agreement
NIRA	National Indigenous Reform Agreement
NITV	National Indigenous Television Service
NKPIs	National Health KPIs
NOPSAD	National Opioid Pharmacotherapy Statistics
NPA	National Partnership Agreement
NPAIEP	National Partnership Agreement On Indigenous Economic Participation
NPARIH	National Partnership Agreement On Remote Indigenous Housing
NPARSD	National Partnership Agreement On Remote Service Delivery
NPC	National Prisoner Census
NPRH	National Partnership On Remote Housing
NPWS	National Parks And Wildlife Service
NPY	Ngaanyatjarra Pitjantjatjara Yankunytjatjara
NSFATSIH	National Strategic Framework For Aboriginal And Torres Strait Islander Health
NSW	New South Wales
NSWPF	New South Wales Police Force
NT	Northern Territory

Acronym	Definition
NTAIS	Northern Territory Aboriginal Interpreter Service
NTCS	Northern Territory Corrective Services
NTPF	Northern Territory Police Force
OATSIH	Office For Aboriginal And Torres Strait Islander Health
OCHRE	Opportunity, Choice, Healing, Responsibility, Empowerment
OLGR	Office Of Liquor And Gaming Regulation
OOHC	Out Of Home Care
OP-C3	General Order Custody Part IV
OPM	Operational Procedures Manual
ORIC	Office Of The Registrar Of Indigenous Corporations
OPM	Operational Procedures Manual
PAAG	Police Aboriginal Advisory Groups
PCA	Police Complaints Authority
PM&C	The Department Of The Prime Minister And Cabinet
PPRA	Police Powers And Responsibilities Act
PROMIS	Police Real-Time Online Management Information System
PSPI	Parent School Partnership Initiative
QCS	Queensland Corrective Services
QLD	Queensland
QPRIME	Queensland Police Records And Information Management Exchange
QPS	Queensland Police Service
RAJAC	Regional Aboriginal Justice Advisory Committee
RAP	Reconciliation Action Plan
RATEP	Remote Area Teacher Education Program
RCIADIC	Royal Commission Into Aboriginal Deaths In Custody
RIPD	Remote Indigenous Professional Development
RJCP	Remote Jobs And Communities Programme
ROGS	Report On Government Services
RSAS	Remote School Attendance Strategy
SA	South Australia
SAAAC	South Australian Aboriginal Advisory Council
SACE	South Australian Certificate Of Education
SAPOL	South Australia Police
SBS	Special Broadcasting Service
SCII	Senior Critical Incidence Investigator
SDU	Staff Development Unit
SOP	Standard Operating Procedure
SPR	Service Priority Review

Acronym	Definition
STAR	Special Task And Rescue
TAFE	Technical And Further Education
TAHRG	Tasmanian Aboriginal Health Reference Group
TAP	Training For Aboriginals Program
TAS	Tasmania
UPK	Uwankara Palyanyku Kanyintjaku
VACCHO	Victorian Aboriginal Community Controlled Health Service
VCFA	Victorian Common Funding Agreement
VIC	Victoria
VTECSA	Vocational Training And Education Centres Of South Australia
WA	Western Australia
WAAAC	Western Australian Aboriginal Advisory Council
WAAHEC	Western Australian Aboriginal Health Ethics Committee
WACHS	Western Australia Country Health Services
WAPS	Western Australian Police Services
YJFNAB	Youth Justice First Nations Action Board

Executive summary

The Royal Commission into Aboriginal deaths in custody (RCIADIC) was conducted between 1987 and 1991. The final report was provided in 1991 and made 339 recommendations across a wide range of policy areas. The largest number of recommendations relate to policing, criminal justice, incarceration and deaths in custody. The RCIADIC also made recommendations relating to health, education and self-determination in recognition of the breadth of factors leading to the high rates of incarceration of Aboriginal and Torres Strait Islander people, particularly for young people.

The RCIADIC concluded that “Aboriginal people in custody do not die at a greater rate than non-Aboriginal people in custody ... what is overwhelmingly different is the rate at which Aboriginal people come into custody, compared with the rate of the general community”.¹ Despite this key finding, in the 27 years since the RCIADIC the Aboriginal and Torres Strait Islander share of the prison population has doubled, while the mortality rate for Aboriginal and Torres Strait Islander people in custody has halved. Thus, while there have been positive steps, it is clear that further work is still required to successfully address the disproportionately high, and growing, rates of incarceration among Aboriginal and Torres Strait Islander people.

Key themes from the original RCIADIC recommendations

The RCIADIC report was a seminal report, initially intended to investigate Aboriginal and Torres Strait Islander deaths in custody in the 1980s, but became a wide ranging investigation into the causes of Aboriginal and Torres Strait Islander incarceration (Weatherburn, 2014). While the RCIADIC’s recommendations were detailed and specific, the following key themes emerged in that report:

- It is critical to include Aboriginal and Torres Strait Islander people and their perspectives in the development of policies, in undertaking research, and in the operation of programs and institutions to ensure they are culturally and socially appropriate.
- Significant improvements were needed to the criminal justice system and policing in relation to custody arrangements, post-death investigations, support for Aboriginal and Torres Strait Islander individuals and communities that come into contact with the criminal justice system, and the fair application of laws to Aboriginal and Torres Strait Islander people.
- Better targeted support and better use of funding was required for Aboriginal and Torres Strait Islander people across health, employment, schooling and infrastructure, to address the inequitable outcomes facing Aboriginal and Torres Strait Islander people, and particularly young people.

To allow for a thematic assessment of the 339 recommendations, we have divided the recommendations into ten themes based on the topics covered by the recommendations. These are as follows:

- **Coronial matters (recommendations 1-47):** overview, the findings of the Commissioners as to the deaths, post-death investigations, and the adequacy of information.
- **The justice system (recommendations 48-62):** Aboriginal society today, relations with the non-Aboriginal community, the criminal justice system (relations with police), and young Aboriginal people and the juvenile justice system.
- **Aboriginal and Torres Strait Islander disadvantage (recommendations 63-78):** the harmful use of alcohol and other drugs, schooling, housing and infrastructure, and self-determination and local government.
- **Non-custodial approaches (recommendations 79-121):** diversion from police custody, and imprisonment as a last resort.
- **Prison safety (recommendations 122-187):** custodial health and safety, and the prison experience.

¹ RCIADIC, Volume 1, paragraphs 1.3.1-1.3.2.

- **Self-determination (recommendations 188-213):** the path to self-determination, and accommodating difference (relations between Aboriginal and non-Aboriginal people)
- **Cycle of offending (recommendations 214-245):** improving the criminal justice system, and breaking the cycle.
- **Health and education (recommendations 246-299):** towards better health, coping with alcohol and other drugs (strategies for change), and educating for the future.
- **Equal opportunity (recommendations 300-327):** increasing economic opportunity, and improving the living environment (housing and infrastructure).
- **Reconciliation, land needs and international obligations (recommendations 328-339):** conforming with international obligations, addressing land needs, and the process of reconciliation.

This review

Deloitte was engaged to review the implementation status of the recommendations. The review has assessed the extent to which governments have implemented the recommendations through the actions they have taken (i.e. outputs), rather than assessing the outcomes of the actions (i.e. impacts on the overarching objectives of the RCIADIC).

For the review, we undertook a desktop review of the actions that governments had taken to address each of the recommendations. We then consulted with relevant Commonwealth agencies and each of the state and territory governments to capture additional actions that have been undertaken that we did not uncover during the desktop review.

Findings from this review

Of the 339 recommendations, we found that 194 recommendations were the joint responsibility of the Commonwealth and the States and Territories, 29 recommendations were solely the responsibility of the Commonwealth, and 116 recommendations were solely the responsibility of the States and Territories.

Table i Responsibility for recommendations by theme

Theme	Responsibility for recommendations			
	Combined	Commonwealth	State and Territory	Total
Coronial matters	16	3	28	47
The justice system	10	3	2	15
Aboriginal and Torres Strait Islander disadvantage	10	5	1	16
Non-custodial approaches	12	4	27	43
Prison safety	40	0	26	66
Self-determination	23	2	1	26
Cycle of offending	23	1	8	32
Health and education	33	2	19	54
Equal opportunity	19	8	1	28
Reconciliation, land needs and international obligations	8	1	3	12
Total	194	29	116	339

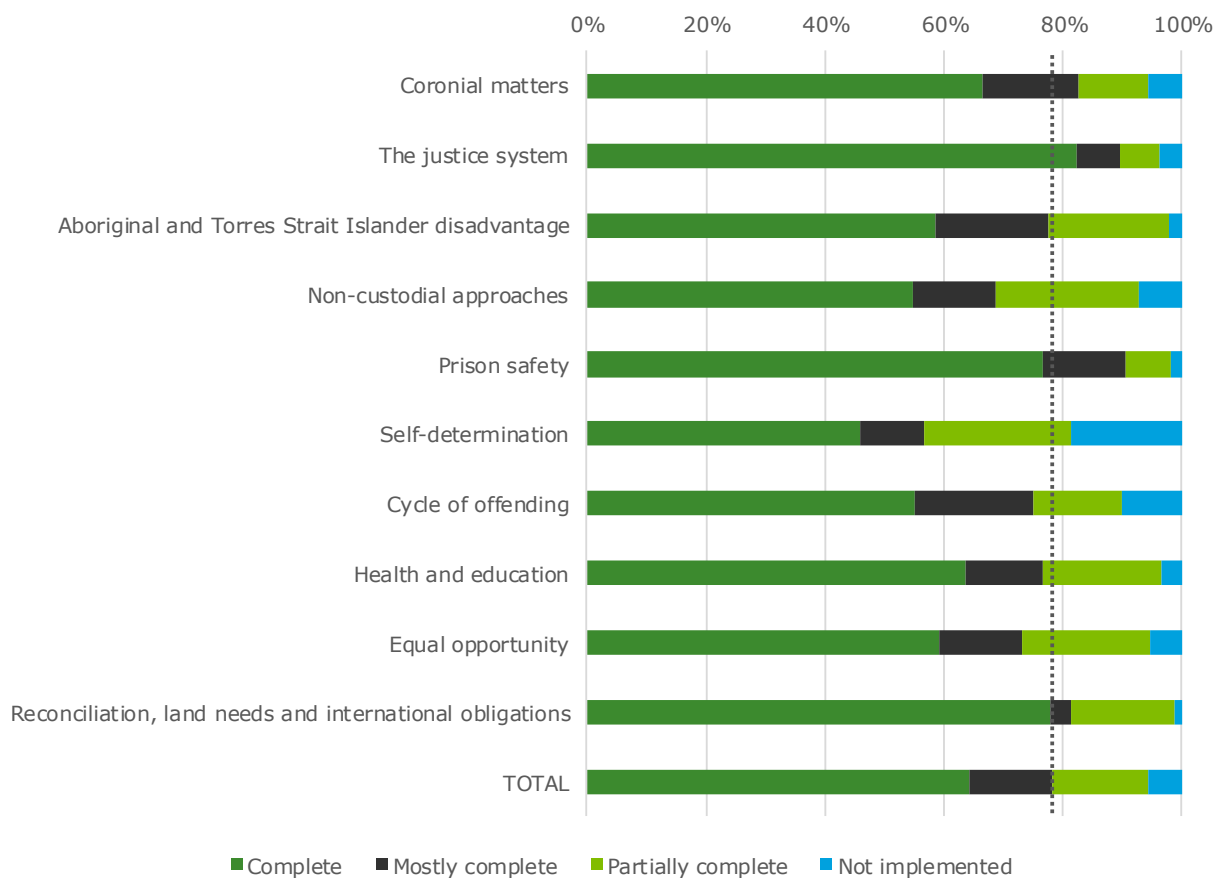
Note: the designation of responsibility was based on Deloitte's independent consideration of each recommendation. There were some isolated instances of recommendations where the jurisdictional views on responsibility were inconsistent with Deloitte's. These are noted in the report.

The status of implementation was determined using a four-point rating scale:

- **Complete** – recommendation has been implemented and no further action is required. For example, recommendations that related to a legislative change that has been enacted.
- ◐ **Mostly complete** – significant progress has been made on the implementation of the recommendation, however the recommendation has not been implemented in full.
- ◑ **Partially complete** – some elements of the recommendation have been implemented. For example, this may include a recommendation requiring a new program to be introduced and Aboriginal and Torres Strait Islander people employed to deliver the program, however it was only implemented with respect to introducing the new program.
- **Not implemented** – no progress has been made that is directly related to the recommendation.
- ⊘ Some recommendations are the responsibility of some government(s), but not all. For example, recommendations relating to remote communities have been assessed as out of scope for the Australian Capital Territory Government, given there are no remote communities in the ACT.

Chart i shows the proportion of recommendations that have been implemented by theme across the ten themes. This is based on the implementation status across all jurisdictions.

Chart i Implementation status of recommendations by theme



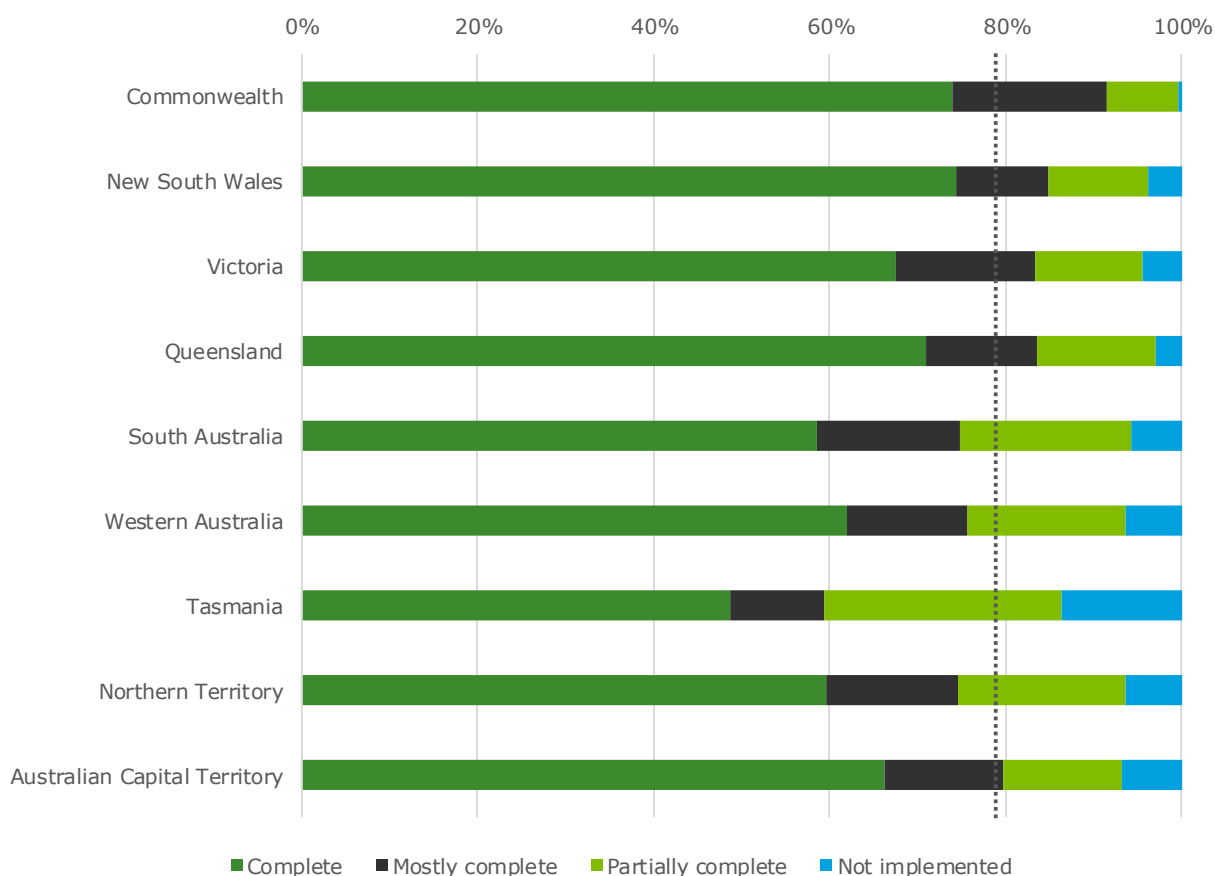
Note: The dashed line represents the average proportion of completed recommendations. The overall implementation status has been evenly weighted across all jurisdictions.

Chart i shows that across all recommendations for all jurisdictions, 64% have been implemented in full, 14% have been mostly implemented, 16% have been partially implemented and 6% have not been implemented. The chart shows that the highest proportion of fully implemented recommendations relates to the justice system, prison safety and reconciliation, land needs and international obligations. The lowest proportion of fully implemented recommendations relates to self-determination, non-custodial approaches, and cycle of offending.

Summary of major actions

All governments have undertaken substantial policy and legislative action to address the recommendations of the RCIADIC, both immediately following the RCIADIC and continuing in to the present. The Commonwealth Government has taken a key leadership role, along with States and Territories through the Council of Australian Governments, to contribute to better policy making and improved outcomes for Aboriginal and Torres Strait Islander Australians. The average implementation status for each jurisdiction across all of the recommendations is shown in Chart ii. A summary of the major actions taken by theme follows.

Chart ii Average implementation status – all recommendations



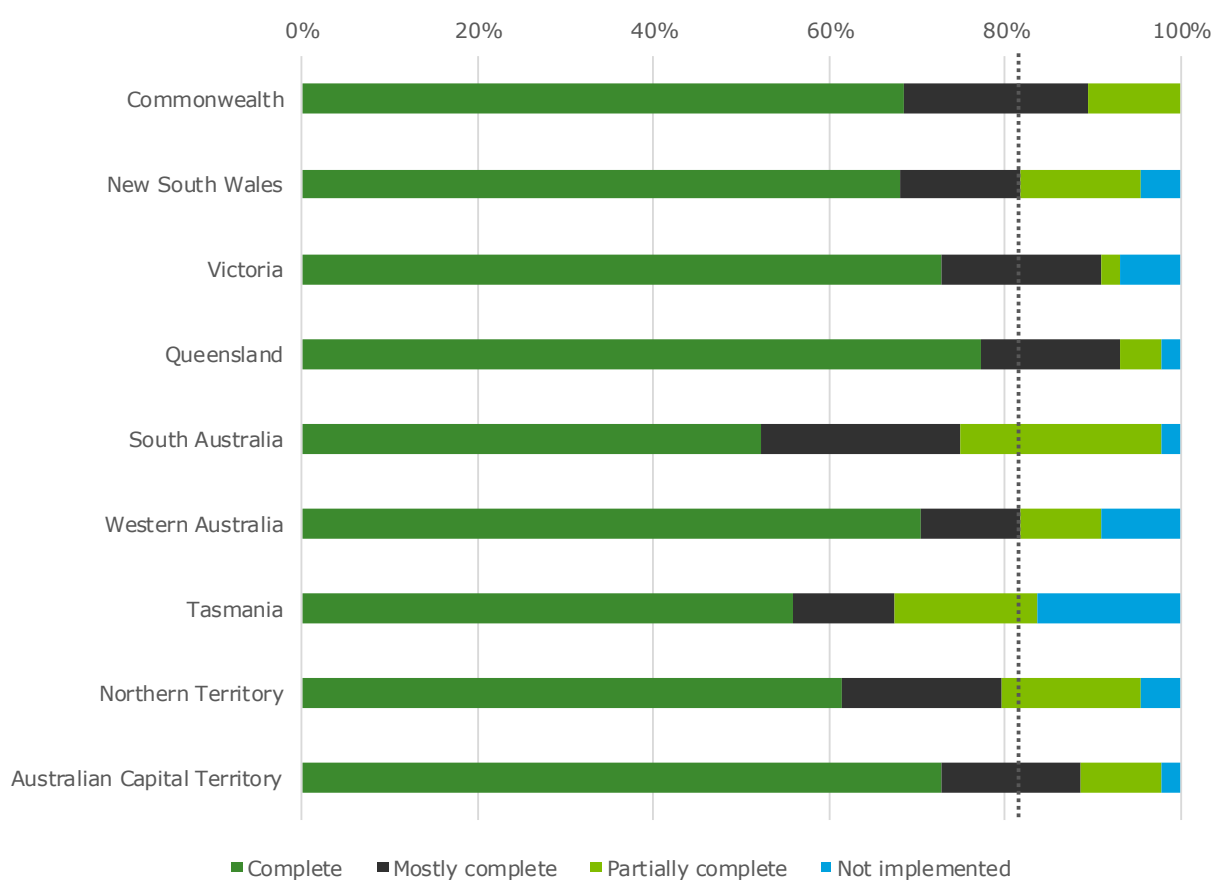
Note: The dashed line represents the average proportion of completed recommendations.

Coronial matters

The RCIADIC found that many deaths in custody were poorly reported at the time of death, which caused distress for families and next of kin. They also found that national data on deaths in custody was lacking. The RCIADIC also called for ongoing and public reporting on the implementation of the recommendations to allow for monitoring of progress.

The average implementation status for each jurisdiction in relation to coronial matters (recommendations 1-47) is shown in Chart iii.

Chart iii Average implementation status – coronial matters



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- At the **Commonwealth** level, the Australian Institute of Criminology (AIC) has collected and published annual data on deaths in custody since the RCIADIC through the National Deaths in Custody Program and was collecting data through the National Police Custody Survey (which has been suspended due to data issues). The Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare also collect data on adults and juveniles in detention.
- **New South Wales** produced implementation reports between 1992 and 2000, and monitored the implementation of the RCIADIC through an Aboriginal Justice Advisory Committee (AJAC). Coronial recommendations have been incorporated into police procedures and policies, and the Coroners Act 2009 (NSW). The NSW Government contributes to ongoing data publication.
- The **Victorian** Government produced implementation reports and established an AJAC to monitor the implementation of recommendations. Aboriginal Justice Agreements have continued to monitor progress, and set strategic policy priorities. Coronial recommendations have been addressed through the Coroners Act 2008 (Vic), and ongoing data publication of Aboriginal and Torres Strait Islander people in the prison population occurs.

- The **Western Australian** Government has produced five public implementation reports and continues to consult with Aboriginal and Torres Strait Islander communities in relation to the RCIADIC. The *Coroners Act 1996 (WA)* significantly addresses recommendations relating to the process of post-death investigation and coronial conduct. Western Australia cooperates with the Commonwealth Government on the publication of relevant data.
- In **Queensland**, the government produced implementation reports between 1993 and 1997 and established an AJAC and the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB) to monitor progress. Coronial inquest and reporting processes were addressed through legislation and procedural guidelines. The Queensland Corrective Services publishes annual reports and other data.
- The **South Australian** Government produced implementation reports and established an AJAC and the South Australian Aboriginal Advisory Council (SAAA) to monitor the progress of implementation. Recommendations relating to coronial inquest, and investigation and reporting procedures were addressed through the *Coroners Act 2003 (SA)* and procedural guidelines. Ongoing data publication occurs as called for by the RCIADIC.
- The **Tasmanian** Government produced implementation reports in 1993 and 1995. The process of coronial inquest, and investigation and reporting procedures were addressed through amendments to the *Coroners Act 1995 (Tas)*, and the Tasmania Police Manual. Ongoing data publication occurs in cooperation with the Commonwealth.
- The **Northern Territory** (NT) Government produced implementation reports and monitored the progress of implementation through an AJAC and Aboriginal Justice Unit (AJU). The *Coroners Act 1993 (NT)* and other legislation and policy has been introduced to address coronial matters. Ongoing data collection and reporting occurs through the function of the Northern Territory Corrective Services (NTCS), and cooperation with the Commonwealth.
- The Australian Federal Police (AFP), in its role of providing community policing in the **Australian Capital Territory** (ACT) and Jervis Bay Territory, has implemented a number of measures and operational changes through the AFP *National Guideline on persons in custody and police custodial facilities* (*'National Guideline'*) to guide police actions if there is a death in custody.

Areas where the recommendations have not been implemented in full, relate to:

- the intensity of reporting on the progress of implementation of the recommendations, which has reduced over time across all jurisdictions; and
- reporting on data on police custody. This remains an ongoing issue. A review of the first data collection using electronic custody data has been completed internally. The next stage will be for the AIC to engage with state and territory data providers to develop the next iteration of data collection.

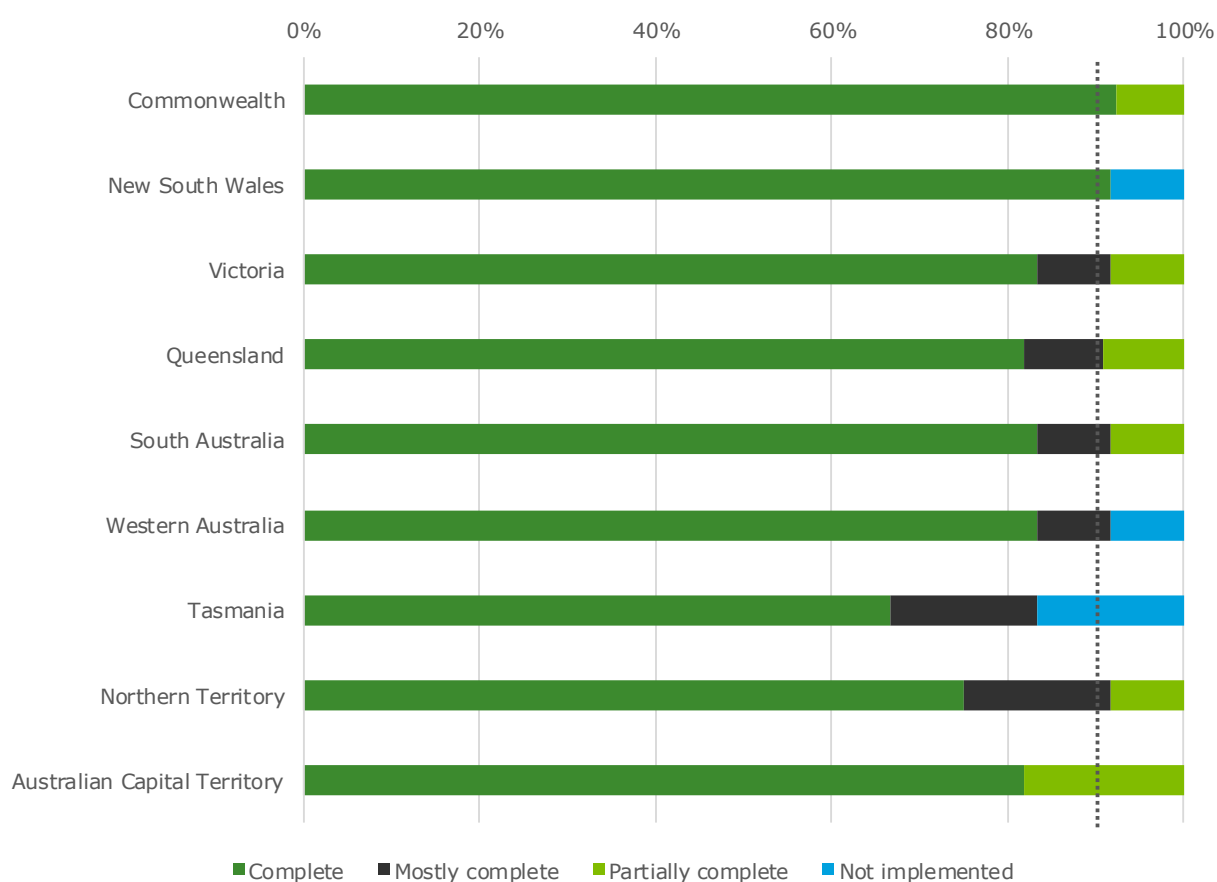
All jurisdictions have made efforts to address the recommendations relating to post-death investigations. To fully address all recommendations, there are some remaining gaps with respect to post death notification procedures, the duties of counsel assisting the coroner, and post-mortem procedures.

The justice system

The RCIADIC called for action to reduce the number of Aboriginal and Torres Strait Islander youth coming into contact with the justice system. In recognition of the wider social and economic factors that drive incarceration, the recommendations also called for policies to support Aboriginal and Torres Strait Islander culture and to improve relationships between Aboriginal and Torres Strait Islander people and the rest of the Australian community.

The average implementation status for each jurisdiction in relation to the justice system (recommendations 48-62) is shown in Chart iv.

Chart iv Average implementation status – the justice system



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** has developed strategies and provided funding to improve community safety and address the drivers of Aboriginal and Torres Strait Islander incarceration. The National Aboriginal and Torres Strait Islander Social Survey (NATSISS) collects data on the social and economic wellbeing of Aboriginal and Torres Strait Islander people. Ethical guidelines have also been developed to govern research involving Aboriginal and Torres Strait Islander people.
- The **New South Wales** Government currently receives advice in relation to justice policy from a range of Aboriginal advisory committees including the Corrective Services NSW AAC and the Juvenile Justice Aboriginal Strategic Advisory Committee. Four Aboriginal Regional Advisory Committees also advise on services, planning and support relevant to Juvenile Justice. There are also a number of Aboriginal Consultative Committees with representatives from local Aboriginal organisations and services programs advising Juvenile Detention Centres on relevant local issues to support Aboriginal young people. Conversations with community are also ongoing as part of the delivery of the Opportunity, Choice, Healing, Responsibility, Empowerment plan (OCHRE). OCHRE

is the NSW Government's plan for Aboriginal affairs. The plan invests in language and culture, healing, Aboriginal governance, education and employment. Implementation and evaluation takes place using a genuine co-design approach with Aboriginal at the centre of decision making. The conversations occurring between communities and the NSW Government can cover a range of issues. Some communities including the Illawarra Wingecarribee have chosen to develop initiatives with Government to address justice issues. Funding is provided for Link Up NSW, and legislation has responded to the abuse of alcohol and drugs, the Aboriginal Child Placement Principle and the essential role of child care agencies.

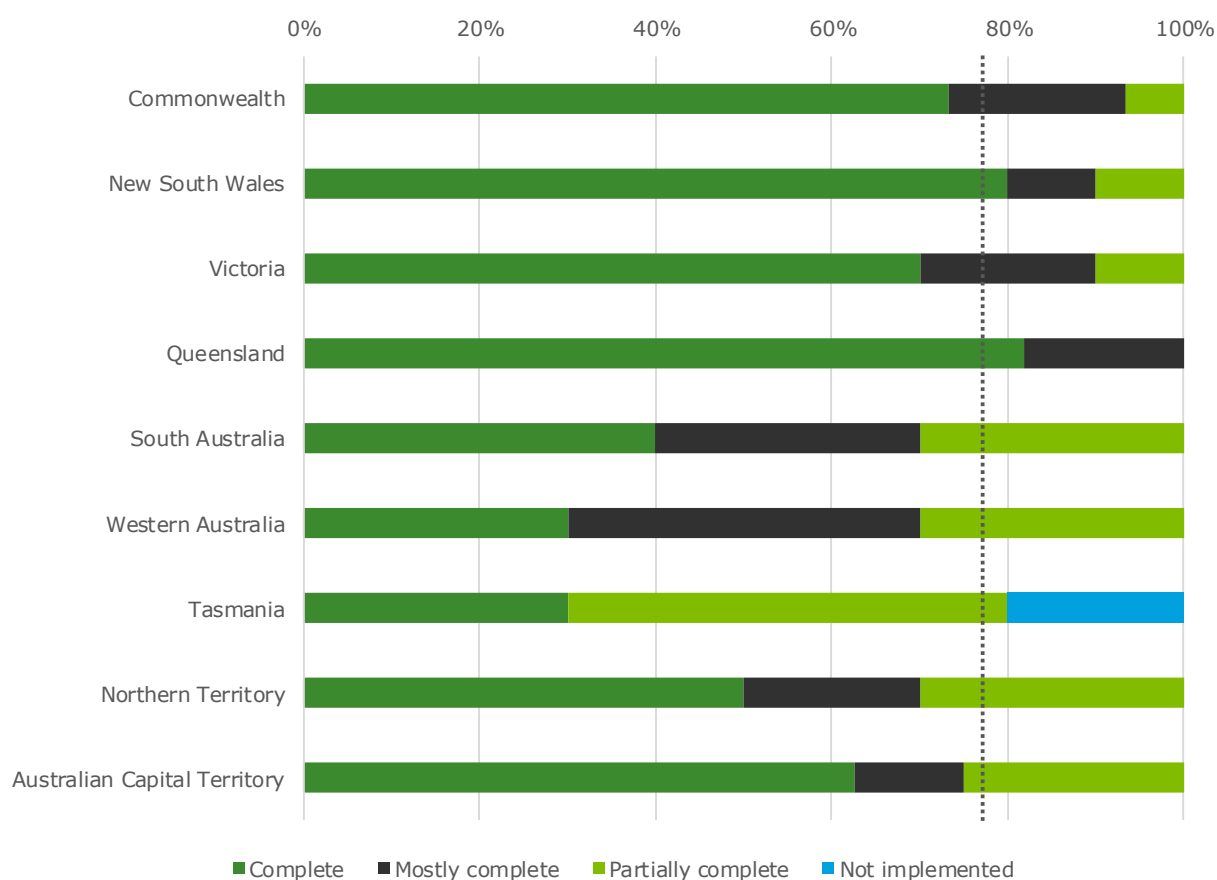
- The **Victorian** Government has established a Human Research Ethics Committee to implement National Health and Medical Research Council (NHMRC) guidelines governing research involving Aboriginal and Torres Strait Islander people. Legislation has been introduced in response to child placement and child agencies, as well as the misuse of alcohol and drugs among Aboriginal and Torres Strait Islander people.
- The **Queensland** Government has addressed recommendations relating to the involvement of Aboriginal and Torres Strait Islander people in health research through incorporating the NHMRC guidelines. Link Up Queensland is jointly funded by both the Commonwealth and Queensland governments, and legislation has been introduced in response to recommendations relating to child placement.
- The **South Australian** Government has implemented the NHMRC guidelines through the function of the Aboriginal Health Research Ethics Committee. Legal aid has been provided for Aboriginal and Torres Strait Islander people through Nunkuwarrin Yunti's Link-Up South Australia Program. The underlying drivers of Aboriginal and Torres Strait Islander incarceration, including health and social issues, have been addressed through legislative response and the introduction of programs.
- The **Western Australian** Government has addressed recommendations related to health research and implemented NHMRC guidelines through the WAAHEC. Funding is provided to the Yorgum Aboriginal Corporation for the administration of Link-Up WA. Programs have also been implemented to address factors underlying Aboriginal and Torres Strait Islander cultural issues, and to provide opportunities for the sharing of culture.
- The **Tasmanian** Government has incorporated the NHMRC's guidelines and addressed recommendations relating to the involvement of Aboriginal and Torres Strait Islander people in research through the Health and Medical Human Research Ethics Committee. A range of legislation and policy initiatives have been introduced to address underlying drivers of Aboriginal and Torres Strait Islander incarceration, including efforts in respect to child placement and the misuse of drugs and alcohol.
- The **Northern Territory** Government has addressed the underlying drivers of Aboriginal and Torres Strait Islander incarceration through a range of legislative and policy initiatives. In relation to recommendations concerning the involvement of Aboriginal and Torres Strait Islander people in health research, two committees (the Top End Human Research Ethics Committee (HREC) and the Central Australian HREC) are responsible for approving health-related research.
- The **Australian Capital Territory** Government has introduced legislation and policy responses to address issues including child placement and the misuse of drug and alcohol among Aboriginal and Torres Strait Islander people. Recommendations related to Aboriginal and Torres Strait Islander participation in health research have been addressed through the Research Ethics and Governance Office which incorporates the NHMRC guidelines.

Approximately 82% of recommendations relating to the justice system have been implemented in full across all jurisdictions. There are some remaining gaps in relation to the right of appeal for persons excluded from a hotel, funding for legal representation for the families of Aboriginal and Torres Strait Islander people who die in custody, and granting access to family records.

Aboriginal and Torres Strait Islander disadvantage

The RCIADIC called for improved incorporation of the perspectives of Aboriginal and Torres Strait Islander people into policy, as well as a greater understanding of the social and cultural factors in designing policy. The average implementation status for each jurisdiction in relation to Aboriginal and Torres Strait Islander disadvantage (recommendations 63-78) is shown in Chart v. Queensland's strong performance in this area reflects that it has mostly or fully completed all recommendations, with action taken across areas including alcohol misuse and harm, school attendance, and community infrastructure programs.

Chart v Average implementation status – Aboriginal and Torres Strait Islander disadvantage



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** Government has supported ongoing research into alcohol and drug issues facing Aboriginal and Torres Strait Islander communities through initiatives including the National Drug Strategy (NDS) and NHMRC. The Commonwealth has made progress to identify Aboriginal and Torres Strait Islander people in administrative data sets. The National Partnership Agreement (NPA) on Remote Indigenous Housing and the National Indigenous Infrastructure guide seek to incorporate the views of Aboriginal and Torres Strait Islander people in the provision of infrastructure, housing, and town planning.
- The **New South Wales** Government has introduced measures to improve the reporting and linkages of datasets relating to Aboriginal and Torres Strait Islander people. Policies have been introduced to provide a holistic approach to responding to alcohol and drug misuse. School attendance has been promoted through initiatives including the Connected Communities Strategy.
- The **Victorian** Government has maintained a commitment to designing, monitoring, and evaluating Aboriginal and Torres Strait Islander issues and programs in partnerships with communities. The Koori Alcohol Action Plan 2010 20 and the Koori Education Workforce

respectively address alcohol misuse and school attendance. Funding for community infrastructure programs has also been administered.

- The **Queensland** Government has recorded the Aboriginal and Torres Strait Islander status of patients in all hospital data collections. Queensland continues to practice a partnership based approach in cooperation with communities to review Alcohol Management Plans and to develop strategies to combat the causes of alcohol misuse and harm. A range of policies have been introduced to address school attendance and support of community infrastructure programs.
- The **South Australian** Government addresses multiple contributory factors to alcohol and drug misuse through policies and programs for Aboriginal and Torres Strait Islander people. The Attendance Strategy 2017 2020 introduces measures to promote school attendance. Community infrastructure programs are supported through funding and governance arrangements.
- The **Western Australian** Government supports research into the nature of alcohol and drug misuse through a range of initiatives. The publication of an Indigenous Status Flag in government datasets has improved the recognition of Aboriginal and Torres Strait Islander people in statistics.
- The **Tasmanian** Government has attempted to address the collection and reporting of data relating to Aboriginal and Torres Strait Islander people through the Bilateral Indigenous Plan on the Data Quality Improvement Subcommittee. This work continues through the implementation of the Cultural Respect Framework for health services delivered by the Tasmanian Government. Access to both compulsory and post-compulsory education is supported by Aboriginal Education Services in the Department of Education and TasTAFE (Technical and Further Education). The Tasmanian Government's agenda to Reset the Relationship with Tasmanian Aboriginal people commits to addressing disadvantage through continuing to deliver initiatives under the Closing the Gap framework.
- The **Northern Territory** Government has implemented a number of policies to address and monitor alcohol misuse among Aboriginal and Torres Strait Islander people, including the 2017 Riley Review into alcohol policies and legislation. The Northern Territory contributes to schemes to support community projects, and to ensure Aboriginal and Torres Strait Islander participation in housing design processes.
- The **Australian Capital Territory** Government continually consults with the local community on health related initiatives, including alcohol and other substance misuse. A range of strategies have been implemented to address school attendance issues, including the employment of Aboriginal and Torres Strait Islander Education Officers.

In order to fully implement the recommendations, the following actions could be pursued:

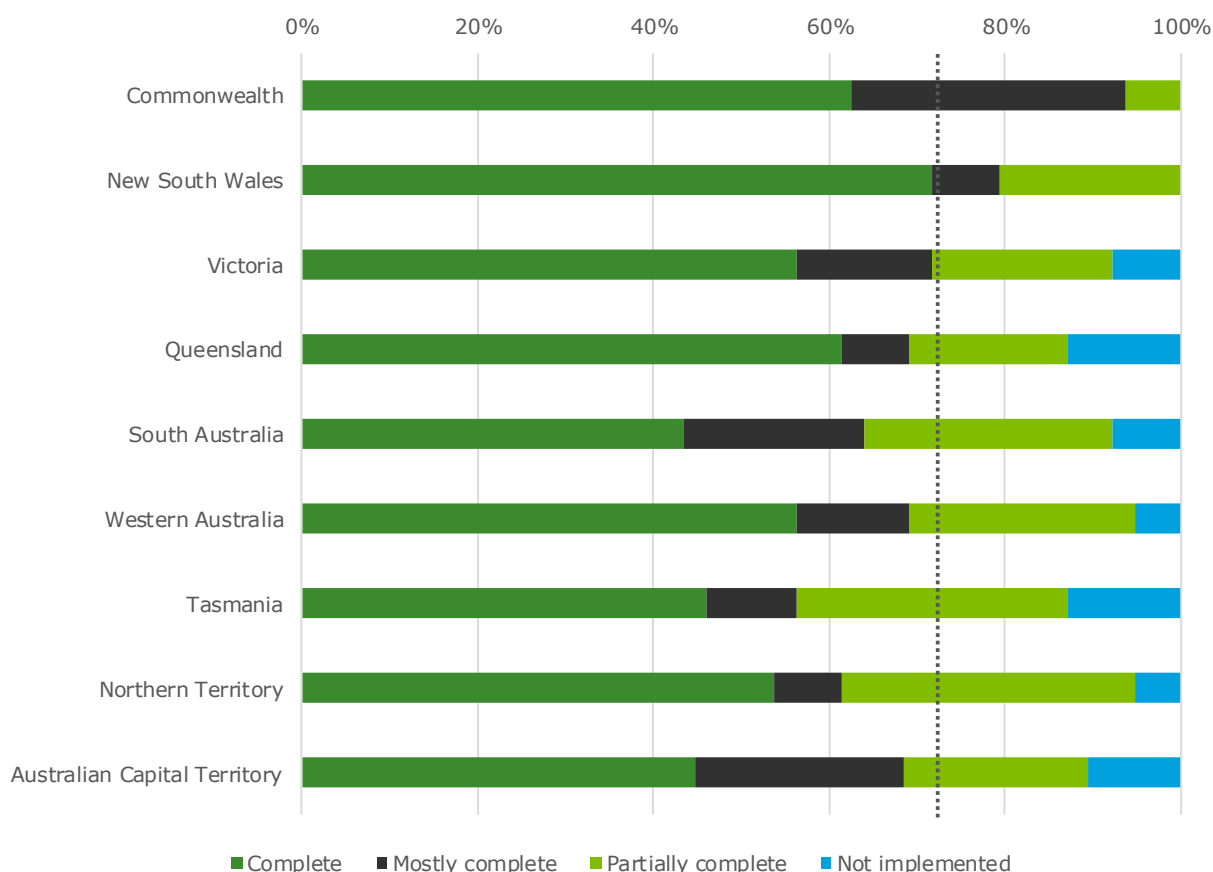
- More research into the specific nature and causes of alcohol dependence and misuse in Aboriginal and Torres Strait Islander communities. Further attention should be to understanding this area, and subsequently establishing renewed prevention, intervention and treatment approaches.
- Refocusing Commonwealth-led policies to reduce truancy in the Northern Territory to align with the primary principle of support recommended by RCIADIC, instead of the current focus on income management.
- Continued work on the identification of Aboriginal and Torres Strait Islander people in administrative datasets.
- Ensuring that access to road funding for Aboriginal and Torres Strait Islander communities is equitable with funding provided to other local governments.

Non-custodial approaches

The RCIADIC was concerned that Aboriginal and Torres Strait Islander people were being imprisoned over minor offences, and provided recommendation around ensuring that imprisonment is used as last resort.

The average implementation status for each jurisdiction in relation to non-custodial approaches (recommendations 79-121) is shown in Chart vi.

Chart vi Average implementation status – non-custodial approaches



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** has reinforced the principle of imprisonment as a last resort through AFP training and procedures. Funding is provided for legal representation and interpretation services for Aboriginal and Torres Strait Islander people. The Federal Circuit Court and the Aboriginal and Torres Strait Islander Legal Service (ATSILS) provide services in regional and remote areas. The Federal Courts have implemented cross-cultural training programs.
- The **New South Wales** Government has introduced diversionary pathways and recognised the principle of imprisonment as a last resort under the Law Enforcement (Powers and Responsibilities) Act 2003 (NSW). Alcohol and drug misuse has been addressed through various policy responses, including the introduction of sobering up centres and Mandatory Alcohol Interlocks.
- The **Victorian** Government provides that arrest should be a last resort, and has introduced non-custodial sentencing options through legislation. Measures to address alcohol misuse among Aboriginal and Torres Strait Islander people are continually monitored and improved upon, and remain a priority area under the Aboriginal Justice Agreements.

- The **Queensland** Government has introduced sobering up centres and continued monitoring of alcohol related policies under the *Liquor Act 1992 (Qld)*. Research has been conducted into the rehabilitative needs and treatment of Aboriginal and Torres Strait Islander people, and a database with information on recidivism has been maintained.
- The **South Australian** Government administers a range of drug and alcohol services through the Specialist Drug and Alcohol Assessment and Treatment Services Program. The South Australian Government has also introduced a range of non-custodial sentencing options, and employment initiatives for the recruitment of Aboriginal and Torres Strait Islander people into justice roles.
- The **Western Australian** Government has introduced sobering-up centres and provide that these should be a first port of call for police dealing with intoxicated persons. The implementation of legislation has provided imprisonment as a last resort, introduced non-custodial sentencing alternatives, and addressed elements related to youth justice.
- The **Tasmanian** Government has introduced non-custodial sentencing under the Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017 (Tas). Cultural awareness has also been incorporated into training programs in the justice system, in line with benchbooks from other states.
- The **Northern Territory's** *New Era in Corrections* policy represented an undertaking to recruit sufficient staff to implement community based orders and electronic monitoring. Support for reduced recidivism in driving related offences is provided through DriveSafe NT and the Elders Visiting Program.
- The **Australian Capital Territory** has introduced the Crimes (Sentencing) Act 2005 (ACT) in response to recommendations which called for arrest as a sanction of last resort and the introduction of non-custodial sentencing. Programs are provided to address cultural awareness among justice staff, to reduce recidivism concerning alcohol related offences, and to recruit more Aboriginal and Torres Strait Islander people into the justice system.

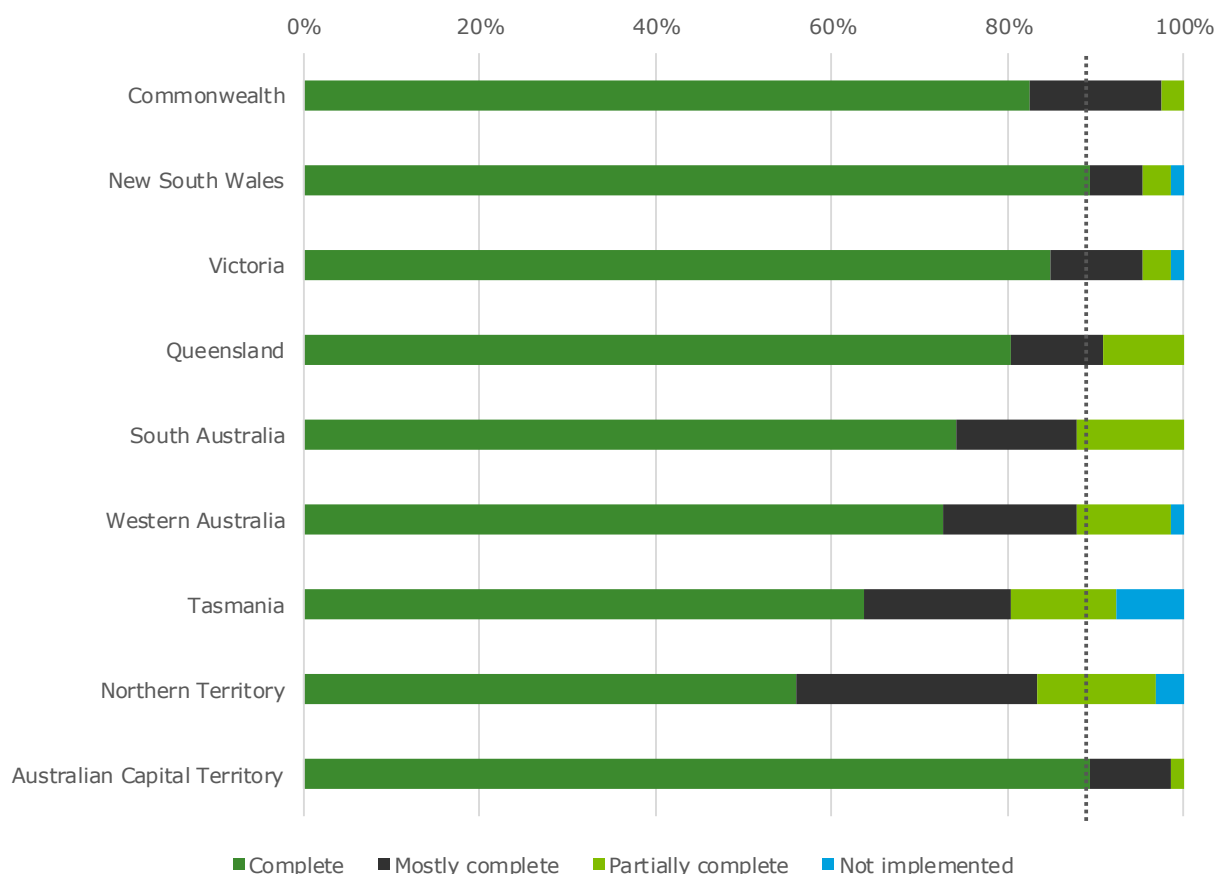
Approximately 55% of recommendations relating to non-custodial approaches have been completely implemented, a lower percentage than the average across all recommendations. While some progress has been made across a number of the recommendations, further action across most jurisdictions is required in relation to prioritising non-custodial sentencing options, such as work orders and home detention as a means of early release; ensuring that imprisonment is a last resort and people are not being held in custody due to problems with bail legislation; and ensuring that Aboriginal and Torres Strait Islander detainees have access to appropriate supports, including interpretation services, when facing charges.

Prison safety

The RCIADIC found that the particular needs and health and safety concerns for Aboriginal and Torres Strait Islander people in custody need to be recognised and greater support should be provided for Aboriginal and Torres Strait Islander people in corrective institutions.

The average implementation status for each jurisdiction in relation to prison safety (recommendations 122-187) is shown in Chart vii.

Chart vii Average implementation status – prison safety



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** has addressed recommendations relating to custodial health and safety, and the prison experience through the AFP National Guideline and revised procedures. Training requirements have been extended to include a focus on first aid, resuscitation and cultural awareness for AFP members. The AFP also has greater linkages and notifications systems between policing, corrective services, and Aboriginal and Torres Strait Islander organisations.
- The **New South Wales** Government has introduced an inter-agency approach to ensuring the delivery of health services in prison, and has responded to recommendations in relation to prisoner care through the NSW Police Force: Code of Practice for CRIME and legislation. Personal development programs, and training courses in first aid, resuscitation, and cultural awareness, have been introduced to implement the recommendations in this chapter.
- The **Victorian** Government has updated the Victoria Police Operating Procedures Manual and the Corrections Act 1986 (Vic) to reflect the principles of recommendations relating to prisoner health and safety, and the prison experience. Attention paid to the adequacy of health service delivery has been ongoing through Aboriginal Justice Agreements. Personal development programmes and

revised training requirements have been introduced to respond to the recommendations in this chapter.

- The **Queensland** Government has introduced measures to improve the prisoner experience and to ensure the adequacy of health service delivery to prisoners. Work experience and further education initiatives, and renewed training requirements, have also been implemented in response to the recommendations in this chapter.
- The **South Australian** Government has prioritised the provision of care and health services to prisoners through legislative and policy response. Emphasis has been placed on first aid, and cultural awareness training; and a range of personal development programs have been introduced as alternative sentencing options.
- The **Western Australian** Government has responded to recommendations relating to the provision of prisoner health and safety through legislation and policy. Professional development, improved screening for health services, and the provision of cultural awareness training have been introduced as part of the response to recommendations in this chapter.
- The **Tasmanian** Government has incorporated the intent of recommendations relating to prisoner health and safety into the Tasmania Police Manual and other procedures. Additionally, training requirements now incorporate a focus on first aid, resuscitation, and cultural awareness among police officers and other justice staff.
- The **Northern Territory** Government has addressed prisoner care, and extended the provision of health services, through procedural documents including General Orders and the Correctional Services Act 2014 (NT). Personal development programs have been introduced in an attempt to reduce recidivism; and training requirements cover first aid, resuscitation, and cultural awareness.
- The **Australian Capital Territory** Government has implemented the AFP National Guideline which incorporates provisions related to custodial health and safety, and the prison experience. The AFP has prioritised the establishment of interconnectedness between policing, corrective services, and Aboriginal and Torres Strait Islander organisations as it concerns notifications procedures. Training requirements have also been updated in line with the recommendations contained in this chapter, and currently place focus on first aid, resuscitation, and cultural awareness of AFP members and other justice staff.

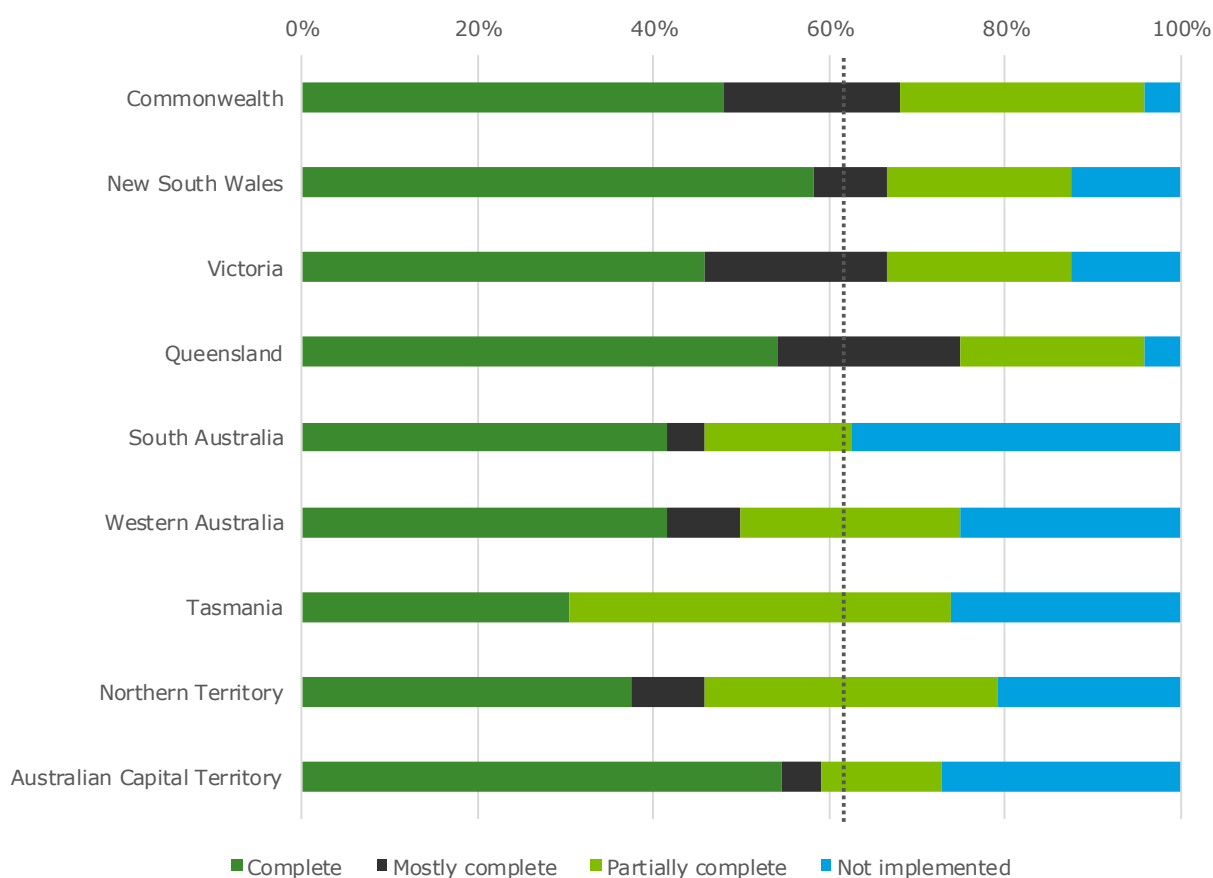
A majority of the recommendations relating to prison safety have been completely implemented. The areas where jurisdictions have not fully implemented the recommendations include the continued use of padded cells in a number of jurisdictions, police are not required to breath test detainees in all jurisdictions if they suspect the detainee is intoxicated and the regular in person checking of detainees in custody.

Self-determination

The RCIADIC recommended that the principle of self-determination needs to be defined, and steps taken to enhance the level of self-determination among Aboriginal and Torres Strait Islander people. The RCIADIC also called for action to encourage Aboriginal and Torres Strait Islander participation in the media to educate non-Aboriginal and Torres Strait Islander people and improve community attitudes.

The average implementation status for each jurisdiction in relation to self-determination (recommendations 118-213) is shown in Chart viii.

Chart viii Average implementation status – self-determination



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** has negotiated with various Aboriginal and Torres Strait Islander organisations to improve self-determination and provided funding and targeted programs, including the Indigenous Advancement Strategy (IAS), which support more strategic investment in Aboriginal and Torres Strait Islander funding. The Commonwealth is also supporting the implementation of the Aboriginal and Torres Strait Islander-led Empowered Communities initiative.
- The **New South Wales** Government has a Protecting Aboriginal Cultural Heritage Policy to ensure that Aboriginal cultural heritage sites are preserved. Under the National Parks and Wildlife Act 1974 (NSW), it is an offence to harm or desecrate an Aboriginal object or Aboriginal place. OCHRE supports the teaching of Aboriginal languages and culture in NSW Schools via Language and Culture nests, Aboriginal Languages legislation was enacted in 2017. OCHRE is the NSW Government’s community-focused plan for Aboriginal affairs. The Plan invests in language and culture, healing, Aboriginal governance, education and employment, The NSW Cultural Tourism

Development Program engages with Aboriginal communities and individuals identified for their potential to develop and deliver a new and/or enhanced cultural tourism experience within national parks. Since 2008-09, National Parks and Wildlife Service has managed an Aboriginal Park Partnerships Funding program which has supported more than 200 projects with Aboriginal communities. Many of these projects aim to share and celebrate Aboriginal culture and support Aboriginal people's ongoing connection to country. In addition, five Aboriginal Language and Culture Nests established under OCHRE in Dubbo, Lightning Ridge, Wilcannia, Coffs Harbour and Lismore have also been established to increase the number of students learning Aboriginal languages in schools.

- The **Victorian** Government has developed several initiatives to address the issue of self-determination in government policy, such as the Koori Services Improvement Strategy and the Indigenous Partnership Strategy, as well as measures to counter discrimination. These include the Victorian Aboriginal Affairs Framework, which requires each government department to report on issues of discrimination in service provision, and provisions under the Aboriginal Justice Agreement.
- The **Queensland** Government has undertaken significant action to promote the principle of self-determination in policymaking, including the development of the *Partners in Government Agreement*, which provides that Aboriginal and Torres Strait Islander local governments are respected as equivalent local governments in their own right. Queensland has also implemented initiatives such as the *Indigenous Regional Arts Development Fund* to promote Aboriginal and Torres Strait Islander art.
- The **South Australian** Government has sought to consult with Aboriginal and Torres Strait Islander Regional Councils on matters relating to self-determination and has recently introduced a new "tiered approach to governance and leadership", which aims to provide a greater platform for Aboriginal and Torres Strait Islander involvement in decision-making. In addition, the South Australian Government has supported Aboriginal and Torres Strait Islander arts through the Indigenous Visual Arts Industry Support Program.
- The **Western Australian** Government has undertaken significant steps towards self-determination of Aboriginal and Torres Strait Islanders in the State. Legislative measures focused on improving self-determination have been passed and Aboriginal and Torres Strait Islander perspectives embedded into the policy development process.
- The **Tasmania** Government has addressed the principle of self-determination through the Reset agenda. This agenda has driven increased engagement between the Government and the Aboriginal community to facilitate stronger participation by individuals and organisations in matters relating to Aboriginal Affairs. Tasmania has also implemented anti-discrimination measures through cross-cultural training and activities led by the Office of the Anti-Discrimination Commissioner.
- The **Northern Territory** Government has addressed the principle of self-determination in policy making by providing flexible organisational structures in community government councils to encourage Aboriginal and Torres Strait Islander participation. In addition, the Northern Territory has also implemented measures to address racial discrimination through the Anti-Discrimination Commission, which consults regularly with Aboriginal and Torres Strait Islander organisations and legal services.
- The **Australian Capital Territory** Government has promoted self-determination and Aboriginal and Torres Strait Islander leadership through the ACT Multicultural Strategy 2010-2013. Anti-discriminatory measures have also been implemented through provisions in the Discrimination Act 1991 and activities undertaken by the ACT Human Rights Commission.

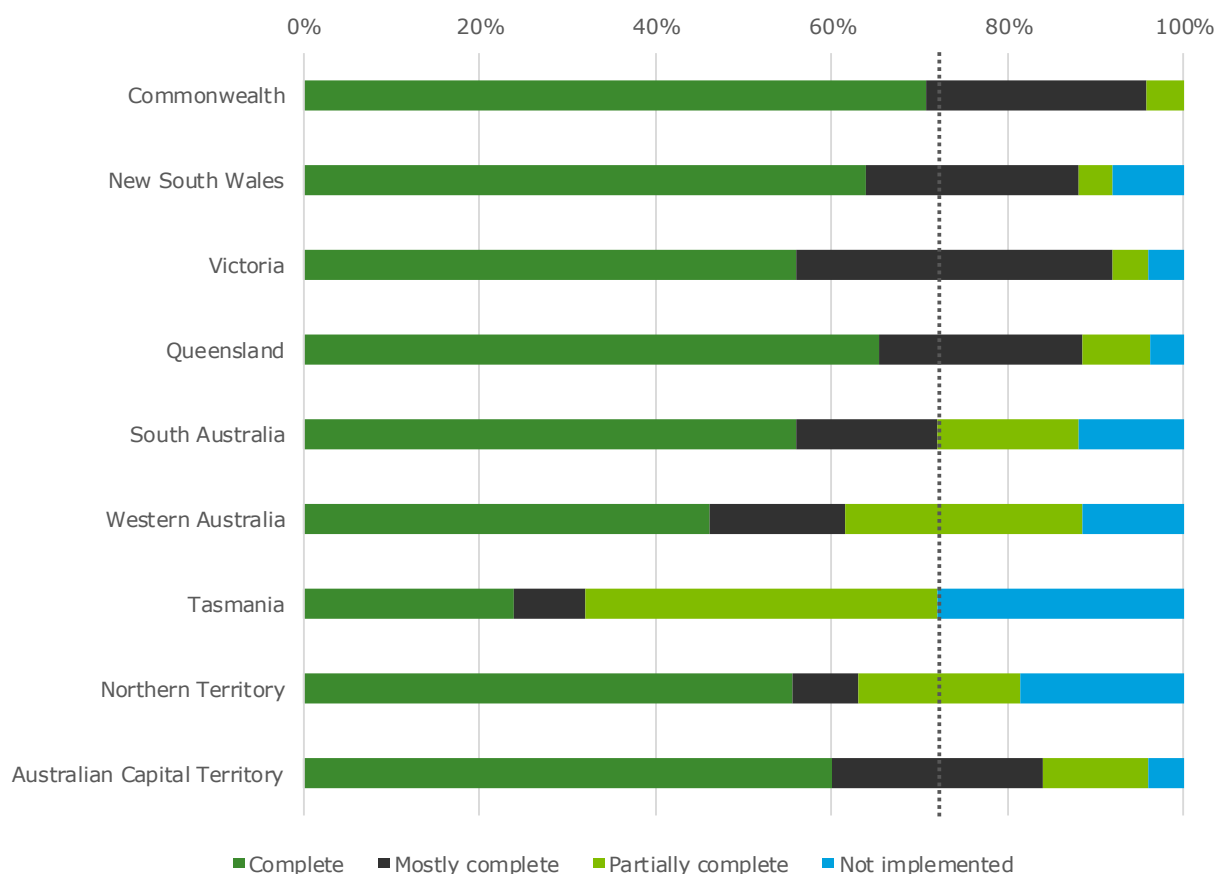
Further work is required across all jurisdictions to address the recommendations relating to funding arrangements for Aboriginal and Torres Strait Islander communities and organisations, and measuring the performance of these organisations in delivering services. Further development of culturally appropriate journalism course content is also required to better meet the RCIADIC recommendations in some jurisdictions.

Cycle of offending

The RCIADIC called for action to reduce reoffending by improving relations between Aboriginal and Torres Strait Islander people and police services, and providing appropriate assistance for young people in custody to divert young people away from the criminal justice system.

The average implementation status for each jurisdiction in relation to cycle of offending (recommendations 214-245) is shown in Chart ix.

Chart ix Average implementation status – cycle of offending



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** has developed several programs in collaboration with Aboriginal and Torres Strait Islander Commissioner (ATSIC) to prevent the detention of youths, and has offered enhanced youth support through welfare programs and legal representation.
- The **New South Wales** Government has established relevant bodies and roles, such as the Aboriginal Community Liaison Officer State Coordinator, to improve relations between Aboriginal and Torres Strait Islander people and the NSW Police. NSW has also introduced legislative measures under the Young Offenders Act 1997, along with Police Commissioner's Instructions, to reduce the incarceration of Aboriginal and Torres Strait Islander youths.
- The **Victorian** Government has sought to improve support for community policing and engagement of Aboriginal and Torres Strait Islander communities through the establishment of Regional Aboriginal Justice Advisory Committees. Victoria has also implemented protocols to ensure that the Victorian Aboriginal Legal Service and Aboriginal Community Justice Panels are notified when a person is brought into custody.
- The **Queensland** Government requires all of the Queensland Police Service's relevant policies to be developed in consultation with Aboriginal and Torres Strait Islander stakeholders and has

employed Police Liaison Officers to support relationship building. Queensland has also implemented clear protocols for the notification of the Aboriginal and Torres Strait Legal Service when people are arrested or detained.

- **South Australia Police** (SAPOL) has established a dedicated Aboriginal and Multicultural Unit and employed Aboriginal Liaison Officers to improve stakeholder engagement. Clear procedures for a range of matters are also defined in four Memorandums of Administrative Arrangement with the Department of Human Services, and in sections of the *Young Offenders Act 1993* (SA) and the *Youth Justice Administration Act 2016* (SA).
- **Western Australia** has addressed recommendations relating to representation of Aboriginal and Torres Strait Islanders within the police force by establishing a special governance committee and the Aboriginal and Community Diversity Unit. Community engagement and youth justice support is also provided.
- The **Tasmanian** Police have sought to improve relations with local communities through Aboriginal Liaison Officers and regular consultation via the Police Commissioner's Consultative Committee. Protections for juveniles in the justice system have also been enshrined in the *Children, Young Persons and their Families Act 1997*.
- The **Northern Territory** Police Force has implemented initiatives to address relations between the police and local communities such as the Community Engagement Police Officer program. The Northern Territory has also taken jurisdiction-specific action by incorporating the now defunct Aboriginal Community Justice Project's objectives into practice.
- The AFP is working to improve relations with Aboriginal and Torres Strait Islander people. For example, the **Australian Capital Territory** Policing Aboriginal and Torres Strait Islander Community Liaison Officer assists with active community engagement between police and Aboriginal and Torres Strait Islander communities. In addition, the AFP has implemented strong internal governance processes to ensure police proceed with caution when apprehending juvenile offenders, in line with the RCIADIC recommendations.

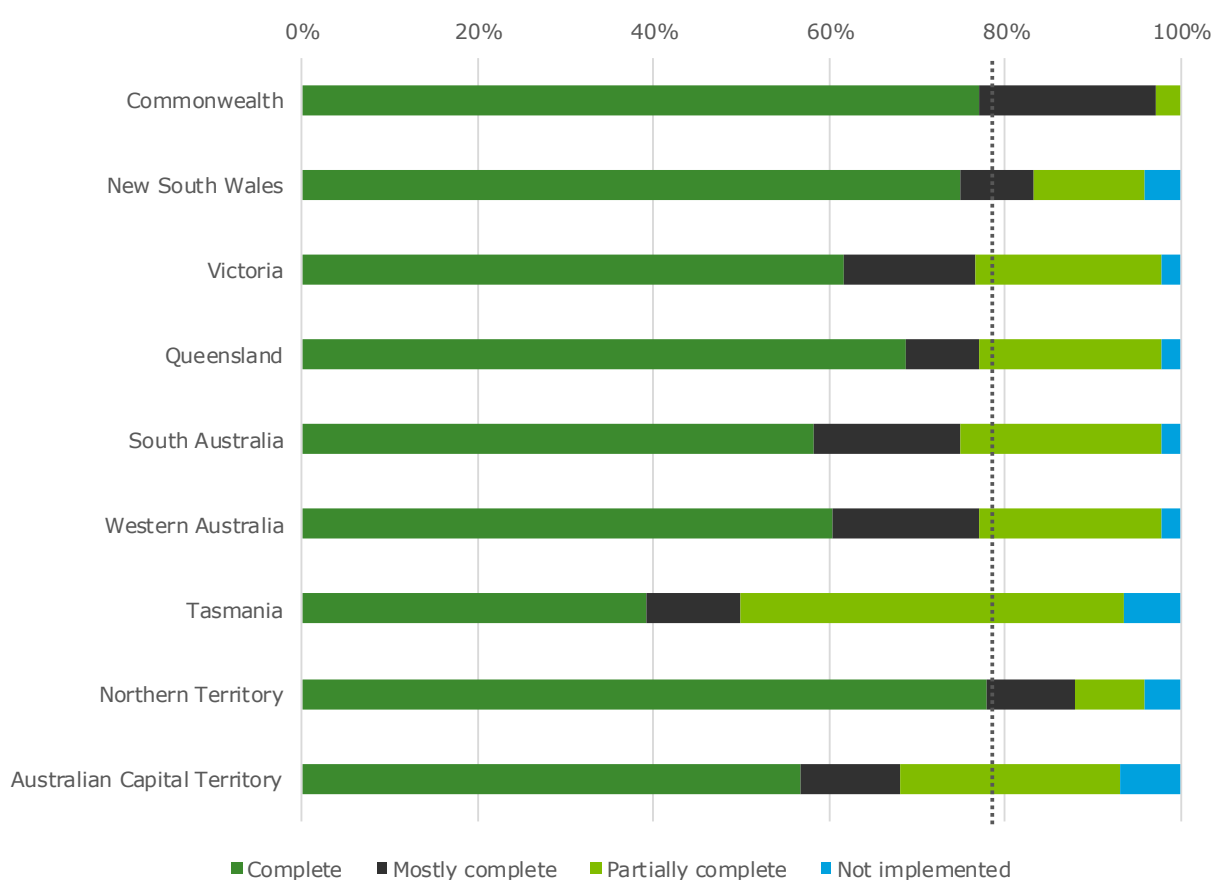
In order to fully implement the recommendations, some jurisdictions need to report on the implementation of customary law, as per recommendations outlined in a report published by the Australian Law Reform Commission (ALRC). In addition, further progress is required to improve police recruitment practices and police caution procedures for youths in order to more fully meet the objectives of the RCIADIC recommendations. Further development of protocols in some jurisdictions for complaints to the police is required to ensure that Aboriginal and Torres Strait Islander complainants receive appropriate protections and assistance.

Health and education

The RCIADIC found that health services needed to be more culturally sensitive, and the development of health frameworks for Aboriginal and Torres Strait Islander communities needed to be based on evidence. It also found that further steps need to be taken to address educational disadvantage among Aboriginal and Torres Strait Islander students and provide meaningful education experiences.

The average implementation status for each jurisdiction in relation to health and education (recommendations 246-299) is shown in Chart x. The Northern Territory’s strong performance in this area reflects two significant programs – the *Northern Territory Aboriginal Health Key Performance Indicator Information System*, and the *Cultural Security Framework 2016-2026* – that have been implemented across the NT healthcare system.

Chart x Average implementation status – health and education



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** has made substantial progress towards providing a health framework that better accommodates the needs of Aboriginal and Torres Strait Islander communities. Major Commonwealth policies, such as Closing the Gap and the National Aboriginal and Torres Strait Islander Health Plan (NATSIHP), have improved engagement with Aboriginal and Torres Strait Islander communities in service design and delivery. In addition, education and training initiatives have been prioritised and mental health programs have been implemented successfully.
- The **New South Wales** Government has committed to improved reporting and health data collection as part of the New South Wales Aboriginal Health Plan 2013-2023 and the Aboriginal and Torres Strait Islander Health Performance Framework. In addition, the NSW Government has made employment in health, specifically mental health, a significant priority through initiatives such as the Aboriginal Mental Health Traineeship Program.

- The **Victorian** Government has prioritised health reporting as part of the Koolin Balit Victorian Government Strategic Direction for Aboriginal Health 2012-2022. Victoria has also implemented significant initiatives targeted at mental health, including the Victorian Aboriginal Suicide Prevention and Response Action Plan 2010-15.
- **Queensland** has invested in evidence based health initiatives as part of Making Tracks: Toward closing the gap in health outcomes for Indigenous Queenslanders by 2033, including early intervention and drug and alcohol training. The Government has also committed to improved mental health outcomes and service provision through the Queensland Health Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021.
- **South Australia** has implemented initiatives to prioritise Aboriginal and Torres Strait Islander health data collection, including the production of an Aboriginal Health supplement to the SA Health Statistics Chart Book, along with provision of cross-cultural awareness training in drug and alcohol treatment through Drug and Alcohol Services SA.
- **Western Australia** has implemented initiatives such as cultural training in the health and education workforce, information sharing, representation and collaboration of Aboriginal and Torres Strait Islanders in health and education policy.
- **Tasmania** has several forums in which Aboriginal community members and organisations participate to directly influence the delivery of health and education services, ranging from the early years to mental health to curriculum development. There are also numerous Aboriginal-identified roles within the health and education sectors to enable service delivery by Aboriginal people to Aboriginal clients.
- The **Northern Territory** has undertaken several initiatives to improve health policies and service delivery, including development of the Northern Territory Aboriginal Health Key Performance Indicator Information System, and implementation of the NT Cultural Security Framework 2016-2026 across all NT health services.
- The **Australian Capital Territory** Government has sought to improve health outcomes by appointing Aboriginal and Torres Strait Islander liaison officers in hospitals, and by regularly reviewing emergency protocols to ensure they are culturally appropriate. The ACT Government has also committed to developing culturally appropriate curricula by consulting with community members on incorporating Aboriginal and Torres Strait Islander perspectives and cultures

In relation to health, the following actions are required to fully address the recommendations:

- a more thorough evaluation of Aboriginal Community Controlled Health Organisations (ACCHOs);
- specific funding for the training of Aboriginal and Torres Strait Islander mental health workers;
- greater consideration of cultural need in the health sector to ensure culturally sensitive care, including more thorough consultation procedures with stakeholders on the design and management of health facilities, and more equitable access to specialised equipment; and
- the introduction of affirmative action policies in all jurisdictions to promote Aboriginal and Torres Strait Islander employment in health.

Further consideration of alcohol-related measures is also needed, including additional funding for compliance monitoring of liquor licensing, the potential for community workers to conduct inspections of licensed premises and reducing the number of licensed premises to restrict the sale of alcohol.

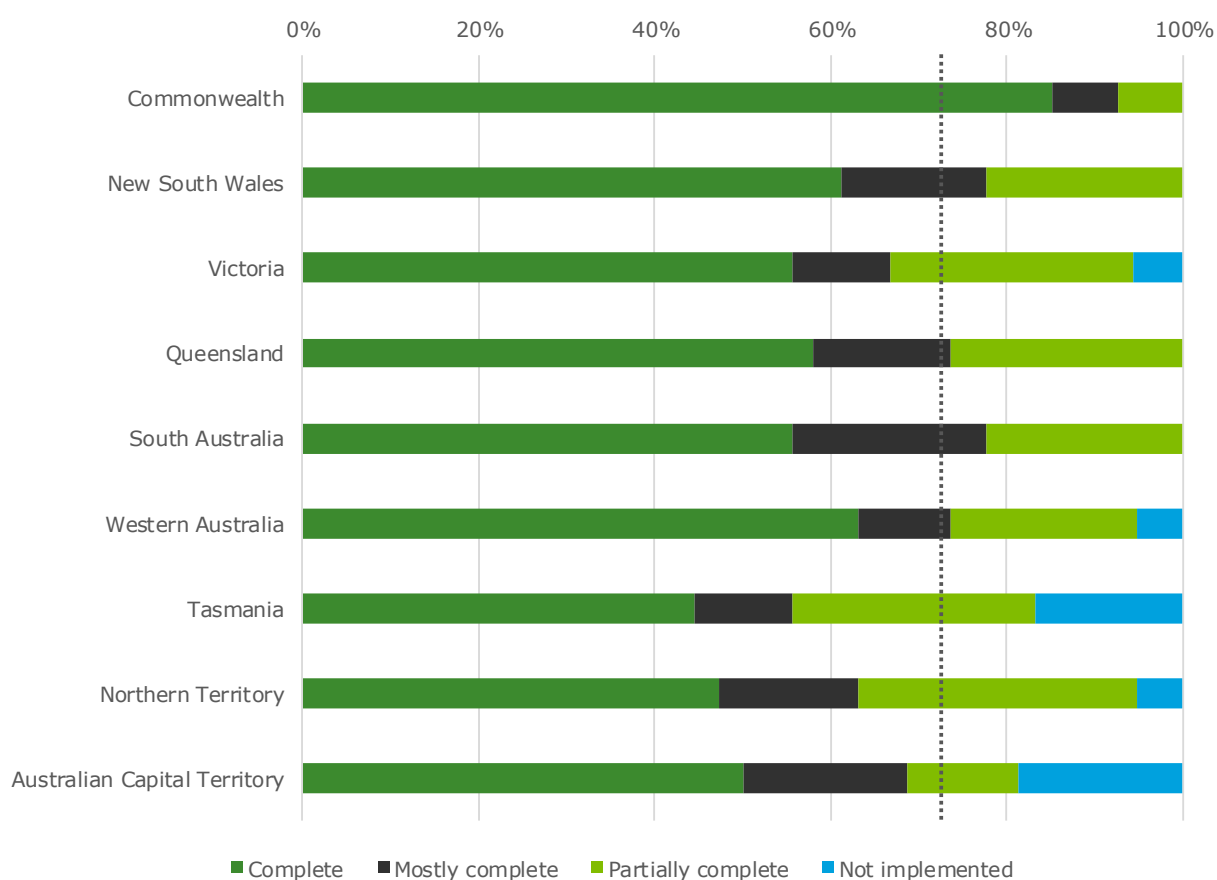
There is also a need for greater cultural consideration in education, including incorporating social issues into the curricula for Aboriginal and Torres Strait Islander students, and appropriate recognition of Aboriginal Education Workers.

Equal opportunity

The RCIADIC found that Aboriginal and Torres Strait Islander people face particularly significant disadvantage in participating in the labour force due to discrimination, low levels of formal education, and cultural imperatives. The RCIADIC recommended providing additional support to address these issues.

The average implementation status for each jurisdiction in relation to equal opportunity (recommendations 300-327) is shown in Chart xi. The Commonwealth's strong performance in this area reflects that it supports private and public sector employment of Aboriginal and Torres Strait Islander people through funding and employment targets, and the Indigenous Procurement Policy.

Chart xi Average implementation status – equal opportunity



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** funds a number of programs that assist private sector employers to employ Aboriginal and Torres Strait Islander people, including Tailored Assistance Employment Grants. In addition, the Commonwealth launched the Indigenous Procurement Policy in 2015, which has resulted in more than \$407 million worth of contracts being won by Aboriginal and Torres Strait Islander businesses. The Commonwealth has also addressed employment outcomes through the Employment Parity Initiative and Vocational Training and Employment Centres initiatives.
- The **New South Wales** Government implemented programs dedicated to improving Aboriginal and Torres Strait Islander employment, such as the Aboriginal Enterprise Development Officer Program and the Careers for Aboriginal People Program. In addition, the NSW Government has taken steps to improve outcomes in the Aboriginal and Torres Strait Islander community-housing sector through the Aboriginal Rental Housing Program.

- The **Victorian** Government has introduced a range of employment strategies and programs, such as the Victorian Aboriginal Economic Strategy to improve economic opportunity for Aboriginal and Torres Strait Islander people. Victoria has also addressed opportunities in the housing sector by encouraging the training and development of tradespeople through activities undertaken by the Aboriginal Housing Board.
- The **Queensland** Government has taken steps to improve employment through the Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan and through employment targets in the Public Service. Queensland has also addressed a jurisdiction-specific recommendation through the Building our Regions program, designed to improve economic independence and self-sufficiency of residents in remote communities.
- **South Australia** has sought to improve employment outcomes for Aboriginal and Torres Strait Islander people through its Strategic Plan, which sets employment targets, including in the public sector. South Australia also aims to support Aboriginal and Torres Strait Islander businesses through the Aboriginal Business Procurement Policy.
- **Western Australia** has implemented initiatives to improve employment of Aboriginal and Torres Strait Islanders such as the 'Attract, Appoint and Advance: an employment strategy for Aboriginal people' policy in the public sector and policy of using local suppliers in remote Aboriginal and Torres Strait Islander communities.
- In **Tasmania**, access to employment for Aboriginal people in the Tasmanian State Service is underpinned by Employment Direction No.10, which provides for identified and tagged positions. The Tasmanian Government is committed to the development of an Aboriginal Employment Strategy in the State Service, which targets employment. Access to equal opportunity in housing for Aboriginal people in remote locations is delivered by the Stronger Remote Aboriginal Services project, specifically for Flinders and Cape Barren Islands.
- The **Northern Territory** Government has implemented initiatives to improve employment, such as the Indigenous Employment Program. The Northern Territory has also developed the Northern Territory Procurement Policy, which gives preference for the letting of contracts to employers of Aboriginal and Torres Strait Islander people.
- The **Australian Capital Territory** Government has introduced labour market programs and employment targets to support greater Aboriginal and Torres Strait Islander employment in the public and private sectors. There has also been greater support of Aboriginal and Torres Strait Islander housing through the funding of homemaking skills through TAFE, and the provision of Liaison Officers to assist Housing ACT clients.

In order to fully implement the recommendations, the following actions are required:

- research on the impact of the taxation system on Aboriginal and Torres Strait Islander people.
- changing government procurement processes as not all Government contracts support the preferential letting of government contracts to employers of Aboriginal and Torres Strait Islander employees.
- further development of notification mechanisms relating to mining and tourism developments of culturally relevant land.
- further development of local employment promotion committees and active labour market programs to ensure that they are specifically designed to support Aboriginal and Torres Strait Islander people.

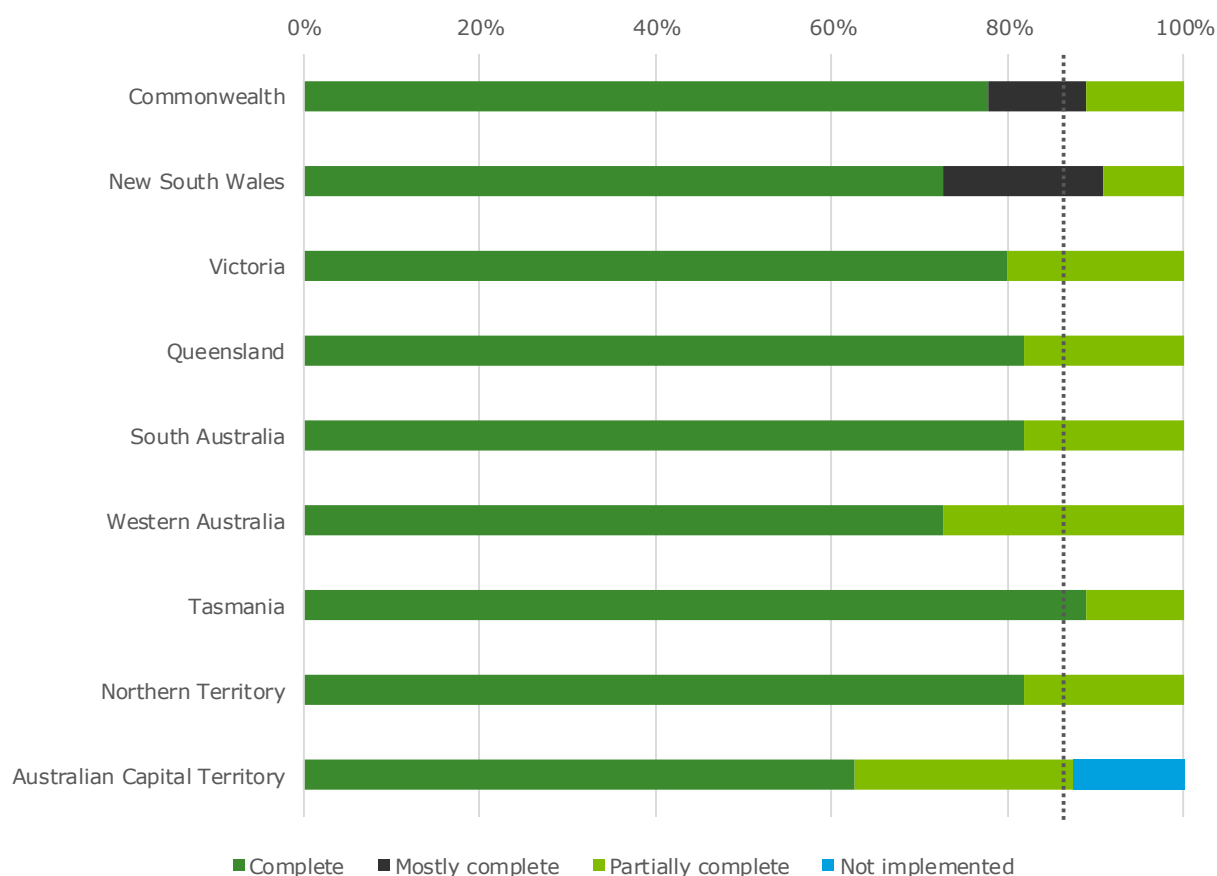
Reconciliation, land needs and international obligations

The RCIADIC noted that land plays a central role in the identity of Aboriginal and Torres Strait Islander people, and that land rights are vitally important to ensuring that Aboriginal and Torres Strait Islander communities can preserve the cultural, historical and traditional integrity of their land. The RCIADIC recommended that land needs of Aboriginal and Torres Strait Islander communities be incorporated into legislation.

The RCIADIC also recommended that the Commonwealth Government make a declaration under Article 22 of the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* and take all steps necessary to become a party to the *Optional Protocol to the International Convention on Civil and Political Rights* to provide a right of individual petition to the Committee Against Torture and the Human Rights Committee. States and Territories have a specific responsibility to ensure that legislation regarding correctional services conform to Standard Guidelines for Corrections in Australia, and uphold humane conditions as required under international obligations.

The average implementation status for each jurisdiction in relation to Reconciliation, land needs and international obligations (recommendations 328-339) is shown in Chart xii.

Chart xii Average implementation status – Reconciliation, land needs and international obligations



Note: The dashed line represents the average proportion of completed recommendations.

In response, governments have taken the following actions:

- The **Commonwealth** has taken the following actions: introduced the *Native Title Act 1993* which established a national scheme to provide for the recognition and protection of native title; and about 40% of Australia has now been returned to, or recognised as, Aboriginal and Torres Strait Islander interests under native title and various state and territory based statutory Aboriginal and Torres Strait Islander land schemes.

- In 1993, the Australasian Police Ministers' Council endorsed standard guidelines for police custodial facilities. Australia has also adhered to international obligations, including the First Optional Protocol to the International Covenant on Civil and Political Rights. In 1993, Australia lodged declarations with the United Nations under Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- **New South Wales** upholds humane prison conditions through a standardised Performance Framework and active systems for monitoring compliance. The Aboriginal Land Rights Act 1983 was introduced to address Aboriginal and Torres Strait Islander land needs.
- The **Victorian** Government has decommissioned a number of older prisons, and updated facilities. In addition, protections for Aboriginal and Torres Strait Islander heritage and cultural sites are enshrined in the Mineral Resources Development Act 1990.
- The **Queensland** Government has complied with the Standard Guidelines for Corrections in Australia by establishing a program for the rebuilding of correctional facilities, including capital works. Provisions for the addressing of land related needs have been included in the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.
- **South Australia** has installed an Aboriginal and Torres Strait Islander person on the Parole Board and improved representation on the Prisoner Assessment Committee. The Native Title (South Australia) Act 1994 has also been enacted to bring State laws in line with Commonwealth native title legislation.
- **Western Australia** has implemented all recommendations related to international obligations, including adopting standard Guidelines for corrections. Western Australia has also made significant progress on addressing land needs through implemented native title legislation.
- **Tasmania** has incorporated the Standard Guidelines for Corrections in Australia into the practices of Corrective Services, and is currently participating a further review to ensure comprehensive compliance. The *Aboriginal Lands Act 1995* (Tas) was introduced to address the absence of native title in Tasmania, and the Aboriginal Land Council of Tasmania is the democratically elected body that manages land returned under the Act.
- The **Northern Territory** Government has ensured that prison practices are compliant with the Standard Guidelines and has been actively involved in their most recent review. In addition, the Northern Territory has taken actions to control entry to Aboriginal and Torres Strait Islander land through the issue of permits, and approval processes.
- The **Australian Capital Territory** Government has incorporated the principles of the Standard Guidelines into ACT Corrective Services policy development and planning, and has also cooperated with the Commonwealth's National Standards Body in the development of the Standard Guidelines.

The RCIADIC also called for reconciliation to address community division and the injustices that Aboriginal and Torres Strait Islanders have faced. Immediately following the RCIADIC, the *Council for Aboriginal Reconciliation* was established. It has since been superseded by a non-government, not-for-profit foundation known as *Reconciliation Australia*. In 2008, Prime Minister Kevin Rudd delivered an Apology to the Stolen Generations to the Australian Parliament in recognition of the harmful policies of past governments. Work is continuing on a referendum on constitutional recognition.

To fully address all of the recommendations relating to land rights, further work is required to provide freehold title over public land, the prioritisation of Aboriginal and Torres Strait Islander buyers for the purchase of pastoral land, to which they may have an historical association and the development of an accelerated process for the granting of land title based on need.

Conclusion

The Commonwealth, State and Territory governments have taken many significant steps to respond to the RCIADIC recommendations, in order to improve outcomes for Aboriginal and Torres Strait Islander people and to advance the objectives of reconciliation. However, in terms of incarceration rates, there remains a substantial gap between the outcomes for Aboriginal and Torres Strait Islander people compared to other Australians.

1 Introduction

Deloitte was commissioned by the Department of the Prime Minister and Cabinet (PM&C) to review the status of the implementation of the recommendations from the Royal Commission into Aboriginal deaths in custody (RCIADIC).

1.1 The Royal Commission into Aboriginal deaths in custody

The RCIADIC was established in October 1987 in response to growing public concern over deaths of Aboriginal and Torres Strait Islander people in custody. The RCIADIC was tasked with inquiring into 99 Aboriginal and Torres Strait Islander deaths in custody that occurred between 1980 and 1989², including any action subsequently taken in respect of each of those deaths and the conduct of coronial, police and other inquiries. The RCIADIC examined both the primary causes of death as well as secondary factors resulting in Aboriginal and Torres Strait Islander incarceration. The terms of reference included accounting for social, cultural and legal factors that have a bearing on the deaths of Aboriginal and Torres Strait Islander people in custody.

The final report of the RCIADIC was delivered in 1991 and made 339 recommendations concerning procedures for persons in custody as well as social factors including youth policy, alcohol, health, employment, housing, land rights, self-determination and reconciliation. It was found that police and prisons failing their duty of care, and high numbers of Aboriginal and Torres Strait Islander people being arrested and incarcerated were key contributors to Aboriginal and Torres Strait Islander deaths in custody.

Responsibility for implementing the RCIADIC's recommendations covered nine jurisdictions in Australia, including the Commonwealth, and the eight States and Territories. This review, commissioned 27 years after the RCIADIC Report, is intended to revisit the status of the RCIADIC's recommendations in light of new policies and initiatives that address the recommendations, as well as broader social developments affecting Aboriginal and Torres Strait Islander people.

1.2 Context

Aboriginal and Torres Strait Islander people comprise approximately 3% of Australia's population, but continue to face disadvantage in a number of areas including education, employment, health and well-being. Aboriginal and Torres Strait Islander people also experience disproportionately high rates of incarceration and continue to die in custody, albeit at reducing rates as discussed below.

The RCIADIC's terms of reference included accounting for social, cultural and legal factors that have a bearing on the deaths of Aboriginal and Torres Strait Islander people in custody. A key finding of the RCIADIC Report was that reductions in rates of imprisonment could translate to a reduced risk of death in custody. Indeed, significant progress has been made on a number of themes identified by the RCIADIC, including:

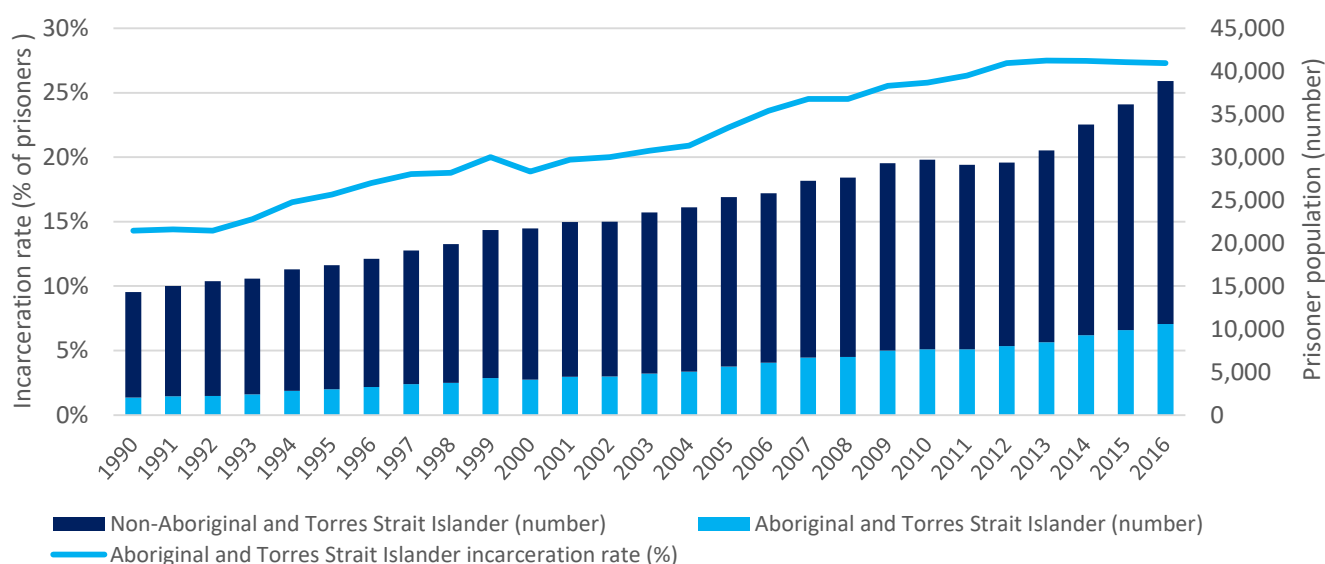
- The 1997 'Bringing Them Home' report of *the National inquiry into the separation of Aboriginal and Torres Strait Island children from their families*, which concluded that Aboriginal and Torres Strait Islander communities have endured gross violations of human rights, and made recommendations for additional funding for affected people and formal apologies by Australian parliaments; and

² The scope of the deaths included in the RCIADIC was expanded in 1988 and again in 1989, after the establishment of the RCIADIC in 1987.

- The *Closing the Gap* campaign initiated by the Council of Australian Governments (C) in 2008, which set measurable targets for reducing Aboriginal and Torres Strait Islander disadvantage, including in health, education and employment outcomes.

However, 25 years after the RCIADIC handed down its report, the incarceration rate among Aboriginal and Torres Strait Islander people has increased compared to that of the rest of the population. The share of the prison population that is made up by Aboriginal and Torres Strait Islander people has nearly doubled between 1990 and 2016, climbing from 14% to 27% (Chart 1.1). In absolute numbers, the Aboriginal and Torres Strait Islander prisoner population reached over 10,600 in 2016, up from 2,046 in 1990 (a more than fivefold increase). Over the same period the number of non-Aboriginal and Torres Strait Islander prisoners more than doubled from 12,200 to just over 28,000. Data from the ABS show that the incarceration rate of Aboriginal and Torres Strait Islander people is 15 times higher than the incarceration rate of non-Aboriginal and Torres Strait Islander people (ABS, 2016).

Chart 1.1 Aboriginal and Torres Strait Islander prison population (number) and incarceration rate (% of prisoners)



Source: ABS (2016).

Deaths in custody also remain a persistent challenge in Australian police watch-houses and correctional institutions. In 2012-13, there were 71 deaths in custody across both police and prison settings (Australian Institute of Criminology (AIC), 2015). Of these, 13 deaths were Aboriginal and Torres Strait Islander people. This is up slightly from 61 deaths in 1990-91, of which 8 were Aboriginal and Torres Strait Islander people. Overall, during the 10 years to 2012-13, there were 142 Aboriginal and Torres Strait Islander deaths in prison and police custody. However, rates of death in prison custody (per 100 prisoners) have fallen since 1990-91 for all prisoners (Chart 1.2). In 2012-13, there were 0.11 Aboriginal and Torres Strait Islander deaths per 100 prisoners, compared to 0.24 in 1990-91. Due to limited data on the number of people in police custody, the rate of death in police custody cannot be determined.

Chart 1.2 Deaths in prison custody by Aboriginal and Torres Strait Islander status (per 100 prisoners)



Source: Deloitte Access Economics analysis; ABS (2016); AIC (2015).

While there have been a number of positive steps taken since the RCIADIC Report in 1991, it is clear that further work is still required to successfully address the disproportionately high, and growing, rates of incarceration among Aboriginal and Torres Strait Island people. The findings of the RCIADIC continue to be relevant in guiding future policies and initiatives aimed at addressing Aboriginal and Torres Strait Islander disadvantage and reducing rates of incarceration. This report represents an important opportunity to systematically review progress on implementing the RCIADIC’s recommendations and identify areas where further action may be warranted.

1.3 Project overview

This review included:

- developing an assessment methodology to assess the progress made against each recommendation;
- conducting desktop research into the actions taken to respond to each recommendation. Key documents that were utilised in the desktop review are noted in Section 2.2;
- consulting with government agencies from each of the nine jurisdictions to collect information on the major actions undertaken to address the RCIADIC recommendations; and
- assessing the status of each recommendation based on the available information.

The scope of the report was limited to:

- assessing the actions taken to respond to each recommendation, noting that commentary on whether the intended outcomes from each recommendation have been achieved was outside of scope; and
- considering the major actions taken to respond to each recommendation, noting that an exhaustive history of all the relevant government actions since 1991 was also outside of scope.

Further detail on the scope of the analysis is provided in Chapter 2.

1.4 Report structure and terminology

The report has been structured as follows:

- Chapter 2 outlines the assessment methodology that was used in assessing the implementation of each recommendation.
- The analysis of each recommendation has been divided into the following sections, which have been grouped thematically based on the categorisations used in the RCIADIC Report:

- Chapter 3 (Coronial matters: recommendations 1-47): overview, the findings of the Commissioners as to the deaths, post-death investigations, and the adequacy of information.
 - Chapter 4 (The justice system: recommendations 48-62): Aboriginal society today, relations with the non-Aboriginal community, the criminal justice system (relations with police), and young Aboriginal people and the juvenile justice system.
 - Chapter 5 (Aboriginal and Torres Strait Islander disadvantage: recommendations 63-78): the harmful use of alcohol and other drugs, schooling, housing and infrastructure, and self-determination and local government.
 - Chapter 6 (Non-custodial approaches: recommendations 79-121): diversion from police custody, and imprisonment as a last resort.
 - Chapter 7 (Prison safety: recommendations 122-187): custodial health and safety, and the prison experience.
 - Chapter 8 (Self-determination: recommendations 188-213): the path to self-determination, and accommodating difference (relations between Aboriginal and non-Aboriginal people)
 - Chapter 9 (Cycle of offending: recommendations 214-245): improving the criminal justice system, and breaking the cycle.
 - Chapter 10 (Health and education: recommendations 246-299): towards better health, coping with alcohol and other drugs (strategies for change), and educating for the future.
 - Chapter 11 (Equal opportunity: recommendations 300-327): increasing economic opportunity, and improving the living environment (housing and infrastructure).
 - Chapter 12 (Reconciliation, land needs and international obligations: recommendations 328-339): conforming with international obligations, addressing land needs, and the process of reconciliation.
- Appendix A includes a list of government agencies who were consulted in the development of this report.
 - Appendix B provides a concordance that records the responsibility designation, and status of implementation, for each recommendation.
 - Appendix C contains responses from government to the findings of this report.

The following terminology has been used throughout the report:

- The final report from the RCIADIC is referred to as the "RCIADIC Report". Subsequent annual reports which reported on the implementation of the recommendations are referred to as '*[Year] Annual Report*' or '*[Year] Implementation Report*'.
- The term "Aboriginal and Torres Strait Islander" has been used throughout the report, with the following exceptions:
 - The RCIADIC Report used the term "Aboriginal". The original text of each recommendation has been reproduced in Deloitte's report.
 - Titles which use the term "Aboriginal" (for example, Aboriginal Health Workers) or the term "Indigenous" (for example, the Indigenous Advancement Strategy).
 - The NSW Government advised that the term "Aboriginal" should be used in NSW.
 - Terminology used in the input received from governments has been retained.

Throughout the report, the key actions and statuses for each of the nine jurisdictions have been listed based on the population of each jurisdiction: the Commonwealth, followed by New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory, and the Australian Capital Territory.

2 Assessment methodology

The objective of this report is to provide an assessment of the status of the implementation of the recommendations of the RCIADIC. This chapter provides a description of the methodology used in conducting the assessment.

2.1 Responsibility for implementation of recommendations

For each recommendation, this review has sought to identify whether responsibility for implementation is shared by both the Commonwealth and State and Territory governments, falls to the Commonwealth Government only, or to some or all of the State and Territory governments only. Of the 339 recommendations:

1. **Shared responsibility (194 recommendations):** those recommendations for which responsibility is shared by Commonwealth, and State and Territory governments. This is the majority of the recommendations, which reflects the holistic approach required by both levels of government to respond to many of the recommendations.
2. **Commonwealth responsibility (29 recommendations):** those recommendations that are the sole responsibility of the Commonwealth Government. These recommendations typically relate to national initiatives and strategies including, for example, employment and education policy, health research, and Australia-wide statistics.
3. **State and territory responsibility (116 recommendations):** those recommendations that are the sole responsibility of State and Territory governments. For example, the operation of correctional institutions is a State and Territory government responsibility.

A number of recommendations relate to the criminal justice system and policing. Many of these recommendations are the responsibility of State and Territory Governments only, with the exception of the Australian Capital Territory, as the Australian Federal Police (AFP) provides community policing in the ACT and Jervis Bay Territory. Thus, for many of these recommendations the Commonwealth and the ACT Government have shared responsibility for their implementation. While the Commonwealth and the ACT Government share responsibility for community policing, the ACT Government is solely responsible for legislative changes to the ACT's criminal justice system.

2.2 Desktop review and input from agencies

The assessment methodology involved two components: a desktop review of current policies and initiatives relating to the implementation of the RCIADIC recommendations; and seeking input from relevant agencies on progress within their portfolios. The assessment was undertaken in between March 2017 and March 2018, and captures progress on the recommendations as at that time.

The desktop review involved research and analysis of publicly available information relating to various policies and initiatives that evidence progress on implementing the recommendations. The research was guided by a number of existing reports covering progress since the RCIADIC Report. However, this review sought to independently confirm any policies or initiatives that implement the RCIADIC recommendations. Existing reports that were consulted include:

- **Indigenous deaths in custody 1989-1996** which was prepared by the Australian Human Rights Commission for the Aboriginal and Torres Strait Islander Commission in October 1996. The report provides commentary on the implementation of the RCIADIC over the time period to 1996.
- **Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (2017)** which was prepared by the Australian Law Reform Commission. The report provides an inquiry into the over representation of Aboriginal and Torres Strait Islander people in Australian prisons. Coverage is provided on the implementation of recommendations made as part of the RCIADIC.

- **Change the Record – Review of the implementation of the recommendations of the RCIADIC (2015)** which was commissioned by Amnesty International in May 2015. The report provides commentary on the extent to which recommendations have been implemented by Commonwealth, and State and Territory governments.
- **RCIADIC Implementation Reports** which detail the Commonwealth and State and Territory implementation of each recommendation at the time. Hard copies of these reports were obtained from the National Library of Australia, where an electronic version was not available. The reports include:
 - Commonwealth: 1992-93, 1993-94, 1994-95, 1995-96, 1996-97
 - New South Wales: 1992-93, 1994-95, 1995-96, 2000
 - Victoria: 1993, 1994, 1997, 2005
 - Queensland: 1993, 1994, 1996-97, 1997
 - South Australia: 1993, 1994
 - Western Australia: 1993, 1994, 1995, 1997, 2000
 - Tasmania: 1993, 1995
 - Northern Territory: 1993-94, 1994-95, 1996-97
 - Australian Capital Territory: 1992-93, 1993-94, 1997, 1997-98

Input was sought from government agencies to capture the extent to which various policies and initiatives within their portfolio have implemented the RCIADIC recommendations. Government agencies were also given the opportunity to identify any gaps in implementation, and to highlight recommendations that have been superseded by more recent policy developments. The government agencies who provided input to the report are listed in Appendix A.

2.3 Implementation rating scale

Each recommendation was assessed using an implementation rating scale. The scale indicates the degree to which a particular recommendation was implemented. The rating scale is as follows:

- **Complete** – recommendation has been implemented and no further action is required. For example, recommendations that related to a legislative change that has been enacted.
- ◐ **Mostly complete** – significant progress has been made on the implementation of the recommendation, however the recommendation has not been implemented in full.
- ◑ **Partially complete** – some elements of the recommendation have been implemented. For example, this may include a recommendation requiring a new program to be introduced and Aboriginal and Torres Strait Islander people employed to deliver the program, however it was only implemented with respect to introducing the new program.
- **Not implemented** – no progress has been made that is directly related to the recommendation.

In addition to the four-point scale, some recommendations did not fit within these definitions, and the following classifications were used:

- ⊘ **Out of scope** – Some recommendations are the responsibility of some state and territory government(s), but not all. For example, recommendations relating to remote communities have been assessed as out of scope for the Australian Capital Territory (ACT) Government, given there are no remote communities in the ACT.

Importantly, the rating scale assesses each recommendation in terms of the actions taken towards implementing the recommendation (e.g. introducing a policy or program, if recommended as an output). However, this report does not provide an assessment of how effective these actions have been, such as monitoring whether the policy or program has been successful in achieving its desired outcomes (e.g. reductions in rates of incarceration). Such further analysis may be a useful subsequent project.

3 Coronial matters

The recommendations in this chapter relate to: **Overview (1-3); the Findings of the Commissioners as to the Deaths (4-5); Post-Death Investigations (6-40); and Adequacy of Information (41-47).**

Key themes from recommendations (47 recommendations)

- The adoption and implementation of the recommendations should be done in a public manner and in consultation with Aboriginal and Torres Strait Islander people and organisations. There should be ongoing reporting on the implementation of the recommendations to allow for monitoring of progress.
- The RCIADIC found that many deaths in custody were poorly reported at the time of death and families and next of kin were ill informed about the details of the death, which caused additional distress. The processes for post-death investigations, notification of deaths to families and next of kin, and coronial inquests should be improved and detailed recommendations on how to do so are provided.
- National databases should be established to collect data on deaths in custody, incarceration rates, the flows in and out of police cells and the demographics of detainees. This should be accompanied by a national harmonisation of data collection and reporting standards.

Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

Commonwealth | Key actions: The Commonwealth produced annual implementation reports from 1992-93 to 1996-97, and continues to publish data on Aboriginal and Torres Strait Islander people in the prison population. The AFP's National Guideline on persons in custody and police custodial facilities, and the AFP Commissioner's Order on Professional Standards were developed to improve process of reporting and investigating deaths in custody.

Remaining gaps: The intensity of reporting on the progress of implementation has reduced over time. The AIC has undertaken to establish and report on data on police custody. This remains an ongoing issue for the AIC. A review of the first data collection using electronic custody data has been completed internally. The next stage is for the AIC to engage with States and Territories to develop the next iteration of data collection.

New South Wales | Key actions: New South Wales produced implementation reports between 1992 and 2000, and monitored the implementation of the RCIADIC through an AJAC Committee. Coronial recommendations have been incorporated into police procedures and policies, and the *Coroners Act 2009* (NSW). The NSW Government contributes to ongoing data publication.

Remaining gaps: In New South Wales, there is no provision that an inquest not proceed should the deceased's family or their representatives not be in attendance. Further efforts are required in relation to notifying family members and the Aboriginal Legal Service surrounding the details of an inquest.

Victoria | Key actions: The Victorian Government produced implementation reports and established an AJAC to monitor the implementation of recommendations. Aboriginal Justice Agreements have continued to monitor progress, and set strategic policy priorities. Coronial recommendations have been addressed through the *Coroners Act 2008* (Vic), and ongoing data publication of Aboriginal and Torres Strait Islander people in the prison population occurs.

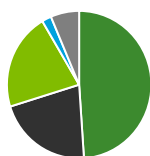
Remaining gaps: The Victorian Government has not fully addressed recommendations relating to the selection or appointment of officers to conduct post-death investigation. It does not appear that the protocol called for between the Aboriginal Legal Services and Aboriginal Health Services has been extended to cover all Aboriginal and Torres Strait Islander deaths notified to the coroner. Further action is also required to address the provision and publication of information on persons in custody.

Queensland | Key actions: In Queensland, the government produced implementation reports between 1993 and 1997 and established an AJAC and the ATSIAB to monitor progress. Coronial inquest and reporting processes were addressed through legislation and procedural guidelines. The Queensland Corrective Services publishes annual reports and other data.

Remaining gaps: The Queensland Government has not established a protocol between the Aboriginal Legal Services and Aboriginal Health services to cover all Aboriginal and Torres Strait Islander deaths notified to the coroner. Further action is also required to address the settlement of claims via negotiation, and the publication of data profiling persons in police cells.

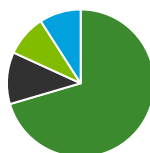
South Australia | Key actions: The South Australian Government produced implementation reports and established an AJAC and the South Australian AAC to monitor the progress of implementation. Recommendations relating to coronial inquest, and investigation and reporting procedures were addressed through the Coroners Act 2003 (SA) and procedural guidelines. Ongoing data publication occurs as called for by the RCIADIC.

Remaining gaps: While the South Australian Government has at least partially addressed nearly all recommendations, further implementation is required in relation to continued monitoring and reporting on progress. Coronial recommendations which deal with autopsy procedures, and the responsibilities and powers of the lawyer assisting the coroner, are also not fully met.



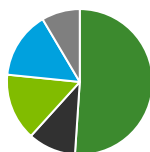
Western Australia | Key actions: The Western Australian Government has produced five public implementation reports and continues to consult with Aboriginal and Torres Strait Islander communities in relation to the RCIADIC. The *Coroners Act 1996* (WA) significantly addresses recommendations relating to the process of post-death investigation and coronial conduct. Western Australia cooperates with the Commonwealth Government on the publication of relevant data.

Remaining gaps: The Western Australian Government has not fully met the requirements of recommendations related to the settlement of claims made in respect of deaths in custody, or the Coroner's reporting and recommendation requirements to the Attorney-General. There is also a lack of legislation requiring the Aboriginal Legal Service to be notified of a death in custody.



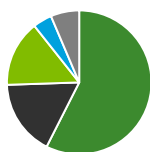
Tasmania | Key actions: The Tasmanian Government produced implementation reports in 1993 and 1995. The process of coronial inquest, and investigation and reporting procedures were addressed through amendments to the Coroners Act 1995 (Tas), and the Tasmania Police Manual. Ongoing data publication occurs in cooperation with the Commonwealth.

Remaining gaps: The Tasmanian Government has not fully met recommendations related to the monitoring of progress, or the establishment of an AJAC or similar body. Procedures governing the departmental response to coronial findings, notification of the family of the deceased, and post-mortem examinations are also not fully addressed.



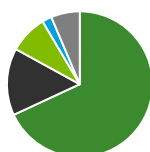
Northern Territory | Key actions: The Northern Territory Government produced implementation reports and monitored the progress of implementation through an AJAC and AJU. The *Coroners Act 1993* (NT) and other legislation and policy has been introduced to address coronial matters. Ongoing data collection and reporting occurs through the function of the NTCS, and cooperation with the Commonwealth.

Remaining gaps: The Northern Territory Government has not fully addressed principles attached to the provision of legal aid, or the duties of the lawyer assisting the coroner. Police, Corrections and Health have protocols in place for Aboriginal and Torres Strait Islander people that die in their care, custody or fall under the provisions of the *Coroners Act 1993* (NT), however protocols don't exist for Aboriginal and Torres Strait Islander people that die outside of the care/custody of these agencies or fall outside the provisions of the *Coroners Act 1993* (NT).



Australian Capital Territory | Key actions: The Australian Capital Territory Government produced implementation reports, and continually monitored implementation through the Advisory Council and the Aboriginal Justice Centre. The Coroners Act 1997 (ACT), and the AFP National Guideline on persons in custody and police custodial facilities, were introduced in response to coronial recommendations. The ACT continues to publish data as called for by the RCIADIC.

Remaining gaps: The Australian Capital Territory has not addressed the requirement that coronial authorities notify the Coroner's Office of all deaths in custody immediately. It does not appear that a protocol exists between Aboriginal Legal Services and Aboriginal Health Services to cover all Aboriginal or Torres Strait Islander deaths reported to the coroner.



3.1 Overview (1-3)

Recommendation 1

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

- a. *That the Commonwealth Government and State and Territory Governments, in consultation with ATSIC, agree upon a process which ensures that the adoption or otherwise of recommendations and the implementation of the adopted recommendations will be reported upon on a regular basis with respect to progress on a Commonwealth, State and Territory basis;*
- b. *That such reports should be made not less than annually and that, subject to the agreement of its Commissioners so to do, ATSIC be given special responsibility and funding to enable it to monitor the progress of the implementation of the adopted recommendations and to report thereon to the Aboriginal and Torres Strait Islander community;*
- c. *That governments consult with appropriate Aboriginal organisations in the consideration and implementation of the various recommendations in this report;*
- d. *That, wherever appropriate, governments make use of the services of Aboriginal organisations in implementing such recommendations; and*
- e. *Ensure that local Aboriginal organisations are consulted about the local implementation of recommendations, and their services be used wherever feasible.*

Background information


The RCIADIC Report represented the first comprehensive review of factors impacting the incarceration of Aboriginal and Torres Strait Islander people and was influential in terms of setting policy direction for governments. Recommendation 1 is for the findings of this Report to be incorporated into Australia's public policy discussion.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** Government produced five annual implementation reports over the period 1992-93 to 1996-97. Following that, ATSIC was responsible for ongoing monitoring until disbanded in 2005. The Commonwealth also cooperated with ATSIC to ensure the involvement of Aboriginal and Torres Strait Islander organisations in the implementation of Recommendation 1. However, ATSIC was disbanded in 2005. The extent and nature of all deaths that occur in gaols, juvenile justice centres and in police custody have been monitored and publicly reported by the AIC through the National Deaths in Custody Program since 1992. Currently, the Commonwealth does not formally monitor the implementation of the RCIADIC recommendations.

 *The Commonwealth has only partially completed Recommendation 1. While initial progress following the RCIADIC was made in the monitoring and implementation of recommendations, this has ceased. After ATSIC was disbanded, cooperation with Aboriginal and Torres Strait Islander organisations on the implementation of the recommendations does not appear to have continued.*


The **New South Wales** Government produced five reports between 1992 and 2000 outlining its implementation of the recommendations. In 1992, NSW established an Inter Departmental Committee to monitor the implementation of the recommendations and to coordinate state funding arrangements. The then Department of Aboriginal Affairs (currently Aboriginal Affairs NSW) received funding from ATSIC to ensure the involvement of Aboriginal people in monitoring the implementation of the recommendations. In respect to part d), in 1994-95, the then Department of Aboriginal Affairs contracted the Western Aboriginal Legal Service and Tranby Aboriginal Cooperative to undertake a series of community workshops specifically dealing with the implementation of the recommendations.

In 2004, the former Aboriginal Justice Advisory Committee (AJAC) made the decision to suspend state reporting in light of the implementation of the Aboriginal Justice Plan in 2004 and the Department of Aboriginal Affairs' *Two ways together: New South Wales Aboriginal Affairs Plan (2003-2012)*. The intent of the Royal Commission's work continues to inform the work of NSW Government agencies today. This includes a commitment to ongoing consultation and engagement with Aboriginal communities to inform the development and implementation of new policies, programs and services in a broad range of areas including education, employment, child protection and family wellbeing, health and the recognition and preservation of Aboriginal culture and heritage.

The NSW Government conducts annual reporting on progress on OCHRE³ and also has a 10-year evaluation plan. OCHRE is the NSW Government's plan for Aboriginal affairs. The plan invests in language and culture, healing, Aboriginal governance, education and employment. Implementation and evaluation takes place using a genuine co-design approach with Aboriginal communities at the centre of decision making.

Corrections Research, Evaluation and Statistics (part of Corrective Services NSW (CSNSW)) collects, analyses, interprets and disseminates information to inform CSNSW planning, policy formulation and operational management including initiatives relating to Aboriginal offenders. Under the Strategy for supporting Aboriginal offenders to desist from re-offending CSNSW actively seeks the formal involvement of Aboriginal community representatives in devising policies and programs as well as CSNSW responses to new legislative initiatives. CSNSW collaborates with regional non-government agencies including Aboriginal organisations to deliver rehabilitation and community based integration programs and services.

NSW Government funding supports Aboriginal Community Controlled Health Services to deliver services in the areas of chronic care, oral health, domestic and family violence, mental health, vascular health, preventive health care and drug and alcohol misuse. This important work is taking place through the NSW *Aboriginal Health Plan 2013-2023*, which was developed in partnership with the Aboriginal Health and Medical Research Council of NSW to ensure that the voices of Aboriginal people inform the NSW Government's decision-making processes.


 *The New South Wales Government has mostly implemented Recommendation 1 through the publication of implementation reports, the development of plans, and continued engagement with Aboriginal organisations. However, it doesn't appear that the ongoing monitoring of all these plans occurs.*

The **Victorian** Government produced Royal Commission Implementation Reports in 1992, 1993, 1995-96 and 2005. In 1994, the then Victorian Minister for Aboriginal Affairs, the Hon. Michael John, MP, was responsible for coordinating the Victorian Government's implementation and response to the recommendations of the RCIADIC. Through Aboriginal Affairs Victoria, a system of monitoring and reporting on initiatives to implement the Commission's recommendations was established. Phase 1 of the Victorian Aboriginal Justice Agreement (AJA) was produced in direct response to the 1997 National Ministerial Summit into Indigenous Deaths in Custody, which was held to review the implementation of the RCIADIC recommendations. Phase 1 ran from 2000 to 2006 and Phase 2 from 2006 to 2012. The current phase is Phase 3, which commenced in 2013. An independent evaluation of AJA Phase 2


³ Opportunity, Choice, Healing, Responsibility, Empowerment.

was undertaken in 2011-12 and AJA Phase 3 specifies benchmarks, performance indicators, targets and timelines that all AJA initiatives are measured against.


In respect to parts c) and e), the AJAs are a formal agreement between the Victorian Government and Koori Community for working together to improve justice outcomes for the Koori community, and had its origins are on implementing the RCIADIC recommendations. In respect to part d), it is Victorian Government policy to use Aboriginal community organisations, wherever possible, to deliver services to Aboriginal people.

 *The Victorian Government has implemented Recommendation 1 through the publication of implementation reports, the development of AJAs as part of the response to the RCIADIC, and continued engagement with Aboriginal and Torres Strait Islander organisations.*

The **Queensland** Government produced four RCIADIC Implementation Reports between 1993 and 1997. The Queensland Government noted that current government policies, programs and practices that implement the recommendations are now considered 'business as usual'. Reporting on relevant activity that implements the recommendations forms part of the regular reporting process of government. In December 1992, the Queensland Government appointed a 12-member Aboriginal and Torres Strait Islander Overview Committee. The Committee's terms of reference included ensuring meaningful consultation with the Aboriginal and Torres Strait Islander community, monitoring and advising government on the implementation of the RCIADIC recommendations, and keeping the Aboriginal and Torres Strait Islander community informed of the processes and progress of implementation.

 *The Queensland Government has implemented Recommendation 1 through the publication of implementation reports, the appointment of an Aboriginal and Torres Strait Islander Overview Committee, and the incorporation of implementation updates into regular government reporting processes.*

The **South Australian** Government produced two RCIADIC Implementation Reports in 1993 and 1994. The 1994 Implementation Report highlighted that the Aboriginal Justice Advisory Committee, with representatives drawn from local committees or organisations, would assist in improving consultation about the local implementation of recommendations. It is the South Australian Government's current position that government policy and practices must place emphasis on consultation and collaboration. The South Australian Government also noted there has been progress in the spirit of the recommendations through implementation of services through approaches that include holistic, place-based, community development practice and empowered decision making with Aboriginal nations, organisations and communities.

 *The South Australian Government has partially implemented Recommendation 1 through the publication of implementation reports, and continued consultation and collaboration with Aboriginal and Torres Strait Islander organisations. However, it does not appear that ongoing monitoring of the RCIADIC recommendations occurs.*

Since the Royal Commission, the **Western Australian** Government has produced five public implementation reports (1993, 1994, 1995, 1997, 2000) against the Recommendations. The first report set out the Aboriginal community-based initiatives and established a detailed outcomes-based reporting process in line with the Aboriginal community response.


The Western Australian Government has consulted with Aboriginal organisations when previously implementing the Recommendations. Presently, the Western Australia Government is undertaking significant consultations with Aboriginal communities across the State for the refreshed Closing the Gap agenda.

In terms of the specific issue of Aboriginal deaths in custody, the Western Australian Government reports such occurrences to the Productivity Commission annually, for their production of the Report on Government Services ('Volume C: Justice' refers).

More strategically, in meeting the needs of Aboriginal people, the Western Australian Government conducted a review of the public sector in 2017, titled the Service Priority Review (SPR). The first


direction from the SPR is to ensure the public sector is focused on community needs, Aboriginal or otherwise. Machinery of Government changes have seen the creation of the Aboriginal Policy Unit (APU) within the Department of the Premier and Cabinet. The APU's primary aim is to transform the relationship between Aboriginal people and government in Western Australia to deliver mutual and enduring benefits. Location-based solutions, including across regional and remote communities, is another key focus of the APU.

The Western Australian Government has also approved further funding for the Regional Services Reform Unit. The Unit is focused on remote communities in the Pilbara and Kimberley regions with a dedicated focus on working with Aboriginal communities to achieve better outcomes. The Unit has published details of its extensive consultation with communities in its report 'Resilient Families, Strong Communities'.


 *The Western Australian Government has implemented Recommendation 1 through the publication of implementation reports, the incorporation of implementation updates into regular government reporting processes and continued engagement with Aboriginal and Torres Strait Islander organisations.*

The **Tasmanian** Government produced two RCIADIC Implementation Reports in 1993 and 1995. The 1993 Implementation Report highlighted that the Department of Premier and Cabinet was responsible for overseeing the implementation process and had secured funding from ATSIC to ensure that Aboriginal organisations were consulted about the local implementation of the recommendations. Further to this, in 1995, the Tasmanian Government stated that a RCIADIC Monitoring Committee had been established to oversee the implementation of the recommendations.

The Department of Police, Fire and Emergency Management's *Aboriginal Strategic Plan 2014-2022* acknowledges the importance of Aboriginal and Torres Strait Islander communities within the context of the broader community, and supports strategies to develop and maintain appropriate and culturally respectful relationships between the Tasmanian Government and these communities. Additionally, the Tasmania Police State Aboriginal Liaison Coordinator establishes a framework for regular meetings between Tasmania Police and local Aboriginal and Torres Strait Islander organisations.

 *The Tasmanian Government has mostly implemented Recommendation 1 through the publication of implementation reports, the establishment of a RCIADIC Monitoring Committee, and the Department of Police, Fire and Emergency Management's Aboriginal Strategic Plan 2014-2022. However, it does not appear that ongoing monitoring of the RCIADIC recommendations occurs.*

The **Northern Territory** Government produced four RCIADIC Implementation Reports in 1993, 1994, 1996 and 1997. The 1994-95 Implementation Report stated that the Northern Territory Government had appointed an Aboriginal RCIADIC Project Officer and an Assistant Project Officer within the Office of Aboriginal Development to enhance involvement of the Northern Territory Aboriginal community in the monitoring and implementation process. According to the 1996-97 Implementation Report, funding for the project officers ceased in 1996-97.


 *The Northern Territory Government has partially implemented Recommendation 1 through the publication of implementation reports, the appointment of Project Officers to assist with the implementation of the RCIADIC, and continued community engagement and monitoring activities. However, it does not appear that ongoing monitoring of the RCIADIC recommendations occurs.*

The **Australian Capital Territory** Government produced four RCIADIC Implementation Reports between 1992 and 1998. By 1994, the ACT Government had formed the Aboriginal and Torres Strait Islander Advisory Council and the Council was working with the ACT Government to implement the recommendations. The 1997 Implementation Report noted that the ACT Government was consulting with the Aboriginal and Torres Strait Islander Consultative Council and other Aboriginal and Torres Strait Islander organisations when implementing the RCIADIC recommendations.

The ACT Aboriginal and Torres Strait Islander Agreement 2015-2018 expires at the end of 2018. The next Agreement (ACT Aboriginal and Torres Strait Islander Agreement 2019-2024) will commence in

2019 to align with the Aboriginal and Torres Strait Islander Justice Partnership 2019-2024. The Agreement is being developed in partnership with the ACT Aboriginal and Torres Strait Islander Elected Body (the Elected Body⁴). The Elected Body will be a signatory to the Agreement, along with the ACT Government and ACT Public Service.

The Agreement is a commitment by the ACT Government, the Elected Body, the ACT Public Service and its service partners to work with the community to meet the vision of equitable outcomes for individuals and members of the ACT Aboriginal and Torres Strait Islander community. The Agreement is a whole-of-government agreement, therefore it is expected that all ACT Government Directorates will use the policy framework to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal and Torres Strait Islander members of the community.

 *The Australian Capital Territory Government has partially implemented Recommendation 1 through the publication of implementation reports, and continued consultation and collaboration with Aboriginal and Torres Strait Islander organisations. However, it does not appear that ongoing monitoring of the RCIADIC recommendations occurs.*

Recommendation 2

That subject to the adoption by governments of this recommendation and the concurrence of Aboriginal communities and appropriate organisations, there be established in each State and Territory an independent Aboriginal Justice Advisory Committee to provide each Government with advice on Aboriginal perceptions of criminal justice matters, and on the implementation of the recommendations of this report. The Aboriginal Justice Advisory Committee in each State should be drawn from, and represent, a network of similar local or regionally based committees which can provide the State Advisory Committee with information of the views of Aboriginal people. It is most important that the views of people living outside the urban centres be incorporated. The terms of reference of each State, local or regional Advisory Committee is a matter to be negotiated between governments and Aboriginal people. The Commission suggests however that matters which might appropriately be considered include, inter alia:

- a. The implementation of the recommendations of this report, or such of them as receive the endorsement of the Government;*
- b. Proposals for changes to policies which affect the operation of the criminal justice system;*
- c. Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;*
- d. Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and*
- e. The dissemination of information on policies and programs between different agencies, and between parallel bodies in different States.*

⁴ The Elected Body consist of seven members. Each member is elected by the ACT Aboriginal and Torres Strait Islander community for three years and hold office on a part-time basis. The Chair and Deputy Chair are elected by majority vote of the members. The purpose of the Elected Body is to provide a strong, respected and democratically elected voice for Aboriginal and Torres Strait Islander people living in the ACT by: Understanding and representing community needs and priorities; Supporting development of government policy and services that meet community needs; and Advocating for accountability, transparency and effectiveness in achieving social and economic outcomes for the ACT Aboriginal and Torres Strait Islander community. The Elected Body has been established by the ACT Government as an innovative and unique model underpinning Aboriginal and Torres Strait Islander community development and self-determination in Canberra.

Background information

To implement successfully the RCIADIC recommendations, the RCIADIC recommended the establishments of an independent Aboriginal Justice Advisory Committee (AJAC) to capture the views of Aboriginal and Torres Strait Islander people. In order to reflect accurately the opinions of all Aboriginal and Torres Strait Islander people, the Advisory Committee should include a group of regionally based members to reflect the views of those Aboriginal and Torres Strait Islander people who live in regional areas.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, the Attorney-General approved the formation of an AJAC in 1993. The AJAC Committee held its first meeting on 10 June 1993 and their role involved advising the Attorney-General on a range of matters within its Terms of Reference. In 1998, the AJAC became the Aboriginal Justice Advisory Council, which operated until 2009.

Currently, the New South Wales Government receives advice in relation to justice policy, including from the Corrective Services NSW AAC and the Juvenile Justice Aboriginal Strategic Advisory Committee, and at a local level from a range of Aboriginal advisory communities. There are also a number of Aboriginal Consultative Committees with representatives from local Aboriginal organisations and services programs advising Juvenile Detention Centres on relevant local issues to support Aboriginal young people.

Consultation is also occurring at the local level under the NSW Government's Aboriginal Affairs policy, OCHRE. As a part of Local Decision Making, negotiations in the Illawarra Wingecarribee region, the regional Aboriginal governance body, and relevant NSW Government agencies have negotiated the establishment of a Community Police and Justice Committee. The Committee's role is to discuss local policy matters and to resolve local contentious issues. The inter-jurisdictional Corrective Services Administrators Council is an effective forum to disseminate information and best practice on policies and programs for Aboriginal offenders. The Council have established the National Indigenous Working Group comprising representatives of Aboriginal policy advisors around Australia to share best practice approaches and ensure the currency and relevance of policies and programs impacted by Aboriginal offenders.

 *The New South Wales Government implemented Recommendation 2 through the establishment of an AJAC, which provided advice on the implementation of the RCIADIC. Aboriginal perspectives on criminal justice issues continue to be provided through a number of advisory committees.*

In 1993, the **Victorian** Government established an Aboriginal Justice Advisory Committee. The Committee acted as the primary source of advice and direction to the Victorian and Commonwealth Governments on the implementation of the RCIADIC recommendations. The *Victorian Government Indigenous Affairs Report 2004-05* detailed that Regional Aboriginal Justice Advisory Committees were a key link in the partnership between the Government and Aboriginal and Torres Strait Islander community. To date, there are nine Regional Aboriginal Justice Advisory Committees throughout Victoria.⁵


 *The Victorian Government implemented Recommendation 2 through the establishment of AJACs which were tasked with providing advice on the RCIADIC, and continue to provide advice to the Victorian Government.*

In 1993, the **Queensland** AJAC was established to provide the-then Minister for Justice and Attorney-General with independent and informed advice about Aboriginal and Torres Strait Islander perspectives on criminal justice issues that affect Aboriginal and Torres Strait Islander people. In

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<http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/regional+aboriginal+justice+advisory+committee.shtml>, accessed September 2017.

1997, the AJAC was replaced by the Indigenous Advisory Council, which in turn was replaced by the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB). The ATSIAB's terms of reference included the provision of advice on the implementation of this recommendation of the RCIADIC. The ATSIAB was disbanded when the Aboriginal and Torres Strait Islander Justice Agreement expired in 2011. The Department of Justice and Attorney-General has initiated strategies aimed at recruiting and training Aboriginal and Torres Strait Islander departmental officers. In relation to sentencing matters, the Queensland Sentencing Advisory Council is able to provide advice to the Attorney-General on matters relating to sentencing. A recent reference of issues affecting parole and community based orders requires the Council to consider Indigenous over-representation in the criminal justice system.

 *The Queensland Government mostly implemented Recommendation 2 through the establishment of an AJAC, and later ATSIAB, which provided advice on the RCIADIC. However, it is not clear which mechanisms currently exist to promote the intent of this recommendation.*

An AJAC was formed in **South Australia** in 1989. To ensure that the Committee was truly independent, it was re-established as a community-based committee in 1994. The Committee worked closely with the Aboriginal Legal Rights Movements Inc. and the Department of State Aboriginal Affairs. In November 2005, the Premier established the South Australian AAC (SAAAC). In May 2007, the interim SAAAC recommended that an ongoing AAC be convened as a key engagement mechanism between South Australian Aboriginal people and the State Government. The South Australian Government formally adopted these recommendations in December 2007.


The AAC has the role of providing the Government with advice on existing programs and policies as they affect Aboriginal people. The Attorney General's Department established the time-limited Port Adelaide Justice Reinvestment Advisory Group with an independent Aboriginal and Torres Strait Islander chairperson to oversee consultations on justice reinvestment in 2015. The SA Government's strategy to reduce reoffending by 10% by 2020 was underpinned by an Aboriginal and Torres Strait Islander advisory panel.

 *The South Australian Government has implemented Recommendation 2 through the establishment of an AJAC, the SAAAC, and the AAC.*

In 1992, the **Western Australian** Government established the Aboriginal Advisory Council (AAC) as the interim AJAC. The role of the AAC was to provide Aboriginal perspectives on criminal justice matters, and to monitor the implementation of the Recommendations of the RCIADIC. In 1994, the Aboriginal Justice Council (AJC) was formally established and replaced the AAC. The State Government funded the AJC until 2002.


Although, the Western Australian Government does not currently have an advisory council dedicated solely to Aboriginal justice matters the functions in the Recommendation are addressed as follows:

- the Western Australia Aboriginal Advisory Council (WAAAC) is a legislated body that considers a wide range of strategic policies and programs affecting the lives of Aboriginal people. Members are drawn from regions in Western Australia, including regional and remote locations;
- the Justice Planning and Reform Committee (JPRC) has been established to lead a coordinated approach to criminal justice system reform. The JPRC is chaired by the Director General of the Department of the Premier and Cabinet and membership is comprised of senior officers from justice agencies; and
- justice agencies develop Reconciliation Action Plans (RAPs) that include strategies to recruit and retain Aboriginal staff.


 *The Western Australian Government implemented Recommendation 2 through the establishment of the AAC and the AJC, which provided advice on the implementation of the RCIADIC. Aboriginal perspectives on justice issues continue to be provided through a number of advisory bodies.*

According to the 1993 Implementation Report, the **Tasmanian** Government would only support this recommendation if the Aboriginal community, represented through Aboriginal Legal Service, agreed to the proposal. The Aboriginal Legal Service and the Department of Police did not give their support to

implement the recommendation and by the time of the 1995 Implementation Report, an AJAC was still under consideration. No further information on more recent actions taken towards implementation could be located.


 *The Tasmanian Government has not implemented Recommendation 2. The establishment of an AJAC did not occur in Tasmania.*

The 1994-95 **Northern Territory** Implementation Report stated that an AJAC had been established comprising representatives from Aboriginal organisations and communities. However, the 1996-97 Implementation Report noted that the Northern Territory AJAC had been dormant for some months and was expected to be revitalised during the 1998-99 financial year. In 2017, the Northern Territory's Attorney-General's Department established an Aboriginal Justice Unit which commenced development of an Aboriginal Justice Agreement through extensive consultation with communities and stakeholders. A key objective of the Unit is to develop strategies and actions aimed at reducing the high levels of Aboriginal and Torres Strait Islander recidivism rates in the Northern Territory justice system.

 *The Northern Territory Government mostly implemented Recommendation 2 through the establishment of an AJAC. Whilst there was a gap in the implementation of this recommendation, the Northern Territory has now established an Aboriginal Justice Unit for ongoing implementation.*

In the **Australian Capital Territory**, the Chief Minister had established an Advisory Council by 1993 to advise and monitor the implementation of the RCIADIC recommendations, which fulfilled the role of an AJAC. In 2006, the Aboriginal Justice Centre replaced the Advisory Council to assist the ACT Government in implementing the RCIADIC recommendations. In 2015, the Aboriginal Justice Centre was placed into administration after the ACT Government withdrew funding for the service due to lack of proper financial management in the previous financial year.⁶ Through extensive community consultation with the Elected Body it was agreed that the ACT Government seek tenders from existing local Aboriginal and Torres Strait Islander organisations to provide community justice programs. Since 2015 the Canberra Office of the Aboriginal Legal Service has been the lead agency to deliver these programs and services.

The ACT Government has also entered into an Aboriginal and Torres Strait Islander Justice Partnership with the Elected Body, which seeks to reduce Aboriginal and Torres Strait Islander over-representation in the ACT justice system, as both victims and offenders. This Partnership aims to improve justice outcomes for Aboriginal and Torres Strait Islander people in the ACT through the development and implementation of policies and programs that have long-term benefits for the local community.

 *The Australian Capital Territory Government implemented Recommendation 2 through the establishment of the Advisory Council, and subsequent bodies. Currently, Aboriginal and Torres Strait Islander perspectives on justice issues are sought through the Justice Partnership.*

Recommendation 3

The Commission notes that some of the recommendations of this report, particularly those relating to the custodial environment, are particularly detailed. The monitoring of the implementation of recommendations could only be carried out in close liaison with the authorities responsible for implementing them. In order to ensure that the State Aboriginal Justice Advisory Committee is able to give informed advice to the Attorney-General or Minister for Justice, it should be assisted by a small Secretariat, staffed by people with knowledge of Aboriginal interactions with the criminal justice system. The role of the Secretariat should be to provide information to the Advisory Committee, assist it in the development of policy proposals, and liaise on behalf (and at the direction of) the Committee with other agencies. The Secretariat should be located within the Department of Attorney-General or Minister for Justice but be accountable to the Advisory Committee on terms to be negotiated between

⁶ <http://www.canberratimes.com.au/act-news/liquidator-appointed-for-aboriginal-justice-centre-20150406-1mf6jy>, accessed September 2017.

government and Aboriginal people but with the maximum degree of autonomy from government as may be consistent with it fulfilling its function to assist the Advisory Committee to give informed, independent advice to government.

Background information


The purpose of forming the Secretariat was to create a strong connection between the AJAC and the Attorney-General or Minister for Justice or their equivalent in each jurisdiction. By forming this connection, the Commission intended for the Secretariat to act as a negotiator between the two bodies and to monitor the implementation of recommendations.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In 1994, the **New South Wales** Government appointed an Executive Officer to support the NSW AJAC. The Officer was located within the Attorney-General's Department but is accountable to the Advisory Committee. The Executive Officer was able to use the support staff in the Legislation and Policy Division of the Department. Currently, the various Aboriginal advisory groups within Justice do not have a specific secretariat budget. Catering is provided and in some limited cases travel costs for some committees or advisory groups. The NSW Sentencing Council pays a sitting fee and has an Aboriginal representative.

 *The New South Wales Government has implemented Recommendation 3 through the function performed by the Executive Officer to the AJAC.*


In 1994, the **Victorian** secretariat to the AJAC was based in Aboriginal Affairs Victoria, within the Department of Health and Community Services. Aboriginal Affairs Victoria was responsible for monitoring the implementation of the recommendations of the RCIADIC and serving the AJAC.

Currently, the Aboriginal Justice Forum brings together leaders in the Aboriginal community and the most senior representatives of the Justice, Health and Human Services, and Education government departments. It operates as the peak coordinating body responsible for overseeing the development, implementation and direction of the AJA. Aboriginal community representation at the Forum includes each of the nine Regional Aboriginal Justice Advisory Committee (RAJAC) chairs as well as senior representatives from a number of key Aboriginal community organisations and peak bodies (for example, Victorian Aboriginal Legal Service, Victorian Aboriginal Childcare Agency, Victorian Aboriginal Education Association, etc.). The Koori Caucus comprises the Aboriginal community members of the Aboriginal Justice Forum. In addition to the nine Chairs of the Regional Aboriginal Justice Advisory Committee, the Koori Caucus also includes Aboriginal representatives of Aboriginal peak bodies and some Aboriginal Community Controlled organisations.


The Koori Justice Unit within the Department of Justice and Regulation is responsible for coordinating the development and delivery of Aboriginal justice policies and programs across the Victorian Government and justice agencies. The Unit builds capacity in the department and the Aboriginal community, to develop and deliver effective and efficient justice services in partnership; provides advice to the Justice executive, ministers and staff across the department on issues impacting on Aboriginal communities across Victoria, advocates for ongoing improvement in the design and delivery of Aboriginal justice initiatives; monitors and evaluates Aboriginal justice initiatives; maintains a robust evidence base detailing Aboriginal involvement with criminal justice institutions; provides executive services to Justice ministers and the Justice executive and secretariat support and program implementation on behalf of the Aboriginal Justice Forum. As a part of the Department of Justice and Regulation the Koori Justice unit briefs up to the Attorney-General but also takes direction from and reports to the Koori Caucus.

 *The Victorian Government has implemented Recommendation 3 through the function performed by the secretariat to the AJAC and ongoing arrangements to support the Aboriginal community to provide input into Aboriginal justice policies and programs.*

By 1994, the **Queensland** AJAC Secretariat had been formed and was located within the Department of Justice and Attorney-General. In 1997, the Secretariat was staffed by a policy co-ordinator, a senior research officer and two administrative assistants, providing policy advice and research support to the AJAC in its role as an independent Ministerial advisory committee.

 *The Queensland Government has implemented Recommendation 3 through the establishment of the AJAC Secretariat to provide police advice and research support to the AJAC. The Secretariat was located within the Department of Justice and Attorney-General.*

An AJAC was established in **South Australia** in 1989 to provide advice and monitor government implementation of the RCIADIC recommendations. In 2002, this was replaced by the Aboriginal Justice Consultative Committee with the role of creating partnerships between the Aboriginal community and the justice agencies.


 *The South Australian Government has partially implemented Recommendation 3. While an AJAC was established, it is not clear what level of Secretariat support was provided.*

The 2000 Implementation Report noted that an Aboriginal Justice Council was formed in **Western Australia** in 1994 and was funded on a recurrent basis from 1995-96. The State Government provided a secretariat to support the State Aboriginal Justice Council through the Aboriginal Affairs Department. The Aboriginal Justice Council's role widened in 1996-97 to monitor progress relating to the underlying and social issues identified in the RCIADIC report in addition to the criminal justice recommendations.


The present WAAAC is supported by the secretariat at the Department of the Premier and Cabinet to facilitate the WAAAC's input on matters across a spectrum of social issues. This wide focus places the Council in the best position to consider justice issues in context, given its appreciation of commonalities between seemingly disparate policy issues.

 *The Western Australian Government has implemented Recommendation 3 through the provision of a secretariat support to the Aboriginal Justice Council and now the WAAAC.*

As mentioned in the 1993 Implementation Report, **Tasmania** believed that the establishment of a secretariat would have significant resource implications for the Department of Justice and could not be justified for Tasmania. Given no AJAC has been established in Tasmania (see Recommendation 2), this recommendation does not apply to Tasmania.


 *Recommendation 3 is out of scope for the Tasmanian Government because the establishment of the secretariat was irrelevant given no AJAC has been established in Tasmania.*

The 1994-95 **Northern Territory** Implementation Report highlighted that a Secretariat to the Law and Justice Forum had been provided by the Office of Aboriginal Development. The Secretariat for the AJAC was located within the North Australian Aboriginal Legal Aid Service.

 *The Northern Territory Government has implemented Recommendation 3 through the provision of a Secretariat to the Law and Justice Forum.*

In the **Australian Capital Territory**, the 1995-96 Annual Report recorded that the ACT Aboriginal and Torres Strait Islander Consultative Council monitored the ACT Government's implementation of the Commission's recommendations. The ACT Government had received funding from the Aboriginal and Torres Strait Islander Commissioner (ATSIC) to assist the council in its monitoring role. The Aboriginal and Torres Strait Islander Issues Unit of the Chief Minister's Department provided secretariat support for the Consultative Council.

Currently, a caucus of Aboriginal and Torres Strait Islander representatives from justice and related sectors is embedded into the advisory framework to monitor and provide advice on the implementation of the Justice Partnership and related initiatives. The caucus group meet on a quarterly basis and provides advice up to the executive level justice partnership advisory group established to monitor the progress in achieving the key objectives in the partnership.

 *The Australian Capital Territory Government has implemented Recommendation 3 through the ACT Aboriginal and Torres Strait Islander Consultative Council, and the provision of secretariat support by the Chief Minister's Department.*

3.2 The findings of the Commissioners as to the deaths (4-5)

Recommendation 4

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

- a. *Governments should not, in all the circumstances, take the point that a claim is out of time as prescribed by the relevant Statute of Limitations; and*
- b. *Governments should, whenever appropriate, make the effort to settle claims by negotiation so as to avoid further distress to families by litigation.*

Background information


The RCIADIC realised that some facts relating to deaths in custody may not be known until after the Commission's hearings and the reports were made available. For this reason, some contemplated claims may be out of time for reasons beyond the families' control. The RCIADIC also noted that litigation can bring additional stress to families and should be avoided where possible.

Responsibility


States and Territories. The States and Territories are responsible for the criminal justice system and providing related support to the relatives of detainees in the event of a death in custody.

Key actions taken and status of implementation


In **New South Wales**, the Crown Solicitor's Office was instructed to forward all relevant papers to the Attorney-General should such a claim arise. The most recent State Government report noted that as of 1996, no such claim had been made as a result of the finding of the RCIADIC. The NSW Government Model Litigant Policy for Civil Claims now contains a statement of principles requiring that NSW agencies act with complete propriety, fairness and in accordance with the highest professional standards. The expectation that the State will act as a model litigant is recognised by the courts. The policy creates an expectation that agencies will deal with claims properly, avoid unnecessary delay and pay legitimate claims without litigation.

 *The New South Wales Government has partially implemented Recommendation 4, noting that all relevant papers would be forwarded to the Attorney-General for consideration. However, it does not appear that all further specific actions have been taken to address the requirements of this recommendation.*


In the 1993 Implementation report, the **Victorian** Government noted that the Statute of Limitations should not be invoked to prevent the hearing of claims for compensation cases where the hearing of such claims has been delayed by the length of the RCIADIC. The implementation report highlighted that it is in the interests of all litigants for claims to be settled by negotiation whenever possible.

 *The Victorian Government has implemented Recommendation 4, noting that the Statute of Limitations would not be invoked to prevent hearing of cases delayed by the RCIADIC. Additionally, negotiation has been stated as the preferred claim resolution mechanism.*


In the 1996-97 Implementation Report, the **Queensland** Government stated that Crown Law is fully aware of the responsibilities in custodial death matters. However, the conduct of Crown Law is governed by the instructing agency. The conduct of litigation on behalf of the State of Queensland is undertaken in accordance with model litigant principles. The principles require the State to act in a manner that adheres to the principles of fairness, including the requirement to handle claims in a consistent and prompt manner and to endeavour to avoid the scope of legal proceedings where possible.

 *The Queensland Government has partially implemented Recommendation 4. While the Queensland Government upholds model litigant principles, it does not appear that any further specific actions have been taken to address the requirements of this recommendation.*


In the 1993 Implementation Report, the **South Australian** Government stated that the Statute of Limitations should not generally be invoked to prevent the hearing of claims for compensation cases where the hearing of such claims has been delayed by the length of the RCIADIC. However, there may be special cases where a departure of this principle is warranted. The Report also highlighted that it is in the best interests of all litigants for claims to be settled by negotiation whenever possible.

 *The South Australian Government noted in their 1993 implementation report that the Statute of Limitations should not be invoked to prevent the hearing of claims for compensation cases where such cases have been delayed by the RCIADIC. Additionally, negotiation has been noted as the preferred method of claim settlement where possible.*


In **Western Australia**, the *Limitation Act 2005* (WA) contains no provision specifically regulating claims arising from deaths in custody, but some of the Act's provisions may be relevant to such claims. There have been no other legislative changes since the release of the Royal Commission's report that are relevant to claims arising from deaths in custody and, more particularly, Recommendation 4.

 *The Western Australian Government has not implemented Recommendation 4.*

As discussed in the 1995 Implementation Report, the **Tasmanian** Government's decision of whether or not to plead the statute of limitations would depend upon the circumstances of each particular case. However, the Tasmanian Government generally tries to settle litigation if reasonable settlement can be obtained.


 *The Tasmanian Government has partially implemented Recommendation 4, noting that reference would be given to the details of individual cases. However, the Tasmanian Government generally tries to settle litigation if reasonable settlement can be obtained.*

In the **Northern Territory**, even if the limitation period is pleaded, the person making the claim is entitled to apply to the Courts under Section 44 of the *Limitation Act 1981* (NT) to extend the limitation. As stated in the 1994-95 Implementation Report, it is the practice of the Solicitor for the Northern Territory to settle claims by negotiation whenever possible.

 *The Northern Territory Government has implemented Recommendation 4 through section 44 of the Limitation Act 1981 (NT), and has noted that claims would be settled by negotiation where possible.*

The 1995-96 Implementation Report noted that the **Australian Capital Territory** was not aware of any claims arising from Aboriginal deaths in custody in the ACT. The Report also stated that if a claim were to be received, it would be settled by negotiation where possible and it is unlikely the *Limitation Act 1985* would be invoked.

The ACT Government acts as a model litigant in all legal proceedings it is involved in. The *Law Officer (Model Litigant) Guidelines 2010* (No 1) set out the government's obligation in the conduct of litigation. This includes paying legitimate claims without litigation, and using methods that it considers appropriate to resolve the litigation including alternative dispute resolution.

 *The Australian Capital Territory Government has implemented Recommendation 4 through the model litigant provisions, noting that the ACT Government is not aware of any deaths in custody in the ACT that were considered as part of the RCIADIC.*

Recommendation 5

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

Background information

The RCIADIC realised that the Commission hearings were a stressful experience for many families, heightened by the grieving associated with the death.


Responsibility

All State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

In **New South Wales**, \$130,000 was provided to Aboriginal controlled organisations by the Commonwealth government via ATSIC between 1992-93 and 1996-97. Funds were granted to Tranby Aboriginal Co-operative College for the purpose of conducting nine community workshops throughout the state. Additionally, the Western Aboriginal Legal Service conducted 19 smaller workshops in the western area of NSW.


Currently, the families of Aboriginal people who have died in prison are contacted and offered support through the CSNSW Chaplaincy service and the Aboriginal Strategy and Policy Unit in Department of Justice. Local assistance and family support is provided through CSNSW Regional Aboriginal Program Officers. Family members of the deceased who are in custody are offered counselling and support from CSNSW counselling staff. CSNSW can also provide financial support to families for funeral arrangements. NSW Police Force Aboriginal Community Liaison Officers (ACLO), of which there are fifty-five across the state, offer support to the family and community of a person who has died in custody. ACLO's also assist police in engaging with the family as well as in the referral of the family and kin to services such as the Aboriginal Medical Services, Justice's Victim Access Line or other appropriate services.

 *The New South Wales Government has completed Recommendation 5 through the provision of counselling and support to family members of Aboriginal people who died in custody.*


In December 1991, the **Victorian** Government received \$60,000 from the Commonwealth Government for the provision of counselling and support services to the families of people who died in custody.

 *The Victorian Government has completed Recommendation 5 through the provision of counselling and support to family members of Aboriginal and Torres Strait Islander people who died in custody.*

In 1994, the-then **Queensland** Department of Family Services and Aboriginal and Islander Affairs received a one-off grant of \$500,000 from ATSIC to enable the Department to develop a family counselling and support program. Further, the Queensland Government notes that organisations continue to operate around the state to provide counselling and other support services to Aboriginal and Torres Strait Islander people.


 *The Queensland Government has implemented Recommendation 5 through the provision of funding through ATSIC to facilitate the development of a family counselling and support program.*

In the 1993 Implementation Report, the **South Australian** Government noted that the Commonwealth provided funds specifically for this purpose. This assistance was directly provided to the Aboriginal Health Council for provision to relatives and friends of those who had died in custody. Additionally, the South Australian Department for Correctional Services (DCS) has established a de-briefing process for family members affected by the death of an Aboriginal and Torres Strait Islander relative in custody. This process complements DCS's Standard Operating Procedure in relation to prisoner deaths in custody, and DCS cooperates with the Aboriginal Legal Rights Movement to assist family through the difficult time.


 *The South Australian Government has implemented Recommendation 5 through the administration of Commonwealth funding and the provision of support for family and members affected by the death of an Aboriginal and Torres Strait Islander relative in custody.*

In 1993, the **Western Australian** Aboriginal Affairs Department received \$465,000 in grant funding totalling from ATSIC for the purposes of providing community counselling and support services to people who had family members that had died in custody.


Currently, when a death occurs in prison, the Aboriginal Visitors Scheme is available to provide support and counselling to family members. Family members in Western Australian prisons also have access to peer support officers. The Office of the State Coroner has the Coronial Counselling Service, which provides grief counselling and liaison services for families in need following a sudden death. Friends of the deceased may also be eligible for counselling services depending upon individual cases.

 *The Western Australian Government has implemented Recommendation 5 through the administration of Commonwealth funding and the ongoing provision of support for family and members affected by the death of an Aboriginal and Torres Strait Islander relative in custody.*


The 1992-93 Commonwealth Implementation Report noted that **Tasmania** received \$20,000 from the Commonwealth for the purpose of addressing Recommendation 5 which funded a 'Prison and Police Officer' cross-cultural project. As mentioned in the 1995 Tasmanian implementation Report, should a death in custody occur at the Ashley Youth Detention Centre, the Child, Family and Community Support program of the Department of Community and Health Services would purchase appropriate counselling services. In 2016, the Coroner's Court released *A Guide for Families and Friends* that includes details of relevant support services and information that can help individuals to cope with grief and loss.

 *The Tasmanian Government has implemented Recommendation 5 through the administration of Commonwealth funding to provide counselling services, and the Child, Family and Community Support program.*

The 1994-95 Implementation Report highlighted that the Commonwealth Government provided funds to the **Northern Territory** for the provision of counselling services. Consultation with the relatives of people who had died in custody indicated a desire for compensation and not counselling. Following this, the funding of \$166,497 was provided to three Aboriginal and Torres Strait Islander organisations to pilot community based Aboriginal and Torres Strait Islander mental health worker projects.

 *The Northern Territory Government has implemented Recommendation 5 through the administration of Commonwealth funding to provide counselling services, and by funding Aboriginal and Torres Strait Islander organisations to pilot community-based Aboriginal and Torres Strait Islander mental health workers.*

The **Australian Capital Territory** Government currently funds a Coronial Counselling Service through Relationships Australia. This service provides support to bereaved family, friends and community members immediately following a death, through all stages of the coronial process and up to three months after an inquest process has finalised. This service can also provide specialist support including: liaison with the coronial office and staff; support at coronial hearings; trauma, grief and bereavement counselling services; family therapy; information about the impact of grief, bereavement and trauma; and referrals and links to appropriate support.

 *The Australian Capital Territory Government has implemented Recommendation 5 through the provision of funds for the ACT Coronial Support Services.*

3.3 Post-death investigations (6-40)

Recommendation 6

That for the purpose of all recommendations relating to post-death investigations the definition of deaths should include at least the following categories:

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

- b. *The death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care while in such custody or detention;*
- c. *The death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and*
- d. *The death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.*

Background information


Prior to 1991, there was not a uniform approach to the issue of deaths in custody with different state and territory legislation in operation. The RCIADIC recognised this issue and recommended the adoption of a consistent definition of a 'death in custody' across the States and Territories.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, the *Coroners (Amendment) Act 1993* (NSW) included a provision to extend the definition of a death in custody in accordance with the provisions of Recommendation 6. The Act was passed by parliament in November 1993 (section 13A of the *Coroners Act 1980* (NSW)). The provision in the current legislation is section 23 of the *Coroners Act 2009* (NSW), which also requires deaths of offenders who are in home detention to be considered as deaths in lawful custody.

 *The New South Wales Government has implemented Recommendation 6 through the Coroners (Amendment) Act 1993 (NSW) and the Coroners Act 2009 (NSW) which set out the definition of deaths in custody in accordance with the principles of this recommendation.*


In **Victoria**, under the *Coroners Regulation 2009 – Regulation 7*, a 'reportable death' includes the death of a person who died while in custody or care, and includes cases where the death was caused by injuries sustained when an authorised person takes the person into custody. It also includes injuries sustained while in the custody of the State.

Paragraphs (j) & (k) of the definition of a person placed in custody or care in section 3 of the *Coroners Act 2008* (Vic) include a person "who is dying from injuries sustained when a police officer or prison officer attempted to take the person into custody" and "a person in Victoria who is dying from an injury incurred while in the custody of the State". Since paragraph (k) refers to "an injury incurred while in custody", traumatic injuries would be captured by paragraph (k). If a person dies from injuries as a result of an attempted escape from custody, they will have died from an injury incurred while in the custody of the State and it would also be covered by paragraph (j) or (k).


Since the definition covers a death in custody and a death from injuries incurred in custody, the definitions would cover most deaths that were caused or contributed to by a lack of proper care. However, there is no specific reference to traumatic injuries or lack of proper care while in custody, or to a death occurring as a result of a person escaping from custody.

 *The Victorian Government has implemented Recommendation 6 through legislation and regulations.*


The **Queensland Coroners Act 2003** (Qld) defines a death in custody as cases when the person who died was in custody, or escaping, trying to escape from, or trying to avoid being put into custody. The definition of a 'reportable death' also accounts for a death that was violent or otherwise unnatural or deaths that arise from an injury that either caused or contributed to the death.

 *The Queensland Government has implemented Recommendation 6 through the Coroners Act 2003 (Qld), which sets out the definition of deaths in custody in accordance with the principles of this recommendation.*


In **South Australia**, under section 3(1) of the *Coroners Act 2003 (SA)* a death in custody includes the death of a person while detained in care, in the process of being apprehended, evading apprehension or escaping/attempting to escape. A 'reportable death' also includes the death of a person by an unexpected, unnatural, unusual, violent or unknown cause.

 *The South Australian Government has mostly implemented Recommendation 6 through the Coroners Act 2003 (SA). However, no reference is made to lack of care while in custody as contributory factors to death.*


In **Western Australia**, the definitions of "persons held in care" and "reportable deaths" contained in section 3 of the *Coroners Act 1996 (WA)* encompass the circumstances outlined in Recommendation 6. The Act addresses all circumstances of a death, including those resulting from an attempt to detain a person, those caused or contributed to by traumatic injuries sustained, and those caused by lack of proper care while in, or escaping from, custody or detention.

 *The Western Australian Government has implemented Recommendation 6 through the Coroners Act 1996 (WA).*

Under Section 3 of the **Tasmanian Coroners Act 1995 (Tas)**, a 'reportable death' includes the death of a person held in custody, the death of a person escaping or attempting to escape from custody or detention, or a death that occurred while a police officer, correctional officer, mental health officer or prescribed person was attempting to detain that person. Additionally, a 'reportable death' also includes a death where it appears to have been unexpected, unnatural or violent or to have resulted directly or indirectly from an accident or injury. While lack of proper care is not specifically stated in the legislation it is provided for in the *Coroners Act 1995 (Tas)* under section 3(a) (i), (ii), (iii) and (iv) and under section 28 (5), which state that 'the coroner must report of the care, supervision or treatment' of a person who dies while in custody.


 *The Tasmanian Government has implemented Recommendation 6 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, the definition of a 'reportable death' is set out in the *Coroners Act 1993 (NT)*. The definition includes the death of a person who immediately before death was held in care or custody, cases where the death was caused or contributed to by injuries sustained while the person was held in custody, and any deaths of a person who is in the process of being taken into custody or escaping from custody or care. Additionally, a reportable death also covers those deaths that have been unexpected, unnatural or violent or have to have resulted, directly or indirectly, from an accident or injury.

 *The Northern Territory Government has implemented the principles of Recommendation 6 in the Coroners Act 1993 (NT).*

The definition of a 'death in custody' in the **Australian Capital Territory** is included in the *Coroners Act 1997 (ACT)*. The definition includes the death of a person in the custody of a police officer or in other lawful custody, the death of a person escaping or attempting to escape from custody, and the death of a person while being taken into custody. A 'death in custody' includes the death of a person due to a fatal injury sustained in custody.

Section 13(1) (i) of the *Coroners Act 1997 (ACT)* directs mandatory inquests in relation to all deaths in custody irrespective of the age of the deceased person. Moreover, section 34A (2) creates a mandatory hearing requirement for these deaths. While there is no explicit, specific reference to deaths occurring outside a place of detention, as a result of injury or quality of care provided in a place of detention, section 3C would likely cover these situations where the death is because of fatal injury sustained in a place or in circumstances relating to being in, or taken to, a place of detention.

 *The Australian Capital Territory Government has implemented the principles of Recommendation 6 in the Coroners Act 1997 (ACT).*

Recommendation 7

That the State Coroner or, in any State or Territory where a similar office does not exist, a Coroner specially designated for the purpose, be generally responsible for inquiry into all deaths in custody.

Background information


The RCIADIC recommended expanding the coronial inquiry from a traditional investigation to a broader and more comprehensive inquest. This would enable a Coroner to give constructive feedback to try to prevent future deaths in similar situations.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, the *Coroners (Amendment) Act 1993* (NSW) included a provision to make the State Coroner or Deputy State Coroner solely responsible for the investigation and conduct of inquests in the case of deaths in custody (section 13A of the *Coroners Act 1980* (NSW)). The current relevant provision is section 23 of the *Coroners Act 2009* (NSW).

 *The New South Wales Government has implemented Recommendation 7 through the Coroners (Amendment) Act 1993 (NSW) and the Coroners Act 2009 (NSW) which include a provision to make the State Coroner or Deputy State Coroner solely responsible for inquests into deaths in custody.*


In **Victoria**, sections 7(b), &(c) and 17 of the *Coroners Act 1985* (Vic) require that an investigation and inquest be held where the deceased was held in care immediately before death. In the event of a juvenile death in custody, the State Coroner and the Department of Health and Community Services must investigate the case.

 *The Victorian Government has implemented Recommendation 7 through the Coroners Act 1985 (Vic) which requires an investigation and inquest to be held where the deceased was held in custody immediately before death.*


In **Queensland**, the State Coroner, Deputy State Coroner, or an appointed coroner or local coroner approved by the Governor in Council must investigate a death in custody as per section 7 of the *Coroners Act 2003* (Qld). A death in custody must be subject to an inquest.

 *The Queensland Government has implemented Recommendation 7 through the Coroners Act 2003 (Qld). The State Coroner, Deputy State Coroner, or an appointed coroner or local coroner approved by the Governor in Council must investigate a death in custody.*

In **South Australia**, under the *Coroners Act 2003* (SA) the State Coroner has the role of administering the Coroner's Court. The Coroner's Court must hold an inquest to determine the cause or circumstance of a death in custody. While the State Coroner does not directly have to hold the inquest, they are in charge of the operation of the Coroner's Court, which undertakes the inquest.

 *The South Australian Government has implemented Recommendation 7 through the Coroners Act 2003 (SA) in which the State Coroner is given responsibility for administering the Coroner's Court and holding an inquiry to determine the cause of circumstance of a death in custody.*

In **Western Australia**, the requirements of Recommendation 7 are met by Part 2 of the *Coroners Act 1996* (WA). Section 8 of the *Coroners Act 1996* (WA), sets out the functions of the State Coroner, which requires the investigation of all reportable deaths, including all deaths of persons in custody.

 *The Western Australian Government has implemented Recommendation 7 through the Coroners Act 1996 (WA).*

In **Tasmania**, under sections 21 and 24 of the *Coroners Act 1995* (Tas), a coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a reportable death – which includes a death in custody. The Chief Magistrate in Tasmania oversees the operation of the State coronial system.

- *The Tasmanian Government has implemented Recommendation 7 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, the Territory Coroner has jurisdiction to investigate and must hold an inquest into a death in custody. The Territory Coroner must hold an inquest if immediately before death, the deceased was in custody or care or the death was caused or contributed to by injuries sustained while the deceased in custody.

- *The Northern Territory Government has implemented Recommendation 7. The Territory Coroner must hold an inquest if immediately before death, the deceased was in custody or care or the death was caused or contributed to by injuries sustained while the deceased in custody.*

The 1995-96 Implementation Report noted that the **Australian Capital Territory** does not have a State Coroner. However, the Chief Coroner, who is also the Chief Magistrate in the ACT, is responsible for the business of the Coroner's Court including holding inquests into deaths in custody. In the ACT, under section 13(1) of the *Coroners Act 1997 (ACT)*, a coroner must hold an inquest into the manner and cause of death of a person who dies in custody. Under Section 9(2) of the Act, the Chief Coroner must not direct a deputy coroner to hold an inquest into a death in custody.

The ACT Government noted that in the ACT all resident magistrates have a coronial case load. Consideration could be given as part of an upcoming coronial system review to designating a Magistrate to work as a dedicated Coroner, who may handle all deaths in custody.

- *The Australian Capital Territory Government has implemented Recommendation 7 through the Coroners Act 1997 (ACT) and the function of the Chief Coroner.*

Recommendation 8

That the State Coroner be responsible for the development of a protocol for the conduct of coronial inquiries into deaths in custody and provide such guidance as is appropriate to Coroners appointed to conduct inquiries and inquests.

Background information

The RCIADIC realised the importance of having a set of streamlined guidelines to improve the coronial process and system. By creating such guidelines, all coroners required to undertake inquiries into deaths in custody would be able to follow the correct procedures.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


The **New South Wales** *Coronial Protocol for Deaths in Custody/Police Operations* for the conduct of coronial inquiries into deaths in custody was developed in 1994 and is still applicable. It is contained within the Report by the NSW State Coroner into deaths in custody/police operations.

- *The New South Wales Government has implemented Recommendation 8 through the development of the Coronial Protocol for Deaths in Custody/Police Operations which deals with coronial inquiries into deaths in custody.*

As highlighted in the 1993 **Victorian** implementation report, under section 7(e) of the *Coroners Act 1986 (Vic)*, the State Coroner was able to issue guidelines to coroners to help them carry out their duties. Further to this, under section 16, the State Coroner was able to give directions to coroners about an investigation into a death.

Currently, Section 107 of the *Coroners Act 2008 (Vic)* permits the State Coroner to issue practice directions, statements or notes for the Coroners Court in relation to investigations and hearings of the Court. *Practice Direction 4 of 2014 - Police contact deaths* requires, subject to a direction of a coroner, that a directions hearing will be conducted within 28 days of a police contact death, including a death in police custody. The purpose of the directions hearing is to identify the Coroner's Investigator, fix a date for the delivery of the coronial brief and make any other orders or directions required for the


purpose of the investigation. The senior next of kin is advised of this hearing. However, there is no set protocol for coronial inquiries into deaths in custody.

 *Recommendation 8 is mostly implemented. While the Victorian State Coroner has power to make orders or directions for the conduct of coronial inquiries into deaths in custody, the State Coroner has not developed a protocol as specified in the recommendation.*


Under section 14 of the **Queensland Coroners Act 2003** (Qld), the State Coroner must issue guidelines to all coroners about the performance of their functions in relation to investigations generally. Section 14(2) of the *Coroners Act 2003* specifically states that when preparing the guidelines, the State Coroner must have regard to the recommendation of the RCIADIC that relate to investigation of deaths in custody. Further to this, the Queensland Government has made the *State Coroner's Guidelines 2013* publicly available on the Queensland Coroner website.

 *The Queensland Government has implemented Recommendation 8 through the Coroners Act 2003 (Qld) and the publication of the State Coroner's Guidelines 2013.*


The **South Australian** Government noted that a protocol for the conduct of coronial inquiries into deaths in custody exists in South Australia.

 *The South Australian Government has implemented Recommendation 8 through the development of a protocol for the conduct of coronial inquiries into deaths in custody.*


In **Western Australia**, the requirements of the Recommendation have been met through compliance with section 25 of the *Coroners Act 1996* (WA), which provides that where a person is held in care, a Coroner must comment on the quality of the supervision, treatment and care of the person while in care. Guidelines developed for Coroners have been issued pursuant to section 58 of the Act, which provide guidance to coroners addressing matters raised in the Recommendation. While not publicly available, these guidelines have been provided to the Western Australia Police Force and to custodial services in the Department of Justice to assist with understanding the requirements of undertaking inquests.

 *The Western Australian Government has implemented Recommendation 8 through the Coroners Act 1996 (WA) and the publication of Guidelines.*


Under section 7(g) of the *Coroners Act 1995* (Tas), a function of the **Tasmanian** Chief Magistrate is to issue guidelines to coroners to assist them to carry out their duties. Section 22 of the Act also allows the Chief Magistrate to give directions to a coroner about an investigation into a death and the manner of conducting it.

 *The Tasmanian Government has partially implemented Recommendation 8 under the Coroners Act 1995 (Tas). However, it does not appear that an overarching guideline has been developed for the conduct of coronial inquiry.*

The 1996-97 **Northern Territory** Implementation Report noted that a draft Protocol containing guidelines for the conduct of inquests and autopsies had been prepared. The guidelines were to be finalised after consultation with relevant government and non-government bodies, including Aboriginal organisations. However, we were unable to locate the final guidelines for coronial inquiries into deaths in custody.

 *The Northern Territory Government has mostly implemented Recommendation 8 through the development of a Protocol containing guidelines for the conduct of inquests and autopsies. However, it is unclear whether the draft protocol was finalised and implemented.*

Under section 51(A) of the *Coroners Act 1997* (ACT), in the **Australian Capital Territory** an inquest must be conducted in accordance with any practice or procedure prescribed under the Act. However, if a practice or procedure for an inquest of inquiry is not prescribed under the Act, the Chief Coroner may give directions for the practice or procedure in the inquest or inquiry.

 *The Australian Capital Territory Government has partially implemented Recommendation 8 through provisions made by the Coroners Act 1997 (ACT). However, there does not appear to have been explicit protocols established.*

Recommendation 9

That a Coroner inquiring into a death in custody be a Stipendiary Magistrate or a more senior judicial officer.

Background information


The RCIADIC suggested that having a judicial officer with a status equivalent to a judge would increase the status and authority of the investigation and ensure the process was managed effectively.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, the *Coroners Act 1980* (NSW) was amended in 1993 to provide that appointment as a magistrate is a prerequisite for appointment as a State Coroner or as a Deputy State Coroner. These are the only coroners allowed to conduct inquests into deaths in custody. Currently, the provisions of this recommendation are set out in section 23 of the *Coroners Act 2009* (NSW) and provide that only a Senior Coroner can conduct an inquest into a death in custody or within a Police Operation.

 *The New South Wales Government has completely implemented Recommendation 9 through the Coroners Act 1980 (NSW) and the Coroners Act 2009 (NSW).*


In **Victoria**, under the *Coroners Act 1985* (Vic), the State Coroner or Deputy State Coroner is required to have been a County Court Judge, a magistrate, or a barrister or solicitor.

 *The Victorian Government has completely implemented Recommendation 9 through the Coroners Act 1985 (Vic).*


In **Queensland**, Section 11(7) of the *Coroners Act 2003* (Qld) states that an inquest held in relation to a death in custody or a death which occurs as a result of police operations must be investigated by the State Coroner or the Deputy State Coroner or another coroner approved by the Governor-in-Council on the recommendation of the Chief Magistrate in consultation with the State Coroner. Under Part 4 of the *Coroners Act 2003* (Qld), the State Coroner and the Deputy Coroner must be a Magistrate. All local Coroners are Magistrates. Lawyers of at least five years standing may be appointed Coroners by the Governor-in-Council.

 *The Queensland Government has completely implemented Recommendation 9 through the Coroners Act 2003 (Qld).*


In **South Australia**, under section 4(3) of the *Coroners Act 2003* (SA), a person is not eligible for appointment as the State Coroner unless he or she is a magistrate.

 *The South Australian Government has completely implemented Recommendation 9 through the Coroners Act 2003 (SA).*


In **Western Australia**, the State Coroner conducts all investigations into deaths in custody. According to Section 6 of the *Coroners Act 1996* (WA), the State Coroner is the equivalent in status to the Chief Magistrate. Section 11 of the Act also provides that all magistrates are contemporaneously considered to be coroners, and that the State Coroner may only appoint a person as coroner who is eligible to be appointed as a magistrate.

 *The Western Australian Government has completely implemented Recommendation 9 through the Coroners Act 1996 (WA).*


It is standard practice in **Tasmania** for a magistrate to conduct all inquests, according to the 1995 Implementation Report. The Chief Magistrate will determine which magistrate will undertake the inquest. However, section 13 of the *Coroners Act 1995* (Tas) provides that, subject to any direction given by the Chief Magistrate, a coroner may delegate to a coroner's associate any function or power of a coroner other than the power of delegation or a power prescribed by regulations.

 *The Tasmanian Government has partially implemented Recommendation 9 through the Coroners Act 1995 (Tas). However, a coroner may delegate to a coroner's associate any function or power of a coroner other than the power of delegation.*

In the **Northern Territory**, under the *Coroners Act*, which came into force on 1 September 2017, the Administrator may appoint a Local Court Judge to be the Territory Coroner, and a person who is a Local Court Judge is a coroner. The investigation of the person who dies in custody must be undertaken by a coroner and cannot be delegated to a deputy coroner.

 *The Northern Territory Government has completely implemented Recommendation 9 through the Coroners Act.*

In the **Australian Capital Territory**, the Chief Magistrate is the Chief Coroner for the Territory. Under section 9(2) of the *Coroners Act 1997* (ACT), the Chief Coroner must not direct a deputy coroner to hold an inquest into a death in custody.

 *The Australian Capital Territory Government has completely implemented Recommendation 9 through the Coroners Act 1997 (ACT).*

Recommendation 10

That custodial authorities be required by law to immediately notify the Coroner's Office of all deaths in custody, in addition to any other appropriate notification.

Background information


The RCIADIC highlighted the importance of notifying the Coroner's Office immediately of all deaths in custody so that the family and friends of the deceased are informed in a timely and sensitive manner.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, a death in custody or within a police operation is regarded as a death within section 23 of the *Coroners Act 2009*. A mandatory inquest must therefore be conducted by a senior Coroner under the legislation. The New South Wales State Coroner's protocol for deaths in custody includes a requirement that the State Coroner or Deputy State Coroner be immediately notified of any death in custody.

 *The New South Wales Government has implemented Recommendation 10 through the Coroners Act 2009 (NSW).*

In **Victoria**, under section 13(5) of the *Coroners Act 1985* (Vic), all deaths in custody must be reported to the Coroner as soon as possible. According to the 1994 implementation report, police instructions also state the Coroner must be immediately notified of all reportable deaths.

 *The Victorian Government has implemented Recommendation 10 through the Coroners Act 1985 (Vic).*

In **Queensland**, Section 7(3) of *Coroners Act 2003* (Qld) states that the person that becomes aware of the death must immediately report the death to the State Coroner or Deputy State Coroner if the death happened in the course of, or as a result of, police operation or if the death was a death in custody. This is also provided in the Queensland Police Service *Operational Procedures Manual*.

 *The Queensland Government has implemented Recommendation 10 through the Coroner's Act 2003 (Qld).*

In **South Australia**, under section 28(1) of the *Coroners Act 2003 (SA)* a person must, immediately after becoming aware of a death that is, or may be a reportable death, notify the State Coroner. This is built into standard operating procedures for South Australia's custodial officers.

● *The South Australian Government has implemented Recommendation 10 through the Coroners Act 2003 (SA).*

In **Western Australia**, the *Coroners Act 1996 (WA)* imposes on "a person" (rather than a custodial authority specifically) an express obligation to report deaths, unless the person has reasonable grounds to believe that a death has already been reported. The Department of Justice guidance documents for prisons include the policy directive, *Death of a Prisoner – Procedures*. This directive lists the category of persons required to be notified immediately in the event of a death in custody, including the Coroner. The Youth Justice Services Standing Order 29 – *Death of a Detainee* – identifies required notifications, including the Coroner.

● *The Western Australian Government has implemented Recommendation 10 through the Coroners Act 1996 (WA), the Department of Justice policy directive and the Youth Justice Services Standing Order 29.*

In **Tasmania**, Section 19 of the *Coroners Act 1995 (Tas)* requires a person who has reasonable grounds to believe that a reportable death has not been reported must report it as soon as possible to a coroner or police officer. The coroner or police officer must inform the Chief Magistrate of the reportable death as soon as possible.

● *The Tasmanian Government has completely implemented Recommendation 10 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, Section 91 of the *Correctional Services Act 2014 (NT)* requires the Commissioner to be notified of a prisoner death. Under the *Coroners Act 1993 (NT)*, the Commissioner is required to report the death of a prisoner to the Coroner and the Coroner's staff must notify the prisoner's next of kin.

● *The Northern Territory Government has completely implemented Recommendation 10 through the Prisons (Correctional Services) Act (NT) and the Coroners Act 1993 (NT).*

In the **Australian Capital Territory**, section 78 of the *Coroners Act 1997 (ACT)* stipulates a specific offence creating an obligation on custodial officers to report deaths in custody as soon as practicable after becoming aware of it and having reasonable grounds to believe that the death has not been reported to a coroner, which sits over and above the general obligation in section 77.

ACTCS currently operates under the Code Black Operating Procedure in relation to a death in custody. This operating procedure is currently under review and will include the requirement for notifying the Coroner's Office, as well as ACT Policing of a death in custody.

Custodial facilities advise ACT Policing Operations of any deaths at custodial facilities that would be considered deaths in custody. This is a requirement under the ACTCS Operating Procedure 'Death in Custody' which is to become operational imminently. This requires the Officer in Charge to notify ACT Policing of a death in custody as soon as practicable and in all instances within 30 minutes of the death being confirmed.

ACT Policing Operations advise on-call Coroners Team members of all deaths as standard procedure as soon as they are notified. On-call Coroners Team members advise the duty coroner of deaths, as appropriate. A death in custody (in a custodial facility, as opposed to a person under a Mental Health order) would be notified to the duty coroner immediately.

● *The Australian Capital Territory Government has implemented Recommendation 10 through the Coroners Act 1997 (ACT) and the operational procedures followed by ACTCS and ACT Policing.*

Recommendation 11

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

Background information


The RCIADIC suggested that having a formal coronial inquiry into all deaths in custody would ensure a thorough and impartial investigation. By retaining a full record of all evidence from the coronial inquest, the RCIADIC anticipates that this may help prevent future deaths in similar circumstances.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, under Section 12B(1)(b) of the *Coroners Act 1980* (NSW), an inquest must be held in respect of a suspected death in custody. Currently, a death in custody or within a police operation is regarded as a death within section 23 of the *Coroners Act 2009* (NSW). A mandatory inquest must therefore be conducted by a senior Coroner under the legislation.

 *The New South Wales Government has partially implemented Recommendation 11 through the Coroners Act 1980 (NSW) and the Coroner's Act 2009 (NSW). However, it does not appear that the inquest must be conducted in public hearings or a full record of evidence must be retained.*


In **Victoria**, as cited in the 1994 implementation report, section 17 of the *Coroners Act 1985* (Vic) provides that a Coroner must investigate a death if immediately before or at the time of death the deceased was held in care. Inquests are normally held in public, unless the Coroner orders that all or some persons be excluded from the court, if they believe it is in the interest of any person, the public or of justice to do so. Under Section 57 of the *Coroners Act 1985* (Vic) all evidence must be recorded.

 *The Victorian Government has completely implemented Recommendation 11 through the Coroners Act 1985 (Vic).*


In **Queensland**, under section 27 of the *Coroners Act 2003* (Qld), a Coroner must hold an inquest if the coroner believes the death is a death in custody. Section 31 of the *Coroners Act 2003* (Qld) requires an inquest to be held by the Coroners Court in open court, except when the coroner orders the court be closed while particular evidence is given. With some exceptions regarding pre-inquest conferences and prohibited publications relating to inquests and pre-inquest conferences, any other proceedings in the Coroners Court must be recorded under the *Recording of Evidence Act 1962* (Qld). Under this Act, anyone is entitled to obtain a copy or these recordings.

 *The Queensland Government has completely implemented Recommendation 11 through the Coroners Act 2003 (Qld) and the Recording of Evidence Act 1962 (Qld).*


Under section 21 of **South Australia's** *Coroners Act 2003* (SA), the Coroner's Court must hold an inquest to determine the cause of all deaths in custody. Inquests held in the Coroner's Court must be open to the public. However, the Court may withhold publication of evidence if it considers it desirable to do so in the interests of national security. As the Coroner's Court is a court of record, all proceedings are therefore recorded and available as evidence of fact.

 *The South Australian Government has completely implemented Recommendation 11 through the Coroners Act 2003 (SA).*


In **Western Australia**, section 22(1) of the *Coroners Act 1996* (WA) makes it mandatory for an inquest to be held into the death of a person in care. The practice is that the State Coroner undertakes all inquests into deaths in custody. All inquests are public hearings unless there are compelling reasons to justify a different approach and full records are kept of proceedings.

 *The Western Australian Government has completely implemented Recommendation 11 through the Coroners Act 1996 (WA).*


Section 24 of the **Tasmanian Coroners Act 1995** (Tas) requires a coroner who has jurisdiction to investigate a death, if the person died in custody. Section 56 of the Act requires the coroner to conduct an inquest in open court. However, a coroner may exclude any or all persons from an inquest if they consider it in the interests of the administration of justice, national security or personal security. Further to this, section 29 of the Act requires that a coroner or a coroner's associate must keep a record of each investigation into a death.

 *The Tasmanian Government has completely implemented Recommendation 11 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, under section 15 of the *Coroners Act 1993* (NT), a coroner is required to hold an inquest if the body of the deceased person was held in care or custody immediately before death or if the death was caused or contributed to by injuries sustained while the deceased was held in custody. Section 42 of the Act requires inquests to be held in open court unless a coroner thinks it necessary to order persons outside for the safety of others. Finally, section 11 of the Act requires the coroner or coroner's clerk to keep a record of findings, evidence and comments in relation to each investigation into death or disaster.

 *The Northern Territory Government has completely implemented Recommendation 11 through the Coroners Act 1993 (NT).*

In the **Australian Capital Territory**, under section 13 of the *Coroners Act 1997* (ACT), a coroner must hold an inquest into the manner and cause of death of a person who dies in custody. Section 40 of the Act requires the hearing to be held in public, unless a Coroner is of the opinion that it is desirable in the public interest or in the interests of justice to direct that a hearing take place in private. In the ACT, the registrar must keep a record of the inquest into a death in custody for a period of no less than seven years after the completion of the inquest under section 73 of the Act.

 *The Australian Capital Territory Government has completely implemented Recommendation 11 through the Coroners Act 1997 (ACT).*

Recommendation 12

That a Coroner inquiring into a death in custody be required by law to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death.

Background information


The RCIADIC recommended that all investigations should extend beyond an inquiry into whether a death occurred as a result of criminal behaviour and should include an inquiry into the lawfulness of the custody and the general care, treatment and supervision of the deceased prior to death.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, quality of care, treatment and supervision of the deceased were already examined by the State Coroner prior to the RCIADIC, to establish whether they contributed to the death of a person. Therefore, it was not considered necessary to amend the *Coroners Act 1980* (NSW) to specify that these matters should be specifically examined in any inquest. However, while current and past practice when conducting inquests has been consistent with the specific principles in Recommendation 12, the New South Wales Government has not given legislative or legal effect to this recommendation.

 *The New South Wales Government has partially implemented Recommendation 12, as the recommendation is adhered to in practice but it is not specified in legislation.*


In **Victoria**, under the *Coroners Act 2008* (Vic), a coroner must find, if possible, the cause of death and determine how the death occurred. The coroner is also required to report on the circumstances of the death. The coroner may also comment on any matter connected with the death including public

health or safety, or the administration of justice, which includes the quality of care, treatment and supervision.


The Coroners Court has a prevention unit that provides advice to the coroner, including the provision of advice from medical specialists regarding the quality of treatment and care provided to those in custody. The coroner would look at the care, treatment and supervision of the deceased, if it were relevant to the circumstances of the death and/or it were an issue regarding public health and safety.

 *The Victorian Government has mostly completed Recommendation 12 through the Coroners Act 1985 (Vic), however there is no legal requirement for the Coroner to comment on the quality of care, treatment or supervision of the deceased.*


In **Queensland**, under section 45(2) of the *Coroners Act 2003* (Qld), the coroner must, if possible, find how, when and where the person died as well as what caused the person to die. Section 14 of the *Coroners Act 2003* (Qld) provides that the State Coroner must issue guidelines that deal with the investigation of deaths in custody and that coroners must comply with the guidelines to the greatest practicable extent. The State Coroners Guidelines require coroners to direct their attention to the general care, treatment and supervision of the deceased and to determine whether custodial officers complied with their common law duty of care and all departmental policies and procedures, and whether these were best suited to preserving the prisoner's welfare. Coroners are directed to consider the possibility of any systemic failure relating to a death.

 *The Queensland Government has implemented Recommendation 12 through the requirements set out in the Coroner's Act 2003 (Qld) and the State Coroners Guidelines.*


In **South Australia**, the *Coroners Act 2003* (SA) requires that the cause and circumstances of a death in custody be investigated. However, does not specifically provide that the quality of the care, treatment and supervision of the deceased prior to death be investigated. Those areas of investigation generally feature in death in custody investigations, although not a requirement of the law.

 *The South Australian Government has mostly implemented Recommendation 12 through the Coroners Act 2003 (SA). It is current practice to take evidence as to the care, treatment and supervision during the time of incarceration and prior to death. However, this is not required by law.*


In **Western Australia**, the *Coroners Act 1996* (WA), section 25(1) (b) requires the Coroner to determine how the death occurred. Under section 25(3) of the *Coroners Act 1996* (WA), where a death has occurred in custody, a coroner must comment on the quality of the supervision, treatment and care of the person while in that care.

 *The Western Australian Government has implemented Recommendation 12 through the Coroners Act 1996 (WA).*


In **Tasmania**, under section 28(5) of the *Coroners Act 1995* (Tas), if a coroner holds an inquest into the death of a person who died while that person was in custody, held in care, or escaping or attempting to escape from prison, a secure mental health unit, a detention unit or police custody, the coroner must report on the care, supervision or treatment of that person while that person was a person held in custody or care.

 *The Tasmanian Government has implemented Recommendation 12 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, section 15 of the *Coroners Act 1993* (NT) requires that where a death occurs in custody that an inquiry must be held. Section 26 of the Act provides that where the coroner holds an inquest into the death of a person held in custody or where the death was caused or contributed to by injuries sustained while being held in custody, the coroner must investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody.

 *The Northern Territory Government has implemented Recommendation 12 through the Coroners Act 1993 (NT).*

In the **Australian Capital Territory**, under section 74 of the *Coroners Act 1997* (ACT), the coroner holding an inquest into a death in custody must include in a record of proceedings of the inquest, findings about the quality of care, treatment and supervision of the deceased where, in the opinion of the coroner, these contributed to the cause of death.

 *The Australian Capital Territory Government has implemented Recommendation 12 through the Coroners Act 1997 (ACT).*

Recommendation 13

That a Coroner inquiring into a death in custody be required to make findings as to the matters which the Coroner is required to investigate and to make such recommendations as are deemed appropriate with a view to preventing further custodial deaths. The Coroner should be empowered, further, to make such recommendations on other matters as he or she deems appropriate.

Background information


As the State Coroner may be able to identify general, persistent problems, which may not be apparent from an individual examination, the RCIADIC recommended that the Coroner be given the right to make recommendations to prevent future deaths in custody.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, the *Coroners Act 1980* (NSW) was amended in 1993 to include a provision that the State Coroner may make recommendation to prevent further deaths in custody. This provision is set out in section 22A of the *Coroners Act 1980* (NSW). Currently, the New South Wales Government notes that a formal written finding must be handed down by the Coroner outlining the circumstances, reasons, and findings related to the death in custody.

 *The New South Wales Government has implemented Recommendation 13 through the Coroner's Act 1980 (NSW), which provides the Coroner with the right to make recommendations to prevent further deaths in custody.*


As noted in the 1993 **Victorian** Implementation Report, while there is no statutory duty to do so, the Coroner has the discretion under section 19 of the *Coroners Act 1985* (Vic) to comment on any matter connected with the death including public health or safety, or the administration of justice.

 *The Victorian Government has implemented Recommendation 13 through the Coroner's Act 1985 (Vic), which provides the Coroner with the right to comment and make recommendations on deaths in custody.*


In **Queensland**, under Section 46 of the *Coroners Act 2003* (Qld), the Coroner may comment on anything connected with a death investigated at an inquest that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future. Further under this legislation, a written copy of any comment must, if the comment relates to matters with which a government entity deals, be given to the Attorney-General, the relevant Minister and the chief executive officer of the entity.

 *The Queensland Government has implemented Recommendation 13 through the Coroners Act 2003 (Qld) which permits the Coroner to comment on anything connected with a death investigated at an inquest.*


In **South Australia**, under section 25(2) of the *Coroners Act 2003* (SA), the Coroner's Court may add to its findings any recommendations that may prevent, or reduce the likelihood or reoccurrence, of a similar event occurring.

 *The South Australian Government has implemented Recommendation 13 through the Coroner's Act 2003 (SA), which provides the Coroner with the right to comment and make recommendations on deaths in custody.*


In **Western Australia**, under sections 25(2) and 27(3) of the *Coroners Act 1996* (WA), the Coroner is required to investigate and must find (if possible) the identity of the deceased, how the death occurred and the cause of death. The Coroner may also comment on any matter connected with the death including public health or safety, or the administration of justice. The Coroner must comment on the quality of the supervision, treatment and care of the deceased.

 *The Western Australian Government has implemented Recommendation 13 through the Coroners Act 1996 (WA).*


Under section 28(2) of the **Tasmanian Coroners Act 1995** (Tas), a coroner must, where appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers relevant.

 *The Tasmanian Government has implemented Recommendation 13 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, under section 26(2) of the *Coroners Act 1993* (NT), a coroner who holds an inquest into a death in custody must make recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant. The Coroner must report on the care, supervision, and treatment of the person held in prison; and may report on matters in connection with public health, safety, or the administration of justice as it relates to the death. The Coroner must report to the Attorney-General.

 *The Northern Territory Government has implemented Recommendation 13 through the Coroners Act 1993 (NT), which requires the Coroner to make recommendations to prevent future deaths in custody. The Coroner must also report on the care, supervision, and treatment of the person held in prison.*

In the **Australian Capital Territory**, section 74 of the *Coroners Act 1997* (ACT) requires a Coroner to make additional findings into deaths in custody as to the quality of care, treatment and supervision that contributed to the cause of death. The objects of the Act in section 3BA provide a very broad discretion in relation to coronial recommendations including the prevention of deaths. While section 57 creates a process in relation to certain recommendations in reports to the ACT Attorney-General, as the Act is not a Code, ACT Coroners retain their common law powers and functions and regularly make recommendations under common law.

 *The Australian Capital Territory Government has implemented Recommendation 13 through the Coroners Act 1997 (ACT).*

Recommendation 14

That copies of the findings and recommendations of the Coroner be provided by the Coroner's Office to all parties who appeared at the inquest, to the Attorney-General or Minister for Justice of the State or Territory in which the inquest was conducted, to the Minister of the Crown with responsibility for the relevant custodial agency or department and to such other persons as the Coroner deems appropriate.

Background information

The RCIADIC recognised the importance of establishing a formal means to ensure proper public accountability and to provide a system of review, which is able to draw from the general experience gained from all inquests into deaths in custody.


Responsibility

All State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

In **New South Wales**, under the NSW Premier's Memorandum M2009-12 Responding to Coronial Recommendation, findings must be provided to Departments and Ministers. The *Coroners Act 1980* (NSW) was amended in 1993 to include a provision to require the State Coroner to report to the Attorney-General on all deaths in custody. This requirement is set out in section 12A(4) of the Act. All


persons with an interest in the death are entitled to a copy of findings. Findings are also published on the NSW State Coroners website and in the State Coroner Annual Report on Deaths in Custody.

 *The New South Wales Government has mostly implemented Recommendation 14 through the Coroner's Act 1980 (NSW) and current coronial practice. It does not appear to be a requirement that relevant departments or Minister for the Crown be given a copy of the Coronial findings.*


In **Victoria**, under section 72 of the *Coroners Act 2008* (Vic), a Coroner may report to the Attorney-General on a death, and may make recommendations accordingly. Further to this, under section 73 of the Act, it is required that all inquest findings, with recommendations, be published on the internet. The findings and recommendations of the coroner are provided to all interested parties, who have a right to appeal against the findings. This gives the interested parties an implied right to receive the findings.

 *The Victorian Government has implemented Recommendation 14 through the Coroner's Act 1985 (Vic).*


In **Queensland**, under section 45 of the *Coroners Act 2003* (Qld), the Coroner must give a written copy of the findings to a family member of the deceased person, any person who appeared at the inquest when the deceased was a child, and to the State Coroner, if they did not conduct the inquiry themselves. Further to this, under section 46 of the *Coroners Act 2003* (Qld), the Coroner must publish the findings and coroner comments on the State Coroner's website. A written copy of any Coroner's comment must, if the comment relates to matters with which a government entity deals, be given to the Attorney-General, the relevant Minister and the chief executive officer of the entity.

 *The Queensland Government has mostly implemented Recommendation 14 through the Coroner's Act 2003 (Qld), however no express requirement is made that in all cases the Attorney-General or Minister for Justice are provided with the Coroner's inquest findings and recommendations.*

In **South Australia**, under section 25 of the *Coroners Act 2003* (SA), the Coroner's Court must, as soon as practicable, forward a copy of its findings and any recommendations to the Attorney-General, to each relevant minister or other agency that was instrumental to the Crown during the inquest, to each person who appeared personally or by counsel at the inquest, and to any other person who, in the opinion of the court, has a sufficient interest in the manner.

 *The South Australian Government has implemented Recommendation 14 through the Coroners Act 2003 (SA).*

In **Western Australia**, it is current practice that findings and recommendations are provided to the Western Australian Attorney-General, the responsible minister, interested parties and all agencies listed in the Coroner's findings. Guideline 33 of the Guidelines for Coroners provides for the identification of any person or body whose action would be required for the implementation of recommendations and for reports to the Coroner. Details of the Coroner's findings and recommendations, and information as to their implementation, are included in the State Coroner's Annual Report, which is laid before both Houses of Parliament (s27 of the *Coroners Act 1996* (WA)). Section 26(3) of the Act requires that a copy of any part of the record of the death investigation be provided to the senior next of kin on request. Furthermore, the findings and recommendations of an inquest are published on the website of the Coroner's Court of Western Australia.

 *The Western Australian Government has implemented Recommendation 14 through current practice, Guideline 33 and the Coroners Act 1996 (WA).*

In the 1995 Implementation Report, the Tasmanian Government noted that in **Tasmania** the Coroner's Office provides copies of findings and recommendations of the Coroner to all parties who appeared at the inquest, to the Attorney-General and to the Minister of the Crown with responsibility for the relevant custodial agency or department. Rule 25 of the *Coroners Rules 2006* provides that at the conclusion of an investigation into a death, a copy of the coroner's findings is to be provided to the deceased person's senior next of kin, parties who appeared at the inquest, and government departments.

- *The Tasmanian Government has implemented Recommendation 14 as noted in the 1995 implementation report and through the Coroner's Rules 2006.*

In the **Northern Territory**, under section 27 of the *Coroners Act 1993* (NT), the coroner is required to send a copy of each report and recommendations relating to an inquest into the death in custody to the Attorney-General without delay. As highlighted in the 1994-95 Implementation Report, the Attorney-General must then provide the relevant agency or department with the report or recommendations. The Attorney-General must also table a copy of the report or recommendations before the Legislative Assembly within six days of receiving it.

- ▶ *The Northern Territory Government has mostly implemented Recommendation 14 through the Coroner's Act 1993 (NT), however it does not appear that there exists a requirement to provide all parties who appeared at the inquest with a copy of the findings and recommendations.*

In the **Australian Capital Territory**, under section 75 of the *Coroners Act 1997* (ACT), the Coroner must make available a copy of the findings to a member of the immediate family, plus any witness who appeared at the inquest into the death in custody, along with the Attorney-General, the custodial agency, the Australian Institute of Criminology, the appropriate Aboriginal Legal Service (if the deceased was Aboriginal and Torres Strait Islander) and any other person the Coroner considers appropriate.

- *The Australian Capital Territory Government has implemented Recommendation 14 through the Coroner's Act 1997 (ACT).*

Recommendation 15

That within three calendar months of publication of the findings and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister of the Crown with responsibility for that agency or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person.

Background information

The RCIADIC Report noted that it is necessary to establish a formal means to ensure proper public accountability and to provide a system of review, which is able to draw from the general experience gained from all inquests held into deaths in custody.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under the NSW Premier's Memorandum M2009-12 Responding to Coronial Recommendation, findings must be provided to Departments and Ministers. The relevant Minister or NSW Government agency is required to write to the Attorney-General outlining any action being taken to implement the coronial recommendation within six months of receiving a recommendation from the Coroner.⁷

- ▶ *The New South Wales Government has mostly implemented Recommendation 15 through the NSW Premier's Memorandum M2009-12 Responding to Coronial Recommendation. However, the time period is set as six months as opposed to the three months required in this recommendation.*

Under section 72 of the **Victorian Coroners Act 2008** (Vic), a public statutory authority or entity must within three months after the date of receipt of a report from a Coroner, provide to the Coroner a written response to the findings contained in the report. The response must include a statement of the action (if any) that has been, or is being taken in relation to any aspect of the findings contained in the report.

⁷ <http://arp.nsw.gov.au/m2009-12-responding-coronial-recommendations>, accessed September 2017.

- *The Victorian Government has implemented Recommendation 15 through the Coroner's Act 2008 (Vic).*

In **Queensland**, an administrative scheme operates to facilitate the compilation of a government response to coronial recommendations. In the case of a death in custody, such a response would be compiled. The arrangement is administrative, as opposed to legislative. Under the arrangement, the relevant government entities must respond within six months from the date of the delivery of the recommendation. Any response will advise whether the recommendation has been implemented. If any recommendation is still under consideration at the conclusion of that period, an implementation update must be provided. Government responses and implementation updates are publicly available on the Coroners Court section of the Queensland Courts website. Following a Coroner's inquest into a death in custody, Queensland Corrective Services (QCS) notifies the Minister for Corrective Services of the findings of the inquest and any action that has been taken or is proposed to be taken as a result of the inquest.

- *The Queensland Government has mostly implemented Recommendation 15 through the Operational Procedures Manual. However, current practice is for six months rather than the three months required in this recommendation.*

According to section 25 of **South Australia's Coroners Act 2003 (SA)**, the Coroner's Court must, as soon as practicable after the completion of the inquest, forward a copy of its findings and recommendations to the Attorney-General and the relevant Minister. Section 25(5) of the Act requires that the Minister must cause a report to be laid before each House of Parliament, within eight sitting days once six months has passed since receiving a copy of the findings and recommendations. The report must detail any actions taken, or proposed to be taken, in response to the recommendations. A copy of the report must also be forwarded to the State Coroner.

- *The South Australian Government has mostly implemented Recommendation 15 through the Coroner's Act 2003 (SA). However, the time period is set as six months as opposed to the three months required in this recommendation.*


There is currently no legislative requirement to compel a **Western Australian** Government agency or department to respond to findings or recommendations made by the Coroner. Despite the absence of legislative obligations, however, the Western Australian Government stated that it remains committed in its support for the Coroner.

- *The Western Australian Government has not implemented Recommendation 15 and there is no requirement for government agencies or departments to respond to the Coroner's recommendations.*


In **Tasmania**, under section 30 of the *Coroners Act 1995 (Tas)*, a Coroner is empowered to report and make recommendation to the Attorney-General on a death in which the Coroner investigated. Section 69 of the Act states that the Chief Magistrate must, on or before 30 November in each year, prepare and submit to the Attorney-General a report in relation to the operation of this Act during the preceding financial year. Currently, it is normal practice for government agencies to provide a response to any findings or recommendations to the relevant Minister.

- *The Tasmanian Government has not implemented Recommendation 15. While it is current practice for government agencies to provide a response to coronial findings, this does not appear to be a requirement.*

In the **Northern Territory**, under section 46B(1) of the *Coroners Act 1993 (NT)*, if a Chief Executive Officer of a government agency or department, or the Commissioner of Police receives a copy of a report or recommendations, they must, within three months after receiving the report or recommendations, give the Attorney-General a written response to the findings in the report or to the recommendations. The Northern Territory Correction Services (NTCS) *Incident Reporting and Recording Policy* provides that a response to the Coroner's findings will be provided within three months.

 *The Northern Territory Government has implemented Recommendation 15 through the Coroner's Act 1993 (NT). This recommendation is also addressed through the NTCS Incident Reporting and Recording Policy.*

In the **Australian Capital Territory**, under section 76 of the *Coroners Act 1997 (ACT)*, the custodial agency must, within three months after the date of receipt of a report from the Coroner, give to the responsible Minister a written response to the findings contained in the report. A written response must include a statement of the action (if any) that has been, or is being, taken in relation to any aspect of the findings contained in the report.

 *The Australian Capital Territory Government has implemented Recommendation 15 for the custodial agency through the Coroner's Act 1997 (ACT).*

Recommendation 16

That the relevant Ministers of the Crown to whom responses are delivered by agencies or departments, as provided for in Recommendation 15, provide copies of each such response to all parties who appeared before the Coroner at the inquest, to the Coroner who conducted the inquest and to the State Coroner. That the State Coroner be empowered to call for such further explanations or information as he or she considers necessary, including reports as to further action taken in relation to the recommendations.

Background information


With the aim of ensuring public accountability, the RCIADIC Report hoped that by enforcing such measures as discussed in Recommendations 15 and 16 this would help to identify general, persistent problems which may not be apparent from an examination of the circumstances of an individual death.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

According to the **New South Wales** 1994-95 Implementation Report, the State Coroner had implemented a protocol which provides for the distribution of responses to all parties at the inquest. The 1994-95 Implementation Report noted that it was more administratively efficient for the State Coroner's Office to arrange for the distribution of responses to all parties at the inquest. The actions taken towards the implementation of Recommendation 14 also address this recommendation.


 *The New South Wales Government has partially implemented Recommendation 16. However, it does not appear that the State Coroner is empowered to call for further explanations or information.*

In **Victoria**, under section 72(5) of the *Coroners Act 2008 (Vic)*, the coroner must publish the response of a public authority or entity on the Internet. The Coroner must also provide a copy of the response to any person who has advised the principal registrar that they have an interest of the subject of the recommendation and who that principal registrar considers to have sufficient interest in the subject of the recommendations. The relevant Minister is not explicitly required to provide copies of responses to the persons specified in Recommendation 16, however a copy is available on the internet. The State Coroner is not specifically empowered to call for further explanations or information.


 *The Victorian Government has mostly completed Recommendation 16 through the Coroner's Act 2008 (Vic), however the State Coroner is not empowered to call for further explanations or information.*

As noted in Recommendation 15, in **Queensland** responses to coronial recommendations are publicly available. Any implementation reports which arise subsequent to the initial response are also made public. Under section 16.23.6 of the *Operational Procedures Manual (Issue 59)*, a consolidated report prepared by the Department of Justice and Attorney-General is provided to all other parties appearing at the coronial inquest including the Coroner, other Government agencies, next of kin and legal


services. No further information has been found suggesting that the State Coroner is empowered to call for further explanations or information. Under section 50A of the *Coroners Act 2003* (Qld), a coroner who held an inquest may reopen an inquest if satisfied that it is in the public interest.

 *The Queensland Government has mostly implemented Recommendation 16 through a range of initiatives including the reporting requirements, and the Operational Procedures Manual for police. While under the Coroners Act 2003 (Qld), a coroner may reopen an inquest if it is deemed to be in the public interest, there is no explicit power granted to the Coroner to call for further explanations or evidence.*


Under section 39 of the **South Australian Coroners Act 2003** (SA), the State Coroner must, on or before 31 October each year, make a report to the Attorney-General on the administration of the Coroner's Court and the provision of coronial services under this Act during the previous financial year. The report must include all recommendations made by the Coroner's Court. Additionally, the Attorney-General must, within 12 sitting days after receiving a report cause copies of the report to be laid before both Houses of Parliament. South Australian legislation does not explicitly require the State Coroner to include responses to the recommendations in the report, and the South Australian Government notes that the Coroner should not assume a policing role.

 *The South Australian Government has partially implemented Recommendation 16 through the Coroners Act 2003 (SA), however there does not appear to be a provision empowering the Coroner to call for further explanations or evidence or to reopen an inquest.*


The 2000 Implementation Report noted that within **Western Australia** a copy of the report provided to the Minister is forwarded to the Coroner. Under section 27(1) of the *Coroners Act 1996* (WA), the State Coroner is required to report annually to the Attorney-General on the deaths which have been investigated in each year, including a specific report on the death of each person held in care. Section 27(3) of the Act allows for the State Coroner to make recommendations to the Attorney-General on any matter connected with a death in care. The Western Australian Government notes that there is currently no legislative requirement to compel a Western Australia government agency or department to respond to findings or recommendations made by the Coroner.

 *The Western Australia Government has not implemented Recommendation 16. There is currently no legislative response which implements the principles of this recommendation.*

In **Tasmania**, the Coronial Practice Handbook recommends that organisations consider forwarding correspondence to the coroner's office outlining the measures taken to implement the recommendations, the measures that are intended to be taken in the future or, if alternative measures are employed, details and the reasons for implementing those measures.

 *The Tasmanian Government has not implemented Recommendation 16.*


In the **Northern Territory**, under section 46B(3) of the *Coroners Act 1993* (NT), after receiving the response of the Chief Executive Officer or the Commissioner of Police, the Attorney-General must, without delay, report on the coroner's report or recommendation and respond to the coroner's report or recommendation. The Attorney-General must table a copy of their report before the Legislative Assembly within three sitting days of completing the report. Additionally, the coroner may give a copy of the Attorney-General's report to the senior next of kin of a deceased person mentioned in the report, a witness who appeared at the inquest and any other person who the coroner considers has sufficient interest in the inquest or investigation. The Territory Coroner is not expressly empowered to call for further explanations or information.

 *The Northern Territory has partially implemented Recommendation 16 through the Coroners Act 1993 (NT), however there is no express power granted to the Coroner enabling them to call for further explanations or information.*

The 1995-96 Annual Report states that within the **Australian Capital Territory**, Ministers who receive a response from an agency concerning a coronial report are required under the *Coroners Act 1997* (ACT) to provide a copy of that response to the Coroner. The Coroner is then required to deliver

a copy to any person who received a copy of the report. The Coroner, without the need for a statutory provision, may seek additional information from an agency about a response made by that agency.

Under s.76 of the *Coroners Act 1997* (ACT), the custodial agency must give a response to the responsible Minister that details the action being taken in relation to any aspect of the findings in the inquest report. That response must then be provided to the Coroner, family members, other witnesses presenting at an inquest, and all stakeholders listed in s.75 of the Act.

 *The Australian Territory has implemented Recommendation 16 through the Coroners Act 1997 (ACT).*

Recommendation 17

That the State Coroner be required to report annually in writing to the Attorney-General or Minister for Justice, (such report to be tabled in Parliament), as to deaths in custody generally within the jurisdiction and, in particular, as to findings and recommendations made by Coroners pursuant to the terms of Recommendation 13 above and as to the responses to such findings and recommendations provided pursuant to the terms of Recommendation 16 above.

Background information


The RCIADIC Report suggested that the State Coroner should report to the Attorney-General or Minister for Justice annually as a further precaution to ensure proper public accountability for all deaths in custody.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In **New South Wales** under section 37 of the *Coroners Act 2009* (NSW), the State Coroner is required to make a written report to the Minister containing a summary of the details of all deaths in custody on an annual basis. Section 27(3) of the Act states that the Minister is to cause a copy of the report that is then to be tabled in each House of Parliament within 21 days after the request is made. The report is also published on the State Coroner's website.

 *The New South Wales Government has implemented Recommendation 17 through the Coroners Act 2009 (NSW) and annual reporting processes.*

Under sections 102 and 113 of the *Coroners Act 2008* (Vic), the **Victorian** State Coroner must submit to the Attorney-General, by 31 October, a report containing a review of the operation of the Coroner's Court during the 12 months ending on the preceding 30 June. The Attorney-General must provide the annual report to each House of Parliament within seven sitting days after receipt of the report.


 *The Victorian Government has implemented Recommendation 17 through the Coroners Act 2008 (Vic) and annual reporting to the Attorney-General and Victorian Parliament on the operation of the Coroner's Court.*

In **Queensland**, under section 77 of the *Coroners Act 2003* (Qld), the State Coroner must give the Attorney-General a report on the operation of the legislation for the year as soon as practicable after the end of financial year. Section 72(2) (c) of the Act requires that a summary of the investigation, including the inquest, must contain all deaths in custody. The Attorney General must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.


 *The Queensland Government has implemented Recommendation 17 through the Coroners Act 2003 (Qld) and reporting practices between the State Coroner and the Attorney-General's Department.*

Section 39 of the **South Australian Coroners Act 2003** (SA) requires that the State Coroner must, on or before 31 October in each year, make a report to the Attorney-General on the administration of the Coroner's Court and the provision of coronial services under this Act during the previous financial


year. The Attorney-General must, within 12 sitting days after receiving a report, cause copies of the report to be laid before Houses of Parliament.

 *The South Australian Government has implemented Recommendation 17 through the Coroners Act 2003 (SA) and annual reporting to the Attorney-General on the operation of the Coroner's Court.*


In **Western Australia**, section 27(1) of the *Coroners Act 1996* (WA), requires that the State Coroner must report annually to the Attorney-General on the deaths that have been investigated in each year, including a specific report on the death of each person held in care. The Attorney-General must table the report before each House of Parliament within 12 sitting days after receiving the report.

 *The Western Australian Government has implemented Recommendation 17 through the Coroners Act 1996 (WA).*


In **Tasmania**, under section 69 of the *Coroners Act 1995* (Tas), the Chief Magistrate must, on or before 30 November in each year, prepare and submit to the Attorney-General a report of the operations of the Act during the preceding financial year. The report must include details of deaths of persons held in custody and findings and recommendations made by coroners, and may also include any other matter that the Chief Magistrate considers appropriate. The Attorney-General must table a copy of the report in each House of Parliament within ten sitting days after receiving the report.

 *The Tasmanian Government has implemented Recommendation 17 through the Coroners Act 1995 (Tas) and annual reporting to the Attorney-General on the operation of the Coroner's Court.*

In the **Northern Territory**, under section 27 of the *Coroners Act 1993* (NT), the coroner must provide a copy of each report and recommendations into all deaths in custody to the Attorney-General without delay. There is no requirement for the Territory Coroner to report annually in the Northern Territory.

 *The Northern Territory Government has partially implemented Recommendation 17 through the Coroners Act 1993 (NT). However, there is no requirement for the Territory Coroner to report annually in the Northern Territory.*

In the **Australian Capital Territory**, under section 102 of the *Coroners Act 1997* (ACT), the Chief Coroner must give a report relating to the activities of the court during each financial year to the Attorney-General for presentation to the Legislative Assembly. The report must include particulars of reports prepared by coroners into deaths in custody and findings contained in the reports. The Chief Coroner must give the report to the Attorney-General as soon as practicable after the end of the financial year and, in any event, within six months after the end of financial year. The Attorney-General must present a copy of a report to the Legislative Assembly within six sittings days after the day the Attorney-General receives the report.

 *The Australian Capital Territory Government has implemented Recommendation 17 through the Coroners Act 1997 (ACT) and annual reporting processes to the Attorney-General.*

Recommendation 18

That the State Coroner, in reporting to the Attorney-General or Minister for Justice, be empowered to make such recommendations as the State Coroner deems fit with respect to the prevention of deaths in custody.

Background information

The RCIAIDIC Report recommended that the State Coroner be empowered to make such general recommendations as he or she sees fit to prevent future deaths in custody. It is anticipated that the State Coroner may be able to identify general, persistent problems which may not be apparent from examining individual deaths.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under section 82 of the *Coroners Act 2009* (NSW), the State Coroner is empowered to make such recommendations as the Coroner considers necessary or desirable to make in relation to any matter connected with the death.

- *The New South Wales Government has implemented Recommendation 18 through the Coroners Act 2009 (NSW).*

Under section 72(2) of the **Victorian Coroners Act 2008** (Vic), a coroner may make recommendations to any Minister, public statutory authority or entity on any matter connected with a death that the coroner has investigated, including recommendations relating to public health and safety or the administration of justice.

- *The Victorian Government has implemented Recommendation 18 through the Coroners Act 2008 (Vic), under which the State Coroner may make recommendations to Ministers and public statutory authorities on matters relating to deaths in custody.*

In **Queensland**, section 46(1) of the *Coroners Act 2003* (Qld) provides that a coroner may, wherever appropriate, comment on anything connected with a death investigated at an inquest that relates to public health or safety, the administration of justice or ways to prevent deaths from happening on similar circumstances in the future. Section 46(2) requires those written comments to be provided to certain people including family members and Ministers responsible for government entities. Additionally, the State Coroner must give the Attorney-General a report after the end of the financial year on the operation of the *Coroners Act 2003* (Qld) which includes a summary of the investigation, including the inquest, into each death in custody.

- *The Queensland Government has implemented Recommendation 18 through the Coroners Act 2003 (Qld), under which the State Coroner may make recommendations to Ministers and the Attorney-General.*

Under section 25(2) of the *Coroners Act 2003* (SA), within **South Australia** the Coroner's Court may add to its findings any recommendation that might, in the opinion of the Court, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest.

- *The South Australian Government has implemented Recommendation 18 through the Coroners Act 2003 (SA), under which the State Coroner may add to its findings any recommendation that might prevent or reduce the likelihood of a future death in custody.*


In **Western Australia**, under section 27(3) of the *Coroners Act 1996* (WA), the State Coroner may make recommendations to the Attorney-General on any matter connected with a death which a coroner investigated, including public health or safety, the death of a person held in care or the administration of justice. Further, under section 25 of the *Act*, the State Coroner and other Coroners make public the findings and recommendations on the circumstances of any death. The findings and recommendations are published on the website of the Coroner's Court of Western Australia.

- *The Western Australian Government has implemented Recommendation 18 through the Coroners Act 1996 (WA), under which Coroners are empowered to make recommendations and recommendations and findings are made public.*


Section 29(2) of the **Tasmanian Coroners Act 1995** (Tas), defines that a coroner must, wherever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate.

- *The Tasmanian Government has implemented Recommendation 18 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, under section 26(2) of the *Coroners Act 1993* (NT), a coroner who holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody must make recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant.

 *The Northern Territory Government has implemented Recommendation 18 through the Coroners Act 1993 (NT), under which the State Coroner must make recommendations with respect to the prevention of future deaths in similar circumstances.*

In the **Australian Capital Territory**, under section 52(4) of the *Coroners Act 1997* (ACT), the coroner, in the coroner's findings, must state whether a matter of public safety is found to arise – comment on the matter. Further to this, section 57(3) of the Act requires that a report to the Attorney-General by the coroner may make recommendation about matters of public safety if the recommendations relate to the coroner's findings about a cause of death or, in the opinion of the coroner, improve public safety.

 *The Australian Capital Territory Government has implemented Recommendation 18 through the Coroners Act 1997 (ACT), under which the Coroner is required to comment on matters relating to public safety.*

Recommendation 19

That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known.

Background information

The RCIADIC Report found that many deaths in custody were poorly reported at the time of death due to a lack of knowledge about the circumstances of the death. This may be seen as an attempt to hide the truth or a lack of understanding of the complex family obligations and responsibilities that exist in Aboriginal and Torres Strait Islander society.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. This Recommendation 19 has been addressed through the *AFP National Guideline* on persons in custody and police custodial facilities (hereafter referred to as the National Guideline) which provides that if a person dies in custody, next of kin, family, or nominated contact persons must be notified as soon as practicable (paragraph 21). If the person's next of kin lives in the ACT, the notice must be delivered in person. The procedures relating to deaths in custody are set out in the 1995-96 Australian Capital Territory Implementation Report, the Australian Federal Police ACT Regional Guidelines 4/96 (Care of Persons in Police Custody) and 5/96 (Watch House), and ACT Regional Instruction 8/92 (Deaths). These provide that, where an Aboriginal and Torres Strait Islander dies in custody, the officer in charge of the investigation will notify the family and the Aboriginal Legal Service. This was to be done in conjunction with the Officer in Charge, who has been designated liaison officer with ACT Aboriginal and Torres Strait Islander communities. Each detention centre must also notify the AFP with details of the detainee's family or next of kin and request that the police notify the family of the death in custody. Further to this, ACT Youth Justice Services are also required to contact the immediate family of the deceased and Aboriginal Legal Services are also to be notified.

Additionally, the Corrections Management (Next of Kin) Policy 2012 outlines the policy and procedure to notify a detainee's next of kin of any unexpected injury/illness, death or other urgent circumstances. Policy in the Australian Capital Territory's Alexander Maconochie Centre requires that ACT Policing, in the event of a death in custody, are contacted and informed of the death and provided with the contact details of the next of kin or another nominated person for notification. However, currently there exists no requirement to engage an Aboriginal and Torres Strait Islander person to make the notification.


 *The Commonwealth and the Australian Capital Territory Governments have mostly completed Recommendation 19 through the introduction of the AFP National Guideline. However, it does not appear to be a requirement to engage an Aboriginal and Torres Strait Islander person for the notification.*

In **New South Wales**, the NSW Police Force and CSNSW procedures are consistent with this recommendation. The NSW Police Force Critical Incident Guidelines 4.2.3 state that the Local Area Commander is to personally notify relatives of any deceased person, or to delegate the responsibility to a fully briefed senior officer. Arrangements should be made for other family members to be in attendance as a support mechanism particularly if the deceased is Aboriginal and that it is important to consider local Aboriginal protocols. This role would be supported by the ACLO and requisite notifications would also be made to the Aboriginal Legal Service and Aboriginal Regional Coordinator.

The Policy for the Prevention, Detection, Intervention and Management of Suicide and Self-Harm Behaviour in Juvenile Justice Centres establishes that the family of the deceased must be notified as soon as possible by officers of Juvenile Justice NSW. The Department of Corrective Services incorporated this recommendation into the Custodial Operations Policy and Procedures (COPP). The NSW Police Force have responsibility for notifying the inmate's emergency contact person of the inmate's death. To ensure a sensitive and culturally appropriate response, the CSNSW ASPU is notified if an Aboriginal inmate dies in custody and follows formal documented processes. The Regional Aboriginal Programs Officer provides local assistance to family and friends of the deceased. These and all ASPU positions are Aboriginal identified positions. The Head of the CSNSW Chaplaincy Services is notified and makes contact with the family of the deceased to offer care and support. The COPP also sets out the process for assisting the deceased inmate's emergency contact person or family member.


 *The New South Wales Government has mostly implemented Recommendation 19 through the introduction of processes consistent with Recommendation 19. These are set out in NSW Police Force and CSNSW procedures. However, it does not appear that an Aboriginal that is known to the family must be used.*

The **Victorian** 1994 Annual Report cited that the Correctional Services Division within the Department of Justice utilises the Division's Aboriginal Welfare staff to notify family and others in the event of the death of an Aboriginal person in custody. The Annual Report noted that in respect to the Victoria Police, in the event where an Aboriginal person dies in custody, the Homicide Squad was to notify the Victorian Aboriginal Legal Service Co-operative Ltd and the Aboriginal/Police Liaison Officer of such death and relevant factors. The Victorian Aboriginal Legal Service was then responsible for informing the Aboriginal community of such a death. Further to this, when notifying relatives of the death, police were to be accompanied, where practicable, by an Aboriginal person known to those being notified. The Victorian Government also noted in AJA 3 that a protocol was developed between the State Coroner's Office and the Aboriginal Funeral Service regarding the release of information about the deceased, including notification of the deceased's relatives.


 *The Victorian Government has introduced measures to ensure that the notification of the deceased's relatives in the event of death in custody is conducted in a manner that is consistent with Recommendation 19.*

The **Queensland** Operational Procedures Manual Issue 59 Public Edition sets out under sections 16.23.3(vi), (vii) and (viii), that investigating officers as part of their investigation should immediately arrange for the next of kin or person previously nominated by the deceased to be notified. Where the deceased is an Aboriginal and Torres Strait Islander person, notification should preferably be assisted


by an Aboriginal and Torres Strait Islander person known to those being notified. Further to this, if the deceased is an Aboriginal and Torres Strait Islander person, the investigating officer is to notify Aboriginal and Torres Strait Islander Legal Service or another Aboriginal and Torres Strait Islander community organisation with responsibility for that area, as soon as possible, whether or not the relatives have been located. This recommendation is also implemented under the *Corrective Services Act 2006* (Qld) which sets out notification requirements for the chief executive officer in the event of a death in custody.

 *The Queensland Government has implemented Recommendation 20 through the Operational Procedures Manual Issue 59 Public Edition and the Corrective Services Act 2006 (Qld).*


As discussed in the 1994 **South Australian** Annual Report, in principle it is desired that correctional staff should accompany the police when the notification of next of kin occurs. However, this may not always be practicable because of location of next of kin and under these circumstances notification will be made by Police. In these circumstances, correctional staff will be involved with the family as appropriate. In the case of a death in custody, Department of Human Services (DHS) staff refer to the DHS Coronial Policy and DHS Coronial Guidelines and Mandatory Procedures. As soon as confirmation has been received by Department of Correctional Services that the family is aware of the Death, the Director Department for Correctional Services Aboriginal Services Unit (DCS-ASU) contacts the family to provide support. Refer to recommendation 5 for further information. There is a requirement to provide training for correctional personnel who may be called upon to be a notifier. Currently, the South Australian Government notes that this recommendation has been addressed and implemented through *Police General Orders* and the practices of Family and Community Services.

 *The South Australian Government has implemented Recommendation 19 through Police General Orders and the practices of Family and Community Services.*


The **Western Australian** 2000 Annual Report noted that Director General's Rule 2M and Juvenile Custodial Rule 410 apply to Recommendation 19. In general, notification is provided by the Western Australia Police Service, who, because of their greater distribution across the state, are better placed to provide personal notification, with a requirement that the Superintendent of the Prison or Detention Centre verify the notification. The Department of Justice also have procedures in place in the event of a death in custody, and in conjunction with the WA Police Service, seek to ensure that cultural protocols are adhered to in the notification process.

 *The Western Australian Government has mostly implemented Recommendation 19 through policy documents and procedures. However, the custodial institution is not responsible for the notification.*

In **Tasmania**, the 1995 Implementation Report noted that Police Policy Document 8/92 states that there should be sensitive notification of the death of a person in custody. While it may not always be practicable to have an Aboriginal and Torres Strait Islander person present to notify the family, the Department of Community and Health Services recognised that it is preferred to have an Aboriginal person known to the family to deliver the notification of death. The Department of Community and Health Services also fully supported the immediate notification of Aboriginal Legal Services of any Aboriginal and Torres Strait Islander death in custody. Currently, the Aboriginal Liaison Officer must be notified under the *Tasmania Prison Service Emergency Operating Procedure*.

 *The Tasmanian Government has mostly implemented Recommendation 19 through policy documents and procedures. However, it does not appear to specify that the custodial institution is responsible for the notification.*

In the **Northern Territory**, under section 91 of the *Correctional Services Act 2014* (NT), the General Manager of the custodial facility must notify the Commissioner as soon as practicable after a prisoner becomes critically ill or dies. The Commissioner must then notify the next of kin or a decision making authority if a prisoner is critically ill or injured.

 *The Northern Territory Government has mostly implemented Recommendation 19 through the Correctional Services Act 2014 (NT). However, it does not appear that an Aboriginal and Torres Strait Islander that is known to the family be used.*

Additional commentary

In the Australian Capital Territory under existing legislation and governance, all deaths in custody are investigated by ACT Policing who reports directly to the Coroner. The ACT Coroner directs how ACT Policing members notify families of the deceased. The Chief Coroner has stated that consideration should be given to having these notifications made by a staff member of the Coroners Court with appropriate skills or training. The Chief Coroner considers that ideally, this would be the preferable course for notifications of these deaths in the ACT. However, in the absence of sufficient court resources to facilitate this, she believes that the ACT Policing Coroners Officers are the next most appropriate to give death notifications for Aboriginal and Torres Strait Islander deaths in custody.

Recommendation 20

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

Background information

To be effective, the right of appearance at coronial inquests is dependent on appropriate steps being taken to arrange for legal advice and representation. The RCIADIC Report noted that there were shortcomings in the Aboriginal Legal Services, as they were called at the time, receiving notification and making the necessary arrangements for representation on instructions from the deceased's family or next of kin.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline on persons in custody and police custodial facilities* provides that when an Aboriginal and Torres Strait Islander person dies in custody, the case officer and the ACT Policing Aboriginal and Torres Strait Islander Community Liaison Officer must, after consultation with the Coroner, notify and provide requested information to the ATSILS (paragraph 22). Additionally, section 69 of the *Coroners Act 1997* (ACT) requires that notification be given to the deceased's family as well as the appropriate Aboriginal Legal Service. Under section 38 of the *Act*, the Coroner is required to give public notice of an inquest at least 14 days prior to the hearing. However, there is no requirement that the notification be made immediately. The Remand Centres Standing Orders number 4.4.8 (Deaths in Custody) ensures that the AFP, Coroner's Office and Aboriginal Legal Services are notified.

As discussed in the 1995-96 Implementation Report, the Australian Capital Territory have addressed Recommendation 20 through Australian Federal Police ACT Regional Guidelines 4/96 (Care of Persons in Police Custody) and 5/96 (Watch House), and ACT Regional Instruction 8/92 (Deaths) which include procedures in relation to all deaths in custody. Additionally, in the event of a death, ACT Youth Justice Services would contact the immediate family of the deceased. If the deceased was an Aboriginal and Torres Strait Islander person, the Aboriginal Legal Service would also be notified.


 *Significant progress has been made by the Commonwealth and Australian Capital Territory Governments on Recommendation 20 through the introduction of the AFP National Guideline, but the Guideline does not currently require that notification is immediate.*

Recommendation 20 is addressed in the '**New South Wales** coronial protocol for deaths in custody/police operations' section of the *Report by the NSW State Coroner into deaths in custody/police operations 2006*. The report notes that upon notification of death, the State Coroner is required to ensure that arrangements have been made to notify the relatives of the deceased and, if necessary, the deceased's legal representatives. Where Aboriginality is identified, the Aboriginal Legal


Service is contacted. As part of the formal processes that CSNSW follows in the event of an Aboriginal death in custody, the Principal Manager of the Aboriginal Strategy and Policy Unit contacts the Chief Legal Officer of the Aboriginal Legal Service to advise of the death. The head of NSW Aboriginal Affairs is also notified of the death. The Head of the CSNSW Chaplaincy Services is notified and makes contact with the family of the deceased to offer care and support. As part of the formal processes that CSNSW follows in the event of an Aboriginal death in custody, the Principal Manager of the Aboriginal Strategy and Policy Unit in Department of Justice contacts the Chief Legal Officer of the Aboriginal Legal Service to advise of the death. The head of NSW Aboriginal Affairs is also notified of the death.

 *The New South Wales Government has implemented Recommendation 20, with the appropriate Aboriginal Legal Service and NSW Aboriginal Affairs notified in the event of an Aboriginal death in custody.*


The 1994 **Victorian** Implementation Report noted that the Victorian Aboriginal Services Service Co-operative Ltd, the Aborigines Advancement League Inc. and the Victorian Aboriginal Health Service Co-operative Ltd were to be notified immediately by the Correctional Service Division Aboriginal Welfare Officer in the event of an Aboriginal death in custody. Further to this, when an Aboriginal person dies in custody, the Homicide Squad were to notify the Victorian Aboriginal Legal Service of the death and relevant information.

 *The Victorian Government has implemented Recommendation 20, with the appropriate Aboriginal Legal Service and associated agencies immediately notified of any Aboriginal and Torres Strait Islander death in custody.*


In **Queensland**, under section 24(e) of the *Corrective Services Act 2006* (Qld), if an Aboriginal and Torres Strait Islander person dies in custody, the chief executive officer must notify an Aboriginal and Torres Strait Islander legal service representing Aboriginal and Torres Strait Islander persons in the area in which the prisoner died. Additionally, if practicable, the chief executive officer should also notify an elder, respected person or Aboriginal and Torres Strait Islander spiritual healer who was relevant to the prisoner.

 *The Queensland Government has implemented Recommendation 20, under the Corrective Services Act 2006 (Qld) the chief executive officer must notify an Aboriginal and Torres Strait Islander legal service in the event of an Aboriginal and Torres Strait Islander death in custody.*

The 1994 Implementation Report noted that within **South Australia**, Recommendation 20 had been incorporated into Correctional Services Departmental procedures and Instructions as well as Police General Orders. The Aboriginal Legal Rights Movement is contacted when the death of an Aboriginal person in custody has occurred.


 *The South Australia Government notes that Recommendation 20 had been incorporated into Correctional Services Departmental procedures and Instructions as well as Police General Orders.*

In **Western Australia**, the 2000 Implementation Report highlighted that Prison Services and Juvenile Custodial Services were to advise the Aboriginal Legal Service if approved by the family. This is also provided for in Juvenile Custodial Services Outstanding Orders and Director General Rule 2M, as well as in the policy and procedures of the Western Australia Police Services. However, there is currently no specific legislative provision for the Department of Justice to notify the Aboriginal Legal Service of a death in custody.


 *The Western Australia Government has partially completed Recommendation 20, as there is currently no express legislative provision for the Aboriginal Legal Service to be notified of a death in custody.*

The 1995 **Tasmanian** Implementation Report noted that the Department of Community and Health services fully supported the immediate notification of the Aboriginal Legal Service of any Aboriginal death in custody. Additionally, an instruction of the Tasmania Police, contained in *Police Gazette Notice 13, 1993* required that the Aboriginal Legal Service were appropriately notified when a death in custody occurred. The Gazette notice also applied to the notification of the progress of the

investigation to the family of the deceased, Aboriginal Legal Service and/or lawyers representing the family. Actions taken towards the implementation of Recommendation 16 also apply to this recommendation.

 *The Tasmanian Government notes that Recommendation 20 has been incorporated among the Department of Community and Health Services, and Tasmania Police.*

Under section 80 of the **Northern Territory's Prisons (Correctional Services) Act 1980** (NT), the Director of Correctional Services shall notify a prisoner's next of kin, close relative, legal representative or such other person as requested by a prisoner to be notified, when the prisoner is seriously ill or dies. This provision is also set out in the NTCS *Directive 2.8.2 Death of a Prisoner* which states that Executive Director Correctional Operations will notify the nearest Aboriginal Legal Office of the death unless the next of kin requests otherwise.

 *The Northern Territory Government has implemented Recommendation 20 through NTCS Directive 2.8.2 Death of a Prisoner. Additionally, the Prisons (Correctional Services) Act 1980 (NT) provides that Correctional Services shall notify a prisoner's legal representative.*

Recommendation 21

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

Background information


The historical background of Aboriginal-police relations has resulted in custodial deaths being regarded with a high degree of suspicion by Aboriginal people, even in cases which are ultimately found to be straightforward deaths by natural causes. The RCIADIC recommended openness, frankness and sensitivity towards to family of the deceased.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

Under 21 of the *Coroners Act 2009* (NSW), within **New South Wales** if an inquest or inquiry is held into a death, the coroner must give particulars of the time and place to the person's next of kin if the coroner has been informed of the name and address of the next of kin. Further to this, the coroner may also give the particulars of time and place to any person who has, in the opinion of the coroner, a sufficient interest in the subject matter of the inquest or inquiry. It is unclear whether the ATSILS is notified.


 *The New South Wales Government has partially implemented Recommendation 21 through the Coroners Act 2009 (NSW), however it does not appear that measures have been taken to ensure that ATSILS is notified of the date and time of inquest.*

In **Victoria**, section 21 of the *Coroners Act 2008* (Vic) specifies that as soon as possible after a coroner has commenced an investigation into a death, the principal registrar must ensure that the prescribed information in respect of the coronial process, including dates of the inquest, is provided to the senior next of kin and family parties of the deceased and any other person who the principal registrar considers to have sufficient interest in the investigation of the death. It is unclear whether the ATSILS is notified.


 *The Victorian Government has partially completed Recommendation 21 through the Coroners Act 2008 (Vic), however it does not appear that measures have been taken to ensure that ATSILS is notified of the date and time of inquest.*

Under section 32 of the *Coroners Act 2003* (Qld), within **Queensland**, the Coroner's Court must publish, in a daily newspaper circulating generally in the State, a notice of the matters and issues to be investigated at the inquest, along with the date, time and place of the inquest set by the coroner. Such notice must be published at least 28 days before the inquest is to be held. Additionally, Chapter 9 (9.6) of the *State Coroner's Guidelines 2013*, specifies that all people with a legitimate interest in an


inquest must be notified of the date, time and place it will commence. The Guidelines also require that notice of commencement of an inquest be given to the ATSILS, unless another legal practitioner acts on behalf of the family or the family has indicated that they do not wish to participate in the inquest.

 *In Queensland, the State Coroner's Guidelines 2013, specifies that all people with a legitimate interest in an inquest, including the ATSILS, must be notified of the date, time and place it will commence. Recommendation 21 is also implemented through the Coroner's Act 2003 (Qld). However, it does not appear that there is a requirement that notification occur as soon as is possible.*

The **South Australian** Government Gazette No.63, under section '12 – Notice to be given of intention to hold inquest', requires that the Manager must, not less than 21 days before the commencement of an inquest or reopening of an inquest, publish a notice of the date, time and place of the inquest in a newspaper circulating generally throughout the state. Also, the Manager must serve a copy of the notice on the senior available next of kin of the person who is deceased and any other person who claims to be entitled to appear at the inquest and has notified the Manager of their details. The Aboriginal Legal Rights Movement is also contacted.

 *The South Australian Government has implemented Recommendation 21 through the provisions made in the South Australian Government Gazette No.63 which deals with 'notice to be given of intention to hold inquest', and the function of the ALRM. However it does not appear that there is a requirement that notification occur as soon as is possible.*


Discussed within the **Western Australian** 2000 Implementation Report, under section 39 of the *Coroners Act 1996* (WA), the State Coroner must, at least 14 days before an inquest, publish in a daily newspaper circulating generally in the State, the date, time, place and subject of the inquest. The Report also noted that Guideline 23 of the *Guidelines for Coroners* provides for Coroners to notify the family of the deceased in writing of the date, time, place and subject of the inquest and in the case of an Aboriginal person, the Aboriginal Legal Service is to be advised in writing.

 *The Western Australia Government has implemented Recommendation 21 into Coronial practice through the Coroners Act 1996 (WA) and the Guidelines for Coroners.*


The **Tasmanian** Government noted that all efforts are made by investigators conducting inquiries on behalf of the Coroner and the staff of the Coroner's Office to provide frank and helpful advice to the family of the deceased in a polite and considerate manner at all times. However, it is unclear what the procedures are for notifying the family and the ATSILS of the time and place of the inquiry.

 *It does not appear that the Tasmanian Government has taken actions to implement Recommendation 21.*

Within the **Northern Territory**, the 1996-97 Implementation Report specified that the Coroner's Regulations provide that the inquest into the death of a person in custody shall not commence in the absence of the senior next of kin or representative of the family of the deceased person nominated by the senior next of kin, unless the Coroner has been advised by that person or his/her legal representative that he or she does not wish to attend the inquest. The Northern Territory Government also notes that the ATSILS are notified of all deaths at the time of the death, and subsequently of the inquest time and date upon listing. The Northern Territory Government has advised that the next of kin are always notified.

 *The Northern Territory Government has implemented Recommendation 21 into Coronial practice.*

Under section 69 of the **Australian Capital Territory's** *Coroners Act 1997*, a coroner must not conduct a hearing into a death in custody unless satisfied that either (a) a member of the deceased's family has been notified, or (b) reasonable attempts to notify a family member have been unsuccessful. The Coroner must also ensure that the appropriate Aboriginal Legal Service has been notified prior to conducting a hearing.

 *The Australian Capital Territory Government has mostly implemented Recommendation 21 through the Coroners Act 1997 (ACT). However, it does not appear that there is a requirement that notification occur as soon as is possible.*

Recommendation 22

That no inquest should proceed in the absence of appearance for or on behalf of the family of the deceased unless the Coroner is satisfied that the family has been notified of the hearing in good time and that the family does not wish to appear in person or by a representative. In the event that no clear advice is available to the Coroner as to the family's intention to be appear or be represented no inquest should proceed unless the Coroner is satisfied that all reasonable efforts have been made to obtain such advice from the family, the Aboriginal Legal Service and/or from lawyers representing the family.

Background information


The RCIADIC noted that it is important for there to be an opportunity to view the body of the deceased and for the family, or their nominated representative, to satisfy themselves that there are no suspicious marks or indications of violence.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


Similar to that of Recommendations 20 and 21, within **New South Wales** the State Coroner will check to ensure that arrangements have been made to notify the relatives and, if necessary, the deceased's legal representatives. Where aboriginality is identified, the ATSILS is contacted. If this has not occurred the inquest may be adjourned until those steps have been taken.

 *It does not appear that the New South Wales Government has taken steps to implement Recommendation 22. While the Coroner checks that the family of the deceased has been notified, there does not appear to be a requirement that the inquest not go ahead in their absence or upon advice the family does not wish to appear.*


In **Victoria**, Section 8(d) of the *Coroners Act 2008* (Vic) provides for family members who are affected by a death being investigated to be kept informed of an investigation. The Act specifies that as soon as possible after a coroner has commenced an investigation into a death, the principal registrar must ensure that the prescribed information in respect of the coronial process is provided to the senior next of kin of the deceased and any other person who the principal registrar considers to have sufficient interest in the investigation of the death. In practice, various people would try to engage with the senior next of kin, including the coroner's investigator, registry and counsel assisting.

 *The Victorian Government has mostly implemented Recommendation 22 through the Coroners Act 2008 (Vic), however there is no express requirement that the advice of ATSILS is sought before the inquest in the event that clear advice is not available from the family.*


Chapter 2 (2.11) of the **Queensland State Coroner's Guidelines 2013**, states that families must always be notified of a coroner's decision to hold an inquest. Paragraph 2.7 of the *Guidelines* states that families should be regularly informed as to the progress of an inquest. Chapter 9.6 of the *Guidelines* states that 'written notice of the commencement date should be given to the senior family member and the inquest should not commence unless the coroner is satisfied that the family member has been notified.'

 *The Queensland Government has completed Recommendation 22 through the State Coroner's Guidelines 2013, which provides that families must be notified and kept regularly informed on matters relating to inquest.*


The actions taken by the **South Australian** Government to Recommendation 21 also apply to Recommendation 22. Additionally, the 1994 Implementation Report included that the State Coroner adopts the practice described in Recommendation 22. This recommendation has been implemented through a combination of the *Coroners Act 2003* (SA) and the practices of the Coroners Court.

 *The South Australian Government has mostly implemented Recommendation 22 through their response to Recommendation 21, the Coroners Act 2003 (SA), and the practices of the Coroners Court.*


The 2000 Implementation Report noted that within **Western Australia**, section 44(1) of the *Coroners Act 1996* (WA) specifies that an interested person may appear, or be represented by an Australian legal practitioner, at an inquest and examine or cross-examine witnesses. The actions taken by the WA Government in Recommendation 21 also apply to Recommendation 22. There is no legislative requirement that the Coroner must not proceed with an inquest unless satisfied that the deceased's family and the Aboriginal Legal Service have been notified of the hearing in good time. In order to ensure that an inquest does not proceed until such time as every avenue has been exhausted to discover the family's interest in the proceeding, the Coroner's Court has implemented a system of call-overs to notify interested parties of inquest listings.

 *The Western Australian Government has partially implemented Recommendation 22 through the Coroners Act 1996 (WA) and the implementation of call-overs. However, there is no requirement that the Coroner must not proceed with the inquest unless satisfied that the deceased's family and the Aboriginal Legal Service have been notified of the hearing in good time.*


According to the 1995 **Tasmanian** Implementation Report, inquests do not proceed in the absence of appearance for or on behalf of the family of the deceased unless the Coroner is satisfied that the family has been notified of the hearing and does not wish to be represented. If an inquest is to proceed without family or legal representation, the Coroners Clerk must obtain advice from the family, the Aboriginal Legal Service, or legal representatives that the family does not wish to appear or be represented. If no such advice is forthcoming, the Clerk must demonstrate that all reasonable efforts were made to obtain that advice.

 *The Tasmanian Government has implemented Recommendation 22 as noted in their 1995 implementation report and exemplified in current court processes.*

As discussed in the 1994-95 Implementation Report, the **Northern Territory's** Coroners Regulations provided that an inquest into the death of a person held in custody may not begin without the presence of the senior next of kin, unless the coroner is satisfied that the senior next of kin does not wish to attend. The next of kin, nominated representative or legal representative must advise the coroner if this is the case. Permission is also granted for a person with sufficient interest to appear at the inquest.

 *The Northern Territory Government has implemented Recommendation 22 through the Coroners Regulations which provided that an inquest into the death of a person held in custody may not begin without the presence of the senior next of kin.*

Under section 69 of the *Coroners Act 1997* (ACT), within the **Australian Capital Territory** the Coroner must not commence an inquest into the death of a person held in custody unless a member of the immediate family has been notified of the time and place of hearing. The appropriate Aboriginal Legal Service must also be notified. However, these requirements do not apply if the Coroner believes on reasonable grounds that it would be in public interest or the interests of justice to proceed with a hearing despite these requirements.

 *The Australian Capital Territory Government has mostly implemented Recommendation 22 through the Coroners Act 1997 (ACT).*

Recommendation 23

That the family of the deceased be entitled to legal representation at the inquest and that government pay the reasonable costs of such representation through legal aid schemes or otherwise.

Background information

In most cases, Aboriginal and Torres Strait Islander people did not have legal representation due to a lack of funds. Lack of representation placed Aboriginal and Torres Strait Islander people at a

disadvantage, and this was a significant factor impacting the rates of offending, violence and incarceration.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

Immediately following the RCIADIC, the **Commonwealth** Government agreed to provide funding for legal representation for families at inquests relating to deaths in custody and ATSIC provided \$9.7 million to ATSILS to expand their services (*1992-93 Annual Report*).


Through the Indigenous Legal Assistance Program, the Commonwealth funds eight ATSILS to deliver culturally appropriate, accessible legal assistance and related services to Aboriginal and Torres Strait Islander people so that they can fully exercise their legal rights as Australian citizens. From 2015 to 2020, the Australian Government is investing over \$370 million into the Indigenous Legal Assistance Program. It is a matter for legal service providers to target services to the greatest need to ensure they maximise the benefit to disadvantaged and vulnerable clients.

 *The Commonwealth has implemented Recommendation 23 by providing ongoing funds to ATSILS for legal assistance services. These services may include, where applicants meet eligibility requirements, legal assistance to the family of the deceased at inquests.*


The 1995-96 Implementation Report noted that Legal Aid was available in **New South Wales** for inquests into deaths where the public interest would be advanced by representation of the applicant. The Legal Aid Commission altered its guidelines in 1992 to provide that where the death occurred in the custody of police, a juvenile detention centre or a prison, questions of public interest will generally be considered to have arisen. Currently, Legal Aid NSW has a dedicated Coronial Inquest Unit which provides free legal advice, assistance and representation to people at coronial inquests where the matter involves some 'public interest'.

 *The New South Wales Government has implemented Recommendation 23 through the provision of legal services through Legal Aid.*


The **Victorian** 1994 Implementation Report suggested that the Commonwealth Government had funding responsibility for Aboriginal Legal Services, while the Victorian Government shared responsibility for the Legal Aid Commission of Victoria.

 *The Victorian Government has implemented Recommendation 23 through the administration of Commonwealth funds provided for Aboriginal Legal Aid Commissions.*

In **Queensland**, grants of legal assistance are available through Legal Aid Queensland for legal representation to the families of an Aboriginal and Torres Strait Islander person who died in custody.


 *The Queensland Government has implemented Recommendation 23. Grants of legal assistance are available through Legal Aid Queensland for legal representation to the families of an Aboriginal and Torres Strait Islander person who died in custody.*

The 1994 Implementation Report highlighted that within **South Australia**, Aboriginal and Torres Strait Islander people are entitled to legal representation free of charge either through the Legal Services Commission or the Aboriginal Legal Service, provided they qualify for support through a means test. The South Australian Government notes that the Legal Services Commission does not receive a specific allocation to provide funding for legal representation at coronial inquiries. Applications for legal assistance are assessed against normal funding criteria, which comprise a means test, a merits test and guidelines. Coronial inquiries may fall outside these criteria. Legal Aid may also be granted for an inquest that is in the 'public interest'.


 *In South Australia, past practice has been that Aboriginal and Torres Strait Islander people are entitled to means-tested legal representation free of charge either through the Legal Services*

Commission or the Aboriginal Legal Service. Legal assistance is available for coronial inquiries through an application to ATSILS however is assessed against normal funding criteria and is not guaranteed.


In **Western Australia**, s 44(1) of the *Coroners Act 1996* (WA) allows the family of the deceased to be represented at an inquest. Legal Aid Western Australia is funded by the Western Australian Government, and provides representation at inquests in limited, means-tested circumstances where the applicant meets the Legal Aid Western Australia State eligibility guidelines. Aid may be granted for representation at inquests where there is a realistic risk that serious criminal charges may arise against the applicant, or where the outcome of the inquest can reasonably be seen to have a significant impact on civil proceedings involving the applicant.

 *In Western Australia, Recommendation 23 has been mostly implemented. While legal representation is provided by the Aboriginal Legal Service, Legal Aid Western Australia offers limited access to services.*


Under section 52(4) of the **Tasmanian Coroners Act 1995** (Tas), a person who the coroner considers has a sufficient interest may appear or be represented by an Australian legal practitioner. The 1993 Implementation Report highlighted that such persons may apply for legal aid in the normal manner, either through the Legal Aid Commission or the Aboriginal Legal Service.

 *In Tasmania, past practice has been that Aboriginal and Torres Strait Islander people are entitled to means-tested legal representation, which upon qualifying is free of charge. Legal assistance is available for coronial inquiries through ATSILS but is assessed against normal funding criteria and is not guaranteed.*

The **Northern Territory** considered that Recommendation 23 fell under the Commonwealth Government's responsibility.

 *It does not appear that the Northern Territory Government has taken actions towards the implementation of Recommendation 23, noting that they consider implementation of this recommendation to be a matter for the Commonwealth Government.*

The 1993-94 Implementation Report noted that the **Australian Capital Territory** Government considers that the most appropriate source for legal representation of Aboriginal and Torres Strait Islander people at inquests is through the Aboriginal Legal Service, noting that this is funded by the Commonwealth. The Report also highlighted that the ACT Government would consider additional funding for legal representation at coronial inquests relating to deaths in custody on a case-by-case basis. Currently, there is no guaranteed right to funded legal representation for family members. The Australian Capital Territory Government note that funded representation will be considered as part of an upcoming review into the operation of the *Coroners Act 1997* (ACT).

 *The Australian Capital Territory Government has partially completed Recommendation 23 as some funding is provided for legal representation.*

Recommendation 24

That unless the State Coroner or the Coroner appointed to conduct the inquiry otherwise directs, investigators conducting inquiries on behalf of the Coroner and the staff of the Coroner's Office should at all times endeavour to provide such information as is sought by the family of the deceased, the Aboriginal Legal Service and/or lawyers representing the family as to the progress of their investigation and the preparation of the brief for the inquest. All efforts should be made to provide frank and helpful advice and to do so in a polite and considerate manner. If requested, all efforts should be made to allow family members or their representatives the opportunity to inspect the scene of death.

Background information

Notification of death and the provision of information into the circumstances of the death is crucial for the relatives of the deceased. Additionally, notification is important in allowing relatives to organise proceedings for the inquest.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and **Australian Capital Territory** governments have addressed Recommendation 24 through the *AFP National Guideline* which provide that if an Aboriginal and Torres Strait Islander person dies in custody, the case officer and the ACT Policing Aboriginal and Torres Strait Islander Community Liaison Officer must notify and provide requested information to the deceased's family and the ATSILS (paragraph 22). Current AFP procedure for the ACT and Jervis Bay Territory is set by the *ACT Coroners Act 1997* which provides families or their representatives the opportunity to inspect the scene of death; to view the body; to have a representative present at any post-mortem examination; and to have another medical practitioner conduct a further post-mortem. Additionally, the Act provides for the deceased's immediate family to have all reasonable questions about the circumstances of the death answered; and to be kept informed of all important developments throughout the inquest. It is also standard practice in the ACT that the Coroners Court is polite and professional.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 24 through the AFP National Guideline and the ACT Coroners Act.*

The **New South Wales** *Police Force Handbook* sets out that officers are to be sensitive and discreet when dealing with relatives of deceased people. The Handbook notes that if an Aboriginal person dies in police custody, officers are to secure and preserve the scene and to notify their regional commander. If available, officers are to use Aboriginal Community Liaison Officers to maintain a relationship with the relatives. Under existing protocols for Aboriginal deaths in custody, the Aboriginal Strategy and Policy Unit provides a contact for families seeking advice on prison protocols and the status of relevant investigations conducted by CSNSW. Information such as briefs of evidence and post mortem reports are provided upon request to the court. Information about coronial processes are contained on the website and brochures given to families. Police Officers were instructed by the Police Commissioner, pursuant to Instruction 55, to ensure that all reasonable requests by the family were complied with, which may include viewing the body or the scene of the death.


 *The New South Wales Government has implemented Recommendation 24. The Aboriginal Strategy and Policy Unit provides a contact for families seeking advice on prison protocols and the status of relevant investigations conducted by CSNSW.*

Within **Victoria**, coroners try to make inquests less formal than other court proceedings, according to *The Coroners Process Information for family and friends*. The document notes that the coroner will try to avoid using unnecessarily complex language as the coroner wants family members and interested parties to understand what is happening in the proceeding. Further to this, the Coroners Support Service provides information and updates to families through letters and phone calls so that they are up to date with key findings of a coroner's investigation. The Victorian Government also provided in AJA 3 that a protocol would be developed between the State Coroner's Office and the Aboriginal Funeral Service, to authorise release of information regarding the deceased.


 *The Victorian Government has implemented Recommendation 24 through The Coroners Process Information for Family and Friends, and the initiatives undertaken by the Coroners Support Service in providing information and updates to families.*

In **Queensland**, under section 45(4) of the *Coroners Act 2003* (Qld), the coroner must give a copy of the findings to a family member of the deceased person who has indicated that he or she will accept the document for the deceased person's family. Chapter 2(2.7) of the *Guidelines* reminds coroners that steps are to be taken to ensure that families are provided with regular updates about how the investigation into a death is to be conducted and the progress of that investigation. The Guidelines also highlight the importance of the role that Coronial counsellors play in supporting grieving families. Further to this, Section 16.23.3(xii) of the *Operational Procedures Manual Issue 59 Public Edition*, notes that if requested, investigation officers should make all efforts to allow family members or their


representatives the opportunity to inspect the scene of death, subject to police operational and security requirements, bearing in mind the cultural needs of the relatives.

 *The Queensland Government has implemented Recommendation 24 through the Coroner's Act 2003 (Qld), Guidelines, and the police Operational Procedures Manual Issue 59 Public Edition.*


In the 1994 **South Australian** Implementation Report, the South Australian Government explained that the processes described in Recommendation 24 were already practised by the Coroner's Court. Documentary evidence was made available to members of the family in a managed way through a social worker employed by the court. If convenient, family members were given the opportunity to inspect the scene of the death. Additionally, under section 25 of the *Coroners Act 2003 (SA)*, the Coroner is required to send a copy of the Coroner's findings to any person with sufficient interest. Section 37 of the Act notes that a member of the public may apply to access various documents relating to coronial process or findings.

 *The South Australian Government has noted that Recommendation 24 was incorporated into practices prior to the RCIADIC, and implementation is further strengthened by the Coroners Act 2003 (SA). However, this does not appear to necessarily require all reasonable measures to be taken.*

The 2000 **Western Australian** Implementation Report noted that Guideline 33 of the *Guidelines for Police* provided that throughout any inquiry all efforts should be made to provide frank and helpful advice to the relatives of the deceased and to do so in a polite and considerate manner. If requested, all efforts were to be made to allow family members or their appointed representatives to inspect the scene of death. The opportunity to inspect the scene of death will only be permitted after the initial investigations are completed on behalf of the Coroner. Where the death occurs in a prison or the Banksia Hill Detention Centre, permission to view the scene of death must be authorised by the designated superintendent. Additionally, section 42 of the *Coroners Act 1996 (WA)* provides that the Coroner may make available statements arising from the inquiry to any person with a sufficient interest - including the family of the deceased. Section 26(a) of the Act allows access to the evidence by the senior next of kin.

 *The Western Australian Government has implemented Recommendation 24 through the Guidelines for Police and the Coroners Act 1996 (WA).*

The actions taken by the **Tasmanian** Government in Recommendation 20 are also relevant to Recommendation 24. Additionally, section 25 of the *Coroners Rules 2006 (Tas)* requires that at the conclusion of an investigation into a death, the coroner is to ensure the senior next of kin of the deceased person is provided with a copy of the coroner's findings. If family members wish to access a public place where a death occurred, family can attend at any time unless police or the coroner are still conducting investigations at the scene. If the scene is still an active part of the investigation, the police will deny access until all evidence is gathered and it is safe for the public. Staff at the Coroner's Court can notify family once access to the scene is open. If the scene family wish to access is a private residence, building or on private property then there are restrictions on accessing the scene.

 *The Tasmanian Government has implemented Recommendation 24 through the Coroners Rules 2006 (Tas).*

The 1994-95 Implementation Report noted that in the **Northern Territory**, Code C9 had been added to the Police General Order Coroners and Inquests. Paragraph 41.2.10 under Code C9 specified that unless the coroner conducting the inquest otherwise directs, any information that is sought by the deceased's family, the Aboriginal Legal Service and/or lawyers representing the family as to the progress of the investigation is to be supplied. Further to this, paragraph 41.2.11 of Code C9 requires that unless the coroner conducting the inquiry otherwise directs and providing the viewing does not prejudice the conduct of the investigation, members of the deceased's immediate family or a representative thereof, shall be permitted to view the body or scene of death as soon as practicable.

 *The Northern Territory Government has implemented Recommendation 24 through Code C9.*

Recommendation 25

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

Background information


The RCIADIC Report noted that in several cases, the deceased's body was removed from the place of death prior to the relatives being given an opportunity of viewing it. This aroused concern and suspicion amongst the deceased's family. It is important that the family's right to view the body should be recognised.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and **Australian Capital Territory** governments note in the 1995-96 Implementation Report that the Coroner's Act empowers the Coroner, on request, to allow a member of the immediate family of the deceased, or a representative of that family member, to view the body, inspect the scene of death, be present at any post mortem and order a further post mortem. If the coroner believes, on reasonable grounds, that it would not be in the interests of justice to do this, the coroner must notify the person making the request and the Aboriginal Legal Service in writing and provide the reasons for the decision. These provisions are also made under section 70 of the *Coroners Act 1997* (ACT), including that if requested the Coroner must authorise the viewing of the body, inspection of the scene of death and presence of family members at any post-mortem except where it is not in the interests of justice. Additionally, section 32(b) provides for the report of the post-mortem to be given to the representative of the deceased.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 25 through the AFP National Guideline and the Coroners Act 1997 (ACT).*


The 1995-96 Implementation Report noted that in **New South Wales** the protocol of the State Coroner's Officer specified that the family of the deceased was entitled to have an independent representative attend the post mortem. The Aboriginal Legal Service were to liaise with the State Coroner's Office for this purpose. Police Officers were instructed by the Police Commissioner, pursuant to Instruction 55, to ensure that all reasonable requests by the family were complied with, which may include viewing the body or the scene of the death. The Report highlighted that in relation to an 'independent' observer or medical practitioner, it was the responsibility of the family of the deceased or the Aboriginal Legal Service to make such arrangements. Further to this, the Department of Corrective Services had incorporated Recommendation 25 in Section 13.2.7 of the Operations Procedure Manual.

 *The New South Wales Government has implemented Recommendation 25 through Section 13.2.7 of the Operations Procedure Manual. Procedures exist for families to arrange to be present at the post-mortem and to view the body.*


The **Victorian** Implementation Report of 1994 specified that the family of the deceased or their representative were able to view the body of the deceased on request. The family could view the scene of death as part of the arrangements for the inquest. It was also noted that the Coroner could not provide a right for the family to view the scene of death when it was within a police station or prison. Additionally, independent observers were allowed at post-mortems if suitable arrangements were made with the Coroner. A copy of the post-mortem report was normally available as part of the court file and was provided on request. The Victorian Government also noted in the AJA 3 that in the event of a death in custody that relatives would be notified in accordance with privacy and legal considerations.

 *While the Victorian Government has taken measures to implement Recommendation 25, there is no provision for families of the deceased to view the scene of death where it is in within a police station or prison cells.*


In **Queensland**, this is provided for in the *Coroners Act 2003* (Qld). Chapter 2(2.5) of the *State Coroner's Guidelines* emphasises the benefits that can be gained for grieving families to view their loved one's body from burial or cremation. Chapter 4 of the *Guidelines* establish the processes in place for viewing the remains of a deceased person, arrangements are made for the family to view the body and in some cases ritual cleansing of cells has occurred. Chapter 5 of the *Guidelines* permit a medical practitioner engaged by the family to attend an autopsy. A coroner's order for an autopsy will usually permit a family to be told of the results of an autopsy by a counsellor or other person. A family is also entitled to access the brief of evidence.

 *The Queensland Government has implemented Recommendation 25 through the Coroners Act 2003 (Qld).*


The 1994 Implementation Report noted that the **South Australian** Government was advised that this process detailed in Recommendation 25 was then current practice of the Coroner's Court. A 'viewing room' was available at the court and the family were able to view the body where possible. An independent observer and medical practitioner were possible in certain circumstances and upon request. A copy of the post mortem report was available was available to members of the family through a social worker.

 *The South Australian Government has incorporated Recommendation 25 into current practice concerning families viewing the scene of death.*

In **Western Australia**, section 30(2) of the *Coroners Act 1996* (WA) provides that while a body is under the control of the coroner investigating the death, the coroner is to ensure that any of the deceased person's next of kin who wish to view or touch the body are permitted to do so. Section 35 of the Act specifies that if the senior next of kin of the deceased asks a coroner to allow a doctor to be present at a post mortem examination, the coroner is to allow that doctor to be present. Additionally, the 2000 Implementation Report noted that an independent observer may be permitted at post mortem examination and the Coroner can consider a request for additional post mortem examination. The opportunity to inspect the scene of death will only be permitted after the initial investigations at the scene of death are completed on behalf of the Coroner. Where the death occurs in a prison, authorisation by the designed Superintendent must be approved before the family can view the scene of death. The Western Australian Government notes that it is current practice for an independent medical practitioner nominated by the next of kin to receive a copy of the post-mortem report on request.


 *The Western Australian Government has incorporated Recommendation 25 into current practice concerning families viewing the scene of death.*

In **Tasmania**, as highlighted in the 1993 Implementation Report, the family of the deceased or their representative may view the body and/or the scene of death. The family may also request a further post mortem (at their own cost) and are entitled to receive a copy of the examining pathologist's report. The Report also noted that as post mortems in Tasmania are conducted by qualified and independent pathologists, the presence of an independent medical practitioner or observer at post mortems is unnecessary. The Tasmanian Government comments that determination as to whether family members would have the opportunity to inspect the scene of death would be subject to police operational and security requirements, but the cultural needs of the relatives would be acknowledged.

 *The Tasmanian Government has incorporated Recommendation 25 into current practice concerning families viewing the scene of death.*

The actions taken in Recommendation 24 in the **Northern Territory** also apply to this recommendation. It is unclear whether an independent medical practitioner is able to be present at the post mortem and will receive a copy of the post-mortem report, or if a copy of the direction is sent to the family and the ATSILS. The Northern Territory Government notes that in practice, while

regulations to this effect do not exist, there is no issue with an independent medical practitioner being present at the post-mortem. Additionally, the NTCS Directive 2.1.19 *Sorry Business/Body Viewing and Smoking Ceremonies* allows for the rest of kin and other relatives to make arrangements to see the body and the place of death, should they wish to.

 *The Northern Territory has mostly implemented Recommendation 25 through the Coroners Act 1993 (NT). However, it does not appear that regulatory provisions allowing an independent medical practitioner to be present at the post-mortem exist. It is not clear whether the independent medical practitioner will receive a copy of the post-mortem report, or if a copy of the direction is sent to the family and the ATSILS.*

Recommendation 26

That as soon as practicable, and not later than forty-eight hours after receiving advice of a death in custody the State Coroner should appoint a solicitor or barrister to assist the Coroner who will conduct the inquiry into the death.

Background information


The RCIADIC recommended that a legal practitioner should be immediately appointed to assist the Coroner to ensure that a full and adequate inquiry is conducted into the cause and circumstances of death.

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


As discussed in the 1995-96 **New South Wales** Implementation Report, where a death occurs in police custody or there is alleged to be police involvement in the death, the Crown Solicitor or the Office of General Counsel is requested at the earliest opportunity to instruct suitable Counsel to assist. Where the death occurs in non-police custody, a Police Advocate may be instructed to assist the Coroner. Under the State Coroner's protocol for deaths in custody, when informed of a death in police custody, the State Coroner will ask the Attorney-General to appoint a barrister to assist the coroner on that day.

 *In New South Wales, Recommendation 26 has been mostly implemented. There is no requirement that appointment of a counsel occur within 48-hours.*

In **Victoria**, under section 60 of the *Coroners Act 2008 (Vic)*, a coroner may be assisted at an inquest by an Australian lawyer. The 1994 Implementation Report highlighted that this is a discretionary, not mandatory, requirement. The Report noted that in practice, counsel is usually appointed for an inquest into a death in custody, however, this is done at the inquest stage, not at the beginning of the investigation. The Victorian Government noted that in practice, if the death in custody is related to the police, the Coroner will generally attend the scene and appoint a solicitor within 48 hours.


 *While the Victorian Government has responded to Recommendation 26 through the Coroners Act 2008 (Vic) and current practices, the appointment of a barrister or solicitor is not mandatory and does not always occur at the beginning of the inquiry.*

In **Queensland**, each coroner is already assisted by a lawyer (counsel assisting), so the option to appoint further legal assistance is in addition to the assistance provided by the counsel assisting positions. The State Coroner is supported by a dedicated and independent Counsel Assisting attached to the court who assists in the investigation of all deaths in custody from the time the death is reported. External counsel can be briefed in more complex matters.


 *The Queensland Government has implemented Recommendation 26, as all coroners are already assisted by a lawyer in their inquiries.*

In **South Australia**, there is no legislative requirement to meet a 48-hour time frame, however the Coroner's Court has two full time legal practitioners who assist with inquests. Additionally, the State Coroner may request appointment of additional Counsel from the responsible government office.


There have, however, been occasions where requests made by the Coroner for the appointment of additional counsel have not been met.

 *The South Australian Government has mostly implemented Recommendation 26 by the employment of 'in-house' practitioners within the Coroner's Court. There have, however, been occasions where requests made by the Coroner for the appointment of additional counsel have not been met.*


Under section 46(2) of the *Coroners Act 1996* (WA), in **Western Australia** a coroner may be assisted by counsel, or by any other person that the coroner believes will be of assistance. Highlighted in the 2000 Implementation Report, as of 10 March 1997, a solicitor had been attached to the Coroners Court. Currently, the Coroner's Court employs three people as counsel to assist in inquests. Additionally, an arrangement had been entered into with the Director of Public Prosecutions whereby officers from that office were seconded to the Office of State Coroner for a period on a rotational basis.

 *The Western Australian Government has partially implemented Recommendation 26 through the *Coroners Act 1996* (WA). However, it appears that no timeframe is provided for the Director of Public Prosecutions to provide counsel to assist the coroner.*


The 1993 Implementation Report noted that in **Tasmania** a Crown Counsel from the Director of Public Prosecutions Office is appointed to assist the Coroner in all cases dealing with a death in custody in Tasmania. Section 53(3) of the *Coroners Act 1995* (Tas) provides that a coroner must request the Director of Public Prosecutions to provide counsel to assist the coroner, however no timeframe is provided for this to occur.

 *The Tasmanian Government has partially implemented Recommendation 26 through the *Coroners Act 1995* (Tas). However, no timeframe is provided for the Director of Public Prosecutions to provide counsel to assist the coroner.*

In the **Northern Territory**, under section 41(2)(b) of the *Coroners Act 1993* (NT), a coroner must appoint a person to assist the coroner for the purpose of an inquest into a death in custody. The Coroners Regulations stipulates that the person shall be a legal practitioner and, if practicable, shall be experienced in coronial matters. The Northern Territory Government noted in their 1996-97 annual report that Coroners Regulations were proposed to be amended to ensure that the legal practitioner was appointed as soon as possible after the advice of a death in custody was received, although it is unclear if this occurred.

 *The Northern Territory Government has mostly implemented Recommendation 26. Under the *Coroners Act 1993* (NT), a coroner must appoint a person to assist the coroner for the purpose of an inquest into a death in custody. However, there is no requirement for this to occur within 48 hours.*

In the **Australian Capital Territory**, under section 72 of the *Coroners Act 1997* (ACT), the coroner holding an inquest into a death in custody must appoint a lawyer as counsel to assist the coroner. It is unclear whether such appointment must be made within 48 hours. The Australian Capital Territory Government notes that time limits for the appointment of counsel assisting the Coroner will be considered as part of an upcoming review of the Act.

 *The Australian Capital Territory Government has mostly implemented Recommendation 26. Under the *Coroners Act 1997* (ACT), a coroner must appoint a lawyer or counsel to assist the coroner for the purpose of an inquest into a death in custody. However, there does not appear to be a requirement for this to occur within 48 hours.*

Recommendation 27

That the person appointed to assist the Coroner in the conduct of the inquiry may be a salaried officer of the Crown Law Office or the equivalent office in each State and Territory, provided that the officer so appointed is independent of relevant custodial authorities and officers. Where, in the opinion of the

State Coroner, the complexity of the inquiry or other factors, necessitates the engaging of counsel then the responsible government office should ensure that counsel is so engaged.

Background information


The RCIADIC proposed that the lawyer assisting the coroner may be a salaried officer of the Crown Law Department, or equivalent office, provided that the lawyer is not engaged in the consideration or preparation of any criminal proceedings which may arise from any inquest in which that legal officer has assisted.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

The **New South Wales** 1995-96 Implementation Report noted that the Attorney-General instructs the Crown Solicitor to assist the coroner where the coroner so requests. The Crown Solicitor and Office of General Counsel are completely independent of all custodial authorities in these matters. Counsel is engaged if the complexity of the case demands it. The Report highlighted that this is the rule, rather than the exception, in the case of Aboriginal deaths in custody.

 *The New South Wales Government has implemented Recommendation 27. In all deaths in custody, the Attorney-General instructs the Crown Solicitor to assist the Coroner.*


The 1994 **Victorian** Implementation Report stated that in all deaths in custody the Coroner seeks assistance from the Office of Public Prosecutions staff so they may brief independent counsel to assist the Coroner.

 *The Victorian Government has implemented Recommendation 27. In all deaths in custody, the Coroner seeks assistance from the Office of Public Prosecutions staff.*


In **Queensland**, the counsel assisting the coroners, who provide legal assistance in the first instance, are employed by the Coroners Court of Queensland and are therefore independent of custodial authorities. The State Coroner is supported by a dedicated and independent Counsel Assisting attached to the court who assists in the investigation of all deaths in custody from the time the death is reported. External counsel can be briefed in more complex matters.

 *The Queensland Government has implemented Recommendation 27 through the use of independent counsel from the Coroners Court.*


In **South Australia**, the Coroner's Court has two full time legal practitioners who assist with inquests. The State Coroner may request appointment of additional Counsel from the responsible government office. There have, however, been occasions where requests made by the Coroner for the appointment of additional counsel have not been met.

 *The South Australian Government has mostly implemented Recommendation 26 by the employment of 'in-house' practitioners within the Coroner's Court. There have, however, been occasions where requests made by the Coroner for the appointment of additional counsel have not been met.*


The 2000 **Western Australia** Implementation Report highlighted that the State Coroner had entered into an arrangement with the Office of the Director of Public Prosecutions whereby officers from that office would be seconded to the Office of the State Coroner for a period of one year on a rotational basis. The Coroner's Court 2012 publication 'Inquest Hearings in Western Australia' requires that those assisting the Coroner be independent and impartial. Coroner's Investigators are appointed on the recommendation of the State Coroner and every member of the Western Australia Police Force is contemporaneously a Coroner's Investigator.

 *The Western Australian Government has mostly implemented Recommendation 27. However, it is not clear that current practice is for the Assistant to the Coroner to be a salaried officer of the Crown Law Office.*


The 1993 **Tasmanian** Implementation Report noted that the process described in Recommendation 27 was the current practice in Tasmania.

 *The Tasmanian Government noted in their 1993 implementation report that Recommendation 27 had been incorporated into current practice. However, no evidence of these actions taken could be identified.*

As discussed in the 1994-95 Implementation Report, in the **Northern Territory** the then current regulations specified that the person appointed to assist the coroner must be a legal practitioner. The 1996-97 Report noted that the Coroners Regulations were to be amended to give effect to this recommendation. The updated *Coroner's Act 1993* (NT) provides that the coroner's clerk may perform functions including witnessing an affidavit, receive information about a death or disaster, and may issue a summons.

 *The Northern Territory Government has partially implemented Recommendation 27 by amending the Coroners Regulations to give effect to the principles contained in this recommendation. It does not appear to be an explicit requirement that legal advice be independent.*

In the **Australian Capital Territory**, under section 72 of the *Coroners Act 1997* (ACT), a lawyer appointed to assist the coroner holding an inquest into a death in custody must not have an actual or perceived conflict of interest (based on lawyer's personal or professional circumstances) that would prevent the lawyer from properly carrying out the functions of counsel.

 *The Australian Capital Territory Government has implemented Recommendation 27 through the Coroners Act 1997 (ACT), which provides that the appointed lawyer to assist in inquest must not have a conflict of interest.*

Recommendation 28

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

Background information


The RCIADIC suggested that upon the hearing of the inquest that services of that lawyer should be retained to assist the coroner to ensure that all relevant factors are brought to the attention of the coroner to enable the making of all findings and recommendations which are appropriate to be made.

Responsibility

All State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

Discussed in the 1995-96 Implementation Report, within **New South Wales** it is the duty of the legal officer assisting the coroner to ensure that all relevant evidence is brought to the coroner's attention and is appropriately tested during the course of an inquest. Additionally, this duty applies to both police prosecutors and independent lawyers engaged to assist in specific cases.


 *The New South Wales Government has implemented Recommendation 28, and provides that it is the duty of the legal officer assisting the coroner to ensure that all relevant evidence is brought to the coroner's attention and accurately tested.*

The 1994 **Victorian** Implementation Report noted that under section 46 of the *Coroners Act 1985* (Vic), the Coroner normally appoints counsel whose role is confined to assisting the Coroner during the inquest to ensure that relevant matters are raised. Under the amended *Coroners Act 2008* (Vic), provision is made for the appointment of a lawyer to assist the Coroner with their duties at inquest. However, no specific reference is made to the duties.


The Victorian Government has also addressed the principles of Recommendation 28 through the Coroners Court Bench Book. The Coroners Court Bench Book provides that the role and involvement of an assistant will depend on the wishes of the presiding coroner. In general, the coronial assistant will conduct the procedural steps at the inquest, and will adduce evidence on behalf of the coroner. This allows the coroner to focus on listening to and evaluating the evidence. The coronial assistant must be independent and impartial, and must not struggle unduly for a particular result.

 *The Victorian Government has addressed Recommendation 28 through the Coroners Act 1985 (Vic), and the Coroners Court Bench Book.*

According to the 1997 Implementation Report, the **Queensland** Government highlighted that the responsibilities imposed on Counsel assisting Coroners in regard to Recommendation 28 were fully complied with. The Queensland *State Coroner's Guidelines 2013* sets out the role of counsel assisting the coroner, which includes impartially and fairly presenting the evidence to the coroner, identifying issues for examination, calling and examining witnesses, exploring the range of possibilities open on the available evidence, exploring possible options for preventative recommendations and making submissions about the findings and comments open to the coroner.

 *The Queensland Government has implemented Recommendation 28 through the State Coroner's Guidelines 2013.*

In **South Australia**, the Coroner's Court has two full time legal practitioners who assist with inquests. The State Coroner may request appointment of additional Counsel from the responsible government office. The State Coroner has noted that if requests for the appointment of Counsel are not met, the Coroner's Court may not be in a position to carry out its Inquiry within the words of this recommendation.

 *The South Australia Government has partially implemented Recommendation 28. However, where a request made by the State Coroner for the appointment of additional Counsel to assist is not met, this has the potential to impact upon the Coroner's Court's Inquiry.*


Within **Western Australia**, as discussed in the 2000 Implementation Report, the counsel appointed to assist Coroners is able to ensure that full and adequate inquiry is conducted from a very early stage through to completion of each inquiry.

 *As discussed in the 2000 Implementation Report, Recommendation 28 has been implemented in Western Australia.*

The 1995 Implementation Report noted that within **Tasmania**, the responsibility of a Crown Counsel is to ensure that a full and detailed inquiry has been conducted and that all evidence that might reasonably be collected has in fact been collected and will be presented to the Coroner.

 *The Tasmanian Government has implemented Recommendation 28 through the responsibilities of the Crown Counsel.*

Within the **Northern Territory**, as highlighted within the 1996-97 Implementation Report, amendments to the Coroners Regulations were proposed to give effect to Recommendation 28. The amended regulations were unable to be located.

 *Within the Northern Territory, Recommendation 28 has been implemented through revised Coroners Regulations.*

The 1995-96 Implementation Report noted that in the **Australian Capital Territory**, Recommendation 28 was the current practice in the ACT. Section 39(a) of the *Coroners Act 1997* (ACT) sets out the functions of counsel assisting which include: assisting the Coroner as required by the Coroner in the inquest or inquiry; appearing at the hearing and presenting evidence and examining witnesses at the hearing; making submissions to the Coroner on any matter relevant to the inquest or inquiry; and acting in the public interest and the interests of justice to assist the Coroner in deciding matters of fact or law.

- *Within the Australian Capital Territory, Recommendation 28 has been implemented as noted in the 1995-96 implementation report and under the Coroners Act 1997 (ACT).*

Recommendation 29

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

Background information

The RCIADIC stressed the importance of ensuring the independence of the coroner in addition to the independence of the officer in charge of the police investigation from outside influence.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

Under the **New South Wales Coroners Act 2009** (NSW), section 51(2) specifies that a coroner in coronial proceedings may give such directions as the coroner thinks fit. In particular, the coroner may direct relevant persons in the proceedings to take specified steps in relation to the proceedings, time frames in which the specified steps must be completed and give directions with respect to the conduct of proceedings as the coroner considers appropriate. Section 49(3)(d) of the Act specifies that a relevant person means any person assisting the coroner in conducting the proceedings.

- *The New South Wales Government has implemented Recommendation 29 through the Coroners Act 2009 (NSW), under which Coroners may make any directions they deem fit.*

In **Victoria**, under section 36 of the *Coroners Act 2008* (Vic), a police officer who has information that may be relevant to an investigation by a coroner into a death must give that information to the coroner to assist the coroner in his or her investigation of the death. Under section 32 of the Act, a person who reported a reportable death or a reviewable death must give the coroner any information or other assistance that the coroner requests for the purposes of the coroner's investigation. Additionally, section 42 of the Act highlights that if a coroner is of the opinion that a document or prepared statement is required for the purposes of the investigation, the coroner may require a person to give the document to the coroner.

- *The Victorian Government has implemented Recommendation 29 through the Coroners Act 2008 (Vic), under which a police officer with relevant information is required to present it to the coroner during the investigation into death.*


As discussed in the **Queensland Police Powers and Responsibilities Act 2000** (Qld), section 794 stipulates that it is the duty of police officers to help coroners in the performance of a function, or exercise of a power, under the *Coroners Act 2003* (Qld), section 15. This provides for the investigation of deaths and the conduct of inquests. Further to this, it is the duty of police officers to comply with every reasonable and lawful request, or direction, of a coroner.

- *The Queensland Government has implemented Recommendation 29 through the Police Powers and Responsibilities Act 2000 (Qld), under which police officers are required to help coroners in the performance of a function, or exercise of a power.*


In **South Australia**, Section 28(3) of the *Coroners Act 2003* (SA) requires that a police officer must, on being notified of a reportable death, immediately notify the State Coroner of the death and any information that the police officer has or has been given in relation to the matter. The police officer in charge of the investigation does not report solely to the Coroner. Section 23(1) of the Act specifies that the Coroner's Court may, by summons, require the appearance of any person before a Coronial inquest.

- *The South Australian Government has partially implemented Recommendation 29 through the Coroners Act 2003 (SA). However, police in charge of the investigation are not required to report solely to the Coroner.*


In **Western Australia**, under section 14 of the *Coroners Act 1996* (WA), every member of the Police Force of the State is at the same time a coroner's investigator. Under s.14(3) of the Act, a coroner's investigator must assist the coroner in carrying out his or her duties under the Coroners Act and carry out all reasonable directions of the coroner.

 *The Western Australian Government has implemented Recommendation 29 through the Coroners Act 1996 (WA).*


Under section 20(2) of the *Coroners Act 1995* (Tas), in **Tasmania**, a police officer who has information relevant to an investigation must report to the Coroner. Section 16(b) of the Act specifies that that a police officer is, by virtue of his or her office, a coroner's officer and has the same functions and power as are conferred or imposed on a coroner's officer by the Act. Further to this, section 59(3) of the Act provides that the Coroner may give directions for an officer to exercise their powers of entry, inspection and possession if the Coroner believes it is reasonably necessary for the investigation.

 *The Tasmanian Government has implemented Recommendation 29 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, under section 25 of the *Coroners Act 1993* (NT), a coroner may give directions to a police officer for the purpose of investigating the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody. A police officer must not refuse or fail to comply with a lawful direction by a coroner as per this section of the *Coroners Act 1993*.

 *The Northern Territory Government has implemented Recommendation 29 through the Coroners Act 1993 (NT), which provides that a police officer must not refuse or fail to comply with a lawful direction by a coroner.*

In the **Australian Capital Territory**, as per section 63 of the *Coroners Act 1997* (ACT), a coroner may, in writing, request the chief police officer for the assistance of a police officer in an investigation for an inquest or inquiry. The chief of police must, as far as practicable, comply with the coroner's request. Further to this, section 59(1) of the Act provides that a coroner may appoint a person to assist the coroner in the investigation of any matter relating to an inquest or inquiry. Such a person must report in writing to the coroner on any matter referred to by the coroner by the investigator's instrument of appointment.

 *The Australian Capital Territory Government has implemented Recommendation 29 through the Coroners Act 1997 (ACT), which provides that the chief of police must comply with the Coroner's request.*

Recommendation 30

That subject to direction, generally or specifically given, by the Coroner, the lawyer assisting the Coroner should have responsibility for reviewing the conduct of the investigation and advising the Coroner as to the progress of the investigation.

Background information

The RCIADIC suggested that to ensure all investigations are carried out with thoroughness and vigour, the lawyer assisting the coroner should advise and assist the coroner in his or her investigation.


Responsibility

All State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

The 1995-96 Implementation Report noted that within **New South Wales**, the lawyer assisting the coroner was able to provide a direction for certain inquires where considered necessary. If a lawyer assisting an inquiry had concerns with any aspect of the investigation, he or she would advise the coroner. Additionally, the counsel assisting the coroner were to liaise with the Coronial Investigation


Unit of the NSW Police Service. Further to this, the Report highlighted that paragraph 8 of the State Coroner's protocol for deaths in custody provided that upon appointment of counsel, instructed by the Crown Solicitor of NSW, investigations into the death were supervised and checked by counsel and the instructing solicitor.

 *The New South Wales Government has implemented Recommendation 30. The 1995-96 implementation report noted that the lawyer assisting the Coroner was able to advise a direction for certain inquiries, and advise the coroner, where considered necessary.*


Addressed in the 1994 **Victorian** Implementation Report, during the inquest, counsel are able to attempt to review the conduct of the investigation and advise the Coroner. In addition, prior to an inquest, counsel could raise defects or other matters, which were then investigated prior to and during the inquest by the Victoria Police in conjunction with the Coroner.

 *The Victorian Government has implemented Recommendation 30. The 1994 implementation report noted that counsel were able to review the conduct of the investigation and advise the coroner during the inquest.*


The **Queensland State Coroner's Guidelines 2013**, details in chapter 9.5 that each coroner is supported by in-house lawyers whose role is to assist the coroner to manage complex investigations and inquests and appear as Counsel Assisting at inquest. The role of Counsel Assisting at inquest is to impartially and fairly present the evidence to the coroner, identify issues for examination, call and examine witnesses, explore the range of possibilities open on the available evidence, explore possible options for preventative recommendations and make submissions about the findings and comments open to the coroner. Coroners may ask Counsel Assisting to assist in the preparation of findings by providing a summary of the evidence, outline of relevant legislation and case law.

 *The Queensland Government has implemented Recommendation 30 through the State Coroner's Guidelines 2013 which provide the Counsel Assisting with the authority outlined in this recommendation.*


Although the 1994 **South Australian** Implementation Report stated that the procedure specified in Recommendation 30 was current practice, today there are no express powers for counsel assisting the Coroner to be kept informed. However, there is a "Protocol for Investigation into Deaths in Custody" drafted by the State Coroner's Office which SAPOL Investigators comply with. This protocol details the role of the investigating officer and counsel assisting, and provides guidelines on providing regular updates to counsel assisting.

 *The South Australian Government has partially implemented Recommendation 30. There are no express powers for counsel to be kept informed, however, there is a "Protocol for Investigation into Deaths in Custody" drafted by the State Coroner's Office which SAPOL Investigators comply with.*


As per the 2000 Implementation Report, within **Western Australia** police officers are ex officio Coroner's Investigators. Under section 14(3) of the *Coroners Act 1996 (WA)*, a coroner's investigator must assist a coroner is carrying out his or her duties and carry out all reasonable directions of a coroner. Under the Coroner's guidelines, counsel assisting is required to conduct the procedural steps of the inquest, to introduce evidence, and to play a role in ensuring that police officers and other investigating officers have conducted adequate investigations for a brief to be prepared.

 *The Western Australian Government has implemented Recommendation 30 through Coronial guidelines and legislation.*


The 1995 **Tasmanian** Implementation Report highlighted that it was the-then current practice of Tasmania Police that the officer in charge of the police investigation into a death in custody informs the lawyer assisting the Coroner about the conduct of the investigation.

 *The Tasmanian Government has implemented Recommendation 30 and the requirements of the recommendations have been incorporated into current practice.*

Within the **Northern Territory**, as discussed in the 1994-95 Implementation Report, section 41(2) of the *Coroners Act 1993* (NT) provides that the coroner must appoint a person to assist the coroner for the purpose of an inquest into a death in custody. Regulation 11 stipulates that person shall be a legal practitioner who, if practicable, is experienced in coronial matters. Further to this, the Report noted that the Coroner's Office advised that, as a matter of practice, the Deputy Coroner or the lawyer assisting, reviews the conduct of the investigation and advises the Coroner as to the progress of the investigation.

 *The Northern Territory Government has implemented Recommendation 30 through the Coroners Act 1993 (NT).*

The **Australian Capital Territory** Government noted within the 1995-96 Implementation Report that the coroner holding an inquest into a death in custody is responsible for the investigation into the death, including providing directions to the lawyer assisting the coroner. Under the-then current procedures, the coroner could delegate responsibility for an investigation or part of an investigation to the lawyer assisting the coroner. The assisting lawyer was required to keep the coroner informed of the progress of the investigation.

 *The Australian Capital Territory Government has implemented Recommendation 30 through the ability of the coroner to delegate powers to the lawyer assisting the coroner.*

Recommendation 31

That in performing the duties as lawyer assisting the Coroner in the inquiry into a death the lawyer assisting the Coroner be kept informed at all times by the officer in charge of the police investigation into the death as to the conduct of the investigation and the lawyer assisting the Coroner should be entitled to require the officer in charge of the police investigation to conduct such further investigation as may be deemed appropriate. Where dispute arises between the officer in charge of the police investigation and the lawyer assisting the Coroner as to the appropriateness of such further investigation the matter should be resolved by the Coroner.

Background information

The ability for lawyers to carry out a thorough and unhindered coronial investigation into the circumstances of death is crucial in identifying systemic and individual failures of care. The RCIADIC Report noted deficiencies in the post-death investigative processes, and found that these partly stemmed from the inquiry being conducted by local police officers.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

In relation to the **Commonwealth** and **Australian Capital Territory** governments' actions taken to address this recommendation, the AFP commented that ACT Policing works effectively with Counsel Assisting the Coroner to inform the Coroner of the circumstances of a death in custody, and in a practical sense, this recommendation has been implemented. However, there is no requirement that the Counsel Assisting is kept informed of the conduct of the investigation at all times, nor is the Counsel Assisting entitled to require Police to conduct further investigation they deem appropriate.


Actions taken towards the implementation of Recommendation 29 are also relevant to this recommendation. Additionally, the 1995-96 Implementation Report noted that in the ACT, the Director of Public Prosecutions assists the coroners.

 *The Commonwealth and Australian Capital Territory Government have partially implemented Recommendation 31. The AFP assists the Counsel Assisting and conducts investigations at direction of the Coroner. However, the Counsel Assisting does not have the full powers set out in the recommendation for example there is no provision made in respect to mechanisms for dispute resolution.*

As set out in the **New South Wales Police Force Handbook**, when conducting an investigation, an officer must confer with the Coroner, State Crown Solicitor and the appointed counsel to help the investigation and presentation of evidence at the inquest. The Coroner will in most cases conduct a directions hearing for all legal representatives prior to the inquest commencing. Under section 51(2) of the *Coroners Act 2009* (NSW), a coroner may give a police officer directions concerning investigations to be carried out for the purposes of coronial proceedings or proposed coronial proceedings. Such directions may include a direction to keep to Counsel Assisting informed.


 *The New South Wales Government has mostly implemented Recommendation 31, through the Police Force Handbook and the Coroners Act 2009 (NSW). However, it does not appear that specific provisions are made for dispute resolution between a lawyer supporting with the inquest and the police officer in charge.*

As per the 1994 **Victorian** Implementation Report, the actions taken by the Victorian Government in Recommendation 30 are the same as those actions taken in Recommendation 31. Additionally, the Victorian Government noted that, in practice, the Coroner's Investigator will keep Counsel Assisting apprised of the progress of the investigation and at the direction of the coroner will conduct further investigations. In the case of a dispute between the Counsel Assisting and the Coroner's Investigator, the appropriateness of further investigations will be resolved by the Coroner who is given ultimate charge over the investigation under the *Coroners Act 2009* (Vic).


 *The Victorian Government has incorporated Recommendation 31 into current practice, with the Coroner given ultimate responsibility including over dispute resolution under the Coroners Act 2009 (Vic).*

In the 1997 Implementation Report, the **Queensland** Government noted that where the lawyer assisting the Coroner is of the view that further investigation is required, this is brought to the attention of the Coroner who may ask the police to investigate further.

Currently, section 794 (Helping coroner investigate a death) of the *Police Powers and Responsibilities Act 2000* (Qld) and section 15 (Help in investigation) of the *Coroners Act 2003* (Qld) require police officers to help coroners in the performance of a function, or exercise of a power. There is therefore no requirement for dispute resolution as police are required to assist the coroner in their investigation. This recommendation is also addressed in the Queensland Government's response to Recommendation 29.


 *The Queensland Government has implemented Recommendation 31 through the Police Powers and Responsibilities Act 2000 (Qld) and the Coroners Act 2003 (Qld).*

The **South Australian** Government noted in the 1994 Implementation Report the process outlined in Recommendation 31 was then current practice in SA. Today there are no express powers for Counsel assisting to require that they be kept informed by the officer in charge of an investigation into a death in custody. However, there is a "Protocol for Investigation into Deaths in Custody" drafted by the State Coroner's Office which SAPOL Investigators comply with. This protocol details the role of the investigating officer and counsel assisting, and provides guidelines on providing regular updates to counsel assisting. It is not practice in South Australia to refer disputes between Counsel assisting and the officer in charge of the police investigation to the Coroner.


 *The South Australian Government has partially implemented Recommendation 31. There is no express provision for counsel assisting the Coroner to be kept informed, however, there is a "Protocol for Investigation into Deaths in Custody" drafted by the State Coroner's Office which SAPOL Investigators comply with. There are no specific provisions made for dispute resolution between counsel supporting the inquest and the police officer in charge.*

The actions taken by the **Western Australian** Government in Recommendation 29 are relevant to this recommendation. Section 14(2) of the *Coroners Act 1996* (WA) provides that every existing member of the WA Police Force is a Coroner's Investigator. The 2000 Implementation Report noted that these actions give Coroners sufficient power to ensure compliance with this recommendation. When a police officer is working as the Coroner's Investigator, he or she must follow the Coroner's


instructions. The Western Australian Government notes that the Commissioner of the Western Australia Police Force may not direct the work of a police officer who is working in this capacity for the Coroner.

 *The Western Australian Government has implemented Recommendation 31 through the Coroners Act 1996 (WA).*

In **Tasmania**, the *Coroners Act 1995* (Tas) addresses this recommendation, as discussed in relation to Recommendation 29 and the relationship between the Coroner and police officers.

 *The Tasmanian Government does not appear to have taken actions in relation to Recommendation 31. There is no express provision for Counsel assisting the Coroner to be kept informed or covering dispute resolution.*

The actions taken by the **Northern Territory** Government in Recommendation 29 are relevant to this recommendation. Further, under the General Order Deaths in Custody, the Commissioned Officer in charge of an investigation into a death is required to: liaise with Counsel Assisting the Coroner; carry out any directions given by the Coroner in regard to the investigation; keep Counsel Assisting the Coroner informed of the progress and conduct; and in case of a dispute refer to the Coroner for resolution.

 *The Northern Territory Government has implemented Recommendation 31 through the Coroners Act 1993 (NT) and the General Order Deaths in Custody.*

Recommendation 32

That the selection of the officer in charge of the police investigation into a death in custody be made by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank.

Background information

The RCIADIC Report noted that in many cases local police officers, despite having a close relation to the particular custodial incident, conducted the inquiry into the death. In ensuring a fair and thorough investigation occurs following a death in custody, it is important that there is input from more highly-ranked police officers.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In relation to the **Commonwealth** and **Australian Capital Territory** governments' actions taken towards this recommendation, the *1992-93 Annual Report* noted that the procedures for the AFP (Jervis Bay and nationally) were reviewed and partially amended in accordance with Recommendation 32.

In the Australian Capital Territory, the *Commissioner's Order on Profession Standards* provides that in the ACT, all deaths in custody are investigated by Criminal Investigations within ACT Policing. The selection of investigating officers and the Officer in Charge is a matter for the Superintendent of Criminal Investigations. The Chief Police Officer, at the rank of Assistant Commissioner, does not currently have the responsibility for selecting investigating officers, but has the ability to select officers if required.


The AFP National Guideline provides that a death in custody classifies as a critical incident. As a result, the Deputy Chief Police Officer – Crime has overall responsibility for the investigation into a death in custody. Where the death occurred in police custody, the Manager Professional Standards is responsible for any internal investigation.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 32 through the AFP's policies and procedures for investigating a death in custody.*


The 1995-96 **New South Wales** Implementation Report noted that the NSW Police Service had incorporated Recommendation 32 in Commissioner's Instructions 155.8.01. Additionally, the *NSW Police Force Handbook* specifies that a Senior Investigating Officer takes command of the investigation team. It is unclear who selects the Senior Investigating Officer. The NSW Police Force Critical Incident Guidelines provides that a death in custody is to be deemed a "critical incident". 4.1.3 of NSW Police Force Critical Incident Guidelines indicate that the Region Commander (Assistant Commissioner) must direct a Critical Incident Investigation Team to be formed once he or she has decided that an incident will be investigated as a critical incident. A suitably experience Senior Critical Incident Investigator should be appointed to ted the Critical Incident Investigation Team until the investigation has concluded.

 *The New South Wales Government has implemented Recommendation 32 through the Commissioner's Instructions 155.8.01 and the NSW Police Force Handbook.*


The **Victorian** Government discussed in the 1994 Implementation Report that the Chief Commissioner of Police had directed that deaths in custody were to be investigated by the Homicide Squad with active oversighting by the Internal Investigations Department of the Victoria Police. Currently as per the VPMG Deceased Persons, the Homicide Squad is responsible for the Coronial brief oversighted by the Professional Standards Command. Given this current policy, the Victorian Government noted that implementation of Recommendation 32 is considered unnecessary.

 *The Victorian Government has not implemented Recommendation 32. There is no requirement that the officer in charge of an investigation be appointed by the Chief Commissioner, or a Deputy Commissioner or Assistant Commissioner.*


Under section 16.23.1 of the **Queensland Operational Procedures Manual, Issue 59 Public Edition**, deaths in custody are to be investigated by Ethical Standards Command, subject to the Crime and Corruption Commission exercising its power to assume responsibility for the investigation.

 *The Queensland Government has mostly implemented Recommendation 32. While Ethical Standards Command is headed by an Assistant Commissioner, the Manual does not specifically require that the Assistant Commissioner appoint the officer.*

Discussed in the 1994 Implementation Report, the **South Australian** Government noted that the Superintendent of the Major Crime Squad selects this officer on delegated authority from an Assistant Commissioner. South Australia Police (SAPOL) *General Orders* state to ensure investigations are independent and impartial Major Crime Investigation Section will fully investigate deaths in police custody. Investigations will be overseen by the Officer in Charge, Internal Investigation Branch, who will assume command and control of the investigation if instructed by the Commissioner of Police.

 *The South Australian Government has mostly implemented Recommendation 32. While the Superintendent of the Major Crime Squad selected the officer, this function is performed on delegated authority from an Assistant Commissioner.*

The 2000 **Western Australian** Implementation Report highlighted that responsibility for the conduct and supervision of investigations were delegated through the chain of command on the receipt of notification of death in police custody. Firstly, the Assistant Commissioner instructs a senior investigator of the substantive rank of Superintendent to conduct a full investigation and report directly to the coroner. Fully qualified Senior Investigating Officers are responsible for ensuring the investigation is being conducted under the provisions of the Criminal Investigation Act 2006 or the Coroners Act 1996. Secondly, the Assistant Commissioner thereafter notifies the Deputy Commissioner of the circumstances surrounding the death.

 *The Western Australian Government has incorporated Recommendation 32 into police procedures in regard to the conduct and supervision of investigations.*

In **Tasmania**, the 1995 Implementation Report explained that the Commissioner of Police made the appointment of the officer in charge of the police investigations into a death in custody, as such cases were treated as major crime investigations. It was then current practice of Tasmania Police that all officers involved in the investigation of a death in police custody were in every respect as independent

as possible from police officers concerned with matters under investigation. At the time of the report, the Coroner had the power to direct which Police Branch were to investigate a death. The Tasmania Police Manual states that where a person dies or receives life-threatening injuries while in police custody, the Deputy Commissioner is to assume control of the investigation, which will be conducted by Professional Standards.

● *The Tasmanian Government has implemented Recommendation 32. As noted in their 1995 implementation report, the Commissioner of Police makes the appointment of the officer in charge of the police investigation into a death in custody.*

The **Northern Territory** 1994-95 Implementation Report specified that an amendment had been made to *Police General Order Coroners and Inquests – Code C9*, at paragraph 39, providing that the member in charge of an investigation into a death in custody was to be appointed by the Assistant Commissioner of the appropriate Command. The *Police General Order – Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public* provides that the Deputy Commissioner is notified and appoints an investigative head and team. In the interim until the team is appointed, the Commissioned Officer responsible is the Divisional Officer for the location where the incident occurred.

● *The Northern Territory Government has implemented Recommendation 32. Under the Police General Order Coroners and Inquests – Code C9 the member in charge of an investigation into a death in custody must be appointed by the Assistant Commissioner of the appropriate Command.*

Recommendation 33

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

Background information

The RCIADIC Report noted that post-death coronial processes were inadequate and a cause of concern and suspicion for families of the deceased. This is largely due to a lack of transparency and independence in the post-death investigation. In many cases, the inquiry into the circumstances of the deceased's death was conducted by local police officers who had a close relation to the particular custodial incident.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


For the **Commonwealth** and **Australian Capital Territory** responses to this recommendation, the AFP *National Guideline* provides that the Manager Professional Standards, or in their absence, the Deputy Commander, must appoint an independent team to investigate the death (paragraph 22). Those that are involved with the deceased are not to take part in the post-death inquiry, except as witnesses.

The Commissioner's Order on Professional Standards provides that an independent investigation team from Criminal Investigations will be appointed to investigate the circumstances of the death. It is standard AFP practice that investigators for such an incident would be drawn from the most qualified business area of the AFP rather than from the internal affairs unit. AFP Professional Standards provide a critical oversight role, sitting over all aspects of the investigation including the appropriateness and independence of the allocated investigators. The members involved with the person while in police custody which include the informant, the Watch-house staff and other members directly involved with the deceased, are not to take part in the investigation process, other than as witnesses.


The Coroner may only refuse a request if they believe, on reasonable grounds, that it would not be in the interests of justice to allow access to a member of the immediate family of the deceased, or a representative of that member. All deaths in custody must be treated as a crime scene and investigated accordingly. The *1992-93 Annual Report* noted that the procedures for the AFP (Jervis Bay and nationally) were reviewed and amended in accordance with Recommendation 33.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 33 through the AFP's policies and procedures for investigating a death in custody.*


The 1995-96 **New South Wales** Implementation Report noted that the NSW Police Force had incorporated Recommendation 33 in Commissioner's Instruction 155.18.01. Under the NSW Police Force Critical Incident Guidelines, a Death in Custody would be deemed a "Critical Incident". 4.1.3 of NSW Police Force Critical Incident Guidelines states that Critical Incident Investigation Team (CIIT) must comprise police officers who are not involved in the incident and who do not appear likely from the outset to have a conflict of interest. It follows that members of the CIIT should be drawn from a different local area command (LAC) to the one in which the incident occurred, and a different command to that of the directly involved officer/s. The *NSW Police Force Handbook* also sets out that the Senior Investigating Officer must ensure that the officer who accompanies the body to the mortuary is not connected with the circumstances of, or leading up to, the death. The Handbook further provides that the Professional Standards Command reviewing officer has an independent function and is responsible for ensuring a competent investigation is carried out by their team. They are also responsible for identifying and reporting on deficiencies in established practices and procedures.

 *The New South Wales Government has implemented Recommendation 33 through Commissioner's Instruction 155.18.01 and the NSW Police Force Handbook.*


The **Victorian** Government specified in the 1994 Implementation Report that deaths in custody, as well as deaths arising from police investigation, were investigated by the Homicide Squad. The investigation was actively oversighted by the Internal Investigations Department of the Victoria Police.

 *The Victorian Government has implemented Recommendation 33 as noted in the Victorian 2005 implementation review, by updating processes and practice.*


Under section 16.23.1 of the **Queensland** Police Services *Operational Procedures Manual*, deaths in police custody are to be investigated by the Queensland Police Service (QPS) Ethical Standards Command, subject to the Crime and Corruption Commission exercising its power to assume responsibility for the investigation. Further to this, under section 16.23.3(xiv), investigating officers are required to ensure that officers involved in the incident are not given access to investigation documents without the consent of the Coroner who is investigating the matter. Under section 16.23.2, a police officer or watch-house officer who finds a person whom they considered to be dead or dying is required to call for assistance and attend to that person – including attempting to resuscitate that person. When a death in police custody has occurred, first response officers should record any relevant information including the position of the body, if the body must be moved for any reason, and secure all documentation relevant to the particular person.

 *The Queensland Government has implemented Recommendation 33 through the QPS Operational Procedures Manual.*


The 1994 **South Australian** Implementation Report noted that the procedure specified in Recommendation 33 was the current practice within SA. It is a requirement under *SAPOL General Orders* that the Major Crime Investigation Branch must investigate the death ensuring compliance with the State Coroner's *Protocol for Investigation into Deaths in Custody*. This recommendation is also implemented through the South Australian Government's response to Recommendation 32.

 *The South Australian Government noted in their 1994 implementation report that Recommendation 33 had been incorporated into police practice. Current practice continues to implement the principles of this recommendation through SAPOL General Orders.*


As highlighted in the 2000 **Western Australian** Implementation Report, a Superintendent from the Internal Investigation Unit was to investigate the death in police custody. An alternative to this was that the Deputy Commissioner in his discretion could appoint the local Detectives Office to handle the investigation, depending on the circumstances. The officer delegated to the task must be independent of the incident under investigation, this contributes to an open and equitable process for the investigation of a death in custody. Current practice, as noted by the Western Australian Government, is for the Police Major Crime Division to take responsibility for investigating incidents including deaths in custody. The Major Crime Division is independent of the police officers concerned under the investigation.

 *The Western Australian Government has implemented Recommendation 33 through police policies and procedures.*

In **Tasmania**, the actions taken in Recommendation 32 are relevant to this recommendation.

 *The Tasmanian Government has implemented Recommendation 33 through their actions taken towards Recommendation 32.*

Under section 25 of the **Northern Territory Coroners Act 1993** (NT), a coroner may give directions to a police officer for the purpose of investigating the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody. A police officer must not refuse or fail to comply with a lawful direction by a coroner given under this Act. Under the *Police General Order – Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public*, members of the investigation team are required to be, as far as practicable, independent and not directly involved in the incident. It is further provided that the senior police member will ensure that the scene is secured and that only essential personnel involved in the preservation of life are allowed access. The senior member will also ensure that witnesses are not able to communicate to each other. There is no requirement that members of the investigative team be selected from an Internal Affairs Unit. This recommendation is also dealt with in the Northern Territory Government's response to Recommendation 32.

 *The Northern Territory Government has mostly implemented Recommendation 33. There is no requirement that officers be selected from an Internal Affairs Unit or from a police command area other than that in which the death occurred.*

Recommendation 34

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

Background information

The RCIADIC Report noted that police should retain an investigative role in post-death coronial investigations, but also seeks to implement some important safeguards. Recommendation 34 seeks to provide one such safeguard.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In relation to the **Commonwealth** and **Australian Capital Territory** responses to this recommendation, the AFP has confirmed that all deaths in custody (whether police custody or other custodial setting) are investigated by trained criminal investigators from Criminal Investigations. A Detective Superintendent has overall command of Criminal Investigations, with the area further supervised by the Deputy Chief Police Officer – Crime.

The Commissioner's Order on Professional Standards states that all deaths in custody will be referred to the Criminal Investigations Reception Officer, and that all non-natural deaths will be investigated by a member of ACT Policing Criminal Investigations.

● *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 34 through the AFP's policies and procedures for investigating a death in custody.*

In **New South Wales**, the *NSW Police Force Handbook*, provides that the Senior Investigating Officer is required to take command of the investigation and the Professional Standards Manager has an independent function to ensure a competent investigation is carried out by the team. This recommendation has been incorporated into the Commissioner's Instruction 155.18.01 – Deaths in Custody. Current practice is that for a death in custody, the Region Commander and the SCC Homicide Squad Commander must agree within 48 hours of the incident what level of involvement the Homicide Squad will have in the Critical Incident Investigation Team. Whatever agreement is reached, the Homicide Squad must provide specialist investigative advice for the duration of the investigation. The (SCII) will lead a team in the investigation of all critical incidents. The primary role of the SCII is to ensure critical incidents are rigorously and thoroughly investigated in a timely manner.

● *The New South Wales Government has implemented Recommendation 34. Under the NSW Police Force Handbook the Senior Investigating Officer is required to take command of the investigation.*

The 1994 **Victorian** Implementation Report specified that police investigations of deaths in custody were conducted by the Homicide Squad and oversighted by the Internal Investigations Department.

● *The Victorian Government has implemented Recommendation 34. Deaths in custody are investigated by the Homicide Squad, with oversight from the Internal Investigations Department.*

In **Queensland**, a Memorandum of Understanding (MOU) was signed in 2008 between the Police Commissioner, State Coroner and the Crime and Misconduct Commission – now known as the Crime and Corruption Commission (CCC). The MOU establishes operational arrangements for the investigation of police related deaths. Under these arrangements, the Queensland Police Service Ethical Standards Command investigates the death, subject to the CCC exercising its power to assume responsibility for the investigation. The MOU requires consultation with the State Coroner about the allocation of appropriate police resources to these investigations.

● *The Queensland Government has implemented Recommendation 34. A MOU was signed between the Police Commissioner, State Coroner and the Crime and Misconduct Commission to establish operational arrangements for the investigation of police-related deaths.*


The 1994 **South Australian** Implementation Report noted that the-then current practice was that the Major Crime Squad were required to investigate the death of any person in police custody. The nature of the work undertaken by this squad required that any officer attached were to be a highly experienced investigator. Current practice per South Australia Police *General Orders* is that the Major Crime Investigation investigates the death of all persons in police custody. All investigating officers in the Major Crime Investigation Branch are highly experienced and directly responsible to the Officer in Charge, Major Crime Investigation Branch.

● *The South Australian Government has implemented Recommendation 34. Deaths in custody are investigated by the Major Crime Investigation Branch, comprised of highly experienced members.*


The actions taken by the **Western Australian** Government in Recommendation 33 are also relevant to this recommendation. Additionally, under section 14 of the *Coroners Act 1996* (WA), every member of the Police Force of the State is contemporaneously a coroner's investigator. Further, as stipulated by the Police Force Manual *Critical Incidents Involving Police* and legislation, all Senior Investigating Officers are fully qualified.

● *The Western Australian Government has implemented Recommendation 34 through police manuals and legislation, which provide that all Senior Investigating Officers be fully qualified.*

The **Tasmanian** Government noted within the 1993 Implementation Report that a Tasmanian Police Policy document was being drafted to reflect this recommendation. The Report also highlighted that appropriate arrangements were largely in place in regard to this recommendation. This recommendation is also dealt with in the Tasmanian Government's response to Recommendation 32.

 *The Tasmanian Government has implemented Recommendation 34 through the development of guidelines discussed in their 1993 implementation report.*

The 1994-95 **Northern Territory** Implementation Report specified that there are a number of highly qualified investigators available in the NT Police. Suitably qualified and experienced members conduct investigations into major incidents. Actions taken by the Northern Territory Government in response to Recommendation 33 are also relevant to this recommendation.

 *The Northern Territory Government has partially implemented Recommendation 34. Suitably qualified and experienced members conduct investigations into major incidents. It does not appear that a chain of command has been established, as required by this recommendation.*

Recommendation 35

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

- a. *Investigations should be approached on the basis that the death may be a homicide. Suicide should never be presumed;*
- b. *All investigations should extend beyond an inquiry into whether death occurred as a result of criminal behaviour and should include inquiry into the lawfulness of the custody and the general care, treatment and supervision of the deceased prior to death;*
- c. *The investigations into deaths in police watch-houses should include full inquiry into the circumstances leading to incarceration, including the circumstances of arrest or apprehension and the deceased's activities beforehand;*
- d. *In the course of inquiry into the general care, treatment or supervision of the deceased prior to death particular attention should be given to whether custodial officers observed all relevant policies and instructions relating to the care, treatment and supervision of the deceased; and*
- e. *The scene of death should be subject to a thorough examination including the seizure of exhibits for forensic science examination and the recording of the scene of death by means of high quality colour photography.*

Background information

In order to ensure the conduct of a thorough enquiry and to avoid long, drawn-out processes which add to the stress experienced by families of the deceased, clear police standing orders and instructions as to the conduct of post-death investigations are required.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

In the **Commonwealth** and **Australian Capital Territory**, the AFP *National Guideline* establishes consistent procedures for the conduct of post-death investigations. Included in the Guideline are the requirements that all deaths in custody are to be treated as a crime scene, and that an independent investigation team must be appointed to investigate the circumstances of the death (paragraph 22). The AFP guidelines do not specifically state the requirement for colour photography as per part e) of the recommendation.

This recommendation is also addressed through the Commissioner's Order on Professional Standards, the ACT Policing Watch House Policy, and the ACT Coroner's Act 1997. These measures incorporate Recommendation 35 into standard investigative and oversight practices. In the event of a death in custody, the experienced investigators from ACT Policing will work at the direction of the Coroner.


The AFP confirmed that AFP Forensic Services adopt industry standards, best practice and Court accepted methodology which includes colour photography. However, the AFP's guidelines do not specifically state the requirement for colour photography as per part (e) of the recommendation.

The Australian Capital Territory Government has noted that ACT Policing will progress an amendment to the *National Guideline* to stipulate the requirement for colour photography.


 *The Commonwealth and Australian Capital Territory governments have mostly implemented Recommendation 35 through the AFP's policies and procedures for investigating a death in custody. However, these do not specifically address all the requirements of Recommendation 35, as there is no requirement for colour photography of the scene of death.*

The **New South Wales Police Force Handbook** specifies on page 40 that officers are not to presume suicide and to consider that evidence presented to the Coroner must be sufficient to conclusively prove it. The Handbook also specifies under the chapter *Deceased Persons - Death in Custody* that the Senior Critical Incident Investigator is to consider the lawfulness of the custody and the general care, treatment and supervision of the prisoner before death. It further states that the first officer at the scene of a Death in Custody is to preserve the scene and exhibits (including, where relevant, any/all police appointments and possible forensic evidence relating to gunshot residue) for examination by representatives of the Forensic Services Group (FSG). If practical, any deceased person is to remain in situ for the purpose of examination by FSG and other relevant personnel.


This recommendation has also been incorporated into the *Commissioner's Instruction 155.18.01 - Deaths in Custody*, and the NSW Police Force Critical Incident Guidelines which provide detailed information for those officers involved in the management, investigation and review of critical incidents so they can be dealt with consistently and effectively when they arise.

 *The New South Wales Government has implemented Recommendation 35 through the NSW Police Force Handbook and through directions to the Region Commanders (Assistant Commissioner) within Commissioner's instructions: 155.18.01 - Deaths in Custody.*

The 1994 **Victorian** Implementation Report noted that both the Homicide Squad and the Internal Investigations Department of the Victoria Police had standard operating procedures, which addressed this recommendation. No evidence of more recent actions taken towards implementation could be located.


 *The Victorian Government has implemented Recommendation 35 in the standard operating procedures of the Homicide Squad and the Internal Investigations Department.*

Under section 16.23.3 of the **Queensland** Police Services *Operational Procedures Manual*, officers investigating a death in custody should treat the death in custody as a homicide until otherwise determined and are not to presume suicide or natural death regardless of whether it appears likely. Appendix 16.3 of the *Operational Procedures Manual* provides a suggested format for reports on deaths in custody or in police company. The suggested format requires that an officer should comment on the general care and treatment of the deceased, the watch-house routine for accepting the prisoner and photographs of scene and body 'in situ'. The suggested format does not specifically require officers to assume the death may be a homicide.


 *The Queensland Government has implemented Recommendation 35 through the requirements set out in the *Operational Procedures Manual*.*

The **South Australian** Government noted within the 1994 Implementation Report that the procedures outlined in Recommendation 35 were then current practice for all deaths and attempted suicides in police custody in SA. Additionally, while the matters referred to in this recommendation were addressed during the investigation into a death in custody, the complete file was then subjected


to review by the Internal Investigations Branch. At that time, particular attention was provided to the nominated custodial aspects. The South Australian Government notes that the provisions set out in this recommendation are complied with in all investigations into deaths and attempted deaths in police custody. This recommendation has been implemented through South Australia Police *General Orders*, South Australia Police's *Operational Guidelines for Investigators and Managers for Deaths*, and the State Coroner's Office *Protocol for Investigation into Deaths in Custody*. Additionally, the complete investigation file is then subjected to review by the Internal Investigations Branch to ensure implementation of provisions contained in this recommendation.

 *In South Australia, this recommendation has been implemented through South Australia Police General Orders, South Australia Police's Operational Guidelines for Investigators and Managers for Deaths, and the State Coroner's Office Protocol for Investigation into Deaths in Custody.*


The **Western Australian** Government highlighted within the 1994 Implementation Report that all deaths in custody were treated as a homicide in regards to evidence collection and scene examination by forensic staff. In relation to part e), the Report noted that high quality Agfa film was to be used in either 35mm or 120mm format. The 2000 Implementation Report emphasised that the investigative policy in process then in place provided for an open and equitable process for investigating deaths in custody. The Western Australian Government notes that Recommendation 35 has been met by the enactment of the *Criminal Investigation Act 2006 (WA)* and the *Coroners Act 1996 (WA)*.

 *In Western Australia, Recommendation 35 has been completed through the enactment of the Criminal Investigation Act 2006 (WA) and the Coroners Act 1996 (WA).*

The **Tasmanian** Government noted within the 1995 Implementation Report that a *Procedures Manual Guidelines for Investigation of Complaints Against Police Officers* had been issued which specified directions as to how officers should conduct such investigations. The Report highlighted that Police Policy Document and 6/94 were also relevant to this recommendation. This recommendation is incorporated under the Tasmania Police Manual section 7.4 *Death or Life Threatening Injury in Custody*.

 *The Tasmanian Government has mostly implemented Recommendation 35 in the Tasmania Police Manual section 7.4 Death or Life Threatening Injury in Custody. However, specific details of implementation could not be located such as provisions related to colour photography.*

The 1994-95 **Northern Territory** Implementation Report highlighted that the actions taken by the NT Government in Recommendation 12 are relevant to this recommendation. The actions taken in Recommendation 12 have direct implications for the police in relation to all custodial deaths. Accordingly, Police General Order Coroners and Inquests – Code C9 was amended. An addition was made to the General Order to include the precise requirements of part d) and e) of this recommendation. Additionally, parts a) to d) of Recommendation 35 have been addressed the Northern Territory's *Police General Order - Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public*.

 *The Northern Territory Government has implemented Recommendation 35 in the Police General Order - Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public.*

Recommendation 36

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

Background information

The RCIADIC Report noted that post-death investigations were inadequate, and often lacked thoroughness. This added further stress and inspired suspicion among the families of the deceased. In order to improve the Coronial inquest, greater evidence into the cause and circumstances of death must be collected and provided to the Coroner.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation


In the **Commonwealth** and **Australian Capital Territory**, the AFP National Guidelines established rules for the conduct of post-death investigations, including that all deaths in custody are to be treated as a crime scene and investigated accordingly, that an independent investigation team must be appointed, and that the Coroner must make findings in relation to factors that contributed to the cause of death. Additionally, under section 74 of the *Coroners Act 1997* (ACT), the coroner holding an inquest into a death in custody must include a record of the proceedings of the inquest findings about the quality of care, treatment and supervision of the deceased that, in the opinion of the coroner, contributed to the cause of death.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 36 through the AFP National Guideline and the ACT Coroners Act.*


As discussed in the 1995-96 **New South Wales** Implementation Report, the NSW Police had incorporated this recommendation in the Commissioner's Instructions 62.25, 155.18.01 and 155.18.02. Relevant agencies have a range of practices and procedures to ensure a thorough evidence-base informs the coronial inquest. Additionally, the Internal Investigation Unit of the Department of Corrective Services conducted investigations following a death in custody. Such investigations addressed the conduct of staff in terms of compliance with Departmental policies and procedures. Further to this, section 23 of the *Coroners Act 2009* (NSW) also addresses this recommendation.

 *The New South Wales Government has implemented Recommendation 36 through the Coroners Act 2009 (NSW) and Commissioner's Instructions 62.65, 155.18.01 and 155.18.02. Agencies in NSW have a range of practices to ensure a thorough evidence-base informs the coronial inquest.*


In **Victoria**, as specified under section 15 of the *Coroners Act 2008* (Vic), a coroner must investigate the death of a person if it appears to the coroner that the death is a reportable death. Section 36 of the Act explicates that a police officer who has information that may be relevant to an investigation by a coroner into a death must give that information to the coroner to assist in his or her investigation. Additionally, section 52 of the Act requires that a coroner must hold an inquest into a death if the deceased was, immediately before death, a person placed in custody. Further, the Coroner is required to determine the circumstances of the death under section 67 of the Act, including the quality of care, treatment and supervision of the deceased where relevant.

 *The Victorian Government has mostly implemented Recommendation 36 through the Coroner's Act 2008 (Vic). There is no explicit legislative requirement that in all cases the care, treatment and supervision of the deceased be considered.*


In **Queensland**, under section 14 of the *Coroners Act 2003* (Qld), the State Coroner must issue guidelines to all coroners about the performance of their functions in relation to investigations generally. When preparing guidelines, the State Coroner must have regard to the recommendations of the RCIADIC that relate to the investigation of deaths in custody. Additionally, section 46(1) provides that the coroner may, wherever appropriate, comment on anything connected with a death investigated at an inquest that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future. The State Coroners Guidelines require coroners to direct their attention to the general care, treatment and supervision of the deceased and to determine whether custodial officers complied with their common law duty of care and all departmental policies and procedures and whether these were best suited to preserving the prisoner's welfare. Coroners are directed to consider the possibility of any systemic failure relating to a death.

 *The Queensland Government has implemented Recommendation 36 through the Coroner's Act 2003 (Qld) and the State Coroners Guidelines.*


In **South Australia**, under section 21 of the *Coroners Act 2003* (SA), the Coroner's Court must hold an inquest to ascertain the cause or circumstances of a death in custody. As a matter of public record the Coroner hears evidence concerning the care, treatment and supervision of deaths in custody and in hospitals. In addition, the Coroner requires police investigators to include within their evidence of the cause or circumstances of the death that consideration is given to the care, treatment and supervision of the deceased prior to death. Section 25(3) of the Act specifies that the Coroner's Court may add to its findings any recommendation that might, in the opinion of the Court, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest.

 *The South Australian Government has fully met the requirements of Recommendation 36 through the Coroners Act 2003 (SA).*


Western Australia has implemented this recommendation at a policy level which includes detailed procedures in the *Police Manuals Operational Manual* and in the *Policy Directives* of the Department of Corrective Services. Under section 25(3) of the *Coroners Act 1996* (WA), where there is a death in custody, the coroner must comment on the quality of supervision, treatment and care of the person while in that care. The Western Australian Government notes that Recommendation 35 has been met by the enactment of the *Criminal Investigation Act 2006* (WA) and the *Coroners Act 1996* (WA).

 *In Western Australia, Recommendation 36 has been completed through the enactment of the Criminal Investigation Act 2006 (WA) and the Coroners Act 1996 (WA).*

In **Tasmania**, under section 21 of the *Coroners Act 1995* (Tas), a coroner has jurisdiction to investigate a death if it appears that the death is or may be a reportable death. Section 28(5) of the Act provides that if a coroner holds an inquest into a death in custody, the coroner must report on the care, supervision or treatment of that person while that person was held in custody.

 *The Tasmanian Government has fully met the requirements of Recommendation 36 through the Coroners Act 1995 (Tas).*

In the **Northern Territory**, section 25(1) of the *Coroners Act 1993* (NT), a coroner may give directions to a police officer for the purpose of investigating the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody. Section 26(1) of the Act provides that where a coroner holds an inquest into a death in custody, the coroner must investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed by injuries sustained while being in custody. Additionally, the coroner may investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.

 *The Northern Territory Government has fully implemented Recommendation 36 through the Coroners Act 1993 (NT), which requires that the Coroner investigate and report on the care, supervision and treatment of the person while being held in custody.*

Recommendation 37

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

Background information

The RCIAIDC noted that autopsies were being inadequately performed and that forensic pathologists should undertake the autopsies to ensure that they are conducted at a high standard.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under section 89 of the *Coroners Act 2009* (NSW), a coroner may, by written order, give directions to an appropriate medical investigator to undertake a post mortem examination.

Under section 89(3) of the Act, an 'appropriate medical investigator' is classified as a Coronial Medical Officer, a pathologist or anyone else the coroner considers to have appropriate qualifications. Further to this, the *NSW Police Force Manual* explicates that anyone who dies in custody is to undergo a post mortem examination at the Department of Forensic Medicine in Glebe or Newcastle. The New South Wales Government notes that it is practice that only a qualified Forensic Pathologist can conduct a post-mortem examination.

● *The New South Wales Government has implemented Recommendation 37, and notes that it is practice that only a qualified Forensic Pathologist can conduct a post-mortem examination.*

In **Victoria**, under section 25 of the *Coroners Act 2008* (Vic), a coroner must direct a medical investigator to perform an autopsy on a body under the control of the coroner if the coroner believes that that autopsy is necessary for the investigation of the death and it is appropriate to give the direction. Section 3 of the Act defines a medical investigator to be the Institute, a pathologist or a registered medical practitioner under the general supervision of a registered medical practitioner.

● *The Victorian Government has implemented Recommendation 37 through the Coroners Act 2008 (Vic) which provides that a medical investigator must perform an autopsy in the event of an investigation into death.*

In **Queensland**, under section 19(2) of the *Coroners Act 2003* (Qld), as part of the investigation of a death, a coroner may order a doctor to perform an autopsy. In the *State Coroner's Guidelines 2013*, forensic pathologists are identified as the highest qualified practitioner to undertake an autopsy. Attachment 5B of the Guidelines classifies all deaths in custody as complex and are reserved for forensic pathologists only.

● *The Queensland Government has implemented Recommendation 37 through the State Coroner's Guidelines 2013 which reserves all deaths in custody for forensic pathologists only.*

In **South Australia**, under section 21(1)(i) of the *Coroners Act 2003* (SA), the Coroner's Court has the power to direct a medical practitioner who is a pathologist, or some other person or body considered by the State Coroner or the Court to be suitably qualified, to perform a post-mortem examination of the body of the deceased person. The South Australian Government additionally notes that in Adelaide, post-mortems are performed by a specialist forensic pathologist (this is not necessarily the case in regional centres).

● *The South Australian Government has partially implemented Recommendation 37 through the Coroners Act 2003 (SA), however there is no recognition provided that a forensic pathologist is best qualified to conduct autopsy.*

In **Western Australia**, as outlined in section 34 of the *Coroners Act 1996* (WA), if a coroner reasonably believes that it is necessary for an investigation of a death, the coroner may direct a pathologist or a doctor to perform a post mortem examination on the body. Further to this, the Coroner's Court of Western Australia website specifies that in Perth, the autopsy is performed by a forensic pathologist.⁸ The Western Australian Government notes that it is established practice with the State Coroner's Office that all post-mortem examinations are conducted at the State Mortuary by fully qualified forensic pathologists.

● *In Western Australia, Recommendation 37 has been completed through the Coroners Act 1996 (WA).*

Section 36 of the **Tasmanian Coroners Act 1995** (Tas), provides that if a coroner reasonably believes that it is necessary for the investigation of a death, the coroner may direct the State Forensic Pathologist or an approved pathologist, or a medical practitioner under the direct supervision of the State Forensic Pathologist or an approved pathologist, to perform an autopsy on the body.

⁸ http://www.coronerscourt.wa.gov.au/W/who_does_the_autopsy.aspx?uid=9011-9553-1679-9690, accessed September 2017

○ *The Tasmanian Government does not appear to have implemented Recommendation 37. While there is the possibility to appoint the State Forensic Pathologist or an approved pathologist to conduct autopsy, there is no provision that all autopsies should be conducted by these parties.*

In the **Northern Territory**, as specified under section 20 of the *Coroners Act 1993* (NT), if a coroner reasonably believes that it is necessary for an investigation of a death, the coroner may direct a medical practitioner to perform an autopsy on the body of the deceased person. Additionally, section 6(2) of the *Coroners Regulations 2010*, provides that the medical practitioner who is directed to perform the autopsy shall wherever possible, be a qualified forensic pathologist, or be a qualified pathologist who is, in the opinion of the coroner, suitably experienced to perform the autopsy. The *Police General Order - Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public* provides that an autopsy be carried out by a specialist forensic pathologist, or by a specialist pathologist qualified by experience or training to conduct autopsies.

● *The Northern Territory Government has implemented Recommendation 37 through the Coroners Regulations 2010 which provides that the medical practitioner who is directed to perform the autopsy shall wherever possible, be a qualified forensic pathologist.*

As discussed in the **Australian Capital Territory Coroners Act 1997** (ACT), section 71 provides that the coroner holding the inquest into a death in custody must, wherever practicable, direct a post-mortem examination to be made of the body by a pathologist who has not less than two years' experience in conducting post-mortem examinations. Additionally, the Magistrates Court of the Australian Capital Territory website explains that a post-mortem examination is a thorough medical examination performed by a Pathologist to establish the medical cause of death.⁹ In the 2018-19 Australian Capital Territory, \$1.9 million of funding over four years was announced to fund a full-time resident forensic pathologist to oversee all post-mortems.

● *The Australian Capital Territory Government has implemented Recommendation 37 through the Coroners Act 1997 (ACT) and funding made available in the 2018-19 to ensure that all post-mortems are conducted by a resident forensic pathologist.*

Recommendation 38

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

Background information

The RCIADIC found that it is highly desirable that, as far as possible, no obstacle be placed in the way of carrying out traditional rites and that relatives of a deceased Aboriginal person be spared further grief.


⁹ https://www.courts.act.gov.au/magistrates/courts/coroners_court/information-about-the-coroners-court, accessed September 2017

Responsibility


All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under section 88 of the *Coroners Act 2009* (NSW), when a post mortem examination or other examination or test is conducted on the remains of a deceased person, regard is to be had to the dignity of the deceased person. Further, if more than one procedure is available to a person conducting a post-mortem examination to determine the cause and manner of a deceased person's death, the person conducting the examination is to endeavour to use the least invasive procedures that are appropriate in the manner. A Coronial Information and Support team is in place which includes three social worker positions. In the event of an objection or organ retention, a social worker will talk one-on-one with the family or nominated next of kin explaining the procedures and options for the family. Section 96 of the Act provides that a senior next of kin may, by notice in writing, request a coroner or an assistant coroner not to exercise a relevant post-mortem investigative function in relation to the deceased person.


 *The New South Wales Government has partially implemented Recommendation 38 through the function of the Coronial Information and Support team. However, no provision is made for traditional rites to be performed by family members, and it does not appear that Aboriginal Legal Services and Aboriginal Health Services have been consulted.*

The **Victorian Coroners Act 2008** (Vic), specifies under section 26 that a coroner must take reasonable steps to notify the senior next of kin of the deceased that an autopsy is to be performed. Within 48 hours after receiving notice, the senior next of kin may ask the coroner to reconsider the direction that an autopsy be performed. Section 26(3) of the Act specifies that if, after reconsidering the autopsy, the coroner determines that the autopsy is necessary for the investigation, the coroner must, without delay, give written notice to the senior next of kin.

 *The Victorian Government has mostly implemented Recommendation 38 through the Coroner's Act 2008 (Vic) which provides for a consultative process between the Coroner and the deceased's next of kin in the event that an autopsy must be performed. It does not appear that a protocol has been developed as called for in this recommendation.*


In **Queensland**, under section 19 of the *Coroners Act 2003* (Qld), as part of the investigation of a death a coroner, if burial of the body has not happened, must order a doctor to perform an autopsy. Before ordering an internal examination of the body, the coroner must, wherever practicable, consider that in some cases a deceased person's family may be distressed by the making of this type of order. Additionally, the coroner must consider any issues are raised by a family member, or another person with sufficient interest, in relation to the type of examination to be conducted during the autopsy. A coroner may still order an internal examination despite objections from a family member.

The State Coroner's Guidelines state that occasionally families may wish to observe cultural or religious rites before the body is removed from the scene. Coroners should allow this to occur for non-suspicious deaths once the scene has been forensically examined, provided the ritual does not involve physical contact with or contamination of the body. Care needs to be taken to ensure these observances do not unduly delay transportation and consequently it is reasonable to impose timeframes on when and for how long the ritual can be performed. Families should generally be allowed to observe religious or cultural rites during a post-autopsy viewing provided the ritual is not unduly disruptive to the mortuary environment.


 *The Queensland Government has mostly implemented Recommendation 38 through the Coroner's Act 2003 (Qld) and the State Coroner's Guidelines. However, it does not appear that Aboriginal Legal Services and Aboriginal Health Services have been consulted.*

The **South Australian** Government notes that the State Coroner should be advised immediately in writing of any objection to a post-mortem being conducted so that the post-mortem can be delayed while the objection is being considered. In the *South Australian Annual Report of the State Coroner for 2013-14*, it was reported that Social Workers had met with officers from Court Services Aboriginal Programs to discuss synergies between the Coroners Court and Aboriginal Justice Officers. The aim of


this was to gain a greater understanding of how to assist the Aboriginal and Torres Strait Islander community during times of grief and loss. The South Australian Government has cooperated with pathologists from Forensic Science South Australia in implementing this recommendation.

 *The South Australian Government has partially implemented Recommendation 38, permitting objections to autopsy to be considered and adopting initiatives to consider the cultural sensitivities of Aboriginal and Torres Strait Islander communities as they concern autopsy. However, it does not appear that the Aboriginal Legal Service (ALS) has been consulted or that a protocol has been developed as called for in this recommendation.*


In **Western Australia**, as per section 20 of the *Coroners Act 1996* (WA), a coroner who has jurisdiction to investigate a death must, as soon as practicable after assuming jurisdiction, provide to any of the deceased person's next of kin that a post-mortem examination is likely to be performed on that body. Section 37 of the Act provides that if the senior next of kin of the deceased asks a coroner not to direct a post-mortem examination but the coroner decides that a post-mortem examination is necessary, the coroner must immediately provide, in writing, a notice to the senior next of kin and to the State Coroner. The Office of State Coroner deals with objections to post-mortem with due respect and Office counsellors take a lead role in dealing with the family and their concerns. Within two clear working days after receiving notice of the decision, or before the end of any extension of time granted by the Supreme Court, the senior next of kin may apply to the Supreme Court for an order that no post-mortem examination be performed. Alternatives to physically invasive post-mortem examinations have been announced by the Western Australian Government and a Computed Tomography Scanner has been purchased by the Office of the State Coroner to facilitate less invasive examinations. There is currently no protocol between the Office of the State Coroner and the Aboriginal Legal Service and Aboriginal Health Services.

 *The Western Australian Government has partially implemented Recommendation 38, permitting objections to autopsy to be considered. However, there is no protocol between the Office of the State Coroner and the Aboriginal Legal Service and Aboriginal Health Services.*

Within **Tasmania**, under section 38 of the *Coroners Act 1995* (Tas), where the senior next of kin of the deceased person requests a coroner not to direct that an autopsy be performed but the coroner decides that an autopsy is necessary, the coroner must immediately give notice in writing of the decision to the senior next of kin. Within 48 hours after receiving notice of the coroner's decision to perform an autopsy, the senior next of kin of the deceased person may apply to the Supreme Court for an order that an autopsy not be performed.


 *The Tasmanian Government has partially implemented Recommendation 38, since there is no provision for traditional rites to be performed by family members and it does not appear that Aboriginal Legal Services and Aboriginal Health Services have been consulted.*

Section 23 of the **Northern Territory Coroners Report 1993** (NT) provides that where the senior next of kin of the deceased person asks a coroner not to direct that an autopsy be performed but the coroner decides that the autopsy is necessary, the coroner must immediately give notice in writing of the decision to the senior next of kin. The autopsy must not be performed until 48 hours after the senior next of kin has been given notice, and the next of kin may apply within that time to the Supreme Court for an order that the autopsy not be performed. Under the *NT Coroners Regulations*, section 8(1) specifies that a coroner may allow a person with sufficient interest to attend the conduct of the autopsy.

 *The Northern Territory Government has partially implemented Recommendation 38, and allow for a consultative process between the Coroner and the deceased's next of kin in the event that an autopsy must be performed. However, it does not appear that the ALS has been consulted or that a protocol has been developed as called for in this recommendation.*

In the **Australian Capital Territory**, under section 21 of the *Coroners Act 1997* (ACT), a coroner may direct a doctor to conduct a post-mortem examination of the body of a person, in which the coroner has conducted an inquest. Section 17(a) of the *Act* emphasises that a coroner must have regard to the desirability of minimising the causing of distress or offence to people who, because of

their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by the decision. Under section 70(2), if a coroner does not give authorisation for an immediate family member or representative to be present at the post-mortem examination conducted on the body, the coroner must give written notice of the decision and the reasons for the decision to the person whom the request was made and, if the deceased was an Aboriginal and Torres Strait Islander person, to an appropriate local Aboriginal Legal Service. The Australian Capital Territory Government notes that families are always advised of their rights to formally object to post-mortem examination, and within operational limitations the examination of Aboriginal and Torres Strait Islander people is undertaken as expeditiously and prioritised wherever possible.

 *The Australian Capital Territory Government has mostly implemented Recommendation 38 through the Coroners Act 1997 (ACT) and consultative process in the event that an autopsy must be performed. It does not appear that a protocol has been developed as called for in this recommendation.*

Recommendation 39

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

Background information


The RCIADIC suggested that the State Coroner should extend the scope of the protocol so that the Aboriginal Legal Service and Aboriginal Health Services could be notified to assist in investigations of all Aboriginal deaths brought to the Coroner's attention.

Responsibility

All State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, as discussed within the *Report on the NSW Government's Implementation of the Recommendation of the Royal Commission into Aboriginal deaths in custody*¹⁰, when the death of an Aboriginal person (whether or not in custody) is reported to a Coroner it is usual for the Aboriginal Legal Service to make contact and discuss the matter with the Coroner. While the NSW Attorney-General's Department noted that it supported this recommendation, it was highlighted that due to funding restraints, Aboriginal Court Liaison Officers were only to attend particularly sensitive coronial inquiries into Aboriginal deaths, for example, those which occur in custody.

 *It does not appear that the New South Wales Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

In **Victoria**, under section 15 of the *Coroners Act 2008 (Vic)*, a coroner must investigate the death of a person if it appears to the coroner that the death occurred in Victoria, is a reportable death, occurred within 50 years before the death was reported to a coroner or if an interstate coroner does not intend to investigate the death. Section 25 of the Act specifies that a coroner must direct a medical investigator to perform an autopsy on a body under the control of the coroner if the coroner believes that the autopsy is necessary for the investigation of the death and it is appropriate to give the direction. Section 16 of the Act provides that a coroner must take reasonable steps to notify the senior next of kin in which they are given 48 hours, after receiving notification of death, to object the autopsy. Further section 8(c) of the Act highlights that coroners should have regard to the fact that different cultures have different beliefs and practices. These provisions are not restricted to deaths in custody.

¹⁰ http://www.lawlink.nsw.gov.au/report%5C1pd_reports.nsf/pages/rc99_investigating, accessed September 2017

○ *It does not appear that the Victorian Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

The actions taken by the **Queensland** Government in Recommendation 38 are relevant to this recommendation. Additionally, the 1997 Implementation Report noted that consideration will be given to this recommendation as part of the development of a new Coroner's Act. There does not appear to be any legislation in the *Coroners Act 2003* (Qld) that addresses this recommendation. Further, it is unclear whether a specific protocol has been formed with the Aboriginal Legal Service and Aboriginal Health Services as projected by this recommendation.

○ *It does not appear that the Queensland Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

Within **South Australia**, the action taken by the SA Government to address the issues faced in Recommendation 38 also apply to this recommendation. It is unclear whether a separate protocol has been developed in consultation with the Aboriginal Legal Service and Aboriginal Health Services. Additionally, the South Australian Government notes in their response to this recommendation that action has been taken to accommodate the sensitivities of Aboriginal and Torres Strait Islander families and communities in relation to the retention of organs.

○ *It does not appear that the South Australian Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

The **Western Australian** Government noted within the 2000 Implementation Report, that all known facts relating to the deceased will be given due consideration before a Post Mortem Examination is carried out. Sections 36 and 37 of the *Coroners Act 1996* (WA) provide a right to object and a right to appeal to the Supreme Court to have or not to have a post-mortem examination. The Western Australian Government comments that there is no protocol as the Act's provisions are considered to meet these requirements.

○ *It does not appear that the Western Australian Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

The actions taken by the **Tasmania** Government in response to Recommendation 38 also applies to this recommendation, as it does not appear to specifically apply to deaths in custody. It is unclear whether a separate protocol has been formed in consultation with the Aboriginal Legal Service and Aboriginal Health Services to address this recommendation.

○ *It does not appear that the Tasmanian Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

The actions taken by the **Northern Territory** Government to address Recommendation 38 also apply to this recommendation as it applies to all deaths. It is unclear whether a separate protocol has been developed in consultation with the Aboriginal Legal Service and Aboriginal Health Services to satisfy this recommendation.

○ *It does not appear that the Northern Territory Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

The actions taken by the **Australian Capital Territory** Government to address Recommendation 38 are also relevant to this recommendation, as it is not specifically targeted towards deaths in custody. Further, it is unclear whether a separate protocol has been developed in consultation with the Aboriginal Legal Service and Aboriginal Health Services.

○ *It does not appear that the Australian Capital Territory Government has developed a specific protocol with the Aboriginal Legal Service and Aboriginal Health Services, and as such the requirements of Recommendation 39 are not met.*

Recommendation 40

That Coroners Offices in all States and Territories establish and maintain a uniform data base to record details of Aboriginal and non-Aboriginal deaths in custody and liaise with the Australian Institute of Criminology and such other bodies as may be authorised to compile and maintain records of Aboriginal deaths in custody in Australia.

Background information

The RCIADIC Report found that data collection and reporting are important in identifying systemic failures in custodial practices and thus preventing future deaths in similar circumstances.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In its initial response, the **Commonwealth** supported the establishment of a Monitoring Unit in the AIC which was tasked with monitoring and research into cases of deaths in custody. This Monitoring Unit contributed to the formation of a national database on deaths and custody, and the publication of several monitoring reports.

The National Coronial Information System (NCIS) – launched in July 2000 and now administered by the Victorian Department of Justice – is an internet based data storage and retrieval system for Australian coronial cases. It stores information about every death reported to an Australian Coroner since July 2000 and thereby enables Coroners and research agencies to review previous cases and identify trends. The Commonwealth provides funding for the NCIS.


● *The Commonwealth has implemented Recommendation 40. The NCIS provides the AIC with access to relevant information on deaths in custody.*

In **New South Wales**, under section 37 of the *Coroners Act 2009* (NSW), the State Coroner is required to make a written report to the Minister containing a summary of all deaths, or suspected, deaths in custody. The report is then to be tabled in each House of Parliament within 21 days of the report being made. Further, section 82(4) of the Act provides that the coroner is to ensure that a copy is provided of a record to the State Coroner, any person or body to which a recommendation included in the record is directed, the Minister and any other Minister that administers legislation to which a recommendation in the record relates. Other key agencies also have processes for tracking or reporting relevant deaths. Corrective Services NSW records and reports on all deaths in custody; the Justice Health and Forensic Mental Health Network maintains an annual Death in Custody register that identifies Aboriginal status; and all NSW coronial data are additionally stored in the National Coronial and Information System with that of other jurisdictions.


● *The New South Wales Government has implemented Recommendation 40 through several initiatives: CSNSW records and reports on all deaths in custody; the JH&FMHN maintains an annual Death in Custody register that identifies Aboriginal status; and all NSW coronial data are additionally stored in the National Coronial and Information System with that of other jurisdictions.*

Section 72 of the **Victorian Coroners Act 2008** (Vic), specifies that a coroner may report to the Attorney-General on a death which the coroner has investigated. A Coroner may make recommendation to any Minister, public statutory authority or entity on any matter connected with a death which the coroner has investigated. Section 73 of the Act provides that unless otherwise ordered by a coroner, the findings, comments and recommendations made following an inquest must be published on the Internet. Further, the 2005 Implementation Report noted that the Victorian Government would continue to provide information on all deaths in custody to the Australian Institute of Criminology, which maintains a national database. Section 3.5 of the 2005 Implementation Report


highlighted that the State Coroner, in conjunction with the Victorian Police, had developed a revised 'Report of Death to the Coroner', which includes the Aboriginal and Torres Strait Islander status of the deceased.

 *The Victorian Government has implemented Recommendation 40 through several cooperative initiatives with the Commonwealth. These include the provision of Coronial information to the Australian Institute of Criminology, the publication of findings on the internet, and reporting requirements.*


In **Queensland**, section 93 of the *Coroners Act 2003* (Qld) provides that the Minister may enter into an arrangement with the entity for stated information obtained under the Act to be included in the database. Section 46A of the Act specifies that if a coroner investigates a death at an inquest, the coroner must publish the findings and comments of the investigation on the State Coroner's website, unless the coroner orders otherwise. The coroner must also give a written copy of the findings and comments to the Attorney-General, the appropriate chief executive and Minister. Further to this, section 16.23.5 of the *Operational Procedures Manual, Issue 59, Public Edition*, provides that Investigating Officers, as part of their investigation, should notify the Australian Institute of Criminology of the death as soon as practicable.

 *The Queensland Government has implemented Recommendation 40 through the provision of Coronial information to the Australian Institute of Criminology, the publication of findings on the internet, and cooperation with the Minister in maintaining the database.*


Within **South Australia**, under section 39 of the *Coroners Act 2003* (SA), the State Coroner must make a report to the Attorney-General on the administration of the Coroner's Court and the provision of coronial services under the Act during the previous financial year. The report must include all recommendation made by the Court's Court. The Attorney-General must cause copies of the report to be laid before both Houses of Parliament. Further, section 25(4) of the Act provides that the Coroner's Court must forward a copy of its findings and recommendations to the Attorney-General, a Minister or other agency, to each person who appeared personally or by counsel at the inquest and any other person, who in the opinion of the Court, has sufficient interest in the matter. The National Coronial Information Service also helps to implement this recommendation throughout Australia.

 *The South Australian Government has implemented Recommendation 40 through reporting processes and cooperation with the National Coronial Information Service.*


As discussed in the **Western Australian Coroners Act 1996** (WA), section 26 provides that a coroner, or the coroner's registrar must keep a record of each investigation into a death in a prescribed form. 27(1) of the Act specifies that the State Coroner must report annually to the Attorney-General on the deaths which have been investigated in each year, including a specific report on the death of each person held in care. The Attorney General is to cause a report to be laid before each House of Parliament within 12 sitting days of such House. The State Coroner may make recommendations to the Attorney-General on any matter connected with a death which a coroner investigated. Where recommendations are made regarding a death of a person in care is relevant to the operation of an agency, the State Coroner must inform that agency in writing of the recommendation. Additionally, the Office of the State Coroner maintains a localised database as part of the National Coronial Information System.

 *The Western Australian Government has implemented Recommendation 40 through the Coroners Act 1996 (WA) and participation in the National Coronial Information System.*


In **Tasmania**, as outlined in sections 29 and 30 of the *Coroners Act 1995* (Tas), a coroner or the coroner's associate must keep a record of each investigation into a death and a coroner may report to the Attorney-General on a death which the coroner investigated. Section 69 of the Act provides that the Chief Magistrate must prepare and submit to the Attorney-General a report in relation to the operation of the Act during the preceding financial year. The report must include details of persons held in custody and findings and recommendations made by coroners. The Attorney-General must also cause a copy of the report to be laid on the table of each House of Parliament. It is unclear whether the Australian Institute of Criminology is notified of all deaths in custody.

 *The Tasmanian Government has partially implemented Recommendation 40 through reporting processes under the Coroners Act 1995 (Tas). However, it does not appear that the AIC is notified of all deaths in custody.*

In the **Northern Territory**, as per section 26 of the *Coroners Act 1993 (NT)*, where a coroner holds an inquest into the death of a person held in custody, the coroner must report on the care, supervision and treatment of the person. Section 27 of the Act provides that the coroner must cause a copy of the report and recommendations to the Attorney-General without delay. As highlighted in section 46A of the Act, where the Attorney-General receives a report or recommendations from the coroner that contains comments relating to an agency or the Police Force of the Northern Territory, the Attorney-General must give a copy of the report or recommendations to the Chief Executive Officer of the Agency or the Commissioner of the Police, as the case requires. Further, section 46B provides that if the Chief Executive Officer or the Commissioner of Police receives a copy of a report or recommendations, they must give the Attorney-General a written response to the findings in the report or to the recommendations. The *Police General Order - Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public* also provides that Divisional Officers will assist the AIC in the monitoring of deaths in custody.

 *The Northern Territory Government has implemented Recommendation 40 through the provision of Coronial information to the Australian Institute of Criminology, and reporting requirements.*

In the **Australian Capital Territory**, under section 75(1) of the *Coroners Act 1997 (ACT)*, after the coroner has completed an inquest into a death in custody, the coroner must, in writing, report the findings to the Attorney-General, the custodial agency in who custody the death occurred and the Minister responsible for that agency, the Australian Institute of Criminology, an appropriate Aboriginal Legal Service (if the deceased was Aboriginal and Torres Strait Islander) and any person whom the coroner considers appropriate.

 *The Australian Capital Territory Government has implemented Recommendation 40 through the provision of Coronial information to the Australian Institute of Criminology, and reporting requirements contained under the Coroners Act 1997 (ACT).*

3.4 Adequacy of information (41-47)

Recommendation 41

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

- a. *Maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders);*
- b. *Report annually to the Commonwealth Parliament; and*
- c. *Negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody. Such definition should include at least the following categories:*
 - i) *the death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;*
 - ii) *the death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention;*

- iii) *iii. the death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and*
- iv) *iv. the death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.*

Background information

The RCIADIC Report recognised the importance of publicly available, accurate information about deaths in custody in allaying suspicion and inspiring greater confidence in various administrations.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

As part of the **Commonwealth's** initial response, the National Deaths in Custody Program database was started in 1992 to collect and disseminate data on all deaths that occur in police, correctional, and youth justice services – including the number of deaths, and the trends observed in those deaths. At the inception of the National Deaths in Custody Program, five annual reports were tabled for Commonwealth Parliament. However, following the *1996-97 Annual Report*, no further reports have been tabled for Parliament.

The AIC and police services agreed to monitor and report on deaths in custody. The Consensus Statement, reached in 1994, provides that this collaborative approach will ensure that this recommendation is implemented in a manner which enhances community understanding of deaths in custody, and also minimises the scope for misinterpretation of the data emanating from the monitoring process. The database currently holds information from 1979-80 to 2014-15. Data from the National Deaths in Custody Program are published on a biennial basis in the AIC's Statistical Report.


 *The Commonwealth has mostly implemented Recommendation 41 through the work of the AIC. However, annual reporting to the Parliament has ceased and there is no clear indication of monitoring by the Parliament.*

The **New South Wales** Police Service, Department of Corrective Services, Juvenile Justice NSW and State Coroner's Office all contribute data to the database. A separate database which could identify the deceased on the basis of Aboriginality is maintained for all deaths in custody. This information is regularly provided to the ABS. In relation to part c) of the recommendation, the *1995-96 Implementation Report* also noted that the Commonwealth and the NSW Government had agreed to a uniform definition of deaths in custody, which covered the requirements of this recommendation. The NSW Government commented that the AIC has completed a series of monitoring reports informed by NSW data and that of other jurisdictions.


 *The New South Wales Government has implemented Recommendation 41 through cooperating with the Commonwealth, and the ongoing data collection and associated initiatives of relevant agencies.*

In **Victoria**, as noted in the 1997 Implementation Report, the Correctional Services Division and Victoria Police provide statistical data to the AIC on all Victorian Deaths in Custody. The Report noted that Victoria Police – Internal Investigations Department – is responsible for recording particulars of all deaths in custody.


The Victorian Government also noted in AJA 3 a commitment to collaborating with Victoria Police, Corrections Victoria, the Department of Human Services, and the courts to develop a detailed database which described Aboriginal and Torres Strait Islander over-representation in the justice system. This serves as part of a broader data improvement strategy introduced as part of AJA 3.

 *The Victorian Government has implemented Recommendation 41 through cooperating with the Australian Institute of Criminology with the collection and provision of data, and initiatives by the Victorian Police under the AJA 3.*


The 1997 **Queensland** Implementation Report specified that Recommendation 41 has been implemented. Specifically, statistics are provided to the AIC in two standard categories; deaths in institutional settings and other deaths during custody-related police operations. Queensland Corrective Services also annually reports on deaths from apparent unnatural causes in the Department of Justice and Attorney-General Annual Report, through Service Delivery Statements and the Report on Government Services (ROGS). The definition of a death in custody used in Queensland (as described in Recommendation 6) addresses part c) of this recommendation.

 *The Queensland Government has implemented Recommendation 41 through cooperating with the Australian Institute of Criminology with the collection and provision of data, and the annual reporting initiative of Queensland Corrective Services.*


In **South Australia**, the 1994 Implementation Report highlighted that State Agencies were cooperating with the AIC in relation to this recommendation. For example, DCS keeps a record of all Aboriginal and non-Aboriginal deaths in prison and within 30 days a Death in Custody Notification form is provided to the AIC of a death in custody for the National Deaths in Custody Program. The definition of a death in custody used in South Australia (as described in Recommendation 6) addresses part c) of this recommendation.

 *The South Australian Government has implemented Recommendation 41 through cooperating with the Australian Institute of Criminology with the collection and provision of data, and through their response to Recommendation 6.*

In **Western Australia**, the Office of the State Coroner participates in the NCIS, which allows for collection, analysis and reporting of coronial data from across Australia as part of the National Monitoring of Deaths in Custody. The Department of Justice is currently developing a memorandum of understanding with the AIC for the provision of data on all reportable deaths to the AIC. On a broader scale, the Department of Justice collects ongoing data relating to Aboriginal deaths in custody. This information is sensitive to cause of death, whether from unnatural or natural causes. The definition of a death in custody used in Western Australia (as described in Recommendation 6) addresses part c) of this recommendation.

 *The Western Australian Government has implemented Recommendation 41 through cooperating with the Commonwealth with the collection and provision of data, and through their response to Recommendation 6.*


Within **Tasmania**, as discussed in the 1995 Implementation Report, the Department of Community and Health Services fully supports the national monitoring of statistics and other information on Aboriginal and non-Aboriginal deaths in custody, police custody and juvenile detention centres and related matters. The Tasmanian Government provided that state authorities comply with the requests of the AIC in relation to the establishment of uniform national procedures and methodologies. The Report also noted that Tasmania Police co-operate with the AIC by the provision of statistics and other information. They regularly provide and publish detailed information on the numbers and details of the people passing through their cells. In 2017, the Tasmania Prison Service signed a Memorandum of Understanding with the AIC regarding the Deaths in Custody Program.

 *The Tasmanian Government has implemented Recommendation 41 through cooperating with the Australian Institute of Criminology with the collection and provision of data.*


The 1996-97 **Northern Territory** Implementation Report specified that the NT Government is co-operating with the AIC in line with this recommendation. Further, as per the actions taken by the NT Government for Recommendation 6, the NT definition of a death in custody addresses part c) of this recommendation. This is also supported by the *Police General Order - Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public*, as discussed in Recommendation 40.

The NT Government also noted that deaths in custody by Aboriginal and Torres Strait Islander status are reported to the Productivity Commission and reported as part of the Report on Government Services. Deaths in Police custody are reported separately to apparent unnatural deaths in correctional services custody. The definitions used are standardised across jurisdictions. For Correctional Services, 'apparent unnatural deaths' is defined as the number of deaths where the likely cause of death is suicide, drug overdose, accidental injury or homicide.

A register relating specifically to deaths in NTCS custody is maintained within NTCS.

 *The Northern Territory Government has implemented Recommendation 41 through cooperating with the Australian Institute of Criminology with the collection and provision of data, and has responded to part c) in their response to Recommendation 6.*

The **Australian Capital Territory** Corrective Services and ACT Youth Justice Services provide the necessary details to the AIC of any deaths in custody. The definition of a death in custody used in the ACT (as described in Recommendation 6) addresses part c) of this recommendation.

 *The Australian Capital Territory Government has implemented Recommendation 41 through cooperating with the Australian Institute of Criminology with the collection and provision of data, and has responded to part c) in their response to Recommendation 6.*

Additional commentary

The Commonwealth's National Deaths in Custody Program is Australia's only national data collection with the capacity to collect information on deaths in custody and communicate it to key stakeholders including law enforcement and other government, non-government organisations, academia and the general public. The AIC has maintained a strong commitment to the administration of the National Deaths in Custody Program and the collection and storage of comprehensive trend data on deaths in custody.

Through their administration of the Juvenile Justice National Minimum Data Set, the AIHW also collects information on all young people under youth justice supervision on an annual basis, including their status as an Aboriginal and Torres Strait Islander.

Recommendation 42

That governments require the provision of and publish, on a regular and frequent basis, detailed information on the numbers and details of the people passing through their police cells.

Background information

The RCIADIC Report noted a paucity of information at the national level concerning the demographic characteristics of Aboriginal and Torres Strait Islander people at risk of death in custody.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

At the **Commonwealth** level, the AIC has published annual data on all deaths in custody in all Australian jurisdictions since the inception of the National Deaths in Custody Program, this also includes the numbers and details of Aboriginal and Torres Strait Islander detainees.


The AIC conducted National Police Custody Surveys in 1992, 1995 and 2002, which provided information on the numbers of people in custody, the types of offences for which they are held, their details, and trends in those numbers over the period 1988-2002. The survey was also conducted in 2007, however the results were not available for public release due to issues with data validity and reliability. The AIC undertook a review of the *National Police Custody Survey* in 2011, which concluded that previous data issues may be alleviated by collation of data from electronic custody management systems operating in each jurisdiction. In 2011, the AIC collaborated with the States and Territories through the National Police Custody Monitoring Program to establish electronic custody management systems within each jurisdiction. Data were collected for the period 1 July 2011 to 30 June 2014.

However, these data were also affected by reliability and validity issues and the survey was suspended in 2016. The AIC has undertaken to report on police custody data. This remains an ongoing issue for the AIC. A review of the first data collection using electronic custody data has been completed internally. The next stage will be for the AIC to engage with state and territory data providers to develop the next iteration of data collection.


The ABS conducts the annual National Prison Census (NPC) on persons held in custody in Australian prisons, which is typically published each year through the *Prisoners in Australia* publication. The quarterly ABS publication *Corrective Services in Australia* also contains information on persons in corrective services, including their numbers, gender, demographic information, and Aboriginal and Torres Strait Islander status.

 *The Commonwealth has implemented Recommendation 42 since the AIC has published annual data on all deaths in custody since 1992. While the National Police Custody Survey is not conducted at the moment, the NPC performs a similar function.*


The 1995-96 **New South Wales** Implementation Report stated that the Department of Corrective Services provides relevant information sourced from the NSW Prison Census to the NSW Attorney-General and Bureau of Crime Statistics and Research. Further, the NSW Police Service publishes data on the number and details of all persons passing through police cells, including Aboriginal status. The data are published in the monthly and Annual Activity Reports produced by the Statistical Service Branch, Strategy and Review Command and provided to the Police Ministry.

 *The New South Wales Government has implemented Recommendation 42. NSW Police Service publishes data on the number and details of all persons passing through police cells. There are a number of other initiatives which also support the implementation of this recommendation in New South Wales.*


In **Victoria**, data on the number and details of people in police cells are not routinely published or made publicly available, although this information has been produced for specific reports and inquiries as required. While statistics relating to people held in prisons are routinely produced, the scope of these collections does not generally include people held in police cells.

 *The Victorian Government has not implemented Recommendation 42. Data on the number and details of people in police cells are not routinely published or made publicly available.*

The **Queensland** 1996-97 Implementation Report highlighted that the-then Queensland Police Services Indepol recording system could not provide all of the required data. It was anticipated that the integrated Queensland Police Services Polaris Computer System would facilitate provision of detailed custody information when stage 3 was to be completed. There is currently no ability to extract data from the QPS Queensland Police Records and Information Management Exchange (QPRIME).

 *The Queensland Government has partially implemented Recommendation 42, while the data are collected it is not possible to extract all of the data from the QPRIME system for publication.*


The **South Australian** Government notes that South Australia Police collects and collates the number of people arrested, for which offence, gender, and whether the offender is a juvenile or an adult. These data are detailed in the South Australian Police Annual Report.

 *The South Australian Government has implemented Recommendation 42 through the collection and collation of statistics on the number of people arrested, for which offence, gender, and status as a juvenile or adult. These statistics are provided in an annual report.*


In **Western Australia**, as noted by the 2000 Implementation Report, the process for data collection had been put in place, however, further examination of the data collected prior to the publication of the annual report revealed variances and inconsistencies in that data that would not present an accurate representation of the information. For this reason, the information was not included in the annual report. Prior to this, for the preceding five years the Western Australian Police Services (WAPS) published in its annual report lock up admission for drunken detainees and comparative

figures for sobering up shelters. WAPS noted that it was improving its information system through the development of a major information system infrastructure and software upgrade.


The Western Australian Government noted that it captures data relating to people passing through police cells. A broad range of custodial data continues to be published regularly. This includes State Government Annual Reports, statistics pages on justice departments' websites, and Western Australian data published in the Productivity Commission's Report on Government Services.

 *The Western Australian Government has mostly implemented Recommendation 42 through the collection of data on the number of people passing through police cells. It is not clear that these data are published regularly.*

The 1993 **Tasmanian** Implementation Report noted that the process described in this recommendation was current practice within the state. Further, the 1995 Implementation Report noted that the Tasmanian Police regularly provided and published details on the numbers and details of the people passing through their cells. This requirement was formalised in Tasmania Police Policy Document No, 9/92 issued in November 1992. Currently, the Tasmania Prison Service does not publish this information for watch-house cells.


 *The Tasmanian Government has mostly implemented Recommendation 42 through the publication of statistics on the number of people, as provided for in Tasmania Police Policy Document No 9/92. However, these statistics are not published currently for watch-house cells.*

Within the **Northern Territory**, as specified in the 1994-95 Implementation Report, information on the number of people by race and gender for Protective Custody is published in the Northern Territory Police, Fire and Emergency Services Annual Reports. Further statistical information comparing Aboriginal and non-Aboriginal arrest rates was included in the Annual Implementation Report. Care was taken to protect the privacy of individuals, and information which could identify individuals was not published.

 *The Northern Territory Government has mostly implemented Recommendation 42 through the publication of statistics on the number of people in Protective Custody separated by race and gender immediately following RCIADIC. It is not clear if these arrangements remain current.*

The 1995-96 **Australian Capital Territory** Implementation Report noted that the information required in Recommendation 42 was readily available from the Regional Watch House Online Charging System and was published in the Australian Federal Police annual report to the ACT Government. However, this information was not published in the most recent ACT Policing Annual Report.¹¹

The ACT Government responded that ACT Policing will make amendments to ensure this information is included in the ACT Policing Annual Report.

 *The Australian Capital Territory Government has mostly implemented Recommendation 42 through the publication of statistics in the Regional Watch House Online Charging System. However, annual reporting has ceased.*

Recommendation 43

That a survey such as the 1988 National Police Custody Survey be conducted at regular intervals of, say, two to five years, with the aim of systematically monitoring and evaluating the degree to which needed improvements in legislation, attitudes, policies and procedures that affect police custody are implemented.

Background information

The 1988 National Police Custody Survey provided information including the timing and reasons for the detainee's incarceration, and details relating to the number of detainees and trends observed. The

¹¹ <https://www.police.act.gov.au/sites/default/files/PDF/ACT%20Policing%20Annual%20Report%202015-2016.PDF>

establishment of a regular monitoring program would increase the volume of information available about Aboriginal and Torres Strait Islander people in detention at the national level.

Responsibility

This Recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** Government has addressed this recommendation through data collection, discussed in relation to the implementation of Recommendation 42.

● *The Commonwealth has implemented Recommendation 43. While the National Police Custody Survey is not conducted at the moment, the NPC performs a similar function. The data collected by through the NPC could be used for evaluating legislation, attitudes, policies and procedures.*

Recommendation 44

That the Australian Institute of Criminology co-ordinate and implement the recommended series of national surveys. The experience of the first national survey points to the fact that careful planning with all the relevant authorities will be needed to ensure that the maximum amount of useful information is derived from the surveys.

Background information

The RCIADIC Report noted a paucity of information at the national level concerning the demographic characteristics of Aboriginal and Torres Strait Islander people at risk of death in custody. It further notes the importance of data collection in the identification of trends, monitoring of detainees, and the prevention of future deaths in custody.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** Government has addressed this recommendation through data collection, discussed in relation to the implementation of Recommendation 42.

● *The Commonwealth has implemented Recommendation 44. The National Police Custody Survey is temporarily suspended while data issues are resolved. However, the NPC performs a similar function, noting it is run by the ABS.*

Recommendation 45

That the appropriate Ministerial Councils strive to achieve a commonality of approach in data collections concerning both police and prison custody.

Background information

It is important that information on people in custody be comparable across the States and Territories, and be in a form that enables data to be aggregated to produce a national overview, in order to identify systematic failures and thereby reduce the occurrence of future deaths in custody.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth's** AIC contributed to the implementation of this recommendation through the National Deaths in Custody reports and the National Deaths in Custody Program (see Recommendation 41).

Currently, the ABS and the AIHW are responsible for the development of nationally consistent police and corrections data. The ABS produces nationally consistent comparable adult corrections statistics. The ABS continues to further refine data in collaboration with States and Territories, in ensuring that


the comparability of statistics across jurisdictions is maintained. The ABS noted that their collections do not include information on deaths in custody and do not include data relating to police custody (police cells are currently out of scope of the ABS collections). The AIHW's Juvenile Justice National Minimum Data Set provides information on the number of young people supervised by youth justice agencies in each State and Territory.

 *The Commonwealth has implemented Recommendation 45. Significant progress has been made by the AIC, ABS and AIHW in the collection of nationally-consistent data. Data provided by the Northern Territory do not meet the nationally agreed minimum data standards for inclusion in the Juvenile Justice National Minimum Data Set, which is outside of the Commonwealth's responsibility.*


The **New South Wales** Government highlighted in the 1995-96 Implementation Report that a commonality of approach exists in the censuses of persons held in police and prison custody sponsored by the AIC, which are conducted annually. Standardised reporting on a range of prison metrics are included in the annual ROGS, and the NPC.

 *The New South Wales Government has implemented Recommendation 45 through cooperation with national initiatives.*


The 1994 **Victorian** Implementation Report provided that both the Victoria Police and the Correctional Services Division participate in national statistical collection processes in which agreement on the commonality of data generally occurs. Additionally, the Report highlighted all corrections jurisdictions participate in the National Corrections Statistics Committee, which is a committee under the National Corrections Administrators Conference. Similarly, the Victoria Police participates in the AIC sponsored census of person held in police custody, which involves all States and Territories.

 *The Victorian Government has implemented Recommendation 45 through participation in national initiatives which are focused on achieving a standard approach to data collection.*


In **Queensland**, as noted within the 1996-97 Implementation Report, the Queensland Police Service provides standardised custody information to the AIC. The Queensland Corrective Services Commission has consulted and cooperated with the AIC in data collection. It has met all requests for data from that organisation. Further to this, the Department of Families, Youth and Community Care Client Information System had incorporated relevant data requirements to ensure compatibility with other Queensland Government systems.

 *The Queensland Government has implemented Recommendation 45 through the provision of standardised data to the AIC, and the adoption of state-wide consistent data reporting practices.*

The 1994 **South Australian** Implementation Report noted that the Australian correctional agencies had already achieved a commonality of approach in data collections.

 *The South Australian Government has implemented Recommendation 45 through cooperation with national initiatives.*

The **Western Australian** Government continues to participate in the national data collection of prison data in accordance with the agreed national approach. The State also produces data on the rate of adult recidivism for return to prison, return to community corrections and return to corrections (i.e. prison or community corrections).

 *The Western Australian Government has implemented Recommendation 45 through cooperation with national initiatives.*

In **Tasmania**, as highlighted in the 1995 Implementation Report, Tasmania Police contributed to the development of existing data collection system. The Tasmanian Department of Justice currently participates in the collection of national correctional statistics through the National Corrections Statistics Group.

- *The Tasmanian Government has implemented Recommendation 45 through cooperation with national initiatives.*

The 1994-95 **Northern Territory** Implementation Report provided that both the Department of Correctional Services and the Northern Territory Police cooperate with the AIC on a continuing basis, and both endeavour to comply with the requirements of their Ministerial Councils. The NTCS records of offenders are maintained within an Integrated Offender Management System which has information from the Police Integrated Justice Information System.

- *The Northern Territory Government has implemented Recommendation 45 through the provision of standardised data to the AIC on a continuing basis, and the development of an Integrated Offender Management System.*

The **Australian Capital Territory** Government noted that ACT Corrective Services works with the Commonwealth and other jurisdictions to achieve a common approach.

- *The Australian Capital Territory Government has implemented Recommendation 45 through cooperation with the Commonwealth and other jurisdictions to achieve a common approach.*

Recommendation 46

That the national deaths in custody surveys which I have recommended be undertaken by the Australian Institute of Criminology include the establishment of uniform procedures and methodologies which would not only enhance the state of knowledge in this area but also facilitate the making of comparisons between Australian and other jurisdictions, and facilitate communication of research findings.

Background information

The RCIADIC Report identified the attaining of comparable data as a significant problem in criminological research conducted across jurisdictions.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** Government's National Deaths in Custody Program records information on deaths in prison and police custody based on definitions developed specifically for the collection and in response to the Recommendations of RCIADIC. The definition of a death occurring in police custody is based on a resolution of the Australasian Police Ministers' Council in 1994 and captures Category 1 deaths (1a. deaths in institutional settings and 1b. other deaths in police operations where officers were in close contact with the deceased) and Category 2 deaths (other deaths during custody-related police operations).

Information held in the National Deaths in Custody Program database is based on two main data sources: completed data collection forms from state and territory police and corrective services; and coronial reports including toxicology, police reports, post-mortem accounts and proceeding and findings transcripts. At the commencement of the National Deaths in Custody Program a data collection template was developed in consultation with police and correctional custodial agencies in each jurisdiction. The template includes standardised data items that are consistently collected across jurisdictional custodial agencies, thus allowing for comparisons between States and Territories and the preparation of national data. The National Deaths in Custody Program uses the NCIS (see recommendation 40) as a confirmatory measure of the primary data provided by police and corrective services. To ensure accuracy of data, the AIC maintains a strict verification process whereby data on deaths in custody are sent to each data provider at the end of a financial year for confirmation. Before releasing any data on deaths in custody the AIC confirms findings with data providers to ensure they match.

- *The Commonwealth Government has implemented Recommendation 46. The AIC continues to operate National Deaths in Custody Program with strict adherence to the methodology and processes outlined above.*

Recommendation 47

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

Background information

The RCIADIC highlighted that a significant deficiency had been the fact that for some jurisdictions, there had been a relatively high number of cases for which the Aboriginality or non-Aboriginality of the prisoners was not stated.


Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the NSW Department of Justice Corrective Services division conducts and publishes an annual Inmate Census as part of the NPC conducted by the ABS. The annual Inmate Census contains statistics on inmates held in full-time prison, police and juvenile centre custody and includes statistical details as to the legal and Aboriginal status of all persons held. The results of the annual Inmate Census are published on the Corrective Services website.


Further to this, the Minister of the NSW Department of Justice is required to table to State Parliament the operations of that financial year in accordance with the *Annual Report (Departments) Act 1985* (NSW). The published Bureau of Crime Statistics and Research quarterly custody statistics provide reception, discharge and custody population data and information on age, gender, Aboriginal status, most serious offence and the average length of stay. Separate figures are presented for juveniles and adults.

 *The New South Wales Government has implemented Recommendation 47 through the Department of Justice Annual Report which is tabled to State Parliament annually by the relevant Minister. A range of other data publications are also published annually, and contain the data referred to in this recommendation.*

In **Victoria**, the Department of Justice Annual Report includes prison service statistics which includes the total annual daily average number of prisoners, the total number of deaths in custody and the total number of Aboriginal and Torres Strait Islander deaths in custody. The Annual Report also comprises of statistics of those persons who identify as being of Aboriginal and Torres Strait Islander background. These annual reports are tabled to State Parliament annually by the relevant Minister in accordance with this recommendation. This is also supported by initiatives introduced under AJA 3 in response to Recommendation 42.


 *The Victorian Government has implemented Recommendation 47 through the Department of Justice Annual Report which is tabled to State Parliament annually by the relevant Minister.*

Queensland Corrective Services produces annual reports containing statistical data on offending persons. The annual reports include statistics on the proportion of Aboriginal and Torres Strait Islander prisoners (custodial) and proportion of prisoners who are Aboriginal and Torres Strait Islander (probation and parole). It is unclear whether the Minister is required to table the report to State Parliament. The Department of Justice and Attorney-General also provides an annual report to Parliament supplying the statistical data required in this recommendation.


 *The Queensland Government has implemented Recommendation 47 through the Department of Justice and Attorney-General annual reporting requirements, and the reports from Queensland Corrective Services.*

In **South Australia**, the Department of Correctional Services Annual Report provided detailed statistics on persons in custody for that year including whether or not the persons detained are of


Aboriginal and Torres Strait Islander background. Appendix 4 of the 2015-16 Annual Report details Prisoner Statistical Information, which includes whether the prisoner is sentenced, un-sentenced or unknown and Aboriginal and Torres Strait Islander, non-Aboriginal and Torres Strait Islander or unknown. Further to this, under section 9 of the *Correctional Service Act 1982* (SA), the Chief Executive of the Department must submit to the Minister the annual report which must be tabled in each House of Parliament. However, the South Australian Government notes that these statistics are no longer provided in the Department of Correction Services Annual Report. Instead, statistics are provided through ROGS which is publicly available but does not have a formal requirement to be reported to Parliament.

 *The South Australian Government has mostly implemented Recommendation 47 through the Department of Corrective Services Annual Report which was tabled to State Parliament annually by the relevant Minister. However, this is no longer current practice, and while data are published they do not have to be tabled in Parliament.*

In **Western Australia**, a broad range of custodial data continues to be published regularly. This includes State Government Annual Reports, statistics pages on justice departments' websites, and Western Australian data published in the Productivity Commission's Report on Government Services. The Western Australia Police Force is currently taking action to commence publishing data on the number of persons held in police custody to supplement the data already available.

 *The Western Australian Government has mostly implemented Recommendation 47 through the publication of custodial data. However, the data made public currently does not identify the number of persons held in police custody.*

The **Tasmanian** Justice Department produces an annual report with a chapter on Corrective Services. The Corrective Services chapter includes detailed statistics on those persons in custody, including whether they are Aboriginal and Torres Strait Islander or non-Aboriginal and Torres Strait Islander. However, the annual report does not include information relating to the legal status of those persons in custody. In accordance with section 36 of the *State Service Act 2000* (Tas), the annual reports are required to be tabled before the State Parliament. The 2016-17 Department of Justice Annual Report does not include the information referred to by this recommendation. Tasmania also contributes to the ABS Prisoners in Australia (prisoner census as at 30 June each year) which does contain State and Territory data and specific information regarding the prisoner population including legal status, Aboriginal and Torres Strait Islander status and most serious offence or charge.

 *The Tasmanian Government has mostly implemented Recommendation 47 through the Justice Department's annual report and provisions made under the State Service Act 2000 (Tas). However, the 2016-17 Department of Justice Annual Report does not include all of the data specified in the recommendation.*

The **Northern Territory** Police, Fire and Emergency Services annual report includes statistics on the type and number of offences the number of persons held in police protective custody by Indigenous status. For prison and juvenile centre custody, these data are reported through the Productivity Commission, ABS and AIHW data collections. In particular, the ABS National Prisoner Census presents information about adult prisoners held in custody in Australian prisons (in the NT this includes gazetted police prisons administered and controlled by the Director of Corrective Services). Statistics are derived from information collected by the ABS from administrative records held by corrective service agencies in each state and territory. A range of information is presented on the demographic and legal characteristics of prisoners such as age, sex, country of birth, Indigenous status, legal status, prior imprisonment, most serious offence/charge, aggregate sentence and length of sentence being served, as well as time on remand.

Currently, the NTCS has a system in place that requires daily information that includes the number of Aboriginal and Torres Strait Islander people in custody to be emailed to the Minister. The Research and Statistics Unit of the NTCS supports the implementation of this recommendation through the collection and dissemination of statistics, including the NTCS Annual Statistics.

- *The Northern Territory Government has implemented Recommendation 47 through the Police, Fire and Emergency Services annual report, national data collections and the Research and Statistics Unit of the NTCS. Regular updates are also provided to the Minister.*

In the **Australian Capital Territory**, the Justice and Community Safety Directorate of the ACT publishes the ACT Criminal Justice Statistical Profile which contains information relating to persons held in prisons and youth justice centres. The Profile contains statistical details of the Aboriginal and Torres Strait Islander status, gender, offence and legal status (including on remand or sentenced) of those held in custody. ACT Policing provide data on the number of apprehensions (persons taken into police custody) for inclusion in the Profile. The Profile data are compiled quarterly and then tabled in the ACT Parliament. ACT Corrective Services also provides data annually to the Elected Body.

- *The Australian Capital Territory Government has implemented Recommendation 47 through the ACT Criminal Justice Statistical Profile.*

4 The justice system

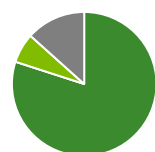
The recommendations in this chapter relate to: Aboriginal society today (48-57); relations with the non-Aboriginal community (58-59); the criminal justice system – relations with police (60-61); and young Aboriginal people and the juvenile justice system (62).

Key themes from recommendations (15 recommendations)

- There needs to be an improvement in research procedures and data collection relating to Aboriginal and Torres Strait Islander people, particularly to ensure Aboriginal and Torres Strait Islander people are involved in undertaking the research and that their informed views are incorporated.
- Governments should provide those adversely affected by previous policies with the necessary resources to re-establish community and family links. Support should also be provided to keep Aboriginal and Torres Strait Islander languages alive and to encourage the telling of their history and culture to all Australians.
- Governments should ensure that policing is consistent across those with non-Aboriginal and Torres Strait Islander and Aboriginal and Torres Strait Islander backgrounds.
- There is an urgent need to take action to reduce the number of Aboriginal and Torres Strait Islander youth who are coming into contact with the welfare system and the criminal justice system, and are being separated from their families and communities.

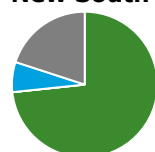
Legend Complete Mostly Complete Partially Complete Not Implemented Out of Scope

Commonwealth | Key actions taken to date: The Commonwealth has developed strategies and provided funding to improve community safety and address the drivers of Aboriginal and Torres Strait Islander incarceration. The *National Aboriginal and Torres Strait Islander Social Survey* (NATSISS) collects data on the social and economic wellbeing of Aboriginal and Torres Strait Islander people. Ethical guidelines have also been developed to govern research involving Aboriginal and Torres Strait Islander people.



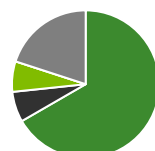
Remaining gaps: The RCIADIC recommended an inventory of community infrastructure be established. The ABS collected data on housing and infrastructure in Aboriginal and Torres Strait Islander Communities, however these data are no longer collected.

New South Wales | Key actions: The New South Wales Government has established OCHRE which focuses on developing community partnerships to address cultural, educational, and economic empowerment issues covered in these recommendations. Funding is provided for Link-Up NSW, and legislation has responded to the abuse of alcohol and drugs, the Aboriginal Child Placement Principle and the essential role of child care agencies.



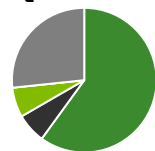
Remaining gaps: In New South Wales, there are no legal mechanisms to provide the right of appeal to persons excluded from a hotel.

Victoria | Key actions: The Victorian Government has established a Human Research Ethics Committee to implement NHMRC guidelines governing research involving Aboriginal and Torres Strait Islander people. Legislation has been introduced in response to child placement and child agencies, as well as the misuse of alcohol and drugs among Aboriginal and Torres Strait Islander people.



Remaining gaps: The Victorian Government has introduced measures to partially address each of these recommendations. However, greater attention should be paid to ensuring the responsible service of alcohol and the policing of provisions made by Licensing Acts.

Queensland | Key actions: The Queensland Government has addressed recommendations relating to the involvement of Aboriginal and Torres Strait Islander people in health research through incorporating the NHMRC guidelines. Link-Up Queensland is jointly funding by both the Commonwealth and Queensland governments, and legislation has been introduced in response to recommendations relating to child placement.



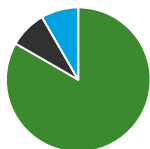
Remaining gaps: While Queensland has introduced measures which mostly implement the recommendations in this chapter, measures do not currently exist to ensure procedures are developed for the granting access to family records outlined in Recommendation 57.

South Australia | Key actions: The South Australian Government has implemented the NHMRC guidelines through the function of the Aboriginal Health Research Ethics Committee. Legal aid has been provided for Aboriginal and Torres Strait Islander people through Nunkuwarrin Yunti's Link-Up South Australia Program. The underlying drivers of Aboriginal and Torres Strait Islander incarceration, including health and social issues, have been addressed through legislative response and the introduction of programs.



Remaining gaps: The South Australian Government has partially addressed each of the recommendations in this chapter. However, greater priority should be given to the continued amendment of liquor laws in providing a right to appeal a ban.

Western Australia | Key actions: The Western Australian Government has addressed recommendations related to health research and implemented NHMRC guidelines through the Western Australian Aboriginal Health Ethics Committee (WAAHEC). Funding is provided to the Yorgum Aboriginal Corporation for the administration of Link-Up WA. Programs have also been implemented to address factors underlying Aboriginal and Torres Strait Islander cultural issues, and to provide opportunities for the sharing of culture.



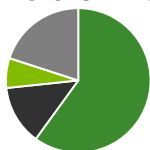
Remaining gaps: For a more complete implementation, further action is required towards the provision of access to government archival records and assistance to Aboriginal and Torres Strait Islander people researching family history.

Tasmania | Key actions: The Tasmanian Government has incorporated the NHMRC's guidelines and addressed recommendations relating to the involvement of Aboriginal and Torres Strait Islander people in research through the Health and Medical Human Research Ethics Committee. A range of legislation and policy initiatives have been introduced to address underlying drivers of Aboriginal and Torres Strait Islander incarceration, including efforts in respect to child placement and the misuse of drugs and alcohol.



Remaining gaps: Link-Up does not operate in Tasmania, and it does not appear that the Tasmanian Government makes funding available expressly for legal representation for the families of Aboriginal and Torres Strait Islander deceased. It does not appear that processes exist for granting access to family records.

Northern Territory | Key actions: The Northern Territory Government has addressed the underlying drivers of Aboriginal and Torres Strait Islander incarceration through a range of legislative and policy initiatives. In relation to recommendations concerning the involvement of Aboriginal and Torres Strait Islander people in health research, two committees (the Top End HREC and the Central Australian HREC) are responsible for approving health-related research.



Remaining gaps: While the Northern Territory has partially addressed each of the recommendations in this chapter, greater attention should be paid to the provision of funding for organisations such as Link-Up with respect to helping to re-establish family connections.

Australian Capital Territory | Key actions: The Australian Capital Territory Government has introduced legislation and policy responses to address issues including child placement and the misuse of drug and alcohol among Aboriginal and Torres Strait Islander people. Recommendations related to Aboriginal and Torres Strait Islander participation in health research have been addressed through the Research Ethics and Governance Office which incorporates the NHMRC guidelines.



Remaining gaps: The Australian Capital Territory Government is required to take further actions in regards to the provision of funding for organisations such as Link-Up in assisting Aboriginal and Torres Strait Islander people to re-establish family connections. Provision of access to government archival records should also be considered.

4.1 Aboriginal society today (48-57)

Recommendation 48

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

Background information

Standard social indicators may be inappropriate to monitor and/or evaluate programs concerning Aboriginal and Torres Strait Islander people. The collection and use of data should reflect the priorities of Aboriginal and Torres Strait Islander people.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


At the **Commonwealth** level, the NATSISS was developed by the ABS in consultation with a range of stakeholders including the Aboriginal and Torres Strait Islander community, peak bodies, research groups, government and academia. The NATSISS enables monitoring of the social and economic well-being of Aboriginal and Torres Strait Islander people.

The ABS is also involved in Aboriginal and Torres Strait Islander reference groups, including the ABS-led Round Table on Aboriginal and Torres Strait Islander Statistics which consults at a grassroots level with individuals on operational and cultural aspects related to Aboriginal and Torres Strait Islander statistics and collections.

The National Health and Medical Research Council (NHMRC) has developed ethics guidelines in relation to health research. The guidelines, which include Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research and Keeping Research on Track: A guide for Aboriginal and Torres Strait Islander people about health research ethics (2005), define principles for meaningful collaboration between researchers and Aboriginal and Torres Strait Islander communities.


The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has introduced Guidelines for Ethical Research in Australian Indigenous Studies, which emphasise the importance of consultation with Aboriginal and Torres Strait Islander people.

PM&C has developed a biennial Aboriginal and Torres Strait Islander Health Performance Framework Report series, which includes consultation and advice from Aboriginal and Torres Strait Islander people and bodies. The reports cover measures of health outcomes, determinants, and health system performance.

 *The Commonwealth has implemented Recommendation 48 by introducing guidelines and data sets that give effect to collaboration between researchers and Indigenous communities, across health and non-health research domains.*

In **New South Wales**, the annual implementation reports for 1993-1996 noted that the NSW Government was consulting with Aboriginal communities to develop social indicators that effectively monitored policies and programs, ensuring that community aspirations were taken into account, and this information would be available to the communities concerned. This commitment has been maintained as demonstrated through OCHRE. OCHRE is the NSW Government's community-focused plan for Aboriginal affairs, and invests in language and culture, healing, Aboriginal governance, education and employment. OCHRE has consulted with communities to determine the measure of success, data for collection, approach to analysis, and the publication of the report. Additionally,

where a research project in the NSW Health system focuses on, or separately collects data relating to Aboriginal people as a group, separate approval must be sought from the Aboriginal Health and Medical Research Council Ethics Committee.


 *The New South Wales Government has implemented Recommendation 48 through ongoing consultation with Aboriginal communities and the function of the Aboriginal Health and Medical Research Council Ethics Committee.*

In **Victoria**, when a research proposal involves Aboriginal people, the researcher is obliged to consult with the relevant Aboriginal Community and seek approval for the project before it is assessed by a Human Research Ethics Committee (HREC). A previous report by the Onemda Koori Health Unit observed that this approval occurs on an 'ad hoc' basis rather than through a formal process, concluding that "it was clear that Aboriginal Communities in Victoria want Aboriginal people to have more control of how ethics is assessed when the research affects their Communities." The Victorian Government notes that current practice is that HRECs have processes in place that consistently review research applications in accordance with the NHMRC statement and refer concerns relating to the perspective of Aboriginal and Torres Strait Islander people back to their relevant Aboriginal and Torres Strait Islander units for follow-up.


Applications to conduct research and evaluations submitted to the Justice HREC are reviewed in accordance with the NHMRC Statement on Ethical Conduct in Human Research, and Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Research (2003). Additionally, the Justice HREC requires all applications involving Aboriginal and Torres Strait Islander people to be accompanied by a letter of support from the DJR Koori Justice Unit, thus ensuring that the application methodology reflects Aboriginal and Torres Strait Islander perceptions and is culturally appropriate. Further, the JHREC has an additional membership category for a Koori representative (a measure over and above what is required for NHMRC accreditation for a HREC). This measure helps to ensure that research conducted: is culturally appropriate; includes processes to minimise and monitor potential negative consequences; and considers the six core values of reciprocity, respect, equality, responsibility, survival, protection, and spirit and energy.

It is Corrections Victoria Research Committee policy to consult with both the Naalamba Ganbu and Nerrlinggu Yilam Program Branch about any proposed research that has a focus on Aboriginal and Torres Strait Islander people, or seeks to inform programs or policies for Aboriginal and Torres Strait Islander prisoners or offenders.


The Victorian Government has also introduced a data collection strategy under AJA 3 to facilitate a better integration of the views of Aboriginal and Torres Strait Islander people into program evaluation. This program involves consultation with government and community partners, including Aboriginal and Torres Strait Islander organisations.

 *The Victorian Government has implemented Recommendation 48 through the HREC and data collection initiatives introduced under AJA 3. However, for full implementation more effort is required in integrating the perspectives of Aboriginal and Torres Strait Islander people into ethics approval processes.*

Queensland incorporates the NHMRC guidelines into its ethics assessments for research involving Aboriginal and Torres Strait Islander people. The Queensland Government notes that the Department of Aboriginal and Torres Strait Islander Partnerships is developing a new Performance Assessment Framework in collaboration with the Office of the Queensland Government Statistician to measure community level indicators.

 *The Queensland Government has mostly implemented Recommendation 48 through adoption of the NHMRC guidelines into ethics approval for research involving Aboriginal and Torres Strait Islander people, and the work of the Department of Aboriginal and Torres Strait Islander Partnerships in constructing a new Performance Assessment Framework. However, it is not clear on what basis Aboriginal and Torres Strait Islander people are consulted.*


South Australia has a separate Aboriginal Health Research Ethics Committee responsible for reviewing research involving Aboriginal and Torres Strait Islander people or communities. The Committee is guided by the NHMRC guidelines. When the Office of Crime Statistics and Research undertakes program evaluations with an Aboriginal and Torres Strait Islander component, approval is sought from this committee.

 *The South Australian Government has implemented Recommendation 48. South Australia has a separate Aboriginal Health Research Ethics Committee responsible for reviewing research involving Aboriginal and Torres Strait Islander people, guided by NHMRC guidelines. However, the level of consultation with Aboriginal and Torres Strait Islander communities is unclear.*


The **Western Australian** Aboriginal Health Ethics Committee (WAAHEC) manages the consultation of communities and organisation to ensure that research projects are ethically sound and benefit Aboriginal and Torres Strait Islander people. Additionally, the Western Australian Government is undertaking consultation with Aboriginal and Torres Strait Islander communities for refreshed Closing the Gap targets. The Regional Services Reform Unit has also recently undertaken on-the-ground consultation with remote Aboriginal and Torres Strait Islander communities to equip communities with a greater representative voice.

 *Western Australia has implemented Recommendation 48 through ongoing consultation with Aboriginal and Torres Strait Islander communities, and the operational function of WAAHEC.*


Tasmania's Health and Medical Human Research Ethics Committee incorporates the NHMRC guidelines into its ethics assessments for research for involving Aboriginal and Torres Strait Islander people.

 *The Tasmanian Government has mostly implemented Recommendation 48 through compliance with the NHMRC guidelines. However, the level of consultation with Aboriginal and Torres Strait Islander communities is unclear.*

In the **Northern Territory**, two committees (the Top End HREC and the Central Australian HREC) are responsible for approving health-related research. Both require researchers to comply with NHMRC guidelines, and if working in Aboriginal and Torres Strait Islander communities, researchers must demonstrate that they have community approval.

 *The Northern Territory Government has implemented Recommendation 48 through the Top End HREC and the Central Australian HREC, which require compliance with NHMRC guidelines and the approval of Aboriginal and Torres Strait Islander communities where research involves Aboriginal and Torres Strait Islander people.*

The **Australian Capital Territory** Research Ethics and Governance Office incorporates the NHMRC guidelines into its decisions on researching involving Aboriginal and Torres Strait Islander individuals. The Office for Aboriginal and Torres Strait Islander Affairs is currently working with the Aboriginal and Torres Strait Islander Elected Body and local Aboriginal and Torres Strait Islander communities to develop the Aboriginal and Torres Strait Islander Agreement 2019-24, which will incorporate an Outcomes Framework and a shift towards population-based outcomes.

 *The Australian Capital Territory Government has implemented Recommendation 48 through the incorporation of NHMRC guidelines into decisions on research involving Aboriginal and Torres Strait Islander people.*

Recommendation 49

That proposals for a special national survey covering a range of social, demographic, health and economic characteristics of the Aboriginal population with full Aboriginal participation at all levels be supported. The proposed census should take as its boundaries the ATSIIC boundaries. The Aboriginal respondents to the census should be encouraged to nominate their traditional/contemporary language affiliation. I further recommend that the ATSIIC Regional Councils be encouraged to use the special census to obtain an inventory of community infrastructure, assets and outstanding needs which can be used as data for the development of their regional plans.

Background information


A special national survey would provide useful information about Aboriginal and Torres Strait Islander populations across a wide range of areas of social concern including health, education and economic outcomes. These data could be used to inform policy-making for Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


At the **Commonwealth** level, the ABS produces NATSISS (see Recommendation 48) and the National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) which deliver a broad range of social, demographic, health and economic statistics. Further sociocultural information, including language spoken at home and difficulty understanding English, is collected in the Census. The ABS collected data on housing and infrastructure in Aboriginal and Torres Strait Islander Communities in 1999, 2001 and 2006 through the Community Housing and Infrastructure Needs Survey. The survey was funded by the then Department of Families, Housing, Community Services and Indigenous Affairs. The data are no longer collected by ABS. The ABS uses the Australian Statistical Geography Standard which includes Indigenous regions – thus, information is available based on Aboriginal and Torres Strait Islander geography from all publications listed above.

 *The Commonwealth has partially completed Recommendation 49 through the implementation of NATSISS and NATSIHS. The Commonwealth no longer funds the collection of data on community housing and infrastructure, noting this responsibility originally lay with ATSIC Regional Councils.*


New South Wales observed in its 1992-93 Implementation Report that it would co-operate with the Commonwealth in establishing such a survey. The NATSISS was first conducted by the Australian Bureau of Statistics in 1994 responds to this recommendation. The latest survey was conducted in 2014-15.

 *The New South Wales Government has implemented Recommendation 49 through cooperating with the Commonwealth's national surveys of Aboriginal people.*


The **Victorian** Government observed in its 1994 Implementation Report that it supported the ABS in its national survey of Aboriginal and Torres Strait Islander people. In its 1996-97 Implementation Report, the Government stated it was developing a pilot project in conjunction with the Commonwealth to address the issues of Aboriginal participation in data collection focusing on health.

 *The Victorian Government has implemented Recommendation 49 through cooperating with the Commonwealth's national surveys of Aboriginal and Torres Strait Islander people.*

The **Queensland** Government, in its 1996-97 Implementation Report, considered this a responsibility of the Commonwealth Government.

 *The Queensland Government has implemented Recommendation 49 through cooperating with the Commonwealth on a number of national surveys.*

South Australia, in its 1994 Implementation Report, observed that State Government agencies were co-operating with the Commonwealth on implementing this recommendation. Currently, the South Australian Government cooperates with the Commonwealth on this recommendation through mechanisms including biannual Overcoming Indigenous Disadvantage reporting, bi-annual Health Indicators reporting, and annual Reporting on Government Services.

 *The South Australian Government has implemented Recommendation 49 through cooperating with the Commonwealth's national surveys of Aboriginal and Torres Strait Islander people, and state reporting on Aboriginal and Torres Strait Islander indicators.*

The **Western Australian** Government co-operated with the ABS in the development of the NATSISS and NATSIHS.

- *The Western Australian Government has implemented Recommendation 49 through its cooperation with the ABS.*

The **Tasmanian** Government provided support and information to the ABS in the development of the NATSISS.

- *The Tasmanian Government has implemented Recommendation 49 through cooperating with the Commonwealth's national surveys of Aboriginal and Torres Strait Islander people.*

The **Northern Territory** Government observed in its 1996-97 Implementation Report that it was represented on the Advisory Committee for the first national Aboriginal and Torres Strait Islander survey.

- *The Northern Territory Government has implemented Recommendation 49 through cooperating with the Commonwealth's national surveys of Aboriginal and Torres Strait Islander people.*

The **Australian Capital Territory** in its 1997 Implementation Report considered this to be a Commonwealth responsibility.

- *The Australian Capital Territory Government has implemented Recommendation 49 through cooperating with the Commonwealth's national surveys of Aboriginal and Torres Strait Islander people.*

Recommendation 50

That in the development of future national censuses and other data collection activity covering Aboriginal people, the Australian Bureau of Statistics and other agencies consult, at an early stage, with ATSIC – to ensure that full account is taken of the Aboriginal perspective.

Background information

Taking into account the perspectives of Aboriginal and Torres Strait Islander people is important to ensure that survey and data collection activities are designed in a way that is sensitive to the needs of Aboriginal and Torres Strait Islander people and reflects their priorities and cultural requirements.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

See Recommendation 48 for details of the **Commonwealth's** implementation of this recommendation through ABS's engagement with Aboriginal and Torres Strait Islander people in data collection. And the establishment of guidelines for researchers working with Aboriginal and Torres Strait Islander communities.

- *The Commonwealth has implemented Recommendation 50 by ensuring adequate consultation through the introduction of specialist advisory groups, fulfilling the intent of the Recommendation, given ATSIC no longer exists.*

Recommendation 51

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

- a. The extent to which the problem or process being investigated has been defined by Aboriginal people of the relevant community or group;*
- b. The extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research;*

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

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

Background information

The adoption of protocols for research concerning Aboriginal and Torres Strait Islander people will help ensure that research activities are relevant, can be understood by the community, and are meaningful for Aboriginal and Torres Strait Islander people.

Responsibility


This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** Government's release of the Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research and the Guidelines for Ethical Research in Australian Indigenous Studies (see Recommendation 48).

The NHMRC requires that applications that qualify as Aboriginal and Torres Strait Islander health research must address the NHMRC Indigenous Research Excellence Criteria of community engagement, benefit, sustainability and transferability, and building capability.

The introduction of the Discovery Indigenous scheme by the Australian Research Council and supporting guidelines relating to eligibility for funding under the scheme. The scheme supports research programs led by Aboriginal and Torres Strait Islander researchers and aims to build research capacity of higher degree research and early career researchers.

 *The Commonwealth has implemented Recommendation 51 through the introduction of guidelines relating to health and non-health research concerning Aboriginal and Torres Strait Islander people.*

Recommendation 52

That funding should be made available to organisations such as Link-Up which have the support of Aboriginal people for the purpose of re-establishing links to family and community which had been severed or attenuated by past government policies. Where this service is being provided to Aboriginal people by organisations or bodies which, not being primarily established to pursue this purpose, provide the service in conjunction with other functions which they perform, the role of such organisations in assisting Aboriginal people to re-establish their links to family and community should be recognised and funded, where appropriate.

Background information


The national Link-Up network and associated state services assists Aboriginal and Torres Strait Islander people of the Stolen Generation, particularly those who have been fostered, adopted or raised in institutions under government policies of the time.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** Government has provided additional funding for core administration requirements to Link-Up and similar services. There are currently eight Link-Up services supported nationally that offer family tracing and reunion services to Aboriginal and Torres Strait Islander individuals and families affected by the Stolen Generations. The Link-Up services were collectively allocated \$12 million in 2016-17 through the IAS Safety and Wellbeing Programme.

 *The Commonwealth has implemented Recommendation 52 through funding provided for Link-Up.*


The **New South Wales** Government jointly funds Link-Up (NSW) with the Commonwealth, which provides family reunion and other services in the State. Corrective Services NSW assists inmates to make contact with Link-Up (NSW) and provides free birth certificates which may assist with reconnecting with family. In addition, funding is provided to the Burrun Dalai Aboriginal Corporation to deliver an Aboriginal genealogy and cultural support service to support family tracing activities for Aboriginal children and young people placed with non-Aboriginal Out of Home Care providers. Corrective Services NSW delivers a number of programs for Aboriginal offenders that provide opportunities to reconnect with local community, family and children.

 *The New South Wales Government has implemented Recommendation 52 through the provision of funding for Link-Up (NSW) and the Burrun Dalai Aboriginal Corporation, as well as the administration of programs through CSNSW.*

The **Victorian** Government jointly funds the Victorian Aboriginal Child Care Agency, which is responsible for administering Link-Up Victoria, with the Commonwealth. The Victorian Government also noted in AJA 3 that grant support was made available through the Frontline Youth Initiatives program, and that protocols would be developed that formally link Koori prisoners and offenders with Stolen Generation Services including the Family History Service, Link-Up, and Connecting Home.

 *The Victorian Government has implemented Recommendation 52 through the provision of funding for the Victorian Aboriginal Child Care Agency, which is responsible for administering Link-Up Victoria, and provisions under AJA 3.*


The **Queensland** Government jointly funds Link-Up (Qld) with the Commonwealth, which provides family reunion and other services in the State. The Queensland Government also notes that LinkUp regional offices have full access to Community and Personal Histories records and resources.

 *The Queensland Government has implemented Recommendation 52 through the joint funding of Link-Up (Qld) with the Commonwealth, and through providing Link-Up regional offices with full access to Community and Personal Histories records and resources.*


The **South Australian** Government jointly funds Nunkuwarrin Yunti's Link-Up South Australia Program with the Commonwealth, which provides family reunion and other services in the State. These services include searching for sourcing records on behalf of researchers; copies of free of charge records for South Australia Link-Up clients and records regarding native title, Aboriginal and Torres Strait heritage, reconciliation and family and community history.

 *The South Australian Government has implemented Recommendation 52 through jointly funding the Nunkuwarrin Yunti's Link-Up South Australian Program with the Commonwealth, which provides family reunion and other services in the State.*


The **Western Australian** Government jointly funds the Yorgum Aboriginal Corporation, which provides the Link-Up Program for the State. The Western Australian Government's Aboriginal History Research Unit provides the Aboriginal and Torres Strait Islander community with family history research, and works closely with Link-Up to facilitate research, collation, and delivery of family history responses to applications.

 *The Western Australian Government has implemented Recommendation 52 through the provision of funding for the Yorgum Aboriginal Corporation which administers Link-Up for the State, and further through the function of the Aboriginal History Research Unit.*


Tasmania is served by Link-Up Victoria, though that organisation does not appear to receive any funding from the Tasmanian Government.

 *The Tasmanian Government has not implemented Recommendation 52 since Link-Up is administered through Link-Up Victoria and the Tasmanian Government does not appear to contribute funding.*

The **Northern Territory** Stolen Generations Aboriginal Corporation provides these services in the Territory; the review did not reveal whether the organisation received funding from the Northern Territory Government.

 *The Northern Territory Government has partially implemented Recommendation 52 through the Stolen Generational Aboriginal Corporation. It is not clear that this is funded by the Northern Territory Government.*

Link-Up does not operate in the Australian Capital Territory. However, Child and Youth Protection Services support individuals and their families impacted by past adoption or child protection practices to establish family links. Additionally, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) provides services to support people to research their Aboriginal and Torres Strait Islander family history, including specific ACT services.

 *While a Link-Up service does not operate in the Australian Capital Territory, the principles of Recommendation 52 have been partially implemented through the activities of Child and Youth Protection Services and the AIATSIS.*

Recommendation 53

That Commonwealth, State and Territory Governments provide access to all government archival records pertaining to the family and community histories of Aboriginal people so as to assist the process of enabling Aboriginal people to re-establish community and family links with those people from whom they were separated as a result of past policies of government. The Commission recognises that questions of the rights to privacy and questions of confidentiality may arise and recommends that the principles and processes for access to such records should be negotiated between government and appropriate Aboriginal organisations, but such negotiations should proceed on the basis that as a general principle access to such documents should be permitted.

Background information

As a result of past government policies, many Aboriginal and Torres Strait Islander people lost community and family links. Allowing those affected to access government archival records may assist with the process of Aboriginal and Torres Strait Islander people re-establishing community and family links.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In response to this recommendation, the **Commonwealth's** National Archives consulted with Aboriginal and Torres Strait Islander groups in the Northern Territory, Victoria and South Australia where the National Archives' most extensive holding of records about Aboriginal and Torres Strait Islander people are held, and agreed a Memorandum of Understanding (MOU) to assist Aboriginal people to obtain access to Commonwealth records for the purposes of re-establishing family and community links. Sensitive personal information that would normally be exempt from public access under the Archives Act 1983 is available under the MOU to the subject of the record or to family members. The Northern Territory and Victorian MOUs provide for the establishment of Aboriginal Advisory Groups consisting of community and Link-Up representatives to advise and assist the National Archives in implementing, managing and reviewing the operation of the MOU.

The National Archives has published a range of publications and guides to assist with finding records about Aboriginal and Torres Strait Islander people in the collection. The National Archives' access programs, which include websites, exhibitions, reader education and other events also promote the availability of records about Aboriginal and Torres Strait Islander people in their collection.


 *The Commonwealth has implemented Recommendation 53 through the implementation, by the National Archives, of tailored access arrangements, and the publication of guides and other*

information to assist Aboriginal people to access Commonwealth records held by the National Archives for the purpose of re-establishing family and community links.


In **New South Wales**, the Aboriginal Affairs Family Records Service has been in operation since 2002 to assist Aboriginal people to access records held in the archive collection of the former Aborigines Protection Board and the Aborigines Welfare Board. Unrestricted records held by the Archives Authority are made available by the Department of Aboriginal Affairs. Restricted records are made available in accordance with established privacy procedures. In addition, Corrective Services NSW provides free birth certificates to Aboriginal inmates, which can assist in re-connecting with family.

 *The New South Wales Government has implemented Recommendation 53 through the function of the Aboriginal Affairs Family Records Service and the provision of records.*


In **Victoria**, the *Adoption Act 1984* (Vic) permits Aboriginal persons to obtain their own records, as does the *Freedom of Information Act 1982* (Vic).

 *The Victorian Government has implemented Recommendation 53. Aboriginal and Torres Strait Islander people have been provided with access to their family records under the Adoption Act 1984 (Vic) and the Information Act 1982 (Vic).*


In **Queensland**, the Communities and Personal Histories team has an access policy for Aboriginal and Torres Strait Islander people, balancing access with privacy. Such records relating to individuals or their families are provided free of charge.

 *The Queensland Government has incorporated Recommendation 53 into the Communities and Personal Histories access policy for Aboriginal and Torres Strait Islander people.*


In **South Australia**, information relating to Aboriginal and Torres Strait Islander people is provided by the State Records office, which also refers Aboriginal and Torres Strait Islander individuals to other agencies and resources as necessary. Actions taken in response to Recommendation 52 are also relevant to this recommendation.

 *The South Australian Government has implemented Recommendation 53 through the State Records office which assists Aboriginal and Torres Strait Islander people in accessing resources, and through cooperation with the Commonwealth.*

In **Western Australia**, the Aboriginal History Research Unit and the State Records Office are responsible for several initiatives to help Aboriginal people access information relating to their family history. Archived files are governed by the *State Records Act 2000* (WA), in which the guiding principal is that sensitive Aboriginal and Torres Strait Islander cultural information should be accessed in consultation with the Aboriginal History Research Unit. The Aboriginal History Research Unit is currently undergoing review, which will incorporate state-wide consultation with Aboriginal and Torres Strait Islander groups to seek advice on access to, and the release of, sensitive and restricted records.

 *The Western Australian Government has mostly implemented Recommendation 53, however it is unclear whether formal policy exists to ensure that Aboriginal and Torres Strait Islander people are given access to all documents and information related to family history.*

In **Tasmania**, advice and assistance is provided to Aboriginal and Torres Strait Islander people to enable them to have access to information and documentation of their history as it appears in the records held in the State's Archive Office.

 *The Tasmanian Government has implemented Recommendation 53. Advice and assistance is provided to Aboriginal and Torres Strait Islander people to enable them to access information related to family history.*

The **Northern Territory** Archives Service provides specific advice for Aboriginal and Torres Strait Islander individuals researching their own family history.

- *The Northern Territory Government has implemented Recommendation 53. Specific advice is provided for Aboriginal and Torres Strait Islander people researching their own family history.*

The **Australian Capital Territory** has general Freedom of Information legislation permitting access to these records. The review did not reveal specific initiatives to support Aboriginal and Torres Strait Islander individuals in family history research. General provisions are made under the *Freedom of Information Act 2016 (ACT)*, through which the Community Services Directorate aims to make it easier for the community to access information, keep improving processes to protect and provide access to information, and process information requests as quickly as possible.

- ◐ *The Australian Capital Territory Government has implemented Recommendation 53. It does not appear that specific advice is provided for Aboriginal and Torres Strait Islander people researching their own family history.*

Recommendation 54

That in States or Territories which have not already so provided there should be legislative recognition of:

- a. The Aboriginal Child Placement Principle; and*
- b. The essential role of Aboriginal Child Care Agencies.*

Background information

The RCIADIC Report acknowledged that placing Aboriginal foster or adoptee children with Aboriginal families helped maintain culture and, potentially, a connection to family. Aboriginal Child Care Agencies reinforce this role by supporting governments in their general child protection administration with a specific focus on Aboriginal and Torres Strait Islander families.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In New South Wales the Aboriginal Child Placement Principle has been legislated in s 34 of the *Adoption Act 2000 (NSW)* and s 13 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*. In 2012, NSW commenced a 10-year plan to transition Aboriginal children and young people in Out of Home Care (OOHC) from non-Aboriginal Service Providers to Aboriginal community controlled Service Providers.

Under s 12 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, Aboriginal representative organisations are to be given the opportunity to participate in decisions made concerning the placement of their children and young persons. The NSW Government is working closely with the Grandmothers Against Removal NSW to promote the 'Guiding Principles for strengthening the participation of local Aboriginal community in child protection decision making'. These guiding principles envisage Aboriginal communities forming their own local advisory groups to ensure Aboriginal community participation in decision making regarding the care and protection of Aboriginal children. The NSW Government also supports the Aboriginal Child, Family and Community Care State Secretariat (AbSec) who is the peak NSW Aboriginal organisation providing child protection and OOHC police advice on issues affecting Aboriginal children, young people, families and carers. In 2017-18, AbSec was allocated \$3.18 million for the delivery of its core activities including sector development initiatives to grow the number of Aboriginal controlled service providers supporting vulnerable Aboriginal children, young people and their families.

- *The New South Wales Government has implemented Recommendation 54 through the Adoption Act 2000 (NSW), the Children and Young Persons (Care and Protection) Act 1998 (NSW), and various initiatives to address the principles contained in this recommendation.*


In **Victoria** the Aboriginal Child Placement Principle has been legislated in ss 12-14 of the *Children, Youth and Families Act 2005 (Vic)*.

The *DHS and Victorian Aboriginal Child Care Agency Protocol 2002* (a non-legislative policy) directs that the Child Protection Service will consult with the Victorian Aboriginal Child Care Agency on all Aboriginal notifications and investigation decisions. Additionally, section 18 of the *Children, Youth and Family Act 2005* (Vic) has given support to the authorisation of the principal officer of the Victorian Aboriginal Child Care Agency to undertake functions and powers in relation to a number of Aboriginal children on protection orders. Recognition of the role of ACCOs is being acknowledged further through development of the Aboriginal Children and Families Agreement, which will operate as a tripartite commitment for government, ACCOs and community service organisations to work together to improve outcomes for Aboriginal children and families.


 *The Victorian Government has mostly implemented Recommendation 54 through the Children, Youth and Families Act 2005 (Vic) and the DHS and Victorian Aboriginal Child Care Agency Protocol 2002. However, currently no express legislative recognition is provided for the role of Aboriginal Child Care Agencies.*

In **Queensland** the Aboriginal Child Placement Principle has been legislated in s 5C of the *Child Protection Act 1999* (Qld). Recent amendments to the *Act* more fully incorporate the intent of the Aboriginal and Torres Strait Islander Child Placement Principle, and strengthen the requirement to place an Aboriginal and Torres Strait Islander child with a member of the child's family group and provide for an amended hierarchy of placement options if this is not practicable.

Section 6 of the *Child Protection Act 1999* (Qld) requires child protection decisions relating to Aboriginal and Torres Strait Islander children to be made in consultation with recognised entities. Recent amendments to the *Act* introduce measures to facilitate greater participation of the child and their family in all decision-making. This recognises the child and their family are the primary source of cultural knowledge in relation to the child and will replace the existing recognised entity framework.


 *The Queensland Government has implemented Recommendation 54 through the Child Protection Act 1999 (Qld).*

The **South Australian** Government initially responded to Recommendation 54 through incorporating the principle of the recommendation into the *Children's Protection Act 1993* (SA). This *Act* has since been superseded by the *Children and Young People (Safety) Act 2017* (SA) which provides legislative recognition of the Aboriginal and Torres Strait Islander Child Placement Principles under section 12. This section also incorporates specific reference to the need to consult with a recognised Aboriginal and/or Torres Strait Islander organisation in relation to the placement of Aboriginal and Torres Strait Islander children.

 *The South Australian Government has implemented Recommendation 54 through the Children and Young People (Safety) Act 2017 (SA).*

In **Western Australia** the Aboriginal Child Placement Principle has been legislated in s 12 of the *Children and Community Services Act 2004* (WA).


Section 16A of the *Adoption Act 1994* (WA) requires that the Department of Child Protection consult with an Aboriginal and Torres Strait Islander individual or agency with relevant knowledge of the child, the child's family, or community. This is supported by s 81 of the *Children and Young People (Safety) Act 2017* (WA), which requires consultation to occur prior to the placement of a child and which sets out avenues to consult with Aboriginal and Torres Strait Islander agencies.

 *The Western Australian Government has implemented Recommendation 54 through legislation including the Community Services Act 2004 (WA) and the Children and Young People (Safety) Act 2017 (WA).*

In **Tasmania** the Aboriginal Child Placement Principle has been legislated in s 9 and s 10G of the *Children, Young Persons and Their Families Act 1997* (Tas).

Under s 10G of the *Children, Young Persons and Their Families Act 1997* (Tas), a kinship group, Aboriginal community or organisation representing the Aboriginal people nominated by an Aboriginal child's family should be allowed to contribute to the making of a decision under this *Act* in relation to


the child. Tasmania is also a member of the Children and Families Secretaries group, which provides jurisdictions with a platform to collaborate on innovative policy approaches to child and family issues. The group has established a Permanency Reform Working Group to develop a National Permanency Workplan. Under Strategic Action Area 2, state governments are required to ensure the Aboriginal and Torres Strait Islander Child Placement Principle is upheld and Aboriginal Community Controlled Organisations are supported to have a role and responsibility for Aboriginal and Torres Strait Islander children in out of home care.

 *The Tasmanian Government has implemented Recommendation 54 through the Children, Young Persons and Their Families Act 1997 (Tas).*

In the **Northern Territory** the Aboriginal Child Placement Principle has been legislated s 12 of the *Care and Protection of Children Act* (NT).


Section 12 of the *Care and Protection of Children Act* (NT) states that a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision involving the child.

The Northern Territory Government noted that Territory Families is investing in ACCOs and reviewing legislative provisions to ensure that appropriate references to the Aboriginal Child Placement Principle and the role of ACCOs is maintained. Currently, there is not a strong Aboriginal and Torres Strait Islander childcare agency sector within the Northern Territory.

 *The Northern Territory Government has mostly implemented Recommendation 54 through the Care and Protection of Children Act (NT). However, there is currently not a strong Aboriginal and Torres Strait Islander childcare agency in operation in the Northern Territory.*

In the **Australian Capital Territory**, the Aboriginal Child Placement Principle has been legislated s 10 of the *Children and Young People Act 2008* (ACT).

Section 10 of the *Children and Young People 2008* (ACT) states that, in making a decision relating to an Aboriginal and Torres Strait Islander child or young person under the Act, the decision-maker must take into account (among other things) submissions made by Aboriginal and Torres Strait Islander people or organisations providing ongoing support services.

 *The Australian Capital Territory Government has implemented Recommendation 54 through the Children and Young People Act 2008 (ACT).*

Recommendation 55

That government and funding bodies reflect the importance of the National Aboriginal Language Policy in the provision of funds to Aboriginal communities and organisations.

Background information

The preservation and the revitalisation of Aboriginal and Torres Strait Islander culture and language is identified as critical in supporting many Aboriginal and Torres Strait Islander people.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

Following the RCIADIC, the **Commonwealth** Government introduced and funded the National Aboriginal Languages and Literacy Strategy (*Annual Report 1992-93*). Since then the policy framework that governs Aboriginal and Torres Strait Islander languages has evolved and changed with successive governments. The Commonwealth currently supports the revival, maintenance and celebration of Indigenous languages through the \$20 million per year Indigenous Languages and Arts (ILA) program. Administered by the Department of Communications and the Arts (DCA), the program provides single and multi-year funding to a range of organisations across Australia, including 21 community-led Indigenous Language Centres to undertake ongoing language revival and maintenance activities, as well as one off projects that promote or celebrate language.

In addition to the ILA, the Commonwealth has committed a further \$10 million from 2016-17 to 2020-21 to Aboriginal and Torres Strait Islander language activities, with a focus on community-driven projects that utilise digital technology in an innovative and culturally-sensitive manner.

- *The Commonwealth has implemented Recommendation 55 through the funding provided to support Aboriginal and Torres Strait Islander languages.*

Recommendation 56

The Commission notes that many Aboriginal people have expressed the wish to record and make known to both Aboriginal and non-Aboriginal people aspects of the history, traditions and contemporary culture of Aboriginal society. This wish has been reflected in the establishment of many small local community museums and culture centres. The Commission notes that many opportunities exist for projects which introduce non-Aboriginal people to Aboriginal history and culture. One illustration is the work done by the Kurna people in South Australia to restore the Tjilbruke track; another is the Brewarrina Museum. The Commission recommends that government and appropriate heritage authorities negotiate with Aboriginal communities and organisations in order to support such Aboriginal initiatives.

Background information

A strong awareness of the importance of Aboriginal and Torres Strait Islander history and culture is important for all Australians.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** supports Aboriginal and Torres Strait Islander people to maintain, present and promote their culture through funding a range of arts programs, cultural organisations and celebrations. One of the five pillars of the IAS is Culture and Capability. In 2015-16, the Government invested more than \$105 million through the Indigenous Affairs, Arts and Education portfolios. The Commonwealth also funds the Aboriginals Benefit Account from consolidated revenue determined by the value of mining royalties generated from mining on Aboriginal and Torres Strait Islander land in the Northern Territory. Under the administration of PM&C, this Account has provided funds almost \$38 million since 2013-14 to support 93 projects which foster cultural expression, traditional cultural practice and caring for country.

Prior to 2015, the Commonwealth supported a number of programs for the advancement of Aboriginal and Torres Strait Islander visual arts, culture, and language. In 2015, these programs were consolidated into the ILA program and the Indigenous Visual Arts Industry Support (IVAIS) program under the auspices of the DCA.

- The ILA program supports Aboriginal and Torres Strait Islander communities to revive and maintain languages, and to develop and present art.
- The IVAIS program helps to fund the operation of Aboriginal and Torres Strait Islander-owned art centres, and a number of art fairs, regional hubs and industry service organisations. IVAIS also supports a number of marketing events and peak organisation, including the Indigenous Art Code which guides ethical trade.
- The Commonwealth provided \$43 million through these programs in 2015-16 to support Aboriginal and Torres Strait Islander arts and languages, with \$20 million available each year thereafter.

DCA also noted that the Australia Council for the Arts Strategic Plan 2014-19 identifies in Goal 4 that 'Australians cherish Aboriginal and Torres Strait Islander arts and cultures'. Guided by this principal, the Australia Council provides funding to support strategic initiatives and grants for Aboriginal and Torres Strait Islander arts and culture projects.

● *The Commonwealth has implemented Recommendation 56 by increasing funding for existing organisations and communities to increase awareness of Aboriginal and Torres Strait Islander history and culture.*

The **New South Wales** Government has a *Protecting Aboriginal Cultural Heritage Policy* to ensure that Aboriginal cultural heritage sites are preserved. Under the *National Parks and Wildlife Act 1974* (NSW), it is an offence to harm or desecrate an Aboriginal object or Aboriginal place.

The NSW Government Aboriginal Affairs Strategy, known as the OCHRE plan, includes several relevant initiatives for this recommendation, such as teaching Aboriginal languages and culture in NSW schools. The NSW Cultural Tourism Development Program engages with Aboriginal communities and individuals identified for their potential to develop and deliver a new and/or enhanced cultural tourism experience within national parks. Since 2008-09, National Parks and Wildlife Service (NPWS) has managed an Aboriginal Park Partnerships Funding program which has supported more than 200 projects with Aboriginal communities. Many of these projects aim to share and celebrate Aboriginal culture and support Aboriginal people's ongoing connection to country. In addition, five Aboriginal Language and Culture Nests in Dubbo, Lightning Ridge, Wilcannia, Coffs Harbour and Lismore have also been established to increase the number of students learning Aboriginal languages in schools.

Additionally, the New South Wales Government notes that draft Aboriginal cultural heritage legislation currently on public exhibition promotes Aboriginal culture as a living culture, and captures its diverse expressions and practices, including tangible and intangible elements.

● *The New South Wales Government has implemented Recommendation 56 through initiatives including the OCHRE plan, the NSW Cultural Tourism Program, and the Aboriginal Parks Partnerships Funding program. In addition, the Protecting Aboriginal Cultural Heritage Policy supports the principles contained in this recommendation.*

In **Victoria**, a number of initiatives exist to ensure Aboriginal people can protect and share their culture, including Local Aboriginal Networks and Aboriginal Cultural Heritage Management Training.

● *The Victorian Government has implemented Recommendation 56 through initiatives including Local Aboriginal Networks and Aboriginal Cultural Heritage Management Training.*

The **Queensland** Government supports a number of initiatives to protect and share Aboriginal and Torres Strait Islander culture, including Aboriginal and Torres Strait Islander language centres. The Department of Aboriginal and Torres Strait Islander Partnerships also provides regular assistance to Aboriginal and Torres Strait Islander communities and provides access to historical information and records at designated centres such as the Cherbourg Ration Shed.


● *The Queensland Government has implemented Recommendation 56 through initiatives including Aboriginal and Torres Strait Islander language centres and the provision of regular assistance to Aboriginal and Torres Strait Islander communities, including through the provision of places to provide historical information and records.*

In **South Australia**, improving the broader population's understanding of Aboriginal and Torres Strait Islander culture was a target of South Australia's Strategic Plan. One initiative under this Plan was to include Aboriginal cultural studies as a part of the school curriculum, with Aboriginal and Torres Strait Islander people being involved in the design and delivery of that curriculum. Arts South Australia endeavours to work with artists and organisations to ensure respect and acknowledgement for Aboriginal and Torres Strait Islander people and cultures at every stage of a project's development. The South Australian Government is also providing funding to record Aboriginal and Torres Strait Islander histories through South Australia's Stolen Generations Reparations Scheme.


● *The South Australian Government has implemented Recommendation 56 through initiatives including South Australia's Strategic Plan, and the introduction of Aboriginal and Torres Strait Islander as part of the school curriculum, amongst other initiatives.*

In **Western Australia**, the Indigenous Arts Grant Program supports Aboriginal and Torres Strait Islander individuals sharing their culture through artistic endeavours. The Western Australian


Government also supports Aboriginal and Torres Strait Islander people and communities to share and maintain their stories through a range of other initiatives, such as the Storylines project, and Desert River Sea.

 *The Western Australian Government has implemented Recommendation 56 through a range of initiatives designed to promote the sharing of Aboriginal and Torres Strait Islander culture and history.*

Aboriginal Heritage **Tasmania**, part of the Department of Primary Industries, Parks, Water and Environment supports Aboriginal and Torres Strait Islander individuals in community cultural and education projects.


 *The Tasmanian Government has implemented Recommendation 56 through initiatives facilitated by the Department of Primary Industries, Parks, Water and Environment.*

In the **Northern Territory**, the Arts Trail initiative is one way the Government has implemented this Initiative. This involves significant funding for Government and local arts and culture organisations, aimed at making the Northern Territory a world-class tourist and cultural destination for experiencing Aboriginal culture.

 *The Northern Territory Government has implemented Recommendation 56 through initiatives such as the Arts Trail initiative.*

The **Australian Capital Territory** Government provides cultural grants for Aboriginal and Torres Strait Islanders to showcase their culture. Specific projects which implement Recommendation 56 include:

- Murumbung Rangers deliver guided activities to non-Aboriginal and Torres Strait Islander people including children and visitors to parks and reserves, and share Aboriginal and Torres Strait Islander history. These activities are delivered at Tidbinbilla Nature Reserve, Namadgi National Park and other nature reserves. The content of the activity is based on Ngunnawal knowledge and stories, Aboriginal and Torres Strait Islander kinship, bush tucker and medicines, dispossession and dislocation of Aboriginal and Torres Strait Islander people, reconnecting to Country and Culture, and Aboriginal and Torres Strait Islander land ownership.
- Aboriginal and Torres Strait Islander staff participate and deliver tailored presentations, field trips, and host events including the Southeast Australian Aboriginal Fire Forum, and a water forum designed to share knowledge and care for country together.
- Resources including the Ngunnawal Plant Use Book have been prepared to introduce non-Aboriginal and Torres Strait Islander people to culture and traditional ecological knowledge.
- The Kickstart My Career through Culture program engages students in programs and provides opportunity for at-risk youth to learn about Aboriginal and Torres Strait Islander culture, local history through engagement of Ngunnawal traditional custodians. Students also learn conservation and land management skills, the traditional uses of native plants, and have the opportunity to network with other students. The Kickstart program spans across a number of educational institutions, including the Canberra Institute of Technology, Greening Australia, Elders, cultural tourism businesses, and Murumbung Rangers.

 *The Australian Capital Territory Government has implemented Recommendation 56 through the provision of cultural grants for Aboriginal and Torres Strait Islander people to showcase their culture.*

Recommendation 57

That Governments agree that:

- a. The records of the Commission be held in archives in the capital city of the state in which the inquiry, which gathered those records, occurred; and*

b. A relevant Aboriginal body, for example the Aboriginal Affairs Planning Authority in the case of Western Australia, be given responsibility for determining access to the material jointly with the normal authority for determining such matters.

Background information

Providing access to the records of the RCIADIC Report is important to continue to contribute to a better understanding of the underlying causes of Aboriginal and Torres Strait Islander deaths in custody. Although accessible, procedures must be in place to account for privacy, confidentiality and Aboriginal and Torres Strait Islander cultural sensitivities.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** Government has provided that where possible records of RCIADIC are held in the National Archives repository in the capital city in which the inquiry, which generated those records, occurred. In some cases, such as where the Archives does not have the specialist preservation facilities (for example cold storage and digital preservation capability for audio-visual records in a particular State or Territory), records have been relocated to another repository of the Archives with the appropriate facilities. Should access be required in a particular State or Territory, the Archives will make arrangements for this to happen.


The records of the RCIADIC are now in the open access period and access is therefore provided in accordance with the Archives Act 1983. Records that were publicly available at the time of the Royal Commission, such as transcripts of open hearings, remain publicly available. Individuals can access information which they themselves provided to the Royal Commission, and the related transcripts.

Records subject to a non-publication order of the Royal Commission will be considered for release under the public access provisions of the Archives Act, which require the exemption of information of ongoing sensitivity, including matters which are an unreasonable disclosure of personal affairs and matters that are culturally sensitive to Indigenous Australians. As required the National Archives will consult with relevant Indigenous groups and the Department of Prime Minister and Cabinet, as controlling agency, as part of the process of determining access arrangements for these records.


 *The Commonwealth has implemented Recommendation 57 through the records held at the National Archives and ongoing consultation about releasing records subject to a non-publication order.*

All States and Territories have taken the following actions with respect to implementing the second part of this recommendation.


New South Wales observed in its 1995-96 Implementation Report that the records of the RCIADIC are Commonwealth, rather than State records. However, the Commonwealth Department of Aboriginal Affairs (as it then was) developed procedures consistent with those for NSW Archive materials relevant to Aboriginal people. Aboriginal Affairs formed an agreement with NSW Aboriginal Land Council and Aboriginal and Torres Strait Islander Commission on procedures for access to the sensitive information stored in the Commonwealth Archives, with Aboriginal Affairs acting as ATSIC's agent.

 *The New South Wales Government has implemented Recommendation 57 through cooperating with Commonwealth initiatives to provide access to records of the RCIADIC. The New South Wales Government noted that this recommendation had been implemented.*


The **Victorian** Government noted in its 1994 Implementation Report that the records belonged to the Commonwealth, but that public access would be determined in consultation with the Department of Premier and Cabinet and Aboriginal Affairs Victoria.

 *The Victorian Government has implemented Recommendation 57 through cooperating with Commonwealth initiatives to provide access to records of the RCIADIC, such as housing records in Melbourne.*


The **Queensland** Government noted in its 1996-97 Implementation that all but one set of records relating to the RCIADIC were the responsibility of the Commonwealth. The Crown Solicitor was responsible for access to these records; other records were in the responsibility of the National Archives. Currently, the Queensland Government notes that records are held by the Queensland State Archives.

 *The Queensland Government has partially implemented Recommendation 57 through their response to part a, however there is no Aboriginal and Torres Strait Islander body that has joint responsibility for determining access to the records that are their responsibility.*


The **South Australian** Government noted in its 1994 Implementation Report that the Chief Executive Officer of State Aboriginal Affairs was the authorising officer for records relating to Aboriginal Affairs. This responsibility is now part of the Department of Industry and Skills. The South Australian Government notes that the National Archives of Australia has responsibility for the storage, preservation and accessibility of the records of RCIADIC.

 *The South Australian Government has implemented Recommendation 57 through cooperating with Commonwealth initiatives to provide access to records of the RCIADIC, and through providing that the Chief Officer of State Aboriginal Affairs have responsibility for records.*


In **Western Australia**, the Government's 1995 Implementation Report observed that the State's portion of the RCIADIC records were lodged with the Western Australian office of the National Archives. More recently, the Western Australian Government in conjunction with a National Working Group reached the decision to hold Western Australian records jointly by the State Records Office Western Australia and the Aboriginal History Research Unit.

 *The Western Australia Government has implemented Recommendation 57 by cooperating with the Commonwealth's National Working Group and through the activities of the State Records Office Western Australia and the Aboriginal History Research Unit.*


Tasmania considered in its 1995 Implementation Report that the records relating to the RCIADIC were the responsibility of the Commonwealth.

 *The Tasmanian Government does not appear to have taken actions towards the implementation of Recommendation 57, noting that the Tasmanian Government considers that this recommendation is the responsibility of the Commonwealth.*

The **Northern Territory** Government noted in its 1994-95 Implementation Report that responsibility for determining access to this material would be determined jointly between the Commonwealth and Northern Territory Governments and several Aboriginal Legal Aid Services.

 *The Northern Territory Government has implemented Recommendation 57 through cooperating with Commonwealth initiatives and jointly determining access to material between the Commonwealth and Northern Territory Governments and several Aboriginal Legal Aid Services.*

The RCIADIC did not hold any inquiries in the **Australian Capital Territory**, so this recommendation did not apply.

 *The Australian Capital Territory Government did not hold any inquiries and hence Recommendation 57 did not apply.*

4.2 Relations with the non-Aboriginal community (58-59)

Recommendation 58

That Governments give consideration to amending the liquor laws to provide a right of appeal to persons excluded from a hotel where that exclusion or its continuation is harsh or unreasonable.

Background information


The RCIADIC Report observed that licensed establishments were an important social institution for Australians, particularly in regional and rural towns. However, the absolute power available to publicans to bar patrons led to some hotels failing to facilitate relations between Aboriginal and Torres Strait Islanders and the broader community. Allowing a statutory right of appeal to a ban allows individuals to challenge this.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, a right of appeal has not been legislated for. Venue bans can be implemented via a common law right and are not subject to review. However, an exclusion or ban under the *Liquor Act 2007* (NSW) or by common law must be issued in line with the *Anti-Discrimination Act 1977* (NSW). Individuals that receive a ban can lodge a complaint of racial discrimination with the Anti-Discrimination Board of NSW. The Board has no power to overturn a ban, but may attempt to resolve the complaint through conciliation, or may refer the complaint to the NSW Civil & Administrative Tribunal for a hearing.

 *The New South Wales Government has not implemented Recommendation 58. The right of appeal has not been legislated for in the NSW Liquor Laws, and venue bans are not subject to review.*


In **Victoria**, under the *Liquor Control Reform Act 1998* (Vic) s 106I, a banned individual may appeal to the Police Commissioner.

 *The Victorian Government has implemented Recommendation 58 through the Liquor Control Reform Act 1998 (Vic), which provides a right of appeal to Aboriginal and Torres Strait Islander people who are banned from a hotel.*

In **Queensland**, while the *Liquor Act 1992* (Qld) includes provisions regarding one-off refusal of entry and removal of persons, it does not contain a framework for a licensee to ban a person from their premises on an ongoing basis. Accordingly, a right to appeal such a ban is unnecessary. The ability for a licensee to refuse entry reflects a common law right. However, licensee bans must not be discriminatory in nature (e.g. based on race), and a person who feels they have been discriminated against may make a complaint under the *Anti-Discrimination Act 1992* (Qld).


 *In Queensland, Recommendation 58 is out of scope. The Liquor Act 1992 (Qld) does not contain a framework for licensees to ban a person from their premises on an ongoing basis, and as such the right to an appeal a ban is unnecessary.*

In **South Australia**, under the *Liquor Licensing Act 1997* (SA) s 128, the Liquor Commission may review banning orders that last longer than one month. Only certain barring orders are reviewable by the Licensing Court, namely where the Commissioner has approved a longer period for a licensee barring order.


 *The South Australian Government has partially implemented Recommendation 58. It does not appear that the right for Aboriginal and Torres Strait Islander people to appeal a ban is provided in all cases through legislation or practice.*

In **Western Australia**, under the *Liquor Control Act 1988* (WA) s 115AD, the Liquor Commission was permitted to review banning orders that last longer than one month. This right to appeal a ban has subsequently been removed in more recent amendments to this Act. The Western Australian


Government notes that entry into a licensed premise is a privilege afforded by the licensee, not an automatic right.

 *The Western Australian Government has not implemented Recommendation 58, and no right to appeal an unfair ban is provided in legislation or policy.*


In **Tasmania**, effective from September 2016, the *Liquor Licensing Act 1990* (Tas) provides that a barred person may apply in writing to the Commissioner of Police for a review of a Barring Order given by a police officer. The applicant can appeal against the Commissioner's decision to the Tasmanian Liquor and Gaming Commission.

 *The Tasmanian Government has implemented Recommendation 58 through the Liquor Licensing Act 1990 (Tas).*

In the **Northern Territory**, under the *Liquor Act* (NT), a banned individual may appeal to the Police Commissioner.

 *The Northern Territory Government has implemented Recommendation 58 through the Liquor Act (NT).*

The **Australian Capital Territory** did not support the implementation of this recommendation, suggesting that anti-discrimination law provided the appropriate avenue for individuals banned because of their race to lodge a complaint. The Australian Capital Territory Government noted s 42(1)(c) of the *Human Rights Commission Act 2005* (ACT) as permitting an individual to complain to the ACT Human Rights Commission where they consider they have experienced unlawful discrimination, including exclusion from a premises without reasonable justification.

 *The Australian Capital Territory Government has implemented Recommendation 58 through the Human Rights Commission Act 2005 (ACT).*

Recommendation 59

That Police Services use every endeavour to police the provisions of Licensing Acts which make it an offence to serve intoxicated persons.

Background information


The RCIADIC Report found that it is often the case that hotels serve intoxicated Aboriginal and Torres Strait Islander people and are not charged with an offence, due to the relationship between the police and the publican.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

In the **Commonwealth** and **Australian Capital Territory**, reducing alcohol-fuelled violence and enforcing the liquor laws is part of the 2016-17 Ministerial Direction. The Ministerial Direction sets the priorities for the operational activities of ACT Policing around reducing alcohol fuelled violence and consumption of liquor in the ACT. ACT Policing enforces the provisions of the *Liquor Act 2010* (ACT), which includes offences for supplying alcohol to intoxicated persons. ACT Policing has dedicated Regional Targeting Teams for the nightlife precincts which specifically enforce criminal as well as liquor laws.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 59. ACT policing has dedicated teams focused on Liquor Act compliance, including serving alcohol to intoxicated persons.*

In **New South Wales**, one initiative made in this area is the "three strikes" disciplinary regime, where the commission of prescribed offences by a licensee can lead to the imposition of licence conditions, licence suspension, or a temporary ban on the issue of a liquor licence. Additionally, this

recommendation is given effect under the Police Commissioner's Instruction 130.07 – Licensing Matters.


 *The New South Wales Government has implemented Recommendation 59 through the "three strikes" disciplinary regime, and the Police Commissioner's Instruction 130.07 – Licensing Matters.*

In **Victoria**, licensees are issued with "demerit points" where they commit certain offences under the *Liquor Control Reform Act 1998* (Vic) (including supplying liquor to an intoxicated person). Five demerit points lead to a 24-hour suspension; 10 demerit points lead to a 7-day suspension; 15 demerit points lead to a 28-day suspension. Demerit points expire after three years from their issue. Venues with demerits are also listed online.


Victoria Police and the Victorian Commission for Gambling and Liquor Regulation continue to monitor and enforce the requirements of *Liquor Control Reform Act 1998* (Vic), which includes the licensee or permittee offence of supplying liquor to an intoxicated person. There has been a review of the guidelines published by the Commission that were the result of consultation with Victoria Police, the department and the Commission. These revised guidelines are published on the Commission's website. This is also subject to the review of the Act.

 *The Victorian Government has partially implemented Recommendation 59 through a "demerit points" scheme introduced under the *Liquor Control Reform Act 1998* (Vic).*


In **Queensland**, one effort made to improve enforcement of this offence was amendment of the *Liquor Act 1992* (Qld) s 9A definition of "unduly intoxicated". Police no longer need to prove that the intoxication of a person is the result of alcohol, which was historically a barrier to successful prosecution of this offence.

 *The Queensland Government has implemented Recommendation 59 through the *Liquor Act 1992* (Qld) which provides police with greater powers to prohibit the serving of intoxicated persons.*


In **South Australia**, one effort made to improve enforcement of this offence was amendment of the *Liquor Licensing Act 1997* (SA) s 4 definition of "intoxicated". Police no longer need to prove that the intoxication of a person is the result of alcohol, which was historically a barrier to successful prosecution of this offence. Venues open after midnight are also required to employ a drinks marshal to monitor responsible service of alcohol. The *Liquor Licensing (Liquor Review) Amendment Act 2017* (SA), which recently passed through South Australian Parliament, inserted an expiation fee of \$1,200 for the s 108 offence of selling or supplying liquor on licensed premises to an intoxicated person. Under the revised Act, a defendant must prove there was compliance with the Commissioner's Codes of Practice relating to the responsible service of alcohol designated as mandatory provisions.

 *The South Australian Government has implemented Recommendation 59 through the *Liquor Licensing Act 1997* (SA) which provides greater policing power, and the *Licensing (Liquor Review) Amendment Act 2017* (SA) which introduces harsher penalty options.*

In **Western Australia**, the *Liquor Control Act 1988* (WA) prohibits the sale of liquor to intoxicated persons. Enforcement of the Act is conducted through the Police Licensing Enforcement Division.


 *The Western Australian Government has implemented Recommendation 59 through the *Liquor Control Act 1988* (WA), and enforcement through the Police Licensing Enforcement Division.*

Tasmania has improved the training of police officers in the relevant Responsible Service of Alcohol laws, in an effort to improve enforcement of this offence.

 *The Tasmanian Government has partially implemented Recommendation 59 through improved police training.*

The **Northern Territory** Police has specifically targeted alcohol-related crime and public order issues in its strategic plan. "Point of sale interventions" are used to target particular takeaway liquor points

of sale to ensure compliance with the Liquor Act (NT) and other legislative requirements. The Northern Territory Government conducts regular compliance activity in relation to the compliance and enforcement of the Act.

 *The Northern Territory Government has mostly implemented Recommendation 59 through "point of sale interventions" and through other measures aimed at specifically targeting alcohol-related crime and public order issues.*

Additional commentary

Many difficulties were observed for police in enforcing the offence of serving an intoxicated person.¹² In particular, police need to observe drunken patrons being served alcohol in order to prove the offence, requiring significant time investments often for relatively small penalties. Police must also prove that a person was intoxicated, which requires more than merely observations of drunken behaviour. Many states provide a defence to the offence if a licensee or their staff did not believe an individual was intoxicated. Combined, these all pose barriers to charging people with the offence and proving the offence in court.

4.3 The criminal justice system: relations with police (60-61)

Recommendation 60

That Police Services take all possible steps to eliminate:

a. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and

b. The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers. When such conduct is found to have occurred, it should be treated as a serious breach of discipline.

Background information


To improve relations with Aboriginal and Torres Strait Islander communities, it is important for police to address conflict in such a way to reduce any forms of an aggressive encounter on their part.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In the **Commonwealth** and **Australian Capital Territory**, the *Australian Federal Police Act 1979* (Cth) outlines the behavioural standards expected of AFP members, and consequences for breaching these standards. The AFP Code of Conduct provides that officers must act without discrimination or harassment in the course of AFP duties. Additionally, this recommendation is incorporated into the AFP Professional Standards and Core Values.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 60 through its requirements for the actions of AFP officers.*

In **New South Wales**, these principles are encompassed in the Police Service's Statement of Values and Aboriginal Policy Statement, along with other police training and policy documents. Where force is used beyond what is necessary and permitted under law, individuals are able to make a complaint under the *Police Act 1990* (NSW) or to the Ombudsman.

¹² Trifonoff et al (2011), *Liquor Licensing Legislation in Australia: Police Expectations and Experiences*. Online: [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/66CFE1ED3DAA02CBCA257AB1001C9182/\\$File/LLL%20part%203.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/66CFE1ED3DAA02CBCA257AB1001C9182/$File/LLL%20part%203.pdf)

● *The New South Wales Government has implemented Recommendation 60 through the Police Service's Statement of Values and Aboriginal Policy Statement, along with other police training and policy documents.*

In **Victoria**, police regulations cover the principles of this recommendation, and cultural sensitivity training is incorporated into police practice.

● *The Victorian Government has implemented Recommendation 60 through police regulations and the provision of cultural sensitivity training for police.*

In **Queensland**, the Police Service Code of Conduct, the *Police Service Administration Act 1990* (Qld), the *Non-Discriminatory Language Guide* and the *Criminal Justice Act 1989* (Qld) set these principles out for the State's police. The Queensland Police Service's Ethical Standards Unit and Crime and Corruption Commission take complaints regarding misconduct by police.

● *The Queensland Government has implemented Recommendation 60 through police regulations and the function of the Professional Standards Unit and Criminal Justice Commission.*

In **South Australia**, these principles are addressed through the Police Code of Ethics, Statement of Values, General Orders, disciplinary provisions and form the basis of training material. These regulatory measures enforce the need for police to ensure non-discriminatory treatment when delivering police services.

● *The South Australian Government has implemented Recommendation 60 through police regulations and the introduction of this principle into police training requirements.*

In **Western Australia**, the *Equal Opportunities Act 1984* (WA), Police Routine Orders, Police Disciplinary Regulations and the Police Code of Ethics and Statement of Values. Internal investigations can result in disciplinary action, and the Parliamentary Commissioner for Administrative Investigations takes appeals from these internal reviews. Additionally, the principles of Recommendation 60 are currently addressed in the Western Australia Police Force Code of Conduct and Professional Standards which include remediation measures when a breach occurs.

● *The Western Australian Government has implemented Recommendation 60 through the Equal Opportunities Act 1984 (WA) and police regulations.*

Tasmanian Police Officers are required to interact with detainees in a humane and courteous manner. Disciplinary provisions were reviewed in response to the RCIADIC and no change was deemed necessary. Police training incorporates cultural awareness programs.

● *The Tasmania Government has noted that Recommendation 60 was incorporated into police practices at the time of the RCIADIC. No further evidence of actions taken could be identified.*

The **Northern Territory** Police Statement of Ethics and General Orders contain this principle. Appropriate disciplinary and criminal sanctions may be applied for breaches. Northern Territory police ensure that all recruits receive appropriate cultural awareness and duty of care training, and have implemented Use of Force reporting systems and regular member Diary Audits conducted by officers in charge.

● *The Northern Territory Government has implemented Recommendation 60 through police regulations and, the provision of cultural sensitivity training for police, the use of disciplinary and criminal sanctions.*

Recommendation 61

That all Police Services review their use of para-military forces such as the New South Wales Special Weapons and Operations Squad and Tactical Response Group units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.

Background information


The RCIADIC Report was particularly critical in regards to the use of police paramilitary forces following the death of an Aboriginal and Torres Strait Islander man after an unlawful raid of his family home.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In the **Commonwealth** and **Australian Capital Territory**, the National guidelines for the deployment of police in high risk situations, have been adopted by the AFP's Specialist Response Group. These indicate that specialist police teams should not be deployed in the ordinary course or as a matter of routine, in relation to Aboriginal and Torres Strait Islander communities and individuals.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 61 through the AFP's adoption of national guidelines on deployment of police in high risk situations.*


In **New South Wales**, the use of the Tactical Operations Unit is limited to high-risk situations. Situations are deemed to be high risk based on several criteria, including the seriousness of the offence committed and risks of violence against police or innocent participants. The Unit performs a reactive role and is under the control of a State Commander and Assistant Commissioner, who conduct operational audits every six months. The NSW Police Force has adopted the National Guidelines for the Deployment of Police in High Risk Situations.

 *The New South Wales Government has implemented Recommendation 61 through adoption of the National Guidelines for the Deployment of Police in High Risk Situations. The Tactical Operations Unit is limited to high-risk situations.*


In the **Victorian** 2005 Implementation Review of the RCIADIC, Victoria Police reported that there had been no incidents requiring the attendance of police tactical groups in Aboriginal and Torres Strait Islander communities since 1991.

 *The Victorian Government noted that Recommendation 61 has been implemented, with police tactical groups not employed in Aboriginal and Torres Strait Islander communities since 1991.*

In **Queensland**, the Special Emergency Response Team is limited to high-risk situations, using a similar definition and set of criteria to those set out in New South Wales. The Major Incident Guidelines set out procedures for the deployment and use of this tactical unit.

 *The Queensland Government has implemented Recommendation 61, noting that the Special Emergency Response Team is limited to high-risk situations, using a similar definition and set of criteria to those set out in New South Wales.*

In **South Australia**, the 1994 Implementation Report observed that the use of the Special Tasks and Rescue Group is continually monitored and requires approval from a commissioned officer. The Multicultural Services Unit also assists when the group is used at incidents involving Aboriginal and Torres Strait Islander people.

 *The South Australian Government has implemented Recommendation 61. South Australia Police constantly monitors and reviews the use of Special Task and Rescue (STAR) Group.*

In **Western Australia**, the Tactical Response Group is responsible for armed offender siege/hostage situations and the execution of warrants. The Group is governed by the Police Manual and National Tactical Group guidelines. The Western Australian Government expressed a commitment to this policy in its 1994 Implementation Report. The Tactical Response Group are not deployed to public order incidents unless it is considered by the Police Commander that specialist chemical munitions are required to support the resolution of violent civil disorder.

● *The Western Australian Government has implemented Recommendation 61 through ratifying the National Tactical Group guidelines and operating on the functional terms set by the Police Manual.*

Tasmanian Police standing operating procedures comply with the national guidelines for the deployment of police in high risk situations, which requires that a sufficient level of risk exists to justify the use of the Special Operations Group.

● *The Tasmanian Government has implemented Recommendation 61 through compliance with the national guidelines for the deployment of police in high risk situations.*

The **Northern Territory** Government's Territory Response Group has operational procedures and guidelines in place to ensure that there is no unavoidable use of the Territory Response Group.

● *The Northern Territory Government has implemented Recommendation 61 through operational procedures and guidelines in place to ensure that there is no unavoidable use of the Territory Response Group.*

4.4 Young Aboriginal people and the juvenile justice system (62)

Recommendation 62

That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.

Background information

There exists an over-representation of Aboriginal and Torres Strait Islander youth in every level of the juvenile justice system in Australia (this was the case at the time of the RCIADIC and is still the case). It is important to ensure that offences committed by Aboriginal and Torres Strait Islander individuals are dealt with based on welfare and rehabilitation while minimising the separation from their communities.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** Government's Youth Social Justice Strategy in 1991 aimed to address the issue of access by disadvantaged young people to adequate income support, accommodation, health care, employment, education and training.

An Aboriginal and Torres Strait Islander Youth Working Group was also convened in 1991 to address social justice issues related to Aboriginal and Torres Strait Islander young people.

Currently, the Commonwealth is providing funding to address this recommendation through the IAS. The Commonwealth is providing over \$1 billion over four years for activities to improve community safety and address the drivers of Aboriginal and Torres Strait Islander people offending and incarceration. This includes funding for prisoner care services, youth crime prevention and diversion activities, alcohol and drug treatment services, family safety activities and activities to improve wellbeing through connection to family, community and country. In addition, the Commonwealth is providing \$287 million in 2016-17 for activities that encourage school attendance, improved education

outcomes, and which provides support for families to give young Aboriginal and Torres Strait Islander people an improved start in life.


In addition, the Department of Social Services (DSS) funds services and social security payments that support people and families to participate economically and socially in Australian society. Included in this are a range of preventive and early intervention programs which aim to disrupt harm and to set people on a positive trajectory. For example, the Family and Children Activity funds 250 service providers. For the July–December 2016 reporting period, these services supported over 246,000 clients to access mainstream services that are designed to improve the wellbeing of juveniles, to enhance family functioning, and to increase the participation of vulnerable people in community life. The DSS also funds initiatives such as the Reconnect Program which assists Aboriginal and Torres Strait Islander juveniles to reconnect with their families, and to education and employment.

 *The Commonwealth has implemented Recommendation 62 through its policies to support Aboriginal and Torres Strait Islander youth.*


With regards to child protection programs and separation of Aboriginal and Torres Strait Islander juveniles from their families and communities, actions by each State and Territory to introduce Aboriginal and Torres Strait Islander self-determination in this space are identified in Recommendation 54 above.

In **New South Wales**, the *Young Offenders Act 1997* (NSW) ss 13 and 18 permit the use of cautions and warnings in place of prosecutions of juveniles. The NSW Government has also introduced several community-based programs to reduce the risks of Aboriginal youths becoming involved in the criminal justice system, such as the Safe Aboriginal Youth Patrol. Funding is also provided to non-government organisations to deliver Youth on Track, an early intervention that reduces the risk of long-term involvement in the criminal justice system. In 2017, Juvenile Justice commenced the Aboriginal and Torres Strait Islander Reintegration and Transition Program which provides intensive support for young Aboriginal offenders after they leave custody or community supervision.

Through *Their Futures Matter* (the NSW Government's strategy to improve life outcomes for vulnerable children and families), reforms are underway to improve the child protection and Out of Home Care systems. Two new evidence-based intensive family preservation and restoration models aimed at keeping families together and targeting the causes of child abuse and neglect are: Multisystemic Therapy for Child Abuse and Neglect and Functional Family Therapy through Child Welfare.


 *The New South Wales Government has implemented Recommendation 62 through a range of initiatives targeted at early intervention and reducing youth contact with the justice system, and supported by provisions made under the Young Offenders Act 1997 (NSW).*

In their 1993 implementation report, the **Victorian** Government noted that the Koori Youth Justice Program had been developed in conjunction with Aboriginal and Torres Strait Islander communities. Additionally, the AJAs have included a number of programs targeted at early intervention and breaking the cycle of youth offending. This fits into the broader *Victorian Aboriginal Affairs Framework 2013-18* which intends to close the gap between Aboriginal and Torres Strait Islander youth and non-Aboriginal and Torres Strait Islander youth representation in the justice system. Programs introduced have included group conferencing, the *Frontline Youth Initiatives* grant program for community intervention, and the *Victoria Police Youth Cautioning Project*. Staff supports are also provided, including a Koori Youth Network. Early intervention remains a key initiative under AJA 3.


 *The Victorian Government has implemented Recommendation 62 through a range of initiatives targeted at early intervention and reducing youth contact with the justice system.*

In **Queensland**, the Police Service Operational Procedures Manual requires officers to consider alternatives to court for children who have not committed a serious offence. The *Youth Justice Act 1992* (Qld) also refers to the cultural needs of Aboriginal and Torres Strait Islander people and requires that actions taken under the Act must give recognition to their needs. The Youth Justice First Nations Action Board (YJFNAB) was established in February 2016 to provide a representative voice for


Aboriginal and Torres Strait Islander people and to assist with the development of culturally-appropriate initiatives to reducing over-representation of Aboriginal and Torres Strait Islander people in the youth justice system. The Queensland Government's Youth Justice strategic plan 2015-18 includes a focus on working effectively and respectfully with Aboriginal and Torres Strait Islander communities to reduce over-representation in the youth justice system. This recommendation is also incorporated into the *Youth Detention Centre Operations Manual*.

 *The Queensland Government has implemented Recommendation 62 through a range of initiatives including the Youth Justice First Nations Action Board (YJFNAB), the Youth Justice Act 1992 (Qld), the Police Operational Procedures Manual, and the Youth Detention Centre Operations Manual.*


In **South Australia**, the *Young Offenders Act 1993 (SA)* provides for informal cautions and family conferences as diversionary options. The Department of Communities and Social Inclusion run the Panyappi Indigenous Youth Mentoring Program, which aims to break the cycle of negative behaviours to improve the self-esteem and sense of identity of young Aboriginal and Torres Strait Islander people. The *Youth Justice Administration Act 2016 (SA)* recognises the over-representation of Aboriginal and Torres Strait Islander young people in the justice system and aims to improve responses to their needs through specific provisions ensuring best practice. The Aboriginal and Torres Strait Islander Youth Justice Principle requires that family and community, including Aboriginal and Torres Strait Islander people participate in case planning, assessment and decision-making for Aboriginal and Torres Strait Islander young people. The *Youth Justice Aboriginal Cultural Inclusion Strategy 2015-2018* and its associated Action Plan were developed in partnership with the Youth Justice Aboriginal Advisory Committee, to address re-offending and the over-representation of Aboriginal children and young people in the justice system.

 *The South Australian Government has implemented Recommendation 62 through the Young Offenders Act 1993 (SA), the Youth Justice Administration Act 2016 (SA), the Youth Justice Aboriginal Cultural Inclusion Strategy 2015-18, and the introduction of initiatives targeted at early intervention.*

The **Western Australian** Government introduced the *Young Offenders Act 1994 (WA)* which established Juvenile Justice Teams to promote diversion. Juvenile Justice Teams operate state-wide and, where possible, Aboriginal and Torres Strait Islander people are invited to participate in team meetings to support Aboriginal young Aboriginal and Torres Strait Islander people. In addition, the child placement principle in the *Children and Community Services Act 2004 (WA)* is designed to maintain a connection with family and culture for Aboriginal and Torres Strait Islander children in placement also provides an opportunity for Aboriginal and Torres Strait Islander people to be involved in the decision-making process. An AJA was signed in 2004 to ensure Aboriginal and Torres Strait Islander input into the criminal justice system. The Youth Justice Services Division of the Department of Justice also operates a number of diversionary programs. The current Target 120 policy features cross-agency data collection and analysis to form the foundation for justice reinvestment using an actuarial methodology.


 *The Western Australian Government has implemented Recommendation 62 through legislation and policies which seek to promote diversion and to aid children in maintaining a connection to their families.*

In **Tasmania**, Part 2 of the *Youth Justice Act 1997 (Tas)* offers a number of diversionary options, including cautions issued by an elder or a representative of a recognised Aboriginal organisation (s 11 of the Act). The Tasmania Police Aboriginal Strategic Plan has aimed to improve cross-cultural understanding and reduce the number of Aboriginal and Torres Strait Islander people detained – one part of this is to use alternative sentencing options where appropriate.

 *The Tasmanian Government has mostly implemented Recommendation 62 through the Youth Justice Act 1997 (Tas) and the introduction of diversionary strategies. However, it does not appear that reference is made to other requirements of this recommendation such as the young person's family ties.*

The **Northern Territory** requires that Aboriginal and Torres Strait Islander youth be dealt with in a manner involving their community (s 4(o) of the *Youth Justice Act (NT)*). Section 39 of the Act provides for diversion of non-serious charges against youth. Juvenile justice officers engage in a number of diversionary programs in Aboriginal and Torres Strait communities, and Community Courts involve community members in the sentencing process.

The Northern Territory Government also notes that Territory Families is implementing reforms to legislation, policy and programs, in order to improve child protection and youth justice systems so as to reduce the rate of incarceration among young Aboriginal and Torres Strait Islander people.


 *The Northern Territory Government has mostly implemented Recommendation 62 through the Youth Justice Act (NT) which provides for diversion of non-serious charges against youth, and requires that the community be involved in sentencing. No specific reference is made to the other considerations contained in Recommendation 62, such as the young person's family ties.*

The **Australian Capital Territory's** Justice and Community Safety directorate consults with the ACT Aboriginal and Torres Strait Islander Elected Body and the United Ngunnawal Elders Council on any proposed Aboriginal and Torres Strait Islander people in policymaking for the justice system. The Justice and Community Safety directorate has designed and implemented a number of Aboriginal and Torres Strait Islander justice program trials through a co-design approach, including:

- Yarrabi Bamirr – a family-centric service support model to improve life outcomes and reduce, or prevent, contact with the criminal justice system;
- Ngurrumbai – a tailored bail support program that encourages compliance with court orders and provides assistance to navigate the justice and social service systems; and the
- Aboriginal and Torres Strait Islander Driver Licensing Pilot Program – a culturally appropriate Driver education program to reduce licence inequality and improve road safety.

These trials are delivered by Aboriginal and Torres Strait Islander organisations and staff to ensure a community-led approach to program design and delivery.

The Restorative Justice Unit supports Aboriginal and Torres Strait Islander youth offenders by facilitating conversations between offenders and victims. A number of agreements and partnerships also exist between the ACT Government and the Canberra Aboriginal community to improve the use of diversionary programs. The Australian Capital Territory Government has also entered the Aboriginal and Torres Strait Islander Justice Partnership 2015-18 with the Aboriginal and Torres Strait Islander Elected Body. This provides a representative voice to involve Aboriginal and Torres Strait Islander people in policy making for the justice system.

 *The Australian Capital Territory Government has implemented Recommendation 62 through the function of the Restorative Justice Unit, and various agreements and partnerships to promote the use of diversionary programs.*

5 Aboriginal and Torres Strait Islander disadvantage

The recommendations in this chapter relate to: the harmful use of alcohol and other drugs (63-71); schooling (72); housing and infrastructure (73-76); and self-determination and local government (77-78).

Key themes from recommendations (16 recommendations)

- Research into the harmful use of alcohol and other drugs should incorporate the perspectives of Aboriginal and Torres Strait Islander people and consider all factors that contributing to the problems faced by communities.
- The Commonwealth should take into account social and cultural factors in policies relating to housing, infrastructure and town planning for Aboriginal and Torres Strait Islander communities.
- Truancy rates from school for Aboriginal and Torres Strait Islander children need to be reduced, given the importance of education to reducing disadvantage. Policies to do so should be based on a primary principle of support and implemented in consultation with Aboriginal and Torres Strait Islander people.
- Ongoing initiatives should recognise Aboriginal and Torres Strait Islander people’s right to self-determination.

Legend Complete Mostly Complete Partially Complete Not Implemented Out of Scope

Commonwealth | Key actions: The Commonwealth Government has supported ongoing research into alcohol and drug issues facing Aboriginal and Torres Strait Islander communities through initiatives including the NDS and NHMRC. The Commonwealth has made progress to identify Aboriginal and Torres Strait Islander people in administrative data sets. The *National Partnership Agreement (NPA) on Remote Indigenous Housing* and the *National Indigenous Infrastructure guide* seek to incorporate the views of Aboriginal and Torres Strait Islander people in the provision of infrastructure, housing, and town planning.

Remaining gaps: There remains formal barriers to Aboriginal and Torres Strait Islander communities to accessing local government infrastructure grants. Commonwealth-led policies to reduce truancy do not all align with the primary principle of support recommended by RCIADIC.

New South Wales | Key actions: The Government has introduced measures to improve the reporting and linkages of datasets relating to Aboriginal people. Policies have been introduced to provide a holistic approach to responding to alcohol and drug misuse. School attendance has been promoted through the Connected Communities Strategy.

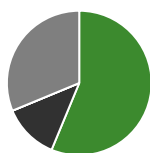
Remaining gaps: The New South Wales Government has partially addressed each recommendation in this chapter, however greater attention should be paid to the provision of road funding and consultation with local Aboriginal communities in the development phase of road projects.

Victoria | Key actions: The Victorian Government has maintained a commitment to designing, monitoring, and evaluating Aboriginal and Torres Strait Islander issues and programs in partnerships with communities. The *Koori Alcohol Action Plan 2010-20* and the *Koori Education Workforce* respectively address alcohol misuse and school attendance. Funding for community infrastructure programs has also been administered.

Remaining gaps: The Victorian Government does not appear to have conducted research into the specific nature and causes of alcohol dependence and misuse in Aboriginal and Torres Strait Islander communities. Further attention should be to understanding this area, and subsequently establishing renewed prevention, intervention and treatment approaches.

Queensland | Key actions: The Queensland Government has recorded the Aboriginal and Torres Strait Islander status of patients in all hospital data collections. Queensland continues to practice a partnership-based approach in cooperation with communities to review Alcohol Management Plans and to develop strategies to combat the causes of alcohol misuse and harm. A range of policies have been introduced to address school attendance and support of community infrastructure programs.

Remaining gaps: The Queensland Government has mostly implemented each of the recommendations contained in this chapter. However, continued work is needed on the identification of Aboriginal and Torres Strait Islander people in administrative datasets, and the integration of infrastructure, housing and essential services.



South Australia | Key actions: The South Australian Government addresses multiple contributory factors to alcohol and drug misuse through policies and programs for Aboriginal and Torres Strait Islander people. The *Attendance Strategy 2017-2020* introduces measures to promote school attendance. Community infrastructure programs are supported through funding and governance arrangements.

Remaining gaps: While each of the recommendations in this chapter have been partially addressed by the South Australian Government, greater priority should be given to data collection related to the misuse of alcohol among Aboriginal and Torres Strait Islander people. Additionally, research should be commissioned into the specific nature and causes of alcohol dependence and misuse in Aboriginal and Torres Strait Islander communities.



Western Australia | Key actions: The Western Australian Government supports research into the nature of alcohol and drug misuse through a range of initiatives. The publication of an Indigenous Status Flag in government datasets has improved the recognition of Aboriginal and Torres Strait Islander people in statistics.

Remaining gaps: The Western Australian Government has at least partially implemented each of the recommendations contained in this section. More support is required for the provision of infrastructural and technological innovation in service provision. A greater focus is also required on addressing student care and to address the cultural factors behind school attendance.

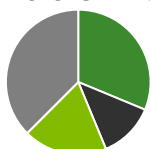


Tasmania | Key actions: The Tasmanian Government attempted to address the collection and reporting of data relating to Aboriginal and Torres Strait Islander people through participation in the Data Quality Improvement Subcommittee. This work continues through the implementation of the Cultural Respect Framework for health services. Access to education is supported by Aboriginal Education Services in the Department of Education and TasTAFE. The Tasmanian Government's Reset agenda commits to addressing disadvantage through continuing to deliver initiatives under the Closing the Gap framework.



Remaining gaps: The Tasmanian Government needs to provide greater consideration to specific nature and causes of alcohol dependence and misuse in Aboriginal and Torres Strait Islander communities.

Northern Territory | Key actions: The Northern Territory Government has implemented a number of policies to address and monitor alcohol misuse among Aboriginal and Torres Strait Islander people, including the 2017 Riley Review into alcohol policies and legislation. The Northern Territory contributes to schemes to support community projects, and to ensure Aboriginal and Torres Strait Islander participation in housing design processes.



Remaining gaps: The Northern Territory Government has partially addressed each recommendation in this chapter, however greater attention should be paid to the provision of road funding. Greater action is also required in response to promoting school attendance, and in understanding the nature of alcohol dependence.

Australian Capital Territory | Key actions: The Australian Capital Territory Government continually consults with the local community on health related initiatives, including alcohol and other substance misuse. A range of strategies have been implemented to address school attendance issues, including the employment of Aboriginal and Torres Strait Islander Education Officers.



Remaining gaps: The Australian Capital Territory Government should give greater focus to conducting research into matters relating to the misuse of alcohol among Aboriginal and Torres Strait Islander people. This should include a focus on the nature and cause of alcohol dependence.

5.1 The harmful use of alcohol and other drugs (63-71)

Recommendation 63

That having regard to the desirability of Aboriginal people deciding for themselves what courses of action should be pursued to advance their well-being, ATSIC consider, in the light of the implementation of the National Aboriginal Health Strategy, the establishment of a National Task Force to focus on:

- a. The examination of the social and health problems which Aboriginal people experience as a consequence of alcohol use;*
- b. The assessment of the needs in this area and the means to fulfil these needs; and*
- c. The representation of Aboriginal Health Services and other medical resources in such a project.*

Background information

Recommendation 63 recognises the disparity in health outcomes between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander people, especially in regards to the social and health problems associated with alcohol use.

Responsibility


This Recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

A Taskforce on Substance Abuse was established in 1992 as an advisory body to ATSIC. The purpose of the Taskforce was to examine the social and health issues facing Aboriginal and Torres Strait Islander people as a result of substance abuse, and to assess and meet needs in this area. While ATSIC was disbanded in 2005, the Commonwealth has continued to provide national guidelines and funding for drug and alcohol treatment and rehabilitation through COAG.

The NDS, a cooperative venture between Commonwealth, State and Territory governments, and the non-government sector, aims to improve health, social and economic outcomes for Australians by preventing drug misuse. The Commonwealth provides funding through the Strategy for education and research into substance abuse among Aboriginal and Torres Strait Islander communities. The Strategy also established a national database on alcohol and other drug projects undertaken by or for Aboriginal and Torres Strait Islander communities.

DSS implemented the Cashless Debit Card trial with the aim of addressing the social and health issues experienced by Aboriginal and Torres Strait Islander people because of alcohol abuse and gambling. The trial was for 12 months and aimed to reduce the levels of harm associated alcohol use by limiting trial participants' access to cash and by preventing the purchase of alcohol or gambling products. Participation in the trial was mandatory for all working age recipients of income support payments in the selected trial sites.

-  *The Commonwealth has implemented Recommendation 63 by continuing to provide a national approach and funding to address alcohol abuse.*

Additional commentary

The Commonwealth's DSS notes that results from the Cashless Debit Card trial indicate that many of the intended outcomes are on the way to being achieved.

Recommendation 64

That Aboriginal people be involved at every level in the development, implementation and interpretation of research into the patterns, causes and consequences of Aboriginal alcohol use and in the application of the results of that research.

Background information

In order to gain a culturally relevant understanding of issues facing Aboriginal and Torres Strait Islander communities, it is critical that Aboriginal and Torres Strait Islander members are included in the research process.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The *1993-94 Annual Report* noted that the **Commonwealth** took steps to promote Aboriginal and Torres Strait Islander representation on the Council for Aboriginal Health, alongside existing opportunities for inclusion on ATSIC's Board of Commissioners, Regional Councils, and State Tripartite Forums.

Commonwealth bodies, including the NHMRC, have developed broad guidelines which emphasise the involvement of Aboriginal and Torres Strait Islander people at all stages of research that relates to Aboriginal and Torres Strait Islander health. For example, NHMRC's *Guidelines on Ethical Matters in Aboriginal and Torres Strait Islander Health Research*. In 2010, the NHMRC launched Road Map II: A Strategic Framework for Improving the Health of Aboriginal and Torres Strait Islander People through Research which seeks to improve Aboriginal and Torres Strait Islander participation in research, and to conduct further research into evaluation, intervention and priority-driven areas of Aboriginal and Torres Strait Islander health.

- *The Commonwealth has implemented Recommendation 64 by promoting the inclusion of Aboriginal and Torres Strait Islander people in health research.*

Aboriginal and Torres Strait Islander individuals are required to be involved in health research in **all States and Territories**, as outlined in Recommendation 48 above. In addition, the following actions that relate specifically to impact of alcohol have been taken.

- *All States and Territories have implemented Recommendation 64 through the introduction of a range of initiatives to support the Commonwealth.*

Additional commentary

In **New South Wales**, a range of formal Aboriginal advisory structures, Aboriginal networks and experts are used by NSW Health in the development, implementation and evaluation of Aboriginal drug and alcohol related programs. Where a research project in the NSW Health system focuses on, or separately collects data relating to Aboriginal people as a group, separate approval must be sought from the Aboriginal Health and Medical Research Council Ethics Committee. Aboriginal community involvement in, and control over, research is a major criterion for approval.

The **Victorian** Government notes an ongoing commitment to self-determination as the guiding principle in Aboriginal Affairs, and continued cooperation with Aboriginal communities to approach issues of importance. Recently, Aboriginal members have been included in the governance of a research-mapping project that contributes to an evidence-based design to inform the design of the Aboriginal alcohol and other drug, and mental health positions funded through the 2017-18 State Budget.

The **Queensland** Government is currently working with the 19 discrete Aboriginal and Torres Strait Islander communities with alcohol restrictions in place to review their Alcohol Management Plans (AMPs).

The Review is being informed by community input and engagement and has resulted in research and analysis on key issues identified by communities. A general review on the effectiveness of AMPs was also undertaken and James Cook University partnered with a number of communities to review their AMPs. In partnership with Aboriginal and Torres Strait Islander communities, the results from this research and application of these results, will inform the future approach to alcohol management.

In **Tasmania**, the Department of Health and Human Services is implementing the Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2016-2026, and in so doing, has consulted with a number of Aboriginal and Torres Strait Islander community health service providers. Aboriginal and Torres Strait Islander interests in social and health service provision around alcohol are pursued through the Tasmanian Aboriginal Health Reference Group, the Tasmanian Aboriginal Health Partnership Forum and internally, through the Department of Health and Human Services (DHHS) Aboriginal Health and Wellbeing Working Group.

Recommendation 65

That if Aboriginal people identify it as a priority (and ATSIC is well placed to make such a judgement) the Ministerial Council on Drug Strategy, as the body which manages the NCADA, act to develop and implement, in conjunction with Aboriginal people and organisations, an ongoing program of data collection and research to fill the many gaps which exist in knowledge about Aboriginal alcohol and other drug use and the consequences of such use. Particular areas of need are:

- a. Information about alcohol consumption among urban Aboriginal groups;*
- b. Information about alcohol consumption among Aboriginal youth;*
- c. Longitudinal data in all areas;*
- d. An emphasis on good quality data utilising standard methodology and definitions; and*
- e. Evaluation research which assists in developing improved Aboriginal prevention, intervention and treatment initiatives in the alcohol and other drugs field.*

Background information

The National Campaign Against Drug Abuse (NCADA) was a conjoint effort between the Commonwealth, and the States and Territories to reduce or prevent alcohol and substance abuse. It has since been succeeded by the National Drug Strategy (NDS).

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation

Key actions taken and status of implementation

At the **Commonwealth** level, the NCADA (1985-2010) and the NDS (2010-current) aim to build safe and healthy communities by minimising alcohol, tobacco and other drug-related health, social and economic harm among individuals, families and communities.

The National Indigenous Drug and Alcohol Committee (NIDAC, 2004-2014) was established to address Aboriginal and Torres Strait Islander alcohol and substance abuse problems.

The Commonwealth has also supported several research bodies and Action Plans to address Aboriginal and Torres Strait Islander alcohol and substance abuse, through the Australian National Council on Drugs (ANCD).


The ABS has conducted research into Aboriginal and Torres Strait Islander alcohol and substance abuse, through the NATSISS and the NATSIHS. These surveys collect alcohol and drug use statistics in alternate 3 year cycles. However, the ABS notes that longitudinal data are not available from these collections.

In 2016, the AIHW published the results of the Australian Burden of Disease Study which included estimates of the burden of alcohol and substance use among Aboriginal and Torres Strait Islander people. The AIHW also conducts a National Drug Strategy Household Survey (NDSHS) which collects information on alcohol and tobacco consumption, and illicit drug use among Aboriginal and Torres Strait Islander people. The NDSHS covers the period from 1998 to present, and is conducted every three years. The AIHW and the Australian Institute of Family Studies released the Closing the Gap Clearinghouse Resource Sheet No. 3 *Reducing alcohol and other drug related harm* in 2010, which reviewed the extent to which strategies and interventions to reduce harmful alcohol and drug usage among Aboriginal and Torres Strait Islander people have been successful. Other AIHW data collections


include the Alcohol and Other Drugs Treatment Services Minimum Data Set (AODTS) and the annual National Opioid Pharmacotherapy Statistics (NOPSAD) collection. The AODTS and NOPSAD collect information on Aboriginal and Torres Strait Islander patients receiving drug and alcohol treatment including those patients who receiving opioid substitution therapies.

The Department of Health (DOH) has responsibility for a number of drug and alcohol forums, including the Ministerial Drug and Alcohol Forum and the National Drug Standing Committee. They are also the lead agency in the Commonwealth's response to the National Ice Taskforce Report, which includes further funding to improve the quality of data and research on ice and other illicit drugs.


PM&C is also providing over \$40 million in funding over the four years from 2017 to strengthen the evaluation of Aboriginal and Torres Strait Islander programs, including evaluation relating to substance misuse.

 *The Commonwealth has mostly implemented Recommendation 65 by undertaking research and data collection on alcohol and substance abuse issues facing Aboriginal and Torres Strait Islander people. However, longitudinal data are not currently provided for all areas.*


The **New South Wales** Government identified this as a Commonwealth responsibility in its 1995-96 Implementation Report. Since then, NSW Health contributes Aboriginal-related health service data to the AIHW as part of their data collections.

 *The New South Wales Government has mostly implemented Recommendation 65. While this has been identified as a Commonwealth responsibility, the New South Wales Government has cooperated with the provision of data for the AODTS and the NOPSAD collections.*


In **Victoria**, a reporting mechanism for substance abuse instances for Koori individuals was developed as a response to this recommendation. Today, the Koori Alcohol Action Plan specifically requires the evaluation of programs aimed at reducing rates of substance abuse.

 *The Victorian Government has introduced a range of initiatives to implement Recommendation 65. These include the Koori Alcohol Action Plan, and the establishment of a reporting mechanism in response to Aboriginal and Torres Strait Islander substance abuse.*

Queensland Health observed in the State's 1996-97 Implementation Report that it had an ongoing program of data collection and research on Aboriginal and Torres Strait Islander alcohol, tobacco and other drug issues.


 *The Queensland Government has introduced a range of initiatives to implement Recommendation 65. This has included an ongoing program of data collection and research on Aboriginal and Torres Strait Islander alcohol, tobacco, and other drug issues in conjunction with the Commonwealth.*

The **South Australian** Government identified this as a Commonwealth responsibility in its 1994 Implementation Report. The South Australian Government provides ongoing support to the Commonwealth in its implementation of this recommendation. Under the NDS, the Commonwealth funds the National Centre for Education and Training on Addiction in South Australia.


 *The South Australian Government has partially implemented Recommendation 65. While this has been identified as a Commonwealth responsibility, the South Australian Government has cooperated with the Commonwealth through initiatives such as the National Centre for Education and Training on Addiction.*

In **Western Australia**, the Government's 1994 Implementation Report stated that no direct collection of data was made about alcohol consumption among Aboriginal and Torres Strait Islander people. However, the WA Aboriginal Health and Wellbeing Framework published in 2015 sought to evaluate alcohol as part of a number of determinants of health, providing some nationally-collected statistics on the high risk consumption of alcohol. The WA Government currently provides internal and external stakeholders with data on Aboriginal drug and alcohol consumption, including usage, hospitalisations, deaths and treatment. Western Australia also supports external research through initiatives including


the Australian Secondary Students' Alcohol and Drug Survey, the Young Adult Drug and Alcohol Survey, and the Mental Health Attitudes Survey. The WA Mental Health Commission provides researcher requests for de-identified treatment-episode data accessed via the Data Linkage Unit.

 *The Western Australian Government has mostly implemented Recommendation 65 through a range of initiatives. For a more complete implementation, greater steps towards parts (c) and (d) of the recommendation is required.*


The **Tasmanian** 1995 Implementation Report observed that there were no NCADA centres in the State, and stated that this recommendation was accordingly not relevant to the State.

 *The Tasmanian Government has partially implemented Recommendation 65 through supporting Commonwealth initiatives. However, no specific actions taken could be located.*

The **Northern Territory** identified in its 1994-95 Implementation Report the Living With Alcohol program and several Menzies School of Health Research programs, which were specifically focused on collecting data about substance abuse among Aboriginal groups. The implementation of this recommendation remains a focus of the Menzies School, which in 2015 undertook research work on developing a place-based framework for assessing alcohol harms in remote communities. The 2017 *Alcohol Policy and Legislation Review Report* ('Riley Review') also contained a number of recommendations about continuing to refine and improve data collection and research in this area.

 *The Northern Territory Government has mostly introduced a range of initiatives to implement Recommendation 65. These include the Living with Alcohol program, various Menzies School of Health Research programs, and the conduct of the Riley Review.*

The **Australian Capital Territory's** 1997 Implementation Report observed that the Alcohol and Drug Service of ACT Health collects data across all areas on treatment episodes, which could be used for research if sought by the Aboriginal and Torres Strait Islander community of the ACT. ACT Health retains a commitment to continual improvement of data relating to alcohol and other drug treatment and usage among Aboriginal and Torres Strait Islander populations. This commitment involves a proactive approach to working with service providers and Aboriginal and Torres Strait Islander people to inform the development of programs and policies to address identified areas of need. The ACT Aboriginal and Torres Strait Islander Health Coordination Group functions to advise, monitor and support the coordinated implementation of Directorate-wide strategies and initiatives in relation to the health of Aboriginal and Torres Strait Islander people.

 *The Australian Capital Territory Government has partially addressed Recommendation 65 through the collection of data on treatment episodes, however for complete implementation further actions is required against parts (c), (d) and (e) of the recommendation.*

Additional commentary

The Commonwealth's AIHW notes that further action is required to improve the NDSHS, including: increasing rural and remote area stratification, increasing sample size and representativeness, and ensuring methods of data collection are culturally appropriate.

Recommendation 66

That if Aboriginal people identify it as a priority, organisations which support research into Aboriginal issues, including the NCADA and the Australian Institute of Aboriginal and Torres Strait Islander Studies, encourage more comprehensive and diverse research into the extent, causes and consequences of alcohol use among Aboriginal people. In particular, that appropriate steps be taken to ensure that the NCADA national research and training centres at the University of New South Wales, Curtin University and the Flinders University of South Australia establish mechanisms to encourage new graduates, researchers from other fields and Aboriginal people to conduct research in this area and identify research priorities and methods to implement them.

Background information

The NCADA has been replaced by the NDS (see Recommendation 65). AIATSIS is a research, collection and publishing organisation that promotes knowledge of Aboriginal and Torres Strait

Islander cultures, traditions, languages and stories. Recommendation 66 recognises the importance of research centres and partnerships in identifying alcohol-related issues facing Aboriginal and Torres Strait Islander people.

Responsibility


This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** provided funding for the National Centre for Research into the Prevention of Drug Abuse at Curtin University, and the National Drug and Alcohol Research Centre at the University of New South Wales (*1993-94 Annual Report*). The research conducted was aimed at reducing alcohol consumption among Aboriginal and Torres Strait Islander people, and reducing excessive drinking and associated health problems.

A national database of projects on alcohol and other drugs involving Aboriginal and Torres Strait Islander people was developed through the NDS (see Recommendation 63). The establishment of this database provided Aboriginal and Torres Strait Islander researchers with training and skill development opportunities through the data collection and compilation involved.

Recommendations 63 and 65 detail the alcohol-related research that has been funded by the Commonwealth.

 *The Commonwealth has implemented Recommendation 66 by funding alcohol-related research regarding Aboriginal and Torres Strait Islander people and developing a national initiatives database.*

Recommendation 67

That the National Drug Abuse Data System of the NCADA institute a regular research program to establish baseline data and monitor changes over time in relation to the health, social and economic consequences of alcohol use among Aboriginal people.

Background information

It is important to monitor progress, in order to understand the scale of the problem and the impact of policy interventions.

Responsibility


This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

As part of the **Commonwealth** NCADA's National Drug Abuse Data System, surveys were conducted by the National Drug and Alcohol Statistics Unit in 1994, 1996, and 1998. These surveys provided information around drug usage patterns, behaviour and attitudes among Aboriginal and Torres Strait Islander people. The National Drug Abuse Data System was discontinued and its functions were transferred to the ABS.

The ABS has contributed to the implementation of Recommendation 67 through the following surveys:

- NATSISS: beginning in 2002 and conducted every six years, NATSISS collects information on family and culture, health, education, employment, income, financial stress, housing, and law and justice.
- NATSIHS: beginning in 2004-05 and conducted every six years, NATSIHS collects information about health-related actions, risk factors, health status and socioeconomic circumstances relevant to Aboriginal and Torres Strait Islander people.

 *While the NCADA has been discontinued, the Commonwealth has implemented Recommendation 67 by continuing the collection and publication of Aboriginal and Torres Strait Islander health surveys through the ABS.*

Recommendation 68

That responsible authorities accurately identify Aboriginal people in administrative data sets such as those covering mortality, morbidity and other social indicators, where such action will provide basic information which will assist Aboriginal organisations to achieve their research and service development goals. While it is acknowledged that primary responsibility for the management of such data sets lies with the States and Territories, Commonwealth agencies such as ATSIC, the AIH and the AIC should be involved in this exercise in a co-ordinating role.

Background information

Baseline data are important in health administration and in monitoring progress to achieve more optimal health outcomes for Aboriginal and Torres Strait Islander communities.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** Government's 1993-94 *Annual Report* noted that the AIHW established the National Health Information Agreement to improve the collection, quality and dissemination of health statistics – particularly as they concern the identification of Aboriginal and Torres Strait Islander people. The Agreement is a combined effort between the Commonwealth, and the States and Territories to arrive at national data standards. Implementation is ongoing through the National Indigenous Data Improvement Support Centre, with the most recent version of the Agreement updated in 2013.

The AIHW has undertaken a number of pieces of work aimed at assessing and improving the quality of identification of Aboriginal and Torres Strait Islander people in key administrative data sets.

- In 2012, the AIHW undertook the Enhanced Mortality Database project aimed at improving the quality and completeness of mortality and life expectancy estimates for Aboriginal and Torres Strait Islander populations.
- The AIHW has also undertaken a series of data quality audits for hospital admitted patient care data. These audits aimed to assess the quality of identification information by comparing it with data collected in a face-to-face interview. The audits have demonstrated improvements in data quality over time, with all jurisdictions assessed as having adequate identification of Aboriginal and Torres Strait Islander people in hospital records from 2010-11.
- In 2010, the AIHW released the National best practice guidelines for collecting Indigenous status in health data sets.
- The AIHW also undertakes regular assessment of the quality of identification of Aboriginal and Torres Strait Islander people within its own data holdings, including the National Cancer Registry, the National Child Protection Collection, and the Disability Services National Minimum Data Set.
- The AIHW collects data on Aboriginal and Torres Strait Islander status in the Alcohol and other drugs treatment services National Minimum Dataset and the National Opioid Pharmacotherapy Statistics Annual Data Collection.


The ABS has also made progress with the identification of Aboriginal and Torres Strait Islander people in data collections. While nationally accurate benchmarks have not yet been established, the ABS has moved towards nationally consistent and comprehensive coverage.

DOH, through the development of the Voluntary Indigenous Identifier, has also contributed to progress in the identification of Aboriginal and Torres Strait Islander people in administrative data, including mortality, morbidity, and other indicators.


 *The Commonwealth has mostly implemented Recommendation 68 through the progress made to identify Aboriginal and Torres Strait Islander people in data sets. Identification and improvement in quality is ongoing, and as yet, not all data sets identify Aboriginal and Torres Strait Islander people in a manner that is nationally consistent and accurate.*

The **New South Wales** Government has made efforts to improve the reporting and linkage of datasets relating to Aboriginal people. A 2012 report sought to link data across a number of health and administrative databases, noting opportunities to capture Aboriginal status that might not have been identified in every data collection. In addition, NSW Health has a publicly available interactive tool for data analysis across a range of key health themes and performance indicators for Aboriginal and non-Aboriginal patients. The Department of Family and Community Services (FACS) provides breakdowns of data by Aboriginality in its publicly available 'FACS Statistics'. Breakdowns are provided where the data are available and does not breach privacy and confidentiality provisions. The FACS Aboriginal Outcomes Strategy also has a range of Aboriginal key performance indicators, which aim to improve outcomes across the child protection system.


In 2017, CSNSW conducted a Data Verification Project to validate information on inmates who had advised that they were of Aboriginal descent; 2,554 inmates were interviewed with 77 inmates confirming they did not identify as being of Aboriginal descent.

 *The New South Wales Government has implemented Recommendation 68 through efforts to improve the reporting and linkage of datasets relating to Aboriginal people.*


The **Victorian** Government noted in its 1994 Implementation Report that reviews and changes of policy within the Koori Health Unit and Victorian hospitals. A report on *The History of Indigenous Identification in Victorian Health Datasets, 1980-2011*¹³ observed many initiatives and policies to improve reporting of Aboriginal and Torres Strait Islander status. Initiatives were also implemented to improve data collection of Aboriginal and Torres Strait Islander status in BreastScreen Victoria¹⁴ and in maternity services at the Royal Women's Hospital.¹⁵ The Victorian Government has also noted in AJA 3 a commitment to supporting community organisations to design, monitor and evaluate Aboriginal and Torres Strait Islander programs and to conduct research into issues that are significant for Aboriginal and Torres Strait Islander communities.

 *The Victorian Government has mostly implemented Recommendation 68 through several initiatives targeted towards improving the reporting of Aboriginal and Torres Strait Islander health status.*

Queensland Health, since the RCIADIC, has recorded the Aboriginal and Torres Strait Islander status of patients in all hospital data collections, as well as in birth and death registrations. Data on community level indicators included in the new Performance Assessment Framework will be disaggregated by Aboriginal and Torres Strait Islander status.

 *The Queensland Government has mostly implemented Recommendation 68, and records the Aboriginal and Torres Strait Islander status of patients in all hospital data collections, as well as in birth and death registrations.*

The **South Australian** Government stated in its 1994 Implementation Report that the State Statistical Priorities Committee would coordinate a response to this recommendation among agencies. South Australia Health has established regular quality checks to improve and monitor the quality of Aboriginal and Torres Strait Islander identification in datasets. The South Australian Government notes that a culture of continuous improvement supports the regular review of quality checks, as well as a consideration of education and training requirements. The South Australian Government also ensures Departmental adherence to ABS standards for identification of Aboriginal and Torres Strait Islander people within administrative data sets.

 *The South Australian Government has mostly implemented Recommendation 68 through the introduction of regular quality checks to improve and monitor the quality of Aboriginal and*

¹³ Bree Heffernan, Dulce Iskandar and Jane Freemantle (2012)


¹⁴ Karen Adams, Anne Kavanagh and Jill Guthrie (2008) 'Are you Aboriginal and/or Torres Strait Islander?': improving data collection at BreastScreen Victoria. Australian and New Zealand Journal of Public Health 28(2) 124.

¹⁵ Kate Freeman (no date), *Improving identification of Aboriginal and/or Torres Strait Islander babies in mainstream maternity services (Vic)*. Online: https://www.monash.edu/data/assets/pdf_file/0006/139704/kate-freeman.pdf


Torres Strait Islander identification in datasets, and the adoption of ABS classification standards for administrative datasets.

In **Western Australia**, the Department of Health undertook the Telethon Kids Institute's Developmental Pathways Project on a collaborative basis with the ABS and the Telethon Institute for Child Health Research which "aimed to explore and develop different methods for deriving Indigenous status from multiple data sources."¹⁶ As a result of this project, an Indigenous Status Flag which uses multiple datasets to flag individuals across WA government administrative data collections as Aboriginal and Torres Strait Islander. Further, the project facilitates the provision of State Government administrative datasets across a spectrum of wellbeing indicators, including mortality, morbidity and other social indicators such as health, education, justice and child protection data. These data are used to inform policy and prevention strategies to improve outcomes for Aboriginal and Torres Strait Islander people.


Western Australian agencies also provide data drawn from administrative datasets to the Commonwealth, as part of a long-standing arrangement to facilitate Federal coordination of various analyses and reporting. This contributes towards Commonwealth Government projects, policies, and publications.

 *The Western Australian Government has mostly implemented Recommendation 68 through initiatives such as the Telethon Kids Institute's Developmental Pathways Project and ongoing cooperation with the Commonwealth.*

Tasmania faced issues with some data collection around Aboriginal and Torres Strait Islander status: the Commonwealth Health Performance Framework 2014 observed that Aboriginal and Torres Strait Islander-flagged data in the National Perinatal Data Collection from Tasmania included those who did not state their status. However, the Aboriginal Health Unit has encouraged the development of strategies to improve data collection. Hospital admissions more broadly identify Aboriginal people. Since 2007, the Tasmanian Government has actively sought to improve the quality of administrative data sets. Between 2009 and 2013, the Tasmanian Government worked in partnership with the Commonwealth in implementing the Overarching Bilateral Indigenous Plan on the Data Quality Improvement Subcommittee. The implementation of the Cultural Respect Framework throughout the DHHS will continue this work, with a focus on using the Indigenous identifier throughout the Tasmanian Health Service and allied services.

 *The Tasmanian Government has partially implemented Recommendation 68 through the introduction of initiatives to improve the identification of Aboriginal and Torres Strait Islander identification in datasets in conjunction with the Commonwealth. However, the Commonwealth Health Performance Framework 2014 observed that Tasmania faces ongoing issues in regards to the implementation of this recommendation.*

The **Northern Territory** conducted an audit of the recording of demographic items, including Aboriginal and Torres Strait Islander status, in 1997 at all five public hospitals in the Northern Territory. The Northern Territory Department of Health has undertaken validation of demographic data collection three times in the past 20 years.

 *The Northern Territory Government has mostly implemented Recommendation 68. Actions have included the conduct of an audit of demographic items, including Aboriginal and Torres Strait Islander status, and continued demographic data collection.*

The **Australian Capital Territory** conducted a project on Aboriginal and Torres Strait Islander health awareness in 2007, working with General Practitioners (GPs) to improve rates of Aboriginal and Torres Strait Islander status collection. The ACT's Community Services Directorate has developed a common dataset to ensure consistent data standards across directorate services; it includes nationally consistent standards for Aboriginal and Torres Strait Islander identification. The Community Services

¹⁶ Christensen D, Davis G, Draper G, Mitrou F, McKeown S, Lawrence D, McAullay D, Pearson G, Ridders W, Zubrick S R. *Evidence for the use of an algorithm in resolving inconsistent and missing Indigenous status in administrative data collections*. Australian Journal of Social Issues. Vol.49. No 4. 2014 pp 423-443.

Directorate also reports Aboriginal and Torres Strait Islander disaggregated data to the AIHW and Productivity Commission for inclusion in national reports. ACT Health uses data on self-reported Aboriginal and Torres Strait Islander status for all patients to inform internal reporting and external reporting to Commonwealth agencies. The ACT Government notes that all information is reported to all agencies in accordance with the nationally agreed-upon definition for national health information purposes.

 *The Australian Capital Territory Government has implemented Recommendation 68.*

Additional commentary

The ABS aims to enhance the statistical information from administrative data sources. As part of this aim, the ABS seeks opportunities to include the Standard Indigenous Question into the administrative process to provide for self-identification.

The Enhanced Mortality Database project methodology is now being used to establish an ongoing AIHW Enhanced Indigenous Mortality Data Collection, to support producing enhanced Indigenous mortality and life expectancy estimates on an ongoing basis.

The ABS has independently assessed the reliability of Northern Territory Aboriginal and Torres Strait Islander identification in health surveys, and assessed the under-identification of Aboriginal and Torres Strait Islander people in the Northern Territory to be the lowest of all jurisdictions.

Recommendation 69

That with the aim of assisting Aboriginal organisations to develop effective programs aimed at minimising the harm arising from alcohol and other drug use, priority be given by research funding bodies to research investigating the causal relationships between alcohol and other drugs, including their availability, and consequences on community well-being and criminal activity.

Background information

Research into Aboriginal and Torres Strait Islander alcohol and substance use is needed to identify the underlying issues and thereby better address Aboriginal and Torres Strait Islander problems.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** Government has provided funding for research into priority areas of Aboriginal and Torres Strait Islander health through the NDS. Further, PM&C commented that Commonwealth alcohol policy is developed in line with harm minimisation principles, as outlined in the NDS.

The NHMRC has also established the Road Map II: A Strategic Framework for Improving the Health of Aboriginal and Torres Strait Islander People through Research to improve Aboriginal and Torres Strait Islander participation in research.

Under the IAS, PM&C funds over 80 alcohol and other drug treatment services. Many of these services have integrated models of care, which recognise the relationship between alcohol misuse, mental and physical health, and the social and cultural determinants of health.

 *The Commonwealth has implemented Recommendation 69 by providing ongoing funding for research projects into Aboriginal and Torres Strait Islander alcohol and substance use.*

Recommendation 70

That organisations developing policies and programs addressing Aboriginal alcohol issues:

- a. Recognise the inadequacy of single factor explanations (such as the disease model of problematic alcohol use) of the causes of alcohol dependence and misuse among individuals;*
- and*

b. Take into account the fact that multiple explanations are necessary to explain the causes of alcohol misuse and related problems at the community level. It is therefore inappropriate to focus too strongly on any one explanation to the exclusion of others.

Background information

Alcohol and drug abuse often results from a combination of factors, and an integrated approach to the identification and management of these health issues is required. The RCIADIC Report emphasised community-based initiatives which empower Aboriginal and Torres Strait Islander people to make informed decisions about the use of alcohol and other drugs.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** Government's 1992-93 *Annual Report* noted that ATSIC recognises a host of factors that lead to alcohol and other drug abuse and related problems. In 1995-96, the NHMRC established the Emotional and Social Well Being (Mental Health) Working Party which focused on the interrelationship between emotional and social wellbeing and alcohol and drug usage.

Broadly, the Commonwealth has adopted an increasingly integrated approach to the management of Aboriginal and Torres Strait Islander alcohol and drug related problems. The Commonwealth has contributed to ongoing research through the NDS and the NHMRC. As set out in Recommendation 69, PM&C provides funded for alcohol and other drug treatment services which address a range of causal factors.

 *The Commonwealth has implemented Recommendation 70. The Commonwealth has incorporated an understanding of the underlying complex aetiology of alcohol and substance misuse into its national policies and programs.*

The **New South Wales** Government notes that it recognises the complex interrelationships between dispossession, interruption of culture and intergenerational trauma that impacts on the health and wellbeing of Aboriginal people, including its contribution to substance misuse. The New South Wales Government developed a number of alternative strategies in order to provide a holistic approach to responding to alcohol misuse. Alcohol and Other Drug programs in the state are focused on developing coping skills. Programs targeted at the implementation of this recommendation include:

- the NSW Drug Package which invests an additional \$75 million over four years to tackle drug misuse in NSW communities by supporting more young people and families into treatment. Aboriginal people are a priority for new drug and alcohol treatment, rehabilitation, pregnancy services and aftercare programs.
- delivery of evidence-based programs and services including: EQUIPS in adult correctional facilities; and Dthina Yuwali in juvenile correctional and community settings. These programs and services aim to address the relationship between substance abuse and offending.
- Bolwarra Transitional Centre provides support for Aboriginal female offenders with alcohol and other drug addiction issues in the transition back to community living.
- Through Their Futures Matters (the NSW Government's strategy to improve life outcomes for vulnerable children and families), tailored support packages for vulnerable children and their parents which access and build on universal services to provide a child- or family-centred focus. One area of focus is health and mental health.

 *The New South Wales Government has implemented Recommendation 70 through the development and implementation of strategies targeted at providing a holistic response to alcohol misuse and the development of coping skills.*

The **Victorian** Government noted in its 1994 Implementation Report that it developed programs addressing Aboriginal alcohol misuse at a local level with communities. This is also incorporated into

the *Koori Alcohol Action Plan 2010-20*, which utilises a cross-agency approach to the treatment of alcohol misuse within Aboriginal communities.

● *The Victorian Government has implemented Recommendation 70 through the development and implementation of strategies targeted at addressing Aboriginal and Torres Strait Islander drug and alcohol issues.*

The **Queensland** Government has implemented holistic health service models to address community specific social and emotional wellbeing factors associated with alcohol dependence. Queensland Health developed a state-wide network of Aboriginal and Torres Strait Islander reference groups to provide information, advice and insight on Aboriginal and Torres Strait Islander alcohol, tobacco and other drug issues. Currently, the Queensland Government is working in partnership with communities to review AMPs and develop practical, collaborative actions to address the causes and symptoms of alcohol misuse and harm.

● *The Queensland Government has implemented holistic health service models to address community specific social and emotional wellbeing factors associated with alcohol dependence in line with Recommendation 70. Additionally, Aboriginal and Torres Strait Islander reference groups are consulted on alcohol, tobacco and other drug issues.*

The **South Australian** Government stated in its 1994 Implementation Report that the philosophy of this recommendation was incorporated into the practice of Drug and Alcohol Services South Australia, and that government agencies more broadly had recognised the inadequacy of single-factor explanations of alcohol abuse. Presently, the South Australian Government addresses multiple contributory factors to alcohol and drug misuse through policies and programs for Aboriginal and Torres Strait Islander people who face alcohol problems. These include:

- harm reduction measures: Sobering Up Units, Mobile Assistance Patrols, the *Public Intoxication Act 1984* (SA), and regional alcohol action plans;
- supply reduction measures: regional alcohol action plans; and
- demand reduction measures: community development programs, welfare cards, treatment services, and population based social marketing.

● *The South Australian Government has implemented Recommendation 70 through amendments to Drug and Alcohol Services South Australia practice, and the implementation of harm reduction measures, as well as demand-side and supply-side policy responses.*

In **Western Australia**, the funded programs for alcohol and drug issues recognise the importance of lifestyle issues and community factors in responding to the health needs of Aboriginal communities. The Strong Spirit Strong Mind Aboriginal Programs provide nationally recognised training programs to support the development of a skilled Aboriginal and Torres Strait Islander workforce, and focus on alcohol and other drug problems in addition to social and emotional wellbeing harms. These training programs also provide awareness training for non-Aboriginal and Torres Strait Islander workers. The Western Australian Government notes the commitment of the Mental Health Commission to planning, developing and implementing culturally secure policy frameworks and service models in consultation with Aboriginal and Torres Strait Islander stakeholders across Western Australia.

● *The Western Australian Government has implemented Recommendation 70, recognising the importance of lifestyle issues and community factors in responding to the health needs of Aboriginal and Torres Strait Islander communities.*


Tasmania did not specifically respond to this recommendation in its 1995 Implementation Report, but referred to a number of broader initiatives taken towards alcohol and drug misuse. It was unclear as to whether these initiatives incorporated the policy recommendations of this recommendation.

○ *Despite adopting broader initiatives to address alcohol and drug-related issues, it does not appear that the Tasmanian Government has implemented the intent of Recommendation 70.*

The **Northern Territory** Health Service stated in its 1994-95 Implementation report that these principles were incorporated into the Alcohol and Other Drugs program. Culture, social determinants, early childhood programs and strengthening communities were also included as key focuses of the 2017 Riley Review into alcohol policies and legislation.

 *The Northern Territory Government has implemented Recommendation 70 through the Alcohol and Other Drugs Program and the 2017 Riley Review.*

The **Australian Capital Territory** noted in its 1997 Implementation Report that ACT Health consulted with Aboriginal and Torres Strait Islander communities and the Aboriginal Health Service in developing its programs, and was developing programs in line with these principles at the time.

 *The Australian Capital Territory Government has implemented Recommendation 70 through the ongoing consultation with Aboriginal and Torres Strait Islander communities and the function of the Aboriginal Health Service in program development.*

Recommendation 71

That research funding bodies consider commissioning or otherwise sponsoring research investigating Aboriginal conceptualisation of the nature and causes of alcohol dependence and misuse and the prevention, intervention and treatment approaches which stem from these.

Background information


The RCIADIC Report noted that research into the patterns, causes and consequences of Aboriginal and Torres Strait Islander alcohol use should be conducted and Aboriginal and Torres Strait Islander people's perspectives into alcohol-related issues should be incorporated.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** has contributed to funding for the NDS and for the NHMRC to undertake research. The National Centre for Research into the Prevention of Drug Abuse created an Aboriginal Research Program to identify factors which can prevent alcohol and other drug-related harm among Aboriginal and Torres Strait Islander communities, develop culturally appropriate means for measuring the extent and consequences of drug abuse, and to disseminate information and provide advice. Currently, research is conducted through the NHMRC which identifies research on the health of Aboriginal and Torres Strait Islander people as a priority area.

 *The Commonwealth has implemented Recommendation 71. The Commonwealth has funded research into the nature and causes of alcohol dependence in Aboriginal and Torres Strait communities.*


Research conducted by the Australian Indigenous Alcohol and Other Drugs Knowledge Centre found that research had taken place into alcohol misuse by Aboriginal and Torres Strait Islander individuals in every State and Territory, including the relationship between alcohol dependence, treatment and culture. The below provide an indication of some of the research undertaken in each State.

In **New South Wales**, the University of Wollongong has published research on incorporating culture into treatment for Aboriginal men in alcohol and drug rehabilitation programs.¹⁷ The Stay Strong and Healthy Alcohol in Pregnancy project is one example which builds on formative research conducted in 2011 with Aboriginal women and their families. The research explores attitudes and beliefs around drinking, drug use and pregnancy; and seeks to identify the best ways to deliver information, education and support to Aboriginal women and their families.


¹⁷ Stacey L Berry (2013) *Culture in treatment for Aboriginal Australian men in New South Wales residential drug and alcohol rehabilitation services*. Online: <http://ro.uow.edu.au/theses/3758/>

 *The New South Wales Government has implemented Recommendation 71 through support of ongoing research into incorporating culture into treatment for Aboriginal alcohol and drug rehabilitation programs. This research has been incorporated into program design.*


The **Victorian** Government funds research into alcohol and other drug issues. The review did not reveal the extent to which this research specifically related to the Aboriginal and Torres Strait Islander conceptualisation of these issues. The Victorian Government also noted in AJA 3 that research had been conducted into the risk factors of alcohol and drug misuse by young people.

 *The Victorian Government has partially implemented Recommendation 71 through the provision of funding for research into alcohol and other drug issues, including into the risk factors of alcohol misuse. However, it is unclear to what extent research has been conducted into the prevention, intervention and treatment approaches for Aboriginal and Torres Strait Islander people.*


The **Queensland** Government 1996-97 Implementation Report stated that Queensland Health conducted this research by its participation in the National Drug Strategy Committee. The Queensland Alcohol and Drug Research and Education Centre, jointly funded by the University of Queensland and Queensland Health, developed the Indigenous Risk Impact Screen and Brief Intervention. This tool was designed to screen and treat alcohol Aboriginal and Torres Strait Islander individuals in the Queensland context. The Queensland Government notes that prevention, intervention and treatment approaches, including tools for screening and brief intervention, continue to be informed by contemporary research and evidence.

 *The Queensland Government has implemented Recommendation 71 through participation in the National Drug Strategy Committee, and the ongoing work of the Queensland Alcohol and Drug Research and Education Centre which focuses on prevention, intervention and treatment approaches.*


In **South Australia**, the Aboriginal Drug & Alcohol Council (SA) was formed in direct response to the RCIADIC, and aims “to ensure the development of effective programs to reduce harm related to substance misuse in Aboriginal communities.” It receives funding from the South Australian Government.

 *The South Australian Government has partially implemented Recommendation 71 through the establishment of the Aboriginal Drug and Alcohol Council. However, it is unclear to what extent research has been undertaken into the prevention, intervention and treatment approaches.*

In **Western Australia**, the Aboriginal Health Council of Western Australia has researched the involvement of alcohol in broader health outcomes for Aboriginal individuals.¹⁸ For example, research projects conducted in line with the principles contained in this recommendation include the Australian Secondary Students’ Alcohol and Drug Survey, the Young Adult Drug and Alcohol Survey, and the Mental Health Attitudes Survey. The Western Australian Mental Health Commission also provides de-identified treatment-episode data to researchers via the Data Linkage Unit.


 *The Western Australian Government has mostly implemented Recommendation 71, however further specific research is required to be conducted into the prevention, intervention and treatment approaches.*

In **Tasmania**, this recommendation was listed as “supported, but not implemented” in the Government’s 1995 Implementation Report. It is unclear whether any funded research has taken place in Tasmania specifically aimed at Aboriginal and Torres Strait Islander people.


 *The Tasmanian Government does not appear to have taken actions to implement Recommendation 71 beyond those identified through the Australian Indigenous Alcohol and Other Drugs Knowledge Centre.*

¹⁸ Aboriginal Health Council of Western Australia (2014) *Submission response – inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities.*

In the **Northern Territory**, the Menzies School of Health Research has a specific research focus on alcohol misuse in the context of Aboriginal and Torres Strait Islander health, and has made a number of publication contributions to the field.

 *The Northern Territory Government has partially implemented Recommendation 71 through the work of the Menzies School. However, it is unclear to what extent research has been conducted into the prevention, intervention and treatment approaches for Aboriginal and Torres Strait Islander people.*

In the **Australian Capital Territory**, the Alcohol Tobacco and Other Drug Association (ACT) has a large number of publications looking at the policy interventions relevant to reducing alcohol misuse. In 2017, the ACT Government opened the Ngunnawal Bush Healing Farm to address root cause issues that lead to substance abuse and treatment relapses, with services that will revolve around reconnecting Aboriginal and Torres Strait Islander people to land and culture. The Farm provides Aboriginal and Torres Strait Islander people with access to support from the traditional custodians, community leaders/elders, respected role models as well as cultural healers.

 *The Australian Capital Territory Government has partially implemented Recommendation 71; it does not appear that research programs specific to the ACT have been implemented.*

5.2 Schooling (72)

Recommendation 72

That in responding to truancy the primary principle to be followed by government agencies be to provide support, in collaboration with appropriate Aboriginal individuals and organisations, to the juvenile and to those responsible for the care of the juvenile; such support to include addressing the cultural and social factors identified by the juvenile and by those responsible for the care of the juvenile as being relevant to the truancy.

Background information

Improved school engagement is seen as an important contribution to reducing areas of Aboriginal and Torres Strait Islander disadvantage, including in literacy and numeracy levels and economic participation.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In implementing policy and programmes to respond to truancy, the **Commonwealth** Government takes a holistic approach to supporting Indigenous communities to get kids to school through the IAS. The two specific measures the Commonwealth has introduced to address truancy are:

- The School Enrolment and Attendance Measure in the Northern Territory, which requires children to attend school otherwise income support payments may cease.
- The Remote School Attendance Strategy – launched in January 2014 – assists parents and carers to get children to school in remote communities through consultation with the families and practical support. PM&C noted that this Strategy employs local Aboriginal and Torres Strait Islander attendance and truancy officers to support children, and their families, to attend school. This initiative operates in 78 schools and is currently funded until the end of 2018.


 *The Commonwealth has implemented several policies which seek to reduce truancy. Recommendation 72 is mostly complete as additional steps could be undertaken by the Commonwealth as the focus on income management does not seem to align with the primary principle being support.*

In **New South Wales**, the *Education Act 1990* (NSW) Part 5 permits conferences between students and parents or carers to help address the factors underlying truancy. The Department of Education

also employs a number of Aboriginal individuals in liaison-style roles to help improve engagement, attendance and broader issues of broader student welfare. The Connected Communities Strategy has been introduced to address the educational and social aspirations of Aboriginal children and all young people in 15 schools in 11 of the most complex and vulnerable communities in the State. Schools work closely with their Local Reference Group and Aboriginal students' parents to improve student attendance at school and to ensure learning and teaching content is culturally responsive to improve attendance. In addition, the NSW Government provides funding to the Clontarf Foundation and Girls Academy program to help prevent disengagement from education by Aboriginal children and young people.


 *In implementing Recommendation 72, the New South Wales Government has provided support for Local Reference Groups and Aboriginal individuals employed in liaison-style roles. Programs including the Connected Communities Strategy have also supported implementation.*

In **Victoria**, School Attendance Officers follow up on ongoing attendance issues. Schools are required to develop policies to support and maintain student attendance, and are supported in this with resources from the Victorian Government. The Koori Education Workforce helps to assist schools with building relationships in Koori families and communities. The Victorian Government included as a strategic priority in AJA 3 the reconnection of at-risk Aboriginal and Torres Strait Islander youth with school.


 *In implementing Recommendation 72, the Victorian Government has provided support for School Attendance Officers and the Koori Education Workforce, and mandated that schools establish policies to encourage school attendance among Aboriginal and Torres Strait Islander people.*

In **Queensland**, the Attendance Turnaround Team supports schools and communities to improve school attendance levels. Aboriginal and Torres Strait Islander cultural perspectives inform the program. The Queensland Department of Education and Training implements a youth engagement plan to strengthen engagement from early childhood through to post-school. State schools, including those in remote areas, use a range of strategies for maintaining and improving student attendance in consultation with parents and interested community members. Key strategies which implement this recommendation include:


- the State-wide Every Day Counts initiative, which aims to improve student attendance at schools through a shared commitment by students, parents, caregivers, schools and the community.
- the Australian Government Remote School Attendance Strategy (RSAS) being delivered in 12 Queensland state schools to lift school attendance levels in remote communities by developing the capacity of parents, carers and interested community members to work with schools and families; and
- the Cherbourg attendance pilot, which aims to improve school attendance rates of students in rural and remote schools. Four schools (Cherbourg State school, Murgon State school, Moffatdale State school) are involved in the pilot, which involves working with a local community body to re-engage students, support parents and mitigate the risk of prosecution.

 *In implementing Recommendation 72, the Queensland Government has introduced a number of strategies to promote attendance including the Attendance Turnaround Team, the Every Day Counts initiative, the Remote School Attendance Strategy, and the Cherbourg attendance pilot.*


In **South Australia**, one initiative run to improve Aboriginal and Torres Strait Islander student attendance is the "Enter for Success" program, which permits Aboriginal and Torres Strait Islander students to attend a school other than their local zoned school. The Department of Education Development's *Aboriginal Strategy 2013-2016* also outlined a number of key strategies to improve attendance, particularly through cultural and community engagement of families and students. The Department of Education's *Attendance Strategy 2017-2020* includes priority populations and applies across the intervention continuum. The strategy focuses on promoting the importance of education from a young age; engaging children, young people and their families; and addressing barriers to attendance, learning and wellbeing.

 *In implementing Recommendation 72, the South Australian Government has provided support through a number of programs including Enter for Success and initiatives under the Aboriginal Strategy 2013-16 and the Attendance Strategy 2017-20.*


In **Western Australia**, the Department of Education encourages a holistic approach to improving attendance at a school level. Part of this response is to encourage the recruitment of local Aboriginal and Torres Strait Islander people as teachers to build inclusive school cultures.¹⁹ A number of other legislative powers, including cases before an attendance panel under the *School Education Act 1999* (WA), assist in dealing with truancy problems. The Western Australian Government notes that the Student Attendance policy for Western Australian public schools has been revised to emphasise positive attendance strategies. Additionally, the Department of Education offers Student Attendance Toolkit resources, specialist support from the School Psychology Service, and Badged Attendance Officers.

 *The Western Australian Government has partially implemented Recommendation 72 through a number of positive attendance strategies. However, these strategies do not appear to include involving those with responsibility for the care of students, and the extent that they address cultural factors is unclear.*


In **Tasmania**, compulsory conciliation conferences involving the school, parents and student help to allow all participants to understand reasons for absenteeism and resolve school attendance issues without issuing penalties. The Department of Education employs Aboriginal Education Workers to facilitate discussions between parents, students and teachers and improve outcomes such as attendance.

 *In implementing Recommendation 72, the Tasmanian Government has provided support through the employment of Aboriginal Education Workers and the introduction of compulsory conciliation conferences between school, parents and students.*

In the **Northern Territory**, the Commonwealth School Enrolment and Attendance Measure requires children to attend school otherwise income support payments may cease. If a child does not regularly attend school, a compulsory conference assists parents and students with developing a plan to regularly attend school before the issue of infringement notices. Remote school attendance officers also help to ensure that students attend school.

 *The Northern Territory Government has partially implemented Recommendation 72 through the provision of support to Remote School Attendance Officers. The use of punitive measures such as the Commonwealth School Enrolment and Attendance Measure is not in the spirit of this recommendation.*

In the **Australian Capital Territory**, Aboriginal and Torres Strait Islander Education Officers help to provide more equitable education outcomes for Aboriginal and Torres Strait Islander students, including by improving attendance through acting as a liaison between families, communities and schools. The ACT's Education Directorate has recently adopted a strengths-based approach to Aboriginal and Torres Strait Islander Education, which focuses on building school environments to support Aboriginal and Torres Strait Islander students, and to welcome their families and communities. This approach is centred on four dimensions, including: (a) engagement with families and community; (b) teaching and cultural integrity; (c) leadership, celebration and environment; and (d) high expectations and successful transitions. In 2017, school leaders from across the ACT public system attended Cultural Integrity Training where they engaged with the task of creating a strengthened organisational culture.

 *The Australian Capital Territory Government has mostly implemented Recommendation 72 through the Education Directorate's programs, and involvement of parents and community.*

¹⁹ G. Partington, J. Gray & M. Byrne (no date) *School attendance and Aboriginal students*. Online: http://www.det.wa.edu.au/aboriginaleducation/detcms/cms-service/download/asset/?asset_id=15815446.

However, it is not clear to what extent these programs address cultural factors behind a lack of school attendance.

5.3 Housing and infrastructure (73-76)

Recommendation 73

That the provision of housing and infrastructure to Aboriginal people in remote and discrete communities, including the design and location of houses, take account of their cultural perceptions of the use of living space, and that budgetary allocations include provision for appropriate architectural and town planning advice to, and consultation with, the serviced community.

Background information

The RCIADIC Report recognised the importance of culturally appropriate housing provision to the wellbeing of Aboriginal and Torres Strait Islander communities and recommends governments practice cultural sensitivity and inclusion of Aboriginal and Torres Strait Islander communities in architectural and town planning decisions.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

Bilateral agreements between the **Commonwealth**, and State and Territory governments were made to channel the Aboriginal Rental Housing Program through ATSIC, which ran during the mid- to late-1990s.

The National Partnership Agreement on Remote Indigenous Housing (NPARIH) was targeted at addressing the issues of poor housing conditions, severe housing shortages, homelessness and overcrowding in remote Aboriginal and Torres Strait Islander communities. The NPARIH was replaced by the National Partnership on Remote Housing (NPRH) from 1 July 2016. It has a greater emphasis on improved housing sustainability and provides more business and employment opportunities for Aboriginal and Torres Strait Islander people

The National Partnership Agreement on Remote Service Delivery (NPARSD) implemented a new model for service delivery to Aboriginal and Torres Strait Islander people living in remote communities.

● *The Commonwealth has implemented Recommendation 73 through the National Partnership Agreements to improve housing and infrastructure in communities, with progress in practising cultural sensitivity and inclusivity for Aboriginal and Torres Strait Islander town planning needs.*


The **New South Wales** *Aboriginal Housing Act 1998* (NSW) explicitly aims to provide access to appropriate and quality housing that takes into account social and cultural requirements of Aboriginal people. The remainder of the Act sets out the framework through which Aboriginal public housing is offered. The Aboriginal Housing Office is currently designing new social housing which takes into account cultural and environmental considerations and includes innovation in design, purpose and construction in order to achieve better outcomes, including those in remote and discrete communities. Corrective Services NSW has an ongoing partnership with Aboriginal Housing Office to manufacture modular buildings for use in Aboriginal remote communities, providing community housing and employment opportunities for Aboriginal offenders.

● *The New South Wales Government has implemented Recommendation 73 through the *Aboriginal Housing Act 1998* (NSW), and the incorporation of Aboriginal people in this process.*

In **Victoria**, \$500 million of social housing assets were transferred to Aboriginal Housing Victoria, with the aim of improving the cultural appropriateness of housing.


● *The Victorian Government has implemented Recommendation 73 through the provision of funding towards ensuring the cultural appropriateness of housing.*

In **Queensland**, the *Housing Act 2003* (Qld) explicitly aims to provide access to appropriate and quality housing that takes into account social and cultural requirements of Aboriginal and Torres Strait Islander people. The remainder of the Act sets out the framework through which public housing is offered. The Queensland Government notes that the choice of housing types in remote communities is in response to the housing needs of community residents and is influenced by factors including cultural preferences of the community, regional housing styles, local conditions, availability of skilled trades and availability of building materials and equipment. The Queensland Government is currently developing the new *Indigenous Housing Action Plan* in collaboration with Aboriginal and Torres Strait Islander councils to improve housing outcomes for Aboriginal and Torres Strait Islander people.


 *The Queensland Government has implemented Recommendation 73 through the Housing Act 2003 (Qld) and consultation of Aboriginal and Torres Strait Islander councils in developing the new Indigenous Housing Action Plan.*

The **South Australian** Government's 1994 Implementation Report observed that the Housing Trust and Aboriginal Housing Board consulted with Aboriginal communities in providing social housing for Aboriginal individuals. The South Australian Government noted that Housing SA works across government to establish coordinated planning considerations. Formal consultation on location of houses and infrastructure is conducted as core business prior to each capital works program, with commencement based on the consent of the Aboriginal community governance body. Consultation includes location of individual housing lots within the community, and has included establishment of family allocated subdivisions where appropriate.

More recently, at the beginning of the NPARIH capital works program, Housing SA engaged an architect to work closely with remote communities to develop housing designs driven by cultural preferences. Housing SA has built houses on known preferences of local communities, incorporating fire pits, outdoor-sheltered living spaces, and breezeways. Houses delivered to communities under the NPARIH program are subject to Post Occupancy Evaluations to ensure housing design is improved in future delivery of housing programs and remains culturally appropriate. These evaluations document and recommend design features for improvement, and which are not working well for tenants. Issues identified by the evaluation report were also reviewed at Housing South Australia's Housing Technical Standards Forum to address issues needing deeper investigation.

 *The South Australian Government has implemented Recommendation 73. South Australia has demonstrated continuous improvement in the supply of culturally appropriate housing design and implementation of culturally appropriate housing location in remote Aboriginal and Torres Strait Islander communities.*

In **Western Australia**, the Aboriginal Housing Policy Manual explicitly aims to ensure that public housing is delivered in a manner sensitive to cultural protocols. Compliance with the National Indigenous Housing Guidelines on design is supplemented with housing management arrangements, which involve negotiation prior to the construction of housing in remote Aboriginal communities. A protocol requiring continuous consultation with community members, councils, elders and traditional owners, serves to ascertain the wishes of Aboriginal and Torres Strait Islander inhabitants. This guides decisions on location and design, including the use of living spaces.

 *Recommendation 73 has been implemented by the Western Australian Government through a number of measures to ensure appropriate consultation is undertaken with Aboriginal and Torres Strait Islander people.*

In **Tasmania**, the Government's 1995 Implementation Report observed that the Aboriginal Rental Housing Program was jointly administered by the Government and three Regional Aboriginal Housing Allocation Committees. The Report stated that these bodies aimed to ensure public housing programs were delivered in a culturally appropriate manner. The design of houses constructed under the National Partnership Agreement on Remote Indigenous Housing occurred in collaboration with the specific and unique design requirements for those communities as well as incorporating a range of environmental and energy efficiency features. Service delivery has also included consultation with the Cape Barren Aboriginal Association Inc. and the Flinders Island Aboriginal Associations Inc. to determine the extent of the detailed scopes of works.

● *The Tasmanian Government has implemented Recommendation 73 through the Aboriginal Rental Housing Program, the National Partnership Agreement on Remote Indigenous Housing, and ongoing processes of consultation on housing design with local Aboriginal and Torres Strait Islander communities.*

The **Northern Territory** Government committed to spend \$1.1 billion over 10 years from 2017 on remote Aboriginal and Torres Strait Islander housing, including the construction of new housing, repairs and maintenance, the provision of employee housing, and the implementation of room to breathe programs to increase living spaces in existing homes. Under this program, Aboriginal and Torres Strait Islander people have input into the design of their homes to ensure they are culturally appropriate. This forms part of the Northern Territory's Aboriginal Community Planning Framework and applies to 50 remote Aboriginal and Torres Strait Islander communities in the Northern Territory. This replaces the Strategic Indigenous Housing and Infrastructure Programs, which faced delays and expanding costs.

● *The Northern Territory Government has implemented Recommendation 73 through the provision of funding towards remote Aboriginal and Torres Strait Islander housing. It is not clear whether all Aboriginal and Torres Strait Islander communities are regularly consulted.*

In the **Australian Capital Territory**, housing assistance for Aboriginal and Torres Strait Islander individuals was reviewed in 1996 by ACT Housing. Currently, Housing ACT and other mainstream housing services generally respond in a culturally appropriate way to the needs of Aboriginal and Torres Strait Islander people. For example, in 2016 five two-bedroom units were constructed in Kambah to meet the needs of older Aboriginal and Torres Strait Islander people. The units were designed in close consultation with the ACT Aboriginal and Torres Strait Islander Elected Body.

● *The Australian Capital Territory has implemented Recommendation 73 through a review conducted in 1997, and the provision of culturally appropriate housing.*

Recommendation 74

That the work of the Centre for Appropriate Technology in Alice Springs in the design of items specifically for infrastructural and technological innovations appropriate to remote communities, and that of similar research units, be appropriately encouraged and supported.

Background information

The Centre for Appropriate Technology (CAT) improves the lifestyle of those living in remote areas by providing appropriate technical solutions to specific problems raised by Aboriginal and Torres Strait Islander communities. Its programs concentrate on information dissemination, practical problem-solving and skills training in relation to essential services, shelter technologies, transport, and communications.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** has provided funding for Centre for Appropriate Technology (CAT) since RCIADIC. In 2016, CAT initiatives included the installation of HotSpots in Central Australia, a standalone solar power system for the Oriners Ranger Base, and the BEEBox innovation which assists regional households conserve energy. PM&C noted that CAT has been funded to design and construct the Koongarra Homeland. Construction is due for completion by the end of 2017.

The National Indigenous Infrastructure Guide also promotes awareness of the relevant issues relating to the provision of regional and remote infrastructure for Aboriginal and Torres Strait Islander communities.

● *The Commonwealth has implemented Recommendation 74 as it has provided ongoing CAT funding.*


The **New South Wales** Aboriginal Community Water and Sewerage Program has developed a co-ordinated strategy for the investigation and delivery of water and sewerage infrastructure needs in Aboriginal communities. This goes towards implementing infrastructure appropriate to remote communities. The Aboriginal Community Lands and Infrastructure Program 2017 is being rolled-out to improve planning outcomes for Aboriginal communities. The Program aims to educate Aboriginal people about the planning system and empower them with the tools and information they need to gain a greater economic benefit from their land. The Aboriginal Housing Office is also undertaking energy saving initiatives, including through the installation energy monitoring devices and solar panels, in Western Sydney social housing.

 *The New South Wales Government has implemented Recommendation 74 through the function of the Aboriginal Community Water and Sewerage Working Group and the Aboriginal Housing Office, and programs including the Aboriginal Community Lands and Infrastructure program 2017.*


In **Victoria**, a \$15 million Aboriginal Infrastructure Fund was announced in the 2017 budget, which is to be used for projects nominated by Aboriginal and Torres Strait Islander communities and organisations.

 *The Victorian Government has implemented Recommendation 74 through the provision of funding towards projects nominated by Aboriginal and Torres Strait Islander communities and organisations.*


In **Queensland**, the Indigenous Environmental Health Infrastructure Program seeks to improve the health of Aboriginal and Torres Strait Islander communities through the provision of improved environmental health infrastructure.

 *The Queensland Government has implemented Recommendation 74 through the provision of funding through the Indigenous Environmental Health Infrastructure Program.*


In **South Australia**, houses on homelands are provided with hot water services from the CAT. In 2008, Aboriginal and Torres Strait Islander community structure plans were developed for certain Anangu Pitjantjatjara Yankunytjatjara (APY) and Aboriginal Lands Trust communities. These provided the framework for land-use planning and development considerations in South Australia's Aboriginal and Torres Strait Islander communities, and provide each community and land-holding authority with a guide to future growth and development.

 *The South Australia Government has partially implemented Recommendation 74 through the establishment of Aboriginal and Torres Strait Islander community structure plans to assist with infrastructure planning and development. It is not clear to what extent funding is provided to support local infrastructure and technological innovation needs.*

In **Western Australia**, the State Government announced in December 2016 funding for power and water upgrades at 10 remote Aboriginal communities. The Western Australia Government notes that despite the Centre having limited presence in Western Australia, a range of infrastructural and technological innovations in remote communities have been devised through the delivery of infrastructure projects in those communities over the past 25 years.

 *The Western Australia Government has partially implemented Recommendation 74. Despite offering infrastructural and technological innovations, there does not appear to be formal steps taken to address the requirements of this recommendation.*

In **Tasmania's** 1995 Implementation Report, the Government indicated that it would seek the advice of CAT, if Aboriginal and Torres Strait Islander representatives advised Housing Services that they wish to design and construct their own dwellings. We have not been able to identify further activity relevant to this recommendation in Tasmania.

 *The Tasmanian Government has not implemented Recommendation 74, it does not appear that CAT has been contacted or additional actions have been taken to address the recommendation.*

The **Northern Territory** Government continues to operate and support the CAT.

- *The Northern Territory Government has implemented Recommendation 74 through the ongoing work of the CAT.*

In the **Australian Capital Territory**, there are no remote communities, so this recommendation is not directly relevant.

- ⊘ *In the Australian Capital Territory, there are no remote communities, so this recommendation is not directly relevant.*

Recommendation 75

That Aboriginal communities be given equitable access to ongoing expenditure by the Commonwealth, State and Territory, and local authorities on roads. In addition, where new roads or changes to existing roads are proposed, it is recommended that no development should take place until the impact on Aboriginal land and the possible impact on Aboriginal communities that public access may have are established in consultation with those communities likely to be affected by the development proposal.

Background information

Recommendation 75 sought to provide greater consideration and accessibility of funding to Aboriginal and Torres Strait Islander communities, which fall outside the scope of formal local government authorities. It also aims to uphold the values of Aboriginal and Torres Strait Islander communities in relation to land and the natural environment throughout development processes.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** Government has addressed this recommendation through the Aboriginal Peoples and Torres Strait Islander Principle which, adopted by the Commonwealth Grant Commission, seeks to promote greater equity in funding allocations.

The existing legislative framework provides some protection for Aboriginal and Torres Strait Islander heritage sites. The *Aboriginal Land Rights (Northern Territory) Act 1976* prohibits the construction of a road on Aboriginal and Torres Strait Islander land unless consent from the Land Council is granted. Additionally, the *Environmental Protection and Biodiversity Conservation Act 1999* provides for the involvement of Aboriginal and Torres Strait Islander people in the planning process for Kakadu, Uluru and Jervis Bay Territory.

The Department of Infrastructure and Regional Development noted that the Commonwealth has a range of infrastructure funding programs – from its major investment program, which funds nationally significant infrastructure, to programs which fund local governments. The local government programs, such as Roads to Recovery and Financial Assistance Grants are provided to all councils, including Aboriginal and Torres Strait Islander councils to assist with maintenance of local roads.

- *The Commonwealth has implemented Recommendation 75 as progress has been made towards recognising Aboriginal and Torres Strait Islander people's needs, and incorporating them in development planning and road funding.*


In **New South Wales**, the Aboriginal Road Safety Action Plan 2014-2017 explicitly identified improving community road infrastructure as a priority. In 2009, 66 Aboriginal communities were assessed for their road safety infrastructure, leading to repair works in response. The Aboriginal Road Safety Infrastructure Program (2014-2019) is currently being rolled out as an integral part of the Safer Roads Program. It aims to deliver safety improvement works, such as improved signs and installation of shared paths, based on the needs of, and consultation with, Aboriginal communities.

- ◐ *The New South Wales Government has partially implemented Recommendation 75 through the Aboriginal Road Safety Action plan. However, it does not appear that Aboriginal communities*


must be consulted or that the provision of funding occurs in the same way as for non-Aboriginal people.

In its 1994 Implementation Report, the **Victorian** Government noted that its road funding contained a component giving priority to roads which service Aboriginal and Torres Strait Islander communities. VicRoads has had policies relating to the consideration of Aboriginal and Torres Strait Islander heritage as an integral part of managing and improving the road network since 1996, thus helping to uphold Aboriginal and Torres Strait Islander values and legislation regarding cultural heritage and native title. These policies pursue objectives relating to respect and recognition, employment and capacity building, and supporting Aboriginal and Torres Strait Islander communities through road safety, registration and licensing initiatives.


The *Native Title Act 1993* (Vic) requires notification and negotiation with traditional owner groups when road projects are undertaken on land where native title might exist. The *Aboriginal Heritage Act 2006* (Vic) provides traditional owner corporations with power to approve cultural heritage management plans and otherwise take action to protect cultural heritage that might be disturbed by road activities. Additionally, the *Traditional Owner Settlement Act 2010* (Vic) provides for agreements requiring notification and negotiation rights to be afforded to traditional owner corporations relating to major new road-building projects. Community benefits are required to be paid to compensate for any impact and can include non-monetary benefits such as employment and business opportunities.

 *The Victorian Government has mostly implemented Recommendation 75 through the introduction of a designated component of road funding allocated for Aboriginal and Torres Strait Islander communities. However, there is no evidence that this funding is still sequestered.*


In **Queensland**, the Transport Infrastructure Development Scheme provides funding to improve road infrastructure in rural and remote communities. All 16 Aboriginal and Torres Strait Islander local governments are constituted and funded on the same basis as non-Aboriginal and Torres Strait Islander local governments under the *Local Government Act 1993* (Qld). Additional support is made for Aboriginal and Torres Strait Islander Councils through the Queensland Government's Financial Aid Funding program.

 *The Queensland Government has implemented Recommendation 75 through the Transport Infrastructure Development Scheme and the provision of funding to Aboriginal and Torres Strait Islander Councils under the Local Government Act 1993 (Qld).*


In **South Australia**, \$106.25 million funding has been provided to upgrade 210 kilometres of road between the Stuart Highway and Pukatja (Ernabella) in the APY Lands, and surrounding roads. Additionally, approximately 21 kilometres of community access roads in Pukatja, Umuwa, Kaltjiti, Mimili and Iwantja form part of the project. APY consultation protocols form part of the requirements for development approval and establish minimum process requirements for consultation with Anangu and their advocate regarding the built environment on the APY lands.

 *The South Australian Government has mostly implemented Recommendation 75 through the provision of funds for APY lands, the local Aboriginal and Torres Strait Islander community is consulted on any development proposal. However, it is not specified that Aboriginal and Torres Strait Islander funding be allocated in the same way as that of non-Aboriginal and Torres Strait Islander communities.*

In **Western Australia** in 1991-92, the Main Roads division introduced two strategies for improving access roads to remote Aboriginal and Torres Strait Islander communities. A range of road capital projects which seek to improve access to remote and regional Aboriginal and Torres Strait Islander communities have been jointly funded with the Commonwealth Government and assessed in line with the *Aboriginal Heritage Act 1972* and the *Native Title Act 1993* prior to work commencing. The Indigenous Roads Committee advises the Western Australian Local Government Grants Commission in respect to allocations for access roads servicing remote Aboriginal communities.

 *The Western Australian Government has mostly implemented Recommendation 75, however it is unclear the extent to which funding is provided on an ongoing basis.*


In **Tasmania's** 1995 Implementation Report, the Department of Transport observed that federal local road funds were not provided through state government. Currently, the Tasmanian Department of State Growth delivers resources to Cape Barren Island Aboriginal Association to deliver ongoing routine road and aerodrome maintenance via a grant deed which is managed under a Road Asset Management Plan.

 *The Tasmanian Government has partially implemented Recommendation 75 through the administration of funds by the Department of State Growth. However, it does not seem that processes exist for community consultation on the impacts of new development proposals.*


In the **Northern Territory**, a review of local road funding, with specific reference to Aboriginal Roads, took place in 1994-95, and specifically recommended funding for upgrading strategic roads on Aboriginal and Torres Strait Islander land. Currently, the Commonwealth provides funding to the Northern Territory, which the NT Grants Commission distributes to local government councils.

Local Government Councillors in areas covering Aboriginal and Torres Strait Islander communities are usually Aboriginal and Torres Strait Islander people. The allocation of this grant to councils takes into consideration the length and formation of the roads managed by each council, however it remains at the individual council's discretion to decide how much funding will be spent and on which roads. Funding is provided for roads through essential services and municipal funding to service providers, which includes maintaining dumps, slashing, waste disposal, and roads within the homelands boundaries.

The Department of Transport's 2014-2018 Strategic Plan specifically outlined an action of developing a policy for land tenure requirements for transport assets on Aboriginal and Torres Strait Islander land, including roads. The Northern Territory Government comments that the level of consultation in relation to new or existing roads would be decided on a case-by-case basis, depending on the location of the road and impact on the community.

 *The Northern Territory Government has partially implemented Recommendation 75. While some funding is provided to the councils, the government is yet to implement a policy to address the second part of this recommendation.*

The **Australian Capital Territory** does not have any rural or remote communities, or local government authorities.

 *The Australian Capital Territory does not have any rural or remote communities, or local government authorities.*

Recommendation 76

That the integrated analysis of infrastructure, housing, essential services and health as illustrated by the Nganampa Health Council's Uwankara Palyanyku Kanyintjaku (UPK) Report be considered as a model worthy of study and adaption for the development of community planning processes in other States and areas.

Background information

The UPK report, initiated in the early 1980s at the request of Pitjantjatjara elders, emphasised the relationship between housing conditions and health outcomes. The UPK program is involved in the development, implementation, and monitoring of regional and community public health and highlighting the relationship between good living conditions and health outcomes.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

In the **Commonwealth** Government's 1993-94 Annual Report, ATSIC fully supported the UPK findings and adopted a policy of incorporating UPK initiatives into projects which receive ATSIC funding.


The National Indigenous Housing Guide provides guidance on the design, construction and maintenance of housing for remote communities. The Guide provides advice on safety, health and housing, healthy communities, and managing houses for safety and health. The Guide was developed and included in the NPARIH Strategy and is updated as needed. PM&C noted that States and Territories have complied with the principles and guidance set out in this Guide.

 *The Commonwealth has implemented Recommendation 76 through national strategies geared towards improving housing to support health outcomes for Aboriginal and Torres Strait Islander people.*


In **New South Wales**, the Housing for Health initiative, established in 1999, provides repairs and maintenance to Aboriginal community housing with a focus on improving safety and health standards. The Aboriginal Housing Office established under the *Aboriginal Housing Act 1998* (NSW) works to ensure Aboriginal people have access to affordable, quality housing. The AHO manages and coordinates an annual capital works program, along with developing and implementing financial and resourcing strategies. It has a strong commitment to the principles of self-determination and self-management, and seeks to promote employment opportunities for Aboriginal people. The NSW Government continues to support the Housing for Health initiative with \$2.4 million allocated to the program in 2017-2018.

 *The New South Wales Government has incorporated the principles of Recommendation 76 into the Housing for Health initiative.*


Victoria Health began development in 2016 of the Aboriginal Health and Wellbeing Strategic Framework, which sought to take a comprehensive approach to develop a platform for coordinated responses to health issues with Aboriginal Victorians. The Government intended the Framework to be completed by September 2016; consultations appeared to be ongoing in November 2016.

 *The Victorian Government has incorporated the principles of Recommendation 76 into its coordinated approach to providing care for Aboriginal and Torres Strait Islander health issues.*


The **Queensland** Government reported in its 1996-97 Implementation Report that the UPK methodology was incorporated into a number of community infrastructure plans between 1987 and 1996. Currently, regular housing property condition assessments are undertaken by Department of Housing and Public Works in remote Indigenous communities. Property condition information forms the basis of the targeted maintenance and refurbishment program to ensure health and safety and to provide an appropriate level of amenity. In 2016, on-site asset condition assessments were completed for the water, wastewater and solid waste assets of all 16 Indigenous Councils by suitably qualified engineering consultants and staff from the Department of Infrastructure, Local Government and Planning, in collaboration with council officers. A \$120 million program of works is being delivered based on the outcomes of the asset condition reviews and in conjunction with councils.

 *The Queensland Government has mostly implemented Recommendation 76. The Queensland Government has incorporated the UPK methodology into a number of community infrastructure plans, and continues to conduct on-site asset condition assessments. However, it does not appear that a consolidated health and community housing program has been developed.*


In **South Australia's** 1994 Implementation Report, the State Government observed that the principles of the UPK report were incorporated into the tendering process for the Health and Community Housing program. The South Australian Government currently provides \$2.7 million per annum in grants to support municipal services in Aboriginal and Torres Strait Islander communities, including for an audit of services and infrastructure in these communities.

 *The South Australian Government has incorporated the principles of Recommendation 76 into the tendering process for the Health and Community Housing program, as well as the ongoing provision of grant funding to support municipal services in Aboriginal and Torres Strait Islander communities. However, the South Australian Government has not implemented a community planning process in line with the UPK.*


In **Western Australia**, the State Planning Policy 3.2 on Aboriginal Settlements was amended in response to this recommendation, aiming to improve co-ordination between services and infrastructure for Aboriginal and Torres Strait Islander people. The key output is community layout plans that integrate community wishes, geographic limitations and public health principles.

 *While the Western Australian Government has partially implemented Recommendation 76 through community layout plans, it does not appear that explicit consideration has been given to the UPK report.*


In **Tasmania**, the Aboriginal Housing Service helps to provide secure affordable rental housing to Aboriginal and Torres Strait Islander people earning a low income. The Tasmanian Government commented that an integrated model of service delivery is provided by Aboriginal and Torres Strait Islander organisations on Cape Barren Island and Flinders Island. Rent setting is managed by the respective of Aboriginal and Torres Strait Islander organisations for those communities.

 *The Tasmanian Government has not incorporated the intent of Recommendation 76 into the establishment of an integrated model of service delivery.*

In the **Northern Territory**, the Nganampa Health Council responsible for the UPK Report runs numerous initiatives relating to health in Aboriginal and Torres Strait Islander communities. The environmental and public health aspects of this report have been incorporated into the Northern Territory's housing and infrastructure provision. The Northern Territory has also implemented the *Indigenous Community Engineering Guidelines* which focus on the provision of essential services to communities to provide effective health hardware within housing.

 *The Northern Territory Government has implemented Recommendation 76. Nganampa Health Council responsible for the UPK Report runs numerous initiatives relating to health in Aboriginal and Torres Strait Islander communities.*

In the **Australian Capital Territory's** 1997 Implementation Report, ACT Housing observed that the UPK report was drawn upon for the review of housing assistance for Aboriginal and Torres Strait Islander individuals, and in the broader ACT Housing Strategy.

 *The Australian Capital Territory Government has implemented Recommendation 76, incorporating the UPK report into the provision of housing assistance for Aboriginal and Torres Strait Islander people.*

5.4 Self-determination and local government (77-78)

Recommendation 77

That the distinction between communities with or without formal local government authority status should be abolished for purposes of access to Commonwealth roads funding. The Minister for Aboriginal Affairs and the Federal Minister for Local Government should establish a review of Commonwealth Local Road Funds and specific purpose funding with, amongst others, one specific term of reference being to find feasible solutions to the problem of inequity for Aboriginal people in the provision and maintenance area of roads.

Background information

Recommendation 77 promotes the link between self-determination, local government and road infrastructure funding. It is prompted by the inequalities that existed between Aboriginal and Torres Strait Islander communities – which did not have local government status authority – and those local government authorities that did.

Responsibility


This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** Government provides untied funding for local roads under the Financial Assistance Grant Programme. PM&C advised that under the *Local Government (Financial Assistance) Act 1995* (the Act), for a body to receive this funding it must be a Local Government Body. To be eligible to receive funding, an Aboriginal and Torres Strait Islander local governing body must either be established through local government legislation, or declared a Local Government Body for the purposes of the Act by the Commonwealth Minister acting on advice from the state minister. The declaration process may go some way to towards addressing the intent of the recommendation.

PM&C also noted that the Commonwealth provided one-off up-front payments in 2014 and 2015 in exchange for the States and Northern Territory accepting responsibility for the delivery of municipal services, including local road maintenance. The Commonwealth is continuing efforts to implement these arrangements and to ensure that States and the Northern Territory direct funding and services for the benefit of remote Aboriginal and Torres Strait Islander communities.

The abolition of 'local government status authority', for the purposes of access to Commonwealth roads funding, has not been implemented.

 *Recommendation 77 has been partially implemented. The Commonwealth has not directly implemented the requirements of the Recommendation but actions have been taken that partly meet the intent of the recommendation.*

Recommendation 78

That with respect to the provision of grants the Queensland State Government should ensure that Aboriginal and Islander Community Councils are considered against the average standards used for mainstream local government councils. Aboriginal Community Councils should have access to the Capital Works Subsidy Scheme available to mainstream local Government Authorities. The operation of the Aerodrome Local Ownership Scheme should be extended to Aboriginal Community Councils.

Background information

Queensland's community council system, aimed at empowering local Aboriginal communities, gave Aboriginal Community Councils fewer powers than they would have if they were ordinarily-constituted local governments. In particular, they were unable to access particular State Government grants for councils.


Responsibility

This recommendation is solely the responsibility of the Queensland Government.

Key actions taken and status of implementation

In **Queensland** at the time of the RCIADIC, Aboriginal and Torres Strait Islander community councils were separately constituted to ordinary local government areas under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld). However, according to the Queensland 1996-97 Implementation Report, specific and general-purpose funding programs available to other local governments are made available to these councils.

Since 2008, all 16 Aboriginal and Torres Strait Islander local governments have been incorporated under the Local Government Act 1993 or Local Government Act 2009 and are constituted on the same basis as non-Aboriginal and Torres Strait Islander local governments. In addition to the Queensland Government's Financial Aid Funding program, which is provided specifically to Indigenous Councils, Indigenous Councils have access to all local government funding programs on the same basis as all Queensland local governments.

 *The Queensland Government has implemented Recommendation 78 and under the Local Government Act 1993 (Qld) funding of Aboriginal and Torres Strait Islander Councils occurs on the same basis as that of non-Aboriginal and Torres Strait Islander local governments. It is unclear whether the specific schemes referred to in Recommendation 78 are still in existence.*

6 Non-custodial approaches

The recommendations in this chapter relate to: diversion from police custody (79-91); and imprisonment as a last resort (92-121).

Key themes from recommendations (43 recommendations)

- Legislation and guidelines for policing should be used to support decriminalisation and to reduce the number of arrests for minor offences, which disproportionately affect Aboriginal and Torres Strait Islander people.
- The adoption of the principle of imprisonment as a last resort and the use of alternative policies and programs is needed to reduce the pathways into prison for Aboriginal and Torres Strait Islander people, especially those who are less than 18 years old.
- Additional support for, and a greater understanding of, Aboriginal and Torres Strait Islander communities and individuals in the court system is needed.

Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

Commonwealth | Key actions: The Commonwealth has reinforced the principle of imprisonment as a last resort through AFP training and procedures. Funding is provided for legal representation and interpretation services for Aboriginal and Torres Strait Islander people. The Federal Circuit Court and the ATSILS provide services in regional and remote areas. The Federal Courts have implemented cross cultural training programs.

Remaining gaps: While each recommendation has been addressed to some extent, it does not appear that the status or implementation of these recommendations has been regularly reviewed or monitored. It does not appear that Federal Courts actively test whether a person requires an interpreter, as required by the recommendation.

New South Wales | Key actions: The New South Wales Government has introduced diversionary pathways and recognised the principle of imprisonment as a last resort under the *Law Enforcement (Powers and Responsibilities) Act 2003* (NSW). Alcohol and drug misuse has been addressed through various policy responses, including the introduction of sobering up centres and Mandatory Alcohol Interlocks.

Remaining gaps: In New South Wales, recommendations relating to bail application processes and interpretation services have not been fully met.

Victoria | Key actions: The Victorian Government provides that arrest should be a last resort, and has introduced non-custodial sentencing options through legislation. Measures to address alcohol misuse among Aboriginal and Torres Strait Islander people are continually monitored and improved upon, and remain a priority area under the Aboriginal Justice Agreements.

Remaining gaps: In Victoria, it does not appear that home detention has been provided as a sentencing option or as a means of early release for prisoners. Greater attention should also be turned towards bail application processes, the provision of interpreters in court hearings, and the implementation of work orders to ensure these do not replace opportunities for paid employment.

Queensland | Key actions: The Queensland Government has introduced sobering up centres and continued monitoring of alcohol-related policies under the *Liquor Act 1992* (Qld). Research has been conducted into the rehabilitative needs and treatment of Aboriginal and Torres Strait Islander people, and a database with information on recidivism has been maintained.

Remaining gaps: In Queensland, further action is required in relation to bail application processes and the right of Aboriginal and Torres Strait Islander prisoners to apply for bail. Legislative response is also required to address the powers of the Justice of the Peace, and home detention does not appear to have been provided to date.

South Australia | Key actions: The South Australian Government administers a range of drug and alcohol services through the Specialist Drug and Alcohol Assessment and Treatment Services Program. The South Australian Government has also introduced a range of non-custodial sentencing options, and employment initiatives for the recruitment of Aboriginal and Torres Strait Islander people into justice roles.



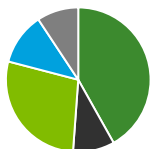
Remaining gaps: It does not appear that discretion is provided for the magistrate to choose non-custodial options in the event of a breach of community service order. Greater attention should also be applied to interpretation services, the breach of non-custodial order, and legal representation for the defendant.

Western Australia | Key actions: The Western Australian Government has introduced sobering-up centres and provide that these should be a first port of call for police dealing with intoxicated persons. The implementation of legislation has provided imprisonment as a last resort, introduced non-custodial sentencing alternatives, and addressed elements related to youth justice.



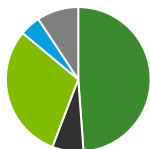
Remaining gaps: Recommendations relating to the establishment and monitoring of liquor licenses and localised liquor laws have not been fully addressed. Further monitoring is also required for bail and non-custodial sentencing alternatives. In many areas, it does not appear that consultation with Aboriginal and Torres Strait Islander people fully satisfies the requirements of the recommendations.

Tasmania | Key actions: The Tasmanian Government has introduced non-custodial sentencing under the *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017* (Tas). Cultural awareness has also been incorporated into training programs in the justice system, in line with benchbooks from other states.



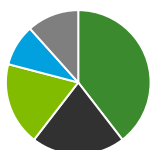
Remaining gaps: The Tasmanian Government should provide greater prioritisation to consultation with Aboriginal and Torres Strait Islander people as it concerns sentencing, including probation and parole, and alcohol-related offences. Legislative change is required to align the powers granted to the Justice of the Peace, and bail application laws, with the principles in these recommendations. Efforts to recruit Aboriginal and Torres Strait Islander people to employment in the justice system are also required.

Northern Territory | Key actions: The Northern Territory's *New Era in Corrections* policy represented an undertaking to recruit sufficient staff to implement community based orders and electronic monitoring. Support for reduced recidivism in driving-related offences is provided through DriveSafe NT and the Elders Visiting Program.



Remaining gaps: In the Northern Territory, further action is required in relation to the decriminalisation of drunkenness, recognition of the principle of arrest or imprisonment as a last resort, and bail legislation. Greater prioritisation should also be given to powers granted to the Justices of the Peace, and consideration of Aboriginal Legal Services.

Australian Capital Territory | Key actions: The Australian Capital Territory has introduced the *Crimes (Sentencing) Act 2005* (ACT) in response to recommendations which called for arrest as a sanction of last resort and the introduction of non-custodial sentencing. Programs are provided to address cultural awareness among justice staff, to reduce recidivism concerning alcohol-related offences, and to recruit more Aboriginal and Torres Strait Islander people into the justice system.



Remaining gaps: The Australian Capital Territory should make greater efforts to implement recommendations relating to the regulation of alcohol consumption, consultation with Aboriginal and Torres Strait Islander communities concerning sentencing, and non-custodial sentencing options and monitoring.

6.1 Diversion from police custody (79-91)

Recommendation 79

That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.

Background information


The RCIADIC Report suggested that police arrested individuals for this offence as a means of social control, rather than as a response to criminal behaviour. The Report stated that this power was unfairly targeted at Aboriginal people by state police, and that the initial reason for custody in many of the circumstances where Aboriginal people died in custody was that they were intoxicated in public. Most States had abolished the offence by the time of the RCIADIC, but gave police powers of 'protective custody' effectively permitting arrest for public drunkenness.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **New South Wales** Government decriminalised drunkenness in a public place in 1979, but police retain a power of protective custody against intoxicated individuals under the *Law Enforcement (Powers and Responsibilities) Act 2003* (NSW). An individual can be given a move-on direction under the Act. If they are still intoxicated and disorderly in the same or another public place within 6 hours of the move-on direction, they can face a significant fine. Under section 9 of the *Summary Offences Act 1988* (NSW), it remains an offence to be intoxicated and disorderly in a public place if police have issued a move on direction and the person has failed to move on.

 *The New South Wales Government has implemented Recommendation 79. Public drunkenness was decriminalised in 1979, and is only punishable by fine after other mechanisms for resolution have been exhausted.*


In **Victoria**, drunk and disorderly offences still exist and can attract a penalty of up to one-month imprisonment.

 *The Victorian Government has not implemented Recommendation 79. Public drunkenness is still an offence, and is punishable by a maximum sentence of a one-month imprisonment.*

In **Queensland**, it remains an offence to drink alcohol in public or to be intoxicated in a public place, however, the *Police Powers and Responsibilities Act 2000* (Qld) permits a police officer to discontinue an arrest for being intoxicated in a public place and deliver the person to their house, hospital or other place that provides care for intoxicated people.

 *The Queensland Government has not implemented Recommendation 79. Public drunkenness is still an offence, and can carry a fine or imprisonment.*

South Australia's 2016 amendment of the *Public Intoxication Act 1984* section 7 decriminalised public drunkenness. Prior to then, protective custody provisions had a high threshold, requiring that a person must be unable to take proper care of himself before a police officer can detain them for intoxication. The person may be taken to their residence, a police station or a sobering-up centre. If they were taken to a police station they must be discharged or transferred to a sobering-up centre within ten hours. Drinking in legislated 'dry areas' still attracts a fine.

 *The South Australian Government has implemented Recommendation 79 under the Public Intoxication Act 1984 (SA) which decriminalises public drunkenness.*

In **Western Australia**, public drinking still attracts a fine of \$2,000. Although an intoxicated person may be detained in Western Australia, they cannot be detained any longer than is necessary to protect their own, or someone else's, health or safety, or to prevent serious damage to property. Detention in a police station or lock-up is a last resort measure. The Western Australian Government

notes that Recommendation 79 was implemented in 1990 through the repeal of s53 of the *Police Act 1892* (WA).

● *The Western Australian Government has implemented Recommendation 79 through the repeal of s53 of the Police Act 1892 (WA). However, fines and imprisonment are still provided for under existing legislation.*

Tasmania retains an offence to consume liquor in a public place. However, the penalty is a small fine. A police officer can take an intoxicated person into custody if they believe that person is likely to cause injury to themselves or another, or damage to property, or if they are incapable of protecting themselves from harm. A person can be held in custody for an initial period of 8 hours if they cannot be released or discharged to a place of safety.

● *The Tasmanian Government has implemented Recommendation 79. While it is an offence to consume liquor in a public place, it no longer appears that public drunkenness is considered a criminal offence.*

In the **Northern Territory**, the penalty for consuming alcohol in a regulated place under the *Liquor Act 2017* (NT) is forfeiture of the liquor, not detention. The *Stronger Futures in the Northern Territory Act 2012* (Cth) introduced an offence for consuming or bringing liquor into alcohol protected areas, with a potential penalty of a fine or imprisonment.

● *The Northern Territory Government has implemented Recommendation 79 through legislative response.*

In the **Australian Capital Territory**, drunkenness is not a criminal offence. ACT Policing may take an intoxicated person into protective custody but this will only be done in circumstances where there is no other reasonable alternative to ensure the person's care and protection. Where practicable, persons taken into custody for intoxication are diverted to the Sobering Up Shelter – a place to sober up while being offered support and assistance.

● *The Australian Capital Territory Government has implemented Recommendation 79. Public drunkenness is not a criminal offence.*

Recommendation 80

That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.

Background information

Police have an interest in removing intoxicated individuals from public spaces to maintain public order and safety. Nonetheless the RCIADIC Report observed that, if these individuals were not otherwise at risk of committing further offences, sobering up centres provided a preferable alternative to police custody.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **New South Wales** Government funds a number of community based Aboriginal alcohol abuse programs, including Oolong House, Orana Haven, Ngaimpe and several Specialist Homelessness Services centres. Drug and alcohol services also form a key part of the Magistrates Early Referral into Treatment and the Adult Drug Court programs.

● *The New South Wales Government has implemented Recommendation 80 through the provision of funding for community based Aboriginal alcohol abuse programs.*

Victoria has seven Koori Community Alcohol & Drug Resource Centres, essentially sobering-up centres specialising in the care of Aboriginal and Torres Strait Islander individuals. The Victorian

Government also noted the importance of sobering-up options as part of a place-based strategy for the North and West Metropolitan regions introduced in AJA 3.

- *The Victorian Government has supported the implementation of Recommendation 80 through the establishment of Koori Community Alcohol and Drug Resource Centres.*

Queensland specifically funded several sobering up centres, including the Lyons Street Centre in Cairns, in response to the recommendations of the RCIADIC.

- *The Queensland Government has implemented Recommendation 80 through the provision of funding for several sobering up centres.*

South Australia funds sobering up centres serving Aboriginal and Torres Strait Islander individuals in Adelaide and several regional and rural centres. South Australia Health contracts other non-government agencies to provide a range of drug and alcohol services through the Specialist Drug and Alcohol Assessment and Treatment Services Program, including: outpatient counselling, non-residential rehabilitation, residential rehabilitation, mobile assistance patrols, Sobering Up, and the Integrated Youth Substance Misuse Specialist Service.

- *The South Australian Government has supported the implementation of Recommendation 80 through the establishment of sobering up centres, and the provision of a range of drug and alcohol services through non-government organisations.*

Western Australia has funded sobering-up services since 1990 and currently funds 9 sobering-up centres with a total of 164 beds. Sobering-up services operate locally and provide safe, supervised overnight care to intoxicated people and referral to other services, where necessary to address underlying issues such as homelessness.

- *The Western Australian Government has implemented Recommendation 80 through the provision of funding for sobering-up centres and other support services.*

The **Tasmanian** Government funds charity-operated Places of Safety, providing facilities for intoxicated individuals to sober up.

- *The Tasmanian Government has supported the implementation of Recommendation 80 through the provision of funding for charity-operated Places of Safety.*

The **Northern Territory** Government funds sobering up centres in Darwin, Katherine, Nhulunbuy, Tennant Creek and Alice Springs. Additional Commonwealth funding of \$155,000 per year was provided to Mission Australia to expand the Sobering Up Shelter in Darwin to seven days per week.

- *The Northern Territory Government has supported the implementation of Recommendation 80 through the provision of funding for sobering up centres.*

The **Australian Capital Territory** Government and CatholicCare have jointly funded a sobering up shelter in Canberra.

- *The Australian Capital Territory Government has supported the implementation of Recommendation 80 through the provision of funding for sobering up centres.*

Recommendation 81

That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.

Background information


Building on Recommendation 80, this recommendation is aimed at ensuring that alternatives to police custody are used in practice.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, police officers have a statutory obligation to take intoxicated persons to a proclaimed place or to their home. However, police stations are a proclaimed place. Detention of an intoxicated person at a police station is a last resort.

 *The New South Wales Government has partially implemented Recommendation 81 through police policy. Detention of an intoxicated person at a police station is a last resort. However, no statutory duty exists to utilise other options and police cells are a proclaimed place.*


Although **Victoria** Police have a policy of directing intoxicated Aboriginal and Torres Strait Islander persons to sobering-up centres, this is not legislated. The *Victoria Police Manual – Guidelines – Safe Management of Persons in Police Care or Custody* provides guidance to alternatives to lodging intoxicated persons in police cells, and where appropriate provides for the intoxicated person to be released into the custody of an Aboriginal Community Justice Panel (ACJP). Additionally, the Victorian Government included as a focus of AJA 3 that service responses for intoxicated persons who come into contact with the justice system be improved. Currently, there are no sobering-up centres operating in Victoria.

 *The Victorian Government has partially implemented Recommendation 81 through police policy. However, no legislative provision is made that alternatives to detention of intoxicated persons are used for Aboriginal and Torres Strait Islander people.*


In **Queensland**, Section 378 of the *Police Powers and Responsibilities Act 2000* (Qld) and section 16.6.3 of the QPS Operational Procedures Manual (OPM) requires that alternatives to the detention of intoxicated persons in police cells should be considered. While it remains an offence to drink alcohol in public or be intoxicated in a public place in Queensland, the *Police Powers and Responsibilities Act 2000* (Qld) permits a police officer to discontinue an arrest for being intoxicated in a public place and deliver the person to their house, hospital or other place that provides care for intoxicated people.

 *The Queensland Government has implemented Recommendation 81 through the *Police Powers and Responsibilities Act 2000* (Qld).*


South Australian Police practice is to regard sobering up centres as the option of first resort for intoxicated individuals. However, it is not a statutory requirement.

 *The South Australian Government has partially implemented Recommendation 81, with it being police practice to regard sobering up centres as the option of first resort for intoxicated individuals. However, there is no statutory duty placed upon police officers.*

In **Western Australia**, under the *Protective Custody Act 2000* (WA), detention in a police lock up should only occur in exceptional circumstances. Sobering-up centres have been introduced (see Recommendation 80) and under the *Act* are to be the first port of call for police dealing with intoxicated persons.


 *The Western Australian Government has implemented Recommendation 81 through the *Protective Custody Act 2000* (WA).*

In **Tasmania**, a police officer must make reasonable inquiries to find a place of safety (namely a hospital, charitable institution or any other appropriate facility) before detaining an intoxicated person.


 *The Tasmanian Government has partially implemented Recommendation 81, with police officers required to find a place of safety before detaining an intoxicated person. However, there is no statutory duty placed upon police officers.*

The **Northern Territory** does not presently provide a legislative requirement for police to use sobering-up shelters as an alternative to incarceration. The *Northern Territory Police General Order* –

Custody Part II provides that police cells are the least preferred option for the custody of intoxicated persons, however it is also recognised that under many circumstances they are the most practicable option to ensure the safety of an intoxicated person. The Northern Territory police force also has detailed instructions to staff regarding the utilisation of alternatives to police watch houses for persons taken into protective custody.

 *The Northern Territory Government has partially implemented Recommendation 81. The Northern Territory Police General Order – Custody Part II provides that police cells are the least preferred option for the custody of intoxicated persons. However, there is no statutory duty placed upon police officers.*

In the **Australian Capital Territory**, police may only detain an intoxicated individual where there is no other reasonable alternative for the person's care and protection. Where possible, police members transport intoxicated persons to the sobering-up shelter. Additionally, ACT Policing contribute to the Canberra Nightcrew which adopts a multi-agency approach to support people in the Canberra nightlife district and operates to ensure their survey. Currently, ACT Policing are conducting a Watch House Review which will examine, among other issues, factors behind the high numbers of intoxicated persons entering the watchhouse.

 *The Australian Capital Territory Government has partially implemented Recommendation 81. While detention of an intoxicated individual is a last resort, there does not appear to be a statutory duty placed upon police.*

Recommendation 82

That governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences.

Background information

Dry areas – public spaces where drinking is not permitted – are a policy tool to minimise the social issues associated with public drinking. However, as with a general prohibition on public drunkenness, they raise the concern that people with no other criminal breaches may be incarcerated or otherwise brought unnecessarily into the criminal justice system. This recommendation suggested that state and territory governments monitored the effects of these regulations to better understand the impact of dry area declarations.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, local councils have the ability to declare alcohol-free zones in road-related areas and Alcohol Prohibited Areas in other public places under the *Local Government Act 1993* (NSW), provided that local Aboriginal groups are consulted in advance. Alcohol free zones apply to council managed land and Alcohol Prohibited Areas apply to public land vested in the Crown.

In areas with an Aboriginal population of 1,000 people or more, the Anti-Discrimination Board of NSW is also required to assess the proposal. The New South Wales Government studied the impact of alcohol free zones in 2007 and found that they were an effective tool to manage public safety (though it did not seek to correlate custody rates and the use of alcohol free zones).


Both regulatory powers aim to be pre-emptive in stopping the escalation of irresponsible public drinking through confiscating and disposing alcohol. From 2008, the power to fine people for drinking alcohol in alcohol-free zones was removed and authorised council officers and police were given the power to confiscate and dispose of alcohol without needing to issue a warning. Similarly, councils can erect signs establishing Alcohol Prohibited Zones in parks and other public places, but cannot fine people for drinking.

 *The New South Wales Government has partially implemented Recommendation 82 through a review conducted into the impact of alcohol free zones. However, it does not appear that there is a requirement for ongoing reporting.*


Victorian Government seeks to restrict supply and focus on harms due to assaults and anti-social behaviour. There are no new dry area declarations, as this power is not currently available to local government authorities in the liquor regulatory framework. As part of the restriction on late night venues, the Victorian Government monitors the inner Melbourne late night licence applications and decisions and the harm data related to late night assaults and anti-social behaviour.

 *The Victorian Government has partially implemented Recommendation 82 through monitoring the restriction on late night liquor licences in inner Melbourne. However, it does not appear that there is a requirement for ongoing review or reporting.*


In **Queensland**, sections 168B and 168C of the *Liquor Act 1992* (Qld) require ongoing reporting on the number of dry place declarations taken up in communities and on the number of unique people convicted for breaches of alcohol restrictions. Queensland undertook an extensive review of Alcohol Management Plans (AMPs) in Aboriginal and Torres Strait Islander communities in 2012. Notably, it found that around 15% of individuals convicted for breaching alcohol restrictions had no other convictions. The Queensland Government notes that this continued review into AMPs is current practice.

 *The Queensland Government has implemented Recommendation 82. The *Liquor Act 1992* (Qld) requires ongoing reporting on the number of dry place declarations taken up in communities and on the number of unique people convicted for breaches of alcohol restrictions*


South Australia undertook monitoring on the Port Augusta Total City Dry Area, noting that although it was difficult to measure the consequences of dry areas, they did potentially displace drinking back from public spaces into family homes. The Liquor Licensing Commissioner in consultation with Ceduna Service Reform and the Ceduna Regional Accord regularly reviews conditions on licences in Ceduna and monitors impacts of regulatory measures taken to determine consequences for communities.

 *The South Australian Government has partially implemented Recommendation 82 through regular monitoring of the conditions on licences in Ceduna and the impacts of regulatory measures taken to determine consequences for communities. It does not appear that these measures have been implemented on a State-wide basis.*


In **Western Australia**, dry area declarations are continually monitored by communities, government agencies, and local drug and alcohol services, though there has been no formal study to draw conclusions against this recommendation.

 *While the Western Australian Government notes that dry area declarations are continually monitored, the specific steps taken towards Recommendation 82 are unclear.*

Tasmania completed a report in 2012 on the topic, but noted limitations of data in examining the impacts of alcohol consumption.


 *The Tasmanian Government has partially implemented Recommendation 82 through the completion of a report in 2012.*

In the **Northern Territory**, the Commonwealth Government has monitored the impact of the *Northern Territory National Emergency Response Act 2007* (Cth) and then the *Stronger Futures in the Northern Territory Act 2012* (Cth), which included the declaration of dry areas. This included the conduct of a 2012 review of the *Stronger Futures in the Northern Territory Act* by KPMG and commissioned by the Commonwealth's PM&C. There is also ongoing process under the *Liquor Act* to monitor the effectiveness of General restricted areas in consultation with the community, including the considerations to declare such areas.

 *The Northern Territory Government has partially implemented Recommendation 82, and closely monitors the impact of the *Northern Territory National Emergency Response Act 2007* (Cth) and*

then the *Stronger Futures in the Northern Territory Act 2012 (Cth)*. It does not appear that reporting has occurred across all aspects, for example public areas where drinking is banned.

The **Australian Capital Territory** has not published any information on an ongoing monitoring process relating to this recommendation. Quarterly data on the number of criminal infringement notices issued for consumption of alcohol in a certain public place is published for a five-year period in the ACT Government's Criminal Justice Profile²⁰.

 *The Australian Capital Territory has partially implemented Recommendation 82, however further publication and ongoing monitoring activities are required in order for full implementation.*

Recommendation 83

That:

- a. *The Northern Territory Government consider giving a public indication that it will review the two kilometre law at the end of a period of one year in the expectation that all relevant organisations, both Aboriginal and non-Aboriginal, will negotiate as to appropriate local agreements relating to the consumption of alcohol in public that will meet the reasonable expectations of both Aboriginal and non-Aboriginal people associated with particular localities; and*
- b. *Other Governments give consideration to taking similar action in respect of laws operating within their jurisdictions designed to deal with the public consumption of alcohol.*

Background information


The Northern Territory's two kilometre law prohibited the consumption of alcohol in public within two kilometres of licensed premises, and the consumption of liquor on unoccupied private land without the owner's permission. This recommendation sought to encourage governments to review and consult on these laws and similar laws with Aboriginal and Torres Strait Islander groups.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


New South Wales has reviewed its alcohol-free zone laws, and the legislative requirements around establishing alcohol-free zones were subsequently changed (see Recommendation 82 above). The establishment of alcohol-free zones was extended to a maximum period of four years for newly established zones and consultation requirements with local Aboriginal communities were enhanced. To establish an alcohol-free zone councils must consult with their communities (including Aboriginal or culturally and linguistically diverse groups), the Police Local Area Commander, and (in areas with a higher Aboriginal population) the Anti-Discrimination Board of NSW. Further, every patrol in the NSW Police Service has committees to consult with Aboriginal communities, liquor licensees, and local governments.

 *The New South Wales Government has implemented Recommendation 83 through conducting a review into alcohol-free zones and ongoing consultation with Aboriginal communities.*


The **Victorian** Government observed that it supported the implementation of this recommendation in 1997, but does not appear to have implemented a specific review process for liquor laws beyond the regular reviews conducted by local governments, nor implemented explicit consultation procedures with Aboriginal and Torres Strait Islander communities. Victoria Police consults with local government and representatives of Aboriginal and Torres Strait Islander organisations in respect of local laws that relate to the consumption of alcohol in public places. The Victorian Government's AJA 3 noted its support for alcohol-free community and sporting events as part of the *Alcohol and Other Drug Strategy 2012-20* which involves community education. In 2013, a Roundtable was convened between the Aboriginal Justice Forum, Aboriginal and Torres Strait Islander health services, and alcohol and other drug services to develop responses to public intoxication arising from alcohol misuse. This

²⁰ http://justice.act.gov.au/criminal_and_civil_justice/criminal_justice_statistical_profiles


included the development of linkages between Koori Alcohol and Drug service networks and ACCHOs at local, regional, and state-wide levels to promote coordinated and informed responses.

 *The Victorian Government has partially implemented Recommendation 83. Victoria Police consults with local government and representatives of Aboriginal and Torres Strait Islander organisations on liquor laws and a Roundtable was convened in 2013. However, no specific review process or consultation procedures have been developed.*


In **Queensland**, while it is generally an offence to consume liquor in a public place, local governments may choose to designate public land they own or control as an area in which liquor can be consumed (i.e. a “wet area”). However, in the 19 Aboriginal and Torres Strait Islander community areas where an AMP has been declared, local governments cannot designate wet areas. Instead, the *Liquor Act 1992* (Qld) provides an ability for a place within a restricted area to be prescribed by regulation as a public place where liquor may be consumed (subject to the restrictions on the type and amount of liquor that may be possessed that otherwise apply in the area). Before designating a public place in a restricted area for liquor consumption, since designation occurs by regulation, consultation is generally required to occur with affected stakeholders such as community justice groups, and regulatory impact analysis under the Queensland Government Guide to Better Regulation.

 *The Queensland Government has mostly implemented Recommendation 83. While most local governments are able to negotiate their own rules on public drinking, there does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*


In **South Australia**, councils must publicly consult on declarations of dry areas. Local Crime Prevention plans of the South Australian Police address public drinking issues in communities.

 *The South Australian Government has mostly implemented Recommendation 83, and local councils must publicly consult communities on declarations of dry areas. However, there is no indication that consultation requirements apply to all alcohol and drug regulations.*


In **Western Australia**, local communities and licensees are permitted to vary rules relating to liquor licensing of their own accord through liquor accords. These liquor accords are established at the direction of the District Police Officer for the Police District.

 *The Western Australian Government has partially implemented Recommendation 83. While most local governments are able to negotiate their own rules on public drinking, there does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*


In **Tasmania**, councils are permitted to declare alcohol free zones, but there is no requirement for consultation. Police are involved in ongoing discussions alongside local government and the liquor licensing body on general issues of public drinking.

 *The Tasmanian Government has partially implemented Recommendation 83. While most local governments are able to negotiate their own rules on public drinking, there does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*

The **Northern Territory** Attorney General’s Department indicated in its 1994-95 Implementation Report that it did not intend to undertake a formal review of the two-kilometre rule. Nonetheless, a review of the *Summary Offences Act* was undertaken by the Department of Justice in 2010, which included consideration of the two-kilometre open consultation in this time. The rule remains in place, in the *Liquor Act* (NT) and in 2012 was incorporated as a regulated area. Issues relating to public drunkenness are discussed between police, local government bodies and representative Aboriginal and Torres Strait Islander groups. Additionally, a number of areas have been declared public restricted areas under the *Act* following consultations with local communities, including in Alice Springs, Tenant Creek, Katherine and Darwin.

 *The Northern Territory Government has partially implemented Recommendation 83. It does not appear that local agreements were negotiated following the formal review, nor does it appear that the review occurred at the end of one year as required in this recommendation.*

The **Australian Capital Territory** does not appear to require consultation on any alcohol-free place declarations, but the ACT Community Safety Committee consults with the community on public drinking. The ACT Government notes that currently there are few alcohol free places in the ACT, and that the independent two-year review of the *Liquor Act 2010* (ACT) did not raise any issues relating to the way that alcohol free areas were designated in the ACT.

 *The Australian Capital Territory Government has mostly implemented Recommendation 83, however it does not appear that consultation occurs with Aboriginal and Torres Strait Islander communities.*

Recommendation 84

That issues related to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organisations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan.

Background information

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The actions relating to this recommendation are summarised in Recommendation 83 above.

-  *The New South Wales Government has implemented Recommendation 84 and ongoing consultation takes place.*
-  *The Victorian Government has implemented Recommendation 84. Victoria Police consults with local government and representatives of Aboriginal and Torres Strait Islander organisations on liquor laws, and a Roundtable was convened to discuss policy options in response to public intoxication.*
-  *The Queensland Government has mostly implemented Recommendation 84. There does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*
-  *The South Australian Government has mostly implemented Recommendation 84. While local councils must publicly consult communities on declarations of dry areas, there is no indication that consultation requirements apply to all public drinking issues.*
-  *The Tasmanian Government has not implemented Recommendation 84; consultation does not appear to occur.*
-  *The Western Australian Government has not implemented Recommendation 84; consultation does not appear to occur.*
-  *The Northern Territory Government has implemented Recommendation 84. Issues relating to public drunkenness are discussed between police, local government bodies, and representative Aboriginal and Torres Strait Islander groups.*
-  *The Australian Capital Territory Government has not implemented Recommendation 84. Consultation does not appear to occur.*

Additional commentary

In **New South Wales**, relevant consultation mechanisms in relation to public drinking include through the Police Aboriginal Consultative Committees (under the NSW Police Force Aboriginal Strategic Direction 2012-2017) and local Community Drug Action Teams. These teams are supported by the Australian Drug Foundation through the Community Engagement and Action Program funded by NSW Health.

In **Queensland**, the *Police Service Administration Act 1990* (Qld) requires police officers to work in partnership with the community. The Indigenous Community/Police Consultative Groups Charter have also been established to develop better relationships between police and Aboriginal and Torres Strait Islander communities. The Queensland Police *Operational Procedures Manual Issue 62 Public Edition* also requires officers to interact with local communities and developing and maintaining appropriate community-based projects.

The **Western Australian** Government notes that a number of communities have community-driven and negotiated Liquor Accords, established for the purpose of minimising harm caused in the local community by the excessive consumption of liquor, and promoting responsible practice in the sale, supply and service of alcohol.

Recommendation 85

That:

- a. Police Services should monitor the effect of legislation which decriminalises drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells when they should more appropriately have been taken to alternative places of care;*
- b. The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences. Such monitoring should also assess differences in police practices between urban and rural areas; and*
- c. The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public.*

Background information

Correct monitoring of new legislation ensures significant changes such as the decriminalisation of public drunkenness is enforced and not bypassed in its implementation within communities.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** Ombudsman released a detailed report in 2008 on the use of the Australian Federal Police's powers under the *Intoxicated People (Care and Protection) Act 1994*.

In the **Australian Capital Territory**, the review has not been able to find any published data indicating the successful implementation of parts (b) and (c). However, the AFP noted that while there is no formal monitoring or reporting on this issue specifically, the statistics regarding persons taken in to protective custody for intoxication, and statistics on arrest for minor offences, do not show a trend towards persons being charged with minor offences rather than being diverted to alternative places to sober up. Additionally, the ACT Government notes that ACT Policing undertake to monitor and make public statistics on the type of place that apprehended intoxicated persons are taken to.


 *Recommendation 85 is mostly implemented in the Commonwealth and the Australian Capital Territory. A review of the Australian Federal Police's powers under the Intoxicated People (Care and Protection) Act 1994 was published in 2008. However, there does not appear to have been actions taken in response to parts (b) and (c) of this recommendation.*

The **New South Wales** Police Service does not maintain a count of the number of intoxicated persons taken to alternative places of care, but does monitor the number of detentions under the *Intoxicated Persons Act*. The *Intoxicated Persons Act 1979* (NSW) designates all police stations as Proclaimed Places and the NSW Police Force continues to monitor this issue. Accordingly, it is difficult to determine whether individuals are taken to an alternative place, or charged with another offence as a substitute.


However, NSW has introduced legislation (*Law Enforcement Powers and Responsibilities Act 2002* (NSW) s 206(1)) to prevent intoxicated individuals being placed in police custody and later charged with minor offences. Under section 206 (Part 16) of the *Act*, a police officer may detain an intoxicated person found in a public place who is: (a) behaving in a disorderly manner or in a manner likely to cause injury; or (b) in need of physical protection. A person detained is to be taken to, and released into the care of, a responsible person who is willing to immediately take care of the intoxicated person. Detaining an intoxicated person in an authorised place of detention, such as a police station, is a last resort. The NSW Ombudsman reviewed the issue in a December 2012 issues paper.

 *The New South Wales Government has partially implemented Recommendation 85. However, it does not appear that results of monitoring are published.*


Victoria has retained its offence of public drunkenness, so monitoring relating to the use of alternative charges is not relevant in the state.

 *The Victorian Government has not implemented Recommendation 85. Victoria has retained its offence of public drunkenness.*


Queensland has not engaged in any monitoring process around its decriminalisation of public drunkenness, besides those relating to Alcohol Management Plans (see Recommendation 82). Queensland has not decriminalised the public consumption of alcohol or being intoxicated in a public place.

 *The Queensland Government has not implemented Recommendation 85. Queensland has not engaged in any monitoring around the decriminalisation of public drunkenness, except for monitoring related to Alcohol Management Plans. Public drunkenness remains an offence in Queensland.*


In **South Australia**, a review of the operations of a sobering-up centre in Ceduna was conducted by Brady et al (2006), observing that such centres avoided some of the harms associated with police custody for intoxicated individuals. However, the review did not identify any published research on detention of intoxicated individuals or the use of minor offence charges as substitutes for drunkenness charges. The South Australia Police *Annual Report* is the appropriate mechanism for reporting on its response to the *Public Intoxication Act 1984* (SA).

 *The South Australian Government has partially implemented Recommendation 85, with a review of sobering up centres conducted by Brady et al (2006). Research did not indicate any published research on detention of intoxicated individuals or the use of minor offence charges as substitutes for drunkenness charges.*


Western Australia monitors and publishes the number of individuals placed in sobering-up shelters and detained in lockups in its Police Services Annual Report. The Western Australian Government further notes that the effect of the decriminalisation of drunkenness is consistently monitored to inform policy and practices in relevant agencies. Currently, the Western Australia Police Force is taking actions to publish information associated with this monitoring.

 *The Western Australian Government has partially implemented Recommendation 85, with data on sobering-up centres monitored and published. However, research did not indicate any published research on the use of minor offence charges as substitutes for drunkenness charges.*


Tasmania Police have monitored the detention of individuals for intoxication. The most recently results available publicly were from 2007-08. No published monitoring or review process relating to the propriety of charging procedures was found. The Tasmanian Government note that police must submit a Public Intoxication Report for all instances where persons are taken into custody for public intoxication under s 4A *Police Offences Act 1935* (Tas).

 *The Tasmanian Government has partially implemented Recommendation 85 through the submission of Public Intoxication Reports under the Police Offences Act 1935 (Tas). However, it does not appear that results of monitoring are published.*

The **Northern Territory** publishes statistics on the use of protective custody in its police annual reports, which are also published in the Productivity Commission's *Report on Government Services*. No published monitoring or review process relating to the propriety of charging procedures was found. The Northern Territory Government noted that monitoring of the implementation of decriminalising public drunkenness is not applicable in the NT as the offence was decriminalised prior to the RCIADIC.

 *The Northern Territory Government has not implemented Recommendation 85. It does not appear that published monitoring or a review process relating to the propriety of charging procedures has been undertaken. Noting the Northern Territory Government does not consider this recommendation is applicable to them.*

Drunkenness is not a criminal offence in the **Australian Capital Territory**. As such, ACT Policing may take an intoxicated person into protective custody but this will only be done in circumstances where there is no other reasonable alternative to ensure the person's care and protection. Where practicable, persons taken into custody for intoxication are diverted to the Sobering Up Shelter – a place to sober up while being offered support and assistance. This is stated in the ACT Policing guidelines.

 *Recommendation 85 is mostly complete in the Australian Capital Territory through the decriminalisation of drunkenness. However, it appears that intoxicated persons may still be taken into custody in certain cases.*

Recommendation 86

That:

- a. The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and*
- b. Police Services should examine and monitor the use of offensive language charges.*

Background information


The RCIADIC Report noted that drunkenness is not the only offence which affects Aboriginal and Torres Strait Islander people disproportionately. Offensive language charges are also disproportionately used against Aboriginal and Torres Strait Islander people. This has resulted in imprisonment as a consequence of default in payment of fines imposed by the court in relation to the offence.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The offence for offensive language is encompassed within the offence of offensive behaviour contrary to section 392 of the *Crimes Act 1900*. The legislation does not prohibit the offence occurring in front of a police officer. The case of *Saunders v Herold* (SCA 263–264/1990) provides precedent that, in order to make out a charge of offensive language, the language must be made to another member of the public, not a police officer. Further, the ACT Government notes that ACT Policing undertake to examine and monitor the use of offensive language charges.


 *The Commonwealth and the Australian Capital Territory Government have mostly implemented Recommendation 86 through precedent from case law about offensive language in front of a police officer. However, it does not appear that actions have been taken to provide this in statute.*

New South Wales has a Commissioner's Instruction in place requiring police not to arrest an individual for a minor offence (such as the use of offensive language) when a summons would guarantee their appearance in court. Additionally, the Police Commissioner's Instructions 155.01 and 155.11.04 state "do not detain Aboriginals in police custody when other procedures or facilities are


available; do not detain Aboriginals in police custody for intoxication or other minor offence, unless the offender is violent or the offence is likely to continue". The NSW Police Force statistician produces monthly and annual activity reports detailing arrest and detention rates in all categories of offending, including Offensive Behaviour and Offensive Language. Those statistics show the state-wide and patrol-by-patrol incidence of those charges as raw data, monthly averages and trend patterns.

 *The New South Wales Government has implemented Recommendation 86 through Police Commissioner's Instructions and the function of the NSW Police Force (NSWPF) statistician.*


Victoria monitors the use of the charge of offensive language through broader crime statistics published online. From April 2016 to March 2017, 922 individuals were charged with the use of offensive language. It is unclear whether Victoria Police monitors the use of these charges to ensure that they are not a response to circumstances initiated by police. The Victorian Government notes that discretionary implementation exists and that the individual circumstances of the offence are taken into account, with most offences not escalating beyond initial intervention.

 *The Victorian Government has partially implemented Recommendation 86. While Victoria monitors the use of the charge of offensive language, more work is required to fully implement Part (a) of Recommendation 86.*


In **Queensland**, a magistrate ruled in 2010 in *R v Kaitira* that offensive language used towards a police officer did not amount to a criminal offence, because it did not interfere with the broader public. Arrest is a sanction of last resort for juveniles, but not adults. However, police must consider whether it is reasonably necessary to arrest a person, and may issue notices to appear in court without the need for formal summons.

 *The Queensland Government has partially implemented Recommendation 86. It does not appear that any action has been taken towards the implementation of this recommendation, except through common law which addresses part (a).*

South Australia has incorporated guidance on the use of offensive language charges into its police training. The Recruit Training Course addresses issues relating to the use of offensive language by offenders when in contact with police personnel, and training of new cadets includes discussions relating to discretionary interpretation of whether language is offensive or not. There is also a strong emphasis on the use of cautioning to deal with offensive language, whereby instructors make special mention of the use of offensive language and Aboriginal and Torres Strait Islander offenders. In addition, South Australia Police *General Orders* prescribe the criteria for arrest and the South Australia Police *Adult Cautioning Program* involving cautionary scheme for minor offences.

 *The South Australian Government has partially implemented Recommendation 86. The use of offensive language by an offender is met by caution and forms a significant aspect of recruit training requirements. However, there is no evidence that South Australia monitors the use of the charge of offensive language.*


In **Western Australia**, the use of offensive language is not an arrestable offence under the Criminal Code, and supervisors and senior officers monitor the use of these charges.

 *The Western Australian Government has implemented Recommendation 86 through the Criminal Code and monitoring functions performed by police members.*

Tasmania's Police Manual instructs officers to only arrest individuals for offensive language where the intervention was not initiated by police and was clearly audible to the public. Supervisors monitor arrests under the charge to ensure compliance.

 *The Tasmanian Government has implemented Recommendation 86 through the Police Manual.*

The **Northern Territory** has incorporated the intent of this recommendation into the general order governing arrests. There does not appear to be an ongoing monitoring process on the issue.

 *The Northern Territory Government notes that Recommendation 86 has been incorporated into the general order governing arrests. However, there does not appear to be an ongoing monitoring process on the issue.*

Recommendation 87

That:

a. All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;

b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;

c. Administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons and in particular should take account of the following matters:

i. all possible steps should be taken to ensure that allowances paid to police officers do not operate as an incentive to increase the number of arrests;

ii. a statistical data base should be established for monitoring the use of summons and arrest procedures on a Statewide basis noting the utilisation of such procedures, in particular divisions and stations;

iii. the role of supervisors should be examined and, where necessary, strengthened to provide for the overseeing of the appropriateness of arrest practices by police officers;

iv. efficiency and promotion criteria should be reviewed to ensure that advantage does not accrue to individuals or to police stations as a result of the frequency of making charges or arrests; and

v. procedures should be reviewed to ensure that work processes (particularly relating to paper work) are not encouraging arrest rather than the adoption of other options such as proceeding by summons or caution; and

d. Governments, in conjunction with Police Services, should consider the question of whether procedures for formal caution should be established in respect of certain types of offences rather than proceeding by way of prosecution.

Background information

It is possible that policing becomes more intense in relation to Aboriginal and Torres Strait Islander people as a result of local law and order campaigns. Outlined in the RCIADIC Report were other issues which included the allocation of police resources and possible incentives, both financial and performance based, in some police procedures and practices.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The sanction of last resort is addressed in s.3W of the **Commonwealth's** Crimes Act 1914 (Cth). **Australian Capital Territory** Policing powers of arrest are covered in s.212 of the Crimes Act 1900 (ACT). The Attorney General's Department (AGD) also noted that under the Act a Constable may only arrest someone, if they believe on reasonable grounds that proceeding by way of summons would not achieve one or more of the following purposes: preventing the repetition or continuation of the offence or the commission of another offence, preventing the destruction or fabrication of evidence, ensuring appearance before the Court, preserving the safety of the person, or preventing the harassment or intimidation of witnesses.

In the Australian Capital Territory, the AFP has adopted the principle of arrests as a sanction of last resort, and does not offer incentives for officers to increase the number of arrests. AFP training and procedures reinforce the principle of arrests being a sanction of last resort. Part (c) of the recommendation has been addressed in the ACT by ensuring AFP officers are not paid an allowance on the basis of the number of arrests, a database is maintained for monitoring purposes, officers are not promoted on the basis of frequency of charges and AFP work processes do not encourage the use of arrest rather than proceeding by summons or caution.


ACT Policing also have stringent provisions that define the circumstances under which arrest may be carried out. Each arrest is reviewed by the Watch House Sergeant, and if the circumstances don't warrant an arrest, then the charge is not accepted. ACT Policing has a standard operating procedure which outlines the circumstances surrounding the issuing of Police Criminal Cautions.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 87 as the AFP has adopted the principle of arrests as a sanction of last resort, and does not offer incentives for officers to increase the number of arrests.*


The **New South Wales** Police Force Code of Practice advises police not to arrest unless it is necessary to pursue certain police aims (such as to prevent a person fleeing a scene or continuing to offend)²¹. The Code also provides that police must consider alternatives to arrest, including warning, caution, penalty notice, field or future CAN, or dealing with the matter under the *Young Offenders Act 1997* (NSW) where appropriate.

To ensure compliance with Part 99 of the Law Enforcement (Powers and Responsibilities) Act (LEPRA) when police enter a person arrest into the Custody Management System, the arresting police must indicate the detention reason from Part 99. This form is electronically submitted to the Custody Manager to review and accept.


The method of proceedings against alleged offenders is captured within the computerised operational police system (COPS), with the statistics released quarterly by the Bureau of Crime Statistics and Research.

 *The New South Wales Government has implemented Recommendation 87. The Police Force Code of Practice and ongoing initiatives.*

The **Victoria** Police Manual requires that arrest is only to be used to prevent the harm, or support the purpose, for which the arrest power has been conferred – that is, a limited set of welfare purposes. Frequency of arrest is not considered in promotions or salaries. The Victorian Government also included in AJA 3 a commitment to ensuring that arrest is a sanction of last resort. AJA 3 also incorporates a focus on continuing to increase the use of cautioning when Aboriginal and Torres Strait Islander people interact with the justice system.

 *The Victorian Government has implemented Recommendation 87 through the Victoria Police Manual and AJA 3.*


In **Queensland**, arrest is a sanction of last resort for juveniles, but not adults. However, police must consider the necessity of arrest when making one, and may issue notices to appear in court without the need for formal summons, reducing the need for arrest for minor offences as an administrative issue. The issues contained in this recommendation are addressed in the *Youth Justice Act 1992* (Qld).

 *The Queensland Government has addressed Recommendation 87 for young people through a range of initiatives, including the Youth Justice Act 1992 (Qld). However, there is no provision specifying that arrests should be the sanction of last resort provision for adults.*


South Australia provides in its Police General Order that arrest should be the last resort when dealing with intoxicated persons, but not for all cases. Changes to the General Orders were also made to remove incentives to arrest in line with Recommendation 87(c). South Australia Police has also

²¹ New South Wales Police Force Code of Practice (2015). Online: http://www.police.nsw.gov.au/__data/assets/pdf_file/0007/108808/Code_of_Practice_for_Crime.pdf.


worked in conjunction with the Attorney-General's Department on improving access to bail via the Access to Bail Project. South Australia Police is also committed to a number of diversionary or alternative justice measures including: the Police Drug Diversion Initiative, the Shop Theft Infringement Notice Scheme, and the Adult Cautioning Program.

 *The South Australian Government has partially implemented Recommendation 87, recognising that arrest should be the last resort when dealing with intoxicated persons and removing incentives for arrests. However, no actions appear to have been taken in response to the other parts of this recommendation.*

In **Western Australia**, arrest is a sanction of last resort. Allowances paid to the arrest of individuals in custody were abolished in response to the RCIADIC Report. Currently, police officers in Western Australia are required to use their powers of arrest in accordance with the *Criminal Investigation Act 2006* (WA) which provides alternative actions to detention and prosecution. Diversionary initiatives include the Cannabis Infringement Notice, Move on Notices, and Criminal Code Infringement Notices, which enable police to issue an infringement as an alternative to a court appearance.

 *The Western Australian Government has mostly implemented Recommendation 87, however it does not appear that actions have been taken to fulfil part (c) of the recommendation.*


In **Tasmania**, under the Police Offences Act 1935 (Tas) s 55, a police officer must arrest an offender unless the purposes of the arrest power will be adequately served by issuing a summons. Allowances do not operate as an incentive, nor do frequency of arrests determine promotions.

 *The Tasmanian Government has not implemented Recommendation 87, arrest is not a sanction of last resort under the Police Offences Act 1935 (Tas). However, the Tasmanian Government has removed any incentives for arrest.*

The **Northern Territory** permits four-hour "paperless arrests" for individuals who would otherwise be fined for minor offences. This appears to support the use of arrest in place of other law enforcement tools, contrary to the intent of this recommendation. However, the Northern Territory Government note that they are committed to revoking these paperless arrests and the General Order Arrest provides that arrest should be an action of last resort, and only in the following circumstances:

- to prevent the continuation or repetition of an offence;
- to prevent the risk of further offences which may cause a danger to the public;
- if it is unlikely a summons or notice to appear will ensure the offender's in court;
- if the charge is of a serious nature; or
- if the person is intoxicated to the extent that they would not understand the consequences of their actions or the summons or notice to appear process.

Number of arrests form one criterion in the overall assessment of efficiency made of police officers during performance evaluation. The Northern Territory Government notes that Territory Families is currently reviewing the provisions of the *Youth Justice Act* in relation to the principle of arrest being the sanction of last resort.

 *The Northern Territory Government has partially implemented Recommendation 87 through General Order Arrest. However, there does not appear to have been actions taken in response to the other parts of this recommendation.*

Recommendation 88

That Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal organisations, whether there is a sufficient emphasis on community policing. In the course of that process of review, they should, in negotiation with appropriate Aboriginal organisations and people, consider whether:

- a. There is over-policing or inappropriate policing of Aboriginal people in any city or regional centre or country town;*

b. The policing provided to more remote communities is adequate and appropriate to meet the needs of those communities and, in particular, to meet the needs of women in those communities; and

c. There is sufficient emphasis on crime prevention and liaison work and training directed to such work.

Background information

Police resources may be used in ways which are likely to increase the rate of Aboriginal and Torres Strait Islander detentions. The RCIADIC Report indicated that it is important to review resource allocation in consultation with individual Aboriginal and Torres Strait Islander communities to develop policing responses which are acceptable to both groups.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP has an ACT Policing Aboriginal and Torres Strait Islander Community Liaison Officer to ensure open communication channels between police and the local Aboriginal and Torres Strait Islander community.

PM&C also noted that the Commonwealth provides funding to the Northern Territory Government for Community Engagement Police Officers through the IAS and the National Partnership Agreement on Remote Aboriginal Investment. The Commonwealth also provides financial support to ensure remote communities have access to adequate levels of policing.


In the Australian Capital Territory, ACT Policing are required to regularly engage with Aboriginal and Torres Strait Islander community forums to ensure that an adequate level of policing services and support is provided. The Chief Police Officer attends these forums on a three-monthly basis and the Aboriginal and Torres Strait Islander liaison officers work with Elders and community members daily. This information is fed into Malunggag Indigenous Officers in order to facilitate training for police. Through these forums, a number of potential initiatives have been discussed and work is underway to enhance ACT Policing capacity by providing more Liaison Officers and enhanced cultural advice for legislation and policy development.

 *The Commonwealth and the Australian Capital Territory Governments have mostly completed Recommendation 88 through the use of community engagement officers, but it does not appear that there has been a formal review to ensure there is no inappropriate policing of Aboriginal and Torres Strait Islander people.*


The **New South Wales** Police Force has a number of initiatives to consult with Aboriginal communities, including Aboriginal Community Liaison Officers, Police Aboriginal Consultative Committees, the Aboriginal Steering Direction Committee, and the Police Aboriginal Strategic Advisory Council. Policing levels and styles in the towns specifically mentioned in the RCIADIC Report were reviewed in response to the report.

The NSWPF have implemented the Aboriginal Strategic Direction Crime Prevention Grant program, which currently allocates \$200,000 per annum to fund initiatives negotiated by the Police Area Commands and Police Districts in consultation with the local Aboriginal community to develop crime prevention and community safety initiatives as well as break down barriers and build strong relationships between NSWPF and the Aboriginal community.

The establishment of the Corporate Sponsor Aboriginal Engagement role also supports the ongoing philosophy of the RCIADIC. The Program allocates a senior police officer to develop the NSWPF response to key Crime, Public Safety and Community and Partner issues. Corporate portfolios are allocated to the issues that have been identified as being of strategic importance to NSWPF, but generally do not have a substantive command assigned with an existing Head of Discipline/Crime Area who can lead the NSWPF response in this area.


 *The New South Wales Government has mostly implemented Recommendation 88 through the consultation procedures with Aboriginal communities, and the conduct of a review into police positions. It does not appear that there are specific measures addressed at women.*

In **Victoria**, Police Aboriginal Liaison Officers and Aboriginal Community Liaison Officers support Victorian Police in their engagement with Aboriginal and Torres Strait Islander communities to enhance perceptions of safety and positive engagement. The Victorian Government notes that following a review of the resources available across the state to enhance proactive policing services, the Minister for Police funded an additional 4 Aboriginal Community Liaison Officers in 2017, bringing the total number of Aboriginal Community Liaison Officers in Victoria to 13. Further, Aboriginal Justice Agreements (AJA) Phase 3 and 4 have a particular focus on supporting community-policing approaches to increase positive community-based activities between Aboriginal and Torres Strait Islander communities and police.

 *The Victorian Government has mostly implemented Recommendation 88 through the role of Police Aboriginal Liaison Officers and Aboriginal Community Liaison Officers, per the 2005 Victorian Implementation Review. However, it does not appear that there has been a review conducted into the inappropriate policing of Aboriginal and Torres Strait Islander people.*


In **Queensland**, the Queensland Police Service conducted a review of policing on remote Aboriginal and Torres Strait Islander communities in 1997. A number of roles exist to support liaison between Aboriginal and Torres Strait Islander communities and police, including Community Police Officers, Aboriginal and Torres Strait Islander Community/Police Consultative Groups, Police Liaison Officers and Cross-Cultural Liaison Officers.

In addition, the Queensland Police Service's Aboriginal and Torres Strait Islander Strategic Directions (2015-19) and associated Annual Plans contribute to the Commonwealth's implementation of Closing the Gap and Queensland Government Strategies including in response to research undertaken by the Crime and Misconduct Commission. The Queensland Government notes that the 2007 submission to the CMC Inquiry into Policing in Indigenous Communities and subsequent action plans address the requirements of this recommendation.

 *The Queensland Government has implemented Recommendation 88 through a range of initiatives, including the 2007 submission to the CMC Inquiry into Policing in Indigenous Communities, and subsequent action plans which followed the inquiry.*


South Australia trialled Aboriginal Police Liaison Officers from 2008 to 2012. It is unclear whether any such officers are still employed by South Australia Police. However, SA Police continues to employ Community Constables, who are Aboriginal and Torres Strait Islander individuals sworn in to the police with varying powers. SA Police's stated position is that irrespective of distance and isolation, like all other communities, those within the APY Lands can rightfully expect a policing service of no lesser standard than that provided elsewhere in the State. SA Police set out their delivery model for delivering its services to Aboriginal and Torres Strait Islander people, and this is subject to regular review. SA Police also established the Police Aboriginal Advisory Group Meeting, as part of its implementation of this recommendation, which includes in its terms of reference to:

- identify issues and concerns relative to police and the South Australian Aboriginal and Torres Strait Islander communities; and
- work together as a strategic consultative forum to advise the commissioner of Police and SAPOL regarding specific police issues affective South Australian Aboriginal communities.


 *The South Australian Government has implemented Recommendation 88 through a range of initiatives, including the function of the Police Aboriginal Advisory Group Meeting which serves as a strategic forum on police issues and identifies issues and concerns with current practices.*

In **Western Australia**, police training was reviewed in 1994 in response to the RCIADIC Report. Aboriginal people are encouraged to join the police as police officers, police auxiliary officers or as civilian staff; there is no longer a dedicated Aboriginal Police Liaison Officer role. Multi-Function Police


Facilities also provide a collaborative approach to service delivery for remote communities, incorporating consultation with key stakeholders.

 *Despite a number of measures targeted at collaboration and monitoring of policing, there does not appear to have been specific research conducted or steps taken by the Western Australian Government in accordance with the requirements of Recommendation 88.*

In **Tasmania**, Aboriginal Liaison Officers provide advice to police on their duties relating to Aboriginal and Torres Strait Islander individuals. The Tasmanian Police underwent significant restructuring and close analysis of all Aboriginal and Torres Strait Islander communities in response to the RCIADIC Report.

 *The Tasmanian Government has mostly implemented Recommendation 88 through the role of Aboriginal Community Liaison Officers and ongoing restructuring and service delivery analysis of police resources. However, further details on the implementation of this recommendation in Tasmania could not be located.*

In the **Northern Territory**, Aboriginal Community Police Officers are sworn members of NT Police who perform a liaison role between Aboriginal and Torres Strait Islander communities and other police officers. The Commonwealth also partly funds policing in Aboriginal and Torres Strait Islander communities. An independent review of policing in remote Aboriginal and Torres Strait Islander communities took place in 2010. The Aboriginal Liaison Officer program has been used to promote community engagement, communication and understanding to victims and witnesses. The program has received support from police, and Aboriginal and Torres Strait Islander leaders and community members.

 *The Northern Territory Government has implemented Recommendation 88 through the role of Aboriginal Community Liaison Officers, and the conduct of a review in 2010 into policing in remote Aboriginal and Torres Strait Islander communities.*

Recommendation 89

That, the operation of bail legislation should be closely monitored by each government to ensure that the entitlement to bail, as set out in the legislation, is being recognised in practice. Furthermore the Commission recommends that the factors highlighted in this report as relevant to the granting of bail be closely considered by police administrators.

Background information

Legislative changes require ongoing close monitoring of the legislation to ensure adequate and intended implementation.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The ACT Attorney-General announced a review of the *Bail Act 1992 (ACT)* in 1996. This review was released in 2001 and tabled in the ACT Legislative Assembly in the same year, resulting in amendments to the Act. Beyond this, the AFP has confirmed that all decisions in relation to the granting and refusal of bail made by a Watch House Sergeant are reviewed internally by ACT Policing, and offenders are given notice of the right to seek review by a court.


In the ACT, all detainees have the right to have a bail refusal reviewed as per s.38 of the *Bail Act 1992 (ACT)*. Section 16 of the Act stipulates that the Watch House Sgt is required to notify the detainee of this right when refusing bail, and facilitate a review if requested. By virtue of the process, decisions relating to the refusal of bail by Police are reviewed by the judiciary when an application to be released on bail is made to the Court. ACT Police have a checklist for consideration of bail for all persons arrested and charged.

 *The Commonwealth and the Australian Capital Territory Governments have mostly implemented Recommendation 89. Decisions on granting or refusing bail are reviewed internally or by the Courts. However, it is not clear if the AFP has considered the findings of the RCADIC in relation to decisions around bail.*


In **New South Wales**, a Bail Monitoring Group exists to support the Department of Justice in its ongoing review of bail laws. The group is made up of both prosecutorial and defendant representatives. The primary aim of this group, however, is to prevent bail being offered leniently, rather than to ensure the recognition of an individual's entitlement to bail. The Dubbo Bail Project also seeks to assist Aboriginal people through enabling police and courts to set more realistic and accountable bail conditions through local Aboriginal communities and staff giving the police and courts accurate information and helping offenders to understand their bail conditions.

 *The New South Wales Government has implemented Recommendation 89 through the function performed by the Bail Monitoring Group.*


In **Victoria**, the Bail Act was reviewed in 2007. Bail reform has been an ongoing part of Victorian political debate since this time. The Victorian Government included in AJA 3 a commitment to monitor and regularly report to the Aboriginal Justice Forum the numbers of Aboriginal and Torres Strait Islander people accessing bail.

 *The Victorian Government has partially implemented Recommendation 89, as there is no evidence of a clear effort to monitor the recognition of entitlement to bail in practice. However, AJA 3 supports the implementation of this recommendation through monitoring and reporting bail statistics to the Aboriginal Justice Forum.*


In **Queensland**, a review was conducted on the impact of bail on Aboriginal and Torres Strait Islander communities in 2011, considering several data sources. These issues are addressed in Queensland Police's *Operating Procedures Manual* and the *Bail Act 1980* (Qld).

 *The Queensland Government has partially implemented Recommendation 89, conducting a review on the impact of bail on Aboriginal and Torres Strait Islander communities in 2011. However, there is no evidence of a clear effort to monitor the recognition of entitlement to bail in practice on an ongoing basis.*


South Australia reviewed its *Bail Act 1985* (SA) after the Royal Commission, and changes were made to Police General Orders as a result. There does not appear to have been ongoing monitoring. In 2006, the Youth Court implemented changes as a result of a review into bail applications for children. In the event that the child or guardian applies for a telephone bail review by a magistrate, the telephone bail review must be conducted without any unnecessary delay.

 *The South Australian Government has partially implemented Recommendation 89, as there is no evidence of a clear effort to regularly monitor the recognition of entitlement to bail in practice. However, changes were made to the *Bail Act 1985* (SA) following a review of bail laws in the aftermath of the RCIADIC.*


In **Western Australia**, a review of the *Bail Act 1982* (WA) was conducted in 2010. No substantive amendments were made to the legislation as a result. The Western Australian Government notes that amendments are currently under consideration by the Department of Justice, and include measures which aim to support the reduction of recidivism among Aboriginal and Torres Strait Islander people.

 *The Western Australian Government has partially implemented Recommendation 89 through several bail monitoring initiatives. However, these do not appear to be undertaken continuously, and there does not appear to have been legislative amendments made to date.*

Tasmania last reviewed the operation of bail in 1996.

 *The Tasmanian Government has not implemented Recommendation 89, as there is no evidence of a clear effort to regularly monitor the recognition of entitlement to bail in practice.*

In the **Northern Territory**, the *Bail Amendment Act 2017* (NT) is reviewed and updated as required on a regular basis. The Northern Territory Police Force are also engaged in providing feedback on *Bail Act* amendments.

 *The Northern Territory Government has fully implemented Recommendation 89, the Bail Amendment Act 2017 (NT) is reviewed and updated as required on a regular basis and police members are required to provide feedback on the operation of bail laws.*

Recommendation 90

That in jurisdictions where this is not already the position:

- a. Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, the Aboriginal Legal Service, or a person nominated by the Service, be notified of that fact;*
- b. An officer of the Aboriginal Legal Service or such other person as is nominated by the Service, be granted access to a person held in custody without bail; and*
- c. There be a statutory requirement that the officer in charge of a station to whom an arrested person is taken give to that person, in writing, a notification of his/her right to apply for bail and to pursue a review of the decision if bail is refused and of how to exercise those rights.*

Background information

Given the overrepresentation of Aboriginal and Torres Strait Islander people in all levels of the justice system in Australia, it is important that they receive the necessary legal support when refused bail.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The AFP's guidelines addressed this recommendation for the **Commonwealth** and the **Australian Capital Territory** governments, prior to the RCIADIC Report. The AFP's guidelines addressed this recommendation, prior to the RCIADIC Report. The guideline states that "where an Indigenous Australian is taken into custody, the arresting member must ensure the Aboriginal Legal Services (ALS) is notified and notification is sent by facsimile. Members must record all ALS notifications and notification attempts in the relevant Police Real-time Online Management Information System (PROMIS) incident". Police are also required to supply information regarding eligibility for bail orally.

While ensuring access to legal services and the welfare of detained persons is the responsibility of state and territory governments, the Commonwealth Government supports custody notification arrangements to ensure the welfare of Aboriginal people coming into contact with the criminal justice system and prevent deaths in custody.

- All jurisdictions have some form of custody notification arrangements in place, however NSW and the ACT are the only jurisdictions where there is legislation in place that explicitly requires notification when an Aboriginal person comes into custody.
- The Commonwealth provided funding of \$1.8 million to NSW and the ACT from 2015-16 to 2018-19 to implement a 24-hour telephone legal advice service for Aboriginal people taken into custody by the police.
- The Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has offered three years of funding to support the establishment of a Custody Notification System in the remaining jurisdictions, to reduce the likelihood of future Aboriginal and Torres Strait Islander deaths in custody. This is conditional on the States and Territories introducing legislation to mandate the use of the Custody Notification System and the agreement of jurisdictions to take on funding responsibility at the end of the initial three-year period.

The Minister is working with the States and Territories to support arrangements that are most suitable to each jurisdiction.


 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 90, noting that the AFP was compliant with this recommendation at the time of the RCIADIC.*

In **New South Wales**, the Aboriginal Legal Service is notified when an Aboriginal individual is detained, and detainees are offered access to a solicitor from the Service. Police officers are required to provide written bail eligibility information. These requirements are contained in statute and in Police Commissioner Instructions. ALS is also notified when an Aboriginal person comes into CSNSW custody. Additionally, Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) requires that if the person under detention has asked an Australian legal practitioner communicated with to attend at the place where the person is being detained, the custody manager must: (a) allow the person to consult with the Australian legal practitioner in private and provide reasonable facilities for that consultation; and (b) if the person has so requested, allow the Australian legal practitioner to be present during any such investigative procedure and to give advice to the person.


Police officers are required to provide written bail eligibility information to a person in custody as soon as practicable after they are charged with an offence. This information includes an explanation of the person's entitlement to be granted bail; or, if a show cause requirement applies, information about the requirement for the person to show cause as to why their detention is not justified. These requirements are contained in statute and in Police Commissioner Instructions. Additionally under the *Bail Act 2011* (NSW) part 5 Division 1 s 44, a police officer must ensure that as soon as reasonably practicable after a person in police custody is charged with an offence a bail decision is made for the offence and the person is given the bail eligibility information.

In New South Wales, the Bail Act Monitoring Committee Group continues to operate, and is monitoring the implementation of bail reforms. The committee includes representatives from the NSW Police Force, Office of the Director of Public Prosecutions, Legal Aid NSW and the Aboriginal Legal Service NSW/ACT. The Dubbo Bail Project is also an innovative reform to assist Aboriginal people. In early 2017 Dubbo was identified as an appropriate site to trial a new approach to supporting Aboriginal accused people on bail because of the high number of breaches of bail. The trial has been developed to reduce bail breaches by:


- helping the police and courts to set more realistic and accountable bail conditions, through local Aboriginal community members and staff giving the police and courts accurate information;
- helping accused people better understand their bail conditions and how to keep them;
- increasing the number of accused people seeking variations of their bail conditions instead of breaching them;
- encouraging accused people who are required to report to police, to present themselves to the police station to prevent a breach of their bail conditions; and
- linking accused people to community support services to reduce the likelihood of breaches of their bail conditions.

 *The New South Wales Government has implemented Recommendation 90 through existing practices and governing legislation.*


In **Victoria**, the Victorian Police Manual prescribes that the Victorian Aboriginal Legal Service should be notified within 60 minutes of an Aboriginal and Torres Strait Islander individual being detained in police custody. Victorian Police currently notify the legal service on the arrest of the Aboriginal and Torres Strait Islander accused and their lawyers can be given access to a person held in custody without bail. The proposed legislative bail reforms will also change this further and require a bail justice to be called for all Aboriginal and Torres Strait Islander accused if police bail is denied. The Victorian Bail Regulations 2012 require a statement to be given to a person in custody when bail is refused by police that they have a right to apply for bail from a bail justice (Form 7).

 *The Victorian Government has mostly implemented Recommendation 90 through the Victorian Police Manual. However, it does not appear that part (c) of this recommendation has been fully implemented.*

In **Queensland**, the *Police Operational Procedure Manual* sets out that prior to the questioning of Aboriginal and Torres Strait Islander defendants, police officers must inform a legal aid representative that such a defendant is being held in custody. Written notifications of bail rights are not provided. Duty lawyer services operate in Magistrates Courts to ensure that a person denied bail by a watch house keeper can be represented before a magistrate.


 *The Queensland Government has partially implemented Recommendation 90 through the Police Operational Procedure Manual. However, written notifications of bail rights are not provided.*

South Australia police practice is to notify the Aboriginal Legal Service and to provide written notification of bail eligibility.


 *The South Australian Government has partially implemented Recommendation 90. Police practice is to notify the Aboriginal Legal Service and to provide written notification of bail eligibility. It does not appear that actions have been taken to address part (b) of this recommendation.*

In **Western Australia**, an agreement was reached in 1995 that the Aboriginal Legal Service would be advised when an Aboriginal and Torres Strait Islander individual was charged. However, that agreement appears to have lapsed, as deaths in custody in 2016 led to calls by advocacy groups for a custody notification service to be implemented in the state.²²


The Western Australian Government notes that the *Criminal Investigation Act 2006* (WA) allows for the accused to have contact with a lawyer, while police manuals provide direct guidance on notifying the Aboriginal Legal Service. In addition, the *Bail Act 1988* (WA) requires that the person accused be informed, in writing, of their rights for bail.

 *The Western Australian Government has mostly implemented Recommendation 90, however further action is required to fulfil part (a) of the recommendation as it concerns the role of the Aboriginal Legal Service.*

In **Tasmania**, the Aboriginal Legal Service is notified when an Aboriginal and Torres Strait Islander individual is detained. Written notifications of bail rights are not provided.

 *The Tasmanian Government has partially implemented Recommendation 90, providing that the Aboriginal Legal Service be notified when an Aboriginal and Torres Strait Islander individual is detained. However, there does not appear to have been actions taken to address parts (b) and (c) of this recommendation.*

In the **Northern Territory**, Police General Orders require that a person be informed if bail is refused of their right to apply to a magistrate for review. A statutory requirement was deemed unnecessary. The Northern Territory Government notes that all considerations are documented on the Bail Consideration form and that capacity for a review of a denial of bail is provided over a phone to a Local Court Judge. Additionally, the General Order Bail at section 34 requires that where an Aboriginal person is refused bail, all reasonable efforts be made to notify an appropriate legal aid provider or a person nominated by the provider, of the fact of refusal or the failure to meet conditions set.

 *The Northern Territory Government has partially implemented Recommendation 90 through current procedures and provisions made under the General Order – Bail. However, there is no formal requirement for ALS to be notified in all cases or for written notification of bail eligibility to be provided. Further, it does not appear that detainees are notified of their right to apply for bail.*

²² Denham Sadler (2016) *WA still waits for Indigenous custody notification*. Online: <https://www.thesaturdaypaper.com.au/news/indigenous-affairs/2016/08/20/wa-still-waits-indigenous-custody-notification/14716152003630>

Recommendation 91

That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation:

- a. to enable the same or another police officer to review a refusal of bail by a police officer,*
- b. to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and*
- c. to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station.*

Background information

Each of these proposals for reform are aimed at minimising the amount of time spent by Aboriginal and Torres Strait Islander individuals in police custody: by improving access to reviews of bail decisions; to ensure that Aboriginal and Torres Strait Islanders do not face obvious disadvantage in bail applications; and to permit bail before a person has been placed in custody.

Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The review did not reveal legislative changes resulting from this legislation. However, some jurisdictions explicitly require judges to consider a person's cultural background in making a bail decision, which may help to ensure that bail criteria are not unfairly biased against an Aboriginal and Torres Strait Islander individual.


In **New South Wales**, a senior police officer may review a bail decision under the *Bail Act 2013* (NSW). Any bail decisions should take into account whether a person is Aboriginal. However, bail decisions can only be made at a police station.

In relation to (c) Field Court Attendance Notices provide police with the ability to issue a Notice in lieu of formal arrest.

The *Bail Act 2013* (NSW) contains clear guidance and restrictions on when bail conditions can be imposed, notably that conditions can only be imposed if there is an identified bail concern and must be appropriate to address that concern. Further, a bail condition can only be imposed if there are reasonable grounds to believe that the accused is likely to comply with the condition. This is to ensure that unduly onerous conditions, which the accused is not likely to be able to comply with, are not imposed.


 *The New South Wales Government has mostly implemented Recommendation 91 through the Bail Act 2013 (NSW). However, no evidence has been found in support of actions taken towards part (b) of this recommendation.*

In **Victoria**, bail applications may only be made to a court. However, the current *Bail Act 1977* (Vic) requires that a bail decision maker take into account any issues that arise due to a person's Aboriginality, including their ties to family or place and other relevant cultural issues or obligations. Where courts are unavailable, a system of bail justices is provided to enable the prompt review of police decisions to refuse bail. Generally, Aboriginal and Torres Strait Islander people are excluded from recent bail reforms, and in most cases an Aboriginal and Torres Strait Islander accused will be able to seek bail from a police officer, and if the police officer refuses bail, from a bail justice.


 *The Victorian Government has partially implemented Recommendation 91 through bail legislation. However, no evidence has been found in support of actions taken towards parts (a) or (c) of this recommendation.*

In **Queensland**, only courts may review bail decisions. Courts are not required to consider a person's cultural background, and some criteria (in particular, the use of records of minor offences) potentially restrict the granting of bail to Aboriginal and Torres Strait Islander people. A court may also consider any submissions made by a community justice group made on behalf of an Aboriginal and Torres


Strait Islander defendant. People served with a notice to appear in court in relation to an offence are not required to enter into a bail undertaking until after they have appeared in court and if the matter has been adjourned. The review has not revealed a power to enable police officers to release a person on bail outside of a police station.

 *The Queensland Government has not implemented Recommendation 91; legislation does not appear to respond to the requirements outlined in this recommendation.*


South Australia permits a senior police officer to act as a bail authority. The *Bail Act 1985* (SA) has provision for bail review by a magistrate and may be done by telephone after hours. There are no criteria that inappropriately restrict granting of bail to Aboriginal and Torres Strait Islander people. The South Australian Government does not support a person arrested by police to not be conveyed to a police station. Provisions in the Act are designed to ensure that when a person is arrested that the person is not kept in custody of the arresting officers but taken to a police station. The review has not revealed a power to enable police officers to release a person on bail outside of a police station.

 *The South Australian Government has partially implemented Recommendation 91 through bail legislation. However, no evidence has been found in support of actions taken towards part (c) of this recommendation.*

In **Western Australia**, only a judge may review a bail decision. Under s 6 of the *Bail Act 1982* (WA), in the event that bail is not granted the accused is to be brought before an authorised police officer or Justice of the Peace for consideration of bail. Clause 3 of Schedule 1 Part B of the Act provides that once an authorised officer refuses bail it cannot be considered by another officer of the same or more senior level. Bail may subsequently be considered by a Justice of the Peace or before a court as soon as is practicable.


 *The Western Australian Government has partially implemented Recommendation 91 through the *Bail Act 1982* (WA), however it does not appear that parts (a) or (c) have been met.*

In **Tasmania**, all bail refusals must be reviewed by a justice or magistrate, so no appeal to a senior police officer is available. All bail decisions are made at a police station.

 *The Tasmanian Government has not implemented Recommendation 91; legislation does not appear to respond to the requirements outlined in this recommendation.*

In the **Northern Territory**, only a magistrate or justice can review a refusal of bail by a police officer. Bail laws including s 24 of the *Bail Act 2005* (NT) require the bail authority to consider a person's ties to extended family, cultural background and community ties. The Northern Territory Police Force has strict guidelines on the identification of persons and as identification processes need to occur in a police station through Livescan access, there is no power to enable police officers to release a person on bail outside of a police station.


In the event that identification is not an issue, police have the power to issue a 'Notice to appear' which dispenses with the need for police bail. As discussed in Recommendation 90, the Bail Consideration form must also be submitted in relation to every bail decision and the General Order – Bail makes requirements towards the implementation of this recommendation.

 *The Northern Territory Government has partially implemented Recommendation 91; legislation does not appear to respond to all of the requirements outlined in this recommendation.*

In the **Australian Capital Territory**, accused individuals can request a review of a bail decision by the officer who made the decision or another officer. Bail criteria do not explicitly consider the interests of Aboriginal and Torres Strait Islander individuals but do not appear to discriminate against them directly or indirectly. Provisions are made under the *Bail Act 1992* (ACT) for the court to have regard to any relevant matter, including a person's character, background and community ties, including an Aboriginal and Torres Strait Islander person's circumstances.

The ACT Government is taking additional steps towards the implementation of part (b) of this recommendation through the provision of funding for the Ngurrambai bail support trial under which

Aboriginal and Torres Strait Islander individuals are provided with assistance to apply for bail, as well as ongoing support in complying with their bail conditions. Bail may only be granted to an accused person present at a police station. The ACT Government comments that given the size of the ACT and the strategic positioning of police stations, the distance that an arrested person is taken from the place of arrest does not incur the type of problems that other, larger jurisdictions may experience.

 *The Australian Capital Territory Government has mostly implemented Recommendation 91 through bail legislation. However, no evidence has been found in support of actions taken towards part (c) of this recommendation.*

6.2 Imprisonment as a last resort (92-121)

Recommendation 92

That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.

Background information


One of the key aims of the RCIADIC Report was to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander individuals. At its core, these recommendations sought to ensure that non-custodial penalties are used before imprisonment. Legislation is one way to hold governments accountable to this principle.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, this principle is legislated in the *Crimes (Sentencing Procedure) Act 1991* (NSW) s 5.

 *The New South Wales Government has implemented Recommendation 92 through the Crimes (Sentencing Procedure) Act 1991 (NSW).*


In **Victoria**, this principle is legislated in the *Sentencing Act 1991* (Vic) ss 4B and 5(4), and the *Children, Youth, and Families Act 2005* (Vic) ss 11, 360 and 361.

 *The Victorian Government has implemented Recommendation 92 through the Sentencing Act 1991 (Vic) and the Children, Youth, and Families Act 2005 (Vic) which incorporate the principle that imprisonment should be a sanction of last resort.*

In **Queensland**, this principle is legislated in the *Penalties and Sentences Act 1992* (Qld) section 9(2). The principle does not apply to sentences for offences involving violence or which resulted in physical harm to another person or was an offence of a sexual nature committed against a child under the age of 16 years. The *Youth Justice Act 1992* (Qld) section 208 requires that a court be satisfied, after considering all other options and taking into account the desirability of not holding a child in detention, that no other sentence is appropriate in the circumstance of the case.


 *The Queensland Government has implemented Recommendation 92 through the Sentences Act 1992 (Qld) and the Youth Justice Act 1992 (Qld) which incorporate the principle that imprisonment should be a sanction of last resort.*

In **South Australia**, this principle is legislated in the *Criminal Law (Sentencing) Act 1988* (SA) s 11.


 *The South Australian Government has implemented Recommendation 92 through the Criminal Law (Sentencing) Act 1988 (SA) which incorporates the principle that imprisonment should be a sanction of last resort.*

In **Western Australia**, this principle is legislated in the *Sentencing Act 1995* (WA) ss 6(4) and 86, and the *Young Offenders Act 1994*. The Western Australian Government is also currently considering amendments to the *Fines and Infringement Notices Enforcement Act 1994* (WA) to reduce the reliance


on imprisonment for the enforcement of fines and penalties and to ensure that it is considered as a last resort.

 *The Western Australian Government has implemented Recommendation 92 through relevant legislation.*


In **Tasmania**, this principle is legislated for youth offenders in the *Youth Justice Act 1997* (Tas) s 5(1)(g), but does not apply to non-juvenile offenders. The *Sentencing Act 1997* (Tas) provides courts with discretion to use non-custodial sentencing options should they be deemed more appropriate than imprisonment.

 *The Tasmanian Government has partially implemented Recommendation 92 through the Youth Justice Act 1997 (Tas). However, no corresponding provision exists for adults.*

In the **Northern Territory**, this principle has been legislated with respect to youth offenders.

 *The Northern Territory Government has partially been implemented, as this is only a requirement for youth offenders.*

In the **Australian Capital Territory**, this principle is legislated in the *Crimes (Sentencing) Act 2005* (ACT) s 10.

 *The Australian Capital Territory Government has implemented Recommendation 92 through the Crimes (Sentencing) Act 2005 (ACT).*

Additional commentary

Mandatory sentencing laws for particular crimes have been implemented in most Australian jurisdictions. For these charges, imprisonment is inherently not an option of last resort.

Recommendation 93

That governments should consider whether legislation should provide, in the interests of rehabilitation, that criminal records be expunged to remove references to past convictions after a lapse of time since last conviction and particularly whether convictions as a juvenile should not be expunged after, say, two years of non-conviction as an adult.

Background information


Removing references to past convictions helps to enable individuals to seek employment and otherwise promotes their rehabilitation.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under the *Criminal Records Act 1991* (NSW), a conviction for which a person received a sentence of less than 6 months is "spent" after a crime-free period of 10 years for adults, or 3 years for juveniles.

 *The New South Wales Government has implemented Recommendation 93 through the Criminal Records Act 1991 (NSW).*

In **Victoria**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults. The Victorian Government notes that the merits of a legislative spent convictions scheme are currently under consideration, which would replace the current administrative scheme. This includes consideration of reducing the qualifying period of non-conviction for juvenile offenders.

 *The Victorian Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In **Queensland**, the *Criminal Law (Rehabilitation of Offenders) Act 1986* permits a person to deny certain criminal convictions after the rehabilitation period has passed. That period is 5 years for juveniles and 10 years for adults.

● *The Queensland Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In **South Australia** under the *Spent Convictions Act 2009* (SA), criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults.

● *The South Australian Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In **Western Australia** there is currently no legislative basis to expunge a conviction. The *Sentencing Act 1995* (WA) allows a court to make a spent conviction at the time of sentencing, while the *Spent Convictions Act 1988* (WA) provides for convictions to be spent based on the severity and nature of the offence, once the prescribed period for the conviction has elapsed. Section 189 of the *Young Offenders Act 1994* (WA) provides for certain offenders to be regarded as not convicted, in prescribed circumstances which do not apply to a young person convicted of murder, attempt to murder, or manslaughter.

○ *Recommendation 93 has not been implemented in Western Australia, as there is currently no legislative basis to expunge a conviction.*

In **Tasmania**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults. This is provided under the *Annulled Convictions Act 2003* (Tas) for minor infringements.

● *The Tasmanian Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In the **Northern Territory**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults.

● *Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In the **Australian Capital Territory**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults.

● *The Australian Capital Territory Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

Recommendation 94

That:

a. *Sentencing and correctional authorities should accept that community service may be performed in many ways by an offender placed on a community service order; and*

b. *Consistent with the object of ensuring that offenders do not re-offend, approval should be given, where appropriate, for offenders to perform Community Service work by pursuing personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending.*

Background information

Community service orders provide an alternative to imprisonment as a penalty for committing an offence. This recommendation considers permitting an offender to fulfil their community service obligation by undertaking a personal development course. This is done with the aim of reducing recidivism (and the likelihood of an individual going to prison).


Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

In **New South Wales**, personal development programs may be counted as community service work under the *Crimes (Administration of Sentences) Act 1999* (NSW) s 3. CSNSW offers a range of methods for completing community-service obligations depending on the offender's personal circumstances, work commitments and obligations, and other factors.


The NSW Government is currently undertaking reforms to Intensive Corrections Orders which will enable more Aboriginal offenders to participate in work and other activities and avoid custodial sentences. This reform addresses the lack of available paid employment in regional and rural locations.

 *The New South Wales Government has incorporated Recommendation 94 into legislation and has implemented personal development programs through CSNSW.*


In **Victoria**, personal development programs may be counted as community service work under the *Sentencing Act 1991* (Vic) ss 48C and 48D.

 *The Victorian Government has incorporated Recommendation 94 into legislation. The Sentencing Act 1991 (Vic) allows personal development programs to count as community service work.*


In **Queensland**, community service projects are run by local groups and developed in conjunction with Aboriginal and Torres Strait Islander communities. Offenders also have the opportunity to undertake education and training courses and rehabilitation programs which can contribute up to 50% of their ordered hours. Youth Justice has procedures that enable community service orders to include up to 50% of hours that take into account personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending. Section 302 of the *Youth Justice Act 1992* (Qld) enables Youth Justice to determine what a community service order is comprised of.

 *The Queensland Government has implemented Recommendation 94. Community service projects are developed in conjunction with Aboriginal and Torres Strait Islander communities, and offenders have the option to undertake education and training courses and rehabilitation programs.*


In **South Australia**, the *Youth Justice Community Service Order Program Framework* sets out the requirements from this recommendation, which are achieved through community-based partnerships and the development of individualised plans. Sentencing authorities can impose community service as a specific order, or as a condition of a bond. Part 5 of the *Youth Justice Administration Act 2016* (SA) provides that when undertaking assessment of a youth who is required to be under supervision in the community, regard must be had to the cultural identity, developmental and cognitive capacity, ability or disability, and any special needs, of the youth in respect of education or training. Repay SA provides an avenue for offenders to repay their debt to society through supervised community work projects, and to gain meaningful skills that will assist in obtaining employment.

 *In South Australia, the Youth Justice Community Service Program Framework and the Youth Justice Administration Act 2016 (SA) implement Recommendation 94.*


In **Western Australia**, a wide range of community-based orders, including personal development programs, are provided under the *Young Offenders Act 1994* (WA) and the *Sentencing Act 1995* (WA) s 66. The *Sentencing Act 1995* (WA) allows up to 25% of an Order for Community Service to be satisfied by way of personal development. These Acts emphasise rehabilitation, such as through attendance at drug-education courses or participation in programs focused on issues such as substance abuse or skills development. For young people on orders, a Youth Support Plan is prepared which may include attendance at relevant treatment or personal development courses.

 *The Western Australian Government has implemented Recommendation 94 through the Young Offenders Act 1994 (WA) and the Sentencing Act 1995 (WA).*


In **Tasmania**, personal development programs may be counted as community service work under the *Sentencing Act 1997* (Tas) ss 4, 8 and Part 3A.

 *The Tasmanian Government has implemented Recommendation 94 through the Sentencing Act 1997 (Tas).*

In the **Northern Territory**, rehabilitation programs may be counted as community service work under the *Sentencing Act* (NT) s 34. The Act allows for rehabilitation and personal development as part of Community Custody orders. The Northern Territory Government has implemented strategies to provide opportunities for training and development while an offender is subject to a community work order, such as the inclusion of White Card Training, First Aid, cultural courses, and Basic Living Skills within the Community Work Program. In 2013, the *Sentencing Act* (NT) was amended to create Community Custody Orders which incorporates a community work component.

 *The Northern Territory Government has implemented Recommendation 94 through the Sentencing Act (NT).*

In the **Australian Capital Territory**, the *Crimes (Sentencing) Act 2005* (ACT) provides for custodial and non-custodial sentences. The ACT Government notes that the objects of the Act include providing a range of sentencing options to promote flexibility in sentencing and to maximise the opportunity for imposing sentences that are adapted to individual offenders. Current ACT legislation does not allow for offenders to perform community service work conditions by pursuing personal development courses.

 *The Australian Capital Territory Government has partially implemented Recommendation 94 as current ACT legislation does not allow for offenders to perform community service work.*

Recommendation 95

That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with Aboriginal community organisations, programs be designed to reduce that incidence of offending.

Background information


Aboriginal and Torres Strait Islander people in remote communities particularly face barriers to obtaining a licence. Escalating penalties for offences of this nature – for instance, being charged for driving without a licence, being disqualified from driving as a penalty, and then breaching that disqualification – contributes to a cycle of recidivism. Reducing the incidence of these offences is one means of reducing the number of Aboriginal and Torres Strait Islanders being imprisoned.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the Community Based Knowledge-Testing Program is one program aimed at supporting Aboriginal individuals with driver's licence knowledge tests. The Driving Change program provides support in Aboriginal communities to enable individuals to obtain a licence. The Sober Driver Program is an evidence-based, nine session group program that targets serious and /or repeat drink drivers. In 2017 the Corrective Services NSW (CSNSW) Data Verification Project collected information on the licensee status of Aboriginal offenders and provided the details to Education staff, allowing them to tailor a program pathway to address licensing issues. Other programs have also been established, including the Driver Licensing Access Program and the Safer Driver Course which both target young drivers. Mandatory alcohol interlocks have also been introduced under the Mandatory Alcohol Interlock Program (MAIP).

 *The New South Wales Government has implemented Recommendation 95 through a range of programs aimed at addressing the issues raised in this recommendation.*


In **Victoria**, accredited drink-drive programs, alcohol and drug counselling programs, and motor vehicle offender programs are all aimed at reducing recidivism for motor vehicle offences.

 *The Victorian Government has implemented Recommendation 95 through a range of drink-drive programs, alcohol and drug counselling programs, and motor vehicle offender programs targeted at reducing recidivism for motor vehicle offences.*


The **Queensland** Government's Just Futures strategy includes an initiative for all prisons to provide driver education support to assist individuals with obtaining or regaining their licence. The Queensland Youth Justice reports on unlawful use of a motor vehicle offenders and sentence outcomes.

In addition, Queensland Corrective Services has implemented a working group to develop a strategy regarding program implementation for Aboriginal and Torres Strait Islander people that has been developed and delivered by Aboriginal and Torres Strait Islander people, including driver education. Currently, the Indigenous Driver Licensing Program aims to reduce unlicensed driving in remote communities including Cape York, the Gulf and Torres Strait Islands.


The Queensland Government has also developed the Austroads Learning to Drive kit and handbook, to help Aboriginal and Torres Strait Islander people get a better understanding of the road rules and driving safely. The Department of Transport and Main Roads also supports communities in the development of sustainable licensing and road safety initiatives, particularly those focused on assisting learner drivers progress to their provisional licence

 *The Queensland Government has implemented Recommendation 95 through initiatives such as their Just Futures strategy which includes an initiative for all prisons to provide driver education support.*


In **South Australia**, mandatory alcohol interlocks aim to reduce motor vehicle offence recidivism. The government's On the Right Track program delivers driver licensing services to Aboriginal and Torres Strait Islander people in the remote communities of the APY and MT Lands. In these communities the Mandatory Alcohol Interlock is not necessarily effective; as such, an alternative approach is currently being explored.

 *The South Australian Government has implemented Recommendation 95 through the introduction of mandatory alcohol interlocks, and the On the Right Track program, which delivers driver-licensing services to Aboriginal and Torres Strait Islander people in the remote communities of the APY and MT Lands.*


In **Western Australia**, mandatory alcohol interlocks aim to reduce motor vehicle offence recidivism. The Remote Areas Licensing program, a partnership between the Department of Transport, private industry and Aboriginal communities, provides driver's licence testing services to remote parts of Western Australia and supports individuals with lower levels of reading and numeracy comprehension. Western Australia currently offers an Aboriginal Driver Training and Education program in nine rural and remote Aboriginal and Torres Strait Islander communities.

 *The Western Australian Government has implemented Recommendation 95 through the introduction of mandatory alcohol interlocks, along with a range of other initiatives.*


In **Tasmania**, mandatory alcohol interlocks aim to reduce motor vehicle offence recidivism. The Learner Driver Mentor Program provides support to disadvantaged individuals in undertaking the minimum hours required under a learner's permit to obtain their licence. The *Back on Track Program* has also been introduced with the aim to reduce re-offending by moderate-high to high risk young adult offenders who are new to the justice system.

 *The Tasmanian Government has implemented Recommendation 95 through the introduction of alcohol interlocks and driver education courses which aim to end re-offending by young adult offenders.*

In the **Northern Territory**, alcohol interlocks and drink-driver education courses both aim to end cycles of recidivism for motor vehicle offences. The DriveSafe NT Remote supports individuals in 74 remote communities in obtaining their drivers licence.

 *The Northern Territory Government has implemented Recommendation 95 through the introduction of alcohol interlocks and drink-driver education courses which aim to end cycles of recidivism for motor vehicle offenders.*

The **Australian Capital Territory** made a grant to the Aboriginal Legal Services in 2017 for a two-year Aboriginal and Torres Strait Islander Driver Licensing project pilot which seeks to increase licensing rates of Aboriginal and Torres Strait Islander people, while building employment opportunities for Aboriginal and Torres Strait Islander driving instructors. Focus is also provided to ensuring program participants maintain their license and are prevented from coming into contact with the justice system as a result of driving without a license.

 *The Australian Capital Territory Government has mostly implemented Recommendation 95. While a pilot program is being offered, this does not appear to be ongoing or available for all Aboriginal and Torres Strait Islander people within the ACT.*

Recommendation 96

That judicial officers and persons who work in the court service and in the probation and parole services and whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today. The Commission further recommends that such persons should wherever possible participate in discussion with members of the Aboriginal community in an informal way in order to improve cross-cultural understanding.

Background information

It is important for individuals who work alongside Aboriginal and Torres Strait Islander people to be aware of the sensitivities involved in their society, customs and trainings.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** Government's AGD has committed to developing a Cultural Competency eLearning package, to develop cultural awareness of Aboriginal and Torres Strait Islander people for judicial officers and staff working in the federal courts. Launched in October 2015, this training comprises six modules and aims to:


- improve knowledge and understanding of the culturally diverse communities who access the courts;
- use critical reflection to understand the impact of stereotypes; and
- provide staff with the skills to adapt and deliver services to best meet the needs of culturally and linguistically diverse clients.

 The Commonwealth has implemented Recommendation 96 through the development of cultural awareness training programs.


In **New South Wales**, cultural awareness training is mandatory for all CSNSW Community Corrections staff as part of broader Justice policy, and other more specific programs are also available on request through the Brush Farm Academy and external to the Department. The CSNSW Aboriginal Strategy and Policy Unit works with internal and external stakeholders, partnering with organisations to deliver culturally sensitive services to Aboriginal offenders and their families.

 *The New South Wales Government has implemented Recommendation 96 through the introduction of cultural awareness training and ongoing consultation with Aboriginal organisations.*


In **Victoria**, Koori Community Engagement Officers and Koori Liaison Officers support courts in engaging with Aboriginal and Torres Strait Islander individuals. The Victorian Government also noted in AJA 3 that the Department of Justice *Koori Cultural Awareness Training Program* had been developed to increase the understanding of Aboriginal and Torres Strait Islander culture amongst justice staff. This initiative stands alongside Indigenous Cultural Awareness Training and Aboriginal Community Justice Panels.

 *The Victorian Government has implemented Recommendation 96 through a range of programs outlined as part of AJA 3. Additionally, the Victorian Government provides support for Koori Community Engagement Officers and Koori Liaison Officers who provide a link between courts and local Aboriginal and Torres Strait Islander communities.*


The **Queensland** judiciary's *Equal Treatment Benchbook* offers guidance and background knowledge to judicial officers on issues of equality that, if overlooked, could result in an injustice or perceived injustice. This includes information on Aboriginal and Torres Strait Islander culture. The Murrindhagun Cultural Centre develops and delivers cultural capability training to Queensland Corrective Services staff and provides advice to senior management and others in relation to Aboriginal and Torres Strait Islander culture and tradition. The Queensland Corrective Services Academy provides training and online courses relating to cultural awareness and capability. Custodial and probation and parole officers complete a cultural awareness component as part of their entry-level training. Cultural capability actions relevant to Probation and Parole include a commitment to increase staff participation in cultural competence training; appointment of additional cultural liaison officers; and development of culturally specific education, training and rehabilitation programs.

 *The Queensland Government has implemented Recommendation 96 through a range of initiatives, including the *Equal Treatment Benchbook*, the work of the Murrindhagun Cultural Centre, and the introduction of cultural capability to mandatory training requirements.*


In **South Australia**, Aboriginal Cultural Awareness training was introduced for all new court staff in 2003. Funding has also previously been sought and received from the National Judicial College of Australia by the SA Indigenous Justice Committee to allow Judicial Officers to travel to various locations within SA for cultural activities and education. The establishment of the Courts Aboriginal Cultural Awareness Training was developed by Courts Administration Authority (CAA) Aboriginal Justice Officers, and it has been attended by the Aboriginal Legal Rights Movement and other organisations.

 *The South Australian Government has mostly implemented Recommendation 96 through the development of Aboriginal Cultural Awareness training for staff. However, the extent to which informal conversations occur with Aboriginal and Torres Strait Islander communities is unclear.*


In **Western Australia**, the Aboriginal Benchbook for Western Australian Courts offers guidance to the judiciary on cross-cultural issues. Additional publications to educate the judiciary and employees on relevant aspects of Aboriginal and Torres Strait Islander history and culture include the *Equality Before the Law Benchbook* and the *Aboriginal Liaison Officer's Community Kit*. The Department of Justice is currently preparing a RAP which will include emphasis on improving the Aboriginal and Torres Strait Islander cultural competency of all employees as a key initiative, including through the provision of online cultural awareness training to all employees. Training and advice is also provided at the annual Magistrates' Conference.

 *The Western Australian Government has mostly implemented Recommendation 96 through the development of training and guidance for staff. However, the extent to which informal conversations occur with Aboriginal and Torres Strait Islander communities is unclear.*


In **Tasmania**, resources from benchbooks in other states have been used, and ad hoc training has been provided on cross-cultural issues (for instance, the use of interpreters in court). It does not appear that there exists an ongoing training and development program on Aboriginal and Torres Strait Islander culture. The Tasmanian State Service Aboriginal Employment Strategy is in development and will seek to improve recruitment and retention practices, including in the Department of Justice.

 *The Tasmanian Government has partially implemented Recommendation 96 through the introduction of ad-hoc training and recruitment efforts under the Tasmanian State Service Aboriginal Employment Strategy. However, there does not appear to be an ongoing training and development program for the purposes of this recommendation.*

In the **Northern Territory**, court user forums facilitate consultation between the North Australian Aboriginal Justice Agency (NAAJA) and the Supreme Court. Northern Territory police officers and Community Corrections Officers are required to undergo training on engagement with Aboriginal and Torres Strait Islander people as part of Customer Service training and Respect, Equity and Diversity training. Parole officers are required to complete Certificate IV in Correctional Practice, which incorporates a strong cross-cultural component. The Elders Visiting Program also serves to link Aboriginal and Torres Strait Islander offenders with Elders from their own community through scheduled visits at correctional centres, thereby contributing to the resolution of community based issues and validation of cultural identity.

 *The Northern Territory Government has implemented Recommendation 96 through a range of programs, including the introduction of court user forums, cultural sensitivity training requirements, and the Elders Visiting Program.*

The **Australian Capital Territory** offered cultural awareness training to courts staff in the past (as reported in its 1998 implementation report). Currently, ACT Government employees are required to undertake cultural awareness training as part of mandatory training on an ongoing basis. ACT Courts & Tribunals (ACTCT) supports ongoing judicial and staff training, including cultural competency development sessions for the Judiciary and registrars. The ACT Correctional Services engages an Aboriginal Client Support Officer within its Community Corrections section to provide cultural advice and support to Community Corrections Officers working with Aboriginal and/or Torres Strait Islander clients.

 *The Australian Capital Territory Government has implemented Recommendation 96 through ongoing training and consultation through an Aboriginal Client Support Officer.*

Recommendation 97

That in devising and implementing courses referred to in Recommendation 96 the responsible authorities should ensure that consultation takes place with appropriate Aboriginal organisations, including, but not limited to, Aboriginal Legal Services.

Background information

Organisations involving Aboriginal and Torres Strait Islander people should be consulted in the development of Recommendation 96 to ensure it is implemented adequately.

Responsibility








The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** Government's AGD noted the Aboriginal and Torres Strait Islander Access to Justice Committee continues to collaborate with the Courts and to facilitate the Courts' engagement with Aboriginal and Torres Strait Islander communities around Australia. Additionally, Indigenous Community Consultative members work with judges and staff.

 *The Commonwealth has implemented Recommendation 97 through the Courts' continued consultation with Aboriginal and Torres Strait Islander organisations and communities.*

The Aboriginal and Torres Strait Islander cross-cultural awareness programs for judicial officers outlined in Recommendation 96 above also relate to Recommendation 97. With the exception of Tasmania and the Australian Capital Territory, the other jurisdictions consulted with Aboriginal and Torres Strait Islander communities in the development of the programs. The ACT has partially undertaken consultation through the function of an Aboriginal Client Support Officer.

-  *The New South Wales Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Victorian Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Queensland Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The South Australian Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Western Australian Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Tasmanian Government has not implemented Recommendation 97. It does not appear that consultation occurs with Aboriginal and Torres Strait Islander organisations.*
-  *The Northern Territory Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Australian Capital Territory Government has mostly implemented Recommendation 97. It does not appear that consultation specifically occurs with Aboriginal and Torres Strait Islander organisations such as the ALS.*

Recommendation 98

Those jurisdictions which have not already done so should phase out the use of Justices of the Peace for the determination of charges or for the imposition of penalties for offences.

Background information

Justices of the Peace are not judicial officers, but rather, civilians who are authorised to witness and sign statutory declarations, affidavits, and copies of documents. Some jurisdictions have broadened the powers of a Justice of the Peace to support magistrates in the discharge of their duties. The RCIADIC Report observed that Justices of the Peace were more likely to impose custodial sentences than trained judges.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, Justices of the Peace do not have these powers.

-  *The New South Wales Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*


In **Victoria**, Justices of the Peace do not have these powers.

-  *The Victorian Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*


Queensland continues to use Justices of the Peace in its Magistrates Court to prevent cases being adjourned for hearing by a Magistrate. A defendant may not be sentenced to more than six months' imprisonment in respect of indictable offences when sentenced in a Magistrates Court constituted in this way. Summary proceedings can be heard by two or more justices.

-  *The Queensland Government has not implemented Recommendation 98; Justices of the Peace still have the powers listed in this recommendation.*


In **South Australia**, Special Justices (Justices of the Peace who undertake further training) sit in the Magistrates and Youth Courts to hear minor matters.

-  *The South Australian Government has not implemented Recommendation 98; Justices of the Peace still have the powers listed in this recommendation.*


In **Western Australia**, two Justices of the Peace may hear matters in the Magistrates Court where the accused has pleaded guilty, under the *Magistrates Court Regulations 2005 (WA)*. Justices of the Peace (a) are required to undertake compulsory tertiary training before the appointment is ratified; (b) cannot impose a sentence of imprisonment without the sentence being confirmed by a magistrate; and (c) have a retirement age of 70 years imposed on them by the Western Australian Attorney-General if presiding in court. The Department of Justice is proactive in recruiting Aboriginal Justices and establishing a more representative mix of Justices of the Peace appointments.

-  *The Western Australian Government has mostly implemented Recommendation 98, although Justices of the Peace are still able to impose a sentence of imprisonment provided that the sentence is confirmed by a magistrate.*


In **Tasmania**, Justices of the Peace do not have these powers.

-  *The Tasmanian Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*

In the **Northern Territory**, Justices of the Peace are not used for offences where imprisonment is a penalty.

-  *The Northern Territory Government has partially implemented Recommendation 98; Justices of the Peace still have the powers listed in this recommendation. However, Justices of the Peace are not used for offences where imprisonment is an available sentence.*

In the **Australian Capital Territory**, Justices of the Peace do not have the power to determine charges or impose penalties for offences.

-  *The Australian Capital Territory Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*

Recommendation 99

That legislation in all jurisdictions should provide that where an Aboriginal defendant appears before a Court and there is doubt as to whether the person has the ability to fully understand proceedings in the English language and is fully able to express himself or herself in the English language, the court be obliged to satisfy itself that the person has that ability. Where there is doubt or reservations as to these matters proceedings should not continue until a competent interpreter is provided to the person without cost to that person.

Background information

To ensure a defendant's understanding of court proceedings in the English language, they should be provided with the option of accessing an interpreter without cost. Aboriginal and Torres Strait Islander people's background and use of disappearing languages should be no reason not to provide this service.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The federal courts, which the **Commonwealth** has responsibility for, provide translators free of charge for people attending court to ensure that they have the ability to fully understand proceedings in the English language and are fully able to express themselves in the English language. This includes translators for Aboriginal and Torres Strait Islander people.

AGD has been funded to develop a program for the use of interpreters for Aboriginal and Torres Strait Islander people in court. The program involves liaison and consultation with Aboriginal and Torres Strait Islander groups, state and federal courts and relevant legal bodies, such as the ATSILS. These


translation services are provided free-of-charge and assist Aboriginal and Torres Strait Islander people to fully understand proceedings in the English language and to express themselves in the English language.

PM&C noted that the Minister for Indigenous Affairs committed \$5 million in 2016-17 to improve access to Aboriginal and Torres Strait Islander interpreting services, including for the use in courts, and to ensure the ongoing supply of Aboriginal and Torres Strait Islander interpreters.


This is in addition to the Commonwealth's investment through the IAS of \$2.7 million over two years for free legal interpretation for ATSILS and Family Violence Prevention Legal Services in the Northern Territory, and to improve legal interpreting, training, accreditation and support.

 *The Commonwealth has partially implemented Recommendation 99 by providing national funding for a program for interpreters in courts that Aboriginal and Torres Strait Islander people can access without cost as needed. While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **New South Wales** provide interpreters for defendants who do not speak English under the *Evidence Act 1995* (NSW) s 30. Supporting procedures also implement this recommendation, such as the Local Court Bench Book.

 *The New South Wales Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 1995 (NSW). While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **Victoria** provide interpreters for defendants who do not speak English under the *Criminal Procedure Act 2009* (Vic) s 335.

 *The Victorian Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Criminal Procedure Act 2009 (Vic). While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **Queensland** provide interpreters for defendants who do not speak English under the *Evidence Act 1977* (Qld) s 131A. A lawyer acting for an Aboriginal and Torres Strait Islander may also engage an interpreter for the purposes of court proceedings.

 *The Queensland Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 1977 (Qld). A lawyer acting for an Aboriginal and Torres Strait Islander may also engage an interpreter. While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **South Australia** provide interpreters for defendants who do not speak English under the *Evidence Act 1929* (SA) s 14. Interpreters are provided to defendants upon the defendant notifying the Court that they require an interpreter; the solicitor or police advise that a party to the case requires an interpreter; or it is determined by the Magistrate that an interpreter is required. All interpreters are provided free of charge by the Courts Administration Authority to the party involved in the case.

 *The South Australian Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 1929 (SA). While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **Western Australia** provide interpreters for defendants who do not speak English under the *Criminal Investigation Act 2006* (WA) ss 137 and 138. Additionally, the *Criminal Procedure Act 2004* (WA) provides for the use of interpreters in court where a witness or defendant is unable to understand or speak English. The Department of Justice has developed a policy for interpreters to be provided for all court and registry dealings as required, at no cost to the offender or other parties to the action.

 *While Recommendation 99 has been partially implemented in Western Australia, it does not appear to be a requirement that trials not commence until an interpreter is provided.*


Courts in **Tasmania** provide interpreters for defendants who do not speak English under the *Evidence Act 2001 (Tas)* ss 26 and 30.

 *The Tasmanian Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 2001 (Tas). While services are available, it is not clear if testing of whether the services are needed is undertaken.*

Courts in the **Northern Territory** provide interpreters for defendants who do not speak English under the *Evidence (National Uniform Legislation) Act 2011 (NT)* s 30. This is also provided for under the *Northern Territory Police General Order – Interpreters and Translators*. The Northern Territory Government funds a dedicated Aboriginal Interpreter Services that covers close to 100 languages and dialects.

 *The Northern Territory Government has implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence (National Uniform Legislation) Act 2011 (NT) and the Northern Territory Police General Order – Interpreters and Translators.*

Courts in the **Australian Capital Territory** provide interpreters for defendants who do not speak English under the *Evidence Act 2011 (ACT)* s 30. The ACT Government notes that under s 22(2)(a) of the *Human Rights Act 2004 (ACT)* anyone charged with a criminal offence is entitled to have the free assistance of an interpreter if (s)he cannot understand or speak the language used in court. Translation services for domestic and family violence cases are organised through the ACT Aboriginal and Torres Strait Islander support services and reimbursed by the ACT Government under the Translating and Interpreting Services program.

 *The Australian Capital Territory Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 2011 (ACT). While services are available, it is not clear if testing of whether the services are needed is undertaken.*

Additional commentary

The Commonwealth's 2016-17 investment also included:

- Support for the quality and supply of interpreting provided by existing services in the Kimberley and the Northern Territory;
- A cross-border trial for the provision of interpreting services in the South Australia Anangu Pitjantjatjara Yankunytjatjara Lands and Western Australia Ngaanyatjarra Lands by the Northern Territory Aboriginal Interpreter Service; and
- Provision of training and accreditation to increase the number and quality of accredited Aboriginal and Torres Strait Islander interpreters.

In December 2016, the Commonwealth Ombudsman released an own motion report, *Accessibility of Indigenous Language Interpreters*. This report focused on the use of, and access to, interpreters by Commonwealth agencies. The report found that there has been some progress since 2011. The Australian Government has agreed with the Commonwealth Ombudsman's report recommendations, including the development of Best Practice Principles for interpreting for Aboriginal and Torres Strait Islander people and the establishment of a national model.

While services are available in all states, it is not clear if testing of whether the services are needed is undertaken in practice. Evidence exists that interpreters are not always provided for defendants that require them. For instance, 14.9% of requests from South Australian courts for an Aboriginal and Torres Strait Islander language interpreter were not satisfied in 2010.²³ The significant number of

²³ Statistics from Multicultural SA, cited in Paper Tracker (2011) Royal Commission: access to interpreters <http://www.papertracker.com.au/archived/royal-commission-access-to-interpreters/>

Aboriginal and Torres Strait Islander languages in Australia with a declining number of speakers poses an ongoing barrier to implementation.

Recommendation 100

That governments should take more positive steps to recruit and train Aboriginal people as court staff and interpreters in locations where significant numbers of Aboriginal people appear before the courts.

Background information

The employment of Aboriginal and Torres Strait Islander people in the Australian justice system is important to ensure the perception and ruling of a non-biased court system.

Responsibility

The Commonwealth and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** initially referred Recommendation 100 to the Chief Executive Officers of the federal courts, for implementation by the courts (*Annual Report 1992-93*).

The Federal Circuit Court has developed a Reconciliation Action Plan, which includes developing opportunities for members of the Aboriginal and Torres Strait Islander community to enhance their educational and career prospects, through offering placements and work experience opportunities for law students/graduates and through establishing traineeships and work experience for other Aboriginal and Torres Strait Islander people.


The Family Court through its *Indigenous Plan 2014–2016* has created Aboriginal and Torres Strait Islander positions and is in the process of developing a Reconciliation Action Plan.

AGD noted that federal courts provide information in their annual reports on the Aboriginal and Torres Strait Islander status of their employees. As at 30 June 2016, there were nine employees in the Federal Court and seven employees in the Family Court/Federal Circuit Court. These reports do not report corresponding information on the location of employees.


Additional funding and support for interpreters has been provided, see Recommendation 99.

 *Recommendation 100 has been mostly implemented through the actions taken by the Federal courts. However, work is ongoing to develop measures to recruit and train Aboriginal and Torres Strait Islander people as court staff.*


In **New South Wales**, the Attorney General's Department implemented an Aboriginal and Torres Strait Islander Employment Strategy leading to a 4% increase in Aboriginal staff numbers by 2013. The Department of Justice has also established plans to increase employment of Aboriginal people across the justice cluster including in Courts, including through the Aboriginal and Torres Strait Islander Employment Strategy 2015-2017.

 *The New South Wales Government has implemented Recommendation 100 through ongoing strategies to increase Aboriginal employment in the justice system.*


In **Victoria**, Aboriginal Bail Officers, and Koori Liaison Officers in both the Magistrates and Supreme Courts form part of an ongoing strategy to increase Aboriginal and Torres Strait Islander employment in the state's justice system. The continued implementation of this recommendation has been encouraged by the Department of Justice's *Koori Employment Strategy 2011-15*, outlined in AJA 3, which seeks to increase Aboriginal and Torres Strait Islander employment in the justice system.

 *The Victorian Government has implemented Recommendation 100 through ongoing strategies to increase Aboriginal and Torres Strait Islander employment in the justice system.*

The **Queensland** Department of Justice and Attorney-General has developed and implemented an Aboriginal and Torres Strait Islander Trainee Employment Strategy, focusing on areas where significant numbers of Aboriginal people appear before the courts. This incorporates efforts to recruit and train Aboriginal and Torres Strait Islander officers.

 *The Queensland Government has implemented Recommendation 100 through Department of Justice and Attorney-General's Aboriginal and Torres Strait Islander Trainee Employment Strategy.*


In **South Australia**, the Courts Administration Authority observed difficulty in obtaining suitable Aboriginal staff in 1994 in response to the RCIADIC Report. Currently, the South Australian Government encourages Aboriginal and Torres Strait Islander people to apply for jobs, and employs a number of Aboriginal Justice Officers to assist Aboriginal and Torres Strait Islander court users with information and support.

 *The South Australian Government has partially implemented Recommendation 100 through the employment of Aboriginal Justice Officers. However, no specific program appears to have been implemented in response to this recommendation.*


In **Western Australia**, the Department of Corrective Services increased the number of permanent Indigenous staff to 4.7% in 2014. The Western Australian Government has also implemented a broader Aboriginal Employment Strategy, with apparent success in increasing the number of Aboriginal and Torres Strait Islander individuals in public service employment.

Aboriginal Liaison Officers are employed to provide assistance and advice to Aboriginal and Torres Strait Islander people involved in court processes, to provide cultural advice to judicial officers and court employees, and to work collaboratively with other service providers and Aboriginal and Torres Strait Islander communities to address underlying issues and reduce recidivism.


The Department of Justice is seeking to increase the number of Aboriginal and Torres Strait Islander employees across the sector, through strategies identified in the Reconciliation Action Plan, with a strong focus on non-metropolitan areas.

 *The Western Australian Government has implemented Recommendation 100 through the introduction of employment plans and other initiatives to increase the employment of Aboriginal and Torres Strait Islander people in the justice system.*


In **Tasmania**, Aboriginal and Torres Strait Islander interpreters are not generally necessary because very few individuals in the State use traditional languages in day-to-day engagement. An Aboriginal Court Support Officer is available to Aboriginal people who appear before the courts.

 *The Tasmanian Government has partially implemented Recommendation 100 through providing an Aboriginal Court Support Officer. However, there does not appear to have been specific actions taken towards implementing this recommendation*

In the **Northern Territory**, Aboriginal and Torres Strait Islander employees have made up an increasing number of the employees of the Department of Justice in recent years. The Northern Territory Public Service has adopted an Indigenous Employment and Career Development Strategy which, in conjunction with the introduction of a Special Measures Plan, seeks to promote equal employment opportunities for Aboriginal and Torres Strait Islander people. A special measure is a form of more favourable treatment of certain groups, such as the introduction of plans by the Department of Attorney-General and Justice to promote greater workplace diversity and to address inequality of employment opportunity.

 *The Northern Territory Government has mostly implemented Recommendation 100, through an increased employment of Aboriginal and Torres Strait Islander people in the Department of Justice. However, there does not appear to have been specific actions taken towards implementing this recommendation among court staff and interpreters.*

In the **Australian Capital Territory**, efforts have been ongoing to increase the number of Aboriginal and Torres Strait Islander individuals working in the Justice and Community Safety Directorate from 2012, with an overall increase from less than 1 percent in 2012 to 1.7 percent in 2015. The ACT Government notes that the ACTCT has an inclusion Employment Plan; however, no further information was located on this.

 *The Australian Capital Territory Government has partially implemented Recommendation 100 through ongoing strategies to increase Aboriginal and Torres Strait Islander employment in the justice system. However, there does not appear to have been specific actions taken towards implementing this recommendation.*

Recommendation 101

That authorities concerned with the administration of non-custodial sentencing orders take responsibility for advising sentencing authorities as to the scope and effectiveness of such programs.

Background information


The RCIADIC Report indicated that sentencing authorities are more likely to use non-custodial options if they are given explicit guidance on their use and results.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, the results of non-custodial program reviews are provided to judicial officers. Non-custodial sentencing options have been regularly evaluated by the Bureau of Crime Statistics and Research. The recent sentencing reforms enacted in NSW include comprehensive evaluation of community based sentencing options including performance for Aboriginal people.

 *The New South Wales Government has implemented Recommendation 101. The Bureau of Crime Statistics and Research regularly evaluates non-custodial sentencing options.*


In **Victoria**, the Community Based Corrections team advise magistrates and judges on consistency of sentencing and on least-restrictive appropriate sentencing options for given offenders. The Victorian Government also noted in AJA 3 that support would be provided to expand Community Corrections based delivery of culturally specific programs, aligned to the identified needs of Aboriginal and Torres Strait Islander offenders.

 *The Victorian Government has implemented Recommendation 101. The Community Based Corrections team advises sentencing authorities on matters related to the administration of non-custodial sentencing orders.*


In **Queensland**, a Community Corrections Policy and Procedures manual was already provided to judiciary and to magistrates prior to the RCIADIC Report. In addition, the Queensland Government publishes educational material for the public about the benefits of non-custodial orders. Probation and Parole's Court Advisory Service and regional managers state-wide work closely with local Magistrates and Judges. Probation and Parole also provides advice to the court via verbal and written Pre-Sentence Reports which cover the different community supervision options available and the suitability of the offender for such options. These reports can also detail the different rehabilitative programs available in the community.

 *The Queensland Government has implemented Recommendation 101 through the Community Corrections Policy and Procedures Manual, the ongoing publication of educational material on the benefits of non-custodial orders, and the function of Probation and Parole's Court Advisory Service.*


In **South Australia**, judicial officers are provided with information about departmental programs including relevant statistics on non-custodial programs. The Department for Correctional Services compiles information which identifies the scope and effectiveness of community-based orders requiring supervision by order of the Courts. Regular meetings occur between Community Youth Justice, the judiciary, SA Police Prosecutions, Legal Services Commission, and Aboriginal Legal Rights Movement to ensure the ongoing scope and effectiveness of community youth justice programs.

 *The South Australian Government has implemented Recommendation 101 through ongoing meeting and reporting arrangements.*


In **Western Australia** judicial officers engage in regular consultation with the Community Based Services team and are informed of statistical outcomes for non-custodial programs. There is ongoing monitoring and reporting to the courts, parole and release boards on the overall progress with community-based orders in terms of their completion rates, individual engagement with order requirements, engagement with the community, and the programs undertaken. Comprehensive statistics are generated quarterly, and made available to inform the judiciary.

 *The Western Australian Government has implemented Recommendation 101 through ongoing monitoring and reporting activities in relation to community-based orders.*

In **Tasmania**, regular meetings between Corrective Services and the Chief Magistrate involve discussions around effectiveness of non-custodial sentencing programs. Tasmania Community Corrections reports back on the success of individual cases; however, there is currently no formal mechanism to report to sentencing authorities on the overall effectiveness of programs.


 *The Tasmanian Government has mostly implemented Recommendation 101 through meetings between the Corrective Services and Chief Magistrate, and Tasmania Community Corrections reporting requirements. However, there is no formal mechanism to report to sentencing authorities on the overall effectiveness of programs.*

In the **Northern Territory**, Correctional Services informs magistrates and judges about the statistics relating to community-based programs. Community Corrections staff attend most urban and circuit court sitting in the Northern Territory and provide oral or written reports to the court on sentencing options available in that location, including availability of programs. Courts also receive compliance (progress) reports on offenders returning to courts. Community Corrections managers attend Court Users Forum Meetings with judiciary to provide feedback, and high level meetings occur with the Chief Judge of the Local Court that include information on current programs and initiatives.

 *The Northern Territory Government has implemented Recommendation 101. Community Corrections Staff attend urban and circuit court sitting and provide oral or written reports advising on sentencing options.*

In the **Australian Capital Territory**, ACT Corrective Services provide Pre-Sentence reports which indicate appropriate programs and sentencing options available, and include information such as an offender's cultural background, any prior sentences, and education history. The Aboriginal Client Support Officer helps to advise the Galambany Circle Sentencing Court on issues relating to relevant corrections clients, as well as working collaboratively with Aboriginal and Torres Strait Islander organisations.

The ACT Government is also developing a trial of a new style of report (modelled on Canadian 'Gladue reports' to be called 'Ngattai reports') that would give the sentencing court further information about culturally appropriate rehabilitation options available in the community for Aboriginal and Torres Strait Islander offenders.

 *The Australian Capital Territory Government has partially implemented Recommendation 101, however it does not appear that advice incorporates the effectiveness of non-custodial programs.*

Recommendation 102

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.

Background information


In line with Recommendation 87 (that arrest is a measure of last resort), arrests should only be made for individuals who are otherwise unlikely to appear in court. Avoiding arrest diverts individuals from police custody.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, summons or attendance notices are the ordinary course for dealing with a breach of a non-custodial order. Under the Sentencing and Parole reforms which passed Parliament in October 2017, a legislative sanctions regime will be introduced for parole orders and intensive correction orders whereby the parole authority and Community Corrections officers will have clear authority to deal with lower level breaches in the community as an alternative to revoking the order.


 *The New South Wales Government has implemented Recommendation 102. Summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known.*

In **Victoria**, summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known. Breaches of Parole Orders and Pre-Release Permits, however, must be followed by the issue of an arrest warrant. Warrants for arrest are also issued for non-payment of fines, but arrests are not effected until a person has had an opportunity to go to court to request to pay the fine in instalments, seek time to pay, or consent to a community based order as an alternative.


 *The Victorian Government has mostly implemented Recommendation 102. While summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known, they are not the first instance response when the offender cannot be located.*

In **Queensland**, the *Penalties and Sentences Act 1992* (Qld) permits proceedings for a breach of a community based order to be commenced by complaint and summons rather than complaint and warrant unless the offender cannot be located. When a child contravenes a community-based order they must first be issued with a warning under section 237 of the *Youth Justice Act 1992* (Qld). If they continue to contravene, Youth Justice may bring action by way of a complaint and summons served on the child (s238).


A warrant may only be issued if a child fails to appear or their whereabouts are unknown and cannot be reasonably determined. The Queensland Government notes that issuing a complaint and summons for a person where their whereabouts are unknown results in duplication of resources due to a summons requiring the matter to be listed at court for hearing. The offender is considered unlikely to show as the summons would have been mailed to the last known address. The Court is then required to issue a warrant in relation to the summons.

 *The Queensland Government has mostly implemented Recommendation 102 under the *Penalties and Sentences Act 1992* (Qld). While summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known, they are not the first instance response when the offender cannot be located.*


In **South Australia**, courts still have discretion to issue either a warrant for arrest or a summons for breaches of bond or community service orders.

 *The South Australian Government has not implemented Recommendation 102. Courts still have discretion to issue either a warrant for arrest or a summons for breaches of bond or community service order.*


In **Western Australia**, the policy of Community Based Services is to issue warrants for arrest as a last resort. The Department of Justice has contracted process servers to search for all adult absentee offenders to ensure that all possible efforts have been made before issuing a warrant. Matters before the Children's Court may be commenced by way of a notice to attend. Young people who are dealt with by the Supervised Release Board or the Children's Court for breaches may be subject to warrants, however the Western Australian Government notes that this is the least favoured method.

 *Recommendation 102 has been implemented in Western Australia, with warrants only used for juveniles as a last resort.*


In **Tasmania**, a breach of a non-custodial order should be followed in the first instance by summons or attendance notice.

 *The Tasmanian Government has implemented Recommendation 102 and comments that a breach of a non-custodial order should be followed in the first instance by summons or attendance notice.*

In the **Northern Territory**, a breach of a non-custodial order should be followed in the first instance by summons or attendance notice. It is the Northern Territory Government's position that the only time a summons would not be used in the first instance is where the location of an offender is unknown and corrections staff have exhausted all options for contacting the offender. An affidavit is required in these instances. A warrant can be issued where the court is satisfied the offender may not appear. Recommendation 102 has also been incorporated to the *International Operational Guidelines* and the *Standard Guidelines for Corrections in Australia*.

 *The Northern Territory Government has mostly implemented Recommendation 102. While summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known, they are not the first instance response when the offender cannot be located.*

In the **Australian Capital Territory**, a court may only issue summons in the first instance for offenders who have breached good behaviour obligations. Only after an individual has failed to comply with summons will an arrest warrant be issued.

 *The Australian Capital Territory Government has implemented Recommendation 102, and a court may only issue summons in the first instance for offenders who have breached good behaviour bonds.*

Recommendation 103

That in jurisdictions where a Community Service Order may be imposed for fine default, the dollar value of a day's service should be greater than and certainly not less than, the dollar value of a day served in prison.

Background information


Individuals who cannot afford to pay a fine may incur either community service or imprisonment sentences for their default. These sentences are calculated in proportion to the dollar value of the fine. This Recommendation is aimed at ensuring that there is no incentive for an individual to request a custodial sentence over a community service order.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, an eight-hour day of community service is equal to the dollar value of a day of imprisonment under the *Fines Act 1996* (NSW), Part 4, Division 5.


 *The New South Wales Government has mostly implemented Recommendation 103. Under the *Fines Act 1996* (NSW), one day of community service is equal to the dollar value of one day of imprisonment. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*

In **Victoria**, five hours of community service is equal to the dollar value of a day of imprisonment under the *Sentencing Act 1991* s 63.


 *The Victorian Government has implemented Recommendation 103 through the *Sentencing Act 1991*, which provides that the dollar value of a day of community service is greater than the dollar value of a day of imprisonment.*

In **Queensland**, a community service order cannot be imposed for a fine default. Fines can be converted to community service under the *Penalties and Sentences Act 1992* (Qld) and the *State Penalties Enforcement Act 1999* (Qld) through a fine option order. Currently, ten hours of community


services is equal to the dollar value of 14 days of imprisonment. Neither Act permits community service to be imposed; it must be requested by the offender.

 *The Queensland Government has implemented Recommendation 103 through the Penalties and Sentences Act 1992 (Qld) and the State Penalties Enforcement Act 1999 (Qld). Ten hours of community services is equal to the dollar value of 14 days of imprisonment.*


In **South Australia**, one day of community service is equal to the dollar value of one day of imprisonment under s 47 of the *Fines Enforcement and Debt Recovery Act 2017* (SA). Repay SA provides an avenue for offenders to repay their debt to society through supervised community work projects. It is an opportunity at making a positive contribution to their community.

 *The South Australian Government has mostly implemented Recommendation 103. Under s 47 of the Fines Enforcement and Debt Recovery Act 2017 (SA), one day of community service is equal to the dollar value of one day of imprisonment. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*


In **Western Australia**, the conversion rate of fines served through a Work and Development Order is \$300 per six hour day, whereas the cut-out rate for fines served while incarcerated is \$250 per day.

 *The Western Australian Government has implemented Recommendation 103, as the conversion rates for fines served through a Work and Development Order is higher than the value of fines served while incarcerated.*


In **Tasmania**, a seven-hour day of community service is equal to the dollar value of a day of imprisonment under the *Monetary Penalties Enforcement Act 2005* (Tas) ss 27 to 38.

 *The Tasmanian Government has mostly implemented Recommendation 103. Under the Monetary Penalties Enforcement Act 2005 (Tas) the dollar value of a day of community work is equal to the dollar value of a day in prison serving for fine default. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*

In the **Northern Territory**, the dollar value of a day of imprisonment is established under the *Fines and Penalties (Recovery) Act* (NT) ss 14 and 15. The Northern Territory Government notes that the current conversion rate from fines to community work is \$38.50 (0.25 of a penalty unit) per one hour of community work, and that the dollar value of a day in prison is equal to 2 penalty units. This means that an 8 hour day is equal to a day in prison serving for fine default.

 *The Northern Territory Government has mostly implemented Recommendation 103. Under the Fines and Penalties (Recovery) Act (NT) the dollar value of a day of community work is equal to the dollar value of a day in prison serving for fine default. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*

In the **Australian Capital Territory**, under the *Crimes (Sentence Administration) Act 2005* (ACT) s 116ZG a fine defaulter performing work under a voluntary community work order discharges their outstanding fine at an hourly rate of \$37.50 up to a maximum of 8 hours, or \$300, per day. Section 116ZM of the Act states that the rate of discharge of the outstanding fine for a fine defaulter is \$300 per day for which the defaulter is imprisoned. For a fine defaulter under 18 years at the time of the offence, the rate is \$500 for each day for which the person is imprisoned. This means that the rate of fine discharge is quicker for a young person under an imprisonment order than a young person on a voluntary community work order.

 *The Australian Capital Territory has partially implemented Recommendation 103 through the Crimes (Sentencing Administration) Act 2005 (ACT). However, the rate of fine discharge for a young person is faster under an imprisonment order than under a voluntary community work order.*

Recommendation 104

That in the case of discrete or remote communities sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should in appropriate circumstances relate to sentences in individual cases.

Background information


This Recommendation is aimed at integrating Aboriginal and Torres Strait Islander consultation into the sentencing process.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, pre-court and post-court offence resolution mechanisms including the provision of pre-sentencing reports involve consultation with Aboriginal communities, but these do not inform sentencing. Circle Sentencing is also available for eligible Aboriginal people across NSW. The Circle includes at least three Aboriginal people from the relevant community and it determines an intervention plan for an offender and it may make recommendations as to sentence.

 *The New South Wales Government has partially implemented Recommendation 104 as consultations do not form a part of sentencing decisions except in cases that are resolved through circle sentencing.*


In **Victoria**, consultation is undertaken through Aboriginal Liaison Officers during the court advice process, but this does not necessarily form part of the sentencing decisions for a court. As noted in AJA 3, the Victorian Government has engaged with the views of local Aboriginal and Torres Strait Islander communities in informing the enhancement of Community Corrections based programs under the Sentencing Reform Implementation Program.

The Victorian Government also introduced Koori Court Officers in Koori Court process who contribute during the hearing to ensure that court orders are appropriate to the cultural needs of the Koori accused. Aboriginal Elders or Respected Persons sit with the presiding magistrate and provide cultural advice regarding the accused's background, and possible reasons for the offending behaviour. They may also advise on cultural practices, protocols and perspectives relevant to sentencing. Examples of support given by Aboriginal Elders or Respected Persons include:


- providing assistance and advice to the presiding Magistrate and judicial officers on Aboriginal cultural and community matters;
- reinforcing cultural values and perspectives of the Aboriginal community to the accused in relation to their offending behaviour; and
- working with Koori Court staff, in particular the Koori Court Officer, to gain knowledge of the local services and programs available to Aboriginal accused.

 *The Victorian Government has mostly implemented Recommendation 104 through the work of Aboriginal Liaison Officers, and the Sentencing Reform Implementation Program introduced under AJA 3. However, there is no evidence that Aboriginal and Torres Strait Islander views will be consulted in relation to individual cases.*


In **Queensland**, under the section 9(2)(p) of the *Penalties and Sentences Act 1992 (Qld)*, when sentencing an Aboriginal and Torres Strait Islander defendant a court must take into account any submission made by a Community Justice Group that is relevant to sentencing the offender, including the offender's relationship to the community, any cultural consideration, and any programs or services established for offenders in which the community justice group participates.

 *The Queensland Government has implemented Recommendation 104 through the *Penalties and Sentences Act 1992 (Qld)*, which requires that any submission made by a Community Justice Group be considered when sentencing an Aboriginal and Torres Strait Islander defendant.*


In **South Australia**, as a matter of policy, consultation with Aboriginal communities form part of sentencing decisions. The court conducts circuits to Aboriginal communities on a regular basis and has done so for many years. At the Yalata Anangu Court a Magistrate sits with two Elders and consults the Elders about the appropriate penalty before imposing a sentence. The Elders also engage with the defendant and explain why the offending was wrong and the impact is on community.

 *The South Australian Government has implemented Recommendation 104. As a matter of policy, consultation with Aboriginal and Torres Strait Islander communities forms a part of sentencing decisions.*


In **Western Australia**, current practice is to obtain input from Aboriginal and Torres Strait Islander communities on the range of sentences considered appropriate for particular offences. However, the variety and diversity of communities means that this consultation is not always feasible. Community Corrections Officers and Juvenile Justice Officers are available to provide advice to all courts at all levels and to liaise with the communities and report back to the courts. Access is also provided to the communities for members of the judiciary who are interested in meeting with elders and visiting communities.

 *The Western Australian Government has partially implemented Recommendation 104 through occasional consulting with Aboriginal and Torres Strait Islander communities. However, the extent to which this occurs in practice is unclear.*


In **Tasmania**, Aboriginal and Torres Strait Islander communities are consulted “on occasion” on programs appropriate for Aboriginal and Torres Strait Islander individuals. There does not appear to be programs for Aboriginal and Torres Strait Islander community consultation in sentencing decisions.

 *The Tasmanian Government has partially implemented Recommendation 104 through “on occasion” consulting of Aboriginal and Torres Strait Islander individuals. It does not appear that there exist programs for Aboriginal and Torres Strait Islander community consultation in sentencing decisions.*

In the **Northern Territory**, circuit courts in Aboriginal and Torres Strait Islander communities informally consult with individuals and organisations to obtain information for sentencing decisions. Aboriginal and Torres Strait Islander elders participate in the hearing process where appropriate and judicial officers have discretion to take into account Aboriginal and Torres Strait Islander heritage and customs in selecting a sentence. Some Local Court Judges do sit in Community Courts where community members do participate and advise the Court on sentencing. Pre-sentence reports from Community Corrections also address community and family attitudes in individual cases.

 *The Northern Territory Government has implemented Recommendation 104 through informal consultation with Aboriginal and Torres Strait Islander individuals and communities to obtain information for sentencing decisions. Elders are also provided the option to participate in the hearing process where appropriate.*

The **Australian Capital Territory** does not consider this recommendation applicable as there are no discrete or remote Aboriginal and Torres Strait Islander communities in the Territory.

 *The Australian Capital Territory Government does not consider Recommendation 104 relevant to this jurisdiction.*

Recommendation 105

That in providing funding to Aboriginal Legal Services governments should recognise that Aboriginal Legal Services have a wider role to perform than their immediate task of ensuring the representation and provision of legal advice to Aboriginal persons. The role of the Aboriginal Legal Services includes investigation and research into areas of law reform in both criminal and civil fields which relate to the involvement of Aboriginal people in the system of justice in Australia. In fulfilling this role Aboriginal Legal Services require access to, and the opportunity to conduct, research.

Background information

Legal Services and research into law reform that benefit Aboriginal and Torres Strait Islander people is important to address their overrepresentation in the Australian justice system.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.


Key actions taken and status of implementation

The **Commonwealth** provided \$9 million of additional funding to the ALSs in the 1993-94 financial year to enhance services including investigations and research into areas of law reform. The additional funding was to continue for the following three years (*Annual Report 1993-94*).

Ongoing implementation of Recommendation 105 is supported by the Commonwealth's continued funding of legal support services for Aboriginal and Torres Strait Islander people. This includes funding to ATSILS under the *Indigenous Legal Assistance Program* (\$370 million from 2015 to 2020). The funding agreements with the ATSILS do not include a restriction on public commentary, research, policy reform work or making submissions to government bodies or inquiries. However, the Government has determined that funding priority should be given to the delivery of front-line legal services to help disadvantaged Aboriginal and Torres Strait Islander people resolve their legal problems.

AGD also provides funding to the National Aboriginal and Torres Strait Islander Legal Services (NATSILS). NATSILS is the peak body for ATSILS and facilitates effective engagement and collaboration across the sector and government and provides constructive policy advice and research.

PM&C also provides funding to maintain the Family Violence Prevention Legal Services Secretariat. This provides the Services with a national voice and the ability to provide research, policy advice and capacity building across the sector.

 *Recommendation 105 has been implemented by the Commonwealth through an increase in funding for legal services for Aboriginal and Torres Strait Islander people and funding for NATSILS.*

Recommendation 106

That Aboriginal Legal Services recognise the need for maintaining close contact with the Aboriginal communities which they serve. It should be recognised that where charges are laid against individuals there may be a conflict of interests between the rights of the individual and the interests of the Aboriginal community as perceived by that community; in such cases arrangements may need to be made to ensure that both interests are separately represented and presented to the court. Funding authorities should recognise that such conflicts of interest may require separate legal representation for the individual and the community.

Background information

The RCIADIC Report indicated that the most important safeguard to the rights of Aboriginal and Torres Strait Islander people, especially given their current overrepresentation in prison, was the provision of competent legal representation.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation


The additional funding provided by the **Commonwealth** Government to the ATSILSs outlined in the actions from Recommendation 105 is also aimed to address Recommendation 106. Currently, the eight AITSILS are funded under the *Indigenous Legal Assistance Program* to deliver services at a number of permanent sites, court circuits and outreach locations in urban, rural and remote areas (\$370 million from 2015 to 2020).

AGD requires that Aboriginal and Torres Strait Islander legal assistance providers have strong links to the communities which they service. These links assist with identifying legal need within the

community. The Commonwealth provides funding for legal assistance and women's legal services to supplement the AGD's initiatives in the Northern Territory. AGD noted that it is a matter for each individual provider to manage conflicts of interest.

The Family Violence Prevention Legal Services program was established in 1998 by ATSIC to provide culturally appropriate legal assistance to victims of family violence and/or sexual assault. Now administered by PM&C, the program now supports 14 service providers who are located in regional and remote areas across Australia. The Commonwealth has provided support of over \$92 million to these Services over the four years through to 30 June 2018.

Additional funding has also been provided under the Third Action Plan to Reduce Violence against Women and their Children. This funding will increase the capacity of the program to deliver holistic, case managed crisis support to Aboriginal and Torres Strait Islander women and children experiencing family violence.

 *The Commonwealth has implemented Recommendation 106. Funding is provided for legal services in urban, rural and remote communities and providers are required to have strong links with the community and manage conflicts of interest.*

Recommendation 107

That in order that Aboriginal Legal Services may maintain close contact with, and efficiently serve Aboriginal communities, weight should be attached to community wishes for autonomous regional services or for the regional location of solicitors and field officers.

Background information

The provision of legal services for Aboriginal and Torres Strait Islander people is important in reducing their overrepresentation in prison. In doing this, it is important to consult and work with the communities in which ALS are likely to be working heavily with.


Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

There are eight Aboriginal and Torres Strait Islander legal assistance providers nationally which deliver services from 65 permanent locations in regional and remote areas, as well as court circuits, bush courts and outreach locations. AGD noted that in 2015-16 more than 66 per cent of services nationally are delivered in regional and remote areas of Australia.

The **Commonwealth** Government's AGD acknowledges that ATSILS are best placed to identify the needs of Aboriginal and Torres Strait Islander people and appropriate service approaches. Accordingly, ATSILS have flexibility in their planning, consultation and delivery approaches to ensure the wishes of Aboriginal and Torres Strait Islander communities have been met.

 *Recommendation 107 has been implemented by the Commonwealth through the provision of legal services for Aboriginal and Torres Strait Islander people in regional and remote areas.*

Recommendation 108

That it be recognised by Aboriginal Legal Services, funding authorities and courts that lawyers cannot adequately represent clients unless they have adequate time to take instructions and prepare cases, and that this is a special problem in communities without access to lawyers other than at the time of court hearings.

Background information

The RCAIDIC noted the difficulties faced by Aboriginal and Torres Strait Islander communities in accessing the court system. Legal representation is a significant determinant of court outcomes.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth's** AGD noted that the Federal Circuit Court facilitates access to justice to regional communities through its circuit program. The Court sat in 30 locations across Australia on 165 occasions in 2015-16.

In addition, the Federal Circuit Court began implementing its Reconciliation Action Plan (RAP) which outlines how the Court engages with Aboriginal and Torres Strait Islander communities in order to improve legal access for members of these communities. Federal Circuit Court judges have also assisted with establishing regional family law pathways networks with a focus on Aboriginal and Torres Strait Islander law. This included conducting a 'Roadshow' in Redfern and Broken Hill, attended by community members and judges of the Federal Circuit Court.


Legal services are also provided across Australia (see Recommendation 107).

 *The Commonwealth has implemented Recommendation 108 through the work of the Federal Circuit Court.*


In **New South Wales**, magistrates balance the need to conduct court lists in a just and expeditious manner with the heavy demand placed on ATSILS and Legal Aid solicitors, and may permit solicitors who have not had adequate time to take instructions to obtain an adjournment. NSW administers the funding for the legal aid commission through the National Partnership Agreement. The Aboriginal Legal Services is funded by the Commonwealth directly.

 *The New South Wales Government has implemented Recommendation 108 through enabling solicitors to attain an adjournment in certain cases.*


In **Victoria**, Aboriginal Community Justice Panel members provide support for Aboriginal and Torres Strait Islander people who are appearing in court in addition to that provided by the Victorian ATSILS. Courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions).

 *The Victorian Government has implemented Recommendation 108 through the function of the Aboriginal Community Justice Panel in providing support for Aboriginal and Torres Strait Islander people appearing in court.*


The **Queensland** Government considers that funding of ATSILS is a Commonwealth responsibility. Courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions). The Queensland Government contends that the recommendation does not provide that the court must have specific directions to follow when deciding on case adjournment, and that the court continually recognises the difficulty in lawyers taking instructions in remote or regional communities.

 *While ATSILS funding is not considered by the Queensland Government to be within their responsibility, the Queensland Government has partially implemented this recommendation through a general discretion to adjourn cases. However, there are no specific directions to follow when deciding on case adjournment.*


South Australia has recognised that the shortfall in funding for ATSILS creates court delays but has not implemented any responses to this. Magistrates who circuit to remote communities recognise the time constraints that the lawyers have with their clients due to remoteness and lack of access to communication facilities.

 *The South Australian Government has partially implemented Recommendation 108. While the South Australian Government and Magistrates recognise that recognise the time constraints that lawyers have with their clients. However, there does not appear to have been a specific response to these issues.*


The **Western Australian** Government considers that funding of ATSILS is a Commonwealth responsibility. Courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions). The Western Australian Government notes that judicial officers recognise that lawyers cannot adequately represent clients unless they have time to take instructions and prepare cases, and that judicial officers ordinarily allow a defendant an adjournment to provide an opportunity to give full instructions to their counsel.

 *The Western Australian Government has mostly implemented Recommendation 108, however it does not appear that the principles of this recommendation have been incorporated to formal policy or legislation.*


In **Tasmania**, courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions). It is court practice that no trial proceeds until such time as the defendant is ready to plead, even if multiple adjournments have already occurred.

 *The Tasmanian Government has implemented Recommendation 108, allowing as a matter of course for courts to adjourn a court where it is in the interest of justice to do so and that no trial proceeds until the defendant is ready to plead.*

The **Northern Territory** considers funding of ATSILS, and this recommendation broadly, a Commonwealth responsibility. The Northern Territory Government funds the Northern Territory Legal Aid Commission which provides legal services for all Territorians, including Aboriginal and Torres Strait Islander people. The Northern Territory Government has increased funding to the Commission from \$4.91 million in the 2013/14 financial year, to \$6.11 million in the 2017/18 financial year. The Northern Territory Government has also invested in a specialist approach to domestic violence matters in the Alice Springs Local Court, which aims to better meet the needs of Aboriginal court users, including defendants and witnesses.

 *The Northern Territory Government does not appear to have taken action towards making provisions for cases to be adjourned as called for Recommendation 108, noting that the Northern Territory Government considers implementation of this recommendation to be the responsibility of the Commonwealth.*

The **Australian Capital Territory** considers funding of ATSILS, and this recommendation broadly, a Commonwealth responsibility. The ACT Government follows the Model Litigant Guidelines, which require that they do not take unfair advantage of a claimant who lacks the resources to litigate a legitimate claim.

 *The Australian Capital Territory Government does not appear to have taken action towards making provisions for cases to be adjourned as called for Recommendation 108, noting that the Australian Capital Territory Government considers implementation of this recommendation to be the responsibility of the Commonwealth.*

Recommendation 109

That State and Territory Governments examine the range of non-custodial sentencing options available in each jurisdiction with a view to ensuring that an appropriate range of such options is available.

Background information

Alternatives to custody that still achieve the overarching aims of the criminal justice system (including general deterrence and rehabilitation) help to reduce the number of Aboriginal and Torres Strait Islander individuals in prison.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the NSW Law Reform Commission reviewed the sentencing considerations necessary for certain groups of offenders, including Aboriginal individuals. A number of alternatives to incarceration have been implemented by the NSW Government.

- *The New South Wales Government has implemented Recommendation 109 through the function of the NSW Law Reform Commission and the implementation of alternative sentencing options.*

In **Victoria**, the Victorian Sentencing Advisory Council consults and advises on sentencing matters, including non-custodial options. Additionally, the Sentencing Reform Implementation Program outlined as part of the Victorian Government's response to Recommendation 104 also applies to this recommendation.

- *The Victorian Government has implemented Recommendation 109 through the ongoing role of the Victorian Sentencing Advisory Council and continued reforms to sentencing.*

In **Queensland**, a number of non-custodial programs targeted at Aboriginal and Torres Strait Islander individuals have been developed, including 'outstations', which return people to their local communities and the Corrective Services Work Program. The *Penalties and Sentences Act 1992* (Qld) contains a range of options available to the court, including Probation, Intensive Correction Orders and a range of reparation orders as an alternative option to imprisonment. The Queensland Sentencing Advisory Council has been tasked to consider flexible community based sentencing orders that provide for supervision in the community that are used in other jurisdictions and advise on appropriate options for Queensland. The Council's report is due in April 2019.

- *The Queensland Government has implemented Recommendation 109 through the ongoing role of the Queensland Sentencing Advisory Council, alongside the introduction of non-custodial programs and the Penalties and Sentences Act 1992 (Qld).*

South Australia retains a number of non-custodial options including probation, parole, community service, fines and home detention. Recent amendments to the Sentencing Act introduced a new non-custodial option - Intensive Correction Order. The South Australian Government is examining alternatives to custody through the *10% by 20* and Transforming Criminal Justice initiatives.

- *The South Australian Government has implemented Recommendation 109 through continued reforms to sentencing, and a number of government reviews into non-custodial sentencing options.*

In **Western Australia**, the *Young Offenders Act 1994* (WA) and *Sentencing Act 1995* (WA) expanded the range of non-custodial orders available to courts. The Department of Justice provides Community Work Projects as a means for offenders to complete community work hours as a non-custodial options, and is currently examining the use of Conditional Release Orders.


- *The Western Australian Government has addressed the requirements of Recommendation 109 through legislation.*

In **Tasmania**, reviews of non-custodial options occur on an ongoing basis. In 2017, the Tasmanian Government extended the availability of drug treatment orders to matters before the Supreme Court; introduced deferred sentencing for adult offenders; and introduced a sentencing option of a fine without recording conviction. The *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017* (Tas) also introduced home detention orders and community correction orders.

- *The Tasmanian Government has implemented Recommendation 109, with non-custodial programs subject to review and evaluation on a regular basis and with the continuing introduction of new options.*


In the **Northern Territory**, non-custodial programs are subject to review and evaluation on a regular basis. The Northern Territory Government draws on programs from interstate and overseas through participation in conferences. In 2012, the Northern Territory Government introduced Community Custody Orders and Community Based Orders under the *Sentencing Act* (NT) as alternatives to

imprisonment and further non-custodial measures are currently being investigated. Measures such as the COMMIT program for parole are also being implemented to reduce incarceration time. The Electric Monitoring initiative was also implemented in 2014 under the *Correctional Services Act 2014* (NT) to support community based sentencing options, including home detention, through monitoring curfews, exclusion zones, and the location and whereabouts of offenders.

 *The Northern Territory Government has implemented Recommendation 109, with non-custodial programs subject to review and evaluation on a regular basis.*

In the **Australian Capital Territory**, non-custodial options include fines, good behaviour orders, the intensive correction order, and suspended sentence of imprisonment with a good behaviour order. These sentences can be tailored to reflect the circumstances of the offence and the offender. Additionally, the Blueprint for Youth Justice involves Aboriginal and Torres Strait Islander communities in strategies to divert young people from entering or continuing in the criminal justice system.

Research has been conducted into the effectiveness of different sentencing options, including by the ACT Government Standing Committee on Justice and Community Safety in their 2015 report on the *Inquiry into Sentencing*. The *Crimes (Sentencing and Restorative Justice) Amendment Act 2016* (ACT) introduced intensive correction orders that allow sentences of imprisonment to be served in the community. The Galambany Circle Sentencing Court provides culturally-relevant sentencing options in the ACT Magistrates Court jurisdiction for eligible Aboriginal and Torres Strait Islander offenders.

 *The Australian Capital Territory Government has implemented Recommendation 109 through a range of sentencing options.*

Recommendation 110

That in view of the wide variety of pre-release and post-release support schemes conducted by Corrective Services authorities and other agencies and organisations in various parts of the country it is the view of the Commission that a national study designed to ascertain the best features of existing schemes with a view to ensuring their widespread application is highly desirable. In such a study it is most important that consultation take place with relevant Aboriginal organisations.

Background information

It is important to ensure existing schemes are both relevant and effective before any form of national application.

Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

Key actions taken and status of implementation

The **Commonwealth** Government has released a number of reports that relate to Recommendation 110. First, this includes the *2004 Australian Human Rights Commission* report on programs for Aboriginal and Torres Strait Islander women exiting prison that examines Aboriginal and Torres Strait Islander women. Second, the *2009 National Justice Chief Executive Officers Group* report on 36 programs throughout Australia and New Zealand that provide re-entry programs for young Aboriginal and Torres Strait Islander adults. Third, in 2011-12, AGD commissioned evaluations of its prisoner through care providers, the findings of which pointed to good and poor practice of pre- and post-release programmes. Fourth, the *2012 Australian Government strategy* paper reviewing employment opportunities of Indigenous persons upon their release from correctional institutions.

The *Prison to Work* Report, released December 2016, lists possible actions that governments could undertake to improve prisoners' pathways to work, including identifying current best practices. In response to the Report, PM&C is seeking to co-design, develop and test a best-practice prisoner through care model.

As part of the *Closing the Gap – Employment Services* measure announced in the 2017-18 Budget, \$17.6 million has been committed to establish the Prison to Work program which will support Aboriginal and Torres Strait Islander prisoners to make a successful transition from Prison to Work.

- *Recommendation 110 is complete as the intent of the recommendation has been indirectly addressed through other national reports.*

Recommendation 111

That in reviewing options for non-custodial sentences governments should consult with Aboriginal communities and groups, especially with representatives of Aboriginal Legal Services and with Aboriginal employees with relevant experience in government departments.

Background information

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the Aboriginal Strategic and Policy Unit advises Corrective Services on services, planning and support for Aboriginal offenders. The NSW Department of Justice held roundtables in 2017 which brought together representatives of victims groups, advocacy groups and representatives including from organisations dedicated to working with Aboriginal people. There were further opportunities for written feedback from Aboriginal organisations, who were able to provide submissions through two rounds of consultation on the draft Sentencing Bill.

- *The New South Wales Government has implemented Recommendation 111, as it consulted with organisations specifically dedicated to working with Aboriginal people when reviewing sentencing options.*

In **Victoria**, the Victorian Sentencing Advisory Council consults and advises on sentencing matters, including non-custodial options. As part of the research undertaken by the Sentencing Advisory Council, the Council consults with the Victorian Aboriginal Legal Service. As noted in AJA 3, the views of Aboriginal and Torres Strait Islander individuals and communities are also taken into account in reviewing sentencing options.

- *The Victorian Government has mostly implemented Recommendation 111, as it does not appear that the ATSILS is consulted when reviewing sentencing options.*

● In **Queensland**, the Aboriginal and Torres Strait Islander Action Plan provides for consultation with Aboriginal and Torres Strait Islander communities in the development and implementation of programs. See Queensland's response to Recommendation 109. The Queensland Government note that ATSILS are consulted in reviewing non-custodial sentences. The current Terms of Reference for the Sentencing Advisory Council on community-based sentencing options must have regard to the impact of any recommendation on the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

The Queensland Government has implemented Recommendation 111 through ongoing consultation with Aboriginal and Torres Strait Islander stakeholders regarding sentencing options, including ATSILS.


In **South Australia**, the Aboriginal Services Unit advises Corrective Services on services, planning and support for Aboriginal and Torres Strait Islander offenders. The Aboriginal Services Unit provides advocacy for Aboriginal and Torres Strait Islander departmental staff, oversees the development of culturally appropriate services and policies, and actively participates in the growth of partnerships and support for Aboriginal and Torres Strait Islander community organisations.

- *The South Australian Government has mostly implemented Recommendation 111, as it does not appear that the ATSILS is consulted when reviewing sentencing options.*


In **Western Australia**, the *Aboriginal Community Supervision Agreement* involves Aboriginal and Torres Strait Islander communities in the supervision of adult and juvenile offenders. The Western

Australian Government incorporated consultation with the Aboriginal Legal Service and Aboriginal and Torres Strait Islander employees of the Department of Justice in their statutory review of the *Sentencing Act 1995* (WA).

The Department also has regard to the views of the Aboriginal Legal Service in relation to proposed amendments to Conditional Release Orders. Aboriginal and Torres Strait Islander communities are directly involved in the supervision of adult and young offenders through Aboriginal Community Supervision Agreements in remote communities.

 *Recommendation 111 has been implemented in Western Australia through ongoing consultation requirements.*

In **Tasmania**, the Government engaged in community consultations over several reforms to non-custodial sentences that took place after the RCIADIC Report. The Tasmanian Government consults with the public on draft legislation and sentencing policy.


 *The Tasmanian Government has mostly implemented Recommendation 111, as it does not appear that the ATSIILS is consulted when reviewing sentencing options.*

In the **Northern Territory**, Community Supervision, where Aboriginal and Torres Strait Islander organisations supervise local offenders for a fee, serves the intent of this recommendation. In 2010-11 under the *New Era in Corrections*, options for non-custodial sentences were reviewed. Subsequently, the Northern Territory Government has since introduced community custody orders and community based orders. Within corrections, the Northern Territory Correctional Services coordinates an Indigenous Justice Stakeholders Group that includes the legal services. Northern Territory Correctional Services also works with NAAJA and Central Australian Aboriginal Legal Aid Service (CAALAS) and NAAJA. The Visiting Elders Program also provides a platform for representative Aboriginal and Torres Strait Islander services to engage with NTCS regarding services and to provide input into the development of sentencing options.

 *The Northern Territory Government has implemented Recommendation 111 through various initiatives, including the Indigenous Justice Stakeholders Group.*

In the **Australian Capital Territory**, the Blueprint for Youth Justice involves Aboriginal and Torres Strait Islander communities in strategies to divert young people from entering or continuing in the criminal justice system. The ACT Government also engages with Aboriginal and Torres Strait Islander communities through the work of the Justice Reform Strategy to address high incarceration rates.

The ACT Government engages with the Aboriginal and Torres Strait Islander Elected Body on sentencing policy matters, and is committed to the objectives of the Aboriginal and Torres Strait Islander Agreement 2015-18. Currently, consultation is ongoing with stakeholders including the ALS, the United Ngunnawal Elders Council, the ACT Aboriginal and Torres Strait Islander Elected Body and the ACT Government to develop a trial of Aboriginal and Torres Strait Islander Experience Court Reports, which seek to ensure culturally appropriate implementation of non-custodial sentencing options.

 *The Australian Capital Territory Government has implemented Recommendation 111 through ongoing consultations with relevant bodies.*

Recommendation 112

That adequate resources be made available to provide support by way of personnel and infrastructure so as to ensure that non-custodial sentencing options which are made available by legislation are capable of implementation in practice. It is particularly important that such support be provided in rural and remote areas of significant Aboriginal population.

Background information

Alternatives to custody that still achieve the overarching aims of the criminal justice system (including general deterrence and rehabilitation) help to reduce the number of Aboriginal and Torres Strait


Islander individuals in prison. This recommendation is aimed at ensuring that such programs are adequately resourced.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **New South Wales** Government increased the number of Aboriginal Program Development Officers and Juvenile Justice caseworkers in locations of need in response to the RCIADIC Report. Contracting with individuals and Aboriginal community agencies allowed the expansion of supervision orders in remote and regional areas.

 *The New South Wales Government has implemented Recommendation 112 through provision of increased resourcing and ongoing monitoring for non-custodial options.*


In **Victoria**, community corrections operations take place across regions, including in areas with significant Aboriginal and Torres Strait Islander populations. The delivery of culturally appropriate community corrections sentencing options is also a key focus under AJA 3, along with the provision of resources to roll-out such options across diverse localities.

 *The Victorian Government has implemented Recommendation 112. Community corrections operations take place across regions and are adequately resourced to ensure their continued delivery under AJA 3.*

Queensland Corrective Services asserted in the 1996-97 Queensland Implementation Report that all non-custodial options were “currently resourced”. Currently, the Queensland Corrective Services’ Probation and Parole Service provides supervision across all areas of Queensland. There are also a permanent District Offices and Reporting centres in a number of remote Aboriginal and Torres Strait Islander communities.

 *The Queensland Government has implemented Recommendation 112. Non-custodial options are adequately resourced, and supervised by the Queensland Corrective Services’ Probation and Parole Service. District Offices and reporting centres are also provided for remote communities.*

In **South Australia**, specific funding has been made available to alternative sentencing options in response to the RCIADIC Report. During the period of a community based sanction, offenders are supervised by the Department of Corrective Services through case management by Community Corrections Officers. DCS manages 16 community correctional centres and other outreach services which are located across the state. These outreach services include visiting the APY Lands and Oak Valley. In 2012, the *Statewide Community Youth Justice* model was implemented to ensure the consistent application for all case management and Community Service Order program functions to every young person under supervision across South Australia.

 *The South Australian Government has implemented Recommendation 112. Community corrections operations take place across regions and are adequately resourced to ensure their continued delivery under AJA 3.*

In **Western Australia**, Aboriginal and Torres Strait Islander communities are funded to supervise community-based orders. In rural and remote areas, offenders are assessed for, and placed in, appropriate accommodation in consultation with families and local service providers, toll-free phone numbers are provided to facilitate easy access for the offender, and Departmental officers travel to meet with offenders locally.

Community Supervision Agreements facilitate adults and young people remaining on country, which allow remote community members to be paid for supervising offenders on Community Based Orders. These agreements cover the delivery of programs, community work, and ensuring that people are compliant between visits on nearby circuit courts. Western Australia has eight Sheriffs and Community Development Officers who travel regularly to Aboriginal and Torres Strait Islander communities to facilitate non-custodial sentences.

- *The Western Australian Government has implemented Recommendation 112 through the provision of support to ensure the implementation of non-custodial sentences.*

In **Tasmania**, community service orders cover all areas of the State. Community Corrections has five office locations across Tasmania and provides outreach services to other centres outside of these locations.

- *The Tasmanian Government has implemented Recommendation 112, noting that community service orders cover all areas of Tasmania. These are supported by the provision of offices and outreach services across geographies.*

In the **Northern Territory**, staffing resources are placed where there is clear need, including in remote Aboriginal and Torres Strait Islander communities. The Northern Territory Government allocates resources and personnel to support non-custodial sentencing options across urban, rural and remote Northern Territory. Resourcing provided to facilitate non-custodial sentences included the provision of treatment beds; electronic monitoring; enhanced community based reintegration measures; post release support, additional staff and the expansion of services (existing infrastructure and personnel).

- *The Northern Territory Government has implemented Recommendation 112. Personnel and resources are allocated to support non-custodial sentencing options across geographies.*

In the **Australian Capital Territory**, the 1997 Implementation Report asserted that the range of non-custodial options had expanded and community-based programs were “adequately funded.” In 2014, the ACT Government created the Justice Reform Strategy which focuses on improving sentencing issues, including through intensive correction orders. Additionally, in the 2015-16 ACT Budget provided \$3.2 million over three years to enhance community corrections under the banner of the 2014-16 Justice Reform Strategy. In the 2018-19 Budget, the ACT Government has committed \$6 million to continue the intensive correction orders scheme.

- *The Australian Capital Territory Government has implemented Recommendation 112 through the expansion of non-custodial options and provision of funding.*

Recommendation 113

That where non-custodial sentencing orders provide for a community work or development program as a condition of the order the authorities responsible for the program should ensure that the local Aboriginal community participates, if its members so choose, in the planning and implementation of the program. Further, that Aboriginal community organisations be encouraged to become participating agencies in such programs.

Background information

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, as outlined in Recommendation 112, Aboriginal communities are involved in the delivery of community service programs.

- *The New South Wales Government has implemented Recommendation 113. The New South Wales Government has demonstrated a commitment to encouraging Aboriginal participation in the delivery of non-custodial programs.*


In **Victoria**, a number of Aboriginal and Torres Strait Islander agencies participate in the planning and delivery of non-custodial program conditions, including drug alcohol services for Aboriginal offenders and non-custodial orders (for instance, archaeological surveys on Aboriginal sites and Aboriginal development projects). The Victorian Government noted in AJA 3 an ongoing commitment fostering

Aboriginal and Torres Strait Islander participation in the delivery of non-custodial programs including through the funding of the Local Justice Worker program. The program aims to provide assistance to the Aboriginal and Torres Strait Islander community to meet their outstanding fine and warrant obligations, and to complete Community Correction Orders. It was co-designed with the Aboriginal community and implemented as pilots in 2008, and has expanded to now include 20 Local Justice Workers employed in Aboriginal Community Controlled organisations in 18 locations around Victoria. Examples of community work routinely include:


- maintenance and improvement works at Aboriginal and Torres Strait Islander cemeteries, Aboriginal and Torres Strait Islander cooperatives, Aboriginal and Torres Strait Islander schools and cultural heritage sites;
- working with local government to revitalise disused or run-down community infrastructure such as community halls for the Aboriginal and Torres Strait Islander community; and
- providing services to local elders such as gardening, home maintenance and meal preparation.

 *The Victorian Government has implemented Recommendation 113. The Victorian Government has demonstrated a commitment to encouraging Aboriginal and Torres Strait Islander participation in the delivery of non-custodial programs.*


In **Queensland**, members of Aboriginal and Torres Strait Islander communities and organisations participate in non-custodial sentencing orders and community justice consultations. Queensland Corrective Services has introduced co-facilitated programs and community service projects such as the Positive Futures Program with a community Elders and Community Justice Groups in remote areas of North Queensland. Youth Justice contributes to monitoring and evaluation of program effectiveness.

 *The Queensland Government has incorporated the principles contained in Recommendation 113 to co-facilitated community service programs, and continued consultations over non-custodial sentencing orders.*

In **South Australia**, the Aboriginal Community Work team uses a number of community resources and programs, and regularly consults with Aboriginal and Torres Strait Islander communities in operating community service option programs for Aboriginal offenders. The Youth Justice Community Service Order program has a focus on partner organisations which provide skills, personal development opportunities, cultural education linkages, and tangible community outcomes, with ongoing support.

 *The South Australian Government has mostly implemented Recommendation 113 through community consultations, and initiatives to promote Aboriginal and Torres Strait Islander community engagement in the operation of non-custodial programs. It is unclear if the Government has taken specific actions to encourage Aboriginal and Torres Strait Islander organisations to deliver the programs.*

In **Western Australia**, Aboriginal communities are funded to supervise community-based orders. The Western Australian Government has Community Supervision Agreements for adults and young people to remain on country, which allow remote community members to be paid for supervising an offender on a Community Based Order. Under Community Supervision Agreements, Aboriginal and Torres Strait Islander communities identify and manage the work for individuals on orders, including consulting with the Department of Justice on available options within the community.

 *The Western Australian Government has implemented Recommendation 113 through a range of initiatives to promote the engagement of Aboriginal and Torres Strait Islander people in appropriate programs.*

In **Tasmania**, Aboriginal and Torres Strait Islander community groups assist in the programs appropriate to Aboriginal and Torres Strait Islander people in community service orders. Aboriginal and Torres Strait Islander who have been sentenced to community service orders are given the option to perform their community service with a variety of Aboriginal and Torres Strait Islander organisations.

- *The Tasmanian Government has implemented Recommendation 113 with Aboriginal and Torres Strait Islander communities and organisations involved in programs appropriate to Aboriginal and Torres Strait Islander people.*

In the **Northern Territory**, Aboriginal and Torres Strait Islander community organisations participate in the planning, implementation and administration of many community-based corrections programs, and are consulted above refinements to the programs to meet the needs of Aboriginal and Torres Strait Islander offenders. Community Corrections has Community Work Coordinators based within all regional offices who have responsibility for engaging and consulting with remote organisations on the development of Community Work Projects.

- *The Northern Territory Government has implemented Recommendation 113. Aboriginal and Torres Strait Islander community organisations participate in the planning, implementation and administration of many community-based corrections programs.*

In the **Australian Capital Territory**, it is policy to consult with the community prior to the placement of an Aboriginal and Torres Strait Islander individual on a community service order, specifically where the offender has requested to perform the work within his or her community. In the past, this has involved partnership agreements between the ACT Corrective Services and Aboriginal and Torres Strait Islander organisations.

Currently, detainees on Community Service Work orders have the option of completing their hours at the Ngunnawal Bush Healing Farm, or alternatively by participating in the Continuing Adolescent Life Management (CALM) program. The program integrates aspects of traditional culture, art, music, horticulture and land management embedded with language, literacy and numeracy skills and is delivered in conjunction with ACT Environment and Planning directorate, Greening Australia, and the Winnunga Nimmityjah Aboriginal Health Service.

- *The Australian Capital Territory Government has implemented Recommendation 113 and it is practice to consult with the Aboriginal and Torres Strait Islander communities before the placement of an offender on a community service order.*

Recommendation 114

Wherever possible, departments and agencies responsible for non-custodial sentencing programs for Aboriginal persons should employ and train Aboriginal people to take particular responsibility for the implementation of such programs and should employ and train Aboriginal people to assist to educate and inform the community as to the range and implementation of non-custodial sentencing options.

Background information

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values. This recommendation also supports the employment of Aboriginal and Torres Strait Islander individuals in the criminal justice system.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The State and Territory response for this recommendation is outlined in Recommendations 112 and 113.

New South Wales Juvenile Justice also actively recruit Aboriginal people for identified and mainstream positions.


- *The New South Wales Government has implemented Recommendation 114 through the provision of Aboriginal Program Development Officers and Juvenile Justice caseworkers, and other actions taken towards Recommendations 112 and 113.*


- *The Victorian Government has implemented Recommendation 114 through their response to Recommendations 112 and 113.*

Queensland Corrective Services employs a number of Aboriginal and Torres Strait Islander officers across the agency, including Cultural Development Officers and Cultural Liaison Officers, with a continuing commitment to increase this number, as per the Queensland Parole System Review. Queensland Corrective Services also works with Aboriginal and Torres Strait Islander people within other government and non-government agencies to support a range of culturally appropriate programs for prisoners and offenders. In addition, re-entry services providers in locations with a high proportion of Aboriginal and Torres Strait Islander offenders are required to employ a minimum 50% Aboriginal and Torres Strait Islander staff. Youth Justice contributes to monitoring and evaluation of program effectiveness.

 *The Queensland Government has implemented Recommendation 114 through the role of Aboriginal and Torres Strait Islander officers, and the introduction of employment targets.*

In **South Australia**, the Department of Correctional Services has created positions for Aboriginal and Torres Strait Islander people and has developed initiatives to increase the number of Aboriginal and Torres Strait Islander employees across all directorates. As of June 2016, the Aboriginal and Torres Strait Islander employment rate was 4.13%. The South Australian Government has also piloted Corrections' Future which targeted Aboriginal and Torres Strait Islander people and provided a pathway to completing a Certificate II in Justice Services, and to gaining subsequent employment. Training is also provided for Aboriginal and Torres Strait Islander people through the Correctional Services Training and Employment Program. The South Australian Government notes that Community Youth Justice is committed to employing Aboriginal staff, and to utilising the Aboriginal Employment Pool to seek opportunities to employ Aboriginal and Torres Strait Islander people for all vacancies.

 *The South Australian Government has implemented Recommendation 114 through their creation of positions for Aboriginal and Torres Strait Islander people within the Department of Correctional Services, and the introduction of the Corrections' Future program.*


 *The Tasmanian Government has implemented Recommendation 114 in their response to Recommendations 112 and 113.*


The **Western Australia** Department of Justice seeks to promote the employment of Aboriginal and Torres Strait Islander people in non-custodial environments through a range of initiatives, including employment drives and targeted selection and training processes. Aboriginal and Torres Strait Islander employees are provided with Aboriginal and Torres Strait Islander mentors when undergoing supported certificate-level training for the role of Community Corrections Officer.

The Department's new RAP and associated Aboriginal Workforce Development Strategy seeks to further boost the employment of Aboriginal and Torres Strait Islander people, including through:

- advertising all vacancies on Aboriginal and Torres Strait Islander media;
- supporting Aboriginal and Torres Strait Islander employees to develop strong networks;
- examining selection panel member composition; and
- implementing best practice support strategies for Aboriginal and Torres Strait Islander employees to improve engagement and retention.

 *The Western Australian Government has implemented Recommendation 114 through a range of initiatives to boost Aboriginal and Torres Strait Islander employment.*

 *The Northern Territory Government has implemented Recommendation 114 in their response to Recommendations 112 and 113.*

 *The Australian Capital Territory Government does not appear to have implemented Recommendation 114. No reference is made to the employment or training of Aboriginal and Torres Strait Islander people for the purposes listed in this recommendation.*

Recommendation 115

That for the purpose of assessing the efficacy of sentencing options and for devising strategies for the rehabilitation of offenders it is important that governments ensure that statistical and other

information is recorded to enable an understanding of Aboriginal rates of recidivism and the effectiveness of various non-custodial sentencing orders and parole.

Background information

The lack of specific statistics reporting on the effectiveness of programs to reduce the rate of recidivism amongst Aboriginal and Torres Strait Islander offenders means that governments are unable to understand whether measures they have implemented are effective.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth's** AIC has published various papers on recidivism that have included information on recidivism amongst Aboriginal and Torres Strait Islander offenders. The AIC has also produced regular reports on the effectiveness of non-custodial sentencing options.


The *Prisoners in Australia*, and *Corrective Services Australia* publications, produced by the ABS, also include information on Aboriginal and Torres Strait Islander offenders. However, the ABS notes that currently they do not have data relating to recidivism or the effectiveness of non-custodial sentencing or parole.

 *The Commonwealth has implemented Recommendation 115 through the collection and publication of data by the AIC and the ABS.*


New South Wales Corrective Services have examined on several occasions the effectiveness of non-custodial programs for offenders.

 *The New South Wales Government has implemented Recommendation 115 and the Bureau of Crime Statistics and Research regularly evaluates non-custodial sentencing options.*

The **Victorian** Ombudsman has conducted multiple enquiries into the effectiveness of rehabilitation programs for offenders, including one on alcohol and drug rehabilitation services and another on the rehabilitation and reintegration of prisoners in Victoria. Corrections Victoria provides an annual report to the Aboriginal Justice Forum, which provides data and analysis of the profile and trends in Aboriginal and Torres Strait Islander prisoner and offender populations. Corrections Victoria also provides ongoing data reports and analysis to a number of external agencies including the Australian Bureau of Statistics, the Productivity Commission and to the Victorian Government for input into the Victorian Aboriginal Affairs Framework.


 *The Victorian Government has implemented Recommendation 115 through conducting a number of enquiries into the effectiveness of rehabilitation programs, and annual reporting to the Aboriginal Justice Forum.*

Queensland Corrective Services released a report on the rehabilitative needs and treatment of Indigenous offenders in the state in 2010. Queensland Corrective Services has also developed an offender database which incorporates information specific to Aboriginal and Torres Strait Islander offenders. This database includes a measure of recidivism which conforms to the national standard developed for ROGS. Youth Justice contributes to monitoring and evaluation of program effectiveness.


 *The Queensland Government has implemented Recommendation 115 through conducting a report into the rehabilitative needs and treatment of Aboriginal and Torres Strait Islander offenders, the maintenance of a database which collects information on recidivism, and continued monitoring and evaluation of program effectiveness.*

In **South Australia**, Aboriginal and Torres Strait Islander identification information is collected by the Department of Corrective Services for use in recidivism studies; one such study was conducted prior to 1994 on the impact of parole legislation changes in the state. These data can be disaggregated. The South Australia Department of Communities and Social Inclusion Youth Justice also collects and analyses data by Aboriginal and Torres Strait Islander status, and compiles these data into an


evidence base on the efficacy of interventions and to identify opportunities for partnerships to deal with Aboriginal and Torres Strait Islander over-representation.

 *The South Australian Government has implemented Recommendation 115. The Department of Corrective Services collects Aboriginal and Torres Strait Islander identification information for use in recidivism studies.*


In **Western Australia**, data on Aboriginal and Torres Strait Islander recidivism is made available for researchers on request. The Western Australian Government produces data on the rate of adult recidivism for return to prison, return to community corrections and return to corrections for the Productivity Commission's Report on Government Services. The Department of Justice uses recidivism rates and other relevant data when considering the development and implementation of rehabilitation options for offenders.

 *The Western Australian Government has implemented Recommendation 115 through data collection and provision activities which form a basis of non-custodial sentencing policy decisions.*


Tasmania observed in its 1995 Implementation Report that statistical information systems were being upgraded to assess the efficiency of sentencing options and rehabilitation of offenders. The Tasmanian Government notes that statistical information relating to recidivism for all offenders is published in the Productivity Commission's Report on Government Services and in the Department of Justice Annual Report. Funding has been allocated for the preparation of detailed requirements for the redevelopment of the Department's key Justice Information Communication Technology (ICT) systems. Additionally, the *Justice Connect* program seeks to enhance efficiency and improve policy outcomes through improved information sharing.

 *The Tasmanian Government has addressed Recommendation 115 through the Department of Justice Annual Report, contribution to the Productivity Commission's Report on Government Services, and the Justice Connect program.*

In the **Northern Territory**, information around recidivism of offenders is provided to the Productivity Commission, though they are not currently published in the Report on Government Services as they are considered experimental. The percentage completion of community orders as a whole for Aboriginal and Torres Strait Islander offenders is published within the report.

 *The Northern Territory Government has not taken specific actions towards the implementation of Recommendation 115 beyond participation in the Productivity's Commissions' Report on Government Services.*

In the **Australian Capital Territory**, rates of recidivism are monitored by Corrective Services and shared nationally. Imprisonment data under the Report on Government Services rules require that two years have passed before there can be meaningful reporting on return to custody/supervision figures. Since 2011-12, the two-year requirement was satisfied and recidivism data have been published in the JACSD Annual Report which is publicly-available on the JACSD website.

 *The Australian Capital Territory Government has implemented Recommendation 115 through ongoing monitoring performed by Corrective Services.*

Additional commentary

The ABS provides a recidivism indicator at a national level, however, there exist limitations in this measure to comprehensively understand the issue. In order to overcome these limitations, the ABS has been working with the justice sector to define recidivism and to identify data needs and availability to support the definition. Additionally, the ABS Criminal Courts collection has investigated the feasibility of including a courts reappearance item to strengthen existing measures of recidivism.

Recommendation 116

That persons responsible for devising work programs on Community Service Orders in Aboriginal communities consult closely with the community to ensure that work is directed which is seen to have

value to the community. Work performed under Community Service Orders should not, however, be performed at the expense of paid employment which would otherwise be available to members of the Aboriginal community.

Background information

Submissions to the RCIADIC Report indicated that offenders and the community regarded the work involved in Community Service Orders as being of no social benefit for the individual or the community. Ensuring that community service work supports and integrates with Aboriginal and Torres Strait Islander communities helps to make it more valuable to those communities, increasing engagement. However, the RCIADIC Report also focused on increasing economic opportunity for Aboriginal and Torres Strait Islander individuals in the labour market. If community service work was potentially a cheaper alternative to ordinary employment, this could have an adverse effect on economic prospects for Aboriginal and Torres Strait Islander individuals.


Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

In **New South Wales** Community Corrections, CSNSW is responsible for managing community service orders. Community Corrections' policy is to place Aboriginal offenders with Aboriginal organisations, to ensure that work is of value to their communities.

The NSW Government notes that ongoing reforms to community-based sentences are intended to enable more Aboriginal offenders to participate in work and other activities and access community-based sentences. This reform aims to address structural flaws that currently prevent many Aboriginal offenders from accessing the intensive supervision and interventions that it offers; for example, the lack of available paid employment in regional and rural locations. For work programs, Community Corrections engages voluntary community organisations as well as in environmental projects rather than drawing from paid employment providers.


 *The New South Wales Government has partially implemented Recommendation 116 through placement of Aboriginal offenders with Aboriginal organisations. However, it does not appear that specific provisions exist to ensure that this does not replace opportunities for paid employment.*

In **Victoria**, Aboriginal and Torres Strait Islander agencies supervising community work are responsible for developing the form and direction of that work.

 *The Victorian Government has partially completed Recommendation 116 through incorporating it into the process involved in developing the form and direction of community work. However, it does not appear that specific provisions exist to ensure that this does not replace opportunities for paid employment.*


Queensland Corrective Services consult closely with Aboriginal and Torres Strait Islander communities in the development of community service programs. Many Community Justice Groups are community service project supervisors which ensure work is culturally appropriate and is giving value to the community. In addition to considering whether work is normally conducted by paid or voluntary staff, the following factors are also considered:

- a sponsor organisation should ideally be a "not-for-profit" or a government agency, exceptions may be approved where a project does not contribute to the organisation's profit; and
- a rigorous assessment for any potential ethical concerns for Queensland Corrective Services.


 *The Queensland Government has partially completed Recommendation 116. Aboriginal and Torres Strait Islander communities are closely consulted in the development of community service programs. However, it does not appear that specific provisions exist to ensure that this does not replace opportunities for paid employment.*

In **South Australia**, the format outlined in the recommendation has been in place since 1987. The South Australian Government notes that the Department for Correctional Services continues to work closely with Aboriginal and Torres Strait Islander communities to ensure that the work performed is


seen to have value and does not come at the expense of paid employment. The Youth Justice Community Service Order program services are provided by, and in consultation with, local Aboriginal Community Providers.

 *The South Australian Government noted that practice was compliant with the principles of Recommendation 116 at the time of the RCIADIC. The South Australian Government continues to consult Aboriginal and Torres Strait Islander communities on the development of new programs.*


In **Western Australia**, communities are consulted on an ongoing basis about community service work; consistent with Trades and Labour Council standards, this work is not at the expense of paid employment otherwise available.

 *The Western Australian Government has implemented Recommendation 116 through ongoing consultation and ensuring that, in lines with Trades and Labour Council standards, work is not at the expense of paid employment otherwise available.*


In **Tasmania**, Community Corrections Officers liaise with Aboriginal and Torres Strait Islander community groups to select significant projects for community service work. This is addressed in Recommendation 113.

 *The Tasmanian Government has completed Recommendation 116 through the function of Community Corrections Officers.*

In the **Northern Territory**, Correctional Services liaises with Aboriginal and Torres Strait Islander communities to ensure that work service programs cooperate with local employment opportunities. Before projects are 'approved' they are assessed to ensure they don't undermine paid employment opportunities. The Northern Territory Government notes that the focus for the community work program is to provide a benefit to the wider community while at the same time providing the offender with portable and relevant skills and experience.

 *The Northern Territory Government has completed Recommendation 116 through incorporating it into the process involved in developing the form and direction of community work.*

In the **Australian Capital Territory**, Corrective Services consults with communities, including the Aboriginal and Torres Strait Islander Elected Body, prior to the placement of an Aboriginal and Torres Strait Islander individual on a community service order. The work available for community service is not otherwise paid employment. Under the *Sentence Administration Act 2005* s 91(6), an offender is not required to do work the offender is not capable of doing, and the direction must avoid interference with the offender's normal attendance at another place for work or at a school or other educational institution.

 *The Australian Capital Territory Government has mostly completed Recommendation 116 and consults with the community prior to placement of an offender. However, no specific provisions seem to exist to ensure that community work does not come at the expense of paid employment.*

Additional Commentary

Although each State and Territory offers community work through Aboriginal and Torres Strait Islander agencies, it is unclear whether the programs run by these Aboriginal and Torres Strait Islander organisations are designed to meet the needs of Aboriginal and Torres Strait Islander communities more broadly.

Recommendation 117

That where in any jurisdiction the consequence of a breach of a Community Service Order, whether imposed by the court or as a fine default option, may be a term of imprisonment, legislation be amended to provide that the imprisonment must be subject to determination by a magistrate or judge who should be authorised to make orders other than imprisonment if he or she deems it appropriate.

Background information

A Community Service Order is, in essence, an alternative to a custodial sentence. Accordingly, the default consequence for breaches of such an order is often imprisonment. However, this may not be proportionate to the original crime committed. This recommendation aims to permit judicial officers to at least consider alternative penalties for a breach of a Community Service Order.


Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

In **New South Wales**, a person may be imprisoned upon breach and revocation of a community service order. Where the community service order was imposed by the court, the court has full discretion to impose any other sentence it deems appropriate after revoking the community service order, including a good behaviour bond, suspended sentence, intensive correction order or imprisonment. Where the community service order was imposed in relation to fine default, the Commissioner of Fines Administration has discretion to order that the person should be subject to an intensive correction order rather than imprisonment.


Reforms to sentencing laws in 2017 provide greater flexibility for courts to hand down non-custodial sentences for Aboriginal and other offenders and also gives CSNSW Community Corrections Officers more authority to address breaches of parole conditions.

 *The New South Wales Government has implemented Recommendation 117 through judicial officers having a broader range of sentencing options available in the case of either a breach of community service order or fine default.*


In **Victoria**, judicial officers hearing a breach of a Community Based Order have the full range of sentencing options available.

 *The Victorian Government has implemented Recommendation 117 through judicial officers having the full range of sentencing options available.*


In **Queensland**, the *Penalties and Sentences Act 1992 (Qld)* provides for a number of options in the case of a breach of Community Service Order, including admonition and discharge, a fine, increased hours and extension of time. Under section 245 of the *Youth Justice Act 1992 (Qld)* the court may impose a variety of penalties but may not order detention for a breach of orders other than conditional release orders. For breach of a conditional release order, the court may order the child returned to detention but may instead otherwise vary the order if it chooses.

 *The Queensland Government has implemented Recommendation 117 through the Penalties and Sentences Act 1992 (Qld) which provides a range of options in the case of a breach of Community Service Order.*


In **South Australia**, non-performance of community service work is enforceable by imprisonment, with every 7.5 hours not completed equalling one day in prison, or six months total, whichever is the lesser. If the failure to comply was trivial or there are proper grounds to do so, the court may instead give extra time, cancel some or all of the remaining hours, or impose a fine, under s 47 of the *Fines Enforcement and Debt Recovery Act 2017 (SA)* and s 115 of the *Sentencing Act 2017 (SA)*.

 *The South Australian Government has not implemented Recommendation 117. The non-performance of community service work is enforceable by imprisonment.*


In **Western Australia**, under Division 4 of the *Sentencing Act 1995 (WA)*, a person may be given a fine of no more than \$1,000 for a breach of a community base order. A court can also confirm or amend a community-based order, or impose a sentence as if it had just convicted the person of that offence. The Western Australian Government notes that amendments to fines enforcement legislation have been developed to implement the recommendation.

 *The Western Australian Government has implemented Recommendation 117 through amendments to fines enforcement legislation.*


In **Tasmania**, under the *Sentencing Act 1997* (Tas), an authorised person may apply to the court which made the order if it appears that an offender has breached a condition of a community service order. The Court may confirm the order, increase the number of hours or deal with the offender in any manner in which the court could deal with them had it just found the offender guilty of the offence.

 *The Tasmanian Government has implemented Recommendation 117 through the Sentencing Act 1997 (Tas).*

In the **Northern Territory**, under s 39 of the *Sentencing Act* (NT), a court may re-sentence a person in breach of a court-imposed community work order as if it had just found them guilty of the offence (including by non-custodial options). The court may further impose imprisonment at a rate of one day per 8 hours of community work not completed, or for 7 days, whichever is greater. Where a community work order made by the Fines Recovery Unit is breached an individual may be imprisoned by warrant committing the fine defaulter to the custody of the Commissioner for Corrections. In practice this occurs as a last resort and the Fines Recovery Unit has options to revoke the community work order.

 *The Northern Territory Government has partially implemented Recommendation 117. The court may re-sentence a person in breach of a court-imposed community work order, or may further impose imprisonment. In community work orders made by the Fines Recovery Unit, the Fines Recovery Unit has options to revoke the community work order.*

In the **Australian Capital Territory**, a court dealing with a breach of a good behaviour order (including a community service order) has several options under the *Crimes (Sentence Administration) Act 2005* s 108, including offering a written warning, amending the good behaviour order, or resentencing the offender for the original offence.

 *The Australian Capital Territory Government has implemented Recommendation 117 through the Crimes (Sentence Administration) Act 2005 (ACT).*

Recommendation 118

That where not presently available, home detention be provided both as a sentencing option available to courts as well as a means of early release of prisoners.

Background information


Where an offender does not pose an excessive risk to themselves or the broader community, home detention can have the same intended effect as imprisonment while keeping the individual out of the prison system.

Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

In **New South Wales**, home detention is available as a penalty under the *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 6 and 80. The *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW) abolished home detention orders. However, home detention will be available as an additional condition for the court or the State Parole Authority to impose on the reformed Intensive Correction Order. The New South Wales Government also notes that reintegration home detention is an option from May 2018, enabling eligible and suitable offenders to be released up to six months before the end of their non-parole period.


 *The New South Wales Government has implemented Recommendation 118. Home detention is available as an alternative sentencing option, and reintegration home detention has been made available recently.*

In **Victoria**, home detention was introduced following the RCIADIC Report, but abolished by the *Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011* (Vic). Community correction orders are available as a sentencing option for most offences in Victoria. Community


correction orders may include conditions relating to residence and place restrictions, and treatment and rehabilitation requirements.

 *The Victorian Government has not implemented Recommendation 118. Home detention as an alternative sentencing option was abolished in the Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011 (Vic).*


In **Queensland**, home detention was previously available for prisoners on parole, but was removed as an option in 2011.

 *The Queensland Government has not implemented Recommendation 118. Home detention is not available as an alternative sentencing option.*


In **South Australia**, home detention is available as a penalty and means of early release under the *Correctional Services Act 1982 (SA)* s 37A. Under s 71 of the *Sentencing Act 2017 (SA)*, Magistrates and Judges are able to impose sentenced Home Detention as a valid sentencing option that fits between an immediate term of imprisonment and a suspended sentence.

 *The South Australian Government has implemented Recommendation 118 through the *Correctional Services Act 1982 (SA)* and the *Sentencing Act 2017 (SA)*.*


In **Western Australia**, home detention is available as a penalty under the *Bail Act 1999 (WA)* Part VIA. This is subject to a report from the Community Corrections Officer on the suitability of the offender and of the place in which the offender will reside during the period of bail. The Statutory Review of the *Sentencing Act 1995 (WA)* found that increased flexibility of conditions for suspending imprisonment should be considered in preference to any proposal for periodic detention.

 *The Western Australian Government has partially implemented Recommendation 118. While home detention is available as a penalty, it does not seem to be a means of early release.*


In **Tasmania**, home detention orders were introduced in Tasmania under the *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017*.

 *The Tasmanian Government has partially implemented Recommendation 118, with home detention introduced for alternative sentencing but not for early release.*

The **Northern Territory** Government notes that home detention is available as a court disposition or sentencing option across the Northern Territory under the *Sentencing Act (NT)*, and the offender is usually subject to electronic monitoring. Additionally, in 2014, the *Correctional Services Act 2014 (NT)* introduced administrative home detention as an option of pre-release home detention for qualifying prisoners.

 *The Northern Territory Government implemented Recommendation 118. Home detention as an alternative sentencing option is available under the *Sentencing Act (NT)* and as an option of pre-release sentencing under the *Correctional Services Act 2014 (NT)*.*

In the **Australian Capital Territory**, intensive correction orders may require an individual to live in a particular premises and comply with a number of other conditions. Such orders may be imposed for offences with maximum penalties of up to 2 years.

 *The Australian Capital Territory Government has partially implemented Recommendation 118. Home detention is available as an alternative sentencing option, but not as a means of early release.*

Recommendation 119

That Corrective Services authorities ensure that Aboriginal offenders are not being denied opportunities for probation and parole by virtue of the lack of adequate numbers of trained support staff or of infrastructure to ensure monitoring of such orders.

Background information

The RCIADIC observed that in some cases Aboriginal and Torres Strait Islander offenders were not able to access probation and parole options due to a lack of resources to monitor their compliance with their probation or parole requirements. This was particularly the case in regional and remote areas.


Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

An inquiry by the **New South Wales** Legislative Council received many submissions observing that community-based sentencing options were not available uniformly outside of Sydney and large regional centres. The inquiry noted the ongoing expansion, wherever practical, of community based sentencing options in rural and remote areas. The Government's Response to this inquiry indicated positive improvements, including the creation of additional Community Offender Services positions and provision of additional infrastructure (including satellite telephones and motor vehicles) in regional towns. Further recruitment is ongoing, for example 200 additional staff are being recruited to support the recent parole reforms. CSNSW is also implementing reforms to offender management that will improve access to services in regional areas, including using external program facilitators and improving the extent to which CSNSW provides services directly to offenders.


Research conducted by the NSW Government has found that remote and regional offenders are less likely to receive a prison sentence than offenders in inner-metropolitan areas; however there was no interaction effect found for Aboriginal status and area of residence.

 *While it appears that in New South Wales community-based sentences are available state-wide, access to them in regional areas is being increased. Recommendation 119 is partially implemented.*

The **Victorian** Government reported in its 1993 Implementation Report that demand drove the employment of sessional workers in areas where there were a high proportion of Aboriginal and Torres Strait Islander offenders under supervision. Aboriginal Wellbeing Officers are employed in prisons to provide ongoing welfare, advocacy and support for Aboriginal prisoners. The Corrections Victoria Reintegration Pathway provides pre- and post-release programs responsive to each prisoner's transitional needs on entry to prison, throughout their prison sentence and to assist with returning to the community. ReConnect is the post-release program that provides outreach services for prisoners with high transitional needs, with all Aboriginal and Torres Strait Islander prisoners eligible.


 *The Victorian Government noted that employment of sessional workers was demand driven, and a number of programs have been used to offer pre- and post-release programs. It does not appear that research or monitoring into the adequacy of resources is conducted. Thus, Recommendation 119 is mostly implemented in Victoria.*

The **Queensland** Government reported in its 1996-97 Implementation Report that non-custodial options were available throughout the state, with the support of casual staff in regional areas to ensure "the widest possible coverage". Queensland Corrective Services is able to monitor all community-based orders in Queensland and has a presence in many remote and discrete Aboriginal and Torres Strait Islander communities. Queensland Corrective Services utilises a range of reporting methods including in-office reporting, remote visits, phone reports and collateral checks with local police or Community Justice Groups to ensure compliance is monitored.


 *The Queensland Government has implemented Recommendation 119 through the ongoing coverage and monitoring provided by Queensland Corrective Services.*

In **South Australia**, both the 1993 and 1994 Implementation Reports identified "difficulties" for non-custodial sentencing options in country and remote areas. Sixteen Community Correctional Centres exist across the State, with 10 being placed outside of Adelaide. All young people under supervision have access to the same case management function, including when on Conditional Release. The Sentence Management Unit and Serious Offender Committee are not aware of any instances regarding


Aboriginal and Torres Strait Islander offenders being denied access to parole or sentenced home detention.

 *The South Australia Government has mostly implemented Recommendation 119 through the role of Community Correctional Centres, and the Sentence Management Unit and Serious Offender Committee. However, it is not clear that regular monitoring of resourcing adequacy is actively performed.*


In **Western Australia**, the Community & Youth Justice Division operates 30 offices throughout the State, including in regional and remote areas. In its 2000 Implementation Report, the Ministry of Justice (as it was known) stated that “no offenders have been denied access to community based sentences due to lack of resources.” The Western Australian Government has noted that the Department of Justice is satisfied that it employs an adequate number of casual, regionally-based employees, who assist in facilitating the supervision and delivery of community work projects, and conduct home visits as required.

 *The Western Australian Government has implemented Recommendation 119, noting that sufficient resources are available in rural and remote areas to meet the principles of the recommendation.*


The **Tasmanian** Government, in its 1995 implementation report, stated that “Aboriginal and Torres Strait Islander offenders are not denied probation or parole in this State by a lack of support staff or infrastructure.”

 *The Tasmanian Government has implemented Recommendation 119 as noted in their 1995 implementation report.*

In the **Northern Territory**, Community Corrections services almost 80 remote communities. In 2010 under the *New Era in Corrections*, the Northern Territory Government recruited additional staff to support the implementation of enhanced community based orders and electronic monitoring. Pre- and post-release accommodation was also provided in Alice Springs and Darwin, while funding was provided for alcohol and drug rehabilitation in Katherine and Alice Springs.

 *The Northern Territory Government has implemented Recommendation 119 through the Community Corrections Services and the employment of new staff to facilitate electronic monitoring under the New Era in Corrections.*

The **Australian Capital Territory**, in its 1997 implementation report, stated that “ACT Corrective Services has adequate resources to provide services to all clients and meet potential demand needs.” All Community Corrections Probation and Parole Officers participate in Aboriginal and Torres Strait Islander cultural awareness training to assist them in their supervision of Aboriginal and Torres Strait Islander offenders. Currently, the ACT Correctional Services employs two Aboriginal and Torres Strait Islander Probation and Parole Officers, and an Aboriginal Client Support Officer.

 *The Australian Capital Territory Government has implemented Recommendation 119, noting that ACT Corrective Services has adequate resources to provide services to all clients and to meet demand needs.*

So far as non-custodial sentence options beyond parole and probation are relevant to this recommendation, further actions by the States and Territories are outlined for Recommendation 112 above.

Recommendation 120

That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.

Background information


Where fines have been unpaid for a long period of time, reintroducing a person to custody may not be in the interests of justice.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, police continue to arrest individuals with single warrants for traffic or parking fines over five years old; warrants outstanding for other types of fine that are more than five years are not collected.

 *The New South Wales Government has partially implemented Recommendation 120. Amnesty is provided for fines that are more than five years old, provided that these are not for traffic or parking infringements.*


In **Victoria**, warrants to imprison for non-payment of a fine are of no effect if they are more than five years old under the *Magistrates' Courts Act 1989* (Vic) s 58.

 *The Victorian Government has implemented Recommendation 120 through the *Magistrates' Courts Act 1989* (Vic), which provides that warrants to imprison for non-payment of a fine are of no effect if they are outstanding for more than five years.*


In **Queensland**, warrants of commitment for imprisonment are destroyed after 10 years of existence, subject to assessment of fine amounts and the seriousness of the offences involved. In Queensland, under section 150A the *State Penalties Enforcement Act 1999* (Qld) the registrar may write off all or part of a fine in circumstances permitted by a guideline issued by the minister.

 *The Queensland Government has implemented Recommendation 120. Warrants of commitment for imprisonment are destroyed after 10 years of existence, subject to assessment of fine amounts and the seriousness of the offences involved.*


In **South Australia**, the Governor may cancel a warrant for apprehension if it has not been executed within 15 years from its issue. Other types of warrants may be cancelled within 7 years. However, this process is not automatic. In addition, legislation for an amnesty exists under s 70 of the *Fines Enforcement and Debt Recovery Act 2017* (SA).

 *The South Australian Government has partially implemented Recommendation 120. While legislative powers exist to cancel a warrant after it has been long in existence, this is not an automatic process.*


In **Western Australia**, there is no amnesty for long outstanding warrants of commitment for unpaid fines. However, there is a write-off process which is exercised by the Fines Enforcement Registry after a period of applying other inducements to encourage individuals to pay their fines. Due to the restricted capacity to apply sanctions and recovery mechanisms, fines still outstanding in country regions after four years may be listed for write-off after consideration of unsuccessful attempts to seek payment. Fines still outstanding in metropolitan areas may be written off after ten years.

 *The Western Australian Government has partially implemented Recommendation 120 through the introduction of a write-off process for outstanding loans. However, there is no amnesty for long outstanding warrants of commitment for unpaid fines.*


In **Tasmania**, fines which are over 10 years old are "written off" on a continuous basis. Tasmania's Monetary Penalties Enforcement Service has no outstanding Warrants of Commitment, and has not applied for a warrant of commitment against a debtor since 2008 when the *Monetary Penalties Enforcement Act 2005* (Tas) commenced.

 *The Tasmanian Government has implemented Recommendation 120 with warrants expiring after 10 years.*

In the **Northern Territory**, warrants of commitment for imprisonment for non-payment of a fine were of no effect if they are more than ten years old under the *Justices Act* (NT). However, this legislation has been superseded by the *Local Court (Criminal Procedure) Act* (NT), which does not appear to provide for such an amnesty.

 *The Northern Territory Government has partially implemented Recommendation 120 through the Justices Act (NT) under which warrants expire after 10 years. However, this legislation has been superseded by the Local Court (Criminal Procedure) Act (NT), which does not appear to provide for such an amnesty.*

The **Australian Capital Territory's Crimes (Sentence Administration) Act 2005 (ACT)** provides for payment arrangements. This incorporates a tiered approach to fine management, with options including payment by instalment, notifying the Road Transport Authority, voluntary community work orders, and imprisonment. On application, the court may impose a term of imprisonment if satisfied all appropriate enforcement action has been taken under chapter 6A of the Act to secure payment and there is no likelihood for the fine to be paid.

 *The Australian Capital Territory Government has not implemented Recommendation 120. It does not appear that outstanding fines will be written-off or expunged, with imprisonment available in certain circumstances and at the court's discretion for unpaid amounts.*

Recommendation 121

That:

a. Where legislation does not already so provide governments should ensure that sentences of imprisonment are not automatically imposed in default of payment of a fine; and

b. Such legislation should provide alternative sanctions and impose a statutory duty upon sentencers to consider a defendant's capacity to pay in assessing the appropriate monetary penalty and time to pay, by instalments or otherwise.

Background information


In a similar vein to Recommendation 117, fines are intended to be an alternative punishment less severe than imprisonment. If the default penalty for non-payment of a fine is imprisonment, then this may introduce individuals to state custody against the principle of detention as a last resort.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, section 125 of the *Fines Act 1996* (NSW) prohibits the imprisonment of an offender for a fine default. Instead, a range of other sanctions are provided including licence suspension and community service orders. Under section 6 of the *Fines Act 1996*, a court considering the amount of any fine must consider the means of the accused. A person may also apply for additional time to pay or at least have the fine written off on the basis that the person has no capacity to pay. Work and Development Orders are available so a person can work off their fine debt through community service work, medical or mental health treatment, drug and alcohol treatment, education or vocational training or financial counselling.

 *The New South Wales Government has incorporated Recommendation 121 into the Fines Act 1996 (NSW).*


In **Victoria**, a court may only imprison a person under section 160 of the *Infringements Act 2006* (Vic) after they have failed to comply with the conditions of a community work permit issued consequent to a fine default. A court must be satisfied that no other order (including an extension of time, offering of instalments, or discharge of the fine) is appropriate in the circumstances. Such an order cannot be issued if the infringement offender did not have capacity to pay the fine. Under the *Sentencing Act 1991* (Vic) s 52, a court issuing a fine must take into account the financial circumstances of the offender and the nature of the burden that its payment will impose.

 *The Victorian Government has incorporated Recommendation 121 into the Infringements Act 2006 (Vic) and the Sentencing Act 1991 (Vic).*


In **Queensland** the State Penalties Enforcement Registrar may issue a warrant for the arrest and imprisonment of a fine debtor only if satisfied that the unpaid amount cannot be satisfied in any other way, under the *State Penalties Enforcement Act 1999* (Qld) s 119. The Act provides for a number of different mechanisms to ensure payment of fines by offenders in default, and it provides that fines may be referred to the State Penalty Enforcement Registry. For individuals without capacity to pay a fine (in full or in instalments), a fine option order is available, where a person performs community service at a specified equivalent rate to the fine. Under the *Penalties and Sentences Act 1992* (Qld) s 48, a court issuing a fine must take into account the financial circumstances of the offender and the nature of the burden that its payment will impose. Pursuant to section 190 of the *Youth Justice Act*, a court may make an order requiring a child to pay an amount by way of fine only if it is satisfied that the child has the capacity to pay the amount.

 *The Queensland Government has incorporated Recommendation 121 into the State Penalties Enforcement Act 1999 (Qld) and the Penalties and Sentences Act 1992 (Qld).*


In **South Australia**, a community service order issued for a fine default may be enforced by imprisonment, if the person does not comply with the order (under the *Fines Enforcement and Debt Recovery Act 2017* (SA), particularly part 7). If the failure of a person to comply with such an order was trivial, or there are proper grounds on which the failure should be excused (for instance, not having the means to pay a fine), then the court has alternatives (for instance, extending the term of the order or discharging the order).

 *The South Australian Government has mostly implemented Recommendation 121. A community service order issued for fine default may be enforced by imprisonment, however imprisonment is not automatic and there are other avenues should proper circumstances be satisfied.*


In **Western Australia**, a warrant of commitment may be issued after an extended process of more than two years during which alternatives are explored, for a person who fails to comply with a work and development order under s 53 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA). Under s 53 of the *Sentencing Act 1995* (WA), a court must consider the means of the offender in imposing a fine.

 *Recommendation 121 is implemented in Western Australia through the Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA).*

In **Tasmania**, the Monetary Penalties Enforcement Service may only apply to a court for a warrant of commitment against a fine debtor, if satisfied that the unpaid amount cannot be realistically discharged in any other way. There does not appear to be legislation requiring sentencers to consider an offender's means in imposing a fine. The *Monetary Penalties Enforcement Act 2005* (Tas) provides for the Director to apply to a court for a Warrant of Commitment were the amount of an unpaid monetary penalty cannot be discharged in any other way authorised under the Act and the enforcement debtor is unsuitable to perform a community service order.

 *The Tasmanian Government has partially implemented Recommendation 121. A warrant of commitment against a fine debtor may be used where a fine debtor cannot realistically discharge the unpaid amount in another way. However, sentences are not required to consider an offender's means.*

In the **Northern Territory**, a fine defaulter may be issued a warrant to be committed into the custody of the Commissioner of Correctional Services under section 86 of the *Fines and Penalties (Recovery) Act* (NT) after they have failed to comply with the conditions of a community work order issued consequent to a fine default. Under the *Sentencing Act* (NT) s 17, a court issuing a fine must take into account the financial circumstances of the offender and the nature of the burden that its payment will impose.

 *The Northern Territory Government has partially implemented Recommendation 121. Imprisonment is provided for after a failure to comply with the conditions of a community work order issued consequent to a fine default. It is not clear whether other sentencing options exist.*

In the **Australian Capital Territory**, a court may only imprison a person under section 116ZK of the *Crimes (Sentence Administration) Act 2005* (ACT) after all appropriate enforcement action has been taken under the chapter. Under s 33(1)(n) of the *Crimes (Sentencing) Act 2005* (ACT), a sentencing court must consider the financial circumstances of the offender.






- *The Australian Capital Territory Government has incorporated Recommendation 121 into the Crimes (Sentencing) Act 2005 (ACT).*

7 Prison safety

The recommendations in this chapter relate to: custodial health and safety (122-167); and the prison experience (168-187).

Key themes from recommendations (66 recommendations)

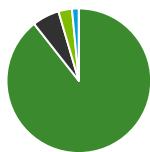
- People in custody may have various medical concerns and risks, including physical and mental health conditions. Members of the police owe a duty of care to protect the health and safety of detainees.
- Strict procedures are required for training of custodial staff, identification of risks in custody, supervision of detainees, access to medical care, and sharing of information between custodial authorities.
- The particular needs and health concerns of Aboriginal and Torres Strait Islander detainees should be recognised. Health and safety protocols should demonstrate cultural awareness and be implemented in consultation with Aboriginal Health Services (AHSs), ALSs, and the broader community.
- Greater support should be provided for Aboriginal and Torres Strait Islander people in corrective institutions, including access to prisoner employment and training opportunities.

Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

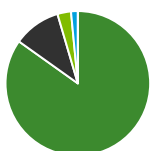
Commonwealth | Key actions: The Commonwealth has addressed recommendations relating to custodial health and safety, and the prison experience through the AFP *National Guideline* and revised procedures. Training requirements have been extended to include a focus on first aid, resuscitation and cultural awareness for AFP members. The AFP also has greater linkages and notifications systems between policing, corrective services, and Aboriginal and Torres Strait Islander organisations.
Remaining gaps: The AFP currently allows for the use of padded cells, but not for punitive purposes.



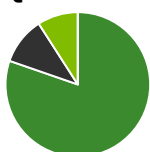
New South Wales | Key actions: The New South Wales Government has introduced an inter-agency approach to ensuring the delivery of health services in prison, and has responded to recommendations in relation to prisoner care through the *NSW Police Force: Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)* and legislation. Personal development programs, and training courses in first aid, resuscitation, and cultural awareness, have been introduced to implement the recommendations in this chapter.
Remaining gaps: The New South Wales Government does not appear to have undertaken an evaluation of breath analysis technology for blood alcohol concentration. While each of the other recommendations in this chapter have partially been addressed, greater prioritisation should be given to arrangements with Aboriginal Health Services and provisions made for cell visitor schemes.



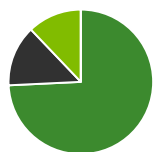
Victoria | Key actions: The Victorian Government has updated the *Victoria Police Operating Procedures Manual* and the *Corrections Act 1986 (Vic)* to reflect the principles of recommendations relating to prisoner health and safety, and the prison experience. Attention paid to the adequacy of health service delivery has been ongoing through Aboriginal Justice Agreements. Personal development programmes and revised training requirements have been introduced to respond to the recommendations in this chapter.
Remaining gaps: It does not appear that the Victorian Government has introduced measures to evaluate the use of breath analysis technology, and greater attention should be provided to cell visitation schemes. Notification procedures for the families of those 'at risk' should also be reviewed.



Queensland | Key actions: The Queensland Government has introduced measures to improve the prisoner experience and to ensure the adequacy of health service delivery to prisoners. Work experience and further education initiatives, and renewed training requirements, have also been implemented in response to the recommendations in this chapter.
Remaining gaps: The Queensland Government has partially addressed each of the recommendations in this chapter. Greater prioritisation should be given to recommendations relating to the use of padded cells, the screening of prisoners at admittance, flexible custody arrangements, and ongoing screening of cells for harmful objects.

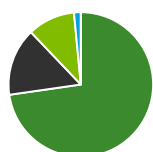


South Australia | Key actions: The South Australian Government has prioritised the provision of care and health services to prisoners through legislative and policy response. Emphasis has been placed on first aid, and cultural awareness training; and a range of personal development programs have been introduced as alternative sentencing options.



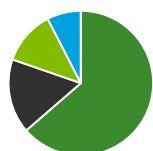
Remaining gaps: The South Australian Government has introduced measures which partially address each of the recommendation in this chapter. However, greater priority could be placed on the psychiatric assessment of, and provision of health services to, Aboriginal and Torres Strait Islander prisoners. Additionally training is also required for police officers in the use of restraint techniques, and the screening of cells should occur more frequently.

Western Australia | Key actions: The Western Australian Government has responded to recommendations relating to the provision of prisoner health and safety through legislation and policy. Professional development, improved screening for health services, and the provision of cultural awareness training have been introduced as part of the response to recommendations in this chapter.



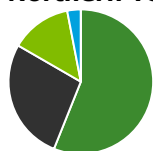
Remaining gaps: The Western Australian Government has not taken actions related to the provision of breath analysis equipment for blood alcohol testing. Further action is also required towards processes dealing with shift handovers between police watch-house staff, and the provision of training to police officers in identifying medical issues in prisoners.

Tasmania | Key actions: The Tasmanian Government has incorporated the intent of recommendations relating to prisoner health and safety into the *Tasmania Police Manual* and other procedures. Additionally, training requirements now incorporate a focus on first aid, resuscitation, and cultural awareness among police officers and other justice staff.



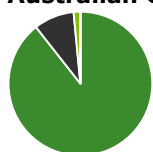
Remaining gaps: The Tasmanian Government should place greater prioritisation on cell visitation schemes and consultation with Aboriginal and Torres Strait Islander people in relation to such schemes. It does not appear that visitation is provided for police custodial facilities. Additionally, flexible custody arrangements are an area for further reform to occur.

Northern Territory | Key actions: The Northern Territory Government has addressed prisoner care, and extended the provision of health services, through procedural documents including General Orders and the *Correctional Services Act 2014 (NT)*. Personal development programs have been introduced in an attempt to reduce recidivism; and training requirements cover first aid, resuscitation, and cultural awareness.



Remaining gaps: In the Northern Territory, greater attention is required in relation to detention of persons in police cells where a police officer is not in attendance. Further reform is needed to address segregation of Aboriginal and Torres Strait Islander people in cell custody.

Australian Capital Territory | Key actions: The Australian Capital Territory Government has implemented the *AFP National Guideline* which incorporates provisions related to custodial health and safety, and the prison experience. The AFP has prioritised the establishment of interconnectedness between policing, corrective services, and Aboriginal and Torres Strait Islander organisations as it concerns notifications procedures. Training requirements have also been updated in line with the recommendations contained in this chapter, and currently place focus on first aid, resuscitation, and cultural awareness of AFP members and other justice staff.



Remaining gaps: Further action is required in providing a transition period for prisoner adjustment, and in discontinuing the use of padded cells in police watch-houses.

7.1 Custodial health and safety (122-167)

Recommendation 122

That Governments ensure that:

- a. Police Services, Corrective Services, and authorities in charge of juvenile centres recognise that they owe a legal duty of care to persons in their custody;*
- b. That the standing instructions to the officers of these authorities specify that each officer involved in the arrest, incarceration or supervision of a person in custody has a legal duty of care to that person, and may be held legally responsible for the death or injury of the person caused or contributed to by a breach of that duty; and*
- c. That these authorities ensure that such officers are aware of their responsibilities and trained appropriately to meet them, both on recruitment and during their service.*

Background information


Custodial health and safety practices are critically important in the prevention of custodial deaths. The RCIADIC Report noted deficiencies in the standard of care afforded to detainees, and found that many of the deficiencies were the result of officers misunderstanding the duties they owe to detainees.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. Aboriginal and Torres Strait Islander people were involved in the development, presentation, evaluation and modification of Aboriginal cultural awareness training which was provided to members of police and corrective services (*1994-95 Annual Report*). The AFP *National Guideline* establishes benchmark guidelines for managing people in custody, including obligations to provide medical attention to detainees. The AFP Commissioner's Order on Professional Standards, sanctions pursuant to Division 3 of the *Australian Federal Police Act 1979*, as well as training and guidelines for all sworn police members, ensures that members are aware of the legal duty of care to detainees and the potential consequences for breaching this duty of care. In relation to part (b) of Recommendation 122, the AFP ensures that Australian Capital Territory Policing members working within the regional watch-house receive additional, specific training in relation their duties. This reinforces their understanding of the duty of care requirements owed to all detainees. The duty of care is further reinforced through governance relating to 'at-risk' and special needs detainees in the ACT Watch House.


 *The Commonwealth and Australian Capital Territory governments are compliant with the principles in Recommendation 122. The AFP has implemented Recommendation 122 through its procedures and training programs.*

New South Wales Police have addressed part (a) and (b) of this recommendation in the *NSW Police Force: Code of Practice for CRIME* (Custody, Rights, Investigation, Management and Evidence), which explicitly states that police officers have a duty of care towards people under arrest and others in an officer's custody at any time. The NSW Government stated in their 1995-96 implementation report that Corrective Services have also addressed this recommendation through section 8.1 of the *Operations Procedures Manual* which outlines the duty of care. Juvenile Justice NSW outlines the duty of care owed to a young person in detention in the *Children (Detention Centres) Act 1987* (NSW). In addition, juvenile justice staff are required to conform to a Code of Conduct which ensures that staff are aware of their legal responsibilities and the penalties for breaching those responsibilities. For part (c) of this recommendation, the NSW Government stated in their 1995-96 implementation report that this is addressed in all appropriate training courses and lectures at both the Police Academy and patrol level. The implementation report also stated that the Department of Corrective Services has in


place a Pre-Service Training Course, a Senior Correctional Officer Course, and a Commissioned Officer Course which all cover duty of care.

 *The New South Wales Government has implemented Recommendation 122 the NSW Police Force: Code of Practice for CRIME and the introduction of training.*

For part (a) and (b) of this recommendation, **Victoria** has set out duty of care requirements for Correctional Services staff in sections 20(2), 21(1) and 23(1) of the *Corrections Act 1986* (Vic). Under this Act, officers may be charged if they breach duty of care expectations. Victoria Police have recognised their legal duty of care in the *Victoria Police Operating Procedures Manual*. Police are also aware of the legal responsibilities if injury or death result from an incarceration. The Department of Health and Community Services, which managed juvenile justice in 1994, stated that all duty of care provision were prescribed in Department policy and that staff are aware of the legal responsibility if injury or death occurs. For part (c), the 1994 Victorian implementation report stated that recruitment, promotion, and general training reinforces the duty of care as a responsibility to all Correctional Services staff. Police recruits also receive training relating to the care and welfare of prisoners. Lastly, the implementation report also stated that juvenile justice staff receive training relating to the care and responsibility of detainees.

 *Victoria has implemented all parts of Recommendation 122. Parts (a) and (b) of this recommendation are implemented through sections 20(2), 21(1) and 23(1) of the Corrections Act 1986 (Vic), and part (c) has been implemented through changes to training.*

Part (a) and (b) of this recommendation are addressed in chapter 16 of the **Queensland** Police Service's Operational Procedures Manual which sets out the duty of care of police officers; primarily that police officers have a duty of care to those persons in their custody. These duties also relate to the preservation of human life. For Corrective Services, the 1996-97 Queensland implementation report stated that this is in a number of policies, procedures, and legislation relating to the duty of care for detainees. The implementation report also noted that the duty of care in relation to youth detention centres is incorporated in the *Juvenile Justice Act 1992* (Qld). For part (c) of this recommendation there is duty of care and custody training included in the Police Recruit Operational Vocational Education Program and other in-service training courses. For Queensland Corrective Services, the 1996-97 Queensland implementation report stated that the duty of care concept underpins all training associated with inmate management and there is also pre-service training that incorporates this concept. When staff are employed to work at a detention centre they undergo mandatory youth worker training, and included in the training is Protective Actions Continuum training. There is also a Protective Actions Continuum policy, with a specific appendix for death of a young person in youth detention. The Youth Detention Operational Manual provides overarching framework on how to work with young people in youth detention.

 *The Queensland Government has implemented Recommendation 122 through the Police Services Operational Procedures Manual and the provision of training.*

For part (a) and (b) of this recommendation, the **South Australian** Government stated in their 1993 implementation report that the duty of care requirements are reflected in Police General Orders, Code of Ethics, Statement of Values, and the *Correctional Services Act 1982* (SA). For part (c) of this recommendation, the Department of Correctional Services stated that they have a Trainee Officer Induction Training course, which includes the officers' legal responsibilities in relation to the *Correctional Services Act 1982* (SA) and the *Occupational Health Safety and Welfare Act 1986* (SA). In addition to this training, the Department of Correctional Services provides a cross cultural awareness program which is undertaken by trainees as part of the induction program. This training program is also offered to officers already in service and highlights their responsibilities in caring for Aboriginal and Torres Strait Islander offenders. New Adelaide Youth Training Centre staff members are required to undertake a DHS Induction Program, while all new operational staff are required to undergo a seven-week induction program, which includes classroom and field placement. The *Youth Justice Administration Act 2016* (SA) also incorporates recognition for the duty of care owed to young people in custody.

- *The South Australian Government has implemented Recommendation 122 through Police General Orders, Code of Ethics, Statement of Values, and the Correctional Services Act 1982 (SA) and the provision of training.*

The **Western Australian** Government have incorporated duty of care requirements for police officers in *The Western Australia Police Code of Conduct*. The 2010 version of this document states that officers must try to ensure that persons in custody or in their care are prevented from suffering illness, injury or death and officers must be alert to their duty of care as a result of their actions. This is supported by the Police Manual, statutes and other policies. All police officers are additionally required to undertake training in the use of Custodial Management application. Duty of care obligations for corrective services staff are set out in the *Code of Inspection Standards for Adult Custodial Services* and the *Code of Conduct, Policy Directives, and Prison Standing Orders* as well as the *Prisons Act 1981* (WA). For the Juvenile Justice Division, the 1995 WA implementation report stated that Director General's Juvenile Justice Rules and detention centre Standing Orders prescribe the manner in which detained persons must be managed in order to ensure their safety and wellbeing. For part (c) of this recommendation the 1995 WA implementation report noted that the WA police service had a training video titled, *Custodial Care*, which set out lockup procedures and had training at recruit level which was updated regularly.

- *The Western Australian Government has implemented Recommendation 122 through statutes, policies, procedures and documents.*

The **Tasmania** Government stated in their 1993 implementation report that Police Standing Orders and Police Regulations address part (a) of this recommendation as they set out duty of care requirements and are reinforced by duty of care lectures. These lectures are delivered to recruits and personnel attending courses at the Police Academy. The Department of Justice custodial officers are also aware of their legal duty of care in terms of persons with the custody of the Department. Part (b) of this recommendation is addressed by Part 07 – Arrest – Custody and Bail of the *Tasmania Police Manual*. Finally, for part (c) of this recommendation, police recruits and those having responsibility for custodial care also receive training with regards to duty of care.

- *The Tasmanian Government has implemented Recommendation 122 through police standing orders and the Tasmania Police Manual.*

The **Northern Territory** Government stated in their 1994-95 implementation report that section 8(2) of the *Prisons (Correctional Services) Act 1980* (NT) specified that the-then Department of Correctional Services has a fundamental duty of care for safe custody of prisoners. This Act has been replaced by the *Correctional Services Act 2014* (NT). Correctional officers are provided with induction and refresher training to enable them to perform this duty of care. Youth workers in juvenile justice were assumed to learn the "skills of the trade" on the job. While for police, the safety and care of prisoners in police custody was stressed in *General Order – Prisoners – Code P12* and in *General Order – Custody Part 1*. For part (c) of this recommendation, Prison Officer Recruit training also emphasises the responsibility to deliver refresher training and promotional courses. Care and custody training was also included in recruitment courses.

- *The Northern Territory Government has implemented Recommendation 122 through police procedures and training programs.*

Recommendation 123

That Police and Corrective Services establish clear policies in relation to breaches of departmental instructions. Instructions relating to the care of persons in custody should be in mandatory terms and be both enforceable and enforced. Procedures should be put in place to ensure that such instructions are brought to the attention of and are understood by all officers and that those officers are made aware that the instructions will be enforced. Such instructions should be available to the public.

Background information

Clear and enforceable policies for the care of persons in custody will help increase accountability of members of police and corrective services, and ensure that standards of conduct are upheld.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* establishes benchmark guidelines for managing people in custody, and are available to the public. The guideline is enforceable under the *AFP Professional Standards* and the *Australian Federal Police Act 1979*. The AFP also provides training in relation to standards of care and treatment of persons arrested by AFP members, and compliance with these policies is monitored (*1994-95 Annual Report*). Breaches may also be highlighted as a result of complaints made by members of the public, and are investigated by the AFP Professional Standards portfolio. The *Corrections Management Act 2007* (ACT) also implements this recommendation for the Department of Corrective Services and the care of prisoner's in custodial facilities.


In the ACT, Corrections Officers undergo training in the administration of relevant legislation and are governed by the *ACT Corrective Services Corrections Management (Dress Standards and Code of Conduct for Corrections Staff) Policy 2011* which requires Corrections Officers to adhere to the code of conduct. Underperformance and misconduct are both acts which can result in the termination of employment. This is supported by s 9 of the *Public Sector Management Act 1994* (ACT) which establishes the obligations of public servants.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 123 through AFP guidelines and compliance monitoring mechanisms, including systems for public accountability.*

In **New South Wales**, police service documents such as the *NSW Police Force Handbook* and the *NSW Police Force Code of Practice for CRIME* are both publicly available. These documents set out police procedures and code of practice. NSW Corrective Services also have in place a *NSW Corrective Services Operations Procedures Manual* which is a publicly available document. According to the 1995-96 NSW implementation report, all service directives and instructions are available under freedom of information legislation. The implementation report also stated that compliance of police officers is monitored by the Professional Responsibility Command, the NSW Ombudsman, the Police Integrity Commission and the Independent Commission Against Corruption. Corrective Services NSW (CSNSW) also has a staff code of conduct.


 *The New South Wales Government has implemented Recommendation 123 through the development of procedural documents, including the NSW Police Force: Code of Practice for CRIME and the NSW Corrective Services Operations Procedures Manual, as well as the ongoing enforcement of these standards.*

The **Victoria** Police Manual sets out the procedures for Victorian Police, which is available to the public. The 1994 Victorian implementation report also stated that instructions relating to the care and welfare of prisoners are disseminated throughout the Force at all levels. The 1994 Victorian implementation report also stated that Correctional Services Division has procedures and practices in place for breaches of Departmental Instructions. Departmental Instructions are also available to the public. The *Corrections Act 1986* (Vic) contains provisions for the discipline of officers. The Victorian Government committed to ensuring that its practice for the care and wellbeing of Aboriginal and Torres Strait Islander detainees, prisoners and offenders complies with the recommendations of the Royal Commission in its third AJA.


 *Victoria has implemented Recommendation 123 through the procedures in the Victoria Police Manual, departmental procedures for dealing with breaches of the Manual, and the provisions in the Corrections Act 1986 (Vic).*

In their 1997 implementation report, the **Queensland** Government stated that for Queensland Police Services, the procedures are set out in the *Queensland Police Services Operational Procedures*, which is publicly available. The Queensland Police Services Ethical Standards Unit and the Crime and


Corruption Commission will investigate breaches of discipline under the provision of the *Police Services Administration Act 1990* (Qld), the *Police Services (Discipline) Regulations 1990* (Qld), the Code of Conduct and the *Criminal Justice Act 1989* (Qld). For Corrective Services, the Code of Conduct is displayed in all Correctional Centres, in training rooms, and in common areas of the Training Centre. All officers are also provided with a copy of the Code of Conduct. All pre-service officers affirm and sign off on the Code of Conduct as part of their graduation ceremony. Duty of care is also a core principle of Queensland Corrective Services procedures for dealing with risks and management of self-harm, contingency planning and case management.

 *The Queensland Government has implemented Recommendation 123 through the Queensland Police Services Operational Procedures, the ongoing function of Queensland Police Services Ethical Standards Unit, and efforts to raise awareness among officers of these standards.*


The **South Australian** Government stated in their 1994 implementation report that any allegations of breach of Police General Orders are dealt with in accordance with clearly defined procedures and proved breaches in accordance with Regulations. Procedures are in place to ensure all officers are aware of their obligations. For Correctional Services, Correctional Services Instructions are enforced through charges laid out under section 68 of the *Government Management and Employment Act 1985* (SA). Procedures are in place to ensure Departmental Instructions to staff are distributed to all staff, Departmental Instructions that are not confidential are also made available to prisoners. The Performance Management groups drafted task outlines that aimed to ensure Correctional officers adhered to specific routines. This course of action was taken to eliminate potential breaches of Departmental Instructions. *Adelaide Youth Training Centre Orders* cover all areas of the Department of Department of Human Services operations, and are in accordance with the *Youth Justice Administration Act 2016* (SA) which enshrine the current service model. The *Code of Ethics for the South Australian Public Sector*, issued under the *Public Sector Act 2009* (SA), sets out the professional standards expected of all public sector employees, including adherence to departmental policies and procedures, and the repercussions associated with violations thereof.

 *In South Australia, Recommendation 123 is addressed through clearly defined procedures and the ongoing enforcement of these procedures.*


In their 1995 implementation report, the **Western Australian** Government stated that the WA Police Service have in place the *Police Department Lockup Management Manual* which is reviewed and updated on an ongoing basis. Current procedures are also reviewed and updated on a regular basis to address the changing needs of the community. The implementation report also stated that the Ministry of Justice have implemented this recommendation through part X of the *Prisons Act 1981* (WA). The juvenile justice system also has in place the Director General's Juvenile Justice Rules and Standard Orders which are considered to be Departmental policy. Any breaches of these regulations and requirements results in disciplinary action under public service legislation. The Western Australian Government notes that there currently exists clear policies in relation to breaches of departmental instructions, with all staff provided training and guidance on the enforcement of breaches.

 *Recommendation 123 has been implemented in Western Australia through a range of policies and procedures, including ongoing enforcement and review.*

The **Tasmanian** Government stated in their 1993 implementation report that the Department of Justice had implemented instructions relating to the care of people in custody and a process for disciplinary action if such instructions were not followed. This recommendation was also covered by Tasmania Police Standing Orders and Police Regulations, and was reinforced at recruit training level. In 1993, the *Ashely Home Institution Manual* was revised to include instructions relating to the care of persons in custody and the manual was distributed to each staff member. The Tasmanian Government notes that the *Police Service Act 2003* (Tas) in conjunction with the *Tasmania Police Manual* satisfies the governance of this recommendation.

 *In Tasmania, Recommendation 123 is addressed through the introduction of instructions and disciplinary procedures by the Department of Justice and the Tasmania Police. Additionally, the Police Service Act 2003 (Tas) incorporates this recommendation.*

In their 1994-95 implementation report, the **Northern Territory** Government stated that the *Prisons Procedures Manual* sets out operational procedures in all centres and provide the authority for the issue of correctional centre local instructions and procedure manuals. In addition, there are police instructions released regularly that are enforced. For example, the *General Order – Custody Part I* provides directives to staff on behaviours expected and actions that will be taken in the event of a breach. In some instances, instructions are not released to the public since this would be a breach of security. Any breaches of Departmental Instruction by police officers are disciplined and are subject to the *Police Administration Act* (NT). Any breaches of instructions by prison officers are set out in the *Public Sector Employment and Management Act* (NT).

 *The Northern Territory Government has mostly addressed Recommendation 123 through the Prisons Procedures Manual, other professional standards and procedures manuals, any legislation which provides for the enforcement of these standards. In some instances, instructions are not released to the public since this would be a breach of security.*

Recommendation 124

That Police and Corrective Services should each establish procedures for the conduct of de-briefing sessions following incidents of importance such as deaths, medical emergencies or actual or attempted suicides so that the operation of procedures, the actions of those involved and the application of instructions to specific situations can be discussed and assessed with a view to reducing risks in the future.

Background information


Where incidents such as death, medical emergencies or attempted suicides occur, debriefing sessions are important for assessing compliance with procedures and providing 'lessons learned' for reducing risks in future.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP has a critical incident debriefing program in place. ACT Policing has existing frameworks for welfare support for any incidents occurring within ACT Policing; and de-briefing within the team is required in addition to the support from welfare officers. The *Corrections Management Act 2007* (ACT) also implements this recommendation for the Department of Corrective Services and the care of prisoner's in custodial facilities.

 *The Commonwealth and Australian Capital Territory governments have mostly implemented Recommendation 124 through the AFP's debriefing programs following critical incidents, however it appears that debriefing sessions and mechanisms for incorporating 'lessons learned' have not been formalised in AFP guidelines.*

New South Wales have addressed this recommendation in the *NSW Police Force Handbook*. This document states that there must be a debriefing of any recommendations or findings of an investigation into a death in custody. This recommendation has not been addressed by the Corrective Services. In the *NSW Corrective Services Operations Procedures Manual*, the section on Deaths in Custody has been removed.

This recommendation is implemented under the New South Wales Police Force Critical Incident Guidelines. Critical Incident Guideline 4.5.13 indicates that at the conclusion of an inquest the Senior Critical Incident Investigator will prepare the final investigation report, which will include any comments or recommendations made by the Coroner. The Investigator should also organise a formal debrief following any inquest / trial, in consultation with the review officer for the relevant local area commander/s and region commander; duty officer; professional standards manager; Psychology; duty operations inspector; staff nominated by the Deputy Commissioner's office; professional standards

command (PSC) and PSC Investigations Unit; Forensic Services Group; Marine Area Command and the Crash Investigation Unit.

New South Wales have addressed this recommendation in the NSW Police Force Handbook. This document states that there must be a debriefing of any recommendations or findings of an investigation into a death in custody. Debriefing by correctional centre management staff is also provided under s 13.2.19 of the *Custodial Policies and Procedures* which requires that an operational debriefing be given to all employees who were involved in the death in custody response. The Governor must ensure that individual, private counselling is offered to those personnel who discovered, witnesses or responded to the death in custody. Officers are supported through the Chaplaincy Service and the Employee Assistance Program, as well as through peer support. Every death in custody is subject to a comprehensive independent investigation by CSNSW Governance and Continuous Improvement, and NSW Police Force.

● *The New South Wales Government has implemented Recommendation 124 through the NSW Police Force Handbook and the Custodial Policies and Procedures.*

Victoria have addressed this recommendation through their *Victorian Police Manual*. This document requires that a "hot debrief" must be held where an incident commander considers it necessary to quickly review an incident. A "full debrief" is held whenever a police officer uses force on someone aged under 18 years. In addition, the 1994 Victorian implementation report stated that Correctional Services Division's Incident Procedures checklists indicate that a debriefing session should occur after any incident of a serious nature.

● *Victoria has implemented Recommendation 124 through their Victorian Police Manual, in addition to the Correctional Services Division's Incident Procedures checklists.*

In their 1997 implementation report, the **Queensland** Government stated that the *Queensland Police Operational Procedures Manual* includes procedures for initiating a debriefing session following any incident relating to attempted suicide or suicide of a person in custody. Queensland Corrective Services sets out a standard procedure for responses to critical incidents in *Custodial Operations Standard Operating Procedure - Death in Custody*, which stresses that debriefing is undertaken following any major incident including serious self-harm or death in custody.

● *The Queensland Government has implemented Recommendation 124 through the Queensland Police Operational Procedures Manual and the Custodial Operations Standard Operating Procedure - Death in Custody.*

The **South Australian** Government stated in their 1994 implementation report that this recommendation has been implemented in Correctional Services and police procedures. The Department of Corrective Services has established procedures set out in the *Standard Operating Procedure* relevant to Prisoner Death or Critical Injury. An Adelaide Youth Training Centre operational order outlines the process for conducting staff debriefing sessions, including ensuring operational compliance. Incidents are reviewed in accordance with the Department of Human Services Managing Critical Client Incidents Policy.

● *The South Australian Government has implemented Recommendation 124 through Correctional Services and police procedures, and the ongoing conduct of de-brief sessions following an incident.*

According to the *Change the Record* report, the **Western Australian** Police Manual requires that a debriefing session be conducted by a member in charge following an incident of importance such as death, medical emergency, or attempted suicide. This debriefing session must include a discussion about the actions of people involved, procedures taken, and any lessons learnt. According to the *Change the Record* report, Corrective Services have also implemented this recommendation through their Policy Directive 41 which requires an immediate debrief following a critical incident. There must also be a formal debrief to discuss any lessons learnt. Debriefing officers in the event of serious incidents is part of core business, and is directed by the policies relating to Critical Incident Stress Management, and Critical Incidents Involving Police.

- *The Western Australian Government has implemented Recommendation 124 through the Police Manual and other policies and procedures for corrective services staff.*

The **Tasmanian** Government stated in their 1993 implementation report that this recommendation had been fully implemented by the Department of Police through the Critical Incident Stress Debriefing Program. In addition, Department of Justice and Corrective Services have access to debriefing resources which are accessed following a death or other critical incident. The Tasmania Prison Service's Director's Standing Order *Emergency Management Manual and Emergency Orders 2016* provides procedures to be followed after all such incidents, including de-briefing sessions. All persons taken into custody are subject to a screening form, and the Tasmania Police notify a relative or friend of a person identifying as Aboriginal and Torres Strait Islander and the Aboriginal Legal Service is notified.

- *The Tasmanian Government has implemented Recommendation 124 through the Department of Police's Critical Incident Stress Debriefing Program, and the Emergency Management Manual and Emergency Orders 2016.*

In their 1994-95 implementation report, the **Northern Territory** Government stated that the-then Department of Correctional Services have in place a Departmental Peer Support Program, which ensures that critical incidents are examined to ensure compliance with procedures. Police have also addressed this recommendation in *General Order – Prisoners – Code P12* which includes an instruction to hold a debriefing session when a critical incident such as an attempted suicide, medical emergency or death occurs. This recommendation has also been implemented through NTCS *Directive 2.1.4 Incident Report and Recording* and the *General Order – Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public* which established procedures in the correctional centres. In Darwin, Darwin Correctional Centre has developed a Critical Incident Response Team that comprises of custodial, managers and non-custodial support services including a psychologist.

- *The Northern Territory has implemented Recommendation 124 through the introduction of a Departmental Peer Support Program and other procedures and directives which outline the conduct of de-briefing sessions.*

Recommendation 125

That in all jurisdictions a screening form be introduced as a routine element in the reception of persons into police custody. The effectiveness of such forms and of procedures adopted with respect to the completion of such should be evaluated in the light of the experience of the use of such forms in other jurisdictions.

Background information


Screening forms can help assess the mental and physical state of persons taken into police custody, and identify prisoners at risk of illness or self-harm. Screening forms can also support dissemination of information between officers, particularly during shift changes.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* requires an initial assessment by the watch-house staff of a person who arrives in custody (paragraph 15). The assessment is based on a series of pre-defined questions outlined in the *ACT Policing Watch-House Operations Manual*. The screening process is audio and visually recorded, as well as documented on the Police Real-time Online Management Information System (PROMIS) custody module.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 125 through the requirement for an initial assessment of persons taken into custody, under the AFP National Guideline.*


In **New South Wales**, the *NSW Police Force: Code of Practice for CRIME* requires that a detailed assessment of a detainee must be conducted. The 1995-96 NSW implementation report also stated that there was a Prisoner Admission and Management Form which is used upon admission of a prisoner. The implementation report also stated that compliance was monitored by Local Area Commanders and supervisors. This recommendation also falls under the responsibility of the Department of Corrective Services who has developed the position of State Co-ordinator of the Screening and Induction Program who ensures consistent application of Departmental policy and procedures related to screening and induction of inmates in custody. In addition, the Justice Health and Forensic Mental Health Network do health screening to ensure that all issues and risks are identified, considered and managed. Lastly, the implementation report stated that Juvenile Justice NSW has screening forms which includes information about mental illness. Information from police is also reviewed and recorded.

 *The New South Wales Government has mostly implemented Recommendation 125 through the provisions in the *NSW Police Force: Code of Practice for CRIME* and the ongoing function of the State Co-ordinator of the Screening and Induction Program. However, it does not appear that the effectiveness of screening is continually evaluated.*


In **Victoria**, police have developed a prisoner medical checklist which must be used when a person is taken into custody. This is set out in the *Victoria Police Manual*.

 *Victoria has mostly implemented Recommendation 125 through the provisions in the *Victoria Police Manual*. However, it does not appear that the effectiveness of screening is continually evaluated.*


The **Queensland** Government stated in their 1997 implementation report that Queensland Police have a computerised Custody Index which records information about inmates, such as their mental and physical health. The information of people taken into custody is entered into this system.

 *Queensland has partially implemented Recommendation 125 through the *Custody Index*; however, it does not appear that the effectiveness of screening is monitored.*


The **South Australian** Government stated in their 1994 implementation report that screening forms have been used since 1989. Screening forms are subject to an ongoing improvement process and are maintained via electronic database. Currently, South Australia Police conducts a detailed risk assessment involving the detainees mental and physical wellbeing, including details of substance use, medical, psychological, emotional, and physical status is completed by the Charging member before the detainee is placed in a cell.

 *The South Australian Government has implemented Recommendation 125 through the introduction of screening forms and the implementation of a continual improvement process.*


The **Western Australian** Police Manual states that members in charge are required to ensure that all prisoners admitted into custody are adequately screened to assess their needs and a Lockup Admission Form P10A must be completed. The Western Australian Government notes that admission and assessment processes are standardised across the state, and that the admission system has inbuilt checks and balances to ensure that all processes of determining risk are completed. The Perth Watch-house has a Registered Nurse on duty at all times to ensure that every person being admitted is fit for custody. The Western Australian Government is currently developing an improved and common assessment for screening at point-of-contact on admission to lock-ups, which will include triggers for medical assessment.

 *The Western Australian Government has mostly implemented Recommendation 125 through screening processes which are subject to continued improvement. However, it is unclear whether the effectiveness of these processes has been evaluated.*

The **Tasmanian** Government stated in their 1993 implementation report that a screening form was being developed and input was being sought from the Aboriginal and Torres Strait Islander community. The Tasmania Prison Service uses assessment forms to screen all individuals received into the custody. Over recent years there has been considerable investment by jurisdictions in the development of evidence-based assessment and classification systems and an exchange of information across jurisdictions in the ongoing process of enhancing assessment and classification systems through the Corrective Services Administrators' Council. As per Recommendation 124, all persons taken in to custody are subject to a screening form.

 *The Tasmanian Government has implemented Recommendation 125 through the introduction of screening forms and ongoing investment in their improvement.*

The **Northern Territory** Government stated in their 1994-95 implementation report that screening forms were formalised through inclusion in *General Order – Prisoners – Code P12* and had been utilised for some years. The *General Order – Custody Part III* establishes rules for the watch house keeper that are in line with this recommendation.

 *The Northern Territory Government has mostly implemented Recommendation 125 through General Orders; however, it does not appear that the effectiveness of screening is continually evaluated.*

Recommendation 126

That in every case of a person being taken into custody, and immediately before that person is placed in a cell, a screening form should be completed and a risk assessment made by a police officer or such other person, not being a police officer, who is trained and designated as the person responsible for the completion of such forms and the assessment of prisoners. The assessment of a detainee and other procedures relating to the completion of the screening form should be completed with care and thoroughness.

Background information

Screening forms can help assess the mental and physical state of persons taken into police custody, and identify prisoners at risk of illness or self-harm. Screening a detainee before they are placed in their cell ensures that appropriate early action can be taken to minimise the risk of harm.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

As outlined in Recommendation 125 for the **Commonwealth** and **Australian Capital Territory**, the *AFP National Guideline* requires an initial assessment by watch-house staff of all persons who arrives in custody (paragraph 15).

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 126 through the AFP National Guideline.*

The **New South Wales** Government stated in their 1995-96 implementation report that the Prisoner Admission and Management Form is completed by a custody officer at those patrols with a staff allocation large enough to roster a person solely dedicated to those duties. In other patrols, the Form is completed by an officer who acts in the capacity of a Custody Officer. All police who go through the Police Academy are taught the roles of the Custody Officer. Any prisoners identified as at risk must have this information entered into the custody management system and assistance sought for these prisoners. The Department of Corrective Services have in place a Screening and Induction Program. In addition, the Justice Health and Forensic Mental Health Network employs a nurse to screen all new prisoners for mental and physical health issues. Lastly, Juvenile Justice NSW also has in place admission forms and risk assessment upon admission at a centre. The New South Wales Government has also introduced measures relevant to this recommendation as part of their response to Recommendation 125.

- *The New South Wales Government has implemented Recommendation 126 through use of a Prisoner Admission and Management Form, and other procedural practices.*

As noted in Recommendation 125, **Victoria** Police use a prisoner medical checklist.

- *The Victorian Police have implemented Recommendation 126 with the use of a prisoner medical checklist.*

In their 1997 implementation report, the **Queensland** Government stated that Corrective Services had in place a screening process that includes information about the mental and physical health of a prisoner. This screening process is conducted upon admission into custody. Queensland Corrective Services has a comprehensive screening process including a risk and needs assessment covering general and medical health, self-harm and suicide, drug and alcohol abuse as well as various social factors. This assessment is undertaken on every admission into a correctional centre (excluding transfers). Any immediate risks relating to health and wellbeing, are referred for further assessment and treatment with Queensland Health. For actions taken by Queensland Police see Recommendation 125.

- *Queensland Corrective Services and Queensland Police have implemented Recommendation 126 through the introduction of a comprehensive screening process and risk assessment.*

The **South Australian** Government stated that Police conduct an 'at risk' physical condition and security assessment upon admission to juvenile secure care. Standard procedures require the admitting officer to assess young offenders' physical condition prior to accepting their admission from the Police. Each admission must also be given a physical examination by a nurse or medical practitioner. Currently, as is the case for Recommendation 125, South Australia Police has a computerised system that directs officers to complete a risk assessment and care plan for every person being taken into custody. This is audited on a regular basis to ensure compliance with this recommendation.

- *The South Australian Government has implemented Recommendation 126 through the introduction of a screening and risk assessment process for both juveniles and adults.*

For **Western Australia's** response to this action see Recommendation 125. Additionally, the Western Australia Police Force is trialling the use of mental health professionals on duty, six days a week during the afternoon and evening, to be involved in the intake and assessment process to identify persons at risk.

- *The Western Australian Government has implemented Recommendation 126 through their actions taken towards Recommendation 125, which include processes for screening.*

In their 1993 implementation report, the **Tasmanian** Government stated that all people entering prison are assessed on the basis of a form developed internally. In Southern Tasmania this process is undertaken by a trained officer and nurse. Currently for receptions to the Tasmania Prison Service, initial screening is undertaken by trained Correctional Officers to identify immediate management needs including the risk of suicide or self-harm, the need for protection, issues of vulnerability and other issues relevant to a person's safety and security while in custody. A health assessment also forms part of the initial screening and is undertaken by Correctional Primary Health Services.

- *The Tasmanian Government has implemented Recommendation 126 through the introduction of a screening and risk assessment process.*

The **Northern Territory** Government stated in their 1994-95 implementation report that screening forms had been used since 1989. More recently, reception cards and health assessment forms have been a part of the screening process for all people coming into police custody. Police officers who use the form are trained in completion of these forms. The *General Order Custody – Part III* provides information on the determination of persons in custody considered to be 'at risk' and outlines instructions for their care while in police custody.

- *The Northern Territory Government has implemented Recommendation 126 through screening and risk assessment procedures.*

Recommendation 127

That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following:

- a. The introduction of a regular medical or nursing presence in all principal watch-houses in capital cities and in such other major centres as have substantial numbers detained;*
- b. In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness, injury or self-harm at the time of reception;*
- c. The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;*
- d. The establishment of locally based protocols between police, medical and para-medical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises;*
- e. The establishment of proper systems of liaison between Aboriginal Health Services and police so as to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody; and*
- f. The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by officers with respect to the management of:*
 - i. intoxicated persons;*
 - ii. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions;*
 - iii. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour;*
 - iv. persons with an impaired state of consciousness;*
 - v. angry, aggressive or otherwise disturbed persons;*
 - vi. persons suffering from mental illness;*
 - vii. other serious medical conditions;*
 - viii. persons in possession of, or requiring access to, medication; and*
 - ix. such other persons or situations as agreed.*

Background information

Police officers may have limited medical expertise. Accordingly, greater access to medically trained personnel at police watch-houses would help staff provide the requisite level of management and supervision to assist in preventing deaths in custody.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* provides that a member responsible for a person in custody must take reasonable steps to ensure a person receives proper medical attention (paragraph 18.1). This includes in situations where the person shows signs of impaired sensibility, physical or mental illness, or presents in a manner that raises doubt about their health. The guidelines also require close surveillance of a person in custody who gives concern about their physical or mental condition, is intoxicated, or appears angry, withdrawn or depressed. The Australian Capital Territory watch-house maintains a contractual arrangement with Clinical Forensic Medical Services a specialist unit of ACT Health, to provide advice and treatment for persons in custody at all times. Where appropriate, and to ensure a detainee who identifies as Aboriginal and Torres Strait Islander receives appropriate medical attention, Clinical Forensic Medical Services will contact Winnunga Nimmityjah Aboriginal Health Service to obtain background information regarding the person's health.

In the *1994-95 Annual Report*, the Commonwealth noted that:

- the AFP provides access to 24-hour medical cover in all jurisdictions;
- it would seek to negotiate with States and Territories to ensure that liaison occurs with AHSs to develop protocols for the provision of health and medical services, and where such services are provided by AHSs, that these are provided on a negotiated fee-for-service basis; and
- that parts (a), (b), (d), and (f) of the recommendation have been implemented through a variety of AFP arrangements.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 127 through the AFP guidelines and policies.*

In their 1995-96 implementation report, the **New South Wales** Government stated that the NSW Police have fully implemented part (b), (d) and (f). The NSW Police Service did not propose to implement part (a) of this recommendation because the number of prisoners in police cells had reduced. Also, with the exception of fresh charge prisoners brought into custody outside of court hours, no prisoners remain in police cells overnight in the Sydney metropolitan, Wollongong, and Newcastle areas. Local medical services were deemed adequate to service the needs of these prisoners. For part (c) of this recommendation, Aboriginal Medical Services provide some medical services; however, insufficient funding prevents them from being able to service police cells. Part (e) of this recommendation has not been addressed since it is deemed a potential breach of confidentiality.


This recommendation is reflected within the New South Wales Police Force Code of Practice for CRIME which states the Custody manager must immediately call for medical assistance, if someone in custody:

- appears to be ill;
- is injured;
- does not show signs of sensibility and awareness;
- is unconscious;
- fails to respond normally to questions or conversation;
- is severely affected by alcohol or other drugs (eg: incapable of standing from sitting position unassisted, seen to be lapsing in and out of consciousness);
- requests medical attention and the grounds on which the request is made appear reasonable; or
- otherwise appears to be in need of attention.

This medical assistance is implemented by New South Wales Police Force by contacting New South Wales Ambulance Service who attend and conduct a medical assessments of the person in custody and if required transport the person to hospital for treatment.


CSNSW works with the Justice Health and Forensic Mental Health Network (JH&FMHN) in providing health services for the detainee population at some police and court cell complex, including determining the frequency and extent of medical treatment provided to inmates in accordance with

the *Crimes (Administration of Sentences) Act 1999* (NSW). The JH&FMHN assists CSNSW by recommending cell placement, priority transfers to a correctional centre, and emergency transfers to hospital. Through its AAC, CSNSW seeks the formal involvement of Aboriginal community representatives in developing policies and programs as well as CSNSW responses to new initiatives.


 *In New South Wales, Recommendation 127 is partially implemented. For full completion, further action is required in respect of parts (a), (c) and (e) of this recommendation.*

The **Victorian** Government stated in their 1994 implementation report that in relation to part (a) and (b) of this recommendation, the Office of the Senior Medical Officer, Operations Department is in charge of providing medical services to prisoners in police custody and provides a 24-hour on-call service, including access to doctors for all prisoners, across the state. Employing full-time medical staff in watch-houses is prohibited by staffing levels. In the Melbourne Custody Centre Aboriginal and Torres Strait Islander prisoners are given priority access to a nurse who works 12 hours per day, and other medical staff who are available at all times. All metro and major regional have daily or more access to health staff, while all other centres have on-call health staff available at all times. The Custodial Health Advice Line 24/7 provides care advice and coordination of staff efforts, focusing on clinical risk assessment for suicide and self-harm triggers and medical or mental health issues.


For part (c) of this recommendation, policy issues and specific cases are discussed with the Victorian Aboriginal Health Services Cooperative Ltd. For part (d), Victoria Police staff liaise with all other health providers to obtain relevant medical information. For part (e), the implementation report stated that there was regular liaison between the Office of the Senior Medical Officer, Operations Department and Victorian Aboriginal Health Service Cooperative Ltd. In addition to these responses, the Department of Health and Community Services, Juvenile Justice Specialist Support Service stated that they had developed improved services for young offenders on custodial and non-custodial services. This included introducing an assessment by a psychologist at centres, counselling services, and health education programs.

 *In Victoria, parts (a), (b) and (e) of Recommendation 127 are mostly implemented through the provision of an on-call medical officer. For part (c) of this recommendation, policy issues and specific cases are discussed with the Victorian Aboriginal Health Services Cooperative. However, parts (d) and (f) of this recommendation has yet to be implemented through formal protocols.*


The Queensland Government notes that each component of this recommendation has been addressed by the Queensland Police Service. In relation to part (a), Blue Nurses have been contracted for daily attendance and the Queensland Ambulance Service is in attendance on weekends. In relation to part (b) the Queensland Ambulance Service is the first point of call and part (c) of the recommendation is facilitated through Queensland Health as Required. Arrangements outlined as part of part (d) have been made through Queensland Ambulance Service, local hospitals, and the State Forensic Medical Officer who is either on call or rostered. The Queensland Police Service continues to interact with Queensland Health in relation to part (e) regarding medical and mental assistance. Additionally, the *Operational Procedures Manual* sets out these provisions in chapter 16.

 *In Queensland, Recommendation 127 has been implemented through Queensland Police Services procedures and the Operational Procedures Manual.*


The **South Australian** Government stated in their 1993 implementation report that the current Police General Orders endorsed this recommendation. Under South Australia Police General Orders, persons incarcerated or waiting to be accepted into police cells, who show any signs of illness or injury, are immediately treated by the police medical officer or are immediately conveyed to a government funded hospital. Full time medical officers were also available and there was a formal liaison with Aboriginal Health Services. Clinical Nurse Consultants are also employed by the Drug and Alcohol Services South Australia to assist with the management of prisoners with drug and alcohol related problems. Under their duty of care responsibilities, if a prisoner is ill or says that they are ill, the nurses contact a locum doctor; two locum doctors are contracted to South Australia Police.

 *The South Australian Government has implemented Recommendation 127 through the Police General Orders.*


In the 1995 **Western Australian** implementation report, the WA Government stated that in relation to part (a) and (b), a regular nursing service operated in East Perth, but budget restraints restricted the extension of this service to other areas. Other medical services such as ambulance services are available. For part (c), the Police Service was in discussion with the Aboriginal Medical Services about the establishment of a 24-hour a day telephone "hotline" service. This would be used to transfer information relevant to the health and medical needs of Aboriginal and Torres Strait Islander prisoners. The Western Australian Government is currently developing an improved and common assessment for screening at point-of-contact on admission to lock-ups, including triggers for medical assessment. The improvement of screening would be to provide enhanced measures when compared with the 1993 response outlined in the implementation report.

 *The Western Australian Government has partially implemented Recommendation 127 through actions taken towards parts (a), (b), and (c). Further, part (f) has partially been addressed as noted in the 1993 implementation report. Further action is required for the remainder of this recommendation.*

In their 1993 implementation report, the **Tasmanian** Government stated that practices set out in Tasmania Police Standing Order and Police Regulations require the presence of medically trained personnel in police watch-houses, where and when required. Major hospitals are also in close proximity of the detention centres. The Tasmania Prison Service has detailed suicide and self-harm guidelines in place and employs psychologists and high needs counsellors in its Therapeutic Services Unit and Needs Assessment Unit. Major hospitals are also in close proximity.

 *In Tasmania, Recommendation 127 is partially implemented. For full completion, further action is required in respect of parts (c), (d) and (e) of this recommendation.*

The **Northern Territory** Government stated in their 1994-95 implementation report that they had developed a protocol so the responsibility for prisoner well-being is shared by the appropriate bodies. *General Order – Prisoner P12* contains all principles from this recommendation, except part (a). The Northern Territory Government notes that police in the Northern Territory have an agreement with the Department of Health to have watch house nurses in all major watch houses. Where there is no watch house nurse in staff, the local medical clinic or hospital is to be utilised.

 *The Northern Territory Government has mostly implemented Recommendation 127 through the development of appropriate protocols, and actions taken to ensure a nursing presence in watch houses. Action is still required to address part (a) of this recommendation.*

Additional commentary

DOH noted that the 2016 *Prison to Work* report recognised high rates of incarceration and recidivism among Aboriginal and Torres Strait Islander people. The need for improvements to the health and wellbeing of Aboriginal and Torres Strait Islander detainees was a finding from the Report.

Recommendation 128

That where persons are held in police watch-houses on behalf of a Corrective Services authority, that authority arrange, in consultation with Police Services, for medical services (and as far as possible other services) to be provided not less adequate than those that are provided in correctional institutions.

Background information

In some instances, police watch-houses are used as prisons on behalf of Corrective Services. It is important to ensure consistency of care and medical services across custodial settings.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP noted that the medical responsibilities of

ACT policing in relation to persons in custody is established within governance and standard practices, which apply to instances where ACT Policing Regional Watch House is used on behalf of ACT Corrective Services. The AFP *National Guideline* provides that a person in custody is entitled to the same standard of medical care as any other member of the public (paragraph 17). Members of the AFP must also be satisfied that a person is fit to be placed in, or remain in, custody.


 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 128 through the AFP National Guideline.*

New South Wales stated in the *Law Enforcement (Powers and Responsibilities) Act 2002* that detainees have the right to medical services. In addition to this, the *NSW Police Force: Code of Practice for CRIME* states that medical assistance must be supplied to prisoners when they appear ill and injured.


The NSW Police Force has developed strategies which have significantly reduced both monthly cell occupancy rates, and the average time each prisoner spends in police cell custody. All prisoners received from court, bail refused, or who are unable to meet bail condition, are rapidly transferred to CSNSW. In areas serviced by CSNSW, transfer occurs on the day of the court appearance. Inmates have access to Justice Health services in some cell complexes and all correctional centres - for urgent/acute illness transport to hospital occurs. The procedure for CSNSW is outlined in the Custodial Operations Policy and Procedures COPP section 13.2 Medical Emergencies.

 *The New South Wales Government has mostly implemented Recommendation 128 through the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) and the NSW Police Force: Code of Practice for CRIME. However, it does not appear to be a requirement that the standard of care provided in police cells is generally similar to that in correctional facilities.*


In their 1994 implementation report, the **Victorian** Government stated that the Office of the Senior Medical Officer, Operations Department was responsible for all prisoners in police cells and generally provided a similar standard of care to that of Corrections Health.

 *The Victorian Government has implemented Recommendation 128 as the standard of care provided in police cells is generally similar to that in correctional facilities.*


In **Queensland**, the *Queensland Police Services Operational Procedures Manual* sets out the policy and procedures around seeking medical treatment of prisoners. However, it does not specifically refer to the level of care provided to detainees who are held on behalf of a Corrective Services authority.

 *The Queensland Government has mostly implemented Recommendation 128. However, it does not appear to be a requirement that the standard of care provided in police cells is generally similar to that in correctional facilities.*


In their 1993 implementation report, the **South Australia** Government stated that this is current police practice. This remains current practice.

 *The South Australian Government has implemented Recommendation 128, noting that this is current practice.*


The **Western Australian** Government stated in their 1995 implementation report that the WA Police Service had introduced a computerised exchange of information services that identifies any prisoner requiring medical or welfare services. As part of actions taken towards Recommendation 125, the Western Australian Government has introduced the use of a nurse for admission and assessment processes. Persons in custody who are identified with health concerns are either admitted to the Perth Watch-house with a medical treatment report, or referred to the nearest hospital for assessment, treatment and determination of fitness. The Ministry of Justice also stated that they had not implemented this recommendation but support the establishment of a national benchmark in relation to the provision of medical services in police lock-ups.

 *The Western Australian Government has implemented Recommendation 128 through the healthcare provided to people in police watch-houses.*

In their 1993 implementation report, the **Tasmanian** Government stated that these arrangements are already in existence. See also the Tasmanian Government's response to Recommendation 127.

 *The Tasmanian Government has implemented Recommendation 128, noting that this was current practice in their 1993 implementation report.*

The **Northern Territory** Government stated in their 1994-95 implementation report that guidelines for health protocol of prisoners in custody were being developed in collaboration with Territory Health Services and the Department of Correctional Services. *General Order – Prisoner P12* was revised to clearly set out requirements that any prisoner remaining in police custody in excess of 24 hours must be medically examined by either a doctor or nurse. The police *General Order – Custody Part IV* states that persons held on behalf of Correctional Services will be treated as per the Prisons Regulations. Currently, nurses are stationed within the Katherine and Darwin watch houses and serve the function to provide health assessment and ensure the provision of acute care services. They are supported via telephone by the on call Rural Medical Practitioner and abide by standard treatment protocols.

 *The Northern Territory Government has implemented Recommendation 128 through the General Order – Custody Part IV and the provision of health services.*

Recommendation 129

That the use of breath analysis equipment to test the blood alcohol levels at the time of reception of persons taken into custody be thoroughly evaluated by Police Services in consultation with Aboriginal Legal Services, Aboriginal Health Services, health departments and relevant agencies.

Background information

The RCIADIC Report identified that some deaths in custody arose in cases where a person was charged with public drunkenness but was subsequently found not to be intoxicated. The correct usage of breath analysis equipment is important to ensure that persons are not detained unnecessarily.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In 1996, the AFP conducted research into the efficacy of breath testing equipment in response to this recommendation. As noted in a 2001 Commonwealth Ombudsman's report, the research found that subjective assessment of the level of intoxication of persons in custody and the results of breath testing for alcohol concentrations is highly positively correlated, indicating that it is relatively accurate versus breath testing. More recently, the AFP provided the following information on the procedures in the ACT:


- It is not standard practice in the ACT to conduct breath analysis of all persons who are submitted to the ACT Watch House.
- ACT Policing may use breath analysis in the watch house as an aid in determining levels of intoxication when assessing fitness in custody. This is conducted by consent of the detainee only and does not replace the observations made by the Sergeant regarding the intoxication level of detainees.
- The assessment of fitness is covered by the AFP Practical Guide on Duty of Care, 'at-risk' and special needs detainees in the Watch House (ACT Policing).
- In 1996 the AFP undertook research into the efficacy of using breath testing equipment in direct response to recommendation 129 of the RCIADIC.

 *The Commonwealth and Australian Capital Territory governments have mostly implemented Recommendation 129, however it is not clear whether research was undertaken in cooperation with the ALS, AHS, or relevant agencies.*

In their 1995-96 implementation report, the **New South Wales** Government stated that they had decided against implementing breath testing and instead implemented the Prisoner Admission and

Management Form, which must be completed for all prisoners. This form specifically looks at any information about prisoners that is useful for officers to know that might impact the mental and physical health of the prisoner, including the identification of persons with high blood alcohol levels.


For inmates directly received into CSNSW, section 5.12 of the Custodial Policies and Procedures states that Justice Health and Forensic Mental Health Network staff must be advised immediately if on arrival an inmate has drug or alcohol issues, and the Network will provide advice on managing inmates identified as detoxing from drugs or alcohol. CSNSW will not accept offenders who are detained in NSW Police Force cells who are grossly affected by drugs or alcohol, or who have obvious physical injuries. NSW Police Force are advised to obtain medical clearances for those offenders before they are accepted into CSNSW custody.

 *The New South Wales Government has chosen not to implement Recommendation 129.*


The **Victorian** Government stated in their 1994 implementation report that they had not implemented this recommendation as they believed that breath alcohol analysis of prisoners at the time of entry to the watch-house rarely resolved medical management issues. Instead, police training and policy was aimed at identifying and resolving these issues.

 *The Victorian Government has chosen not to implement Recommendation 129.*


In their 1997 implementation report, the **Queensland** Government stated that the Queensland Police Service had evaluated the use of breath analysis equipment in watch-houses in conjunction with Aboriginal Health and Legal Service representatives. Mandatory breath testing of prisoners was not adopted.

 *The Queensland Government has implemented Recommendation 129 through conducting an evaluation into the use of breath analysis equipment in watch-houses in conjunction with Aboriginal Health and Legal Service representatives.*


The **South Australian** Government stated in their 1993 implementation report that Police General Orders provided safeguards for prisoners' health and wellbeing. Consultation with Aboriginal and Torres Strait Islander organisations, health staff, and legal staff concluded that this recommendation would not be implemented. However, it is now current practice for the Department of Correctional Services to conduct regular drug and breath analysis of offenders. In accordance with the *Police Regulations 1999*, a medical clearance must be provided upon admission of a young person to the Adelaide Youth Training Centre.

 *The South Australian Government has implemented Recommendation 129 through consultation with Aboriginal and Torres Strait Islander organisations and the introduction of breath analysis of offenders.*


In their 1995 implementation report, the **Western Australia** Government had not taken any actions to implement this recommendation. Current policy is that Blood Alcohol Content readings in isolation are considered by the Western Australian Government to be inadequate for determining the effect that alcohol has on the person in custody or the care provided. Western Australia uses other methodology through observations and assessment conducted by the Registered Nurse and Mental Health Clinician in conjunction with observations made by police as to the level of intoxication of a person. The observations of ability to understand, function, fine motor skills and levels of consciousness with medical assessments is considered a better indicator.

 *The Western Australian Government has chosen not to implement Recommendation 129.*

The **Tasmanian** Government stated in their 1993 implementation report that they had conducted a review into using breath analysis equipment to test blood alcohol levels of offenders prior to their incarceration and found that practical and legal difficulties existed. Tasmania Police do not currently test blood alcohol levels of offenders routinely and would refer any such circumstance to be treated in a medical facility.

 *The Tasmanian Government has partially implemented Recommendation 129 through conducting an internal evaluation. However, it does not appear that Aboriginal and Torres Strait Islander organisations were consulted as part of this process.*

In their 1994-95 implementation report, the **Northern Territory** Government stated that they had conducted an internal evaluation and felt that use of blood alcohol equipment in evaluating blood alcohol levels required further research. The-then Northern Territory Department of Law simply recommended a working party be formed to further examine the issues however, after consideration, this was not actioned. The Northern Territory Government comments that the Northern Territory Police Force (NTPF) is aware of the risks associated with highly intoxicated persons and other medical conditions being masked by the appearance of intoxication. The *General Order – Custody Part IV* has clear instructions to ensure that all staff are aware of these risks and that all police watch houses and cells have breath analysis equipment available for use.

 *The Northern Territory Government has partially implemented Recommendation 129 through conducting an internal investigation. However, it does not appear that Aboriginal and Torres Strait Islander organisations were consulted as part of this process.*

Recommendation 130

That:

- a. Protocols be established for the transfer between Police and Corrective Services of information about the physical or mental condition of an Aboriginal person which may create or increase the risks of death or injury to that person when in custody;*
- b. In developing such protocols, Police Services, Corrective Services and health authorities with Aboriginal Legal Services and Aboriginal Health Services should establish procedures for the transfer of such information and establish necessary safe-guards to protect the rights of privacy and confidentiality of individual prisoners to the extent compatible with adequate care; and*
- c. Such protocols should be subject to relevant ministerial approval.*

Background information

Exchange of information between policing and corrective services, particularly in relation to a detainee's mental and physical health, can have positive benefits for reducing the risk of death or harm in custody.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP introduced a prisoner transfer form (now referred to as an 'in custody file') in the ACT and Jervis Bay Territory in 1994, to indicate whether a detainee is considered "at risk" (*1995-96 Annual Report*). The use of In-Custody Files was introduced in Jervis Bay Territory to provide relevant medical information when a person is transferred into the custody of another agency (*1995-96 Annual Report*). Where a person falls within an identified risk category, such as Aboriginal and Torres Strait Islander people, the person in custody will be invited to provide further information to enhance their own safety.


A MOU was executed, and is still in place, between the AFP, ACT Corrective Services, ACT Juvenile Justice Services and the NSW Department of Corrective Services to formalise procedures for information transfer. The MOU was developed in 1995-96 in consultation with ALSs, AHSs, and the ACT Aboriginal/Police Liaison Committee. The MOU was renewed in 2017 to provide additional information-sharing arrangements to assist ACT Corrective Services to provide a safe custodial environment, free from injury or death. Information on induction of a detainee is shared between ACT Corrective Services and Justice Health Services.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 130 through AFP protocols, comprising a prisoner transfer form, In Custody Files and an MOU. However, it does not appear that relevant protocols were subject to Ministerial approval.*


The **New South Wales** Government stated in their 1995-96 implementation report that in relation to part (a) the police force has in place the Prisoner Admission and Management Form which is used as a tool to transfer health information from the police service to the Department of Corrective Services. For part (b), the implementation report stated that this form was developed in consultation with senior medical professionals and all information on the form does not breach the person's right to privacy. Juvenile Justice NSW has also stated that part (a) and (b) of this recommendation had been incorporated in Departmental protocols. There are protocols around the transfer of medical information from Juvenile Justice NSW, the NSW Police Force, and CSNSW. However, all information transferred is subject to privacy and confidentiality provisions.

Ministerial approval is not always required for protocols. Arrangements or procedures are developed with input from key medical and technical experts, and are typically approved by the Heads of Agencies. CSNSW and Justice Health and Forensic Mental Health Network also have regard to offenders' privacy interests under law, which regulate the collection, storage, security, use and disclosure of personal information and health information.

In New South Wales, this is covered in Police Commissioner's Instruction 155 - Screening Prisoner, and Police Commissioner's Instruction 155.01. CSNSW intake screening and the Justice Health and Forensic Mental Health Network screening records all issues relating to the physical and mental condition of inmates. CSNSW manages these issues accordingly.

 *The New South Wales Government has implemented Recommendation 130 as noted in the 1995-96 implementation report.*

In their 1994 implementation report, the **Victorian** Government stated that section 128 of the *Health Act* limits the ability to transfer information relating to the medical conditions of prisoners. Additionally, protocols are in place to ensure health information collected in police custody is transferred and accessed by prison health services upon reception. However, there is a forensic nursing service operated by the Forensic Health Services which screens all Aboriginal and Torres Strait Islander detainees at the main city watch-house. This screening includes compiling information about the physical and mental health of the prisoner. The information from this screening is not transferred to the Victorian Aboriginal Health Service Cooperative Ltd unless the prisoner gives approval. In addition, the Prisoner Information Records has allowed for a mechanism to transfer prisoner medical information between the Police Services and the Correctional Services Division. All information is collected and used in accordance with the *Health Records Act 2001* (Vic).


 *The Victorian Government has mostly implemented Recommendation 130 through a forensic nursing service. It does not appear that protocols are subject to Ministerial approval.*

In **Queensland**, under chapter 16 of the *Queensland Police Services Operational Procedures Manual*, any prisoner's health issues should be included in the Custody Report in QPRIME and be transferred when transferring a prisoner between corrective services and police. The officer relinquishing custody must also inform the receiving officer of any health concerns. The Queensland Government also stated in their 1997 implementation report that these procedures were not developed in collaboration with Aboriginal and Torres Strait Islander legal or medical services and the procedures are not subject to Ministerial approval.


Currently, Queensland Corrective Services has a comprehensive admission process outlined in the Admission and Induction Custodial Operations Practice Directives. An Immediate Risk Needs Assessment is undertaken at every admission to determine if the prisoner is at risk to themselves, or has additional special needs such as health needs. If required, a protection needs assessment is undertaken and immediate interventions commence as soon as is practicable after referral. The Queensland Government notes that these processes are consistent with the Standard Guidelines for

Corrections in Australia, which are endorsed by Correctional Ministers and are developed with input by Aboriginal and Torres Strait Islander stakeholders.

Currently, Queensland Corrective Services works with the watch-house staff to monitor the transfer of information and medications for prisoners attending courts. Where a prisoner is transferred to the police watch-house (awaiting trial or sentence), a Discharge Health Report is provided to ensure that Queensland Police Service officers have sufficient medical information to enable provision of medical care and observation.


 *The Queensland Government has mostly implemented Recommendation 130. It does not appear that consultation fully meets confidentiality and privacy requirements of this recommendation in part (b).*

In their 1993 implementation report, the **South Australian** Government stated that SA Police had introduced a "Prisoner Information Sheet" which provides a formal mechanism for the transfer of information about prisoners being moved from Police to Correctional Services custody. This form was developed following consultation with the Police and Public Service Association. Currently, the Department of Correctional Services' *Standard Operating Procedure* relevant to case management addresses protocols for the transfer of prisoners between South Australia Police and Corrections. A Memorandum of Administrative Arrangement between Youth Justice and the South Australia Police outlines the sharing of information to reduce risk to all young people, with consideration to privacy and confidentiality.


 *The South Australian Government has partially implemented Recommendation 130. It does not appear that Aboriginal and Torres Strait Islander organisations were consulted, or Ministerial approval was sought during the development of these protocols.*

The 1994 **Western Australian** implementation report stated that protocols for the transfer of at risk health status prisoners had been reviewed and further changes were being considered. The report also stated review and refinement of these protocols was an ongoing process. These protocols needed to be finalised in consultations with the Aboriginal Medical Service and Aboriginal Legal Service.

Currently, Western Australian policies govern the release of patient medical information and provide for a discharge summary to be provided to a patient's GP or Aboriginal health service on release. These policies provide clear instruction on issues related to continuity of care and processes to be followed in response to requests for information from various sources. The Department of Justice has a Clinical Governance Advisory Committee, which oversees policy development, clinical standards, initiatives and reporting regarding services. Membership includes a representative from Aboriginal Health Services. Banksia Hill Detention Centre employees require the Western Australia Police Force to ensure all urgent medical treatment has been attended to before they will admit a young person.


 *The Western Australian Government has mostly implemented Recommendation 130; however, it does not appear that Ministerial approval was sought during the development of these protocols.*

The 1993 **Tasmania** implementation report stated that there is a close relationship between Tasmania Police and the Corrective Services area, as such, formalising this agreement was not deemed necessary. The report also stated that there were protocols in place which relate to transferring young people to the juvenile detention centre; however, these were not developed in consultation with Aboriginal and Torres Strait Islander agencies. Currently, the Tasmania Police Service has protocols in place with both Tasmania Police and the DHHS, outlining arrangements for information exchange to ensure a continuum of care for all prisoners and detainees.

 *The Tasmanian Government has partially implemented Recommendation 130. It does not appear that Aboriginal and Torres Strait Islander organisations were consulted, or Ministerial approval was sought during the development of these protocols.*

The **Northern Territory** 1996-97 implementation report stated that there was a protocol being developed in consultation with Territory Health Services and NT Police. The report also noted that there was a shared database, which could be accessed by either police or corrections staff. There were already informal processes in place where the transfer of information of a prisoner had any

injuries or diseases. Formal protocol between the police, Department of Correctional Services and Territory Health Services had been negotiated and a draft MOU was being examined by the Attorney General's Department. Currently, the Northern Territory Police Force (NTPF) conducts a health assessment of all persons in custody. This assessment is entered into an electronic patient record and can be shared easily. The *General Order – Custody Part III* sets out clear instructions to seek and obtain medical clearance and health information for persons in custody as the need is identified. All health information and 'fit of custody' information is required to be attached to the person's custody reception card. The Northern Territory Government also makes use of the Integrated Justice Information System (IJIS) and WEBEOC systems in implementing this recommendation.

 *The Northern Territory Government has partially implemented Recommendation 130. It does not appear that Aboriginal and Torres Strait Islander organisations were consulted, or Ministerial approval was sought during the development of these protocols.*

Recommendation 131

That where police officers in charge of prisoners acquire information relating to the medical condition of a prisoner, either because they observe that condition or because the information is voluntarily disclosed to them, such information should be recorded where it may be accessed by any other police officer charged with the supervision of that prisoner. Such information should be added to the screening form referred to in Recommendation 126 or filed in association with it.

Background information

Monitoring the medical condition of prisoners, facilitating the transfer of medical information, and acting on new information in a timely manner, can reduce the risk of death or harm in custody.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* requires that where an officer has custody of a person and acquires information relating to the medical condition of the person (including through observation or voluntary disclosure), they must record the information to inform officers who later assume custody responsibilities (paragraph 18.5).

Online charging and manual (now also online) screening forms were introduced to ensure that information about a person's medical condition is readily accessible by police involved in supervising the person (*1995-96 Commonwealth Annual Report on the implementation of the RCIADIC*).

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 131 through the AFP National Guidelines and information forms.*

In **New South Wales**, under the *NSW Police Force: Code of Practice for CRIME*, information about a prisoner's medication, medical examinations, and medical directions must be documented. Additionally, the Police Commissioner's Instruction 155.13.01 – Inspecting Prisoners and Cells requires that officers record all information relevant to this recommendation. When a prisoner is first taken into custody any request for medical treatment must be noted in the custody report. Any injuries sustained by a detained person must also be recorded in the computerised operational policing system (COPS), a system which can be accessed by all NSW police officers. CSNSW records all relevant information to assist with the appropriate management of inmates on the Offender Integration Management System.

 *In New South Wales, Recommendation 131 has been implemented through the NSW Police Force: Code of Practice for CRIME AND Police Commissioner's Instructions.*

In their 2005 implementation report, the **Victorian** Government stated they have fully implemented this recommendation through the publication of its police guidelines. The Victoria Police Manual – Guidelines – Safe Management of persons in Police Care or Custody provides guidance on

entering welfare checks and any risk assessments on the Attendance Module to ensure an accurate record of welfare checks, meals and refreshments provided, medical treatment provided, access to legal representation, and all interactions with the person in custody. All health information collected by the Police staff or Police Custody Officer is added to the prisoner's health recorded, which is maintained by the Custodial Health Service. All comments relating to observations are recorded within the Custody application and visible to all police members.

● *The Victorian Government has addressed Recommendation 131 through the Victoria Police Manual and relevant procedures and policies.*

In **Queensland**, the *Queensland Police Service Operational Procedures Manual* states that police officers must record prisoner information, including the health condition of the prisoner, in the QPRIME Custody Report.

● *In the Queensland, Recommendation 131 has been implemented through the Queensland Police Services Operational Procedures Manual.*

The **South Australian** Government stated in their 1993 implementation report that information included on the screening form and other relevant information is recorded and is available in accordance with Police General Orders. South Australia Police current practice requires a risk assessment to be completed and entered into a computerised detainee management system. This incorporates information relating to observations of the arresting officer and charging officer, questioning the detainee about their substance consumption both legal and illicit, injuries, physical and mental conditions, emotional status both past and current. At the completion of the risk assessment a care plan is completed. All data entered onto the Computerised detainee management system can be viewed by the Duty Officer who is of the rank of Inspector.

● *In South Australia, Recommendation 131 has been implemented through the information forms, General Orders, and the collection of information into the Computerised detainee management system.*

The **Western Australian** Police Manual states that if a prisoner receives medical attention then this must be recorded on the detainee running sheet. Currently, medical information is stored in custody management systems and risks are highlighted for the effective management of the person in custody. Dedicated medical forms are available to any person taking care of someone in custody during their time in custody and remain with the person until their release.

● *The Western Australian Government has implemented Recommendation 131 through the Western Australian Police Manual.*

The **Tasmania** Police Manual states that when a police officer has information on the medical condition of a prisoner they must record the information so that any other member charged with supervising that prisoner may be able to access it.

● *In Tasmania, Recommendation 131 has been incorporated into the Tasmania Police Manual and procedures have been established to implement this recommendation.*

The **Northern Territory** Government stated in their 1996-97 implementation report that where police officers are aware of a prisoner's medical condition, they should record this information where it may be accessed by any other police officer charged with supervision of that prisoner. The NTPF's *General Order – Custody* provides instructions to all staff to ensure that important information about a person in custody is recorded for access for all staff. Actions taken towards the implementation of Recommendation 130 are also relevant to the implementation of this recommendation.

● *In the Northern Territory, Recommendation 131 has been implemented as noted in the 1996-97 implementation report and provided for in the NTPF's General Order - Custody.*

Recommendation 132

That:

- a. Police instructions should require that the officer in charge of an outgoing shift draw to the attention of the officer in charge of the incoming shift any information relating to the well-being of any prisoner or detainee and, in particular, any medical attention required by any prisoner or detainee;
- b. A written check list should be devised setting out those matters which should be addressed, both in writing and orally, at the time of any such handover of shift; and
- c. Police services should assess the need for an appropriate form or process of record keeping to be devised to ensure adequate and appropriate notation of such matters.

Background information


Procedures for effective recording and communication of health information relating to persons in custody can help ensure continuity of care and reduce the risk of death in custody.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* requires that an outgoing watch-house Sergeant must brief the incoming sergeant on the status of each person in custody (paragraph 39). All information relating to persons in custody is to be recorded on the relevant PROMIS custody module. In its 1995-96 Annual Report, the Commonwealth noted that AFP instructions require officers in charge of a watch-house to be satisfied as to the welfare of prisoners in their charge. The AFP considered that an appropriate form for record keeping would be advantageous, and was willing to assist in its development. The use of the PROMIS custody module provides for written records.


-  *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 132 through guidelines requiring incoming officers to be briefed on the well-being of any persons in custody.*

In **New South Wales**, the *NSW Police Force: Code of Practice for CRIME* addresses each part of this recommendation. This document states that when completing shifts, a custody manager/assistant must brief the relieving officer about any detained people and go with them to inspect all people in custody. Police officers must also record information on prisoner incidents in the system, known as COPs, which can be accessed by other officers.


-  *The New South Wales Government has implemented Recommendation 132 through the *NSW Police Force: Code of Practice for CRIME* which addresses each part of this recommendation.*

In their 2005 implementation report, the **Victorian Government** states they have fully implemented this recommendation through the publication of its police guidelines. As discussed in the actions taken towards Recommendation 131, the *Victoria Police Manual – Guidelines – Safe Management of persons in Police Care or Custody* provides guidance on entering welfare checks and any risk assessments. Procedures are in place and the Custody application is used for such notations. Under current policy, the outgoing Section Sergeant or Custody Supervisor is required to brief the incoming Custody Supervisor on the status and condition of prisoners in custody. A physical check of all prisoners is to take place with appropriate entries being made in the watchhouse keeper's charge book. It is also the duty of the outgoing/incoming Section Sergeant to physically check and note the condition of all prisoners in custody. The ISOBAR (Identify, Situation, Observations, Background, Agree to plan, and Read back) – identify, situation, observations, background, agree to plan, and read back - formula is being deployed to assist watchhouse staff with handover, helping to ensure that correct information is


shared with focus on the wellbeing of the prisoner. CHS staff assist with the education in the use of the ISOBAR tool at the Police Academy.

 *The Victorian Government has implemented Recommendation 132 through the Victoria Police Manual, and other procedural measures including the adoption of ISOBAR.*


In **Queensland**, as per the *Queensland Police Services Operational Procedures Manual*, it is a requirement that an officer relinquishing custody of a prisoner must advise the person receiving the prisoner of any information relevant in providing appropriate care for the prisoner, including the medical condition of the prisoner. Officers must also record prisoner information in the QPRIME Custody Report.

 *The Queensland Government has implemented Recommendation 132 through guidelines requiring incoming officers to be briefed on the well-being of any persons in custody.*


The **South Australian** Government stated in their 1993 implementation report that this recommendation has been addressed through use of a prisoner screening form and entries in the charge book and station journal. A prisoner custody disposition form also follows the prisoner. South Australia Police General Orders state the officer in charge of a station must ensure they inform the officer in charge of the oncoming shift of the condition of each prisoner. The computerised detainee management system requires the oncoming officer in charge to enter an electronic, date/time stamp, declaration that an inspection and handover has been completed. This system is regularly audited as part of the South Australia Police audit regime, and it can be viewed remotely by any Police Officer with access to South Australia Police computer systems.

 *The South Australian Government has implemented Recommendation 132 through use of a prisoner screening form and entries in the charge book and station journal.*


According to the *Change the Record* report, in **Western Australia** the *Western Australian Police Manual* states that if a prisoner receives medical attention then this must be recorded on the detainee running sheet. However, no handover processes were found. The actions taken by Western Australia towards Recommendation 131 are also relevant here.

 *The Western Australian Government has partially implemented Recommendation 132. However, further action is required to fully implement parts (a) and (b) of the recommendation.*

In **Tasmania**, the *Tasmania Police Manual* states that when a police officer has information on the medical condition of a prisoner they must record the information so that any other member charged with supervising that prisoner may be able to access it. However, there does not appear to be a formal handover process for conveying this information.

 *The Tasmanian Government does not appear to have taken relevant steps to address Recommendation 132.*

The **Northern Territory** Government stated in their 1994-95 implementation report that this recommendation was implemented by amendment to *General Order – Prisoners – Code P12*, which requires that every person who is detained or arrested is to be inspected by the receiving officer. The receiving officer shall ensure a screening form is completed describing the present state of mind and health of the person detained or arrested. In addition, where a staff member who is looking after prisoners acquires information relating to the medical condition of a prisoner, such information should be recorded where it may be accessed by any other member charged with supervision of that prisoner. The requirements of handling procedures, including related to the health, behaviour and alerts status of all prisoners, are also outlined in the *General Order – Custody*. The Northern Territory Government notes that all handover information is required to be recorded in the WEBEOC Custody Board and/or in the Integrated Justice Information System.

 *The Northern Territory Government has implemented Recommendation 132 by amendment to General Order – Prisoners – Code P12.*

Recommendation 133

That:

- a. All police officers should receive training at both recruit and in-service levels to enable them to identify persons in distress or at risk of death or injury through illness, injury or self-harm;
- b. Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining unconscious or semi-rousable persons and the specific action to be taken by officers in relation to those matters which are to be the subject of protocols referred to in Recommendation 127;
- c. In designing and delivering such training programs, custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services; and
- d. Where a police officer or other person is designated or recognised by a police service as being a person whose work is dedicated wholly or substantially to cell guard duties then such person should receive a more intensive and specialised training than would be appropriate for other officers.

Background information

The RCIADIC Report found that appropriate training was required to assist police officers in identifying persons in custody who are at risk of death or injury, including through self-harm or illness.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP has implemented training for officers to identify persons who are in distress or at risk (*1995-96 Annual Report*). The AFP *National Guideline* mandates close supervision of persons in custody who give any concern about their physical or mental condition, are intoxicated, or appear angry withdrawn or depressed (paragraph 31). Watch-house sergeants have been instructed by AFP Health Services Division, in particular in resuscitation and in the recognition of systems of drug and alcohol abuse (*1996-97 Annual Report*). AFP training includes first aid and injury or illness identification for watch-house sergeants. An outline of the First Aid training program was approved by medical staff from Aboriginal Health Services during discussions in 1992 (*1995-96 Annual Report*).


Currently, AFP recruits must have and maintain a Senior First Aid Certificate. Additionally, recruits receive training in identifying and responding to mental health issues. New and existing members of the AFP are provided with cross cultural awareness training involving Aboriginal and Torres Strait Islander people in all aspects of its development, presentation, evaluation and modification (*1996-97 Annual Report*). Currently, AFP recruits receive a presentation from Malunggang Indigenous Officers Network covering Aboriginal and Torres Strait Islander culture and issues.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 133 through the AFP training regime and guidelines.*


In their 1995-96 implementation report, the **New South Wales** Government stated that they have addressed all parts of this recommendation through training modules included throughout the Police Recruitment Education Programs and all other relevant in-service courses and training packages of the NSW Police Service. Specifically, for part (c) of this recommendation, the NSW Government stated that these training programs were developed in consultation with Aboriginal Health Services and the Aboriginal Legal Services.

The NSW Police Force (NSWPF) offers training prior to employment and for new recruits. Prior to their commencement with NSWPF, applicants must possess a current first aid certificate. As part of their training under the Police Recruit Education Programme, Student Police Officers also receive conducted


by registered nurses employed by the NSWPF. The NSWPF also receive ongoing training. CSNSW provides accredited Correctional officer training. All correctional officers in NSW employ must obtain the Certificate III in Correctional Practice (Custodial) which includes modules on maintaining the health, safety and welfare of offenders, protecting the safety and welfare of Aboriginal offenders, respond to offenders influenced by drugs or alcohol etc.

 *The New South Wales Government has implemented Recommendation 133 through training modules included throughout the Police Recruitment Education Programs and all other relevant in-service courses and training packages of the NSW Police Service.*


In their 1994 implementation report, the **Victorian** Government stated that the Office of Forensic Medicine provides police training at recruit and advanced levels on the topic of prisoner health which addresses part (a) and (d) of this recommendation. For part (b) and (c) of this recommendation the Victorian Government state in their 1994 implementation report that their current processes already meet these requirements.

 *The Victorian Government has implemented Recommendation 133 through their training programs.*

The **Queensland** Government stated in their 1997 implementation report that part (a) of this recommendation has been addressed since completion of first aid training is a requirement for police recruits and follow up training has also been introduced as part of the Competency Acquisition Program. Part (b) and (c) of this recommendation has been addressed through the development of a Custody Awareness Lecture Package which provides training on mental and physical health requirements of people in custody, assessment, inspection and supervision responsibilities, and legal obligations. This package was developed in consultation with Queensland Health and Aboriginal and Islander Community Health Services. It was noted also that youth detention centre staff receive the training identified, but without the focus on Aboriginal and Torres Strait Islander needs. For part (d) of this recommendation, the Queensland Government notes that civilian watch-house officers receive dedicated training.

 *The Queensland Government has implemented Recommendation 133 through mandatory first aid training requirements, the development of a Custody Awareness Lecture Package, and the introduction of training for watch-house officers.*


In their 1993 implementation report, the **South Australian** Government stated that part (a) to (c) of this recommendation had been addressed in existing training and education programs for both recruits and in-service staff. Training in Aboriginal and Torres Strait Islander issues is also included in training modules for recruits. For part (d) of this recommendation, special training has been provided to officers at the city watch-house and Holden Hill police stations. SAPOL currently ensures ongoing Senior First Aid Certificate training as outlined in General Order 8540 under Occupational Health, Safety and Welfare. Officers receive mandatory training in Cardio-Pulmonary Resuscitation (CPR), Expired Air Resuscitation (EAR), and bleeding control. SAPOL is also currently in the final stages of developing an Aboriginal Cultural Awareness Training package to be delivered to all SAPOL staff, which will fulfil the requirements of Recommendation 133.

 *The South Australian Government has implemented Recommendation 133 through their training programs.*


In their 1995 implementation report, **Western Australia** stated that they have already addressed this recommendation as custodial care training procedures occur at pre-service and in-service levels of training. However, they also noted that in terms of part (b), training does not include the specific health status of Aboriginal and Torres Strait Islander people. In addition, for part (c), the Aboriginal Health Services and Aboriginal Legal Services did not contribute to the creation of the training programs. Also, for part (d) no specific training is provided for officers engaged in custody and custodial duties.

Currently for part (b) of the recommendation, at-risk indicators are covered as part of recruit and in-service training, which is also included in the Custodial Police Auxiliary Officer Program. This covers


the dangers associated with detaining unconscious or semi-rousable persons and specific actions to be taken. As a result of the 2016 Dhu Inquest, Notre Dam University has been contracted to conduct an Aboriginal Cultural Security audit of the Western Australia Police Force training curriculum, to highlight areas of strength and weakness within the curriculum pertaining to Aboriginal and Torres Strait Islander people and engagement with them.

 *The Western Australian Government has partially implemented Recommendation 133, as the requirements of parts (b), (c) and (d) do not appear to have been fully met.*

The **Tasmanian** Government notes that this recommendation has been incorporated into training programs for recruits and for operational police since 1994, following the adoption of the Prisoner Admission Risk Assessment Form. However, it is unclear whether the training programs were developed in consultation with Aboriginal and Torres Strait Islander communities.

 *The Tasmanian Government has mostly implemented Recommendation 133 through their training programs for recruits and for operational police. However, it is unclear whether the training programs were developed in consultation with Aboriginal and Torres Strait Islander communities.*

The **Northern Territory** Government states that all NPTF members are required to have a current First Aid qualification, and that all watch houses and police cells must contain audited first aid kits and medical equipment available for use. All NPTF staff who work in watch houses also undergo dedicated custody training. The *General Order – Custody* additionally provides instructions to staff on actions required for persons suffering from intoxication or other health related issues. However, it is unclear whether the training programs were developed in consultation with Aboriginal and Torres Strait Islander communities.

 *The Northern Territory Government has mostly implemented Recommendation 133 through their training programs. However, it is unclear whether the training programs were developed in consultation with Aboriginal and Torres Strait Islander communities.*

Recommendation 134

That police instructions should require that, at all times, police should interact with detainees in a manner which is both humane and courteous. Police authorities should regard it as a serious breach of discipline for an officer to speak to a detainee in a deliberately hurtful or provocative manner.

Background information

People taken into custody can experience extreme distress and isolation. The RCIADIC Report noted the importance of treating detainees humanely and courteously to reduce the risk of exacerbating any vulnerabilities or suicidal tendencies.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* requires that “any person in police custody must be treated with humanity, dignity and regard for their civil rights, and not be subjected to cruel, inhumane or degrading treatment” (paragraph 6). The guideline is enforceable under the AFP Professional Standards and the *Australian Federal Police Act 1979*, and breaches could result in the loss of rank or dismissal (*Annual Report 1995-96*). The AFP Code of Conduct places an expectation upon all officers to speak to and treat others in a courteous and respectful manner. Any breach of such would be investigated within the AFP Complaints Management System. Recommendation 134 is also implemented through the Commissioner's Order on Professional Standards.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 134 through the AFP National Guideline.*

New South Wales have in place the *NSW Police Force Standards of Professional Conduct*, which states that police officers must treat the detainees courteously. This recommendation is also implemented through the NSWPF Statement of Values and various Police Commissioner's Instructions. The NSWPF Code of Conduct and Ethic states, that Police should, "treat everyone with respect, courtesy and fairness".


The NSWPF Code of Practice for CRIME states the custody manager must report a complaint about the treatment of someone in custody as soon as possible to a duty officer or other senior officer, not connected with the investigation. If it concerns a possible assault, or the unnecessary or unreasonable use of force, have them examined by a doctor promptly.

 *In New South Wales, Recommendation 134 has been implemented through the NSW Police Force Standards of Professional Conduct.*


Victoria has in place the *Victoria Police Manual*, which states that police are to behave in a courteous and responsive manner at all times.

 *The requirements in the Victoria Police Manual satisfy Recommendation 134.*


In **Queensland**, the *Queensland Public Service Code of Conduct* and the *Operational Procedures Manual* state the requirements for how police officers are to interact with the community. The requirements reflect what is included in this recommendation. This recommendation has also been incorporated into the *Public Service Act 2008* (Qld).

 *The Queensland Government has implemented Recommendation 134 through the Queensland Public Service Code of Conduct and the Operational Procedures Manual.*


South Australia have implemented this recommendation through the *Service Delivery Charter* which states that a police officer must be courteous and considerate. The provisions set out in this recommendation are covered by SAPOL's Code of Conduct, Leadership Charter and General Orders.

 *The South Australian Government has addressed the requirements of Recommendation 134 through the Service Delivery Charter which states that a police officer must be courteous and considerate.*


In **Western Australia**, under *Police Force Regulations 1979*, regulation 402 (b) states that police officers must act with courtesy to the public. The Western Australia Police Force Code of Conduct and Professional Standards include a range of remediation measures should a breach occur.

 *Recommendation 134 has been implemented in Western Australia through the Police Force Regulations 1979 and procedural policies in the event of a breach occurring.*

Tasmania's *Department of Police and Emergency Management Service Charter* states that police officers should strive to deal with matters in a professional manner displaying sensitivity and understanding.

 *The Tasmanian Government has addressed the requirements of Recommendation 134 through the Department of Police and Emergency Service Charter which states that a police officer must be sensitive and understanding.*

The **Northern Territory** *Customer Service Charter* states that police officers will treat every customer with courtesy and respect. The *General Order – Custody* also implements this recommendation, providing clear directives regarding the duty of care owed by police and the principals of custody which include a duty of care. The NPTF has a complaints management process set out in the *General Order – Complaints Against Police*.

 *In the Northern Territory, Recommendation 134 has been implemented through the Custody Service Charter and the General Order – Custody.*

Recommendation 135

In no case should a person be transported by police to a watch-house when that person is either unconscious or not easily roused. Such persons must be immediately taken to a hospital or medical practitioner or, if neither is available, to a nurse or other person qualified to assess their health.

Background information

Detainees who are unconscious or not easily roused may be suffering from serious medical conditions including alcohol intoxication, epilepsy, diabetes, drug overdose or head injury. In these situations, urgent medical attention is required and transporting the person to a watch-house may result in death or serious harm.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP National Guideline requires that reasonable steps should be taken to ensure a person in custody receives proper medical attention, including arranging prompt medical attention in situations where the person is unconscious or lapsing into and out of consciousness (paragraph 18.1). The AFP National Guideline provides that a person must be conveyed to hospital where medical treatment for an injury or illness cannot be conducted at a police station (paragraph 19). If a person in custody is seriously ill or not easily roused, they must be taken to hospital or other place of treatment by ambulance. The National Guideline also states that a person's fitness for custody is to be assessed prior to being taken to the watch-house and a person should be taken to hospital if they cannot be treated at a police station.

- *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 135 through the AFP National Guideline.*

In **New South Wales** the *NSW Police Force: Code of Practice for CRIME* states that the custody manager must immediately call for medical assistance if someone in custody does not show signs of sensibility and awareness or is unconscious.

- *The New South Wales Government has implemented Recommendation 135 in the NSW Police Force: Code of Practice for CRIME.*

The **Victorian** Government stated in their 1994 implementation report that seeking medical attention immediately for a prisoner who is found in an impaired conscious states or if there is any doubt about their condition is a requirement under the *Victoria Police Operating Procedures Manual*. Police training, policy, and the prisoner checklist also focus on seeking medical treatment for prisoners in this condition.

- *The Victoria Police Operating Procedures Manual has fully implemented Recommendation 136.*

In **Queensland**, chapter 16 of the *Queensland Police Service Operational Procedures Manual* states that a receiving officer is not to accept custody of a person who is unconscious or apparently unconscious but is to assist that person in obtaining professional healthcare advice or assistance as soon as reasonably practicable. Similarly, an officer is not to arrest an unconscious or apparently unconscious person but must assist with seeking medical help for that person.

- *The Queensland Police Service Operational Procedures Manual has fully implemented Recommendation 136.*

The **South Australian** Government stated in their 1993 implementation report that police officers are directed to immediately call for an ambulance and when prisoners are medically examined, a Medical Examination of Prisoners form is completed.

- *In South Australia, Recommendation 136 has been incorporated into practices which provide that a police officer must immediately call for an ambulance.*

Western Australia's Court Security and Custodial Services Regulations 1999 requires that procedures be established to provide first aid and emergency medical care to detainees in police lockups or court custodial centres. It also provides that it is the responsibility of the officer in charge of a lockup to arrange any medical attention to support the health, safety, and welfare of a prisoner. It is current policy that any detainee in need of treatment by a medical professional, or who is semi-unconscious or not easily roused, must not be admitted to the lock-up without first being taken to hospital and assessed and deemed fit for custody.

● *The Western Australian Government has incorporated Recommendation 135 into current processes, as supported by the Court Security and Custodial Services Regulations 1999.*

According to the *Change the Record* report, the **Tasmania** Police Manual provides that police members should exercise special vigilance and precautions to ensure the safety and wellbeing of Aboriginal and Torres Strait Islander people in the event of detention in police custody (section 7.6.1). The Manual also requires police to ensure that immediate medical treatment is sought if there is doubt over the condition of a person held in custody (section 7.2.10).

● *The Tasmanian Government has partially implemented Recommendation 136. The Tasmania Police Manual which requires police to ensure that immediate medical treatment is sought if there is doubt over the condition of a person held in custody, however, it is not clear if this specifically prohibits transporting someone who is unconscious or not easily roused to the watch-house.*

In the Northern Territory, the *Police General Order - Custody Part II (OP – C3) – 4 May 2017* sets out that where a person is so impaired by intoxication that they cannot walk or be roused, prior to conveyance to a Watch House, the apprehending members are to: (1) in the case of a person unable to walk, convey the intoxicated person directly to the hospital or health clinic for a health assessment; or (2) in the case of unconsciousness and unable to be roused, request attendance of an ambulance service. Only in the case of extreme emergency and an ambulance is unavailable in a timely manner are members able to convey the unconscious person to a hospital or health clinic.

● *The Northern Territory Government has implemented Recommendation 136 through the Police General Order.*

Recommendation 136

That a person found to be unconscious or not easily rousable while in a watch-house or cell must be immediately conveyed to a hospital, medical practitioner or a nurse. (Where quicker medical aid can be summoned to the watch-house or cell or there are reasons for believing that movement may be dangerous for the health of the detainee, such medical attendance should be sought).

Background information

Detainees who are unconscious or not easily roused may be suffering from serious medical conditions including alcohol intoxication, epilepsy, diabetes, drug overdose or head injury. In these situations, urgent medical attention is required and transporting the person to a watch-house may result in death or serious harm.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The procedures relating to a person who is unconscious or not easily roused are set out in the *AFP National Guideline* (see Recommendation 135).

● *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 136 through the AFP National Guideline.*

In **New South Wales**, the *NSW Police Force: Code of Practice for CRIME* states that the custody manager must immediately call for medical assistance if someone in custody does not show signs of sensibility and awareness or is unconscious. In addition, section 129 of the *Law Enforcement (Powers and responsibilities) Act 2002* (NSW) states that the custody manager for a detained person must arrange immediately for the person to receive medical attention if it appears to the custody manager that the person requires medical attention.


Actions taken to implement Recommendation 134 are also relevant to this recommendation.

 *The New South Wales Government has implemented Recommendation 136 in the NSW Police Force: Code of Practice for CRIME.*


The **Victorian** Government stated in their 1994 implementation report that medical attention is to be sought immediately in this instance and only an ambulance may convey the prisoner to a place of medical treatment. According to the *Change the Record* report this requirement is also set out within section 8.4 of the *Victoria Police Manual: Safe management of person in police care or custody*.

 *The Victorian Government implemented Recommendation 136 in section 8.4 of the Victoria Police Manual.*


In **Queensland**, section 16.13 of the *Queensland Police Service Operational Procedures Manual*, section 285 of the *Criminal Code 1989 (Qld)*; and the *State Watch-house Coordinator's Statement of Intent* direct police to seek urgent medical attention for a person in custody who is unconscious or apparently unconscious. For Queensland Corrective Services, the *Code Blue Incident Management - Code Blue Medical Emergency Response Checklist* identifies that where medical attention is urgently required, the first response officer should immediately ring 000. First Aid should be administered by trained officers in the interim where appropriate and once all safety measures have been implemented to prevent contaminated by blood or other bodily fluids.

 *The Queensland Government has fully implemented Recommendation 136 through the procedures for the Queensland Police Service and Queensland Corrective Services' Code Blue Incident Management - Code Blue Medical Emergency Response Checklist*

The **South Australian** Government stated in their 1993 implementation report that this is current practice for both the police, and family and community services. The South Australian Government notes that the provisions set out in Recommendation 136 are current police practice as set out in General Orders. Any detainee who shows signs of illness or injury, is immediately treated by the police medical officer or conveyed to a government funded hospital for assessment and treatment.

 *In South Australia, Recommendation 136 has been incorporated into practice. Any detainee who shows signs of illness or injury, is immediately treated by the police medical officer or conveyed to a government funded hospital for assessment and treatment.*

Regulation 11 of the **Western Australia** *Court Security and Custodial Services Regulations 1999* (WA) states that procedures must be in place for the provision of first aid and emergency medical care to persons in custody. The *Western Australia Police Manual* also notes that prisoners who require medical care are not to be admitted to a lockup. The officer in charge is responsible for arranging medical attention for the health, safety and welfare of a person in custody. The determination is made on a case-by-case basis, giving due regard to the medical condition and security requirements of the person in custody.

 *The Western Australian Government has mostly implemented Recommendation 136, however it does not appear that medical attention must be given immediately.*

Section 7.6.10 of the **Tasmania** Police Manual states that members shall ensure immediate medical treatment or care is sought if there is any doubt concerning the medical condition of a person in custody. The Tasmania Prison Service has detailed Standing Orders in place covering health services, including emergency operating procedures for serious medical issues occurring in watch-house cells.

- *The Tasmania Government has implemented Recommendation 136 through the Tasmania Police Manual and Standing Orders.*

The **Northern Territory** notes that the *General Order – Custody* establishes the required actions from staff when dealing with persons who are unconscious or not easily roused. Training is also incorporated for all officers.

- *The Northern Territory Government has implemented Recommendation 136 through the General Order – Custody.*

Recommendation 137

That:

- Police instructions and training should require that regular, careful and thorough checks of all detainees in police custody be made;*
- During the first two hours of detention, a detainee should be checked at intervals of not greater than fifteen minutes and that thereafter checks should be conducted at intervals of no greater than one hour;*
- Notwithstanding the provision of electronic surveillance equipment, the monitoring of such persons in the periods described above should at all times be made in person. Where a detainee is awake, the check should involve conversation with that person. Where the person is sleeping the officer checking should ensure that the person is breathing comfortably and is in a safe posture and otherwise appears not to be at risk. Where there is any reason for the inspecting officer to be concerned about the physical or mental condition of a detainee, that person should be woken and checked; and*
- Where any detainee has been identified as, or is suspected to be, a prisoner at risk then the prisoner or detainee should be subject to checking which is closer and more frequent than the standard.*

Background information

The RCIADIC Report noted that 52% of deaths in police custody occurred in the first six hours, with one third occurring within two hours or less. It was found that regular human interaction was essential for the wellbeing of persons in custody, particularly those at risk of self-harm.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* requires that watch-house staff must maintain close surveillance of persons in custody who raise concerns about their physical or mental condition, are intoxicated, or appear angry, withdrawn or depressed (paragraph 31). Heavily intoxicated persons should be placed in the 'coma position' and checked regularly. The AFP *National Guideline* notes that inspection of cell occupants must be undertaken in accordance with the *ACT Policing Watch-House Operations Manual* (paragraph 31). The AFP noted that governance and standard practices in relation to watch-house duties have these suggested timeframes in place. In the *1995-96 Annual Report*, the Commonwealth noted that this recommendation was addressed by the AFP ACT *Regional Instruction 22*.

- *In the Commonwealth and Australian Capital Territory, Recommendation 137 has been implemented. The AFP National Guideline requires close surveillance of persons in custody who have physical or mental health concerns and the AFP has confirmed the suggested timeframes are part of their standard practices.*


In **New South Wales**, part (a) and (c) of this recommendation are covered by the *NSW Police Force: Code of Practice for CRIME* which states that where electronic surveillance is installed, it should not be relied upon as a sole means of inspecting people in custody and instead prisoners should be visited regularly with no more than one hour between visits. Part (d) of this recommendation is covered by the *New South Wales Police Guidelines* which state that checking of 'at risk' prisoners should be done every thirty minutes or more frequently if required. This recommendation has also been incorporated into Police Commissioner's Instructions.

 *The New South Wales Government has mostly implemented regular checks of detainees as specified in Recommendation 137. However, the requirement of the checking of prisoners every fifteen minutes in part (b) of this recommendation has not been met.*

The **Victorian** Government stated in their 1994 implementation report that for parts (a), (c), and (d) of this recommendation, police officers are instructed to check all prisoners who are heavily intoxicated or suffering from health problems as frequently as possible and at least once every half hour. All other prisoners must be checked regularly and at change of shift. For part (b) of this recommendation the implementation report stated that the checking of prisoners every fifteen minutes in the first two hours is dependent on staffing levels. Recently, the *Change the Record* report found that the Victoria Police Manual states that detainees who are assessed to be needing constant supervision are to be physically checked every thirty minutes, or as advised by a medical practitioner, and constantly observed by Closed Circuit Television (CCTV).


Currently, the Victoria Police Manual – Guidelines – Safe Management of Persons in Police Care or Custody defines four distinct levels of observation. For detainees identified as having an immediate risk of self-harm or a serious medical condition, or other symptoms requiring immediate treatment, the Level 1 – High Risk observation is required. As part of this observation level:

- arrangements are required to be made to transfer detainee's out of police custody and to an appropriate facility;
- procedures are strictly adhered to in the supervision of prisoners, and by supervising sergeants and senior sergeants;
- all sleeping prisoners must be woken and a response received from them prior to leaving the cells; and
- an entry is then made in the custody application.


 *The Victorian Government has implemented regular checks of detainees as specified in Recommendation 137. However, the requirement of the checking of prisoners every fifteen minutes in part (b) of this recommendation has not been met. Thus, Recommendation 137 is mostly complete.*

In **Queensland**, section 16.13.3 and section 16.9.5 of the *Operational Procedures Manual* address part (a) and (d) of this recommendation and partly address part (b). Section 16.13.3 states that the watch-house manager is to ensure that regular inspections are conducted at varying intervals. The intervals between prisoner inspections is to be no greater than one hour. Section 16.9.5 also sets out different inspection times for prisoners who may have a medical condition²⁴, or display certain risk factors, such as self-harm. Monitoring intervals of prisoners with a medical condition must be no longer than thirty minutes for the first four hours while at-risk prisoners are required to have constant supervision. Section 16.13.3 of the *Operational Procedures Manual* also covers part (c) of this recommendation as it states that prisoner inspections must be conducted personally, even if video monitoring is available. The 1997 Queensland implementation report also noted that for part (b) of this recommendation, it would not be practicable to increase staff numbers at all watch-houses in Queensland to maintain prisoner inspections at fifteen minute intervals during the first two hours of custody.


²⁴ These prisoners have a medical condition but have been assessed by a professional healthcare provider to be fit to remain in custody.

 *The Queensland Government has mostly implemented regular checks of detainees as specified in Recommendation 137. However, the requirement of the checking of prisoners every fifteen minutes in part (b) of this recommendation has not been met.*


The **South Australian** Government stated in their 1993 implementation report that this recommendation has been addressed in Standing Orders. Any prisoner checks that are made are recorded in the Prisoners Property book and Register. The South Australian Government notes that Recommendation 137 has been incorporated into South Australia Police *General Orders - Prisoners*.

 *The South Australian Government notes that Recommendation 137 has been implemented through Standing Orders and the Police General Order – Prisoners.*

In **Western Australia**, the *WA Police Manual* sets out the guidance on the method of checking prisoners. Intervals of cells checks are determined by risk and are conducted more frequently than suggested in the Recommendation; high-risk prisoners are monitored continuously for the first 30 minutes, then every 10 minutes thereafter. Normal-risk prisoners are monitored for the first 2 hours, with cell welfare checks conducted at intervals of 20 minutes. All cell checks are conducted in person, with further monitoring intervals undertaken remotely.

 *The Western Australian Government has incorporated Recommendation 137 into cell check and monitoring processes, as outlined in the WA Police Manual.*

Tasmania fully implemented this recommendation through section 7.3.6 of the *Tasmania Police Manual*. The 1995 Tasmania implementation report also noted that this recommendation has been addressed in the *Tasmania Police Regulations*. Tasmania Prison Service also has detailed Standing Orders and monitoring requirements in place for prisoners or detainees identified as, or suspected to be, at risk.

 *The Tasmania Government notes that Recommendation 137 has been implemented through Standing Orders and the Tasmania Police Manual and Tasmania Police Regulations.*


The **Northern Territory** Government stated in their 1994-95 implementation report that a significant proportion of NT police stations have two to four officers, therefore, the requirement of checking prisoners every fifteen minutes can only be applied in the longer term, if and when staffing levels increase. They also stated in their 1996-97 implementation report that they support this recommendation but did not specify the actions taken towards addressing this recommendation.

The *General Order – Custody* provides direction to staff on the requirements for cell checks, including that all cell checks be recorded in IJIS and/or the WEBEOC Custody Board. These provisions include that:

The Watch House Keeper will assign a person to be the Custody Observer when there are two (2) or more members assigned to Watch House duties. The Custody Observer is responsible for conducting cell checks within the appropriate time frames and will record their observations in IJIS and/or the WebEOC Custody Board.

- All cell checks are to be recorded on IJIS and/or the WebEOC Custody Board.
- The Watch House Keeper or member in charge is to ensure a Custody Health Assessment Form is completed at the time of reception of each person placed in custody at the Watch House. Such information must also be readily accessible by others charged with supervision of the Watch House.
- Any person in custody delivered to the Watch House with an injury or suffering an illness, or who receives an injury while in the Watch House, should be examined and treated as necessary and the examination and treatment recorded in IJIS and/or the WebEOC Custody Board and on the Custody Health Assessment form. If there is any doubt in relation to the seriousness of the injury, medical treatment should be sought pursuant to paragraphs 389 – 400 of this General Order. If an injury is received while in custody notification is required by CIIR as per paragraphs 451 - 454 of this General Order. The Watch Commander is to be notified.

Additionally, the PHC nurses note all of their clinical records of clients within the electronic health record.

 *The Northern Territory Government has mostly implemented Recommendation 137. However, the requirement of the checking of prisoners every fifteen minutes in part (b) of this recommendation has not been met.*

Recommendation 138

That police instructions should require the adequate recording, in relevant journals, of observations and information regarding complaints, requests or behaviour relating to mental or physical health, medical attention offered and/or provided to detainees and any other matters relating to the well-being of detainees. Instructions should also require the recording of all cell checks conducted.

Background information


The RCIADIC Report identified several cases of death in custody where observations were not recorded. Recording of observations and information regarding complaints or requests can help identify changes in medical condition, improve accountability, and better meet the care needs of persons in custody.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the *1995-96 Annual Report*, the Commonwealth Government noted that this recommendation was addressed by the AFP ACT Regional Instruction 22. The AFP noted that these records are currently maintained in the ACT on the relevant PROMIS cell management module.


 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 138 through the use of PROMIS.*

In **New South Wales**, the *NSW Police Force: Code of Practice for CRIME* states that the results of any visits to detained people should be recorded. A visit to a detained person includes any check on prisoners noted in Recommendation 137.

The NSW Government note that this recommendation is met within the *Law Enforcement (Powers and Responsibilities) Regulation 2002*, part 9 clause 131.

 *New South Wales has implemented Recommendation 138 through the NSW Police Force: Code of Practice for CRIME and the Law Enforcement (Powers and Responsibilities) Regulation 2002.*


The **Victorian** Government first addressed this recommendation in their 1994 implementation report through a Register of Prisoner form and a Prisoner Checklist; however, this is no longer current. These measures have been superseded, currently in case of prisoner complaint full complaint procedures are initiated following conversation with the prisoner and details in more serious cases are compiled in an electronic Incident Fact Sheet. The Incident Fact Sheet is produced and published Force-wide for the information of Force Command and the Prisoner Management Unit.

 *Victoria has implemented Recommendation 138 through the procedures and policies introduced to deal with prisoner complaints.*


In **Queensland**, section 16.13.3 of the *Operational Procedures Manual* states that the watch-house manager is to ensure a record is kept of all prisoner inspections through entries in the appropriate QPRIME Custody Report (Full) Detention Log.

 *Queensland has implemented Recommendation 138 through the Operational Procedures Manual and the entry of inspection records in the QPRIME Custody Report (Full) Detention Log.*

The **South Australian** Government stated in their 1993 implementation report that this recommendation has been addressed in Standing Orders. Any prisoner checks that are made are recorded in the prisoners' property book and register. In addition, police instructions require all complaints and cell checks to be entered in a journal. Current practice in South Australia incorporates this recommendation through *General Orders – Custody*, which requires that police enter the required information in the computerised detainee management system.

 *The South Australian Government has addressed Recommendation 138 through Standing Orders, recording procedures, and General Orders – Custody.*

The **Western Australia** Government have stated in their 1995 implementation report that the provisions of the *Police Department Lockup Management Manual* have introduced procedures and written forms as required. Currently in Western Australia, two medical forms guide the provision of medical treatment for a person in custody. The Medical Treatment Plan provides information to police to ensure they fulfil their duty to detainees with minor or manageable health concerns that do not require hospitalisation. The Custodial Management Application automatically produces a Medical Summary Report for medical staff, which may be forwarded to a hospital if required.

 *The Western Australian Government has implemented Recommendation 138, as noted in their 1995 implementation report.*


Tasmania fully implemented this recommendation through sections 7.3.6 to 7.3.8 of the *Tasmania Police Manual*.

 *The Tasmanian Government has addressed Recommendation 138 through the Tasmania Police Manual.*

The **Northern Territory** Government stated in their 1994-95 implementation report that *General Orders – Prisoner – Code P12* paragraphs 6, 39, and 40 address this recommendation. These paragraphs state that every person who is detained or arrested is to be inspected by the receiving officer who shall ensure a screening form is completed. This form will include information about the state of mind and health of the prisoner. In addition, if any illness or injury of a prisoner is noticed then this should be entered in the watch-house journal or station day journal. Finally, any reasons for why prisoner information cannot be recorded should also be noted in the watch-house journal or station day journal. Actions discussed as part of Recommendation 138 are also relevant to this recommendation.

Currently, this recommendation is addressed through the *NT Police General Order – Custody* which makes the following provisions:

- Appropriate observation according to circumstances must be maintained. CCTV monitors are not a substitute for physical observation and personal checks.
- The only check that truly satisfies that a person is displaying signs of life is a physical one. Therefore, cell checks are to be conducted in the following manner:
 - at least one member is to approach the front of the cell and make such observations as they can to satisfy themselves that they can see signs of life;
 - where a person in custody is awake they are to be engaged in conversation to check their state of mind and their general health; and
 - where a person in custody is sleeping, they should be checked to ensure they are breathing. If the inspecting member has any reason to be concerned about the wellbeing of any sleeping person in custody or they cannot observe signs of life, they must enter the cell to check and awaken the person if required.

 *The Northern Territory has implemented Recommendation 138 through General Orders – Prisoner – Code P12, and currently the General Order – Custody.*

Recommendation 139

The Commission notes recent moves by Police Services to install TV monitoring devices in police cells. The Commission recommends that:

- a. The emphasis in any consideration of proper systems for surveillance of those in custody should be on human interaction rather than on high technology. The psychological impact of the use of such equipment on a detainee must be borne in mind, as should its impact on that person's privacy. It is preferable that police cells be designed to maximise direct visual surveillance. Where such equipment has been installed it should be used only as a monitoring aid and not as a substitute for human interaction between the detainee and his/her custodians; and
- b. Police instructions specifically direct that, even where electronic monitoring cameras are installed in police cells, personal cell checks be maintained.

Background information

The RCIADIC Report noted that 52% of deaths in police custody occurred in the first six hours, with one third occurring within two hours or less. It was found that regular human interaction was essential for the wellbeing of persons in custody, particularly those at risk of self-harm.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the *1995-96 Annual Report*, the Commonwealth noted that this recommendation was addressed by the AFP ACT Regional Instruction 22. The AFP *National Guideline* notes that inspection of cell occupants must be undertaken in accordance with the *ACT Policing Watch-House Operations Manual* (paragraph 31). The AFP noted that appropriate CCTV systems are in place in the ACT regional watch-house and that these systems have not replaced physical checks of persons in custody.

- *Recommendation 139 has been implemented by the Commonwealth and the Australian Capital Territory Governments, as reported in the 1995-96 Annual Report and as noted by the AFP.*

In **New South Wales**, the *NSW Police Force: Code of Practice for CRIME* stated that electronic surveillance should not be relied upon as a sole means of inspecting people in custody and instead prisoners should be visited regularly with no more than one hour between visits. Under the Code the Custody Manager is required to:


- check the condition and review the risk assessment of each person at least every hour or more frequently if needed. Risk assessment of people in custody is an ongoing process - the higher the risk, the more frequent the inspection and assessment should be;
- wake, speak to and assess the sobriety of people intoxicated by drugs or alcohol at least every 30 minutes (or more frequently if your assessment indicates it is necessary) during the first two to three hours of detention. Where you cannot rouse a person or their level of intoxication or consciousness has not changed or is of concern, get urgent medical help; and
- do all assessments in person, not by video.

In New South Wales, this recommendation is also covered in the New South Wales Police Force (NSWPF) Police Commissioner's Instruction 155.01.08- Record and Review of Prisoner.


- *In New South Wales, Recommendation 139 has been implemented through the NSW Police Force: Code of Practice for CRIME.*

The **Victoria** Police Manual addresses this recommendation. This Manual states that detainees who are assessed to be needing constant supervision are to be physically checked every thirty minutes, or as advised by a medical practitioner, and constantly observed by CCTV. The Victorian Government also noted in their 1994 implementation report that there is a balance between the psychological


impact of using CCTV and the importance of continuous monitoring of some prisoners. However, they also noted the importance of monitoring prisoner who might wish to self-harm.

 *In Victoria, Recommendation 139 has been implemented through the Victoria Police Manual.*


In **Queensland**, section 16.13.3 of the *Operational Procedures Manual* states that prisoner inspections must be conducted personally, even if video monitoring is available. During these visits the officer must ask prisoners who are awake if they are well, ensure that any sleeping prisoners are breathing comfortably and appear well, and wake a sleeping prisoner when the inspecting officer is unsure or has a reasonable degree of suspicion about the condition of that prisoner. The Queensland Police Service has building standards which consider appropriate surveillance arrangements in the building design.

 *In Queensland, Recommendation 139 has been implemented through the Operational Procedures Manual.*


The **South Australian** Government have stated in their 1993 implementation report that this recommendation has been addressed in the cell upgrade program and the requirement under General Orders that physical cell checks must be maintained. The South Australian Government commissioned a study of prisoner holding facilities on cell design, which identified benchmarks for cell design and the standards required for the safe custody of prisoners. A further CCTV upgrade was applied to 35 police facilities with holding cells in 2006-07.

 *In South Australia, Recommendation 139 has been addressed in the cell upgrade program and the requirement under General Orders that physical cell checks must be maintained.*


The **Western Australia** Police Manual sets out the guidance on the method of checking prisoners. In-person cell checks are maintained, and CCTV is used in all police lock-ups for recording and storing images.

 *Recommendation 139 has been implemented in Western Australia through ongoing use of cell-checks and the adoption of CCTV in all police lock-ups.*

Tasmania has fully implemented this recommendation through section 7.3.6 of the *Tasmania Police Manual*. The Manual could not be accessed for this report.

 *Tasmania has fully implemented this recommendation through section 7.3.6 of the Tasmania Police Manual.*

The **Northern Territory** Government stated in their 1994-95 implementation report that television monitoring devices had been installed in some centres; however, there is still a policy emphasis on human interaction. The *General Order – Custody* recognises that there is no substitute for personal checks and physical observations.

 *In the Northern Territory, Recommendation 139 has been implemented through the General Order – Custody and ongoing personal cell check practices.*

Recommendation 140

That as soon as practicable, all cells should be equipped with an alarm or intercom system which gives direct communication to custodians. This should be pursued as a matter of urgency at those police watch-houses where surveillance resources are limited.

Background information


The RCIADIC Report expressed concern about some detainees being left alone overnight without supervision and without a means of communication in an emergency. Alarm and intercom systems can reduce the risk of death or injury as a result of detainees being left unsupervised.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the *1995-96 Annual Report*, the Commonwealth noted that this recommendation was addressed by the AFP ACT Regional Instruction 22. The AFP noted that all cells at the ACT regional watch-house and in the External Territories are equipped with these facilities.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 140 through equipping all watch house cells with these facilities.*

The **New South Wales** Government stated in their 1995-96 implementation report that the police service updated their cells to have direct communications with custodians. In addition, the Department of Corrective Services also installed cell alarms/intercoms in all correctional centre cells. All cells still in service have been surveyed, and a voice communication cell-call system is included in the watch house building code. This is standard in CSNSW court cell locations.

 *The New South Wales Government has implemented Recommendation 140 through the upgrade of all cells to enable direct communications with custodians, including the equipping of all watch house cells with these facilities.*


The **Victorian** Government stated in their 1994 implementation report that intercom systems will be installed in all new cells, but is dependent on budgets. A 2006 report of the Victorian Ombudsman again recommended that all prison cells be equipped with duress alarms and intercoms. The Victorian Government currently notes that cameras are in place, and duress alarm bells are present in all cells containing prisoners. This allows Custody Supervisors or Police Custody Officers to comfortably communicate with prisoners either verbally or by means of electronic systems.

 *Recommendation 140 has been implemented by the Victorian Government, with cameras and duress alarm bells installed in all cells.*


The **Queensland** Government stated in their 1997 implementation report that approximately 67% of all prisoners in Corrective Services' secure custody have access to a cell call facility and extension of these services will continue subject to available resources. Queensland police also noted that all new watch-houses comply with the requirements of this recommendation. The Queensland Government notes that in response to this recommendation, all new centres since 1988 are equipped with a cell call facility.

Currently, Queensland Corrective Services has a number of call facilities available, including:

- all secure cell accommodation cells have intercoms;
- some residential cells have bedroom intercoms, however where these are not available prisoners have 24-hour access to an intercom in the common room of each residential block;
- all maximum security units and detention unit cells have cell intercoms; and
- padded cells have a one-way intercom (Officer to Prisoner).

 *Recommendation 140 has been implemented by the Queensland Government through the introduction of call facilities within all cells.*

The **South Australian** Government stated in their 1993 implementation report that intercom systems are incorporated into all cell accommodation. The provision of an effective cell intercom system remains a basic component of all new prison design and construction.

 *As noted in their 1993 implementation report, the South Australian Government has implemented Recommendation 140 and intercom systems are incorporated into all cell accommodation.*

Since the adoption of the **Western Australia** Police Force Custodial Design Guidelines in the 1990s, all new cells constructed in the state have been fitted with a cell alarm and an intercom system enabling detainees to communicate with police officers within the station. Intercom and alarm systems conforming with the State Cell Guidelines are also currently installed in all police lock-ups.

- *The Western Australian Government has implemented Recommendation 140 through the introduction of intercom and alarm systems in all police lock-ups.*

The **Tasmanian** Government stated in their 1993 implementation report that the Tasmania Police reject this recommendation as people in custody may abuse its use. More recently, the Tasmanian Government has commented that all Tasmania Prison Service watch-house cells have intercoms.

- *The Tasmanian Government has implemented Recommendation 140 and notes that all Tasmania Prison Service watch-house cells have intercoms.*

The **Northern Territory** Government stated in their 1996-97 implementation report that all new police complexes will have alarms fitted as a matter of course. The Northern Territory Police had also taken reasonable steps to ensure that any redesign of cells and holding facilities will comply with these recommendations. The Northern Territory Government comments that all NPTF watch houses and police cell facilities are fitted with intercoms and call buttons. The *General Outline – Custody* requires that these are checked for regularly functionality.

- *Recommendation 140 is implemented in the Northern Territory. The Northern Territory Government note that all NPTF watch houses and police cell facilities are fitted with intercoms and call buttons.*

Recommendation 141

That no person should be detained in a police cell unless a police officer is in attendance at the watch-house and is able to perform duties of care and supervision of the detainee. Where a person is detained in a police cell and a police officer is not so available then the watch-house should be attended by a person capable of providing care and supervision of persons detained.

Background information

The RCIADIC Report expressed concern about some detainees being left alone overnight without supervision and without a means of communication in an emergency. Regular monitoring of detainees can help identify those at risk, allow appropriate levels of care to be provided, and reduce the risk of injury or death.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP noted that governance and standard practices ensure that a person will not be detained in a cell without the appropriate level of supervision being available. The ACT watch-house is always staffed. ACT Policing officers are not to place detainees in cells at ACT Police Stations unless they are directly supervised.

- *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 141 through the AFP's governance and standard practices.*

The **New South Wales** Government stated in their 1995-96 implementation report that this recommendation has been incorporated in Commissioner's Instructions 155.11.01 and compliance is monitored by Local Area Commanders and local supervisors.


The Code of Practice for CRIME states the Custody Manager/Assistant is required to ensure the person in custody (even if they are in a dock) is kept under constant face to face observation by yourself or another officer until either: the person is released or you have conducted your assessment of the detained person, identified the level of risk, nominated an inspection frequency and placed the person into the observation cell.

 *In New South Wales, Recommendation 141 has been implemented through Police Commissioner's Instructions 155.11.01 and monitored through Local Area Commanders and local supervisors.*


In their 1994 implementation report, the **Victorian** Government stated that the duties of police watch-house staff are such that they must always be in a position to administer care to a prisoner should the need arise. In addition, people who are detained in police cells must be detained in police stations which are staffed 24 hours a day.

 *The Victorian Government has implemented Recommendation 141, as detention cells in police stations are staffed 24 hours a day.*


For **Queensland**, this is set out in chapter 16 of the *Operational Procedures Manual* (see Recommendation 137). In addition, chapter 10 of this manual also stated that a duty of care may warrant the transfer of a person in custody to another watch-house because of inadequate facilities or an inability to provide proper supervision of the person in custody.

 *In Queensland, Recommendation 141 has been addressed through the Operations Procedures Manual.*


In their 1994 implementation report, the **South Australian** Government stated that this recommendation was addressed following state funding to address the interim report recommendations. It was also noted that in emergency events in smaller facilities this requirement may not be met. This recommendation has been incorporated into South Australia Police *General Orders Prisoners*.

 *In South Australia, Recommendation 141 has been incorporated into SAPOL's General Orders – Prisoners.*


The **Western Australian** Government stated in their 1995 implementation report that the Commissioner of Police issued instructions which prevent detainees being held in any lockup where 24-hour supervision could not be maintained. No person in Western Australia is detained without a police officer, custody officer, or police auxiliary officer on duty at the lock-up. All detainees held in locations where such care cannot be provided are transported to the nearest 24-hour facility to provide such care and observation.

 *The Western Australian Government has implemented Recommendation 141 through supervision requirements and procedure.*

In their 1993 implementation report, the **Tasmanian** Government stated that they have addressed this recommendation in *Tasmania Police Standing Order 412.5* and general instructions that were issued, which require that no prisoner is to be detained without care and supervision. In Hobart and Launceston watch-houses, Correctional staff are in attendance at all times to provide appropriate care and supervision.

 *The Tasmanian Government has implemented Recommendation 141 through Tasmania Police Standing Order 412.5 and general instructions which require that no prisoner is to be detained without care and supervision.*

In their 1996-97 implementation report, the **Northern Territory** Government stated that they support this recommendation. The *General Order – Custody* provides that at police stations where there are no permanent watch house staff, and members are required to leave the station with a person that cannot be bailed, transferred, or otherwise released from custody, members should seek advice from the Watch Commander, Divisional Officer or the on call Executive Officer before leaving a person in custody unattended.

 *In the Northern Territory, Recommendation 141 does not appear to guarantee that a detainee will not be left without supervision.*

Recommendation 142

That the installation and/or use of padded cells in police watch-houses for punitive purposes or for the management of those at risk should be discontinued immediately.

Background information


The RCIADIC Report found that padded cells could act as a “sensory deprivation chamber and can markedly increase distress, reactance and experienced isolation” (RCIADIC Report, paragraph 24.3.103).

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* currently allow for the use of padded cells if a person behaves in a manner likely to cause injury; is violent; is uncontrollable; or has attempted self-harm (paragraph 30). The AFP noted that the regional watch-house is equipped with padded cells for the management of persons in custody who are at risk. Governance and standard practices ensure that the use of these cells is in appropriate circumstances, and the person is moved to a conventional cell when the circumstances allow. The ACT Government notes that the use of padded cells is for purely protective purposes to ensure the safety and wellbeing of individuals in custody, and will be subject to review by ACT Policing.

 *The Commonwealth and Australian Capital Territory Governments have partially implemented Recommendation 142. The AFP currently allows for the use of padded cells but not for punitive purposes.*


The **New South Wales** Government stated in their 1995-96 implementation report that there are no padded cells in any police station in NSW.

 *The New South Wales Government has implemented Recommendation 142, noting in their 1995-96 implementation report that there are no padded cells in any police station in New South Wales.*

The **Victorian** Government stated in their 1994 implementation report that padded cells are not used as a punitive measure. However, there is a role for padded cells when managing severely disturbed prisoners and they may be used to prevent self-harm. In its 2005 implementation report, Victoria Police advised that no padded cells remained in police watch houses. However, two padded cells remained at the Melbourne Custody Centre, a facility for individuals who have been arrested and are awaiting hearings at courts in Melbourne. These facilities are at the disposal of the Custodial Health Service and not the security providers. Padded cells are not used as punishment cells, but rather safe spaces under the direction of health staff only for at-risk individuals.


 *The Victorian Government has implemented Recommendation 142, as padded cells are not used in police watch houses.*

In **Queensland**, section 16.12.4 of the *Operational Procedures Manual* states that prisoners with suicidal tendencies or who are violent or aggressive may be placed in a violent detention cell, a padded cell. These cells are not to be used for punishment of prisoners.


 *The Queensland Government has partially implemented Recommendation 142. The Queensland Government currently allows for the use of padded cells but not for punitive purposes.*

The **South Australian** Government stated in their 1993 implementation report that padded cells are not to be used as a penalty for antisocial behaviour or conduct. This is set out in General Orders. The General Orders further state that the condition and behaviour of a prisoner in a padded cell must be monitored closely and the prisoner must be placed in a conventional cell as soon as they are no longer a danger to their self or others. Prisoners who are at risk are only to be confined to a padded cell in


extreme circumstances when, prior to a medical examination, they cannot be safely confined in any other way.

 *The South Australian Government has partially implemented Recommendation 142. The South Australian Government currently allows for the use of padded cells but not for punitive purposes.*


The **Western Australian** Police Manual states that padded cells are not to be used as punishment and may only be used for temporary prisoner management to restrain violence or aggressive prisoner in the interest of their own and others' safety. The use of a padded cell is recorded in the Custody Management System, and subjected to review and monitoring by the Custodial Services Inspector.

 *The Western Australian Government has partially implemented Recommendation 142. The Western Australian Government currently allows for the use of padded cells, though not for punitive purposes.*

The **Tasmanian** Government stated in their 1995 implementation report that padded cells are not used in any police watch-houses for any reason. Moreover, currently Tasmania Prison Service watch-house cells do not have padded cells.

 *The Tasmanian Government has implemented Recommendation 142, noting that padded cells are not used in police watch-houses.*

The **Northern Territory** Government stated in their 1994-95 implementation report that there is only one padded cell in the NT and no further such cells will be constructed. The use of the padded cell has stringent controls for its use, and is only utilised in the event of a person attempting serious self-harm. Each time the padded cell is used, the event undergoes an independent review and the subsequent report is submitted to the NTPF Custody Steering Committee.

 *The Northern Territory Government has partially implemented Recommendation 142. The Northern Territory Government currently allows for the use of padded cells but not for punitive purposes.*

Additional commentary

The AFP noted that if ACT Policing were to implement this recommendation in full (that is, to discontinue the use of padded cells) this would immediately increase the risk of injury and/or death to persons in custody who are behaving in a violent and/or uncontrollable manner, and/or who have indicated self-harm while in custody.

Recommendation 143

All persons taken into custody, including those persons detained for intoxication, should be provided with a proper meal at regular meal times. The practice operating in some jurisdictions of excluding persons detained for intoxication from being provided with meals should be reviewed as a matter of priority.

Background information

The RCIADIC Report identified that some jurisdictions had policies to withhold food from persons taken into custody who are intoxicated. It was found that withholding food could increase the risk of harm to a person due to the relationship between alcohol misuse, diabetes, hypoglycaemia and malnutrition.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the *1995-96 Annual Report*, the Commonwealth noted that this recommendation was addressed by the AFP Australian Capital Territory

Regional Instruction 22. The AFP noted that persons in custody are provided with regular meals, with any allergies, medical needs and religious restrictions taken into account.


 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 143, as reported in the 1995-96 Annual Report and confirmed by the AFP.*

In **New South Wales**, under section 207(2)(e) of the *Law Enforcement Powers and Responsibilities Act 2002* (NSW), an intoxicated person who is detained must be provided with necessary food, drink, bedding and blanket appropriate to the person's needs.

The NSWPF Code of Practice for CRIME (page 46) states the custody manager is to:


- provide persons in custody at least two light meals and one main meal in any 24-hour period;
- provide drinks at meal times and when they are requested (if reasonable);
- contact the Clinical Forensic Medicine Unit for advice on medical and dietary matters; and
- as far as possible, offer a varied diet and meet special dietary or religious needs.

This recommendation is also covered in the NSW Police Force Police Commissioner's Instructions 155.10.02 and 155.15.01.


 *The New South Wales Government has implemented Recommendation 143 through the Law Enforcement Powers and Responsibility Act 2002 (NSW).*

In their 1994 implementation report, the **Victorian** Government stated that Victoria police policy is that meals are served to all prisoners, but discretion is used in the serving of meals to prisoners charged with drunkenness. This is because it may result in choking or other repercussions.


Currently, the Victoria Police Manual – Guidelines – Safe Management of Persons in Police Care or Custody guide the practices called for by this recommendation. Suspects lodged for drunkenness are released after a period of four hours or depending on their state of sobriety; once they are in a condition to be released, this occurs at the earliest opportunity. Prisoners lodged for drunkenness and other offences are entitled to meals provided they are serving longer-term sentences.

 *The Victorian Government has mostly implemented Recommendation 143. The Victoria Police policy is that meals are served to all prisoners, but discretion is used in the serving of meals to prisoners charged with drunkenness who are detained for a short term.*


In **Queensland**, under section 16.21.13 of the *Queensland Police Service Operational Procedures Manual*, prisoners must be provided with meals three times a day. Additionally, this recommendation is addressed under 16.21.12 of the *Manual*.

 *The Queensland Government has implemented Recommendation 143 through the Queensland Police Service Operational Procedures Manual.*


The **South Australian** Government stated in their 1994 implementation report that all persons admitted into corrections are provided with a meal, unless medical staff advise otherwise. If a meal is declined, the details are entered on the Prisoners Register. Currently, South Australia Police General Orders direct that prisoners are to be provided with breakfast, lunch, and dinner unless they decline the offer.

 *The South Australian Government has implemented Recommendation 143 and prisoners are provided with breakfast, lunch, and dinner unless they decline the offer.*


In their 1995 implementation report, the **Western Australian** Government stated that a meal is not automatically provided at regular meal times to detainees if their state of intoxication indicates that there may be some hazard in their state of health and safety. The risk of choking of detainees who are intoxicated is greater than the benefits so in some cases they may be denied food. The implementation report also noted that this practice is unlikely to change, and this remains current practice. The officer in charge of a lock-up facility has the discretion to provide a meal prior to release.

 *The Western Australian Government has mostly implemented Recommendation 143 through automatically providing meals at meal times. However, discretion is used in the serving of meals to prisoners charged with drunkenness and intoxicated persons will not be provided with a meal on admission.*

The **Tasmanian** Government stated in their 1993 implementation report that this recommendation had been implemented for all detainees in police cells and the prison system.

 *The Tasmanian Government has implemented Recommendation 143, as noted in their 1993 implementation report.*

The **Northern Territory** Government stated in their 1994-95 implementation report that all meals are provided to all detainees at normal meal times provided they are sufficiently sober to consume the meals. This recommendation is also implemented through the *General Order – Custody* which requires that prisoners are to be meals be supplied compliant with the United Nations Minimum Standards for Prisoner Nutrition. The Northern Territory Government also notes that persons held in custody are only to be provided meals when their level of intoxication does not represent a safety risk.

 *The Northern Territory Government has mostly implemented Recommendation 143. Police policy is that meals are served to all prisoners, but discretion is used in the serving of meals to prisoners charged with drunkenness.*

Recommendation 144

That in all cases, unless there are substantial grounds for believing that the well-being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a police cell. Wherever possible an Aboriginal detainee should be accommodated with another Aboriginal person. The views of the Aboriginal detainee and such other detainee as may be affected should be sought. Where placement in a cell alone is the only alternative the detainee should thereafter be treated as a person who requires careful surveillance.

Background information

The RCIADIC Report found that many detainees taken into custody experience distress, isolation, and vulnerability. Placing Aboriginal and Torres Strait Islander detainees in cells with other Aboriginal and Torres Strait Islander persons may help reduce their sense of isolation.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the *1995-96 Annual Report*, the Commonwealth noted the recommendation would be complied with, once construction of new cells at Jervis Bay Territory is complete. The AFP Practical Guide on *Duty of Care, 'at-risk' and special needs detainees in the Watch-House* details that Aboriginal and Torres Strait Islander persons are to be offered cell placement with other Aboriginal and Torres Strait Islander detainees (if there are others in custody) or an individual cell. It is up to the detainee to decide whether they would be more comfortable placed in a cell with others or on their own (the other persons in the cell are also consulted). All Aboriginal and Torres Strait Islander persons are considered to be 'at-risk' and therefore additional measures are taken to monitor their period in custody.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 144 through the AFP's policies and procedures.*

In **New South Wales**, the *NSW Police Force: Code of Practice for CRIME* states police officers must attempt to place Aboriginal prisoners with another Aboriginal person.


In New South Wales, this is covered in the NSWPF's Police Commissioner's Instructions 155 - Screening prisoners. The NSWPF complies with *Law Enforcement (Powers and Responsibilities)*

Regulation 2016 Part 2, Clause 4 which states "If an Aboriginal person or Torres Strait Islander who is not a child is placed in a cell:


- wherever possible, that person should be accommodated with another Aboriginal person or Torres Strait Islander who is not a child, and
- the person should not be placed alone in the cell unless there is no reasonably practicable alternative."

The NSWPF Standard Operating Procedures for CCTV Digital Video Management System states that any surveillance system coverage areas of the Custodial areas will provide live viewing and recording of all persons processed or detained in these areas.


The Code of Practice for CRIME states police officers must check the condition and review the risk assessment of each person at least every hour or more frequently if needed. Risk assessment of people in custody is an ongoing process; the higher the risk, the more frequent the inspection and assessment should be. All assessments are to be conducted in person, not by video.

 *The New South Wales Government has implemented Recommendation 144 through the NSW Police Force: Code of Practice for CRIME.*


The **Victorian** Government stated in their 1994 implementation report that this recommendation has been addressed in the *Victoria Police Operating Procedures Manual*. This report also stated that it is standard practice not to place prisoners in cells by themselves, unless for a specific reason. It is also general practice to place Aboriginal and Torres Strait Islander prisoners in cells with other Aboriginal and Torres Strait Islander prisoners if the circumstances permit. However, the 2005 implementation report stated that the Manual "does not discriminate for race, creed or colour". Prisoners who are "suicidal, ill or suffer mental problems" are not isolated or lodged alone, and strict criteria are applied in the monitoring of these persons and if it is practical to bail these offenders it is done at the earliest opportunity. However, despite these provisions, police face difficulties where prisoners are behaving in an anti-social manner or creating danger to other prisoners.

 *The Victorian Government has mostly implemented Recommendation 144 through the Victoria Police Operating Procedures Manual. However, it is unclear whether Aboriginal and Torres Strait Islander detainees are lodged with other Aboriginal and Torres Strait Islander detainees where possible.*

In **Queensland**, chapter 16 of the *Operational Procedures Manual* states that Aboriginal and Torres Strait Islander prisoners are to be placed in a multi-prisoner cell, preferably with other Aboriginal and Torres Strait Islander prisoners unless there is considered to be a threat created by placing them together.

 *The Queensland Government has mostly implemented Recommendation 144 through the Operational Procedures Manual. However, it is not clear whether Aboriginal and Torres Strait Islander prisoners are identified as needing careful surveillance if placed in a cell alone.*

South Australia have implemented this recommendation in full through their *General Order – Arrest and Custody management* document, which states that it is encouraged that Aboriginal and Torres Strait Islander prisoners share cells, unless tribal conflicts are likely. The South Australian Government notes that the provisions made by this recommendation have been incorporated into South Australia Police practice.

 *The South Australian Government has implemented Recommendation 144 through the General Order – Arrest and Custody Management.*

Western Australia have addressed this recommendation in their *Western Australian Police Manual* which states that it is encouraged that Aboriginal and Torres Strait Islander prisoners share cells, unless tribal conflicts are likely. Current practice is that custodial placements for Aboriginal and Torres Strait Islander people in custody are made on a case-by-case basis after considering risk on a personal and cultural level.

- *The Western Australian Government has implemented Recommendation 144 in their Western Australian Police Manual.*

The **Tasmanian** Government have stated in their 1993 implementation report that Tasmanian police watch houses contain only one bed per cell.

- *The Tasmanian Government has not implemented Recommendation 144. There does not appear to have been actions taken to address this recommendation as it relates to police cells or the surveillance provided when an Aboriginal and Torres Strait Islander prisoner is in a cell alone.*

In their 1994-95 implementation report, the **Northern Territory** Government stated that they addressed this recommendation through a minor amendment to *General Order – Prisoners – Code P12*. The *General Order – Custody* provides advice to staff on the importance of being aware of Aboriginal and Torres Strait Islander cultural requirements when selecting cell placements in the watch house. Where possible, Aboriginal persons should be placed in a multi-prisoner cell, preferably with another Aboriginal person, unless there is an identified threat from placing them together or the person objects. An Aboriginal person who is alone in a cell is to be regarded as a greater risk than normal.

- *The Northern Territory Government has implemented Recommendation 144 through an amendment to General Order – Prisoners – Code P12.*

Additional information

The Tasmanian Government noted that in relation to the Tasmania Prison Service, Aboriginal and Torres Strait Islander prisoners may request accommodation amongst their peers, including 'buddy cells' where available. This provides the opportunity to be accommodated in family, community or language groups, which will provide a supporting environment.

Recommendation 145

That:

- a. In consultation with Aboriginal communities and their organisations, cell visitor schemes (or schemes serving similar purposes) should be introduced to service police watch-houses wherever practicable;*
- b. Where such cell visitor schemes do not presently exist and where there is a need or an expressed interest by Aboriginal persons in the creation of such a scheme, government should undertake negotiations with local Aboriginal groups and organisations towards the establishment of such a scheme. The involvement of the Aboriginal community should be sought in the management and operation of the schemes. Adequate training should be provided to persons participating in such schemes. Governments should ensure that cell visitor schemes receive appropriate funding;*
- c. Where police cell visitor schemes are established it should be made clear to police officers performing duties as custodians of those detained in police cells that the operation of the cell visitor scheme does not lessen, to any degree, the duty of care owed by them to detainees; and*
- d. Aboriginal participants in cell visitor schemes should be those nominated or approved by appropriate Aboriginal communities and/or organisations as well as by any other person whose approval is required by local practice.*

Background information

The RCIADIC Report identified that visits from the community, family and friends could assist with improving the behaviour of Aboriginal and Torres Strait Islander detainees, and reduce incidents of suicide and self-harm.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* states that a watch-house sergeant may permit arranged visits to persons in custody by their family members, legal advisors, or other appropriate persons, and that visiting times should not be unreasonably restrictive (paragraph 33). The *Crimes Act 1914* (Cth) stipulates that a legal aid organisation and an interview friend should be contacted on behalf of Aboriginal and Torres Strait Islander persons as part of the questioning process. The ACT Aboriginal Interview Friends Scheme was established to provide support and assistance through community volunteers to Aboriginal and Torres Strait Islander people when brought into police custody for interview. The scheme is managed by the Aboriginal Justice Centre. The AFP confirmed that members of ACT Policing understand their responsibilities for duty of care and that the presence of any visitor in the watch-house does not diminish their responsibilities for duty of care of detainees.

 *In Commonwealth and the Australian Capital Territory, Recommendation 145 has been implemented through the AFP National Guideline, legislated requirements, and the establishment of the Aboriginal Interview Friends Scheme in the ACT.*


The **New South Wales** Government stated in their 1995-96 implementation report that formal cell visitor schemes are in place at a local level and vary between locations.

The NSWPF Code of Practice for CRIME states the Custody Manager of a Police Station should, "Make every effort to advise relatives, friends or Aboriginal Legal Aid of Aborigines or Torres Strait Islanders in custody, and encourage them to visit. Where practical arrange visits by relatives, friends, Aboriginal community liaison officers or representatives of community groups".

 *The New South Wales Government has partially implemented Recommendation 145, however no provision appears to have been made in response to parts (c) and (d) of this recommendation.*

The **Victorian** Government stated in their 1994 implementation report that there was no specific "cell visitor scheme"; however, the visitation rights of all prisoners are set out in the police gaols regulations. Aboriginal Community Justice Panels have also been established which have the aim of ensuring the wellbeing of Aboriginal and Torres Strait Islander people. One component of ensuring the wellbeing of Aboriginal and Torres Strait Islander people is to encourage family and friends to visit the person in custody.

Additionally, the Aboriginal Community Justice Panel volunteer attends the police station and conducts a welfare check to ensure the person in custody is safe, that relevant medical information is shared, and that families are notified of the person's whereabouts. Aboriginal Community Justice Panel volunteers also work to improve the relationship between local police and Aboriginal and Torres Strait Islander communities through regular meetings and a variety of youth-focused social, sporting and recreational activities. The Victorian Aboriginal Legal Service is currently funded to employ a coordinator who provides secretariat support to the Statewide Executive, training and support to volunteers.

 *Victoria has partially implemented Recommendation 145. Although no cell visitor scheme has been established, several initiatives have aimed to encourage Aboriginal and Torres Strait Islander detainees to have family and friends visit. However, parts (c) and (d) have not been addressed.*

In **Queensland**, section 420 of the *Police Powers and Responsibilities Act 2000* (Qld) states that a police officer must allow an Aboriginal and Torres Strait Islander person access to a support person and legal aid as part of the questioning process. In addition, Queensland has in place a cell visitors' scheme which assists with the observation of prisoners, facilitates communication between prisoners and watch-house staff, offers company, support and counselling to the prisons, prevents attempts at

self-harm, identifies symptoms suggesting the need for medical attention, and provides information about support services to prisoners. This is set out in section 16.22 of the *Queensland Operational Procedures Manual*.

- *Queensland has implemented Recommendation 145 through the Police Powers and Responsibilities Act 2000 (Qld) and the Queensland Operational Procedures Manual.*

South Australia has in place an Aboriginal Visitors Scheme which is run by the Aboriginal Legal Rights Movement. This scheme aims to provide Aboriginal and Torres Strait Islander people with comfort, care, and support when they have been arrested. It also aims to assist police in their duty of care.

- *South Australia has implemented Recommendation 145 through the Aboriginal Visitors Scheme.*

In **Western Australia**, this recommendation is partly covered by standard A41 of the *Inspection Standards for Aboriginal Prisoners* which states that an Aboriginal Visitors' Scheme should be established at every prison with Aboriginal prisoners. This scheme would link Aboriginal and Torres Strait Islander prisoners with their community. This scheme has been developed and is currently being run by the WA Department of Justice²⁵. The program provides support and counselling to Aboriginal and Torres Strait Islander people detained in police lock-ups, prisons and Banksia Hill Detention Centre. The arrangement means that Aboriginal and Torres Strait Islander people detained in Western Australian Police metropolitan and regional lock-ups, and the Perth Watch-house have access to the Aboriginal Visitors Scheme at all times of the day and night, either in person or via the phone. The Department of Justice provides a free-call number in its Operations Centre, which the Western Australia Police Force can call and request a call-back from a member of the Aboriginal Visitors Scheme.

- ◐ *The Western Australian Government has mostly implemented Recommendation 145 through the Aboriginal Visitors Scheme. However, it is unclear whether this is available in all locations across Western Australia.*

In their 1993 implementation report, the **Tasmanian** Government stated that they do not consider these recommendations necessary since the current visiting procedures were deemed adequate with virtually no restrictions on visits to Aboriginal and Torres Strait Islander people in custody. The Tasmanian Government noted that cell visitor schemes do not currently operate within Tasmania Prison Service watch-house facilities.

- *The Tasmanian Government has not implemented Recommendation 145 and visitor schemes do not currently operate in Tasmanian custodial facilities.*

The **Northern Territory** Government stated in their 1994-95 implementation report that they have in place an Aboriginal Visitor Scheme which was introduced as a result of the RCIADIC. They also have in place an informal arrangement at Ngukurr where the gates to the compound are left open at all times to allow residents of the community to visit and talk with prisoners. The *General Order – Prisoners – Code P12* provides for a cell visitor scheme and has been amended to also involve Aboriginal and Torres Strait Islander communities in the management of the scheme. The report also stated that this code was amended to address parts (c) and (d) of this recommendation. This recommendation is also incorporated in the *General Order – Custody Part IV* which outlines the operation of the cell visitor scheme.

- *The Northern Territory Government has implemented Recommendation 145 through the introduction of an Aboriginal Visitor Scheme, the Ngukurr arrangement, and the General Order – Prisoners – Code P12 and General Order – Custody Part IV.*

²⁵ <http://www.correctiveservices.wa.gov.au/rehabilitation-services/aboriginal-visitors-scheme.aspx>

Recommendation 146

That police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody.

Background information


The RCIADIC Report identified that visits from the community, family and friends could assist with improving the behaviour of Aboriginal and Torres Strait Islander detainees, and reduced incidents of suicide and self-harm.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* states that a watch-house sergeant may permit arranged visits to persons in custody by their family members, legal advisors, or other appropriate persons, and that visiting times should not be unreasonably restrictive. However, the Guideline does not go so far as to require police to encourage visits. In addition, the ACT implemented the Aboriginal Interview Friends Scheme Program which involves a number of community volunteers who provide support and assistance to Aboriginal and Torres Strait Islander people when brought into police custody for interview²⁶. Currently, ACT Policing policy allows visitation of persons in police custody and these visits are facilitated in accordance with the safety and security requirements of the ACT watch-house. ACT Policing has also noted a commitment to undertaking to review the visitation policy for detained persons.


 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 146 through the AFP National Guideline. However, the Guideline does not appear to specify police encouragement, rather than just facilitation, of visitors.*

New South Wales' NSW Police Force: *Code of Practice for CRIME* states that the custody manager must make every effort to advise relatives or friends of Aboriginal people in custody and encourage them to visit.

The NSWPF also has the Custody and Victim Support Program that identifies volunteers from the Aboriginal community who after undertaking appropriate training will support any Aboriginal persons being questioned, arrested or detained as well as support victims while their statements are being taken. NSWPF also ensures that the Aboriginal Legal Service NSW/ACT is contacted as soon as an Aboriginal is taken into custody.

 *The New South Wales Government has implemented Recommendation 146 under the NSW Police Force: Code of Practice for CRIME.*


Victoria has set out in the *Victoria Police Manual* guidelines for visits by family and friends, which provide that detainees should be allowed to have friends or family visit them.

 *The Victorian Government has implemented Recommendation 146 under the Victoria Police Manual guidelines.*


In **Queensland**, *Just Futures 2012-2015* sets the strategy for improving safety in Queensland's Aboriginal and Torres Strait Islander communities and to reduce the over-representation of Aboriginal and Torres Strait Islander people as victims and offenders in Queensland's youth detention and correctional centre. This strategy states that a key action to improve transitions from prison for Aboriginal and Torres Strait Islander people is to ensure all Aboriginal and Torres Strait Islander

²⁶ <http://www.healthinfor.net.ecu.edu.au/key-resources/programs-projects?pid=2076>


offenders have the opportunity to maintain connections with their families through video link-ups and face-to-face visits where appropriate²⁷.

 *The Queensland Government has implemented Recommendation 146 through video link-ups and face-to-face visits provided under the Just Futures 2012-2015 strategy.*


South Australia has partially addressed this recommendation in the *SAPOL General Order - Arrest and Custody Management* which states that a visitor from the Aboriginal Visitors Scheme should be requested as soon as an Aboriginal and Torres Strait Islander person is detained. Although there is not specific mention of encouraging family and friends to visit the prisoner. The South Australian Government note that this recommendation is currently met through SAPOL practice, as outlined in *General Order – Prisoners*.

 *The South Australian Government notes that Recommendation 146 has been incorporated into SAPOL practice, as outlined in General Order – Prisoners.*


In **Western Australia**, the Department of Justice website states that visitors are welcome to all WA prisons. Family and friends are encouraged to maintain contact with prisoners throughout their sentence. Visits are an important link in preparing prisoners for their life in the community when they are released²⁸. Visits are also encouraged through the Western Australian Aboriginal Visitors Scheme, discussed in the Western Australian response to Recommendation 145.

 *The Western Australian Government has implemented Recommendation 146, and visits from families and friends are encouraged.*

In their 1993 implementation report, the **Tasmanian** Government stated that this recommendation is not considered necessary as people are not detained in police custody for any lengthy periods.

 *The Tasmanian Government has not implemented Recommendation 146, as the recommendation was deemed unnecessary in their 1993 implementation report.*

The **Northern Territory** Government stated in their 1994-95 implementation report that *General Order – Prisoners – Code P12* has been amended to more fully reflect this requirement. However, because of the relatively large numbers of short-term prisoners, this is impractical at larger police stations. The Northern Territory Government notes that the NPTF has introduced measures aimed at promoting community and family engagement for Aboriginal and Torres Strait Islander persons in custody, including making reasonable efforts to contact persons nominated by the person in custody.

 *The Northern Territory Government has mostly implemented Recommendation 146. It is unclear to what extent this recommendation has been implemented in large police stations.*

Recommendation 147

That police instructions should be amended to make it mandatory for police to immediately notify the relatives of a detainee who is regarded as being 'at risk', or who has been transferred to hospital.

Background information

The notification, support or presence of family members can help improve the well-being of family and detainees, particularly those who are 'at risk', unwell, or otherwise vulnerable.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


²⁷

<https://www.cabinet.qld.gov.au/documents/2011/Sep/ATSI%20Justice%20Strategy/Attachments/Att%201%20Queensland%20Aboriginal%20and%20Torres%20Strait%20Islander%20Justice%20Strategy%202012-2015.PDF>


²⁸ <https://www.correctiveservices.wa.gov.au/prisons/visiting-prisons/default.aspx>

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* requires notification to a detainee's family, next of kin, nominated contact person or representative body if the detainee suffers a serious injury or dies (paragraph 21). However, the Guideline does not expressly require notification in relation to detainees who are 'at risk' or have been transferred to a hospital.


 *The Commonwealth and the Australian Capital Territory Governments have mostly implemented Recommendation 147 through the AFP National Guideline. However, it appears that the Guideline does not expressly require notification for detainees who are 'at risk' or have been transferred to a hospital.*

In **New South Wales**, under the *NSW Police Force Code of Practice for CRIME*, relatives must be notified if a detainee has been taken to hospital or is at risk. The NSWPF is also required to take all reasonable steps to notify a friend or relative, to their doctor. This recommendation is also covered in the NSW Police Commissioner's Instructions 155.01 (Screening of Prisoners) and 155.08 (Release).


 *The New South Wales Government has implemented Recommendation 147 through the NSW Police Force Code of Practice for CRIME.*

Section 2.3 of the **Victoria** *Police Manual – Guidelines: Safe Management of persons in police care or custody* – states that if a prisoner is taken to hospital then a police officer must ask a detainee if they want their friends or relatives notified. The 2005 Victorian Implementation Report also notes that the Victorian Aboriginal Legal Service and the Aboriginal community justice panel are notified when a prisoner who is at risk is brought into custody.


The notification of Victoria ALS and the ACJP who will facilitate the notification to family and friends of Aboriginal and Torres Strait Islander people detained in custody is required under the *Victoria Police Manual – Guidelines – Safe Management of Persons in Police Care or Custody*. In order to protect prisoners and the police, prisoner warning flags are submitted on all prisoners who are at-risk or a risk while in police custody.

 *The Victorian Government has partially implemented Recommendation 147 by requiring that police must ask a person if they want their friends or relatives notified. However, police are not mandated to notify friends or relatives of detainees who have been transferred to hospital.*


In **Queensland**, chapter 16 of the *Operational Procedures Manual* states that the next of kin is to be notified where a prisoner has been transferred from a watch-house for medical attention.

 *The Queensland Government has partially implemented Recommendation 147. It appears that only the next of kin is notified, and that notification only occurs when a prisoner has been transferred not for detainees who are 'at risk'.*


The **South Australian** Government note that all practical efforts are made to notify relatives. While practical difficulties are experienced with the definition of 'at risk', the principle of the recommendation is followed.

 *The South Australian Government has mostly implemented Recommendation 147, however notes practical difficulties in defining 'at risk'.*


Western Australia has mostly addressed this recommendation in the *Western Australian Police Manual*. This manual states that the next of kin or person nominated by the prisoner must be notified if a prisoner is seriously ill, injured, or attempts suicide. Police Lockup Management Procedures also make it mandatory for officers to liaise with the Police Operations Centre or the Internal Affairs Unit to seek approval to inform the next of kin or any other person previously nominated by the detainee.

 *The Western Australian Government has mostly implemented Recommendation 147, however it does not appear that notification is required to be immediate.*

The **Tasmanian** Government stated in their 1993 implementation report that this recommendation had been addressed in gazette notice 13/9.

 *The Tasmanian Government has implemented Recommendation 147 through the gazette notice 13/9, as noted in their 1993 implementation report.*

In their 1994-95 implementation report, the **Northern Territory** Government stated that there are significant practical limitations for police notifying relatives in all cases. To fulfil this obligation, police may need to go to extraordinary measures to locate relatives, which would be detrimental to other operational procedures. An amendment to *General Order – Prisoners – Code P12* was made to address this recommendation where practical. The *General Order – Custody* provides directions to staff on actions required for the care of persons in custody to be considered 'at risk', including a requirement to inform family and community members of any transfer to a medical facility. Under this policy, there is also a requirement that persons showing emotional or physical distress be examined.

 *The Northern Territory Government has mostly implemented Recommendation 147 through General Order – Prisoners – Code P12. However, practical limitations are noted.*

Recommendation 148

That while there can be little doubt that some police cell accommodation is entirely substandard and must be improved over time, expenditure on positive initiatives to reduce the number of Aboriginal people in custody discussed elsewhere in this report constitutes a more pressing priority as far as resources are concerned. Where cells of a higher standard are available at no great distance, these may be able to be used. More immediate attention must be given to programs diverting people from custody, to the provision of alternative accommodation to police cells for intoxicated persons, to bail procedures and to proceeding by way of summons or caution rather than by way of arrest. All these initiatives will reduce the call on outmoded cells. The highest priority is to reduce the numbers for whom cell accommodation is required. Where, however, it is determined that new cell accommodation must be provided in areas of high Aboriginal population, the views of the local Aboriginal community and organisations should be taken into account in the design of such accommodation. The design or re-design of any police cell should emphasise and facilitate personal interaction between custodial officers and detainees and between detainees and visitors.

Background information


The RCIADIC Report determined that some police cell accommodation is unsuitable for extended detention and lacks facilities including toilets, exercise areas and proper lighting.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. Australian Capital Territory policing has a strong focus on diversion, and where possible and appropriate, all persons will be diverted from custody through referral to diversion programs, or the issuing of warnings or cautions. If diversion is not an option and a person is arrested they are transferred to the ACT watch-house. There is only one watch-house facility in the ACT. Facilities at the ACT watch-house are sufficient as to allow for interaction between detainees and staff as well as allow interaction between detainees and visitors. Cells 5 and 6 at the ACT watch-house allow for detainees to have visitors, the process for which is governed by the AFP Practical Guide on Watch House Detainee Administration. ACT watch-house staff will always offer Aboriginal and Torres Strait Islanders the option of being housed with other detainees if it is safe and appropriate to do so.


 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 148 through the AFP's focus on diversion and the facilities at the ACT Watch House.*

In their 1995-96 implementation report, the **New South Wales** Government stated that they had addressed this recommendation through four main actions. Firstly, all cells still in use have been, or are in the process of being, substantially upgraded to ensure maximum observation of detainees and the elimination of all identified hanging points. Secondly, they implemented strategies such as the use of summonses, Court Attendance Notices and cautions to divert offenders. They also began to divert intoxicated persons to responsible adults and only detain the person if the conduct of the person such that no other option was appropriate. Arrest as a last resort is a guiding principle for the NSWPF, and it is common practice for rural police not to arrest when the threat of conflict is at its highest and to instead concentrate on defusing and settling the situation. Thirdly, they sought views from the local Aboriginal community on the design of police cells. Lastly, all cells were redesigned to facilitate interaction between detainees, the police and cell visitors. Recent updates to these actions are reported in the New South Wales Corrective Services' *Aboriginal Offender Strategic Plan (2010-2012)*²⁹, which sets key priorities for increasing diversion of Aboriginal offenders from custody. Two of these priorities included engaging with Aboriginal communities when developing alternatives to custody and also using the skills of Aboriginal staff to develop diversion programs.

 *In New South Wales, Recommendation 148 has been implemented as the 1995-96 implementation report notes.*

Victoria's 1994 implementation report stated that the design of cells for the Victoria Police Building Program emphasises and facilitates personal interaction between custodial officers and detainees and visitors. Throughout this program there was consultation with the Aborigines Advancement League Inc., Victorian Aboriginal Legal Services Cooperative, Prisoners Reform Group and the Australian Association of Prisoner Support Organisations. However, the 2005 Victorian implementation report stated that new police stations and cells in the state were "designed for security of both prisoners and police", and that "the view of the local Aboriginal community should not influence and compromise this security".

A 2014 state-wide review conducted of all police cells resulted in some being decommissioned and the remaining categorised into either police cells (suitable for longer term detention) or holding rooms (suitable for overnight detention only). Police cells are inspected annually by the Prisoner Management Unit to ensure their suitability and compliance with suicide and self-harm prevention and human rights. Additionally, enhanced supervision is in place with custody issues and all cells that house prisoners come with CCTV monitors; two watch-house keepers are allocated to stations with prisoners. The Victorian Government notes that there are currently no police cells that are substandard.

 *The Victorian Government has mostly implemented this recommendation through the Victoria Police Building Program, which consulted with Aboriginal and Torres Strait Islander groups in designing cells and has improved existing cells. However, it appears that recent police station redesigns have placed less priority on consultation with Aboriginal and Torres Strait Islander communities.*

The **Queensland** Government stated in their 1997 implementation reported that, in appropriate circumstances, Aboriginal and Torres Strait Islander prisoners are granted bail and transferred to existing Diversionary Centres. They also stated that consultation with local groups does not take place. This recommendation is now addressed in section 16.6 of the Queensland Police Services *Operating Procedures Manual* and sections 376 to 381 of the *Police Powers and Responsibilities Act 2000* (Qld).


 *The Queensland Government has implemented Recommendation 148 through Queensland Police Services' Procedures Manual and the Police Powers and Responsibilities Act 2000 (Qld).*

In their 1994 implementation report, the **South Australian** Government stated that diverting people from custody should be a priority. Cell design was discussed with local Aboriginal and Torres Strait

²⁹


http://www.correctiveservices.justice.nsw.gov.au/Documents/aboriginal/Aboriginal_Strategy_111114_Accessible.pdf

Islander representatives. For more information about the actions relevant to this recommendation please see recommendations 80, 85, and 89. A number of Community Policing initiatives are directed towards reducing the interface between Aboriginal and Torres Strait Islander people and police cells (i.e. Police Drug Diversion, Adult Cautioning Program, Public Intoxication Act provisions re: sobering up centres).


 *In South Australia, Recommendation 148 has been implemented through the implementation of diversionary programs and ongoing consultation with Aboriginal and Torres Strait Islander communities.*

The **Western Australian** Government stated in their 1995 implementation report that consultation with Aboriginal and Torres Strait Islander organisations whenever new police lock-up facilities are to be constructed. The police services have also developed the *Custodial Design Guidelines* in response to this recommendation.


The Perth Watch-house was designed in consultation with Aboriginal and Torres Strait Islander people to reflect cultural needs. The Western Australian Government has also contributed funding towards sobering-up centres to provide safe, supervised overnight care to intoxicated people and referral to other services where necessary to address underlying issues, such as homelessness or severe alcohol dependence.

 *The Western Australian Government has implemented Recommendation 148 through revised lock-up design processes, and the provision of funding for sobering-up centres.*

Tasmania's 1993 implementation report stated that *Tasmania Police Standing Order 144* partly addresses this recommendation with regards to the diversion from custody of Aboriginal and Torres Strait Islander people. The Tasmanian Government also stated in this report that consultation is ongoing with regards to detoxification centres. Tasmania Police implemented a program of improving cell conditions and restricting their use to Hobart, Launceston and Burnie centres. This included the decommissioning of outmoded cells in regional stations and major centres.

 *In Tasmania, Recommendation 148 has been implemented through the upgrading of cells and ongoing consultation with Aboriginal and Torres Strait Islander communities.*

In their 1994-95 implementation report, the **Northern Territory** Government stated that they have put in place measures such as alternative accommodation, summons and bail, as well as proactive strategies in communities to reduce the incidence of crime and violence, which in turn reduces the number of Aboriginal and Torres Strait Islander people taken into custody. In addition, new cell designs are in place in new stations. The NPTF Custody Steering Committee has also commissioned the development of an NPTF Custody Cell design guide which would provide a consistent and compliant-with-best-practice cell complex design for use in all new builds and renovation activities.

 *In the Northern Territory, Recommendation 148 has been implemented as noted in the 1994-95 implementation report. Additionally, the cell design guide has been updated to incorporate the intent of this recommendation.*

Recommendation 149

That Police Services should recognise, by appropriate instructions, the need to permit flexible custody arrangements which enable police to grant greater physical freedoms and practical liberties to Aboriginal detainees. The Commission recommends that the instructions acknowledge the fact that in appropriate circumstances it is consistent with the interest of the public and also the well-being of detainees to permit some freedom of movement within or outside the confines of watch-houses.

Background information

The RCIADIC Report determined that flexible custody arrangements (including allowing detainees to sit with family and friends), as well as increased freedom of movement could improve the wellbeing of Aboriginal and Torres Strait Islander detainees.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In the 1995-96 *Annual Report*, the **Commonwealth** noted that in the **Australian Capital Territory**, the AFP has in place flexible custody arrangements, and will have an enhanced capacity to implement this recommendation following the construction of new Jervis Bay Territory cells. The design of the watch House allows detainees to have access to areas where they can move around more freely, and are not confined directly to their cell. The AFP Practical Guide on *Duty of Care, 'at-risk' and special needs detainees in the Watch-House* requires that Aboriginal and Torres Strait Islander persons are to be offered cell placement with other Aboriginal and Torres Strait Islander detainees (if there are others in custody) or an individual cell. The practical guide further details that Aboriginal and Torres Strait Islander detainees should also be given opportunity for wider range of movement within the exercise yard area of the cell block.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 149 through the AFP's flexible custody arrangements in place.*


The **New South Wales** Government stated in their 1995-96 implementation report that the police service has incorporated this recommendation into Commissioner's Instruction 155.01.07, which governs freedom of movement in watch houses, and that this recommendation is aimed at those services which tend to hold persons in custody for long periods of time. This is monitored by Local Area Commanders and the Aboriginal Co-ordination Unit. The Department of Juvenile Justice also takes into account the needs of Aboriginal detainees and will allow them to attend funerals of significant others and family. It is the NSWPF's current practice to aim to release all prisoners on bail, and to transfer those who are refused bail to CSNSW. All Patrol Commanders, particularly in rural areas, have the authority to provide prisoners with whatever physical freedom they deem appropriate in the circumstances.

 *The New South Wales Government has implemented Recommendation 149 through the Police Commissioner's Instruction 155.01.07 and ongoing practices.*


The **Victorian** Government stated in their 1994 implementation report that it is not appropriate for the police to allow prisoners to leave the environs of the cell block or the confines of the watch-house. This would breach police policy regarding security. This position was confirmed in Victoria's 2005 implementation report. However, the Victorian Government has advised that current practice is that cells are built with external fresh air exercise yards, which allow freedom of movement.

 *The Victorian Government has implemented Recommendation 149 through the introduction of fresh air exercise yards in police cells.*


In their 1997 implementation report, the **Queensland** Government stated that their new watch-houses comply with current human rights standards. In remote Aboriginal and Torres Strait Islander communities, the police service has developed a separate standard for new watch-houses in consultation with the Aboriginal and Torres Strait Islander community councils and the Aboriginal Justice Advisory Committee.

 *The Queensland Government has partially implemented Recommendation 149, however no reference is made to freedom of movement or to flexible custody arrangements.*

The 1994 **South Australian** implementation report stated that the principle of their recommendation is supported and covered in General Orders. The outcome is dependent upon the reason for custody and design of custodial accommodation.

 *The South Australian Government has mostly implemented Recommendation 149 through the General Orders. However, it is noted that practical implementation is dependent on the reason for custody and design of custodial accommodation.*


The **Western Australia** Government stated in their 1995 implementation report that this recommendation had been implemented in certain areas where police service Aboriginal and Torres Strait Islander communities. However, they also note the potential problems with this recommendation, such as placing the custodian at risk of prosecution in the event of an incident and that it could cause disquiet amongst other detainees that were not granted such freedoms due to racial differences. It is further noted by the Western Australian Government that the movement and use of custodial spaces is based on the safety of detainees, officers and staff, and safe movements within facilities.

 *The Western Australian Government has implemented Recommendation 149, and provides exercise spaces where appropriate.*

The **Tasmanian** Government noted in their 1993 implementation report that they rejected this recommendation since it was deemed inappropriate because “Tasmanian Aboriginal and Torres Strait Islander people did not live in a traditional Aboriginal and Torres Strait Islander lifestyle”.

 *The Tasmanian Government has not implemented Recommendation 149, as it was deemed inappropriate for Aboriginal and Torres Strait Islander people.*

In their 1994-95 implementation report, the **Northern Territory** Government stated that NT policy is that in remote stations freedom of movement within the confines of the police station perimeters and cell areas is generally allowed. In urban areas, for general public security, prisoners are not normally allowed the freedom as in remote stations. Overall, the policy is for prisoners to spend as little time as possible in police custody.

 *The Northern Territory has partially implemented Recommendation 149 through providing for freedom of movement within the confines of the police station and cell areas. however, prisoners are not allowed the freedom in urban areas.*

Recommendation 150

That the health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public. Services provided to inmates of correctional institutions should include medical, dental, mental health, drug and alcohol services provided either within the correctional institution or made available by ready access to community facilities and services. Health services provided within correctional institutions should be adequately resourced and be staffed by appropriately qualified and competent personnel. Such services should be both accessible and appropriate to Aboriginal prisoners. Correctional institutions should provide 24 hour a day access to medical practitioners and nursing staff who are either available on the premises, or on call.

Background information

The RCIADIC noted the need to provide healthcare equivalent to that provided to the general public. They also found that not providing 24-hour a day healthcare may result in a prisoner not being assessed upon reception and corrections staff with inadequate knowledge being responsible for prisoners who are at risk.


Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **New South Wales** Government stated in their 1995-96 implementation report that all correctional centres have access to 24-hour nursing, psychiatry and medical officer on-call rosters. NSW Corrections health service’s policy is that for any medical emergency a prisoner must be taken to the nearest public hospital. Aboriginal prisoners in Long Bay and some metropolitan centres also receive general practitioner services provided by a medical officer employed by the Aboriginal Medical Services. Currently in New South Wales, the Justice Health & Forensic Mental Health Network (JH&FMHN) provide health care in all correctional centres to the equivalent standard to that available to the general public. All clinical staff are highly trained, qualified and competent, and JH&FMHN


services are both assessable and appropriate to Aboriginal patients. For all correctional centres, there is 24 hours access available to on call medical services.

 *The New South Wales Government has implemented Recommendation 150 as noted in their 1995-96 implementation report and through the ongoing function of the JH&FHMN.*


In their 1994 and 2005 implementation reports, the **Victorian** Government stated that health care for persons in Victorian prisons is of a standard equivalent to that available to members of the general public, while also taking into account the special health care needs of prisoners. On reception, all Aboriginal and Torres Strait Islander prisoners receive an extensive health check which includes a psychiatric check and diagnostic tests. Any emergency services required by prisoners is supplied through local hospitals with certain prisons having additional services; for example, Fairlea Female Prison has 14-hour nursing cover per day. Dental services are also available throughout Victorian prisons.

 *The Victorian Government has implemented Recommendation 150, as noted in their 1994 and 2005 implementation reports.*


In the 1997 implementation report, the **Queensland** Government stated that every secure centre has a 24-hour nursing service and an on-call service for visiting medical officers. Queensland Health is responsible for the delivery of health services in publicly operated prisons and for mental and oral health for all correctional centres. Privately operated prisons are responsible for delivering their own health services, funded by Queensland Corrective Services.

 *The Queensland Government has mostly implemented Recommendation 150, through the provision of a 24-hour nursing service and on-call medical officers. However, it is unclear the level of access that prisoners have to broader allied health services.*

The **South Australian** Government stated in their 1994 implementation report that the Prison Medical Service is committed to the principle that as far as possible, health care available to people in correctional institutions should be of an equivalent standard to that available to the general public. The implementation report also stated that the health services for South Australian prisoners are of a high standard and include 24-hour infirmaries at the Adelaide Remand Centre and Yatala Labour Prison. South Australia Prison Health Services provides all health services to prisoners within South Australia. A 2017 pilot of Aboriginal Health Practitioners provides clinical in-reach services to Aboriginal and Torres Strait Islander prisoners within Port Augusta Prison, Mobilong and the Adelaide Women's Prison. The South Australian Government is currently designing a model of care that attends to the broad needs of the Aboriginal and Torres Strait Islander adult prison within the nine prisons across South Australia. Youth Justice uses a service hub approach, where access to health care includes seeing a doctor, dentist, nurse or mental health worker. A young person being remanded to custody is to be medically assessed by a nurse as soon as practicable. Locum services are available and provided as required.

 *The South Australian Government has implemented Recommendation 150, implementation report.*

In **Western Australia**, the *Code of Inspection Standards for Adult Custodial Services* states that all prisoners should have access to a 24-hour, on-call, or stand-by primary health service. In addition, the type of health care available to all prisoners should reflect the health needs of the prison population. Custodial health services are independently accredited as meeting the Royal Australian College of General Practitioner Standards for health care in prisons, and meet the requirement to provide care equivalent to that in the community.

 *The Western Australian Government has implemented Recommendation 150, with health services provided in prisons being of an equivalent standard to that available in the community.*

The **Tasmanian** Government stated in their 1993 implementation report that with the exception of mental health services, the standard of health services in adult correctional institutions is at least equivalent to that available in the general community. Currently, the Tasmania Prison Service provides access to medical services 24-hours a day. This includes mental health. From early 2006,

inpatient mental health services for offenders is provided within a Secure Mental Health Unit, situated near the Risdon Prison.

● *The Tasmanian Government has implemented Recommendation 150 through the provision of access to medical staff and services 24-hours a day.*

In their 1996-97 implementation report, the **Northern Territory** Government stated that Mental Health Services provide specialist mental health care to prisoners on referral and prisoners are admitted for inpatient health treatment when necessary. There is also 24-hour access to medical/nursing staff and the provision of a range of public health services by an on call (after hours) service. Northern Territory Correctional Services is a signatory to the Standard Guidelines for Corrections in Australia and supports the prisoner health care principles.

● *The Northern Territory Government has implemented Recommendation 150 through the provision of access to medical staff and on-call health services, as well as ratifying the Standard Guidelines for Corrections in Australia.*

In the **Australian Capital Territory**, section 21 of the *Corrections Management Act 2007* (ACT) requires a doctor to be appointed for each correctional centre. The doctor is required to see prisoners once a week. Section 53 of the *Corrections Management Act 2007* (ACT) states that the director-general of a correctional centre must ensure that detainees have a standard of health care equivalent to that available to other people in the ACT. The director-general must also ensure that arrangements are made to provide appropriate health services for detainees.

● *The Australian Capital Territory Government has implemented Recommendation 150 through the Corrections Management Act 2007 (ACT).*

Recommendation 151

That, wherever possible, Aboriginal prisoners or detainees requiring psychiatric assessment or treatment should be referred to a psychiatrist with knowledge and experience of Aboriginal persons. The Commission recognises that there are limited numbers of psychiatrists with such experience. The Commission notes that, in many instances, medical practitioners who are or have been employed by Aboriginal Health Services are not specialists in psychiatry, but have experience and knowledge which would benefit inmates requiring psychiatric assessment or care.

Background information

The RCIADIC Report found that access to healthcare and health assessments is required by the United Nations Standard Minimum Rules for Treatment of Prisoners and is critical to the well-being and safety of detainees and prisoners. Failing to provide adequate healthcare and health assessments can place increased responsibility on corrections staff who have limited training and knowledge in medicine.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the *1995-96 Annual Report*, the Commonwealth Government stated that the AFP will maintain at all police station a list of psychiatrists having knowledge and experience of Aboriginal and Torres Strait Islander people. It is also noted that police stations will keep lists of AHSs. However, the current status of these undertakings is not clear. The AFP *National Guideline* states that where there is uncertainty about a person in custody's medical (including psychiatric) condition, medical attention should be sought (paragraph 7.2). Particular care should be given to persons defined as 'at risk', including Aboriginal and Torres Strait Islander people.

ACT Policing uses mental health practitioners attached to the on-call Crisis Assessment Team within ACT Health. All patients have clinical handover and discussion within 24-hours with a Justice Health System Medical Officer, and/or a Forensic Mental Health Psychiatrist as required. Where an Aboriginal and Torres Strait Islander person requires psychiatrist treatment, JHS will contact the Aboriginal

Health Services to receive a treatment summary. JHS also works collaboratively with ACT Corrective Services and Winnunga to introduce the Winunga Model of Care into the Prison.


Clinical Forensic Medical Services are available to ACT Policing at all times, with a nurse often on duty at the Watch House. Assessments can be made by Clinical Forensic Medical Services staff and timely referrals to the Crisis Assessment Team can be made if required. Forensic Mental Health Services at the Alexander Maconochie Centre refer Aboriginal and Torres Strait Islander detainees to an Aboriginal Liaison Mental Health Officer for follow-up. In addition, ACT Corrective Services has coordinated with Winnunga Nimmityjah Aboriginal Health Service to provide a weekly health and wellbeing service for detainees at the Alexander Maconochie Centre.

See Recommendation 127 for further information on the medical responsibilities set out in the National Guideline. The *Corrections Management Act 2007* (ACT) addresses this recommendation for the ACT Corrective Services and the care of prisoner's in custodial facilities. Further, ACT Policing note that they will undertake to review the National Guidelines with a view to mandating that police stations maintain a current list of ACCHOs available.

 *The Commonwealth and the Australian Capital Territory Governments have mostly implemented Recommendation 151 through the AFP National Guideline and the AFP's commitment to maintain lists of relevant psychiatrists and ACCHOs at police stations. However, it is not if there is a current list of ACCHOs available at police stations.*

The 1995-96 **New South Wales** implementation report stated that the Department of Corrective Services employed two Aboriginal psychologists. There is also a full time Co-ordinator of Indigenous Psychological Services employed by the Department. The Corrections Health Services also arranges for an accredited Aboriginal psychiatrist to provide sessional services from the Central Sydney Area Health Services. A psychiatrist with knowledge and experience in the provision of services to Aboriginal and Torres Strait people has been appointed to provide part-time sessions on a fortnightly basis for Aboriginal referrals. Currently in New South Wales, medical referrals are the responsibility of the JH&FMHN which provides specialist mental health services for people detained in custody. The New South Wales Government notes that JH&FMHN employs qualified and experienced psychiatrists, including sub-specialist forensic psychiatrists, child and adolescent psychiatrists and psychiatrists with dual forensic and child training.


All JH&FMHN employees including psychiatrists, are required to complete cultural awareness training. As at 31 December 2017, 94% of JH&FMHN staff had completed the online training component, and 85% had completed the face-to-face training.

 *The New South Wales Government has implemented Recommendation 151 through the employment and training of psychiatrists as required.*


In their 1994 implementation report, the **Victorian** Government stated that links had been established between the Office of Forensic Health Services and the Victorian Aboriginal Mental Health Network. The Victorian Aboriginal Mental Health Network provides a consultation service on a regular basis to Victoria Police and Correctional Services staff. A consultant psychiatrist specialising in Aboriginal and Torres Strait Islander mental health has also been appointed by Forensic Psychiatry Services. At the time of the implementation report, the Forensic Health Service was in the process of developing a strategy for providing medical staff with more knowledge and experience with Aboriginal and Torres Strait Islander issues. AJA 3 also supports delivery of cultural awareness training to prison health staff, service managers and Justice Health staff. Aboriginal Mental Health Assessment Training is currently being delivered to forensic mental health, and primary mental health, staff to ensure culturally appropriate assessments and treatment.

In its 2005 implementation report, Corrections Victoria observed that difficulties remained in accessing psychiatric professionals with specialist knowledge and experience in working with Aboriginal and Torres Strait Islander people. However, psychiatric professionals regularly liaise with Indigenous Services Officers and Aboriginal Wellbeing Offices to ensure cultural issues are being raised and addressed in the treatment of Aboriginal and Torres Strait Islander prisoners. All Victoria Police prisoners have access to health care at all times via the Custodial Health Advice Line, and


receive an initial suicide and self-harm assessment on top of a formal mental health assessment as required.

 *The Victorian Government has implemented Recommendation 151 through revising the provision of psychiatry services.*

The **Queensland** Government stated in their 1997 implementation report that the-then Department of Families, Youth and Community Care has a Service Agreement with an Aboriginal and Torres Strait Islander Community Health Service to supply mental health workers to service the needs of the Aboriginal and Torres Strait Islander residents of two correctional centres. Currently, Queensland Health is responsible for the delivery of health services in publicly operated prisons and for mental and oral health for all correctional centres. Privately operated prisons are responsible for delivering their own health services. All psychiatrists working with the Prison Mental Health Service have access to the Queensland Health cultural capability training and access to Indigenous Mental Health Workers who can provide consultation liaison assistance for cultural assessments and treatment and care pathways.


 *The Queensland Government has mostly implemented Recommendation 151. However, it is unclear to what extent Aboriginal and Torres Strait Islander prisoners are able to access psychiatrists with specialist knowledge in dealing with Aboriginal and Torres Strait Islander people.*

In their 1994 implementation report, the **South Australian** Government stated that there are a limited number of psychiatrists and medical officers with knowledge and experience of Aboriginal and Torres Strait Islander mental health issues. Health services, including dedicated cultural positions are made available onsite at the Adelaide Youth Training Centre. See also recommendation 150.


 *The South Australian Government has partially implemented Recommendation 151, noting that there are a limited number of psychiatrists and medical officers with knowledge and experience of Aboriginal and Torres Strait Islander mental health issues.*

The **Western Australia** Government stated in their 1995 implementation report that the Ministry of Justice is collaborating with the Health Department on a project in the Kimberley to develop an appropriate model for the delivery of psychiatric services using the Kimberley Aboriginal Medical Services. A psychiatrist had also commenced a two-year term to facilitate the project.

The Western Australian Government notes that, currently, psychiatrist services in the Department of Justice are provided to people in custody by appropriately qualified medical professionals who are required to complete mandatory training in cultural awareness and culturally secure care.


 *As noted by the Western Australian Government, Recommendation 151 has been addressed through current requirements for psychiatrist services in the Department of Justice.*

In their 1993 implementation report, the **Tasmanian** Government stated that there are no psychiatrists with specialist knowledge on Aboriginal and Torres Strait Islander mental health issues operating in Tasmania. The report noted that the current Clinical Director of the Forensic Service had experience working within Aboriginal and Torres Strait Islander communities in the NT. The forensic psychologist at the time had also attended two conferences on Aboriginal and Torres Strait Islander mental health and completed a university course on Aboriginal and Torres Strait Islander studies. Currently, the Tasmania Prison Service employs psychologists and high needs support counsellors in its Therapeutic Services Unit, as well as an Indigenous Officer.

 *The Tasmanian Government has partially implemented Recommendation 151, through the employment of psychologists and high needs support counsellors, as well as an Indigenous Officer. It is unclear whether these psychologists and counsellors have specialist experience with Aboriginal and Torres Strait Islander people.*

The **Northern Territory** Government stated in their 1994-95 implementation report that the Department of Correctional Services deems that all "at risk" prisoners and those with mental health problems be assessed by the visiting medical officer and if necessary referred to Forensic Mental Health Services. In Darwin the Forensic Mental Health Team provide specialist mental health care to prisoners. Most members of this team have experience working with Aboriginal and Torres Strait

Islander prisoners. In Alice Springs, services are provided by the general mental health team who also have experience working with Aboriginal and Torres Strait Islander people. Northern Territory Correctional Services in conjunction with the Department of Health has developed a Memorandum of Understanding to ensure that there is a clear clinical pathway to support the provision of these health services. Courts in the Northern Territory regularly request Community Corrections to source psychiatric assessments and psychological assessments from specialists who can undertake and deliver these specialist services.

 *The Northern Territory Government have mostly implemented Recommendation 151. It is not a requirement that the visiting medical officer has experience with Aboriginal and Torres Strait Islander people.*

Recommendation 152

That Corrective Services in conjunction with Aboriginal Health Services and such other bodies as may be appropriate should review the provision of health services to Aboriginal prisoners in correctional institutions and have regard to, and report upon, the following matters together with other matters thought appropriate:

- a. The standard of general and mental health care available to Aboriginal prisoners in each correctional institution;*
- b. The extent to which services provided are culturally appropriate for and are used by Aboriginal inmates. Particular attention should be given to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal prisoners. Such programs should be provided, where possible, by Aboriginal people;*
- c. The involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal prisoners;*
- d. The development of appropriate facilities for the behaviourally disturbed;*
- e. The exchange of relevant information between prison medical staff and external health and medical agencies, including Aboriginal Health Services, as to risk factors in the detention of any Aboriginal inmate, and as to the protection of the rights of privacy and confidentiality of such inmates so far as is consistent with their proper care;*
- f. The establishment of detailed guidelines governing the exchange of information between prison medical staff, corrections officers and corrections administrators with respect to the health and safety of prisoners. Such guidelines must recognise both the rights of prisoners to confidentiality and privacy and the responsibilities of corrections officers for the informed care of prisoners. Such guidelines must also be public and be available to prisoners; and*
- g. The development of protocols detailing the specific action to be taken by officers with respect to the care and management of:*
 - i. persons identified at the screening assessment on reception as being at risk or requiring any special consideration for whatever reason;*
 - ii. intoxicated or drug affected persons, or persons with drug or alcohol related conditions;*
 - iii. persons who are known to suffer from any serious illnesses or conditions such as epilepsy, diabetes or*
 - iv. persons who have made any attempt to harm themselves or who exhibit, or are believed to have exhibited, a tendency to violent, irrational or potentially self-injurious behaviour,*
 - v. apparently angry, aggressive or disturbed persons;*

vi. persons suffering from mental illness;

vii. other serious medical conditions;

viii. persons on medication; and

vii. such other persons or situations as agreed.

Background information

The RCIADIC found that information exchange between Custodial Authorities plays an important role in reducing deaths in custody. The RCIADIC recommended collaboration between Custodial Authorities and Aboriginal Health Services and Aboriginal Legal Services in producing procedures around the sharing of information to ensure Aboriginal and Torres Strait Islander needs are met.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **New South Wales** Government stated in their 1995-96 implementation report that the Department of Corrective Service has established guidelines for the exchange of information between custodial staff and employees of the-then Corrections Health Service. The Department and Corrections Health Service have also established a procedure, which allows for a "Risk Intervention Team" at each correctional centre. This team assists those prisoners who may be considered to be at risk of self-harm or suicidal. The Corrections Health Service is also in charge of ensuring that the availability and standard of health services is equivalent for Aboriginal prisoners and other prisoners, as well as ensuring equitable access. The Corrections Health Services employs two Aboriginal Health Workers; however, they recognise this is insufficient to meet the needs of all Aboriginal prisoners. To increase the number of Aboriginal medical staff the Aboriginal Health Services have been consulted and have been involved in developing the Aboriginal Health Services Plan. The NSW Government also stated that they have implemented the following items:

- 24 hour on-call nurse staff;
- developed screening and assessment tools for identifying at risk prisoners;
- an Aboriginal Health Policy which sets out the health needs of Aboriginal people;
- developed a Medical Alert Form which can be used by staff to provide information on inmates who may be at risk.

The NSW Department of Juvenile Justice stated in the 1995-96 NSW implementation report that they regularly invite Aboriginal Medical Services to visit their centres. Any information about inmates can be passed to and from other agencies given they have the inmates' permission. They also offer particular services to inmates in different centres including counselling pre- and post- Human Immunodeficiency Virus(HIV) testing, an Aboriginal Health Program, dental services, and a specialist behavioural unit for Aboriginal people.

Currently in New South Wales, standards and policies for the health care of prisoners is the responsibility of JH&FMHN. The Risk Intervention Team provides an avenue to address inmates at risk and facilitate information exchange between relevant parties. Network drug and alcohol services have close working relationships with Aboriginal Medical Services across NSW as part of post release care planning for these patients. This recommendation is also dealt with in the New South Wales Government's response to Recommendations 150 and 151.

 *The New South Wales Government has implemented each element of Recommendation 152.*


In their 1994 implementation report, the **Victorian** Government stated that the Forensic Health Service always abides by best practice principles and standards. The Forensic Health Service also consults with Aboriginal Health Services to maintain a relationship. Victorian Government statements specific to parts of this recommendation are as follows:

- The standard of service provided to Aboriginal and Torres Strait Islander prisoners is at least equivalent to those provided to other prisoners.

- An Aboriginal Alcohol and Drug Worker was employed to work 10 hours a week to develop programs for Aboriginal and Torres Strait Islander prisoners in the Pentridge complex.
- Aboriginal Health Services partake in the provision of health services to Aboriginal and Torres Strait Islander prisoners.
- Behavioural facilities are in place in some centres. In these centres there is also a police of “double bunking” Aboriginal and Torres Strait Islander prisoners.
- Prison medical staff and the Victorian Aboriginal Health Service Cooperative Ltd. have a good relationship and share relevant medical information.
- Guidelines have been established that discuss the exchange of medical information.


The Correctional Services Division and the Forensic Health Service have in place a reception process for new prisoners. This process includes a medical assessment and screening and a psychiatric assessment for all Aboriginal and Torres Strait Islander prisoners.

The Victorian Government also stated in their 1994 implementation report that the Specialist Support Service, Juvenile Justice Branch of the Department of Health and Community Services had been established to develop, implement and evaluate psychiatric and psychological services for young offenders. The Specialist Support Service provides specialised mental health services to young offenders. They have in place psychologists, psychiatric nurses, and drug and alcohol counsellors who provide services to young offenders. The AJA 3 focused on poor mental health as a driver of Aboriginal and Torres Strait Islander contact with the justice system, and supported collaborative work between government agencies at strategic points in the justice system.

 *The Victorian Government has implemented Recommendation 152 through the introduction of strategies targeted at each component of this recommendation.*


In their 1997 implementation report, the **Queensland** Government stated that to address parts (a) and (c) of this recommendation, they have in place 24-hour nursing services and 24-hour on-call service by medical officers. For part (b) of this recommendation, Corrective Services offer a number of drug and alcohol programs in their correctional centres. For part (d) of this recommendation, the Queensland Government acknowledged the requirement for appropriate facilities for the behaviourally disturbed and have commenced a project assessing the feasibility of these facilities. For part (e) of this recommendation, the Queensland Government stated that new prisoners undergo a comprehensive medical assessment. Part (f) of the recommendation has been addressed since each correctional centre operates procedures to ensure the exchange of information between medical, administrative, and custodial staff. Finally, for part (g), the implementation report stated that this is complete and is contained in Commission Rule. Subsections of this part are also contain in medical protocols and other procedures that may already be in place. Additionally, the Queensland Government provide that persons identified at reception as having a mental illness or suspected mental illness can be referred to Prison Mental Health Services. A Memorandum of Understanding exists between Queensland Health and Queensland Corrective Services to support information sharing about persons in custody.

As part of the Queensland Parole System Review, the Queensland Government has provided additional funding of \$15 million over 5 years to Queensland Health to increase the resourcing and provision of mental health services for prisoners, including an expansion of rehabilitation and re-entry services. Queensland Corrective Services is also undertaking a review of the current rehabilitation services offered to enable the development and delivery of a greater variety of rehabilitation programs to address the specific and complex needs of women and Aboriginal and Torres Strait Islander prisoners and offenders and to increase the availability of this program. The Queensland Government notes that in implementing these strategies, a review of the provision of services would have been required to be undertaken at each step.

 *The Queensland Government has implemented Recommendation 152 through the introduction of strategies targeted at each component of this recommendation.*

The **South Australian** Government stated in their 1994 implementation report that in relation to part (a), (c), (e), and (f) of this recommendation, a review of the prisoner medical services has been recommended. A Terms of Reference for the review had been drafted. For part (b) of this


recommendation, an Aboriginal and Torres Strait Islander counsellor had been employed with the Prison Drug Unit. For part (d) of this recommendation, a recent report had recommended the establishment of an early intervention unit to address issues of behaviourally disturbed prisoners. No action had yet been taken to develop this unit. For part (g) of this recommendation, the implementation report stated that this had been addressed by the action under Recommendations 150 and 151.

 *The South Australian Government has implemented Recommendation 152 through the introduction of strategies targeted at each component of this recommendation.*


In their 1995 implementation report, the **Western Australia** Government stated that the Ministry of Justice had undertaken an audit of health services utilisation and that a needs analysis review would be commenced in 1996. The Juvenile Justice Division stated that they complied with most of the issues identified in the recommendation. They had in place drug and alcohol programs, observation cells for the management of detainees at risk of self-harm, guidelines for the exchange of information, and screening of new inmates.

Currently, the Western Australian Department of Justice convenes a Clinical Governance Advisory Committee to oversee policy development, initiatives, and reporting; and works closely with the Mental Health Commission on the need for appropriate facilities to support people with mental illness in custodial facilities. In addition, Aboriginal and Torres Strait Islander patients admitted to the State Forensic Mental Health In-Patient Unit (Frankland Centre) are also assessed by the Specialised State Aboriginal Mental Health Service.

Western Australia has policies that provide clear instruction and guidance on issues related to continuity of care and processes to be followed in response to requests for information from various sources. A discharge summary is provided to the patient's general practitioner or Aboriginal health service on release. The Western Australian Government is pursuing prison healthcare models that involve local Aboriginal and Torres Strait Islander health services in regional areas, and has committed to the establishment of two (one male and one female) Alcohol and Other Drug Rehabilitation Prisons.


 *The Western Australian Government has mostly implemented Recommendation 152. Further action is required to be taken in respect to parts (d) and (g) of the recommendation.*

The **Tasmanian** Government stated in their 1993 implementation report that Corrective Services and the Department of Community and Health Services work closely together when Aboriginal and Torres Strait Islander prisoners are involved. The report also stated that because there is a low number of Aboriginal and Torres Strait Islander prisoners experiencing mental health problems, sensitisation of existing processes to Aboriginal and Torres Strait Islander issues is regarded as preferable rather than treating it as a separate service stream. Currently, Tasmania Prison Service has protocols in place with the DHHS outlining arrangements for information exchange between agencies that will ensure a continuum of care for prisoners and detainees. The Tasmania Prison Service also has detailed Standing Orders in place outlining actions required by staff in relation to prisoners or detainees at risk, suffering from other medical conditions or requiring medication.

 *The Tasmanian Government has partially implemented Recommendation 152 through the introduction of strategies targeted at each component of this recommendation.*

In their 1996-97 implementation report, the **Northern Territory** Government stated that all reviews consider the issues raised in this recommendation. In addition, Mental Health Service formally consult with Corrective Services and were in the process of implementing the National Mental Health Standards. Two new Aboriginal and Torres Strait Islander mental health worker positions had been established in Darwin. The Implementation Plan for the Northern Territory Aboriginal Mental Health Policy was scheduled to be completed in June 1998. This aimed to facilitate refinement and development of culturally appropriate services. The Northern Territory Government notes that currently all health employees receive cross-cultural training as part of their mandatory training, and there exists priority special measures to ensure the active employment of Aboriginal and Torres Strait Islander people. The Northern Territory Correctional Services has also established a Moratorium of


Understanding with the Department of Health, as discussed in Recommendation 150. Additionally, an Indigenous Reference Group is currently being established to evaluate current prisoner rehabilitation and treatment programs.

 *The Northern Territory Government has implemented Recommendation 152 through the introduction of strategies targeted at each component of this recommendation.*

The **Australian Capital Territory** Government stated in their 1997 implementation report that medical services for Aboriginal and Torres Strait Islander people are provided in collaboration with the Aboriginal Health Service. Information is protected in line with privacy legislation and any relevant medical information is only sought after permission from the prisoner is granted. Any exchange of information between medical staff and custodial officers is when confidentiality allows. Medical information is kept by medical staff and cannot be accessed by custodial or administrative staff.

Further actions taken by the ACT Government towards the implementation of Recommendation 152 include:

- Recommendations from the Independent Inquiry in the Treatment in Custody of Steven Freeman are undergoing implementation to improve the holistic nature of care offered to detainees.
- ACT Health has produced a Cultural Responsiveness Framework and Practice Standards for Aboriginal and Torres Strait Islander Liaison Officers within Mental Health, Justice Health, and Alcohol and Drug Services.
- Aboriginal Liaison Officers attend correctional facilities and work with the clinical teams to ensure culturally-sensitive care.
- Offender Services and the Corrections Programs Unit facilitate a range of mainstream rehabilitation programs to address identified risks and needs related to offending, including specific programs for Aboriginal and Torres Strait Islander people such as counselling, education, and intervention programs.
- Justice Health Services contacts relevant agencies following a detainees' admission to the Alexander Maconochie Centre, to ensure continuity of care and the incorporation of relevant clinical information into the detainee's care plan.
- Discharge summaries are developed for all detainees to support appropriate clinical handover and Throughcare.
- ACT Health works with ACT Corrective Services on the development of new facilities, including on how to manage the behavioural needs of individual detainees including case management through the separation and segregation where detainees are at risk of self-harm or harm to others.
- ACT Health and ACT Corrective Services implemented an Information Sharing Protocol to ensure the exchange of relevant information as part of the tripartite work between ACT Health, ACT Corrective Services, and Winnunga.
- Written or verbal clinical handover occurs between members of the treating team to ensure safe transfer of detainees between facilities.
- The establishment of detailed guidelines governing the exchange of information between prison medical staff, corrections officers and corrections administrators with respect to the health and safety of prisoners.
- Targeted information sharing occurs between the ACT Health Directorate and ACT Corrective Services, including risk assessment findings, medication charts, and other relevant information.
- The introduction of comprehensive screening by health staff, and the completion of a health notification form. Any mental health concerns identified during the screening assessment result in a referral for a comprehensive mental health assessment with the Mental Health Service.

 *The Australian Capital Territory Government has implemented Recommendation 152 through the introduction of strategies targeted at each component of this recommendation.*

Recommendation 153

That:

- a. Prison Medical Services should be the subject of ongoing review in the light of experiences in all jurisdictions;*

b. The issue of confidentiality between prison medical staff and prisoners should be addressed by the relevant bodies, including prisoner groups; and

c. Whatever administrative model for the delivery of prison medical services is adopted, it is essential that medical staff should be responsible to professional medical officers rather than to prison administrators.

Background information


The RCIADIC noted the need to keep Prisoner Medical Services completely independent of the Department of Corrections. This was because the RCIADIC found that this helped maintain a confidential relationship between prisoners and prisoner medical staff.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In their 1995-96 implementation report, the **New South Wales** Government stated that for part (a) of this recommendation there had been reviews undertaken into the Corrections Health Service and reviews are undertaken when a serious incident in custody has occurred. In the juvenile justice system, a review was conducted in 1990. More recently, JH&FMHN have been subject to reviews of all Severity Assessment Code 1 and 2 incidents and reports compiled for Serious Incidents and Root Cause Analysis. For part (b) of this recommendation there is a Privacy Committee which approved the protocol for the transfer of clinical information under duty of care without breach of confidentiality or privacy. No other details on this protocol were provided. In the juvenile justice system the implementation report stated that nurses are aware of their confidentiality requirements; however, the implementation report also noted that an Ombudsman's inquiry into juvenile detention centres reported that there was a need to develop formal procedures and policies in relation to the confidentiality of client information. Currently, all staff who work in NSW Health, including JH&FMHN, such as employees, contractors and other health service providers who in the course of their work, have access to personal health information are bound by the Health Records and Privacy Act 2002 (HRIPA) and NSW Health Privacy Manual for Health Information. Under the *Crimes (Administration of Sentences) Regulations 2014*, health records at each correctional centre must be kept in the custody of a prescribed JH&FMHN officer and their content not divulged to any person external to JH&FMHN. For part (c) of this recommendation, the NSW Government stated that the Chief Executive Officer of the Correction Health Services is a medical practitioner and does not come from a custodial administrative background. In the juvenile justice system, a position of Director of Nursing/Health Services in the Department of Juvenile Justice was created and became directly responsible for the nursing staff in juvenile justice. Prior to the creation of this position there was minimal external accountability. All clinicians report to a NSW Health (JH&FMHN) staff member and not to a correctional officer/administrator.


 *The New South Wales Government has introduced measures to implement Recommendation 153, including: the conduct of reviews; the ongoing function of the Privacy Committee; and staffing selection criteria; among other initiatives.*

The **Victorian** Government stated in their 2005 implementation report that, for part (a) of the recommendation, two reviews had considered the Victorian prisoner health service delivery system. At that time, the Corrections Health Board was completing a business case to implement the recommendations. AJA 3 includes several initiatives with the aim of strengthening the capability of the prison health system to deliver culturally-safe and appropriate services. For part (b) of the recommendation, the report stated that most standards that apply to the confidentiality of medical records for the public are upheld in prison. Lastly, for part (c) of this recommendation, there is a clear and defined separation between health service provision and correctional services.


 *The Victorian Government has met the requirements of each part of Recommendation 153.*

In their 1997 implementation report, the **Queensland** Government stated that for part (a) of this recommendation, medical services in both youth justice and adult correctional centres are subject to continual review. For part (b) of this recommendation the confidentiality requirement for medical

records in youth justice are set out in section 26 of the *Juvenile Justice Regulations 1993* (Qld). While for adult correctional centres this has been discussed in Recommendation 152. For part (c) of this recommendation, nursing staff in youth justice do not report to professional medical officers, and in adult correctional centres, control of health services is held by the Corrective Services Consultant, Health and Medical Services. Queensland Health is responsible for oral health and prison mental health services. Health and medical services in private prisons are delivered in accordance with standards set by Queensland Health.


 *The Queensland Government has implemented Recommendation 153 through ongoing procedures.*

The **South Australian** Government stated in their 1994 implementation report that for part (a) of this recommendation they were in the process of reviewing the prisoner medical services with a focus on services provided to Aboriginal and Torres Strait Islander prisoners. For part (b) of the recommendation, prison medical services staff are required under the *Health Commission Act 1976* (SA) to maintain confidentiality. In addition, the prison medical services is administered by Modbury Hospital and thus comes under the scrutiny of the Board of Directors of the hospital and their confidentiality requirements. For part (c) of this recommendation, this was already the case in South Australia. The South Australian Government additionally noted that letters of arrangement are in place between various health providers in relation to compliance with Adelaide Youth Training Centre procedures and the Ombudsman South Australia Information Sharing Guidelines for promoting safety and wellbeing. A Youth Interagency Partnership Agreement is also in place in relation to forensic patients held at the Adelaide Youth Training Centre and South Australia Health has protocols in place to ensure confidential patient medical information is maintained.


 *The South Australian Government has mostly implemented Recommendation 153. However, it is unclear to what extent a process of continual review has been implemented to address part (a).*

In their 1995 implementation report, the **Western Australia** Government stated that prisoner health staff report to the Director Justice Health Services, a medical practitioner who in turn reports to the Director General, this addresses part (c) of the recommendation. For part (a) and part (b) of the recommendation, the Justice Health Council, which is made up of representatives from the Ministry of Justice and Health Department, is responsible for general oversight of health services delivered to prisoners and is charged with addressing these parts of the recommendation.

Western Australia has implemented an inter-agency custodial health project, which is currently reviewing the governance of Prison Health Services, to improve efficiencies and health outcomes for people in custody. Under the current administrative model, Prison Health Services employees report through line management to the Director, Health Services. The Health Services Executive includes the Director of Medical Services, who is a medical doctor.


 *The Western Australian Government has mostly implemented Recommendation 153. However, it is unclear to what extent a process of continual review has been implemented to address part (a).*

The **Tasmanian** Government stated in their 1993 implementation report that the Prison Medical Officer and allied health professional staff in the mental health area are employed by the Department of Community and Health Services. Nursing staff at the prison are employed by the Department of Justice. The Department of Justice regularly reviews the medical services available with the prison system. Currently, health services for prisoners in Tasmania are delivered by the DHHS and correctional administrators are not responsible for medical staff.

 *The Tasmanian Government has mostly implemented Recommendation 153. However, it is unclear to what extent a confidentiality arrangements have been made to address part (b).*

The **Northern Territory** Government stated in their 1994-95 implementation report that Correctional Health Standards are being developed. NTCS contributes to a range of national projects including the National Prisoner Health Information Committee, and all personal information of prisoners is managed consistently with Information Privacy Principles from the *Information Act* (NT). The Northern Territory

Government also conducts regular reviews of the medical services supplied to prisoners to ensure ongoing improvements. The Department of Health is the Primary Health Care Provider responsible for the health services delivered in correctional centres.

 *The Northern Territory Government has incorporated the principles of Recommendation 153 into ongoing practices.*

In response to part (a) of the recommendation, **Australian Capital Territory** Health Directorate has undertaken the Alexander Maconochie Centre Inmate Health Survey and initiated a comprehensive review into the Drug Services and Policies at the Centre during 2010, in order to set a baseline from which monitoring can be undertaken and recommendations made. In 2012, the ACT Health Directorate completed a full review for a four-year accreditation with the Australian College on Healthcare Standards in regard to healthcare standards maintained in custodial settings. Ongoing periodic biennial reviews are undertaken by the ACT Health Directorate. Regarding part (b), the 1997 implementation report noted that any relevant information on prisoners is sought from other agencies after consent has been provided. Custodial and administrative staff are unable to access a prisoner's medical information.

The ACT Government has noted that the *Health Records Privacy and Access Act 1997* (ACT) are adhered to, and that detailed guidelines governing the exchange of information between prison medical staff, corrections officers and corrections administrators with respect to the health and safety of prisoners have been developed in line with the recommendation. Regarding part (c) of the Recommendation, the *Corrections Management Act 2007* (ACT) s 21 stipulates that the Director-General of ACT Health is responsible for the appointment of the doctor for the prison and accordingly for the health service. This model ensures the separation of custodial and health responsibilities. The doctor appointed is responsible for providing health services to detainees, and protecting the health of detainees (including preventing the spread of disease at correctional centres).

 *The Australian Capital Territory Government has implemented Recommendation 153.*

Recommendation 154

That:

- a. All staff of Prison Medical Services should receive training to ensure that they have an understanding and appreciation of those issues which relate to Aboriginal health, including Aboriginal history, culture and life-style so as to assist them in their dealings with Aboriginal people;*
- b. Prison Medical Services consult with Aboriginal Health Services as to the information and training which would be appropriate for staff of Prison Medical Services in their dealings with Aboriginal people; and*
- c. Those agencies responsible for the delivery of health services in correctional institutions should endeavour to employ Aboriginal persons in those services.*

Background information

The RCIADIC identified that mortality and morbidity in the Aboriginal and Torres Strait Islander population differs from that of the non-Aboriginal and Torres Strait Islander population, and that prison medical services would benefit from understanding this difference. In addition, prison medical services are underused by Aboriginal and Torres Strait Islander prisoners, one method to increase uptake is to provide Aboriginal and Torres Strait Islander health staff.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **New South Wales** Government stated in their 1995-96 implementation report that part (a) of this recommendation was difficult to address since many of their staff are located in a variety of locations, making the provision of cultural training difficult. Instead, the JH&FMHN have issued an

Aboriginal Health Policy which provides information for staff. The Department of Juvenile Justice were in the process of developing cultural training for staff. Currently, all JH&FMHN staff are mandated to undertake the Respecting the Difference training which aims to increase cultural competency and promotes greater understanding of the processes and protocols for delivering health services to Aboriginal people. All JH&FMHN employees are required to complete cultural awareness training, including those in adult correctional centres. The training was developed in consultation with, and delivered by, an external Aboriginal facilitator. All Juvenile Justice Youth Officers receive a full day cultural awareness training prior to commence work in centres.


CSNSW employs a full-time Aboriginal Cultural Awareness Trainer in the Aboriginal Strategy and Policy Unit, and conducts one-day sessions for all new and existing staff. The Unit has developed an Aboriginal Elders visiting initiative to provide cultural support to Aboriginal inmates in all CSNSW correctional centres and a means for inmates to maintain contact with the Aboriginal community. CSNSW also employ Aboriginal Mentors at Kempsey, Wellington, and South Coast correctional centres at Balund.

 *The New South Wales Government has implemented Recommendation 154 through a range of initiatives to increase cultural awareness and the employment of Aboriginal staff within the justice system.*


In their 1994 implementation report, the **Victorian** Government stated that part (a) of this recommendation had been addressed as prison medical staff employed by the Department of Health and Community Services are provided training on the medical needs of Aboriginal and Torres Strait Islander people. Staff in Youth Training Centres must also attend cultural awareness training. More recently, section 2.2(7) of the *Correctional Management Standards for Men's Prisons in Victoria* stated that training must be provided to staff of Corrections Victoria with the aim of developing their understanding of the needs of Aboriginal and Torres Strait Islander people.

The 2005 Victorian implementation report stated that the private providers of medical and psychiatric services at prisons did not have specific cultural awareness training around Aboriginal and Torres Strait Islander detainee issues. However, the AJA 3 stated that the Department of Justice would support delivery of cultural awareness training to prison health staff. For part (b) of this recommendation, the training mentioned in regards to part (a) of this recommendation and the AJA 3 was developed and designed by members of the Aboriginal and Torres Strait Islander community. For part (c) of the recommendation, the employment of more Aboriginal Health Workers was being investigated.

Currently, the Victorian Government notes that some Aboriginal Health Staff have been employed in prison health and forensic health services, and a Koori Scholarship program has been implemented to assist more Aboriginal and Torres Strait Islander individuals to work in the prison health sector.


 *The Victorian Government has implemented Recommendation 154.*

The **Queensland** Government stated in their 1997 implementation report, in relation to part (a), cultural awareness was available to all juvenile justice staff. For adult correctional services, there was a recent session on Aboriginal and Torres Strait Islander health issues. This was seen by some staff and will also be shown to nursing supervisors. The Indigenous Mental Health Intervention Project is a culturally capable mental health service which has been implemented within two women's and men's prisons in Queensland to deliver social and emotional well-being programs in custody. For part (b), the report noted that there had been consultation conducted with the Aboriginal and Islander Community Health Services in relation to youth justice services. Finally, for part (c) of this recommendation, the implementation report noted that there had been difficulty recruiting Aboriginal and Torres Strait Islander nurses to Corrective Services.

 *The Queensland Government has mostly implemented Recommendation 154, with part (c) yet to be completed.*

In their 1994 implementation report, the **South Australian** Government stated that there is a cross cultural awareness course offered to prison medical staff. The SA Government have also developed

the Aboriginal Services Unit which provides cultural awareness training to staff. The South Australian Government has also addressed this recommendation in their response to Recommendation 152.


 *The South Australian Government has partially implemented Recommendation 154 through introducing measures in response to part (a). However, it is unclear which actions have been taken to address parts (b) and (c) of this recommendation.*

In the 1995 **Western Australia** implementation report, the WA Government stated that in relation to part (a), a training program had been developed and was in the process of being implemented. This was also repeated in a recent document *Code of Inspection Standards for Adult Custodial Services* which stated that cultural training must be provided to medical staff. It is a requirement that all custodial medical employees complete mandatory cultural awareness education when commencing employment with the Department of Justice.


For part (b), the WA Government stated that they had undertaken consultation with Aboriginal Medical Services. For part (c), the Government had recently appointed two Aboriginal Registered General Nurses. The Department of Justice continues to recruit Aboriginal Health Workers and Registered Nurses through the *Equal Opportunity Act 1984* (WA) s 50(d).

 *The Western Australian Government has implemented Recommendation 154.*

In their 1993 implementation report, the **Tasmanian** Government stated that the prisoner medical services collaborate with the Aboriginal Health Service in meeting the needs of Aboriginal and Torres Strait Islander prisoners. There is also a cultural awareness program for prison medical and nursing staff. The Tasmanian Prison Service requires all recruits to complete a Cultural Awareness and Aboriginal Issues in Corrections session, and for all staff to complete an e-learning package called Interactive Ochre.

 *The Tasmanian Government has mostly implemented Recommendation 154. However, it does not appear that actions have been taken to address part (c).*

The **Northern Territory** Government stated in their 1999-97 implementation report that in relation to part (a), all staff receive cross cultural training. For part (c), the employment of Aboriginal Health Workers is encouraged in Darwin and Alice Springs correctional centres. The actions taken towards the implementation of Recommendation 152 are also relevant to this recommendation.

 *The Northern Territory Government has mostly implemented Recommendation 154. However, it is unclear whether specific actions have been taken to address part (b).*

In their 1997 implementation report, the **Australian Capital Territory** Government stated that in relation to part (a) of this recommendation, all youth justice staff receive training that specifically looks at working with people from diverse backgrounds. For part (b) of this recommendation, the Aboriginal Health Services provides additional health services to prisoners and provides advice to Corrective Services medical staff. Finally, for part (c), the ACT Government stated that recruiting medical personnel into health services, other than the part-time nurse position at the Belconnen Remand Centre, is not in the jurisdiction of ACT Corrective Services. Justice Health staff have participated in ACT Health Directorate general awareness education sessions related to Aboriginal and Torres Strait Islander people and Cultural awareness training is available to all Health Directorate staff.

The Aboriginal and Torres Strait Islander Policy Unit of the ACT Health Directorate acts as a conduit between individual teams and the wider Aboriginal and Torres Strait Islander community. Health Directorate policy includes an Aboriginal and Torres Strait Islander impact statement and they have also recently released their "Cultural Responsiveness Framework and Practice Standards for Aboriginal and Torres Strait Islander Liaison Officers within Mental Health, Justice Health and Alcohol & Drug Services (MHJHADS)" publication, which aims to establish and embed a Cultural Responsiveness Framework within MHJHADS and clarify the roles of Aboriginal and Torres Strait Islander Liaison Officers working within MHJHADS and establish a required standard of practice for these officers.

Justice Health employs two Aboriginal and Torres Strait Islander liaison officers who attend Alexander Maconochie Centre (AMC) on a weekly basis to engage Aboriginal and Torres Strait Islander detainees who have been referred to the Dhulwa Mental Health Unit or are being considered by ACT Justice Health professionals for referral. The ALOs have close working relationships with Winnunga Nimmityjah Aboriginal Health & Community Service and Gugan Gulwan Youth Aboriginal Corporation which supports the interface between mainstream and Aboriginal and Torres Strait Islander health services.

● *The Australian Capital Territory Government has partially implemented Recommendation 154 through the introduction of training and the function of Aboriginal Health Services. However, it does not appear that part (a) has been implemented in relation to staff employed in adult correctional institutions or part (c) has been implemented.*

Recommendation 155

That recruit and in-service training of prison officers should include information as to the general health status of Aboriginal people and be designed to alert such officers to the foreseeable risk of Aboriginal people in their care suffering from those illnesses and conditions endemic to the Aboriginal population. Officers should also be trained to better enable them to identify persons in distress or at risk of death or harm through illness, injury or self-harm. Such training should also include training in the specific action to be taken in relation to the matters which are to be the subject of protocols referred to in Recommendation 152 (g).

Background information

The RCIADIC identified that mortality and morbidity in the Aboriginal and Torres Strait Islander population differs from that of the non-Aboriginal and Torres Strait Islander population and that prison medical services would benefit from understanding this difference.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **New South Wales** Government stated in their 1995-96 implementation report that the Department of Corrective Services provides training specific to officer's tasks wherever possible. There is also suicide awareness and prevention training in the Pre-Service Training Course and the Senior Correctional Officer Course. The Department of Juvenile Justice provides training to all nursing staff in Aboriginal health issues. Aboriginal Cultural Awareness Training for CSNSW staff includes common risk factors that officers should be aware of for Aboriginal inmates. CSNSW, in conjunction with Victims Services, has also introduced Trauma Informed Practice Training for staff in selected correctional centres with a view to rolling it out state-wide. This training is aimed at supporting staff to better manage and help offenders who have experienced sexual and/or physical violence.


● *The New South Wales Government has implemented Recommendation 155 through CSNSW training, which includes cultural awareness, suicide awareness and prevention, and nursing components.*

In their 1994 implementation report, the **Victorian** Government stated that the correctional services division recruit training courses provide information to prison staff which is designed to increase their awareness of Aboriginal and Torres Strait Islander issues. There is another health course run by correctional services called "Management of Aboriginal Offenders". In addition, there is suicide prevention courses provided to staff. The Department of Health and Community Services also provides cross cultural training to all youth officers. This training does not go into detail about Aboriginal and Torres Strait Islander health issues, but does provide an overview. In their 2005 implementation report, Corrections Victoria stated it was ensuring that its existing training encompassed information regarding the general health status of Aboriginal people designed to alert staff to the risk of Aboriginal people suffering from those illnesses.


● *Corrections Victoria has taken steps to incorporate Aboriginal and Torres Strait Islander cultural awareness into corrections staff training. As such, Recommendation 155 is complete.*

The **Queensland** Government stated in their 1997 implementation report that they had updated the suicide prevention training package to include more information on duty of care and duty in preservation of life. All officers receive first aid training which includes information on suicide and self-harm. Training on counselling distressed prisoners, Aboriginal and Torres Strait Islander mental health, and identifying risk has also been included in further training. Additionally, all custodial recruits undertake cultural custodial awareness training which was developed in consultation with Aboriginal and Torres Strait Islander staff members of the Queensland Corrective Services.


Queensland Corrective Services psychologists are required to undergo cultural support training biannually. All prisoners on reception are screened for risks and needs, including substance abuse and withdrawal, mental health, cognitive or physical disabilities and are referred to Queensland Health for further assessment and treatment where required.

 *The Queensland Government has implemented Recommendation 155 through updated training modules.*


In their 1994 implementation report, the **South Australian** Government stated that there is a trainee correctional officer program that provides training on how to identify prisoners who may be suicidal or partake in self-harm or be victims of abuse from other prisoners. There is also in-service training for officers in identifying prisoners who may be experiencing distress. The Department also sponsors a TAFE course in the Justice Studies Certificate called Correctional Administration which has been amended to include more coverage of issues that were highlighted in the RCIADIC. The Department of Correctional Services currently provides a comprehensive schedule for Trainee Correctional Officers, that includes Cultural Awareness training, Suicide Prevention training, and other health-related components.

 *The South Australian Government has implemented Recommendation 155 through the provision of training to address the principles raised in this recommendation.*


The **Western Australia** Government stated in their 1995 implementation report that the actions taken to address this recommendation are the same as those taken to address Recommendation 154. Currently, cultural awareness training is delivered to all prison officers as part of entry-level training and ongoing professional development. All prison officers receive mandatory training in the use of the At Risk Management System and Gatekeeper suicide-prevention system, to assist those in distress. Each prison also has a cohort of peer support prisoners lead by prison support officers, who provide support to the needs of the person in custody.

 *The Western Australian Government has implemented Recommendation 155 through the provision of training to address the principles raised in this recommendation.*

In their 1993 implementation report, the **Tasmanian** Government stated that this recommendation is addressed in the cultural awareness program provided to all prison officers. See also the Tasmanian response to Recommendation 154.


 *The Tasmanian Government has implemented Recommendation 155 through the cultural awareness program provided to all prison officers.*

The **Northern Territory** Government stated in their 1994-95 implementation report that cultural training is provided throughout the Prison Officer Recruit training. Promotional training, custodial refresher training, mental health, communicable disease, suicide prevention, rescue and resuscitation, and cross-cultural courses were set to increase in 1996. The Northern Territory Government notes that cultural training remains mandatory, and has been continually updated in line with best practices. Nurses also attend a mandatory ACAP cultural awareness program as part of induction and orientation to the health service. Other initiatives during 2016-17 included a range of online courses and individual accredited professional development activities.

 *The Northern Territory Government has implemented Recommendation 155 through cultural training and a range of other training requirements to address this recommendation.*

In their 1997 implementation report, the **Australian Capital Territory** Government stated that there is a training program provided to new recruits at the Belconnen Remand Centre, which addresses this recommendation. All youth justice staff also receive cultural training. With regards to any mental health issues faced by Aboriginal and Torres Strait Islander prisoners, prison officers know of the referral process for the Forensic Unit and this process will be formalised.

Currently, all Correctional Officer recruits attend a one-day Aboriginal and Torres Strait Islander Cultural Awareness Training course as a compulsory component of their training program. The training program also incorporates a one-day session on suicide and self-harm awareness, including: defining 'at risk' and duty of care; understanding risk; identifying risk; managing risk; and post-suicide event. Correctional Officers are also required to complete a unit of competency in the skills required to monitor Aboriginal and Torres Strait Islander offenders in a secure facility and respond to identified risks. Additionally, all Correctional Officers are required to hold a current First Aid Certificate which is refreshed annually.

 *The Australian Capital Territory Government has implemented Recommendation 155 through the provision of cultural training, mental health training, and other initiatives.*

Recommendation 156

That upon initial reception at a prison all Aboriginal prisoners should be subject to a thorough medical assessment with a view to determining whether the prisoner is at risk of injury, illness or self-harm. Such assessment on initial reception should be provided, wherever possible, by a medical practitioner. Where this is not possible, it should be performed within 24 hours by a medical practitioner or trained nurse. Where such assessment is performed by a trained nurse rather than a medical practitioner then examination by a medical practitioner should be provided within 72 hours of reception or at such earlier time as is requested by the trained nurse who performed such earlier assessment, or by the prisoner. Where upon assessment by a medical practitioner, trained nurse or such other person as performs an assessment within 72 hours of prisoners' reception it is believed that psychiatric assessment is required then the Prison Medical Service should ensure that the prisoner is examined by a psychiatrist at the earliest possible opportunity. In this case, the matters referred to in Recommendation 151 should be taken into account.

Background information

The RCIADIC noted that a medical assessment of a prisoner upon entry to a prison allows for any medical issues to be identified and appropriate medical services to be supplied.


Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


In **New South Wales**, Recommendation 156 is addressed through the Corrective Services NSW Custodial Operations Policy and Procedure. Timeframes are stipulated in Justice Health procedures, and all people entering custody in NSW Correctional Centres receive Reception Screening Assessments within 24-hours. Young Aboriginal people have an initial assessment conducted by a trained nurse within two days of entering custody. Follow up assessment by a specialist health professional is then conducted, as required.

Adults and young people in custody are prioritised for treatment according to their health needs. Section 11.2 of the Custodial Operations Policy and Procedure states that an inmate, if eligible, must be allocated a Case Management Officer within 24-hours of arrival. Screening information must be included in the inmate's case management file.


 *The New South Wales Government has implemented Recommendation 156 through the Corrective Services New South Wales Operations Procedure Manuals.*

The **Victorian Standards for the Management of Women Prisoners in Victoria** and **Standards for Men's Prisons in Victoria** require that the prison general manager must ensure that upon initial reception into prison custody, a prisoner must undergo a comprehensive health, medical, and psychiatric screening


assessment by a medical practitioner as soon as possible after initial reception, and no later than 24 hours after reception.

 *Victoria has implemented Recommendation 156 through setting out procedures for screening upon reception of prisoners.*

Queensland has a requirement that all prisoners must be seen by a registered nurse upon reception to prison. Persons identified at reception as having a mental illness or suspected mental illness can be referred to Prison Mental Health Services. The *Prison Mental Health Services Triage Prioritisation Guide* includes consideration of Aboriginal and Torres Strait Islander status. An Immediate Risks Needs Assessment (IRNA) is administered to prisoners admitted into Queensland Corrective Services custody. The IRNA is completed on a prisoner's admission and arrival after transferring from community supervision to a custodial facility. The purpose of the IRNA is to identify any immediate risks or needs that require immediate attention upon a prisoner's admission to the Queensland custodial system or arrival after transfer from community supervision to a custodial facility. The IRNA is administered by a psychologist or counsellor.

 *The Queensland Government has mostly implemented Recommendation 156 through procedures for screening upon reception of prisoners. However, procedures do not seem to cover where initial screening is not possible.*


In **South Australia**, section 23 of the *Correctional Services Act 1982 (SA)*, states that as soon as practicable after the initial admission to a prisoner, the prisoner must be assessed. This assessment includes an assessment of the needs of the prisoner in respect to education or training or medical or psychiatric treatment. This generally occurs within the 72-hour time frame. The South Australian Government has also addressed this recommendation in their response to Recommendation 150.

 *South Australia has mostly implemented Recommendation 156 through the *Correctional Services Act 1982 (SA)*. However, this does not seem to explicitly establish a timeframe.*

Western Australia has addressed this recommendation in their *Code of Inspection Standards for Adult Custodial Services* which states that all prisoners should undergo a health examination by a qualified health professional within 72 hours after being received into prison. All new admissions to custody and prison, including young people, are required to be medically assessed for risks to physical and mental health and wellbeing within 24 hours of reception. Upon initial reception into prison, each patient is to be screened using the At Risk Management System – Reception and Intake Assessment by the receiving prison officer and nurse. Patients identified as needing review by a medical officer and/or mental health team are triaged and appointments made, depending on clinical presentation and acuity.

 *The Western Australian Government has implemented Recommendation 156 through their *Code of Inspection Standards for Adult Custodial Services*, and medical screening processes.*

In their 1993 implementation report, the **Tasmanian** Government stated that all prisoners are screened by medical staff as soon as practicable. In youth justice, all prisoners undergo a medical and psychiatric assessment within 24 hours of admission. Currently in Tasmania, all new prisoners undergo a thorough health assessment upon reception into custody and referrals to relevant health professionals are made as required.

 *Tasmania has mostly implemented Recommendation 156 through the introduction of screening procedures. However, this does not seem to explicitly establish a timeframe for adults.*


The **Northern Territory** Government stated in their 1994-995 implementation report that all prisoners are seen by qualified health personnel within 24 hours of reception. Currently, nurses on duty within watch houses will undertake a medical assessment of the prisoner and consult with a medical officer via telephone if required. All youth prisoners entering detention receive a health check and referral to a medical officer if required within 24 hours.

 *The Northern Territory has implemented Recommendation 156, as noted in the 1994-95 implementation report.*

In the **Australian Capital Territory**, section 68 of the *Corrections Management Act 2007* (ACT) states that an assessment of a prisoner's physical and mental health needs and risks must be made within 24 hours after the detainee's admission. The health induction is a joint health assessment by primary health nurses and forensic mental health clinicians. A standardised process for health induction assessment has been developed for the screening of:

- general health, including any injury or pain issues;
- mental health, including suicide and self-harm assessment; and
- drug and alcohol screening.

Following the health screen at induction, both the primary health nurse and the forensic mental health clinician contact the medical officer to provide the outcomes of their assessment. The detainee is then referred as appropriate to GP or mental health follow-up.

 *The Australian Capital Territory has implemented Recommendation 156 through the Corrections Management Act 2007 (ACT).*

Recommendation 157

That, as part of the assessment procedure outlined in Recommendation 156, efforts must be made by the Prison Medical Service to obtain a comprehensive medical history for the prisoner including medical records from a previous occasion of imprisonment, and where necessary, prior treatment records from hospitals and health services. In order to facilitate this process, procedures should be established to ensure that a prisoner's medical history files accompany the prisoner on transfer to other institutions and upon re-admission and that negotiations are undertaken between prison medical, hospital and health services to establish guidelines for the transfer of such information.

Background information


The RCIADIC noted that in addition to screening a prisoner upon entry to a prison, obtaining the medical history of the patient would improve the provision of medical services to prisoners. Similarly, medical information collected by Prisoner Medical Services should be made accessible to other prison services if the prisoner is transferred to enable the consistent provision of medical treatment.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **New South Wales** Government stated in their 1992-93 implementation report that medical records accompanied a person from institution to institution, and that doctors had access to those records subject to confidentiality agreements. In 1993, this was incorporated into a procedures manual developed by the Correction Health Services Board for the manual transfer of medical records. The NSW Government also introduced a Prisoner Admission and Management Form to collect health information about detainees, particularly any known physical or psychological condition of the person that may increase their risk of death in custody. The transfer of information occurs between police and the Department of Corrective Services. Currently, the Reception Screening Assessment conducted on entry into a CSNSW Centre includes completion of a comprehensive medical history and a request of information inquiry from clinical service providers in the community. The NSW Government note that CSNSW is committed to expanding access to video conference and other digital delivery channels to enhance contact between inmates and their families.

 *The New South Wales Government has implemented Recommendation 157, noting in their 1992-93 implementation report that medical records accompanied a person from institution to institution, and that doctors had access to those records subject to confidentiality agreements.*

In **Victoria**, all prisoners on admittance to custody have their medical history completed and recorded in a medical history file. That file is transferred with the prisoner between prisons, and is retrieved if a person returns to prison. More recently, the online transfer of information has also been developed. If a prisoner receives external care, medical documents from the prisoner's medical record are made

available to the treating facility. Health staff also contact external care providers (with the prisoner's consent) if a prisoner has had treatment for ongoing medical conditions outside of the prison system.

● *Victoria has implemented Recommendation 157 by retaining records of prisoners' medical history and co-ordinating healthcare inside and outside of prisons.*

Queensland's Government commented in 1993 that medical histories of Aboriginal and Torres Strait Islander people being admitted from prison were obtained where known and available and all prison medical files go with the inmate on transfer to another correctional facility. These provisions were formalised in guidelines, such as the *Healthy Prisons Handbook*. This guideline also allows prisons to access medical records in line with confidentiality and privacy restrictions. In Queensland, Prison Medical Services uses a state-wide clinical database which ensures access to both community and custody mental health assessment and treatment history. However, there are limitations to the access of the database within custody due to ICT infrastructure.

● *The Queensland Government has implemented Recommendation 157, in procedures and the Healthy Prisons Handbook.*

In **South Australia's** 1994 implementation report, the Government noted that Recommendation 157 had already been incorporated in practice. A comprehensive standard procedure on health-related issues in detention facilities was developed, covering drug and alcohol abuse, prescribed medication, special medical circumstances, and handling at risk and aggressive behaviours.

● *The South Australian Government has implemented Recommendation 157, noting in their 1994 implementation report that this was current practice at the time of the RCIADIC.*

In their 1994 implementation report, the **Western Australia** Government noted that medical information would accompany prisoners if and when they are transferred between prisons. Online transfer of medical information was also implemented for both adult and juvenile custody. Currently, the *Court Security and Custodial Services Act 1999* (WA) provides for prisons to access prisoners' medical records in line with confidentiality and privacy laws.


Additionally, the Health Services policy of the Western Australian Department of Justice requires all new admissions to custody and prison to be assessed by nursing staff within 24-hours of admission. As part of this process, the patient is requested to complete a consent form allowing Health Services to contact their community healthcare provider to ascertain what their current treatment is in the community and their medical history. Health Services policy also requires that all patients transferred to external healthcare facilities for inpatient care be accompanied by a transfer letter, outlining their current health problems (general or mental health), history, current medication regime and any other pertinent information. On discharge from hospital, Health Services requires a discharge letter from that facility to ensure continuity of care.

● *The Western Australian Government has implemented Recommendation 156, ensuring appropriate transfer of medical information to allow for continuity of care.*


Tasmania provides access to medical records for the Corrective Services Division. See also the Tasmanian Government's response to Recommendation 156.

● *The Tasmanian Government has implemented Recommendation 157, noting that access to medical records is provided for the Corrective Services Division.*

The **Northern Territory** Government commented in their 1993-94 implementation report that some records were available with prisoners' consent, and that information sharing occurred between various agencies on a 'need-to-know' basis. The Northern Territory Government notes that prisoner health records are separate from any other correctional centre management files relating to prisoners and are managed in accordance with the Department of Health Clinical Records Disposal Schedules. Prisoner health records can be accessed electronically across prisons, and prisoners transferred to a correctional centre outside of the Northern Territory are accompanied by a discharge summary.

 *The Northern Territory Government has partially implemented Recommendation 157. It only appears that some records are able to be accessed online, and shared on a 'need-to-know' basis.*

The **Australian Capital Territory** *Watch-house Operations Manual* provides access to medical records by prisons, provided the disclosure of medical information is in accordance with confidentiality and privacy laws (paragraph 2.9). The ACT Corrective Services has also entered into an AFP Memorandum of understanding regarding the transfer of information about the health or risk status of detainees to ensure their continuing safe care. If a detainee has transferred from a prison interstate, the health records are requested; if the detainee comes from the community and has a health issue, the detainee's GP will be contacted for a treatment and medication history.

 *The Australian Capital Territory Government has implemented Recommendation 157 through the *Watch-house Operations Manual*.*

Recommendation 158

That, while recognising the importance of preserving the scene of a death in custody for forensic examination, the first priority for officers finding a person, apparently dead, should be to attempt resuscitation and to seek medical assistance.

Background information

The RCIADIC Report found that resuscitation was not attempted in many cases after discovering a scene of apparent death. It is believed that immediate attempts to resuscitate may reduce the number of deaths in custody.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the *1995-96 Annual Report*, the Commonwealth indicated that the AFP complies with this recommendation since ACT procedures require officers to commence first aid, including resuscitation, when needed. The AFP *National Guideline* does not appear to expressly require officers to attempt resuscitation or seek medical assistance upon discovering an apparent death in custody. The Guideline states that "all deaths in custody must be treated as a crime scene and investigated accordingly" (paragraph 22). The AFP noted that preservation of life is the priority for members attending to any incident involving the welfare of an individual.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 158 through the AFP's National Guideline and standard practices.*

In **New South Wales**, the *Death in Custody Procedures* and the *Custody Deaths Investigation Manual* include the priority that, on finding a person apparently dead, resuscitation should be attempted and medical assistance should be sought. This practice is also enforced in Juvenile Justice by the *Self-Harm, Attempted Suicide and Suicide Procedure*. CSNSW has also incorporated this recommendation into procedures, set out in the *Custodial Operations Policy, Procedures 13.2 Medical Emergencies*, and *13.8 Crime Scene Preservation*.

 *The New South Wales Government has implemented Recommendation 158 through internal procedures.*

The **Victorian** Government, through written instruction from the General Manager of Prisons Operations, provided in 1994 that when a prisoner is found apparently dead, the first course of action is to attempt resuscitation and/or to seek medical attention. Corrections Victoria confirmed this in the Victorian Government's 2005 implementation report, noting that "the preservation of life outweighs anything else at the scene of a crime/incident". This principle is incorporated into training for staff.

- *The Victorian Government has implemented Recommendation 158 through internal procedures and training.*

In **Queensland**, should an inmate of a correctional facility be considered to be apparently dead, it is a requirement of the Queensland Corrective Services Commission that resuscitation treatment be administered until transferred to a medical centre or hospital. These provisions were also incorporated to the 1992 *Custody Manual*, and the juvenile *Detention Centre Manual*.

- *The Queensland Government has implemented Recommendation 158 through internal procedures.*

The **South Australian** Government noted in their 1994 implementation report that Recommendation 158 had been incorporated into Correctional Services procedures, including *Task Outline 040522*, which deals with the maintenance and preservation of evidence. Under the *Standard Operating Procedure* relevant to Prisoner Death or Critical Injury, an officer must administer First Aid and attempt to resuscitate a prisoner. Delegated personnel covered by the Adelaide Youth Training Centre emergency order are also required to respond to a medical emergency through the application of first-aid until support arrives.

- *The South Australian Government has implemented Recommendation 158 through internal procedures.*

The **Western Australia** Government implemented resuscitation and medical attention as a priority course of action in the event that a prisoner is found apparently dead. This is provided for in the *Police Department Lockup Management Manual* which places an obligation on police officers to protect life and property. It is currently standard practice for officers to attempt resuscitation and seek medical assistance.

- *The Western Australian Government has implemented Recommendation 158 through procedures and policy, including the Police Department Lockup Management Manual.*

The **Tasmanian** Government has incorporated the priorities of resuscitation and medical attention in the event of a death or life-threatening injury in custody. This is provided in the *Tasmania Police Manual* which sets out detailed guidelines in the event of death or critical injury, including a step-by-step description of initial actions to be taken.

- *The Tasmanian Government has implemented Recommendation 158 through internal procedures outlined in the Tasmania Police Manual.*

The **Northern Territory** Government incorporated the practice of attempting resuscitation and seeking medical assistance in their *General Orders – Prisoners – Code P12* in 1993. This was further reinforced by the *Correctional Services Superintendent’s Instructions* under Emergency Procedures. The Northern Territory Government notes that NTPC policies, including Directive 2.8.2 Death of a Prisoner, contain instructions to all staff members regarding the priority to provide medical assistance and “make every effort to save life” regardless of scene preservation requirements.

- *The Northern Territory Government has implemented Recommendation 158 through internal procedures.*

Recommendation 159

That all prisons and police watch-houses should have resuscitation equipment of the safest and most effective type readily available in the event of emergency and staff who are trained in the use of such equipment.

Background information

The RCIADIC Report noted that in some prisons and police watch-houses the location of resuscitation equipment was not well known among staff, and in some instances the equipment was inadequate.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP noted that all appropriate first aid and resuscitation equipment (including a defibrillator) is in place in the regional watch house. All watch house members are first aid qualified and nurses are regularly on shift to assist members in managing the health and welfare of persons in custody. The *Corrections Management Act 2007* (ACT) addresses this recommendation for the Department of Corrective Services and the care of prisoners in custodial facilities.


All ACT Corrective Services custodial officers are trained in CPR as part of First Aid training. ACT Corrective Services also has resuscitation packs (including defibrillators) available in all three main accommodation areas of the AMC. Justice Health staff undertake mandatory annual CPR training, which includes recognition of the deteriorating patient and the use of resuscitation equipment for basic life support.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 159 through the provision of resuscitation equipment in the ACT Policing regional watch house.*


In **New South Wales**, all corrective service institutions have a clinic where resuscitation equipment is stored and officers have been trained in the use of this equipment. Police also receive training in resuscitation techniques, and resuscitation masks are on hand at all police stations. The majority of Correctional Centres have access to a defibrillator which may be located with JH&FMHN clinic. JH&FMHN staff are equipped with emergency backpacks that include resuscitation equipment.

 *The New South Wales Government has implemented Recommendation 159 through the provision of resuscitation equipment and training for officers in its use.*


The **Victorian** Government stated in their 2005 implementation report that all Corrections Victoria prisons have resuscitation equipment situated in strategic locations within the prison environment. However, Corrections Victoria staff were not generally trained in using this equipment, though the report noted that this training would be undertaken “soon”. With respect to police cells, police have access to resuscitation equipment and are trained to use it. The Victorian Government notes that currently a defibrillator is located within all police complexes and staff are trained in its use and methods of application.

 *The Victorian Government has implemented Recommendation 159 by providing resuscitation equipment and training in prisons and in police cells.*


Under the 1992 **Queensland Police Service Custody Manual**, training was developed to incorporate resuscitation training in line with Recommendation 159. First aid training was also provided in the *Competency Acquisition Program* for police up to, but excluding, commissioned ranks. The Queensland Government noted that resuscitation equipment is provided in all Queensland Corrective Services facilities.

 *The Queensland Government has implemented Recommendation 159 through the provision of resuscitation equipment and training for officers in its use.*


The **South Australian** Government noted that all Correctional Services prisons have resuscitation equipment of the safest and most effective type readily available in the event of emergency and staff are trained in the use of such equipment. Defibrillators, first aid kits and trauma bags are readily available for Adelaide Youth Training Centre staff to use during an emergency and staff are trained in their application.

 *The South Australian Government has mostly implemented this recommendation by providing resuscitation equipment in custodial facilities, but it is unclear whether all staff are trained in using this equipment.*


In **Western Australia**, it is a prerequisite for police recruits to have obtained a *Provide First Aid Certificate*. Under the *Western Australia Police Manual*, police members are required to undertake first aid and resuscitation training on induction, and every two years for members who use firearms or force options. Additionally, it is the responsibility of Officers in Charge of a lockup to ensure that adequate first aid and resuscitation equipment is provided, and that staff are adequately trained in its use. Appropriate resuscitation is placed at strategic locations, and personal resuscitation aids are carried by employees in prisons at the Banksia Hill Detention Centre. Resuscitation equipment is available at all Western Australia Police Force facilities.

 *The Western Australian Government has implemented Recommendation 159, by providing resuscitation equipment in custodial facilities and the relevant training for all custodial officers.*

The 1993 **Tasmanian** implementation report recorded that prison officers and police watch-house keepers have been trained in the use of resuscitation equipment, which is available in prisons and all watch-houses. Currently, resuscitation equipment is available at all Tasmania Prison Service facilities and in 2017, six new defibrillators were introduced to the Risdon Prison Complex.

 *The Tasmanian Government has implemented this recommendation by providing resuscitation equipment in custodial facilities, and training in the use of this equipment.*

Northern Territory Police watch-houses are equipped with resuscitation equipment and members who are specifically trained to perform watch-house duties and trained to use such equipment. Annual audits by the Professional Standards Unit are conducted regarding the availability of the resuscitation equipment. It is also a requirement under NTCS Directive 2.8.8 Emergency Medical Procedures that officers must maintain Senior First Aid certificates and be able to administer Cardiac-Pulmonary Resuscitation in an emergency.

 *The Northern Territory Government has implemented this recommendation by providing resuscitation equipment in custodial facilities, and training in the use of this equipment.*

Recommendation 160

That:

a. All police and prison officers should receive basic training at recruit level in resuscitative measures, including mouth to mouth and cardiac massage, and should be trained to know when it is appropriate to attempt resuscitation; and

b. Annual refresher courses in first aid be provided to all prison officers, and to those police officers who routinely have the care of persons in custody.

Background information

Police and prison officers are often the first available to respond to incidents of illness or injury in custody. Adequate first aid and resuscitation training for police and prison officers can help reduce the risk of death in custody.

Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


For all jurisdictions, see also Recommendation 159 for actions taken towards the implementation of Recommendation 160.

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the Commonwealth's *1996-97 Annual Report*, it was noted that watch-house sergeants have been instructed by AFP Health Services Division in

resuscitation, first aid, and injury or illness identification. It was also noted that current new member training courses will include a segment on first aid, and in future all people applying to join the AFP would be required to have a First Aid Certificate. The AFP recruitment website³⁰ specifies that a senior first aid certificate, including CPR training, is required for all entry level policing and protective service officer roles. The AFP noted that all ACT Policing operational members are qualified to deliver first aid. Refreshers occur as required for the member to maintain the qualification. Additionally, all ACT Corrective Services officers are required to hold a current First Aid Certificate and are trained in the use of Automated External Defibrillators.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 160 through mandated first aid and resuscitation training for all AFP watch-house sergeants and new recruits.*


The **New South Wales** Government requires all police recruits to have a current St John's First Aid certificate, and the Police Resuscitation Training Unit conducts annual refresher courses in resuscitation in all local area commands. Guidelines for Police First Aid requirements are set out in Commissioner's Instructions 155.11 (Care and Supervision of Prisoners) and 155.16 (Medical). The CSNSW Brush Farm Academy provides accredited refresher training so all custodial staff can maintain currency of their First Aid Certificate.

 *Recommendation 160 has been implemented in New South Wales through mandated first aid and annual resuscitation training.*


The **Victorian** Government requires recruit prison officers to be trained in resuscitation techniques, including annual refresher training. All Prison Medical Support Officers are trained to Level 3 First Aid. Police recruits are trained in cardiopulmonary resuscitation.

 *The Victorian Government has fully implemented Recommendation 160.*


In **Queensland**, all prison officers and staff are provided first aid and resuscitation training in their pre-service training. Refresher courses are provided by the nursing staff in the various centres.

 *Recommendation 160 has been implemented in Queensland through the provision of first aid and resuscitation training in their pre-service training. Refresher courses are provided by the nursing staff in the various centres.*

The **South Australian** Government commented in their 1994 implementation report that all staff must be trained in first aid and retain a current certificate, including knowledge of the application of cardiac massage and mouth-to-mouth resuscitation. Training courses were further refined in line with the principles in this recommendation, in collaboration with the Red Cross. It is currently a requirement that Correctional Officers have a current First Aid Certificate, and Adelaide Youth Training Centre staff are trained in first aid.

 *Recommendation 160 has been implemented in South Australia, with all staff required to hold a current first aid certificate. Training courses were also refined in line with this recommendation.*

For **Western Australia**, this is covered in the response to Recommendation 160. All police and prison officers are required to maintain proficiency in first aid and resuscitation training, as well as other critical skill qualifications.

 *Recommendation 160 has been implemented in Western Australia, through first aid and resuscitation requirements.*

The **Tasmanian** Government provided in their 1993 implementation report that all prison watch-house keepers receive annual refresher courses in first aid, and operational police receive ongoing first aid training where practicable. All frontline officers receive training every three years and watch-house keepers annually.

³⁰ <https://www.afp.gov.au/careers/vacancies/how-apply/minimum-requirements>

- *Recommendation 160 has been mostly implemented in Tasmania. However, all frontline officers receive training every three years instead of annually.*

The **Northern Territory** Police require the attainment of Provide First Aid and Provide Advanced Resuscitation certificates at recruit level. All new recruits, prison officers, and youth workers are required to have undertaken certified courses.

- *Recommendation 160 has been partially implemented in the Northern Territory, it is not clear how regularly training is provided to address this recommendation.*

Recommendation 161

That police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee's condition.

Background information

The RCIADIC Report found that in some cases delays in providing medical care have contributed to the severity of cases involving injury or illness in custody. It was determined that custodial staff should be well trained in medical emergency procedures to ensure that medical attention is provided promptly.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* provides that officers must immediately arrange for an ambulance and/or take appropriate action to provide medical assistance, if there are any signs that a person requires urgent medical attention (paragraph 18.3).

All ACT Corrective Services custodial officers are trained in relevant incidence response procedures and are instructed to seek immediate medical attention in the event of there being any doubt in respect to a detainee's health status. Should the matter be urgent or if there is any doubt as to the detainee's status a Code Pink (Medical Emergency Policy) is called for immediate medical attention provided by the Ambulance Service, outside of the Hume Health Centre operating hours.

- *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 161 through the AFP National Guideline.*

The **New South Wales** Government enacted the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) which provides a right to immediate medical attention where the custody manager believes that such attention is necessary. The *NSW Police Force Code of Practice for CRIME* also requires immediate medical attention to be arranged if necessary, and for police officers to seek medical advice if they have any doubt regarding a detainee's health.


Additionally, the NSWPF's Police Commissioner's Instructions 155.11 and 155.16 state all frontline CSNSW officers and Juvenile Justice staff are required to seek medical attention if any doubt arises as to a person's condition.

- *The New South Wales Government has implemented Recommendation 161 through the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) and the NSW Police Force Code of Practice for CRIME.*

In **Victoria**, the *Victoria Police Manual* (2015) requires immediate medical attention to be arranged where necessary, and for police officers to seek medical advice should they have doubt over a detainee's health. *Victorian Correctional Management Standards* also require staff to be trained on the requisite action to take in suicide and self-harm prevention and response.

- *Recommendation 161 is implemented in Victoria through the Victoria Police Manual (2015) and the Victorian Correctional Management Standards.*


The **Queensland** Government provides in the *Queensland Police Service Operational Procedures Manual* that police officers must immediately seek medical advice if they have doubt over a detainee's health. Under section 16.13.1 of these guidelines, the responsible officer is required to immediately assess and re-assess the level of supervision and healthcare requirements for a prisoner if in doubt over a detainee's condition. Additionally, these guidelines require staff to be trained on actions to take in regard to emergency and suicide prevention. This is a fundamental principle of duty of care for correctional services officers and is included in the *Code Blue Medical Emergency Response Checklist*.

 *The Queensland Government has implemented Recommendation 161 through the Queensland Police Service Operational Procedures Manual.*


The 1993 **South Australian** implementation report noted that Recommendation 161 had been incorporated into Correctional Services procedures and by Police Standing Orders. Presently in accordance with Standard Operation Procedures, Correctional Services staff are trained to seek medical attention for a prisoner if they have any doubt as to the prisoner's condition. Relevant Adelaide Youth Training Centre emergency and operational orders outline these requirements.

 *The South Australian Government has implemented Recommendation 161 through Correctional Services procedures and Police Standing Orders.*


The **Western Australia** *Court Security and Custodial Services Regulations 1999* provides that detainees receive immediate medical attention where necessary. The *Western Australia Police Manual* also requires that those in charge of lock-ups arrange medical attention for detainees as is required. The Western Australian Government notes that Recommendation 161 has been incorporated to standard practice for all police and prison officers in their duty of care.

 *The Western Australian Government has implemented Recommendation 161 through the Court Security and Custodial Services Regulations 1999, the Western Australia Police Manual, and current practices.*

The **Tasmanian** Government noted in their 1993 implementation report that the Department of Justice has introduced procedures to ensure that immediate medical care can be provided for prisoners. Additionally, if a watch-house keeper is under any doubt as to a prisoner's medical condition, it is a requirement that medical care is sought.

 *The Tasmanian Government has implemented Recommendation 161, as noted in their 1993 implementation report.*

The **Northern Territory** Government addressed Recommendation 161 through *General Orders – Prisoners – Code P12*. In 1993, this order was extended to also apply to suicides and attempted suicides. This recommendation is also incorporated into the *General Order – Custody Part II*, which places a priority on the safety and welfare of the individual person in custody. The Northern Territory Government note that this recommendation has been implemented through the *NTCS Incident Reporting and Recording Policy*, and the *At Risk Policy*.

 *The Northern Territory Government has implemented Recommendation 161 through General Orders – Prisoners – Code P12.*

Recommendation 162

That governments give careful consideration to laws and standing orders or instructions relating to the circumstances in which police or prison officers may discharge firearms to effect arrests or to prevent escapes or otherwise. All officers who use firearms should be trained in methods of weapons retention that minimise the risk of accidental discharge.

Background information


The RCIADIC Report observed that clear guidelines on the use of firearms are necessary to achieve a balance between protecting the public and protecting the rights and welfare of detainees.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *Commissioner's Order on operational safety (C03)* states that AFP employees may only carry or use munitions and equipment that they are qualified to use in accordance with AFP training (paragraph 16). All members who use firearms are trained in a range of methods (including retention) and refresher training is conducted annually. AFP officers are also required to undertake operational safety assessments on the use of firearms, batons, handcuffs, conducted energy weapons and chemical agents (paragraph 24). This includes firearms handling assessments and scenario based assessments that emphasise the use of communication, negotiation and conflict de-escalation.

 *In the Commonwealth and the Australian Capital Territory, Recommendation 162 has been implemented through the AFP Commissioner's Order on operational safety (C03).*

In **New South Wales**, for correctional services, regulation 295 under the *NSW: Crimes (Administration of Sentences) Regulations 2014* applies. This regulation states that a correctional officer can only carry or use a firearm if they have undergone approved training on the use of that firearm. Police training includes accreditation and annual reaccreditation relating to the use of issued sidearms. For CSNSW, all custodial officers undertake weapons training in primary training which includes being proficient with legislation and policies surrounding the use of firearms.

 *The New South Wales Government has implemented Recommendation 162 through the NSW Crimes (Administration of Sentences) Regulations 2014 and the introduction of training.*


Victoria has the *Victoria Police Manual* which sets out guidelines regarding firearms training for police. For correctional officer the *Correctional Management Standards for Men's Prisons in Victoria* and the *Standards for the Management of Women Prisoners in Victoria* state that training must be provided to firearm users. The 2005 implementation reports notes that, since the RCIADIC, Victoria Police have introduced oleoresin spray, conflict resolution training and operational safety tactics to avoid use of firearms except in necessary situations.

 *Victoria has implemented Recommendation 162 through firearms requirements in the Victoria Police Manual.*

In **Queensland**, the *Operational Procedures Manual* chapter 14 sets out the guidelines around firearms training for police. Section 14.5 states that a service firearm should not be issued to an officer unless the officer has been trained and qualified in the use of the particular type of firearm. The *Corrective Services Act 2006 (Qld)* section 144 states that the chief executive must ensure that a corrective services officer authorised to use lethal forces has been trained to use lethal force and other forms of force in a way that causes the least possible risk of injury to anyone other than the person against whom lethal force is directed.


 *The Queensland Government has implemented Recommendation 162 through the Operational Procedures Manual and the Corrective Services Act 2006 (Qld).*

The **South Australian** Government provided in their 1994 implementation report that the Department of Correctional Services was committed to phasing out the use of firearms in normal operations within prison. The Department reduced the number of firearms in prisons and provided for staff training in defence without using weapons. Additionally, the *Police General Orders* cover this recommendation. Currently, all Correctional Services Officers who use firearms are trained in methods of weapons retention that minimise the risk of accidental discharge. Officers are required to reach and maintain a qualification and be authorised by the Chief Executive to use and carry firearms.


 *The South Australian Government has implemented Recommendation 162 through the Police General Orders and the introduction of mandatory training requirements.*

Western Australia has an Operational Safety and Tactics Training Unit which is responsible for all critical use of force skills and operational safety training for police. WA also has the *Western Australian Police Manual* which sets out guidelines for firearms training. For correctional officers the *Adult Custodial Rule 15* is applicable, as is *Prisons Regulations 1982*. Both state that a firearm must only be used by a person who has completed a relevant training program.


All police officers and members of the Department of Justice Special Operations Group are required to maintain their proficiency in the appropriate use of firearms and tactical training. The use of firearms as a tactical option must be in accordance with jurisdictional law, policy and training guidelines. Any use of force must be necessary according to the circumstances, and members are accountable for their actions using such force.

 *The Western Australian Government has implemented Recommendation 162 through the introduction of training requirements relevant to firearms.*

Tasmania provided in their 1993 implementation report that Recommendation 162 was fully implemented in Corrective Services. The Tasmanian Police adopted the standard national guidelines for the use of lethal force and the deployment of police in high risk situations.

 *The Tasmanian Government has implemented Recommendation 162 as noted in their 1993 implementation report, and through the adoption of the standard national guidelines for the use of lethal force and the deployment of police in high risk situations.*

In the **Northern Territory**, the *Northern Territory Criminal Code* establishes the law in relation to the use of force, including the use of firearms. The *Police General Orders – Firearms* also explains the law and gives other guidelines in regard to the use of firearms by members. The Northern Territory's 1993-94 implementation report noted that access to firearms is not permitted in Correctional Services unless the officer has been trained in their use. Recommendation 162 was incorporated into the *Criminal Code and Prisons (Correctional Services) Act 2005* and Director's Rule 7/1994. However, these instruments have been repealed and replaced by the *Correctional Services Act 2014 (NT)* and Commissioner Directives. The *General Order – Operational Safety and Use of Force* provides guidance to police members on the use of force and directs the qualification and requalification requirements associated.

 *The Northern Territory Government has implemented Recommendation 162 through the Correctional Services Act 2014 (NT) and the General Order - Operational Safety and Use of Force, alongside other legislative instruments.*

Recommendation 163

That police and prison officers should receive regular training in restraint techniques, including the application of restraint equipment. The Commission further recommends that the training of prison and police officers in the use of restraint techniques should be complemented with training which positively discourages the use of physical restraint methods except in circumstances where the use of force is unavoidable. Restraint aids should only be used as a last resort.

Background information

The RCIADIC Report indicated that inadequate training in restraint techniques and the use of restraint equipment contributed to a number of custodial deaths.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The *AFP Commissioner's Order on Operational Safety (C03)* states that AFP employees may only use handcuffs and other approved restraints in accordance with AFP training and when they believe that their use is necessary to restrain a person in lawful custody (paragraph 11). Any use of force must be reasonable, justifiable and is always applied

as a last resort. Reasonable force is defined as 'the minimum force necessary and reasonable in the circumstances of a particular incident'. Restraint equipment must only be used when it is appropriate, including consideration of the extent to which the person in custody is violent; has attempted escape; needs to be escorted; is at risk of self-injury; likely to lose, conceal or destroy evidence; or threatens to expel bodily fluid or has done so. All Police and Protective Services Officers receive annual officer safety training and assessment, which includes the use of restraints and restraint techniques, including their application.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 163 through the AFP Commissioner's Order on operational safety (C03).*


The 1992-93 **New South Wales** implementation report noted that Prison Officer Recruits receive training in restraint techniques during their primary training. Additionally, instructions on use of restraint techniques are provided to student police during recruit training. This includes training in the use of handcuffs, restraining belt, riot equipment, batons, and physical controls skills. These training requirements were provided for in Police Commissioner's instructions 2.05 *Discouraging use of Physical Restraint Methods* annual training. These training requirements remain current, with police officers and custodial officers required to undergo annual training in restraint techniques during compulsory Officer Survival training.

 *Recommendation 163 has been implemented in New South Wales through the Police Commissioner's instructions 2.05 Discouraging use of Physical Restraint Methods annual training.*


In **Victoria**, training in restraint techniques is incorporated into Correctional Services Division recruit courses and periodic training is provided. All police recruits are trained in restraint techniques on an annual basis. The Victorian Government also introduced the *Corrections Regulations 2009* and the correctional management guidelines. In its 2005 implementation report, Victoria Police confirmed that restraints are only used as a last resort, depending on the extent of violence police are faced with.

 *Recommendation 163 is implemented in Victoria through training procedures and Corrections Regulations 2009.*


The **Queensland** Police Service provides restraint technique training in both pre-service and in-service training. The training is consistent with the principle that physical restraint methods be invoked only as a last resort. More recently, Queensland has incorporated the intent of this recommendation into the *Queensland Police Service Operational Procedures Manual* and the *Queensland Corrective Services Custodial Operations Standard Operating Procedure* which outlines the use of force. These guidelines also specify that prison officers are to be trained to use approved techniques. For Corrective Services, Queensland Corrective Services' control and restraint re-accreditation training was changed from three yearly to every 12 months commencing July 2017. Youth detention centre staff are provided with extensive training which has specific emphasis on staff using verbal and non-physical de-escalation techniques, this includes trauma informed practice.

 *Recommendation 163 has been implemented in Queensland through the introduction of pre-service and in-service training, as well as through procedural guidelines.*


In **South Australia**, trainee correctional officers receive training in restraint holds during the induction training course and active members of institutional emergency response groups receive regular training in application of physical and mechanical restraint methods. Adelaide Youth Training Centre staff are trained in restraint techniques designed by Maybo (a conflict management and physical intervention training provider) techniques, including SAFERcare™ for conflict management, SAFER PI™ for handcuffing and SAFER PI™ for assault reduction, disengagement and holding (use of reasonable force). An operational order is in place, outlining the use of reasonable force, including staff roles and responsibilities.

 *Recommendation 163 has been partially implemented in South Australia through the introduction of training modules. However, this does not appear to include measures to positively discourage the use of restraint techniques.*


Western Australia incorporated Recommendation 163 into the *Court Security and Custodial Services Regulations 1999* which provides that restraint devices can only be used by authorised persons who have successfully undergone training. Currently, training in the use of restraints is facilitated by the Operational Safety and Tactics Training Unit within the WA Police Force. Actions taken towards Recommendation 162 are also relevant to this recommendation.

 *The Western Australian Government has partially implemented Recommendation 163, as it does not appear that the use of force or restraints is required to be used only as a last resort.*

The **Tasmanian** Government noted in their 1993 implementation report that prison officers are trained in restraint techniques at induction, including in the use of the long baton. However, regular ongoing training had not yet been implemented. Currently in the Tasmania Prison Service, control and restraint training is provided to all correctional staff. A Director's Standing Order in relation to the use of force states that force should be only used as a last resort and for the minimum period where other means have proved unsuccessful and where not to act would threaten safety, security or the good order of the prison.

 *The Tasmanian Government has mostly implemented Recommendation 163 through the introduction of training and a Director's Standing Order in relation to the use of force. However, it is unclear how frequently this training is provided.*

In the **Northern Territory**, restraint techniques are taught at police recruit level and training is facilitated by Defensive Tactics Instructors. All training stresses the avoidance of confrontation and encourages conflict resolution to avoid the use of restraint methods. Intensive training is also provided to prison officers and youth workers in the use of restraining techniques. The guidelines for training requirements are outlined in NTCS Directives 2.2.3 Use of Restraints and 2.2.4 Use of Force. All training and directives emphasise verbal communication as the first priority to disarming any incident.

 *Recommendation 163 has been implemented in the Northern Territory through the introduction of training and development of procedural guidelines including NTCS Directives 2.2.3 Use of Restraints and 2.2.4 Use of Force.*

Recommendation 164

The Commission has noted that research has revealed that in a significant number of cases detainees or prisoners who had inflicted self-harm were subsequently charged with an offence arising from the incident. The Commission recommends that great care be exercised in laying any charges arising out of incidents of attempted self-harm and further recommends that no such charges be laid, at all, where self-harm actually results from the action of the prisoner or detainee (subject to a possible exception where there is clear evidence that the harm was occasioned for the purpose of gaining some second advantage).

Background information

The RCIADIC Report commented that charging detainees in relation to self-harm showed a lack of empathy towards the detainee and could increase the distress felt by that person.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. All charges made by ACT Policing members are evidence-based and subjected to examination in light of obvious defences (including those relating to the mental state of the accused). Only in the absence of obvious defences, or where obvious defences do exist but there is evidence to negate them, will charges proffered by ACT Policing members be pursued.

● *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 164 through the AFP's standard approach for determining when to pursue charges.*

The **New South Wales** Government provides that police officers should give careful consideration, prior to a charge being laid, as to whether it is appropriate. Currently under the *Crimes (Administration of Sentences) Act 1999* (NSW) and Regulations, an act of self-harm is not prescribed as offence in custody and therefore cannot be charged. In addition, this is also set out in the *Police Commissioner's Instruction 155.04 - Charging*.

● *Recommendation 164 has been implemented in New South Wales through the Crimes (Administration of Sentences) Act 1999 (NSW) and Regulations, and Police Commissioner's Instruction 155.04 - Charging.*

In **Victoria**, there is no longer a specific offence of self-harm/mutilation in the *Corrections Regulations 1988*. It is not police practice to charge detainees with offences after they have been involved in self-harm.

● *Recommendation 164 is implemented in Victoria under the Corrections Regulations 1988.*

The **Queensland** Police Service *Operational Procedures Manual* states that officers must exercise discretion when deciding to charge persons in custody with minor criminal or regulatory offences arising from incidents where self-harm or suicide was solely the intended outcome of the unlawful conduct. This is further supported by provisions in the *Queensland Police Services Custody Manual*. Under the *Corrective Services Act 2006*, self-harm is not an offence.

● *Recommendation 164 has been implemented in Queensland through the Queensland Police Service Operational Procedure Manual and the Corrective Services Act 2006 (Qld).*

The **South Australian** Government stated in their 1993 implementation report that Recommendation 164 had been implemented, and that inflicting self-harm is not an offence, in South Australia. Correctional Services also established a working group in the mid-1990s to explore the issue of suicides and incidents of self-inflicted injury.

● *Recommendation 164 has been implemented in South Australia, as noted in the South Australian Government's 1993 implementation report.*

Western Australia's 1994 implementation report commented that Recommendation 164 had been incorporated into police practice, and that there is no legislation that precludes a person from committing acts of self-harm.

● *As noted in their 1994 implementation report, the Western Australian Government has implemented Recommendation 164.*

The 1993 **Tasmanian** implementation report states that prisoners are not charged with self-harm in Tasmania. This is covered by Tasmania Prison Service suicide and self-harm guidelines.

● *Recommendation 164 has been implemented in Tasmania, through Tasmania Prison Service suicide and self-harm guidelines.*

The **Northern Territory** had implemented the intent of Recommendation 164 at the time of the RCIADIC. Self-harm prisoners and detainees in Northern Territory prisons are not, as a matter of course, charged with any offence. Under the *General Order – Custody Part II*, the NTPF conducts regular audits of all watch houses to ensure ongoing compliance to the best practices of design and safety.

● *Recommendation 164 has been implemented in the Northern Territory through existing provisions which stated that self-harm prisoners and detainees in Northern Territory prisons are not charged with any offence as a matter of course.*

Recommendation 165

The Commission notes that prisons and police stations may contain equipment which is essential for the provision of services within the institution but which may also be capable, if misused, of causing harm or self-harm to a prisoner or detainee. The Commission notes that in one case death resulted from the inhalation of fumes from a fire extinguisher. While recognising the difficulties of eliminating all such items which may be potentially dangerous the Commission recommends that Police and Corrective Services authorities should carefully scrutinise equipment and facilities provided at institutions with a view to eliminating and/or reducing the potential for harm. Similarly, steps should be taken to screen hanging points in police and prison cells.

Background information

The RCIADIC Report commented that prison and police station environments may contain equipment and facilities that, if misused, could present a hazard to detainees, cause harm or result in death.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP *National Guideline* requires that AFP employees conduct daily checks of cells and facilities to ensure they are in good working order, and search and clean them after use (paragraph 40). ACT Policing take into consideration the potential harm that could be caused in Watch House cells and all efforts are made to ensure persons do not have access to anything which may cause them harm. Where a detainee is identified as being at risk, the use of the padded cell can be engaged to ensure their safety. In the *1995-96 Annual Report*, the Commonwealth noted that the new Jervis Bay Territory Police Station complex met the requirements of this recommendation, and that the situation will be monitored to ensure the station and cells remain safe. The *Corrections Management Act 2007* (ACT) addresses this recommendation for the Department of Corrective Services and the care of prisoner's in custodial facilities.

Additionally, the ACT Corrective Services have a policy outlining the storage and control of chemicals and cleaning materials in line with the principles of this recommendation. The ACT Government provided funding across the 2012-13 and 2013-14 financial years to undertake ongoing structural improvements to the Corrective Services Unit to increase detainee and staff safety. The design of the Alexander Maconochie Centre also takes into account the principles of this recommendation.


 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 165 through facility check procedures mandated by the AFP National Guideline, and the delivery of improved facilities at the Jervis Bay Territory Police Station.*

In **New South Wales**, current practice is for each cell to be searched before and after use for anything that may be used to inflict harm or to cause damage. Prompt reports are required to be made if cells are considered insecure or hazardous. These provisions are contained in the *NSW Police Code of Practice for CRIME* (2012) which establishes protocols for inspecting people in custody and cells. Additionally, all moveable items which present a potential danger, have been removed from cells and all hanging points have been either removed or screened since the time of the RCIADIC.

 *Recommendation 165 is implemented in New South Wales through the NSW Police Code of Practice for CRIME (2012) and the introduction of screening procedures.*


The **Victorian** Police Manual requires that custody staff should visually inspect and search detention facilities before a prisoner is placed or allowed in them, after the prisoner is released, and periodically throughout the shift. The manual also states that the staff member must check that the area is clean and free of objects that could be used to cause injury, and that no hanging points are available. The Victorian Government allocated \$50m for upgrades to cells after four deaths at a private prison attributable to hanging points in cells and shower facilities. The Building Design Review Project Team prepared the *Building Design Review Project Guidelines 2000* and the *Cell and Fire Safety Guidelines*

Revision 2004. Upgrades were completed in a number of prisons to ensure compliance with these guidelines.


 *Recommendation 165 is implemented in Victoria, based on the requirements of the Victorian Police Manual and the initiatives taken by the Building Design Review Project Team.*

The **Queensland** Police Service Operational Procedure Manual requires prisoners to be supervised when in areas that have hanging points, such as exercise yards and shower facilities. The Manual doesn't include a provision for inspecting facilities, but instead focuses on items illegally brought to the facility which may cause harm. For Corrective Services, all correctional facilities built in Queensland since 1996 have been designed to minimise the risk of self-harm by a change of structure and removal of hanging points. As at June 2017, 91.9% of secure cells have suicide reduction measures in place.

Currently, fire-fighting appliances are secured from prisoners' access, every high security correctional centre has a hazardous chemical register and clear guidelines over their storage and control, and Queensland Corrective Services does not use any corrosive chemicals in these centres. Queensland Corrective Services has a policy position to not bring any new cells online with hanging points.


 *Recommendation 165 is partially implemented in Queensland through the Queensland Police Service Operational Procedure Manual and the design of correctional facilities. However, it does not appear that there have been provisions introduced for the screening or removal of hazardous items or hanging points.*

The **South Australian** Government commented in their 1993 implementation report that all new prison designs would incorporate the intent of Recommendation 165. The South Australian Government also noted the tension that exists between providing a humane atmosphere and that which will resist the most determined suicide-intent prisoner. With respect to potential ligature (hanging) points, Correctional Services continues to modify infrastructure to remove or modify potential points based on an assessment of risk. An Adelaide Youth Training Centre operational order outlines that Fabric and Integrity Checks are the responsibility of all operational staff.


 *Recommendation 165 is partially implemented in South Australia, with the 1993 implementation report noting that new prisons would incorporate the intent of this recommendation. It does not appear that hazardous items or hanging points were screened or removed from existing prisons.*

The **Western Australia** Police Manual requires officers to check the condition of a cell before placing a prisoner in it, and to check it whenever the prisoner is removed, but does not make reference to equipment that may be used to cause injury.


The Western Australian Government has advised that it complies with the Australian standards for prison infrastructure regarding the containment and storage of essential equipment, and there are regular Occupational Safety and Health inspections conducted in prisons with corresponding reports and implementation of report recommendations. The Western Australia Police Force monitor the application of the Custodial Design Guidelines and, where appropriate, will amend them as required.

 *The Western Australian Government has implemented Recommendation 165 through compliance with the Australian standards for prison infrastructure, and the conduct of regular checks in prisons.*

In **Tasmania's** 1993 implementation report, the Government noted that all reasonable steps are taken to remove dangerous items from prisoners and that a program had been implemented to improve cell conditions as resources become available. Since 2001, Tasmania has introduced new men's maximum and medium security accommodation and upgraded the Mary Hutchinson Women's Prison. New infrastructure and refurbishment projects also seek to introduce safer cell designs and remove the risks covered in this recommendation.

 *The Tasmanian Government has implemented Recommendation 165 as noted in their 1993 implementation report, and through the incorporation of these principles into new infrastructure and refurbishment projects.*

In the **Northern Territory**, all police cells are checked and obvious injury points removed, including the screening of high level hanging points. In the 1993 implementation report, the Northern Territory Government noted that the NT Police Force had spent over \$300,000 modifying cells to remove hanging points, upgrade electrical connections, and install fire alarms. A comprehensive review of all correctional institutions was also conducted at the time to ensure that prisoners did not have access to dangerous equipment. The *General Order – Custody* also implements this recommendation through providing information on the requirement to record and share relevant information between Agencies when custody of a person is transferred. The correctional facility's operating procedures prevents unauthorised or unsupervised use of any emergency equipment.

 *Recommendation 165 is implemented in the Northern Territory, based on the screening or removal of hanging and injury points. The General Order – Custody also implements the principles of this recommendation.*

Recommendation 166

That machinery should be put in place for the exchange, between Police and Corrective Services authorities, of information relating to the care of prisoners.

Background information

The RCIADIC Report found that the exchange of information (such as medical history) between various custodial authorities, including police and corrective services, can reduce the risk of death in custody.


Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

For actions taken towards the implementation of Recommendation 166, see also Recommendation 157.

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the Commonwealth's *1995-96 Annual Report*, it was noted that in 1994 the AFP has introduced a prisoner transfer form, which indicates whether a detainee has displayed signs of being "at risk". It was further noted that the AFP uses *In Custody Files*, which provide relevant information (including medical conditions, mental conditions, violent tendencies or other concerns) when a person in custody is transferred into the custody of another agency. The procedures were formalised through an MOU between the AFP, ACT Corrective Services, ACT Juvenile Justice Service and the New South Wales Department of Corrective Services in 1995-96 and is still in place (*1995-96 Annual Report*). As of 28 April 2017, the ACT Corrective Services has a Memorandum of Understanding with ACT Policing regarding the exchange of information relating to the care of prisoners.


 *Recommendation 166 has been implemented by the Commonwealth and the Australian Capital Territory Governments through AFP's use of prisoner transfer forms, In Custody Files, and an MOU between policing and correctional agencies.*

The **New South Wales** Government noted in their 1992-93 implementation report that the Police/Corrective Services Inter-Departmental Committee had produced a report on preventing all deaths in custody, and a draft Prisoner Admission/Prisoner Custody Risk/Transfer Form. Current practices are in place to ensure information is provided from the NSWPF to CSNSW and Juvenile Justice, including providing a copy of the NSWPF Custody Management Record when a detainee is transferred into corrective custody.


 *The New South Wales Government has implemented Recommendation 166 through facilitating transfer of information between police and custodial authorities.*

The **Victorian** Government noted in their 1993 implementation report that existing arrangements between the Office of Forensic Medicine (Police) and the Forensic Health Services ensure an


information flow and high standard of medical delivery. Additionally, a new Prisoner Information form was introduced containing basic pertinent information attached to a prisoner's warrant. In their 2005 implementation report, Corrections Victoria advised electronic transfers of information meant there had been no recent issues identified relating to this recommendation.

 *The Victorian Government has implemented Recommendation 166 through facilitating electronic transfer of information between police and custodial authorities.*

In **Queensland's** 1993 implementation report, the Government noted that the transfer of information about each prisoner from the Queensland Police Service to the Queensland Corrective Services Commission occurs both on informal and formal bases. In 2016 there was an independent review of the youth detention centres in Queensland, which made 83 recommendations. The Queensland Government accepted all recommendations and work is underway to implement the recommendations. Within youth detention ongoing consultation and engagement with staff and external experts occurs to create a culture of review and continual improvement.


 *The Queensland Government has implemented Recommendation 166 through facilitating formal and informal transfer of information between police and custodial authorities.*

The **South Australian** Government commented in their 1993 implementation report that information is exchanged on a number of levels, facilitated by a Correctional Services Liaison Officer appointed by the Police Department. Additionally, a Prisoner Information Sheet was introduced: see Recommendation 130. The Department for Community and Social Inclusion has a Memorandum of Administrative Arrangement in place with South Australia Police and the Department of Correctional Services, for sharing information to reduce risk to all young people, with consideration for privacy / confidentiality. Youth Justice records what is requested, why it is requested, and what is provided to meet the requirements of the Ombudsman South Australia Information Sharing Guidelines for promoting safety and wellbeing.


 *The South Australian Government has implemented Recommendation 166 through facilitating transfer of information between police and custodial authorities.*

In **Western Australia**, the Government noted in their 1994 implementation report that it is established practice to provide all relevant information when a detainee is transferred to Corrective Services, Health Department agencies, or other Police lockup facilities by using the Form P10B.

Currently, medical and personal information is stored in the Custody Management Application and risks are highlighted to effectively manage the person in custody. The Western Australia Police Force records and updates all medical information on the Application and uses this in assessing risks. Upon transfer to another agency, current reports are printed out and provided to the third party contracted transport officer. All risks and history while in custody are transferred, and the contractor is required to sign an Authority to take Charge document whereby the contractor confirms that the person in custody's medical and risk history has been provided.


 *The Western Australian Government has implemented Recommendation 166 through facilitating the transfer of information between police and custodial authorities.*

The **Tasmanian** Government noted in their 1993 implementation report that procedures had been established between Tasmania Police and the Corrective Services Division to ensure that relevant information on prisoners is exchanged. Currently, a Memorandum of Understanding exists between the Tasmania Prison Service and Tasmania Police.

 *The Tasmanian Government has implemented Recommendation 166 through facilitating transfer of information between police and custodial authorities as outlined in a Memorandum of Understanding.*

In the **Northern Territory's** 1993-94 implementation report, it was noted that informal exchanges of information between Police and Correctional Services relating to the care of prisoners is routinely carried out. Additionally, Correctional Services and the NT Police have access to a common computer system (IJIS), which includes details of any injury or disease a prisoner may have. Formal protocols

were also established between the NT Police, the Department of Correctional Services and the Department of Health, and a Memorandum of Understanding drawn up for the sharing of information.

 *The Northern Territory Government has implemented Recommendation 166 through facilitating transfer of information between police and custodial authorities.*

Recommendation 167

That the practices and procedures operating in juvenile detention centres be reviewed in light of the principles underlying the recommendations relating to police and prison custody in this report, with a view to ensuring that no lesser standards of care are applied in such centres.

Background information


The RCIADIC investigation highlighted issues relating to the identification and care of those at risk of death in custody. These issues were similar to those experienced by adult prisoners, including the need for: supervision; proper care-worker training; a safe physical environment; adequate support systems for detainees; and access to proper care.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

The **New South Wales** Government noted in their 1992-93 implementation report that Juvenile Justice had incorporated Recommendation 167 into procedures and practices applied to juvenile detention. Several oversight mechanisms are in place to review operation of juvenile detention centres. The Inspector of Custodial Services is currently conducting a review of use of force and use of segregation and confinement in NSW Juvenile Justice Centres.

 *The New South Wales Government noted in their 1992-93 implementation report that Recommendation 167 had been implemented and that there exist several oversight mechanisms are in place to review operation of juvenile detention centres.*


The **Victorian** Government, in 1993, updated the *Practice and Procedure Manual for Juvenile Justice Centres* in line with Recommendation 167. Standards of care provided in Juvenile Justice Centres reflect at least the minimum standards prescribed for persons in police or prison custody. The Victorian Government's 2005 implementation report observed that Child Protection and Juvenile Justice continually reviewed policy to ensure it complied with the RCIADIC recommendations and 'best practice' frameworks for Aboriginal and Torres Strait Islander young people.

 *The Victorian Government has implemented Recommendation 167 through the updated *Practice and Procedure Manual for Juvenile Justice Centres*.*


The **Queensland** Government noted in their 1993 implementation report that the Department of Family Services and Aboriginal and Islander Affairs had considered all recommendations that relate to police and prison custody and applied them to the juvenile justice system. As best practice in youth justice the aim is to place the young person in the detention centre closest to their place of residence. The following policies apply to transferring a young person to/from youth detention centres:

- a young person must be transferred to an adult correctional facility if they are 17 and have six or more months remaining to serve;
- a young person may be transferred to a mental health facility or another Australian youth justice jurisdiction if it is in the young person's best interests;
- a young person may be transferred between youth detention centres for safety and/or operational reasons.
- the young person must be afforded all possible contact with their legal representatives prior to the transfer.
- Consultation about the transfer will occur with the young person, their parents or care providers, the Youth Justice Service caseworker and other relevant stakeholders. This includes liaison with the Hospital and Health Service or interstate health authority for any continuing health treatment that the young person requires.


- Discretionary transfers must be informed by an assessment of risk and suitability.
- All case management documentation must be updated prior to enacting any transfer.
- Interstate transfers will only proceed when the sending and receiving State and Territory have agreed to the arrangements.
- For transfers between youth detention centres:
 - a young person is to be returned to a youth detention centre if or when the factors that led to their transfer are resolved
 - an estimated return date should be established prior to enacting the transfer
 - the young person will be provided with an opportunity to participate and have their views taken into account in planning processes to the fullest extent possible, having regard to age and ability to understand
 - young people who have a court date within the following two weeks are not eligible to be transferred to another centre

 *The Queensland Government has implemented Recommendation 167 through the introduction, and ongoing review, of policies to further the standard of care provided to young people in juvenile custody.*


In their 1994 implementation report, the **South Australian** Government noted that the RCIADIC's principles had been used as the basis for enhancing practices and procedures over several years, and incorporated into a revised Standard Procedures. The Youth Justice Administration Act 2016 (SA) embeds the current Youth Justice service model and promotes contemporary practice by reflecting that assessment, case planning and rehabilitation programs are key to reducing re-offending. The Act also recognises the important contribution of families and communities in supporting young people and the over-representation of Aboriginal and Torres Strait Islander young people in the justice system. To further support culturally appropriate practice, the legislation introduces the Aboriginal and Torres Strait Islander Youth Justice Principle. The legislative requirements are reflected in policies, guidelines, procedures and Adelaide Youth Training Centre Orders and where possible, compliance requirements have been built into forms and templates.

 *The South Australian Government has incorporated the principles of Recommendation 167 as a basis for enhancing practices and procedures over several years, and to developing a revised Standard Procedure.*


According to the Australasian Juvenile Justice Administrators, **Western Australian** youth justice department policies and procedures are reviewed to ensure compliance with the Australasian Juvenile Justice Administrator's National Standards. The Western Australian Government further notes that this recommendation has been implemented since the 1994 compliance report. More recently, the Department of Justice has been developing a new trauma-informed model of care for the Banksia Hill Detention Centre which incorporates individualised care and case coordination that recognises vulnerability, developmental levels, gender and cultural beliefs and practices.

 *As noted by the Western Australian Government, Recommendation 167 has been implemented since the 1994 compliance report.*


The **Tasmanian** Government commented in their 1993 implementation report that staff had received training, and practiced closer liaison with the Aboriginal and Torres Strait Islander community in response to Recommendation 167.

 *The Tasmanian Government has partially addressed Recommendation 167 through the ongoing consultation of Aboriginal and Torres Strait Islander communities. However, it does not appear that ongoing monitoring and evaluation specifically occurs or that the standard of care is considered.*

The **Northern Territory's** 1993-94 implementation report states that ongoing monitoring and evaluation has been conducted internally and through independent Official Visitors and Boards of Management. Territory Families has also reviewed and updated youth justice policy directives, and the amended *Youth Justice Act 2005* (NT) includes new provisions regarding the conditions and treatment of young people in detention.

 *The Northern Territory Government has mostly implemented Recommendation 167. While ongoing monitoring and evaluation activities occur, there does not appear to be a provisions made regarding the standard of care to be considered.*

The **Australian Capital Territory** Government commented in their 1993-94 implementation report that Juvenile Justice's operational practices and procedures and training, as set out in Juvenile Justice's procedures manual, have been reviewed and amended in accordance with Recommendation 167. These principles have been incorporated into practice, for example through the model of care used by the Bimberi detention centre.

 *The Australian Capital Territory Government has implemented Recommendation 167 through the updated Juvenile Justice's procedures manual.*

7.2 The prison experience (168-187)

Recommendation 168

That Corrective Services effect the placement and transfer of Aboriginal prisoners according to the principle that, where possible, an Aboriginal prisoner should be placed in an institution as close as possible to the place of residence of his or her family. Where an Aboriginal prisoner is subject to a transfer to an institution further away from his or her family the prisoner should be given the right to appeal that decision.

Background information


The RCIADIC noted that community connection was important for Aboriginal and Torres Strait Islander people and the difficulties of sustaining this connection when an Aboriginal and Torres Strait Islander prisoner may be geographically displaced from their community.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales** the *Aboriginal and Torres Strait Islander Inmate Handbook* notes that a prisoner can request to be close to family. Under current practices, the Aboriginal Classification Officer makes decisions relating to classification and placement decisions for Aboriginal inmates. Having regard to the safety of staff and security of the correctional centre and the needs of Aboriginal offenders, these decisions can be informed by the family and other supports available to Aboriginal offenders at specific locations. Aboriginal inmates have the right to ask for consideration of a change of placement, following the process set out in section 14.2 of the CSNSW Offender Classification and Case Management Policy and Procedures Manual.

 *The New South Wales Government has implemented Recommendation 168 as noted in the Aboriginal and Torres Strait Islander Inmate Handbook.*

Victoria has implemented this recommendation through the *Corrections Regulation 2009* and the *Corrections Victoria Sentence Management Manual*. The manual states that Aboriginal and Torres Strait Islander people should be engaged in the discussion regarding placement options. Under regulation 26 of the *Corrections Regulation 2009* placements need to take into account the cultural background of a prisoner.

These provisions are also supported by the *Sentence Management Manual AC 5 – Determining a Prisoner's Placement*, which states that staff must ensure that the prisoner is able to engage in the discussion regarding placement options and that consideration must be given to placement at a location at which a prisoner may maintain cultural links and other appropriate supports. All prisoners have the right to request a review of their classification at any point in time by making an application to the Case Management Review Committee at their prison location. If unsatisfied with the response from the Committee, the prisoner can write to the Assistant Commissioner, Sentence Management, and ultimately to the Victorian Ombudsman.

- *Victoria has implemented Recommendation 168 through the Corrections Regulation 2009 and the Corrections Victoria Sentence Management Manual.*

Queensland has implemented this recommendation through the *Corrective Services Act 2006* (Qld) and the *Corrective Services Regulation 2006*. Regulation 34 of the *Corrective Services Regulation 2017* states that an Aboriginal and Torres Strait Islander prisoner must be as close as practicable to their family. Section 71 of the *Corrective Services Act 2006* (Qld) allows for the prisoner to appeal to the chief executive to reconsider a transfer decision. If a young person cannot be located in the detention centre closest to their home and family, they can be eligible for financial assistance, which can support transport, accommodation, and meals. Young people are also allowed to correspond to approved persons through mail, telephone calls, and video link-ups.

- *The Queensland Government has implemented Recommendation 168 through the Corrective Services Act 2006 (Qld) and the Corrective Services Regulation 2006.*

In **South Australia** the *Correctional Services Act 1982* (SA) section 23 requires that initial and periodic assessment of prisoners should take into account family ties. However, no appeal mechanisms were found. If a prisoner is located away from their family, the prisoner can request a short-term transfer to access family visits. The Adelaide Youth Training Centre operates as a 'one-centre, two-campus' model and therefore the principles of this recommendation concerning the transfer between institutions do not apply. The Adelaide Youth Training Centre does provide mechanisms, including phone and visitations, for residents to maintain contact with family.

- *South Australia has mostly implemented Recommendation 168 through the Correctional Services Act 1982 (SA) which requires that initial and periodic assessment of prisoners should take into account family ties. However, no appeal mechanisms were found.*

In **Western Australia** the *Inspection Standards for Aboriginal Prisoners* and the *Code of Inspection Standards for Adult Custodial Services* state that Aboriginal and Torres Strait Islander prisoners should be able to serve out their term in their own country. A recent *Report of an Announced Inspection of Casuarina Prison*³¹ found that 60% of Aboriginal and Torres Strait Islander prisoners were 'out of country'.

Currently, the Adult Custodial Rule 18 *Assessment and Sentence Management of Prisoners* provides that, where practicable, people in custody are to be placed as close as possible to family, friends, and/or significant others in order to promote family, community, and social support. This Rule also provides that prisoners have the right of appeal against placement decisions.

- *The Western Australian Government has implemented Recommendation 168 through the Inspection Standards for Aboriginal Prisoners, the Code of Inspection Standards for Adult Custodial Facilities, and Adult Custodial Rule 18. However, it is unclear to what extent this is followed in practice.*


Tasmania has implemented this recommendation through the *Tasmania Prison Services, Director's Standing Orders*. Order 2.12 states that Aboriginal and Torres Strait Islander prisoners are allowed to request to be accommodated amongst their peers and are able to attend cultural events and programs. The Tasmanian Government also stated in their 1995 implementation report that there are difficulties in placing prisoners close their family members since the prisons suitable for longer term accommodation in Tasmania are all located in Southern Tasmania. There is also no mechanism for prisoners to appeal against their place of incarceration because there is only one prison in Tasmania for long-term accommodation and a single youth detention centre.

- *The Tasmanian Government has mostly implemented Recommendation 168 through Tasmania Prison Services, Director's Standing Order 2.12. However, no appeal mechanisms were found.*


In the **Northern Territory**, prisoners are held in an institution as close to their home community as possible. However, this is not always possible due to security or operational constraints. Under the

³¹ Office of the Inspector of Custodial Services 2014, *Report of an Announced Inspection of Casuarina Prison*, ISSN 1445-3134

Sentencing Act 1995 (NT), the Court decides where to place a prisoner. The family and cultural background of the prisoner might be taken into account in the Court's decision; however, there is no legislation or policy stating it must be taken into account. Prisoners have the right to appeal to the Commissioner on any operational matter, including where they may be accommodated.

 *The Northern Territory Government has partially implemented Recommendation 168. While the family and cultural background of the prisoner might be taken into account in the Court's decision; there is no legislation or policy stating it must be taken into account.*

The **Australian Capital Territory** Government stated in their 1997 implementation report that there is a formal agreement with NSW that allows for ACT prisoners to be placed in one of the four facilities closest to the ACT. An ACT prisoner in a NSW jail can also request a transfer through the NSW system or through the ACT system. In 2008, the ACT opened the Alexander Maconochie Centre, and offenders in the ACT are as a matter of routine placed in this institution. The ACT is a small jurisdiction geographically and the Alexander Maconochie Centre is the only prison in the ACT. Only in extremely rare occasions are prisoners sent to a NSW prison, for example the Goulbourn prison in the event that a greater level of security is required.

 *In the Australian Capital Territory, Recommendation 168 has been addressed through formal agreement with NSW and the role of the Alexander Maconochie Centre.*

Recommendation 169

That where it is found to be impossible to place a prisoner in the prison nearest to his or her family sympathetic consideration should be given to providing financial assistance to the family, to visit the prisoner from time to time.

Background information


The RCIADIC noted that the families of Aboriginal and Torres Strait Islander prisoners may have financial constraints and would be unable to visit family members in prison, especially if the family lives in a remote area. Providing financial support may aid Aboriginal and Torres Strait Islander people to visit their family members in prison and support cultural and family connection.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, there is the *Travel and Accommodation Assistance Scheme* which provides funding for families who face difficulties in paying for the costs of travel and accommodation when visiting family members in correctional centres that may be located far away from their home³². CSNSW is also continuing work on utilising audio visual links for family visits.

 *New South Wales has implemented Recommendation 169 through the Travel and Accommodation Assistance Scheme.*

Victoria implemented the *Aboriginal Family Visits Program* which aims to ensure Aboriginal and Torres Strait Islander prisoners within Victoria remain in contact with their families. The program provides bus and train tickets, reimbursement of petrol expenses and taxis, and accommodation if a person must travel at least three hours from home to prison and travel interstate. The AJA 3 aims to support the *Aboriginal Family Visits Program* to enhance connection of Aboriginal and Torres Strait Islander offenders with their families and communities.


 *Victoria has implemented Recommendation 169 through the Aboriginal Family Visits Program.*

³²


http://www.correctiveservices.justice.nsw.gov.au/Documents/Reports%20and%20Publications/Visit_Brochure_2016_2_Approved_ONLINE.pdf

Queensland Corrective Services has video conferencing equipment in all facilities to enable prisoners to keep in contact with families in rural and remote areas. Youth detention centres are also able to subsidise families for transportation and accommodation costs to visit their children in detention.


Queensland Corrective Services currently has a Family Support Budget program available for families to seek financial support to visit Aboriginal and Torres Strait Islander prisoners. Applications are approved at the discretion of the General Manager. Additionally, the following strategies are funded to enable families to maintain contact with Aboriginal and Torres Strait Islander prisoners: at-risk cell visitation, Elders Visitation Services, cultural connection programs (Aurukun), Aboriginal and Torres Strait Islander leadership programs, first peoples chaplaincy, and visitor transport services state-wide.

 *The Queensland Government has addressed Recommendation 169 through video conferencing, and the provision of funding and strategies targeted at supporting families to maintain contact with Aboriginal and Torres Strait Islander prisoners.*


In **South Australia** an organisation called Aboriginal Prisoners and Offenders Support Services, which was set up in response to the RCIADIC, provides a bus once a month to transport families to Port Augusta and Cadell prisons to visit family members. No other financial services are provided to family members to cover travel costs.

 *The South Australian Government has partially implemented Recommendation 169 through the provision of bus transport once a month. No evidence of other financial consideration could be located.*


The **Western Australian** Code of Inspection Standards For Adult Custodial Services standard 13.5 states that when an out of country placement is unavoidable, compensatory measures such as video telephone calls to family and periodic transfer to a prison that will enable family visits should be undertaken. Financial assistance is not provided in Western Australia for family members to visit people in custody.

 *The Western Australian Government has partially implemented Recommendation 129 through the Code of Inspection Standards for Adult Custodial Services. However, financial assistance is not provided for family members to visit people in custody.*

The **Tasmania** Prison Service works closely with non-government organisations to provide support to families, including free transport from the north of the State and affordable accommodation for families next door to the Risdon Prison Complex. Video visits are also available for prisoners from the North or North-West of Tasmania. Community and Custodial Youth Justice work together to facilitate family access to Ashley Youth Detention Centre (AYDC). This may include booking and paying for transport or providing fuel vouchers.


 *The Tasmanian Government has implemented Recommendation 169 through initiatives including transport and video conferencing services.*

The **Northern Territory** has video-conferencing services available to Aboriginal and Torres Strait Islander prisoners to be used for family contact. The NTCS Directive 2.15.3 Prisoner Access to Video Conferencing notes that prisoners should be permitted one hour of video conference linkup each month or two half hour conferences per month. However, no financial assistance programs for family were found and the Northern Territory Government noted that this recommendation is not supported due to funding constraints.

 *The Northern Territory Government has partially implemented Recommendation 169 through the provision of video conferencing. However, no financial assistance programs for family were found and the Northern Territory Government noted that this recommendation is not supported due to funding constraints.*

In the **Australian Capital Territory**, Prisoners Aid is funded by the ACT Government to assist non-ACT residents to visit detainees in the Alexander Maconochie Centre. The provision of financial assistance is based on a merit-based process and primarily contributes towards petrol costs and assistance in finding inexpensive accommodation. ACT Corrective Services practice is to give

favourable consideration to Aboriginal and Torres Strait Islander detainees attending funerals and significant family functions.

 *The Australian Capital Territory has implemented Recommendation 169 through the provision of funding towards Prisoners Aid.*

Recommendation 170

That all correctional institutions should have adequate facilities for the conduct of visits by friends and family. Such facilities should enable prisoners to enjoy visits in relative privacy and should provide facilities for children that enable relatively normal family interaction to occur. The intervention of correctional officers in the conduct of such visits should be minimal, although these visits should be subject to adequate security arrangements.

Background information

The RCIADIC identified a need to ensure an appropriate environment for visits with family and friends to reduce the negative impacts of prison and to improve social integration after release.


Responsibility

All State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

New South Wales have stated in *Family Matters: A Strategy for Service and Program Provision to Children and Families of Offenders* that they are committed to providing child and family friendly visiting areas. CSNSW is committed to expanding access to video conference and other digital delivery channels to enhance contact between inmates and their families.


Currently, CSNSW offers quality-parenting programs to encourage offenders to be effective parents, and recognises the importance of visits by family and friends as part of an offender's rehabilitation. To address officer interventions, the *Crimes (Administration of Sentences) Regulation 2012* and s 10.2 of the Custodial Operations Policy and Procedures provides the overarching ability of the Commissioner and Governors to impose restrictions on, or prohibit entry to, a visitor to the correctional centre. Under clause 100 of the Regulation, the Governor of a correctional centre may direct that a visit is to be, or is to continue as a non-contact visit if of the opinion that the visitor is likely to (a) introduce into the centre prohibited goods; or (b) to act in a threatening, offensive, indecent, obscene, abusive or improper way.

 *The New South Wales Government has mostly implemented Recommendation 170 through Family Matters: A Strategy for Service and Program Provision to Children and Families of Offenders. However, this does not appear to address the level of intervention of correctional officers in the conduct of such visits.*


The **Victorian** Government have stated that they have adequate facilities for conducting visits by friends and families which includes non-contact, contact, and in some facilities private areas for families. This is the case for the juvenile justice centres as well. Staff intervention during family visits is at a minimum and only occurs when necessary.

 *Victoria has implemented Recommendation 170 by having adequate facilities for conducting visits by friends and families.*

In **Queensland**, under section 150 of the *Corrective Services Act 2006* (Qld) new prisons should have a meeting place for Aboriginal and Torres Strait Islander prisoners that promotes communication and endorses the prisoner's cultural heritage. The Queensland Government noted that supervision is undertaken by correctional services officers with the minimal intervention that is required to maintain the safety of staff, visitors and prisoners while ensuring prisoner containment and security. Queensland Corrective Services has video conferencing equipment in all facilities to facilitate family visits with families in rural and remote areas of Queensland. Youth detention centres aim to create a welcoming atmosphere for visitations to occur, by providing facilities including tea and coffee, access to barbecue areas, and access to a birthday cake and photographic facilities in the event of the young person's birthday.


 *The Queensland Government has implemented Recommendation 170 through the Corrective Services Act 2006 (Qld), the provision of adequate facilities, and updated organisational practices.*

In their 1994 implementation report, the **South Australia** Government stated that they ensure that Rule 79 of the United Nations Standard Minimum Rules for the Treatment of Prisoners is enforced, this Rule states that “special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both”. Private family facilities have been provided in all new institutions and prisoners are entitled to receive visits from authorised visitors. The South Australian Government recognises that visits from relatives and friends enable prisoners to maintain community ties and play an essential role for the present and future wellbeing of prisoners and their families. Adelaide Women’s Prison Visits Centre and the Adelaide Youth Training Centre have both been equipped with a children’s play area and family visit rooms. An Adelaide Youth Training Centre operational order outlines the management and supervision of residents and their visitors.


 *The South Australian Government has mostly implemented Recommendation 170 by enforcing Rule 79 of the United Nations Minimum Rules for the Treatment of Prisoners, and the provision of adequate facilities. However, this does not appear to address the level of intervention of correctional officers in the conduct of such visits.*

Western Australia has implemented this recommendation through their *Code of Inspection Standards for Adult Custodial Services* document. Standard 118 states that “all visiting facilities within the prison should be comfortable, pro-social and safe environment that maximise ease of contact between prisoners and their visitors”.


Western Australia is also a signatory to the minimum national standards that require prisons to treat visitors with respect, and provide visiting facilities that are conducive to receiving visitors in a dignified manner consistent with the security and good order of the prison. This is also supported by Adult Custodial Rule 7, which allows for daily visits of remandees and weekly visits of those who are sentenced. Banksia Hill Detention Centre has a separate ‘visits’ area for families visiting young people in custody, and supervision is provided at the least intrusive level possible while still maintaining security. The Department of Justice also provides options for child residence and extended day and overnight stay programs, enabling women and primary caregivers to maintain or establish bonds and relationships with their children. Policy Directive 10 provides guidance on women having their children in prison with them.

 *The Western Australian Government has implemented Recommendation 170 through a range of procedural documents and processes governing visitation.*


The **Tasmania** *Prison Services Director’s Standing Order 4.04* explicitly sets out that visits should be in a friendly and relaxed environment. The Ashley Youth Detention Centre is equipped with an outdoor barbecue area, a dining room, and a range of other family-friendly areas. Risdon Prison Complex also offers family friendly facilities, as does the Ron Barwick Minimum Security Prison.

 *The Tasmanian Government has mostly implemented Recommendation 170 through the Prison Services Director’s Standing Order 4.04. However, there does not appear to be a requirement that involvement by custodial officers be minimal.*

In the **Northern Territory**, the Northern Territory Correction Services have incorporated this recommendation into a number of directives which make provisions within correctional facilities for the conduct of visits by friends and families, and which support visits to a prisoner in a constructive manner. If a visitor requires video conferencing to a prisoner this is conducted in accordance to NTCS Directive 2.15.3 Prisoner Access to Video Conferencing.

 *The Northern Territory Government has incorporated Recommendation 170 into a number of directives which make provisions within correctional facilities for the conduct of visits by friends and families, and which support visits to a prisoner in a constructive manner.*

In the **Australian Capital Territory**, only one new prison has been built since the RCIADIC, the Alexander Maconochie Centre. This prison has been “specifically designed to provide a non-threatening family and child friendly environment”. This prison also includes family rooms, child play areas, and barbeque facilities³³, and provides visits five days per week. Visits may be contact or non-contact, with contact visits occurring in a communal visit area under the supervision of Corrections Officers. An internal CCTV system also records visits. ACT Corrective Services also engage the ‘Shine for Kids’ community organisation to facilitate programs within the Alexander Maconochie Centre aimed at building relationships between parents in custody and their children, and reducing the level of trauma for the child associated with such visits.

 *The Australian Capital Territory Government has mostly implemented Recommendation 170 in the design of the Alexander Maconochie Centre. However, no specific actions have been taken towards minimising correctional officer intervention.*

Recommendation 171

That Corrective Services give recognition to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance.

Background information


The RCIADIC recognised that the concept of family within Aboriginal and Torres Strait Islander culture includes extended family which should be taken into account when an individual requests leave.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales** prisoners are able to apply for local leave permits to attend a funeral service of an immediate family member, attend the funeral services or burial of an extended family member where special kinship or cultural obligations have been verified and confirmed, and to attend an event of family or cultural significance. This is set out within section 7.16.3 in the *Corrective Services New South Wales Operations Procedures Manual*. Where it is not possible for an inmate to attend a funeral in person, an audio visual link option has been trialled with initial success. The CSNSW Strategy for Supporting Aboriginal Offenders to Desist from Re-offending recognises the importance of family, kinship, community and culture are highly significant to Aboriginal people.

 *The New South Wales Government has implemented Recommendation 171 through the Corrective Services New South Wales Operations Procedures Manual and CSNSW Strategy for Supporting Aboriginal Offenders to Desist from Re-offending.*


In **Victoria**, sections 57A and 82 of the *Corrections Act 1986* (Vic) states that the Secretary may issue a custodial community permit to a prisoner for leave to travel to attend the funeral of a person with whom the prisoner has had a long standing personal relationship, or for any other compassionate purpose, including in the case of an Aboriginal and Torres Strait Islander prisoner, to enable them to be present at an occasion of special significance to the prisoner’s immediate or extended family.

 *Victoria has implemented Recommendation 171 through provisions of the Corrections Act 1986 (Vic).*


In **Queensland**, under section 73 of the *Corrective Services Act* (Qld), prisoners are granted compassionate leave to attend a relative’s funeral. This Act also states that the culturally specific needs of the prisoner must be taken into account when considering a compassionate leave request. Another document, *Funeral Attendance of Aboriginal Prisoners*, provides guidance regarding Aboriginal and Torres Strait Islander prisoner attendance at funerals and includes clarification of the definition of kinship in Aboriginal and Torres Strait Islander communities. Queensland Corrective Services provides

³³ <http://correctionscoalitionact.org.au/Links/docs/RCIADIChr.pdf>

favourable consideration, as well as funding, to support Aboriginal and Torres Strait Islander prisoner attendance at funerals. Where funeral attendance is not possible, Queensland Corrective Services works with prisoners to hold a memorial service in the correctional centres in partnership with Murri Chaplains or to arrange a video-conference with the family to support the prisoner. Young people are permitted to take a leave of absence from a youth detention centre to attend a visit. This includes visits to other correctional facilities, funerals, and events to help with transitioning from detention back into the community.


 *The Queensland Government has implemented Recommendation 171 through provisions of the Corrective Services Act (Qld) and the Funeral Attendance of Aboriginal Prisoners document.*

In **South Australia** the *Correctional Services Act 1982 (SA)* and section 34 of the *Youth Justice Administration Act 2016 (SA)* allows prisoners to be granted leave for compassionate purposes. The Aboriginal and Torres Strait Islander Youth Justice Principle within the *Youth Justice Administration Regulations 2016*, outlines that Aboriginal and Torres Strait Islander young people will be supported to uphold their cultural responsibilities through cultural ceremonies, funerals, and cultural practices.


 *In South Australia, Recommendation 171 has been implemented through the Correctional Services Act 1982 (SA), and the Youth Justice Administration Act 2016 (SA).*

In **Western Australia**, under division 9 of *Prisons Regulation 1982*, prisoners are allowed an absence permit for facilitating maintenance of cultural ties, enabling the prisoner to meet cultural obligations, and enabling the prisoner to be absent from prison on compassionate grounds. However, under *Policy Directive 9*, the Department of Corrective Services has financial and security limitations and as a result only immediate family relationships will be considered favourably for absence permits.


Requests for exceptional relationships are considered on a case-by-case basis, and financial limits are placed on the attendance - \$2,000 for local and \$6,000 for remote communities. Unsuccessful applicants are allowed one appeal of the decision in order to provide more information to inform the decision. Young people in custody at Banksia Hill Detention Centre seeking to attend funerals and other significant family events are supported by provisions for absence from detention, factoring in Aboriginal and Torres Strait Islander culture and traditional matters.

 *The Western Australian Government has implemented Recommendation 171 through the Prisons Regulation 1982 and other actions taken to consider family in respect of principles in this recommendation.*

In **Tasmania**, section 42 of the *Corrections Act 1997 (Tas)* allows leave permits for prisoners to attend the funeral of a person with whom the prisoner had a longstanding relationship, or in the case of a prisoner who is an Aboriginal and Torres Strait Islander person, to attend events of special cultural significance to their community. Section 130 of the *Tasmanian Youth Justice Act 1997 (Tas)* allows young people to take temporary leave from the detention centre for multiple purposes, including to take part in cultural events, visit family or to attend a funeral.


 *The Tasmanian Government has implemented Recommendation 171 through the Corrections Act 1997 (Tas) and the Tasmanian Youth Justice Act 1997 (Tas).*

In the **Northern Territory**, under section 118 of the *Correctional Services Act 2014 (NT)*, the Commissioner may issue a general leave permit on compassionate grounds; however, it is unclear whether this would be applicable for extended family or kin. The Northern Territory Government noted that funeral attendance may be granted for close family members and significant others dependent on security issues, cost reimbursement and operational requirements. Additionally, the Northern Territory Correction Services Directive 2.1.19 *Sorry Business* seeks to ensure that all eligible Aboriginal and Torres Strait Islander prisoners are given the opportunity to attend Sorry Business and have their application considered with fairness and equity.

 *The Northern Territory has mostly implemented Recommendation 171 through the Correctional Services Act 2014 (NT) and the Northern Territory Correction Services Directive 2.1.19 Sorry Business. However, it is unclear if compassionate leave is available for extended family or kin.*

In the **Australian Capital Territory**, there are local leave permits whereby any prisoner can obtain written permission to be absent from a correctional centre for compassionate reasons. This is not specific to Aboriginal and Torres Strait Islander prisoners and therefore might not include the extended family of Aboriginal and Torres Strait Islander people.

As discussed in actions taken towards Recommendation 170, Prisoners Aid is offered by the ACT Government. Additionally, the *Corrections Management (Aboriginal and Torres Strait Islander Detainee and Offender) Policy 2018* notes that ACT Corrective Services supports the rights of Aboriginal and Torres Strait Islander detainees and offenders to maintain, protect and develop their cultural heritage, language, knowledge and kinship ties. In line with this, it is practice to give favourable consideration to Aboriginal and Torres Strait Islander detainees attending funerals and significant family functions, with leave given by the General Manager on a case-by-case basis. ACT Corrective Services (ACTCS) is also bound by section 27(2) of the *Human Rights Act 2004* (ACT) on these issues.

 *The Australian Capital Territory has implemented Recommendation 171 through local permits and favourable consideration for Aboriginal and Torres Strait Islander people to attend significant family functions.*

Recommendation 172

That Aboriginal prisoners should be entitled to receive periodic visits from representatives of Aboriginal organisations, including Aboriginal Legal Services.

Background information


The RCIADIC identified the need for Aboriginal and Torres Strait Islander prisoners to be able to access Aboriginal and Torres Strait Islander organisations and services.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under the *Crimes (Administration of Sentences) Regulation 2014*, the governor of a correctional centre may permit a person to visit a centre. In addition, Aboriginal prisoners may be visited by a field officer of the Aboriginal Legal Services, or a field officer of any other organisation that provides legal or other assistance to Aboriginal people that is approved by the commissioner. This is supported by the *Corrective Services New South Wales Operations Procedures Manual* which states that field officers of the Coalition of Aboriginal Legal Service are permitted to visit all Australian Aboriginal inmates.

 *New South Wales has implemented Recommendation 172 under the Crimes (Administration of Sentences) Regulation 2014 and the Corrective Services New South Wales Operations Procedures Manual.*

In **Victoria**, regulation 60 of the *Corrections Regulations 2009* states that a prisoner's lawyer may visit the prisoner and enter the prison. In addition, regulation 61 states that a prisoner who is in the custody of a prison officer or an escort officer and is at court awaiting trial must be given the opportunity to have access to a lawyer. The *Correctional Management Standards for Men's Prisons in Victoria* also states that a prison general manager will provide Aboriginal and Torres Strait Islander prisoners with access to an Aboriginal Wellbeing Officer/Aboriginal Liaison Officer within 24 hours of reception into the prison system, and provide programs for Aboriginal and Torres Strait Islander prisoners which incorporate links to community programs.

 *Victoria has implemented Recommendation 172 under the Corrections Regulations 2009.*

Queensland offers legal services to prisoners through the Aboriginal and Torres Strait Islander Legal Service. The Elders Visitation Program is active in all correctional services facilities and First Peoples Chaplaincy Services also regularly visit most correctional centres. Young people are entitled to regular visits from their Elder groups from their local community, community visitor officers, and legal officers.

- *Queensland has implemented Recommendation 172 through a range of visitation programs, including the Elders Visitation Program.*

In **South Australia** there is an Aboriginal Prisoners and Offenders Support Service which regularly visits prisons in South Australia. The South Australian Government note that prisoners can access periodic visits from professionals and representatives from Aboriginal and Torres Strait Islander organisations while incarcerated, including Aboriginal Legal Rights Movement. This is also the case for residents of the Adelaide Youth Training Centre.

- *The South Australian Government has implemented Recommendation 172 as prisoners can access periodic visits from professionals and representatives from Aboriginal and Torres Strait Islander organisations while incarcerated.*

Western Australia has in place an Aboriginal Visitors Scheme whereby Aboriginal and Torres Strait Islander people visit and provide support for Aboriginal and Torres Strait Islander prisoners. Aboriginal and Torres Strait Islander organisations are able to visit Aboriginal and Torres Strait Islander detainees in custody pursuant to ss 62, 65 and 95E of the *Prisons Act 1981* (WA) and *Adult Custodial Rule 7*. These visitors are unable to directly help prisoners with money, legal, or medical issues but are able to refer prisoners to other agencies. Within WA, Legal Aid and the Aboriginal Legal Service of Western Australia also visit prisons and provide legal services to prisoners who may not have legal representation. However, Aboriginal and Torres Strait Islanders are not explicitly entitled to receive periodic visits from Aboriginal and Torres Strait Islander organisations.

- *The Western Australian Government has implemented Recommendation 172 through legislation governing visitation.*

In the **Tasmanian** 1995 Implementation Report, it was noted that the Aboriginal Legal Service is encouraged to visit Aboriginal and Torres Strait Islander prisoners. The Tasmanian Government commented that there are no restrictions on visits from representatives of Aboriginal and Torres Strait Islander organisations, and that prisoners are able to access Elders who help to address cultural and social needs. Elders visit Ashley Youth Detention Centre every fortnight. They engage with both Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander young people with a particular focus on supporting reintegration and establishing community links.

- *The Tasmanian Government has implemented Recommendation 172. The Tasmanian Government comments that there are no restrictions on visits from representatives of Aboriginal and Torres Strait Islander organisations, and that prisoners are able to access Elders who help to address cultural and social needs.*

In the **Northern Territory** there are a number of legal programs offered to Aboriginal and Torres Strait Islander prisoners including support from the North Australian Aboriginal Justice Agency and the Central Australian Aboriginal Legal Aid Service. Legislation provides for access to legal representatives and policy allows for access to other organisations, however there is no legislative entitlement made for Aboriginal and Torres Strait Islanders to receive periodic visits from Aboriginal and Torres Strait Islander organisations. Visits by legal practitioners are permitted at any time as approved by the Superintendent. Additionally, the Northern Territory has introduced the Elders Visiting Program which has contributed to decision-making on health, welfare and reintegration matters.

- *The Northern Territory Government has implemented Recommendation 172, through a number of legal programs offered to Aboriginal and Torres Strait Islander prisoners.*

In the **Australian Capital Territory**, the *Corrections Management (Official Visitor) Policy 2011* allows for the appointment of an official visitor. The function of the official visitor is to receive complaints from prisoners and investigate any complaints deemed to be valid. There are also specific Aboriginal and Torres Strait Islander official visitors who perform these functions for Aboriginal and Torres Strait Islander prisoners.

Representatives from the ALS also visit the Alexander Maconochie Centre as needed to meet with Aboriginal and Torres Strait Islander detainees, as well as maintaining contact with the AMC Indigenous Case Manager and the AMC Indigenous liaison officer (ILO). Gugan Gulwan Aboriginal

Youth Corporation, Winnunga Nimmityjah Aboriginal Health Service, and the Indigenous Official Visitor visit the Alexander Maconochie Centre either regularly or periodically. ACT Corrective Services also provides an Elders and Community Leaders Visitation Program at the Alexander Maconochie Centre.

- *The Australian Capital Territory Government has implemented Recommendation 172 through the appointment and function of an official visitor.*

Additional commentary

In Victoria's 2005 implementation report, Corrections Victoria observed that, because of the limited staffing and resources of Aboriginal and Torres Strait Islander community agencies, it was not always viable for them to provide these types of services to Aboriginal and Torres Strait Islander prisoners.

Recommendation 173

That initiatives directed to providing a more humane environment through introducing shared accommodation facilities for community living, and other means should be supported, and pursued in accordance with experience and subject to security requirements.

Background information

Based on the connection to community and culture, the RCIADIC surmised that Aboriginal and Torres Strait Islander prisoners had a preference for shared accommodation with other Aboriginal and Torres Strait Islander prisoners.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under section 7.17.4 of the *Corrective Services New South Wales Operations Procedures Manual*, all prisoners are able to request a two-out cell – a cell which may be shared by two prisoners. The New South Wales Government comments that the design of new correctional facilities is informed by the needs of Aboriginal offenders, including space dedicated to learning and communal interactions. However, no specific legislation or procedures for Aboriginal prisoners was found.

- *The New South Wales Government has implemented Recommendation 173 through the Corrective Services New South Wales Operations Procedures Manual and the provision of access to a two-out cell.*

In **Victoria**, the *Correctional Management Standards for Men's Prisons in Victoria* and the *Correctional Management Standards for Women's Prisons in Victoria* state that the prison general manager will accommodate Aboriginal and Torres Strait Islander prisoners together, where possible and appropriate. A number of minimum and medium security prisons contain the option of shared accommodation.


- *Victoria has implemented Recommendation 173 by providing shared accommodation options for prisoners at lower-risk security levels.*

The **Queensland** Government stated in their 1997 implementation report that there is shared accommodation in all correctional centres. In contemporary correctional centres, the design of the facilities incorporates a residential accommodation area that allows prisoners to live in small groups in domestic style housing. Youth Justice views the use of Independent Living Units as a key mechanism in facilitating reintegration back into the community, and ensures that young people are given opportunities to develop independent living skills.

- *The Queensland Government has implemented Recommendation 173 by providing shared accommodation and the facilitation of residential accommodation areas.*


The **South Australian** Government presently note that where possible and practical, Aboriginal and Torres Strait Islander prisoners are provided shared accommodation facilities either doubled up with another Aboriginal and Torres Strait Islander person within a cell or within dormitory accommodation.

The Port Augusta prison provides shared accommodation for up to 36 Aboriginal and Torres Strait Islander prisoners. This accommodation is called Pakani Arangka and was specifically built with the purpose of accommodating Aboriginal and Torres Strait Islander prisoners. The Adelaide Youth Training Centre also provides shared accommodation facilities to residents, which include common room areas, games rooms, courtyards, kitchen and laundry.


 *The South Australian Government has implemented Recommendation 173, and notes that Aboriginal and Torres Strait Islander prisoners are provided shared accommodation facilities either doubled up with another Aboriginal and Torres Strait Islander person within a cell or within dormitory accommodation.*

In **Western Australia** the *Aboriginal Prisoner Standards* (standard A2) states that prison buildings and the layout of the prison should be culturally appropriate for the prisoner population. These standards also note that there should be adequate shared accommodation for prisoners. However, a recent *Report of an Announced Inspection of Casuarina Prison*³⁴ found that these standards were not being implemented consistently across all prisons.


Currently, the Western Australian Government notes that shared accommodation facilities are available, and requests for placements in this style of accommodation are considered subject to security requirements. For example, the West Kimberley Regional Prison premises operate upon Aboriginal and Torres Strait Islander culture and values, including recognition and acceptance of kinship, family and community responsibilities. The Prison is designed with 22 houses on site, each of which accommodates six to seven prisoners. Self-care units are also available at Banksia Hill Detention Centre, designed to provide community-style living for young people in custody.

 *The Western Australian Government has implemented Recommendation 173 through the provision of shared accommodation.*

In their 1995 implementation report, the **Tasmanian** Government stated they have a preference for single cell accommodation. However, shared accommodation is available if there is a specific need. Currently, shared accommodation units are available at the Risdon Prison Complex and the Ashley Youth Detention Centre. Shared accommodation is mostly facilitated through common areas, while still maintaining individual cells.

 *The Tasmanian Government has partially implemented Recommendation 173 through the provision of common areas. However, the Tasmanian Government maintains a preference for single cell accommodation.*

In their 1996-97 implementation report, the **Northern Territory** Government stated that they support this recommendation. Dormitory accommodation is provided in the Alice Springs Correctional Centre, Barkly Work Camp and Datjala Work Camp. In Darwin Correctional Centre, space is provided outdoors and indoors to allow withdrawal, separateness, choices around prisoner groupings and opportunities for recreation.

 *The Northern Territory has mostly addressed Recommendation 173 by the provision of dormitory accommodation and the design of Darwin Correctional Centre. It is not clear whether the provision of shared accommodation has taken place across all custodial facilities.*

In the **Australian Capital Territory**, the *Corrections Management (Aboriginal and Torres Strait Islander Detainees) Policy 2011 (No.2)* states that there is a Shared Cell Policy whereby Aboriginal and Torres Strait Islander prisoners should be accommodated together if requested. This is also noted in the *Corrections Management (PDC: Shared Accommodation) Policy 2011* where factors such as Aboriginal and Torres Strait Islander prisoner's requests for shared accommodation should be taken into account when accommodating prisoners.

The Alexander Maconochie Centre was designed to include cells for men (single and double) and cottages with individual rooms for both men and women. These measures are intended to provide for

³⁴ Office of the Inspector of Custodial Services 2014, *Report of an Announced Inspection of Casuarina Prison*, ISSN 1445-3134

the support of a fellow-detainee in an adjoining cell, while respecting individual privacy. The ACT Government notes that due to accommodation pressures in the Alexander Maconochie Centre, most cells now accommodate two detainees.

- *The Australian Capital Territory has implemented Recommendation 173 in the Corrections Management (Aboriginal and Torres Strait Islander Detainees) Policy 2011 (No.2).*

Recommendation 174

That all Corrective Services authorities employ Aboriginal Welfare Officers to assist Aboriginal prisoners, not only with respect to any problems they might be experiencing inside the institution but also in respect of welfare matters extending outside the institution, and that such an officer be located at or frequently visit each institution with a significant Aboriginal population.

Background information

Prisoners may experience trauma during the trial and sentencing processes, the RCIADIC considered that the most appropriate way to manage this trauma was to provide Aboriginal and Torres Strait Islander prisoners with an Aboriginal Welfare Officer to facilitate discussions.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the *Corrective Services New South Wales Operations Procedures Manual* states that prisons that have a significant Aboriginal population should employ an Aboriginal Inmate Delegate. This delegate will support Aboriginal prisoners. The majority of welfare positions have now been converted to Aboriginal Services and Programs Officers, and program delivery has moved away from a 1 to 1 basis to group work. CSNSW also engages Regional Aboriginal Programs Officers, and Aboriginal Mentors to address the needs of Aboriginal offenders and work with community and custodial corrections staff. The Aboriginal Strategy and Policy Unit (ASPU) works with internal and external stakeholders and cooperates with Aboriginal organisations. The work of the ASPU extends to reviewing program outcomes and deliverables under CSNSW funding arrangements and partnering with organisations to deliver culturally sensitive services to Aboriginal offenders and their families.

- *The New South Wales Government has implemented Recommendation 174 through the provision of an Aboriginal Inmate Delegate under the Corrective Services New South Wales Operations Procedures Manual as well as the employment of Regional Aboriginal Programs Officers, and Aboriginal Mentors.*


In **Victoria**, the *Correctional Management Standards for Men's Prisons in Victoria* and the *Correctional Management Standards for Women's Prisons in Victoria* item 2.2 states that the prison general manager will provide Aboriginal and Torres Strait Islander prisoners with access to an Aboriginal Wellbeing Officer/ Aboriginal Liaison Officer. Also, Activity 3.5.1 of the AJA 3 aims to enhance advocacy by Aboriginal Wellbeing Officers or Aboriginal Liaison Officers for Aboriginal and Torres Strait Islander prisoners at Review and Assessment Committees.

- *Victoria has implemented Recommendation 174 by providing Aboriginal and Torres Strait Islander prisoners with access to an Aboriginal Wellbeing Officer/Aboriginal Liaison Officer.*

In **Queensland**, Aboriginal and Torres Strait Islander cultural liaison officers and cultural development officers are employed at all correctional centres. They provide welfare and support to Aboriginal and Torres Strait Islander prisoners and conduct programs for Aboriginal and Torres Strait Islander prisoners. Queensland Corrective Services has made a commitment to increase the number of cultural liaison officer positions in Probation and Parole.


- *Queensland has implemented Recommendation 174. Aboriginal and Torres Strait Islander cultural liaison officers and cultural development officers are employed at all correctional centres.*

In response to RCIADIC, **South Australia** developed an Aboriginal Services Unit in 1995 which is responsible for advising and developing culturally appropriate services for Aboriginal and Torres Strait Islander prisoners. This program also employs Aboriginal Liaison Officers (ALOs) in prisons. Currently, the Department for Correctional Services employs ALOs to provide counselling, advisory and advocacy support for prisoners, their families and staff. Visiting ALOs attend those correctional facilities where ALOs are not employed on a fulltime basis. An Aboriginal Cultural Advisor has been employed at Port Augusta Prison to provide expert cultural advice especially around the cultural needs of prisoners from APY and remote communities.


 *South Australia has implemented Recommendation 174 through the function of ALOs.*

In **Western Australian** the *Aboriginal Prisoner Standards* (standard A35) states that it is preferable to have an Aboriginal superintendent, an Aboriginal Health Worker, an Aboriginal Education Officer, and an Aboriginal Prisoner Support Officer in prisons where the population is predominantly Aboriginal and Torres Strait Islander. In addition to these roles there should be at least one Prisoner Support Officer who is able to communicate with all groups of Aboriginal and Torres Strait Islander prisoners.


The Western Australian Government notes that all prisons have at least one Prison Support Officer, and that all Prison Support Officers undergo specialised training encompassing Aboriginal and Torres Strait Islander mental health, suicide prevention and self-harm intervention, and reintegration into family and community. The Banksia Hill Detention Centre employs Aboriginal Welfare Officers to support young Aboriginal and Torres Strait Islander people in custody, including through arranging their case management and ensuring their needs are met while in custody.

 *The Western Australian Government has mostly implemented Recommendation 174. It does not appear that Aboriginal Welfare Officers are provided in all prisons.*


The **Tasmanian** Department of Justice have an Integrated Offender Management unit which aims to reduce re-offending by supporting prisoners. They offer therapeutic, rehabilitation and reintegration services as well as counselling. This unit also employs an Indigenous Officer. The Indigenous Officer is based at the Risdon Prison Complex and also works at the Mary Hutchinson Women's Prison. The Ashley Youth Detention Centre offers individualised and tailored case management services.

 *The Tasmanian Government has implemented Recommendation 174 through the function of the Department of Justice Integrated Offender Management unit, and the employment of an Indigenous Officer.*

According to the 1996-97 implementation report, in the **Northern Territory**, one Aboriginal liaison officer is located at each Correctional Centre. Currently, the Northern Territory Government comments that Prisoner Support Officers at Darwin Correctional Centre and Aboriginal Liaison Officers at Alice Springs Correctional Centre are recruited under the Special Measures which give preference to selection of Aboriginal and Torres Strait Islander people. Additionally, Community Probation and Parole Officers are Aboriginal and Torres Strait Islander people and assist with cultural issues and awareness. These initiatives stand alongside the Elders Visiting Program, discussed as part of Recommendation 97.

 *The Northern Territory Government has implemented Recommendation 174 by providing an Aboriginal liaison officer at each Correctional Centre, as well as the provision of Prisoner Support Officers, Community Probation and Parole Officers, and the Elders Visiting program.*

In the **Australian Capital Territory**, an Indigenous Case Manager and two Aboriginal Liaison Officers are employed to assist detainees in the Alexander Maconochie Centre, including the provision of assistance to reintegrate to the community upon release. However, no policy or legislation was found stating this as a requirement.

 *The Australian Capital Territory has implemented Recommendation 174 through the appointment of an Indigenous liaison officer.*

Recommendation 175

That consideration be given to the principle involved in the submission made by the Western Australian Prison Officers' Union that there be a short transition period in a custodial setting for prisoners prior to them entering prison routine.

Background information

The RCIADIC found that prisoners experience trauma when immediately entering prison and having a short transition period may reduce the trauma experienced by prisoners.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the *Corrective Services News South Wales Operations Procedures Manual* includes support measures in place for Aboriginal prisoners. There is an Aboriginal Inmate Committee, which is set up to support Aboriginal prisoners upon their reception into the prison, as well as support other Aboriginal prisoners. Additionally, the primary role of Aboriginal Delegates is to support all Aboriginal inmates at the centre, including through the development and presentation of an Aboriginal Induction Program for all inmates received at the centre.

● *Recommendation 175 is implemented in New South Wales through the Aboriginal Inmate Committee.*

Victoria has implemented orientation units where new prisoners at all but three prisons are received and stay for two to five days. In Victoria's 2005 implementation report, Corrections Victoria observed that when inception numbers are high, newly received prisoners will spend shorter periods of time in orientation units than the two to five-day standard.

● *Recommendation 175 is implemented in Victoria through the orientation units.*

In **Queensland**, no legislation was found specifically stating that there should be a transition period. Queensland Corrective Services places prisoners in induction units on reception to facilitate their transition into a correctional services facility and to enable relevant assessments to be undertaken. Youth Justice has a current policy which includes a number of requirements concerning induction, including that the process occurs no later than one day after admission and that staff must read the Induction Booklet with the young person and ensure their understanding of its contents.

● *Recommendation 175 is implemented in Queensland through the role of induction units.*

The **South Australian** Government stated in their 1994 implementation report that this recommendation has not yet been implemented. However, under *SOP 001A – Admission – Case Management*, prisoners have an induction interview within 24 hours of admission or transfer and 7-Day Observations are commenced. The Adelaide Youth Training Centre Assessment Unit accommodates boys aged 15 years and above who are new to the centre and allows for a comprehensive needs and risk assessment to tailor their required services and supports while in custody. The induction process also includes the provision of information about residents' rights, complaints and how to contact the Guardian for Children and Young People.


● *Recommendation 175 is implemented in South Australia under SOP 001A and juvenile induction processes.*

The **Western Australian** *Code of Inspection Standards* standard 2.9 states that newly admitted prisoners should be accommodated separately from the general population during the admission and orientation process. Standard 2.4 and 2.5 also state that admission staff should be trained to deal with newly received prisoners. The Prison Policy Directive 18 also addresses prisoner orientation, establishing a checklist for the Prisoner Orientation Program and requiring all superintendents to have a program that meet its requirements. Under the Directive, there are three stages of the prisoner orientation program:


- day of arrival, provide basic information and items to assist with adjustment to prison routine;

- within three working days of arrival, provide a detailed orientation program and a copy of the Prisoner Handbook; and
- within one month of arrival, explain sentence management systems including assessment, personal development courses, addressing offending behaviour, and any compulsory course requirements.


The length of time provided for orientation varies, depending on the individual's needs and exposure to the custodial setting. New detainees at Banksia Hill Detention Centre are observed for 24 to 72 hours, depending on their needs, before being placed in the facility.

 *The Western Australian Government has implemented Recommendation 175 through the Code of Inspection Standards and the Prison Policy Directive 18, which establish orientation procedures.*


The **Tasmanian** Government stated in their 1995 implementation report that prisoner induction programs had been developed and were designed with the input from the Aboriginal Prisoner Support Officer. Recently, the Hobart Reception Prison has been launched as the induction prison for Tasmania. Prior to transferring to their accommodation, prisoners will complete an assessment focused on identifying immediate welfare and security issues and a more comprehensive assessment to obtain a picture of the issues presenting a prisoner and the supports required.

 *Recommendation 175 is implemented in Tasmania through the development of prisoner induction programs with input from the Aboriginal Prisoner Support Officer.*

In their 1996-97 implementation report, the **Northern Territory** Government stated that they support this recommendation but had not specified any actions taken to implement this recommendation. The Darwin Correctional Centre Induction Unit focuses on previous and new prisoners entering in custody and ensures they receive sufficient information and adjustment within a custodial setting prior to entering general population. Additionally, a purpose built sentenced prisoner reception area is located in the Alice Springs Correctional Centre which allows for a transition period prior to mainstream placement.

 *The Northern Territory has partially implemented Recommendation 175 through prisoner reception processes, however no clear orientation or induction procedure appears to exist.*

The **Australian Capital Territory** Government stated in their 1997 implementation report that this recommendation is applicable primarily to imprisonment in larger jurisdictions with multiple facilities. Currently, new detainees at the Alexander Maconochie Centre are placed in a new reception area for an average of 5 days where they undergo an assessment and induction process. As part of this induction, information is sought to ensure the detainee's longer-term accommodation placement is appropriate after considering the detainee's offence, associations, intelligence, and any other medical and mental health assessments. The Induction Policy requires that when a detainee is received, they will be advised of their entitlements, privileges and responsibilities and how to access services.

 *The Australian Capital Territory has implemented Recommendation 175 through the Induction Policy.*

Recommendation 176

That consideration should be given to the establishment in respect of each prison within a State or Territory of a Complaints Officer whose function is:

- a. To attend at the prison at regular (perhaps weekly) intervals or on special request for the purpose of receiving from any prisoner any complaint concerning any matter internal to the institution, which complaint shall be lodged in person by the complainant;*
- b. To take such action as the officer thinks appropriate in the circumstances;*
- c. To require any person to make enquiries and report to the officer,*
- d. To attempt to settle the complaint;*

e. To reach a finding (if possible) on the substance of the complaint and to recommend what action if any, should be taken arising out of the complaint; and

f. To report to the complainant, the senior officer of the prison and the appointing Minister (see below) the terms of the complaint, the action taken and the findings made.

This person should be appointed by, be responsible to and report to the Ombudsman, Attorney-General or Minister for Justice. Complaints receivable by this person should include, without in any way limiting the scope of complaints, a complaint from an earlier complainant that he or she has suffered some disadvantage as a consequence of such earlier complaint.

Background information


The RCIADIC believed that prisoners will inevitably face some difficulties with prison; having a complaints officer will help ensure that difficulties and complaints are monitored and can be addressed.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the Minister for Corrective Services appoints official visitors who visit prisoners approximately every fortnight and whose role is to resolve complaints from prisoners. Official visitors are also independent from Corrective Services New South Wales. Section 228 of *Crimes (Administration of Sentences) Act 1999* (NSW) and clauses 155-157 of the *Crimes (Administration of Sentences) Regulation 2008* (NSW) set out the functions of the official visitor role. The Corrective Services Support Line is also in place for inmates to raise complaints. Currently, inmates have access to Official Visitors, the Ombudsman and the Inspector of Custodial Services who monitor and report issues/complaints to the Commissioner of Corrective Services NSW, the Minister for Corrections and the NSW Government.

 *The New South Wales Government has implemented Recommendation 176 through the role of official visitors, outlined under the Crimes (Administration of Sentences) Act 1999 (NSW) and the Crimes (Administration of Sentences) Regulation 2008 (NSW).*


Victoria has official visitors whose role is to listen to the concerns of prisoners. Official visitors are appointed by the Minister for Corrections. In the 1991 Implementation report, the Victorian Government noted that they were establishing the role of Aboriginal official visitor who would specifically manage the Aboriginal and Torres Strait Islander prisoners. The AJA 3 supports the continued appointment of Aboriginal Official Visitors into the adult prison system, and also sought the participation of Aboriginal visitors in the Independent Visitors Program for youth justice custodial centres.

 *Aboriginal Official Visitors in Victoria satisfy the requirements of Recommendation 176.*

As noted in Recommendation 174, **Queensland** has official visitors whose role is set out in section 290 of the *Corrective Services Act 2006* (Qld). The functions of the official visitor are: to investigate complaints made by prisoners, to be impartial when investigating a complaint, the ability to make a recommendation to the Chief Inspector and advise the prisoner if they do so. These reports assist the Chief Inspector to identify systemic issues and inform the process of centre inspections. The official visitor will visit their assigned prisoner at least once a month, with two or three visits per month for most correctional centres. Youth detention Centres, there are extensive oversight mechanisms which streamline and strengthen internal youth detention oversight governance and accountability. Staff are required to ask the young person/people if they would like to make a complaint within 24 hours after being involved in an incident in the centre. Youth Justice has a legislative reporting requirement to provide all complaints received to the Public Guardian on a quarterly basis.


 *The Queensland Government has implemented Recommendation 176 through the function of official visitors under the Corrective Services Act 2006 (Qld).*

In **South Australia**, there is the Aboriginal Liaison Officer who handles the complaints of prisoners. This role sits within the South Australian Department for Correctional Services. Currently, if after giving local staff the opportunity to resolve a complaint and the prisoner remains unsatisfied, the complaint can be referred to other sources including the Prisoner Complaint Line, a Visiting Inspector, or Ombudsman. The Department for Correctional Services has Visiting Inspectors who have been appointed to independently conduct weekly inspections of each prison to ensure that all prisoners are treated fairly, accommodation is clean and safe and that they have access to adequate food and clothing. Inspectors are approached by prisoners to discuss problems that they may have. The Inspectors are also called upon to investigate any complaints that could affect the health and welfare of prisoners. The recommendations of Visiting Inspectors are taken seriously and improvements to prisoner conditions are continually being made. The Guardian for Children and Young People has been appointed as the Training Centre Visitor under the *Youth Justice Administration Act 2016 (SA)* and visits the Adelaide Youth Training Centre on a regular basis.


 *The South Australian Government has mostly implemented Recommendation 176 through ALOs and through the Youth Justice Administration Act 2016 (SA). However, it does not seem to be a requirement that visits occur periodically.*

In **Western Australia**, under sections 39 and 40 of the *Inspector of Custodial Services Act 2003 (WA)*, the Minister may appoint an independent prison visitor whose role is to visit the prison approximately every three months and record any complaint made by, or on behalf of, a prisoner. However, there is no specific complaints officer role in the WA.

Additionally, Western Australia's Administration of Complaints, Compliments and Suggestion Service is available to visitors and the general public to provide complaints, feedback and suggestions to the Department of Justice in order to improve service quality. The Western Australian Government notes that at present, Western Australia meets the Australian Standards guidelines for complaints resolution, including the principles of natural justice.

 *The Western Australian Government has implemented Recommendation 176 through measures to address complaints resolution including the function of an independent prison visitor.*


Tasmania has in place the role of the official visitors who are tasked with investigating complaints made by prisoners, and making enquiries into the conditions of prisoners – see section 10 of the *Correction Act 1997 (Tas)*. The official visitors operate separately from the Tasmanian Prison Service and can help prisoners make complaints to the Ombudsman³⁵.

 *The Tasmanian Government has partially implemented Recommendation 176 through official visitors under the Correction Act 1997 (Tas). Further action is required to implement parts (a), (b), and (f) of this recommendation.*


The **Northern Territory** does not have a specific complaints officer role. Instead, the process for managing prisoner complaints is set out in the *Ombudsman Act 2009 (NT)*. Section 26 of the Act states that a prisoner may ask the officer in charge of the institution in which the prisoner is detained for help in preparing a written complain to make to the Ombudsman. The Northern Territory Government notes that official visitors are engaged to inquire into the treatment, behaviour and conditions of the prisoners at the facility. All prisoners are provided with access to a number of avenues of complaint either through telephone or written letters.

The *Correctional Services Act 2014 (NT)* allows for visits at any time by priority visitors which includes official visitors and a number of other independent officers providing avenues for complaints. All prisoners have access at reasonable times to the Superintendent or Officer in Charge of the Prison who shall hear with patience, reasonable complaints. Additionally, all prisoners have access to a number of avenues of complaint, including the Minister, Commissioner, Official Visitors, legal representatives, the Ombudsman, Health Complaints Commission, the Anti-Discrimination Commissioner and the Human Rights and Equal Opportunity Commissioner.

³⁵ http://officialvisitors.tas.gov.au/prison_official_visitors_program

 *The Northern Territory Government has mostly implemented Recommendation 176 through procedures allowing for complaints to be made. However, there is no specific complaints officer role in the Northern Territory.*

The **Australian Capital Territory** has in place the role of the official visitor who receives and considers complaints from prisoners. The official visitor then gives to the operational Minister, as soon as practicable after the end of each quarter, a written report summarising the number and kind of complaints they have received, and the actions taken. This is set out in the *Official Visitor Act 2012* (ACT) and the *Corrections Management Act 2007* (ACT). Under the *Corrections Management Act 2007* (ACT), the Minister has appointed an Official Visitor and an Indigenous Official Visitor to undertake visits to the Alexander Maconochie Centre, the ACT court cells, and other places outside the correctional centres to which detainees have been assigned. The Director-General must ensure that an Official Visitor is told as soon as practicable about any detainee that has informed a Corrections Officer that they want to see an Official Visitor, and an Official Visitor must investigate any complaint unless there is reasonable belief that the complaint is frivolous or vexatious. The ACT Government has also recently appointed an Inspector of Correctional Services to conduct comprehensive and systemic inspections of correctional services every two years and to review matters referred by the Minister for Corrective Services.

 *The Australian Capital Territory Government has implemented Recommendation 176 under the Official Visitor Act 2012 (ACT).*

Recommendation 177

That appropriate screening procedures should be implemented to ensure that potential officers who will have contact with Aboriginal people in their duties are not recruited or retained by police and prison departments while holding racist views which cannot be eliminated by training or re-training programs. In addition Corrective Services authorities should ensure that all correctional officers receive cross-cultural education and an understanding of Aboriginal-non-Aboriginal relations in the past and the present. Where possible, that aspect of training should be conducted by Aboriginal people (including Aboriginal ex-prisoners). Such training should be aimed at enhancing the correctional officers' skills in cross-cultural communication with and relating to Aboriginal prisoners.

Background information


The RCIADIC identified issues relating to racism in custodial settings, including racist attitudes held by some officers, which contributed to feelings of distress and isolation felt by some Aboriginal and Torres Strait Islander detainees.

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. In the Commonwealth's *1995-96 Annual Report*, it was noted that the selection process used by the AFP, includes psychological testing, comprehensive group selection exercises and one-to-one interviews. It was reported that these procedures provide a forum whereby unsuitable traits, including racist views, can be identified. The AFP confirmed that this is still relevant now. Training regarding harassment and bullying is provided, and behaviours demonstrated in initial training are managed by learning and development. The *1995-96 Annual Report* further noted the provision of cross-cultural awareness training to AFP members. Aspects of the training are conducted by Aboriginal and Torres Strait Islander people and cover issues such as community and police relations, racism, stereotyping and communication barriers. The *Corrections Management Act 2007* (ACT) addresses this recommendation for the Department of Corrective Services and the care of prisoner's in custodial facilities. Custodial staff are required to undertake research into the RCIADIC as a compulsory component of the Certificate III in Correctional Practice (Custodial), a mandatory qualification for continued employment as a Correctional Officer with the ACT Corrective Services.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 177 through the AFP selection process and cross-cultural awareness training programs.*


In **New South Wales**, all potential police recruits undergo the California Personality Inventory which identifies traits of aggression, ethnocentrism, and authoritarianism. All recruits also undergo cross cultural training. There is also the Aboriginal Awareness Training e-learning module for NSW Corrective Services employees (Department of Attorney General and Justice, 2013³⁶). NSW police officers employed in communities who display inappropriate attitudes or work practices may be transferred away from that area and directed to undertake periods of instruction and retraining. At the end of the period, their suitability for retention is assessed. The Aboriginal Cultural Awareness training (ACAT) day is provided to all new CSNSW recruits and to existing staff upon request. All Justice Health and Forensic Mental Health Network staff attend mandatory Respecting the Difference training.

 *Recommendation 177 has been implemented in New South Wales through the provision of training, disciplinary procedures, and recruitment selection screening.*


In **Victoria**, under item 40.2.1 of the *Correctional Management Standards for Men's Prisons in Victoria* and the *Standards for the Management of Women Prisoners in Victoria*, the prison general manager will ensure prison staff demonstrate appropriate attitudes and culturally sensitive practices and actively engage prisoners in positive behaviour change. Victoria also stated in their 1994 and 2005 implementation report that new prison officer positions and Victoria Police have screening procedures which aim to identify inappropriate traits such as racist views. Human Resource policies reinforce an intolerance of racist behaviour and views in staff. Cultural awareness programs are delivered to new recruits by Aboriginal and Torres Strait Islander people.

 *Appropriate screening, human resource and cultural awareness procedures in Victoria have satisfied the requirements of Recommendation 177.*

The **Queensland** Government stated in their implementation reports on the status of the recommendations that all newly recruited officers are assessed during the pre-service training and that this training also includes cultural awareness training. All Youth Justice frontline roles require cultural capability and this is assessed at recruitment through selection tools and references from an Aboriginal and Torres Strait Islander person recognised within the community. The use of racist language and behaviour by Queensland Corrective Services staff is against Queensland's Code of Conduct and the *Anti-Discrimination Act 1991* (Qld) and is grounds for disciplinary action, including termination of employment.

 *Recommendation 177 has been implemented in Queensland through the provision of training and recruitment selection screening strategies.*

South Australia established the Aboriginal Services Unit which in 2013-14 provided cultural training to 262 staff members (Department of Corrective Services, 2014³⁷). The South Australian Corrections Services have also noted in their 2011 *Declaration for Reconciliation* a commitment to develop requisite leadership and training to eliminate racism in the workplace and build a culturally competent organisation by increasing the knowledge and practical skills of Department staff in relation to Aboriginal and Torres Strait Islander people's values and beliefs. In the Department for Corrective Services, it is a requirement that any officer wishing to gain promotion must also undertake further cultural awareness training. A screening procedure is in place at the Adelaide Youth Training Centre that includes psychological testing used to determine any views, including racist views, which cannot be eliminated by training. As part of mandatory training, new recruits are required to undertake DHS Cultural Sensitivity and Awareness Training to gain a better understanding of Aboriginal and Torres Strait Islander people. DHS developed the Support Aboriginal young people online program incorporating the Circles of Trust Training Package, to build on this training.

 *Recommendation 177 has been mostly implemented in South Australia through the provision of training and recruitment selection screening strategies. However, it does not appear that*


³⁶ Department of Attorney General and Justice 2013, *2012-2013 Annual Report*, NSW Government, Sydney.

³⁷ Department for Correctional Services 2014, *Annual Report 2013-14*, South Australian Government, Adelaide.


disciplinary mechanisms are in place or that there exists mechanisms to cease the retention of officers with racist views.

The **Western Australian Standards for Aboriginal Prisoners** state that there should be appropriate training for staff that work with Aboriginal and Torres Strait Islander prisoners, cultural training should be undergone by new recruits along with refresher training for other staff, and specific key performance indicators for each prison around racism.


Currently, Prison Officer recruits are screened for suitability including assessment of attitudes and values. Racist behaviour is reportable and subject to further investigation and subsequent action. Similarly, the Western Australia Police Force has selection and screening processes at recruitment stages to ensure that applicants meet the ethical and integrity standards required by the agency. All Western Australia Police Force personnel are inducted with the Western Australia Police Code of Conduct, and Our Values and Service Delivery Standards, which articulate the integrity requirements of the agency. Should any officer demonstrate racist behaviour, subject to a sustainable complaint, that officer will be subject to disciplinary action, including provision for dismissal.

 *Recommendation 177 has been implemented in Western Australia through screening processes for prison officers and police, and the provision of disciplinary actions to be taken in the instance that racist language is used.*

Tasmania has a questionnaire for correctional officers undertaken in their application for a position. Within this questionnaire there is a question about whether the person can treat another person humanely and fairly regardless of a person's culture and background³⁸. However, this is a self-assessment and it is uncertain how these assessments are taken into account in the application process. Tasmania also has in place the *Aboriginal Strategic Plan*, one objective in this plan is to implement recruitment and selection processes consistent with Tasmania Government policy that provide opportunity to everyone, remove barriers to diverse recruitment, and aim for a workplace that is discrimination free. One strategy to meet this objective is to screen applicants for racist attitudes prior to selection. However, it is unclear as to the extent that this strategy has been implemented. Correctional recruits are required to complete a *Cultural Awareness and Aboriginal Issues in Corrections* session and all staff complete an e-learning package called Interactive Ochre designed to assist learners build their knowledge and practical application of the concepts and principles of cultural awareness. The Department of Justice also has detailed policies in place for all staff relating to harassment and discrimination.

 *Recommendation 177 has been mostly implemented in Tasmania through the provision of training and recruitment selection screening strategies. However, it does not appear that disciplinary mechanisms are in place or that there exists mechanisms to cease the retention of officers with racist views.*

The **Northern Territory** 1994-95 Implementation Report noted that all applicants for positions with the NT police undergo psychological testing, including testing for ethnocentricity. An applicant with racist or discriminatory views would be found unsuitable. All recruits also undergo mandatory cross-cultural training conducted by accredited local organisations using Aboriginal and Torres Strait Islander facilitators, including elders. Cross cultural training is also incorporated in promotional courses at the supervisory level. This is administered through a Correctional Practice Certificate IV unit, *Work Effectively with Culturally Diverse Offenders and Colleagues*.

 *Recommendation 177 has been mostly implemented in the Northern Territory through the provision of training and recruitment selection screening strategies. However, it does not appear that disciplinary mechanisms are in place or that there exists mechanisms to cease the retention of officers with racist views.*

³⁸

http://www.justice.tas.gov.au/prisonservice/careers/applying_to_be_a_correctional_officer/suitability_questionnaire

Recommendation 178

That Corrective Services make efforts to recruit Aboriginal staff not only as correctional officers but to all employment classifications within Corrective Services.

Background information

The RCIADIC found evidence that Aboriginal and Torres Strait Islander staff are beneficial to the wellbeing of Aboriginal and Torres Strait Islander prisoners.


Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In 2009, all States and Territories signed the *National Partnership Agreement on Indigenous Economic Participation 2008* which set a national target of at least 2.6% of public sector employment for Aboriginal and Torres Strait Islander people across all classifications by 2015.


In **New South Wales** the number of Aboriginal staff in the Department of Justice was 5.4%, exceeding the target of 2.6%. The Department of Justice's *Aboriginal Employment Strategy 2015-2017* aims to increase the number of Aboriginal people employed throughout the Department. In CSNSW, 3.12% of staff are Aboriginal people. CSNSW actively promotes employment opportunities to potential and existing Aboriginal recruits across custodial and community corrections as well as corporate and policy functional areas. The CSNSW Aboriginal Staff Network has more than 200 members, working as a forum to provide support to and networking opportunities for Aboriginal staff.

 *In New South Wales, Recommendation 178 has been implemented through ongoing employment strategies.*

In **Victoria**, the *Correctional Management Standards for Men's Prisons* and the *Standards for the Management of Women Prisoners in Victoria* state that a prison manager should endeavour to employ a range of staff taking into account gender and ethnicity. In its 2005 implementation report, Corrections Victoria noted concerted efforts to attract Aboriginal and Torres Strait Islander candidates, including advertising positions in Aboriginal and Torres Strait Islander newspapers. In an independent 2012 *Evaluation of the Aboriginal Justice Agreement – Phase 2*, Nous Group observed that Corrections Victoria employed 19 full-time Aboriginal and Torres Strait Islander staff.

 *Victoria's Standards for prisons satisfy Recommendation 178.*


In **Queensland**, the *Standard Guidelines for Corrections in Australia* (standard 5.4) state that the composition of the workforce should provide a gender and ethnicity mix that reflects the prison population where practicable. Currently, Queensland Corrective Services has a target of 3% on the employment of Aboriginal and Torres Strait Islander staff, and as at September 2017, 3.4% of Queensland Corrective Services staff identified as Aboriginal and Torres Strait Islander. Queensland Corrective Services has also committed to significantly increase the number of Cultural Liaison Officers employed in Probation and Parole. Youth Justice actively promotes all advertised vacancies through established Aboriginal and Torres Strait Islander employment networks and community events such as NAIDOC (National Aboriginal and Islanders Day Observance Committee), Winds of Zendath festival and Laura Dance festival to promote working for Youth Justice across all roles.

 *The Queensland Government has implemented Recommendation 178 through the Standard Guidelines for Corrections in Australia and ongoing employment initiatives.*


In **South Australia**, the Corrections Services have noted in their 2011 *Declaration for Reconciliation* the intention to improve Aboriginal and Torres Strait Islander employment. The 2015-16 percentage of employees that were Aboriginal and Torres Strait Islander in the Corrective Services was 3.8%, which exceeded the *South Australian Strategic Plan* target of 2.0%³⁹. The development of the Aboriginal Services Unit also plays a critical role in improving Aboriginal and Torres Strait Islander employment in Corrective Services by promoting employment opportunities within the Aboriginal and

³⁹ Department for Correctional Services 2016m *Annual Report 2015-16*, South Australian Government, Adelaide.


Torres Strait Islander community. The Department for Correctional Services employs Aboriginal and Torres Strait Islander staff across custodial, administrative, the DCS-ASU and ALO positions.

 *The South Australian Government has implemented Recommendation 178 through ongoing employment initiatives.*

The **Western Australian** *Inspection Standards for Aboriginal Prisoners* notes that all prisons with a predominately Aboriginal and Torres Strait Islander population should employ a substantial number of Aboriginal and Torres Strait Islander custodial and non-custodial staff. A recent review conducted by the Office of the Inspector of Custodial Services about the number of Aboriginal and Torres Strait Islander staff in the Corrective Services (*Recruitment and Retention of Aboriginal staff in the Department of Corrective Services*) found that the Department's overall rate of Aboriginal and Torres Strait Islander employment was 7.9% of all staff, which is higher than the public sector average (2.8%). The rate of Aboriginal and Torres Strait Islander employment across prisons was quite varied, for example Acacia Prison only had 0.9% Aboriginal and Torres Strait Islander staff, while West Kimberley Regional Prison had 10.0%. This report also found that Aboriginal and Torres Strait Islander staff took on a variety of roles such as prison officer, specialist staff, group program officers, and vocational support officers. The Department of Justice's Reconciliation Action Plan for 2017-18 to 2020-21 maintains this focus on increasing the number of Aboriginal and Torres Strait Islander employees across the Department.

 *The Western Australian Government has implemented Recommendation 178 through ongoing employment initiatives.*

In addition to signing the *National Partnership Agreement on Indigenous Economic Participation 2008*, the **Tasmanian** Government is developing a whole of service strategy to meet the employment target for Aboriginal and Torres Strait Islander people in the State Service in consultation with the Tasmanian Aboriginal and Torres Strait Islander Community, as part of the State Service Diversity and Inclusion Framework. The Strategy will complement the State Service Diversity and Inclusion Framework.

 *The Tasmanian Government has partially implemented Recommendation 178. However, there do not seem to be specific actions taken in relation to corrective services.*

The **Northern Territory** Government notes that the current percentage of Northern Territory Corrective Services (NTCS) employees who identify as Aboriginal and Torres Strait Islander has increased to 11%. The current bulk recruitment provider Bielby partners with GOAL Indigenous services to connect with potential Aboriginal and Torres Strait Islander candidates for the front line roles of Correctional Officer and Probation and Parole Officers. The Special Measures with priority consideration for recruiting Aboriginal and Torres Strait Islander people continues to be used for a range of advertised positions across NTCS.


 *The Northern Territory has implemented Recommendation 178 through recruitment processes and Special Measures.*

Since the signing of the *National Partnership Agreement on Indigenous Economic Participation 2008*, the number of Aboriginal and Torres Strait Islander people in the **Australian Capital Territory** public service has increased from 176 in 2010 to 407 in 2015 (Standing Committee on Health, Ageing, Community and Social Services, 2014⁴⁰).

The ACT Corrective Services has taken a number of initiatives to promote the employment of Aboriginal and Torres Strait Islander people. The JACS Directorate Aboriginal and Torres Strait Islander Employment Action Plan 2016-19 requires the ACT Corrective Services to develop a recruitment and retention strategy with a view to attracting and retaining Aboriginal and Torres Strait Islander staff, and to look for opportunities to increase the professional development of current Aboriginal and Torres Strait Islander staff. ACT Corrective Services currently has nine identified

⁴⁰ Standing Committee on Health, Ageing, Community and Social Services 2014, *Inquiry into ACT public service Aboriginal and Torres Strait Islander employment*, ACT Government, Canberra.

positions including: an Indigenous Services Coordinator; an Indigenous Services Officer; an AMC Indigenous Case Manager; an AMC Indigenous Liaison Officer; two Indigenous Probation and Parole Officers; an Aboriginal Client Support Officer; an Indigenous Throughcare Officer; and an Indigenous and Cultural Diversity Senior Policy Officer. The ACT Corrective Services workforce is 6.4% comprised of Aboriginal and Torres Strait Islander people, which is above the Council of Australian Government's target of 2.6% Indigenous public sector employment by 2015.

 *The Australian Capital Territory has implemented Recommendation 178 through ongoing employment initiatives.*

Recommendation 179

That procedures whereby a prisoner appears before an officer for the purpose of making a request, or for the purpose of taking up any matter which can appropriately be taken up by the prisoner before that officer, should be made as simple as possible and that the necessary arrangements should be made as quickly as possible under the circumstances.

Background information


The RCIADIC found that appearing before an officer to make a request may be traumatic for an Aboriginal and Torres Strait Islander prisoner; keeping these processes simple and short will reduce the negative impact on the Aboriginal and Torres Strait Islander prisoner.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


Corrective Services in **New South Wales** have in place a *Complaints Management Policy* which sets out the processes that a prisoner follows when making a complaint. Inmates are encouraged to resolve issues locally with an avenue to escalate if this is not possible. The Corrective Services Support Line enables prisoners to make a complaint and receive support through a telephone service. Inmate Development Committees and Aboriginal delegates in correctional centres provide a forum for matters to be raised by inmates for the attention of corrections officers.

 *In New South Wales, Recommendation 179 has been implemented through the Complaints Management Policy.*

In **Victoria**, under item 42 in the *Correctional Management Standards for Men's Prisons in Victoria*, and the *Standards for Management of Women Prisoners in Victoria* the prison manager must implement procedures to resolve issues and conflicts in the prison using open and legitimate processes. They must also ensure prisoners have access to appropriate parties to resolve issues, and ensure that prisoners are informed of the internal and external requests and complaints process in a form appropriate to their language and cognitive abilities. Corrections Victoria Operating Procedure 4.1 encourages staff to process requests and complaints in a timely and fair manner; prisoners are advised of requests and complaints procedures upon their reception at each prison location.


 *In Victoria, procedures encourage timely responses to prisoner requests, thus implementing Recommendation 179.*

Queensland has implemented the World Health Organisation Health Prison concept in the *Healthy Prisons Handbook*, which sets out a complaints procedure that ensures an effective, easy to access, and easy to use process. Correctional services officers are responsible for the day-to-day welfare of prisoners including dealing with basic prisoner requests in a timely manner. A case management process allocates specific officers to a number of prisoners to provide for the management and support of prisoners.

 *In Queensland, Recommendation 179 has been implemented through the Healthy Prisons Handbook and complaints procedures.*


In **South Australia**, under section 35AA of the *Correctional Service Act 1982* (SA), the manager of a correctional institution where a prisoner is detained must facilitate a prisoner in making a complaint.

Aboriginal Liaison Officers are also available to receive complaints from Aboriginal and Torres Strait Islander prisoners. Currently, the Department of Human Services Youth Justice has a comprehensive policy and practice framework which supports effective complaints management and enables young people to make a complaint. The Adelaide Youth Training Centre Client Feedback Operational Order provide guidance and direction for staff to manage feedback and complaints in a timely manner. The Youth Advisory Committee at the Adelaide Youth Training Centre and the Guardian for Children and Young People provide further mechanisms for residents to raise concerns.


 *In South Australia, Recommendation 179 has been implemented under the Correctional Services Act 1982 (SA).*

The **Western Australian Adult Custodial Rule 5** sets out the policy around requests, complaints and grievances by prisoners. Section 1.4 of this Rule allows for any request or complaint to be made either verbally or in writing, to support the needs of prisoners. The *Inspection Standards for Aboriginal Prisoners* also state that departmental processes for making complaints should take account of the inhibitions that Aboriginal and Torres Strait Islander prisoners may have about putting matters in writing and that prisons should avoid the need for Aboriginal and Torres Strait Islander prisoners to make a written application, wherever practicable (standard A37.1). As such, standard A37 requires that prisons with a substantial number of Aboriginal and Torres Strait Islander prisoners should ensure that any procedures are appropriate to Aboriginal and Torres Strait Islander prisoners.


The Department of Justice also operates the ACCESS service to receive complaints about service delivery in prisons where an adult is unsatisfied with the response or behaviour of an officer. Prison Support Services, Peer Support Prisoners and the Aboriginal Visitor Scheme operate to provide support to at risk and vulnerable prisoners.

 *The Western Australian Government has mostly implemented Recommendation 179 through procedures and avenues for the registration of complaints by prisoners. However, it is not clear whether this process is facilitated as quickly or soon as is practicable.*

In **Tasmania**, the Tasmanian Prison Service Compliance Unit, the Official Visitor Scheme and the Office of the Ombudsman are involved in handling complaints from prisoners. Official visitors are available to receive complaints from Aboriginal and Torres Strait Islander prisoners.

 *In Tasmania, Recommendation 179 has been mostly implemented through the Tasmania Prison Service Compliance Unit, the Official Visitor Scheme, and the Office of the Ombudsman. However, it is not clear whether this process is facilitated as quickly or as soon as is practicable.*

In the **Northern Territory**, prisoner complaints can be made to official visitors, while serious complaints can be made to the NT Ombudsman. The correctional facilities have an induction process which all prisoners are required to attend following Reception, showing the rules and processes of the correctional centres.

 *In the Northern Territory, procedures encourage timely responses to prisoner requests, thus mostly implementing Recommendation 179. However, it is not clear whether this process is facilitated as quickly or as soon as is practicable.*

In the **Australian Capital Territory**, the *Official Visitor Act 2012* allows for Aboriginal and Torres Strait Islander prisoners to make their complaints to the Aboriginal Official Visitor. Additionally, Aboriginal and Torres Strait Islander detainees may make complaints and requests via telephone or email to either the Ombudsman, Alexander Maconochie Centre case manager, or Alexander Maconochie Centre Indigenous Liaison Officer. Complaints may also be made to a yard delegate or custodial officer. Staff are required to be responsive in a timely manner and for critical matters such as At Risk referrals, a mandated 2-hour window is allowed to have a mental health assessment with observations until that assessment occurs.

 *In the Australian Capital Territory, Recommendation 179 has been implemented through the Official Visitor Act 2012.*

Recommendation 180

That where a prisoner is charged with an offence which will be dealt with by a Visiting Justice, that Justice should be a Magistrate. A charge involving the possibility of affecting the period of imprisonment should always be dealt with in this way. All charges of offences against the general law should be heard in public courts.

Background information

The RCIADIC noted that the prison disciplinary systems needed to have procedures and systems that ensured that “disciplinary penalties and punishments are not unduly harsh or counter-productive to the process of correction”.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales** the *Crimes (Administration of Sentences) Act 1999 (NSW)* states that if the governor of a correctional centre believes an offence is serious then they may refer a correctional centre offence with which an inmate is charged to a visiting magistrate for hearing and determination. General criminal offences (which are not correctional centre offences) are heard by public courts under normal processes.

- *The New South Wales Government has implemented Recommendation 180 through the Crimes (Administration of Sentences) Act 1999 (NSW).*

In the **Victorian** Implementation Review of Recommendations, this recommendation is listed as “no longer relevant” since Victoria now has the Official Prison Visitor Scheme. The system of *Visiting Justices* was phased out in Victoria in the 1980s.

- *The Victorian Government implemented the intent of Recommendation 180 prior to the RCIADIC, as the Visiting Justice System was phased out in the 1980s as a custody disciplinary tool.*

In **Queensland**, under section 1.71 of the *Standard Guidelines for Corrections in Australia*, prisoners should be notified in writing of any charges relating to an alleged breach of prison discipline at the first available opportunity. Proceedings for criminal offences committed within a correctional centre, if not proceeded with as a breach of discipline, are commenced in the same manner as any other offence requiring a prisoner’s attendance before a Magistrates Court in the first instance. In addition, no prisoner shall be tried unless informed of the alleged offence. Any adjudication processes should be fair and should incorporate principles of natural justice and procedural fairness.


- *The Queensland Government has implemented Recommendation 180 through the Standard Guidelines for Corrections in Australia and disciplinary procedures.*

In **South Australia**, section 17 of the *Corrections Act 1982 (SA)* states that visiting tribunals must be established for each correctional institution. A magistrate or a special justice may be appointed to be a visiting tribunal. The chief executive of the administrative unit who enforces this act may, at their discretion, refer any offence against the prison regulations to a visiting tribunal for hearing and determination. However, it is unclear whether charges of offences against the general law are heard in public courts.


- *The South Australian Government has partially implemented Recommendation 180 through the Corrections Act 1982 (SA). However, it does not appear that it is a requirement for cases to be heard by a Magistrate. However, it is unclear whether charges of offences against the general law are heard in public courts.*

In **Western Australia**, under section 54 of the *Prisons Act 1981 (WA)*, the Minister may appoint visitors to be known as visiting justices. Visiting justices shall be appointed from persons who are magistrates or justices of the peace. The visiting justice may inquire into and determine any charge of a minor prison offence (section 72). If an aggravated prison offence is commenced in a court of summary jurisdiction, then the offence can be treated as a “simple offence”. This means that the


offence will not be treated as a criminal offence and generally faster will not go through a full trial. Charges for minor prison offences may also be dealt with by a Superintendent. Penalties applicable for minor offences do not affect the person in custody's terms of imprisonment.

 *The Western Australian Government has partially implemented Recommendation 180 through the Prisons Act 1981 (WA), however visiting justices are not required to be magistrates and it does not appear that matters are heard in public court.*


In **Tasmania**, section 59 of the *Corrections Act 1997* (Tas) provides that a disciplinary officer may do one of the following: (a) reprimand the prisoner or detainee; (b) withdraw one of the prisoner's or detainee's privileges for less than 14 days; (c) confine the prisoner or detainee to his or her cell for up to 48 hours; (d) charge the prisoner or detainee with the prison offence; (e) take steps to have the matter dealt with under criminal law. If the matter is considered serious enough to refer to Tasmania Police, a prisoner may be charged with a criminal offence. All prisoners charged with a criminal offence would be dealt with by a Magistrate / Judge.

 *The Tasmanian Government has implemented Recommendation 180 through the Corrections Act 1997 (Tas).*

In the **Northern Territory**, under section 71 of the *Correctional Services Act 2014* (NT), if a prisoner is charged with engaging in misconduct, the proceedings on the charge must be conducted by either the general manager of the custodial facility or the correctional officer nominated by the general manager. None of the penalties that may be imposed affect the period of imprisonment. Criminal charges are handled through normal police and courts processes.

 *The Northern Territory Government has mostly Recommendation 180 through the Correctional Services Act 2014 (NT). However, it does not appear that it is a requirement for cases to be heard by a Magistrate.*

In the **Australian Capital Territory**, chapter 10 of the *Corrections Management Act 2007* (ACT) sets out the processes in relation to a disciplinary breach, or alleged disciplinary breach, by a prisoner. Any disciplinary breaches go before a presiding officer who may refer the report to an investigator. The presiding officer may also refer the allegation to the chief police officer or the director of public prosecutions if the disciplinary breach is a criminal offence. An inquiry may take place, in which the rules of natural justice would apply.

 *The Australian Capital Territory Government has implemented Recommendation 180 through the Corrections Management Act 2007 (ACT).*

Recommendation 181

That Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention. In any event, Corrective Services authorities should provide certain minimum standards for segregation including fresh air, lighting, daily exercise, adequate clothing and heating, adequate food, water and sanitation facilities and some access to visitors.

Background information

The RCIADIC identified that solitary confinement caused anxiety for Aboriginal and Torres Strait Islander prisoners.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, under section 14.7.14 of the *Corrective Services New South Wales Operations Procedures Manual*, placing an Aboriginal prisoner in segregated custody is undesirable to the highest degree and in cases where it is necessary the general manager must ensure the inmate is provided with daily exercise, appropriate clothing, food, and water. The Regional Aboriginal Program Officer is also notified of all cases in which an Aboriginal inmate is placed in segregation. The Custodial

Operations Policy and Procedures (section 14.1 Inmate Discipline) stipulates that young Aboriginal inmates should not be confined to cells alone. The policy provides that consideration is to be given to inmates' mental health and that alternative disciplinary penalties should be considered.

● *New South Wales has implemented Recommendation 181 through the introduction of minimum standards around the use and conditions of management units.*

In the **Victorian** 2005 Implementation Review of Recommendations, Corrections Victoria advised that approval must be given by the Sentence Management Unit before a prisoner is placed in a Management Unit as a result of a significant incident or for disciplinary purposes. Placements in a Management Unit are reviewed by Sentence Management on a weekly basis. Access to food and water will continue in the usual manner. Prisoners will also have access to fresh air, lighting, daily exercise and adequate clothing.

● *Victoria has implemented Recommendation 181 through the introduction of minimum standards around the use and conditions of management units.*

In **Queensland**, under section 1.80 of the *Standard Guidelines for Corrections*, prolonged solitary confinement, punishment by placement in a dark cell, inhuman or degrading punishments should not be used. Section 2.14 of these guidelines also states that every prisoner should be provided with continuous access to clean drinking water with nutritional food adequate for health and wellbeing. Where separation of prisoners occurs, Queensland Corrective Services has regard for special needs of prisoners, visits, amount of property to be kept, the prisoner's access to approved activities, courses and programs, and phone calls and electronic communications.

● *Queensland has implemented Recommendation 181 through the introduction of minimum standards around the use and conditions of management units.*

In **South Australia**, section 36 of the *Correctional Services Act 1982* (SA) sets out information on the power to keep a prisoner apart from other prisoners. A prisoner may only be separated if the prisoner has allegedly committed an offence and an investigation is required, or in the interests of the safety and welfare of the prisoners or protecting other prisoners. The Department for Corrective Services review of SOP 1 *Case Management Admission and Induction Procedures* requires officers to consider Aboriginal and Torres Strait Islander status, and sharing accommodation with another Aboriginal and Torres Strait Islander prisoner, in their decision regarding accommodation placement. The *Youth Justice Administration Act 2016* (SA), prohibits isolation or segregation from other residents, other than in a safe room or in prescribed circumstances.

● *South Australia has implemented Recommendation 181 through the introduction of minimum standards around the use and conditions of management units.*

The **Western Australian** *Code of Inspection Standards for Adult Custodial Services* (standard 42) states that the management of 'protection prisoners' must ensure their immediate safety and should be directed in the longer-term to returning them safely back into a normal (non-segregated) prison regime. In addition to these standards, *Adult Custodial Rule 1* sets the policy for the management of prisoners in confinement stating that prisoners in separate confinement must be held in a ventilated and well-lit cell, have access to daily exercise, adequate clothing, food, water, and sanitation facilities. However, there was no policy or legislation found that discussed a notable difference in the treatment of Aboriginal and Torres Strait Islander prisoners and non-Aboriginal and Torres Strait Islander prisoners.

Additionally, legislative provisions are made in the *Prisons Act 1981* (WA) ss 43 and 82 to place Aboriginal and Torres Strait Islander prisoners in separate confinement if deemed necessary for the purposes of maintaining good government, good order or security in a prison, or as a penalty imposed following a disciplinary hearing or conviction.

● *The Western Australian Government has implemented Recommendation 181 through the Code of Inspection Standards for Adult Custodial Services and Adult Custodial Rule 1.*

In **Tasmania**, under section 29 of the *Corrections Act 1997* (Tas), prisoners must have access to sufficient food and drink, clothing, facilities for personal hygiene, exercise, and bedding. However, there was no policy or legislation found that discussed a notable difference in the treatment of Aboriginal and Torres Strait Islander prisoners and non-Aboriginal and Torres Strait Islander prisoners. The Tasmanian Government comments that prisoners in Tasmania are not kept in social isolation, inhumane conditions, or subject to sensory deprivation. A new regime, introduced in 2012 and applying to all prisoners, includes safeguards to ensure that prisoners are only separated from other prisoners as a last resort, are treated decently and humanely and are separated for the minimum amount of time necessary to address the high risk behaviours that led to their separation.

● *Tasmania has implemented Recommendation 181 through the introduction of minimum standards around the use and conditions of management units.*

In their 1996-97 implementation report, the **Northern Territory** Government stated that they support this recommendation but have not specified any actions taken to implement this recommendation. The Northern Territory Government provides that separate confinement is used as a "last resort" prisoner management procedure in incidents of proven prison misconduct as a deterrent for continued poor performance and behaviour.

○ *The Northern Territory Government has not implemented Recommendation 181, as it does not appear that specific actions have taken place in response to this recommendation.*

In the **Australian Capital Territory**, the section 12 of the *Corrections Management Act 2007* (ACT) states that prisoners must have access to sufficient food and drink, clothing, facilities for personal hygiene, exercise, and bedding. Section 95 of the Act requires that these minimum living conditions also apply to those prisoners in segregation, unless it is reasonable that the standards not apply. There is a distinction between the treatment of Aboriginal and Torres Strait Islander prisoners and non-Aboriginal and Torres Strait Islander prisoners in the *Correction Management (Aboriginal and Torres Strait Islander Detainees Policy 2011)* stating that consideration needs to be taken into account of the impact segregation has on Aboriginal and Torres Strait Islander prisoners. When segregating a detainee for safety or security reasons, regard must be given to any relevant known cultural considerations as well as any likely impact of the segregation on the health and wellbeing of the detainee. Under the ACT Corrective Services *Corrections Management (Shared Cell) Policy 2009*, Aboriginal and Torres Strait Islander detainees should be accommodated together where this is requested subject to operational requirements and other necessary considerations.

● *The Australian Capital Territory has implemented Recommendation 181 through the introduction of minimum standards around the use and conditions of management units.*

Recommendation 182

That instructions should require that, at all times, correctional officers should interact with prisoners in a manner which is both humane and courteous. Corrective Services authorities should regard it as a serious breach of discipline for an officer to speak to a prisoner in a deliberately hurtful or provocative manner.

Background information

The RCIADIC heard of instances when correctional officers would not interact appropriately with prisoners.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, the *Guide to Conduct and Ethics* section 2.8 sets out the professional conduct towards offenders that is expected of Corrective Services NSW employees. This section notes that the treatment of prisoners should encourage their self-respect and a sense of personal responsibility. Corrective Services employees should also act with integrity and compassion towards prisoners. Any misconduct may be subject to disciplinary or other remedial action including fine, demotion, or

dismissal. All training for frontline staff is regularly reviewed and updated in line with these expectations.

- *New South Wales has implemented Recommendation 182 through standards, training, and procedures for responding to inhumane or discourteous treatment of prisoners.*

In **Victoria**, item 40 of the *Standards for the Management of Women Prisoners in Victoria* and the *Correctional Management Standards for Men's Prisons in Victoria* outline the expectations of how prisoners will be managed in correctional institutions. Specifically, the prison general manager will ensure prison staff demonstrate appropriate attitudes and culturally sensitive practices. In the 2005 implementation review, Corrections Victoria stated that any alleged incidents where staff have behaved inappropriately are investigated and, as appropriate, sanctions imposed.

- *Victoria has implemented Recommendation 182 through standards, training, and procedures for responding to inhumane or discourteous treatment of prisoners.*

In **Queensland**, under section 1.49 of the *Standard Guidelines for Corrections*, interactions between staff and prisoners should promote dignity and respect. The *Corrective Services Act 2006* and the Code of Conduct for the Queensland Public Service also reinforce the principles of treating all persons with respect and without prejudice, and to communicate and respect people from different backgrounds.

- *The Queensland Government has implemented Recommendation 182 through the Standard Guidelines for Corrections as well as the Corrective Services Act 2006 (Qld) and the Code of Conduct for the Queensland Public Service.*


In their 1994 implementation report, the **South Australia** Government stated that they were developing a Code of Ethics in the Correctional Services which addressed this recommendation. This report also noted that there is a Cross Cultural Awareness program undertaken by trainees in their induction training and by current officers. The Department for Corrective Services Core Values statement requires employees to respect each person, staff and clients alike, for their individuality and reject and confront discrimination, prejudice, victimisation, physical and psychological bullying and sexual and racial discrimination. DCS has its own Declaration of Reconciliation as well as being a signatory to the Justice Portfolio's Reconciliation Statement. The Youth Justice Administration Act 2016 recognises a duty of care to young people in custody:

- to provide for the safe, humane and secure management of youths held in training centres in the State;
- to follow, to the extent practicable, international and national requirements or guidelines relating to the detention of youths;
- to promote the rehabilitation of youths by providing them with the care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential;
- and to promote, and endeavour to ensure compliance with, the Charter of Rights for Youths Detained in Training Centres.


Mechanisms are in place to ensure any breaches in staff conduct are reviewed and addressed appropriately.

- *The South Australian Government has implemented Recommendation 182 through standards, training, and procedures for responding to inhumane or discourteous treatment of prisoners.*

The **Western Australian** *Code of Inspection Standards for Custodial Services* standard 72 states that prisoners must be treated with respect for their inherent dignity as individual human beings. However, there have been a number of complaints made to the Office of Custodial Services and the Ombudsman with regards to the treatment of prisoners by correctional officers. Currently, Department of Justice employees are required to adhere to the *Code of Conduct, Policy Directives* and *Prison Standing Orders* as well as the provisions of the *Prisons Act 1981* (WA) and other legislative provisions.

 *The Western Australian Government has implemented Recommendation 182 through legislation and policy.*


In their 1995 implementation report, the **Tasmania** Government stated that this requirement is written in Standing Orders and is also incorporated in staff training. Any breaches are dealt with on a case-by-case basis.

 *Tasmania has mostly implemented Recommendation 182 through standards and training. However, there does not appear to be clearly defined procedures for responding to inhumane or discourteous treatment of prisoners.*

The **Northern Territory** has in place the *Northern Territory Public Sector Principles and Code of Conduct* which all prison officers must adhere to. *The Northern Territory Public Sector Employment Instruction Number 12- Code of Conduct* item 7 notes that a public sector officer must be seen to exhibit the highest ethical standard in carrying out his or her duties. The *Code of Conduct* also endorses integrity, transparency and ethical accountable behaviour as a requirement from all staff. The Code of Conduct is issued in accordance with Employment Instruction 13 and as such is a lawful direction under the Public Sector Employment and Management Act.

 *The Northern Territory has implemented Recommendation 182 through its policies.*

In the **Australian Capital Territory**, under section 9 of the *Corrections Management Act 2007* (ACT), prisoners' human rights should be respected and protected and prisoners should be treated decently and humanely. All ACT Corrective Services staff are subject to the ACT Public Service Code of Ethics, the ACT Public Service Code of Conduct, and undertake mandatory training in areas including: human rights; bullying and harassment; respect, equity and diversity; ethical standards; effective communication; and cultural awareness training. The 2011 Independent Review of Operations at the Alexander Maconochie Centre found that the ACT Government and ACT Correctional Services had placed considerable emphasis on creating a pro-social environment that contributes to the human and dignified treatment of detainees.

 *The Australian Capital Territory has implemented Recommendation 182 through the Corrections Management Act 2007 (ACT).*

Additional commentary

In the Northern Territory, there have been reports of inappropriate treatment of prisoners by prisoner officers which has resulted in the Royal Commission into the Protection and Detention of Children in the Northern Territory as well as complaints to the NT Ombudsman (NT Ombudsman, 2014⁴¹).

Recommendation 183

That Corrective Services authorities should make a formal commitment to allow Aboriginal prisoners to establish and maintain Aboriginal support groups within institutions. Such Aboriginal prisoner support groups should be permitted to hold regular meetings in institutions, liaise with Aboriginal service organisations outside the institution and should receive a modest amount of administrative assistance for the production of group materials and services. Corrective service authorities should negotiate with such groups for the provision of educational and cultural services to Aboriginal prisoners and favourably consider the formal recognition of such bodies as capable of representing the interests and viewpoints of Aboriginal prisoners.

Background information

The RCIADIC found that there had been an increase in the number of Aboriginal and Torres Strait Islander support groups within institutions, which had a positive impact on Aboriginal and Torres Strait Islander prisoners.

Responsibility


All State and Territory governments are responsible for this recommendation.

⁴¹ NT Ombudsman, *Annual Report 2013-14*, Northern Territory Government, Darwin.

Key actions taken and status of implementation

The **New South Wales** Government stated in their 1995-96 implementation report that they have resident committees within juvenile justice centres that meet regularly with the manager of the correctional institution. Representatives on this committee are elected by either staff or their peers. The Department of Corrective Services also has programs run with TAFE where they aim to train prisoners to become mentors. This is specifically for Aboriginal prisoners. Lastly, NSW has also established Aboriginal Inmate Committees which aim to facilitate communication between staff and prisoners. Aboriginal delegates act as a touch point for communication between inmates and staff, and liaise with the Regional Aboriginal Programs Officer employed by CSNSW. CSNSW also collaborate with Aboriginal offenders and community organisations through the delivery of programs including:


- the Gundi Program which provides participants with real world construction experience and employment placements;
- Bundian Way - a community engagement and cultural learning initiative for male and female offenders delivered in partnership with the Eden Land Council;
- Yetta Dhinnakkal - a working farm maintained by inmates with programs addressing offending behaviour as well as providing practical skills and vocational training in horticulture, construction and technology; and
- Balund – a residential diversionary program that includes interventions to address reoffending risks, enhance cultural connections and provide employment seeking assistance.

 *New South Wales has implemented Recommendation 183 through Aboriginal Inmate Committees and other similar initiatives.*


In **Victoria**, the *Victorian Correctional Management Standards for Men's Prisons* states that Aboriginal and Torres Strait Islander prisoners should be provided access to an Aboriginal Wellbeing Officer or Aboriginal Liaison Officer (item 2.2). Aboriginal Wellbeing Officers maintain individual contact with Aboriginal and Torres Strait Islander prisoners and arrange for group meetings to occur. The Aboriginal Cultural Immersion Program (ACIP) facilitates group discussions for Aboriginal and Torres Strait Islander prisoners and offenders. The AJA 3 also supports this recommendation by aiming to enhance advocacy of Aboriginal Wellbeing Officers or Aboriginal Liaison Officers for Aboriginal and Torres Strait Islander prisoners at Review and Assessment Committees.

 *Victoria has implemented Recommendation 183 through the ACIP.*


The **Queensland** Government stated in their 1997 implementation report that Aboriginal and Torres Strait prisoner support groups operate in correctional centres. These groups remain current and include visits from Elders, legal services, Aboriginal and Torres Strait Islander chaplaincy services and health organisations. The *Corrective Services Act 2006* states that when establishing a new prison, the chief executive must ensure that appropriate provision is made in the prison for a meeting place for Aboriginal and Torres Strait Islander prisoners. All correctional centres in Queensland comply with this requirement.

 *Queensland has implemented Recommendation 183 through Aboriginal and Torres Strait prisoner support groups and the Corrective Services Act 2006 (Qld).*


In **South Australia**, there is the Aboriginal Services Unit which is responsible for advising and developing the provision of culturally appropriate services to Aboriginal and Torres Strait Islander prisoners and contributes to policy development. DCS holds six-weekly Prevention of Aboriginal Deaths in Custody Forums rotating around the State's prisons which encourage prisoner participation in sharing their concerns related to their custodial health and welfare. An Aboriginal Peer Support Program is under development for Port Augusta and Port Lincoln Prisons, with assistance from the DCS's Health Promotions. In 2015, the Yarning Circle Pilot commenced at the Adelaide Youth Training Centre which is open to young Aboriginal and Torres Strait Islander males who expressed interest in having a safe space to discuss issues which impact upon themselves, their families and wider communities.

 *South Australia has implemented Recommendation 183 through the function of the Aboriginal Services Unit, the introduction of rotating forums, and other similar initiatives.*


In **Western Australia**, prisoner peer-support groups currently operate in all prisons and are provided by standard A12 of the *Inspection Standards for Aboriginal Prisoners*, which states that Aboriginal and Torres Strait Islander prisoners should have active peer support groups of prisoners. Standard A23 also notes that educational opportunities should be culturally appropriate to the needs and beliefs of the prison population. Aboriginal Meeting Places have been created in most prisons. Regional prisons liaise with local Aboriginal and Torres Strait Islander groups and communities, and encourage their participation in prison programs. For example, regular unit meetings including the Unit Manager and detainees are held at Banksia Hill Detention Centre to discuss particular issues as required.

 *The Western Australian Government has implemented Recommendation 183 through the introduction of prisoner peer-support groups and meeting places, including liaison between detainees and custodial staff.*

The **Tasmanian** Government stated in their 1993 implementation report that Aboriginal and Torres Strait Islander support groups are facilitated in the prisoner system. Currently, while Aboriginal and Torres Strait Islander prisoners have the opportunity to participate in and represent other prisoners through prisoner forums, specific support groups are not maintained within institutions. The Tasmania Prison Service facilities support by providing access to external supports and connects Aboriginal and Torres Strait Islander prisoners with appropriate programs.

 *The Tasmanian Government has implemented Recommendation 183 through ongoing support groups and the function of Tasmania Prison Service in implementing the principles of this recommendation.*


The **Northern Territory** Government stated in their 1996-97 implementation report that each facility has an Activities Officer and Welfare Officer who actively encourages interactions with support groups where there is no compromise of security. There is also assistance with education programs offered through Batchelor College, Centralian College, the Centre for Appropriate Technology, and Aboriginal Development Unit. Currently, the Elders Visiting Program includes 14 communities with over 45 Elders participating in the Program. The Elders make regular visits to the Correctional facilities to engage with the prisoners from their region and to listen to their concerns. The Northern Territory Government provides \$1 million per annum in funding for the Elders program, and additional funding of \$120,000 per annum to organisations supporting community-based work in association with the program.

 *The Northern Territory Government has implemented Recommendation 183 through the Activities Officer and Welfare Officer, education programs, and the Elders Visiting Program.*

In the **Australian Capital Territory**, the *Corrections Management (Aboriginal and Torres Strait Island Detainees) Policy (No 2)* allows for Aboriginal and Torres Strait Islander prisoners of the same gender to meet for the purpose of providing communal, cultural, and spiritual support. There is also an Indigenous Liaison Officer who will see all Aboriginal and Torres Strait Islander prisoners and who liaises with other Aboriginal and Torres Strait Islander community organisations.

The Alexander Maconochie Centre has incorporated a cultural place to provide Aboriginal and Torres Strait Islander people with a venue to discuss and express themselves through culturally relevant ways including visual art activities. The Corrections Management (Aboriginal and Torres Strait Islander Detainees) Policy 2011 (No. 2) provides that:

- recreational programs and activities that are culturally appropriate are provided within the activities centre, designated compound areas, and the women's community centre; and
- representatives of community-based organisations may be granted access to the Alexander Maconochie Centre to conduct programs and/or provide education for Aboriginal and Torres Strait Islander detainees.

 *The Australian Capital Territory Government has implemented Recommendation 183 through the Corrections Management (Aboriginal and Torres Strait Island Detainees) Policy (No 2).*

Recommendation 184

That Corrective Services authorities ensure that all Aboriginal prisoners in all institutions have the opportunity to perform meaningful work and to undertake educational courses in self-development, skills acquisition, vocational education and training including education in Aboriginal history and culture. Where appropriate special consideration should be given to appropriate teaching methods and learning dispositions of Aboriginal prisoners.

Background information


The RCIADIC identified an opportunity for Aboriginal and Torres Strait Islander prisoners to continue building their skills while incarcerated.

Responsibility

All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

In **New South Wales**, inmates are provided with education and vocational training with priority given to those with the highest learning needs and most at risk of re-offending. The *Aboriginal and Torres Strait Islander Inmate Handbook* states that each prison has educational units which are run by the Adult Education and Vocational Training Institute. Aboriginal inmates are provided with opportunities that recognise their land, heritage, relationships and cultural beliefs. CSNSW has completed an education review and as part of this programs offered are being further explored. CSNSW engages qualified (degree in Education or equivalent) Aboriginal teachers who deliver Aboriginal Cultural Programs. Corrective Services Industries prepares inmates for employment after release through real work opportunities. CSNSW is partnering with the Commonwealth Government to implement the Time to Work Employment Service across NSW correctional centres.

 *New South Wales has implemented Recommendation 184 through its work and education programs.*

In **Victoria**, under section 47 of the *Corrections Act 1986* (Vic), prisoners have the right to take part in education programs in the prison. The Victorian Government noted in its 2005 implementation report that all sentenced prisoners are required to work six hours each day, five days per week, across a number of types of work. All correctional facilities provide educational programs, including the Certificate I in Koori Education which develops foundational skills for Aboriginal and Torres Strait Islander prisoners.

 *Victoria has implemented Recommendation 184 through its work and education programs.*


In **Queensland**, section 266 of the *Corrective Services Act 2006* (Qld) states which programs and services should be established to help prisoners. Included within this list are programs or services to help prisoners reintegrate into the community after their release from custody, including programs that enable the prisoner to acquire skills. Any programs or services must take into account the special needs of prisoners. Prisoners are also encouraged to undertake work as part of a structured day. All prisoners are provided with opportunities to access basic education and vocational education and training programs.

 *Queensland has implemented Recommendation 184 through its work and education programs.*


The **South Australia** Department of Correctional Services *Annual Report 2015-16* noted that the following services are offered to prisoners; vocational training such as literacy and numeracy skills, business and business administration, textiles and clothing as well as agrifood and horticulture. The Aboriginal Services Unit also provides additional programs to Aboriginal and Torres Strait Islander prisoners such as employment programs.

VTEC-SA provides advice for planning, policy and direction for the education and training programs that are available to prisoners to ensure that they meet national standards. Additionally, DCS has a number of key partnerships with external providers, including TAFE SA, to deliver programs to prisoners to improve job readiness.

The Work Ready scheme provides assistance for prisoners in gaining valuable work skills and qualifications. In addition, the 'Job Club' at the APC prepares prisoners at the end of their sentence for employment through employment specific courses. These include job network placements, short courses, long term TAFE SA programs and several external TAFE enrolments where prisoners are enrolled externally but study in prison. A structured work day has been introduced in PAP and Mobilong prisons where prisoners are provided opportunity to participate in meaningful work and education. The Adelaide Youth Training Centre provides residents with opportunities for success such as participation in a range of South Australian Certificate of Education (SACE) courses, vocational and University level studies, sports programs, poetry and art competitions. The Youth Education Centre, run by the Department of Education onsite, provides a high quality, contemporary educational environment.

 *South Australia has implemented Recommendation 184 through its work and education programs.*

In **Western Australian**, under standard A21 of the *Inspection Standards for Aboriginal Prisoners*, Aboriginal and Torres Strait Islander prisoners should have available to them culturally appropriate offender programs, including core programs that address education and employment training. Furthermore, standard A22 also notes that vocational skills programs that are relevant to post-release employability of Aboriginal and Torres Strait Islander prisoners in either local industries or on their own communities should be established and maintained. Detainees are provided with a choice to work in a range of industries, including the abattoir, dairy, bakery, laundry, textiles and cabinet workshops, with many of these work placements linked to accredited TAFE courses. Additionally, support is offered in accessing VET courses, secondary/higher education, skills-based programs and other pre-release employability programs.

 *The Western Australian Government has implemented Recommendation 184 through a range of culturally-appropriate employment and education programs for Aboriginal and Torres Strait Islander detainees.*

A review of **Tasmania** Community Corrections⁴² conducted by the Tasmanian Department of Justice (2008) found that although there were a variety of educational programs offered to prisoners, there were limited programs that were specifically aimed at Aboriginal and Torres Strait Islander prisoners. In response to the lack of tailored educational programs, the *Tasmanian Prison Services Education and Training Strategic Plan 2011-2016* was developed. This plan outlined new initiatives that would be developed such as a core programs of learning that are available to all prisoners. In Tasmania, all prisoners are entitled to participate in work, education and programs, and are encouraged to do so through the payment of various allowances. A Memorandum of Understanding is in place between the Tasmania Prison Service and TasTAFE, with TasTAFE taking on primary responsibility for the delivery of prisoner education and training within the prison service. The Tasmania Prison Service also works with TasTAFE to delivery Aboriginal specific educational courses.

 *Tasmania has implemented Recommendation 184 through its work and education programs.*

According to their *2015-16 Annual Report*, in the **Northern Territory** the-then Department of Correctional Services offered a range of educational programs to prisoners in conjunction with the Batchelor Institute of Indigenous Tertiary Education. There was also an increase in the proportion of prisoners participating in education programs from 10% in 2014-15 to 38% in 2015-16. One of the strategic issues for 2016-17 outlined in this annual report was to improve participation in vocational education and training as well as prisoner education. The Northern Territory Government notes that prisoners on remand are given their choice to participate in work programs under the *Correctional Services Act 2014* (NT). The Commissioner may give any other prisoner the opportunity to work at the custodial correction facility or elsewhere.

⁴²

http://www.justice.tas.gov.au/__data/assets/pdf_file/0019/130069/FINAL_REPORT_Tasmania_Community_Corrections.pdf

- *The Northern Territory has implemented Recommendation 184 through its work and education programs.*

In the **Australian Capital Territory**, the *Corrections Management (Aboriginal and Torres Strait Island Detainees) Policy (No 2)* notes that culturally appropriate recreational programs and activities are allowed to be provided within the activities centre, designated compound areas, and the women's community centre. Additionally, detainees at the Alexander Maconochie Centre are remunerated for participating in approved programs, education and employment as set out in the *Corrections Management (Prisoner Remuneration Policy) 2009 (ACT)*. The *Corrections Management (Work Release) Policy 2012* extends the employment programs offered at the Centre to allow low-risk detainees approaching release to engage in paid employment in the community.

Since 2009, the Centre has had an education provider delivering more than 20 mainstream vocational education and training courses, as well as general education. Individual learning plans are developed for all participants including through ongoing skills assessment. Delivery is now principally through the enrolment in three certificates of Foundations Skills with VET skill sets as electives within each qualification, these include:

- Certificate I in Access for Vocational Pathways;
- Certificate I in Skills for Vocational Pathways; and
- Certificate II in Skills for Work and Vocational Pathways, which has the following electives: hospitality, hairdressing, business, information and communications technology, cleaning operations, construction, first aid, horticulture. A range of education programs also address topics relating to Aboriginal and Torres Strait Islander history and culture.

- *The Australian Capital Territory has implemented Recommendation 184 through its work and education programs.*

Additional commentary

In Victoria's 2005 implementation report, Corrections Victoria observed that education provisions have not increased in real terms in spite of dramatic increases in prisoner numbers. As a result, demand for education and training exceeded supply.

Recommendation 185

That the Department of Education, Employment and Training be responsible for the development of a comprehensive national strategy designed to improve the opportunities for the education and training of those in custody. This should be done in co-operation with state Corrective Services authorities, adult education providers (including in particular independent Aboriginal-controlled providers) and State departments of employment and education. The aim of the strategy should be to extend the aims of the Aboriginal Education Policy and the Aboriginal Employment Development Policy to Aboriginal prisoners, and to develop suitable mechanisms for the delivery of education and training programs to prisoners.

Background information

The RCIADIC commented on the significant differences in educational outcomes between Aboriginal and Torres Strait Islander people and other Australians. It further noted that lower education achievement is one of the "principle underlying issues associated with the disproportionate representation of Aboriginal people in custody and Aboriginal deaths in custody" (RCIADIC Report, Volume 3 paragraph 25.9.4).

Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


Key actions taken and status of implementation

In 1999, the **Commonwealth** Department of Education, Science and Training released a National Strategy to Improve Education and Training Outcomes for Adult Indigenous Australians in the Custody of Correctional Authorities (the 'National Strategy') directly in response to the RCIADIC's

recommendation. The strategy was developed in collaboration with the States, Territories, the Commonwealth and the Aboriginal and Torres Strait Islander community.

DET is a member of the Prison to Work Advisory Committee which works across government to identify practical ways to address barriers to employment for Aboriginal and Torres Strait Islander people leaving prison and to provide support during the transition from incarceration to employment. The *Prison to Work* report, released by COAG in 2016, identifies national strategies to help Aboriginal and Torres Strait Islander people to transition from prison into employment. This includes in-prison training and rehabilitation programs, employment and health initiatives, and welfare income support services. The report was developed through consultations in every jurisdiction including with governments, academics, service providers, employment providers, healthcare providers, Aboriginal and Torres Strait Islander people, prison staff and prisoners.

The Prison to Work program announced in the 2017-18 Budget builds on the findings of the Prison to Work report and will support Indigenous prisoners to make a successful transition from Prison to Work.

 *Recommendation 185 has been implemented by the Commonwealth Government through the 1999 National Strategy and the subsequent Prison to Work report in 2016.*

In 1999, the Department of Education, Science and Training released a National Strategy to Improve Education and Training Outcomes for Adult Indigenous Australians in the Custody of Correctional Authorities (the 'National Strategy') directly in response to the RCIADIC's recommendation. The strategy was developed in collaboration with the States, Territories, the Commonwealth and the Aboriginal and Torres Strait Islander community.

States and Territories: all States and Territories either referred to the National Strategy or stated that this recommendation was under the Commonwealth's jurisdiction.

 *All States and Territories have implemented Recommendation 184 through cooperating with the Commonwealth in its establishment of a national partnership, as well as through State-based work and education programs.*

Additional commentary

In **New South Wales**, CSNSW provides adult basic education and vocational training to offenders in custody with assessed educational needs. All education programs are delivered by a registered training organisation. All education programs that are delivered issue nationally recognised credentials under the Australian Qualifications Training Framework. The provision of vocational education has been informed by Australian National Training Authority's 'Rebuilding Lives: VET for prisoners and offenders' provides a framework for a national approach to the implementation of vocational education and training for adult prisoners and offenders who are in custody. CSNSW and the Department of Education and Training collaborated to develop an implementation plan for TAFE NSW provision for Aboriginal prisoners. CSNSW has recently commenced a Service Level Agreement that will provide for the delivery of inmate education and vocational training centres. CSNSW engaged BSI Learning under a new education model which prioritises offenders most at risk of reoffending to ensure that those inmates with the highest needs participate in programs.

Queensland Corrective Services works with other agencies to provide accredited vocational education and training and literacy and numeracy education opportunities to all prisoners. Culturally appropriate training needs of Aboriginal and Torres Strait Islander prisoners are determined at the centres by the cultural development officers in consultation with Aboriginal and Torres Strait Islander prisoner's communities. Training providers who are contracted to deliver this training to Aboriginal and Torres Strait Islander prisoners must address specific criteria, as detailed in the tender documentation, to ensure that training is delivered in a culturally competent way. Queensland Corrective Services will increase rehabilitation and re-entry service opportunities for prisoners over the next five years.

In **South Australia**, significant progress towards the principles in this recommendation is occurring as part of Time to Work. A Memorandum of Understanding is also being progressed for the delivery of employment services in South Australian prisons. The Department for Correctional Services is

progressing work in the employment area with New Foundations and Work Ready Release Ready as part of the 10% by 2020 initiative.

The **Western Australian** Government notes that educational attainment is assessed at reception in prison and an agreed management plan, which may incorporate education and training, is implemented within six months of arrival. The Department of Justice offers numeracy and literacy courses to Aboriginal and Torres Strait Islander prisoners assessed as having low attainment in these areas. Assistance is provided with training, career, employment and transitional services into the community. Young people at Banksia Hill Detention Centre are provided education based on the Western Australian Curriculum. Banksia Hill Detention Centre collaborates with the Department of Education to ensure young people receive the best education possible, and are assisted to transition back into schooling upon release.

In the **Northern Territory**, the Batchelor Institute of Indigenous Tertiary Education provide the education and training requirements for the Darwin and Alice Springs Correctional Centre. On 29 June 2015, the then Department of Correctional Services and Batchelor Institute of Indigenous Tertiary Education signed a seven-year Service Level Agreement for Batchelor Institute of Indigenous Tertiary Education to be the primary education and training provider for Northern Territory Correctional Services until the end of 2022.

Recommendation 186

That prisoners, including Aboriginal prisoners, should receive remuneration for work performed. In order to encourage Aboriginal prisoners to overcome the educational disadvantage, which most Aboriginal people presently suffer, Aboriginal prisoners who pursue education or training courses during the hours when other prisoners are involved in remunerated work should receive the same level of remuneration. (This recommendation is not intended to apply to study undertaken outside the normal hours of work of prisoners.)

Background information


The RCIADIC stated that while in prison, Aboriginal and Torres Strait Islander prisoners should be encouraged to develop skills which would help them find employment when released from prison. The RCIADIC also noted that Aboriginal and Torres Strait Islander prisoners should be compensated for their work to improve their self-worth.

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation

New South Wales adheres to the *Standard Guidelines for Corrections in Australia*. Item 3.8 of these guidelines state that prisoners who are approved to be full-time students should be remunerated equivalently to prisoners who are employed in full-time work. However, these guidelines are not legally binding and as such States and Territories do not have to abide by them. Actions taken towards the implementation of Recommendation 183 are also relevant.

 *The New South Wales Government has implemented Recommendation 186 through the Standard Guidelines for Corrections in Australia.*

In **Victoria**, prisoners are paid for work undertaken in work programs or attendance at prison programs (which can include educational programs).

 *The Victorian Government has implemented Recommendation 186 through the paid work schemes.*

In **Queensland**, section 316 of the *Corrective Services Act 2006* (Qld) states that the chief executive may set remuneration for approved activities within the prison. Queensland Corrective Services has a prisoner remuneration policy that provides payments for unemployed, employed workers, full-time students and prisoners taking part in intervention programs.

- *The Queensland Government has implemented Recommendation 186 through the establishment of a prisoner remuneration policy.*

South Australia also adheres to the *Standard Guidelines for Corrections in Australia*. Prisoners who work in prison industries are paid a work allowance, and where appropriate, an additional performance allowance. The performance allowance may vary daily and is dependent on assessment by the relevant Supervising Correctional Officer. Prisoners who participate in approved education programs receive the same level of allowance as a prisoner who is paid a work allowance.

- *The South Australian Government has implemented Recommendation 186 through the Standard Guidelines for Corrections in Australia.*

Western Australia also adheres to the *Standard Guidelines for Corrections in Australia*. We were unable to locate additional guidelines specific to Western Australia. Remuneration is offered for those who engage in Prison Industries work, requisite with the level of difficulty required by the work and as defined in the *Prisons Regulations 1982* (WA). This work is associated with education and training outcomes that provide options for Aboriginal and Torres Strait Islander people on release. Given the mandatory obligation of young people to engage in education, they are provided gratuities consistent with the *Young Offenders Regulations 1995* (WA).

- *The Western Australian Government has implemented Recommendation 186 through the Standard Guidelines for Corrections in Australia and the introduction of relevant state-based measures.*

In **Tasmania**, prisoners are able to earn wages for this work. In addition, different jobs and activities have different wages⁴³. Currently, all prisoners are paid to attend work, education or programs.

- *The Tasmanian Government has implemented Recommendation 186 through the introduction of paid work for prisoners.*

In the **Northern Territory**, under section 55 of the *Correctional Services Act 2014* (NT) applies. This recommendation is also given effect in the NTCS Directive 2.14.1 which provides that internally employed prisoners will be paid at level when engaged in education or programs.

- *The Northern Territory Government has implemented Recommendation 186 through the Correctional Services Act 2014 (NT).*

In the **Australian Capital Territory**, the *Australian Capital Territory Corrections Management (Prisoner Remuneration) Policy 2009* allows for prisoners to be paid for their work. Each activity receives a set wage. Remuneration is also provided for approved programs and employment under the *Corrections Management (Prisoner Remuneration) Policy 2009*. However, education programs that are not included within the Detainee Rehabilitation Plan are not remunerated in the detainee wage system.

- *The Australian Capital Territory Government has implemented Recommendation 186 through the Australian Capital Territory Corrections Management (Prisoner Remuneration) Policy 2009.*

Recommendation 187

That experiences in and the results of community corrections rather than institutional custodial corrections should be closely studied by Corrective Services and that the greater involvement of communities and Aboriginal organisations in correctional processes be supported.

Background information

At the time of the RCIADIC, there was increasing support for community corrections instead of institutional corrections, but a greater understanding of the outcomes from community corrections was needed.


⁴³ http://www.justice.tas.gov.au/prisonservice/life_in_prison/prohibited_articles

Responsibility


All State and Territory governments are responsible for this recommendation.

Key actions taken and status of implementation


New South Wales stated in their 1995-96 implementation report that they consulted with community organisations about the services required for Aboriginal offenders. The Bureau of Crime Statistics and Research has undertaken studies relating to community-based sentences and Aboriginal experience. Community involvement is established through the AAC, community led programs such as Never Going Back and Bundian Way. The new High Intensity Program Units in CSNSW also seeks to involve communities to support inmates and establish community connections for post release. The Community Corrections Practice Guide for Intervention used in CSNSW enhances the effectiveness of supervision of offenders by staff by providing a structure for supervision based around simple exercises which allow staff to continue to use their professional skills and judgement, but in a more focused and structured manner.

 *New South Wales implemented Recommendation 187, as noted in their 1995-96 implementation report.*


Victoria implemented a Koori Court in Shepparton which involved collaboration with Aboriginal and Torres Strait Islander agencies. Corrections Victoria are also a member of Regional Aboriginal Justice Advisory Committees and have contributed to the supervision and management of Aboriginal and Torres Strait Islander offenders by Community Correctional Services. The AJA 3 aimed to support Community Correctional Services by developing and expanding programs and frameworks that are more responsive and inclusive of Aboriginal and Torres Strait Islander needs, and meet the needs of Aboriginal and Torres Strait Islander offenders.

 *Victoria implemented Recommendation 187 through the AJA 3.*

Queensland Corrective Services have a number of district offices and reporting centres. Reporting centres enable offenders to be supervised in the community in which they live. There are three parole boards which decide whether prisoners receive parole. At least one appointed member on each board must be an Aboriginal and Torres Strait Islander person⁴⁴. Queensland Corrective Services works closely with a number of Aboriginal and Torres Strait Islander government and non-government agencies across the State and has established Probation and Parole offices in various communities to ensure that services are delivered in areas with significant numbers of Aboriginal and Torres Strait Islander offenders. Queensland Corrective Services collects and maintains data on all offenders and orders with the aim of improving services, programs and completion rates. The Research and Evaluation unit guides the strategic direction for Queensland Corrective Services' research and evaluation activities and, monitors and evaluates outcomes as a result of the implementation of the Queensland Parole System Review.


 *Queensland implemented Recommendation 187 through the ongoing function of Queensland Corrective Services.*

In **South Australia**, the Aboriginal Services Unit was set up to advise on policy matters as well as to liaise with other Aboriginal and Torres Strait Islander community organisations. ALOs work closely with Community Corrections Officers and Aboriginal Community to support this. The Youth Justice Aboriginal Advisory Committee assists Youth Justice to reach its goals outlined in the *Youth Justice Strategic Plan 2015 - 2018* and the *Youth Justice Aboriginal Cultural Inclusion Strategy 2015 - 2018*. The aim of the committee is to bring the voice of the Aboriginal community and key partner agencies into the decision-making process of Youth Justice. DHS continues to develop its own evidence base regarding the efficacy of its interventions and to seek opportunities with sector partners to develop effective solutions for Aboriginal and Torres Strait Islander over-representation.


 *South Australia implemented Recommendation 187 through the ongoing function of the Aboriginal Services Unit.*

⁴⁴ <https://www.manpower.com.au/media/manpower-au/images/pdf/QCS.pdf>


The **Western Australia** Government stated in their 1995 implementation report that negotiations had been undertaken in Wyndham and Central Desert to develop preventive programs in the communities there. Aboriginal and Torres Strait Islander staff were also appointed to country Community Corrections offices and Aboriginal and Torres Strait Islander communities were involved in providing community based options. This monitoring remains current practice, and the Department of Justice is currently seeking to build capacity in Aboriginal and Torres Strait Islander organisations to deliver support services to those in contact with the justice system.

 *The Western Australian Government has implemented Recommendation 187 through ongoing monitoring and continued efforts to build capacity.*

The **Tasmanian** Government stated in their 1993 implementation report that Community Corrections programs were reviewed for effectiveness on a six monthly basis by way of Program Management Reviews. Consultative processes were in place to ensure participation of Aboriginal and Torres Strait Islander organisations in the correctional processes, although a less formal basis exists for consultation with regard to program development. Appropriate consultative processes were developed and formalised with Aboriginal and Torres Strait Islander organisations. Tasmania participates on the Corrective Services Administrators' Council (CSAC) Indigenous Issues Working Group that was established to develop a strategic framework that identifies common challenges and principles for the management of Aboriginal and Torres Strait Islander offenders and reports, regularly to both Corrective Services Administrators and Ministers. Relevant research or studies are also shared through CSAC.


 *Tasmania implemented Recommendation 187, as noted in their 1993 implementation report.*

The **Northern Territory Parole Act 1971** (NT) requires Aboriginal and Torres Strait Islander representation on the parole board. Following a 2010/11 Workplace Review of Community Corrections, there was an organisational restructure and a review of organisational policies and procedures including the Offender Management Framework. Additionally, under the Closing the Gap initiative NTCS has employed Community Probation and Parole Officers in remote locations with a high proportion of Aboriginal and Torres Strait Islander people to assist offenders and community engagement.

 *The Northern Territory implemented Recommendation 187 through the ongoing function of the parole board.*

The **Australian Capital Territory** Government stated in their 1997 implementation report that ACT Corrective Services is committed to expanding non-custodial, community-based sentencing options. Corrective Services continues to be involved with Aboriginal and Torres Strait Islander organisations in consideration of community-based sentencing options, including the ACT Aboriginal and Torres Strait Islander Elected Body; the United Ngunnawal Elders Council; Gugan Gulwan Youth Aboriginal Corporation; Winnunga Nimmityjah Aboriginal Health and Community Service; the ALS; and Legal Aid ACT. The ACT Corrective Services monitors the results of, and experiences in, the administration of Community Corrections programs. This includes through the publication of recidivism rates in the JACS Annual Report.

The ACT Government has established intensive correction orders under chapter 5 of the *Crimes (Sentence Administration) Act 2005* (ACT). Under the Act, entities under which the offender participates in community service work or rehabilitation programs must provide written reports to the Director-General about the offender's participation. Section 76 of the Act requires the Director-General to keep data of each intensive correction order made in relation to an offender, the offence for which an order is made, and each order that is cancelled, suspended or discharged including the reasons for such action. The operation of the intensive correction order scheme is to be reviewed by the ACT Government in March 2019.

 *The Australian Capital Territory implemented Recommendation 187 through the Crimes (Sentence Administration) Act 2005 (ACT) and associated monitoring activities.*

8 Self-determination

The recommendations in this chapter relate to: the path to self-determination (188-204); and accommodating difference: relations between Aboriginal and non-Aboriginal people (205-213).

Key themes from recommendations (26 recommendations)

- The principle of self-determination needs to be defined, and steps taken to examine the approaches that can be used to enhance levels of self-determination among Aboriginal and Torres Strait Islander people.
- Governments need to improve the mechanisms they use to provide funding to Aboriginal and Torres Strait Islander communities to simplify the process by providing funds through a single source and providing greater certainty through three-year funding agreements.
- Action is needed to encourage Aboriginal and Torres Strait Islander participation in the media, and to educate non-Aboriginal and Torres Strait Islander people to improve community attitudes and address ignorance.
- States and Territories need to observe the operations of successful Aboriginal and Torres Strait Islander councils and consider the adoption of similar models for local governance.

Legend Complete Mostly Complete Partially Complete Not Implemented Out of Scope

Commonwealth | Key actions: The Commonwealth has negotiated with various Aboriginal and Torres Strait Islander organisations to improve self-determination and provided funding and targeted programs, including the IAS, which support more strategic investment in Aboriginal and Torres Strait Islander funding. The Commonwealth is also supporting the implementation of the Aboriginal and Torres Strait Islander-led Empowered Communities initiative.



Remaining gaps: While there have been improvements in grant programs and funding, greater clarity and consistency is required in providing funding outside of the IAS to fully implement the RCIADIC recommendations. Similarly, greater priority is required for community development and social, economic and cultural plans.

New South Wales | Key actions: The New South Wales Government has established OCHRE which focuses on developing community partnerships to address cultural, educational, and economic empowerment issues covered in these recommendations. This allows community members and government to come together to negotiate and execute formal agreements on issues of mutual interest. The NSW Government has promoted development of Aboriginal arts through relevant funding to Create NSW for fellowships and grants.



Remaining gaps: New South Wales has not addressed recommendations relating to support for journalism courses with significant Aboriginal content and the wider representation of Aboriginal people in the media. In addition, further consideration of an approach to funding for organisations that is consistent state-wide, and simple to adopt, is required.

Victoria | Key actions: The Victorian Government has developed several initiatives to address the issue of self-determination in government policy, such as the *Koori Services Improvement Strategy* and the *Indigenous Partnership Strategy*, as well as measures to counter discrimination. These include the *Victorian Aboriginal Affairs Framework*, which requires each government department to report on issues of discrimination in service provision, and provisions under the *Aboriginal Justice Agreement*.



Remaining gaps: Victoria has not yet addressed the production of specific units of study relating to Aboriginal and Torres Strait Islander content in journalism and media nor the development of awards for excellence in Aboriginal and Torres Strait Islander affairs reporting.

Queensland | Key actions: The Queensland Government has undertaken significant action to promote the principle of self-determination in policy making, including the development of the *Partners in Government Agreement*, which provides that Aboriginal and Torres Strait Islander local governments are respected as equivalent local governments in their own right. Queensland has also implemented initiatives such as the *Indigenous Regional Arts Development Fund* to promote Aboriginal and Torres Strait Islander art.



Remaining gaps: Queensland has addressed most recommendations in this chapter to some degree. However, greater priority is required for the development and application of key performance indicators

and performance management for Aboriginal and Torres Strait Islander communities and organisations, as well as appropriate processes for preparing community development plans to inform decision-making and policy making.

South Australia | Key actions: The South Australian Government has sought to consult with Aboriginal and Torres Strait Islander Regional Councils on matters relating to self-determination and has recently introduced a new “tiered approach to governance and leadership”, which aims to provide a greater platform for Aboriginal and Torres Strait Islander involvement in decision making. In addition, the South Australian Government has supported Aboriginal and Torres Strait Islander arts through the Indigenous Visual Arts Industry Support Program.



Remaining gaps: Further consideration of block grant funding, development of appropriate performance indicators for organisation funding, and the impact of organisational structures on funding provisions is needed. Greater attention is also required for the use of social, cultural and economic development plans; and the portrayal of Aboriginal and Torres Strait Islander people in the media.

Western Australia | Key actions: The Western Australian Government has undertaken significant steps towards self-determination of Aboriginal and Torres Strait Islanders in the State. Legislative measures focused on improving self-determination have been passed and Aboriginal and Torres Strait Islander perspectives embedded into the policy development process.



Remaining gaps: Western Australia has gaps in the implementation of recommendations relating to the length, stability and simplicity of organisation funding and support for media organisations.

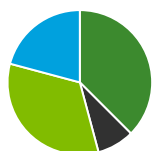
Tasmania | Key actions: The principle of self-determination has been addressed through the Reset agenda, which has increased engagement between the Government and the Aboriginal community to facilitate stronger participation in matters relating to Aboriginal Affairs. Tasmania implemented anti-discrimination measures through cross-cultural training and activities led by the Office of the Anti-Discrimination Commissioner.



Remaining gaps: Tasmania has not taken any action to address a number of recommendations relating to block grant funding, funding accountability measures, or support for media organisations. Further consideration of measures to ensure non-discriminatory service provision and support of the arts is also

required.

Northern Territory | Key actions: The Northern Territory Government has addressed the principle of self-determination in policy making by providing flexible organisational structures in community government councils to encourage Aboriginal and Torres Strait Islander participation. In addition, the Northern Territory has also implemented measures to address racial discrimination through the Anti-Discrimination Commission, which consults regularly with Aboriginal and Torres Strait Islander organisations and legal services.



Remaining gaps: The Northern Territory has not addressed key recommendations relating to block grant funding, culturally appropriate service delivery, and the facilitation of social, economic and cultural development plans. Further development of culturally appropriate journalism course content is also required to better meet the RCIADIC recommendations.

Australian Capital Territory | Key actions: The ACT Government has promoted self-determination and Aboriginal and Torres Strait Islander leadership through the *ACT Multicultural Strategy 2010-2013*. Anti-discriminatory measures have also been implemented through provisions in the *Discrimination Act 1991* and activities undertaken by the ACT Human Rights Commission.



Remaining gaps: The ACT Government has not addressed recommendations relating to funding accountability and performance management for Aboriginal and Torres Strait Islander organisations. In addition, further progress will be required to address support for developing community development plans and incorporating economic, social and cultural development plans into decision-making.

8.1 The path to self-determination (188-204)

Recommendation 188

That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.

Background information

The RCIADIC Report noted that Aboriginal and Torres Strait Islander community-controlled organisations are by far the most effective support mechanism to discuss self-determination as they are more likely to receive support from Aboriginal and Torres Strait people.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The implementation of this recommendation requires a holistic approach from all levels of government.

Key actions taken and status of implementation

The **Commonwealth** Government has addressed this recommendation via a number of different initiatives, programs, and policy actions. The National Indigenous Reform Agreement (NIRA) (*Closing the Gap*) – launched November 2012 – encourages Aboriginal and Torres Strait Islander people to be engaged in the development of policy reforms that will impact on them.

The NATSIHP (2013-2023) and its Implementation Plan have been developed by the DOH in partnership with the National Health Leadership Forum – the national representative body for Aboriginal and Torres Strait Islander peak organisations who provide advice on health. Through collaboration with Aboriginal and Torres Strait Islander leaders, the DOH aims to ensure that their work reflects the priorities of Aboriginal and Torres Strait Islander people.

The Third Action Plan 2016-17 of the National Plan to Reduce Violence against Women and their Children (2010-2022) was launched in 2016 as part of a long-term commitment by governments to cooperate to change Australia's attitudes to, and tolerance for, violence against women and their children. As part of the development process of the Third Action Plan, the DSS consulted with Aboriginal and Torres Strait Islander communities to ensure a representation of their perspective. The Third Action Plan also established a working group to lead a partnership approach with Aboriginal and Torres Strait Islander women with the aim of gaining an improved understanding of the context of violence in Aboriginal and Torres Strait Islander communities, and to facilitate responses that are culturally appropriate and effective.

The DSS is a funding contributor to Jawun as well as a participating member by supplying departmental secondees. Jawun is a not-for-profit organisation that manages secondments from the public and private sectors to a range of Aboriginal and Torres Strait Islander partner organisations across Australia. Jawun aims to develop capabilities for Aboriginal and Torres Strait Islander people and organisations. The DSS' Place-Based Approach to Disadvantage requires staff to engage with the community as equal partners and genuinely collaborate with all stakeholders to develop and deliver outcomes based on interventions to address social harms and to build local community capability.

Under the IAS, project or grant activity must foster productive relationships and draw on the knowledge of communities and key stakeholders. Stakeholders should be involved in all stages of the grant lifecycle including the design of the activity.

In 2016, funds were allocated to develop the Indigenous Business Sector Strategy. This 10-year Strategy is being designed in collaboration with a wide range of Indigenous entrepreneurs and businesses across Australia and across industries. The Strategy will be implemented in 2017 and PM&C will continue to work closely with stakeholders on implementation to ensure the Strategy continues to meet the needs of Indigenous businesses over time.

- *Recommendation 188 has been implemented through the NIRA and the initiatives undertaken by PM&C and the Departments of Health and Social Services.*

New South Wales reported in their 1993 implementation report that a self-determination principle had been enforced by the Government. This approach has been implemented through various policies, including through OCHRE. The Local Decision Making initiative under OCHRE invests in regional Aboriginal governance bodies which receive progressive devolution of decision making from Government as their governance capacity is strengthened.

In addition, the Corrective Services NSW AAC actively seeks the formal involvement of Aboriginal community representatives in developing policies and programs, as well as responses to new initiatives. The *Children and Young Persons (Care and Protection) Act 1998 (NSW)* also provides a clear directive for encouraging the support and participation of Aboriginal people in decision making and in the implementation of programs that promote self-determination.

- *New South Wales has implemented Recommendation 188 through initiatives such as the OCHRE Strategy, the Local Decision Making model, and the Children and Young Persons (Care and Protection) Act 1998.*

In **Victoria**, government policy has focused on providing Aboriginal and Torres Strait Islander organisations with funding to deliver programs, and including Aboriginal and Torres Strait Islander people on government advisory committees, taskforces and planning forums. Strategies such as the *Koori Services Improvement Strategy* and the *Indigenous Partnership Strategy* were developed in 2005. Partnerships have been developed with the Premier's AAC, and the Aboriginal Justice Forum.

Additionally, the Victorian Aboriginal Affairs Framework 2013-2018 incorporated a clear framework for plans to close the gap for Aboriginal and Torres Strait Islander people. Victoria's 2005 *Implementation Review of the Recommendations from the Royal Commission into Aboriginal deaths in custody* noted that Victoria considered this recommendation to have been completed. The AJA, in place since 2000, represents a significant partnership in determining policy between the Victorian Government and the Aboriginal and Torres Strait Islander community of Victoria.

- *Victoria has implemented Recommendation 188 through working with its Aboriginal and Torres Strait Islander community in developing policy.*


Queensland has incorporated self-determination into implementation of policy through acts such as the *Environmental Protection Act 1994 (Qld)*, *Community Services Act 2007 (Qld)* and the recently amended *Child Protection Act 1999 (Qld)*, which are to be administered in consultation with, and with regard to the interests of, Aboriginal and Torres Strait Islander people. A joint body of Aboriginal and Torres Strait Islander Policy and Queensland Police Service Steering Committee was formed to take over responsibility for the function of Aboriginal and Torres Strait Islander policing.

Additionally, a Strategic Policy Framework entitled *Transition to Aboriginal and Torres Strait Islander Community Control of Health in Queensland* included self-determination principles such that Aboriginal and Torres Strait Islander people could have control over the way services are provided in their community. In 2017, the Queensland Government released *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017-2037*, which also prioritises self-determination as a means of empowering Aboriginal and Torres Strait Islander families. Principles of self-determination are also explored in the Aboriginal and Torres Strait Islander Cultural Capability training that is delivered to all departments.

- *Queensland has addressed the objectives of Recommendation 188 by embedding the principles of self-determination into policy development processes and legislation.*


In **South Australia**, advisory bodies such as the Aboriginal Health Council and the South Australian Aboriginal Education and Training Advisory Committee have endorsed the aims of this recommendation. Additionally, the South Australian Government has sought to consult with the chairperson of each Aboriginal and Torres Strait Islander Regional Council on matters relating to self-determination, as per the 1994 implementation report. The SA Government has recently implemented a new 'tiered approach to governance and leadership' which aims to provide a greater platform for

Aboriginal and Torres Strait Islander nations to be involved in government decision making and to provide them with the tools for self-determination. The approach ranges from a process of Aboriginal and Torres Strait Islander nation building, to priority setting under the Aboriginal and Torres Strait Islander Regional Authority model, to Treaty negotiations.


 *South Australia has implemented Recommendation 188 through its tiered approach to governance and leadership.*

Western Australia had already enacted the *Aboriginal Affairs Planning Authority Act 1972* (WA) prior to the RCIADIC Report, which was established with the intent of promoting Aboriginal and Torres Strait Islander consultation for the economic, social and cultural advancement of Aboriginal and Torres Strait Islander people. Under this Act, the Department of Aboriginal Affairs established a Working Party to examine issues relating to effective community management. At a local level, the *Aboriginal Communities Act 1979* (WA) granted powers to incorporated communities to make laws relating to community lands in regard to matters necessary or convenient for the purpose of securing decency, order and good conduct on community lands. The *Children and Community Services Act 2004* (WA) provides for Aboriginal and Torres Strait Islander self-determination when participating in the protection and care of their children.

In addition to these changes, the Western Australian Government has recently completed Service Priority Review, which recommended that the Western Australian Government focus on community needs, community engagement and co-design. The Aboriginal Policy Unit was also recently established with the primary aim of transforming the relationship between Aboriginal and Torres Strait Islander people and government in Western Australia to deliver mutual and enduring benefits, including through policy co-design. More specific policy and program examples developed through government and Aboriginal and Torres Strait Islander community partnerships include the 6718 Advantage Plan, and the Supporting Families pillar of the Regional Services Reform's Roadmap.

 *Western Australia has implemented Recommendation 188 through enacting self-determination focused legislation and embedding Aboriginal and Torres Strait Islander perspectives into the policy development process.*

Tasmania supported this recommendation in their 1994 implementation report by hosting a public forum aimed at negotiating with Aboriginal and Torres Strait Islander organisations and communities to address the concept of self-determination. The principle of self-determination is embedded in the Tasmanian Government's agenda to *Reset the Relationship with Tasmanian Aboriginal People*. Under this agenda the Government has engaged with Aboriginal and Torres Strait Islander communities across the state, with a particular focus on the Aboriginal Dual Naming Policy, land return, and enhanced access to programs and services through a revised eligibility policy. Further, the Tasmanian Government has co-signed a Statement of Intent with the Tasmanian Regional Aboriginal Communities Alliance that commits signatories to working collaboratively for enriched cultural, social, economic and political participation.

 *Tasmania has implemented Recommendation 188 through embedding self-determination into policy development processes.*

The **Northern Territory** Government has taken action to address this recommendation by encouraging agencies to implement policies and procedures which provide Aboriginal and Torres Strait Islander people with the opportunity to participate at an appropriate level in decision making. Local governments provide flexible organisational structures in community government councils to demonstrate the Northern Territory Government's commitment to self-determination.


 *The Northern Territory has implemented Recommendation 188 through consulting with its Aboriginal and Torres Strait Islander elected body to develop policy.*

The **Australian Capital Territory** has taken action to address this recommendation by creating the ACT Aboriginal and Torres Strait Islander Elected Body. This body, established in 2008 aims to ensure participation by Aboriginal and Torres Strait Islander people in the ACT in the formulation, coordination and implementation of Government policies and services that affect them. The Elected

Body has seven elected members that are required to consult with the Aboriginal and Torres Strait Islander people of the ACT. The body receives and passes on to the chief minister views of Aboriginal and Torres Strait Islander people living in the ACT on issues of concern to them.

The ACT has established the Whole of Government Aboriginal and Torres Strait Islander Agreement as a way to implement this recommendation. The agreement highlights focus areas for government policy, identified by the ACT Aboriginal and Torres Strait Islander community, ACT Government and other relevant parties. Under the Agreement, the ACT Government reports annually on the progress made against each of the focus areas.

Although largely superseded by the new policy, previously the ACT Multicultural Strategy 2010-2013 encouraged representation of Aboriginal and Torres Strait Islander people on committees, panels and advisory roles. This strategy was implemented through programs such as the United Ngunnawal Elders Council, elders camps, Aboriginal and Torres Strait Islander leadership grants, Aboriginal and Torres Strait Islander cultural grants, and the ACT Genealogy Project.

 *The Australian Capital Territory has implemented Recommendation 188 through its ACT Multicultural Strategy and Aboriginal and Torres Strait Islander Elected Body.*

Recommendation 189

That the Commonwealth Government give consideration to constituting ATSIC as an employing authority independent of the Australian Public Service.

Background information


The work of ATSIC was recommended to be separated from the Australian Public Service with the anticipation of increasing the work of local teams and Aboriginal organisations within regional Australia.

Responsibility

The recommendation is solely the responsibility of the Commonwealth Government as it relates directly to the Commonwealth.

Key actions taken and status of implementation

No action was taken before ATSIC ceased operating in 2005. Since this recommendation relates directly to the operation of ATSIC it is now out of date since it cannot be delegated to another entity.

 *No action was taken at the Commonwealth level to address Recommendation 189 prior to ATSIC ceasing operations in 2005.*

Recommendation 190

That the Commonwealth Government, in conjunction with the State and Territory Governments, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations and also implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.

Background information

Block funding provides Aboriginal and Torres Strait Islander organisations with more flexibility on how the funding is spent. A minimum level of funding enables Aboriginal and Torres Strait Islander communities to plan ahead and achieve long term goals that they have set for themselves.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation as it is addressed to the Commonwealth and jurisdictional governments.

Key actions taken and status of implementation


The **Commonwealth** Government has addressed Recommendation 190 via the following actions. The *1993-94 Annual Report* noted that ATSIC introduced block grants as the standard budgeting

condition. However, funding to Aboriginal and Torres Strait Islander organisations was not consistently established on a triennial basis.

Under the IAS, long-term contracts are provided where the circumstances deem them appropriate with funding length tailored to the specific requirements of the project. PM&C supports the principle that, where possible and appropriate, longer-term contractual periods for awarded grants can contribute to improved stability for provider organisations. It should be noted that while the average term for grant funding under the IAS is 23 months, this includes projects which are intended to be single year, including workforce capability training, pilot programs and infrastructure spending. Aboriginal organisations are able to apply for multi-year funding. Additionally, there are large number of services, including medical Aboriginal Medical Services and Aboriginal Legal Services, which have much longer than 3 year funding.

 *Recommendation 190 has been mostly completed. Although ATSIC introduced block grants and the Aboriginal Education Strategic Initiatives Program used triennial funding, the Commonwealth does not consistently deliver funding on a triennial basis.*


In **New South Wales**, block grant and triennial funding proposals were included in the 1992 *National Commitment to Improve Outcomes in Policies and Programmes for Aboriginal Peoples and Torres Strait Islanders*. Currently, government departments and agencies are encouraged to provide funding on a triennial basis to ensure adequate planning, development and delivery of services. From 1 October 2017, funding for all Out of Home Care (OOHC) service providers, including Aboriginal and Torres Strait providers, has increased to five year contracts.

 *New South Wales has mostly implemented Recommendation 190. While agencies are encouraged to provide funding on a triennial basis, this is not a consistent requirement across all areas of Aboriginal grant funding.*

The **Victorian** Government noted that in 1993 the State would encourage self-management of Aboriginal and Torres Strait Islander organisations by providing funds to organisations that deliver programs to the Aboriginal and Torres Strait Islander population. In its 2005 implementation report, the Victorian Government noted that it had moved to three-year departmental consolidated funding and service agreements for all DHS funded agencies (including Aboriginal and Torres Strait Islander organisations). The Victorian government has noted that it is currently undertaking consultation with Aboriginal and Torres Strait Islander organisations to further progress funding reforms.

 *While Victoria has taken steps to implement Recommendation 190, these have not been consistently implemented across all Departments.*


The **Queensland** Government reported in the 1993 implementation report that they were supportive of making funding commitments on a triennial basis. Currently, Queensland Government departments are increasingly directing their funding to Aboriginal and Torres Strait Islander community-controlled organisations. Funding is provided as outsourced service delivery, with contracts of between 3 and 5 years in length.

 *Queensland has mostly implemented Recommendation 190, by supporting the triennial funding, but not requiring it for all areas of funding.*


South Australia has stated that Recommendation 190 is the responsibility of the Commonwealth. No evidence was observed of South Australian action to respond to this recommendation.

 *South Australia has not implemented Recommendation 190, however, considers that it is the responsibility of the Commonwealth.*


Over 2009-10 to 2011-12, **Western Australia** provided triennial funding to the Broome Aboriginal Media Association. Since 2003, triennial funding has since been provided to Goolarri Media Enterprises in Broome to support music development in Aboriginal and Torres Strait Islander people.

 *Western Australia has partially implemented Recommendation 190, by supporting triennial funding for some Aboriginal communities and organisations, however this has not been consistently applied across all Aboriginal communities and organisations.*


Funding from the **Tasmanian** Government to Aboriginal and Torres Strait Islander community organisations, with the exception of housing and municipal services – is typically for short projects of up to two years, rather than for service delivery. The Tasmanian Government has consistently engaged with the Department of the Prime Minister and Cabinet since the implementation of the Indigenous Advancement Strategy in 2014.

 *Tasmania has partially implemented Recommendation 190 through the provision of some funding through longer-term funding arrangements and ongoing engagement with the Commonwealth. However, Aboriginal communities and organisations in Tasmania are not consistently provided with a minimum level of funding on a triennial basis.*

The **Northern Territory** Government supported the development of block grant funding for Aboriginal and Torres Strait Islander communities, as advised by the 1994-95 implementation report. However, because the Northern Territory received (as of 1995) the bulk of its funding from the Commonwealth on an annual basis, the Northern Territory Government noted that providing funding on a triennial basis would not be feasible until there is a change in the overarching structures guiding these arrangements. The Northern Territory Government is currently pursuing options to move to longer term funding arrangements where appropriate.

 *The Northern Territory has not addressed Recommendation 190, noting that it is currently pursuing options to move to longer term funding arrangements.*

In 1992 the **Australian Capital Territory** endorsed the National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders which details an intention to develop bilateral agreements with the Commonwealth Government specifying funding arrangements for programs delivered in the ACT. No further action has been reported since 1992.

 *The Australian Capital Territory has not addressed Recommendation 190.*

Recommendation 191

That the Commonwealth Government, in conjunction with the State and Territory Governments, develop means by which all sources of funds provided for or identified as being available to Aboriginal communities or organisations wherever possible be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to the communities and organisations to determine the priorities for the allocation of such funds.

Background information

As Aboriginal and Torres Strait Islander communities and organisations are eligible to receive funding from a variety of different government agencies and programs, funding should be allocated through a single source where possible.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation as it is addressed to the Commonwealth and jurisdictional governments.


Key actions taken and status of implementation

The *1993-94 Annual Report* noted that the **Commonwealth** agreed with the objective, but multiple sources of funding continued to exist delivered through various agencies and different levels of government.


Introduced in July 2014, the IAS replaced more than 150 individual programs with five broad-based programs. The IAS is designed to manage a more strategic investment in Aboriginal and Torres Strait Islander funding that focuses on achieving measurable outcomes and simplifying program arrangements. Through this, funding and reporting requirements have become more streamlined and

consistent. However, it should be noted that other Commonwealth agencies provide Aboriginal and Torres Strait Islander specific funding that is outside of the IAS. Communities and organisations can also apply for non-Aboriginal and Torres Strait Islander specific funding.


In addition to providing \$4.9 billion over 4 years (from 2016-17) through the IAS, PM&C also manages funding through National Partnership Agreements, Special Accounts and Special Appropriations. Under the IAS, PM&C has also established risk and compliance frameworks which promote risk-based monitoring of providers, less stringent acquittal requirements for low risk providers and low value grants, and earned autonomy for higher performing providers.

 *The implementation of Recommendation 191 is partially complete at the Commonwealth level through the consolidation that has occurred through programs such as the IAS. However, across the Commonwealth Government funding is still not provided through a single source.*

In their 1993 report, the **New South Wales** Government noted that they were not going to arrange for single agency funding for Aboriginal communities or organisations. Currently, funding for Aboriginal communities remains separately provided through relevant government departments and agencies based on the services required.


 *New South Wales has not addressed Recommendation 191.*

In 1997, **Victoria** participated in discussions through the Australian Aboriginal Affairs Council to achieve greater coordination in funding to Aboriginal and Torres Strait Islander organisations. The Victorian Government has also indicated that it is undertaking consultation with Aboriginal and Torres Strait Islander organisations on progressing funding reform. The Victorian Government has implemented the Victorian Common Funding Agreement which provides a standardised funding agreement for use by all Victorian government departments when funding the not-for-profit community sector. The Victorian Common Funding Agreement (VCFA) is designed to benefit all users by being scalable, predictable and easy to understand, with core Terms and Conditions that apply to all funding. However, there remains no "single source" for organisation funding.


 *Victoria has partially implemented Recommendation 191 by taking steps to co-ordinate funding for Aboriginal and Torres Strait Islander organisations, but have not implemented a "single source" approach.*

In **Queensland**, the former Department of Family Services and Aboriginal and Islander Affairs provided funding flexibility through large composite funds (i.e. where funding would be provided from a number of different sources). Funding priorities were determined based on regional consultation, and whether the Aboriginal and Torres Strait Islander communities were engaged in these processes. This recommendation was partially supported by the Queensland Government as it was not current practice in Queensland as of 1997 to use a single source of funding. This is because funds were spent in the relevant area of responsibility.

The Queensland Productivity Commission has recommended that the Queensland Government pool funding for Aboriginal and Torres Strait Islander communities or organisations in its recent review of service delivery in Queensland's remote and discrete Aboriginal and Torres Strait Islander communities. The report was delivered at the end of 2017. The Queensland Government is required to formally respond to these findings by June 2018.


 *Queensland has partially implemented Recommendation 191 by taking steps to co-ordinate funding for Aboriginal and Torres Strait Islander organisations as it is currently considering the Queensland Productivity Commission's recommendation to pool funding.*

South Australia noted in the 1993 implementation report that multiple sources of funding would continue for Aboriginal and Torres Strait Islander communities and organisations, and as such did not intend to implement this recommendation. More recently, South Australia has flagged Recommendation 191 as a responsibility of the Commonwealth.


 *South Australia has not addressed Recommendation 191, and notes that it is the responsibility of the Commonwealth.*

Western Australia noted in 1997 that implementation of this recommendation required a joint effort by the Commonwealth Government and the other jurisdictions in order to be fully addressed.


The Western Australian Government has noted that while the Commonwealth and Western Australian Government have not implemented the Recommendation, the Western Australian Government has conducted reviews of State and Commonwealth funding.

 *Western Australia has not addressed Recommendation 191.*


Tasmania cited in their 1995 implementation report that this recommendation is primarily a Commonwealth responsibility. Under the Commonwealth Government, multiple sources of funding exist and funding is not provided through a single source. The Tasmanian Government has advised that it cannot implement this recommendation without the Commonwealth taking the lead. The Tasmanian Government has noted that they have consistently engaged with the Department of Prime Minister and Cabinet since the implementation of the Indigenous Advancement Strategy.

 *Tasmania has partially implemented Recommendation 191 through ongoing engagement with the Commonwealth. The Tasmanian Government notes that full implementation requires the Commonwealth to address this recommendation in full.*

The **Northern Territory** reports in their 1994-95 implementation report that negotiations were beginning to commence with the Commonwealth government over developing a single source of funding to address this recommendation.

 *The Northern Territory has partially implemented Recommendation 191 by taking steps to co-ordinate funding for Aboriginal and Torres Strait Islander organisations, however, there is no evidence that the Northern Territory have implemented a "single source" approach.*

As of 1997, the **Australian Capital Territory** supported this recommendation, however were yet to collaborate with the Commonwealth Government to support a single source of funding.

 *The Australian Capital Territory has not addressed Recommendation 191.*

Additional commentary

PM&C advised that the **Commonwealth** is supporting the implementation of Empowered Communities in eight regions across Australia. The initiative was put forward by Aboriginal and Torres Strait Islander leaders from the eight regions in March 2015. The Government responded in December 2015, committing to working with leaders to jointly agree priorities and regional investment. In the first year of implementation, the leaders are focusing on working with their communities and other stakeholders to identify communities' needs, priorities and aspirations and understanding current government service delivery arrangements at the regional level. This will enable them to articulate long-term Regional Development Agendas that address social, economic and cultural development which will guide government investment. Government's support for this work includes providing data and funding information to EC regions from across the Commonwealth, with the PM&C Regional Network a key point of engagement and coordination. The Government has also provided \$14.4 million over three years till the end of June 2019.

Recommendation 192

That in the implementation of any policy or program which will particularly affect Aboriginal people the delivery of the program should, as a matter of preference, be made by such Aboriginal organisations as are appropriate to deliver services pursuant to the policy or program on a contractual basis. Where no appropriate Aboriginal organisation is available to provide such service then any agency or government delivering the services should, in consultation with appropriate Aboriginal organisations and communities, ensure that the processes to be adopted by the agency in the delivery of services are appropriate to the needs of the Aboriginal people and communities in receiving such services. Particular emphasis should be given to the employment of Aboriginal people by the agency in the delivery of such services and in the design and management of the process adopted by the agency.

Background information

Aboriginal and Torres Strait Islander organisations have a greater understanding of the needs of Aboriginal and Torres Strait Islander people, and are thus best placed to implement policies or programs that particularly affect Aboriginal and Torres Strait Islander people.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The implementation of this recommendation requires a holistic approach from all levels of government.

Key actions taken and status of implementation

The **Commonwealth** Government has addressed Recommendation 1996 through a number of different avenues. The Aboriginal and Torres Strait Islander Health Council – established May 1996 – was used to advise the Minister of Health and Family Services on strategies to improve health outcomes for Aboriginal and Torres Strait Islander people. The Australian Public Service Indigenous Employment Strategy (APSIES) (2012-2016) aimed to foster Aboriginal and Torres Strait Islander employment within the Australian public services. The *Closing the Gap* initiative committed to increasing the representation of Aboriginal and Torres Strait Islander people in the public sector to 2.6% by 2015. PM&C advised that the number of Aboriginal and Torres Strait Islander people employed in the Commonwealth public sector has increased from 2.2% to 2.4% in 2016.

The Indigenous Procurement Policy – which commenced in 2015 – applies to all non-corporate Commonwealth entities. The policy has three parts: a target number of contracts that need to be awarded to Aboriginal and Torres Strait Islander businesses; a mandatory set-aside of contracts for Aboriginal and Torres Strait Islander businesses when the majority of goods or services are being delivered in remote Australia and for all procurements valued between \$80,000 and \$200,000; and mandatory minimum requirements for Aboriginal and Torres Strait Islander employment and Aboriginal and Torres Strait Islander supplier use in certain high value contracts. PM&C advised that these changes have led to a significant increase in the use of Aboriginal and Torres Strait Islander businesses in the delivery of goods and services for government, in particular in remote Australia where Aboriginal and Torres Strait Islander people make up a higher proportion of the population.

Under the IAS, over half of all IAS funding provided for Aboriginal and Torres Strait Islander grants has been contracted to Indigenous organisations. The proportion of funding under the IAS 2014 grant round was to Aboriginal and Torres Strait Islander organisations higher at 55 per cent, up from an estimated 30 per cent prior to the implementation of the IAS.


Under the National Framework for Protecting Australia's Children – Third Action Plan 2015-18 – all governments committed to continuing to fully implement the Aboriginal and Torres Strait Islander Child Placement Principle. Under the Third Action Plan (2015-18) all governments agreed to consider five elements – prevention, partnership, placement, participation and connection – in relation to all national actions, including trials and strategies under the Third Action Plan.

 *The Commonwealth has implemented Recommendation 192 through a number of mechanisms since 1996, such as the Aboriginal and Torres Strait Islander Health Council, the APSIES, Closing the Gap, and the Indigenous Procurement Policy.*

Since 2011, the **New South Wales Ministerial Taskforce on Aboriginal Affairs** and OCHRE (the NSW Government's co-designed community-focused plan for Aboriginal affairs) have worked to address this recommendation by building the capacity of Aboriginal non-government organisations to deliver services to local communities and by building enduring relationships with communities. A local decision making model was implemented to strengthen Aboriginal involvement and develop community leadership and governance. The development of an Aboriginal Non Government Organisation (NGO) capacity building strategy has helped to ensure NGOs are functional, sustainable and effective. An increased focus on the employment of Aboriginal people within the Public Service Commission was also implemented.

Since 2011, the Department of Family and Community Services has also been supporting capacity building in the OOHHC sector. Currently, there are ten accredited Aboriginal OOHHC service providers in

NSW and seven Aboriginal Community Controlled Organisations, in partnership with non-Aboriginal service providers, who are seeking accreditation with the Office of the Children's Guardian.


 *New South Wales has fully addressed Recommendation 192 through the Ministerial Taskforce on Aboriginal Affairs, OCHRE and capacity building, through the Department of Family and Community Services.*

By 1997, **Victoria** had implemented several policies to achieve this recommendation such as the *Victorian Aboriginal Health Outcomes Agreement*, the *Koori Services Improvement Strategy*, *Reconciliation and Respect* and the *Indigenous Partnership Strategy*. The 2005 Victorian implementation report stated that the hierarchy specified in this recommendation has been generally adopted throughout government.


 *Victoria has implemented several policies that fully address Recommendation 192.*

In addition to the initiatives introduced under Recommendation 188, **Queensland's** *Learning Earning Active Places Strategy* (2011-2014) outlined how the government would collaborate with Aboriginal and Torres Strait Islander people to improve access to employment, education, health and housing opportunities, including mentoring and professional development. In addition, a strategic policy Framework entitled *Transition to Aboriginal and Torres Strait Islander Community Control of Health in Queensland* included self-determination principles such that Aboriginal and Torres Strait Islander people could have control over the way services are provided in their community.

The Department of Child Safety Youth and Women and the Department of Communities, Disability Services and Seniors have adopted policies under which service delivery to predominantly Aboriginal and Torres Strait Islander target groups should be undertaken by Aboriginal and Torres Strait Islander community-controlled organisations, wherever possible. Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) is also leading a trial of Social Reinvestment in remote and discrete Aboriginal and Torres Strait Islander communities across Queensland.


 *Queensland has implemented several policies that fully address Recommendation 192.*

In **South Australia**, the Family and Community Services Department established a steering group in 1993 which was comprised of several Aboriginal and Torres Strait Islander organisations to direct the review of Aboriginal Young Offender programs. This aimed to develop appropriate models of service delivery for young Aboriginal and Torres Strait Islander people and their families through numerous community consultation processes. Current practice also includes the South Australian AAC providing confidential policy advice to the Government, with a key focus on justice-related issues.


 *South Australia has taken some limited steps towards implementing Recommendation 192. However, no explicit preferences are given to Aboriginal organisations to deliver services which particularly affect Aboriginal people.*

In **Western Australia**, the Department of Aboriginal Affairs builds and supports partnerships between Aboriginal and Torres Strait Islander people, government and the broader community. The 1993 implementation report noted that the WA Department of Aboriginal Affairs had previously facilitated a number of committees including the Aboriginal Lands Trust, the Aboriginal Cultural Material Committee, the Aboriginal Justice Council, Regional Aboriginal Justice Councils, the Commission of Elders, the Intergovernmental Working Group on Environmental Health, the Aboriginal Affairs Coordinating Committee, and Interagency Steering Committees. In addition, a number of government departments put in place strategies to increase the number of Aboriginal and Torres Strait Islander people working in the public service. This has been formalised through Section 50(d) of the Equal Opportunities Act 1984, which gives public sector agencies the authority to employ Aboriginal people where it is identified that service provision is best provided by an Aboriginal person.


Further, the Western Australian Government has implemented 'Attract, Appoint and Advance', a public sector employment strategy for Aboriginal people designed to help public authorities realise good practices around attracting, appointing, retaining and developing Aboriginal employees.

 *Western Australia has mostly implemented Recommendation 192. While no explicit preferences are given to Aboriginal organisations to deliver services which particularly affect Aboriginal people, the Western Australian Government has increased the number of Aboriginal and Torres Strait Islanders working within government to deliver services and has formed a number of committees to improve representation within Government service delivery.*


Following the RCIADIC, the-then **Tasmanian** Department of Community and Health Services previously worked to ensure services delivered to Aboriginal and Torres Strait Islander families were delivered by, or in consultation with, Aboriginal and Torres Strait Islander organisations. For example, the Aboriginal Education and TAFE training program, delivered by the Department of Industrial Relations, Vocational Education and Training, was provided by Aboriginal and Torres Strait Islander organisations in 1995. In 1992, the Department developed an Aboriginal Employment and Career Development Strategy.

 *Tasmania has partially implemented Recommendation 191 by taking steps to ensure that relevant services are delivered by, or in consultation with, Aboriginal and Torres Strait Islander organisations but has not addressed key elements of the recommendation.*

In 1997, the **Northern Territory** organised regular meetings to discuss issues facing the Aboriginal and Torres Strait Islander population. Additionally, all communities on Aboriginal and Torres Strait Islander land employ community government councils to carry out local governance roles, leading to not only increased employment of the Aboriginal and Torres Strait Islander population but also increased Aboriginal and Torres Strait Islander participation in the community. The Northern Territory Government has noted that its departments also engage local Aboriginal and Torres Strait Islander employees in the implementation of many policies.

 *The Northern Territory has partially implemented Recommendation 192 through efforts to engage local Aboriginal and Torres Strait Islander employees in the implementation of many policies.*

In 1995, the **Australian Capital Territory** developed the *Employment Strategy for Aboriginal and Torres Strait Islander people* in consultation with the ACT Government Community Services Directorate, the ACT Public Service Aboriginal and Torres Strait Islander Staff Network, and the Aboriginal and Torres Strait Islander Elected Body. This strategy aimed to attract and retain Aboriginal and Torres Strait Islander people to the ACT public service through enhanced education and training opportunities. Particular programs seek input and advice from Aboriginal and Torres Strait Islander people and have identified Aboriginal and Torres Strait Islander positions. However, this is inconsistently implemented across ACT government programs.

 *The Australian Capital Territory has partially implemented Recommendation 192 as it has improved employment opportunities for Aboriginal and Torres Strait Islander people in the public service, but has not addressed key elements of the recommendation.*

Additional commentary

The **Commonwealth** Government's DSS noted that further work is being undertaken to strengthen service delivery for Aboriginal and Torres Strait Islander programs, such as by improving collaboration between agencies and stakeholders, providing greater focus to Aboriginal and Torres Strait Islander people in the funding processes, and strengthening Aboriginal and Torres Strait Islander ownership and engagement in the delivery of services.

Recommendation 193

That the Commonwealth Government, in negotiation with appropriate Aboriginal organisations devise a procedure which will enable Aboriginal communities and organisations to properly account to government for funding but which will be least onerous and as convenient and simple as possible for the Aboriginal organisations and communities to operate. The Commission further recommends that State and Territory Governments adopt the same procedure, once agreed, and with as few modifications as may be essential for implementation, in programs funded by those governments.

Background information

A consistent approach to accounting for funding would increase accountability without limiting the efficiency and autonomy of Aboriginal and Torres Strait Islander organisations.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation states that the Commonwealth Government should first develop appropriate procedures with Aboriginal and Torres Strait Islander organisations and then the States and Territories are to adopt the same procedure once the procedures have been agreed.

Key actions taken and status of implementation


As outlined in the **Commonwealth** Government's response to Recommendation 191, PM&C has contributed to streamlined and consistent funding and reporting requirements through the IAS. IAS guidelines are subject to review and improvement processes to ensure simplicity, clarity, reduced red tape, and to provide stakeholders access to up-to-date information.

PM&C also manages Aboriginal and Torres Strait Islander-specific funding through National Partnership Agreements, Special Accounts and Special Appropriations. Grant funding is also available through other Commonwealth agencies.


 *The Commonwealth has mostly implemented Recommendation 193 through the IAS which streamlines program delivery and adds accounting consistency for funding. However, it should be noted that other Commonwealth agencies provide Aboriginal and Torres Strait Islander specific funding that is outside of the IAS.*

In the 1993 implementation report, **New South Wales** reported that they supported this recommendation, noting the responses listed in Recommendations 190 and 191. Additionally, the Office of Aboriginal Affairs fully supported the proposal for simplifying the requirements of accountability including the development of a uniform accounting system. The OCHRE policy is also relevant to this recommendation. OCHRE is the NSW Government's community-focused plan for Aboriginal affairs. The Plan invests in language and culture, healing, Aboriginal governance, education and employment. The Local Decision Making initiative under OCHRE invests in regional Aboriginal governance bodies who are supported through a progressive devolution of decision making from Government as their governance capacity is strengthened.

Separately, the Officer of the Registrar (*Aboriginal Land Rights Act*) has undertaken workshops for Local Aboriginal Land Councils on legislative requirements. Aboriginal Affairs has also worked with the Office of the Registrar for Indigenous Corporations to deliver the *Managing in Two Worlds, Introduction to Corporate Governance Training*.


 *New South Wales has partially implemented Recommendation 193 by implementing and supporting governance training to assist organisations with meeting accountability requirements but has not expressly addressed the recommendation's requirements regarding simplicity.*

The **Victorian** Government established accountability requirements in 1997 for non-government organisations which receive government funding, including Aboriginal and Torres Strait Islander organisations. Additionally, in consultation with the Aboriginal and Torres Strait Islander community, the Management Support and Training Unit was developed following the RCIADIC report to provide training and support in financial management and reporting for non-government organisations. It is unclear whether these accountability requirements meet the requirements around simplicity set out in the recommendation.


 *Victoria has partially implemented Recommendation 193 by implementing accountability requirements for organisations receiving government funding. However, it is unclear as to whether these requirements meet the standard set in the recommendation around simplicity.*

In **Queensland**, the number of funding programs administered by the Department of Family Services and Aboriginal and Islander Affairs was consolidated in response to this recommendation, with improvements in the level of standardisation across programs. A training manual for community-based Aboriginal and Torres Strait Islander management committees was also developed. The

Department of Child Safety Youth and Women and the Department of Communities, Disability Services and Seniors also work closely with the community-controlled sector in the design of Aboriginal and Torres Strait Islander programs and associated accountability arrangements. For example, the departments worked with Family Wellbeing Services to design a flexible reporting arrangement to allow localised responses to evolve.


 *Queensland has implemented Recommendation 193 by working closely with Aboriginal and Torres Strait Islander communities to design appropriate accountability procedures.*

South Australia noted in their 1994 implementation report that the details of this recommendation would require consultation with the Commonwealth Government in order to be implemented. More recently, South Australia has advised that they consider Recommendation 193 to be a responsibility of the Commonwealth.


 *South Australia has not implemented Recommendation 193, noting that they consider it to be the responsibility of the Commonwealth.*

Western Australia noted in their 1997 implementation report that a Commonwealth response was required to fully address this recommendation. As of 1997, it had been partially implemented by the Department for Community Development. Under the new scheme, accountability requirements for all organisations were required to be uniform, including joint programs. Support and training was provided for groups having difficulty in meeting accountability requirements at the time of rollout (pre-1997).


Since this time, the Delivering Community Services in Partnership (DCSP) policy has been jointly developed by the State and the not-for-profit sector to build and support a more mature funding and contracting relationship between the sectors, including focusing on improving services and support for vulnerable and disadvantaged people. A revised policy, anticipated for September 2018, will place greater emphasis on co-design with service users and communities. Under the DCSP, the Department of Finance has standardised documentation, guides and reporting to reduce the administrative burden imposed on not-for-profits (including Aboriginal and Torres Strait Islander organisations). Public authorities are strongly recommended to use this standardised documentation.

 *Western Australia has implemented Recommendation 193 designing appropriate accountability funding and contracting procedures with the not-for profit sector, including Aboriginal and Torres Strait Islander organisations.*


Tasmania reported in their 1993 implementation report that this recommendation was not applicable to Tasmania, as it is a Commonwealth responsibility.

 *Tasmania has not implemented Recommendation, and has stated that it is the responsibility of the Commonwealth.*

The **Northern Territory** developed a simplified form of accounting for small communities in response to this recommendation, as reported in the 1996 implementation report. A *Model Accounting Procedures and Policy Manual* was developed to make accounting procedures more simple, consistent and realistic.

 *The Northern Territory has partially implemented Recommendation 193 but has not addressed accountability requirements more broadly.*

The **Australian Capital Territory** report in their 1997 implementation report that they were willing to work with the Commonwealth Government to adopt procedures in the ACT appropriate for this recommendation. No further detail on action arising from these discussions was provided.

 *The Australian Capital Territory has not addressed Recommendation 193.*

Recommendation 194

That Commonwealth, State and Territory Governments, in negotiation with appropriate Aboriginal communities and organisations, agree upon appropriate performance indicators for programs relevant

to Aboriginal communities and organisations. The Commission further recommends that governments fund Aboriginal organisations and communities to enable appropriate level of infrastructure and training as is required to develop, apply and monitor performance indicators.

Background information

Appropriate performance indicators are necessary to ensure that the outputs and outcomes from programs can be assessed. However, it is also necessary that organisations be adequately funded to implement these processes.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation, as the implementation of this recommendation is addressed to the Commonwealth and jurisdictional governments.

Key actions taken and status of implementation


The **Commonwealth** Government's 1995-96 Annual Report noted that Framework Agreements were negotiated between the former Department of Health and Family Services (DHFS), ATSIC, each jurisdiction, the National ACCHO and its jurisdictional affiliate organisations. The Agreements provided a forum for Aboriginal and Torres Strait Islander organisations to agree on a range of issues, including performance monitoring. In November 1995, an MOU was signed between the DHFS and ATSIC, which established a set of performance indicators for monitoring and evaluating health issues.

The national health KPIs (commonly referred to as the "nKPIs") provide a large range of performance indicators for health programs delivered by Aboriginal and Torres Strait Islander organisations. The broad areas covered by the nKPIs include maternal and child health, preventative health and chronic disease management. National reports are published annually showing areas of improvement and areas needing improvement at both a national and a regional level.

The Commonwealth also undertakes reporting against the Aboriginal and Torres Strait Islander Health Performance Framework, which is a biennial report providing information on the health status, outcomes, and social determinants of health and health system performance for Aboriginal and Torres Strait Islander communities.

PM&C has also developed a suite of performance indicators which are applied to IAS projects in consultation with organisations. As part of the IAS, PM&C is undertaking the following initiatives:


- Supporting Aboriginal and Torres Strait Islander organisation capability and capacity, and service transfer to these organisations. This includes strategies to actively support the emergence of new Aboriginal and Torres Strait Islander organisations as well as strengthening Aboriginal and Torres Strait Islander organisations funded under the IAS.
- Maturing the Department's approach to performance assessment and management for IAS grants, including developing better performance data, more rigorous contract management, and funding decisions based on assessed performance.
- Improving grant data analysis and reporting capability to inform priority areas for investment, and development of performance information and the IAS Evaluation program.

 *Recommendation 194 has been implemented through appropriate performance indicators, both in health policy and also in broader policy areas.*


The **New South Wales** 1993 implementation report reported that the-then Premier endorsed the National Commitment to Improved Outcomes in Policies and Programmes for Aboriginal Peoples and Torres Strait Islanders. The objectives of this commitment included: land, culture and heritage, economic development, social well-being and government service.

Accords on service delivery priorities between Aboriginal governance bodies and the NSW Government provide a mechanism for negotiation of performance indicators and monitoring and reporting arrangements. Various departments and agencies have taken actions that are relevant to Recommendation 194. Juvenile Justice NSW developed performance indicators for funded community organisations in consultation with Aboriginal organisations. The Ministry of Health also has key

performance indicators related to the screening of Aboriginal patients in the Aboriginal Chronic Care Program.

 *New South Wales has partially implemented Recommendation 194 through a variety of policy responses but has not expressly indicated a state-wide approach in its response, nor funding for organisations and communities.*


In **Victoria**, the Victorian Aboriginal Affairs Framework 2013-2018 established rigorous performance management and reporting frameworks, following extensive consultation with Aboriginal and Torres Strait Islander groups. The Victorian Government has also established a Management Support and Training Unit to provide training and support in financial management and reporting for non-government organisations. This unit was developed in consultation with Aboriginal and Torres Strait Islander community. Funding was also allocated in 1995 for training of administrators and committees of Aboriginal and Torres Strait Islander organisations. The AJA also sets out indicators for many of its goals, and was subject to an independent evaluation in 2012.

 *Victoria has implemented Recommendation 194 through its use of performance indicators in the Victorian Aboriginal Affairs Framework 2013-2018.*


Up to 2012, the then **Queensland** Department of Aboriginal and Torres Strait Islander Affairs would release quarterly reports for select Aboriginal and Torres Strait Islander communities with data on key performance indicators. Discrete Indigenous Communities Key Indicators have since been published by the Department of Aboriginal and Torres Strait Islander Partnerships in 2014-15 and 2015-16.

Currently, the Queensland Government is working at officer level with the Commonwealth, State and Territory governments to provide input into COAG's revitalisation of Closing the GAP targets. The Government will be engaging the community as part of developing indicators through the refreshed Closing the Gap Agenda.


The Department of Child Safety Youth and Women is providing Family Wellbeing Services with access to the Advice, Referral and Case management client management tool to capture performance data, and services are trained in its use. The Queensland Government's response to the Queensland Productivity Commission's Inquiry into Service Delivery in Remote and Discrete Aboriginal and Torres Strait Islander communities will also consider how Aboriginal and Torres Strait Islander organisations can participate in service delivery and performance monitoring.

 *Queensland has partially implemented Recommendation 194 through a variety of different initiatives and policy responses, noting that its quarterly reporting has ceased and that it does not appear to fund organisations and communities to develop, apply and monitor performance indicators.*


The 1993 **South Australia** implementation report referred to previously developed performance indicators as being acceptable to minimise the reporting burden on Aboriginal and Torres Strait Islander communities and organisations. South Australia considers Recommendation 194 to be a responsibility of the Commonwealth.


 *South Australia has not taken action to address Recommendation 194, noting that they consider Recommendation 194 is the responsibility of the Commonwealth.*

The **Western Australian** government is in the process of developing the Human Services Outcomes Framework for community services between the Department of Finance, the Department of the Premier and Cabinet and the Western Australian Council of Social Services. The framework is intended to measure outcomes, improve funding decisions, and support community organisations in order to deliver better services. However, the Western Australian Government does not have a public sector-wide strategy to fund Aboriginal organisations and communities to develop, apply and monitor performance indicators.


 *Western Australia has partially implemented Recommendation 194 through a variety of policy responses but has not expressly indicated a state-wide approach in its response, nor funding for organisations and communities.*

In **Tasmania**, key performance indicators are negotiated with providers as part of the grant deed drafting process.

 *Tasmania has partially implemented Recommendation 194 by ensuring key performance indicators are negotiated with providers as part of the grant deed drafting process but has not specifically addressed key aspects of the recommendation.*

 *The **Northern Territory** does not appear to have taken any action to address this recommendation.*

The 2019-24 Aboriginal and Torres Strait Islander Agreement developed by the **Australian Capital Territory Government** and Aboriginal and Torres Strait Islander Elected Body includes an outcome framework, including performance indicators. However as this agreement is not yet fully developed or implemented, the Australian Capital Territory is only considered to have partially implemented Recommendation 194.

 *The Australian Capital Territory has partially implemented Recommendation 194 by developing the Aboriginal and Torres Strait Islander Agreement 2019-24, which is to include a new outcomes framework.*

Additional commentary

The **Commonwealth's** AIHW noted that the NATSIHP 2013-2023 and the associated Implementation Plan have strong links to the nKPIs for primary health care services specific to Aboriginal and Torres Strait Islander people.

Recommendation 195

That, subject to appropriate provision to ensure accountability to government for funds received, payments by government to Aboriginal organisations and communities be made on the basis of triennial rather than annual or quarterly funding.

Background information

The RCIADIC Report established that Aboriginal and Torres Strait Islander organisations have been largely successful in delivering services to Aboriginal and Torres Strait Islander people when provided with adequate funding and placed in a position where they are respected service deliverers. It was suggested that funding should be changed from an annual to triennial basis in order to allow Aboriginal and Torres Strait Islander organisations to plan ahead and develop long term strategies.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. At a commonwealth level, the IAS is the primary program used to fund Aboriginal and Torres Strait Islander organisations. State and Territory Governments also run their own funding programs in addition to this. As funding of Aboriginal and Torres Strait Islander organisations occurs at both at all levels of government, this recommendation applies to both the Commonwealth, and the States and Territories.




Key actions taken and status of implementation

As outlined in the **Commonwealth** Government's response to Recommendation 190, under the IAS long-term contracts are provided where the circumstances deem them appropriate with funding length tailored to the specific requirements of the project. PM&C supports the principle that, where possible and appropriate, longer term contractual periods for awarded grants can contribute to improved stability for provider organisations. As advised by PM&C, the average term of grants under the IAS is 23 months (as at June 2017).

The Indigenous Australians' Health Program (IAHP) is guided by an overarching principle of sustainability, with a requirement that programs and services be directed and resourced over an adequate period of time to meet the COAG *Closing the Gap* targets. Primary health care payments to ACCHOs under the Program are made on a quarterly basis with funding agreements running for three years.

-  *Recommendation 195 has been partially addressed through the IAS, however triennial funding has not been consistently implemented at the Commonwealth level.*

Actions taken by the **States and Territories** in response to Recommendation 190 are also relevant to this recommendation as a significant proportion of government funding for Aboriginal and Torres Strait Islander organisations occurs at this level.

-  *Consistent with the status of Recommendation 190, New South Wales, Victoria and Queensland have mostly implemented Recommendation 195.*
-  *Consistent with the status of Recommendation 190, Western Australia and Tasmania have partially implemented Recommendation 195.*
-  *Consistent with the status of Recommendation 190, South Australia, the Northern Territory and the Australian Capital Territory have not implemented Recommendation 195.*

Additional commentary

The **New South Wales** Government has noted that funding on a triennial basis has been adopted by various departments and agencies.

The **Victorian** Government has indicated that it is also undertaking consultations with Aboriginal and Torres Strait Islander organisations to further progress funding reform.

The **Western Australian** Government noted that the annual State Budget provides State agencies with budget projections for three years. State agencies that have financial arrangements with Aboriginal and Torres Strait Islander organisations are able to make funding arrangements on a triennial basis. The Western Australian Governments Delivering Community Services in Partnership Policy emphasises the shift to greater duration of contracts.

In **Queensland**, the Department of Child Safety Youth and Women and Department of Communities, Disability Services and Seniors funds organisations providing ongoing service delivery for periods of 3-5 years.

South Australia considers that Recommendation 195 is a responsibility of the Commonwealth.

The **Australian Capital Territory** has indicated it is committed to providing three year funding cycles. However, currently ongoing funding is re-negotiated every 12 months due to wage increases, CPI, changes in policy and meeting changing service demands.

Recommendation 196

That while governments are entitled to require a proper system for accounting of funds provided to Aboriginal organisations and communities, those organisations and communities are equally entitled to receive a full explanation of the funding processes which are adopted by governments. The Commission recommends that governments ensure that Aboriginal communities and organisations are given prompt advice, in writing and in plain English or, where appropriate, in Aboriginal languages, as to decisions concerning funding applications and as to financial and other matters relevant to the assessment of applications for funding made by those organisations and communities so as to enable those organisations and communities to make appropriate planning decisions.

Background information

The RCIADIC Report noted that many Aboriginal and Torres Strait Islander people have resented the “constant and critical monitoring” which their organisations receive from governments, officials and others (RCIADIC Report, Volume 4 paragraph 27.4.22). To overcome this issue, it was suggested that governments should clearly explain their funding processes to allow organisations to appropriately plan and respond to performance requirements to reduce the feelings of unfairness amongst Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. As funding is provided by both the Commonwealth, and States and Territories, both levels of government are responsible for the implementation of this recommendation.

Key actions taken and status of implementation

In 1996, the **Commonwealth** Government's ATSIC noted that it had Program and Policy Guideline Statements in place that explained the criteria for funding under each available program. The Guideline also clarified the procedures that required staff to promptly and clearly notify clients of funding decisions with the given reasons.


The IAS offers clear guidelines on the process for selecting successful applicants for annual funding. Unsuccessful applicants are also able to apply for feedback following the selection process.

The PM&C Regional Network has an extensive on-the-ground presence through 34 offices in capital cities, regional and remote locations, supplemented by a direct presence in approximately 57 communities. The network places senior staff close to communities and has specialist officers who lead direct engagement with communities. In particular, Indigenous Engagement Officers live in their community, speak the language(s) used by the local community and use their knowledge of the community and language to help government understand local issues and to ensure community feedback is heard.


 *Recommendation 196 has been implemented through various initiatives. Aboriginal and Torres Strait Islander organisations are given clear guidelines as to the funding processes and are able to apply for feedback following the selection process.*

In **New South Wales** the former Department of Juvenile Justice had developed guidelines for the funding of community organisations as per the 1993 implementation report. These guidelines included a statement on the responsibility of the Department to inform community organisations as to the outcome of their applications.

The Department of Family and Community Services (FACS) has undertaken a range of initiatives relevant to Recommendation 196, including the commissioning process for implementation of the Permanency Support Program, which involved Aboriginal service providers in the co-design and development of the funding model. Aboriginal service providers were able to provide feedback on the contract documents and develop an implementation plan for the delivery of services. The Aboriginal Child, Family and Community Care State Secretariat has also been engaged by FACS as a strategic partner in the development of capable and sustainable Aboriginal service system, which has involved providing support for member organisations to develop their understanding of reform-related requirements, including recontracting in the FACS commissioning environment.


 *New South Wales has partially implemented Recommendation 196 by implementing relevant processes to support Aboriginal awareness of funding arrangements and decisions, but has not addressed key elements of the recommendation.*

The **Victorian** Government stated in its 1994 implementation report that its guidelines for non-government organisations worked to ensure that non-government organisations have access to clear and timely advice on the results of their applications including a statement detailing the basis from which funding will be provided. The Victorian Government has indicated that it is undertaking consultation with from Aboriginal organisations on progressing funding reform. Victoria has implemented the Victorian Common Funding Agreement (VCFA) which provides a standardised funding agreement for use by all Victorian government departments when funding the not-for-profit (NFP) community sector. The VCFA is designed to be predictable and easy to understand, with core Terms and Conditions that apply to all funding.


 *Victoria has mostly completed Recommendation 196 by reviewing its guidelines for funding of non-government organisation to provide predictable and easy to understand agreements. However improvements to the accessibility and timeliness of communications on funding outcome*

decisions have not been addressed, including whether outcomes can be communicated in Aboriginal or Torres Strait Islander languages.

In 1993, the-then **Queensland** Department of Aboriginal and Torres Strait Island and Multicultural Affairs provided a guide for feedback for Aboriginal and Torres Strait Island organisations applying for funding. The Department also provided funding application advice to applicants. Currently, the Department of Child Safety Youth and Women and Department of Communities, Disability Services and Seniors routinely provide this information to all organisations they fund, including Aboriginal and Torres Strait Islander agencies. All organisations are assigned a contract manager who can assist them to become familiar with these requirements.

 *Queensland has mostly completed Recommendation 196 by routinely providing funding information to organisations but has not stated whether advice is given, where appropriate, in Aboriginal languages.*

South Australia does not appear to have taken action to address this recommendation. More recently, South Australia has noted that they consider Recommendation 196 to be a responsibility of the Commonwealth.


 *South Australia has not addressed Recommendation 196, noting that they consider it to be the responsibility of the Commonwealth.*

Funding submissions in **Western Australia** were assessed according to guidelines developed in 1992 with particular reference to this recommendation. Under these guidelines, applicants were informed of the process and status of their application through formal correspondence and telephone as early as possible. If unsuccessful, applications were referred to other funding agencies. A funding database was also developed. An Aboriginal Programs Officer would also provide advice to the Aboriginal and Torres Strait Islander community and the Community Funding and Development Directorate on Aboriginal and Torres Strait Islander funding issues.


The revised Delivering Community Services in Partnership policy encourages government and not for profit partnerships, with transparency in decision making and sharing of information relating to funding decisions and contracting requirements. The State encourages the provision of advice in plain English and the use of Aboriginal and Torres Strait Islander languages wherever practical.

 *Western Australia has implemented Recommendation 196 by providing transparency in funding decisions and contracting requirements. The State encourages advice to be communicated in plain English and the use of Aboriginal and Torres Strait Islander languages wherever practical.*


Tasmania noted in their 1995 implementation report that the Office of Aboriginal Affairs in the Department of Premier and Cabinet would provide program funding and support to agencies. Grant deeds and associated documentation (including grant-related communication) are informed by the Tasmanian Government-sponsored 26TEN program to improve adult literacy and numeracy, including the use of plain English. Aboriginal organisations and community receive a comprehensive explanation of funding processes in relation to funding applications. Funding documents and grant documents are produced in plain English.

 *Tasmania has implemented Recommendation 196 by providing a comprehensive explanation of funding processes and producing grant documentation in plain English.*

In the **Northern Territory**, the *Indigenous Workplace Participation Initiatives Program* provides guidelines containing information on eligibility, priority areas, applying for funding, assessing applications and funding administration. The Northern Territory Local Government Grants Commission previously released a public document each year explaining the current funding processes, with a similar document being published for the subsidies provided to local governing bodies and other government organisations.

 *The Northern Territory has mostly completed Recommendation 196 by routinely providing funding information to organisations but has not stated whether advice is given, where appropriate, in Aboriginal languages.*

The **Australian Capital Territory** stated in its 1997 implementation report that it already employed all procedures as required by this recommendation.

 *The Australian Capital Territory has fully implemented Recommendation 196.*

Recommendation 197

That ATSIC Councillors and Commissioners at an early stage be encouraged to consult with Aboriginal organisations and communities to develop a program for training staff of Aboriginal organisations and communities in appropriate management and accounting procedures to ensure the efficiency and integrity of the organisations which are cultural appropriate. In particular, there should be a commitment to devising management procedures which provide rules for the relationship, obligations and rights, both individually and as between each other, of directors, managers and staff of Aboriginal organisations.

Background information

Providing centrally administered, culturally appropriate programs to train staff of Aboriginal and Torres Strait Islander organisations and communities in efficient management and accounting procedure ensures the efficiency and integrity of these organisations.

Responsibility


This recommendation is solely the responsibility of the Commonwealth Government. This recommendation is addressed to ATSIC, which was a Commonwealth organisation.

Key actions taken and status of implementation

The *1992-93 Annual Report* illustrated that ATSIC's Community Training Program – administered in 1992-93 – was used to provide grants to Aboriginal and Torres Strait Islander organisations to support community development and training.

In June 2000, ATSIC developed the Indigenous Training Organisation Project, later renamed the Managing in Two Worlds program, which is a culturally appropriate corporate governance training program for the directors, members and staff of Aboriginal and Torres Strait Islander organisations. The program, which has been regularly updated to address emerging best practice and changes to the law, is today delivered by the Office of the Registrar of Indigenous Corporations (ORIC). The program includes units on corporate structures, the roles and responsibilities of directors/members and staff, the separation of powers and basic financial management. In 2015-16, ORIC delivered corporate governance training to 865 directors, members and staff from 208 Aboriginal and Torres Strait Islander corporations.

In addition, the *Corporations (Aboriginal and Torres Strait Islander) (CATSI) Act 2006* came into force on 1 July 2007. It sets out rules regarding the roles, duties and responsibilities of directors, officers and employees of Aboriginal and Torres Strait Islander corporations. It also prescribes certain matters that must be included in the rule books (constitutions) of all corporations.

 *Recommendation 197 has been fully implemented at the Commonwealth level through the Managing in Two Worlds program, and the relevant provisions in the CATSI Act.*

Recommendation 198

That governments commit themselves to achieving the objective that Aboriginal people are not discriminated against in the delivery of essential services and, in particular, are not disadvantaged by the fact that the low levels of income received by Aboriginal people reduce their ability to contribute to the provision of such services to the same extent as would be possible by non-Aboriginal Australians living in similar circumstances and locations.

Background information

The RCIADIC Report noted that Aboriginal and Torres Strait Islander people aspire to receive the same level of essential services as non-Aboriginal and Torres Strait Islander people. However, several factors specific to Aboriginal and Torres Strait Islander people limit their ability to do so.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. In the *1992-93 Annual Report*, the Commonwealth recognised that while the delivery of essential services is primarily a State and Territory responsibility, the Commonwealth provides supplementary assistance to directly accelerate the provision of essential services.

Key actions taken and status of implementation


The **Commonwealth** Government has undertaken the following actions. The ATSI Access and Equity Plan developed specific strategies to ensure that Aboriginal and Torres Strait Islander people are represented equitably in all policy and program development. The NPARSD (2009-2014) contributed to raising the standard and range of services delivered to Aboriginal and Torres Strait Islander families to be broadly consistent to other Australians in similarly sized and located communities.

Bilateral Indigenous Plans, formed between the Commonwealth and each State and Territory as part of the *Closing the Gap* initiative, set out specific initiatives of the relevant State and Territory governments aimed at improving the services provided to Aboriginal and Torres Strait Islander people. The National Disability Insurance Agency launched its Aboriginal and Torres Strait Islander Engagement Strategy in March 2017, which is aimed at ensuring that all staff are trained to understand and engage with Aboriginal and Torres Strait Islander people in a way that demonstrates support for their language, heritage and culture.


The DSS design and implement policies which are informed by service gap analysis such as data analysis, environmental scanning, mapping of existing coverage areas, examination of the policy objectives of activities, and local knowledge from States and Territories. The DSS continues to develop relationships and engage with relevant Aboriginal and Torres Strait Islander people, including local community controlled organisations and peak organisations, in order to gain insight into the service gaps experienced by Aboriginal and Torres Strait Islander communities.

DSS also administer the following programs which seek to combat the disadvantage associated with low incomes.


- The Families and Children Activity provides services to support disadvantaged families to improve the wellbeing of young people, to enhance family function, and to increase the participation of vulnerable people in community life. This involves early intervention and prevention activities, including parenting support programs and family and relationship services.
- The Financial Wellbeing and Capability Activity provides services to build financial resilience and wellbeing for vulnerable people and those most at risk of financial and social exclusion and disadvantage. This program currently funds 31 Aboriginal and Torres Strait Islander organisations.

 *Recommendation 198 has been fully completed, through various initiative which the Commonwealth has implemented to reduce discrimination towards Aboriginal and Torres Strait Island people when services are delivered – such as the Access and Equity Plan, the NPARSD and the Bilateral Indigenous Plans.*


New South Wales previously implemented legislative provisions within the *Racial Discrimination Act 1977* (NSW) and the *Anti-Discrimination Act 1977* (NSW) for providing equitable and non-discriminatory service delivery. The Office of Aboriginal Affairs monitors and assesses the provision of essential services to Aboriginal communities in NSW. The 1993 implementation report stated that the NSW Government was committed to ensuring that Aboriginal people receive no less provision of service than other Australian citizens. FACS, the Department of Education, and the NSW Police Force have policies in place, which set out service expectations for Aboriginal people. In addition, the Aboriginal Community Development Program was established to ensure that communities have access to essential services and that the development of community infrastructure is sustainable.

 *New South Wales has fully met Recommendation 198 by implementing anti-discriminatory measures and programs to ensure that Aboriginal individuals do not face discrimination in service provision.*


In 2004, **Victoria** implemented the *Victorian Aboriginal Affairs Framework*, which placed obligations on each government department to report on issues of discrimination in service provision. The Victorian Government put in place specific strategies to ensure that Aboriginal and Torres Strait Islander people were able to benefit from services provided to the broader population. For example, the Koori Health Unit works to reduce barriers to accessing health services by the Aboriginal and Torres Strait Islander population by employing Koori Hospital Liaison Officers and being supportive of effective ongoing cultural awareness programs within the health system. The AJA also sets out the delivery of programs that seek to reduce discrimination experienced by the Victorian Aboriginal and Torres Strait Islander community as a key objective.

 *Victoria has implemented Recommendation 198 through several measures to ensure Aboriginal and Torres Strait Islander individuals do not face discrimination in service provision.*


The financial arrangements for Aboriginal and Torres Strait Islander people in **Queensland** provide support for the provision of infrastructure for those with low incomes. The Queensland Government provides electricity to all Aboriginal and Torres Strait Islander consumers living in rural and remote areas at the same rate as those consumers living in urban areas, as cited in the 1993 implementation report. In addition, Queensland has implemented the Our Way Strategy, which is built on four key areas, one of which seeks to empower Aboriginal and Torres Strait Islander parents, families and communities by creating opportunities for families to be supported by services that are accessible, culturally respectful and safe, and where the importance of culture and connection is deeply understood.

 *Queensland has partially implemented Recommendation 198 by implementing certain anti-discriminatory measures but has not expressly addressed the broader objectives of the recommendation.*

South Australia employed a specific authority (the Works and Infrastructure Branch of the Department of State Aboriginal Affairs) to be responsible for managing the delivery of services to rural communities. South Australia has previously implemented legislative provisions within the *Local Government Act 1999* (SA) section 3, 6 and 8 and the *Family and Community Services Act 1972* (SA) section 10(3) for providing equitable and non-discriminatory service delivery. The South Australian Government has recently implemented a new, tiered approach to governance and leadership, which aims to provide a greater platform for Aboriginal and Torres Strait Islander nations to be involved in government decision making and ultimately, service delivery. The South Australian Government is also committed to increasing Aboriginal and Torres Strait Islander economic participation through the Aboriginal Economic Participation Strategy.


 *South Australia has fully met Recommendation 198 by implementing anti-discriminatory measures within the Local Government Act 1999 and the Family and Community Services Act 1972.*

Western Australia's *Remote Areas Essential Services* program currently offers essential repairs and maintenance services to remote Aboriginal and Torres Strait Islander communities. The Western Australian Government has committed to the principle of substantive equality. A recent manifestation of this commitment is the Essential and Municipal Services Upgrade Program, which provides further upgrades of essential and municipal services infrastructure in remote communities in line with the Remote Service Level Guidelines that apply across Western Australia. However, Western Australia does not appear to have any specific legislative provisions for providing equitable and non-discriminatory service delivery for Aboriginal and Torres Strait Islanders people.


 *Western Australia has completed Recommendation 196 by committing to substantive equality and implementing several programs to provide quality in the delivery of essential services.*

The **Tasmanian** Government monitors service provision to the Aboriginal and Torres Strait Islander population and the non-Aboriginal and Torres Strait Islander population on an as-needs basis. In the 1995 implementation report, the-then Tasmanian Department of Community and Health Services reported that it would aim to ensure that Aboriginal and Torres Strait Islander people are not


disadvantaged in accessing essential services or by their capacity to financially contribute to the provision of such services.

 *Tasmania has partially implemented Recommendation 198 by stating a commitment to anti-discriminatory service provision but has not expressly addressed the broader objectives of the recommendation.*

In the **Northern Territory**, the *Remote Service Delivery National Partnership Agreement* focused on fifteen priority locations. For example, the Power and Water Authority maintains essential services infrastructure on most communities with a population greater than 100 people to a level at, or above, the standard available to non-Aboriginal and Torres Strait Islander people living in similar circumstance and location. In order to ensure equity in service provision, a billing system was introduced in 1992 to encourage more efficient use of resources. In addition, the Department of Housing and Community Development provides services to homelands, remote communities, town camps, community living areas and urban centres across the Northern Territory, either directly or indirectly through contracted service providers. The eligibility criteria for public housing requires that an applicant derives an income from the Northern Territory, which can be sourced from wages, salaries or Centrelink benefits.

 *The Northern Territory has fully met Recommendation 198 by implementing anti-discriminatory provisions as part of the Remote Service Delivery National Partnership Agreement to make it unlawful to discriminate in the provision of essential services.*

In the **Australian Capital Territory**, an elected body of Aboriginal and Torres Strait Islander representatives was developed following the RCIADIC report to provide oversight of discrimination in service delivery to Aboriginal and Torres Strait Islander people. In the ACT, it is unlawful for ACT Government agencies or private enterprise to discriminate in the provision of essential services.

 *The Australian Capital Territory has fully met Recommendation 198 by implementing anti-discriminatory legislation to make it unlawful to discriminate in the provision of essential services.*

Additional commentary

From 1 July 2016, the **Tasmanian** Government changed its approach for determining eligibility for Aboriginal and Torres Strait Islander programs and services to be more consistent with the Australian Government's approach.

Under the changed approach to determining eligibility, Tasmanian Government Aboriginal and Torres Strait Islander programs and services that only require self-identification for eligibility will continue to only require self-identification. Other Tasmanian Government Aboriginal and Torres Strait Islander programs and services will require applicants to complete an eligibility form (that includes a statutory declaration) and provide a statement confirming communal recognition from an Aboriginal organisation.

The Department of Health and Human Services (DHHS) administers Commonwealth funding of approximately \$1.4 million per annum for outreach clinical services to Aboriginal communities across Tasmania through the Medical Outreach Indigenous Chronic Disease Program. These services are a mix of medical specialist, midwifery and allied health services, and are provided almost exclusively at Aboriginal community controlled organisations.

Recommendation 199

That governments recognise that a variety of organisational structures have developed or been adapted by Aboriginal people to deliver services, including local government type services to Aboriginal communities. These structures include community councils recognised as local government authorities, outstation resource centres, Aboriginal land councils and co-operatives and other bodies incorporated under Commonwealth, State and Territory legislation as councils or associations. Organisational structures which have received acceptance within an Aboriginal community are particularly important, not only because they deliver services in a manner which makes them accountable to the Aboriginal communities concerned but also because acceptance of the role of such

organisations recognises the principle of Aboriginal self-determination. The Commission recommends that government should recognise such diversity in organisational structures and that funding for the delivery of services should not be dependent upon the structure of organisation which is adopted by Aboriginal communities for the delivery of such services.

Background information

There is diversity in the organisational structure of Aboriginal and Torres Strait Islander organisations, as “Aboriginal organisations have been formed to deal with the problems of Aboriginal communities because Aboriginal people believe that they are best able to solve their own problems” (RCIADIC Report, Volume 4 paragraph 27.5.27). As such, funding should not be dependent on the structure of the organisation.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The recommendation asks that both the Commonwealth, and the States and Territories recognise the diversity of structure within Aboriginal and Torres Strait Islander organisations.

Key actions taken and status of implementation

The **Commonwealth** implemented the CATSI Act in 2006 which provides a range of support to Aboriginal and Torres Strait Islander organisations incorporated under the Act to promote good governance.


PM&C’s Strengthening Organisational Governance framework requires that Aboriginal and Torres Strait Islander organisations who receive more than \$500,000 in annual funding from the Indigenous Affairs Group in PM&C be incorporated under Commonwealth legislation. However, the framework provides an exemption from the incorporation requirements for organisations who receive a low proportion of their total funding from these grants, or who can demonstrate that they are well-governed, high performing and low risk. In this respect the Government recognises a variety of organisational structures, while also actively promoting the benefits of incorporation under Commonwealth legislation, with a focus on those organisations that receive significant grant funding

Under the IAS, over half of all grant funding has been contracted to Aboriginal and Torres Strait Islander organisations. This funding is provided for a range of different entity types including organisations incorporated with the Australian Securities and Investments Commission and ORIC, State and Territory associations, cooperatives, and local councils.

 *Recommendation 199 is partially complete since, while the CATSI Act and the Strengthening Organisational Governance framework provide Aboriginal and Torres Strait Islander organisations some flexibility in their corporate structures, the Commonwealth has not implemented consistent requirements across all funding agencies that stipulate that funding should not be dependent on the structure of an organisation.*


The **New South Wales** Office of Aboriginal Affairs stated in the 1993 implementation report that it supported the need for diverse Aboriginal organisational structures that allow the specific needs of the local community to be met. The NSW Government additionally recognised that Aboriginal organisations need to be incorporated in order to ensure decision making and accountability mechanisms.

Currently, the LDM model (see Recommendation 193) ensures that participating Aboriginal regional governance bodies can define and determine their own governance structures, in reflection of their unique geography and regional history. OCHRE is the NSW Government’s community-focused plan for Aboriginal affairs. The Plan invests in language and culture, healing, Aboriginal governance, education and employment. The NSW Government has also developed strong cross-government working arrangements to engage with regional alliances participating in LDM as well as other peak bodies including the Aboriginal Education Consultative Group and the NSW Aboriginal Land Council.

 *New South Wales has fully completed Recommendation 199 by supporting the diversity of Aboriginal organisational structures through the LDM model.*

In **Victoria**, the 1994 implementation report noted that, although organisations were required to be incorporated (under state or Commonwealth legislation) to receive government funding, Aboriginal and Torres Strait Islander organisations themselves had many different models reflecting their own needs.


Victoria has since developed a variety of approaches to meet the funding needs of Aboriginal organisations. This includes specific arrangements for the Aboriginal Lands Trusts, funding to organisations that provide community services such as Aboriginal Community Co-operatives and Associations, as well as those with native title or Traditional Owner Settlements, and for Registered Aboriginal Parties that have statutory responsibilities for the management of Aboriginal cultural heritage. It is recognised that some Aboriginal organisations that are not a legal entity incorporated under state or commonwealth legislation. These bodies can receive funding under auspice arrangements.

 *Victoria has implemented Recommendation 199 as organisations which are not incorporated can receive government funding through alternate arrangements.*


In 1997, **Queensland** Government funding was not dependent on the structure of an organisation, however it did require a degree of accountability to the members of the community and to the Government. The 1991 Parliamentary Committee of Public Accounts Report and the Legislation Committee's Report "Towards Self-Government" recognised the need for diverse structures in Aboriginal and Torres Strait Islander communities.

Under the *Local Government Act 1993* (Qld), all 16 Aboriginal and Torres Strait Islander local governments are constituted on the same basis as other local governments. Furthermore, the Partners in Government Agreement provides that they are "respected as local governments in their own right and are recognised as having the same status and responsibilities as non-Indigenous local governments" while also being recognised as "having additional significant social and cultural responsibilities within their communities".

In addition to Queensland's State Government Financial Aid Funding program, which is provided specifically to Aboriginal and Torres Strait Islander Councils, Aboriginal and Torres Strait Islander Councils have access to all local government funding programs on the same basis as other local governments.

 *Queensland has implemented Recommendation 199 by supporting the diversity of Aboriginal and Torres Strait Islander organisational structures and ensuring that their structures do not affect their funding.*

In **South Australia**, the 1994 implementation report noted that diverse Aboriginal and Torres Strait Islander organisational structures were supported to meet the specific needs of local communities. The South Australian Government has also sought to meet Recommendation 199 through its new, tiered approach to governance and leadership (see Recommendation 198), which encourages strong engagement with Aboriginal and Torres Strait Islander leaders and nations in government decision making.

 *South Australia has partially implemented Recommendation 199 by supporting the diversity of Aboriginal and Torres Strait Islander organisational structures but has not addressed whether funding provisions are affected in their response.*

Western Australia stated in 1997 that it encouraged active participation in the delivery of local government services to Aboriginal and Torres Strait Islander communities by Aboriginal and Torres Strait Islander communities. Specific examples would include successful tendering processes for Aboriginal and Torres Strait Islander communities to receive roadwork programs and library services in remote areas. An Aboriginal Development Officer and an Aboriginal Employment Officer were employed by the Department of Local Government and the Western Australian Municipal Association, respectively.


 *Western Australia has partially implemented Recommendation 199 by supporting the delivery of local government services to Aboriginal and Torres Strait Islander communities by Aboriginal*

and Torres Strait Islander communities. However, the effect of organisational structures on funding has not been addressed.

The **Tasmanian** Government is a signatory to the *Agreement on Tasmanian Aboriginal and Torres Strait Islander Health and Wellbeing 2016–2020* (the Framework Agreement), along with the Australian Government and the Tasmanian Aboriginal Corporation, which is the Tasmanian National Aboriginal Community Controlled Health Organisation affiliate and peak body on Aboriginal health issues in the State. The Framework Agreement is implemented through the Tasmanian Aboriginal Health Forum, which provides members opportunities to share information, plan collaboratively and work in partnership to improve Aboriginal health outcomes and deliver on the aims of the Framework Agreement.


DHHS also engages with Aboriginal organisations outside of the TAC through the Tasmanian Aboriginal Health Reference Group (TAHRG). The TAHRG conducts quarterly meetings, that include representatives from DHHS, the Australian Government, Primary Health Tasmania and five Aboriginal organisations from across the State that deliver health services and programs for Aboriginal people.

As at recommendation 188, the Tasmanian Government has recently signed a Statement of Intent with TRACA, a group comprising representatives of seven Aboriginal community organisations.


 *Tasmania has partially implemented Recommendation 199 by supporting Aboriginal and Torres Strait Islander organisations but has not addressed whether funding provisions are affected in their response.*

The **Northern Territory** introduced the concept of Community Government Councils in 1978, which provided remote communities with the political and legal opportunity to determine their own leadership structure. Aboriginal and Torres Strait Islander communities can choose their own local government functions and arrangements within individualised council constitutions. These Community Governments provided a form of local self-government, thereby allowing Aboriginal and Torres Strait Islander people to have local representation and control over service delivery. They also obtained the power to make decisions affecting their communities according to their traditional power structures. Community Governments had the power to make their own by-laws, enabling the residents of a community to make specific laws applying to their own community.

The Northern Territory Government has noted that it continues to make progress in supporting and prioritising local service delivery through the Local Decision Making policy. It indicated that can be provided to regional councils and a range of Aboriginal organisations to further this outcome.

 *The Northern Territory has partially implemented Recommendation 199 by supporting the diversity of Aboriginal and Torres Strait Islander organisational structures but has not addressed whether funding provisions are affected in their response.*

In the **Australian Capital Territory**, funding is not dependant on the structure of an organisation; however, the ACT government must specify the legal entity to which it is providing public funds for reasons of accountability. This ensures the recipient of the funding is being held responsible.

 *The Australian Capital Territory has implemented Recommendation 199 by supporting the diversity of Aboriginal and Torres Strait Islander organisational structures and ensuring that their structures do not affect their funding.*

Additional commentary

Tasmania is a signatory to the *Agreement on Tasmanian Aboriginal and Torres Strait Islander Health and Wellbeing 2016-2020* along with the Australian Government and the Tasmanian Aboriginal Corporation, which is the Tasmanian National ACCHO affiliate and peak body on Aboriginal and Torres Strait Islander health issues in the state. The Framework Agreement is implemented through the Tasmanian Aboriginal Health Forum, which provides members opportunities to share information, plan collaboratively and work in partnership to improve health outcomes and deliver on the aims of the Framework Agreement. The Department of Health and Human Services also engages with a variety of Aboriginal and Torres Strait Islander organisations through the Tasmanian Aboriginal Health Reference Group.

Recommendation 200

That the Commonwealth Government negotiate with State and Territory Governments to ensure that where funds for local government purposes are supplied to local government authorities on a basis which has regard to the population of Aboriginal people within the boundaries of a local government authority equitable distribution of those funds is made between Aboriginal and non-Aboriginal residents in those local government areas. The Commission further recommends that where it is demonstrated that equitable distribution has not been provided that local government funds should be withheld until it can be assured that equitable distribution will occur.

Background information

The RCIADIC Report noted an inequality in the provision of services at a local government level between Aboriginal and Torres Strait Islander people and non-Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The equitable distribution of funds is to be addressed at both the Commonwealth and State and Territory level.

Key actions taken and status of implementation


The **Commonwealth** Government has responded to Recommendation 200 through the following policy actions. The April 1995 Local Government's Ministers' Conference (LGMC) agreed to a number of resolutions aimed at increasing the level of participation of Aboriginal and Torres Strait Islander people in local government processes and in increasing the level of services available.

The *Local Government (Financial Assistance) Act 1995* was enacted to provide financial assistance to local governments through the States and Territories. The intent of the Act is to provide equitable level of local government services across Australia.


The Department of Infrastructure and Regional Development is guided by the National Principles for the Allocation of Grants. The Act requires States and Territories to allocate funding to local councils in accordance with the National Principles, including principle 5, which states that financial assistance shall be allocated in a way which recognises the needs of Aboriginal and Torres Strait Islander people within their boundaries. The legislation requires the Australian Government Minister for Local Government to approve an allocation of funding to local councils each year after the State and Northern Territory Local Government Ministers confirm the funding has been allocated in accordance with the National Principles. The funding is untied in the hands of local government and is spent on local priorities, delivered on the basis of need, including services and local roads accessed by Aboriginal and Torres Strait Islander people. The Department is currently developing options for a review into the Financial Assistance Grants program.

 *Recommendation 200 is partially complete – while the LGMC agreed to increase the level of services available to Aboriginal and Torres Strait Islander people, the Commonwealth has not implemented requirements that funding be withheld to local governments that do not demonstrate an equitable distribution of services.*

In **New South Wales**, Financial Assistance Grants provided by the NSW Grants Commission to local governments are generally untied grants. Local governments use these grants and other revenue to deliver services to their local communities, consistent with their 10 year Community Strategic Plans (which must be based on social justice principles). The formula used to determine the grant to any individual local government considers a range of factors including the Aboriginal proportion of the community. The New South Wales Government has indicated that over the past ten years it has made significant investments into improving the standard of infrastructure in the 61 discrete Aboriginal communities across NSW. In particular, the NSW Government has implemented a joint initiative in relation to the upgrade, maintenance and operations of water and sewerage systems in discrete Aboriginal communities. One of the aims of this program is to equalise key infrastructure service provision to discrete Aboriginal communities with the standards enjoyed in the wider community. However, there does not appear to be any obligation to ensure equitable funding or permission to withhold funding under current legislation.


 *The New South Wales government has partially implemented Recommendation 200 by implementing equitable funding distribution across local governments, including basing funding on the proportion of Aboriginal people in the community. However, there does not appear to be any obligation to ensure equitable funding or permission to withhold funding under current legislation.*

The **Victoria Grants Commission Act 1976** (Vic) entitles the Minister responsible for Local Government to make a submission to the Commission to take action in response to any problems that may exist for Aboriginal and Torres Strait Islander communities and local roads funding. Funding for local roads in Aboriginal and Torres Strait Islander communities can be allocated through what has been termed as Special Impact Funding – a set of principles set out to give special consideration to the road needs of Aboriginal and Torres Strait Islander communities.

 *Victoria has taken steps to partially address Recommendation 200, however, has not consistently implemented equitable funding distribution requirements across all sources of local government funding.*


Queensland noted in the 1997 implementation report that this is a Commonwealth issue and that the Commonwealth Government needs to clearly establish that funds would be provided to local government authorities for the specific benefit of Aboriginal and Torres Strait Islander residents. More recently, the Queensland Government has noted that while the Local Government Grants Commission's methodology takes into account Aboriginal and Torres Strait Islander population as a demographic indicator in determining the distribution of the Commonwealth Financial Assistance Grant, it is not a major determinant and that such grants are untied. As such, the Grants Commission has no power to direct any council or to withhold funding based on demographic requirement.

Queensland notes that this recommendation cannot be fully implemented without Commonwealth legislative change. However, the Queensland Government offers a range of funding programs specifically for the identified Indigenous Local Governments, which provide a direct benefit to those local Aboriginal and Torres Strait Islander populations. Other programs such as Local Government Grants and Subsidies Program are competitive bid programs target primarily at Local Government infrastructure projects. These are competitive bid programs, which are not assessed on population demographic (including the proportion of Aboriginal and Torres Strait Islander residents).

 *While demographic indicators may be taken into consideration when distributing funding, Queensland has noted that there is no obligation to ensure equitable distribution between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander people. As such, Queensland has partially implemented Recommendation 200.*

The **South Australian** government noted in the 1993 implementation report that this is a Commonwealth responsibility to provide financial assistance grants and road grants distributed on the advice of the Local Government Grants Commission. Conditional arrangements were reported to be inconsistent with the South Australian Government's position at the time which supported the maintenance of general purpose grants.

Currently, funding is provided on an annual basis, which includes a recognition of the proportion of Aboriginal and Torres Strait Islander residents, as recommended by the Local Government Grants Commission. The Commission and the Minister are required to provide recommendations for the distribution of funding to all local governing authorities and are not permitted to "withhold" funding under the current legislation.

 *South Australia has partially implemented Recommendation 200 as the Local Government Grants Commission includes a recognition of the proportion of Aboriginal and Torres Strait Islander residents in its recommendations. However, there is no obligation to ensure equitable funding or permission to withhold funding under current legislation.*

Western Australia does not appear to have taken any significant action in response to this recommendation.

- *Western Australia has not implemented Recommendation 200 as no significant action has been taken in response to this recommendation.*

In **Tasmania**, as of 1995 there was limited Local Government involvement in the provision of community services. Tasmania therefore supported this recommendation, however noted in 1995 that it is of limited relevance to Tasmania. The Tasmanian Government has noted its support of the relationship between the Flinders Council and the Cape Barren Island Aboriginal Association, particularly in the period since 2015 when the Commonwealth transitioned away from funding the delivery of municipal services.

- ◐ *Tasmania has partially implemented Recommendation 200 through supporting engagement between the Flinders Council and the Cape Barren Island Aboriginal Association. However, there is no obligation to ensure equitable funding or permission to withhold funding under current legislation.*

The **Northern Territory** currently distributes untied funding to local governments through the Territories Grant Commission which recognises the needs of Aboriginals and Torres Strait Islander people within their boundaries. However, as funding is provided by the Commonwealth to the Grants Commission on a per capita basis, the pool of funding available does not reflect the significantly higher proportion of Aboriginal and Torres Strait Islander people living in the Northern Territory. It was suggested in the 1995 implementation report that this recommendation will not come to fruition in the NT under current arrangements.

- ◐ *The Northern Territory government has partially implemented Recommendation 200 through distributing funding which recognises the needs of Aboriginal and Torres Strait Islander people. However, there does not appear to be any obligation to ensure equitable funding or permission to withhold funding under current legislation.*

As per the 1997 implementation report, the structure of the **Australian Capital Territory** is different to the other States and Territories with regard to passage of funds received by the ACT Government. Funding to the ACT is paid on an equal per capita basis without specific regard to the Aboriginal and Torres Strait Islander population. Therefore, this recommendation is not applicable to the ACT.

- ⊘ *Recommendation 200 does not relate to the Australian Capital Territory.*

Additional commentary

The **Tasmanian** Government has recently supported the relationship between the Flinders Council and the Cape Barren Island Aboriginal Association, particularly in the period since 2015 when the Commonwealth transitioned away from funding the delivery of municipal services.

Recommendation 201

The Commission has observed the operations of the Tangentyere Council in Alice Springs and the co-operative relationship established with the Alice Springs Town Council. It is imperative that the Tangentyere Council be provided with stable and adequate funding to enable it to continue and to enhance its provision of services and that governments, local government authorities, Aboriginal organisations and communities consider the adoption of similar models for local governance modified according to the desires of particular communities.

Background information


The RCIADIC Report noted that the relations between Tangentyere Council and the Alice Spring Municipal Council was an important development and was of great significance for Aboriginal and Torres Strait Islander affairs in Australia.

Responsibility


The recommendation is the responsibility of the State and Territory Governments.

Key actions taken and status of implementation


The **New South Wales** government has classified Recommendation 201 as not applicable.

 *The New South Wales Government has not implemented Recommendation 201.*

Victoria employed an Aboriginal employment consultant in 1991-92 to identify ways in which local government authorities could be assisted to employ more Aboriginal and Torres Strait Islander people. However, in the 1996-97 and 2005 implementation reports, this recommendation was classified as not relevant to Victoria.

 *Victoria has partially implemented Recommendation 201 by examining the ways local government authorities could employ more Aboriginal and Torres Strait Islander people, but has broadly considered this recommendation to not be relevant to its circumstances.*


Queensland has established the Partners in Government Agreement, which provides that “within the system of local government in Queensland, Indigenous local governments are respected as local governments in their own right and are recognised as having the same status and responsibilities as non-Indigenous local governments. At the same time, Indigenous local government leaders are recognised as having additional significant social and cultural responsibilities within their communities”.

 *Queensland has implemented Recommendation 201 by addressing its key objectives through the Partners in Government Agreement.*


In 1993, **South Australia** reported that it had endorsed a pilot study for an Aboriginal Community Council or land authority to obtain Local Government status, which was due for completion in June 1994. The South Australian Government has also addressed aspects of Recommendation 201 through its new, tiered approach to governance and leadership.

 *South Australia has partially implemented Recommendation 201 by taking steps toward supporting local Aboriginal and Torres Strait Islander governance but has not fully addressed Recommendation 201.*


Western Australia does not appear to have made any significant progress towards addressing this recommendation.

 *The Western Australian Government has not implemented Recommendation 201 as no evidence was provided to support that Western Australia has considered adopting similar local government models to that of Tangentyere Council.*

In **Tasmania**, there was limited local government involvement in the provision of community services in 1995. Tasmania therefore supported this recommendation, however noted that it was of limited relevance.


 *Tasmania has noted that Recommendation 201 is of limited relevance to its jurisdiction.*

The **Northern Territory** Government noted in the 1997 implementation report that the Tangentyere model is not necessarily applicable to remote Aboriginal and Torres Strait Islander communities where the majority of NT Aboriginal and Torres Strait Islander persons reside but is supportive of cooperative relationships between the Tangentyere Council and Local Government Councils. Additionally, the NT Government provided substantial funding to the Tangentyere Council Housing and Education services. The NT Government has also noted that it is not of the view that this model is appropriate for local governments.

 *The Northern Territory has partially implemented Recommendation 201, by being supportive of the Tangentyere model but not appearing to take action to implement the model for other councils.*

The **Australian Capital Territory** has not implemented any specific action in response to this recommendation. However, it is noted that the ACT Aboriginal and Torres Strait Islander Advisory Council works as the major consultative mechanism between the ACT Government and the local

Aboriginal and Torres Strait Islander communities regarding issues affecting the Aboriginal and Torres Strait Islander population in the ACT.

 *The Australian Capital Territory Government has not implemented Recommendation 201. The Australian Capital Territory Government does not consider Recommendation to be relevant to the Territory.*

Recommendation 202

That where such courses are not already available, suitable training courses to provide necessary administrative, political and management skills should be available for persons elected to regional councils of ATSIC, elected to, appointed to, or engaged in Aboriginal organisations involved in the delivery of services to Aboriginal people and other Aboriginal community organisations. The content of such training courses should be negotiated between appropriate education providers (including Aboriginal education providers) other appropriate Aboriginal organisations and government. Such courses should be funded by government and persons undertaking such courses should be eligible for such financial assistance in the course of studies as would be available under ABstudy guidelines.

Background information

The RCIADIC Report recommended that appropriate training programs be offered to Aboriginal and Torres Strait Islander people to assist with self-determination.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both the Commonwealth, and the States and Territories have oversight of Aboriginal and Torres Strait Islander organisations.

Key actions taken and status of implementation

The **Commonwealth** Government's *1995-96 Annual Report* highlighted that a total of \$528,000 was allocated to cover the administrative costs for Regional Councillor Professional Development.


The ORIC, under the *CATSI Act*, provides courses that are directed towards building director's skills and improving governance and management for Aboriginal and Torres Strait Islander people. Registration is free for Aboriginal and Torres Strait Islander corporations. The training package consists of the *Managing in Two Worlds* program and corporation specific training.

The DSS and PM&C have developed an e-Learning course which raises awareness of the richness and diversity of Aboriginal and Torres Strait Islander cultures and histories.

 *Recommendation 202 has been fully implemented at the Commonwealth level. The courses provided by ORIC, and other Commonwealth bodies, satisfy the requirements of this recommendation.*

New South Wales implemented legislative provisions⁴⁵ that required organisations and/or education providers to provide adequate training, support and advice for Aboriginal organisations. This was to assist in the provision of their services and to build capacity. This includes allowances for TAFE NSW to provide Aboriginal Education and Training Provision, which are developed locally by Regional Aboriginal Coordinators in response to requests from Local Aboriginal Communities.


The Department of Employment, Education and Training provided fee-for-service courses and training programs for local Aboriginal communities. Additionally, Aboriginal people who are enrolled in TAFE NSW courses are eligible to receive financial assistance under *Abstudy*.

 *New South Wales has fully met Recommendation 202 through implementation of legislative provisions and relevant programs.*

⁴⁵ This is noted on p. 456 of the *Change the Record* report. Further specifics on the nature of the legislation was not provided in the report, and could not be determined through the review.

Victoria's Victorian Aboriginal Affairs Framework 2013-2018 details strategic priorities to enhance Aboriginal and Torres Strait Islander economic opportunity and healthcare. These priorities include: building prosperity through economic participation; protecting and supporting vulnerable children and families; better services, better outcomes, and; improved national action. The Victorian Aboriginal Education Association has continued to receive funding from the Victorian Government under this framework.

Victoria has also developed specific training for Aboriginal and Torres Strait Islander people working within Registered Aboriginal Parties, state and local government agencies and other groups. This training is delivered on behalf of the Victorian Government by La Trobe University and has been specifically written to address the legislative responsibilities of Aboriginal and Torres Strait Islander land managers involved in the protection of Aboriginal Cultural Heritage areas at all levels. Training opportunities are currently funded by government and attract ABSTUDY. Funding is also provided to the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) to provide foundational governance workshops and individual support to Aboriginal and Torres Strait Islander organisations.


 *Victoria has mostly implemented Recommendation 202 by funding the Aboriginal Education Association, developing and funding training for Aboriginal and Torres Strait Islander people working within Registered Aboriginal Parties, state and local government agencies and other groups. The extent to which this educational support is aimed at providing the administrative, political, and management skills sought by this recommendation is unclear.*

Queensland implemented legislative provisions, as outlined in the Change the Record report, which require adequate training, support and advice be made available to Aboriginal and Torres Strait Islander organisations who are providing services and building capacity. Queensland noted in their 1997 implementation report that general policy directed towards improving the participation, education and training of Aboriginal and Torres Strait Islander people had been implemented. TAFE in Queensland offers specific Aboriginal and Torres Strait Islander award courses from the Certificate through to Associate Diploma levels.


Currently, the Department of Local Government, Racing and Multicultural Affairs provides a Capacity Building Program that centrally administers culturally appropriate programs to build the administrative and management skills of councillors and staff in Queensland's Aboriginal and Torres Strait Islander councils. Programs are offered on such skills as legislative amendments, financial management, and meeting procedures. The Department of Local Government, Racing and Multicultural Affairs also gives preference to candidates from Aboriginal and Torres Strait Islander local governments when awarding scholarships to undertake accredited training programs and has also awarded assistance packages to staff from Aboriginal and Torres Strait Islander councils.

 *Queensland has implemented Recommendation 202 through the Department of Local Government, Racing and Multicultural Affairs Capacity Building Program and other initiatives.*


In **South Australia**, the Government has partnered with Flinders University and an international presenting team to deliver Aboriginal Nation Building courses to South Australian Aboriginal and Torres Strait Islander groups. South Australia's first three Aboriginal and Torres Strait Islander Regional Authorities participated in the workshops in 2016, and the Government is committed to making the program available more broadly across the state to support steps towards a possible Treaty with its First Nations peoples.

 *South Australia has implemented Recommendation 202 through the Aboriginal Nation Building program.*


No record of legislation or policy that has been implemented to address this recommendation was identified for **Western Australia**, or **Tasmania**. However, the Western Australian Government noted that it continues to support Aboriginal and Torres Strait Islander education and training committees aligned with TAFE colleges and campuses across the State.

 *The Tasmanian and Western Australian governments have not implemented Recommendation 202 as no evidence has been provided as to whether appropriate training programs have been offered to Aboriginal and Torres Strait Islander people in leadership positions.*

The **Northern Territory** Government routinely organises training in governance and related topics for the elected members of regional councils, the majority of whom are Aboriginal and Torres Strait Islander. The Northern Territory Government has indicated that it prioritises training for elected members of regional councils and provides ongoing governance support during their term of office. However, the Northern Territory Government has not specifically earmarked training for Aboriginal and Torres Strait Islander candidates.

 *The Northern Territory has mostly implemented Recommendation 202 by providing elected members of regional councils with training but has not specifically earmarked training for Aboriginal and Torres Strait Islander candidates.*

The **Australian Capital Territory's** Skills Canberra program provides government funding for training courses in administrative, leadership, government and management skills that can be accessed by the members of the Aboriginal and Torres Strait Islander Elected Body, Aboriginal and Torres Strait Islander organisations involved in the delivery of services to Aboriginal and Torres Strait Islander people, and workers of other Aboriginal and Torres Strait Islander community organisations. The Aboriginal and Torres Strait Islander Elected Body also receives specific training and guidance on governance, ethics and conflicts of interest. The Australian Capital Territory also provides specific Aboriginal and Torres Strait Islander focused focus training to Aboriginal trainees in the public sector, provided by Australian Indigenous Leadership Centre, Baringa Childcare Centre and the National Centre for Indigenous Studies (Australian National University).

 *The Australian Capital Territory has implemented Recommendation 202 as training courses in administrative, leadership, government and management skills have been offered to members of the Aboriginal and Torres Strait Islander Elected Body. Additionally, specific Aboriginal and Torres Strait Islander focused focus training is offered to Aboriginal trainees in the public sector*

Additional commentary

More recently, the **New South Wales** Government noted that the Aboriginal Community Development Program consulted and negotiated with local communities to identify local infrastructure needs and to develop appropriate plans and agreements that reflect community needs and aspirations.

Recommendation 203

That the highest priority be accorded to the facilitation of social, economic and cultural development plans by Aboriginal communities, and on a regional basis, as a basis for future planning of:

- a. Economic development goals;*
- b. Training, employment and enterprise projects;*
- c. Community Development Employment Project (CDEP schemes);*
- d. The provision of services and infrastructure; and*
- e. Such other social and cultural needs as are identified.*

Background information

The RCIADIC Report noted Aboriginal and Torres Strait Islander people need to be given the opportunity to make decisions about their lives, children, culture, education and the protection of their sacred sites.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation, as both levels of government are responsible for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander people.

Key actions taken and status of implementation


The **Commonwealth** Government has addressed Recommendation 203 via the following programs and policy actions. As required by the *Aboriginal and Torres Strait Islander Commission Act 1989*, all Regional Councils were required to formulate and revise a Regional Plan for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents in their regions. As noted in the *1995-96 Annual Report*, at the time the report was prepared, Regional Councils were still preparing and revising their regional plans.

The Stronger Futures policy – implemented in 2010 – included directives which were aimed at improving government engagement with Aboriginal and Torres Strait Islander communities and improving the coordination of funding and services for Aboriginal and Torres Strait Islander communities.

The Culture and Capability Programme works to support engagement with, and the expression and conservation of Aboriginal and Torres Strait Islander culture, and to promote broader understanding and acceptance. It also aims to increase Aboriginal and Torres Strait Islander people's participation in the social and economic life of Australia through strengthening the capability, governance and leadership of people, organisations, and communities. PM&C administered \$63 million of funding in 2015/16 and \$60 million in 2016/17 to communities through this program.

PM&C is also supporting the implementation of the Aboriginal and Torres Strait Islander-led Empowered Communities initiative in eight regions across Australia. This initiative seeks to identify community needs, priorities and aspirations, and articulate long-term Regional Development Agendas that address social, economic, and cultural development which will guide government investment. The Commonwealth has contributed \$14.4 million over three years to the end of June 2019 to assist in the coordination and implementation of the initiative.

The Community Development Programme (CDP) (which commenced in July 2015) supports job seekers in remote Australia to build skills, address barriers, and contribute to their community through a range of activities. Activities are broad and flexible, and delivered in consultation with local communities. For example, topics include budgeting, language, literacy and numeracy. The Community Development Programme allows activities to be designed to address the needs of communities. The Minister for Indigenous Affairs has announced as part of the 2017-18 Budget that consultation will begin on a new employment and participation model for remote Australia and communities will be involved in this process.


 *While the Commonwealth has taken some action towards implementing Recommendation 203, higher priority needs to be given to facilitation of social, economic and cultural development plans for Aboriginal and Torres Strait Islander communities to fully implement this recommendation.*

In 1993 **New South Wales** reported that the state supported this recommendation. The Department of Aboriginal Affairs has participated in pilot regional planning programs involving the cooperation of NSW Government agencies through the NSW Coordinating Committee for Services Provided to Aborigines.


In addition, the Aboriginal Community Development Program has consulted and negotiated with local communities to identify local infrastructure needs and to develop appropriate plans and agreements that reflect community needs and aspirations. The Partnership Community Program has also aimed to improve service delivery and strengthen community well-being through partnerships between government and Aboriginal communities. OCHRE includes a Local Decision Making initiative, which supports community and government to negotiate formal agreements (accords) on issues of mutual interest. Accords can cover the design and delivery of government services in priority areas identified by the community.

In 2014 the New South Wales Government allocated \$8 million to the Connected Communities Healing and Wellbeing Model. The goal of this program is to provide support and assistance in addressing issues of historic trauma and oppression for Aboriginal students, their families and their communities. The model includes opportunities for local Aboriginal community members to broaden their knowledge

and skill base in youth work, to increase their employability and to enable them to assist students to maximise their educational experience.

 *New South Wales has implemented Recommendation 203 through a number of initiatives and programs aimed at Aboriginal social, economic and cultural development.*


The **Victorian** Government noted in their 1994 implementation report that a number of training plans were developed for Aboriginal and Torres Strait Islander people. These included the 1994 Koori Industry Training Plan, and regional development plans established by Regional Councils of ATSIC. The Victorian Government's Aboriginal Affairs policy statement in 1992 also identified the promotion of the economic development of Aboriginal and Torres Strait Islander people as a priority. As noted in AJA 3, the Victorian Government has continued a consultative approach to the development of social, economic and cultural development plans for Aboriginal and Torres Strait Islander people. The *Victorian Aboriginal Affairs Framework 2013-18* includes as Strategic Action Areas education and training, and economic participation. Additionally, Aboriginal Affairs Victoria contributed to the existing infrastructure of the Victorian Aboriginal Community through the Aboriginal Capital Projects Program in 1995. Other social and cultural needs have been facilitated for the Aboriginal and Torres Strait Islander community.

 *Victoria has implemented Recommendation 203 with a number of initiatives aimed at Aboriginal and Torres Strait Islander social, economic and cultural development.*


At the time of the 1997 implementation report, **Queensland** TAFE employed nine Aboriginal and Torres Strait Islander Field Officers and two Community Development Co-ordinators to assist communities gain access and funding to vocational education and training.

Currently, all local governments, including Aboriginal and Torres Strait Islander local governments, in Queensland are required to prepare a five-year corporate plan, a long-term asset management plan and an annual operational plan. While cultural development plans are not prepared under the Queensland planning system, the *Queensland Planning Act 2016* (Qld) requires entities performing planning and development functions under the Act to perform the function in a way which includes "valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition".

The Department of Local Government, Racing and Multicultural Affairs South East Queensland Regional Plan also supports regional actions that recognise and reflect cultural heritage management and the economic and social needs of Aboriginal and Torres Strait Islander communities in land use planning through consultation and engagement with those communities. The Department of Local Government, Racing and Multicultural Affairs is currently leading the preparation of a Dunwich (Goompi) Master Plan, as part of the Government's North Stradbroke Island Economic Transition Strategy, as well as a structure plan for One Mile on North Stradbroke Island through a collaborative partnership with the Quandamooka Yoolooburrabee Aboriginal Corporation, the Native Title Prescribed Body Corporation for the Quandamooka People and the Redland City Council.


 *Queensland has implemented Recommendation 203 with a number of initiatives aimed at Aboriginal and Torres Strait Islander social, economic and cultural development.*

South Australia noted in the 1994 implementation report that the government supported this recommendation. Currently, the Government seeks to address Recommendation 203 through its new, tiered approach to governance and leadership and engagement with Aboriginal and Torres Strait Islander leaders and communities.


 *While supportive of Recommendation 2013, South Australia does not appear to have taken any relevant steps towards addressing it.*

The Aboriginal Affairs Planning Authority (AAPA) in **Western Australia** worked closely with the Commonwealth Government in the years following the release of the RCIADIC report to develop a model community plan to further develop community infrastructure and services in remote Aboriginal and Torres Strait Islander communities. The overarching goal for these community plans was to focus


on increased planning and monitoring of Aboriginal and Torres Strait Islander services throughout Western Australia.

 *Western Australia has taken limited steps towards implementing Recommendation 203. As such, Recommendation 203 is partially implemented*

In **Tasmania**, the government stated in their 1993 implementation report that this was an extremely important issue and as a consequence, the Aboriginal and Torres Strait Islander Commission Regional Planning process has played a large role in the development of Aboriginal and Torres Strait Islander facilities. However, the Regional Council's Planning activities did not necessarily align with Government agencies, with the Tasmanian government yet to receive a completed regional plan as of 1997. Currently, the Tasmanian Government is committed to supporting the Cape Barren Island community to achieve its short, medium and long-term aspirations, with a particular focus on housing and infrastructure.

 *Tasmania has taken limited steps towards implementing Recommendation 203. As such, Recommendation 203 is partially implemented.*


The 1995 implementation report notes that agencies in the **Northern Territory** have previously been required to assist in community planning through the provision of information to ATSIC regional councils in the development of regional plans. This includes the Department of Education's Aboriginal Development Unit which is involved with developing training plans for organisations. The Regional Economic Development Strategies developed by the Department of Industries and Development now include Aboriginal and Torres Strait Islander communities.

 *The Northern Territory has previously taken steps towards implementing Recommendation 203. However, it does not appear that this work still occurs.*

The **Australian Capital Territory** Aboriginal and Torres Strait Islander Advisory Council was established following the release of the RCIADIC report to incorporate a range of Aboriginal and Torres Strait Islander's aspirations, plans and needs into ACT Government. Additionally, a Departmental Advisory Committee on Aboriginal and Torres Strait Islander Education was formed within the Department of Education to provide advice to Aboriginal and Torres Strait Islander communities on education opportunities.

Since this time, the Australian Capital Territory Government has formed the ACT Aboriginal and Torres Strait Islander Elected Body. This body is democratically elected to represent views of Aboriginal and Torres Strait Islander people in the ACT. It provides direct advice to the ACT Government on a broad range of issues.

Although no discreet social, economic and cultural development plan has been developed, the ACT Aboriginal and Torres Strait Islander Elected Body has assisted in the development of and agreed to the ACT Aboriginal and Torres Strait Islander Agreement 2015-18. This covers priorities of the Aboriginal and Torres Strait Islander community.

 *The Australian Capital Territory has implemented Recommendation 203 through the development of the ACT Aboriginal and Torres Strait Islander Agreement 2015-18.*

Additional commentary

Historically, from the **Commonwealth** Government's perspective, the emphasis of Aboriginal and Torres Strait Islander economic development objectives has been to encourage greater employment. PM&C is in the process of broadening their Aboriginal and Torres Strait Islander economic development goals with an emphasis on broad economic participation and wellbeing as key outcomes. A practical aim of this is to increase choice for Aboriginal and Torres Strait Islander people to participate in and contribute to the broader Australian economy through a range of opportunities, including employment, business ownership, and access to land. PM&C noted that the economy is a powerful tool that can boost living standards and opportunities to build wealth for those that participate. Policies that increase choices will empower more Aboriginal and Torres Strait Islander people to participate in the economy and thereby improve their material wellbeing.

PM&C is developing the Indigenous Business Sector Strategy, a 10-year action plan aimed at improving the way Aboriginal and Torres Strait Islander businesses are supported to increase in number and strength across Australia. The Strategy is aimed at entrepreneurs at the ideas stage through to those businesses trying to grow and diversify, and is being developed in consultation with a wide range of Aboriginal and Torres Strait Islander entrepreneurs and businesses across Australia. The Strategy is expected to be implemented in 2017. Indigenous Business Australia is also supporting businesses through provision of business and capital support to early-stage Aboriginal and Torres Strait Islander business and entrepreneurs.

Recommendation 204

The preparation of community development plans should be a participative process involving all members of the community, and should draw upon the knowledge and expertise of a wide range of professionals as well as upon the views and aspirations of Aboriginal people in the local area. It is critical that the processes by which plans are developed are culturally sensitive, unhurried and holistic in approach, and that adequate information on the following matters is made available to participants:

- a. The range of Aboriginal needs and aspirations;*
- b. The opportunities created by government policies or programs;*
- c. The opportunities and constraints in the local economy;*
- d. The political opportunities to influence the local arena.*

Background information

The RCIADIC Report emphasised the importance of community planning having regard to a community's needs and aspirations on economic options, law and justice issues, education and health services, in order for self-determination and empowerment to become a reality.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both the Commonwealth, and the States and Territories are responsible for increasing the participation of members of the community in order to develop community plans.

Key actions taken and status of implementation

The policy of the **Commonwealth** Government's ATSIC on community planning was aimed at encouraging Aboriginal and Torres Strait Islander communities and community-based organisations to adopt a strategic planning approach to their social, economic, physical and cultural development. In 1995-96, Regional Councils distributed funding to relevant community organisations for community planning activities.


The Stronger Futures policy is aimed at enhancing government involvement and cooperation with Aboriginal and Torres Strait Islander communities to better manage funding and services for Aboriginal and Torres Strait Islander communities.

The Department of Prime Minister and Cabinet has also contributed to the implementation of Recommendation 204 through a range of initiatives, which are outlined in the response to Recommendation 203, such as the Community Development Program and the announcement by the Minister for Indigenous Affairs in the 2017-18 Budget.


 *Recommendation 204 has been partially implemented at the Commonwealth level. Further progress is still being made towards ensuring that the development of plans is a participative process with Aboriginal and Torres Strait Islander communities.*

The **New South Wales** government reported that as of 1993 they had already completed this recommendation through Aboriginal Affairs' work to support community organisations developing plans. In keeping with the principle of self-determination, the NSW Government has also sought to ensure that plans are community-owned and developed initiatives such as the Aboriginal Community

Development Program and the Partnership Community Program, currently through the Local Decision Making under OCHRE (the NSW Government's community-focused plan for Aboriginal affairs).


 *New South Wales has implemented Recommendation 204 by ensuring Aboriginal people participate in bodies that make decisions which affect their communities.*

In **Victoria**, Aboriginal and Torres Strait Islander individuals were involved in the development of the *Aboriginal Affairs Framework 2013-2018* and the *AJA*. The Victorian Aboriginal Education Association provides advice to the Office of Training and Further Education on course planning and other supports. In addition, a Koori Advisory Committee was established in each TAFE college that has a significant Aboriginal and Torres Strait Islander community. In the health space, the Koori Health Unit encouraged consultation between the former Department of Health and Community Services and local community organisations on the health perspectives of community plans. Funding has previously been provided for research and development officer positions for the Victorian Tripartite Council of Koori Health. Established by the Office of Youth Affairs, Regional Youth committees feature in eight Victorian regions. These committees consider Aboriginal and Torres Strait Islander issues in light of developing Youth Strategy Plans to help co-ordinate service delivery to young people and their families.


 *Victoria has implemented Recommendation 204 by ensuring Aboriginal and Torres Strait Islander people participate in bodies that make decisions which affect their communities.*

Queensland reported in 1997 that it supports this recommendation and is working towards formulating community development plans with the Aboriginal and Torres Strait Islander Commission. Currently, all local governments in Queensland, including Aboriginal and Torres Strait Islander local governments, are required to comply with the local governments' principles under the *Local Government Act 2009* (Qld), which include: transparent and effective processes, decision-making in the public interest, democratic representation, social inclusion, and meaningful community engagement.


Currently there is no requirement in Queensland's Local Government legislation for Councils to have community development plans. However, in the planning process generally, Councils must comply with the Local Government principles, which include community consultation and social inclusion.

 *Queensland has mostly implemented Recommendation 204 by requiring its local governments to undertake meaningful community engagement, and consider public interest and social inclusion in its decision-making and planning process generally. However, no evidence of the preparation of community development plans (which including the views and aspirations of Aboriginal people in the local area) have been provided. Further there is no evidence that similar community development plans have been developed in a culturally sensitive, unhurried and holistic in way.*

South Australia reported in the 1994 implementation report that agencies assisting in the development of these plans observe the principles outlined in this recommendation. In 2008, Aboriginal and Torres Strait Islander community structure plans were developed for certain APY and Aboriginal Lands Trust communities, including the framework for land-use planning and development considerations in South Australia's Aboriginal and Torres Strait Islander communities. They provide each community and the land-holding authority with a guide to future growth and development, particularly housing, infrastructure and other integrated development by communities and state government agencies. In addition, the Government is committed to ensuring Aboriginal and Torres Strait leaders have a voice through its new, tiered approach to governance and leadership.

 *South Australia has implemented Recommendation 204 by requiring agencies to observe the principles contained in this recommendation.*


Similar to the **Western Australian** response to Recommendation 203 and 201, the Aboriginal Affairs Directorate ensured maximum involvement of Aboriginal and Torres Strait Islander people in regional councils. In this vein, Community Development and Funding Officers were placed in all District Offices; however, it was stated that more work needs to be done in order to ensure that these Officers are present in more locations across the State.

 *Western Australia has partially implemented Recommendation 204 by encouraging maximum involvement of Aboriginal and Torres Strait Islander people in regional councils and employing Community Development and Funding Officers. However, it is not clear whether these principles have been used in developing community development plans.*

Tasmania noted in the 1993 implementation report that they considered this recommendation to be a matter for ATSIC and therefore the only action in response to this recommendation should be the provision of advice and opinion. As per their response to Recommendation 203, the Tasmanian Government is committed to supporting the Cape Barren Island community to achieve its short, medium and long-term aspirations, with a particular focus on housing and infrastructure.

 *The Tasmanian government has not implemented Recommendation 204 as there is no evidence of relevant action taken in response.*


Aboriginal and Torres Strait Islander communities were reported in the 1995 implementation report to be more heavily involved in the **Northern Territory's** former Department of Lands, Housing and Local Government, and that these Aboriginal and Torres Strait Islander communities play a vital role in monitoring the effectiveness of community plans, negotiating agreements and developing principles and protocols for community planning. The Aboriginal Development Unit within the Department of Education was involved in many planning exercises which worked to ensure that there was continuity in plan maintenance and future development. Input from Aboriginal and Torres Strait Islander groups and councils was also sought and incorporated by the Department of Industries and Development in the development of Regional Economic Development Strategies. The Northern Territory Government has also indicated that it is implementing a policy of Local Decision Making and through the Department of the Chief Minister, in consultation with communities and peak bodies.

 *The Northern Territory has implemented Recommendation 204 by ensuring Aboriginal and Torres Strait Islander communities participate in the development of community development plans.*

The **Australian Capital Territory's** former Aboriginal and Torres Strait Islander Advisory Council represented the Aboriginal and Torres Strait Islander community in the ACT Government. This council provided input into the plans developed by the ACT Planning Authority. Within the ACT Department of Education and Training, and the Canberra Institute of Technology, the Aboriginal Education Strategic Initiative Plan supplemented, at the time of the 1997 implementation report, mainstream educational funding arrangements, based on the priorities of each education sector. Priority sectors and subsequent individual institution operational plans were developed in consultation with various Aboriginal and Torres Strait Islander organisations.

Since this time, the ACT Aboriginal and Torres Strait Islander Elected Body has been established to ensure maximum participation by Aboriginal and Torres Strait Islander people in the ACT in the formulation, coordination and implementation of Government policies and services that affect them.

The Elected Body receives, and passes on to the Minister, the views of Aboriginal and Torres Strait Islander people living in the ACT on issues of concern to them. Although there is no discreet community development plan for the Aboriginal and Torres Strait Islander community in the ACT, the Whole of Government Aboriginal and Torres Strait Islander Agreement articulates key focus areas identified by the ACT Aboriginal and Torres Strait Islander community, ACT Government, service partners and Aboriginal and Torres Strait Islander organisations. This Government Aboriginal and Torres Strait Islander Agreement fulfils part of Recommendation 204.

 *The Australian Capital Territory has implemented Recommendation 204 through the formation of the ACT Aboriginal and Torres Strait Islander Elected Body and the development of the Whole of Government Aboriginal and Torres Strait Islander Agreement.*

8.2 Accommodating difference: relations between Aboriginal people and non-Aboriginal people (205-213)

Recommendation 205

That:

- a. *Aboriginal media organisations should receive adequate funding, where necessary, in recognition of the importance of their function; and*
- b. *All media organisations should be encouraged to develop codes and policies relating to the presentation of Aboriginal issues, the establishment of monitoring bodies, and the putting into place of training and employment programs for Aboriginal employees in all classifications.*

Background information

The RCIADIC Report considered that Aboriginal and Torres Strait Islander involvement in media would have a considerable impact on facilitating a broader understanding of Aboriginal and Torres Strait Islander affairs.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Media organisations may receive funding from both the Commonwealth, and State and Territory governments.

Key actions taken and status of implementation

The **Commonwealth** Government has undertaken the following actions in response to Recommendation 205. In 1993, ATSIC adopted a new Broadcasting Policy which enabled Aboriginal and Torres Strait Islander people to control their own broadcasting and communications services, and production of their own linguistically and culturally relevant programs.

The National Indigenous Media Association of Australia (NIMAA), as part of the Broadcasting for Remote Aboriginal Communities Scheme, was given priority for consolidating its position. One-off capital grants were also provided to aspiring licences and other broadcasters.


Several co-regulatory broadcasting codes of practice, developed by broadcasting industry groups and registered by the Australian Communications and Media Authority (ACMA) acknowledge the importance of respectful, accurate and sensitive portrayal of culture and customs of Aboriginal and Torres Strait Islander people and, in some cases, encourage consultation with Aboriginal and Torres Strait Islander media organisations:

- The community radio and community television codes of practice include specific provisions containing protocols regarding Aboriginal and Torres Strait Islander content and representation.
- The commercial radio and commercial television codes of practice refer to guidelines or advisory notes relevant to the portrayal of Aboriginal and Torres Strait Islander people, which are available online but do not form part of the codes of practice.

In respect of the national broadcasters, the Australian Broadcasting Corporation and the Special Broadcasting Service:

- The Australian Broadcasting Corporation (ABC) has an Editorial Guidance Note on 'ABC Indigenous Content'.
- The Special Broadcasting Service (SBS) code of practice includes specific provisions regarding Aboriginal and Torres Strait Islander content and representation. Under paragraph 10(1)(j) of the *Special Broadcasting Service Act 1991*, the SBS Board is required to develop a code of practice relating to programming matters and to notify this codes to the ACMA. This code is called the SBS Codes of Practice 2014.

The SBS receives funding from the Commonwealth to maintain the delivery of the National Indigenous Television Service (NITV), a service which promotes Aboriginal and Torres Strait Islander culture and issues through community developed content. The funding is not directly allocated to NITV. The Department of Prime Minister and Cabinet has administered funding of up to \$63.3 million from 2017-18 to 2019-20 for Aboriginal and Torres Strait Islander broadcasting and media organisations.

 *Recommendation 205 has been fully implemented at the Commonwealth level through initiative such as ATSI's Broadcasting Policy, the consolidation of NIMAA, and relevant co-regulatory broadcasting codes of practice registered by the ACMA and related guidelines and advisory notes, and guidance notes and codes developed by the ABC and SBS.*

New South Wales stated in 1993 that it supports this recommendation, as evidenced by funding allocated through the NSW Film and Television Office for Aboriginal content. Funding was provided based on merit, covering a broad range of issues pertaining to the Aboriginal population.

Since 2014-15, the NSW Government has provided over \$5.7 million for programs and projects that explore a diversity of Aboriginal arts and cultural practice, including organisational funding and screen productions with Aboriginal key creatives or significant Aboriginal content. Create NSW has also invested over \$3.8 million in Aboriginal Arts and Culture under the NSW Aboriginal Arts and Cultural Strategy 2010-2014.


Create NSW has also developed Aboriginal Arts and Cultural Protocols. Funded screen productions involving Aboriginal content or participation must comply with Screen Australia's protocols. Create NSW is also a member of MediaRING – a volunteer association of industry and screen organisations. It brings together broadcasters, Government media agencies and Aboriginal organisations, among others, to work together to create opportunities for Aboriginal people working in the media.

 *New South Wales has implemented Recommendation 205 by providing funding to Aboriginal media organisations and implementing appropriate protocols under Create NSW.*

In 1994, **Western Australia** was in the process of expanding the operation of Aboriginal and Torres Strait Islander broadcasting stations in Perth, Kununurra, Halls Creek, Fitzroy Crossing and Broome. Western Australia reported that there had been increased funding to Aboriginal and Torres Strait Islander media organisations, however more funding needed to be provided in order to fully achieve the desired outcomes. Western Australia also noted that this is an issue primarily relating to action required by the Commonwealth Government.

In their implementation reports, **Victoria** (1994), **Tasmania** (1993), **Queensland** (1997), **South Australia** (1994) **the Northern Territory** (1997) and the **Australian Capital Territory** (1997) all noted that this recommendation is not a jurisdictional responsibility.

However, the Australian Capital Territory has noted that it currently funds the community radio station 2XX to provide programming to Aboriginal and Torres Strait Islander people.

 *Victoria, Queensland, Western Australia, Tasmania, South Australia, and the Northern Territory, have not implemented Recommendation 205.*

 *The Australian Capital Territory has taken limited steps towards implementing Recommendation 205, through funding of Aboriginal and Torres Strait Islander content on community radio.*

Additional commentary

With regards to the **Commonwealth** Government's response to this recommendation, the ACMA has advised that the NIMAA was replaced by a peak body called the Australian Indigenous Communications Association. However, in November 2016, the Australian Indigenous Communications Association (AICA) decided to wind-up its operations through a process of voluntary liquidation. Another representative body, the Indigenous Remote Communications Association, is currently expanding its role and representation to become the national peak body for the Aboriginal and Torres Strait Islander broadcasting, media and communications industry.

Queensland stated in 1997 that it supports this recommendation, however notes that this is a matter for the Commonwealth Government and media organisations. The Queensland Government noted an intention to develop codes of practice and employment in the media industry in line with this recommendation by collaborating with the then Department of Family Services and Aboriginal and Islander Affairs, and the then Australian Journalists Association.

Western Australia noted that there is a significant number of Aboriginal and Torres Strait Islander media organisations across Western Australia, indicating that sufficient support is being provided in a competitive media industry. It has also been noted that many non-Aboriginal and Torres Strait Islander media organisations have developed relevant codes of conduct that guide the way they present all issues, including those pertaining to Aboriginal people

Recommendation 206

That the media industry and media unions be requested to consider the establishment of and support of an annual award or awards for excellence in Aboriginal affairs reporting to be judged by a panel of media, union and Aboriginal representatives.

Background information


The RCIADIC Report identified that incentivising the reportage of Aboriginal and Torres Strait Islander issues and promoting it as a worthy field of journalistic endeavour would go some way towards encouraging a greater media uptake of Aboriginal and Torres Strait Islander affairs, and may catapult Aboriginal and Torres Strait Islander issues to the forefront of Australia's public policy agenda.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires both the Commonwealth, and the States and Territories contribute in order to achieve the desired outcomes.

Key actions taken and status of implementation


The **Commonwealth** Government's Council for Aboriginal Reconciliation sponsored a special award at the 1992-93 United Nations Association of Australian Media Peace Awards in support of this recommendation, which was sponsored again in 1995. The Walkley Award has recognised excellence in the coverage of Aboriginal and Torres Strait Islander affairs since 1997.

 *Recommendation 206 has been implemented through the awards which have been established.*

In **New South Wales** the Media Entertainment and Arts Alliance Regional media awards contain categories that encompass reporting on Aboriginal issues. Additionally, the Kennedy Awards established the John Newfong Award for "Outstanding Reporting of Indigenous Affairs", alongside the Multicultural and Indigenous Media Awards.

 *New South Wales has implemented Recommendation 206 by establishing and supporting annual awards for excellence in Aboriginal reporting. I*

Victoria does not have any current programs or policies that relate directly to Recommendation 206. However, the Victorian Government did note that Aboriginal Victoria actively promotes its programs, policies and events regarding Aboriginal Affairs to mainstream media to advance Aboriginal Affairs and increase recognition and appreciation of Aboriginal culture.

 *Victoria has not taken any steps to directly address Recommendation 20. However, Victoria did note that Aboriginal Victoria actively promotes its programs, policies and events regarding Aboriginal Affairs to mainstream media.*

The **Queensland** Clarion Awards for journalism introduced a specific category for reporting on Aboriginal and Torres Strait Islander reporting. Additionally, the A V Myer Indigenous Award for Exceptional Talent acknowledges Aboriginal and Torres Strait Islander talent in the screen arts and broadcast sector, alongside the Red Ochre Award, and the Telstra National Aboriginal and Torres Strait Islander award.

- *Queensland has implemented Recommendation 206 by including a specific category for reporting on Aboriginal and Torres Strait Islander affairs in the Clarion Awards.*

In **South Australia, Tasmania, and the Northern Territory**, the Media Entertainment and Arts Alliance Regional media awards contain categories that encompass Aboriginal and Torres Strait Islander reporting. Tasmania and the Northern Territory note that this recommendation is a consideration for the Commonwealth government, not the States and Territories.

- *South Australia, Tasmania and the Northern Territory have implemented Recommendation 206 via the Media Entertainment and Arts Alliance Regional media awards.*

In **Western Australia**, the Louis St John Johnson Media Awards Scheme was established to annually judge and award prizes in Aboriginal and Torres Strait Islander affairs reporting. The Media Entertainment and Arts Alliance Regional media awards also encompass Aboriginal and Torres Strait Islander reporting. Although the Louis St John Johnson media award is no longer funded, the Western Australian Government has sponsored a broader category award in 2017 for the Best Social Equity Report.

- *Western Australia had implemented Recommendation 206, with the previous Louis St John Johnson media award. However, this award is no longer funded. As this award is no longer funded, Western Australia is not considered to have implemented Recommendation 206, noting that Western Australia does not consider this to be a recommendation applicable to the State.*

The **Australian Capital Territory** noted in 1997 that this is not a state/territory responsibility and has therefore not taken any action in response to this recommendation.

- *The Australian Capital Territory has not made any progress towards implementation of Recommendation 206, noting that it considers it to be outside of its responsibilities.*

Additional commentary

With regards to the **Commonwealth** Government's response to Recommendation 206, the ACMA advised that the NAIDOC awards, while not specifically media-focused, provide scope for journalists to be recognised for their role in raising the profile of Aboriginal and Torres Strait Islander issues. The SBS' *Spirit Initiative* is a professional development opportunity developed by NITV in partnership with the Indigenous Remote Communications Association. It is awarded to an Aboriginal and Torres Strait Islander content maker and offers a work placement at NITV, conference attendance and support for the production of Aboriginal and Torres Strait Islander content.

Recommendation 207

That institutions providing journalism courses be requested to:

- Ensure that courses contain a significant component relating to Aboriginal affairs thereby reflecting the social context in which journalists work; and*
- Consider, in consultation with media industry and media unions, the creation of specific units of study dedicated to Aboriginal affairs and the reporting thereof.*

Background information


A collaborative approach between the education provider and the Aboriginal and Torres Strait Islander community will help to ensure the accuracy and quality of reporting on Aboriginal and Torres Strait Islander affairs.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation largely relates to the Commonwealth, given the level of higher education funding provided by the Commonwealth; however, cooperation from the States and Territories is required to achieve full implementation.

Key actions taken and status of implementation

In 1995, the **Commonwealth** Government's Council for Aboriginal Reconciliation commissioned the production of a video to provide training in cultural awareness and background information for cadet journalists and journalism students. The video was distributed for free to journalism and communications departments in tertiary educations and to media organisations for training purposes. Between 2005 and 2009, the Department of Immigration and Citizenship, in partnership with several universities, Media Monitors and the SBS funded the Journalism in Multicultural Australia Project (now the Reporting Diversity Project) which was established to raise awareness of the way multicultural affairs are reported in the Australian media so as to identify ways of improving journalistic practice.


 *Recommendation 207 has been partially completed. The Department of Education notes that, despite their government funding, Australian universities are fundamentally autonomous institutions that self-accredit their course offerings, and that the Commonwealth Government does not intervene in their academic or corporate policies and procedures.*

New South Wales reported in 1993 that this recommendation primarily refers to Commonwealth responsibilities, as the federal Department of Education is responsible for Universities. As of 1993, NSW TAFE did not run any journalism courses.


 *New South Wales has not addressed Recommendation 207, noting that they consider it to be outside of its responsibilities.*

The **Victorian** Department of Education and Training advocates that all discipline areas (not limited to journalism) should contain components relating to cultural understanding, Aboriginal history and perspectives, reflecting the wider social context in which students study, work and live in Victoria.


A formal partnership between nine Victorian universities and the Victorian Aboriginal Education Association Incorporated has been established through the Toorong Marnong Victorian Higher Education Accord. The Toorong Marnong Higher Education Accord is jointly auspiced by Victorian Aboriginal Education Association Incorporated and the Victorian Vice-Chancellors' Committee. It aims to develop ways in which the nine Victorian universities can co-operate to enhance their engagement with Aboriginal and Torres Strait Islander communities.

 *Victoria has partially implemented Recommendation 207, with broad support and advocacy for courses that contains components relating to cultural understanding, Aboriginal and Torres Strait Islander history and perspectives. However, Victoria has not implemented any specific policies or programs that relate directly to journalism or media training content.*

In **Queensland**, the University of Queensland's School of Journalism provided students with the opportunities to go on rural placements as a part of Reporting Indigenous Issues courses. The Queensland 1993 implementation report stated that this recommendation is a Commonwealth responsibility.


 *Queensland has partially implemented Recommendation 207 by providing students with the opportunity to go on rural placements as part of a Reporting Indigenous Issues course but has not addressed elements of parts (a) and (b) in its response.*

The University of **South Australia's** Bachelor of Arts (Journalism) degree specifically focuses on the reporting of Aboriginal and Torres Strait Islander affairs through a number of second and third year subjects. These courses cover racism in the media and how to report on Aboriginal and Torres Strait Islander affairs effectively. Journalism students are also required to undertake an Australian Studies class which discusses Australia's past treatment of Aboriginal and Torres Strait Islander people. However, South Australia considers that this is not a jurisdictional responsibility.


 *South Australia has fully implemented Recommendation 207 through the focus on Aboriginal and Torres Strait Islander affairs in journalism studies at the University of South Australia. Other universities in South Australia do not appear to offer a course on journalism studies.*

Western Australia has implemented this recommendation at the three universities which offer journalism courses. Each of these courses highlight Aboriginal and Torres Strait Islander issues with


the intent to discourage negative stereotyping. Specifically, Edith Cowan's journalism course includes three subjects relating to Aboriginal and Torres Strait Islander affairs. Curtin University's Centre for Aboriginal Studies offers three courses in Aboriginal and Torres Strait Islander studies and Murdoch University's Graduate Diploma in Journalism highlights Aboriginal and Torres Strait Islander issues.

 *Western Australia has fully implemented Recommendation 207, through the development of courses at three universities, which focus on Aboriginal and Torres Strait Islander affairs in journalism. Each of these courses highlights Aboriginal and Torres Strait Islander issues with the intent to discourage negative stereotypes.*


Tasmania noted in 1995 that this is not a state responsibility and has therefore not made any action in response to this recommendation.

 *Tasmania has not implemented Recommendation 207 and considers that it is outside of its responsibilities.*

The **Northern Territory** reported in 1997 that this recommendation has been implemented and "action is continuing" however the specific nature of this action was not specified.

 *The Northern Territory has partially addressed Recommendation 207. The Government considers that the recommendation is complete, but has not provided evidence of actions that it has taken to address the recommendation.*

The **Australian Capital Territory's** Aboriginal Studies and Media Course Frameworks were being reviewed in 1997 to give consideration to specific units of study aimed at Aboriginal and Torres Strait Islander affairs and reporting. Currently, all students journalism degrees offered in the Australian Capital Territory are required to reflect on the reporting of Aboriginal and Torres Strait Islander issues in the Australian media in the teaching of journalism ethics. In the past, the former chair of the Royal Commission into Indigenous Deaths in Custody, Senator Patrick Dodson has presented on issues surrounding the representation of Aboriginal and Torres Strait Islander people in politics and the media.

 *The Australian Capital Territory has implemented Recommendation 207 through the development of higher education courses and specific units of study, which focus on Aboriginal and Torres Strait Islander affairs in journalism.*

Recommendation 208

That, in view of the fact that many Aboriginal people throughout Australia express disappointment in the portrayal of Aboriginal people by the media, the media industry and media unions should encourage formal and informal contact with Aboriginal organisations, including Aboriginal media organisations where available. The purpose of such contact should be the creation of a better understanding, on all sides, of issues relating to media treatment of Aboriginal affairs.

Background information

The RCIADIC Report noted that there had been an increase in public awareness of the ignorance and prejudice faced by Aboriginal and Torres Strait Islander people, and that it is in the best interest of the media and Aboriginal and Torres Strait Islander organisations to form a mutual understanding of how Aboriginal and Torres Strait Islander people are to be presented in the media.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation, as they have joint responsibility for making these expectations clear to media organisations.

Key actions taken and status of implementation

The **Commonwealth** Government's 1995-96 *Annual Report* noted that the Council for Aboriginal Reconciliation offered courses for journalists with the intent of raising cultural awareness.


The *SBS Act 1991* requires that members of its Community Advisory Committee have interests “relevant to, and an understanding of, ethnic, Aboriginal and Torres Strait Islander communities”.

Commercial Radio Australia’s Commercial Radio Guidelines March 2017 encourages commercial radio broadcasters to contact the Australian Indigenous Communications Association (AICA) for assistance on specific questions regarding the portrayal of Aboriginal and Torres Strait Islander people, noting that AICA has decided to wind-up its operations through a process of voluntary liquidation. Another representative body, the Indigenous Remote Communications Association, is currently expanding its role and representation to become the national peak body for the Aboriginal and Torres Strait Islander broadcasting, media and communications industry.


Free TV Australia’s Advisory Note on The Portrayal of Aboriginal and Torres Strait Islander Peoples encourages reporters, wherever practicable, to consult local Aboriginal and Torres Strait Islander groups when preparing news and current affairs.

The ABC’s Editorial Guidance Note: ABC Indigenous Content includes reference to consultation with Aboriginal and Torres Strait Islander organisations, including representative bodies and land councils. The SBS’ Code of Practice 2014 (revised March 2016) refers to consultation with Aboriginal and Torres Strait Islander people in the making of content about Aboriginal and Torres Strait Islander people.


The Community Radio Broadcasting Codes of Practice (October 2008) encourages licensees to consult with appropriate Aboriginal and Torres Strait Islander media organisations on appropriate forms of communication when producing programs focusing on Aboriginal and Torres Strait Islander people and issues. The Community Television Broadcasting Codes of Practice (June 2011) encourages licensees to seek appropriate advice on Aboriginal and Torres Strait Islander protocols and practices from Aboriginal and Torres Strait Islander community broadcasting sector organisations.

 *Recommendation 208 has been fully completed through the range of co-regulatory broadcasting codes of practice, which are evidence of the Commonwealth’s national leadership role in driving implementation of this recommendation.*

The 1993 implementation reported noted that, in response to this recommendation, the **New South Wales** Anti-Discrimination Board previously actioned: resolution of complaints of racial vilification made by Aboriginal people; negotiation with the police force and adoption of acceptable descriptions which work to avoid stereotyping of Aboriginal people involved in criminal or other incidents in the media, and; education sessions on racial vilification with media representatives. Vilification guidelines targeting the media were drafted in consultation with the media regarding the portrayal of Aboriginal people, groups and issues.

 *New South Wales has fully implemented Recommendation 208.*

The **Victorian** (1993), **South Australian** (1994), **Tasmanian** (1995) and **Australian Capital Territory** (1995) implementation reports noted that they support this recommendation however considered that the recommendation is not relevant to the States and Territories.


 *Victoria, South Australia, Tasmania, and the Australian Capital Territory have not taken action to address Recommendation 208, noting that they consider it to be outside of their responsibilities.*

The **Queensland** implementation report in 1994 noted that they did not believe the recommendation was relevant to the States and Territories. However, Screen Queensland’s Aboriginal and Torres Strait Islander Strategy 2016-2019 celebrates Aboriginal and Torres Strait Islander culture nationally and internationally through mainstream media and innovative platforms. Screen Queensland is a member of the Screen Diversity and Inclusion Network and MediaRING, an organisation that enhances career opportunities for Aboriginal and Torres Strait Islander Australians in the media.


 *Queensland has fully implemented Recommendation 208.*

In **Western Australia**, as of 1997 there was ongoing work into the implementation of this recommendation. The Telling Both Stories media forum developed by the Aboriginal Affairs Directorate in 1994 brought together representatives from Aboriginal and Torres Strait Islander

organisations and media, general media, unions and schools of journalism to foster relationships between these groups. This contact has been further strengthened through additional media forums in 1992 and 1994 by the Centre for Research and Culture and Communication at Murdoch University. Since this time, Western Australian universities teaching journalism have also included course content that highlights Aboriginal and Torres Strait Islander issues with the intent to discourage negative stereotypes.

 *Western Australia has fully implemented Recommendation 208.*

In the **Northern Territory**, funding was provided to Imparja Television to facilitate the broadcasting of Aboriginal and Torres Strait Islander specific content. Additionally, the Northern Territory's *Territory Business* magazine covers local Aboriginal and Torres Strait Islander stories and issues. The NT Government notes that this recommendation is a matter that only the media and Aboriginal and Torres Strait Islander representative can implement.

 *The Northern Territory has fully implemented Recommendation 208.*

Recommendation 209

That continuing support should be given to Aboriginal organisations such as the Aboriginal Arts Board in their endeavours to protect the interests of Aboriginal artists and to ensure the continuing expansion of the production and marketing of Aboriginal art and craft work.

Background information

The RCIADIC Report suggested that the production of Aboriginal and Torres Strait Islander art raises awareness of Aboriginal and Torres Strait Islander culture, beliefs and ways of seeing the world.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The Commonwealth, and the States and Territories are both responsible for funding Aboriginal and Torres Strait Islander art-related organisations.

Key actions taken and status of implementation

The **Commonwealth** Government's Australia Council adopted the National Aboriginal and Torres Strait Islander Arts Policy in May 1997. One of the objectives of this policy consisted of "developing better ways to support Aboriginal and Torres Strait Islander artists and art organisations". The DCA's IVAIS program also contributes to the implementation of Recommendation 209 (as discussed in the response to Recommendation 56).

The responsibilities of the Australia Council's former Aboriginal Arts Board continue to be delivered by the Council's Aboriginal and Torres Strait Islander Arts Strategy and Peer Assessment Panel.

- The Panel oversees the Council's policies, projects and programs that support and protect Aboriginal and Torres Strait Islander arts and culture. The Panel also considers the role of Aboriginal and Torres Strait Islander arts and culture and the cultural dimension of Aboriginal and Torres Strait Islander artistic expression as part of Australia's overall arts ecology.
- The Council's strategic initiatives support development of markets and audiences for Aboriginal and Torres Strait Islander arts nationally and internationally. These initiatives build the capacity of Aboriginal and Torres Strait Islander artists and arts organisations, enabling cultural exchange and intergenerational transfer of artistic and cultural knowledge. A key strategic initiative is the First Nations Audience and Market Development Strategy Framework, which encompasses both national and international markets.

 *Recommendation 209 has been mostly implemented through the National Aboriginal and Torres Strait Islander Arts Policy.*

New South Wales reported in 1993 that they have supported a number of Aboriginal arts organisations and cultural grants programs through the former Ministry for the Arts, since the release of the RCIADIC report, through the *New South Wales Regional Arts Fund*. Community liaison projects


between museums and communities for the re-development of exhibitions and management of Aboriginal cultural material have also been supported.

Currently, Create NSW invests in a range of programs that have effectively increased professional employment opportunities for Aboriginal arts workers. These include the Aboriginal Regional Arts Fund, the Aboriginal Quick Response Program, Accelerate, the NSW Aboriginal Arts Fellowship and the Troy Cassar-Daley scholarship for an emerging Aboriginal country music artist. Create NSW has announced a new fund that will offer individuals and organisations up to \$75,000 towards projects and employment that support a vibrant Aboriginal arts and cultural sector in NSW.

The Creative Koori Aboriginal Strategic Program has also been set up. The purpose of this program is to support projects that increase employment for Aboriginal people at all stages of their artistic practice, build the capacity of NSW Aboriginal arts and cultural organisations and increase the professional skills development of Aboriginal artists.


 *New South Wales has implemented Recommendation 209 by providing funding for Aboriginal arts programs.*

The **Victorian** Government has provided significant funding to promote the production and marketing of Aboriginal and Torres Strait Islander art and craft through Arts Victoria and Aboriginal Affairs Victoria. Specifically, the Aboriginal Cultural Heritage program provides funding that underpins a number of cultural heritage activities. In 1993-94 and 1994-95, Aboriginal Affairs Victoria (in conjunction with the Victorian Government) provided funding for six programs, while Arts Victoria provided funding for a further six programs, the Public Record Office of Victoria supported one program, and Film Victoria supported an additional six programs. An example of these programs include the *Arts Victoria Indigenous Professional Development Program*.

 *Victoria has implemented Recommendation 209 by providing funding for Aboriginal and Torres Strait Islander arts programs.*

Queensland implemented the *Indigenous Regional Arts Development Fund* and the *Queensland Indigenous Arts Marketing and Export Agency*. In 1991-92, grants in excess of \$200,000 were allocated to Aboriginal and Torres Strait Islander themed arts and culture programs. The-then Department of Family Services and Aboriginal and Islander Affairs, and Colleges of Technical and Further Education jointly designed a course aimed at assisting Aboriginal and Torres Strait Islander people to produce and market their art and craft. The Aboriginal and Torres Strait Islander art and craft industry received upgraded financial and staffing support in response to a review conducted by the Arts Division of the former Department of the Premier.

Currently, the Backing Indigenous Arts Initiative aims to build a stronger, more sustainable and ethical Aboriginal and Torres Strait Islander arts industry in Queensland by supporting a range of initiatives, including a network of Indigenous Art Centres, the Cairns Indigenous Art Fair, continuation of the Indigenous Regional Arts Development Fund program, and the Aboriginal Centre for the Performing Arts.

 *Queensland has implemented Recommendation 209 by providing funding for Aboriginal and Torres Strait Islander arts programs.*

South Australia's Department for the Arts and Cultural Heritage provided two grant programs to support and encourage Aboriginal and Torres Strait Islander Arts following the release of the RCIADIC report. This included: project grants (representing approximately 12.6% of the total project grants for all art form areas) and general purpose grants (including general purpose funding to three Aboriginal and Torres Strait Islander arts organisations). Specifically, South Australia implemented the *Project Assistance* program, and the *Individual Artist Development Program*.

The Ananguku Arts and Culture Aboriginal Corporation delivers services for APY and other regional arts centres and artists on an annual basis, and is supported by the SA Government through Arts SA's grant programs, and nationally through the Australian Government's Indigenous Visual Arts Industry Support program. Arts SA is developing the inaugural Arts South Australia Aboriginal Arts Strategy to

identify the aspirations of South Australian Aboriginal and Torres Strait Islander artists and organisations that supports arts and culture, and to identify ways to meet aspirations.

- *South Australia has implemented Recommendation 209 by providing funding for Aboriginal and Torres Strait Islander arts programs.*

In **Western Australia**, the Department for the Arts conducted training seminars, and encouraged the participation of Aboriginal and Torres Strait Islander representatives in the steering committee and consultancy team for the 1994 feasibility study for a new National Institute of Aboriginal Culture. Currently the Western Australian Aboriginal Arts Grants program works to expand the production and marketing of Aboriginal and Torres Strait Islander art and craft via a series of strategies. These strategies include: Revealed - Emerging Aboriginal Artists from WA (exhibition, marketplace, symposium, professional development); and Future Focus for WA Aboriginal Art Centres, a funding program targeted at developing Aboriginal art centre viability and opening new commercial markets.

- *Western Australia has implemented Recommendation 209 by providing funding for Aboriginal and Torres Strait Islander arts programs.*

The **Tasmanian** government provided, at the time of the 1995 implementation report, annual funding through the *Aboriginal Arts Fund* to Arts Tasmania, which included an Aboriginal Arts Advisory Group that advised the-then Minister for Education and the Arts on issues impacting the development of Aboriginal and Torres Strait Islander artists in Tasmania. Currently, the Tasmanian Department of State Growth supports the Aboriginal Arts Advisory Committee, which provides advice to the Tasmanian Arts Advisory Board.

- *Tasmania has partially implemented Recommendation 209 by supporting the Aboriginal Arts Advisory Committee but has not addressed the specific nature of its support.*

The-then **Northern Territory** Office of the Arts and Cultural Affairs provided, at the time of the 1995 implementation report, financial assistance, advocacy, consultation and cultural policy development to Aboriginal and Torres Strait Islander people. This included working with agencies such as the Museum and Art Galleries of the Northern Territory. Support was also provided by the Office to organisations such as the Northern Territory University and Arts Training NT, who played an active role in promoting Aboriginal and Torres Strait Islander arts and cultural activity.

- *The Northern Territory has implemented Recommendation 209 by providing funding for Aboriginal and Torres Strait Islander arts programs.*

The strategic plan prepared by the **Australian Capital Territory** Cultural Council in 1997 illustrated the need to provide increased opportunities to Aboriginal and Torres Strait Islander people to participate in both mainstream and Aboriginal and Torres Strait Islander specific programs and services. Priority was given to the facilitation and development of Aboriginal and Torres Strait Islander arts, culture and heritage practice and policies in the ACT through Aboriginal and Torres Strait Islander leadership practices.

The Australian Capital Territory Government has also noted its support of Aboriginal and Torres Strait Islander artists and communities through artsACT and support of Aboriginal and Torres Strait Islander businesses through the ACT Government's Indigenous Business Development and Entrepreneur Program. Further, the Australian Capital Territory Government has indicated that it supports the ongoing involvement in the arts for those Aboriginal and Torres Strait Islander people in custody.

- *The Australian Capital Territory has partially implemented Recommendation 209 by facilitating and developing Aboriginal and Torres Strait Islander arts.*

Recommendation 210

That:

- a. *All employees of government departments and agencies who will live or work in areas with significant Aboriginal populations and whose work involves the delivery of services to*

Aboriginal people be trained to understand and appreciate the traditions and culture of contemporary Aboriginal society;

- b. Such training programs should be developed in negotiation with local Aboriginal communities and organisations; and*
- c. Such training should, wherever possible, be provided by Aboriginal adult education providers with appropriate input from local communities.*

Background information

To combat institutionalised racism, the RCIADIC Report considered that government service providers – such as healthcare professionals, law enforcement officers and education providers – should acquire an understanding and respect for the communities to which they are providing services.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation, as the implementation of this recommendation requires action from all levels of government.

Key actions taken and status of implementation


Between 1992 and 1996, the **Commonwealth** Government's ATSIC delivered a Cross Cultural Awareness Program that provided training to all ATSIC staff to increase awareness of cross-cultural differences.

The Australian Public Service Commission (APSC) has developed the Aboriginal and Torres Strait Islander Cultural Capability: A Framework for Commonwealth Agencies which serves as a basis for building the cultural capability of the Commonwealth public sector. It explains the skills, knowledge, and practices that employees need to perform their duties in a culturally-informed way.

In June 2008, the AFP undertook Cultural Awareness Training as part of their RAP. The aim of this training was to improve their corporate understanding of Aboriginal and Torres Strait Islander cultures.

PM&C offers the Cultural Appreciation Programme to all staff. It is a comprehensive one-day training program delivered by Aboriginal and Torres Strait Islander PM&C staff to build skills, knowledge and appreciation of Aboriginal and Torres Strait Islander history, cultures and issues.


DET noted that the Core Cultural Learning: Aboriginal and Torres Strait Islander Australia Online Foundation Course was developed to provide an authoritative introductory platform for cultural capability training across the Commonwealth. The course aims to support the development of the foundational or baseline competencies all Commonwealth Government employees should possess. It is offered by a number of Commonwealth agencies as part of their mandatory staff training.

 *While the several Commonwealth agencies have taken action to respond to Recommendation 210, a lack of consistent application across all relevant agencies means that this recommendation is only mostly completed.*


The requirements of this recommendation were already current practice in **New South Wales** prior to the release of the RCIADIC report, as noted in the 1993 implementation report. Since the RCIADIC, and in response to the Stolen Generations Reparations Report recommendations, a cross-sector Aboriginal cultural awareness program has been initiated. This program complements a number of cultural training policies, such as Respecting the Difference: An Aboriginal Cultural Training Framework for NSW Health (2011), the Family and Community Services' Aboriginal Cultural Capability Framework, the Department of Education's Aboriginal Education Policy, and NSW Police's Policing Aboriginal Communities training. Those entering the police force also receive preparatory training which includes an Aboriginal component.

In various instances, training has been developed in negotiation with local communities, such as the Gundungurra people in the delivery of cultural heritage workshops for Jenolan Caves Reserve Trust staff and the Taronga people in the delivery of programs such as the Taronga cultural awareness


program and the Animals of the Dreaming program. Training programs have also been provided by Aboriginal adult education providers, such as Corporate Culcha, an Aboriginal-owned and operated company, which designs and delivers training for the Office of Environment and Heritage.

 *New South Wales has implemented Recommendation 210 by providing cultural awareness training to government employees.*

Victoria implemented the *Aboriginal Inclusion Framework* across all Victorian public sector departments to build in substantive inclusion of Aboriginal and Torres Strait Islander people in all aspects of organisational culture. Examples of initiatives under this Framework include training for Department of Education and Early Childhood Development staff in their liaisons with Aboriginal and Torres Strait Islander communities, and training programs implemented by the Department of Health to improve the quality of care to Aboriginal and Torres Strait Islander patients. Cross-cultural training programs also form a large part of the Victorian Public Service Aboriginal Employment Strategy which involve participation from Aboriginal and Torres Strait Islander Elders and the local community. The Koori Health Unit, as of 1993, was providing professional training to State Government Aboriginal and Torres Strait Islander employees in cultural awareness. The AJA also incorporates training for individuals employed across the justice system in regards to Aboriginal and Torres Strait Islander cultural awareness.

 *Victoria has implemented Recommendation 210 by providing cultural awareness training to government employees.*

The **Queensland** Government's Reconciliation Action Plan includes cultural awareness training, workshops and Aboriginal and Torres Strait Islander protocols. Additionally, the Queensland Police Service is trained in cultural awareness that focuses on Aboriginal and Torres Strait Islander communities. Staff entering the Queensland Corrective Services Commission are exposed to examinable material on cross-cultural education. This cross-cultural awareness training has been rolled out as a general training policy for all public sector employees. Currently, all Queensland Government agencies are required to develop a Cultural Capability Action Plan that outlines actions to improve cultural awareness and responsiveness.

 Queensland has implemented Recommendation 210 through its Cultural Capability Action Plans.


The **South Australian** Government has a Reconciliation Action Plan which focuses on cultural awareness training, workshops and Aboriginal and Torres Strait Islander protocols. In addition, SA Government agencies develop and monitor their own Reconciliation Action Plans, many of which have commitments to providing cultural awareness training to staff. Aboriginal and Torres Strait Islander cultural awareness programs have been rolled out in the former Department of Correctional Services. Police members who decide to undertake a posting in remote areas are required to undertake a 'Remote Areas Course' where local Aboriginal and Torres Strait Islander personnel provide input into the course. Additionally, the Department of Family and Community Services provide cross cultural training to staff working in some areas where there is a high proportion of residents identifying as Aboriginal and Torres Strait Islander.

 *South Australia has implemented Recommendation 210 through its Reconciliation Action Plans.*

The **Western Australian** Government has previously developed a Reconciliation Action Plan which incorporates cultural awareness training, workshops and other Aboriginal and Torres Strait Islander protocols. In 1994, the *Aboriginal Arts Assessment Panel* was appointed alongside the *Aboriginal Cultural Development Policy Project*. In 1994, Aboriginal and Torres Strait Islander representatives were appointed to the Community Arts and Creative Development panels. Additionally, the Art Gallery of Western Australia developed an in-house program for staff to attend an internal series of workshops. Some of these workshops and seminars will include Aboriginal and Torres Strait Islander programs. The Department of Local Government has implemented several cross-cultural awareness programs that involve around 30 councils in a number of workshops to improve the knowledge and skills involved in working successfully with Aboriginal and Torres Strait Islander people.


In addition to this, the Western Australian Government has a state-wide online training module called Sharing Culture. The module was developed in consultation with Aboriginal and Torres Strait Islander people, and enables public sector employees to develop their awareness of Aboriginal and Torres Strait Islander history, culture and experiences, to help to develop better ways of working and engaging with people from Aboriginal backgrounds. A number of Western Australian Government departments also have discreet multicultural training.

A number of Western Australian government agencies have also established Reconciliation Action Plans in consultation with Reconciliation Australia. These plans often include specific goals pertaining to the agency's provision of Aboriginal cultural awareness training to its staff.


 *Western Australia has implemented Recommendation 210 through training of government employees.*

The **Tasmanian** Government requires that staff working in prisons and juvenile detention have received appropriate training in Aboriginal and Torres Strait Islander prisoner management. In 1993, the Department of Corrections funded the employment of an Aboriginal and Torres Strait Islander consultant to develop cross-cultural training programs in consultation with Aboriginal and Torres Strait Islander communities. Additionally, the former Department of Education and the Arts ensured that the Aboriginal and Torres Strait Islander community had been consulted in the preparation of syllabus materials.

The Tasmanian State Service is currently developing a whole of Service Aboriginal Employment Strategy. As part of this process, the need to better understand and recognise the Tasmanian Aboriginal Culture across the entire Service has been a strong theme. Initiatives to support this will be incorporated in the action plan. The Department of Health and Human Services and the Tasmanian Health Service support their staff to provide culturally safe services through an Aboriginal cultural awareness e-learning training package, which was developed in consultation with the Aboriginal and Torres Strait Islander community and is currently being updated by Public Health Services. Some Department of Health and Human Services business units also engage community organisations to run more tailored and face-to-face training.

 *Tasmania has implemented Recommendation 210 through various initiatives and policies that provide cultural awareness training to government employees.*

In the **Northern Territory**, the Office of the Commissioner for Public Employment required that all public service staff who work with Aboriginal and Torres Strait Islander clients complete a cultural awareness course. Funding was provided in the 1995-96 budget for a journalist responsible for the production of a training package to be translated into Aboriginal and Torres Strait Islander languages to advise Aboriginal and Torres Strait Islander people of their rights and responsibilities under the Northern Territory *Anti-Discrimination Act 1993* (NT). This was through the former Officer of the Anti-Discrimination Commissioner. Since this time, the DHCD has also developed the Remote Engagement Coordination Strategy and a Bushready online toolkit, All public servants working remotely use this toolkit and the strategy actively promotes training to all public servants engaging with communities.

 *The Northern Territory has implemented Recommendation 210 by requiring its staff to undertake cultural awareness courses.*

The **Australian Capital Territory** has previously provided funding in 1997 to develop a three-year training program focusing on diversity and cross cultural awareness for ACT Government public service employees. Both the *Access and Equity* and *Equal Employment Opportunity* policies were addressed in this program. The *Valuing Diversity – ACT Government Service Diversity and Culture Training Project* provided staff with the knowledge and skills to manage and work effectively with diverse people and situations. This training provided significant emphasis on Aboriginal and Torres Strait Islander issues and also involved an Aboriginal and Torres Strait Islander co-presenter. Training continues to be provided. Additionally, the ACT Education Directorate has implemented training programs for school staff covering Aboriginal and Torres Strait Islander education issues.

- *The Australian Capital Territory has implemented Recommendation 210 by providing cultural awareness training to government employees.*

Recommendation 211

That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to further pursue their programs designed to inform the Aboriginal community regarding antidiscrimination legislation, particularly by way of Aboriginal staff members attending at communities and organisations to ensure the effective dissemination of information as to the legislation and ways and means of taking advantage of it.

Background information

The RCIADIC Report considered nation-wide anti-discrimination legislation to be an effective mechanism for combating both the institutionalised discrimination of Aboriginal and Torres Strait Islander people and individual racism.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The implementation of this recommendation is addressed to the Commonwealth and jurisdictional governments.

Key actions taken and status of implementation

The AGD noted that in direct response to this recommendation, the **Commonwealth** created the Aboriginal and Torres Strait Islander Social Justice Commissioner in December 1992. The role of the Commissioner is to promote discussion and awareness of human rights in relation to Aboriginal and Torres Strait Islander people and to undertake research and education programs for the purpose of promoting respect for human rights of Aboriginal and Torres Strait Islander people. The Commissioner may also prepare annual social justice and native title reports. The reports outline various legislative and human rights initiatives to address social, political and economic inequality. Recommendations for ways to improve the Aboriginal and Torres Strait Islander community's engagement with its legal rights are also discussed.

- *Recommendation 211 has been fully implemented through the creation of the role of the Commissioner, and their reports.*

At the time of the RCIADIC report, **New South Wales** had legislation in place to prohibit racial vilification as per the *Racial Discrimination Act 1977* (NSW) and the *Anti-Discrimination Act 1977* (NSW). In 1993, the Anti-Discrimination board had designed an Aboriginal Outreach Program to be staffed by Aboriginal people to address common issues revolving around the discrimination of Aboriginal people. Currently, the Anti-Discrimination Board of NSW promotes anti-discrimination, equal opportunity principles and policies throughout NSW. It also administers the anti-discrimination laws and handles complaints under the Acts.

- *New South Wales has implemented Recommendation 211 through the Anti-Discrimination Board of NSW.*


In **Victoria**, the *Equal Opportunity and Human Rights Commission's* Indigenous Engagement Program (operating since 1991) provides information to the Aboriginal and Torres Strait Islander population regarding their rights, and avenues of redress, in regards to discrimination. This service is delivered by Aboriginal and Torres Strait Islander staff members, in collaboration with the Victorian Aboriginal Legal Service. Additionally, the Koori Outreach Program, maintained by the former Equal Opportunity Commission, provides information to Aboriginal and Torres Strait Islander communities in regards to anti-discrimination legislation. The Victorian AJA also focuses on developing responses to racism and discrimination across the justice system, including grievance systems.

- *Victoria has implemented Recommendation 211 through the Indigenous Engagement Program.*

In 1991, **Queensland** introduced the *Anti-Discrimination Act 1991* (Qld), which established the Anti-Discrimination Commission Queensland. The Commission operates the Aboriginal and Torres Strait Islander Unit, which provides continued advocacy for issues that are of importance to Aboriginal

and Torres Strait Islander people and undertakes community-based initiatives, such as community visits and information sessions.

The Queensland Government has also: undertaken research and educational programs to promote the purposes of the Act, and to coordinate programs undertaken by other people or authorities on behalf of the government; and consulted with various organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the Act.


 *Queensland has implemented Recommendation 211 through activities undertaken by the Aboriginal and Torres Strait Islander Unit of the Anti-Discrimination Commission Queensland.*

South Australia implemented legislation within the *Local Government Act 1999* (SA) and the *Family and Community Services Act 1972* (SA) to disseminate information about race discrimination. Currently, the Equal Opportunity Commission is responsible for promoting and implementing the National Anti-Racism Strategy in SA. In addition, the Australian Human Rights Commission employs an Aboriginal and Torres Strait Islander Social Justice Commissioner who is responsible for reviewing and reporting on the impact of laws and policies on Aboriginal and Torres Strait Islander people and related issues. They also produce Social Justice and Native Title Annual Reports and oversee a complaints mechanism.


 *South Australia has implemented Recommendation 211 through activities undertaken by the Equal Opportunity Commission and the Australian Human Rights Commission.*

The **Western Australian** Equal Opportunity Commission plays a role in disseminating information to Aboriginal and Torres Strait Islander people in a relevant and appropriate manner. Education is provided to employers, employees, organisations and the wider community through workshops, seminars and presentations to inform these groups that discrimination is unlawful.


In addition to this, the Western Australian Equal Opportunity Commission designates positions for Aboriginal Officers. Officers are involved in rights based training sessions when the participants are predominantly from the Aboriginal and Torres Strait Islander community.

 *Western Australia has implemented Recommendation 211 through activities undertaken by the Equal Opportunity Commission.*

Section 6 of the **Tasmanian Anti-Discrimination Act 1998** provides that the functions of the Anti-Discrimination Commissioner include, among other things, promoting the recognition and approval of acceptable attitudes, acts and practices relating to discrimination and prohibited conduct, disseminating information about discrimination and prohibited conduct, and undertaking relevant research and programs. Equal Opportunity Tasmania also provides a range of free training and information sessions, including sessions designed to focus on human rights issues affecting Aboriginal and Torres Strait Islander people.


 *Tasmania has implemented Recommendation 211 through activities undertaken by the Anti-Discrimination Commissioner.*

In the **Northern Territory**, the Anti-Discrimination Commission defined, as per the 1995 implementation report, discrimination in various Aboriginal and Torres Strait Islander languages in video form. However, it is not clear whether additional forms of information dissemination – such as face-to-face initiatives – were implemented. Officers from the Northern Territory Anti-Discrimination Commission consult with Aboriginal and Torres Strait Islander organisations and legal services to develop strategies to help Aboriginal and Torres Strait Islander people use anti-discrimination mechanisms more effectively.

 *The Northern Territory has implemented Recommendation 211 through activities undertaken by the Anti-Discrimination Commission.*

The **Australian Capital Territory** implemented requirements set out by the ACT Human Rights Commission to disseminate information about race discrimination. The ACT Human Rights Commission's core work includes improving the quality of, and access to, services, as well as

protecting and promoting Aboriginal and Torres Strait Islander human rights, including the right to non-discrimination. The Commission supports an educational function by providing information to Aboriginal and Torres Strait Islander communities about anti-discrimination and human rights legislation, as well as programs that foster community involvement with Aboriginal and Torres Strait Islander people.

 *The Australian Capital Territory has implemented Recommendation 211 through activities undertaken by the ACT Human Rights Commission.*

Recommendation 212

That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to consult with appropriate Aboriginal organisations and Aboriginal Legal Services with a view to developing strategies to encourage and enable Aboriginal people to utilise anti-discrimination mechanisms more effectively, particularly in the area of indirect discrimination and representative actions.

Background information

The RCIADIC Report considered nation-wide anti-discrimination legislation to be an effective mechanism for combating both the institutionalised discrimination of Aboriginal and Torres Strait Islander people and individual racism.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.


Key actions taken and status of implementation

As noted in Recommendation 211, the **Commonwealth** created the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner in response to this recommendation. The Commissioner may prepare social justice and native title reports. The reports outline various legislative and human rights initiatives to address social, political and economic inequality. Recommendations for ways to improve the Aboriginal and Torres Strait Islander community's engagement with its legal rights is also discussed.

In 2015, the Australian Human Rights Commission published 'Know Your Rights: Aboriginal and Torres Strait Islanders' which explains racial discrimination and what Aboriginal and Torres Strait Islander people can do in the event that they experience racial discrimination. The Australian Human Rights Commission has also developed the National Indigenous Legal Advocacy Courses to provide the necessary competency and skills training for Aboriginal and Torres Strait Islander people wishing to work in a legal environment.

 *Recommendation 212 has been directly implemented at the Commonwealth level through the work of the Aboriginal and Torres Strait Islander Social Justice Commissioner, and the work of the Human Rights Commission.*

Actions taken for Recommendation 211 by **all States and Territories** are also relevant to this recommendation. No evidence of further actions taken by any jurisdiction to respond to this recommendation were identified.

 *Recommendation 212 has been completed by all States and Territories, through the actions noted in the response to Recommendation 211.*

Additional commentary

Western Australia noted that The Western Australian Equal Opportunity Commission regularly liaises with the Aboriginal Legal Service Western Australia and other groups who primarily advocate for Aboriginal and Torres Strait Islander clients and conducts sessions on filing effective complaints. The commission actively promotes the Policy Framework for Substantive Equality, which mandates State Government agencies to address and prevent systemic discrimination.

Recommendation 213

That governments which have not already done so legislate to proscribe racial vilification and to provide a conciliation mechanism for dealing with complaints of racial vilification. The penalties for racial vilification should not involve criminal sanctions. In addition to enabling individuals to lodge complaints, the legislation should empower organisations which can demonstrate a special interest in opposing racial vilification to complain on behalf of any individual or group represented by that organisation.

Background information


The RCIADIC determined that systemic discrimination of the Aboriginal and Torres Strait Islander population was exacerbated by the use of language as a form of violence.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The recommendation applies to all governments who have not passed the necessary legislation.

Key actions taken and status of implementation


The *Racial Hatred Act 1995* was passed by the **Commonwealth** to amend the *Crimes Act 1914* and the *Racial Discrimination Act 1975*, to provide for criminal offences and civil prohibition respectively. The AGD noted that this amendment makes it unlawful to insult, offend, humiliate or intimidate people in public on the basis of their race. Further, victims of racial hatred are entitled to seek redress through the Australian Human Rights Commission.

 *While the Commonwealth legislation responds to this recommendation, it did not adhere fully to the recommendation in that it included criminal sanctions. As such, further action is required to fully address Recommendation 213.*


In New South Wales, the *Racial Discrimination Act 1975 (Cth)* and the *Anti-Discrimination Act 1977 (NSW)* are in place to prohibit racial discrimination. Section 20C of the New South Wales Act makes racial vilification unlawful and complaints may be made to the Anti-Discrimination Board of NSW by or on behalf of individuals or by representative bodies, provided that each person on whose behalf the complaint is made has the relevant characteristic. Section 91A enables the President of the NSW Anti-Discrimination Board to require parties to attend a conciliation conference to endeavour to resolve a complaint. Unresolved complaints may be referred to the NSW Civil & Administrative Tribunal, declined or withdrawn, depending on the circumstances.

 *New South Wales has partially completed Recommendation 213 by introducing legal sanctions for racial vilification. Organisations that are representative bodies are also able to lodge complaints on behalf of any individual or group. However, legislation does allow for criminal sanctions.*


Victoria implemented civil and criminal sanctions for racial vilification under the *Racial and Religious Tolerance Act 2001 (Vic)*. The criminal standard requires that the behaviour needs to have been 'intended' to incite racial hatred or be reckless to the fact.

 *Victoria has mostly completed Recommendation 213 by introducing legal sanctions for racial vilification, however, does allow for criminal sanctions.*


Queensland implemented civil and criminal sanctions for racial vilification under the *Anti-Discrimination Act 1991 (Qld)*. The criminal offence under section 141A of the Act requires proof that the acts must have been undertaken either knowingly or recklessly and incite hatred towards, serious contempt for, or severe ridicule of people of, amongst other things, a particular race. The Act details conciliation processes before the Anti-Discrimination Commission and the Queensland Civil and Administrative Tribunal. A prosecution can only be commenced with the consent of either the Attorney-General or the Director of Public Prosecutions. Individuals and organisations may also be able to make representative complaints on behalf of an individual or group represented by that organisation.

 *Queensland has mostly completed Recommendation 213 by introducing legal sanctions for racial vilification, however, does allow for criminal sanctions.*


South Australia implemented civil and criminal sanctions for racial vilification under the *Racial Vilification Act 1996 (SA)*. The legislation defines a criminal offence as a public act to “incite hatred towards, serious contempt for, or severe ridicule of” a person/s on the grounds of their race by “threatening physical harm” or “inciting others to threaten physical harm” to that person/s or their property. Prosecution requires the written consent of the Director of Public Prosecutions.

 *South Australia has mostly completed Recommendation 213 by introducing legal sanctions for racial vilification, however, does allow for criminal sanctions.*


In **Western Australia**, introduction of the *Equal Opportunity Amendment Act* in 1993 made it unlawful to discriminate on the ground of racial harassment in employment, education and accommodation. Currently, the Western Australian Attorney General is considering the progression of racial vilification provisions in the *Western Australian Equal Opportunity Act 1984*, as part of a comprehensive review of that Act. This will provide an avenue for redress through civil rather than criminal proceedings.

 *Western Australia has mostly completed Recommendation 213 by introducing legal sanctions for racial vilification, however, does allow for criminal sanctions.*

In **Tasmania**, the *Anti-Discrimination Act 1998* contains detailed complaint and conciliation provisions and makes provision for complaints to be made to the Anti-Discrimination Commissioner by persons and organisations other than the person against whom the alleged discrimination or prohibited conduct was directed. In March 2017, amendments to the *Sentencing Act 1997 (Tas)* came into effect requiring the court to take into account as an aggravating circumstance whether the offence was motivated by (a) hatred for or prejudice against, on racial grounds, any victim of the offence; or (b) hatred for or prejudice against, on racial grounds, a person or group of persons with whom at the relevant time any victims of the offence was associated or believed by the offender to have been associated.

 *Tasmania has implemented Recommendation 213 by introducing legal sanctions for racial vilification.*

The **Northern Territory's** 1994-95 implementation report reported that the NT Government intended to review the *Anti-Discrimination Act 1993 (NT)* in future years. This Act works to provide equal opportunity for all residents of the Northern Territory. As part of this review, the Northern Territory Government will seek to improve the Act in regards to addressing racial vilification. No information was identified on whether the Act was reviewed since this time. In September 2017, the NT Government released a discussion paper on modernising the Act.⁴⁶

 *The Northern Territory has partially completed Recommendation 213 by seeking to modernise the Anti-Discrimination Act 1993 (NT) with regards to addressing racial vilification.*

Australian Capital Territory has implemented civil sanctions for racial vilification through the *Discrimination Act 1991*.

Consistent with the Recommendation, the Australian Capital Territory law does not impose criminal sanctions in support of freedom of speech, and criminal sanctions do not apply to speeches, demonstrations, works of art, or public policy discussions.

The ACT Criminal Code does make serious vilification a criminal offence. However, ‘serious vilification’ is defined as the intentional carrying out of a threatening act, other than in private. This threatening act has to incite hatred, revulsion, or serious contempt against people based on their status.

⁴⁶ https://justice.nt.gov.au/__data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf

The ACT Discrimination Act does not create civil or criminal sanctions for racial vilification. The Act labels behaviour as 'unlawful'. Sections 71 and 72 clarify that this does not mean that they are criminal offences, or that they give rise to civil actions. The one criminal offence contained in the Act criminalises unauthorised sharing of protected information.

- *The Australian Capital Territory has completed Recommendation 213 by introducing legal sanctions for racial vilification.*

9 Cycle of offending

The recommendations in this chapter relate to: improving the criminal justice system: Aboriginal people and police (214-233); and breaking the cycle: Aboriginal youth (234-245).

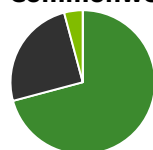
Key themes from recommendations (32 recommendations)

- Initiatives can be undertaken to improve relations between Aboriginal and Torres Strait Islander people and police services. There are several policy options that can assist with reducing the number of Aboriginal and Torres Strait Islander people who are placed in police custody.
- It is important to ensure that any Aboriginal and Torres Strait Islander people who contribute to the administration of community policing schemes are recognised and appropriately compensated.
- Certain jurisdictions such as the Northern Territory and Queensland have undertaken specific policing schemes, which require further attention.
- There are opportunities to increase youth empowerment in Aboriginal and Torres Strait Islander communities and divert young people away from the criminal justice system. In particular, it is important to have deep family and community involvement in developing support programs, and provide appropriate assistance for young people in custody.

Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

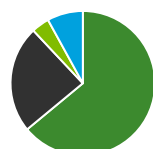
Commonwealth | Key actions: The Commonwealth has developed several programs in collaboration with ATSIC to prevent the detention of youths, and has offered enhanced youth support through welfare programs and legal representation. The AFP has also taken steps to improve relations with communities in the ACT and Jervis Bay Territory.

Remaining gaps: The Commonwealth has yet to report on implementation of customary law, as per recommendations outlined in a report published by the ALRC. In addition, the AFP has not acted to provide bridging courses for the entry of Aboriginal and Torres Strait Islander people into police services. Further consideration of options to respond to the detainment of a young person are also required to meet the recommendations.



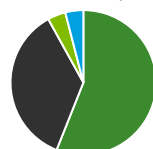
New South Wales | Key actions: The NSW Government has established relevant bodies and roles, such as the Aboriginal Community Liaison Officer State Coordinator, to improve relations between Aboriginal people and the NSW Police. NSW has also introduced legislative measures under the *Young Offenders Act 1997*, along with Police Commissioner's Instructions, to reduce the incarceration of Aboriginal youths.

Remaining gaps: New South Wales has yet to respond to any of the recommendations outlined in the ALRC report on implementing customary law. In addition, further progress is required to improve community policing and community relations with the police.



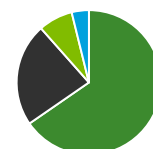
Victoria | Key actions: The Victorian Government has sought to improve support for community policing and engagement of Aboriginal and Torres Strait Islander communities through the establishment of Regional Aboriginal Justice Advisory Committees. Victoria has also implemented protocols to ensure that the Victorian Aboriginal Legal Service and Aboriginal Community Justice Panels are notified when a person is bought into custody.

Remaining gaps: The Victorian Government has not responded to the ALRC report on implementing customary law. The Victorian Police Force should provide greater priority on the implementation of positive discrimination measures as recommended, such as the introduction of education opportunities for prospective Aboriginal and Torres Strait Islander recruits.



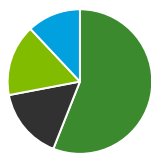
Queensland | Key actions: The Queensland Government requires all of the Queensland Police Service's relevant policies to be developed in consultation with Aboriginal and Torres Strait Islander stakeholders and has employed Police Liaison Officers to support relationship building. Queensland has also implemented clear protocols for the notification of the Aboriginal and Torres Strait Legal Service when people are arrested or detained.

Remaining gaps: The Queensland Government is required to undertake further efforts with respect to the implementation of recommendations from the ALRC report on customary law, the establishment of



policy and development units within the police service to relate to Aboriginal people, and ongoing negotiation with Aboriginal and Torres Strait Islander communities.

South Australia | Key actions: The SAPOL has established a dedicated Aboriginal and Multicultural Unit and employed Aboriginal Liaison Officers to improve stakeholder engagement. Clear procedures for a range of matters are also defined in four Memorandums of Administrative Arrangement with the Department of Human Services, and in sections of the *Young Offenders Act 1993 (SA)* and the *Youth Justice Administration Act 2016 (SA)*.



Remaining gaps: The South Australian Government has not addressed the ALRC's report on implementation of customary law or the remuneration of Aboriginal people who are involved in community and police initiated schemes. Youth justice should also be prioritised to ensure that Aboriginal Legal Services are appropriately funded.

Western Australia | Key actions: Western Australia has addressed recommendations relating to representation of Aboriginal and Torres Strait Islanders within the police force by establishing a special governance committee and the Aboriginal and Community Diversity Unit. Community engagement and youth justice support is also provided.



Remaining gaps: Western Australia has not addressed the ALRC's report on implementation of customary law or the remuneration or the recommendations related to the attendance of carers where detainees are questioned by police.

Tasmania | Key actions: The Tasmanian Police have sought to improve relations with local communities through Aboriginal Liaison Officers and regular consultation via the Police Commissioner's Consultative Committee. Protections for juveniles in the justice system have also been enshrined in the *Children, Young Persons and their Families Act 1997*.



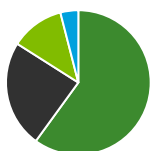
Remaining gaps: Tasmania has yet to establish a dedicated Aboriginal and Torres Strait Islander-specific policy and development unit within its police service or address remuneration of Aboriginal people involved in community and police initiated schemes. A further review of police complaint protocols, as well as of cultural training initiatives in the Tasmanian Police Service, is also needed to ensure that they address the concerns and cultural needs of Aboriginal and Torres Strait Islander communities.

Northern Territory | Key actions: The NT Police Force has implemented initiatives to address relations between the police and local communities such as the Community Engagement Police Officer program. The Northern Territory has also taken jurisdiction-specific action by incorporating the now defunct Aboriginal Community Justice Project's objectives into practice.



Remaining gaps: Further action is required to ensure Aboriginal and Torres Strait Islander people are employed and appropriately trained for the implementation of youth programs and strategies. Focus should also be given to support for ALS in dealing with juveniles, adequate remuneration for Aboriginal and Torres Strait Islander people involved in police and community initiated schemes, and the implementation of recommendations from the ALRC report.

Australian Capital Territory | Key actions: The AFP established continuous liaisons between AFP staff at Jervis Bay Territory and the local Aboriginal Community Council and employed Community Liaison Officers to sustain positive cross-cultural engagement. In addition, the AFP has implemented strong internal governance processes to ensure police proceed with caution when apprehending juvenile offenders, in line with the RCIADIC recommendations.



Remaining gaps: The ACT Government has not addressed the employment and training of Aboriginal and Torres Strait Islander people for roles in the juvenile welfare and justice systems or the provision of sufficient resources to support this. In addition, further consideration is required for the development of a dedicated policy and development unit for the Jervis Bay Territory.

9.1 Improving the criminal justice system: Aboriginal people and police (214-233)

Recommendation 214

The emphasis on the concept of community policing by Police Services in Australia is supported and greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live.

Background information

The RCIADIC Report found that while Aboriginal and Torres Strait Islander people accept the need for police services, it was a common experience to feel powerless in the face of police and to wish for a voice at a local level in how their community is policed.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation


The **Commonwealth** and **ACT** Governments have undertaken the following actions in response to Recommendation 214. The *1992-92 Annual Report* noted that there had been continuous liaison between the AFP staff at Jervis Bay Territory and the local Aboriginal Community Council in relation to the continuation of implementation of this recommendation.

The ACT Policing Aboriginal and Torres Strait Islander Community Liaison Officer assists with active community engagement and the development of practices to support Aboriginal and Torres Strait Islander people. This officer is actively engaged with the communities to help inform policing practices.


 *The Commonwealth and ACT Governments have implemented Recommendation 214 through their work in Jervis Bay Territory and the Community Liaison Officer in the ACT.*

In **New South Wales**, a survey was distributed to all Aboriginal communities in 1993 inviting comment as to the quality, adequacy and appropriateness of the policing effort within their own patrols in order to assist patrol commanders with identifying areas of misunderstanding or misconception. In 1994, New South Wales expanded the Aboriginal Community Liaison Officer scheme, by appointing an Aboriginal Client Consultant and four Regional Aboriginal Coordinators.

In addition, New South Wales has established relevant bodies and roles, such as the Police Commissioner's AAC and the Aboriginal Community Liaison Officer State Coordinator. From 2007-2011, NSW Police advocated for the establishment of Local Area Command Aboriginal Consultative Committees in areas with a high proportion of Aboriginal population. The current policy (2012-2017) continues this work by monitoring, reporting and implementing action plans.


 *New South Wales has implemented Recommendation 214 by implementing initiatives and establishing roles to support the greater involvement of Aboriginal communities in community policing policy.*

Victoria established an Aboriginal Justice Forum in 2000 with senior members of police and Aboriginal and Torres Strait Islander communities. Additionally, there exist nine Regional Aboriginal Justice Advisory Committees that are currently active, which are a government priority under the AJAs. Aboriginal Community Justice Panels supplement the role of community policing in Victoria. These panels aim to promote better understanding, interaction and cooperation between the police force and the Aboriginal and Torres Strait Islander community.

 *Victoria has implemented Recommendation 214 by developing community policing forums.*

In **Queensland**, the Queensland Police Service requires that all its policies be developed in consultation with committees which seek to identify issues facing policing in Aboriginal and Torres Strait Islander communities. There were also a number of Aboriginal and Torres Strait Islander people directly employed by the Queensland Police Service, as per the 1994 implementation report.

Queensland has more recently established a Cultural Support Unit to promote and maintain relationships with multicultural communities while Police Liaison Officers have been employed to establish and maintain a positive rapport between Aboriginal and Torres Strait Islander people and police officers.

 *Queensland has implemented Recommendation 214 by requiring all policies regarding policing in Aboriginal and Torres Strait Islander communities to be developed in consultation with relevant committees.*


Following the RCIADIC report, **South Australia** established a dedicated Aboriginal and Multicultural Unit (within the South Australia Police) to work with the SA Government and Aboriginal and Torres Strait Islander community groups and oversee multicultural engagement to ensure services are delivered in a respectful, professional and impartial manner. The South Australia implementation report (1994) noted the intention for a Prevention of Aboriginal Deaths in Custody Forum to be held by the Aboriginal Services Unit at different prisons every six weeks.

Aboriginal Liaison Officers are currently employed by the South Australia Police and community policing is supported by the employment of Aboriginal Police Aids, Community Constables and the use of Aboriginal and Torres Strait Islander/police committees in community initiatives, including Police Aboriginal Advisory Groups (PAAG), which have been formed over the past two years.


 *South Australia has implemented Recommendation 214 by establishing a dedicated Aboriginal and Multicultural Unit and employing community representatives.*

Western Australia implemented the *Western Australian Strategic Policy on Police and Aboriginal People* in 2009 which required that police work in partnership with Aboriginal and Torres Strait Islander people to develop strategies that increase safety and security. The Western Australian police force played a significant role in the establishment of Wardens schemes in remote Aboriginal and Torres Strait Islander communities and the commencing of Aboriginal Street Patrols in towns open to the general community.

The Western Australian Government has indicated that it continues to support a range of community policing initiatives that include: Aboriginal Police Liaison Officers, Community Relations Officers, Community Patrols, and the Martu Leadership Program. Within the Western Australia Police Force, the Aboriginal and Community Diversity Unit provides cultural consultancy support and engagement with communities that includes dealing with complaints and concerns.


 *Western Australia has implemented Recommendation 214 by establishing the Aboriginal and Community Diversity Unit and requiring that police work in partnership with Aboriginal and Torres Strait Islander people to develop strategies that increase safety and security.*

Tasmania employs regional Liaison Officers that work to communicate, and hold meetings, with local Aboriginal and Torres Strait Islander community groups. The Tasmanian Department of Police, Fire and Emergency Management's *Aboriginal Strategic Plan 2014-2022* includes improving communication and liaison between the Department and the Aboriginal and Torres Strait Islander community, and ensuring members of the Department receive appropriate training to enhance positive relationships with the Aboriginal and Torres Strait Islander community, as key objectives.

 *Tasmania has partially implemented Recommendation 214 by employing regional Liaison Officers but has not expressly addressed the involvement of Aboriginal and Torres Strait Islander people in devising appropriate policing procedures.*

In the **Northern Territory**, a number of agreements were established or planned between Aboriginal and Torres Strait Islander organisations and police in remote communities as of 1995. The NT government notes that the Northern Territory Police Force (NTPF) has implemented a number of

internal programs and activities, including the development of an Indigenous Recruitment Program and the inception of a Community Engagement Police Officer (CEPO) program since 2011, which seeks to promote crime prevention through community involvement, ownership and leadership.

 *The Northern Territory has implemented Recommendation 214 by developing the Indigenous Recruitment Program and the CEPO program.*

Recommendation 215

That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including:

- a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;*
- b. Any problems perceived by Aboriginal people; and*
- c. Any problems perceived by police. Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.*

Background information


The RCIADIC Report noted that Aboriginal and Torres Strait Islander people often feel powerless in the presence of police and wished to increase their input into how their local community is policed. For this reason, a number of suggestions were made to improve the relationship between Aboriginal and Torres Strait Islander communities and police.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.


Key actions taken and status of implementation

The **Commonwealth** and **ACT** Governments' actions in Recommendation 214 also apply to this recommendation.


 *The Commonwealth and ACT Governments have implemented Recommendation 215 through their work in Jervis Bay Territory and the Community Liaison Officer in the ACT.*

In 1993, **New South Wales** supported and implemented this recommendation by arranging for Patrol Officers to consult and work with Aboriginal Community Liaison Officers and Community Consultative Groups. The NSW Police Aboriginal Strategic Plan required individual patrol commanders to develop and maintain links with all sections of the local community. The level and type of complaints made against police by Aboriginal organisations is monitored on an ongoing basis.

Currently, the *Aboriginal Strategic Direction 2012-17* is the overarching document that guides the NSW Police Force in its management of Aboriginal issues. It seeks to achieve Aboriginal community ownership and involvement through a consultative and proactive approach.


 *New South Wales has implemented Recommendation 215 by supporting local consultations and engagements between the police and Aboriginal communities.*

As per Recommendation 214, **Victoria** employs Community Justice Panels, Local Aboriginal/Police Liaison Committees and Police Community Consultative Committees to improve the level of understanding between police and local Aboriginal and Torres Strait Islander communities.


 *Victoria has implemented Recommendation 215 by developing community policing forums.*

The **Queensland** Police Service (QPS) Community Consultative Committees and Aboriginal and Torres Strait Islander liaison committees provide a forum addressing the key issues in this recommendation. Consultation and negotiation on these issues is conducted by Aboriginal Liaison Officers in tandem with local police and Aboriginal and Torres Strait Islander community police.

The QPS Operational Procedures Manual (OPM) outlines a range of 'Community based policing strategies', including community policing boards. The QPS is required, by the *Police Service Administration Act 1990 (QLD)*, to act in partnership with the community at large.


 *Queensland has fully implemented Recommendation 215 by introducing strategies and requirements for the QPS to engage with the community.*

Following the RCIADIC, as part of the Community Policing partnership approach **South Australia** incorporated a problem solving approach to the issues raised in this recommendation, involving all representatives of the local community. This is achieved through consultation with key groups at the local level as well as the use of Community Constables to assist in community policing initiatives.

 *South Australia has implemented Recommendation 215 by incorporating inputs from all relevant members of the local community to address relevant issues, and utilising Community Constables to assist in service delivery.*


As of 1993, the **Western Australian** Government previously took action to address this recommendation by establishing a special government committee on Aboriginal and Torres Strait Islander, police and community relations. This has been used to encourage open dialogue between police and members of Aboriginal and Torres Strait Islander communities at the local level.

Since the RCIADIC Western Australia has also implemented various programs relating to this recommendation. A recent example is the Martu Leadership Program, which was developed in partnership between the Western Australia Police Force and Martu Rangers, to drive more community and culturally attuned policing activity.


 *Western Australia has implemented Recommendation 215 by establishing a special government committee on Aboriginal and Torres Strait Islander, police and community relations. In addition to this, programs encouraging more community and culturally attuned policing activity have been implemented.*

In response to this recommendation, in 1995 **Tasmania** Police formed a working party to visit major Aboriginal and Torres Strait Islander population areas in an effort to discuss perceived problems and police methods. Consequently, Aboriginal Liaison Officers were employed for three geographical areas and currently regularly consult with local Aboriginal and Torres Strait Islander organisations to provide information on Tasmania Police practices and procedures to local groups. Consultation between police and Aboriginal and Torres Strait Islander communities has also been facilitated via the Police Commissioner's Consultative Committee.

As noted in its response to Recommendation 214, the Tasmanian Department of Police, Fire and Emergency Management is committed to improving communication and liaison between the Department and the Aboriginal and Torres Strait Islander community.

 *Tasmania has implemented Recommendation 215 by supporting local consultations and engagements between the police and Aboriginal and Torres Strait Islander communities.*

The requirements of this recommendation were already common procedure in the **Northern Territory** community policing policy at the time of the RCIADIC report. One of the strategies used to encourage police involvement with the community was to recognise the legitimate needs and aspirations of the Aboriginal and Torres Strait Islander people of the Northern Territory, and implement these needs at the local level. Police officers in charge of a station or unit are expected to establish and maintain links with the Aboriginal and Torres Strait Islander population in their area to determine needs and discuss problems. This has more recently been supported by the NT Police Regional and Remote Policy Model, which provides a framework for ongoing engagement between police and community members.

 *The Northern Territory had already implemented Recommendation 215 as part of common procedure, and more recently through establishing the NT Police Regional and Remote Policy Model to support engagement and negotiation at the local level.*

Recommendation 216

That the Northern Territory Department of Correctional Services should, at the conclusion of the review of the Aboriginal Community Justice Project, establish regular meetings with Magistrates to monitor the effective operation of the program and establish a mechanism to ensure that the views of the Aboriginal communities in which the program operates are considered in the context of these meetings.

Background information

The RCIADIC Report noted that the Northern Territory's Community Justice Project was designed to ensure that the view of the Indigenous community was included when considering sentencing issues. As per the RCIADIC report, the Community Justice Project was replaced with the Northern Territory Community Court, which is a specialist Court of the Northern Territory Magistrates Courts.


Responsibility

The recommendation is solely the responsibility of the Northern Territory Government.

Key actions taken and status of implementation

In the **Northern Territory**, as at 1997 Aboriginal and Torres Strait Islander communities, organisations and relevant criminal justice agencies were previously involved in a review of the Aboriginal Community Justice Project. The *Change the Record* report notes that informal meetings with magistrates were held to determine the approach for implementation of this recommendation. The Aboriginal Community Justice Project no longer exists and the Community Courts have not been in operation since 2009.

In November 2016, Community Corrections commenced attending Court Users Meetings on a regular basis, and Probation and Parole Officers commenced attending circuit courts across the Northern Territory to undertake assessments on offenders and to provide advice to the court and other stakeholders.

 *The Northern Territory has implemented Recommendation 216 by establishing regular meetings and mechanisms for incorporating the views of Aboriginal communities.*

Recommendation 217

That the review of the Aboriginal Community Justice Project should undertake a detailed consideration of the resources required by the Project to operate effectively. Consideration should be given to the creation of specific liaison officer positions employing Aboriginal people to facilitate communications between the court and the community.

Background information

The RCIADIC Report noted that the Northern Territory's Community Justice Project was designed to ensure that the view of the Indigenous community was included when considering sentencing issues. As per the RCIADIC report, the Community Justice Project was replaced with the Northern Territory Community Court, which is a specialist Court of the Northern Territory Magistrates Courts.

Responsibility

The recommendation is solely the responsibility of the Northern Territory Government.

Key actions taken and status of implementation

The **Northern Territory** reported in their 1995 implementation report that additional funding was being sought for the liaison function of Aboriginal Community Corrections Officers. This role involves facilitation of communication between the Court and the community. The Aboriginal Community Justice Project no longer exists and the Community Courts have not been in operation since 2009. Community Corrections Officers continue to convey community opinion where possible in sentencing

submissions and Probation and Parole Officers similarly consult with family, friends, Elders and other stakeholders when preparing assessments and reports for sentencing authorities.

● *While the Aboriginal Community Justice Project no longer exists, the Northern Territory has achieved the objectives of Recommendation 217 through its Community Corrections Officers.*

Recommendation 218

That in reviewing the Aboriginal Community Justice Project the Northern Territory Department of Correctional Services should undertake extensive consultations with all Aboriginal communities which wish to participate in the program. In pursuing this consultation, care should be given to canvassing the entire range of community opinions and the means by which these may be brought, in any relevant case, to the Court's attention.

Background information

The RCIADIC Report reported that the Aboriginal Community Justice Project would be further improved through consultation and notice of opinion from various Aboriginal and Torres Strait Islander communities.

Responsibility

The recommendation is solely the responsibility of the Northern Territory Government.

Key actions taken and status of implementation

The **Northern Territory** reported in their 1995 implementation report that this recommendation was incorporated into the review as per Recommendation 216. Trial community supervision received ministerial endorsement in 1995 to involve responsible members of the community in looking after offenders who are on community based Court Orders. The completed review was included in the Intjartnama Consultancy which has now formed the *Law and Justice Strategy for Aboriginal Territorians*. The Aboriginal Community Justice Project no longer exists. However, Community Corrections Officers continue to convey community opinion where possible in sentencing submissions and Probation and Parole Officers similarly consult with family, friends, Elders and other stakeholders when preparing assessments and reports for sentencing authorities, such as courts and parole boards.

● *The Northern Territory has implemented Recommendation 218 by ensuring that Community Corrections Officers undertake extensive consultation with all relevant Aboriginal and Torres Strait Islander communities and stakeholders.*

Recommendation 219

The Australian Law Reform Commission's Report on the Recognition of Aboriginal Customary Law was a significant, well-researched study. The Royal Commission received requests from Aboriginal people through the Aboriginal Issues Units regarding the progress in implementation of the recommendations made by the Australian Law Reform Commission and in some cases from communities which had made proposals to the Law Reform Commission. This Commission urges government to report as to the progress in dealing with this Law Reform Report.

Background information

The RCIADIC Report noted that the initiatives relating to Aboriginal and Torres Strait Islander community justice provide opportunities for the functional recognition of Aboriginal and Torres Strait Islander customary law. Functional recognition had been favoured by the ALRC in its report on the subject.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires the Commonwealth, and the States and Territories to respond on their progress in dealing with the ALRC report.

Key actions taken and status of implementation

In 1996 the **Commonwealth** released a report into the implementation of the ALRC Aboriginal Customary Laws report in response to Recommendation 219.

- The Commonwealth has completed Recommendation 219 by responding to and reporting on recommendations of the report into the implementation of the ALRC Aboriginal Customary Laws.*

New South Wales had previously been involved in reviewing the issues under the guidance of the Australian Aboriginal Affairs Council. Customary law was noted in the 1993 implementation report to not be a major issue by the NSW Government. The NSW Government does not report on the implementation of this report, noting that it was completed some time ago. Notwithstanding, the NSW Government has amended various relevant laws including amendments to the *Adoption Act 2000 (NSW)* to take into account cultural heritage when placing Aboriginal and Torres Strait Islander children in adoption.

- New South Wales has not implemented any response to the ALRC report or to Recommendation 219.*

Victoria does not appear to have made any significant action in response to this recommendation, as it was considered to be of limited relevance to the Victorian context. The Victorian Government reported in their 1994 implementation report that traditional Aboriginal and Torres Strait Islander systems of law were broken down soon after settlement. To address cultural differences that Aboriginal and Torres Strait Islander persons may experience with the justice system, appropriate support was to be provided through Aboriginal and Torres Strait Islander organisations, Aboriginal Community Justice Panel representatives and other cross-cultural awareness training for Aboriginal and Torres Strait Islander offenders.

- Victoria has not implemented any response to the ALRC report or to Recommendation 219.*

The **Queensland Legislative Standards Act 1992** (Qld) requires that Bills before the parliament have sufficient regard to rights and liberties of individuals including whether the proposed legislation has sufficient regard to Aboriginal tradition and Island custom.

- Queensland has not implemented any response to the ALRC report or to Recommendation 219.*

South Australia currently considers some aspects of customary law when sentencing Aboriginal and Torres Strait Islander offenders, particularly on the Anangu Pitjantjatjara Yankunytjatjara lands, as well as cultural considerations through Aboriginal Sentencing Courts, Nunga Courts and Aboriginal Sentencing Conferences, which legislated under section 22 of the Sentencing Act 2017.

- South Australia has not implemented Recommendation 219 as it has not provided any evidence of a response to the ALRC report or to the recommendation.*

The **Western Australian** Government has not accepted the recommendations in the Australian Law Reform Commission's (ALRC) Recognition of Aboriginal Customary Laws Report to date and, accordingly, they have not been implemented. In 2006, the Law Reform Commission of Western Australia conducted a detailed review of the ALRC report, but no actions appear to have been taken as a result. The Western Australian Government has indicated that the Department of Justice will again review the recommendations of the ALRC Report in the context of more recent developments.

- Western Australia has not implemented any response to the ALRC report or to Recommendation 219.*

Tasmania indicated its support for this recommendation in the 1995 implementation report.

- Tasmania has not implemented any response to the ALRC report or to Recommendation 219.*


The **Northern Territory** indicated that it supports this recommendation in the 1994-95 implementation report, and that it was considering the issues as part of the Attorney-General's Aboriginal and Torres Strait Islander law reform program. No further detail on subsequent progress in the NT was identified.

- The Northern Territory has not implemented any response to the ALRC report or to Recommendation 219.*

The **Australian Capital Territory's** 1997 implementation report notes that the ALRC's recommendations were in the process of being implemented into policy pertaining to domestic relationships and education. The ACT Aboriginal and Torres Strait Islander Advisory Council was referred to for advice and consideration on these matters.

Since this time, the ACT Government has not made any direct progress toward implementation of Recommendation 219. However it has made some progress in related areas such as including implementing an Aboriginal Child Placement Principle in relation to children in care, and recognition of Aboriginal and Torres Strait Islander culture and experience in sentencing.

The ACT has a Galambany Circle Sentencing Court, which provides a culturally relevant sentencing option in the ACT Magistrates Court jurisdiction for eligible Aboriginal and Torres Strait Islander people who have offended.

 *The Australian Capital Territory has not implemented any direct response to the ALRC report or to Recommendation 219.*

Recommendation 220

That organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates.

Background information

Community justice programs play an important role in reinforcing social control mechanisms based on traditional Aboriginal and Torres Strait Islander values, and provide a service to local communities. They are also viewed as a potential solution to reducing the numbers of Aboriginal and Torres Strait Islander people entering the criminal justice system.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Recommendation 220 calls for the Commonwealth to work in cooperation with States and Territories in funding Community Justice Panels and associated programs.


Key actions taken and status of implementation

The **Commonwealth** Department of Prime Minister and Cabinet, under the IAS, is administering over \$1 billion of funding over four years for activities to improve community safety and justice outcomes for Aboriginal and Torres Strait Islander people. This includes funding for evidence-based, local community-led projects such as restorative justice and mediation and crime prevention activities.


The Commonwealth is also providing funding for Community Night Patrols to operate in communities across Australia. Julalikari Council is funded under the IAS to run a Community Night Patrol.

 *Recommendation 220 has been completely implemented by the Commonwealth.*


The 1993 implementation report noted that the **New South Wales** Government had established community justice panels in three Aboriginal communities (Dubbo, Taree and Wellington). These panels work with the Office of Juvenile Justice to help divert young Aboriginal people from the formalised court system. More recently, the New South Wales government considers that Recommendation 220 is not applicable to NSW.

 *New South Wales has not implemented Recommendation 220, as it appears that the Community Justice Panels are no longer current. NSW considers this recommendation to not be applicable to NSW.*


Victoria notes in the 1994 implementation report that Victoria supports the use of Aboriginal Community Justice Panels and will continue to fund their existence and development. In 1993-94, the Victorian Government provided \$332,000 for the administration of these panels. More recently, the AJA provides for the continued funding for a number of relevant community policing and justice initiatives.

 *Victoria has implemented Recommendation 220 by developing and funding community justice initiatives.*

The **Queensland** Government registered its support for this recommendation in the 1994 implementation report and subsequently developed the Community Justice Group Program, under the Department of Justice and Attorney-General, to address Aboriginal and Torres Strait Islander overrepresentation in the court system by providing support to those in the criminal justice system and to victims of crime.


 *Queensland has implemented Recommendation 220 by developing and funding the Community Justice Group Program.*

South Australia noted in the 1994 implementation report that the objectives of this recommendation are within community policing philosophies as per Recommendation 215. Local issues were to be addressed via the deployment of local police liaison officers.


 *South Australia has implemented Recommendation 220 by addressing its objectives under its existing community policing philosophies.*

Western Australia established relevant schemes to address the intended outcomes of Recommendation 214. The Western Australian Government also intended, as of 1997, to establish further Warden Schemes at Coonana, Blackstone, Warakurna, Wingelina, Jigalong and Warburton.


Western Australia continues to support a range of community policing initiatives. This includes: district and local police working with specialised resources such as the WA Police Force Community Engagement Division's Aboriginal Unit; Aboriginal Police Liaison Officers; Community Relations Officers; and community patrols on local and regional initiatives. An example of this is the Martu Leadership Program. This Martu initiated a program involves the community working closely with police, lawyers, prison and the Pilbara Magistrate to form a different and new relationship with key agencies in the criminal justice system to reduce contact.

 *Western Australia has implemented Recommendation 220 by addressing its objectives under the Western Australian community policing initiatives.*

Tasmania noted that, as of 1993, there were no Aboriginal and Torres Strait Islander funding requirements for community policing programs. As such, the Tasmanian government considers this recommendation to not be applicable to Tasmania.

 *Tasmania has not implemented Recommendation 220. The Tasmanian Government considers this recommendation to not be applicable to Tasmania.*

In the **Northern Territory**, Aboriginal and Torres Strait Islander communities have previously been encouraged to become involved in community policing, with 22 communities (as of 1994) having warden schemes and/or night patrols being conducted. An established Advisory Committee on Community Policing was established by the NT Government to assist and encourage Aboriginal and Torres Strait Islander communities to take more responsibility in dealing with local social justice law and order issues. The NT has also formed a partnership with the Jawoyn Association to develop a strategic plan for the Maranboy Police District. This involved transitioning the role of Officer in Charge of the police station to a selected Aboriginal and Torres Strait Islander person. More recently, the Northern Territory has been assisted by the use of the CEPO program in remote communities.

 *The Northern Territory has implemented Recommendation 220 by providing ongoing funding for active engagement with community policing.*

In the **Australian Capital Territory**, a Community Justice Panel was intended to be considered as part of the Integrated Crime Prevention Strategy. The now-established Community Safety strategy works to address issues of concern to Aboriginal and Torres Strait Islander people as they arise. The committee features at least one Aboriginal and Torres Strait Islander representative.

Currently, the Australian Capital Territory Government funds programs delivered by the Aboriginal Legal Service, as a part of its community safety strategy. Programs include; The Front up program supporting individuals with warrants or in breach of bail; Interview Friends for individuals requiring support during formal police interviews; Galambany court support for individuals going through the circle sentencing process and additional support for individuals recently released from prison eligible for the ACT Corrective Services Extended Through care program.

 *The Australian Capital Territory has implemented Recommendation 220 by addressing its objectives through the Community Safety strategy.*

Recommendation 221

That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal affairs budget.

Background information


The RCIADIC noted that it was necessary to adequately remunerate Aboriginal and Torres Strait Islander people for their involvement in the schemes that were proposed in Recommendation 220.

Responsibility


The recommendation is the responsibility of the State and Territory Governments.

Key actions taken and status of implementation

The **New South Wales** Government noted in its 1993 implementation report that it has developed budgets for the various panels. This report noted that members of the Koori Community Justice Council in Taree and the Wellington Juvenile Justice Panel are paid sitting fees. In addition, remuneration is considered on a case-by-case basis, following consultation with Aboriginal communities. For example, Circle Sentencing involves Elders who receive travel and catering costs, but not sitting fees. This approach was adopted following consultation with relevant Elders, who advised that it was more appropriate that sitting fees were not provided.

 *New South Wales has implemented Recommendation 221 by remunerating Aboriginal and Torres Strait Islander individuals involved in community and police initiatives.*


In **Victoria**, the criminal justice portfolio provides funding for Aboriginal Community Justice Panels. Panel members receive personal and travel expenses related to their work.

 *Victoria has implemented Recommendation 221 by remunerating Aboriginal Community Justice Panel members.*


The **Queensland** Government Department of Justice and Attorney-General funds 39 Community Justice Groups. From 1 July 2017, funding arrangements were moved to a triennial basis which reduces the administrative burden on the Community Justice Groups.

 *Queensland has implemented Recommendation 221 by funding 39 Community Justice Groups.*


Mobile Assistant Patrols (MAP) in **South Australia** employed Aboriginal and Torres Strait Islander workers, who received funding through SA Health. Additionally, community constables and Police Liason Officers are funded through South Australia Police. Aboriginal Volunteers in the Aboriginal Visitors Scheme receive honorarium payments.

 *South Australia does not appear to have taken any relevant action to respond to Recommendation 221.*


In **Western Australia**, the former Community Development Employment Program provided funding for the remote community patrols programs. However, open community patrols, such as the Aboriginal Street Patrols have historically operated on an unpaid volunteer basis with a few minor exceptions. It was noted in the 1995 implementation report that funding for these schemes does not come under the police budget. The Western Australian Government has noted that it supports a range of initiatives that rely on both volunteers and paid staff. Paid staff are all fairly remunerated.

 *Western Australia does not appear to have taken any relevant action to respond to Recommendation 221.*

Tasmania noted in 1993 that this recommendation is not relevant to the state.


 *Tasmania has not taken any action to respond to Recommendation 221, and considers that it is not relevant to Tasmania.*

The **Northern Territory** Government noted in their 1995 implementation report that remuneration is contrary to the basic principles of community policing, and that providing funding to community policing inputs could potentially jeopardise the current Aboriginal and Torres Strait Islander community policing programs. All Aboriginal and Torres Strait Islander employees of the Northern Territory Police Force are remunerated as per the relevant Northern Territory awards.

 *The Northern Territory has not implemented Recommendation 221.*

The **Australian Capital Territory** Government's Justice and Community Safety Directorate remunerates Aboriginal and Torres Strait Islander people through their contracts with existing local Aboriginal and Torres Strait Islander organisations to provide community justice programs. Programs include: the Front Up program supporting individuals with warrants or in breach of bail; Interview Friends for individuals requiring support in formal police interviews; and Galambany court support for individuals going through the circle sentencing process; and additional support for individuals recently released from prison eligible for the ACT Corrective Services Extended Throughcare program.

The Aboriginal-Police Friends call-out roster, which existed as of 1997, operated on a voluntary basis, however the issue of remuneration had been previously raised with the ACT Government. This matter was stated to require further consideration and consultation between the ACT Government and the Aboriginal and Torres Strait Islander Consultative Council.

 *The Australian Capital Territory has partially implemented Recommendation 221, as it not clear whether all Aboriginal and Torres Strait Islander people involved in community and police initiated schemes are appropriately remunerated.*

Recommendation 222

That the National Police Research Unit make a particular study of efforts currently being made by Police Services to improve relations between police and Aboriginal people with a view to disseminating relevant information to Police Services and Aboriginal communities and organisations, as to appropriate initiatives which might be adopted.

Background information

The RCIADIC Report noted that several Aboriginal and Torres Strait Islander communities felt that their relationship with the police had not improved. Further to this, Aboriginal and Torres Strait Islander communities suggested that meetings and good communications with the police would be crucial to the successful implementation of this recommendation.


Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. This recommendation is addressed to the National Police Research Unit, which was a Commonwealth body.

Key actions taken and status of implementation

The **Commonwealth's** National Indigenous Law and Justice Framework 2009 demonstrated a recognition by the AGD and Attorneys-General of each State and Territory, of the need to improve relations between police services and Aboriginal and Torres Strait Islander communities. In May 1992, the Australian Police Ministers' Council (APMC) noted a consolidated report of Australian initiatives to improve relations between police and Aboriginal and Torres Strait Islander people.

The Australia New Zealand Policing Advisory Agency, formed in 2007 to supersede the National Police Research Unit, has published a number of relevant publications relating to improving relationships with Aboriginal and Torres Strait Islander people, including a *Practical Reference to Religious and Spiritual Diversity for Operational Police*. The AGD noted that this guide includes an overview of Aboriginal and Torres Strait Islander culture, and provides guidance for police on interviewing, searching and detaining Aboriginal and Torres Strait Islander people.

 *The Commonwealth had addressed Recommendation 222 through the National Police Research Unit (now the Australia New Zealand Policing Advisory Agency), and evidence of the report being disseminated to relevant bodies is provided through the National Indigenous Law and Justice Framework.*

Recommendation 223

That Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of:

- a. Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained;*
- b. The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication;*
- c. Concerns of the local community about local policing and other matters; and*
- d. Processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their communities.*

Background information

The RCIADIC Report noted that having written protocols is significant as they represent a negotiation by bodies which each have an important role to play in the criminal justice system.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have addressed Recommendation 223 through the following policy changes and programs. The AFP ACT Regional Instruction – 1/92 – Watch House requires that the Officer in Charge Watch House ensures that the Aboriginal Liaison Committee or Aboriginal Legal Aid Officer was notified of any Aboriginal and Torres Strait Islander person placed in custody. ACT Regional Instructions also apply in Jervis Bay Territory. However, as there was no Aboriginal Liaison Committee in Jervis Bay Territory at the time every effort was made to notify the family/community.


The ACT Aboriginal and Torres Strait Islander Justice Partnership 2015-18 – between ACT Policing, ACT Legal Aid, and the Aboriginal Legal Service – sets out the governing arrangements aimed at reducing Aboriginal and Torres Strait Islander over-representation in the ACT criminal justice system as both victims and perpetrators.

The *1993-94 Annual Report* also mentioned that the act of drunkenness was decriminalised in the ACT and intoxicated persons were placed in protective custody for up to eight hours or until they become sober, whichever ever came first. This remains in place as at 2018.

Under the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991*, Aboriginal and Torres Strait Islander legal organisations must be given notification when an Aboriginal and Torres Strait Islander person is arrested.

The Police/Aboriginal Liaison Committee – established in April 1990 – was a principle avenue through which the Aboriginal community met with police, raised issues of concern and worked together to achieve common objectives. The Committee met on a bi-monthly basis, however there have not met since February 1993. The Australian Capital Territory Government has noted that ACT Policing regularly engage with the Aboriginal and Torres Strait Islander community through community forums for the purpose of ensuring that ACT Policing adequately provide policing services and support to the Aboriginal and Torres Strait Islander community. The Chief Police Officer attends these community forums on a three-monthly basis and Aboriginal and Torres Strait Islander liaison officers work with Aboriginal and Torres Strait Islander elders and community members daily.


The Aboriginal/Police Liaison Committee was reviewed with the advice of the ACT Aboriginal and Torres Strait Islander Advisory Council. As of 1993, the development of a protocol was being considered by the Liaison committee. The *1993-94 Annual Report* also mentioned that the act of drunkenness was decriminalised in the ACT and intoxicated persons were placed in protective custody for up to eight hours or until they become sober, whichever ever came first.

 *The Commonwealth and Australian Capital Territory Governments have taken several actions to implement Recommendation 223; however, it is considered mostly complete since there is no evidence to suggest that paragraph (d) of Recommendation 223 has been addressed in the Jervis Bay Territory Community. It is important to note that the AFP considers that paragraph (d) is not relevant to the ACT, given the geographic size of the AFP and that there are no discrete Aboriginal and Torres Strait Islander communities in the ACT.*

In **New South Wales** cl37 of *Law Enforcement (Powers and Responsibilities) Regulation 2016* requires police to immediately contact the Aboriginal Legal Service's Custody Notification Service when an Aboriginal person is arrested or detained.


In response to part (b) of this recommendation, public intoxication is not an offence in NSW. Police are required to place intoxicated persons into the custody of a responsible adult, convey them to a designated Proclaimed Place, to detain them in police cells without charge, where an appropriate level of observation must be maintained until release.

With regards to the communication of concerns of the local community about local policing, the NSW Police employs community members as Aboriginal Community Liaison Officers to represent community interests and to voice their concerns at the local patrol level. Currently, there is no formal mechanism for direct participation by local community members in the selection or placement of individual police officers.

 *New South Wales has mostly implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal individuals who become involved in the justice system. However, New South Wales has not implemented a response in relation to part (d) of this recommendation.*


In **Victoria**, the Victorian Aboriginal Legal Service Cooperative and Police developed protocols to address part (a), (b) and (c) of this recommendation. These components were addressed through consultation with established Aboriginal Community Justice Panels and Police Community Consultative Committees. When any Aboriginal and Torres Strait Islander person is taken into custody for any reason, the police member responsible must notify D24 (Emergency Communications) as soon as possible, who will then contact the Victorian Aboriginal Legal Service, or where local arrangements exist, notify the Aboriginal Community Justice Panel directly. These matters were addressed by the Police Aboriginal Liaison Unit, these panels, and community consultative committees.

VicPol advised in the 2005 Implementation Review that part d) of this recommendation is not a workable model. VicPol has indicated that there may be some scope for the selection of liaison officers to have community input within the limits of staffing available. However, as these positions are intended to be at a level of Sergeant or above these positions have a limited pool of candidates. Part d) has not been implemented.


 *Victoria has mostly implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system. However, Victoria has not implemented a response in relation to part (d) of this recommendation.*

The **Queensland** Police Service has established community consultative committees and Aboriginal and Torres Strait Islander liaison committees. Section 16.21.10 of the QPS OPM sets out a clear protocol for the Aboriginal and Torres Strait Islander Legal Service be notified when an Aboriginal and Torres Strait Islander is arrested or detained. In addition, it also sets out a protocol for the Aboriginal and Torres Strait Islander Legal Service to seek information and interviews.

The Anungara Rules set out additional safeguards in the event that an Aboriginal and Torres Strait Islander person is taken into custody, whereby police need to ensure that they are fluent in English, understand what is happening, and have an Aboriginal and Torres Strait Islander support person. In addition, the Cultural Support Unit exists to promote and maintain relationships with multicultural and Aboriginal and Torres Strait Islander communities. For matters relating to decriminalisation of drunkenness, the Custody Manual previously provided that diversionary facilities were referenced.

 *Queensland has mostly implemented Recommendation 223 by establishing protocols to address key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system. However, Queensland has not implemented a response in relation to part (d) of this recommendation and has not provided evidence of further action in response to part (b) of this recommendation.*

In **South Australia**, the South Australia Police's (SAPOL) General Arrest Orders instructs officers to notify the Aboriginal Legal Rights Movement when an Aboriginal and Torres Strait Islander person is arrested or taken into custody. There also exist clear guidelines regarding the circumstances under which Aboriginal and Torres Strait Islander individuals are taken into protective custody by virtue of intoxication. In addition, SAPOL have established Aboriginal and Torres Strait Islander support and focus groups, such as the Aboriginal/Police Liaison Group to discuss community concerns regarding policing practices. There is also an Aboriginal Justice Consultative Committee which provides community representatives with a forum through which to raise matters in relation to policing within their communities.


 *South Australia has fully implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system.*

The **Western Australian** Police developed protocols in 1995 in response to this recommendation where Local Aboriginal/Police Liaison Committees were used to resolve issues at the local level. Part (d) of this recommendation was not intended to be implemented as it was deemed inappropriate to suggest that present decision making processes for police officers be diminished in any way. Currently, there is no statutory obligation requiring the police to notify the Aboriginal Legal Service when an Aboriginal and Torres Strait Islander person is arrested.

The Western Australian Government has indicated it is currently exploring a Custody Notification System to improve access for Aboriginal and Torres Strait Islander people to early legal advice. The state has noted that within the Western Australia Police Force, the Aboriginal and Community Diversity Unit provides cultural consultancy support and engagement with communities, including dealing with complaints and concerns.


 *Western Australia has partially implemented Recommendation 223, but has not addressed key elements of the recommendation in its response*

Tasmania noted its support for this recommendation in the 1995 implementation report, and reported that procedures are in place for interaction between Tasmania Police and the Aboriginal and Torres Strait Islander community including for the notification of the arrest or detention of an Aboriginal and Torres Strait Islander person.

 *Tasmania has partially implemented Recommendation 223, but has not addressed key elements of the recommendation in its response.*

In the **Northern Territory**, part (a) of this recommendation was already in place at the time of the RCIADIC at major centres where Aboriginal Legal Services operate, noting that this is not always feasible at remote localities. Regarding part (b), protocols were put in place to address this, with more protocols being developed as of 1994. Part (c) of this recommendation was reported to be fundamental to the Northern Territory Community Policing policy, and if not already in existence, was to be developed in each community. Aboriginal Community Police selection has involved the community since the inception of the Police Aide Scheme in 1979.

In recent years, a new position of Aboriginal Liaison Officer has been introduced where officers, who are sourced from communities, act as dedicated liaisons between the police and Aboriginal and Torres Strait Islander community members.

 *The Northern Territory has fully implemented Recommendation 223 by establishing protocols and forums around key issues for Aboriginal and Torres Strait Islander individuals who become involved in the justice system.*

Recommendation 224

That pending the negotiation of protocols referred to in Recommendation 223, in jurisdictions where legislation, standing orders or instructions do not already so provide, appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person other than such arrests or detentions for which it is agreed between the Aboriginal Legal Services and the Police Services that notification is not required.

Background information

The RCIADIC Report discussed evidence which shows that liaison officers can be effective in defusing situations which might otherwise lead to conflict between police and Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation


The actions taken by the **Commonwealth** and **Australian Capital Territory** Governments in response to Recommendation 223 also apply to this recommendation. AGD noted that the Australia New Zealand Policing Advisory Agency has published a number of relevant publications relating to improving relationships with Aboriginal and Torres Strait Islander people (see Recommendation 222). Additionally, amendments as part of the Crimes Legislation (Powers, Offences and Other Measures) Bill 2017 seek to clarify the timing, content, and discrete nature of the obligation to notify an Aboriginal and Torres Strait Islander legal assistance organisation prior to commencing questioning of an arrestee.

Additionally, the Commonwealth Minister for Indigenous Affairs has extended an offer to all states and territories to fund a Custody Notification Service for three years on the condition that the jurisdictions introduce legislation mandating its use and agree to take on funding responsibility at the end of that period.


For all states and territories, the actions taken in response to Recommendation 223 also apply to this recommendation.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 224 through the actions outlined in response to Recommendation 223.*


In **New South Wales**, informal arrangements were already existing in a number of locations. Currently, the Custody Notification Service, which is operated by the Aboriginal Legal Service, provides support to Aboriginal people who are in custody awaiting bail. NSW is the only state to legislate the Custody Notification Service.

 *New South Wales has implemented Recommendation 224 via the legislation of the Custody Notification Service.*


Victoria noted in the 1997 implementation report that police are responsible for notifying the Victorian Aboriginal Legal Service Cooperative when an Aboriginal and Torres Strait Islander person is taken into custody. If an Aboriginal Community Justice Panel exists in that area, the police are also required to notify the appropriate panel.

 *Victoria has implemented Recommendation 224 by requiring that police notify the Victorian Aboriginal Legal Service and Aboriginal Community Justice Panels when an Aboriginal and Torres Strait Islander person is brought into custody.*

Queensland Police has implemented the protocols referred to in Recommendation 223, including a clear protocol for the notification of the Aboriginal and Torres Strait Islander Legal Service when people are arrested or detained.


 *Queensland has implemented Recommendation 224 by requiring that police notify the Aboriginal and Torres Strait Islander Legal Service when an Aboriginal and Torres Strait Islander person is brought into custody.*

In **South Australia**, the SAPOL General Orders Arrest directs officers to notify the Aboriginal Legal Rights Movement on the arrest of an Aboriginal and Torres Strait Islander person.


 *South Australia has implemented Recommendation 224 by requiring that police notify the Aboriginal Legal Rights Movement when an Aboriginal and Torres Strait Islander person is brought into custody.*

While no statutory obligation exists for the **Western Australian** Police to advise the Aboriginal Legal Service when an Aboriginal and Torres Strait Islander person is arrested or detained, the arrested/detained individuals do have the opportunity for the ALS or other nominated persons to be advised of their whereabouts and charges laid against them. In 1994, the Commissioner of Police introduced policy pertaining to the rights of persons detained in custody, including allowances for detainees to communicate with persons or organisations outside the lockup.


The Western Australia Police Force has trialled an agreed operational protocol with the Aboriginal Legal Service. However this was discontinued due to the arrangements proving problematic for the ALS. The State has indicated it is currently exploring a Custody Notification System as part of its ongoing commitment to find more effective and efficient ways of working.

 *Western Australia has taken limited steps towards implementing Recommendation 224, by introducing a policy pertaining to the rights of persons detained in custody, including allowances for detainees to communicate with persons or organisations outside the lockup.*

In **Tasmania**, Tasmania Police Standing Order No. 144 requires that the police notify the Aboriginal Legal Service in the event of an arrest of an Aboriginal and Torres Strait Islander person.

 *Tasmania has implemented Recommendation 224 by requiring that police notify the Aboriginal Legal Service when an Aboriginal and Torres Strait Islander person is brought into custody.*

In the **Northern Territory**, General Order Custody Part IV (OP-C3) 370 stipulates that the NT Police are to make reasonable efforts to establish protocols at local level that address notification to Aboriginal Legal Aid when an Aboriginal and Torres Strait Islander person is arrested or detained, with the permission of the person in custody.

 *The Northern Territory has partially implemented Recommendation 224, its protocols only require police to make reasonable efforts to notify Aboriginal Legal Aid when an Aboriginal and Torres Strait Islander person is brought into custody.*

Recommendation 225

That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate.

Background information

The RCIADIC Report noted that the quality of relations between police and Aboriginal and Torres Strait Islander people depends on the personality of the patrol commander and his or her ability to relate to Aboriginal and Torres Strait Islander people. The ability of the police commander to understand and recognise the distinctive nature of the Aboriginal and Torres Strait Islander community, and the commander's ability to listen to Aboriginal and Torres Strait Islander people, are also considered to be significantly important.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following activities. At the November 1993 APMC meeting, the AFP noted that progress had been made to develop an Aboriginal and Torres Strait Islander employment strategy for the AFP which aimed to attract and retain Aboriginal and Torres Strait Islander employees.


In the ACT, the Aboriginal and Torres Strait Islander Community Liaison Officer assists with the development of policy and legislation which may impact upon Aboriginal and Torres Strait Islander communities. This is also discussed in Recommendation 214. In addition to this, the Australian Capital Territory Justice and Community Safety Directorate is currently working with ACT Policing to facilitate the placement of an embedded Aboriginal and Torres Strait Islander policy officer to work within its policy team. The aim of this placement is to provide ACT Policing with improved understanding of Aboriginal and Torres Strait Islander issues when developing policing policies and programs.

 *The Commonwealth and Australian Capital Territory Governments have mostly implemented Recommendation 225 through the creation of the Aboriginal and Torres Strait Islander Community Liaison Officer. However, a similar role for the Jervis Bay Territory Community does not appear to have been created.*


New South Wales appointed an Aboriginal Client Group Consultant in the police force to advise on Aboriginal issues following the release of the RCIADIC report. This position was part of the senior administration and provided access to the Commissioner of Police through the Office of Strategic Services.

Currently, there is no single Aboriginal Policy Unit in the NSW Police Force. Each region employs a coordinator to provide strategic advice to the Region Commander on Aboriginal policy and operational issues. An Aboriginal Client Group Consultant continues to be employed to liaise with the Region Coordinators and community groups and organisations state-wide, to provide similar assistance to the


State Commander, Commissioner and Police Board. In addition, senior representatives of Aboriginal communities and organisations are able to have direct access to the Commissioner via the Commissioner's Police Aboriginal Council, while all Aboriginal staff of the NSW Police Force are able to engage with the Commissioner through the Koori network support group.

 *While New South Wales has not established a single unit to address Aboriginal policy issues, it has fully implemented Recommendation 225 by establishing appropriate channels and forums for Aboriginal individuals to contribute to policing policies and programs.*

As of 1994, the **Victorian** Police Force had previously worked with the Police Aboriginal Affairs Unit (led by the Police Aboriginal Liaison Officer who is of Aboriginal and Torres Strait Islander descent) to develop policy and programs which relate to Aboriginal and Torres Strait Islander people. Development of these policy and programs was supplemented by Police Community Consultative Committees and Aboriginal Community Justice Panels.


 *Victoria has implemented Recommendation 225 by establishing a number of forums where Aboriginal and Torres Strait Islander individuals develop policies and programs relating to policing issues.*

In **Queensland**, a Cultural Support Unit has been established by the Queensland Police Service to address policies and programs that relate to Aboriginal and Torres Strait Islander people. However, the unit is not headed by an Aboriginal and Torres Strait Islander person at this time.

 *Queensland has partially implemented Recommendation 225 by establishing a Cultural Support Unit to address policies and programs that relate to Aboriginal and Torres Strait Islander people but has not employed an Aboriginal and Torres Strait Islander person to head this unit.*


Following the release of the RCIADIC report, **South Australian** police aides were required to provide advice at the Regional and divisional level. Aboriginal and Torres Strait Islander persons who were members of the police force were stationed within Multicultural Services to provide liaison and advice on Aboriginal and Torres Strait Islander issues.

In 2000, the SAPOL established the Indigenous Employment Support Unit which is accountable for the implementation of SAPOL's Indigenous Employment Strategy and which reports via the Director of Human Resources Service to the Senior Executive. The SAPOL has also developed an Indigenous Strategic Plan, which oversees Aboriginal and Torres Strait Islander initiatives such as fostering community partnerships and reducing the number of Aboriginal and Torres Strait Islander people in the justice system.

 *South Australia has partially implemented Recommendation 225 by establishing the Indigenous Employment Support Unit and implementing the Indigenous Strategic Plan. However, evidence does not state whether an Aboriginal and Torres Strait Islander person heads this unit.*

Western Australia took action to address this recommendation by creating an Aboriginal Affairs Branch to liaise with Government and other Aboriginal and Torres Strait Islander agencies to address any policing related issues with the Aboriginal and Torres Strait Islander community, and to develop policies and programs that relates to the needs of the Aboriginal and Torres Strait Islander community. In 1994, existing programs were beginning to be expanded, and maintained by the Aboriginal Police Aide scheme, which was staffed by Aboriginal and Torres Strait Islander people.

Currently The Western Australia Police Force's Aboriginal and Community Diversity Unit is responsible for State-wide monitoring of Aboriginal and Torres Strait Islander service delivery matters, including policy and procedures, program development, and the provision of specialised support services. The Unit also provides support and advice on engagement and coordination, including contributing to policy and legislative matters.

 *Western Australia has partially implemented Recommendation 225 by establishing an Aboriginal Affairs Branch and Aboriginal and Community Diversity Unit. However, it is not clear whether an Aboriginal and Torres Strait Islander person heads these groups.*

Tasmania reported in the 1993 implementation report that they consider this recommendation to be “unjustified” (p. 84). No rationale was provided for this assessment.

○ *Tasmania has not implemented Recommendation 225.*

Within **Northern Territory** Police, an Aboriginal, Ethnic and Youth Affairs Unit was established following the RCIADIC report to offer guidance and advice on matters pertaining to police interaction with Aboriginal and Torres Strait Islander people. Currently, a discrete unit no longer exists. Instead, responsibility for interaction now lies with the relevant Police Command with constancy of approach assured through internal governance structures.

○ *The Northern Territory has not implemented Recommendation 225 as its policy and development unit has been superseded by a different approach to developing policies and programs that relate to Aboriginal and Torres Strait Islander people.*

Additional commentary

With regards to the **Commonwealth** and **Australian Capital Territory** Governments’ response to Recommendation 225, under the *Directions Program Traineeship* and the *Indigenous Graduate Program*, Aboriginal and Torres Strait Islander people are recruited in groups, with the cohort going to training and development sessions together. While the members may be working in different areas, the AFP notes that they are unified as a group through the training and opportunities provided for mentoring and support. The *Malunggang Indigenous Officers Network* also delivers cultural awareness training which aims to raise awareness and understanding of the historical and contemporary issues experienced by Aboriginal and Torres Strait Islander people.

Recommendation 226

That in all jurisdictions the processes for dealing with complaints against police need to be urgently reviewed. The Commission recommends that legislation should be based on the following principles:

- a. That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services;*
- b. That the name of a complainant should remain confidential (except where its disclosure is warranted in the interests of justice), and it should be a serious offence for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint;*
- c. That where it is decided by the independent authority to hold a formal hearing of a complaint, that hearing should be in public;*
- d. That the complaints body report annually to Parliament;*
- e. That in the adjudication of complaints made by or on behalf of Aboriginal persons one member of the review or adjudication panel should be an Aboriginal person nominated by an appropriate Aboriginal organisation(s) in the State or Territory in which the complaint arose. The panel should also contain a person nominated by the Police Union or similar body;*
- f. That there be no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint;*
- g. That Aboriginal Legal Services be funded to ensure that legal assistance, if required, is available to any Aboriginal complainant*
- h. That the complaints body take all reasonable steps to employ members of the Aboriginal community on the staff of the body;*
- i. That the investigation of complaints should be undertaken either by appropriately qualified staff employed by the authority itself, or by police officers who are, for the purpose of and for the duration of the investigation, under the direction of and answerable to, the head of the independent authority;*

- j. *That in the course of investigations into complaints, police officers should be legislatively required to answer questions put to them by the head of the independent authority or any person acting on her/his behalf but subject to further legislative provisions that any statements made by a police officer in such circumstances may not be used against him/her in other disciplinary proceedings;*
- k. *That legislation ensure that the complaints body has access to such files, documents and information from the Police Services as is required for the purpose of investigating any complaint.*

Background information

The RCIADIC Report noted that Aboriginal and Torres Strait Islander people made little use of any formal mechanisms for raising complaints with police due to previous encounters that Aboriginal and Torres Strait Islander people had with police services in the past.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of the responsibility of Recommendation 226 falls upon the States and Territories. The Commonwealth is responsible for paragraph (g) that relates to the funding of ATSILSs.

Key actions taken and status of implementation


The **Commonwealth** Government's ATSILSs received over \$29 million in grant funding in the 1993-94 financial year. This funding was provided for a range of services, including legal representation and advice to Aboriginal and Torres Strait Islander complainants. ATSILSs continue to receive funding through the Indigenous Legal Assistance Programme, which totals over \$370 million from 2015 to 2020.

PM&C advised that although ATSILSs are funded to provide a range of legal services, the majority of these services are provided for criminal law matters, followed by civil law and family law and child protection matters. Under current funding agreements, ATSILSs are required to prioritise services to 'priority clients', which means that *any Aboriginal complainant* (as specified in the recommendation) may not necessarily be guaranteed legal representation by an ATSILS.

 *Recommendation 226 has been mostly implemented at the Commonwealth level. ATSILSs continue to receive funding from the Commonwealth Government which allows for the provision of legal representation, however it does not guarantee that funding is available to all complainants.*

New South Wales established the Police Integrity Commission to prevent, detect and investigate serious police misconduct in response to this recommendation. This process occurs independently of the NSW police force and so complaints may be made directly to the Commission or the NSW Ombudsman. There does not appear to be a specific requirement that any members of each review panel be of Aboriginal descent.

In 2017, the Law Enforcement Conduct Commission was established as a permanent independent investigative commission to provide oversight of the NSW Police Force and NSW Crime Commission. It replaces the Police Integrity Commission and the Police Compliance Branch of the NSW Ombudsman with a single oversight body with two clearly defined functions: detecting and investigating misconduct and corruption, and overseeing complaints handling.

 *New South Wales has partially implemented Recommendation 226 by establishing the Law Enforcement Conduct Commission but has not expressly addressed provisions for Aboriginal complainants.*

The Independent Broad-Based Anti-Corruption Commission (IBAC) in **Victoria** was established in 2014 to replace the Office of Police Integrity. This new Commission works to provide independent oversight of the police, and had substantial powers. Serious complaints must always be referred to the Commission, even if initially made to the Police. The Victorian Government has indicated that the Victoria Police complaint handling and discipline system is currently under review, with the aim of

simplifying the current system and becoming more responsive to victims and complainants of police misconduct. It is expected that a reformed system will begin operation in 2018.

In relation to part (a) handling of police complaints is a mixed arrangement between the IBAC and Victoria Police. Most complaints about Victoria Police are managed by directly by Victoria Police. The Professional Standards Command within Victoria Police investigates complaints that are more serious. IBAC can also investigate serious police misconduct. While legislation permits the IBAC to investigate matters that are not criminal nature, in practice, the IBAC limits its direct investigations to the most serious criminal allegations, with less serious allegations passed on to Victoria Police. The IBAC also has a review function and regularly reviews individual complaint investigations, and also from a systemic perspective.

For part (b) of this recommendation, the Victorian Government has noted that an agreement between the Victorian Aboriginal Legal Service and Victoria Police has been reached for the confidential handling of particular complaints. While Victoria Police considers the identity of the complainant of a police complaint is confidential police information, disclosure of the identity of the complainant may occur to certain employees in order to conduct appropriate investigation.

For part (c) of this recommendation, the Victorian Government has noted that complaints investigations are not normally conducted by way of formal hearing. Rather, complaints follow a private investigative process, as the Victorian Government considers that doing otherwise would be detrimental to the integrity of the investigation and outcome. Complaint investigations may result in either formal court proceedings, which are generally open to the public. The current complaints and discipline system in Victoria are also under review by the Victorian Government in the context of the wider review of the *Police Regulation Act 1958*.

For part (d) Victoria Police and IBAC both report annually to Parliament. The Victoria Police annual report includes complaint data.

The Victorian Government does not consider recommendation part (e) to be relevant for the current model of complaint handling. The process is considered to be investigative/recommendatory rather than an adjudicative function.

In part (f), the present system of investigation of police complaints is that there is no financial cost imposed on the complainant.

In regard to part (g), the Victorian Government has noted that the Victorian Aboriginal Legal Service regularly assists members of the Aboriginal and Torres Strait Islander community in the making of complaints and is closely involved in determining how those complaints should best be handled.

In regards to Part (h), the Commission noted in the 1994 implementation report that the employment of Aboriginal and Torres Strait Islander persons on the complaints body required further consultation. Since this time, Victoria Police has encouraged employment of Aboriginal and Torres Strait Islander people within Victoria police through an active Aboriginal and Torres Strait Islander employment program. However, Professional Standards Command does not specifically employ Aboriginal and Torres Strait Islander staff. If necessary, a senior Aboriginal and Torres Strait Islander staff member from Victoria Police would be co-opted for assessment and advice.

In response to Part (i), the Commission noted that investigations have been undertaken by qualified staff at the Ombudsman's office or by police officers. Investigators of criminal complaints appointed to Professional Standards Command must be qualified detectives and have previous investigative experience. Investigators also usually hold supervisory ranks. Investigators employed directly by the IBAC have previous experience usually at a police agency.

In its response to Part (j), the Commission detailed that a police officer in Victoria cannot be expected to provide answers regarding criminal conduct which may be directly or indirectly self-incriminating.

Currently the right to not answer questions or self-incriminate remains for a police employee under investigation for a criminal offence. For the purposes of an investigation into a complaint, any police

officer or protective services officer may also be directed to give information, produce a document or answer questions. Any response given is not admissible in evidence before a court or tribunal.

Part (k) was addressed under the *Police Regulation Act 1958 (Vic)* whereby the Deputy Ombudsman has the authority to access this information detailed in the recommendation. The Victorian Government has indicated that in investigations of complaints or criminality in Victoria Police, investigators have available the full suite of investigative tools including search warrants, surveillance, telephone and other communication intercept warrants and coercive hearings to obtain evidence. Victoria Police staff are also expected to assist investigators with the provision of files, documents and other evidence held by Victoria Police without the need to resort to a search warrant.

The Victorian Government also noted that it completed legislative changes in 2004. These extended the powers available for the independent oversight of Victoria Police. This enabled investigations into corruption or misconduct or into police policies, practices and procedures to be initiated on the Director's own motion whereas previously investigations could only be activated by complaints. The new legislative arrangements were accompanied by significant increases in the budget for oversight of the police.



Victoria has mostly implemented Recommendation 226, however, has not satisfied part (e) of the recommendation.

Complaints in **Queensland** are typically handled by the Assistant Commissioner, Ethical Services Command as part of the Commissioner for Police. Serious complaints are investigated by the Crime and Corruption Commission, thus addressing part (a) of the recommendation. This Commission includes an Aboriginal and Torres Strait Islander engagement strategy which includes strategies for the employment of and engagement of Aboriginal and Torres Strait Islander people, thus addressing part (h) of the recommendation. The Crime and Corruption Commission includes a complaints division by which complaints of official misconduct by public sector employees (including police officers) can be made. There has not been evidence of further actions taken in response to Parts (b), (c), (d), (e), (f), (g), (i), (j), or (k) of the recommendation.

In relation to part (a) of the recommendation, the Criminal Justice Commission (an independent statutory body) was established in 1989, following the Fitzgerald Inquiry (1987-89). One of the Commission's primary functions was to investigate alleged or suspected misconduct by the police force. The Crime and Corruption Commission established in 2001 under the *Crime and Corruption Act 2001* has now taken over the functions of the commission and is the primary oversight body of the Queensland Police Service for police misconduct and corrupt conduct. The Police Commissioner is required to notify the Crime and Corruption Commission of complaints about suspected police misconduct or corrupt conduct.

In relation to part (b) the public may complain directly to the Crime and Corruption Commission, or lodge a complaint with the Queensland Police Service. The Crime and Corruption Commission accepts anonymous complaints and as far as possible, the complainant's identifying particulars are kept confidential. However, it may be apparent given the nature of the complaint who the complainant is.

Part (c) of the recommendation has been addressed by Section 177 of the *Crime and Corruption Act 2001*. This section allows the Crime and Corruption Commission to hold public hearings where it considers that closing the hearing to the public would be unfair to a person or contrary to the public interest. The Crime and Corruption Commission has extensive coercive powers to compel evidence during an investigation and any hearings.

In relation to part (d) of the recommendation, the Crime and Corruption Commission reports annually to Parliament by tabling and publishing its Annual Report. The *Crime and Corruption Act 2001* also establishes the Parliamentary Crime and Corruption Committee to monitor and review the performance of the Commission. The Committee has a statutory duty to conduct a review of the activities of the Commission and table a report to Parliament on its operation every five years.

The Queensland Government does not appear to have taken action in relation to part (e) of the recommendation.


For part (f) there is no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint.

For part (g) the Queensland Government considers this to not be a responsibility of the state, as Aboriginal Legal Services in Queensland are funded by the Commonwealth.

For part (h), the Queensland Crime and Corruption Commission has developed an Aboriginal and Torres Strait Islander engagement strategy, which includes strategies for the employment of and engagement of Aboriginal and Torres Strait Islander people.

For part (i), the Queensland Government has indicated that all investigations of complaints are undertaken by qualified staff employed by the Crime and Corruption Commission and police officers who are engaged by, and reportable to, the Crime and Corruption Commission


In relation to part (j) and (k), during an investigation, the Crime and Corruption Commission has the powers to enter premises and inspect, seize and copy documents as well as the power to conduct coercive hearings that compel people to attend and give evidence and produce documents, when undertaking investigations into corrupt conduct.

 *Queensland has mostly implemented Recommendation 226, with the exception of part (e).*


In **South Australia**, the *South Australian Police Act 1985* generally addresses this recommendation, with a review of the Act following the RCIADIC report finding that this recommendation has been mostly addressed. The Police Complaints Authority (PCA) receives complaints from members of the public about the actions of police officers and the procedures and policies of the police force, thus fulfilling part (a) of the recommendation. It also monitors the investigation of those complaints by the Internal Investigation Branch of the SAPOL and in certain circumstances, will conduct independent investigations. In addition, the PCA receives and considers reports of those investigations and determines any further action, thus fulfilling part, considers Freedom of Information applications relevant to the PCA, and conducts external reviews of the Freedom of Information applications made to the SAPOL, thus fulfilling part (k) of the recommendation.

 *South Australia has partially implemented Recommendation 226 by addressing parts (a) and (k) of the recommendation.*

In Western Australia, there is a robust internal investigation system for complaints against police officers. All allegations are assessed by the Police Conduct Investigation Unit and referred for investigation as appropriate. The Corruption and Crime Commission are notified of every complaint received. Complaints can also be taken directly to the Corruption and Crime Commission or the State Ombudsman, who may conduct their own investigation. Statistics on police complaints are available to the public on the Western Australia Police Force web site.

 *Western Australia has mostly implemented Recommendation 226. However, it is unclear whether every aspect of Recommendation 226 has been implemented from the response.*

Tasmania noted in the 1995 implementation report that processes for dealing with complaints against police were satisfactory, as per the central functions of the Ombudsman and its oversight role over all investigations into Tasmanian Police. Currently, police complaint investigations are reviewed regularly by the Tasmanian Integrity Commission. Complaints about investigations of complaints against police can be given and subsequently reviewed by the Ombudsman or by the Commission.


 *Tasmania has partially implemented Recommendation 226 by establishing procedures for review of complaints by the Tasmanian Integrity Commission but has not expressly addressed provisions for Aboriginal and Torres Strait Islander complainants.*

In the **Northern Territory**, a complaints system exists within the police system alongside the administrative provisions of the Ombudsman Act. This is reported in the 1997 implementation report to cover the majority of the issues listed in this recommendation, with the exception that complaints against police must be investigated by and adjudicated upon by a body independent of the police service and the Ombudsman.

As per the NT Police General Order, all Complaints Against Police are subjected to a thorough, professional and objective investigation, fulfilling part (a). In addition, 6.2 of the General Order recognises the need to maintain community confidence in the ethics and integrity of the Northern Territory Police Force, in accordance with part (b). Section 14A of the Police Administration Act stipulates that members are to obey any relevant Instructions, general Orders, Code of Conduct and any other instruction or order issued from or by the Commissioner of Police, partially fulfilling part (j).

 *The Northern Territory has partially implemented Recommendation 226 by addressing parts (a), (b) and (j) of the recommendation.*

Community policing services in the **Australian Capital Territory** are provided by the Australian Federal Police. ACT Policing members remain officers of the Commonwealth and the Australian Federal Police Commissioner retains responsibility for the general administration, and control of the operations of the Australian Federal Police. As such, administrative arrangements (including complaints processes) of ACT Policing members are subject to the same integrity framework as the AFP more broadly (including Australian Federal Police Professional Standards, the Commonwealth Ombudsman, and the Australian Commission for Law Enforcement Integrity).

 *As Recommendation 226 has been mostly implemented at the Commonwealth level and policing services are provided by the Commonwealth, the Australian Capital Territory has in effect mostly implemented Recommendation 226.*

Recommendation 227

That the Northern Territory Police Service School-based Program be studied by other Police Services and that the progress and results of the program should be monitored by those services.

Background information

The RCIADIC Report highlighted the positive comments by Aboriginal and Torres Strait Islander people for the Northern Territory Police Service School-based Program. The school-based program represents a contribution to the teaching of Aboriginal and Torres Strait Islander students and other students about the function of police in society, laws of the community and the community aspects of policing.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments undertook the following actions in response to Recommendation 227. The *1993-94 Annual Report* noted that the AFP had implemented its own Police Service School-based Program in Canberra. As police involvement with schools in Jervis Bay Territory was considered to be sufficient by the AFP, no such similar program was implemented in the Jervis Bay Territory community.

ACT Policing's Constable Kenny Koala is aimed at educating childcare and primary-aged school children on a range of safety messages, and encouraging them to turn to police for help and advice.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 227 through the introduction of the AFP's program in the ACT, and consideration of a program in the Jervis Bay Territory.*

This program has been trialled in **New South Wales**, with schools being serviced by General Duty Youth Officers and Beat Police. After a review of the program following the release of the RCIADIC report, these positions were transitioned into the role of Youth Liaison Officers. Youth Liaison Officers visit schools, develop crime prevention workshops, provide support for the Safety House scheme and generally promote police relations and foster ideals of citizenship with students and teachers.

- *New South Wales has fully addressed Recommendation 227 by implementing a number of programs in line with the approach of the Police Service School-based Program.*

Victoria reported in the 1997 implementation report that they support this recommendation and have implemented the "Police Schools Involvement Program" which was monitored over several years. Special lectures were given at schools by members of the Police Aboriginal Liaison Unit and the Manager of the Aboriginal Community Justice Panel program. The AJA 3 includes a number of youth programs delivered in partnership with schools, encouraging positive engagement with the justice system.

- *Victoria has fully addressed Recommendation 227 by implementing a number of programs in line with the approach of the Police Service School-based Program.*

Queensland reported in the 1994 implementation report that they support this recommendation and have been monitoring the NT program. Queensland has implemented a School Based Policing Program that draws on the findings of the Northern Territory program and is a joint initiative between the QPS and Queensland Department of Education. The Program focuses on helping teachers to develop and present curriculum materials that meet police and school community needs and undertake initial response and investigations of offences within school perimeters.

- *Queensland has fully addressed Recommendation 227 by implementing a joint initiative with the QLD DET in line with the approach of the Police Service School-based Program.*

In **South Australia**, the SAPOL has developed a number of school based programs in conjunction with the SA Department of Education, Training and Employment, which seek to meet local community needs and are overseen by a dedicated Schools Programs Co-ordinator. In addition, the SAPOL's Schools Programs Section offers resources including lesson plans and singular programs which cover various topics with a crime reduction focus.

- *South Australia has fully addressed Recommendation 227 by implementing a number of school-based programs in line with the approach of the Police Service School-based Program.*

As of 1994, **Western Australia** has previously taken action to address this recommendation by deploying a Schools Based Program which involves 28 police officers servicing 33 senior high schools and 165 primary schools throughout the state. This involved contact with approximately 102,000 students and followed the NT model.

Currently, the Youth Crime Intervention Officer program provides a holistic approach to facilitating better outcomes for offenders and the community, and reducing demand on police services. There are 17 metropolitan-based and 32 regionally based YCIOs that continue to produce positive results in the reduction of youth offending. Local police and specialist business units also engage with schools on a broader needs and issues basis.

- *Western Australia has fully addressed Recommendation 227 by implementing a school-based programs in line with the approach of the Police Service School-based Program.*

Tasmania noted that a full roll-out of the NT scheme would be impracticable for Tasmania, however noted in the 1993 implementation report the need for more Aboriginal Liaison Officers to be appointed in each of the three geographical districts to assist with the Home School Liaison Scheme.

- ◐ *Tasmania has partially implemented Recommendation 227 by considering the appointment of more Aboriginal Liaison Officers but has not provided further evidence of actions taken in its response.*

The **Northern Territory** is not required to respond to this recommendation.

- ◑ *Recommendation 227 is out of scope for the Northern Territory.*

Recommendation 228

That police training courses be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions. Furthermore, such training should incorporate information as to:

- a. *The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;*
- b. *The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and*
- c. *The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation.*

Background information

The RCIADIC Report noted that many police and prison officers whose work involves significant contact with Aboriginal and Torres Strait Islander people have had little or no education concerning Aboriginal and Torres Strait Islander people and their culture.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.


Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 228. The *1993-94 Annual Report* noted that the AFP new member training addressed the issues faced in this recommendation. Similarly, a program of two day workshops were conducted by the Aboriginal Educational Consultative Group with Technical and Further Education which was offered to sergeants and constables. These initiative were funded under the 1992-93 Commonwealth Budget.

All new AFP employees, including contractors, must undertake up to four hours of induction training related to diversity, cultural awareness (including Aboriginal and Torres Strait Islander culture), and unconscious bias prior to entering the workforce. The AFP Malunggang Indigenous Officers Network also delivers cultural awareness training which aims to raise awareness and understanding of the historical and contemporary issues experienced by Aboriginal and Torres Strait Islander people.

-  *The Commonwealth and Australian Capital Territory Governments have fully implemented Recommendation 228 through the AFP's training of new members.*

As cited in the 1993 implementation report, **New South Wales** took action to address this recommendation by running a staff development workshop aimed at improving the interaction between police and Aboriginal communities. Currently, Aboriginal studies has become an important element of all NSW Police Force Academy-based training, particularly in the Police Recruit Education Programme, the Safe Custody Course, and the Patrol Commanders and Patrol Tacticians courses. The training has been developed in consultation with Aboriginal people and is aimed at improving cultural awareness and interactions between the police and Aboriginal communities.

-  *New South Wales has addressed Recommendation 228 by providing training relating to interaction between police and Aboriginal people.*

Victoria has been progressively training up recruits and more senior members of the police force in interacting with Aboriginal and Torres Strait Islander people. In 1993, the Victorian Government proposed a major upgrade in training to address cross cultural awareness issues, including field visits to Aboriginal and Torres Strait Islander communities. A "Kooris and Cops" video was made to play a major role in this program. The AJA includes a number of initiatives relating to improving the relationship between police and Aboriginal and Torres Strait Islander persons.

- *Victoria has addressed Recommendation 228 by implementing training for police on Aboriginal and Torres Strait Islander history and culture.*

Queensland introduced university based training courses for police recruits in 1991. The Queensland Police Service has also been involved in developing Aboriginal and Torres Strait Islander awareness training as part of initiatives funded by the Aboriginal and Torres Strait Islander Commission. The QPS has a range of training courses that are designed to support police to work with Aboriginal and Torres Strait Islander people, including the following courses – Government and the Law, Multicultural Awareness in QLD, and Custody Management.

Queensland has also advised that the courses mentioned cover all topics outlined in this recommendation.

- *Queensland has implemented Recommendation 228 by providing training relating to interaction between police and Aboriginal and Torres Strait Islander people.*

The **South Australian** Police have developed and implemented a number of cultural training initiatives. The SAPOL's Aboriginal and Multicultural Unit, in conjunction with Aboriginal and Multicultural Liaison Officers and Community Constables, has been conducting training with Police Cadets regarding Aboriginal and Torres Strait Islander issues. Aboriginal Cultural Awareness training sessions cover issues of racism and discrimination, their effects on individuals and communities, Aboriginal and Torres Strait Islander history culture, and SAPOL objectives and directions in relation to Aboriginal and Torres Strait Islander Australians, and seek to promote positive behavioural change amongst SAPOL's employees.

- *South Australia has addressed Recommendation 228 by implementing training for police on Aboriginal and Torres Strait Islander history and culture.*

In 1992-1993, **Western Australia** deployed a state-wide *Cultural Awareness Programme* which involved 146 Aboriginal and Torres Strait Islander people as trainers in the program involving both the Police Department and the Department of Education and Training. Additional training initiatives were also under review and exploration as of 1994. More recently, the Western Australia Police Force contracted the University of Notre Dame to undertake an independent review of police training curriculum and policies pertaining to engagement with Aboriginal and Torres Strait Islander people. This report will provide recommendations to guide the transition of current training beyond cultural awareness towards a more comprehensive program both at the entry level as well as throughout a staff member's career.

- *Western Australia has partially addressed Recommendation 228 by implementing training for police on Cultural Awareness. However, it is unclear whether provided training covers all topics outlined in this recommendation.*

In **Tasmania**, Cultural Awareness and Cultural Sensitivity Programs form part of the Tasmania Police Recruit Training syllabus.

- *Tasmania has partially implemented Recommendation 228 by providing training relating to interaction between police and Aboriginal and Torres Strait Islander people. However, evidence has not been found as to whether provided training covers all topics outlined in this recommendation.*

The training provided to **Northern Territory** police to incorporate the objectives outlined in this recommendation was noted in the 1995 implementation report. The NTFP has developed recruit training packages in accordance with this recommendation while cultural education is built into the Diploma of Policing.

- *The Northern Territory has addressed Recommendation 228 by implementing and incorporating training for police on Aboriginal and Torres Strait Islander history and culture into its recruit training packages and Diploma of Policing.*

Recommendation 229

That all Police Services pursue an active policy of recruiting Aboriginal people into their services, in particular recruiting Aboriginal women. Where possible Aboriginal recruits should be taken in groups.

Background information

The RCIADIC Report stressed the importance of recruiting Aboriginal and Torres Strait Islander people into police services, and for police service in any community to be reflective of the composition of the community.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 229. As noted in the *1992-93 Annual Report*, the Commonwealth funded States and Territories to employ a consultant to develop Aboriginal and Torres Strait Islander employment strategies.

The AFP's Equal Employment Opportunity Program was developed to increase the number of Aboriginal and Torres Strait Islander men and women appointed to the AFP as members and staff members. The AFP continues to actively promote the recruitment of Aboriginal and Torres Strait Islander people by providing specific employment pathways for Aboriginal and Torres Strait Islander people to join the AFP.


The AFP has a number of recruitment strategies aimed at recruiting Aboriginal and Torres Strait Islander people into the AFP. The Indigenous Entry Level Traineeship and the Indigenous Graduate program are two programs run to enhance numbers of Aboriginal and Torres Strait Islander persons in the AFP. The AFP's Directions Program Traineeship is a recruitment strategy which seeks to increase Aboriginal and Torres Strait Islander workforce representation. The Traineeship runs as a 12-month full-time, administrative entry-level program for Aboriginal and Torres Strait Islander people who have a career interest with the AFP. Trainees are linked with a mentor who is a police officer, to provide guidance and support with information relating to sworn recruitment gateways.

Through the Directions Program Traineeship and the Indigenous Graduate program, new staff are recruited in groups, with the cohort attending training and development sessions together.

Long-term targets of the AFP Cultural Reform-Diversity and Inclusion Strategy 2016-2026 include:

- Aboriginal and Torres Strait Islander people to increase to 2.5% by 2018;
- Women to comprise a minimum of 50% of applicants considered as part of all external recruitment processes;
- Women in sworn policing and protective service officer roles to increase to 35% by 2021; and
- Women to represent 50% of the total AFP workforce by the end of 2026.


The Australian Capital Territory has also noted that the Australian Federal Police have employed 22 Aboriginal and Torres Strait Islander trainees in the 2017-18 period. Of these trainees, 17 were female and 5 were male. At 21 June 2018, 21 of the 22 trainees are continuing in their employment and study towards a nationally recognised qualification. All 22 trainees were recruited at the same time.

 *The Commonwealth and Australian Capital Territory Governments have fully implemented Recommendation 229 through various initiatives to actively pursue the recruitment of Aboriginal and Torres Strait Islander people into the AFP, and to recruit them in groups where possible.*

The **New South Wales** police force employs an active recruitment program for Aboriginal people. Officers within the Recruitment Unit specialise in Aboriginal recruiting and have received specific


training. An Aboriginal police officer is employed as the coordinator of this program. The NSW Government has also targeted female Aboriginal high school students for recruitment.

As of 30 June 2017, the NSWPF had 580 NSWPF staff identified as Aboriginal employees while women represented 42.4% of all Aboriginal staff. The last five intakes of the Associate Degree in Policing Practice have had strong Aboriginal enrolments.

 *New South Wales has mostly implemented Recommendation 229 by introducing an Aboriginal police recruitment plan and actively recruiting Aboriginal employees, including women, however there is no provision made that recruitment take place in groups where possible.*


The **Victoria** Police Aboriginal and Torres Strait Islander Employment Plan 2014-2018 was developed to facilitate employment and career development opportunities for Aboriginal and Torres Strait Islander people wanting to pursue a career within Victoria Police. Victoria Police has also established the Aboriginal School-based Traineeships that aims to support Aboriginal and Torres Strait Islander students (in Years 11 & 12) with paid employment in a Police Station one day per week, contributing towards a Certificate 3 in Business Administration.

The Victorian Government has also indicated that an Aboriginal Inclusion Strategy and Action Plan will be developed and implemented in 2018, incorporating a revised Aboriginal Employment Plan.


 *Victoria has mostly implemented Recommendation 229 by introducing an Aboriginal and Torres Strait Islander police recruitment plan, however there is no provision made that recruitment take place in groups where possible.*

In **Queensland**, the Recruiting Section of the Queensland Police Service has been undertaking processes to develop strategies for the recruitment of officers from Aboriginal and Torres Strait Islander communities. A bridging course is offered at Johnstone College of TAFE Innisfail and at the Kangaroo Point College of TAFE Brisbane. The courses assist Aboriginal and Torres Strait Islander people meet the entry standards for the Queensland Police Service. The QPS also has recruiting guidelines in place, such as the Culturally and Linguistically Diverse Recruit Preparation Program and the Indigenous Recruit Preparation Program.


The Queensland Police Service offers positions for Aboriginal and Torres Strait Islander people in its Indigenous Recruit Preparation Program. Successful participants provide direct entry into the Recruit Training program. In 2016, the Queensland Police Service introduced a 50/50 gender quota for recruiting.

 *Queensland has mostly implemented Recommendation 229 by developing Aboriginal and Torres Strait Islander recruitment programs and created a 50/50 gender quota for recruitment, however there is no provision made that recruitment take place in groups where possible.*

In **South Australia**, the SAPOL has established a range of recruitment, training and career development programs, such as the Community Constable Scheme and, in 2000, the Indigenous Employment Support Unit, which is attached to the Human Resources Service. The Unit seeks to recruit, train and retain Aboriginal and Torres Strait Islander individuals in policy, strategy and operations. The SAPOL also has a policy statement, whereby its Indigenous Employment Strategy seeks to achieve and maintain a 2% Aboriginal and Torres Strait Islander participation rate.

 *South Australia has partially implemented Recommendation 229 by establishing an Indigenous Employment Support Unit and setting a goal for a 2% participation rate, however there is no provision made that recruitment take place in groups where possible or for active recruitment of women.*


The **Western Australian** Aboriginal Affairs Branch works to employ Aboriginal and Torres Strait Islander people to serve in the police force. No distinction was made in the 1994 implementation report as to whether female recruits were favoured over male recruits. In order to identify potential police officers, a special Aboriginal Police Cadet Scheme was introduced. In addition to this, bridging courses are offered to assist applicants who might not otherwise achieve minimum entry standards.

 *Western Australia has partially implemented Recommendation 229 by developing Aboriginal and Torres Strait Islander recruitment programs, however there is no provision made that recruitment take place in groups where possible or for active recruitment of women.*

Tasmania Police reported in the 1994 implementation report that they were actively engaged in recruiting police members from all community groups, including Aboriginal and Torres Strait Islander people, on the basis of merit.

 *Tasmania has not implemented Recommendation 229.*

The **Northern Territory** Government has employed Aboriginal and Torres Strait Islander people into the police service for a number of years as an equal opportunity employer. However, the standard of educational attainment has been an inhibitor to aspiring Aboriginal and Torres Strait Islander applicants, as per statements made in the 1997 implementation report. To combat this, a bridging course was provided around the time of this implementation report for Aboriginal and Torres Strait Islander people through the Centre for Aboriginal and Islander studies at the then Northern Territory University. The NTFP currently has a dedicated Indigenous Recruitment team.

 *The Northern Territory has partially implemented Recommendation 229 by establishing a dedicated Indigenous Recruitment Team, however there is no provision made that recruitment take place in groups where possible or for active recruitment of women.*

Recommendation 230

That where Aboriginal applicants wish to join a service who appear otherwise to be suitable but whose general standard of education is insufficient, means should be available to allow those persons to undertake a bridging course before entering upon the specific police training.

Background information

The RCIADIC Report explained that while many police officers supported the concept of employing Aboriginal and Torres Strait Islander people, a number expressed opposition to any system of lowering educational or other standards to accommodate Aboriginal and Torres Strait Islander recruitment. For this reason, the RCIADIC Report suggested that bridging courses be made available for Aboriginal and Torres Strait Islander people to improve their education before entering the specific police training.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth's responsibilities relate to the AFP's provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation


The **Commonwealth** and **Australian Capital Territory** Governments' response to Recommendation 230 was that the AFP's *Indigenous Entry Level Traineeship* provides an opportunity for Aboriginal and Torres Strait Islander people to join the AFP in a professional capacity and develop skills.

The Australian Capital Territory Government has noted that the Australian Federal Police has committed to review its recruitment processes to explore the opportunity of bridging courses for persons with an insufficient level of education.

 *The Commonwealth and Australian Capital Territory Governments have partially implemented Recommendation 230 through the Indigenous Entry Level Traineeship. However, the AFP has advised that there are no provisions for people to join the AFP as a sworn member without meeting the academic requirements.*


In 1992, the **New South Wales** Government offered bridging courses for Aboriginal people who aspired to police employment. New South Wales implemented the "Indigenous Police Recruitment Our Way Delivery" which is a specialist training program aimed at assisting Aboriginal people obtain entry to the NSW Police Force recruitment program. Currently, bridging courses are available through

Goulburn TAFE for all Aboriginal applicants for police employment who meet all of the requirements except for education.


 *New South Wales has addressed Recommendation 230 by supporting Aboriginal applicants through bridging courses.*

The **Victorian** Police Force's view, as per the 1997 implementation report, is that all persons, irrespective of race, are encouraged to apply for entry to the Force but that no positive discrimination measures would be introduced. Victoria has an agreement which supports projects for Aboriginal and Torres Strait Islander persons to study in legal and justice related areas, and the public sector.


Since this time, Victoria Police has created a designated position within the Human Resources Division of Victoria Police to proactively promote Victoria Police as an employer of choice and support Aboriginal and Torres Strait Islander applicants throughout the application process, including the provision of additional support to meet entry requirements. Since the creation of the designated position within the division, the numbers of applicants applying for, and being successful in attaining, employment within Victoria Police has increased.

 *Victoria has made initial steps towards implemented Recommendation 230 through support and training provided to Aboriginal and Torres Strait Islander applicants. However, Victoria does not appear to have any provision to allow people to become sworn members of the Police Force without meeting academic requirements.*

The **Queensland** Police Service has an Aboriginal and Torres Strait Islander cadetship program which provides a specific route of entry into the Queensland Police Service recruitment stream for Aboriginal and Torres Strait Islander applicants, known specifically as the Indigenous Recruit Preparation Program. The Queensland Aboriginal and Torres Strait Islander Police program also works to provide Aboriginal and Torres Strait persons with suitable education to become a police force recruit.


 *Queensland has addressed Recommendation 230 by supporting Aboriginal and Torres Strait Islander applicants through the Indigenous Recruit Preparation Program.*

In **South Australia**, the SAPOL Recruiting Section, in conjunction with the Indigenous Employment Support Unit, assists Aboriginal and Torres Strait Islander applications through the pre-entry standard recruitment procedures. If a recruit has not met the pre-entry standard requirements, but demonstrates the potential to do so within a six-month period, they can participate in the Indigenous Employee Development Program.


 *South Australia has addressed Recommendation 230 by supporting Aboriginal and Torres Strait Islander applicants through the Indigenous Employee Development Program.*

The **Western Australia** Government, through the-then Department of Training, made appropriate curriculum material in the years following 1994 for the Police Department in order to assist the increase in the number of Aboriginal and Torres Strait Islander people undertaking police training.


The North Metropolitan TAFE continues to offer Police Preparation courses to assist applicants to achieve the required police recruit or police auxiliary officer entry standard. In addition, the Western Australia Police Force Aboriginal Cadet Program is open to Aboriginal and Torres Strait Islander applicants 17 to 25 years of age, which includes this training program.

 *Western Australia has addressed Recommendation 230 by supporting Aboriginal and Torres Strait Islander applicants through the Aboriginal Cadet Program.*

The **Tasmanian** Government noted in the 1993 implementation report that Recommendation 230 was rejected on the grounds that it would lower the standards applicable to police recruits. Currently, the Tasmania Police consider, on a case-by-case basis, the suitability of an Aboriginal and Torres Strait Islander applicant who lacks the general standard of education required. Consideration is given if all other standards are sufficiently met and the individual demonstrates the potential to bridge the gap while in training.

-  *Tasmania has partially implemented Recommendation 230 by considering applicants on a case-by-case basis but has not formalised a process for such instances in its response.*

In the **Northern Territory**, TAFEs currently provide numeracy and literacy courses designed for Aboriginal and Torres Strait Islander people. This initiative assists with the career advancement of members within the Aboriginal Community Police. Aboriginal Community Police Officers are sworn police officers who provide communication and liaison with local Aboriginal and Torres Strait Islander communities.

-  *The Northern Territory has addressed Recommendation 230 by providing Aboriginal and Torres Strait Islander applicants with bridging courses via TAFEs to assist in their recruitment to the NTFP.*

Recommendation 231

That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances.

Background information

The RCIADIC Report suggested that improving the relationship between the police and Aboriginal and Torres Strait Islander people will make police services appear less “alien” to Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for policing resides with the States and Territories. The Commonwealth’s responsibilities relate to the AFP’s provision of community policing in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 231. As a result of the RCIADIC Report, the AFP was funded to modify and improve existing AFP training courses.

The *1993-94 Annual Report* noted that the AFP ran a number of two-day courses in the ACT, Melbourne and Sydney that provided an overview of Aboriginal and Torres Strait Islander culture in regard to health, education, land rights, customary law, economy, racism, art, language and identity.


The ACT’s Community Liaison Officer (see Recommendation 214) liaises with the Aboriginal and Torres Strait Islander community to establish and maintain positive relationships and foster mutual understanding.

-  *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 231 through actions taken by the AFP to improve relations between the police and Aboriginal and Torres Strait Islander people. These included improving existing training courses, implementing new courses, and employing an Aboriginal and Torres Strait Islander community liaison officer.*


In their 1992 annual report, it was noted that the **New South Wales** Government supported 32 Aboriginal Community Liaison Officers attached to the Police Service. This facilitated informal consultation between the police and the Aboriginal Client Consultant. Aboriginal Client Consultants conducted research, provided information and promoted the development of programs and policies for the police force to foster positive relationships and interactions between the police force and Aboriginal persons.

In addition, other initiatives that have been implemented by the NSW Police Force to meet this recommendation include the Commissioner’s Aboriginal Council, development of the NSW Police Force Aboriginal Policy Statement and Aboriginal Strategic Plan, involvement of Aboriginal community


groups with Patrol Commanders, the Aboriginal Community Liaison scheme, and Juvenile Justice Panels.

 *New South Wales has implemented Recommendation 231 through a number of initiatives aimed at improving relations between police and the Aboriginal community, including the Commissioner's Aboriginal Council and the Aboriginal Community Liaison scheme.*


In order to improve relationships between the Aboriginal and Torres Strait Islander population and the police force, the **Victorian** Government established, following the release of the RCIADIC report, local Police and Aboriginal Liaison Committees, Police Community Consultative Committees and Aboriginal Community Justice Panels.

 *Victoria has implemented Recommendation 231 through a number of programs aimed at improving relations between police and the Aboriginal and Torres Strait Islander community.*

In **Queensland**, the QPS has implemented a range of initiatives aimed at improving relations, including Community Based Policing Strategies and the establishment of the Cultural Support Unit, which seeks to promote and maintain relationships with Aboriginal and Torres Strait Islander communities. In addition, the QPS follows an Aboriginal and Torres Strait Islander Annual Action Plan which contributes to a range of national, state and local initiatives for Closing the Gap on Indigenous Disadvantage.


 *Queensland has implemented Recommendation 231 by developing several initiatives aimed at improving relations between police and the Aboriginal and Torres Strait Islander community, including Community Based Policing Strategies and a Cultural Support Unit.*

In **South Australia**, the SAPOL employs Community Constables to address local Aboriginal and Torres Strait Islander community needs. The SAPOL has also developed Community Program Units to coordinate programs at a local level and formed the Indigenous Support Unit to provide further assistance. The SAPOL has also adopted recommendations following a review of the Community Constables program, including enhanced training and recruitment initiatives.


 *South Australia has implemented Recommendation 231 by facilitating improved communication between the SAPOL and the Aboriginal and Torres Strait Islander community through the employment of Community Constables and the development of Community Program Units.*

Western Australia previously employed a number of Aboriginal Police Liaison Officers. Additionally, the Aboriginal Street Patrols Scheme and the Remote Communities Warden Scheme were actively expanded in 1994.

The Western Australia Government has indicated that the Western Australian Police Force continues to consider options for improving Aboriginal and Torres Strait Islander employment pathways in order to best serve the community. Western Australia is currently piloting a system of Community Relations Officers to work with Aboriginal and Torres Strait Islander communities, families and individuals, to encourage and support participation in appropriate programs, strategies and initiatives with a view to community building.

 *Western Australia has implemented Recommendation 231 by employing Aboriginal Police Liaison Officers and Community Relations Officers to work with Aboriginal communities, families and individuals.*

The **Tasmanian** Police Force includes Aboriginal Liaison Officers, who play a key role in developing and providing courses in cultural sensitivity to police officers.

 *Tasmania has implemented Recommendation 231 through the employment of Aboriginal Liaison Officers.*

The **Northern Territory** actively recruits and trains Aboriginal Community Police Officers, as per Recommendation 230, and has a non-sworn member recruitment program for Aboriginal Liaison

Officers, who help facilitate positive community engagement and provide communication and interpreting to victims and witnesses.

- *The Northern Territory has implemented Recommendation 231 through its implementation of the Aboriginal Liaison Officers program.*

Recommendation 232

That the question of Community Police in Queensland and the powers and responsibilities of Community Councils in relation to them be urgently reviewed.

Background information

The RCIADIC Report recommended that the Queensland Government review the question of Community Police and the powers and responsibilities of Community Councils following raised concern about policing practices in Aboriginal and Torres Strait Islander communities.

Responsibility

Recommendation 232 is solely the responsibility of the Queensland Government.

Key actions taken and status of implementation

The **Queensland** Police Service conducted a detailed review of the powers and responsibility of Community Police and Community Councils. As per Recommendations 228-231, Queensland has since implemented different initiatives in relation to policing in Aboriginal and Torres Strait Islander communities. Queensland Aboriginal and Torres Strait Islander Police Officers have powers to enforce local laws and 'special constable' appointments.

- *Queensland has implemented Recommendation 232 by reviewing and implementing recommendations regarding the powers and responsibilities of Community Police.*

Recommendation 233

That the question of Aboriginal police aides in Western Australia be given urgent consideration in light of recent developments, including the Police Aides Review (1987), the development of programs for police aides in other jurisdictions and the investigations into the work of police aides reported in the report of Commissioner Dodson and in this National Report and the recommendations of this report. In the consideration of Aboriginal police aides special attention should be given to the wisdom of police aides being engaged to work in communities other than those from which they were recruited.

Background information

Aboriginal and Torres Strait Islander police aides constituted a direct organisation of Aboriginal and Torres Strait Islander people into police work. The RCIADIC report viewed it as being of fundamental importance for Aboriginal and Torres Strait Islander communities and individuals to be involved in the administration of community law enforcement. Recommendation 233 calls for the Western Australia Government to consider the use of Aboriginal police aides.

Responsibility

Recommendation 233 is solely the responsibility of the Western Australian Government.

Key actions taken and status of implementation

The **Western Australia** Government formed the Aboriginal and Ethnic Employment Advisory and Review Committee to implement the *Aboriginal and Torres Strait Islander Employment Strategy* in Western Australia. Currently, the powers and responsibilities of police aides are limited under the *Police Administration Manual* to matters relating to Aboriginal and Torres Strait Islander people. There is no provision that Aboriginal and Torres Strait Islander people be used only in their own communities.

Western Australia's 1994 compliance report noted that this recommendation was completed. The Western Australia Police Force continues to actively recruit Aboriginal and Torres Strait Islander people as police officers, Community Relations Officers and Police Cadets.

- *Western Australia has implemented Recommendation 233 through the Aboriginal and Torres Strait Islander Employment Strategy.*

9.2 Breaking the cycle: Aboriginal youth (234-245)

Recommendation 234

That Aboriginal Legal Services throughout Australia be funded to such extent as will enable an adequate level of legal representation and advice to Aboriginal juveniles.

Background information

The RCIADIC Report envisaged that ALSs would have a key role to play in the provision of education to Aboriginal and Torres Strait Islander youth about their legal rights and obligations. It further noted that an adequate level of legal representation and advice to young Aboriginal and Torres Strait Islander people is essential, and the ALS, being best placed to provide it, should be adequately funded.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Although funding to ATSILSs is predominately provided at the Commonwealth level via AGD, funding is also provided on a State and Territory basis.

Key actions taken and status of implementation

In 1993-94, the **Commonwealth** Government-funded ALSs received \$9 million special funding provided as a response to the RCIADIC Report recommendations. This allowed for more adequate levels of legal representation and advice to Aboriginal and Torres Strait Islander youth. In July 2014, the Commonwealth introduced the *Indigenous Legal Assistance Program Guidelines*. The objectives of the program were to deliver culturally sensitive, responsive, accessible, equitable and effective legal assistance and related services to Aboriginal and Torres Strait Islander people.

The AGD also commented that the Commonwealth, through the Indigenous Legal Assistance Programme, will provide over **\$370 million in funding to ATSILSs** over the period 2015 to 2020. Under these funding arrangements, ATSILSs are required to plan and target services to priority clients whose ability to resolve legal problems are compromised by circumstances of vulnerability or disadvantage. Aboriginal and Torres Strait Islander children and young people (up to 24 years) are identified as priority clients.

- *The Commonwealth has provided funding to ATSILSs to address Recommendation 234.*

In the 1992-93 implementation report, the **New South Wales** Government provides that this recommendation is primarily a matter for the Commonwealth, which funds the Aboriginal Legal Service. NSW has provided funding to support legal representation through Legal Aid. Currently, approximately 11% of Legal Aid's clients are Aboriginal people. The *Justice Reinvestment for Aboriginal Young People Campaign* (2012) provided funding to communities with a high concentration of young offenders.

- *New South Wales has implemented Recommendation 234 by providing funding to support legal representation through Legal Aid, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

The **Victorian** Government introduced a range of measures to support Aboriginal and Torres Strait Islander youth in accessing the justice system. In 1993, the Koori Justice Project employed six workers to cooperate with Aboriginal and Torres Strait Islander youth who were either at risk of offending or in contact with the criminal justice system. The Victorian Government noted that funding of ALSs is the responsibility of the Commonwealth.

- *Victoria has implemented Recommendation 234 by implementing programs to support Aboriginal and Torres Strait Islander youth in accessing the justice system, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

In **Queensland**, Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service are capable of providing legal representation and advice to juveniles without charge.

- *Queensland has implemented Recommendation 234 by ensuring that Aboriginal and Torres Strait Islander juveniles can access legal representation and advice without charge.*

The **South Australian** Government considered Recommendation 234 to be a matter of the Commonwealth as per the 1994 implementation report. Funding cuts were reversed in the 2017-2018 Federal Budget.

- *South Australia has not implemented Recommendation 234.*

In **Western Australia**, the *Young Offenders Act 1994* (WA) recognises that Aboriginal and Torres Strait Islander families and community groups are crucial sources of advice in justice related matters. The Western Australia Government has also provided funding for legal representation, in line with the intent of Recommendation 234.

- *Western Australia has implemented Recommendation 234 by implementing programs to support Aboriginal and Torres Strait Islander youth in accessing the justice system, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

The **Tasmanian** Government has not provided any evidence of significant action in response to the recommendation.

- *Tasmania has not implemented Recommendation 234.*

The **Northern Territory** noted in the 1993-94 implementation report that Recommendation 234 was the responsibility of the Commonwealth. The Northern Territory Government has noted that it is supportive of additional resources being provided by the Commonwealth to facilitate legal representation and advice to young people.

- *The Northern Territory has not implemented Recommendation 234.*

The **Australian Capital Territory** Government noted that Recommendation 234 was primarily the responsibility of the Commonwealth as the Commonwealth provides the primary funding for Aboriginal Legal Services. However, the Justice and Community Safety Directorate funds the Aboriginal Legal Service through a number of community program contracts such as the Community Justice Programs deed, Duty Lawyer deed and Yarrabi Bamir. These programs provide for an increased level of legal representation and advice to Aboriginal and/or Torres Strait Islander youth in the Australian Capital Territory.

- *The Australian Capital Territory has implemented Recommendation 234 by implementing programs to support Aboriginal and Torres Strait Islander youth in accessing the justice system, alongside the funding provided by the Commonwealth for Aboriginal Legal Services.*

Recommendation 235

That policies of government and the practices of agencies which have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies.

Background information

The RCIADIC report endorsed the role of families and community organisations in teaching Aboriginal and Torres Strait Islander culture, and considering the needs of Aboriginal and Torres Strait Islander youth in order to build their self-esteem and reinforce their identity. In this vein, Recommendation 235 requires that legislation should recognise the primary role of families and community groups in providing advice about the interests and welfare of Aboriginal and Torres Strait Islander juveniles.


Responsibility

The recommendation is the responsibility of the State and Territory Governments. Recommendation 235 relates solely to legislation at the State and Territory level.


Key actions taken and status of implementation

Prior to the RCIADIC report, the **New South Wales** Government implemented policy directed at the objectives of Recommendation 235 through the *Community Welfare Act 1987* (NSW) which provides that children in need of care should not be placed by Community Services except by way of consultation with the child's family and appropriate Aboriginal organisations. This legislation also recognises the rights of Aboriginal people in raising and protecting their own children, and to be involved in decision-making processes that impact them and their families.


Currently, Juvenile Justice NSW and FACS consult with Aboriginal communities through the Juvenile Justice Aboriginal Strategic Advisory Committee. Four Aboriginal Regional Advisory Committees also advise on relevant services, planning and support while Aboriginal Consultative Committees similarly advise Juvenile Detention Centres on relevant local issues. New South Wales also funds the Aboriginal Child, Family and Community Care State Secretariat (AbSec), which provides child protection and OOHCA policy advice on issues affecting Aboriginal children, young people, families and carers.

 *New South Wales has implemented Recommendation 235 through the provisions of the Community Welfare Act 1987.*


In **Victoria**, the *Children, Youth and Families Act 2005* (Vic) provides that relevant members of the Aboriginal and Torres Strait Islander community, including community organisations, be involved in decisions involving placement of an Aboriginal and Torres Strait Islander child in welfare proceedings, and other community service interactions. The Children's Koori Court, which deals with young Aboriginal and Torres Strait Islander people who have been found guilty of committing a criminal offence, takes submissions from elders, respected persons, and a family member of the young person.

 *Victoria has implemented Recommendation 235 through the provisions of the Children, Youth and Families Act 2005 (Vic) and the establishment of the Children's Koori Court.*

Queensland's *Juvenile Justice Act 1992* (Qld) places emphasis on the importance of recognising families and Aboriginal and Torres Strait Islander communities in the provision of services targeted at the rehabilitation and re-integration of children who commit offences. In 2017, the Queensland Parliament passed amendments to the *Child Protection Act 1999* which inserted an additional principle recognising the right of Aboriginal and Torres Strait Islander people to self-determination, broadened the range of entities or individuals that may support the provision of cultural advice relevant to an offender, and enabled the chief executive to delegate some or all of their functions or powers to a suitable individual within an appropriate Aboriginal or Torres Strait Islander entity.

 *Queensland has implemented Recommendation 235 through the Youth Justice Act 1992 (QLD) and recent amendments to the Child Protection Act 1999.*


In **South Australia**, the *Youth Justice Administration Act 2016* includes specific provisions that require assessment and case planning to consider the cultural identity and unique needs of Aboriginal and Torres Strait Islander young people, include representations made by the young person and their guardian, relative or carer, and include relevant Aboriginal and Torres Strait Islander people or organisations. In addition, the *Child Protection Act 1993* (SA) provides for the convening of family care meetings which are intended to provide a child's family with the proper opportunity to make informed decisions as to arrangements to secure the care and protection of the child.

 *South Australia has implemented Recommendation 235 through the Youth Justice Administration Act 2016 and the Children's Protection Act 1993.*


The **Western Australia** Government noted in the 1994 implementation report that the *Aboriginal Child Placement Policy* and the *Reciprocal Placement Policy* with Yorganop established the Government's commitment to ensuring that families and communities of juveniles are the prime sources of advice.

The Western Australian Government has noted that the *The Children and Community Services Act 2004 (WA)* has been implemented. Under the Act, Aboriginal and Torres Strait Islander families and community groups are able to participate in decision-making processes. Section 13 of the Act also states that Aboriginal and Torres Strait Islander people should participate in the protection and care of their children with as much self-determination as possible. The Western Australian Government has also noted that these provisions in the Act are likely to be further strengthened following a legislative review in 2017.

The Western Australian Government has also noted that the Western Australian Department of Justice has policies in relation to Aboriginal and Torres Strait Islander young people involved in the criminal justice system that recognises the role of responsible adults, families and communities in supporting the interests and welfare of young persons, and ensures that young persons are dealt with in culturally appropriate ways. This is consistent with *The Young Offenders Act 1994*.


 *Western Australia has implemented Recommendation 235 through The Children and Community Services Act 2004 and The Young Offenders Act 1994.*

Under **Tasmania's** *Child, Young Persons and their Families Act 1997 (Tas)*, welfare officers must seek advice from families, community groups and Aboriginal and Torres Strait Islander organisations when dealing with Aboriginal and Torres Strait Islander juveniles.

 *Tasmania has implemented Recommendation 235 through the Child, Young Persons and their Families Act 1997.*

In the **Northern Territory**, the practices of the Department of Correctional Services were compliant with Recommendation 235 at the time of the RCIADIC, as noted in the 1997 implementation report. Consultation with local communities, organisations including Aboriginal and Torres Strait Islander childcare agencies, and family members took place when appropriate. However, no information could be found on the Northern Territory Government's legislative response towards implementing Recommendation 235.


The Northern Territory Government has also noted that in conjunction with its response to the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is reviewing the provisions of the *Care and Protection of Children Act and Youth Justice Act (NT)*. This will consider the role of family, community and specialist organisations in relation to juveniles in the welfare and criminal justice systems.

 *The Northern Territory has mostly implemented Recommendation 235 but has not yet implemented a legislative response.*

The **Australian Capital Territory** Government's 1997 implementation reported noted its support for the involvement of Aboriginal and Torres Strait Islander families, community groups and specialist organisations in the welfare of young Aboriginal and Torres Strait Islander people within the welfare and juvenile justice systems.

In the Australian Capital Territory, the ACT Children and Young People Act 2008 (ACT) includes specific provisions for Aboriginal and Torres Strait Islander children and young people. When making decisions regarding Aboriginal and Torres Strait Islander children and young people, decision makers, must consider the following principles:

- the need to maintain a connection with the lifestyle, culture and traditions of the person's Aboriginal and Torres Strait Islander community;
- submissions about the child or young person made by or on behalf of any Aboriginal and Torres Strait Islander people or groups; and
- Aboriginal and Torres Strait Islander people in the person's family or kinship group and the community with which the child or young person has the strongest affiliation.

 *The Australian Capital Territory has implemented Recommendation 235 and has demonstrated evidence of a legislative response.*

Recommendation 236

That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding.

Background information

The RCIADIC Report noted that it is essential that Aboriginal and Torres Strait Islander youth programs incorporate community input in order to maximise the impact of the programs on Aboriginal and Torres Strait Islander youth.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation applies to all Aboriginal and Torres Strait Islander youth programs at both the Commonwealth and jurisdictional level.


Key actions taken and status of implementation

Following the RCIADIC Report, the **Commonwealth** Government's ATSIC developed the following programs:

- The Inwork Traineeship Program provided Aboriginal and Torres Strait Islander unemployed school leavers with on-the-job training from Aboriginal and Torres Strait Islander organisations.
- The Youth Bail Accommodation Plan was developed to reduce the rate at which young Aboriginal and Torres Strait Islander people were remanded in police custody or juvenile detention centres.
- The Young Persons' Sport and Recreation Development Program provided funding to the jurisdictions for the employment of Aboriginal Sport and Recreation Development Officers.
- The Young People's Development Program aimed to provide programs to address the disadvantage faced by young Aboriginal and Torres Strait Islander people.

Current funding is contributed by PM&C under the IAS which encompasses negotiations with communities in relation to their needs and opportunities. Young people are also targeted through a number of diversionary initiatives or re-engagement in education, training and employment. The IAS stands alongside other Commonwealth initiatives, including the Higher Education Support Act and the National Partnership Agreement on Remote Aboriginal Investments. These programs involve government at a number of levels in the implementation of Recommendation 236.

PM&C is currently undertaking work to develop a model of Youth Throughcare through co-design with existing providers, state and territory representatives and key experts, with the intention to engage an expert Aboriginal and Torres Strait Islander advisory panel with significant experience in supporting vulnerable young people with complex needs in the justice system.

 *Initially, ATSIC developed youth programs to address Recommendation 236. The Commonwealth provides continued funding through IAS toward ongoing implementation.*

In **New South Wales**, the Office of Youth Affairs funded a number of Aboriginal youth programs in the early 1990s which were developed in consultation with communities. The Koori Youth Program sought to improve the literacy, numeracy, self-esteem and cultural awareness of young people at risk of leaving school early. Initiatives including the Youth Arts and Skills Festival, and Youth Week provided a forum to showcase and develop the skills of young people and to discuss pertinent issues. In 2005 the *Tirkandi Inaburra Cultural and Development Centre* was established to provide on-site schooling for young Aboriginal men.


Currently, agencies involved in the delivery of services to Aboriginal children and young people regularly engage with local communities to leverage their knowledge and expertise. For example, as part of its Aboriginal Education Policy, the Department of Education is committed to engaging with local Aboriginal communities to deliver education services. The Aboriginal Education Council partners with the NSW Aboriginal Education Consultative Group through the '*Together we are, Together we can, Together we will*' 2010-2020 Partnership Agreement.

FACS also works with Grandmothers Against Removal to implement the *Guiding Principles for Strengthening the Participation of Local Aboriginal Community in Child Protection Decision Making* and has also provided intensive implementation support for local communities that want to establish a Local Advisory Group. The NSW Advocate for Children and Young People also consults extensively with Aboriginal children and young people to devise youth programs which service their needs and respects the importance of connection to culture.


Juvenile Justice NSW uses consultative committees, such as their Juvenile Justice Aboriginal Strategy Advisory Committee, which provides advice and guidance on policy, programs and Aboriginal issues across the agency. Four Aboriginal Regional Advisory Committees advise on relevant services, planning and support. There are also a number of Aboriginal Consultative Committees, with representatives from local organisations and services, which advise the Juvenile Detention Centres on relevant local issues to support Aboriginal young people. This is also relevant to services and programs for Aboriginal young people exiting custody or completing a community supervision order.

 *New South Wales has implemented Recommendation 236 by working extensively with local Aboriginal communities to design and deliver youth programs.*

It is the **Victorian** Government's policy, as stated in the 1997 implementation report, is that any programs which impact on Aboriginal and Torres Strait Islander people should be developed through negotiation with, and delivered by, local community organisations. In 1993, the Victorian Government supported the Victorian Aboriginal Youth Sport and Recreation Cooperative as its primary point of contact with the Victorian Aboriginal and Torres Strait Islander community, and as a channel for funding assistance and local community program development. The AJA and the Frontline Youth initiatives grant program fund a number of youth community-based programs, for instance, the Songlines Music Aboriginal Corporation, which enables Aboriginal and Torres Strait Islander youth to develop as musicians.


 *Victoria has implemented Recommendation 236 through its policies around negotiation and delivery for youth programs.*

The **Queensland** Government's 1994 implementation report notes that it encourages and supports the development of community-based youth strategies. Youth Justice, in partnership with the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP), has committed to trialling a Justice Reinvestment Initiative in Cherbourg, which seeks to reallocate investment earmarked for detention centres and prisons to prevention, early intervention and diversion initiatives in communities instead.

 *Queensland has partially implemented Recommendation 236 by committing to trialling a Justice Reinvestment Initiative in Cherbourg. However, no evidence was observed that the principles of Recommendation 236 have been implemented across the Queensland Government.*

The 1994 implementation report notes that the **South Australian** Government developed 26 Aboriginal Youth Action Committees with the purpose of encouraging young people as leaders by assuming the responsibility of meeting their own recreation and social needs with guidance and support from community leaders. The *Young Peoples Development Plan* (1993) guided the allocation of funding for youth programs which contributed to the economic and social development of young people.

In 2014, youth program delivery was transferred from the-then Department for Communities and Social Inclusion (DCSI) to the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council, which receives funding from the DCSI through the APY Lands Task Force. The DCSI works in partnership with the NPY Women's Council to deliver youth programs in Amata, Pipalyatjara, Pukatja, Mimili, Kalka and Fregon.

 *South Australia has partially implemented Recommendation 236 by funding the NPY Women's Council to assist with the delivery of youth services. However, no evidence was observed that the principles of Recommendation 236 have been implemented across the South Australian Government.*


In 1994, the **Western Australia** Government supported a range of initiatives including the development of junior football, community games, and street sports in various regions. This included the establishment of a reference group for Aboriginal and Torres Strait Islander sport and recreation, and the provision of ongoing training and support for community recreation officers.

In addition to this, the Western Australian Government has noted that a key principle of all government programs and services is that they should be co-designed with local communities and users. This principle is particularly important for Aboriginal and Torres Strait Islander programs (including Aboriginal and Torres Strait Islander youth programs).


The Western Australian Government has noted that more broadly, changes in the State have seen the creation of the Aboriginal Policy Unit within the Department of the Premier and Cabinet. The primary aim of this unit is to transform the relationship between Aboriginal and Torres Strait Islander people and government in Western Australia, to deliver mutual and enduring benefits. Location-based solutions, including across regional and remote communities, is another focus of the unit.

 *Western Australia has partially implemented Recommendation 236 by funding a range of initiatives targeted at Aboriginal and Torres Strait Islander youth. However, no evidence was observed that a process of negotiating with Aboriginal and Torres Strait Islander communities and organisations has been implemented.*

In 1992-93 and 1993-94, the **Tasmanian** Government provided \$150,000 to the *Tasmanian Aboriginal Centre Aboriginal Youth Program* in support of community-based programs. Currently, the Tasmanian Government follows the *Youth at Risk Strategy* to devise a long-term, financially sustainable, whole of government way to respond to the safety and rehabilitative needs of young people. Aboriginal and Torres Strait Islander young people were consulted in its development. Relevant actions under the Strategy involve working with all levels of government to develop a range of innovative consultative mechanisms and more inclusive practices targeted at youth in risk in Tasmania, and improving the service system to ensure that it is flexible, responsive and inclusive.


 *Tasmania has partially implemented Recommendation 236 by funding the Tasmanian Aboriginal Centre Aboriginal Youth Program and by committing to the Youth at Risk Strategy but has not addressed negotiating with the Aboriginal and Torres Strait Islander community to devise relevant procedures.*

The **Northern Territory** government, through Territory Families is currently participating in intergovernmental approaches to developing place-based responses to community capacity building, local decision making, partnering and service provision for children, young people and families.

 *The Northern Territory has partially implemented Recommendation 236 through place-based responses to community capacity building. However there is no evidence that a process of negotiating with Aboriginal and Torres Strait Islander communities and organisations has been implemented more broadly.*

The **Australian Capital Territory's** *Young Person's Sport: A Recreation Development Program* was established following the release of the RCIADIC report to address the principles, roles and responsibilities of government in relation to Recommendation 236. The Aboriginal Sport and Recreation Development Officers also contributed to the establishment of a network for Aboriginal and Torres Strait Islander community organisations to reduce barriers to participation in community sports and recreation.

The Australian Capital Territory also funds services under the Child, Youth and Family Services Program assist vulnerable children, young people and their families. The program comprises a mix of services from group programs to case management. While all services funded under the program work with Aboriginal and Torres Strait Islander children, young people and their families, there are some organisations that receive dedicated funding to work with Aboriginal and Torres Strait Islander communities. As part of the Directorate's Early Intervention by Design project and planning for future procurement, consideration is being given to how programs can ensure flexible contracting arrangements which embed collaboration with local communities to develop service offerings.

 *The Australian Capital Territory has implemented Recommendation 236 by introducing recreational youth programs and youth support programs. In the planning and procurement of organisations to provide these programs, consideration is given to contracting arrangements, which embed collaboration with local communities.*

Recommendation 237

That at all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both government and community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy.

Background information

The RCIADIC Report concluded that employing Aboriginal and Torres Strait Islander people in the youth welfare and justice systems would improve rehabilitation prospects for youth and reduce their likelihood of being incarcerated as an adult.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The Commonwealth, and the States and Territories are jointly responsible for oversight of programs in the juvenile welfare and justice systems.

Key actions taken and status of implementation

Similar to Recommendation 236, the **Commonwealth** Government's Inwork Traineeship Program, the Young Persons' Sport and Recreation Development Program and the Young People's Development Program are all relevant to addressing Recommendation 237.


Through the IAS, PM&C currently administers a number of programs that provide intensive case management for prisoners to assist adult prisoners to address the underlying causes of their offending behaviour, and equip them with greater capacity to manage the transition out of prison and back into the community. These programs employ Aboriginal and Torres Strait Islander people.

The Commonwealth also contributes to funding for Community Night Patrol, as discussed in Recommendation 220.

 *Recommendation 237 has been completely implemented by the Commonwealth, as primary responsibility for employment in the juvenile justice system resides with jurisdictional governments.*


The **New South Wales** Government responded to Recommendation 237 in 1992-93 by establishing a number of Aboriginal positions within Juvenile Justice Centres and Juvenile Justice Community Services. Currently, approximately 10% of the total Juvenile Justice workforce identify as Aboriginal, in roles ranging across administrative, managerial and frontline areas. In addition, FACS has responded to Recommendation 237 through its *Aboriginal Employment Strategy 2016-2018*, which has three focus areas: to attract and recruit Aboriginal people, to build capabilities and careers, and to promote cultural competency.

FACS also conducts culturally appropriate recruitment campaigns to attract Aboriginal candidates for child protection caseworker roles as well as a range of other identified roles and offers Aboriginal traineeships at the different levels including school and TAFE based traineeships.

 *New South Wales has implemented Recommendation 237 by actively recruiting Aboriginal staff to juvenile justice and welfare programs.*


The **Victorian** *Public Service Aboriginal Employment Strategy* (1993) sought to promote the recruitment of Aboriginal and Torres Strait Islander people to a variety of public sector positions and to assist with the development of training programs. Aboriginal and Torres Strait Islander people were also employed across Juvenile Justice Centres and Juvenile Justice Units. Currently, the Victorian Government provides young people with traineeships and apprenticeships across the public service as

part of the *Youth Employment Scheme*. In addition to recruitment policies, the Department of Human Services aims to fund Aboriginal and Torres Strait Islander service organisations to provide the Department's programs and initiatives wherever possible.

 *Victoria has implemented Recommendation 237 by actively recruiting Aboriginal and Torres Strait Islander persons and by providing services through Aboriginal and Torres Strait Islander organisations.*


In their 1993 implementation report, the **Queensland** Government noted that funding had been provided for the employment of youth workers and the provision of competency-based training, including for a range of Aboriginal and Torres Strait Islander positions. Training opportunities for Aboriginal and Torres Strait Islander health workers and trainers were administered by the Youth Sector Training Council.

The 2012 *Youth At Risk* initiative further aimed to employ Aboriginal and Torres Strait Islander workers and ensure the inclusion of, and access to, Aboriginal and Torres Strait Islander people. In addition, Youth Justice actively promotes all advertised vacancies through the established Aboriginal and Torres Strait Islander employment network and attends community events to promote employment opportunities.

 *Queensland has implemented Recommendation 237 by actively recruiting Aboriginal and Torres Strait Islander persons for youth worker positions and administering training opportunities for health workers and trainers through the Youth Sector Training Council.*

The **South Australian** Government responded to this recommendation in 1994 through the *State Youth Affairs* program. Under this initiative, the South Australian Government contributed to the employment of Aboriginal Project Officers in policy and program branches, and supported an Aboriginal Youth Worker Training Program.


More recently, funding has been provided as part of the *Aboriginal Youth Development Program* for the employment of community based youth workers and the positive engagement of young Aboriginal and Torres Strait Islander people in skill development. The Department of Human Services also has an Aboriginal Employment Pool that provides opportunities for Aboriginal and Torres Strait Islander candidates to be considered for a range of targeted roles, prior to their mainstream advertisement.

 *South Australia has implemented Recommendation 237 by supporting the Aboriginal Youth Worker Training Program and the employment of Aboriginal Project Officers in policy and program branches.*

Following the RCIADIC, the **Western Australian** Government supported the recruitment and retention of Aboriginal and Torres Strait Islander people within the-then Department for Community Development, including in roles such as Policy Officers for Aboriginal Employment and Development, and Youth Activities Officers. In 1994, 9.5% of the Department's staff members were Aboriginal and Torres Strait Islander people.

More recently, Western Australia has continued its commitment to the employment of Aboriginal and Torres Strait Islander people. As part of the Department of Justice's Reconciliation Action Plan for the period 2017/2018 to 2020/2021, there is a strong focus on increasing the number of Aboriginal and Torres Strait Islander employees across the Department.

The Western Australian Government has also indicated that the Department of Communities is currently in the process of setting internal Aboriginal and Torres Strait Islander employment, procurement and contracting targets, including its contracted youth programs.

 *Western Australia has mostly implemented Recommendation 237, however has not provided evidence of a vigorous recruitment and training strategy targeting the employment Aboriginal people as youth workers.*

In 1993, the **Tasmanian** Government implemented a strategy with the-then Department of Community and Health Services to contribute to employment of Aboriginal and Torres Strait Islander


people within the positions identified by Recommendation 237. Currently, the *Tasmanian State Service Aboriginal Employment Strategy*, which aims to identify and implement effective strategies to attract, develop and support Aboriginal and Torres Strait Islander employees to the Tasmanian State Service, is in development.

 *Tasmania has partially implemented Recommendation 237 by taking steps towards improving the employment of Aboriginal and Torres Strait Islander employees in the Tasmanian State Service but has not expressly addressed the appointment of Aboriginal and Torres Strait Islander youth workers.*

In their 1993-94 implementation report, the **Northern Territory** Government noted that 8% of all Community Correction and Juvenile Justice staff were Aboriginal and Torres Strait Islander people. Further initiatives were introduced to bolster the employment of Aboriginal and Torres Strait Islander people, including as Aboriginal Community Correction Officers. This included conjoint training and recruitment programs with the Commonwealth.


In 2017, juvenile detention was re-assigned to the Territory Families agency, with the supervision of youth offenders to follow similar reassignment in 2018. NT Correctional Services applies Special Measures when undertaking recruitment with a view to increasing Aboriginal and Torres Strait Islander employment and development opportunities in the department as part of its Justice Matter Strategies.

The Northern Territory Government has noted that Territory Families has recently implemented Aboriginal and Torres Strait Islander special measures for agency recruitment activity and is supporting the worker development and capacity building of Aboriginal Community Controlled Organisations.

 *The Northern Territory has implemented Recommendation 237 by implementing initiatives to bolster the employment of Aboriginal and Torres Strait Islander people, including conjoint training and recruitment programs with the Commonwealth.*

In the **Australian Capital Territory**, the ACT Bureau of Sport, Recreation and Racing appointed Aboriginal and Torres Strait Islander officers in 1994 to develop links with community members and to facilitate the development of sporting and recreation opportunities for Aboriginal and Torres Strait Islander youth.

In addition to this, the Bimberi Youth Justice Centre has a Family Engagement Officer and two casual youth workers who are of Aboriginal and Torres Strait Islander heritage. The manager of Narrabundah House (Residential Care property) is of Aboriginal and Torres Strait Islander heritage.

 *The Australian Capital Territory has partially implemented Recommendation 237, by employing and training Aboriginal and Torres Strait Islander people as youth workers in some parts of the juvenile welfare and justice systems.*

Recommendation 238

That once programs and strategies for youth have been devised and agreed, after negotiation between governments and appropriate Aboriginal organisations and communities, governments should provide resources for the employment and training of appropriate persons to ensure that the programs and strategies are successfully implemented at a local level. In making appointment of trainers preference should be given to Aboriginal people with a proven record of being able to relate to, and influence, young people even though such candidates may not have academic qualifications.

Background information

The RCIADIC Report stressed the importance of having well-structured programs and instructors that can relate to Aboriginal and Torres Strait Islander youth. Such programs should be aimed at improving the training and employment for Aboriginal and Torres Strait Islander youth.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The Commonwealth, and the States and Territories are jointly responsible for oversight of programs in the juvenile welfare and justice systems.

Key actions taken and status of implementation

The **Commonwealth** Government's Inwork Traineeship Program, the Young Persons' Sport and Recreation Development Program and the Young People's Development Program, discussed in Recommendation 236, are all relevant to the implementation of Recommendation 238.


Under IAS, the Department of Prime Minister and Cabinet administers funding of over \$312 million across Australia in 2016-17 targeted at activities aimed at supporting Aboriginal and Torres Strait Islander children and youth to improve community safety, wellbeing, and education outcomes. Funded organisations under the IAS are required to employ Aboriginal and Torres Strait Islander in the delivery of their programs.

 *Recommendation 238 has been mostly implemented. While the Commonwealth Government has developed programs for the employment and training of Aboriginal and Torres Strait Islander people, program guidelines do not require that preference be given to employing Aboriginal and Torres Strait Islander trainers who have a proven record in relating to young people, even if they lack academic qualifications.*


In 1993, the-then **New South Wales** Office of Juvenile Justice (currently Juvenile Justice NSW) employed an Aboriginal Juvenile Justice Officer and youth workers, and utilised the services of an Aboriginal Chaplain and an Aboriginal Official Visitor. This included the development of culturally-relevant training for staff in responding to Aboriginal youth.

As outlined in NSW's response to Recommendation 237, there exist a variety of programs and strategies to support engagement with Aboriginal communities in the design and delivery of youth programs. In addition, the NSW Government provides funding to AbSec to support sector development including training and development within the child and family sector.

Through its Targeted Earlier Intervention program reforms, FACS is also developing a strategy to focus investment on Aboriginal families through Aboriginal-led service delivery. Over time this strategy will increase the number of Aboriginal people working with young people as well as the cultural safety of that work.

 *New South Wales has mostly implemented Recommendation 238 by providing funding and support through AbSec and other avenues but has not addressed giving preference to Aboriginal people as trainers.*


Within **Victoria's** Koori Justice Project and the AJA, Aboriginal and Torres Strait Islander workers were responsible for program delivery. The appointment of workers was determined by Aboriginal and Torres Strait Islander communities, and the worker was responsible to the community for service delivery.

 *Victoria has mostly implemented Recommendation 238 by ensuring Aboriginal and Torres Strait Islander persons are responsible for service delivery but has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*

In 1993, the **Queensland** Government, through the-then Department of Family Services and Aboriginal and Islander Affairs, provided a 1.5% subsidy into all youth program grants for the provision of coordinated training for all workers in funded community organisations. The Supported Accommodation Assistance Program supported the integration of training and the administration of funding arrangements in line with the intent of Recommendation 238. This included the employment of training officers to assist with service development. A number of these new services were funded in Aboriginal and Torres Strait Islander communities.


Currently, Youth Services ensures that where services are being delivered within Aboriginal and Torres Strait Islander communities, staff will be recruited from the community in the first instance. All Youth

Justice program delivery roles require cultural capability, which is assessed at recruitment through selection tools and references from an Aboriginal and Torres Strait Islander person recognised within the community. It is also highly recommended that selection panels for all youth justice roles include an Aboriginal and Torres Strait Islander panel member.

 *Queensland has mostly implemented Recommendation 238 by ensuring Aboriginal and Torres Strait Islander persons are recruited where services are being delivered within Aboriginal and Torres Strait Islander communities but has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*


The 1994 implementation report noted that the **South Australian** Government, through State Youth Affairs, had provided: measures for the employment of an Aboriginal Youth Worker; financial support to attend conferences for Workers with Aboriginal Youth; and support for the Northern Area Aboriginal Neighbourhood House. The South Australian Government also extended training opportunities for staff in these programs through TAFE and community organisations. In 1994, the policy of the then Department of Family and Community Services was to employ Aboriginal and Torres Strait Islander staff in areas where contact with Aboriginal and Torres Strait Islander young people can be expected.

Currently, the Department of Human Services employs Aboriginal and Torres Strait Islander staff in various roles and classifications via an Aboriginal Employment Pool that provides opportunities for candidates, prior to the mainstream advertisement of these roles.


 *South Australia has mostly implemented Recommendation 238 by supporting Aboriginal and Torres Strait Islander persons to deliver services, as evidenced by support for training opportunities, preferential policies and an Aboriginal Employment Pool. However, South Australia has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*

In 1994, the **Western Australia** Government supported a range of training and employment initiatives for Aboriginal and Torres Strait Islander people engaged in sports and recreation services. This included the provision of funding and the development and administration of relevant staff training programs.


The Western Australian Department of Justice provides currently contracts seven Aboriginal and Torres Strait Islander organisations to deliver programs in the areas of health, rehabilitative, recreational, cultural and educational needs. The procurement process required demonstration of cultural competence and included requirements in relation to partnerships with Aboriginal and Torres Strait Islander Elders, their communities and Aboriginal and Torres Strait Islander controlled organisations. This initiative increased the number of Aboriginal and Torres Strait Islander employees and organisations delivering services.

 *Western Australia has mostly implemented Recommendation 238 by contracting Aboriginal and Torres Strait Islander organisations to deliver programs and implementing a range of training and employment initiatives for Aboriginal and Torres Strait Islander people. However, Western Australia has not addressed giving preference to Aboriginal and Torres Strait Islander people as trainers.*

As noted in its response to Recommendation 236, **Tasmania** has developed a *Youth at Risk Strategy* which provides the Tasmanian Government with strategic direction regarding approaches to addressing youth at risk in Tasmania. No further information could be found on Tasmania's implementation of Recommendation 238.

 *Tasmania does not appear to have taken relevant actions to address Recommendation 236.*


The **Northern Territory** Government has indicated that in conjunction with responses to recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is engaging with Aboriginal and Torres Strait Islander organisations to improve local responses and support capacity building.

 *The Northern Territory has not implemented Recommendation 238.*

Following the RCIADIC, the **Australian Capital Territory** developed an employment and career development strategy for Aboriginal and Torres Strait Islander people engaged with the-then Housing and Community Services Bureau. It aimed to increase the employment of Aboriginal and Torres Strait Islander people within the Department, and at the various levels of the Bureau. The ACT Government extended this emphasis on Aboriginal and Torres Strait Islander employment and training through various other Departmental initiatives in the early 1990s.

The Australian Capital Territory Government has noted that since this time, the Canberra Institute of Technology has provided opportunities for Aboriginal and Torres Strait Islander people who have experience and skills working with young people to gain qualifications through skills recognition, with an Indigenous Scholarship program available.

The institute also encourages Aboriginal and Torres Strait Islander people to apply to the Casual Trainer register. It also has dedicated Aboriginal and Torres Strait Islander vocational education and training as well as an Aboriginal and Torres Strait Islander student support hub.

 *The Australian Capital Territory has mostly implemented Recommendation 238 through providing resources for employing and training of Aboriginal and Torres Strait Islander people at a local level and encouraging the employment of Aboriginal and Torres Strait Islander trainers. However, no evidence has been provided that explicit preference is given for Indigenous trainers even if they lack academic qualifications.*

Recommendation 239

That governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary. The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.

Background information

In order to divert Aboriginal and Torres Strait Islander juveniles away from the court process, the RCIADIC Report encouraged the implementation of a caution for punishment instead of arresting children for their offence. Additionally, the presence of family, or other supporting persons, should be present when such cautions were delivered.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both Commonwealth, and State and Territory governments have legislative oversight of this policy area. The work of the AFP in the ACT and Jervis Bay Territory is also relevant to this recommendation.


Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 239. The Australian Capital Territory implemented the *Children and Young People Act 2008* (ACT) which provides that young people should be detained only as a last resort. There are no considerations as to whether cautioning is preferred to formal caution or progression to Court.

The *Crimes (Search Warrants and Powers of Arrest) Amendment Bill 1993* was enacted which inserted Sections 3V into the *Crimes Act 1914* and came into effect in December 1994. The AGD noted that under this action, police officers were required to consider the most appropriate means of preserving the safety or well-being of a person when contemplating the use of an arrest power.


The AFP's *General Instruction 13* explicitly states that, where practical, proceedings against juveniles shall be initiated by way of summons, as opposed to arrest. The AFP have stringent provisions which

define the circumstances under which members may proceed by way of arrest. Each arrest is reviewed by the watch house sergeant, and if the circumstances do not warrant an arrest, then the charge is not accepted. ACT Policing also has internal governance that outlines the circumstances and process by which members may issue a criminal caution, or refer a matter through the restorative justice process.

 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 239 through legislative amendment of the Crimes Act 1914, and regional instruction from the AFP.*


In **New South Wales**, the *Young Offenders Act 1997* (NSW) states that criminal proceedings should not be instituted against a child if there are alternative and appropriate means of dealing with the matter, including a warning or caution. The Act also addresses the conditions in which warnings and cautions should be issued. For Aboriginal offenders, a caution may be given by a respected member of the Aboriginal community to which the offender belongs, at the request of the police officer as per Police Commissioner's Instructions and provisions in the *Children and Young Persons (Care and Protection) Act 1998*.

Police training has been implemented, both field and NSW Police Force Academy-based, that stresses the use of 'cautions' as a preferred option when dealing with certain classes of child offenders. There is a general rule that if a juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.


 *New South Wales has implemented Recommendation 239 by allowing for youth offender cautioning in the Young Offenders Act 1997.*

Victoria's *Children, Youth and Families Act 2005* (Vic) details that a warrant to arrest a child must only occur in "exceptional" cases. The *Change the Record* report notes that Victoria is the only state in Australia that does not formally accommodate police cautioning within its juvenile justice legislation, despite a police cautioning program existing in the Victorian Police Operating Procedures. Police in Victoria are instructed to handle young offenders in the following manner: no further action; a caution under the police cautioning program; proceed by summons; charge and consider bail; or charge and remand in custody by court or bail justice. Arrest and detention of young person must be authorised by the Senior Sergeant or above for extreme cases. The AJA also provides for the continuation of the Koori Youth Cautioning Program, which aims to grow the number of Aboriginal and Torres Strait Islander youths who are cautioned for offences, and collect better data on the use of cautions.

The Victorian Government has indicated that the relevant section of the Victoria Police Manual (Procedures and Guidelines - Disposition of Offenders) provides guidance on the application of Victoria Police Policy consistent with this recommendation. It is also noted that Victoria maintains separate adult and youth justice systems with separate legislative and service systems covering arrest, bail, remand, sentencing and parole.

 *Victoria has mostly implemented Recommendation 239 in the Children, Youth and Families Act 2005, however, does not allow for youth offender cautioning in its legislative framework.*

Queensland implemented the *Youth Justice Act 1992* (Qld) whereby section 11 provides that prior to starting proceedings against a child for an offence (that is not a serious offence), a police officer must proceed in the following manner: take no action; administer a caution; refer the offence to a conference; if involving a minor drugs offence, refer the child to a drug diversion assessment program; or if involving a graffiti offence, attend a graffiti removal program. This assessment is based on the circumstances of the offence, the individual's criminal history, and any other relevant matters. If the child is of Aboriginal and Torres Strait Islander descent, the police officer must also consider whether there is a respected person of the Aboriginal and Torres Strait Islander community who is available and willing to administer the caution.


 *Queensland has implemented Recommendation 239 by allowing for youth offender cautioning in the Youth Justice Act 1992.*

South Australia implemented the *Young Offenders Act 1993 (SA)* where section 6 provides that if a youth admits to committing a minor offence, a police officer may decide that the matter does not warrant any formal action and therefore hand down an informal warning rather than formal cautioning, diversion or arrest. South Australia requires the consent of a commissioned officer before a juvenile can be arrested. A young person also cannot be detained in a cell if the area has not been previously deemed as suitable for a young person to inhabit.

SAPOL General Orders state that an officer must consider a youth's age, antecedents and welfare when deciding whether to arrest. Before arresting or detaining a youth, authorisation must be given from a sergeant or member above the rank of sergeant, or from the LSA commander, under section 78(2) of the *Summary Offences Act*. Police General Order 8980, *Young Offenders Act* also sets out guidelines for the issuing of both formal and informal cautions and family conference and youth court provisions.


 *South Australia has implemented Recommendation 239 by allowing for youth offender cautioning in the Young Offenders Act 1993.*

Western Australia implemented the *Young Offenders Act 1994 (WA)* which provides that the detention of a young person should be a last resort and any such detention should be for the shortest time possible. When determining how to proceed with a young offender, their cultural background must also be considered and dealt with in a way that assists young people. In the majority of cases, a caution is preferred over laying a charge, unless it would be inappropriate considering the seriousness of the offence and the number of previous offences. Additionally, the Act states that a police officer must consider whether a caution is not appropriate in dealing with a young person convicted of making an offence. Issuing a notice to attend court is preferred in all appropriate circumstances to summon a young person to court or to detain a young person in custody.

 *Western Australia has implemented Recommendation 239 through the Youth Offenders Act 1994, which states that police should make use of cautions as a preference.*

Tasmania implemented the *Youth Justice Act 1997 (Tas)* which provides that a young person should only be detained in custody as a last resort and for as short a time as necessary. There is an additional focus on maintaining family relationships for the young person; to not withdraw a young person from their family environment; to not impair a young person's sense of racial, ethnic or cultural identity; and, to be dealt with in a manner that involves their cultural community.


This Act provides the Police Force with the ability to provide young offenders with an informal caution as an alternative to a formal caution where the matter is not serious enough to warrant an arrest, reference to diversion programs, or progression to Court. Formal and informal cautions may be delivered to Aboriginal and Torres Strait Islander youths by an Aboriginal and Torres Strait Islander Elder or a representative of a recognised Aboriginal and Torres Strait Islander organisation. A young person would only be arrested in cases of very limited circumstances. A caution can also be considered available after an arrest, if an arrest has been necessary and is reviewed by Inspectors and trained youth diversionary police officers.

 *Tasmania has implemented Recommendation 239 by allowing for youth offender cautioning in the Youth Justice Act 1997.*

The **Northern Territory** implemented the *Youth Justice Act 2006 (NT)* which provides that young people should only be kept in custody for an offence as a last resort, and for the shortest period of time possible. If the young person is of Aboriginal and Torres Strait Islander descent, efforts must also be made to deal with the offence in a manner that involves the individual's community. However, under some circumstances they will be unable to merely receive a written or verbal warning, or be processed to a diversion program. In these cases, the young person would be directed to Court. The *Youth Justice Act* was amended as of 2017 to include additional principles providing for the further protection of youths.

In addition to this Section 39 of the Youth Justice Act provides a range of alternates to charging young people with offences, such as verbal and written warnings and, youth justice conferences.

The Northern Territory Government has also noted that, in conjunction with responses to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is reviewing the provisions of the *Youth Justice Act 2006 (NT)* and will consider appropriate provisions to address the application of police powers of arrest.

 *The Northern Territory has implemented Recommendation 239 by allowing youth offender cautioning under the Youth Justice Act 2006.*

Recommendation 240

That:

- a. Police administrators give police officers greater encouragement to proceed by way of caution rather than by arrest, summons or attendance notice;*
- b. That wherever possible the police caution be given in the presence of a parent, adult relative or person having care and responsibility for the juvenile; and*
- c. That if a police caution is given other than in the presence of any such person having care and responsibility for the juvenile such person be notified in writing of the fact and details of the caution administered.*

Background information

The RCIADIC Report emphasised the importance of police officers administering cautions to, as opposed to arresting, Aboriginal and Torres Strait Islander youth in order to prevent detention.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to 240. In addition to the actions noted in Recommendation 239, the AFP has internal governance processes in place relating to circumstances when an offender can be issued a criminal caution for an offence. For example, when a police caution is issued to a juvenile, a parent/guardian must be present and must consent to the caution. However, while AFP staff are encouraged to adhere to these processes, they are not binding on staff.


Additionally, the *Children's Services Act 1986 (ACT)* provides for interviews of juveniles to take place in the presence of a parent, and for the giving of a previous caution to be a matter to be taken into account when deciding whether to instigate criminal proceedings. The *Liquor (Amendment) Act 1987 (ACT)* makes specific provision for using cautions to juveniles, including providing a copy of the caution to the young person or his/her parent or guardian. Similar to Recommendation 239, the *Crimes (Search Warrants and Powers of Arrest) Amendment Bill 1993*, which enacted Sections 3V into the *Crimes Act 1914* and the AFP's General Instruction 13 are both relevant to Recommendation 240.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 240 by addressing all parts of the recommendation.*

In **New South Wales**, the 1996 implementation report states that police instructions require that a person responsible for the young person is present when a formal caution is administered. A young person that has committed an offence would be entitled to be dealt a caution if they are not eligible for a warning or if a warning is deemed inappropriate. In making this decision, the police officer must consider the seriousness of the offence, the degree of violence involved, the harm caused to any victim, and any previous offences and interactions of the young person with the justice system.


More recently, police training, both field and NSW Police Force Academy-based, stresses the use of 'cautions' as a preferred option with dealing with certain cases of child offenders, as included in

Commissioner's Instruction 75 – Child Offenders. Any caution is to be administered in the presence of a person responsible for the child. If a responsible person is not available, a mutually acceptable time and date should be selected within a 28-day period.

 *New South Wales has mostly implemented Recommendation 240 through the Commissioner's Instruction 75 – Child Offenders but has not addressed part (c) of the recommendation.*


In **Victoria**, the 1994 implementation report states that young people who are first offenders are typically cautioned in the presence of an adult, by an officer who is ranked as a Sergeant or above. However, cautioning may be carried out without the presence of a responsible adult (either a parent or independent person). With regards to part (a) of this recommendation, the Koori Youth Cautioning Program serves as a system-level approach to encouraging the use of cautions against Aboriginal and Torres Strait Islander youth.

The Victorian Government has also noted that a specific Koori Youth Cautioning model is being developed for implementation within the life of Aboriginal Justice Agreement Phase Four.

 *Victoria has mostly implemented Recommendation 240, however no evidence of the implementation of part (c) has been provided.*

Current arrangements in **Queensland** allow police officers to caution young offenders. Cautions are not limited to first time offenders, but are dependent on the individual circumstances of each offence. Cautions are typically implemented by appointment and in the presence of a parent of each young offender. The *Youth Justice Act 1992* (Qld) provides for police cautioning to be administered where practicable in the presence of a person chosen by the child or a parent of the child, or a person chosen by the parent of the child.

This Act also allows for Aboriginal and Torres Strait Islander Elders (or a respected Aboriginal and Torres Strait Islander person) of the community to administer cautioning to young Aboriginal and Torres Strait Islander offenders. For each young person that receives a caution, they are to receive a certification that details the facts and details of the caution. A charge made against by a young person may be dismissed at the Children's Court if the court is satisfied that the young person should have been cautioned instead of charged. These issues are also addressed in the *Police Powers and Responsibilities Act 2000* and the QPS OPM.


 *Queensland has implemented Recommendation 240 by addressing these considerations in the Youth Justice Act 1992 (QLD), the Police Powers and Responsibilities Act 2000 and the QPS OPM.*

In **South Australia**, section 6 and 7 of the *Young Offenders Act 1993* (SA) assign a statutory power to the sub-categories raised in this recommendation. The provisions set out in Recommendation 240 have been accordingly incorporated into General Order 8980 and SAPOL General Orders Youths.


 *South Australia has implemented Recommendation 240 by incorporating these provisions into General Order 8980 and SAPOL General Orders Youths.*

In **Western Australia**, the *Young Offenders Act 1994* (WA) instructs police officers to:


- caution young people rather than arrest, summons or attendance notice;
- where possible, give the caution in the presence of a person having care and responsibility for the juvenile; and
- if not administered in their presence, such person be notified in writing of the details of the caution.

 *Western Australia has implemented Recommendation 240 by incorporating these provisions into the Young Offenders Act 1994 (WA).*

As per the **Tasmanian** Government's response to Recommendation 239, the *Youth Justice Act 1997* provides the Police Force with the ability to provide young offenders with an informal caution as an alternative to a formal caution where the matter is not serious enough to warrant an arrest.

-  *Tasmania has partially implemented Recommendation 240 but has not addressed parts (b) or (c) in its response.*

In the **Northern Territory**, the established policy of the Northern Territory Police at the time of the RCIADIC was already in accordance with this recommendation, as per the General Order for Children (Code C3). Additional provisions have been accounted for in the *NT Police General Order – Arrest* as of 2017, which pertain to arrest of youths, as well as the *General Order Youth* and *General Order Youth Pre-Court Diversion*. The *Youth Justice Act 2005* legislates a presumption for diversion which places an obligation on police to divert all youth offenders unless certain criteria exist or the offences are excluded from the diversion process.

-  *The Northern Territory has implemented Recommendation 240 by incorporating these provisions into NT Police General Orders.*

Recommendation 241

The Commission notes that in some jurisdictions (in particular South Australia and Western Australia) Children's Aid Panels or Screening Panels apply. These panels provide an option lying between police cautions, on the one hand, and appearances in children's courts, on the other hand. The Commission is unable to recommend that such panels be established in places where they do not presently exist, nor that panels be abolished in places where they do exist. The Commission, however, draws attention to evidence suggesting that the potential benefits which may flow from the provision of such panels are not fully realised in the case of Aboriginal juveniles. The Commission draws attention to the desirability of studies being done on a wide scale to determine the efficacy of such initiatives. The Commission recommends that for South Australia and Western Australia the following matters should be made clear by legislation, standing orders or administrative directions so as to provide:

- That the fact of arrest is not to be taken into account in determining whether a child is referred to a Children's Court as opposed to being referred to an alternative body such as a Children's Aid Panel;*
- That the decision to proceed by way of summons or attendance notice rather than by cautioning a juvenile should not be influenced by the existence of such panels;*
- That there should be adequate representation of Aboriginal people on the list of panel members;*
- That the panels should be so constituted that there be adequate representation of Aboriginal members of the panel on any occasion in which an Aboriginal juvenile's case is being considered;*
- That in no case should there be consideration of the case of an Aboriginal juvenile unless one member, at least, of the panel is an Aboriginal person; and*
- That an Aboriginal juvenile should not be denied consideration by a Children's Aid Panel by virtue of the juvenile's inability, on financial grounds, to make restitution for property lost, stolen or damaged.*

Background information

The RCIADIC Report recommended that studies be conducted in South Australia and Western Australia to determine the efficacy of Children's Aid Panels or Screening Panels, so as to reduce disadvantages experienced by young Aboriginal and Torres Strait Islander people.


Responsibility

This recommendation is the responsibility of the South Australian and Western Australian Governments.


Key actions taken and status of implementation

In **South Australia**, the *Youth Court Act 1993* (SA) abolished Screening Panels and Children's Aid Panels and the *Children's Protection Act* and the *Young Offenders Act* came into existence, which

established a two-tiered system of pre-court diversion. This system included police cautioning and family conferencing being implemented to deal with minor offences. The instituted diversion program of Family Conferencing holds SAPOL as the 'gatekeepers' of the system whereby they determine which matters will be referred directly to Family Conference and which will be formally laid with the Court. The young person must be pleading guilty to the alleged offending to enter a Family Conference.

 *Recommendation 241 does not apply to South Australia, as they abolished Screening Panels and Children's Aid Panels.*

In **Western Australia**, Children's Panels have been replaced with Juvenile Justice Teams, which facilitate group meetings to discuss the young person and their offence. A young person that admits to committing the offence may be referred to a juvenile justice team in lieu of a court, as per section 25(4) of the *Young Offenders Act 1994* (WA). Young offenders may still proceed to court in cases where there is sufficient evidence to charge a person with the commission of an offence, in circumstances where an infringement notice is inappropriate or not preferable. Members of an approved Aboriginal and Torres Strait Islander community may be nominated by the community council to form a part of the Juvenile Justice Team.

 *Recommendation 241 does not apply to Western Australia, as they replaced Children's Panels with Juvenile Justice Teams. Members of the Aboriginal and Torres Strait Islander community are invited to participate in team meetings for Aboriginal and Torres Strait Islander young people.*

Recommendation 242

That, except in exceptional circumstances, juveniles should not be detained in police lockups. In order to avoid such an outcome in places where alternative juvenile detention facilities do not exist, the following administrative and, where necessary, legislative steps should be taken:

- a. Police officers in charge of lockups should be instructed that consideration of bail in such cases be expedited as a matter of urgency;*
- b. If the juvenile is not released as a result of a grant of bail by a police officer or Justice of the Peace then the question of bail should be immediately referred (telephone referral being permitted) to a magistrate, clerk of Court or such other person as shall be given appropriate jurisdiction so that bail can be reconsidered;*
- c. Government should approve informal juvenile holding homes, particularly the homes of Aboriginal people, in which juveniles can lawfully be placed by police officers if bail is in fact not allowed; and*
- d. If in the event a juvenile is detained overnight in a police lock-up every effort should be made to arrange for a parent or visitor to attend and remain with the juvenile whether pursuant to the terms of a formal cell visitor scheme or otherwise.*

Such steps should be in addition to notice that the officer in charge of the station should give to parents, the Aboriginal Legal Service or its representative.

Background information

The RCIADIC Report highlighted that the United Nations' guidelines and conventions offer important basic principles for the administration of juvenile justice. Conventional custodial options, namely in youth detention centres, should only be used when all other avenues have been exhausted. The placement of youth in police lookups should, save for exceptional circumstances, not constitute a custodial option.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The **Commonwealth** and **Australian Capital Territory** Governments have undertaken the following actions in response to Recommendation 242.

In relation to part a) of the recommendation, ACT Policing members are provided with a clear understanding that alternatives to detention are to be considered, and the welfare of the juvenile is balanced with the need to protect the community. The *Children and Young People Act 2008* s.94 establishes that the detention of a juvenile is to be the option of last resort, and for the minimum amount of time necessary. The AFP's General Instruction 8 requires that where a child or young person is in custody, the officer in charge of the police station shall, after satisfying themselves that the person will appear in court, admit that person to bail with surety from a parent, guardian or responsible adult.


In relation to part b) of the Recommendation, ACT Policing must in accordance with the *Bail Act* bring the accused before a court as soon as practicable or within 48 hours after having been taken into custody. However, the ACT does not have an after-hours bail application process for juveniles (or adults) whereby a Magistrate can be called to make bail applications

In relation to part c) of the Recommendation, a trial of the Ngurrambai bail support program has been implemented.


In relation to part d) ACT Policing have noted that juveniles are very rarely (if ever) detained in police cells overnight. ACT Policing policy is to transport juveniles to Bimberi Youth Justice Center as soon as they have been charged and processed.

There is an After Hours Bail Support Service, established and run through the ACT Justice and Community Services Directorate that is contacted each time a young person is detained. This service assists to ensure young people are afforded the best opportunity to receive police bail by helping to address factors that may prevent bail.

ACT Policing do not currently publish publicly any statistics or information regarding people passing through police cells. Police will notify ATSILS and the Aboriginal and Torres Strait Islander Elected Body of all Aboriginal and Torres Strait Islander people taken into the custody of ACT Policing.

 *The Commonwealth and the Australian Capital Territory Governments have mostly addressed of Recommendation 242. However part b) of this recommendation has not been fully implemented as there is currently no permanent after-hours bail application process for juveniles and no informal juvenile holding homes. Additionally, in relation to part d) no provisions have been made to allow a parent or visitor to attend and remain with the juvenile when in custody, although it is noted that ACT Policing policy is to transport juveniles to Bimberi Youth Justice Center as they have been charged and processed, which may allow visitors.*

In **New South Wales**, parts, a), b), and d) have been incorporated in the Police Commissioner's instructions. These are included in the New South Wales Police Force Commissioner's Instruction 155.09 – Child Offenders and 155.11 – Care and supervision of prisoners. The NSW Police Force complies with *Law Enforcement (Powers and Responsibilities) Regulation 2016*, Part 2, Clause 5, which states that 1) *An Aboriginal person or Torres Strait Islander who is a child should not be placed in a police cell except in exceptional circumstances that make it necessary for the well-being of the child* and 2) *If it is necessary to detain such a child overnight in a police cell, the custody manager for the child should arrange for a support person to remain with the child unless it is not reasonably practicable to do so*. As such, all young people transferred to the Department of Juvenile Justice are not kept overnight unless absolutely unavoidable. If a child is left overnight, every effort is made to ensure a family member, friend, Aboriginal volunteer or Aboriginal Community Liaison Officer spends as much time with the young person as possible. The young person is never left unattended by police.

 *New South Wales has mostly implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, it has not addressed part (c) in their response.*

In **Victoria**, the *Children, Youth and Families Act 2005 (Vic)* provides that young people should only be held in custody after all options have been exhausted or that the nature of the offence is such that community placement is inappropriate.


According to the *Bail Act 1977 (Vic)*, when making a bail decision in Victoria, the decision maker must take into account the need to:

- consider all options before remanding a child in custody;
- preserve and strengthen the relationship between a child and their family; and
- minimise stigma and not be refused bail if the sole ground is that they do not have adequate housing.

In Victoria, Central After Hours Bail Support Services enable bail decisions to be made in all hours (including overnight), so that housing and bail support issues can be resolved in the event that a child is granted bail and needs accommodation. Proposed bills to allow police to remand accused for up to 48 hours will exclude children and other vulnerable accused. In the event a child or young person is apprehended, Bail Justices need to be called for those accused and a member of the police force must ensure a parent or guardian of the young person or an independent person is present when considering the question of bail. The decision by a bail justice after hours to remand a child or young person will enable a child or young person to be transported to a Youth Detention facility instead of being held in police cells overnight.


In some instances, children may be held in custody pending a bail decision -- for example, when they have committed the most serious types of offences for which only a court may grant bail, or if a bail justice has refused bail and remands the child to appear at court. The Bail Amendment (Stage Two) Bill 2017 clarifies that these children will be required to be placed in a remand centre (within the meaning of the *Children, Youth and Families Act 2005*) within a certain period of time, rather than police cells.

Police are also required to call a parent guardian or independent third person to be present in the event that a child is questioned in relation to the commission of a criminal offence in Victoria.

 *Victoria has mostly implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, provisions have not been made for informal juvenile holding homes. No evidence of provisions to allow parents or visitors to attend and remain with the juvenile in a police lockup have been provided.*

The **Queensland** Government noted in its 1993 implementation report that young people should only be held in watch houses after all other options have been exhausted. In 1993, priority was given to providing additional funding to the development of community-based alternatives to detention centres, in line with part (c) of the recommendation.


The QPS OPM provides that a young person should not be held in custody unless all other reasonable alternative arrangements are considered to be inappropriate. The *Youth Justice Act 1992 (QLD)* provides that a young person should be brought promptly before a court to be dealt with. If this is not possible, the police officer must consider releasing the child from custody by way of notice to appear on bail, in line with part (a) of the recommendation. Procedures require police officers to arrange and allow for visitors to the young person by the young person's family, in addition to departmental officers including those under the official community visitor scheme, thus fulfilling part (d).

 *Queensland has mostly implemented Recommendation 242 by ensuring that young people are only placed in custody if all reasonable alternative arrangements are considered to be inappropriate but has not addressed part (b) of this recommendation.*


The Government of **South Australia** noted in its 1994 implementation report that the requirements of this recommendation have been in practice in South Australia for many years. In addition, supplementary emergency and bail accommodation options have been established.

Currently, a dedicated Police Custody unit is located at the Adelaide Youth Training Centre. A Memorandum of Administrative Arrangement with SAPOL outlines how and when young people can be


held in police facilities. Young people may only be detained in specifically approved police facilities, except in situations of necessity in accordance with section 15(2) of the *Young Offenders Act 1993*. In such situations, the person in charge of the police facility must take reasonably practicable steps to keep the young person from encountering any adult person detained in the facility.

 *South Australia has implemented Recommendation 242, as requirements of this recommendation have been in practice in South Australia for many years.*

In **Western Australia**, the *Bail Act 1982* (WA) requires police members to consider whether a young person can be considered for bail, conditional on eleven guiding principles, aimed to reduce the number of young people held in custody wherever possible. Police orders require that parents, Juvenile Justice Division officers and Aboriginal Visitors scheme members be notified when a young person is detained. Additionally, all young people who are detained in police lock-ups must have a visitor once they have been arrested. In addition to this, Metropolitan Youth Bail Services, Youth at Risk Facilities and juvenile prisoner transport are used to reduce the number of young people held in custody.


 *Western Australia has mostly implemented Recommendation 242 through the *Bail Act 1982*, which seeks to reduce the number of young people in custody, requiring visitors to attend once young people have been arrested and establishing Youth at Risk Facilities. However, no evidence was provided as to whether the question of bail should be immediately referred.*

The **Tasmania** Police Standing Order 109.7 requires that young people are not detained “without good cause”. Additionally, Standing Order 144 requires that a member of the Aboriginal Legal Service or a parent be present to assist with the bailing of an Aboriginal and Torres Strait Islander youth. Currently, the Tasmanian *Youth Justice Act 1997* and Youth Justice Act Instructions and Guidelines govern the implementation of parts (a) and (b) of this recommendation. Youths cannot be detained without seeking authorisation from the Inspector of Police. Part (c) remains the remit of the Department of Health and Human Services.

 *Tasmania has partially implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, there has been no further information provided on addressing parts (c) and (d) of the recommendation.*

In the **Northern Territory** the General Order Children – Code C3 was amended to more fully reflect the requirements of this recommendation. The NT Police General Order – Bail stipulates that if a youth has been charged with an offence and is not admitted to bail, a member is to as soon as practicable, apply to the Court or a Local Court Judge for an order that the youth be detained at a detention centre or other place approved by the Minister for the purpose. The Youth General Order states that if a youth has been charged with an offence and not admitted to bail, a police officer must as soon as practicable, apply to the Court or a Magistrate for an order that the youth be detained at a detention centre or other place approved by the Minister for the purpose.

The Northern Territory Government has noted that in response to the Royal Commission into the Protection and Detention of Children in the Northern Territory, Territory Families is reviewing the provisions of the *Youth Justice Act* and the *Bail Act* to provide for more suitable bail considerations for young people.

 *The Northern Territory has partially implemented Recommendation 242 by ensuring that young people are only placed in custody as an option of final resort. However, there has been no further information addressing parts (a), (b) and (d) of the recommendation.*

Recommendation 243

That where an Aboriginal juvenile is taken to a police station for interrogation or as a result of arrest, the officer in charge of the police station at which the juvenile is detained should be required to immediately advise the relevant Aboriginal Legal Service and the parent or person responsible for the care and supervision of the juvenile of the fact of the child being detained at the police station (without prejudice to any obligation to advise any other person).

Background information

The RCIADIC Report recognised the hardship faced by Aboriginal and Torres Strait Islander juveniles, and their families, after being placed in detention. The presence of an ALS member and/or parent/guardian while the Aboriginal and Torres Strait Islander juvenile is being interrogated has been found to reduce the hardship faced by the youth.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The following actions are relevant to the **Commonwealth** and **Australian Capital Territory** Governments. The AFP advised that its Guidelines require that the Aboriginal Legal Service be notified of every Aboriginal and Torres Strait Islander detainee, including young people. Additionally, section 80 of the *Children and Young Persons Act 2008* (ACT) requires that a young person's parent/guardian be notified when the young person is taken into custody.

● *The Commonwealth and Australian Capital Territory Governments have fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per AFP Guidelines.*

New South Wales requires that when a young person is questioned at a police station, police must notify and wait for a parent or guardian to arrive before they can proceed. As of June 1995, amendment was made to the Commissioner's Instruction 155 to require notification of the Aboriginal Legal Service. Compliance is monitored by Local Area Commanders, local supervisors and Aboriginal Legal Service officers and solicitors.


Currently, the Juvenile Justice Bail Assistance Line exists as an early intervention program with the primary aim of reducing the number of young people entering custody on remand by diverting them into safe, cost effective accommodation in the community. While NSW Police are the primary referral source, the service also receives referrals from children's Courts, Juvenile Justice centres and community offices.

● *New South Wales has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal juvenile is detained, due to an amendment to the Commissioner's Instruction 155, and that monitoring procedures are in place to ensure compliance.*


In **Victoria**, section 64C of the *Crimes Act 1958* (Vic) provides that prior to questioning or investigation, an investigating officer must inform the person in custody that he or she may communicate with or attempt to communicate with a legal practitioner. For all Aboriginal and Torres Strait Islander juveniles taken into custody, police are responsible for notification of the Victorian Aboriginal Legal Service Cooperative. As per section 464E of the *Crimes Act 1958* (Vic), police must not question a young person until a parent, guardian or independent person is present.

● *Victoria has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per section 464E of the Crimes Act 1958.*


In **Queensland**, for indictable offences, section 420 of the *Police Powers and responsibilities Act 2000* (Qld) requires the police officer to, as soon as reasonably practicable, notify or attempt to notify a representative of a legal aid organisation to advise of the whereabouts of the young person. Section 392 of the *Police Powers and Responsibilities Act 2000* (Qld) applies to any offence and requires the arresting officer to promptly advise a parent of the child, the chief executive or a person who holds an office within the department nominated by the chief executive, of the purpose of the arrest and whereabouts of the young person. Amendments have been made to section 5.6.4 of the QPS OPM regarding requirements to notify Aboriginal Legal Services about a child's arrest or notice to appear.

 *Queensland has fully implemented Recommendation 243 by requiring police officers to notify Aboriginal Legal Services and parents/guardians when an Aboriginal and Torres Strait Islander juvenile is arrested.*


In **South Australia**, the 1994 implementation report notes that a parent or responsible person is always contacted by the Police, however Aboriginal Legal Services are only notified with the approval of the detainee.

 *South Australia has mostly implemented Recommendation 243 as Aboriginal Legal Services are only notified with the approval of the detainee.*


Western Australia requires that the parent or person responsible for the young person is notified. However, in 1994 it was not yet formally required that the Aboriginal Legal Service is notified when an Aboriginal and Torres Strait Islander young person is detained. In 1994 the police service instigated a multi-agency working party in response to this, which made recommendations to the Police Service Command in relation to young Aboriginal and Torres Strait Islander persons being arrested. No further details on the outcome of this working party were identified.

 *Western Australia has partially implemented Recommendation 243. Although a responsible adult must be notified, as soon as a juvenile is taken into custody, there is no requirement to notify the relevant Aboriginal Legal Service, in the case where the juvenile is Aboriginal and Torres Strait Islander.*

In **Tasmania**, this recommendation has been addressed by Tasmania Police Standing Orders No 109.5. Order 109.5 provides that when a young person commits or is charged with an offence, both parents if available should be informed of the fact that proceedings may be taken against the child. Alternatively, a guardian of the young person may be informed. Under the *Child Welfare Act 1960* (Tas), section 16(7) requires that a parent or guardian be warned to attend the court before a young person can appear. In addition, Tasmania Police policy requires that the Aboriginal Legal Service be notified anytime an Aboriginal and Torres Strait Islander person (juvenile or otherwise) is taken into custody or interviewed.

 *Tasmania has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per Tasmania Police Standing Order No 109.5.*

In the **Northern Territory**, the 1997 implementation report cites that when a young Aboriginal and Torres Strait Islander person is interviewed the police are required to advise the Aboriginal Legal Aid service before the interview commences. Both the parent/guardian of the young offender and the Aboriginal Legal Service must be notified if they are detained at the police station. These provisions are enshrined in the NT Police Force Youth General Orders. The Northern Territory Government has also noted that Territory Families is developing specific provisions to support and improve this practice.

 *The Northern Territory has fully addressed Recommendation 243 by ensuring Aboriginal Legal Services and parents/guardians are notified when an Aboriginal and Torres Strait Islander juvenile is detained as per NT Police Force Youth General Orders.*

Recommendation 244

That no Aboriginal juvenile should be interrogated by a police officer except in the presence of a parent, other person responsible for the care and supervision of the child or, in the absence of a parent or such other person, an officer of an agency or organisation charged with responsibility for the care and welfare of Aboriginal juveniles.

Background information


The RCIADIC Report noted that it is in the best interest of Aboriginal and Torres Strait Islander youth that they be accompanied by a parent/guardian or appropriate Aboriginal and Torres Strait Islander organisation member when being interrogated by a police officer.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation


In the **Australian Capital Territory**, and as part of the **Commonwealth** Government's jurisdiction, section 23K of the *Crimes Act 1914* (Cth) requires that an "interview friend" – defined as a parent/guardian, or relative or friend who is acceptable to the person – be present when a person aged under 18 years is questioned by an investigating official.

 *The Commonwealth and Australian Capital Territory Governments have implemented Recommendation 244, by requiring an "interview friend" to be present if a juvenile is questioned by police.*

Section 13(1) of the **New South Wales** *Children (Criminal Proceedings) Act 1987* (NSW) is consistent with Recommendation 244 as it provides that a statement made to the police by a child can only be admitted as evidence in criminal proceedings if an appropriate adult was present at the time the statement was made. This applies to young people aged under 16 years and has the exception that a confession not made in the presence of an adult responsible for the child may be admitted in criminal proceedings if the police can provide an explanation acceptable as to why such an adult was not present.


 *New South Wales has implemented Recommendation 244, by requiring a support person to be present if a juvenile is questioned by police.*

Victoria's *Crimes Act 1958* (Vic) provides under section 464E that a child is not to be interrogated by police except in the presence of a parent, guardian or independent person. However, there is no requirement that the independent person is an officer of an agency or organisation that has responsibility for the care or welfare of Aboriginal and Torres Strait Islander young people.


 *Victoria has mostly implemented Recommendation 244, with the exception of requiring the independent person be from an agency that has responsibility for the care and welfare of Aboriginal and Torres Strait Islander juveniles.*

In **Queensland**, under section 421 of the *Police Powers and Responsibilities Act* (PPRA), police officers must not question a child for an indictable offence unless a support person is present. Before the commencement of questioning, if practicable, the officer must also allow for the young person to speak with a support person as chosen by the young person. If that young person is then arrested, police are required to notify relevant bodies within the Queensland Government.

During criminal proceedings for an indictable offence, section 29 of the *Juvenile Justice Act 1992* (Qld) requires that a court must not admit a statement into evidence against a defendant unless the court is satisfied that the statement was made or given in the presence of a support person of the young person.


 *Queensland has implemented Recommendation 244, by requiring a support person to be present if a juvenile is questioned by police.*

South Australia has previously addressed this recommendation as per the *Summary Offences Act 1953* (SA). Section 79A(1a) provides that an investigating police officer must ensure that a young person is not interrogated or investigated until they have secured the presence of an independent adult representing the young person's interests. These provisions have been incorporated into SAPOL General Orders Youths and General Order 8980.


 *South Australia has mostly implemented Recommendation 244. While it is a requirement that an independent adult be present if a juvenile is questioned by police, there are no requirements on who the independent adult should be.*

Following the RCIADIC, the **Western Australian** Government issued instructions to police concerning the interviewing of young offenders. Section 20 of the *Young Offenders Act 1994* (WA) requires that police officers inform a parent or responsible adult orally or in writing of the intention to question a young person about an offence and that if such notice is not given the police officer must explain in writing to the Chief Executive Officer why the notice was not given.


Standing orders require that interrogations of young people must be in the presence of a parent, responsible adult or another police officer not involved in the case. Police officers are also required to comply with section 49 of the *Aboriginal Affairs Planning Authority Act 1972* (WA) when conducting interviews. All juveniles in the care of the Department of Justice are accompanied by a staff member when being interviewed by police, to ensure that the young person is advised of their rights prior to commencement of the interview.

 *Western Australia has not implemented Recommendation 244. Although a responsible adult must be notified of the intent to question a young person (although exemptions apply), there is no requirement for the person responsible for the young person's care or supervision to be present.*

Tasmania's Standing Order No. 109.14 provides that wherever practicable, a young person is interviewed at home in the presence of a parent, guardian or other responsible person. A young person may be interviewed at school, given that approval of the school principal is obtained and the interview is conducted in the presence of the principal or their nominated representative.

 *Tasmania has mostly implemented Recommendation 245 by requiring a support person to be present if a juvenile is questioned by police. However, there are no stipulations regarding who the support person should be.*

The **Northern Territory** Government amended the Northern Territory Police General Orders following the release of the RCIADIC report to reflect this recommendation. The General Order now implies that no Aboriginal and Torres Strait Islander youth be interrogated by a police officer except in the presence of a parent, other person responsible for the care and supervision of the child or, in the absence of a parent or such other person, an officer of an agency or organisation charged with responsibility for the care and welfare of Aboriginal and Torres Strait Islander youths. The Northern Territory Government has also noted that Territory Families is developing specific provisions to support and improve this practice.

 *The Northern Territory has implemented Recommendation 244, by requiring a support person to be present if a juvenile is questioned by police.*

Recommendation 245

That legislation, regulations and/or police standing orders, as may be appropriate, be amended so as to require compliance with the above recommendations.

Background information

This recommendation refers directly to recommendations 242, 243 and 244.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. As per the three previous recommendations, the majority of this recommendation falls under the responsibility of the States and Territories. The Commonwealth's responsibilities relate to the AFP and its work in the ACT and Jervis Bay Territory.

Key actions taken and status of implementation

The responses of all parties to Recommendation 245 are per their responses to Recommendations 242, 243 and 244.


The **Commonwealth** and **Australian Capital Territory** Governments have responded to this recommendation through the aforementioned recommendations, the AFP's Guidelines, and s23 of the *Crimes Act 1914* (Cth) to ensure compliance with the requirements of these recommendations.

 *The Commonwealth and Australian Capital Territory Governments have mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


New South Wales addressed this recommendation as per section 13(1) of the *New South Wales Children Criminal Proceedings Act 1987* (NSW), the Commissioner's Instructions and *Law Enforcement (Powers and Responsibilities) Regulation 2016*.

 *New South Wales has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


Victoria addressed this recommendation through existing legislation, regulation and standing orders.

 *Victoria has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


Queensland has implemented legislation and General Instructions as noted in the previous recommendations.

 *Queensland has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*


South Australia has altered General Orders, the *Young Offenders Act 1993* and policies and practices in accordance with this recommendation.

 *South Australia has mostly implemented Recommendation 245, as it has amended General Orders, legislation, and practices accordingly, with the exception of relevant aspects of Recommendations 243 and 244.*


Western Australia has altered policy, practice and procedure in line with some of the requirements of this recommendation, with the exception of aspects of Recommendations 242 and 243, and all of Recommendation 244.

 *Western Australia has partially implemented Recommendation 245, as it has amended policies and practices accordingly, with the exception of some relevant aspects of Recommendations 242, 243 and 244.*

Tasmania has actioned the aforementioned recommendations to address this recommendation.

 *Tasmania has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242 and 244.*

The **Northern Territory** amended the Northern Territory Police General Order to reflect the requirements of these recommendations.

 *The Northern Territory has mostly implemented Recommendation 245, with the exception of relevant aspects of Recommendation 242.*

10 Health and education

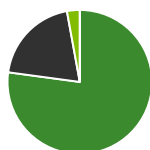
The recommendations in this chapter relate to: towards better health (246-271); coping with alcohol and other drugs: strategies for change (272-288); and educating for the future (289-299).

Key themes from recommendations (54 recommendations)

- There is a need for a shift toward evidence-based policy when developing health frameworks for Aboriginal and Torres Strait Islander communities. This includes more comprehensive collection of data and thorough evaluation.
- Training of health care workers must include extensive cultural sensitivity components alongside traditional skill-based programs.
- A more accessible mental health framework needs to be developed in consultation with Aboriginal and Torres Strait Islander communities.
- There is a need for State and Territory legislation regarding liquor licensing and management to be reflective of and responsive to the concerns and needs of Aboriginal and Torres Strait Islander populations and communities.
- Further steps need to be taken to address educational disadvantage among Aboriginal and Torres Strait Islander students and provide meaningful education experiences.

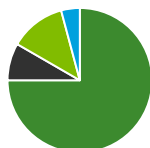
Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

Commonwealth | Key actions: The Commonwealth has made substantial progress towards providing a health framework that better accommodates the needs of Aboriginal and Torres Strait Islander communities. Major Commonwealth policies, such as *Closing the Gap* and the NATSIHP, have improved engagement with Aboriginal and Torres Strait Islander communities in service design and delivery. In addition, education and training initiatives have been prioritised and mental health programs have been implemented successfully.



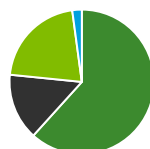
Remaining gaps: A more thorough evaluation of ACCHOs is needed, in addition to specific funding for the training of Aboriginal and Torres Strait Islander mental health workers and further consultation with communities regarding the physical design of health facilities.

New South Wales | Key actions: The NSW Government has committed to improved reporting and health data collection as part of the *New South Wales Aboriginal Health Plan 2013-2023* and the Aboriginal and Torres Strait Islander Health Performance Framework. In addition, the NSW Government has made employment in health, specifically mental health, a significant priority through initiatives such as the *Aboriginal Mental Health Traineeship Program*.



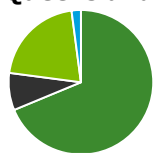
Remaining gaps: The NSW Health Care Interpreter Services does not currently cover Aboriginal languages. The NSW Government has also not addressed recommendations relating to alcohol management, such as reducing the number of licensed premises. Consideration of processes for negotiation in education for local communities, and appropriate recognition of Aboriginal Education Workers, is also required.

Victoria | Key actions: The Victorian Government has prioritised health reporting as part of the *Koolin Balit Victorian Government Strategic Direction for Aboriginal Health 2012-2022*. Victoria has also implemented significant initiatives targeted at mental health, including the *Victorian Aboriginal Suicide Prevention and Response Action Plan 2010-15*.



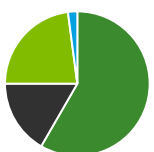
Remaining gaps: A comprehensive review of program evaluation supports for ACCHOs is required, as is a review of career structures for Aboriginal Health Workers. Further consideration of alcohol-related measures is also needed, particularly of additional funding for compliance monitoring of liquor licensing and the potential for community workers to conduct inspections of licensed premises.

Queensland | Key actions: Queensland has invested in evidence-based health initiatives as part of *Making Tracks: Toward closing the gap in health outcomes for Indigenous Queenslanders by 2033*, including early intervention and drug and alcohol training. The Government has also committed to improved mental health outcomes and service provision through the *Queensland Health Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021*.



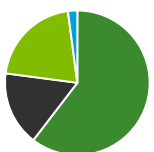
Remaining gaps: Greater consideration of cultural need is required in the health sector to ensure culturally sensitive care, including more thorough consultation procedures with stakeholders on the design and management of health facilities, and more equitable access to specialised equipment. Greater support is also required in education, namely for people undertaking adult education and for Aboriginal Education Workers.

South Australia | Key actions: South Australia has implemented initiatives to prioritise Aboriginal and Torres Strait Islander health data collection, including the production of an Aboriginal Health supplement to the SA Health Statistics Chart Book, along with provision of cross-cultural awareness training in drug and alcohol treatment through Drug and Alcohol Services SA.



Remaining gaps: A review of styles of operation in medicine where there are high rates of non-compliance by Aboriginal and Torres Strait Islander patients is required. There is also a need for greater cultural consideration in education, including the need to include social issues in curricula for Aboriginal and Torres Strait Islander students, and improve accessibility of adult education for Aboriginal and Torres Strait Islander people.

Western Australia | Key actions: Western Australia has implemented initiatives such as cultural training in the health and education workforce, information sharing, representation and collaboration of Aboriginal and Torres Strait Islanders in health and education policy.



Remaining gaps: Western Australia has not addressed the role of community workers in Liquor licence enforcement and access to early intervention health services across the health system broadly.

Tasmania | Key actions: Tasmania has several forums in which Aboriginal community members and organisations participate to directly influence the delivery of health and education services, ranging from the early years to mental health to curriculum development. There are also numerous Aboriginal-identified roles within the health and education sectors to enable service delivery by Aboriginal people to Aboriginal clients.



Remaining gaps: A more comprehensive review of Aboriginal and Torres Strait Islander health information practices and cultural awareness training practices is required to fully meet the objectives of the RCIADIC recommendations. Furthermore, no affirmative action policies are in place to promote Aboriginal and Torres Strait Islander employment in health.

Northern Territory | Key actions: The Northern Territory has undertaken several initiatives to improve health policies and service delivery, including development of the *Northern Territory Aboriginal Health Key Performance Indicator Information System*, and implementation of the NT Cultural Security Framework 2016-2026 across all NT health services.



Remaining gaps: The Northern Territory Government has not considered legislating for the appointment of community workers to inspect licensed premises, or addressed the role of Aboriginal Education Consultative Groups (AECGs) in discussing the needs of Aboriginal communities. Further action is required with regard to preschool readiness programs.

Australian Capital Territory | Key actions: The ACT Government has sought to improve health outcomes by appointing Aboriginal and Torres Strait Islander liaison officers in hospitals, and by regularly reviewing emergency protocols to ensure they are culturally appropriate. The ACT Government has also committed to developing culturally appropriate curricula by consulting with community members on incorporating Aboriginal and Torres Strait Islander perspectives and cultures.



Remaining gaps: The Australian Capital Territory has not addressed recommendations relating to the provision of an interpreter for Aboriginal and Torres Strait Islander people in the health system, the provision of appropriate mental health services, or the appointment of community workers to inspect licensed premises.

10.1 Towards better health (246-271)

Recommendation 246

That the State, Territory and Commonwealth governments act to put an end to the situation where insufficient accurate and comprehensive information on inputs to and activities of Aboriginal health programs is available. Such information is needed if Aboriginal organisations, governments and the community are to be in a position to understand and monitor what is taking place in this area, to estimate the benefits derived therefrom and to develop appropriate policies and programs to address existing and newly emerging needs.

Background information


The RCIADIC Report identified that there was a complex mix of policies, funding arrangements, administrative structures and services currently operating in the health field relating to Aboriginal and Torres Strait Islander people.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation is addressed to the Commonwealth, and jurisdictional governments.

Key actions taken and status of implementation


The NATSIHP was established by the **Commonwealth** Government to guide policies and programs to improve Indigenous health until 2023. This plan enables the monitoring of health systems that play a role in improving Aboriginal and Torres Strait Islander health outcomes through two public reporting mechanisms: a high-level annual report to Parliament; and detailed biennial reporting through the Health Performance Network.

 *Recommendation 246 has been implemented as the NATSIHP will capture accurate and comprehensive information on inputs to and activities of Aboriginal and Torres Strait Islander health programs.*

All States and Territories have signed the *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes*. Closing the Gap seeks to address Aboriginal and Torres Strait Islander disadvantage in relation to life expectancy, child mortality, access to education, and employment outcomes.


In their initial response to Recommendation 246, the **New South Wales** Government funded the implementation of data collection, monitoring, and the establishment of databases for Aboriginal health issues.

More recently, the *New South Wales Aboriginal Health Plan 2013-2023* provides for evaluations of Aboriginal programs. It also seeks to promote the quality improvement of reporting and data collection in the area of Aboriginal health. The NSW Government also works with the Commonwealth and States and Territories on the Aboriginal and Torres Strait Islander Health Performance Framework, which monitors progress in Aboriginal health outcomes, health system performance and broader determinants of health. The Framework provides an authoritative evidence base for Aboriginal Health related-policy as well as a high level summary of data and policy analysis for performance measures.

 *New South Wales has implemented Recommendation 246 through improvements to data collection in Aboriginal health programs under the Aboriginal and Torres Strait Islander Health Performance Framework.*


From 1993, **Victoria** has required hospitals to report on the Aboriginal and Torres Strait Islander health status of their patients. Victoria's *Koolin Balit Victorian Government Strategic Direction for Aboriginal Health 2012-2022* includes initiatives for the improved identification of Aboriginal and Torres Strait Islander patients in hospitals, and improved data collection. Under this Strategic

Direction, state departments are required to author quarterly reports on Aboriginal and Torres Strait Islander health issues.

 *Victoria has implemented Recommendation 246 through improvements to data collection in Aboriginal and Torres Strait Islander health programs.*


In the early 1990s, the **Queensland** Government extended recognition of Aboriginal and Torres Strait Islander status to birth certificates and ABS data collections, and all Queensland Health data collections include Aboriginal and Torres Strait Islander identification.

Queensland Health has implemented *Making Tracks: Toward closing the gap in health outcomes for Indigenous Queenslanders by 2033*, which invests in evidence-based initiatives to address the health gap. Effectiveness of health investment is monitored through the annual Queensland Closing the Gap Performance Report and the Burden of Disease and Injury in Queensland's Aboriginal and Torres Strait Islander People Report.

 *Queensland has implemented Recommendation 246 through the implementation of evidence-based initiatives as part of Making Tracks.*

In 1993, the **South Australian** Health Commission produced an Aboriginal Health supplement to the South Australian Health Statistics Chart Book to facilitate an assessment of Aboriginal and Torres Strait Islander health status. Subsequently, the South Australian Government continued to expand their recognition of Aboriginal and Torres Strait Islander people in health data collections. As part of this, the SA Government has implemented the *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes: Implementation Plan*, which contains initiatives for data collection and evaluation.


SA Health has incorporated an Aboriginal Health Impact Statement into policy development. SA Health undertakes regular evaluations of the SA Health Aboriginal Health Care Plan using a data driven, evidence-based model, as well as of all Aboriginal and Torres Strait Islander health programs funded under *Closing the Gap*.

 *South Australia has implemented Recommendation 246 by using a data driven, evidence-based model for evaluations and policy development of Aboriginal and Torres Strait Islander health models.*

The **Western Australian** Government responded to the initial report by allocating greater funds to the collection of Aboriginal and Torres Strait Islander health data. In addition to this, the Western Australian Government has also commissioned two reviews of Aboriginal Health programs, with a focus on the measurement and achievement of clinical health outcomes and the performance of programs by type and location.


 *Western Australia has implemented Recommendation 246 by allocating additional funds for the collection of Aboriginal and Torres Strait Islander health data and by committing to the National Indigenous Reform Agreement.*

The **Tasmanian** Government is a signatory to the National Indigenous Reform Agreement, which sets out the Council of Australian Governments Closing the Gap Targets. The Department of Health and Human Services regularly consults with the Tasmanian Aboriginal Corporation and the Tasmanian Aboriginal Health Reference Group to determine needs and priorities for Aboriginal health and wellbeing in Tasmania.

 *Tasmania has partially implemented Recommendation 246 by committing to the National Indigenous Reform Agreement but has not expressly addressed information practices regarding Aboriginal and Torres Strait Islander health programs in its jurisdiction.*

In the **Northern Territory**, the Government developed the *Northern Territory Aboriginal Health Key Performance Indicator Information System*, which defines and develops data delivery from all Northern Territory community health centres. The Government has also undertaken consultations with community and representative groups, including ATSIC Regional Councils (which have since been


disbanded). The Department of Health's Annual Report provides information on primary health care performance measures for remote based Aboriginal and Torres Strait Islander people, as well as hospital performance measures specific to Aboriginal and Torres Strait Islander patients such as discharges against medical advice.

 *The Northern Territory has implemented Recommendation 246 by developing the Northern Territory Aboriginal Health Key Performance Indicator Information System.*

The **Australian Capital Territory** appointed Aboriginal and Torres Strait Islander liaison officers in hospitals, and has an *Implementation Plan* as a signatory to the *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes*. As part of this Plan, the ACT Government aims to add Aboriginal and Torres Strait Islander identifiers on pathology forms and on the Australian Capital Territory Patient Master Hub Index.

The Australian Capital Territory Government has noted that ACT Health will shortly commence a project with Winnunga Nimmityjah Aboriginal Health and Community Services. This project is aimed at improving the accuracy of Aboriginal and Torres Strait Islander identification within patient data collected by ACT public hospitals and to provide current data to help promote the benefits for patients, of ACT Health services more broadly, correctly recording Aboriginal and/or Torres Strait Islander identity.

In addition to this ACT Health is participating in a collaborative data linkage project with the NSW Ministry of Health that is providing new information to assist in 'closing the gap' on mortality and morbidity from cardiac conditions in Aboriginal and Torres Strait Islander people. As a part of this project, enhanced identification of Aboriginal and Torres Strait Islander people in health data is to be conducted.

 *The Australian Capital Territory has partially implemented Recommendation 246 by committing to adding Aboriginal and Torres Strait Islander identifiers on the Australian Capital Territory Patient Master Hub Index but is yet to implement information practices more broadly.*

Additional commentary

The **Commonwealth** DOH noted that it is currently commissioning a number of projects to improve evaluation of Aboriginal and Torres Strait Islander health programs and to strengthen data related to their health.

Recommendation 247

That more and/or better quality training be provided in a range of areas taking note of the following:

- a. *Many non-Aboriginal health professionals at all levels are poorly informed about Aboriginal people, their cultural differences, their specific socio-economic circumstances and their history within Australian society. The managers of health care services should be aware of this and institute specific training programs to remedy this deficiency, including by pre-service and in-service training of doctors, nurses and other health professionals, especially in areas where Aboriginal people are concentrated;*
- b. *The rotation of staff through country hospitals means that many professional staff are ill-prepared to provide appropriate health care services to Aboriginal people. Staff on such rotations should receive special training for their rural placements, and resources to make this possible should routinely be provided as part of the operating budgets of the relevant facilities;*
- c. *The primary health care approach to health development is highly appropriate in the Aboriginal health field, but health professionals are not well trained in this area. The pre-service and in-service training of doctors, nurses and other health professionals should provide such staff with a firm understanding of and commitment to primary health care. This should be a special feature of the training of staff interested in working in localities where Aboriginal people are concentrated;*

- d. *Health care staff working in areas where Aboriginal people are concentrated should receive specific orientation training covering both the socio-cultural aspects of the Aboriginal communities they are likely to be serving and the types of medical and health conditions likely to be encountered in a particular locality. Such orientation programs must be complemented by appropriate on-the-job training;*
- e. *Effective communication between non-Aboriginal health professionals and patients in mainstream services is essential for the successful management of the patients' health problems. Non-Aboriginal staff should receive special training to sensitise them to the communication barriers most likely to interfere with the optimal health professional/patient relationship; and*
- f. *Aboriginal people often present to mainstream health care facilities with unusual health conditions and unusual presentations of common conditions, as well as urgent, life-threatening conditions. The training of health professionals must enable them to cope successfully with these conditions.*

Background information

There has been increased attention placed on the importance of medical as well cultural training of all Aboriginal Health Workers (AHWs) to better serve the Aboriginal and Torres Strait Islander population.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The implementation of this recommendation requires coordination and implementation from the Commonwealth, and the states and territory governments.


Key actions taken and status of implementation

The **Commonwealth** Government has undertaken the following actions in response to Recommendation 247. The *Closing the Gap* National Partnership Agreements (NPAs) set out a number of strategies with the aim of improving the cultural sensitivity of health workers and the subsequent services provided to the Aboriginal and Torres Strait Islander population. The NPAs explicitly address every aspect of the priority areas outlined in the recommendation.

The DOH's Reconciliation Action Plan (RAP) 2013-17 sets out training programs such as the Cultural Education and Awareness initiative as well as increasing the focus on Aboriginal and Torres Strait Islander staff recruitment and retention.

The DOH noted that under the Primary Health Care component of the IAHP, funding is available for activities that support the delivery of primary health care services. Specifically, the funding aims to address the development, employment and enhancement of workforce capacity.

The DOH adds that the Practice Incentives Program is a payment scheme available to accredited general practices to improve the quality of care that is provided to Aboriginal and Torres Strait Islander patients. As part of the program, staff members at general practices take part in training to improve their cultural awareness.

 *The Commonwealth Government has implemented Recommendation 247 through Closing the Gap NPAs and the RAP.*

In 1994, the **New South Wales** Government offered cultural sensitivity workshops for non-Aboriginal staff members, and incorporated Aboriginal health issues into relevant university courses. This was strengthened in *Respecting the Difference: an Aboriginal Cultural Training Framework for NSW Health*, in which the NSW Government requires cultural training to be undertaken by staff to ensure that staff are culturally competent. This program empowers staff to deliver more respectful, responsive and culturally sensitive services for Aboriginal people, their families, and communities.

Additionally, the *Aboriginal Health Plan 2013-23* includes the implementation of effective services, building evidence and achieving an integrated planning and service delivery approach in NSW. This includes supporting research and evaluation, disseminating evidence of effective programs and services, and supporting the translation of evidence into policy and practice.

- *New South Wales has implemented Recommendation 247 by implementing training programs under Respecting the Difference: an Aboriginal Cultural Training Framework for NSW Health.*

The **Victorian** Government has conducted consultations with government, educational providers and community organisations to inform cross-cultural training and formal training opportunities in Aboriginal and Torres Strait Islander health. The 2012-2022 *Koolin Balit Strategic Directions for Aboriginal Health* seeks to improve cultural responsiveness among health providers, and to promote the provision of respectful and high-quality training in Aboriginal and Torres Strait Islander health.

- *Victoria has implemented Recommendation 247 by implementing training programs that address the cultural competency of people working in the health system.*

In 1993, the **Queensland** Government introduced a cross-cultural training program, a pre-service training program, and provided a greater awareness of Aboriginal and Torres Strait Islander health issues in state policy. Queensland Health has a cultural capability framework and a cultural learning program for health professionals.

- *Queensland has implemented Recommendation 247 by implementing a cultural capability framework and a cultural learning program under Queensland Health.*

The aims and objectives of the constitution of the **South Australian** Government's Aboriginal Health Council include providing for cultural sensitivity in mainstream service delivery and educating health professionals about the requirements of Aboriginal and Torres Strait Islander people. The SA Government more recently provides in its *Health Aboriginal Cultural Respect Framework* that staff will participate in localised cultural awareness and responsiveness workshops periodically, including where there is substantial contact with Aboriginal and Torres Strait Islander people. This includes Cultural Awareness Training and Quality and Safety Standards, including specific standards relating to Aboriginal and Torres Strait Islander health provision.

- *South Australia has implemented Recommendation 247 by providing cultural training under the Health Aboriginal Cultural Respect Framework.*


The **Western Australia** Government launched an Aboriginal Employment Scheme and education for staff on rotations, in order to bolster the recognition of Aboriginal and Torres Strait Islander people in the provision of health care services. Currently, the WA Department of Health contributes to the implementation of Recommendation 247 through:

- online Cultural Awareness Training, 'Aboriginal Cultural eLearning – a healthier future', which is delivered to all WA Health employees within 6 months of commencing work;
- the Aboriginal Cultural Learning Package, which is an online suite of training, tools and resources to support the development of a culturally respectful and non-discriminatory health system; and
- the Cultural Competency Continuum (currently being developed by the Department of Health)

- *Western Australia has implemented Recommendation 247 by providing cultural training to all employees of the Western Australian Department of Health.*


The **Tasmanian** Department of Community and Health Services initially responded to the RCIADIC report through launching a program to expose staff to Aboriginal and Torres Strait Islander health issues, such as through conferences and professional development.

Currently, the Department of Health and Human Services has established the Aboriginal Health Unit, which includes as one of its key projects Aboriginal Cultural Competency E-Learning. The E-Learning training package was developed in consultation with the Aboriginal and Torres Strait Islander community and is being delivered as part of Tasmania's implementation of the Australian Health Ministers' Advisory Council *Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2016-2026*. In addition, some Department of Health and Human Services business units engage the Tasmanian Aboriginal Corporation to run tailored training. For example, all clinicians engaged by the TAZREACH office of the Department to provide services in Aboriginal and Torres Strait Islander organisations to Tasmanians in rural and remote areas are required to go through cultural awareness and safety training, typically provided by the Tasmanian Aboriginal Corporation.

 *Tasmania has partially implemented Recommendation 247 by implementing an Aboriginal and Torres Strait Islander cultural safety and awareness e-learning training package but has only addressed part (a) of this recommendation.*


From 1994, the **Northern Territory** Government developed and offered the Aboriginal Cultural Awareness Program, which was designed to ensure that all Health and Community Services staff received appropriate levels of cultural training. ACAP included a pre-employment package, a compulsory recruitment orientation course, and further courses to build capacity in Aboriginal and Torres Strait Islander health issues and cultural sensitivity. In addition, the NT Department of Health's *Aboriginal Cultural Security Policy* seeks to review service delivery practices to ensure that they are respectful towards Aboriginal and Torres Strait Islander culture and values, and to modify service delivery where possible.

More recently, the NT Government has implemented the NT Cultural Security Framework 2016-2018 and has developed health literacy training for NT Health Staff.

 *The Northern Territory has implemented Recommendation 247 by implementing a range of training programs and initiatives aimed at improving cultural competency, such as the Aboriginal Cultural Awareness Program and the NT Cultural Security Framework 2016-2018.*

In the **Australian Capital Territory**, the Winnunga Nimmityjah Aboriginal Health Service conducted cultural awareness workshops for mainstream health workers during 1993-94. Since then, cross-cultural training programs have been offered and incorporated into overarching guidelines for health service provision.

Currently, all ACT Health staff are required to complete the 'Working with Aboriginal and Torres Strait Islander patients and clients (eLearning 2016)' training module through the ACT Health eLearning system. ACT Health also expects that all staff will seek and maintain in their work an understanding of Aboriginal and Torres Strait Islander people's culture, history and the health issues of individuals/families presenting for care at ACT Health services. To assist staff, ACT Health has developed Engagement Protocols for Working with Aboriginal and Torres Strait Islander Communities Guide, to provide staff with a basic overview of culturally appropriate communication, language and behaviour.

 *The Australian Capital Territory has partially implemented Recommendation 247 by developing cross-cultural training programs and engagement protocols, but has only addressed parts of this recommendation.*

Recommendation 248

That health departments, academic institutions and other relevant training authorities monitor the proposed Monash University/Victorian Aboriginal Health Service's Aboriginal Primary Health Care Unit, with a view to learning from its experiences and that those interested in this field study the philosophies and methods of operation of the Aboriginal community-controlled health services.

Background information


The Victorian Aboriginal Health Service, in conjunction with psychiatric facilities and hospitals, developed a community-based mental health network linking the community-based health service with a psychiatric hospital and a public hospital. Recommendation 248 recognises that organisations and departments involved in Aboriginal and Torres Strait Islander health should learn from best practice examples in primary health care, including community development strategies and philosophies.

Responsibility

Recommendation 248 is the responsibility of the State and Territory Governments. The States and Territories oversee health departments, academic institutions and relevant training authorities in regard to the integration of primary health practices directed towards Aboriginal and Torres Strait Islander communities.

Key actions taken and status of implementation

Recommendation 248 has not been implemented. The 1992-93 Annual Report notes that the proposed model did not proceed. The Primary Health Care Unit no longer exists in Victoria, although Monash University does offer medical students placements at the Victorian Aboriginal Health Service Co-operative.

 *The proposed model did not proceed. As such, Recommendation 248 is out of scope for all States and Territories.*

Recommendation 249

That the non-Aboriginal health professionals who have to serve Aboriginal people who have limited skills in communicating with them in the English language should have access to skilled interpreters.

Background information

The RCIADIC Report identified cases where communication difficulties resulted in misdiagnosis and a lack of proper treatment of Aboriginal and Torres Strait Islander people. Communication difficulties were determined to have contributed to a number of the deaths in custody considered by the RCIADIC Report.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that translating services be provided by the Commonwealth, and jurisdictional governments.

Key actions taken and status of implementation


The **Commonwealth** Government's NPARSD aimed to improve access, range and coordination of services in 29 priority locations, with explicit programs for strengthening interpreting and translating services. The NPAs ran from 2009 to 2013. From 2015 to 2017, PM&C has funded the National Accreditation Authority for Translators and Interpreters to increase the number of Aboriginal and Torres Strait Islander language interpreters across Australia.

PM&C noted that the Minister for Indigenous Affairs has committed \$5 million in 2016-17 to improve access to Aboriginal and Torres Strait Islander interpreting services. The aim is to ensure the ongoing supply of an accredited, professional workforce through training and accreditation of Aboriginal and Torres Strait Islander interpreters. In addition, PMC also noted that governments have access and equity guidelines which contain requirements for the provision of adequate interpreting services.

PM&C have established a committee regarding accessibility for Indigenous Language Interpreters which includes the DOH as a member.


 *Recommendation 249 has been implemented through an increase in funding and strategies to increase the accessibility of services to the Aboriginal and Torres Strait Islander population in their native languages.*

The New South Wales Government responded to Recommendation 249 by conducting cross-cultural sensitivity workshops, which included training on communication with Aboriginal people. New South Wales Health has a policy of using interpreting services where required. However, the most recent NSW Health Care Interpreter Service data from 2015/16 indicates no requests were received for interpreters of Aboriginal languages.


 *New South Wales has partially implemented Recommendation 249 by implementing a policy of using interpreter services where required. However, this policy does not expressly address Aboriginal languages. It is noted that no request for these services was made in the most recent period.*

The **Victorian** Department of Health has a Language Services Policy in place to support the department and its funded services in responding to the needs of linguistically diverse people, including migrants, refugees and asylum seekers and those that use sign language. It does not expressly cover Aboriginal and Torres Strait Islander people.


In the 2005 implementation review conducted by Victoria, it was noted that the Victorian Government is not of the view that this recommendation is relevant to the State.

 *Victoria has mostly implemented Recommendation 249 by providing interpreting services in its health system, however, does not expressly address Aboriginal and Torres Strait Islander languages.*

As part of the **Queensland** Government's health standards, it is provided that service providers must access appropriately qualified interpreters for Aboriginal and Torres Strait Islander service users. Indigenous Hospital Liaison Officers are employed in major health facilities across the State to improve access to culturally appropriate care and can facilitate access to interpreter services when required.

 *Queensland has fully implemented Recommendation 249 by providing for access to appropriately qualified interpreters for Aboriginal and Torres Strait Islander service users in its health system.*


As part of its initial response to the RCIADIC, the **South Australian** Government provided translation services through formal interpreter services, Aboriginal Liaison officers or liaison with community-controlled Aboriginal and Torres Strait Islander health services. Currently, the SA Interpreting and Translation Centre includes translating services for the Pitjantjatjara and Yankunytjatjara languages. Recently, the SA Government has committed \$2.3 million to expanding the Northern Territory Aboriginal Interpreter Service (NTAIS) to metropolitan Adelaide and Port Augusta. This follows training delivered by NTAIS in 2016 to SA public sector staff on the appropriate use of Aboriginal and Torres Strait Islander languages interpreting services.

 *South Australia has implemented Recommendation 249 by providing interpreting services in its health system for a variety of languages through the SA Interpreting and Translation Centre.*


The **Western Australia** Government responded to Recommendation 249 by developing Aboriginal Health Interpreter courses and in extending career opportunities to Aboriginal and Torres Strait Islander health professionals.

The Western Australian Health Language Services Policy also supports the universal right to health by providing guidelines that will ensure that effective communication occurs between health service providers and those who need language assistance.


Currently, the Kimberley Interpreting Service provides Aboriginal and Torres Strait Islander interpreting service in Western Australia. It is a community-controlled Aboriginal and Torres Strait Islander organisation with 170 interpreters representing 26 languages.

 *Western Australia has implemented Recommendation 249 by providing interpreting services in its health system for a variety of languages including Aboriginal and Torres Strait Islander languages.*


In **Tasmania**, following the RCIADIC the Tasmanian Government liaised with Aboriginal Adult Education and Adult Literacy to explore access to interpreters and advocates. While Tasmania provides a translation and interpretation service, there are no Aboriginal and Torres Strait Islander languages covered as part of this service because there is no commonly-spoken Aboriginal and Torres Strait Islander language in Tasmania.

 *Recommendation 249 is out of scope for Tasmania.*

At the time of RCIADIC, the **Northern Territory** Government was largely compliant with Recommendation 249 in their provision of interpretation services. Aboriginal Health Workers and community workers with local language were utilised in remote areas, and Aboriginal liaison officers were utilised in hospital and urban settings. Currently, the NT Department of Local Government and Community Services operates the Aboriginal Interpreter Service which interprets Aboriginal and Torres Strait Islander language speakers. The Department of Health has also developed the Use of Aboriginal Interpreter Policy and the informed consent policy.

 *The Northern Territory has implemented Recommendation 249 by providing interpreting services through its Aboriginal Interpreter Service and developing a Use of Aboriginal Interpreter Policy.*

In 1994, the **Australian Capital Territory** appointed Aboriginal hospital liaison officers to the then Woden Valley Hospital with the role of interpretation and translation to Aboriginal and Torres Strait Islander people. Currently, in the ACT a translation and interpretation service is available but no Aboriginal and Torres Strait Islander languages are covered as part of the service. It is noted that ACT Health is unaware of any issues relating to deficiency in English language skills amongst Aboriginal and Torres Strait Islanders. As such this recommendation may be of limited relevance to the ACT.

 *The Australian Capital Territory has not implemented Recommendation 249.*

Additional commentary

The **Commonwealth** PM&C noted that a consistent principle across language policies is that a service delivery agency requiring an interpreter is responsible for meeting the costs and steps required to ensure the interpreter is available. PM&C also noted that the Commonwealth Ombudsman released an own motion report in 2016 which found that there had been progress since 2011 in regards to the accessibility of Aboriginal and Torres Strait Islander language interpreters. However, more work is needed to develop best practice principles and a national model.

The **Tasmanian** Government noted that there is no commonly-spoken Aboriginal language in Tasmania. *'palawa kani* is the revived form of the original Tasmanian Aboriginal languages. It incorporates authentic elements of the original languages remembered by Tasmanian Aborigines from the nineteenth to the twenty-first centuries. It also draws on an extensive body of historical and linguistic research. The Tasmanian Aboriginal Corporation is acknowledged both within and outside the Aboriginal community as the body with responsibility for that work.

Recommendation 250

That effective mechanisms be established for communicating vital information about patients, between the mainstream and Aboriginal community-based health care services. This must be done in an ethical manner, preserving the confidentiality of personal information and with the informed consent of the patients involved. Such communication should be a two-way process.

Background information

The RCIADIC Report identified cases where communication difficulties between health care service providers exacerbated existing problems of cultural difference and resulted in worse patient outcomes for Aboriginal and Torres Strait Islander people.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that health services provided by both the Commonwealth, and the States and Territories communicate effectively to provide improved patient outcomes.

Key actions taken and status of implementation

The **Commonwealth** Government's National E-Health Transition Authority (NEHTA) was established in 2005 by COAG to facilitate the transformation of Australia's health system by building the foundations for a national eHealth infrastructure. NEHTA is jointly funded by the Commonwealth, and the state and territory governments.


The DOH noted that My Health Record (MHR) is intended to be the national shared electronic health system, providing an online summary of personal health information. The DOH noted that the Australian Digital Health Agency was established in 2016. The Agency is coordinating approaches for the utilisation of information technology to support a safe and connected health system.

 *While the Commonwealth has undertaken various initiatives aimed at improving communication between health services (for all Australians), to-date these initiatives have not been sufficiently*


effective, and there is more to be done to ensure ongoing issues (for example, uptake among hard to reach populations) with these programs are resolved.

All States and Territories have supported the development of the NEHTA. States and Territories are contributing towards shared electronic health records with national standards and guidelines of the NEHTA, including data collection and linked admission and discharge information between primary, in-patient, and specialist services.


The **New South Wales** Government noted in their 1994-95 implementation report that Recommendation 250 had been addressed through the implementation of *A Healthy Future: A Framework for Health in NSW* which sought to improve communication between public and private health providers and to ensure continuity of care for clients. The NSW Department of Health and the Aboriginal Health Resource Cooperative also established a partnership and a range of plans to facilitate improved mechanisms for the transfer of information about patients. Since this time, the implementation of the New South Wales Integrated Care Strategy continues to support models of integrated care including care pathways for Aboriginal people across the mainstream and Community Controlled Sectors.

 *New South Wales has implemented Recommendation 250 through the implementation of A Healthy Future: A Framework for Health in NSW and its Integrated Care Strategy*


Initially, the **Victorian** Government responded to Recommendation 250 through the Koori Health Unit, in consultation with Aboriginal community-based health care services, to develop these mechanisms. As part of its current strategic direction, the Victorian Government seeks to promote closer collaboration and integration of health services and to improve service coordination between Aboriginal and Torres Strait Islander people and mainstream services. For example, the Health Department provided input through the Victorian Committee for Aboriginal Aged Care and Disability on the Home and Community Care Aboriginal Services Coordination Project.

 *Victoria has implemented Recommendation 250 by providing a liaison service between the public health system and Aboriginal community-based health care services.*

In 1994, the **Queensland** Government launched health databases including *Community Health Information System* and *Genesyst* to enable information sharing between community-based and public sector health services. Currently, the Queensland Government's *Cultural Capability Framework* aims to improve data collection and analysis for culturally and linguistically diverse communities. This is through the provision of intranet and internet services, and the delivery of online resources. The *Hospital and Health Boards Act 2011* (Qld) provides the legislative framework for sharing patient information.

 *Queensland has mostly implemented Recommendation 250 by establishing a legislative framework for the sharing of patient information but does not expressly address the sharing of information between the public health system and Aboriginal community-based health care services.*

In **South Australia**, the Government encouraged cooperative arrangements between mainstream and Aboriginal and Torres Strait Islander based health services. The South Australian 1993 implementation report noted that the Aboriginal Health Council was tasked with mediation where needs arose. SA Health is currently working with the Australian Government and Aboriginal Health Council of South Australia (AHCSA) to improve data exchange and patient coordination across treatment sectors.


 *South Australia has implemented Recommendation 250 by implementing cooperative arrangements between mainstream health and Aboriginal and Torres Strait Islander health services, as well as improving data exchange and patient coordination.*

At the time of the RCIADIC, **Western Australia** had already introduced mechanisms for patient information to be shared between hospitals, agencies, and Aboriginal and Torres Strait Islander community based health care services.


The Western Australian Department of Health is able to share information with Aboriginal and Torres Strait Islander community-based health care services subject to the consent of patients.

 *Western Australia has implemented Recommendation 250 by enabling patient information to be shared between hospitals, agencies, and Aboriginal and Torres Strait Islander community based health care services.*


The **Tasmanian** Government noted in their 1993 implementation report that Tasmania was compliant with Recommendation 250 at the time that RCIADIC was published.

 *Tasmania has partially implemented Recommendation 250 by employing Aboriginal Health Liaison Officers to improve communication between Aboriginal and Torres Strait Islander patients and the mainstream health system but has not addressed key elements of the recommendation.*

At the time the RCIADIC report was released, regular information exchange between mainstream and Aboriginal and Torres Strait Islander community-based health services in the **Northern Territory** was occurring. More recently, the three-year project, 'My eHealth Record transition to the national My Health Record' was completed in 2016, delivering capability to send summaries of important health information to the national My Health Record system.

 *The Northern Territory has implemented Recommendation 250 by developing the capability to exchange information between the public health system and Aboriginal community-based health care services.*

The **Australian Capital Territory** Government noted in their 1994 implementation report that field workers and Aboriginal Liaison Officers facilitated communication and information exchange between various mainstream health services and Aboriginal and Torres Strait Islander community-controlled health services.

 *The Australian Capital Territory has implemented Recommendation 250 by facilitating the exchange of information between the public health system and Aboriginal community-based health care services through field workers and Aboriginal Liaison Officers.*

Additional commentary

The **Commonwealth** DOH indicated that the Australian Government is considering options to increase the participation rate in the MHR for hard to service populations. In addition, under the Primary Health Care component of the IAHP, funding is available for activities that support the delivery of primary health care services. This includes establishing and strengthening partnerships and collaboration at the local, regional and national levels.

Currently, the **Tasmanian** Health Service employs Aboriginal Health Liaison Officers at both the Royal Hobart Hospital and Launceston General Hospital. The Officers are responsible for assisting members of the Aboriginal and Torres Strait Islander community with navigating through health services and increasing their access to appropriate health care, including via direct referral to community-based Aboriginal Health Services.

Recommendation 251

That access to health care services and facilities, including specialised diagnostic facilities, in areas of Aboriginal population should be brought up to community standards. The greater needs, for the time being, of Aboriginal people should be fully recognised by the responsible authorities in their consideration of the allocation of staff and equipment.

Background information

The RCIADIC Report determined that areas with high concentrations of Aboriginal and Torres Strait Islander populations (in particular, remote areas), had limited availability of specialised medical equipment. This lack of resources contributed to a number of deaths examined by the RCIADIC Report.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that specialised diagnostic facilities and treatment equipment be provided by both the Commonwealth, and the States and Territories, noting that the States and Territories have primary responsibility for delivering this recommendation.

Key actions taken and status of implementation


The **Commonwealth** Government have introduced the Practice Incentives Program Indigenous Health Initiative to provide more effective detection and management of chronic disease through the introduction of multidisciplinary care and enhanced screening. Since the NPA on Closing the Gap in Indigenous Health Outcomes was introduced, over 340 extra health professionals and 150 Aboriginal Liaison Officers have been appointed to work in Aboriginal and Torres Strait Islander health.

The DOH noted that funding is available through the IAHP for culturally appropriate primary health care for Aboriginal and Torres Strait Islander people. This includes for the purchase of health equipment, insurance and maintenance.

 *Recommendation 251 is mostly complete as there has been increased access to health care services and facilities, as well as a greater number of staff devoted to providing care to areas with large Aboriginal and Torres Strait Islander populations. However, there is still work to be done to ensure the successful distribution and use of specialised equipment that is specifically directed to Aboriginal and Torres Strait Islander communities, and to bring up access to health care to community standards in all Aboriginal and Torres Strait Islander communities (in particular, remote communities).*


In the early 1990s, the **New South Wales** Government established a number of Aboriginal Liaison Committees in hospitals whose populations included Aboriginal populations. Funding was also provided for Aboriginal Liaison officers to facilitate the use of mainstream services by Aboriginal people.

Currently, the *NSW Aboriginal Health Plan 2013-23* seeks to ensure that all relevant NSW health policies, programs and services consider Aboriginal people as a priority population and reflect the needs of those communities. All new strategies and policies must include an Aboriginal Health Impact Assessment, which requires staff to address three key questions about the context, reach, impact and engagement with Aboriginal people.


 *New South Wales has mostly implemented Recommendation 251 by improving the quality of health care services for Aboriginal people through Aboriginal Liaison Committees in hospitals and the *NSW Aboriginal Health Plan 2013-2023*. However, it does not appear that equitable access to specialised equipment has been ensured.*

The **Victorian** Government facilitated the provision of Aboriginal and Torres Strait Islander health services through Aboriginal and Torres Strait Islander medical services, specialist community-controlled agencies, and mainstream health services with the assistance of Aboriginal Hospital Liaison officers. Currently, the Victorian Government's *Koolin Balit Strategic Directions for Indigenous Health* includes the objective of improving access to services and outcomes for Aboriginal and Torres Strait Islander people. Service providers must meet high quality standards which are inclusive of the needs of all Aboriginal and Torres Strait Islander people.

The Victorian Government has noted that an internal review conducted in 2017 recommended that the Improving Care for Aboriginal Patients (ICAP) program be revised. The revision of this program will provide health services with the support necessary to meet the Version 2 of the National Safety and Quality Health Service standards, ultimately improving the cultural safety experienced by Aboriginal and Torres Strait Islander people accessing their services. To improve health services accountability to Aboriginal and Torres Strait Islander health, and to support them to meet Version 2 of the standards, the Department will be implementing mandatory reporting requirements for health services in 2019/20.


 *Victoria has mostly implemented Recommendation 251 by improving the quality of health care services for Aboriginal and Torres Strait Islander people through the Koolin Balit strategy. It does not appear that equitable access to specialised equipment has been ensured.*

As part of the **Queensland** Health Capital Works Program in the 1990s, the Queensland Government rolled out Primary Health Care Centres in rural and remote areas with high Aboriginal and Torres Strait Islander populations. The 2015 *Making Tracks Policy and Accountability Framework* places an emphasis on maintaining a multi-faceted approach to deliver responsive mainstream health services, complemented by targeted Aboriginal and Torres Strait Islander specific programs and services.


 *Queensland has partially implemented Recommendation 251 by improving the quality of health care services for Aboriginal and Torres Strait Islander people through the Queensland Government's commitment to transitioning primary health care services to community control arrangements. However, it does not appear that equitable access to specialised equipment has been ensured.*

The **South Australian** Aboriginal Health Care Plan 2010-16 provides as a key principle that resources must be sufficient to improve the health and wellbeing of Aboriginal and Torres Strait Islander people. As such, there are a range of accessible government and non-governmental health services in SA, including hospitals, ACCHOs, outreach services, and general practices and services supported by the peak Aboriginal and Torres Strait Islander health body, the AHCSA.


SA Health is committed to ensuring access and quality health services through the implementation of the National Quality and Safety Standards, which includes six specific standards focused on Aboriginal and Torres Strait Islander health provision. SA Health's strategies include participation in the SA Aboriginal Chronic Disease Consortium and delivery of the Aboriginal Maternal and Infant Care Program.

 *South Australia has mostly implemented Recommendation 251 by improving the quality of and access to health care services for Aboriginal and Torres Strait Islander people through the National Quality and Safety Standards and a range of associated strategies. However, it does not appear that equitable access to specialised equipment has been ensured.*


The **Western Australia** Government notes in its 1994 implementation report that diagnostic laboratories and District Hospitals have a capacity to process routine matters. Since 2011, the Western Australian Country Health Service has been delivering a program of works to redevelop Health Clinics at Aboriginal and Torres Strait Islander communities across the Kimberley and Pilbara regions. As of January 2018, four clinics have been completed, with another three scheduled for refurbishment. This program of works has improved the delivery of health care services closer to home for Aboriginal and Torres Strait Islander people in regional and remote areas. The State has also implemented specialist telehealth Services into rural and remote facilities, to ensure better access to care and reduce the need for extended regional travel.

 *Western Australia has mostly implemented Recommendation 251 by improving the quality and access to healthcare service for Aboriginal and Torres Strait Islander people. However, equitable access to specialised equipment has not been addressed.*

The **Tasmanian** Government notes that Aboriginal and Torres Strait Islander populations in Tasmania tend to be located among the general population and have access to mainstream services and facilities. However, the Department of Health and Human Services provides outreach clinical services to all of Tasmania's Aboriginal and Torres Strait Islander organisations through the Medical Outreach Indigenous Chronic Disease Program, including to remote locations such as Flinders Island and Cape Barren Island. In addition, the Bass Strait Islands Agreement provides physiotherapy services to Cape Barren Island, and a range of services to Flinders Island Multipurpose Centre.

 *Tasmania has mostly implemented Recommendation 251 by improving the quality of and access to health care services for Aboriginal and Torres Strait Islander people in remote areas through the Medical Outreach Indigenous Chronic Disease Program but does not appear to have addressed equitable access to specialised equipment in their response.*


The **Northern Territory's** 1993-94 implementation report notes that the Patient Assistance Travel Scheme allowed Aboriginal and Torres Strait Islander people from remote communities to be seen by specialists in major town centres or interstate if required. Since this time, the Northern Territory Department of Health has provided health services across the NT for Aboriginal and Torres Strait Islander populations through 54 primary health care centres, and major primary health care services in regional and urban centres, regional hospitals in Gove, Katherine, Tenant Creek and Palmerston (opening 2018/19), and major hospitals in Darwin and Alice Springs. In addition to this numerous new remote health centres and upgrades / refurbishments have been completed. The Northern Territory Department of Health is also currently transitioning four NT government health services to Aboriginal community controlled health services.

 *The Northern Territory has implemented Recommendation 251 by numerous investments in health infrastructure in Aboriginal and Torres Strait Islander areas and the transition of four government health services to Aboriginal and Torres Strait Islander community controlled health services.*

The **Australian Capital Territory** Government noted that Recommendation 251 relates more to remote Aboriginal and Torres Strait Islander communities. However, the ACT Government has sought to increase access for Aboriginal and Torres Strait Islander people to testing and other health services.

The ACT Government has made significant investment in health facilities for Aboriginal and Torres Strait Islander people. In 2017, the ACT Government opened the Ngunnawal Bush Healing Farm which provides a place for traditional and cultural healing practices aimed at addressing root cause trauma of Alcohol and Drug Addiction. While the facility is in its early stages of operation, it is intended that it will, in time, provide a residential facility for Aboriginal and Torres Strait Islander people seeking to avoid relapse into Alcohol and Drug Addiction.

The ACT Government has also funded the refurbishment and construction of additional facilities for Winnunga Nimmityjah Aboriginal Health and Community Services, the ACT's only Aboriginal Community Controlled Health Organisations (ACCHO). Winnunga reports that it provided 54 000 occasions of service to 4482 people in 2016/2017. The improved facilities will provide increase service capacity and additional services to the Aboriginal and Torres Strait Islander community of the ACT.

 *The Australian Capital Territory has partially implemented Recommendation 251 by improving access for Aboriginal and Torres Strait Islander people to health care services. However, there has been no further evidence of their response to the requirements of the recommendation.*

Additional commentary

The **Queensland** Government notes a long-standing commitment to progress transition to community control in the region of health services and has committed to transitioning Queensland Government funded primary health care services to community control arrangements in Cape York.

Recommendation 252

That hospitals that are regularly attended by Aboriginal people should review existing procedures in casualty, in consultation with Aboriginal Health and Medical Services, to reduce the likelihood of Aboriginal patients receiving ineffective diagnosis and treatment. The usefulness of standard protocols in such situations should be explored in the reviews.

Background information


Recommendation 252 recognises that Aboriginal and Torres Strait Islander people should have ready access to healthcare facilities, including specialised diagnostic facilities in casualty departments.

Responsibility


The recommendation is the responsibility of the State and Territory Governments. The States and Territories have policy oversight of hospitals.

Key actions taken and status of implementation

The **New South Wales** Government conducted a review of hospital casualty services in 1990 and subsequently allocated funding for the employment of Aboriginal Liaison officers in hospitals across NSW. Currently, patients presenting to emergency departments have the opportunity to identify as Aboriginal and Torres Strait Islander, allowing for timely, appropriate and effective care and treatment of patients, including access to Aboriginal Health Workers. The diagnostic error *Take 2 – Think, Do* program includes a strategy that recognises high-risk patients as an opportunity to have a greater scrutiny of the diagnostic information to promote accuracy in diagnosis. Aboriginal and Torres Strait Islander patients are flagged as a potential high risk within this framework. This program is in a pilot phase and will be evaluated to assess its effectiveness.


 *New South Wales has implemented Recommendation 252 by adopting greater scrutiny of protocols and flagging Aboriginal and Torres Strait Islander patients as a potential high risk within its revised framework. NSW Health has explored trial interventions such as the Aboriginal Identification in Hospitals Quality Improvement Program and the 48 Hour Follow Up program to improve care for Aboriginal people.*

In **Victoria**, protocols concerning the diagnosis and treatment of Aboriginal and Torres Strait Islander people were developed in consultation between Koori Hospital Liaison officers, the Regional Office of the Department of Health and Community Services, and local community.


 *Victoria has implemented Recommendation 252 by developing protocols for diagnosing and treating Aboriginal and Torres Strait Islander people in consultation with appropriate stakeholders and communities.*

The **Queensland** Government has implemented the Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010-2033 to improve provision of culturally appropriate health care.

Emergency Departments in Queensland with a higher population of Aboriginal and Torres Strait Islander people are also staffed by Indigenous Hospital Liaison Officers to encourage culturally capable health care. Some hospital and health services also have established MOUs with Aboriginal Community Controlled Health Organisations for continued care pathways.

 *Queensland has partially implemented Recommendation 252 by implementing a framework for culturally capable health care but has not expressly addressed reviews of protocols.*


The **South Australian** Government responded to Recommendation 252 through expanding Aboriginal Hospital Liaison Officer services, increasing Aboriginal and Torres Strait Islander employment in health services, and closer cooperation between hospitals and Aboriginal Health Services. SA Health has also established protocols in place to ensure vulnerable members of the population are seen and treated in emergency departments.

 *South Australia has partially implemented Recommendation 252. While South Australia has expanded Aboriginal Hospital Liaison Officer services and established protocols for the treatment of vulnerable members of the population in emergency departments, the protocols only concern access, not appropriate treatment, and do not address Aboriginal and Torres Strait Islander populations specifically.*


During the 1990s, the **Western Australian** Government reviewed and developed *Regional Aboriginal Health Plans*, and updated clinical protocols and practices through initiatives such as the *Maternal Child Health Project*.

Since this time, the Western Australian Government has indicated that it has been working with other jurisdictions to leverage systematic improvements in the quality of care provided to Aboriginal and Torres Strait Islander people by mainstream health services. Work to improve the quality of care includes the National Aboriginal and Torres Strait Islander Health Standing Committee's work on Safety and Quality in Health Care, on National Safety and Quality Health Service (NSQHS) Standards, which includes six specific actions to address the needs of Aboriginal and Torres Strait Islander people. In addition, the Aboriginal Cultural Learning Package is an online suite of training, tools and

resources that supports the development of a culturally respectful and non-discriminatory health system.


 *Western Australia has implemented Recommendation 252 by reviewing procedures in hospitals in consultation with the National Aboriginal and Torres Strait Islander Health Standing Committee.*

The **Tasmanian** Government's initial response to Recommendation 252 involved the placement of Aboriginal Health Liaison officers to ensure improved communication and access to care. Through the Tasmanian Aboriginal Health Partnership Forum, work is also progressing on mental health and early years health services, which will consider areas of the hospital experience and more effective discharge processes.


 *Tasmania has partially implemented Recommendation 252 by employing Aboriginal Health Liaison Officers and by addressing specific health services through the Tasmanian Aboriginal Health Partnership Forum but has not expressly addressed reviews of protocols.*

The **Northern Territory's** 1993-94 implementation report notes that the Northern Territory Government approached various hospitals as part of a review into clinical practice. This input was used in the development of improved protocols for practice. Currently, the NT Government is also a party to the National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes.

The Royal Darwin Hospital and the Alice Springs Hospitals have established Aboriginal Cultural Advisory Groups to provide guidance and direction for implementing programs which assist in driving changes to make hospitals more culturally accessible, responsive and safe for Aboriginal and Torres Strait Islander people.

 *The Northern Territory has implemented Recommendation 252 by approaching various hospitals as part of a review into clinical practice and establishing Aboriginal Cultural Advisory Groups to guide the development of culturally accessible healthcare.*

Australian Capital Territory practice at the time of the RCIADIC included regular review of emergency protocols and advisory from Aboriginal hospital liaison officers, who commented on the extent to which protocols address the particular needs of Aboriginal and Torres Strait Islander people.

 *The Australian Capital Territory has implemented Recommendation 252 by having Aboriginal Hospital Liaison Officers conduct regular reviews of protocols for diagnosing and treating Aboriginal and Torres Strait Islander people in casualty.*

Recommendation 253

That the physical design of and methods of operating health care facilities be attuned to the needs of the intended patients. Particularly where high concentrations of Aboriginal people are found, their special needs in these regards should be taken into consideration. The involvement of Aboriginal people in the processes of designing such facilities is highly desirable.

Background information

The RCIADIC Report identified issues around Aboriginal and Torres Strait Islander people's frequent reluctance to use mainstream services due to the physical design and methods of operation of health care facilities in areas with a high concentration of Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation covers all health care facilities in areas of highly concentrated Aboriginal and Torres Strait Islander people.

Key actions taken and status of implementation

The **Commonwealth** DOH noted that a set of Facility Design Guidelines were developed by the former Office for Aboriginal and Torres Strait Islander Health (OATSIH) to provide direction on the

design of health care facilities and health professional housing for Aboriginal and Torres Strait Islander communities.


The Commonwealth established the National Strategic Framework for Aboriginal and Torres Strait Islander Health (NSFATSIH) in 2003, which outlined the provision of services that are better equipped to be responsive to the needs of the Aboriginal and Torres Strait Islander population. Improved community decision-making processes and control over the management and delivery of health services were also prioritised. The Aboriginal and Torres Strait Islander engagement principle of the NIRA recognises that the Aboriginal and Torres Strait Islander community should be central to the design and delivery of programs and services.

 *Recommendation 253 is complete through the development of the Facility Design Guidelines which address the physical design of and methods of operating health care facilities specific to Aboriginal and Torres Strait Islander people. This is complemented by other Commonwealth initiatives such as the NSFATSIH and NIRA.*


As signatories to *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes*, all states and territories (excluding Tasmania) seek to implement national best practice in the provision of hospital care. However, there is no requirement to involve Aboriginal and Torres Strait Islander people in the physical design of health care facilities.

In 1992-93, **New South Wales** Aboriginal Health Education Officers, Aboriginal Liaison Committees and the appointment of Aboriginal members to Hospital Boards provided the structure and the authority for Aboriginal involvement in the physical design and methods of operating health care facilities. This included the publication of several reports.


Currently, where there are significant populations of Aboriginal people, NSW Health involves communities at the early stage of planning, development of models of care, and design. Recent examples include Dubbo, Parkes, Forbes and Kempsey. Engagement often occurs through an Aboriginal Advisory Group, which provides the community with an opportunity to influence key aspects of the project. This has included the location of a liaison service at Dubbo, a dedicated meeting place for families at Kempsey Hospital, and appropriate signage. Health Infrastructure also works with local communities to promote new services.

 *New South Wales has fully addressed Recommendation 253 by consulting with communities through an Aboriginal Advisory Group to determine health service design.*

The **Victorian** Government engaged with relevant user groups and directly consulted with Aboriginal and Torres Strait Islander communities through the Koori Health Unit regarding the management and design of health services in Victoria.

 *Victoria has fully addressed Recommendation 253 by consulting with Aboriginal and Torres Strait Islander communities in determining the management and design of health services in Victoria.*

In the design of health care settings, the **Queensland** Government provides for community consultation and input from local community and facility users, from concept to final detailed design. However, no specific actions could be identified that specific steps have been taken towards the recognition of Aboriginal and Torres Strait Islander perspectives.

 *Queensland has partially implemented Recommendation 253 by consulting with local community and facility users, from concept to design, but has not expressly addressed consultation of Aboriginal and Torres Strait Islander perspectives.*

In **South Australia**, services reform was identified as a priority in the Government's *Aboriginal Cultural Report Framework*. During the design phase for SA Health capital works projects, SA Health and the relevant Local Health network work with specific stakeholders, including the Local Health network Aboriginal Liaison Unit and Aboriginal consumer representatives, where relevant, to incorporate their requirements and feedback into the design process.

● *South Australia has addressed Recommendation 253 by consulting with the Aboriginal Liaison Unit and Aboriginal consumer representatives in determining the design of SA Health Capital Works.*

In **Western Australia**, there is no formal policy on community consultation in the design of health care facilities. However, account is taken of local opinions, particularly those of Aboriginal and Torres Strait Islander people where they represent a large proportion of the demographic.

Western Australia has also contributed to the development of the second edition of the National Safety and Quality Health Service Standards through the National Aboriginal and Torres Strait Islander Health Standing Committee. The Standards now include six specific actions to address the needs of Aboriginal and Torres Strait Islander people, including action 1.33, which pertains to health service organisations demonstrating a welcoming environment that recognises the importance of the cultural beliefs and practices of Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander consultation has also occurred in the design of health infrastructure projects, including Perth Children's Hospital and the Karratha Health Campus.

● *Western Australia has implemented Recommendation 253 by consulting Aboriginal and Torres Strait Islander people on the design of health infrastructure projects. Western Australia also has a policy of demonstrating a welcoming environment that recognises the importance of the cultural beliefs and practices of Aboriginal and Torres Strait Islander people.*

Tasmania has provided no information on any significant action in response to Recommendation 253.

○ *Tasmania has not implemented Recommendation 253, as it has not expressly addressed consultation of Aboriginal and Torres Strait Islander perspectives in physical design.*

In the **Northern Territory**, all new health facilities involve consultation and input from Community Councils, Community Health Councils, and local health staff in design and construction. In 1994, the Alice Springs Hospital considered cultural relevance in their development of a room and an adjoining courtyard into a healing space for Aboriginal and Torres Strait Islander people. More recently, extensive consultations were undertaken with Aboriginal and Torres Strait Islander stakeholders in the planning and development of the Palmerston Hospital.

● *The Northern Territory has addressed Recommendation 253 by consulting with Aboriginal and Torres Strait Islander communities in the design and construction of all new health facilities.*

The **Australian Capital Territory** Government provides that Aboriginal hospital liaison officers must be consulted about the design of any new health facilities.

● *The Australian Capital Territory has addressed Recommendation 253 by consulting with Aboriginal hospital liaison officers on the design of any new health facilities.*

Additional commentary

The **Commonwealth** DOH adds that the Facility Design Guidelines are complementary to the Australasian Health Facility Design Guidelines but take priority as it provides specific guidance on the unique health service delivery requirements of Aboriginal and Torres Strait Islander communities. The Facility Design Guidelines are revised periodically to ensure they are kept up-to-date and are appropriate to changing conditions.

The **Tasmanian** Department of Health and Human Services is leading development of a Tasmanian implementation plan for the Cultural Respect Framework. Stakeholder partnerships and collaboration, and consumer participation and engagement are two of the six domain areas of the Framework. In addition, the second edition of the Australian Commission on Safety and Quality in Health Care National Safety and Quality Health Service Standards (released November 2017) for health service organisations emphasise demonstrating a welcoming environment that recognises the importance of the cultural beliefs and practices of Aboriginal and Torres Strait Islander people.

Recommendation 254

That health departments and other mainstream health authorities accept as policy, and implement in practice, the principle that Aboriginal people should be involved in meaningful ways in decision-making roles regarding the assessment of needs and the delivery of health services to the Aboriginal community. One application of this principle is that efforts should be made to see that Aboriginal people are properly represented on the Boards of hospitals serving areas where Aboriginal patients will be a significant proportion of hospital clients.

Background information


The RCIADIC Report provided evidence of the strengths of the AHSs, concluding that they overcome many of the deficiencies provided by the mainstream health services.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Collaboration with the Aboriginal and Torres Strait Islander community in regards to health services is the responsibility of both the Commonwealth, and the States and Territories.


Key actions taken and status of implementation

The **Commonwealth** Government's NATSIHP 2013-23 (National Health Plan) places at the forefront the importance of community-controlled health organisations that allow the Aboriginal and Torres Strait Islander people to lead, deliver and be accountable for culturally appropriate health services. The National Health Plan identifies community governance as having a role in improving services as well as facilitating the delivery of culturally safe care. The DOH noted that the implementation plan was developed in close partnership with the National Health Leadership Forum – the national representative body for Aboriginal and Torres Strait Islander peak organisations.


 *The Commonwealth has implemented Recommendation 254 through the introduction of the National Health Plan. Ensuring that Aboriginal and Torres Strait Islander people are appropriately represented on hospital boards is the responsibility of the States and Territories.*

In 1992, **New South Wales** established that Aboriginal people should be involved in a meaningful way in decision-making roles relating to the assessment and delivery of health services. This was included in the recommendations of the Casualty Review, and the New Direction for Aboriginal Health report. The Aboriginal Health Resources Committee (AMRC) was established to provide representation for Aboriginal people and to ensure that health services are culturally appropriate. The AHMRC's Board of Directors is comprised of Aboriginal people who are elected by members on a regional basis.


More recently, the NSW Aboriginal Health Partnership Agreement 2015-2025 was re-signed with the Aboriginal Health and Medical Research Council of NSW. In addition, NSW Health is reviewing the governance arrangements for Aboriginal Health, which will include consideration of content co-ordination and cultural responsiveness, as well as strategies to elevate the Aboriginal voice at the Local Health District (LHD) Level. Currently, Justice Health and Forensic Mental Health have two Aboriginal members on its Board.

 *New South Wales has completed Recommendation 254 through its development of the NSW Aboriginal Health Plan 2013-2023.*


The **Victorian** Government provided for the recognition of Aboriginal and Torres Strait Islander people through their inclusion on various hospital boards. More recently, the need to work with Aboriginal and Torres Strait Islander communities and to tailor solutions to local problems was identified as a priority in the *Victorian Indigenous Affairs Framework 2013-2018*. Positive employment discrimination programs are also utilised, guided by the Aboriginal Inclusion Framework and Aboriginal and Torres Strait Islander people's participation in the design, implementation and assessment of programs.

 *Victoria has completed Recommendation 254 by ensuring Aboriginal and Torres Strait Islander people are involved in the decision-making processes in the health system, and are represented on hospital boards.*

In 1991, the **Queensland** Government published *Affirmative Action for Queensland Aborigines and Torres Strait Islanders: A Public Health Strategy* which led to the appointment of Aboriginal and Torres Strait Islander people to Regional Health Authorities, the establishment of the Aboriginal and Torres Strait Islander Policy Unit within Queensland Health, and the establishment of regional Aboriginal and Torres Strait Islander Health Advisory Councils. Currently, the Queensland Government's *Cultural Capability Framework* requires community engagement with Aboriginal and Torres Strait Islander people. However, there is no legal requirement for Aboriginal and Torres Strait Islander people to serve on corporate boards. Currently, nine out of 16 Hospital and Health Services have at least one member of their board who identify as an Aboriginal and Torres Strait Island person.

 *Queensland has completed Recommendation 254 by ensuring Aboriginal and Torres Strait Islander people are involved in decision-making via a variety of avenues, including Regional Health Authorities, the Aboriginal and Torres Strait Islander Policy Unit and regional Aboriginal and Torres Strait Islander Health Advisory Councils, and are represented on hospital boards.*

The **South Australian** Health Commission contributed towards this recommendation through including Aboriginal and Torres Strait Islander membership of the Drug and Alcohol Services Council Board of Directors, and the Prison Medical Services General Committee. SA Health engages Aboriginal and Torres Strait Islander people in the planning and delivery of health services to the community via Experience Panels, Community Reference Groups, Aboriginal Advisory Committees, the SA Aboriginal Health Partnership, and ministerial meetings between the Minister and Chief Executive Officer (CEO) of the Aboriginal Health Council of South Australia.


 *South Australia has mostly implemented Recommendation 254 by ensuring Aboriginal and Torres Strait Islander people are consulted via a variety of avenues, including Experience Panels, Community Reference Groups, and Aboriginal Advisory Committees. However, they have not expressly addressed representation of Aboriginal and Torres Strait Islander people on hospital boards.*

The **Western Australia** Government notes in their 1994 implementation report that the established regional planning forums provide opportunities for Aboriginal and Torres Strait Islander communities to participate in the formulation of health service priorities and service decisions. The WA Government also appointed a number of Aboriginal and Torres Strait Islander people to hospital boards, and formed committees for considering the creation of boards. Currently, building cultural leadership capabilities and increasing Aboriginal and Torres Strait Islander people participation in the WA Country Health Service (WACHS) are issues incorporated under the *WACHS Aboriginal Employment Strategy 2014-18*.


In addition to this, the Western Australian Government has indicated that it has implemented the Western Australian Aboriginal Health and Wellbeing Framework 2015-2030, This focuses on the coordination and integration of health services, by incorporating Aboriginal and Torres Strait Islander people into the planning, design and implementation of health services. A priority area of the Framework is building Aboriginal and Torres Strait Islander community capacity.

Completion of an Aboriginal Health Impact Statement Declaration is mandatory in the Western Australian Health System. The intent of this statement is to demonstrate that Aboriginal and Torres Strait Islander people have been consulted and that the health impacts on Aboriginal and Torres Strait Islander people have been considered and appropriately incorporated into relevant health initiatives.


Each new Health Service Provider has established an Aboriginal Health Strategy Team, and has appointed a Director of Aboriginal Health, to oversee Aboriginal and Torres Strait Islander health needs.

 *Western Australia has mostly implemented Recommendation 254 by requiring the completion of an Aboriginal Health Impact Statement, which demonstrates consultation of Aboriginal people when making policies. Although each new Health Service Provider has established an Aboriginal Health Strategy Team, and has appointed a Director of Aboriginal Health, no evidence has been provided that Aboriginal and Torres Strait Islander people are properly represented on the Boards of hospitals.*

In **Tasmania**, District Health Forums have replaced hospital boards as a means to provide for community, including Aboriginal and Torres Strait Islander, involvement. Additionally, Aboriginal and Torres Strait Islander people were consulted by the Department of Community and Health Services regarding health issues. Currently, the Tasmanian Health Service has three Consumer Groups with a broad range of members. There is a new Consumer Advisory Council being formed in addition to the Consumer Groups.

 *Tasmania has partially completed Recommendation 254 by ensuring Aboriginal and Torres Strait Islander people are involved in the decision-making process via consultation. However, they have not expressly addressed the extent of representation of Aboriginal and Torres Strait Islander people on District Health Forums.*


Since 1994, the **Northern Territory** hospital boards have included Aboriginal and Torres Strait Islander members. Currently, the two hospital networks in the NT – the Top End, and the Central Australian Hospital Network Governing Councils – both have Aboriginal and Torres Strait Islander people represented on their governing councils. Further, legislation requires that the community leadership function of governing councils include facilitating input to provide more effective services for Aboriginal and Torres Strait Islander people. The Department of Health is currently implementing the NT Cultural Security Framework 2016-2026 across all NT health services which seeks to improve Aboriginal and Torres Strait Islander representation in governance.

 *The Northern Territory has completed Recommendation 254 by ensuring Aboriginal and Torres Strait Islander people are represented in Hospital Network Governing Councils.*

Although hospitals operated by the **Australian Capital Territory** Health Directorate do not have board structures as in other jurisdictions, an Aboriginal and Torres Strait Islander Advisory Committee has been established. This committee works with officers of the ACT Department of Health and the Commonwealth to monitor the Aboriginal Health Strategy in the ACT. Additional representation for Aboriginal and Torres Strait Islander people has also been provided through the ACT Aboriginal and Torres Strait Islander Advisory Council, the ACT Health Advisory Council, and the Youth Alcohol Action Plan Steering Committee.

ACT Health has also established the ACT Health Aboriginal and Torres Strait Islander Health Coordination Group which is an ACT Health wide committee that advises, monitors and supports coordinated implementation of Directorate wide strategies and initiatives in relation to the health of Aboriginal and Torres Strait Islander people. The membership of HCG include the Chief Executive Office of Winnunga Nimmityjah Aboriginal Health and Community Services and a representative of the Aboriginal and Torres Strait Islander Elected Body.

In addition the executives meets regularly with the Aboriginal and Torres Strait Islander Elected Body of the ACT to ensure and ongoing dialogue.

 *The Australian Capital Territory has implemented Recommendation 254 by ensuring Aboriginal and Torres Strait Islander people are able to provide input into decision-making through the Aboriginal and Torres Strait Islander Advisory Committee and its sub-committee.*

Additional commentary

The **Commonwealth** DOH noted that in March 2017, Minister Wyatt put out a media release calling for Aboriginal and Torres Strait Islander representation on Primary Health Network boards and committees.

Recommendation 255

That the holding of negative stereotypes of both Aboriginal people and people with drinking problems be addressed through effective staff selection and supervision, along with pre-service and in-service education, to reduce the ignorance, and through clear instructions by employing authorities that such stereotyping of Aboriginal people and those with drinking problems will not be tolerated in the health care setting.

Background information

The RCIADIC Report identified that the stereotyping of the Aboriginal and Torres Strait Islander population as well as those with “drinking problems” had adversely affected the treatment of a number of those who died in custody.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that the stereotyping of Aboriginal and Torres Strait Islander people and those with drinking problems be addressed across all types of government health care.

Key actions taken and status of implementation

The cultural responsiveness measures and training of non-Aboriginal and Torres Strait Islander staff members to respond to Recommendation 247 are also relevant to Recommendation 255.


The **Commonwealth** has implemented training programs such as the RAP 2013-17 and the Closing the Gap NPAs with the aim of improving the cultural sensitivity of health care practitioners. The *Guidelines for the Treatment of Alcohol Problems*, and the *Alcohol Treatment Guidelines for Indigenous Australians* (developed by the former Department of Health and Ageing (DoHA) in 2009) caution strongly against healthcare providers letting their biases and stereotyping affect decision making.

The Health Workforce Reform Branch of the DOH noted that the Aboriginal and Torres Strait Islander Health Curriculum Framework was developed to ensure that “cultural safety” is embedded in to health training courses. The Framework supports higher education providers to implement Aboriginal and Torres Strait Islander health curricula across their health professional training programs and aims to prepare graduates across health professions to provide culturally appropriate health services.


 Recommendation 255 has been completed through the NPAs and development of the DoHA guidelines on alcohol treatment.

The **New South Wales** Government noted that a module on Aboriginal culture, including stereotyping, had been introduced to staff training requirements in 1994. Additionally, staff selection guidelines and training programs in selection and supervision contain sections of non-discriminatory practices and stereotyping.


In 2011, New South Wales introduced the Aboriginal Cultural Training Framework: *Respecting the Difference*, which seeks to increase cultural awareness of staff and promote greater understanding of the processes and protocols for engaging with Aboriginal people when delivering health services. All NSW Health staff must complete a related online training module as well as a face-to-face component, which seeks to foster an appreciation of the impact of racism and discrimination on Aboriginal experiences of health care. NSW Health Drug and Alcohol services also require staff to undertake this training. The New South Wales Government has also noted that role descriptions provide for best practice approaches for patient care in drug and alcohol and that staff supervision is a key component of team care.

 *New South Wales provides cultural capability training via the Cultural Training Framework: Respecting the Difference to staff in order to cultivate a culturally capable and responsive workforce. However, Recommendation 255 is partially complete as no information could be found on whether this training expressly addresses stereotypes about drinking problems.*

In 1994-95, **Victoria** drafted and implemented appropriate protocols that were conducted by the Koori Health Unit of the Department of Health and Community Services. No further information could be found on the specific provisions made by these guidelines.


 *While Victoria has implemented protocols to address Recommendation 255, no information could be found on what is contained in the protocols. As such, the recommendation is partially complete.*

Queensland Health developed a cross-cultural awareness package comprising audio-visual and textual materials and training. Under this program, local Aboriginal and Torres Strait Islander health workers are trained to provide training to their non-Aboriginal and Torres Strait Islander colleagues. This allows for both general and local issues to be addressed, and provides a platform for Aboriginal and Torres Strait Islander issues to be better understood. Currently, the *Cultural Capability Framework* includes a Cultural Capability Learning program which emphasises the need for a culturally capable and responsive workforce.

 *Queensland provides a cross-cultural awareness training package and has also implemented a Cultural Capability Framework. However, Recommendation 255 is partially complete as no information could be found on whether this training expressly addresses stereotypes about drinking problems.*


In 1994, the **South Australian** Government prioritised cross-cultural awareness training for non-Aboriginal and Torres Strait Islander staff through the Aboriginal Health Council. The *South Australian Health Aboriginal Health Care Plan 2010-2016* makes a provision that racism will not be tolerated across South Australian health practices.

Recently, SA Health has developed an Aboriginal Cultural Learning Framework for submission to Portfolio Executive, which supports a well-governed, tiered approach to workforce development that ensures all staff have the required skills, knowledge and attitudes to enable culturally competent responses to the needs of Aboriginal and Torres Strait Islander patients.


 *South Australia has developed an Aboriginal Cultural Learning Framework to ensure staff are culturally competent and responsive. However, Recommendation 255 is partially complete as no information could be found on whether this training expressly addresses stereotypes about drinking problems.*

In 1994, **Western Australia** launched cross-cultural education for Health Department staff members. It dealt with the traditional and contemporary life of Aboriginal and Torres Strait Islander people, and sought to develop an ability to participate in service planning, management and delivery of health services in a non-discriminatory manner. It also addressed alcohol through a number of regional workshops held in response to community concerns over alcohol consumption. Currently, WA's Department of Health has a cultural e-learning package and cultural awareness training for all staff (see Recommendation 247).


The Western Australian Government has noted that Racism or discrimination by employees is not tolerated under the Department of Health's Code of Conduct. The online Aboriginal Cultural Learning Package provides a suite of training, tools and resources to support the development of a culturally respectful health system.

 *Western Australia has partially implemented Recommendation 255 through training and including relevant provisions in the Department of Health's Code of Conduct. However, no evidence was provided as to whether training expressly addresses stereotypes about drinking problems.*

Tasmania's Department of Community and Health Services responded to Recommendation 255 through the coordination and implementation of training in adherence to the consultation and Aboriginal and Torres Strait Islander self-determination processes. As previously discussed in response to Recommendation 253, Tasmania is currently developing a Tasmanian implementation plan for the Cultural Respect Framework. In addition, the Cultural Respect Framework domain area "Whole-of-Organisation Approach and Commitment" includes Tackling Racism and Discrimination as a focus area.

 *While Tasmania has implemented practices to address Recommendation 255, including adherence to the Cultural Respect Framework, no information could be found on whether the Framework addresses stereotypes about drinking problems specifically. As such, the recommendation is partially complete.*


The 1993-94 **Northern Territory** implementation report notes that an Aboriginal Team and Aboriginal Policy Officer were positioned to assist in the support and understanding of the *Living with Alcohol Program* philosophy. The *Alcohol Mandatory Treatment Act 2013* (NT), which provided a mandatory treatment order in the case of alcohol misuse, was repealed in 2017. The Remote Alcohol and Other Drugs Workforce Program was implemented in 2015 which employs Aboriginal and Torres Strait Islander people in remote areas to enhance the cultural appropriateness of health interventions being delivered to individuals and communities affected by alcohol and drug issues.

 *The Northern Territory has completed Recommendation 255 by implementing training that is sensitive to stereotypes about drinking problems, through support of the Living with Alcohol program and the Remote Alcohol and Other Drugs Workforce Program.*

The **Australian Capital Territory** Government noted in their implementation reports that Recommendation 255 had been addressed through training and selection requirements. Currently, all ACT Health staff are required to complete the 'Working with Aboriginal and Torres Strait Islander patients and clients (eLearning 2016)' training. ACT Health also expects that all staff will seek and maintain in their work an understanding of Aboriginal and Torres Strait Islander culture, history and the health issues of individuals/families presenting for care at ACT Health services.

ACT Health has developed Engagement Protocols for Working with Aboriginal and Torres Strait Islander Communities Guide, to provide staff with a basic overview of culturally appropriate communication, language and behaviour. This is designed to assist in building positive relationships with the ACT Aboriginal and Torres Strait Islander communities and individuals. The Aboriginal and Torres Strait Islander Practice Centre, Policy and Stakeholder Relations, also delivers an overview of Aboriginal and Torres Strait Islander health during ACT Health Corporate Orientation for all staff each month.

In addition, ACT Health is developing a refresher Aboriginal and Torres Strait Islander Cultural Awareness training course through the Staff Development Unit (SDU). It is intended that staff will be required to complete cultural awareness training every 3 years.

 *The Australian Capital Territory has partially completed Recommendation 255 as it has addressed its requirements through training and workforce selection. However, Recommendation 255 is partially complete as no information was provided on whether this training expressly addresses stereotypes about drinking problems.*

Additional commentary

The **Commonwealth** DOH noted the development of Guiding Principles by Primary Health Networks and Aboriginal Community Controlled Health Organisations (ACCHOs). These principles provide guidance for actions to be taken by each party across six key domains: cultural competency; commissioning; engagement and representation; accountability, data and reporting; service delivery; and research. The DOH noted that as racism in the health sector remains an issue, it will require an on-going effort.

Recommendation 256

That more Aboriginal staff be employed through affirmative action programs as health care workers (and, indeed, in other capacities such as support staff) in those mainstream health care facilities which serve Aboriginal clients and patients and that their involvement must be well thought out, be at appropriate levels, and be structured so that they contribute effectively with the minimum amount of role conflict.

Background information

The RCIADIC Report outlined a large volume of evidence on the effectiveness of AHWs in Aboriginal and Torres Strait Islander health care settings. The report also identified the need for AHWs to have further skills in both the clinical and social development fields.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that increased numbers of AHWs, across all types of healthcare, be employed through affirmative action policies.

Key actions taken and status of implementation


The **Commonwealth** supports affirmative action programs such as by providing funding to the Aboriginal and Torres Strait Islander organisations that mentor and support Aboriginal and Torres Strait Islander doctors, nurses and health workers. These organisations include the Australian Indigenous Doctors' Association, the Congress of Aboriginal and Torres Strait Islander Nurses and Midwives, Indigenous Allied Health Australia, and the National Aboriginal and Torres Strait Islander Health Worker Association. The Aboriginal and Torres Strait Islander Pharmacy Scholarship incentivises Aboriginal and Torres Strait Islander students to undertake further study that lead to a registrable qualification in pharmacy.

The DOH noted that two incentive programs operate to encourage the employment of Aboriginal and Torres Strait Islander health professionals in mainstream health care facilities which serve Aboriginal and Torres Strait Islander clients and patients. The first is the Indigenous General Practice Registrars Network which provides a forum for registrars to provide professional and cultural support to one another to achieve fellowship. The second is the Practice Nurse Incentive Program which provides incentive payments to encourage general practices and ACCHOs to employ Aboriginal and Torres Strait Islander health workers.

 *Recommendation 256 has been implemented through the implementation of the Commonwealth's affirmative action programs that include supporting the Aboriginal and Torres Strait Islander health professional organisations to improve the recruitment and retention of Aboriginal and Torres Strait Islander health professionals in clinical and non-clinical roles across all health disciplines. This is complemented by a number of incentive programs in relation to the employment of Aboriginal and Torres Strait Islander people as health professionals.*

The **New South Wales** Government developed an *Aboriginal Employment Strategy* in 1993, to ensure equity in employment and equitable access to government services for Aboriginal people. Since then, NSW has responded to Recommendation 256 through various initiatives including the *NSW Public Sector Indigenous Cadetship Program*, the *Aboriginal Mental Health Traineeship* program, the *Aboriginal Population Health Training Initiative* and the *Aboriginal Environmental Health Training Program*.


More recently, NSW Health has developed the *NSW Health Good Health – Great Jobs Aboriginal Workforce Strategic Framework 2016-2020*, which sets out priorities and key actions for growing the Aboriginal health workforce. All NSW Health organisations are required to report against the nine key performance indicators in the Framework. Aboriginal people can apply for any position in NSW Health where the role requirements are met while there are positions that have been specifically developed for Aboriginal people, where cultural knowledge or connections are a genuine aspect of the role. Currently, the Justice Health and Forensic Mental Health network has exceeded the national Closing the Gap Aboriginal Employment benchmark.

 *New South Wales has implemented Recommendation 256 by promoting Aboriginal health employment through the NSW Health Good Health – Great Jobs Aboriginal Workforce Strategic Framework 2016-2020 and by establishing positions specifically for Aboriginal in NSW Health.*


The **Victorian** Government responded to Recommendation 256 by recognising the need for employment of Aboriginal and Torres Strait Islander people in policy, program development and direct service roles. The *2014-17 Koolin Balit* incorporates workforce development, recruitment and retention initiatives for Aboriginal and Torres Strait Islander people seeking a career in health services. The *Karreeta Yirramboi* policy also addresses career development and employment opportunities for Aboriginal and Torres Strait Islander people in the Victorian public sector, including the health sector.

 *Victoria has implemented Recommendation 256 through affirmative action programs.*

In their 1993 implementation report, the **Queensland** Government noted the development of an employment strategy targeted at including Aboriginal and Torres Strait Islander people in employment interview panels and the development of position descriptions. The *Queensland Health Aboriginal and Torres Strait Islander Health Workforce Strategic Framework 2016-2026* guides and supports the development of Aboriginal and Torres Strait Islander health workforce planning and the development of a culturally capable and responsive workforce. The Framework seeks to increase the participation rate of Aboriginal and Torres Strait Islander people in the workforce to 3% by 2022.

 *Queensland has implemented Recommendation 256 through affirmative action principles promoted by the Queensland Health Aboriginal and Torres Strait Islander Health Workforce Strategic Framework 2016-2026.*

In **South Australia**, the Health Commission adopted the "1% Challenge" as a target for increased Aboriginal and Torres Strait Islander participation, and formally launched its *Aboriginal Employment Policy* in 1992. More recently, the South Australian Government has implemented a number of affirmative action measures, anti-discrimination legislation, and policy initiatives including the *Aboriginal Health Care Plan 2010-16*, the *South Australian Health Aboriginal Workforce Reform Strategy 2009-2013*, *Aboriginal Employment Policy*, and the *SA Health Aboriginal Workforce Framework 2017-2022*, which seek to increase the Aboriginal and Torres Strait Islander workforce across the public health sector.

 *South Australia has implemented Recommendation 256 through a range of different policies and programs, including the South Australian Health Aboriginal Workforce Reform Strategy 2009-2013 and the Aboriginal Employment Policy.*

In 1994, **Western Australia** established its *Aboriginal Employment Strategy* which provided opportunities to improve Aboriginal and Torres Strait Islander employment within health services. The Strategy encompassed liaison with federal departments, state-wide coordination, cross-cultural training, equal opportunity, selection and recruitment measures, vocational training, and marketing of the Health Department as an employer.


Since this time, the updated Aboriginal Workforce Strategy 2014-2024 has been implemented to build a strong, skilled and growing Aboriginal and Torres Strait Islander workforce. Aligned with the Strategy, the Aboriginal Workforce Policy mandates a range of initiatives, including Aboriginal and Torres Strait Islander traineeships, Aboriginal and Torres Strait Islander cadetships and the Graduate Development Program. WA Health also employs Aboriginal and Torres Strait Islander doctors, nurses and midwives through a range of other graduate pathways.

A pilot program to increase the Aboriginal health workforce by having nominated Aboriginal positions has been implemented, together with additional educational resources for recruitment managers.

 *Western Australia has implemented Recommendation 256 through affirmative action principles promoted by the Aboriginal Workforce Strategy 2014-2024.*


Tasmania responded to Recommendation 256 through the Department of Community and Health Services' equal employment opportunity policy. Anti-discrimination legislation also prevents racial discrimination in employment. The Tasmanian Government has also undertaken measures to bolster Aboriginal and Torres Strait Islander employment as part of *Closing the Gap*.

As previously discussed in response to Recommendation 237, the Tasmanian State Service has set targets for Aboriginal and Torres Strait Islander employment through the *State Service Aboriginal Employment Strategy 2017-2020*. The Department of Health and Human Services also manages the Ida West Aboriginal Health Scholarship, which provides financial assistance to Aboriginal and Torres Strait Islander students completing a formal qualification at university or vocational education in a health or human services field.

 *Tasmania has partially completed Recommendation 256 as it has taken steps towards addressing its objectives through the State Service Aboriginal Employment Strategy 2017-2020 but has not expressly addressed affirmative action policies for Aboriginal and Torres Strait Islander employment in health.*

The **Northern Territory** developed an employment strategy with target employment areas including management, policy and decision making positions, in hospitals, urban community health centres, and service delivery areas with a high concentration of Aboriginal and Torres Strait Islander people. Currently, the *Indigenous Cadetship Support* program is used to recruit and develop Aboriginal and Torres Strait Islander people into areas of current skill shortages. The *Aboriginal Medical Services Alliance Northern Territory* has an objective to increase the number of Aboriginal and Torres Strait Islander people working across all health professions. As part of the *Aboriginal Cultural Security Framework 2016-2026*, NT Health has specified increasing Aboriginal employment across NT Health as a priority action area.

The affirmative action programs run by NT Health have resulted in a one per cent increase per annum between 2014-15 and 2016-17 in Aboriginal and Torres Strait Islander employment across Northern Territory Health. Northern Territory Health also fund a 'back on track' program aimed at improving the recruitment and retention of Aboriginal and Torres Strait Islander people.

 *The Northern Territory has implemented Recommendation 256 by identifying Aboriginal and Torres Strait Islander employment in health as an active priority of both the Aboriginal Medical Services Alliance Northern Territory and the Aboriginal Cultural Security Framework 2016-2026.*


In the **Australian Capital Territory**, measures have been implemented to support Aboriginal and Torres Strait Islander trainees, train members of staff selection panels in equal employment opportunity principles, and to provide additional funding for Aboriginal and Torres Strait Islander professionals. These measures also apply to health professionals.

ACT Health provides employment pathways for Aboriginal and Torres Strait Islander people, including the Aboriginal and Torres Strait Islander Traineeship Program. As of February 2018, ACT Health employs 87 Aboriginal and Torres Strait Islander staff which is working towards the agreed target for ACT Health of 94 Aboriginal and Torres Strait Islander staff by the end of 2018.

By 30 June 2018 ACT Health will have 26 Aboriginal and Torres Strait Islander identified positions established with staff employed across various classification groups, including administration, allied health, dental, general, junior medical officers, nursing staff and, technical officers. Each year, the Chief Allied Health Office offers to subsidise the fees of identified students undertaking the Certificate IV Allied Health Assistance qualification through the Canberra Institute of Technology.

All ACT Health position advertisements specifically include alignment to core values of cultural diversity and inclusion through use of the following statement "ACT Health is committed to building a culturally diverse workforce and an inclusive workplace. As part of this commitment we strongly encourage people from an Aboriginal and/or Torres Strait Islander background to apply for all jobs".

ACT Health is currently developing a workforce strategy, which will have focus on social inclusion and the diversity of the workforce, in particular Aboriginal and Torres Strait Islander people.

 *The Australian Capital Territory has completed Recommendation 256 by implementing measures to support Aboriginal and Torres Strait Islander employment in the ACT Health directorate and implementing affirmative action policies.*

Additional commentary

The **Commonwealth** DOH noted that, as racism in the health sector remains an issue, it will require an on-going effort. The DOH noted the implementation of the Aboriginal and Torres Strait Islander Health Curriculum Framework to assist with minimising conflict and help ensure workplaces are "culturally safe" by embedding cultural safety training in health training courses. The framework supports higher education providers to implement Aboriginal and Torres Strait Islander health curricula across their health professional training programs.

Recommendation 257

That special initiatives now in place in a number of tertiary training institutions such as medical schools, to facilitate the entry into and successful completion of courses of study and training by Aboriginal students be expanded for use in all relevant areas of health services training.

Background information

The RCIADIC Report identified gaps in the employment of tertiary-educated Aboriginal and Torres Strait Islander health care specialists in existing health care facilities. An expansion of these training opportunities would ultimately lead to improved health care outcomes for the Aboriginal and Torres Strait Islander population.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Primary responsibility for tertiary training institutions resides with the States and Territories. The Commonwealth's responsibility relates to the availability of funding for those with an Aboriginal and Torres Strait Islander background.

Key actions taken and status of implementation

The **Commonwealth** has developed a range of funding programs in tertiary institutions with the aim of generating further training opportunities in health care. These programs include Indigenous Health Scholarships, the Aboriginal and Torres Strait Islander Pharmacy Scholarship Scheme and ABSTUDY. Moreover, Health Heroes provides information for Aboriginal and Torres Strait Islander secondary students about the range of health jobs and training options available.

● *Recommendation 257 has been implemented through the development of various funding programs such as Indigenous Health Scholarships and ABSTUDY, which are designed to facilitate the entry into and completion of health education in tertiary institutions.*

In response to Recommendation 257, the **New South Wales** Government developed the *Aboriginal Community Education – Health initiative* which provided Aboriginal people with training in preventative health. The Aboriginal Education Unit also developed a number of courses and helped to prepare Aboriginal students for higher education through the provision of mentoring services. Currently, NSW offers the *Puggy Hunter Memorial Scholarship Scheme* which provides \$15,000 per annum to Aboriginal people who undertake an entry-level course in a health discipline at an Australian educational institution. In addition, the Justice Health and Forensic Mental Health network have employed two Aboriginal cadet nurses.

● *New South Wales has addressed Recommendation 257 by developing a range of initiatives designed to encourage Aboriginal entry into and completion of health service training, such as mentoring, cadetship schemes, courses, and scholarships.*


The **Victorian** Department of Health has recently funded the Victorian Aboriginal Community Controlled Health Organisation Education and Training Unit to increase the number of Aboriginal and Torres Strait Islander people training in primary health.

● *Victoria has addressed Recommendation 257 by developing programs for Aboriginal and Torres Strait Islander persons to enter tertiary health training.*

The **Queensland** Government introduced bridging courses as part of university education from which graduates could move into other health disciplines. Additionally, Queensland Health provides vocational training to Aboriginal and Torres Strait Islander people in the health sector which can either be full-time or 1 day per week during school. These placements include 12 weeks paid employment to health, public health, oral health, nursing or midwifery trainees who combine full-time study with on-the-job work experience to gain professional qualifications and skill development.

● *Queensland has addressed Recommendation 257 by developing programs and pathways for Aboriginal and Torres Strait Islander persons to enter the health sector, such as bridging courses, vocational training, and work placements.*

The **South Australian** Government established a number of higher education pathways for Aboriginal and Torres Strait Islander students to transition into health services. Currently, the *South Australian Health Aboriginal Health Scholarship Program* supports Aboriginal and Torres Strait Islander students enrolled in health-related education courses by providing scholarships of up to \$5,000 per year.

 *South Australia has addressed Recommendation 257 by developing pathways for Aboriginal and Torres Strait Islander students to transition into the health sector, including the South Australian Health Aboriginal Health Scholarship.*


In **Western Australia**, the Government consulted with higher education providers, Aboriginal Health Workers, Health Regions Executive and Unions to identify the competencies required by Aboriginal and Torres Strait Islander health workers, and to develop pathways from education into health services careers. In 1994, the Western Australian Industrial Relations Committee approved award amendments which introduced new employment paths and career options for Aboriginal and Torres Strait Islander health workers. Currently, Western Australia Health offers financial assistance, scholarships, fellowships and grants to Aboriginal and Torres Strait Islander students who are studying health-related subjects.

The Aboriginal Health Access and Support Program also provides funding for Western Australian Universities and Aboriginal Registered Training Organisations to increase the number of Aboriginal and Torres Strait Islander students who gain qualifications in health-related fields.

Traineeships and cadetships have also been implemented as a pathway into employment, and as a strategy to assist Aboriginal and Torres Strait Islander students to gain experience and work-ready skills conducive to gaining employment in the WA health system. Since 2014, there have been 21 Aboriginal and Torres Strait Islander cadets in a range of health disciplines. Trainees are also employed across the health service providers.

 *Western Australia has addressed Recommendation 257 by developing pathways for Aboriginal and Torres Strait Islander students to transition into the health sector*

The **Tasmanian** Government has collaborated closely with higher education providers, who hold a number of university open days for Aboriginal and Torres Strait Islander communities interested in studying in a health-related discipline. More recently, the *Ida West Aboriginal Health Scholarship* was established to address the under-representation of Aboriginal and Torres Strait Islander people in health services. In addition, the Department of Health and Human Services has provided funding to the Tasmanian Aboriginal Corporation for Aboriginal Health Worker Training with a focus on sexual and reproductive health.

 *Tasmania has partially completed Recommendation 257 as it has taken steps towards encouraging Aboriginal and Torres Strait Islander training in the health sector but has not expressly addressed the provision of broader initiatives in their response.*

The **Northern Territory's** Batchelor College expanded their offering to include a TAFE Certificate and Higher Education Associate Diploma course in health studies. This offered Aboriginal and Torres Strait Islander students the opportunity to expand their skillset and to undertake education in this area. The *Batchelor Institute of Indigenous Tertiary Education Act 1999* (NT) was established for the tertiary education of Aboriginal and Torres Strait Islander people and the provision of educational training and programs across health services.


Under the Indigenous Cadetship Support Program, NT Health cadets have been supported to undertake work placements every year as part of the program. In addition, NT Health implemented the Special Measures Plan 'Priority Consideration for Aboriginal Applicants' in 2015, which gives preference to Aboriginal and Torres Strait Islander applicants for employment vacancies.

 *The Northern Territory has addressed Recommendation 257 by developing pathways and programs for Aboriginal and Torres Strait Islander students to transition into the health sector through Batchelor College and the Indigenous Cadetship Support Program.*

The **Australian Capital Territory** provides training activities for Aboriginal and Torres Strait Islander health workers. Additionally, the ACT offer in conjunction with NSW the *Puggy Hunter Memorial Scholarship Scheme* to support Aboriginal and Torres Strait Islander people studying in a health-related discipline.

ACT Health continues to provide employment pathways for Aboriginal and Torres Strait Islander people, including the Aboriginal and Torres Strait Islander Traineeship Program. As of 30 June 2018 ACT Health will have 26 Aboriginal and Torres Strait Islander identified positions.

All ACT Health position advertisements specifically include alignment to core values of cultural diversity and inclusion through use of the following statement "ACT Health is committed to building a culturally diverse workforce and an inclusive workplace. As part of this commitment we strongly encourage people from an Aboriginal and/or Torres Strait Islander background to apply for all jobs".

 *The Australian Capital Territory has mostly implemented Recommendation 257 by implementing training activities for Aboriginal and Torres Strait Islander health workers and introducing an associated scholarship scheme but has not provided further information regarding these activities.*

Additional commentary

The **Commonwealth** DOH noted the development of the Aboriginal and Torres Strait Islander Health Curriculum Framework to minimise conflict and help ensure "cultural sensitivity" is embedded in health training courses. The Framework supports higher education providers to implement Aboriginal and Torres Strait Islander health curricula across their health professional training programs

Recommendation 258

That in areas where Aboriginal people are concentrated and the state or territory governments provide or intend to provide a particular service or services to Aboriginal people, the governments invite community-controlled Aboriginal Health Services to consider negotiating contracts for the provision of the services to Aboriginal people and also, where appropriate, to non-Aboriginal people.

Background information


Recommendation 258 recognises that, where possible, Aboriginal and Torres Strait Islander communities and community-controlled health services should be contracted to deliver health services and to promote Aboriginal and Torres Strait Islander self-management.

Responsibility

The recommendation is the responsibility of State and Territory Governments. Contract negotiation for the provision of health services to Aboriginal and Torres Strait Islander people is the responsibility of States and Territories.

Key actions taken and status of implementation


In 1994, the **New South Wales** Government provided funding to ACCHOs under the *Aboriginal Non-Government Organisation Grants Program* to facilitate the provision of primary health services to Aboriginal people. In 2017/18, \$24.8 million was allocated to 41 ACCHOs to deliver health services across 44 sites. Funding supports a range of Aboriginal health programs, including chronic care, oral health, domestic and family violence, mental health, preventive health care, and drug and alcohol misuse. The NSW Government works in close partnership with Aboriginal Health and the Medical Resource Council of NSW in addressing Recommendation 258.

 *New South Wales has fulfilled Recommendation 258 by promoting and funding the participation of Aboriginal ACCHOs in service delivery, with the NSW Government working closely with the Aboriginal Health and the Medical Resource Council of NSW to respond to this recommendation.*


The **Victorian** Government sought to address Recommendation 258 through their cooperation with the Commonwealth as part of the National Aboriginal Health Strategy. The *Koolin Balit* notes that Aboriginal Community Controlled Health Organisations have emerged as important providers of health services to Aboriginal and Torres Strait Islander people. VACCHO, as the peak body representing

ACCHOs in Victoria, currently administers a number of programs and services, such as the *Improving Care for Aboriginal Patients Program*.


The Victorian Government has noted that as a key component to delivering the new Victorian Aboriginal health, wellbeing and safety strategic plan 2017-2027, Korin Korin Balit-Djak, the Victorian Department of Health and Human Services has committed to prioritising funding to Aboriginal and Torres Strait Islander organisations to deliver services to Aboriginal and Torres Strait Islander people and communities. A phased approach to implementation of the policy across the department's funding streams will occur over the next two years. The new policy aims to significantly assist Aboriginal Health Services negotiate contracts for the provision of services to Aboriginal and Torres Strait Islander people.

 *Victoria has completed Recommendation 258 by engaging Aboriginal Community Controlled Health Organisations as providers of services.*

In **Queensland**, procurement and contracting strategies specify funding preference to Aboriginal and Torres Strait Islander owned and run enterprises, specifically community-controlled health services, for services provided to Aboriginal and Torres Strait Islander people, which are funded through the Making Tracks Strategy. This is consistent with the Council of Australian Government Indigenous Reform Agenda.

 *Queensland has fulfilled Recommendation 258 by giving procurement and contracting preference to Aboriginal and Torres Strait Islander owned and run health enterprises, in line with the Council of Australian Government Indigenous Reform Agenda.*

At the time of RCIADIC, existing **South Australian** practice was for primary health care services that were specifically for Aboriginal and Torres Strait Islander people to be delivered by community-controlled Aboriginal Health Services. Currently, the AHCSA works in partnership with both the Commonwealth and South Australian Governments to improve health service delivery and promote the participation of Aboriginal Community Controlled Health Services (ACCHS). SA Health implements this through the administration of a peak funding agreement between SA Health and the AHCSA.

 *South Australia has fulfilled Recommendation 258 by promoting the participation of Aboriginal ACCHSs in service delivery.*


In their initial response to Recommendation 258, the **Western Australian** Government increased their grant funding provision to Aboriginal and Torres Strait Islander people and organisations for the provision of health services.

Since this time, The Western Australian Government has implemented 'Footprints to Better Health' which sees a high proportion of contracts awarded to Aboriginal Community Controlled Health Services. Additionally, the Western Australian Country Health Service's Population Health unit has engaged and funded ten Aboriginal Community Controlled Health Services to deliver a range of child and school health services in Aboriginal and Torres Strait Islander communities across the state. This has resulted in vulnerable children receiving culturally appropriate and locally based services tailored to need.


 *Western Australia has implemented Recommendation 258 by promoting the participation of Aboriginal Community Controlled Health Services in service delivery, especially in Aboriginal and Torres Strait Islander communities.*

In **Tasmania**, the Tasmanian Aboriginal Corporation is Tasmania's only ACCHO affiliated the NACCHO and is represented on the Tasmanian Aboriginal Health Forum, alongside the Department of Health and Human Services and the Australian Government, with Primary Health Tasmania as an observer. The Forum was established as a mechanism to deliver on the aims of the *Agreement on Aboriginal and Torres Strait Islander Health and Wellbeing 2016-2020*. The Department of Health and Human Services also consults the Tasmanian Aboriginal and Torres Strait Islander community through the Tasmanian Aboriginal Health Reference Group, which comprises the CEOs of a variety of Aboriginal

and Torres Strait Islander organisations, including the Cape Barren Island Aboriginal Association and the Flinders Island Aboriginal Association.


 *Tasmania has partially fulfilled Recommendation 258. While it has indicated that the Tasmanian Aboriginal Corporation has been involved as part of the Tasmanian Aboriginal Health Forum, there is no evidence that it has been involved in negotiating contracts for the provision of services.*

The **Northern Territory** Government noted in its 1993-94 implementation report that the Department of Health and Community Services contributed to the development and implementation of service agreements with Aboriginal and Torres Strait Islander communities to provide their own health services. The NT Department of Health provides significant funding for a range of ACCHSs to provide services.

 *The Northern Territory has fulfilled Recommendation 258 by noting that the Department of Health and Community Services has implemented service agreements with Aboriginal and Torres Strait Islander communities to deliver their own health services, and through funding ACCHSs.*

In the **Australian Capital Territory** in 1993-94, Aboriginal and Torres Strait Islander communities received funding under the National Aboriginal Health Strategy for coordinators, drug and alcohol workers, and mental health workers. Additionally, the ACT Health Department provided funding for a female Human Immunodeficiency Virus (HIV)/ Acquired Immunodeficiency Syndrome (AIDS) educator for the Canberra region.

Although the ACT does not have an area with a high concentration of Aboriginal and Torres Strait Islander people, the ACT Government has a service funding agreement with Winnunga (the ACT's only Aboriginal Community Controlled Health Organisation (ACCHO)) which provides funding for a broad range of services. In addition, ACT Health also provides funding to Winnunga for policy contributions and community events, and provides funding to Gugan Gulwan Youth Aboriginal Corporation to provide youth outreach to Aboriginal and Torres Strait Islander young people.

 *The Australian Capital Territory has completed Recommendation 258 by engaging community-controlled Aboriginal Health Services to provide services to Aboriginal and Torres Strait Islander people.*

Recommendation 259

That Aboriginal community-controlled health services be resourced to meet a broad range of functions, beyond simply the provision of medical and nursing care, including the promotion of good health, the prevention of disease, environmental improvement and the improvement of social welfare services for Aboriginal people.

Background information


The RCIADIC Report identified the effectiveness of AHSs (now called ACCHOs) in improving the health of the Aboriginal and Torres Strait Islander population as well as in assisting the community to regain power to shape their own lives. However, the RCIADIC Report also noted that there exists a substantial level of unmet demand for new and expanded AHSs, particularly in remote areas.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that all levels of government ensure that ACCHOs are adequately resourced.


Key actions taken and status of implementation

The **Commonwealth** IAHP provides funding to Aboriginal and Torres Strait Islander people to allow access to effective high quality health care services across Australia. The IAHP aims to provide comprehensive, culturally appropriate primary health care for Aboriginal and Torres Strait Islander people.

 *Recommendation 259 has been implemented by the Commonwealth through the introduction of the IAHP.*


All States and Territories were signatories to the *National Aboriginal Health Strategy* which included as priorities that services for Aboriginal and Torres Strait Islander people be run by Aboriginal and Torres Strait Islander people, and increased health promotion and preventative health for Aboriginal and Torres Strait Islander people.

In their 1992-93 implementation report, the **New South Wales** Government noted that the NSW Health Department supported the provision of primary health services for Aboriginal people through Aboriginal community-controlled health services. This included funding of \$3.5 million in 1992-93 for 24 Aboriginal community-controlled health services. As mentioned in its response to Recommendation 258, New South Wales has committed \$24.8 million to ACCHOs to deliver a variety of Aboriginal health programs, including chronic care, oral health, domestic and family violence, mental health, preventive health care, and drug and alcohol misuse.


 *New South Wales has fulfilled Recommendation 259 by providing ACCHSs with sufficient funding to deliver a range of services beyond medical care, including assistance for domestic and family violence and preventative health care.*

The **Victorian** Department of Health announced in 2009 that it would provide \$19 million per year to Aboriginal Community Controlled Health Organisations to provide health services in Victoria.


The Victorian Government has noted that a \$7.1 million funding package for Aboriginal and Torres Strait Islander community-controlled organisations to provide corporate infrastructure improvements such as minor capital works, equipment and technology has been recently announced. This funding package aims to improve the sustainability of Aboriginal and Torres Strait Islander community controlled organisations and funds infrastructure improvements such as minor capital works, new equipment and technology. This funding package is also aimed at support the delivery of social welfare services to Aboriginal and Torres Strait Islander communities through Aboriginal and Torres Strait Islander community-controlled organisations in Victoria.

 *While Victoria has historically provided funding to ACCHOs, Recommendation 259 is mostly complete as evidence of continued funding was not identified.*

The **Queensland** Government contributes funding for the Queensland Aboriginal and Islander Health Council which controls 26 community-controlled health services and other associated members. The Council promotes appropriate healthcare through initiatives that seek to address access to education, suicide prevention, professional and cultural mentoring, healthy eating, anti-smoking and alcohol and other drug policies. Aboriginal and Community Controlled Health Services are funded to deliver a range of comprehensive primary health services. Meanwhile, Queensland Health has transitioned Queensland Government funded primary health care services to community control arrangements in a number of communities in Far North Queensland.


 *Queensland has fulfilled Recommendation 259 by providing Aboriginal and Community Controlled Health Services with sufficient funding to deliver a variety of services, including access to education and healthy eating.*

In 1993, the **South Australian** Government increased funding of Aboriginal and Torres Strait Islander health and substance abuse services by \$1.5 million per year under the *National Aboriginal Health Strategy*. SA Health provides funding of ACCHSs through the administration of a peak funding agreement between SA Health and the AHCSA.

 *South Australia has partially fulfilled Recommendation 259 by providing ACCHs with funding through a peak funding agreement with the AHCSA and directing money in particular towards health and substance abuse services. However, they have not addressed the further provision of other services more generally in their response.*


In 1993-94, the **Western Australia** Department of Health provided funding for five Aboriginal and Torres Strait Islander community organisations to operate Aboriginal Health Promotion Units. The activities of these units spanned across environmental health, anti-smoking campaigns, alcohol programs and women's and men's health programs. ACCHOs in Western Australia also receive representation by the Aboriginal Health Council of Western Australia.

The Western Australian Government has noted that it also currently provides funding to three Aboriginal Community Controlled Health Services, as Registered Training Organisations, to deliver the Access and Support program. The key aims of this program are to increase the number of Aboriginal and Torres Strait Islander people who attain qualifications, Aboriginal and Torres Strait Islander student awareness of employment opportunities and access to health services by Aboriginal and Torres Strait Islander communities, families and individuals through a skilled Aboriginal and Torres Strait Islander health workforce.


 *Western Australia has implemented Recommendation 259 by engaging Aboriginal community controlled health services to meet a broad range of functions, including a range of health services in addition to social welfare services.*

The **Tasmanian** Aboriginal Centre was established to provide primary health services for all Aboriginal and Torres Strait Islander people living in Tasmania. Additionally, the 'Number 34 Aboriginal Health Service' is a cooperative effort between the Tasmania Medicare Local and the Six Rivers Aboriginal Corporation which provides health services for Northwestern Tasmania.


Currently, the Tasmanian Aboriginal Corporation delivers a comprehensive primary health care service and secondary health services for Aboriginal and Torres Strait Islander people living in Tasmania. There are seven additional Aboriginal organisations across Tasmania that deliver health services and programs for Aboriginal people.

 *Tasmania has partially fulfilled Recommendation 259 as the Tasmanian Aboriginal Corporation delivers primary and secondary health services for Aboriginal and Torres Strait Islander Tasmanians. However, there has been no further evidence of the specific nature of these services and programs.*

The **Northern Territory** has taken action to address Recommendation 259 by funding ACCHOs for preventative and curative health care. In 1993-94, these funds totalled \$6 million across 21 programs. The Northern Territory Government also provided funds for the provision of other health services. More recently, funding is provided as part of the *Stronger Futures in the Northern Territory National Partnership* which seeks to improve Aboriginal and Torres Strait Islander health outcomes, and through the funding of the Aboriginal Medical Services Alliance of the NT.

 *The Northern Territory has fulfilled Recommendation 259 by providing ACCHSs with funding through the Stronger Futures in the Northern Territory National Partnership and through the Aboriginal Medical Services Alliance of the NT, to deliver preventative and curative health care.*

The Australian Capital Territory currently engages Winnunga, the ACT's only Aboriginal community-controlled health organisation to provide services including midwifery, hearing health, dental health, correctional outreach, mental health and wellbeing, alcohol and other drug harm reduction information and education, needle and syringe programs, alcohol and other drug support and case management, and smoking cessation.

 *The Australian Capital Territory has implemented Recommendation 259 by engaging Winnunga Aboriginal community-controlled health organisation to provide a wide range of services.*

Additional commentary

The **Commonwealth** DOH noted that the funding for comprehensive primary health care gives IAHP the flexibility to determine the needs of their community, develop activities to meet these needs and employ appropriately trained staff and upskill staff to meet their organisation's priorities.

Recommendation 260

That:

- a. *Funding bodies should facilitate program evaluation of Aboriginal community-controlled health services, not with the aim of making decisions on levels of funding, but with the aim of assisting the services to operate most effectively and efficiently;*
- b. *Representatives of the Aboriginal community should be invited to participate in the control of the evaluation research activity; and*
- c. *Performance indicators should be drawn up co-operatively between the managers of the services and the funding bodies.*

Background information

The RCIADIC Report identified clear gaps in the evaluation process in determining the efficiency and effectiveness of AHSs across Australia. Prior attempts by the former Department of Aboriginal Affairs, which involved inappropriate performance indicators were deemed as having aggravated existing operation issues within AHSs.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that funding bodies at all levels of government ensure that adequate resources are allocated to allow appropriate evaluative programs to be developed and used.

Key actions taken and status of implementation


The following actions pertain to the **Commonwealth** Government's response to Recommendation 260. A 2015 report by the Aboriginal Health and Medical Research Council noted that "there are important gaps in the [ACCHO] evidence base, including a lack of specific studies on the [ACCHO] primary health care model as a whole and its impact in some health areas" (p. 4).

The *Remote Indigenous Services Act 2009* established the role of Coordinator-General for Remote Indigenous Services, which is responsible for monitoring, assessing and driving the progress of Closing the Gap programs as well as of the development and delivery of services and facilities by the Commonwealth. Funding for this role ceased in late 2013. PM&C released a report in 2014 which concluded that there has been little Commonwealth evaluation of non-remote health services.

The NIRA includes measures pertaining to public accountability and outcomes, while the COAG Reform Council (CRC) independently analyses and reports annually on progress in each jurisdiction.

DOH noted that where possible and as appropriate, co-design approaches may be used with Aboriginal and Torres Strait Islander communities and consumers. In regard to ongoing evaluative monitoring, a continuing aim of the National Key Performance Indicators for Aboriginal and Torres Strait Islander primary health care is the commitment to building a 'virtuous cycle' in data collection, analysis, interpretation and management—one that tries to align the interests of all players from consumers and clinicians through to local boards, regional bodies, and government.


It is also noted that significant progress has also been made by the Commonwealth, in relation to improving those performance indicators which are measured. In the 2016 Aboriginal Community Controlled Health Services Report Card, compiled by the Australian Institute of Health and Welfare, the Commonwealth is listed as improving 10 of 16 KPIs for process-of-care since data were first collected in 2012. The number of Aboriginal Community Controlled Health Services clients have also increased by 8%, and the number of episodes of care provided to clients have risen by 19%.

 *While it is not reasonable to expect that every ACCHO be evaluated, there are still significant gaps in the ACCHO evidence base. As such, Recommendation 260 is partially complete.*

All States and Territories are parties to the *National Indigenous Reform Agreement* which provides for accountability and outcome measures, collaboration between senior officials, and the alignment of Aboriginal and Torres Strait Islander reporting evaluations. Progress has been continually monitored


in each State and Territory through appointed COAG Reform Councils. However, a 2015 report by the Aboriginal Health and Medical Research Council noted that “there are important gaps in the [ACCHO] evidence base, including a lack of specific studies on the [ACCHO] primary health care model as a whole and its impact in some health areas” (p. 4).

In **New South Wales**, performance agreements were developed for the funding of health services and non-government organisations. The NSW Government also conducted a review of the efficiency and effectiveness of the *Aboriginal Non-Government Organisation Program* under which ACCHOs were funded. Currently, funding criteria for non-government partners of NSW Health are set out in Operational Guidelines. Contracts with ACCHOs and related organisations are generally renewed on a three-year basis in line with compliance with the operational guidelines and reporting on key performance indicators.


 *NSW has partially completed Recommendation 260 through its support for Key Performance Indicator (KPI) data reporting by ACCHOs against funded Aboriginal Health Programs. However, no evidence was provided that KPIs are developed collaboratively with Aboriginal organisations or that the Aboriginal community is invited to participate in the control of the evaluation research activity.*

The **Victorian** Government’s *2014-15 Victorian Health Policy and Funding Guidelines* provide that state-funded primary health services and ACCHOs have annual and quarterly reporting requirements covering Aboriginal and Torres Strait Islander health issues.


The Victorian Government has noted that the development of an Aboriginal and Torres Strait Islander evaluation and research framework is a commitment under Korin Korin Balit-Djak, the Victorian Government’s Aboriginal and Torres Strait Islander health wellbeing and safety strategic plan 2017-2027. The development of the framework and outcome indicators will be Aboriginal and Torres Strait Islander-led and informed by the Aboriginal Strategic Governance forum and Divisional Aboriginal Governance Committees via the Aboriginal and Torres Strait Islander governance and accountability framework.

 *Victoria has taken steps to address Recommendation 260, but has only partially met the requirements.*

The **Queensland** Government stated in their 1996-97 implementation report that the evaluation of ACCHOs is the responsibility of the Commonwealth Department of Health and Family Services as the main funding body. The Queensland Government works in partnership with the Aboriginal and Torres Strait Islander community-controlled sector to develop key performance indicators for funded primary health care initiatives. The Queensland Government has noted that Queensland Health has processes embedded within its engagement practices to allow for two-way feedback with Aboriginal Community Controlled Health Organisations


 *Queensland has taken steps to address Recommendation 260 by developing key performance indicators in collaboration with Aboriginal and Torres Strait Islander communities, but has only partially met the requirements.*

In **South Australia**, the Aboriginal Health Council developed a strategic plan for Aboriginal and Torres Strait Islander health. This included a plan to bring funding for evaluations into line with Recommendation 260. More recently, the *2005-10 Framework Agreement* provided for funding to improve Aboriginal and Torres Strait Islander identification and data collection. Further detail on the Framework Agreement was not able to be identified. Funding agreements between SA Health and the AHCSA include mutually agreed performance measurements and reporting requirements while Aboriginal and Torres Strait Islander people are engaged by SA Health in the planning and delivery of health services in a variety of different capacities.

 *South Australia has mostly implemented Recommendation 260 by ensuring that funding agreements include mutually agreed performance measurements and reporting requirements, and by committing to improved data collection for Aboriginal and Torres Strait Islander health but has not addressed part (b) of the recommendation.*

The **Western Australia** Department of Health cooperated with Aboriginal Medical Services to develop partnership arrangements that promote the delivery of coordinated, efficient and culturally appropriate service provision to Aboriginal and Torres Strait Islander people.

The Western Australian Department of Health has implemented an evaluation framework in collaboration with service providers. Aboriginal Community Controlled Health Services were consulted in the development of the evaluation framework. An external review of the effectiveness of State-funded Aboriginal health programs was undertaken in 2014. The review focused on the measurement and achievement of clinical health outcomes, assessing that 91.3 per cent of the projects delivered good, excellent or outstanding value for money.

 *Western Australia has implemented Recommendation 260 through creating a mutually agreed evaluation framework. Performance measurement has also focused on improvement of efficiency and effectiveness.*

The **Tasmanian** Department of Health and Human Services regularly consults with the Tasmanian Aboriginal Corporation and the Tasmanian Aboriginal Health Reference Group about setting priorities and programs for improving Aboriginal and Torres Strait Islander health and wellbeing in Tasmania. The Department of Health and Human Services has also provided information about results-based accountability to the Tasmanian Aboriginal Health Reference Group and has offered to provide further support in the development of program evaluation frameworks.

 *Tasmania has taken steps to address Recommendation 260 by providing the Tasmanian Aboriginal Health Reference Group with support in the development of evaluation frameworks but has not addressed key elements of this recommendation.*

In the **Northern Territory**, funds are distributed through negotiated service agreements and grant agreements and these contain monitoring and evaluation procedures. Within each agreement, ACCHOs are responsible for the reporting and management of the evaluation procedure along negotiated terms. Negotiated performance indicators are part of any service agreement.


More recently, the Northern Territory Aboriginal Health Forum, comprising the Department of Health, the Aboriginal Medical Services Alliance of the NT, the NT Primary Health Network and the Commonwealth Department of Health, have worked to develop and review the NT Aboriginal Health Key Performance Indicators.

 *The Northern Territory has fulfilled Recommendation 260 by meeting all requirements of the recommendation.*

The **Australian Capital Territory** allocates funding via grant and service agreements for activities including monitoring and evaluation procedures and the development of negotiated performance indicators. ACCHOs are responsible for the reporting and management of the evaluation procedure.

ACT Health regularly meet with Winnunga Aboriginal Community Controlled Health Organisation to discuss performance, reporting and issues affecting the health of the Aboriginal and Torres Strait Islander community.

The ACT Government also has in place specific agreements with the local Aboriginal and Torres Strait Islander community regarding health outcomes, and a tripartite agreement with the Commonwealth and Winnunga in relation to health outcomes in the ACT for this community.

 *The Australian Capital Territory has taken steps to address Recommendation 260 by allocating funding in grant and service agreements for monitoring and evaluation activities, but has only partially met the requirements. There was no evidence provided that the Aboriginal and Torres Strait Islander community is invited to participate in the control of the evaluation research activity and that evaluation is conducted to improve effectiveness / efficiency rather than to determine funding.*

Recommendation 261

That the use of Aboriginal hospital liaison officers be expanded in hospitals which serve Aboriginal patients and that they be seen and used as respected members of the therapeutic team.

Background information

The RCIADIC found that greater effort was required in formalising the roles of Aboriginal hospital liaison officers and in recognising the contribution the impact they have on Aboriginal and Torres Strait Islander health.


Responsibility

The recommendation is the responsibility of the State and Territory Governments. Aboriginal Hospital Liaison Officers are used in many hospitals across Australia, with States and Territories having responsibility over employment practices in hospitals.


Key actions taken and status of implementation

The **New South Wales** Government initially responded to Recommendation 261 through the provision of seed funding for the employment of 19 Aboriginal hospital liaison officers in 1992-93. From 1994, hospitals took over the responsibility for this funding.


In 2014, NSW Health published the Aboriginal Health Worker Guidelines, which identify four categories of Aboriginal Health Workers. Over 20 workshops have been conducted in every LHD to further promote the Aboriginal Health Practitioner role and each LHD has developed a plan to support Aboriginal Health Worker roles. In the last three years, NSW Health has run two two-day "Stepping Up Forums" to promote Aboriginal workforce participation, with focus on promoting better understanding of Aboriginal Health Worker roles.

 *New South Wales has implemented Recommendation 261 by expanding the role of Aboriginal Hospital Liaison Officer (AHLOs) in the health system and developing associated guidelines and training to support their role.*

In **Victoria**, guidelines promoting an increased presence of Aboriginal hospital liaison officers and their corresponding treatment in hospitals were drafted in 1993 and implemented in 1994. Currently, the role of AHLOs is supported in the Career Development Action Plan and VACCHO supports AHLOs in their roles. Additionally, the *Improving Care for Aboriginal and Torres Strait Islander Patients* program (2004) was established to build upon the role of AHLOs in recognition that Aboriginal and Torres Strait Islander people experience poorer health and lower life expectancy than the general community.

 *Victoria has implemented Recommendation 261 by expanding the role of AHLOs in the health system.*

From 1993, **Queensland** increased the employment of AHLOs in hospitals with the intention that there would be AHLOs in all hospitals providing services to significant numbers of Aboriginal and Torres Strait Islander people, as well as in base hospitals and major referral hospitals. More recently, the Queensland Government recognised in the *Queensland Cultural Capability Framework 2010-33* that respect for the role of AHLOs should be a key outcome. Currently, Indigenous Hospital Liaison Officers are employed in most hospital and health services across Queensland, particularly in regions with a large Aboriginal and Torres Strait Islander population.

 *Queensland has implemented Recommendation 261 by increasing the employment of ALHOs in hospitals and recognising their contribution in the Queensland Cultural Capability Framework 2010-33.*

In 1994, the **South Australian** Government reported that AHLOs were provided to four metropolitan and 14 country hospitals. Currently, AHLOs are employed across health service sites in South Australia. The Aboriginal Health Council of South Australia also provides advocacy, support and networking opportunities through a workforce development officer.


 *South Australia has implemented Recommendation 261 by employing ALHOs across health service sites in South Australia.*

In 1994, the **Western Australia** Department of Health collated and presented information on the numbers and placement of AHLOs, and provided program support to contribute towards increased effectiveness, training, career opportunities and future directions. The Western Australia Government implemented the Aboriginal Liaison Program and provided funding of \$20.58 million. Current practice with regard to the Aboriginal liaison program is informed through a collaborative process between the Aboriginal Health Council of WA and the WA Country Health Service.


The Western Australian Government has indicated that a key strategy in the Government's provision of safe, quality and timely health services to Aboriginal and Torres Strait Islander people in regional and remote Western Australia is a state-wide implementation of the Aboriginal Liaison Program. The Western Australian Government also noted that Health Service Providers employ Aboriginal Health Liaison Officers across multiple sites and intend to increase their use.

 *Western Australia has implemented Recommendation 261 by employing ALHOs across the state.*

The **Tasmanian** Government's 1993 implementation report noted that the recommendation would be considered as part of the general hospital staff profile. Currently, Aboriginal Health Liaison Officers work in two of Tasmania's public hospitals in acute health services.

 *Tasmania has partially completed Recommendation 261 by employing AHLOs in two of Tasmania's public hospitals in acute health services. However, there has been no evidence that they have expanded the use of AHLOs to the rest of Tasmania's four public hospitals.*

The **Northern Territory** Government supported Recommendation 261 and recognised the integral role of AHLOs to health teams. The Northern Territory Government's 1993-94 implementation report noted that AHLOs were employed at Royal Darwin, in Katherine, in Alice Springs, in Tenant Creek, and in Gove. Currently, Aboriginal and Torres Strait Islander liaison workers and Aboriginal and Torres Strait Islander Health Practitioners are employed in hospitals and health services across the NT.

 *The Northern Territory has implemented Recommendation 261 by expanding the role of AHLOs across the NT, including the employment of Aboriginal and Torres Strait Islander liaison workers and Health Practitioners in hospitals and health services.*

The **Australian Capital Territory Government** supported the employment of an AHLO in 1994 as part of the National Aboriginal Health Strategy. Currently, ACT Health Aboriginal and Torres Strait Islander Liaison Officers work across all areas of the health system to ensure Aboriginal and Torres Strait Islander people from the ACT and Regional NSW can access mainstream healthcare services. They can provide emotional, social and cultural support to patients and their families, liaison services for patients and their families and information about hospital services and the linkage between the hospital and other Aboriginal and Torres Strait Islander community resources.

The Aboriginal and Torres Strait Islander Liaison Officers also work closely across ACT Health to provide cultural support to Aboriginal and Torres Strait Islander patients after hours.

 *The Australian Capital Territory has implemented Recommendation 261 by expanding the role of AHLOs across all areas of the Australian Capital Territory Health System.*

Recommendation 262

That the States recognise the contributions of Aboriginal Health Workers and in so doing review the Northern Territory's experience of the establishment of appropriate career structures and the registration of them.

Background information

The RCIADIC found that greater effort was required in formalising the roles of Aboriginal Hospital Liaison Officers and in recognising the impact they have on Aboriginal and Torres Strait Islander health. This includes the establishment of appropriate career structures, and reviewing their registration.


Responsibility

This recommendation is the responsibility of the State and Territory Governments. The States and Territories have responsibility over the delivery of hospital services.


Key actions taken and status of implementation

In 1994, the **New South Wales** Department of Health conducted a review of the role, function and career structures of Aboriginal Health Education Officers. The report from this review made a series of recommendations on the career structures and registration of Aboriginal Health Education Officers, which have since been implemented. A further review, the *NSW Aboriginal Health Worker Project*, was conducted from 2012 to further develop an understanding of the role of Aboriginal health workers in NSW.

Currently, NSW Health has introduced four categories of Aboriginal Health Workers, including the Aboriginal Health Practitioner, whose role is to provide direct clinical services to the Aboriginal community. NSW Health has issued a new award that provides a remuneration scale for Aboriginal Health Professionals and updated pay scales for Aboriginal Health Workers. NSW Health LHDs currently employ seven Aboriginal Health Practitioners and further roles are planned. LHDs also employ 376 Aboriginal Health Workers.

 *New South Wales has mostly implemented Recommendation 262 by recognising the contributions of Aboriginal Health Workers and reviewing the establishment of appropriate career structures as part of the NSW Aboriginal Health Worker Project, but there is no evidence that they have reviewed the NT Model.*

Under the direction of Koori Health in 1993, the **Victorian** Government developed a Koori Health Worker Course and conducted a review of the role and effectiveness of the Victoria Tripartite Council.


 *Victoria has taken steps to address Recommendation 262, but has only partially addressed the recommendation as it does not appear to have reviewed the Northern Territory's experience.*

The **Queensland** Government updated the Industrial Award for Indigenous Health Workers in 1993, establishing greater clarity and flexibility in career progression pathways. A number of other Industrial Awards were updated to incorporate the intent of Recommendation 262, based on a process of community consultation. In 1996-97, 146 inspections were held across Queensland with the Queensland Industrial Relations Commission, Queensland Health and relevant unions, to develop a health workers career and wage structure for Aboriginal and Torres Strait Islander people.

In 2011, the Queensland Government reviewed the Aboriginal and Torres Strait Islander Health Worker Career Structure. Since this time, the career and industrial award structure for Aboriginal and Torres Strait Islander Health Workers in the Queensland health system have been updated. This update relied upon robust consultation and in updating the career and award structure, the Queensland Government was cognisant of the NT employment arrangements and territory based registration. However, Queensland identified that a tailored approach was required for Queensland.

Queensland continues to periodically review the career structure of Aboriginal and Torres Strait Islander Health Worker to ensure that they fit with contemporary service delivery. Queensland also supported the inclusion of Aboriginal and Torres Strait Islander Health Practitioners in the National Registration and Accreditation Scheme for the health professions in line with the NT registration arrangements.


A proposed review will also be undertaken in 2018 to modernise the structure with consideration to broadening qualifications and introducing the Aboriginal and Torres Strait Islander Health Practitioner workforce.

 *Queensland has implemented Recommendation 262 by developing a health workers career and wage structure for Aboriginal and Torres Strait Islander health workers, which has taken into account the NT Model.*

The **South Australian** Government recognises the valuable contributions of Aboriginal Health Workers employed in regional and metropolitan health units and has incorporated an appropriate


career structure for Aboriginal Health Workers. The SA Government oversaw implementation of this structure under the *Health Commission Act (SA)* in 1994.

More recently, the importance of retention for Aboriginal and Torres Strait Islander health workers has been recognised in policies including the *SA Aboriginal Health Care Plan 2010-16*, and the *SA Health Aboriginal Workforce Reform Strategy 2009-13*. SA Health has also undertaken the Aboriginal Health Practitioner Project, which sets out a structure and scope of practice for Aboriginal Health Practitioners and has been approved by the SA Health Portfolio Executive.


 *South Australia has mostly implemented Recommendation 262 by recognising the contributions of Aboriginal Health Workers and establishing an appropriate career structure for workers, including the Aboriginal Health Practitioner Project, but has not appeared to review the NT Model.*

The **Western Australia** Industrial Relations Commission approved award amendments in 1994 which facilitated the introduction of new career opportunities and paths for Aboriginal Health Workers employed by the Health Department.

In addition to the award amendments in 1994, the Western Australian Government has also implemented training programs for Aboriginal Health Workers in Western Australia, in which each worker receive the opportunity to gain a Certificate IV in Aboriginal and Torres Strait Islander Primary Health Care (Practice), making them eligible for registration as an Aboriginal Health Practitioner. The Western Australian Government has also noted that an Aboriginal Health Practitioner Pilot has commenced in the Kimberley, creating a career pathway for Aboriginal Health Workers. Currently, there are well-established career pathways for Aboriginal Health Workers and they are widely used in the WA health system.

 *Western Australia has mostly implemented Recommendation 262 by creating well-established and widely used career pathways for Aboriginal Health Workers in Western Australia. However, the Western Australian Government has not appeared to review the NT model.*

The **Tasmanian** Government developed and implemented an Aboriginal Health Workers Course in 1993, reflecting the Northern Territory model. Currently, the Tasmanian Aboriginal Centre provides training and coordination of Aboriginal and Torres Strait Islander health workers. As previously mentioned in response to Recommendation 253, Tasmania is currently developing the Tasmanian implementation plan for the Cultural Respect Framework.


 *Tasmania has implemented Recommendation 262 by reviewing the NT model and by recognising Aboriginal Health Workers through related training and coordination.*

In their 1993-94 implementation report, the **Northern Territory Government** noted that Recommendation 262 is only applicable to the other jurisdictions. However, in 2014, the NT Department of Health and the Aboriginal and Torres Strait Islander Community Controlled Health Sector endorsed and released the Aboriginal and Torres Strait Islander Health Practitioner Cultural Statement, which provides a formal statement of support for the important role that practitioners play in Closing the Gap for Health and Wellbeing of Aboriginal and Torres Strait Islander people.

 *The Northern Territory has fully addressed Recommendation 262.*

The 1993-94 implementation report noted that the **Australian Capital Territory** Government developed career pathway strategies for Aboriginal Health Workers, and Winnunga Nimmityjah formed an enterprise agreement in collaboration with an industrial relations consultant.

The Australian Capital Territory Government noted that ACT Health continues to provide employment pathways for Aboriginal and Torres Strait Islander people, including the Aboriginal and Torres Strait Islander Traineeship Program.

 *The Australian Capital Territory has partially implemented Recommendation 262 by recognising the contributions of Aboriginal Health Workers and developing relevant career pathways and enterprise agreements, but has not appeared to review the NT model.*

Recommendation 263

That where there is a high level of non-compliance by a range of Aboriginal patients with advice tendered to them by health professionals, the health professionals should examine their styles of operation with a view to checking whether those styles can be improved.

Background information

The RCIADIC Report identified instances where treatment outcomes were adversely affected by the reaction of health professionals in dealing with cases of non-compliance.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that all health professionals – including those funded through Commonwealth programs – be flexible in their styles of operation when dealing with cases of non-compliance.

Key actions taken and status of implementation

The **Commonwealth** has funded and implemented an extensive range of cultural sensitivity programs. One such example is the Closing the Gap NPAs which set out a number of strategies with the aim of improving the cultural sensitivity of health workers and the subsequent services provided to the Aboriginal and Torres Strait Islander population.


The DOH noted that in 2016 the Australian Health Ministers' Advisory Council launched the Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2016-2026: A National Approach to Building a Culturally Respectful Health System. This document commits both the Commonwealth and State and Territory governments to embed principles of cultural respect into their health systems, and it provides guidance to health services who seek to improve their cultural competence.

 *Recommendation 263 has been mostly implemented through delivery of extensive cross-cultural training programs. However, it does not appear that specific protocols have been put in place that require health professionals to evaluate their styles of operation in cases where there is a high level of non-compliance.*

All States and Territories are signatories to the *Closing the Gap NPAs* which set out a number of strategies with the aim of improving the cultural sensitivity of health workers and the subsequent services provided to the Aboriginal and Torres Strait Islander population.

In 1994-95, the **New South Wales** Centre for Education and Information on Drugs and Alcohol was responsible for the training of alcohol and other drug workers throughout NSW. The NSW Government worked in collaboration with the Centre for Education and Information on Drugs and Alcohol (CEIDA), TAFE NSW, and Drug Abuse Data to promote the improvement of training opportunities and styles of operation for Aboriginal health professionals.


Currently, the Health Education and Training Institute hosts an online module for the training program, "Aboriginal Culture – Respecting the Difference". This module is compulsory for all NSW Health staff to complete. "My Health Learning" records training completions and these data are available to the manager of each staff member.

 *New South Wales has partially implemented Recommendation 263 by implementing compulsory cultural awareness programs for new doctors and nurses, but has not addressed consideration of styles of operation in their response.*

In their 1993 implementation report, the **Victorian** Government noted that Recommendation 263 was to be addressed by the Department of Health and Community Services. In their 2005 implementation report, the Government advised that Aboriginal Hospital Liaison Officers are now involved in orientation and cultural awareness training programs for new doctors and nurses, to ensure advice is given in a culturally-appropriate manner.


The Victorian Government has also indicated that the revised program will look to address the cultural awareness, and unconscious bias of hospital staff from a systemic organisational perspective. The

Victorian department of Health will be implementing new reporting requirements for Aboriginal Health, elevating its priority status in health services.


 *Victoria has partially implemented Recommendation 263 by implementing cultural awareness programs for new doctors and nurses, but does not appear to have specific protocols for staff members to evaluate their styles of operation.*

Queensland sought to implement Recommendation 263 by increasing the number of AHLOs to ensure that health agencies remained relevant and appropriate in their provision of health services to Aboriginal and Torres Strait Islander people. Additionally, the Cross-Cultural Awareness Package developed in 1993 provided guidance to health workers on the accessibility and acceptability of services. The Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010-2033 also aims to foster cultural capability and responsiveness within the health system so that it provides culturally appropriate services to Aboriginal and Torres Strait Islander people.

As a part of Queensland Health's ongoing training for staff, online cultural capability training modules specific to practice areas have been developed. This cultural capability training seeks to improve the responsiveness of the clinical workforce to the needs of Aboriginal and Torres Strait Islander consumers.


 *Queensland has partially implemented Recommendation 263 through expansion of AHLOs and implementation of cultural awareness training and frameworks, but has not addressed key elements of this requirement.*

South Australia reported that implementation in 1994 was ongoing, being the responsibility of Aboriginal Health Services and the Aboriginal Health Council. More recently, the issue of discharge against medical advice was addressed in the *SA Aboriginal and Torres Strait Islander Health Performance Framework Report 2012*. Currently, the Aboriginal Cultural Learning Framework has been developed for submission to Portfolio Executive for final approval, and will seek to ensure that SA Health staff have the required skills, knowledge and attitudes to meet the needs of Aboriginal and Torres Strait Islander people in their care.

 *South Australia has partially implemented Recommendation 263 by addressing non-compliance in the SA Aboriginal and Torres Strait Islander Health Performance Framework Report 2012 and by implementing cultural awareness training but does not appear to have specific protocols for staff members to evaluate their styles of operation.*


The **Western Australia** Government provide cultural training of health professionals through the Department of Health's Aboriginal Health Division. Further, professional standards policies include coverage of the treatment of Aboriginal and Torres Strait Islander patients supported by professional registration bodies.

The Western Australian Government has also implemented a number of initiatives to improve the level of cultural awareness and increase compliance amongst its staff. These include implementing the Western Australian Aboriginal Health and Wellbeing Framework 2015-2030, through its associated Implementation Guide, and the drafting of a Cultural Competency Continuum. Additionally, the Department of Health has begun to measure the rate of discharge against medical advice as an indirect assessment of cultural competency.

 *Western Australia has partially implemented Recommendation 263, by taking the initial steps required for full implementation such as measuring the rate of discharge against medical advice amongst Indigenous patients and developing cultural awareness training. However, there does not appear to be any program in place that require health professionals to evaluate their styles of operation in cases where there is a high level of non-compliance.*

In **Tasmania**, the Department of Health and Human Services has taken significant steps to improve communication and to support community health literacy, with the launch of the inaugural *Tasmanian Communication and Health Literacy Action Plan* in 2012, and publication of the *Workplace Communications and Health Literacy Workplace Toolkit*. In addition, the Tasmanian Health Service provides verbal and written information in plain English to patients and clients and runs regularly training courses for staff to improve the development of resources based on health literacy principles.


Communication is one of the six domain areas of the Cultural Respect Framework, which includes the focus area of health literacy and the broader communication environment.

 *Tasmania has implemented Recommendation 263 by implementing strategies to improve communication and health literacy.*

The **Northern Territory** Department of Health recognises the need to address Aboriginal and Torres Strait Islander culture in the delivery of health services, in order to improve Aboriginal and Torres Strait Islander people's compliance with treatment. NT Health have an ongoing commitment to working with Aboriginal and Torres Strait Islander leaders and elders within the community and a variety of community groups to ensure they are aware of the current population health needs of the community and the rationale for health interventions.


The Northern Territory is also currently implementing the NT Aboriginal Cultural Security Framework 2016-2026, which includes a staff self-evaluation of cultural security and an organisational assessment. This assessment identifies strengths and weaknesses of service delivery and communication with Aboriginal patients.

Both Alice Springs Hospital and Royal Darwin Hospital also have specific Aboriginal Cultural Advisory groups that monitor 'Take own Leave' and 'Discharge Against Medical Advice' rates for Aboriginal patients and implement strategies to reduce these rates. NT health has also piloted an 'Effective Communication: improving health literacy and cultural safety in health care' training program.

 *The Northern Territory has implemented Recommendation 263 by actively engaging with members of the community regarding health care needs and issues, and has implemented strategies to improve communication and health literacy.*

The **Australian Capital Territory** Government has noted that all ACT Health staff are required to complete the 'Working with Aboriginal and Torres Strait Islander patients and clients (eLearning 2016)' training module through the ACT Health eLearning system.

As part of the ACT 2018-19 budget \$500,000 has been provided over three years to improve health literacy and to help consumers better navigate the health system. The funding will support the Health Care Consumer Association of the ACT to engage with communities that experience poor chronic health outcomes, including Aboriginal and/or Torres Strait Islanders, people living with disability and the elderly, and help connect them with appropriate preventative health services.

 *The Australian Capital Territory has partially implemented Recommendation 263, by allocating funding to improve health literacy. However, it does not appear that specific protocols have been put in place that require health professionals to evaluate their styles of operation in cases where there is a high level of non-compliance.*

Additional commentary

The **Commonwealth** DOH noted that the NATSIHP 2013-2023 sets out a number of deliverables relating to improving cultural competence and reducing racism. Principally, these deliverables focus on the health system and its organisations.

Recommendation 264

That:

- a. There be a substantial expansion in Aboriginal mental health services within the framework of the development, on the basis of community consultation, of a new national mental health policy;*
- b. There be close scrutiny by those developing the national policy of the number of models that exist for such expansion; and*
- c. Aboriginal people be fully involved in the policy development and implementation process.*

Background information

The RCIADIC Report identified that the network of mental health services in Australia was not designed to meet the needs of mentally ill Aboriginal and Torres Strait Islander people who presented in ways typically seen in the non-Aboriginal and Torres Strait Islander population. There were no special mental health services or culturally appropriate facilities, and a lack of specially trained mental health workers.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that significant mental health resources be devoted to expanding the framework across all levels of government.

Key actions taken and status of implementation

The **Commonwealth** has funded and implemented a range of mental health programs since the release of the RCIADIC Report, aimed at improving the size and reach of appropriate mental health facilities to serve the Aboriginal and Torres Strait Islander population. The *Closing the Gap* NPAs aimed to provide integrated alcohol, drugs and mental health services. Further examples include the Aboriginal and Torres Strait Islander Suicide Prevention Strategy in 2013 and an expansion of The Dementia Behaviour Management Service. These policies have been developed in close consultation with the Aboriginal and Torres Strait Islander community, guided by the National Health Plan and the NIRA.

The DOH noted that in 2015, the Commonwealth Government announced \$84.75 million over 3 years to improve mental health outcomes for Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander stakeholders were consulted on the allocation methodology for this funding.


 *Recommendation 264 has been completed through policy initiatives and funding to improve the mental health networks services which have been designed with the Aboriginal and Torres Strait Islander community.*

As addressed in the Commonwealth Government's response, Recommendation 264 has partially been addressed by National Partnership Agreements, including *Closing the Gap*, and the *Aboriginal and Torres Strait Islander Suicide Prevention Strategy 2013*. These initiatives reflect the commitment of **all States and Territories** to provide integrated alcohol, drugs, and mental health services.

New South Wales developed and implemented specific Aboriginal mental health policies in 1997 and 2007, with extensive Aboriginal input. Currently, "Living Well: A Strategic Plan for Mental Health in NSW 2014-2024" is in place. A Mental Health Workforce Plan is also being developed by NSW Health, which includes the Aboriginal mental health workforce. Aboriginal people have been involved in the development of this plan. A review of Aboriginal mental health policy is currently underway, which has involved input from Aboriginal Mental Health experts, including the community sector and other stakeholders. In late 2017, the NSW Government also endorsed the Fifth National Mental Health and Suicide Prevention Plan, which is strongly supportive of Aboriginal mental health as a priority area for action in the next five years.

 *New South Wales has implemented Recommendation 264 by implementing Aboriginal mental health programs and policies and involving Aboriginal communities in their development.*


Victoria was already compliant with offering services for Aboriginal and Torres Strait Islander mental health at the time that Recommendation 264 was made. Since then, Victoria has implemented the Victorian Aboriginal Suicide Prevention and Response Action Plan 2010-15, and has continued to offer a range of mental health and counselling services for the Aboriginal and Torres Strait Islander community.

 *Victoria has implemented Recommendation 264 by implementing mental health programs for Aboriginal and Torres Strait Islander people.*


In the 1990s, the **Queensland** Government rolled out an integrated mental health service within a number of key regions around the State. Queensland also contributed to the development of national

mental health policy, including collaborating with the Commonwealth on the development of performance indicators.

More recently, Queensland Health has invested in improving Aboriginal and Torres Strait Islander mental health outcomes and responsive service provision through the Queensland Health Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021 and Connecting Care to Recovery 2016-2021. Queensland Health also funds Health Consumers Queensland, which includes Aboriginal and Torres Strait Islander consumer representatives with lived experiences of mental illness.


 *Queensland has implemented Recommendation 264 by expanding mental health programs for Aboriginal and Torres Strait Islander people, such as the Queensland Health Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021 and Connecting Care to Recovery 2016-2021, and ensuring appropriate community consultation through Health Consumers Queensland.*

The **South Australian** Government, through the Aboriginal Health Council, established a state-wide network of trained Aboriginal and Torres Strait Islander Social Health Workers. More recently, the South Australian Government has implemented a number of mental health services as set out in its Aboriginal Health Care Plan 2010-16. In addition, the SA Health Aboriginal Mental Health Reference Group has provided leadership to ensure appropriate service development and system redesign.


 *South Australia has implemented Recommendation 264 by developing mental health services, as part of the Aboriginal Health Care Plan 2010-2016, and inviting Aboriginal and Torres Strait Islander input through the SA Health Aboriginal Mental Health Reference Group.*

In **Western Australia**, a number of pilot programs were launched in 1994 to target youth mental health among Aboriginal and Torres Strait Islander people in regional areas. Additionally, the Western Australia Government conducted consultations with community, ACCHOs, and other stakeholders to develop and implement appropriate strategies.

Since this time, the Western Australian Government have developed State-wide Specialist Aboriginal Mental Health Services, with extensive consultation process, which included Aboriginal Community Controlled Health Organisations and regional Aboriginal health planning forums. This model of care underwent rigorous community consultation prior to being finalised.

 *Western Australia has implemented Recommendation 264 by developing a State-wide Specialist Aboriginal Mental Health Services, with extensive consultation and involvement of Aboriginal and Torres Strait Islander people.*

In **Tasmania**, the 1993 implementation report stated that the National Mental Health policy gives no ground for supporting Recommendation 264. More recently, the Tasmanian Government's *Rethink Mental Health: Better Mental Health and Wellbeing – A long-term plan for Mental Health in Tasmania 2015-2025* includes as a medium-term priority to "Work with key stakeholders to develop an Action Plan in relation to the mental health, social and emotional wellbeing under the Tasmanian Aboriginal Health Framework in line with the National Aboriginal and Torres Strait Islander Health Plan 2013-2023". Work has not yet commenced but will be informed by work being undertaken through the Tasmanian Aboriginal Health Forum Mental Health Working Group and by the Fifth National Mental Health and Suicide Prevention Plan.

 *Tasmania has partially implemented Recommendation 264 by planning for the development of an Action Plan for improved Aboriginal and Torres Strait Islander mental health with the aim of involving the Tasmanian Aboriginal Health Forum Mental Health Working Group but has not yet commenced this work.*


The **Northern Territory** Government responded to Recommendation 264 through a number of initiatives noted in the 1993-94 implementation report, including:

- the development of an Aboriginal Mental Health Care Policy which identified all mental health care needs as perceived by communities and primary health care providers, and which set forth the principles that should guide service delivery;

- the development of models for Aboriginal and Torres Strait Islander mental health care at a district level; and
- inclusion of Aboriginal and Torres Strait Islander staff and community members on the Aboriginal Mental Health Care Policy Working Group.
- More recently, the Northern Territory Government contributed to the National Strategic Framework for Aboriginal and Torres Strait Islander People's Mental Health and Social and Emotional Wellbeing 2017-2023 and supports the leadership of that framework. The 5th National Mental Health Strategy and Suicide Prevention Plan also has a focus on Aboriginal and Torres Strait Islander health outcomes.

Since this time, the Northern Territory has contributed to the National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023 and has continued to support the framework.

There are number of mechanisms that ensure Aboriginal and Torres Strait Islander people in the Northern Territory are involved in policy development and implementation. They include: utilisation of the Northern Territory Aboriginal Cultural Security Policy when designing and implementing mental health policy; consulting with key stakeholders in Aboriginal and Torres Strait Islander communities; and ensuring the Northern Territory Mental Health Co-ordination group appropriately represents Aboriginal and Torres Strait Islander organisations and people.


 *The Northern Territory has implemented Recommendation 264 by implementing mental health programs for Aboriginal and Torres Strait Islander people and involving Aboriginal and Torres Strait Islanders in the development of policy and programs.*

In response to Recommendation 264, the **Australian Capital Territory's** 1993-94 implementation report noted that it extended funding for mental health services for Aboriginal and Torres Strait Islander people, and continued to develop links with community service providers. The ACT also cooperated with the establishment of national mental health policy.

In regards to part a) of Recommendation 264, ACT Health participates in the Mental Health Expert Reference Panel and Mental Health Principal Committee which provides advice to the Australian Health Ministers' Advisory Council on the renewal of the National Mental Health Policy. There is commitment in this committee structure for improved mental health services and outcomes for Aboriginal and Torres Strait Islander people. ACT Health has a number of strategies for local implementation of this priority in line with the implementation of the 5th National Mental Health and Suicide Prevention Plan. ACT Health also reports into the ACT Aboriginal and Torres Strait Islander Health Partnership Forum at Winnunga Nimmityjah about improvements to mental health service system.

In regards to b) of Recommendation 264, ACT Health report to the National Mental Health Commission and the Australian Health Ministers' Advisory Council on progress towards the actions to improve Aboriginal mental health services within reporting on the local implementation of the 5th National Mental Health and Suicide Prevention Plan.

In regards to c) of Recommendation 264, there are a range of expert representatives within the committee structure including representation from the National Aboriginal and Torres Strait Islander Mental Health Leadership committee and the Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Project Reference Group.

 *The Australian Capital Territory has partially implemented Recommendation 264 by participating in the formation of national policy, but has not addressed key aspects of the recommendation.*

Additional commentary

The **Commonwealth** DOH noted that current work on the Fifth National Mental Health Plan (2017-2022), Aboriginal and Torres Strait Islander mental health and suicide prevention is one of seven priority areas.

Recommendation 265

That as an immediate step towards overcoming the poorly developed level of mental health services for Aboriginal people priority should be given to complementing the training of psychiatrists and other non-Aboriginal mental health professionals with the development of a cadre of Aboriginal health workers with appropriate mental health training, as well as their general health worker training. The integration of the two groups, both in their training and in mental health service delivery, should receive close attention. In addition, resources should be allocated for the training and employment of Aboriginal mental health workers by Aboriginal health services.

Background information

The RCIADIC Report identified that the network of mental health services in 1991 was poorly developed and that further links between non-Aboriginal and Torres Strait Islander health professionals and Aboriginal and Torres Strait Islander health professionals be established and strengthened.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that links between these two groups be established by both Commonwealth and State and Territory governments.

Key actions taken and status of implementation

The **Commonwealth** PM&C noted that under the IAS Safety and Wellbeing Program, around \$6 million annually funds Workforce Support Units to undertake training needs analysis, and to plan and provide the necessary education, training and development for the social and emotional wellbeing workforce.

The DOH noted that the Aboriginal and Torres Strait Islander Health Workforce Strategic Framework has been developed as one mechanism to guide national Aboriginal and Torres Strait Islander health workforce policy and planning. It assists in contributing to the needs of the Aboriginal and Torres Strait Islander health workforce, including social and emotional wellbeing; drugs and alcohol; and the mental health workforce.


The 2013 Suicide Prevention Strategy outlines that a key objective is to ensure that high-quality resources, information and methods be available to support suicide prevention for Aboriginal and Torres Strait Islander people. Other policies have been developed – such as the 1992 National Mental Health Policy – however these have not been focused on Aboriginal and Torres Strait Islander people or the training of AHWs.

 *Recommendation 265 is complete through the various initiatives by the Commonwealth to improve the mental health facilities servicing Aboriginal and Torres Strait Islander communities.*

All States and Territories, in conjunction with the Commonwealth, have supported the implementation of the 2013 *Suicide Prevention Strategy*. The Strategy outlines that a key objective is to ensure that high-quality resources, information and methods be available to support suicide prevention for Aboriginal and Torres Strait Islander people.

As noted in Recommendation 264, the **New South Wales** Government introduced a state-wide Aboriginal Mental Health Policy which encompassed provisions for mental health training. This policy also sought to promote closer ties between various health professional bodies. In addition, New South Wales is currently developing a Mental Health Workforce Plan.


As part of the second tranche of NSW mental health reforms, projects are being delivered which aim to increase Aboriginal workforce clinical capacity and improve training of health care providers for Aboriginal community-based workers (in partnership with the ACCHS sector and the Centre for Aboriginal Health). In addition to a culturally tailored “Getting on Track in Time (Got It!)” model is currently being trialled and evaluated.

 *New South Wales has fully implemented Recommendation 265 by prioritising the training of Aboriginal health workers in areas of mental health through the Mental Health Workforce Plan.*


At the time of the RCIADIC, the **Victorian** Government had a number of initiatives that responded to the issues identified. In 1988-89, the Aboriginal Mental Health Network was established as a specialist program managed jointly by the Victorian Aboriginal Health Service, Mont Park Hospital, and St Vincent's Hospital. The program included the employment of Aboriginal Mental Health Workers, and specialist in-patient and out-patient services. Victoria also provided a state-wide consultation service.

 *Victoria had already implemented Recommendation 265 at the time of the RCIADIC.*

The 1993 implementation report noted that **Queensland** had funded the placement of several Aboriginal and Torres Strait Islander mental health workers, developed a pilot Area Integrated Mental Health Service, and provided cross-cultural training programs for psychiatrists and non-Aboriginal and Torres Strait Islander health workers. More recently, the Queensland Health *Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021* is enhancing cultural capability into mental health clinical practice through the provision of a mental health cultural capability training module for clinical staff, nurses, allied health staff, Queensland Ambulance Service and administrative staff.

 *Queensland has fully implemented Recommendation 265 by allocating resources to the training of Aboriginal and Torres Strait Islander mental health workers as part of the Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021.*

The **South Australian** Government undertook a number of initiatives under Recommendation 264, which also apply to Recommendation 265. More recently, SA Health is also finalising and implementing a structure to support workforce training and development programs for cultural competence, including building the capacity of local services and the current workforce to competently assess and manage Aboriginal and Torres Strait Islander mental health and wellbeing that has a whole-of-family approach.

 *South Australia has partially implemented Recommendation 265 as it is currently finalising and implementing a structure that will support the training of Aboriginal and Torres Strait Islander health workers in areas of mental health but has not outlined the specific actions it will be taking to address this recommendation.*

In **Western Australia**, the Statewide Specialist Aboriginal Mental Health Service was allocated \$22.47 million over four years from 2011 to 2014 to improve access to culturally-appropriate mental health services for Aboriginal and Torres Strait Islander people, and to develop and maintain inter-agency partnerships.

In addition to this, Western Australia has developed eLearning packages for specific target groups (mental health clinicians, refereeing practitioners, transport officers and consumers, families and carers) as a part of its implementation of the Mental Health Act 2014.

The Certificate IV in Alcohol and Other Drugs training program is also provided to health workers. The certificate includes units pertaining specifically to mental health, as well as units on alcohol and other drugs. The course provides participants with a better overall understanding of the causes of social and emotional wellbeing issues for their clients and communities, and offer practical suggestions to improve support and assistance.


 *Western Australia has implemented Recommendation 265 by funding specialist Aboriginal mental health workers.*

The **Tasmanian** Government is currently developing an implementation plan for the Cultural Respect Framework, which contains steps to implement Recommendation 265.

 *Tasmania has partially implemented Recommendation 265 in its development of an implementation plan for the Cultural Respect Framework but has not outlined the specific actions it will be taking to address this recommendation.*

In the **Northern Territory**, The Top End Health Service currently employs five dedicated Aboriginal Mental Health Workers. The Batchelor Institute, formerly the Batchelor College, have built a mental health component into their Aboriginal and Torres Strait Islander Primary Healthcare study stream,


Vocational and Educational training, and Certificate to Diploma levels. Cultural competence training is also mandated for all Department of Health staff.

 *The Northern Territory has fully implemented Recommendation 265 by prioritising the training of Aboriginal and Torres Strait Islander mental health workers in education and training curriculums.*

In 1993-94, the **Australian Capital Territory** provided funding for an Aboriginal and Torres Strait Islander mental health worker, and facilitated the Winnunga Nimmityjah Aboriginal Health Service's collaboration and networking with mental health service workers.

Currently, Mental Health Aboriginal liaison officers in the Australian Capital Territory provide consultation and liaison services to all mental health teams, Aboriginal and Torres Strait Islander youth services, adult medical services and other stakeholders as required. Aboriginal and Torres Strait Islander liaison officers play a crucial role in ensuring that the delivery of mental health services is sensitive to the social and cultural beliefs, values and practises of Aboriginal and Torres Strait Islander people, their family, and their community in the ACT.

Additionally, ACT Health continues to provide funding to Winnunga Nimmityjah Aboriginal Health Service for a mental health and wellbeing programs. Winnunga Nimmityjah Aboriginal Health Service places particular emphasis on assisting clients to access mainstream support. ACT health also funds Gugan Gulwan Youth Aboriginal Corporation to provide early intervention mental health and wellbeing support.

 *The Australian Capital Territory has mostly implemented Recommendation 265, but has not addressed how non-Aboriginal and Torres Strait Islander and Aboriginal and Torres Strait Islander mental health development will be integrated.*

Recommendation 266

That the linking or integrating of mental health services for Aboriginal people with local health and other support services be a feature of current and expanded Aboriginal mental health services.

Background information

The RCIADIC Report identified that there was a lack of adequate links to mental health services in mainstream health facilities across Australia. This recommendation was made to maximise the efficiency and effectiveness of health service delivery by bringing together health resources.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that integration of mental health services for Aboriginal and Torres Strait Islander people be established at all levels of government.

Key actions taken and status of implementation

The **Commonwealth** DOH noted that Primary Health Networks aim to establish linkages between commissioned and existing services to facilitate a joined up, integrated approach to the provision of mental health services, and to support providers.


The 2013 Suicide Prevention Strategy prioritised the development of Aboriginal and Torres Strait Islander controlled services in dealing with healing, recovery and trauma. Moreover, this policy attempted to build the capacity of mainstream services and agencies to be more inclusive and responsive to the needs of Aboriginal and Torres Strait Islander communities.

 *Recommendation 266 has been implemented through the work of Primary Health Networks and the Commonwealth's National Aboriginal and Torres Strait Islander Suicide Prevention Strategy.*


All States and Territories, in conjunction with the Commonwealth, have supported the implementation of the 2013 *Suicide Prevention Strategy*. This policy prioritised the development of Aboriginal and Torres Strait Islander controlled services in dealing with healing, recovery, and trauma.

Moreover, this policy attempted to build the capacity of mainstream services and agencies to be more inclusive and responsive to the needs of Aboriginal communities.


In 1995, **New South Wales** developed an Aboriginal Mental Health Policy and Strategy which required Area and District Health Services to cultivate links with ACCHOs. This emphasis on cultivating partnerships with ACCHOs was maintained in the *Aboriginal Mental Health and Welfare Policy 2006-10*. As noted in Recommendations 264 and 265, the NSW Government has expanded Aboriginal mental health services through a number of programs and projects.

 *New South Wales has implemented Recommendation 266 through the Aboriginal Mental Health and Welfare Policy 2006-10 and by expanding Aboriginal mental health services.*


The **Victorian** Government's actions as part of Recommendation 265 are also relevant in their response to Recommendation 266. Additionally, the Koolin Balit Strategic Direction advocates that Aboriginal and Torres Strait Islander health services collaborate with other sectors to provide coordinated and integrated care.

 *Victoria has implemented Recommendation 266 through the measures outlined under Recommendation 265 and the Koolin Balit Strategic Direction.*

The **Queensland** Government stated in the 1993 implementation report that progress was being made towards the integration of mental health services with other local health and support services, in line with the National Mental Health Task Force findings. The Queensland Health Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021 includes a commitment to collaborating with the Aboriginal and Torres Strait Islander community controlled health sector, the Commonwealth Department of Health and primary healthcare networks to improve the alignment and integration of service provision of mental health services and funding.

 *Queensland has implemented Recommendation 266 through commitments outlined in the Queensland Health Aboriginal and Torres Strait Islander Mental Health Strategy 2016-2021.*


South Australia contributed towards the implementation of Recommendation 266 through actions taken in their response to Recommendation 264. Further, the Coordinated Aboriginal Mental Health Care project aimed to implement protocols and pathways for the care of Aboriginal and Torres Strait Islander people and their families where they had been impacted by substance misuse. SA Health is currently developing an Aboriginal Mental Health Model of Care.

 *South Australia has implemented Recommendation 266 by developing associated protocols and pathways.*


Western Australia's initial response to Recommendation 266 focused on developing a cooperative approach to the integration of health service delivery to Aboriginal and Torres Strait Islander people. This included the formation of an Aboriginal Mental Health Working Party, and the launch of two pilot programs in 1994. Currently, the Specialist Aboriginal Mental Health Service provides state-wide consultation with service providers and the community, and supports Aboriginal and Torres Strait Islander people in accessing required services.

As a part of the Western Australian Mental Health Commission's procurement process, all respondents are required to demonstrate that the services will be culturally secure and developed in consultation with local stakeholders. It is also a requirement that services are provided in partnership with other providers to ensure that clients have access to integrated and coordinated care.


The State-wide Specialist Aboriginal Mental Health Service operated by Western Australia is integrated with mainstream mental health services. Providers of services are encouraged through contracting arrangements to co-locate with Social and Emotional Wellbeing services.

 *Western Australia has implemented Recommendation 266 by developing the Specialist Aboriginal Mental Health Service and ensuring this care is integrated and coordinated with local health services*

A **Tasmanian** Aboriginal Health Forum Mental Health Working Group has recently been convened to bring together representatives from the Community Controlled Health Sector, Commonwealth Government, State Government and Primary Health Tasmania to support a collaborative approach to improving mental health outcomes for Aboriginal and Torres Strait Islander Tasmanians. The working group's key tasks will be to identify gaps in mental health services, undertake comprehensive mapping of patient journeys, and to develop next steps for improving mental health outcomes.


 *Tasmania has implemented Recommendation 266 by convening the Tasmanian Aboriginal Health Forum Mental Health Working Group to improve mental health services for Aboriginal and Torres Strait Islander people.*

At the time of the RCIADIC, mental health services in the **Northern Territory** were integrated with other health services. In response to Recommendation 266, the Northern Territory Government developed a separate mental health service for Aboriginal and Torres Strait Islander people in the Aboriginal Mental Health Care Policy. Currently, the Northern Territory Department of Health continues to deliver integrated health services and mental health services from remote clinics. There is no dedicated mental health service for Aboriginal and Torres Strait Islander people, but there is an NT Aboriginal Health Plan and Aboriginal Cultural Security Framework.

 *The Northern Territory has implemented Recommendation 266 by integrating mental health services with other health services across the Northern Territory.*

The **Australian Capital Territory's** Aboriginal and Torres Strait Islander Health Unit is tasked with engaging the health and non-health sectors in collaborative efforts to address Aboriginal and Torres Strait Islander health. However, no evidence has been provided relating to whether progress has been made to link or integrate mental health services for Aboriginal people with local health and other support services.

The Australian Capital Territory Government noted the roles of Aboriginal Liaison Officers, but did not provide any evidence that progress has been made to link or integrate mental health services for Aboriginal people with local health and other support services.

 *The Australian Capital Territory has not implemented Recommendation 266.*

Recommendation 267

That aerial medical services and the appropriate authorities review the effectiveness of practices relating to medical diagnosis at a distance, for example by radio or telephone, and consider the implementation of standard diagnostic protocols, where they are not currently being used.

Background information


The RCIADIC Report identified cases that highlighted the problem of misdiagnosis when relying on incomplete information. The Report contended that this risk could be reduced by policies that implement standard protocols and encourage the use of technology that improve channels of communication.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires the adoption of standard diagnostic protocols and updated communication technology in Commonwealth and State and Territory government health facilities.

Key actions taken and status of implementation


The **Commonwealth** DoHA's 2008 eHealth strategy directly addresses the concerns raised by this recommendation through prioritising telehealth and electronic consultation tools to improve rural, remote and disadvantaged community access to health care services. The policy aims to service up to 20% of consumers with these tools.

 *Recommendation 267 has been implemented through the eHealth Strategy which aims to remove the barriers to communication that lead to increased risk of misdiagnosis in Aboriginal and Torres Strait Islander communities.*

New South Wales noted in the 1994-95 implementation report that Recommendation 267 related to the Royal Flying Doctor Service and its operational policies. However, several policy programs have been introduced which support the implementation of Recommendation 267. These include the expansion of e-health in rural and remote NSW, in line with the *NSW Rural Health Plan Towards 2021* and the *eHealth Strategy for NSW Health 2016-2026*. Through the work of the Agency for Clinical Innovation and eHealth NSW, NSW Health has provided greater training, exposure and expertise across rural NSW. Current systems exist for urgent video access to specialists in NSW, such as the Western NSW patient flow unit and a pilot program in Port Stephens giving Police and Ambulance officers remote telehealth access to mental health experts.


 *New South Wales has implemented Recommendation 267 by expanding training and expertise with telehealth.*

In their 1993 implementation report, the **Victorian** Government stated that Recommendation 267 does not apply to Victoria. No further evidence on implementation could be found.

 *Recommendation 267 does not apply to Victoria, as remote diagnostic processes are not used in the State.*

In **Queensland**, the Royal Flying Doctor Service is a combined initiative of the Australian Government Department of Health, the Health Insurance Commission and Queensland Health. The Royal Flying Doctor Services has extended Medical Officer placement to remote locations of the Cape York Peninsula as part of the Rural and Remote Medical Benefits Project and the Medical Specialist Outreach Access Program. Telehealth services are also offered to people living in rural and remote Queensland as an opportunity to see a specialist without having to leave their communities.

Queensland Health has also indicated that they continuously seek to implement models of care to meet the health needs of Aboriginal and Torres Strait Islander people in remote areas. Where telehealth is not feasible, the Queensland Patient Travel Subsidy Scheme is available to people who are required to travel


 *Queensland has partially implemented Recommendation 267 as multiple services are available to assist remote access to medical services. However, no information has been found on implementation of a review of the effectiveness of practices relating to medical diagnosis at a distance.*

In their 1994 implementation report, the **South Australian** Government noted that health authorities including the Aboriginal Health Council had not encountered dissatisfaction or difficulty in relation to service delivery. Two Royal Flying Doctor Services medical officers were made contactable for 7 days a week, 24-hours per day by telephone or radio. Implementation of a review is currently underway and compliance is being assessed.

 *South Australia has implemented Recommendation 267 by undertaking a review of the Royal Flying Doctor Services and assessing compliance.*

The **Western Australian** Government provides a state-wide telehealth service to residents in rural, remote and outer metropolitan areas. This service involves the use of information and communication technology applications to provide health services over substantial distances.

The Royal Flying Doctor Service's Western Operations have a long-established and effective practice regarding distance diagnosis. Their 2013 Clinical Manuals guide the clinical management and aeromedical transport of patients.

 *Western Australia has partially implemented Recommendation 267 as multiple services are available to assist remote access to medical services. However, no information has been found*


on implementation of a review of the effectiveness of practices relating to medical diagnosis at a distance.

The **Tasmanian** Department of Health provided in a 2014 press release that e-health services would be rolled out, led by Tasmania Medicare Local. In 2015, the Department of Health and Human Services, in collaboration with the Tasmanian Health Service, commenced the Telehealth Expansion project, which aims to reduce patient travel and improve access to care through expanding the availability of telehealth across Tasmania. The project is expected to continue until mid-2018.


 *Tasmania has implemented Recommendation 267 through the Telehealth Expansion Project.*

In 1993, the **Northern Territory** Government provided 24-hour medical phone consultation, where Aboriginal and Torres Strait Islander health workers, nursing staff, and other providers could contact the on-call doctor. Standard Treatment Protocols and Manuals were also available and in use, promoting the effective and consistent management of health problems.

Recently, the Department of Health undertook considerable work to implement My eHealth Record and the use of telehealth. The project resulted in more remote and regional Territorians receiving medical advice and an increase in patient consultations with doctors using telehealth technology.

 *The Northern Territory has implemented Recommendation 267 by undertaking work to implement My eHealth Record and telehealth.*

The **Australian Capital Territory** noted in their 1993-94 implementation report that Recommendation 267 applies to remote communities, and as such it has not been implemented.

 *Recommendation 267 does not apply to the Australian Capital Territory as there are no remote communities in the ACT.*

Recommendation 268

That the National Health and Medical Research Council actively stimulate research into health concerns identified as priorities by appropriate Aboriginal health advisory bodies (such as the proposed Council of Aboriginal Health), particularly research that involves Aboriginal people at both the development and implementation stages.

Background information

The RCIADIC Report identified a clear lack of funding by the National Health & Medical Research Council (NHMRC) on the issue of Aboriginal and Torres Strait Islander health.

Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. The Commonwealth has responsibility for the National Health and Medical Research Council.

Key actions taken and status of implementation

In 1992-93, the **Commonwealth's** NHMRC prioritised Aboriginal and Torres Strait Islander health research, for example through providing funds of \$460,000 towards research into hearing loss and \$249,000 into child health.

The NHMRC's 2009 Road Map II policy aimed to increase participation by Aboriginal and Torres Strait Islander researchers in NHMRC programs while also supporting research that generated medical outcomes in Aboriginal and Torres Strait Islander communities. An example of this is the funding of research into Foetal Alcohol Spectrum Disorder in Queensland.

The DOH noted that in 2016, in partnership with the NHMRC, they contributed \$3.4 million to support a Research Special Initiative in Aboriginal and Torres Strait Islander Health. This resulted in the approval of funding for four research projects through the NHMRC's Partnership Projects Scheme to support population and health services research and to promote health outcomes for Aboriginal and Torres Strait Islander people.

- *Recommendation 268 has been implemented as there has been consistent funding of research into Aboriginal and Torres Strait Islander health.*

Additional commentary

The NHMRC noted that in 2016 they made a public call for research priorities in Aboriginal and Torres Strait Islander health, and received 66 completed submissions. A number of Targeted Calls for Research were recommended by the NHMRC Principal Committee Indigenous Caucus which are being progressed.

Recommendation 269

That compliance with the National Health and Medical Research Council's Advisory Notes on Aboriginal health research ethics be a condition of Aboriginal health research funding from all sources.

Background information

The RCIADIC Report identified the need for ethical guidelines when conducting all research into Aboriginal and Torres Strait Islander health.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that research conducted across all levels of governments adhere to the ethical guidelines set out by the NHMRC.

Key actions taken and status of implementation

The **Commonwealth** Government's NHMRC are the body that are responsible for setting the guidelines around the ethics for research into Aboriginal and Torres Strait Islander health. The NHMRC noted that research funded by NHMRC and the Australian Research Council must adhere to NHMRC's research ethics guidelines.

- Recommendation 269 has been implemented as there have been consistent efforts by the NHMRC to ensure compliance with ethical guidelines.

The **New South Wales** Government responded to Recommendation 269 in 1993 by ensuring compliance with NHMRC research ethics, and in circulating a copy of the advisory notes to all Area, Districts and Public Health Units for implementation. Current health research practice is compliant with NHMRC ethical guidelines, evidenced in the requirement to obtain the permission of the individual research subject when conducting human research, including the NHMRC's advisory notes on Aboriginal Health Research Ethics. In addition, all research being undertaken at the Justice Health and Forensic Mental Health Network requires Aboriginal Reference Group review and endorsement, and Aboriginal Health and Medical Research Council Ethics Committee approval before consideration by the Chief Executive.

- *New South Wales has fully addressed Recommendation 269 by endorsing the NHMRC guidelines and requiring approval and endorsement by the Aboriginal Reference Group for research being undertaken at the Justice Health and Forensic Mental Health Network.*

The **Victorian** Government endorsed the draft guidelines on research prepared by the NHMRC in 1993. The Victorian Government has also adopted the NHMRC *Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* which provides guidelines for health research involving Aboriginal and Torres Strait Islander people.

- *Victoria has fully addressed Recommendation 269 by endorsing the NHMRC guidelines.*

The **Queensland** Government's stated position in 1993 was supportive of these guidelines, and endorsed the need for community participation in research proposal development and implementation. In addition, Queensland will include the Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research in the Research Ethics and Governance Health Service Directive and Policy Framework.

● *Queensland has fully addressed Recommendation 269 by endorsing the NHMRC guidelines and supporting the need for community participation in research proposal development and implementation.*

At the time of the RCIADIC, the **South Australian** Government had its own Research Ethics Committee that had been accredited by the NHMRC. All supported research on Aboriginal and Torres Strait Islander health is approved by the Aboriginal Health Research Ethics Committee, which is guided by the principles set out in the NHMRC's National Statement on Ethical Conduct in Human Research 2007.

● *South Australia has fully addressed Recommendation 269 by endorsing the NHMRC guidelines and requiring all health research to be approved by an Aboriginal Health Research Ethics Committee.*

In 1996, the **Western Australian** Office of Aboriginal Health, in partnership with the Western Australian Aboriginal Community Controlled Health Organisation, established the Western Australian Aboriginal Health Information and Ethics Committee. This committee actively monitors ethical standards relating to the health system's use of Aboriginal and Torres Strait Islander health information. The committee is registered with the National Health and Medical Research Council and complies with national standards, including guidelines on Ethical matters in Aboriginal and Torres Strait Islander Health Research. An Aboriginal person elected by the Western Australian Aboriginal Community Controlled Health Organisation chairs the committee.

● *Western Australia has implemented Recommendation 269 by forming the Western Australian Aboriginal Health Information and Ethics Committee to actively monitors ethical standards relating to the health system's use of Aboriginal and Torres Strait Islander health information.*

Government launched an Aboriginal Health Information and Ethics Committee which was charged with maintaining the standards set out in NHMRC guidelines. Western Australia has maintained its commitment to the implementation of Recommendation 269. All human research must undergo ethical and scientific review, approval and monitoring by a Human Research and Ethics Committee registered with the NHMRC. Health ethical review processes are clearly established in the Western Australia Health Research Governance Framework.

The **Tasmanian** Government requires human health research to be assessed by the Tasmanian Health and Medical Human Research Ethics Committee. When conducting a research project with Aboriginal and Torres Strait Islander people or communities, the design of the project must respect and take into account the values, and cultural protocols of Aboriginal and Torres Strait Islander people. The Tasmanian ethics application process abides by the current NHMRC Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research (2003).

● *Tasmania has fully addressed Recommendation 269 by endorsing the NHMRC guidelines and requiring all research projects with Aboriginal and Torres Strait Islander people or communities to take into account cultural values and protocols.*

The **Northern Territory's** 1993-94 implementation report noted that the Joint Institutional Ethics Committee of the Royal Darwin Hospital and Menzies School of Health Research, the Top End Aboriginal Sub-Ethics Research Committee, and the Alice Springs Ethics Committee have been formed. Health Research Ethics Committees were registered with the NHMRC to ensure the ethical acceptability of research proposals involving human participants and operate in accordance with the NHMRC's National Statement on Ethical Conduct in Human Research 2007.


● *The Northern Territory has fully addressed Recommendation 269 by endorsing the NHMRC guidelines and establishing a number of relevant ethics committees, including the Top End Aboriginal Sub-Ethics Research Committee.*

In their 1993-94 implementation report, the **Australian Capital Territory** Government commented that the ACT will comply with the NHMRC's Advisory Notes when considering applications for research funding concerning Aboriginal and Torres Strait Islander health. Currently, the ACT Health Human Research Ethics Committee includes representation from researchers currently undertaking Aboriginal

and Torres Strait Islander health research. Although this is not a core membership requirement from the National Health and Medical Research Council, ACT Health has taken this position to include an Aboriginal and Torres Strait Islander health researcher on the Human Research Ethics Committee since 2010. All members of the committee are aware of the leading guideline on Aboriginal and Torres Strait Islander health research, *Value and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research*. The Ethics and Governance Unit, in the Office of Research has established a collaborative relationship with the Australian Institute for Aboriginal and Torres Strait Islander Studies.

When undertaking its review processes the committee considers the key NHMRC criteria of community engagement; benefit; sustainability and transferability and building capacity. Research proposals not satisfying these criteria are advised on how to engage with the local Aboriginal and Torres Strait Islander health community in order to meet these standards and improve the quality of the research proposal. Committee members and staff are due to undergo training in the *Guidelines for Ethical Research in Australian Indigenous Studies* during the second half of 2018.

Research proposals not meeting these criteria to a high standard would not qualify for funding through sources controlled by ACT Health. Funders not controlled by ACT Health would receive notice of the proposed project failing to meet these standards.

 *The Australian Capital Territory has implemented Recommendation 269 through policies established by the ACT Human Research Ethics Committee.*

Additional commentary

Under the **Commonwealth** Government, the NHMRC noted that the 'Advisory Notes on Aboriginal health research' ethics has been rescinded. The new guidelines include *Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Research* (2004) and *Keeping Research on Track: A guide for Aboriginal and Torres Strait Islander people about health research ethics* (2005). In addition to the ethical guidelines produced by the NHMRC, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has produced the *Guidelines for Ethical Research in Australian Indigenous Studies* (2012).

Recommendation 270

That:

- a. *Aboriginal people be involved in each stage of the development of Aboriginal health statistics; and*
- b. *Appropriate Aboriginal health advisory bodies (such as the proposed Council of Aboriginal Health) consider developing an expanded role in this area, perhaps in an advisory capacity to the Australian Institute of Health, and that the aim of this involvement should be to ensure that priority is given to the collection, analysis, dissemination and use of those Aboriginal health statistics most relevant to Aboriginal health development.*

Background information

The RCIADIC Report identified that a proper assessment of Aboriginal and Torres Strait Islander health status was limited by a lack of comprehensive data.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that data on the health of Aboriginal and Torres Strait Islander communities be collected by responsible departments in the Commonwealth, and State and Territory governments.

Key actions taken and status of implementation


Under the **Commonwealth** Government, the ABS conducts the Australian Aboriginal and Torres Strait Islander Health Survey, which assesses the health of the Aboriginal and Torres Strait Islander population. Statistics include estimates of the prevalence of chronic diseases, certain behavioural risk

factors, physical activity and sedentary behaviour. The ABS also conducts the NATSISS. These surveys have been developed with close consultation from the National Advisory Group on Aboriginal and Torres Strait Islander Health Information and Data.

 *Recommendation 270 has been implemented through the ABS' conduct of regular surveys such as the Australian Aboriginal and Torres Strait Islander Health Survey and the NATSISS, which have been informed with the consultation of Aboriginal and Torres Strait Islander people and health advisory bodies.*

In 1995, the **New South Wales** Department of Health established a partnership with the Aboriginal Health Resource Co-operative (AHRC) which required the involvement of the AHRC in planning and policy issues. This provided Aboriginal people with a platform through which to be involved with the development of health statistics. This commitment to involving Aboriginal people in data collection and the development of health statistics has subsequently been maintained through various partnership agreements and policy initiatives.


Currently, NSW Health works with the Aboriginal Health and Medical Research Council of NSW to enable recognition of Aboriginal community perspectives in the design, analysis, interpretation and reporting of Aboriginal health information.

 *New South Wales has completed Recommendation 270 through its work with the Aboriginal Health and Medical Research Council of NSW to enable recognition of Aboriginal community perspectives in the design, analysis, interpretation and reporting of Aboriginal health-related information.*


The **Victorian** Department of Health, in partnership with VACCHO, has developed initiatives for engaging Aboriginal and Torres Strait Islander people in the development of health statistics.

 *Victoria has implemented Recommendation 270 by working with VACCHO to engage Aboriginal and Torres Strait Islander people in the collection of health data.*

Following the RCIADIC, the **Queensland** Government collaborated with other state health agencies and community-based organisations in the development of standards for Aboriginal and Torres Strait Islander health data collections and a minimum data set. More recently, Queensland's Aboriginal and Torres Strait Islander Cultural Capability Framework 2010-33 provides that research involving Aboriginal and Torres Strait Islander people be ethical, and ensure appropriate consultation and feedback.

 *Queensland has mostly implemented Recommendation 270 by collaborating with community-based organisations to develop data collection standards and a minimum data set but has not addressed the potential involvement of appropriate health advisory bodies.*


In **South Australia**, the Aboriginal Health Council works cooperatively with South Australian Health to promote and advance the social, physical and mental health of Aboriginal and Torres Strait Islander communities. This includes a cooperative approach to the development of health statistics. There is currently a review of the Australian Health Minister's Advisory Council structure that could potentially incorporate these recommendations. There are a number of national committees that consider information and statistics on Aboriginal and Torres Strait Islander specific metrics, which have representation from and consultation with relevant communities.

 *South Australia has mostly implemented Recommendation 270 by collaborating with the Aboriginal Health Council to develop health statistics. While not yet fulfilled, the other requirements of this recommendation may be incorporated following a review of the Advisory Council structure.*


Western Australia responded to Recommendation 270 in 1994 by introducing a number of agreements between the WA Department of Health and Aboriginal Medical Services which provided the basis for a cooperative approach to data collection and development. The Aboriginal Medical Services were also given an expanded role with regard to the use of these statistics.

Since this time, the Western Australian Government has continued its partnership with the Aboriginal Health Council of Western Australia and has reached a collaborative agreement through the Western Australian Aboriginal Health Ethics Committee to ensure research, data collection is conducted in a culturally appropriate manner, and that community consultation is undertaken where relevant.

The Department of Health's Aboriginal Health Policy Directorate also works closely with internal data, information and performance directorates to ensure Aboriginal engagement and input into Aboriginal and Torres Strait Islander health data collection, analysis and publication.

 *The Western Australian Government has mostly implemented Recommendation 270 by collaborating with the Aboriginal Health Council of Western Australia and Western Australian Aboriginal Health Ethics Committee to ensure research, data collection is conducted in a culturally appropriate manner, and that community consultation is undertaken where relevant. However, it is unclear whether priority has been given to the collection, analysis, dissemination and use of those Aboriginal health statistics most relevant to Aboriginal health development.*

Tasmania noted in their 1993 implementation report that the Department of Community and Health Services would coordinate development of health statistics with Aboriginal Health Services. More recently, the *Tasmanian Aboriginal and Torres Strait Islander Health Partnership Framework Agreement 2016-2020* between the Australian Government, Tasmanian Government and the Tasmanian Aboriginal Corporation includes provisions for the development of Aboriginal and Torres Strait Islander health data. The Tasmanian government follows initiatives undertaken by national advisory bodies on the collection, analysis and distribution of Aboriginal and Torres Strait Islander health statistics.

 *Tasmania has mostly implemented Recommendation 270 by involving the Tasmanian Aboriginal Corporation in the development of Aboriginal and Torres Strait Islander health data but has not expressly addressed part (b) of this recommendation in their response.*


The **Northern Territory** provided for Aboriginal and Torres Strait Islander people's involvement in the development of health statistics through a number of initiatives. These included the training of Aboriginal Health Workers in computing and health statistics in 1993, and the consultation of Aboriginal and Torres Strait Islander organisations in developing health plans.

More recently, this has included the development of Aboriginal Health Key Performance Indicators by Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander health and community workers involved with primary care services delivery, including mental health services in remote and prison clinics. This has been further facilitated by the completion of the 'My eHealth Record transition to the national My Health Record' project in 2016.

 *The Northern Territory has implemented Recommendation 270 by working with Aboriginal and Torres Strait Islander health workers to develop and collect health data.*

The **Australian Capital Territory's** Winnunga Nimmityjah Aboriginal Health Service was funded under the National Aboriginal Health Strategy (NAHS) to upgrade its data collections. Practice in the ACT follows the initiatives undertaken by national advisory bodies in relation to the collection, analysis and distribution of Aboriginal and Torres Strait Islander health statistics.

The ACT Government has noted that ACT Health will shortly commence a project with Winnunga Nimmityjah Aboriginal Health and Community Services. This project is aimed at improving the accuracy of Aboriginal and Torres Strait Islander identification within patient data collected by ACT public hospitals and to provide current data to help promote the benefits for patients, of ACT Health services more broadly, correctly recording Aboriginal and Torres Strait Islander identity.

 *The Australian Capital Territory has partially implemented Recommendation 270 by involving appropriate health advisory bodies in the collection of health data but has not addressed the involvement of Aboriginal and Torres Strait Islander health workers in this process.*

Additional commentary

The **Commonwealth** DOH noted that the National Aboriginal and Torres Strait Islander Health Data Principles provide a framework for a culturally respectful foundation for the collection, storage and use of Aboriginal and Torres Strait Islander health-related information. These principles relate to all organisations, including Commonwealth agencies, that have significant responsibilities in relation to Aboriginal and Torres Strait Islander health data.

Recommendation 271

That the implementation of the National Aboriginal Health Strategy, as endorsed by the Joint Ministerial Forum, be regarded as a crucial element in addressing the underlying issues the Commission was directed to take into account, and that funds be urgently made available to allow the Strategy to be implemented.

Background information


The RCIADIC Report identified that greater and urgent funding for the NAHS was required to meet the recommendations. The Commission estimated that less than a fifth of the funding needed in improving Aboriginal and Torres Strait Islander health was actually provided prior to 1991.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that greater funding from all levels of government was needed for the NAHS to be implemented.

Key actions taken and status of implementation


The **Commonwealth** has contributed significant funding toward the renewed NPA on Closing the Gap. The DOH noted that subsequent national plans (the NSFATSIH 2003-2013, the NIRA 2008, and the NATSIHP 2013-2023) are regarded as carrying forward the work of the Strategy. The DOH noted that current Commonwealth funding for Aboriginal and Torres Strait Islander health (the Indigenous Australians' Health Program) is \$3.4 billion over 4 years from 2016-17 (\$780 million allocated in 2016-17) plus significant additional funding from uncapped programs.

 *Recommendation 271 has been implemented through the funding provided by the Commonwealth for the IAHP.*

All States and Territories were signatories to the *National Aboriginal Health Strategy* which included as priorities that services for Aboriginal and Torres Strait Islander people be run by Aboriginal and Torres Strait Islander people, and increased health promotion and prevention for Aboriginal and Torres Strait Islander people.


New South Wales became a signatory to the NAHS in 1994 and contributed towards its implementation through the provision of \$1.3 million in recurrent funding to support projects to improve health service delivery to Aboriginal people. More recently, the NSW Aboriginal Health Partnership 2008-13 adhered to the principles of NAHS. The NSW Ministry of Health is also investing \$24.8 million in 2017/2018 for 41 Aboriginal Community Controlled Health and related organisations to deliver health services across 44 sites.

The NSW Government is continuing to work with the Commonwealth Government to identify and progress shared priorities to deliver improved health outcomes for Aboriginal people. More recently, this included participation in national consultations to inform the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan in 2017.

 *New South Wales has implemented Recommendation 271 by providing additional funding support for the implementation of the NAHS.*


No evidence could be located on **Victoria's** response to the implementation of the NAHS. However, in 2013 the government allocated \$61.7 million over four years for improving the health and wellbeing of Aboriginal and Torres Strait Islander people. In 2005, the Victorian Government stated in its implementation report that Victoria has developed an implementation plan consistent with the newer *National Strategic Framework for Aboriginal and Torres Strait Islander Health*.

The development of an Aboriginal evaluation and research framework is also a commitment under Korin Korin Balit-Djak, the Victorian Government's Aboriginal health wellbeing and safety strategic plan 2017-2027. The Victorian Government has also indicated that the development of the framework and outcome indicators will be Aboriginal-led and informed by the Aboriginal Strategic Governance forum and Divisional Aboriginal Governance Committees via the Aboriginal governance and accountability framework.

 *Victoria has partially completed Recommendation 271. It has funded programs to improve Aboriginal and Torres Strait Islander health, but no evidence could be found that it funded the implementation of the NAHS.*


In the 1993 implementation report, the **Queensland** Government noted that the NAHS would form the basis of the Queensland Aboriginal and Torres Strait Islander Health policy which was then under development. Associated with this policy, the Queensland Government also provided additional funding support for the implementation of the NAHS.

More recently, the National Aboriginal Health Strategy has been superseded by the Making Tracks Strategy in 2010 which provides the overarching policy direction in Queensland towards closing the health gap. The policy is supported by a series of triennial implementation plans.


 *Queensland has implemented Recommendation 271 by providing additional funding support for the implementation of the NAHS and supporting the development of the Making Tracks Strategy, which has superseded the NAHS.*

In response to the NAHS, the **South Australian** Government increased the recurrent funding of Aboriginal and Torres Strait Islander health and substance abuse services by \$1.5 million per annum. Capital projects worth \$2 million were also supported. These measures are reported in the 1994 implementation report.


The NAHS has since been superseded in SA by other strategies to support the COAG Closing the Gap targets and South Australia's Strategic Plan, as well as other relevant state and national policy priorities agreed through COAG, COAG Health Council, and the Australian Health Minister's Advisory Council.

 *South Australia has implemented Recommendation 271 by providing additional funding support for the implementation of the NAHS as well as associated capital projects. The NAHS has since been superseded in South Australia by other policy priorities.*

Western Australia has noted that the National Aboriginal Health Strategy is no longer current, with the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 forming the current overarching national policy framework for Aboriginal health. The first Implementation Plan for this was released in 2015. The Vision, Principles, Priorities and Strategies outlined in the plan align with and inform the Western Australian Aboriginal Health and Wellbeing Framework 2015-2030 and its associated Implementation Guide.

 *Western Australia has completed Recommendation 271 through implementation of the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 (which forms the current national policy framework for Aboriginal Health).*

Tasmania noted in the 1993 implementation report that the NAHS had been implemented and has more recently noted that the NAHS has been superseded by the National Aboriginal and Torres Strait Islander Health Plan.

 *Tasmania has not implemented Recommendation 271 as there is no evidence that it funded the implementation of the NAHS.*

The **Northern Territory** Department of Health and Community Services reported in their 1993-94 implementation report that it spends over 50% of its funds on services to Aboriginal and Torres Strait Islander people. Additionally, the Northern Territory has supported the implementation of the NAHS. Currently, the NT Department of Health is working on developing priority areas for the 2018

Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2032, which has a specific focus on the social and cultural determinants of health for Aboriginal and Torres Strait Islander people.

● *The Northern Territory has implemented Recommendation 271 by providing additional funding support for the implementation of the NAHS and continuing support of its objectives through its 2018 Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan.*

In 1992, the **Australian Capital Territory** Government provided a joint funding package under the NAHS, that was targeted at improving the health and wellbeing of Aboriginal and Torres Strait Islander people. This funding was provided on an ongoing basis and supported services including emergency accommodation; a coordinator, an alcohol worker, and a mental health worker for the Winnunga Nimmityjah Aboriginal Health Service, and an AHLO. More recently, the ACT's *Aboriginal and Torres Strait Islander Health and Family Wellbeing Plan 2006-11* supported continued maintenance of the NAHS and associated initiatives.

● *The Australian Capital Territory has implemented Recommendation 271 by providing additional funding support for the implementation of the NAHS through a joint funding package and maintaining its objectives more recently, through the Aboriginal and Torres Strait Islander Health and Family Wellbeing Plan 2006-11.*

10.2 Coping with alcohol and other drugs: strategies for change (272-288)

Recommendation 272

That governments review the level of resources allocated to the function of ensuring that the holder of liquor licences meet their legal obligations (in particular laws relating to serving intoxicated persons), and allocate additional resources if needed.

Background information

The RCIADIC recognised that the consumption of alcohol was a significant factor leading to alcohol- and other drug-related problems. The Report found evidence to suggest that licensed premises, driven by an incentive for profit, continued to serve persons while they were intoxicated.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation


The **New South Wales** Government responded to Recommendation 272 by introducing a range of education and training programs for liquor licensees. These programs focused on ensuring that licensees knew their responsibilities, including the identification of intoxicated persons. Additionally, the *Liquor Act 2007 (NSW)* made it an offence for a licensee to sell or supply liquor to an intoxicated person. As part of structural reforms in 2015, the Government announced Liquor and Gambling New South Wales (L&GNSW) would be given a 20 per cent boost in compliance capacity "to facilitate more routine and targeted compliance activities across the state.

● *New South Wales has implemented Recommendation 272 by allocating additional resources to facilitate more routine and targeted compliance activities.*

Victoria conducted a number of Responsible Serving of Alcohol workshops across licensed premises, and trained a number of staff in 1992. Additionally, the 1993 amendment of the *Liquor Control Act 1987 (Vic)* provided that the Chief Executive Officer of the Commission could recommend against the grant of a license if he was of the view that the applicant had an insufficient understanding of their responsibility under the Act.

Since this time, the Victorian Commission for Gambling and Liquor Regulation has focused on regional enforcement of liquor laws through the establishment of offices throughout Victoria. Further, the Commission has reviewed its strategies with education of licensees being a critical element. The education strategy aims to increase licensees' understanding of their obligations, encourage voluntary and proactive compliance, and build and maintain effective partnerships.


The Commission has also strengthened resources to target the greatest risk of high harm offences within licensed premises and it has developed a new tool to inform the deployment of compliance inspectors. It has also developed and implemented new training initiatives across its compliance area. The Victorian Government has announced a review of the *Liquor Control Reform Act 1998* (Vic) that will look at the compliance and enforcement regime of the Act including the serving of intoxicated people in licensed venues.

 *Victoria has implemented Recommendation 272 by strengthening resources allocating resources to target the greatest risk of high harm offences.*

Following the RCIADIC, the **Queensland** Government strengthened existing legislation in the *Liquor Act 1992* (Qld), by increasing the penalties for licensees breaching their legal obligations.


Since 2014, additional amendments have been made to tighten the requirements around responsible service of alcohol and alcohol availability, such as more stringent prescription of “unacceptable” practices, reduction of certain on-premises liquor trading hours and the banning of the sale of “rapid intoxication drinks” after midnight.

In conjunction with these amendments, temporary funding has been allocated to the Office of Liquor and Gambling Regulation (OLGR) to fund additional liquor inspectors, investigators, and a dedicated legal officer. The OLGR also has a compliance officer based in Townsville who has dedicated responsibilities relating to licensed premises in remote communities with alcohol restrictions. The OLGR also maintains close linkages with police officers stationed in and around remote communities


 *Queensland has implemented Recommendation 272 by allocating additional resources to the OLGR to fund oversight of licensed premises.*

In **South Australia**, the *Liquor Licensing Act 1997* (SA) prohibits the sale or supply of liquor on a licensed premise to an intoxicated person. Under the Act, police officers are also given the power to enter and inspect licensed premises at any reasonable time. Police officers may also require the provision of information relating to the sale or supply of liquor.

In 2016, the Honourable Tim Anderson QC was appointed to undertake a review of the liquor licensing laws in SA. Recommendations from the review included an increase in annual fees for all classes of license with the revenue to be used to address both enforcement and welfare issues related to the supply of liquor in the community, including more police officers and Consumer and Business Services inspectors, victim support service funding, and rehabilitation facilities. The SA Government accepted the recommendation to increase annual fees but will need to draft regulation to implement any increased fees.


 *South Australia has implemented Recommendation 272 by reviewing liquor licensing laws and accepting the recommendation to increase annual fees.*

The **Western Australia** Government, through the *Liquor Control Act 1988* (WA), made it an offence for a licensee to permit drunkenness to occur on licensed premises, or to sell or supply liquor to an intoxicated person. Police officers are also given the power to ensure that licensed premises conform to proper standards by conducting inspections or requiring the provision of information regarding the sale or supply of liquor. In 1996, the Western Australia Government also appointed six Liquor Licensing Inspectors.

 *Western Australia has implemented Recommendation 272 by providing additional resources (six Liquor Licensing Inspectors) to ensure licence holder meet their obligations.*

Tasmania noted in their 1993 implementation report that the *Liquor Licensing Act 1990* (Tas) makes it an offence to sell or supply liquor to people appearing to be intoxicated. This is enforced by police officers and authorised officers appointed by the Commissioner for Licensing.


More recently, amendments to Tasmania's *Liquor Licensing Act 1990* took effect in 2016. In particular, the Act contains provisions that licensees and permit holders are to retain effective control over the sale and any consumption of liquor on the premises and it is an offence for a licensee or permit holder to sell or supply liquor to people who appear to be intoxicated. Authorised officers (inspectors) and police conduct routine inspections of premises and resourcing is reviewed regularly.

 *Tasmania has implemented Recommendation 272 by noting that resourcing of oversight and compliance activities is regularly reviewed.*

The **Northern Territory** provided funding in 1993-94 to the Northern Territory Hotels and Hospitality Association for the development and delivery of training programs for workers in the liquor industry. More recently, the National Partnership Agreement on Remote Aboriginal Investment 2015-2022 contains specific key performance indicators to support Liquor Licence Compliance in support of safety for remote communities in the NT.


Under the National Partnership Agreement on Remote Aboriginal Investment, Community Safety Implementation Plan, specific resources are allocated to Liquor Licence Compliance activities (particularly in remote Aboriginal and Torres Strait Islander communities). Licence inspectors are employed to boost proactive education, advice and engagement with licensees, and report annually on compliance activities undertaken.

The Northern Territory has also funded a review into "Managing Alcohol Consumption – a review of licensed clubs in remote Indigenous communities in the Northern Territory" which was published in 2016. The report found that clubs can contribute to harm minimisation as they offer an environment where alcohol consumption can be effectively managed. Clubs also can provide a direct intervention point in communities, with sanctions such as bans being available for anti-social behaviour. The report recommended best practice governance requirements and support for licensed clubs, which has been implemented by the Northern Territory Government.

 *The Northern Territory has mostly implemented Recommendation 272 by implementing key performance indicators to support its requirements but has not reviewed resourcing allocations.*

In the **Australian Capital Territory**, the *Liquor Act 2010* (ACT) makes it an offence for a liquor licensee to serve an intoxicated person. The Act also provides police officers and investigators who are appointed by the Commissioner for Fair Trading to enter a liquor licensed premises at any time when it is open for business to inspect or examine the premises.

In December 2014 the ACT Government announced the creation of new agency 'Access Canberra', which combined a number of regulatory services within a single agency. This initiative resulted in an increase to the total number of investigators appointed under the Liquor Act 2010. Access Canberra utilises a risk based compliance framework to identify the areas where risk is the greatest to engage and educate and ensure increased public safety. The Access Canberra liquor licence compliance framework also guides compliance activities, noting that the framework places significant emphasis on addressing conduct that may cause risk to harm to the community. This includes the supplying of liquor to an intoxicated person. Access Canberra has developed a pro-active compliance program to ensure compliance with obligations under the Act. The program primarily focuses on visits to licensed premises to ensure and promote compliance.

 *The Australian Capital Territory has implemented Recommendation 272 through its risk based compliance framework which allocates resources to areas where risk is the greatest.*

Recommendation 273

That consideration be given to legislating for the appointment of community workers who would have the power to inspect licensed premises to ensure that licensees comply with the applicable legislation and licence conditions.

Background information

At the time of the RCIADIC, community workers were employed to focus specifically on Aboriginal and Torres Strait Islander drug and alcohol problems. ATSIC also had a policy of supporting community-based programs which focused on non-residential prevention and intervention activities. In line with this, Recommendation 273 calls for community workers to be given the power to inspect licensed premises to ensure that licensees are compliant with the relevant legislation.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation

In **New South Wales**, the *Liquor Act 2007* (NSW) doesn't include a provision for community workers to inspect licensed premises. The 1994-95 implementation report notes that the NSW Government did not consider it appropriate for community workers to assume a role in which they are responsible for law enforcement.

New South Wales has not implemented Recommendation 273.

Victoria provides for community engagement and interest in licensing matters. Any community member who considers that a licensee is breaching the liquor laws may take their complaint to the police or the Liquor Licensing Commission. The Victorian Government has also noted that it has been focused on improving the effectiveness of compliance and enforcement activities of liquor inspectors.

Victoria has not implemented Recommendation 273.

In **Queensland**, the OLGR adopts a risk-based approach to monitoring compliance with the Liquor Act 1992 (Qld), based on the inherent, specific and emerging risks relating to individual venues. Administration of the Liquor Act is shared jointly between the OLGR and the Queensland Police Service, with both agencies working together to ensure compliance and consistency of regulatory action. Queensland does not consider it appropriate for community workers to have the power to inspect premises and ensure compliance. In the event that a community member has a concern or complaint regarding a licensee or licensed premises, this can be referred to the OLGR for further investigation.

Queensland has not implemented Recommendation 273.

South Australia does not specifically confer power to community workers to inspect licensed premises. The responsibility for enforcing the *Liquor Licensing Act 1997* is currently shared by Consumer and Business Services Inspectors and the SAPOL.

South Australia has not implemented Recommendation 273.


In 1994, the **Western Australia** Government provided \$600,000 in support of Aboriginal and Torres Strait Islander community patrols. Under the *Liquor Control Act 1988* (WA), the Director of Liquor Licensing can authorise any person to undertake the duties of a liquor licensing inspector. To date, this provision has not been exercised to enable community workers to inspect licensed premises.

Licensed premises are inspected regularly under Western Australia's compliance program and, where appropriate, joint inspections are conducted with local government authorities and police. A number of communities throughout Western Australia have Liquor Accords established for the purposes of minimising harm caused in the local community by the excessive consumption of liquor, and promoting responsible practices in its sale, supply and service. The Western Australian Government has noted that given the specialist nature of liquor licensing legislation, the appointment of community officers as "authorised officers" under the Liquor Control Act is not considered appropriate.


Western Australia has not implemented Recommendation 373.

Tasmania does not provide for community workers to inspect licensed premises. Instead, it provides for authorised inspectors to inspect licensed premises. A compliance program involving regular audits

of licensed premises is administered by the Liquor and Gaming Branch on behalf of the Commissioner for Licensing.


 *Tasmania has not implemented Recommendation 273.*

In the **Northern Territory**, provision is made for ministerial appointment of necessary persons to inspect licensed premises and to perform the duties of an inspector under the *Liquor Act 1978* (NT). However, the power of being able to inspect licensed premises has not been conferred to community patrols. More recently, the Riley Review in 2017 has made a number of recommendations to inform the reform of the *Liquor Act*, including the powers of licensing inspectors.

 *The Northern Territory has not implemented Recommendation 273.*

The **Australian Capital Territory** has not given community workers the power to inspect licensed premises. Under, the *Liquor Act 2010* (ACT) the power to inspect licensed premises resides with authorised persons who are the Commissioner of Fair Trading, and police officers.

The ACT government has indicated that they have considered this, however noted that there is no evidence that there is a need for community workers to supplement the work of inspectors (from the regulator Access Canberra) and police officers which oversee compliance and enforce provisions in the *Liquor Act 2010*.

 *The Australian Capital Territory has not implemented Recommendation 273*

Recommendation 274

That governments consider whether there is too great an availability of liquor, including too many licensed premises, and the desirability of reducing the number of licensed premises in some localities, such as Alice Springs, where concentrations of Aboriginal people are found.

Background information


There is a relationship between the availability of alcoholic beverages, consumption levels, and levels of alcohol-related harm. Availability encompasses a range of factors, including the number of licenses in a locality, license types, and hours of sale. The RCIADIC found that in areas of Australia characterised by large Aboriginal and Torres Strait Islander populations, there were many more liquor licenses than was socially justifiable.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.


Key actions taken and status of implementation

In **New South Wales**, controls over the granting of liquor licenses are set out in the *Liquor Act 2007* (NSW). All applications are considered and assessed against a range of factors related to social impact. The NSW Government noted in the 1994-95 implementation report that the issues which are intended to be rectified through Recommendation 274 are not considered to be an issue for NSW.

 *New South Wales has not implemented Recommendation 274.*


In the early 1990s, the **Victorian** Government conducted a review into the volume of liquor purchases by licensed retailers in Victoria and concluded that there was a decreasing trend. In 2002, the Victorian Coordinating Council on Liquor Abuse conducted a review into the impact of packaged liquor licenses operations on the level of alcohol and substance misuse. The *Change the Record* report noted that the report from this review is not available.

The Victorian Government has noted that it is considering many issues associated with the supply of liquor in this state. However, it is doing so as part of the review of the relevant legislation.

 *Victoria has taken steps to address Recommendation 274, but has not fully addressed the recommendation.*


In **Queensland** the Liquor Act 1992 (Qld) imposes significant consultation requirements on applications for liquor licences. Applications with significant potential for social impact must also be accompanied by a community impact statement. In making a decision on such applications, the Commissioner for Liquor and Gaming must have regard to the outcomes of this consultation and the impact assessment information. For applications in 'restricted areas', the Commissioner for Liquor and Gaming may seek comment from the relevant local government, police district officers, community justice group and/or the chief executive of the department that administers the Aboriginal and Torres Strait Island Communities (Justice, Land and Other Matters) Act 1984 (Qld).

In addition, Alcohol Management Plans (AMPs) were introduced from 2002 across 19 discrete Aboriginal and Torres Strait Islander communities to improve community safety and reduce alcohol-related harm. For licensed venues in communities with AMPs in place, more stringent licensing conditions may be applied to mitigate risks associated with alcohol consumption.

 *Queensland has implemented Recommendation 274 by imposing restrictions on the supply of alcohol and more stringent licensing conditions in relevant localities.*


In **South Australia**, the Liquor Licensing Commission in 1993 imposed restrictions on supply by formulating new conditions on licensing. These conditions were imposed after the conduct of a review in collaboration with local communities and relevant Aboriginal and Torres Strait Islander agencies.

Currently, the *Liquor Licensing (Liquor Review) Amendment Bill 2017* is before the South Australian Parliament and introduces a test based on community interest for certain applications. The Licensing Authority must be satisfied that the granting of the application is in the community interest, including with regards to harm that may be caused (whether to a community as a whole or a group within a community) due to the excessive or inappropriate consumption of liquor. The Liquor Licensing Commission has imposed conditions on licenses in Ceduna, which among other things, restricts the sale of liquor for off-premises consumption to anyone who resides in prescribed lands and limits the volume of liquor sold per person per day.

 *South Australia has implemented Recommendation 274 by undertaking a review of licensing conditions.*

Western Australia's *Liquor Control Act 1988* (WA) provides that liquor licenses may be suspended, or that additional conditions may be imposed, on the grounds of public interest. The Director of Liquor Licensing is also required to consider public interest in reviewing liquor license applications.

Amendments to the *Liquor Control Act 1988* have replaced the public needs test with a public interest test. A public interest test will apply to when granting or removing a licence or extending trading hours.

 *Western Australia has implemented Recommendation 274 by amending the Liquor Control Act to include a public interest test, which considers public interests (including the situation where the availability of liquor is too great).*

The **Tasmanian Government** introduced the *Tasmanian Alcohol Action Framework 2010-15* which provided a means to address alcohol issues, including the control and regulation of availability. This Framework also recognises Aboriginal and Torres Strait Islander people as a high-risk, high-priority area for government action. The Department of Treasury and Finance, which participates in the Framework, is currently a key stakeholder of a project led by the Department of Health and Human Services to develop a dynamic model to inform strategies to reduce alcohol-related harms in Tasmania. This project will inform the development of the next Alcohol Action Framework.

More generally, it is at the discretion of the Commissioner for Licensing to grant or refuse a liquor application. This is based on the formal application process and as to whether it is in the best interest of the community to grant a liquor licence. The Commissioner also has to be satisfied that the applicant is a fit and proper person to be a licensee.

- *Tasmania has implemented Recommendation 274 by undertaking a review of alcohol control and availability as part of the Alcohol Action Framework.*

In the **Northern Territory**, Regional Alcohol Management Plans provide guidance for alcohol measures, rules and regulations concerning liquor. Additionally, the *Liquor Act 1978* (NT) allows for “designated areas” to be declared following acts of alcohol-related violence near licensed premises. This provision also encompasses temporary bans for community members charged with specific offences.

More recently, a number of regional areas in the NT have been supported to develop supply plans, and Liquor Accords to manage alcohol consumption. The *Northern Territory National Emergency Response Act 2007* and *Stronger Futures NT 2012* legislation also created additional restrictions with Alcohol Protected Areas. The Banned Drinker Register was also re-introduced in 2017 to reduce alcohol-related harm to individuals, families and communities. In addition to this, the NT licencing commission has also been re-established.

- *The Northern Territory has implemented Recommendation 274 by implementing supply plans, Liquor Accords, and additional legislative restrictions on the supply of alcohol.*

The **Australian Capital Territory** responded to the RCIADIC by introducing a Code of Practice in 1993 which sought to promote the responsible selling and serving of alcohol both on-licenses and off-licenses.

Since this time, a review of ACT Liquor Laws and Licensing Fees has been conducted, which resulted in a white paper and reforms to the Liquor Act 2010. One of the subsequent amendments to the Liquor Act 2010 made in 2017 expanded the consultation requirements for the Commissioner for Fair Trading to undertake when considering an application for a liquor licence in the ACT. The Commissioner for Fair Trading must also provide a notice of application to adjoining properties of the licensee application.

- *The Australian Capital Territory has implemented Recommendation 274 by undertaking a review of licence conditions in 2017.*

Recommendation 275

That the Northern Territory Government review its liquor legislation in the light of the size of the Aboriginal population of the Territory and its needs, and include in such a review the desirability of appointing at least one Aboriginal person to be a member of the Northern Territory Liquor Commission.

Background information

The RCIADIC found a high rate of alcohol use and misuse among Aboriginal and Torres Strait Islander communities in the Northern Territory. As a part of the solution, Recommendation 275 recognises the importance of having Aboriginal and Torres Strait Islander perspectives represented in policymaking and advisory. This Recommendation calls for a review to existing legislation and the inclusion of an Aboriginal person to be a member of the Northern Territory Liquor Commission.

Responsibility

The recommendation is solely the responsibility of the Northern Territory. Recommendation 275 is specifically addressed to the Northern Territory Government.

Key actions taken and status of implementation

In 1993, the **Northern Territory** appointed an Aboriginal and Torres Strait Islander person as an alternate member of the Northern Territory Liquor Commission. The Northern Territory Government also considered issues including the availability and impact of liquor on Aboriginal and Torres Strait Islander communities.

The Northern Territory Liquor Commission was superseded by the Northern Territory Licensing Commission. In its current set-up, the board is not required to provide consideration to appointing Aboriginal and Torres Strait Islander people. The *Stronger Futures in the Northern Territory Act 2012*

(Cth) introduced various initiatives to reduce alcohol-related harm to Aboriginal and Torres Strait Islander people, including the application of alcohol-protected areas. The Riley Review (2017) has made a number of recommendations to inform the re-establishment of the NT Liquor Commission in 2018.

● *The Northern Territory implemented Recommendation 275 by appointing an Aboriginal and Torres Strait Islander person as an alternate member of the Northern Territory Liquor Commission in 1993. The Northern Territory Liquor Commission was superseded by the Northern Territory Licensing Commission but is currently being considered for re-establishment.*

Recommendation 276

That consideration be given to the desirability of legislating to provide for a local option as to liquor sales trading hours, particularly in localities where there are high concentrations of Aboriginal people.

Background information

Recommendation 276 aims to restrict the availability of liquor and thereby reduce consumption. The desired outcomes of the recommendation are to reduce the social disharmony and alcohol health related trauma. Recommendation 276 calls for a consideration of trading hours for liquor sales, particularly where there are high concentrations of Aboriginal and Torres Strait Islander people.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation

New South Wales legislation at the time of the RCIADIC provided for local communities and councils to have a role in the determination of trading hours of licensed premises. An application for an extension of trading hours could be objected to, by three or more residents, the police or the local council on the grounds of public interest. Additionally, other pieces of NSW legislation provide for the creation of dry zones and temporary dry zones in any area. Currently, substantial powers presently exist under the Liquor Act 2007 (NSW) that enable the Independent Liquor & Gaming Authority (ILGA), or the Secretary, Department of Industry, to reduce liquor trading hours in a locality where there is significant community concern about alcohol-related problems.


● *New South Wales has implemented Recommendation 276 by providing for local communities and councils to have a role in the determination of liquor sales trading hours and licensed premises.*

In **Victoria**, the *Liquor Control Act 1987* (Vic) allows for community participation in the decision-making process for licensing matters. The Commission may also impose conditions on a license where it can be shown that this is in the community interest. Currently, all applications for new licenses and the extension of existing trading hours are subject to objection by any affected member of the public on amenity grounds.


● *Victoria has implemented Recommendation 276 by providing for local community participation in decision-making around licensing matters.*

Queensland's *Liquor Act 1992* (Qld) provides that the Liquor Licensing Division is to have due regard to the recommendations of Aboriginal and Torres Strait Islander Councils in the granting of liquor licenses and the setting of trading hours and conditions within Council areas. The Commissioner for Liquor and Gaming undertakes significant consultation before making a decision on liquor license applications, including seeking comment from the Queensland Police Service, the local authority for the area and, in the case of a licensed premises located in a declared restricted area, the local community justice group and DATSIP. The Commissioner must have regard to all comments received from stakeholders when making a decision on the application. Further, the Commissioner has the ability to impose conditions on liquor licenses and permits to ensure harm minimisation and compliance with the *Liquor Act 1992* (Qld) by licensees and patrons, including restricted trading

hours. Any conditions imposed are based on a number of factors, including whether an Alcohol Management Plan (AMP) is in place for the relevant restricted area.


 *Queensland has implemented Recommendation 276 by ensuring that Aboriginal and Torres Strait Islander councils and community stakeholders are extensively consulted with when determining the granting of liquor licenses and the setting of trading hours.*

The **South Australian** Government facilitates community consultation and the input of Aboriginal and Torres Strait Islander people through the *Liquor Licensing Act 1997* (SA), which requires that all applications for liquor licenses must be advertised, and that any person may object. More recently, liquor accords have been formed as goodwill agreements between licensees, Councils, the Office of the Liquor and Gambling Commissioner, the police and community resident groups and organisations for regional areas including Port Lincoln and Ceduna. Local liquor accords are codes of practice, memorandums of understanding or other arrangements that affect the supply of liquor (i.e. opening and closing times of licensed premises). The *South Australian Alcohol and Other Drug Strategy 2011-16* also recognises the need to collaborate with regional and remote communities in addressing alcohol misuse.


 *South Australia has implemented Recommendation 276 by facilitating community consultation and providing for negotiation of licensing matters through the development of local accords.*

In **Western Australia**, the *Liquor Control Act 1988* (WA) provides for the development of liquor accords between liquor outlets, the Western Australia Police, local government authorities, and the Western Australia Department of Health. These are largely informed by public interest concerns, including the concerns of Aboriginal and Torres Strait Islander community members.


The Liquor Control Act also empowers the licensing authority to impose conditions on liquor licences in order to minimise the harm or ill-health caused to people, or groups of people, due to the use of liquor. In a number of areas in regional Western Australia, conditions have been imposed to control the sale of packaged liquor in those communities, including restrictions on trading hours due to evidence of harm.

 *Western Australia has implemented Recommendation 276 by facilitating the development of local accords and imposing conditions on liquor licences where there is evidence of harm in the community.*

In **Tasmania**, the *Liquor Licensing Act 1990* (Tas) requires all applications for liquor licenses to be publicly advertised and allows for community representation. The Commissioner for Licensing may impose conditions on licences and permits when determined to be in the community's best interest.

 *Tasmania has implemented Recommendation 276 by providing for local community representation when determining the granting of liquor licenses.*

In the **Northern Territory's** 1993-94 implementation report, it was noted that the Liquor Commission has powers to vary license conditions in line with community views. This principle was enshrined in the Northern Territory's *Living with Alcohol* program. Additionally, the *Liquor Act 1978* (NT) provides for the Director-General of Licensing to impose additional conditions on liquor licences in response to concerns for community consultation and public interest. A number of regional areas in the NT have been recently supported to develop supply plans, and Liquor Accords to manage alcohol consumption at a local level.

 *The Northern Territory has implemented Recommendation 276 by providing for local consultation around, and control of, liquor sales trading hours.*

In their 1993-94 implementation report, the **Australian Capital Territory** noted that Recommendation 276 is not relevant as there are no areas with a high concentration of Aboriginal and Torres Strait Islander people. More recently, the *Liquor Regulation 2010* prescribed an "alcohol free place" where liquor must not be consumed.

 *The Australian Capital Territory has stated that Recommendation 276 is not applicable.*

Recommendation 277

That legal provision be available in all jurisdictions to enable individuals, organisations and communities to object to the granting, renewal or continuance of liquor licences, and that Aboriginal organisations be provided with the resources to facilitate this.

Background information

Aboriginal and Torres Strait Islander members of the community have a basic right to influence the decisions that affect their quality of life, and the granting of liquor licenses is one such category of decision.

Responsibility


The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation

In **New South Wales**, the *Liquor Act 2007* (NSW) allows interested parties to object to the granting of applications for new licences and the extension of trading hours of existing premises. The Act also provides that a complaint can be laid with the Independent Liquor and Gaming Authority on a number of grounds, including public interest, which can ultimately result in the cancellation of the licence. In addition, a Category B Community Impact Scheme is required for applications, such as a new hotel, club or packaged liquor licence. Under a Community Impact Scheme, consultation is required with recognised leaders or representatives of the local Aboriginal community. Within Liquor and Gaming NSW, a community access team provides assistance to local communities, including Aboriginal communities to access information and have their say.


 *New South Wales has implemented Recommendation 277 by permitting objections to the granting of new liquor licenses and the extension of trading hours under the Liquor Act 2007.*

The **Victorian** *Liquor Control Act 1998* (Vic) provides that any person may object to the grant or variation of a licence on the grounds of public interest, or if any such grant or variation would promote alcohol misuse.

 *Victoria has mostly implemented Recommendation 277 by allowing any person to object to a granting of, or variation to, a liquor license under the Liquor Control Act 1998 but has not specifically addressed providing Aboriginal and Torres Strait Islander organisations with resources to facilitate this.*

In **Queensland** the *Liquor Act 1992* (Qld) imposes significant consultation requirements and consideration of community impacts on applications for liquor licences and approvals. In making a decision on such applications, the Commissioner for Liquor and Gaming must have regard to the outcomes of this consultation and impact assessment. Members of the public have the right to object to any publicly advertised application for a new liquor licence or extended trading hours approval. Comment must also be sought from the relevant local government for applications which require a community impact statement or which may adversely affect the amenity, quiet or good order of a locality and in the case of extended trading hours applications, the police district officer for the area. For every liquor application relating to an alcohol 'restricted area', the Commissioner may seek comment from the relevant local government, police district officer, community justice group and/or the chief executive of the department that administers the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld).


The OLGR also funds a dedicated remote communities compliance officer.

 *Queensland has mostly implemented Recommendation 277 by allowing any persons to object to the granting of a new liquor licence and the extension of trading hours under the Liquor Act 1992. However, it has not specifically addressed providing Aboriginal and Torres Strait Islander organisations with resources to facilitate this.*

South Australia was already consistent with Recommendation 277 at the time of RCIADIC. The *South Australian Liquor Licensing Act 1985* (SA) provides the right for people to object to the


granting, renewal, or continuation of liquor licences. An application for the grant of a liquor licence must also be publicly advertised under the *Liquor Licensing Act 1997 (SA)*.

Under the changes in the Liquor Licensing (Liquor Review) Amendment Bill 2017, which is currently before Parliament, the community or members of the public have the opportunity to make submissions on new licence applications in relation to certain grounds. Section 43 has been amended to give a prescribed person or body the ability to apply to the Commissioner to impose, vary, suspend or revoke a condition on a license.


 *South Australia has mostly implemented Recommendation 277 by allowing any person to object to the granting, renewal or continuation of liquor licenses under the South Australian Liquor Licensing Act 1985 but has not specifically addressed providing Aboriginal and Torres Strait Islander organisations with resources to facilitate this.*

In **Western Australia**, the Director of Liquor Licensing must advertise where there is an application for the grant of a liquor licence. Additionally, in the event that there is undue disturbance or offence to residents, community members may object to the grant application. The Director of Liquor Licensing will give consideration to public interest in making decisions on the granting, renewal, and continuance of liquor licences.


Licences in Western Australia remain in force unless surrendered or cancelled, As a result, licences are not subject to a renewal process and therefore not open to objection. However, the Act allow disciplinary actions to be taken where licence conditions are violated or the community seeks additional conditions on a licence for the health and wellbeing of people.

 *Western Australia has mostly implemented Recommendation 227 but has not specifically addressed providing Aboriginal and Torres Strait Islander organisations with resources to facilitate objections to the granting, renewal or continuance of liquor licences.*


In **Tasmania**, the *Liquor Licensing Act 1990 (Tas)* contains provisions for individuals, organisations or communities to lodge an objection in respect of an application for a liquor licence, within 14 days after a public notice is published. The public can obtain details in respect to an application by contacting the regulator (Liquor and Gaming Branch, Department of Treasury and Finance). The Commissioner also has the ability to suspend or cancel a licence or permit if deemed appropriate.

 *Tasmania has mostly implemented Recommendation 277 by allowing any person to object to liquor licenses in their communities through a provision contained in the Liquor Licensing Act 1990 but has not specifically addressed providing Aboriginal and Torres Strait Islander organisations with resources to facilitate this.*

The **Northern Territory** *Liquor Act 1978 (NT)* provides that persons may object to applications for licences, based on the grounds that the licence will impact public amenity or the health, education, public safety or social conditions of the community.

 *The Northern Territory has mostly implemented Recommendation 277 by allowing any person to object to applications liquor licenses in their communities under the Liquor Act 1978 but has not specifically addressed providing Aboriginal and Torres Strait Islander organisations with resources to facilitate this.*

In the **Australian Capital Territory** when considering an application for a liquor license, the Commissioner for Fair Trading must take into account the suitability of the premises as well as the harm minimisation and community safety principles of the *Liquor Act (2010)*. The provision for consultation and representations is intended to take into account the whole community, including Aboriginal people and Torres Strait Islander concerns with licensed premises. Complaints may be made by any person to the Commissioner for Fair Trading, including for the loss of amenity in the vicinity of the licensed premises attributable to the premises. The Commissioner may find grounds for the imposition of occupational discipline, including suspension or cancellation of the licence.

 *The Australian Capital Territory has mostly implemented Recommendation 277 by allowing any person to lodge complaints regarding liquor licences, but has not specifically addressed providing Aboriginal and Torres Strait Islander organisations with resources to facilitate this.*

Recommendation 278

That legislation and resources be available in all jurisdictions to enable communities which wish to do so to control effectively the availability of alcoholic beverages. The controls could cover such matters as whether liquor will be available at all, and if so, the types of beverages, quantities sold to individuals and hours of trading.

Background information


Recommendation 278 recognises the importance of community input in regulating the supply and consumption of alcoholic beverages. This recommendation advocates for Aboriginal and Torres Strait Islander input into the types of liquor sold, the hours of trading, and availability of alcohol in its aim to reduce overall alcohol consumption.

Responsibility


The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation


The **New South Wales** *Liquor Act 2007* (NSW) doesn't include controls in regard to the type of beverage or quantities sold to individuals. However, it includes public interest provisions which empower the community to take action where licensed or club premises are causing a disturbance. In addition, local liquor accords can introduce strategies, including alcohol restrictions, to reduce harm in their communities. For example, in Bourke, licence conditions have been imposed on venues since 2009 to restrict the types and quantities of takeaway alcohol that can be sold. This action formed part of a locally developed Alcohol Action Plan by Bourke Alcohol Working Group, which comprised government and community stakeholders, including members of the Bourke Aboriginal Community Working Party.

 *New South Wales has implemented Recommendation 278 by enabling communities to control the availability of alcohol through local liquor accords.*

The **Victorian** Government has taken steps towards the implementation of Recommendation 278 as part of its response to Recommendation 277 and actions may be taken subject to the outcomes of the review of the relevant liquor licencing legislation.

 *Victoria allows people to object to liquor licenses in their communities. However, this does not extend to other types of controlling the availability of alcoholic beverages. As such, Recommendation 278 is partially complete.*

Under the *Liquor Act 1992* (Qld), communities in Queensland may be declared as alcohol restricted areas. For each of these restricted areas, the *Liquor Regulation 2002* (Qld) specifies the types and maximum quantities of liquor that a person may have in their possession. There are currently 19 declared restricted areas, which bear varying restrictions regarding possession of alcohol. Prior to a community area being declared as a restricted area, the minister must consult with the local community justice group about the declaration. Alternatively, the community justice group can make a request for a restricted area to be declared, which the Minister must consider. The Minister must also consider any changes to the restricted area that are recommended by the community justice group at a later date

 *Queensland has implemented Recommendation 278 by enabling communities to control the availability of alcohol under the *Liquor Act 1992* (Qld) and the *Liquor Regulation 2002* (Qld).*

In their 1994 implementation report, the **South Australian** Government noted that legislation has been enacted conferring the ability for Aboriginal and Torres Strait Islander communities to control the availability of alcohol. The supply and consumption of alcohol on Aboriginal and Torres Strait Islander lands is regulated by the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA)

and the *Aboriginal Lands Trust Act 1966* (SA). Liquor accords exist for regional areas including Port Lincoln and Ceduna.

- *South Australia has implemented Recommendation 278 by implementing legislation to regulate the supply and consumption of alcohol on Aboriginal and Torres Strait Islander land.*

In **Western Australia**, the *Aboriginal Communities Act 1979* (WA) provides for the creation of community by-laws to regulate liquor supply. In addition to this the *Liquor Control Act 1988* allows communities to apply to restrict or prohibit liquor in an area. Liquor Accords are also available to assist communities that wish to manage liquor issues.

- *Western Australia has implemented Recommendation 278 by allowing communities to create by-laws to regulate liquor, enabling communities to restrict or prohibit liquor in an area and implement liquor accords.*

The **Tasmanian** Government commented in their 1993 implementation report that under current licensing laws, the Licensing Board could grant a licence for a community containing conditions in line with the matters raised in Recommendation 278.

The *Liquor Licensing Act 1990* contains a provision that the Commissioner must consider the community interest and that all licenses and permits are subject to any condition as specified by the Commissioner. The Act also provides for the Minister to prohibit alcohol products if it is in the best interests of the community. The Department of Treasury and Finance is also actively participating in several advisory groups as a response to alcohol-related harm in the Tasmanian community.

- *Tasmania has implemented Recommendation 278 as the Licensing Board is able to grant a licence for a community containing conditions in line with the matters raised in Recommendation 278.*

In the **Northern Territory**, the *Stronger Futures in the Northern Territory Act 2012* (Cth) establishes that the Commonwealth will provide funding and aid with the design and implementation of alcohol management plans in remote Aboriginal and Torres Strait Islander communities. A number of regional areas in the NT have been supported to develop supply plans, and Liquor Accords to manage alcohol consumption at a local level. This has extended to the development of permit systems, overseen by local permit committees, and restrictions on the volume and types of alcohol which can be purchased.

- *The Northern Territory has implemented Recommendation 278 by enabling communities to control the availability of alcohol under the Stronger Futures in the Northern Territory Act 2012.*

In the Australian Capital Territory, the *Liquor Act 2010* makes provision for public input and representations as part of the liquor licensing application process from the community. Under the Act the Commissioner for Fair Trading may impose conditions or amendments to applications for liquor licenses. A member of the Liquor Advisory Board is to represent Aboriginal and Torres Strait Islander people in reviewing and providing advice on the operation and effectiveness of the Liquor Act, including harm minimisation and community safety principles.

- *The Australian Capital Territory has implemented Recommendation 278 through the provision for public input and representations as part of the liquor licensing application process.*

Recommendation 279

That the law be reviewed to strengthen provisions to eliminate the practices of 'sly grogging'.

Background information

'Sly grogging' describes the practice of selling liquor without a licence. Sly grogging raised difficulties in the enforcement of restrictions on the availability of alcoholic beverages, particularly 'dry area' provisions. The practice of 'sly grogging' at the time of RCIADIC was widespread and existing laws were inadequate to deal with this problem.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation

Legislation in **New South Wales** was compliant with Recommendation 279 at the time of the RCIADIC. The *Liquor Act 2007* (NSW) contains provisions that prohibit the sale or supply of liquor without a licence, and the sale of liquor to the public from unlicensed premises, thereby providing a deterrent to the sale of 'sly grog'. In NSW, there are currently no dry areas.

- *New South Wales has addressed Recommendation 279 by prohibiting the sale or supply of liquor without a licence under the Liquor Act 2007.*

The **Victorian** Government complied with Recommendation 279 at the time of RCIADIC, by levying substantial penalties for selling liquor without a licence under the *Liquor Control Act 1987* (Vic). In its 2005 implementation report, Victoria's liquor licensing authorities reported that there was no evidence of 'sly grogging' in Victoria.

- *Victoria has addressed Recommendation 279 by levying substantial penalties for selling liquor without a licence under the Liquor Control Act 1987.*

In its initial response to the RCIADIC, the **Queensland** Government introduced the *Liquor Act 1992* (Qld), which increased the maximum penalty for 'sly-grogging' to \$15,000. Additionally, the Act provides that Aboriginal and Torres Strait Islander Councils may regulate and control the consumption of alcohol in Council areas, which includes by-laws that prohibit 'sly grogging'. Section 38 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and other Matters) Act 1984* (Qld) also relates to homebrew bans. The Queensland Government has also set up a "Sly Grog Hotline" for the purpose of reporting incidents of liquor selling without the appropriate licence.

- *Queensland has addressed Recommendation 279 by explicitly addressing the practice of sly-grogging under the Liquor Act 1992 and by setting up a Sly Grog Hotline.*

In **South Australia**, anyone who sells liquor without a licence is guilty of an offence, and police have the power to search premises or vehicles on suspicion of the presence of drugs or alcohol. The Government is considering measures to target 'grog running' or 'sly grogging'.

- *South Australia has addressed Recommendation 279 by having legal provisions to deal with sale of liquor without a licence.*

Western Australia introduced 'sly-grogging' as a specific offence in the *Liquor Licensing Act 1988* (WA), thus making it illegal for a person without a permit to transport alcohol onto, or near an Aboriginal and Torres Strait Islander community which has either declared itself "dry" or imposed limitations on the availability of alcohol. The *Liquor and Gaming Legislation Amendment Act 2006* (WA) also increased the fine for selling alcohol without a licence from \$10,000 to \$20,000, and the fine for carrying or offering liquor for sale at unlicensed premises. In addition to fines, where a person is convicted of an offence any vehicle in which the liquor was carried may be seized and is liable for forfeiture.

- *Western Australia has addressed Recommendation 279 by having legal provisions to deal with sale of liquor without a licence.*

In their 1993 implementation report, the **Tasmanian** Government noted that the Aboriginal and Torres Strait Islander community had developed their own "rules" which the Government supports and that there was no need for intervention. No further information on these rules was identified.

More recently, the Tasmanian Government noted that, given the small size and population of Tasmania, it is considered unlikely that the practice of selling alcohol by an unlicensed operator would occur without the knowledge of the authorities. Provisions in the *Liquor Licensing Act 1990* make it an offence for any person to sell alcohol without a liquor licence, permit or general exemption.

- *Tasmania has addressed Recommendation 279 by prohibiting the sale of liquor without a licence under the Liquor Licensing Act 1990.*

Under the **Northern Territory's** *Liquor Act 1978* (NT), police have wide powers to search vehicles or people suspected of 'sly-grogging'. On the spot penalties and court prosecutions are permissible penalties. More recently, the Riley Review has made a number of recommendations to inform the reform of the *Liquor Act*.

- *The Northern Territory has addressed Recommendation 279 by providing the police with powers to search vehicle or people suspected of 'sly-grogging'.*

The **Australian Capital Territory** commented in their 1993-94 implementation report that Recommendation 279 is targeted to isolated outback communities, and that any issues in the ACT relating to alcohol would be brought to the ACT Aboriginal and Torres Strait Islander Advisory Council. The ACT government views this recommendation as out of scope for the ACT.

- ⊘ *Recommendation 279 is not applicable to the Australian Capital Territory.*

Recommendation 280

That ATSIC and other organisations be encouraged to provide resources to help Aboriginal communities identify and resolve difficulties in relation to the impact of beer canteens in the communities.

Background information

The RCIADIC noted that many Aboriginal and Torres Strait Islander communities are concerned about the impact of beer canteens on their communities, and require assistance in identifying and resolving difficulties in this area. Recommendation 280 calls for ATSIC and other organisations to be encouraged to provide additional resources in support of this issue.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation

The following States and Territories considered Recommendation 280 to be out of scope: **New South Wales, Victoria, South Australia, Western Australia, Tasmania**, and the **Australian Capital Territory**. There were no beer canteens in these jurisdictions at the time of the RCIADIC.

The **Queensland** Government provided in their 1993 implementation report that the resolution of difficulties in relation to beer canteens is a complex matter, and that wherever communities seek the advice of Queensland Government agencies, it will be provided. More recently, Queensland noted that councils in Queensland can no longer hold liquor licenses and as such, venues previously referred to as 'wet canteens' no longer exist.

- ⊘ *Recommendation 280 does not apply to NSW, Victoria, South Australia, Western Australia, Queensland, Tasmania, and the Australian Capital Territory.*

The **Northern Territory** noted in their 1993 implementation report that they worked closely with communities to resolve difficulties in relation to beer canteens. The Bowchung Report into licensed clubs on remote communities in 2015 made a number of recommendations to strengthen the positive effect local clubs can have on reducing alcohol-related harms.

- *The Northern Territory has addressed Recommendation 280 by working with communities to resolve difficulties in relation to beer canteens.*

Recommendation 281

That Aboriginal communities that seek assistance in regulating the operation of beer canteens in their communities be provided with funds so as to enable effective regulation, especially where a range of social, entertainment and other community amenities are incorporated into the project.

Background information

The RCIADIC noted that many Aboriginal and Torres Strait Islander communities are concerned about the impact of beer canteens on their communities and seek assistance in identifying and resolving difficulties in this area. Recommendation 281 calls for the provision of funds to Aboriginal and Torres Strait Islander communities for regulation.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.


Key actions taken and status of implementation

For the following States and Territories, see Recommendation 280: **New South Wales, Victoria, South Australia, Western Australia, Tasmania**, and the **Australian Capital Territory**.

In 2008 amendments to **Queensland's** Liquor Act 1992 prohibited local authorities from operating commercial hotel licences, including the beer canteens in Aboriginal communities. Licensed premises in Aboriginal communities are now applied for and granted on a case by case basis subject to the framework prescribed under the Act. Specific consultation is required for applications in Aboriginal and Torres Strait Islander communities with community justice groups. Due regard is also had to the potential health and social impact of an alcohol outlet in the community prior to a decision on any licence being made.

 *Recommendation 281 does not apply to NSW, Victoria, South Australia, Western Australia, Queensland, Tasmania and the Australian Capital Territory.*

The **Northern Territory** is the focus of the Commonwealth's *Stronger Futures in the Northern Territory Act 2012* (Cth), which commits funding to reduce alcohol-related harm to Aboriginal and Torres Strait Islander people in the Northern Territory.

 *Recommendation 281 has been addressed in the Northern Territory through providing communities with additional funding to reduce alcohol-related harm through the *Stronger Futures in the Northern Territory Act 2012* (Cth).*

Recommendation 282

That media campaigns and other health promotion strategies targeted at Aboriginal people at the local and regional levels include Aboriginal involvement at all stages of development to ensure that the messages are appropriate.

Background information

The RCIADIC Report noted the importance of specific health programs or health promotion strategies targeted at Aboriginal and Torres Strait Islander communities at both the local and regional levels in changing negative health behaviours.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. State and territory governments are responsible for media campaigns and health promotion at the local and regional levels. The Commonwealth supports these programs through relevant funding and national initiatives.

Key actions taken and status of implementation

The **Commonwealth** DOH advised that it ensures that all health promotion campaigns that include Aboriginal and Torres Strait Islander people in their target audience have a suitably qualified Aboriginal and Torres Strait Islander consultant to advise on all aspects of the campaign. Campaigns that target Aboriginal and Torres Strait Islander people are also guided by an expert advisory group who have experience in communicating with this audience. Campaigns targeting Aboriginal and Torres Strait Islander people are based on research undertaken in communities and involving local Aboriginal and Torres Strait Islander community organisations to facilitate the process and ensure local protocols are respected.


The DOH noted several examples where this approach had been adopted, including the Don't Make Smokes Your Story, Break the Chain, and Health Heroes campaigns. The DOH also has an in-house advisor who has vast experience in communicating with Aboriginal and Torres Strait Islander people and is a respected community leader.

The Tackling Indigenous Smoking program is a major health promotion commitment of the Government focused on reducing smoking. The program funds 37 regional tobacco control grants across Australia. Grant guidelines for the program require multi-level tobacco health promotion approaches that are locally designed and delivered and aim to achieve Aboriginal and Torres Strait Islander community involvement in and support for local tobacco control activities.

 *Recommendation 282 has been completed through the DOH's consistent implementation of this recommendation across all its media campaigns and health promotion strategies.*


The **New South Wales** Government noted in their 1994-95 implementation report that all health promotion programs/campaigns for Aboriginal people in NSW must involve Aboriginal people at all stages of development. This commitment has continued.

Additionally, as part of the *NSW State Health Plan 2013-23*, NSW Health noted the importance of adopting a partnership approach between the Aboriginal Community Controlled Health Services and the NSW LHDs in ensuring a culturally-appropriate message. The *Stay Strong and Healthy Alcohol in Pregnancy project* is an example of engaging Aboriginal healthcare workers and community members in the design and delivery of health information and resources for Aboriginal women, their partners and families on the risks of alcohol consumption during pregnancy and availability of services.

 *New South Wales has fully addressed Recommendation 282 by requiring input from communities when developing relevant health programs and by forming partnerships with Aboriginal Community Controlled Health Services to deliver culturally appropriate messaging.*


In 1993, the **Victorian** Koori Health Unit was tasked with developing culturally relevant materials and programs through community consultation – such as through the Cervical Cancer Awareness Programs. The Victorian Department of Human Services provides that its programs are designed to include Aboriginal and Torres Strait Islander involvement at all stages of development. Examples include:

- Aboriginal and Torres Strait Islander community alcohol resource services;
- Aboriginal and Torres Strait Islander community alcohol and drug workers; and
- the development of the *Koori Drug and Alcohol Plan 2003-04* which sought to address Aboriginal and Torres Strait Islander priority areas from an alcohol and drug treatment, prevention and early intervention perspective.

 *Victoria has fully addressed Recommendation 282 by incorporating input from Aboriginal and Torres Strait Islander communities in health programs and media messaging.*


Queensland's 1993 implementation report noted that the Queensland Government supported Recommendation 282 through endorsement of the National Aboriginal Health Strategy. Additionally, the Aboriginal and Torres Strait Islander Health Branch within Queensland Health provides leadership, high-level advice and direction on appropriate programs and policies.

Currently, state-wide campaigns created by Queensland Health are underpinned by comprehensive market research. Health campaigns specific to Aboriginal and Torres Strait Islander people are informed by and tested with an appropriate audience to ensure messages, language and imagery are appropriate and channels will be effective. In 2014, DATSIP worked in conjunction with Queensland Remote Aboriginal Media to develop locally appropriate and community owned radio advertisements and interview-style radio segments for a Sly Grog and Homebrew communication campaign that was being rolled out.

 *Queensland has fully addressed Recommendation 282 by undertaking comprehensive market research, and consultation with the Aboriginal and Torres Strait Islander Health Branch when designing and developing health programs and media messaging.*


In **South Australia**, the South Australian Aboriginal Health Partnership seeks to establish a collaborative approach between the Commonwealth and SA Governments, and the Aboriginal Health Council of South Australia to foster better health outcomes for Aboriginal and Torres Strait Islander people. Drug and Alcohol Services South Australia has aimed to involve the target groups of campaigns and strategies in the development of their initiatives.

Aboriginal and Torres Strait Islander staff and community members have been involved in the development of all SA Health's health promotion activities and media, including delivery of the Strong Aboriginal Children's Health Expo, training on Promoting Health for Aboriginal Children and Families, and the Aboriginal Environmental Health Program.


 *South Australia has fully addressed Recommendation 282 by involving Aboriginal and Torres Strait Islander staff and community members in the development of all of its health programs and promotional activities.*

As part of their initial response to the RCIADIC, in 1994 the **Western Australia** Government funded five Aboriginal Health Promotion Units and involved Aboriginal and Torres Strait Islander people in the development of health promotion initiatives. The *Aboriginal Cultural Respect – Implementation Framework* places an emphasis on the development of partnerships with cultural groups and Aboriginal Community Controlled Health Services, staff exchange strategies with Aboriginal Community Controlled Health Services, and the encouragement of Aboriginal and Torres Strait Islander communities and organisations to be involved in service development.

In the development of the Western Australian Aboriginal Health and Wellbeing Framework 2015-2030, Aboriginal and Torres Strait Islander community control and engagement were key guiding principles. The Framework states that prevention and early intervention must have meaning for Aboriginal and Torres Strait Islander communities and work within the Aboriginal and Torres Strait Islander view of health, and a whole-of-community perspective.


 *Western Australia has partially implemented Recommendation 282 by noting that Aboriginal and Torres Strait Islander community control and engagement were key guiding principles and providing examples of Aboriginal and Torres Strait Islander involvement. However, Western Australia has not addressed any formalised processes or mechanisms for facilitating community participation or input.*

In **Tasmania**, examples of active involvement of Aboriginal and Torres Strait Islander people in health promotion activities include the 'Smokes Won't Crush Us' campaign, led by the Flinders Island Aboriginal Association.


 *Tasmania has partially implemented Recommendation 282 by noting examples of Aboriginal and Torres Strait Islander involvement in health campaign development but has not addressed any formalised processes or mechanisms for facilitating community participation or input.*

The **Northern Territory** Department of Health has an Aboriginal Policy and Stakeholder Engagement Division which provides advice and leadership to improve the wellbeing of Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people have contributed to the development of a number of initiatives, including:

- "Enough is Enough" alcohol reforms, which formed part of the Northern Territory's alcohol management plans. These reforms were accompanied with community awareness programs, and education initiatives to promote a safer drinking culture.
- "No Smokes" deals with issues regarding smoking, and recognises the communication differences and conceptual differences among Aboriginal and Torres Strait Islander people.
- Larrakia Radio addressed ear health for Aboriginal and Torres Strait Islander people. It broadcast personal stories from Aboriginal and Torres Strait Islander community members, elders, and community health clinic workers.
- More recently, the Riley Review (2017) has made a number of recommendations to inform the development of campaigns to strengthen health promotion messages and community culture.

 The Northern Territory has fully addressed Recommendation 282 by incorporating input from Aboriginal and Torres Strait Islander communities through its Aboriginal Policy and Stakeholder Engagement Division when designing health programs and media messaging.

The **Australian Capital Territory** utilises an integrated media program which involves collaboration between ACT Health and a number of Aboriginal and Torres Strait Islander organisations, including the Aboriginal and Torres Strait Islander Elected Body, United Ngunnawal Elders Council, Ngunnawal Bush Healing Farm, and Gugan Gulwan Youth Aboriginal Corporation.

 *The Australian Capital Territory has fully addressed Recommendation 282 by incorporating input from Aboriginal and Torres Strait Islander communities in its integrated media program.*

Recommendation 283

That the possibility of establishing early intervention programs in Aboriginal health services and in hospitals and community health centres with a high proportion of Aboriginal patients be investigated. This would include the training needs of staff in intervention techniques.

Background information

The RCIADIC Report identified that early intervention programs had been introduced in a number of hospitals and community programs with encouraging success.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that greater funding and policy designed for early intervention programs be provided by the Commonwealth, and State and Territory governments.

Key actions taken and status of implementation


The **Commonwealth** ATSIC allocated \$12.11 million in 1992-93 to various communities that addressed drug-related issues, including through early intervention programs. In addition, the NDS provided \$460,000 for the development of early intervention and training courses.

The NSFATSIH 2003-13 and ongoing National Health Plan 2013-23 prioritise counselling, health promotion and early intervention services amongst Aboriginal and Torres Strait Islander communities.

 *Recommendation 283 has been implemented through funding and policy initiatives, such as the National Health Plan 2013-23, by the Commonwealth into early intervention programs.*

In 1994, the **New South Wales** Department of Health extended \$1.35 million in recurrent funding to support projects to improve the delivery of health services to Aboriginal people. These funds contributed to the employment of AHLOs and projects in a number of districts. Funds were also provided for a range of programs covering antenatal services, cervical cancer and mammography screening, and domestic violence and sexual assault services.


More recently, the University of NSW conducted a review into the training needs of health care professionals involved in the delivery of alcohol screening and interventions. In addition, the NSW Ministry of Health has invested \$24.8 million in 2017/18 in ACCHOs and related organisations to deliver health services, including preventive health care.

 *New South Wales has partially implemented Recommendation 283 as it funded a range of health services, including preventative care, but has not consistently implemented early intervention programs across all aspects of health service delivery.*

The **Victorian** research (2001-02) project *Early Intervention for Young People with Alcohol and Drug Problems* involved a consortium approach to examining case studies of effective early intervention programs in Victoria that addressed alcohol and drug misuse among young people. The subsequent findings promoted the need for greater integration between Aboriginal and Torres Strait Islander-specific treatment providers and mainstream treatment providers.


The Victorian Government has noted the possibility of establishing early intervention programs in Aboriginal and Torres Strait Islander health services and in hospitals and community health centres

with a high proportion of Aboriginal and Torres Strait Islander patients be investigated in the context of the Improving Care for Aboriginal Patients Program.

 *Victoria has taken steps to address Recommendation 283 but has not consistently implemented early intervention programs across all aspects of health service delivery. As such, the recommendation is partially complete.*


The **Queensland** Government noted in their 1993 implementation report that early intervention training was provided on a needs-basis to non-Aboriginal and Torres Strait Islander staff as part of the Primary Health Care Certificate training undertaken by Aboriginal and Torres Strait Islander Health Workers. More recently, the *Queensland Making Tracks Framework* provides an overarching policy framework for the delivery of health services to Aboriginal and Torres Strait Islander people. The Framework calls for a multi-faceted approach that includes increased and sustained effort across the health system, intervention across an individual's life span, and attention to the needs of urban and remote communities.

Queensland has also invested in upskilling the health and community sectors via a state-wide brief intervention training program. The program aims to train the workforce to provide healthy eating, physical activity and smoking cessation advice (and referrals) to Aboriginal and Torres Strait Islander clients.


 *Queensland has fully addressed Recommendation 283 by implementing early intervention programs in Aboriginal and Torres Strait Island health services and instituting a state-wide intervention training program.*

In **South Australia**, Drug and Alcohol Services South Australia has contributed to the employment of Aboriginal and Torres Strait Islander workers and provided training – including a Certificate III in Community Services – to address drug and alcohol issues. Drug and Alcohol Services South Australia also provides cross-cultural awareness training to frontline staff, and contracts Aboriginal and Torres Strait Islander organisations to provide services on its behalf.

In addition, Public Health Services provides funding to Child and Adolescent Mental Health Services to deliver culturally appropriate early intervention mental health programs for Aboriginal and Torres Strait Islander children and young people. The program has been delivered in Murray Bridge for a number of years and plans to expand the service are underway.


 *South Australia has taken steps to address Recommendation 283 by implementing training to address drug and alcohol issues in a culturally appropriate way and by implementing culturally appropriate early intervention mental health programs but has not consistently implemented early intervention programs across all aspects of health service delivery. As such, the recommendation is partially complete.*

The **Western Australia** Government commented in their 1994 implementation report that early intervention training programs had been conducted in hospitals throughout priority areas, and that minimum intervention skills programs had been conducted in alcohol services training. Independent Aboriginal and Torres Strait Islander organisations have also been proactive in implementing early intervention programs in health services, such as Meerilinga which provides parental services and education. In addition to this, prevention and early intervention is a key strategic direction in the Western Australian Health and Wellbeing Framework 2015-2030

 *Western Australia has partially completed Recommendation 283 by implementing early intervention training programs and programs lead by Aboriginal and Torres Strait Islander organisations. However, Western Australia has not addressed how an early intervention approach will apply to other areas of health service delivery for Aboriginal and Torres Strait Islander people. As such, the recommendation is partially complete.*

Tasmanian Government drug policies state that prevention and early intervention are key commitments. Additionally, the Tasmanian Alcohol and Drug Services provides funding for the Circular Head of Aboriginal Corporation which offers alcohol education programs. Currently, the Department of Health and Human Services is developing an *Alcohol and Other Drugs Service System Framework*


which will guide the planning, funding and delivery of public-funded alcohol and other drugs services in Tasmania. A number of Tasmanian Aboriginal and Torres Strait Islander organisations have been consulted in its development.

 *Tasmania has taken steps to address Recommendation 283 by committing to prevention and early intervention in its drug policies but has not addressed how an early intervention approach will apply to other areas of health service delivery for Aboriginal and Torres Strait Islander people. As such, the recommendation is partially complete.*

The **Northern Territory** funded 12 specialist training positions through the *Living with Alcohol Program* in 1993-94. More recently, the Ntaria and Gunbarlanya communities implemented the Beat Project between 2010 and 2014 which offers best practice in early intervention, assessment and treatment of depression and substance misuse. Additionally, the Northern Territory has sought to minimise alcohol- and drug-related harm through prevention, education, treatment and community action initiatives as part of the *Alcohol and Other Drugs Program*.

The National Partnership Agreement on Remote Aboriginal Investment 2015-2022 contains specific key performance indicators to support prevention and early intervention programs in remote communities through community developed Alcohol Action Initiatives.


The Northern Territory Department of Health also delivers early intervention services throughout the Northern Territory. They include: nurse home visiting programs, antenatal visits, the Strong Women Strong Babies program, disease control screening HIV/ AIDS, STDs, environmental management, adult health checks, screening Aboriginal and Torres Strait Islander children under five years of age for anaemia, diagnosing diabetes early in pregnancy and improving maternity education, renal disease, increased cancer screening for Aboriginal and Torres Strait Islander people, and health promotion programs relating to all aspects of health.

 *The Northern Territory has taken steps to address Recommendation 283 by developing and implementing early intervention programs focused on alcohol and substance abuse and associated mental health issues. However, as the Northern Territory has not identified a consistent approach to early intervention across other areas of health service delivery, the recommendation is partially complete.*

In the **Australian Capital Territory**, a range of early intervention programs targeted at reducing alcohol abuse among Aboriginal and Torres Strait Islander communities are administered by the Gugan Gulwan Youth Aboriginal Corporation. Initiatives include lunch and night outreach programs and drug and alcohol groups for young men.

In addition to the Gugan Gulwan youth intervention programs, the ACT Government also funds a sobering up shelter, which provides assistance to intoxicated people, including counselling and follow up care, with staff trained in Aboriginal and Torres Strait Islander cultural awareness.

The ACT Government Health Directorate has also established reconciliation working groups within each alcohol, tobacco and other drug service funded by the ACT Government. Each working group has been tasked with implementing reconciliation action plan principles within the service.

 *The Australian Capital Territory has taken steps to address Recommendation 283 by providing early intervention programs to address drug and alcohol abuse but has not consistently implemented early intervention programs across all aspects of health service delivery. As such, the recommendation is partially complete.*

Additional commentary

The **Commonwealth** DOH noted that funding for comprehensive primary health care gives the service flexibility to determine the needs of their community, develop activities to meet these needs, employ appropriately trained staff and upskill staff to meet their organisation's priorities. Funding for comprehensive primary health care specifically includes funding for children's health services, including early intervention services.

Recommendation 284

That Aboriginal organisations consider adopting alcohol-free workplace policies and be encouraged and given support to develop employee assistance programs.

Background information

Policies and programs concerning the use of alcohol in the workplace illustrate employers' and employees' perceptions of the position of alcohol beverages in society. In order to assist employees in reducing their alcohol consumption, Recommendation 284 calls for the implementation of alcohol-free workplace policies.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation

The **New South Wales** Government noted in their 1994-95 implementation report that this is not a matter for the NSW Government. More recently, the NSW Government has written a number of policies which provide advice for the delivery of workplace support to people impacted by drug and alcohol misuse. These include the *Guide to Developing a Workplace Alcohol and Other Drugs Policy and Employee Assistance Programs*.

- *New South Wales has completed Recommendation 284 by developing policies that provide workplaces with guidance on designing relevant workplace assistance programs.*

The **Victorian** *Guidelines for Developing a Workplace Alcohol Policy* provides that workplace alcohol procedures should focus on prevention, education, counselling and rehabilitation.

- *Victoria has completed Recommendation 284 by putting guidelines in place encouraging workplaces to offer alcohol advice and counselling services for employers.*

The **Queensland** Government's 2011 framework for managing alcohol and drug-related problems in the workplace recommended the introduction of a testing regime and testing procedures, the implementation of procedures for counselling and disciplining of workers in the case of a positive test, and the provision of early intervention services that include counselling and referral services for workers. The Department of Child Safety Youth and Women and Department of Communities, Disability Services and Seniors does not mandate these requirements in its funding arrangements but requires organisations to describe how they will recruit, develop and support their staff in procurement processes.

- *Queensland has completed Recommendation 284 by putting guidelines in place encouraging workplaces to offer alcohol advice and counselling services for employers.*


The **South Australian** Government has developed a Workplace Health and Wellbeing Toolkit, which provides a guide to the design, implementation and evaluation of workplace health and wellbeing programs with the aim of providing guidance to employers.

- *South Australia has partially completed Recommendation 284 by developing a toolkit that provides workplaces with guidance on designing and implementing workplace health and wellbeing programs but does not expressly address alcohol workplace policies.*


In **Western Australia**, the *Healthier Workplace WA* framework assists workplaces with the implementation and evaluation of workplace health and safety policies. The Healthy Workers Alcohol Program extends free information, resources and workplace support for alcohol- and drug-related issues.

- *Western Australia has completed Recommendation 284 as the Healthier Workplace WA framework provides organisations with guidance relating to alcohol and substance-related workplace health and safety policies.*


The **Tasmanian** Government commented in their 1993 implementation report that Recommendation 284 is the responsibility of individual Aboriginal and Torres Strait Islander organisations. The *WorkSafe Tasmania Drugs and Alcohol: A Guide for Employers and Workers* provides support to employers seeking to fulfil their workplace health and safety obligations with regard to alcohol and drug-affected employees.

 *Tasmania has completed Recommendation 284 as the WorkSafe Tasmania Drugs and Alcohol Guide provides organisations with guidance relating to alcohol and substance-related workplace health and safety obligations.*

The **Northern Territory** Government responded to the RCIADIC by extending the provision of training for staff to better identify and treat substance misuse. The Northern Territory Government has also continued to monitor Employee Assistance Programs in remote areas.

 *The Northern Territory has completed Recommendation 284 by expanding training for the identification and treatment of substance misuse, and support for Employee Assistance Programs in remote areas.*

In the **Australian Capital Territory**, the *Guide to Promoting Health and Wellbeing in the Workplace* outlines the various attributes of an effective workplace health and wellbeing program. This guide recommends the provision of information, advice, counselling and referral to treatment services for staff who are concerned about alcohol use; education and training to employees over the responsible use of alcohol; and the development of employee assistance programs to help employees reduce their alcohol consumption.

 *The Australian Capital Territory has completed Recommendation 284 by developing guidelines for effective workplace health and wellbeing, including support for staff who are concerned about alcohol use and Employee Assistance Programs.*

Recommendation 285

That Aboriginal organisations and Councils (including ATSIC) be encouraged to give consideration to the further implementation of programs to employ multipurpose Aboriginal drug and alcohol community workers, and that appropriate assistance is sought in the training of Aboriginal people to fill such roles.

Background information

The RCIADIC found that in some States and Territories, Aboriginal drug and alcohol community workers have in many cases provided an effective service. In order to improve cultural sensitivity and functional accessibility in the provision of alcohol and drug related health services to Aboriginal and Torres Strait Islander people, Recommendation 285 endorses the role of Aboriginal drug and alcohol community workers.

Responsibility

The recommendation is the responsibility of the State and Territory Governments who have policy oversight of liquor legislation and regulations.

Key actions taken and status of implementation

The **New South Wales** Government's Mental Health and Drug and Alcohol Committee offers Aboriginal drug and alcohol traineeships which support Aboriginal workers to undertake supported practical and theoretical training in drug and alcohol-related issues. The draft NSW Health Alcohol and Other Drugs Strategy, which is expected to be finalised in 2018, reiterates the NSW Health priority of increasing the proportion of Aboriginal people employed in drug and alcohol services.

NSW Health funds the Aboriginal Health and Medical Research Council of NSW to lead the Aboriginal Drug and Alcohol Network, which supports Aboriginal drug and alcohol workers from LHDs and ACCHSs to better respond to and treat people with drug and alcohol problems in their communities. The Network received \$173,800 in 2017/18.

● *New South Wales has fully implemented Recommendation 285 by implementing a range of employment and training initiatives for Aboriginal drug and alcohol community workers, including through drug and alcohol traineeships and the Aboriginal Drug and Alcohol Network.*

The **Victorian** Government increased funding provision for Koori Alcohol and Drug workers, and increased the number of workers from six to ten in 1993. This also included the introduction of a training and professional development initiative.

● *Recommendation 285 has been addressed by Victoria through the employment and training of Aboriginal and Torres Strait Islander drug and alcohol community workers.*

In **Queensland's** initial response to Recommendation 285, courses were developed for Aboriginal and Torres Strait Islander workers to increase their skill level in the provision of drug and alcohol-related health services. This included Certificate courses in Indigenous Primary Health, a Bachelor of Applied Health Sciences, and Alcohol and Drug Counsellor Training.

Currently, the Indigenous Wellbeing Centre is tasked with the provision of alcohol and drug use prevention initiatives and supports the employment of Aboriginal and Torres Strait Islander community workers. In addition, public intoxication services funded by the Department of Communities Disability Services and Seniors, and men's support services, funded by the Department of Child Safety Youth and Women, are provided with annual training to undertake their role.

● *Queensland has fully implemented Recommendation 285 by developing specific Certificates for the training of Aboriginal and Torres Strait Islander drug and alcohol community workers and by supporting their employment through the Indigenous Wellbeing Centre.*

The **South Australian** Aboriginal Drug and Alcohol Council resource package on illicit drugs for Aboriginal and Torres Strait Islander workers provides the opportunity for Aboriginal and Torres Strait Islander community workers to increase their skills and qualifications. This is guided with a view to develop competency among Aboriginal and Torres Strait Islander workers in the areas of illicit drugs, community development, and cultural skills.

● *South Australia has fully addressed Recommendation 285 via the Aboriginal Drug and Alcohol Council resource package on illicit drugs, which provides Aboriginal and Torres Strait Islander drug and alcohol community workers with education and employment opportunities.*


The **Western Australia** Government allocated funding in 1994 to regionally-based training in addictions for Aboriginal and Torres Strait Islander workers. More recently, the *Aboriginal Employment Strategy 2011-15* was developed to provide sustainable employment opportunities and career pathways for Aboriginal and Torres Strait Islander people. Additionally, as part of the *Western Australia Country Health Service Aboriginal Employment Strategy 2010-14*, Western Australia seeks to increase employment opportunities for Aboriginal and Torres Strait Islander staff, focus on workforce skill development, and develop a workforce culture and environment that supports the employment and retention of Aboriginal and Torres Strait Islander people.

Western Australia also operates the Strong Spirit Strong Mind program, which offer either a Certificate III in Community Services or Certificate IV in Alcohol and other Drugs qualification to Aboriginal and Torres Strait Islander workers employed in the health and broader human services sector.


● *Western Australia has implemented Recommendation 285 by developing specific training for Aboriginal and Torres Strait Islander drug and alcohol community workers and by supporting their employment through the Western Australia Country Health Service Aboriginal Employment Strategy.*

As part of **Tasmania's** *Alcohol, Tobacco and Other Drug Services Tasmania Future Service Directions (2008/09-2012/13)*, the Tasmanian Government extended initiatives to work in partnership with the Aboriginal and Torres Strait Islander community to establish an Aboriginal and Torres Strait Islander workforce development strategy, and to build the capacity for ACCHOs to address alcohol and drug-related issues.


More recently, as per their response to Recommendation 283, the Department of Health and Human Services is developing an *Alcohol and Other Drugs Service System Framework* which will guide the planning, funding and delivery of public-funded alcohol and other drugs services in Tasmania.

 *Tasmania has partially completed Recommendation 285 via the implementation of the Alcohol and Other Drugs Service System Framework but has not expressly addressed the training or employment of Aboriginal and Torres Strait Islander drug and alcohol community workers.*

In 1993, the **Northern Territory's** Batchelor College developed a TAFE Certificate in Primary Health Care (Drug and Substance Abuse) to support the training of Aboriginal and Torres Strait Islander workers. The employment of Aboriginal and Torres Strait Islander health workers is also prioritised in the *Stronger Futures Plan* which seeks to provide: employment for 20 new full-time alcohol and drug workers through primary health care centres; employment for local workers; and professional development and a support framework to provide training for community workers. The National Partnership Agreement on Remote Aboriginal Investment also provides specific support for the Indigenous Remote Alcohol and Other Drugs workforce, and for additional funding for Aftercare programs.

 *The Northern Territory has fulfilled the objectives of Recommendation 285 by developing appropriate educational pathways for Aboriginal and Torres Strait Islander drug and alcohol community workers in TAFE and by prioritising their employment in the Stronger Futures Plan.*

The **Australian Capital Territory** Government has responded to Recommendation 285 through providing a number of training initiatives for Aboriginal and Torres Strait Islander community health workers in the areas of drug and alcohol misuse. Most recently, the *Aboriginal and Torres Strait Islander Health Workforce Action Plan 2013-18* prioritises increasing the employment of Aboriginal and Torres Strait Islander people across the ACT health sector, and providing training initiatives, support networks, and professional development opportunities.

 *Recommendation 285 has been addressed by the Australian Capital Territory through the provision of relevant training initiatives Aboriginal and Torres Strait Islander community health workers in the areas of drug and alcohol misuse.*

Recommendation 286

That the Commonwealth Government, in conjunction with the States and Territories Governments and nongovernment agencies, act to co-ordinate more effectively the policies, resources and programs in the area of petrol sniffing.

Background information


The RCIADIC Report concluded that petrol sniffing, though uncommon, can cause serious health issues for Aboriginal and Torres Strait Islander communities and should be managed by a more co-ordinated rehabilitation framework.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

In 2005, the **Commonwealth** Government and **all States and Territories** implemented a whole-of-government *Petrol Sniffing Strategy* in response to the effects of petrol sniffing in some Aboriginal and Torres Strait Islander communities. The strategy aimed to reduce the incidence and impact of petrol sniffing and other forms of substance use among Aboriginal and Torres Strait Islander young people and communities in specific areas. All States and Territories contributed toward the implementation of this Strategy, and associated initiatives. To complement this Strategy, the *Low Aromatic Fuel Act 2013* was introduced to prohibit the supply of regular unleaded petrol to certain areas.

 *Recommendation 286 has been implemented by the Commonwealth and all States and Territories through the introduction of relevant policies and programs, such as the Petrol Sniffing Strategy and the supporting Low Aromatic Fuel Act 2013.*

Additional commentary

PM&C has managed the **Commonwealth** Government's response to petrol sniffing since 2013. PM&C coordinates the rollout of low aromatic fuel and other harm reduction programs to combat petrol sniffing, and works closely with fuel production companies and distributors, fuel outlets across Australia, non-government organisations, and state and territory governments. This includes the administration of the *Low Aromatic Fuel Act 2013*. PM&C further noted that research released in 2016 showed that in communities surveyed since 2005-07, petrol sniffing has reduced by up to 88% since the introduction of low aromatic fuel, which is now available in more than 175 fuel outlets in regional and remote parts of Australia.

In **New South Wales**, the NSW Health "Your Room" drug and alcohol website provides accurate and non-judgemental health information on the harms associated with alcohol and other drugs, including resources on inhalants and petrol sniffing.

In 2001, the **Victorian** Government established a working group to address petrol sniffing in collaboration with Aboriginal and Torres Strait Islander communities. This led to the development of a resource package for solvent abuse, which was distributed to Victorian alcohol and drug workers as part of their training. Guidelines were also developed for front line workers who deal with people who use inhalants, including Aboriginal and Torres Strait Islander people.

In **Queensland**, the Queensland Health Dovetail service provides training, resources and support for services working with young people impacted by inhalant and volatile substance misuse. In line with *Connecting Care to Recovery 2016-2021: A plan for Queensland's state funded mental health, alcohol and other drug services*, services provide treatment for people impacted by any substance. Specific funding is directed to services for young people and Aboriginal and Torres Strait Islander people.

The **South Australian** Government developed the *Petrol Sniffing and Other Solvents* resource package in 2000 to support health workers dealing with issues related to the use of inhalants. The Drug and Alcohol Services South Australia developed the APY Lands Substance Misuse Service to address petrol sniffing and other issues, and to provide for the assessment and treatment of people who misuse petrol and other drugs.

SA Health works in collaboration with the APY Lands General Business Managers and a range of APY Lands based service providers to coordinate effective responses to petrol sniffing outbreaks as they occur. In addition, SA Health supported the introduction of low aromatic, or Opal, fuel on the APY Lands, which has reduced the misuse of petrol.

Western Australia introduced Opal fuel as a replacement to regular petrol.⁴⁷ The introduction of Opal fuel was accompanied by a range of advertising initiatives, including the Western Australia Department of Health's "stop petrol sniffing" website, radio announcements, community information sessions, and brochures.

The Western Australian Mental Health Commission, in partnership with the Department of the Prime Minister and Cabinet, has also established the State Volatile Substance Use Coordination Group, to provide a coordinated and strategic response to volatile substance use issues. The Mental Health Commission also provides expert advice and support to regional Working Groups, towns and communities requiring the development of local responses to address volatile substance use problems.

The **Tasmanian** Government has noted that petrol sniffing has not been identified as an issue in Tasmania.

⁴⁷ Opal fuel was also introduced into SA and WA.

The **Northern Territory's** Alcohol and Other Drugs Program targets drug harm minimisation, including from alcohol and petrol. It offers a range of initiatives, including education, treatment, and community actions; as well as the provision of advice and information to members of the community. The Northern Territory has also implemented the *Volatile Substance Abuse Prevention Act 2006* (NT), which requires persons considered to be at severe risk of harm from substance inhalation to be assessed by health practitioners. There have also been community led Volatile Substance Abuse prevention coordinating committees in regional areas.

Recommendation 287

That the Commonwealth, States and Territories give higher priority to the provision of alcohol and other drug prevention, intervention and treatment programs for Aboriginal people which are functionally accessible to potential clients and are staffed by suitably trained workers, particularly Aboriginal workers. These programs should operate in a manner such that they result in greater empowerment of Aboriginal people, not higher levels of dependence on external funding bodies.

Background information

The RCIADIC Report found that few drug and alcohol programs had been implemented by Aboriginal and Torres Strait Islander communities. Moreover, based on the different patterns of abuse by these communities, the Report called for greater focus on community-driven programs.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation.

Key actions taken and status of implementation

The **Commonwealth** Government's NSFATSIH 2003-13 and ongoing National Health Plan 2013-23 prioritise counselling, health promotion and early intervention services amongst Aboriginal and Torres Strait Islander communities. The NPA on Closing the Gap in Indigenous Health Outcomes set out a plan of targeted investment for the provision of alcohol, drugs and mental health services.


PM&C provides funding for over 80 Aboriginal and Torres Strait Islander Alcohol and Other Drug treatment services, which provide culturally appropriate counselling, referrals, aftercare, and residential rehabilitation.

The DOH noted that under the National Ice Action Strategy, the Government is providing funding of \$241.5 million over four years from 2016-17 for Primary Health Networks (PHNs) to commission additional drug and alcohol treatment services to meet local need, including funding of \$78.6 million for Aboriginal and Torres Strait Islander-specific services. PHNs are required to ensure appropriate consultation and collaboration with local Aboriginal and Torres Strait Islander stakeholders in the planning, design, and implementation of this program. Under this program, ACCHO's and other drug and alcohol service providers have the opportunity to apply for funding from PHNs to deliver treatment services based on local needs.


 *Recommendation 287 has been mostly implemented – while Commonwealth programs have increased the accessibility of drug and alcohol services, it is not clear that these programs have resulted in greater empowerment for Aboriginal and Torres Strait Islander people.*

In their 1994-95 implementation report, the **New South Wales** Government noted that the NSW Health Department funded 16 drug and alcohol programs, including associated workers, under the *Aboriginal Non-Government Organisation Program*. Currently, NSW Health provides specific programs for Aboriginal people through Aboriginal residential rehabilitation services, and Aboriginal drug and alcohol workforce development initiatives, and drug and alcohol health information for local communities.

Aboriginal people are a priority population for new drug and alcohol treatment, rehabilitation, pregnancy services and aftercare programs. The NSW Drug Package is investing an additional \$75 million over four years to tackle drug use problems in NSW communities through supporting more young people and families into treatment.

 *New South Wales has mostly addressed Recommendation 287 by providing specific drug and alcohol treatment programs for Aboriginal people and identifying Aboriginal people as a priority population for new drug and alcohol treatment but it is not clear whether these programs have resulted in greater empowerment for Aboriginal people.*


The **Victorian** Government has funded a range of programs and initiatives aimed at addressing the abuse of alcohol, drugs and other substances in Aboriginal and Torres Strait Islander communities under the *Koori Alcohol Action Plan 2010-20*. The Plan seeks to strengthen communities, provide responsible access to alcohol, improve information and understanding, and improve responses and services.

 *Victoria has mostly addressed Recommendation 287 through the Koori Alcohol Action Plan 2010-20 but it is not clear whether the plan has resulted in greater empowerment for Aboriginal and Torres Strait Islander people.*


The **Queensland** Government has offered specific measures in response to Recommendation 287.

- The *IRIS Program* offers screening and intervention for Aboriginal and Torres Strait Islander people impacted by alcohol, drug, and mental health issues.
- The *SmokeCheck* program was introduced to address tobacco smoking and to promote behavioural changes through the identification, encouragement and support of Aboriginal and Torres Strait Islander people.
- The *Making Tracks* initiative also supports implementation of Recommendation 287.

In addition, the The Department of Communities, Disability Services and Seniors funds public intoxication services, which divert Aboriginal and Torres Strait Islander people from custody, and men's services aimed at addressing the causes of alcohol abuse and associated family violence in discrete communities. Alcohol and other drug commissioned services also target culturally appropriate service delivery models inclusive of Aboriginal and Torres Strait Islander workers. Aboriginal and Torres Strait Islander people are recruited and trained to deliver these services.


 *Queensland has mostly addressed Recommendation 287 by offering targeted screening and intervention initiatives to Aboriginal and Torres Strait Islander people and by ensuring that alcohol and other drug commissioned services target culturally appropriate service delivery models. However, it is not clear whether Queensland's actions have resulted in greater empowerment for Aboriginal and Torres Strait Islander people.*

South Australia's 1994 implementation report noted that Recommendation 287 was supported by the Drug and Alcohol Services Council, particularly as it relates to the empowerment of Aboriginal and Torres Strait Islander communities. Currently, SA Health supports collaboration between ACCHOs and specialist alcohol and other drug treatment services, with a view to the exchange of expertise in the delivery of evidence-based treatment and prevention responses, through contractual arrangements for the delivery of culturally appropriate service and policy development. ACCHOs are encouraged to take a lead in the design and delivery of these programs.

 *South Australia has mostly addressed Recommendation 287 by supporting collaborations between ACCHOs and specialist services to deliver drug and alcohol treatment programs for Aboriginal and Torres Strait Islander people. However, it is not clear whether these programs have resulted in greater empowerment for Aboriginal and Torres Strait Islander people.*


The 1994 implementation report for **Western Australia** notes that the WA Government offered a number of programs through the WA Drug and Alcohol Authority, including community drug prevention, intervention and treatment initiatives. These programs were informed through a collaborative, consultative process between government representatives and community organisations.

Drug and alcohol service providers contracted by the State's Mental Health Commission are required to be accredited against a suitable standard, with many providers choosing to be accredited against the standard on Culturally Secure Practice (Alcohol and Drug Sector).

 *Western Australia has mostly addressed Recommendation 287 by encouraging community drug prevention, intervention and treatment initiatives to be delivered in a culturally sensitive way to Aboriginal and Torres Strait Islander people. However, it is not clear whether these programs have resulted in greater empowerment for Aboriginal and Torres Strait Islander people.*


Tasmania's Alcohol, Tobacco and Other Drug Services Tasmania Future Service Directions (2008/09-2012/13), introduced as part of the response to Recommendation 285, recommended that the Government take steps towards: improved access to specialist alcohol and drug services; early intervention; consultation from the Alcohol and Drug Service; liaison and outreach to other organisations; and supporting the Aboriginal and Torres Strait Islander community.

As previously mentioned in response to Recommendation 283, the Department of Health and Human Services is developing an *Alcohol and Other Drugs Service System Framework* which will guide the planning, funding and delivery of public-funded alcohol and other drugs services in Tasmania and will consider the needs of specific population groups, including Aboriginal and Torres Strait Islander people.

 *Tasmania has mostly addressed Recommendation 287 through the Alcohol and Other Drugs Service System Framework but has not stated to what extent the Framework has resulted in greater empowerment for Aboriginal and Torres Strait Islander people.*


In the **Northern Territory**, Commonwealth Government funding has been allocated by the Northern Territory Government through the *Commonwealth Substance Misuse Service Delivery Grants Fund* for 22 organisations to assist Aboriginal and Torres Strait Islander communities in the Northern Territory in the provision of alcohol and drug treatment. In addition, the National Partnership Agreement on Remote Aboriginal Investment provides specific support for the Indigenous Remote Alcohol and Other Drugs workforce, as well as additional funding for Aftercare programs. This workforce, which operates within 18 remote communities throughout the NT to provide greater access to treatment intervention and support is comprised of 98% Aboriginal workers.

In addition to providing greater access to treatment intervention and support, the policy of employing a Indigenous Remote Alcohol and Other Drugs workforce aims to empower Aboriginal communities to address alcohol and drug issues within their own communities.

 *The Northern Territory has addressed Recommendation 287 by supporting Aboriginal and Torres Strait Islander alcohol and drug treatment through the Commonwealth Substance Misuse Service Delivery Grants Fund and empowering Aboriginal communities to address alcohol and drug issues within their own communities.*

The **Australian Capital Territory** has provided funding for AHLOs and guidelines around culturally-appropriate service provision to improve Aboriginal and Torres Strait Islander access to healthcare services.

In addition to this, the ACT Government opened the Ngunnawal Bush Healing Farm in 2017 to provide culturally appropriate prevention, education, and rehabilitation programs for Aboriginal and Torres Strait Islander people recovering from alcohol and other drug problems. Programs delivered at the facility include traditional healing practices, life skills training, and cultural programs.

 *The Australian Capital Territory has completed Recommendation 287 by providing resources for improved Aboriginal and Torres Strait Islander access to healthcare services and has addressed drug and alcohol treatment access through the establishment of the Ngunnawal Bush Healing Farm. However, it is not clear whether these programs have resulted in greater empowerment for Aboriginal and Torres Strait Islander people.*

Recommendation 288

That all workers, both Aboriginal and non-Aboriginal, involved in providing alcohol and other drug programs to Aboriginal people, receive adequate training. Priority training needs include:

- a. *Relevant cross-cultural awareness and communication training for non-Aboriginal workers such as health and welfare staff who provide services to Aboriginal people;*
- b. *Skills training for Aboriginal alcohol and other drug treatment workers, particularly those who have recovered from alcohol problems themselves but have no formal training in the area.*

Background information

The RCIADIC Report pointed to evaluations of alcohol and drug abuse programs that found many programs to be ineffective and wasteful of resources. Training in both cultural awareness and health skills were found to be of particular need.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation requires that training programs be provided to workers in programs under the Commonwealth, and State and Territory governments.

Key actions taken and status of implementation


The **Commonwealth** has developed the National Aboriginal and Torres Strait Islander Health Workforce Training Package to provide funding to organisations that mentor and support Aboriginal and Torres Strait Islander doctors, nurses and health workers.

The NPA on *Closing the Gap in Indigenous Health Outcomes* set out a number of strategies with the aim of improving the cultural sensitivity of health workers and the subsequent services provided to the Aboriginal and Torres Strait Islander population. All **States and Territories** are signatories to this NPA.


 *Recommendation 288 has been implemented through the introduction of relevant training for provision of alcohol and other drug treatment services, via programs such as the National Aboriginal and Torres Strait Islander Health Workforce Training Package and the relevant NPA in Closing the Gap.*

The **New South Wales** Government provided training to Aboriginal drug and alcohol workers through the Centre for Education and Information on Drugs and Alcohol and TAFE NSW. Their 1994-95 implementation report comments that TAFE NSW provided a range of Certificate-level courses in drug and alcohol worker training, while the Centre for Education and Information on Drugs and Alcohol provided training in cross-cultural competence.

Currently, "Respecting the Difference: An Aboriginal Cultural Training Framework for NSW Health" delivers cultural competency training for healthcare professionals on delivering culturally safe service to Aboriginal people. NSW Health Drug and Alcohol services, as well as the Justice Health and Forensic Mental Health Network, are required to ensure that staff have undertaken the training. NSW Health also funds the Aboriginal Drug and Alcohol Workers Network to deliver drug and alcohol workforce development initiatives to public, non-government and ACCHSs.


 *New South Wales has fully addressed Recommendation 288 by providing cross-cultural awareness training via NSW Health as well as providing education pathways to Aboriginal alcohol and other drug treatment workers through the Centre for Education and Information on Drugs and Alcohol and TAFE NSW.*

The **Victorian** Government has funded a number of training programs, including at the Certificate level, for Aboriginal and Torres Strait Islander health workers. Additionally, the 1993 implementation report for Victoria noted that the Department of Health and Community Services facilitated the development of a program, kit and professional training for staff involved in delivering cultural awareness sessions. In 2004, the Victorian Government also supported accredited training for Aboriginal and Torres Strait Islander health workers in advanced case management and counselling skills.


 *Victoria has fully addressed Recommendation 288 by providing appropriate training and education to Aboriginal and Torres Strait Islander health workers.*

In 1992, **Queensland** Health revised its orientation and training programs for Aboriginal and Torres Strait Islander drug and alcohol workers to bring programs into line with the National Aboriginal Health Strategy. More recently, Queensland's *Making Tracks Framework* places an emphasis on providing culturally-sensitive and responsive programs that are staffed by a workforce that has both the clinical and cultural training to make them competent practitioners of health service delivery for Aboriginal and Torres Strait Islander people.

In addition, The Department of Child Safety Youth and Women and Department of Communities, Disability Services and Seniors provides ongoing training for services responding to Aboriginal and Torres Strait Islander clients, with non-Aboriginal and Torres Strait Islander workers required to undertake cultural capability training. Aboriginal and Torres Strait Islander workers who are not formally qualified but have past experiences in the area also undertake relevant training. Resources, training, education and support are provided through Queensland Health's Insight and Dovetail services. In 2016-17 and 2017-18, Queensland Health also provided funding to the Queensland Aboriginal and Islander Health Council support services to address methamphetamine and other substances of concern for Aboriginal and Torres Strait Islander people.


 *Queensland has fully addressed Recommendation 288 by providing cross-cultural awareness training and appropriate training to Aboriginal alcohol and other drug treatment workers under the Making Tracks Framework.*

In **South Australia**, Drug and Alcohol Services SA provides training for Aboriginal and Torres Strait Islander workers, including a Certificate 3 VET accredited program – “Strong Spirit Strong Mind” – in collaboration with the WA Drug and Alcohol Office, and Nunkuwarrin Yunti. Front line clinicians and other workers employed by Drug and Alcohol Services SA are required to undertake cultural awareness training while contracted non-government organisations involved in servicing Aboriginal and Torres Strait Islander clients are also required to ensure cultural appropriateness of services. Drug and Alcohol Services SA also undertakes Aboriginal Workforce Development, which provides Aboriginal and Torres Strait Islander workers with training and networking opportunities.

 *South Australia has fully addressed Recommendation 288 by providing cross-cultural awareness training and alcohol and other drug treatment certifications through Drug and Alcohol Services SA.*

The **Western Australia** Government has sought to provide nationally recognised Aboriginal and Torres Strait Islander workforce development programs and career pathways, including through traineeships, and culturally secure training for non-Aboriginal and Torres Strait Islander staff. This is supported by the Aboriginal Alcohol and Drug Service which provides training, capacity building, the establishment of partnerships, and the development of sustainable programs in this area.

The Western Australian Governments Strong Spirit Strong Mind program also includes cultural awareness training to non-Aboriginal and Torres Strait Islander people in the alcohol and other drugs, mental health and broader human service sectors.

 *Western Australia has fully addressed Recommendation 288 by providing cross-cultural awareness training and appropriate training to Aboriginal and Torres Strait Islander alcohol and other drug treatment workers under the Strong Spirit Strong Mind program.*

The **Tasmanian** Government responded to Recommendation 288 by expanding an offering of TAFE courses to specifically address training for alcohol and drug workers. Under the *Alcohol, Tobacco and Other Drug Services Tasmania Future Directions (2008/09-2012/13)*, the Tasmanian Government worked in partnership with Aboriginal and Torres Strait Islander communities to develop cultural awareness training, a workforce development strategy, and reciprocal learning approaches to build the cultural competence of mainstream services and to establish the capacity of ACCHOs to address alcohol and drug issues.

More recently, funding has been granted to the Drug Education Network in partnership with the Tasmanian Aboriginal Corporation as a Registered Training Organisation, to deliver the Cert IV in Alcohol and Other Drugs work with the expectation of 24 people completing the qualification, thereby

increasing the number of qualified Aboriginal and Torres Strait Islander alcohol and other drug workers as well as boosting the capability of the mainstream alcohol and other drugs sector to provide culturally safe services. The Drug Education Network and the Tasmanian Aboriginal Corporation will also provide cultural safety training to around 60 alcohol and other drug workers.

● *Tasmania has fully addressed Recommendation 288 by providing appropriate training and education through a partnership between the Drug Education Network and the Tasmanian Aboriginal Corporation.*

In their 1993-94 implementation report, the **Northern Territory** Government noted the provision of cross-cultural training and initiatives to build greater competence among Aboriginal and Torres Strait Islander drug and alcohol workers. The Riley Review has also made a number of recommendations to strengthen workforce initiatives. Night and Community Patrols have been a significant area of focus for skills development.

● *The Northern Territory has fully addressed Recommendation 288 by providing cross-cultural training and initiatives for Aboriginal and Torres Strait Islander drug and alcohol treatment.*

In response to Part A of Recommendation 288, the **Australian Capital Territory** Government provided training for Aboriginal and Torres Strait Islander workers including the launch of cross-cultural training through Winnunga Nimmityjah. In relation to Part B, the ACT Government provided that staff from Winnunga Nimmityjah Aboriginal Health Service would attend symposiums and conferences which would focus on training on drug and alcohol matters.

● *The Australia Capital Territory has fully addressed Recommendation 288 by providing appropriate training and education through the Winnunga Nimmityjah Aboriginal Health Service.*

Additional commentary

All **Commonwealth** PM&C funded alcohol and other drug treatment services are encouraged to employ Aboriginal and Torres Strait Islander staff where possible and are required to demonstrate cultural awareness. PM&C advocates that staff employed through these programs should have at minimum a Certificate IV in alcohol and other drug work. In the case where a person is not already qualified, providers must support staff through training to attain their Certificate IV in alcohol and other drugs.

10.3 Educating for the future (289-299)

Recommendation 289

That:

- a. *governments, State Aboriginal Education Consultative Groups and local AECGs should pay great attention to the fact that the scope of the National Aboriginal and Torres Strait Islander Education Policy extends to pre-schooling programs and that it should be recognised that to a considerable extent the success of the whole National Assessment of Educational Progress will turn on the success of the pre-schooling initiatives;*
- b. *That pre-schooling programs should have as a major aim the involvement not only of the children, but of the parents or those responsible for the care of the children.*

Background information

Pre-schooling years are important for the success of all later education interventions. The effectiveness of pre-schooling programs benefit in particular from the involvement of parents and primary carers.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. State and territory governments provide varying levels of subsidised access to one year of pre-school in the year before children start school. In addition, the National Assessment of


Educational Progress is jointly implemented by both State and Territory, and Commonwealth governments.

Key actions taken and status of implementation

The DET indicates that since 2008, the **Commonwealth** Government have made over \$3.2 billion available in funding support to States and Territories to achieve universal access to quality preschool programs with a focus on making sure all Aboriginal and Torres Strait Islander children have access to and participate in quality early childhood education programs for a minimum of 600 hours per year, in the year before full-time school.


The DET noted the establishment of the Connected Beginnings Program in 2016 which aims to better prepare Aboriginal and Torres Strait Islander children for school, and contribute to closing the gap in educational outcomes. This program includes initiatives that provide outreach and support so that more Aboriginal and Torres Strait Islander families get involved in early childhood services. In addition, the program aims to bring early childhood and health services together so families have a combined place in their community for these services.

PM&C noted that under the National Partnership Agreement on Universal Access to Early Childhood Education, the Commonwealth is providing \$843 million in 2016 and 2017 to the States and Territories to ensure every that Australian child has access to a structured, quality early childhood education program for 15 hours per week in the year before formal school. The Commonwealth Government is committing a further \$428 million to continue support for preschool throughout 2018. This funding will be provided by a one-year extension to National Partnership arrangements. This will benefit around 346,000 children across all preschool settings and bring the total Commonwealth investment in preschool to \$3.2 billion since 2008."

 *Recommendation 289 is complete as the Commonwealth has implemented several policies and funding strategies which address expanding pre-school education for Aboriginal and Torres Strait Islander children.*

In their 1992 response, the **New South Wales** Government facilitated a consultative process between the Department of School Education, the Department of Community Services, and the Aboriginal Education Consultative Group about the number and location of preschool centres for Aboriginal children. This led to the approval of several centres, and the provision of increased funding for preschool centres. More recent initiatives include the Kids Excel Program, which provided funding for support staff at preschools, and the Building Stronger Connections Project, which promoted increased family and community involvement in pre-schooling.

The NSW Government also has a range of initiatives supporting the involvement of parents and community members of Aboriginal pre-schoolers. These include the Ngroo Walking Together program, the Aboriginal Early Childhood Education Teaching Scholarships, and the Start Strong Community Safety Net. In 2017 and 2018, the Department of Education developed and funded *Tunin' In*, an early years education initiative aimed at helping Aboriginal parents and carers to support their pre-school child's learning. Further, all Connected Communities primary and central schools either have a preschool in operation or an Early Years Transition program to help ready children and their parents for school.

 *New South Wales has implemented Recommendation 289 by supporting a range of early education programs for Aboriginal children and their parents and carers, including the targeted initiative, Tunin' In.*

In **Victoria**, a joint partnership approach in the early 1990s between the Office of Preschool and Childcare with the Victorian Koori Early Childcare Association sought to ensure that all eligible Aboriginal and Torres Strait Islander children had access to one year of preschool education prior to school entry. This encompassed community liaison, and the rollout of additional preschool learning centres and associated funding. The *Koori Early Childhood Education Program* currently seeks to increase Aboriginal and Torres Strait Islander preschool attendance, increase the cultural relevance of preschool, and foster greater community involvement in the education process.

● *Victoria has implemented Recommendation 289 by developing the Koori Early Childhood Education Program.*

In 1992, the **Queensland** Government launched an *Aboriginal and Torres Strait Islander Early Childhood Education Policy* which provided guidelines for teachers in developing culturally appropriate curricula and classroom strategies. The Queensland Government also appointed regional Aboriginal and Torres Strait Islander Counsellors to provide a link between preschools, schools and parents in the education process. More recently, Queensland's *Embedding Aboriginal and Torres Strait Islander Perspectives in Early Childhood Program* supports early childhood education providers in regional and urban areas of Queensland to engage with Aboriginal and Torres Strait Islander families to deliver early childhood education programs.

The Queensland Department of Education has also worked with the Queensland Aboriginal and Torres Strait Islander Education and Training Advisory Council to improve early childhood and education care outcomes, as part of the National Aboriginal and Torres Strait Islander Education Strategy 2015. The Queensland Government has rolled out other initiatives aimed at involving parents and carers, such as the Families as First Teachers and the Elders as Storytellers campaign initiatives involving Elders and families, which upskills and empowers parents, and the expansion of the Deadly Kindies campaign, which promotes the importance of early childhood education in Aboriginal and Torres Strait Islander Community Controlled Health Services. The Queensland Government has also provided funding to early childhood services targeting Aboriginal and Torres Strait Islander children and their families across Queensland.

● *Queensland has implemented Recommendation 289 by implementing early education programs for Aboriginal and Torres Strait Islander children that aim to engage their parents and carers, such as the Embedding Aboriginal and Torres Strait Islander Perspectives in Early Childhood Program.*

The **South Australian** Government noted in their 1994 implementation report that all Aboriginal and Anangu communities have Child Parent Centres with Aboriginal Education Workers and teachers in each centre. Currently, under the Department of Education and Child Development's Preschool Enrolment Policy, Aboriginal and Torres Strait Islander children may start preschool after their third birthday and may have an extended period in preschool up to six years of age.

● *South Australia has implemented Recommendation 289 by encouraging Aboriginal and Torres Strait Islander enrolment in preschool and supporting engagement with parents and carers through the employment of Aboriginal Education Workers and teachers in Child Parent Centres in all Aboriginal and Torres Strait Islander and Anangu communities.*

In **Western Australia**, the Government's response to Recommendation 289 was to launch the *Early Childhood Education: An Intervention Program* which supported 28 Aboriginal Preschool Centres. This supported 600 preschool places for Aboriginal and Torres Strait Islander children.

Currently, the Western Australian Government also funds a parenting service program to provide information, assistance and support to parents and families with children aged 0 to 18. While services are provided on a universal basis, each service is required to meet the diverse needs of parents throughout the state, including Aboriginal parents and carers. In addition, the State has a range of programs to meet the recommendation that include:

- Child and Parent Centres, which are operated in partnership with non-government organisations and other government agencies, providing a suite of early learning, child and maternal health, parenting and playgroup services to families with children from birth to age eight, focusing on the years prior to school entry; and
- KindiLink, a play-and-learn initiative for three-year-old Aboriginal and Torres Strait Islander children who participate with a parent/caregiver.
- Free access to pre-school for all four-year-olds at public schools, fully funding 11 hours per week since 2001 and expanding to 15 hours per week under the National Partnership on Universal Access to Early Childhood Education.

● *Western Australia has implemented Recommendation 289 by encouraging Aboriginal and Torres Strait Islander enrolment in preschool and engaging Aboriginal and Torres Strait Islander children and their parents and carers in early education through a number of policies.*

The **Tasmanian** Government has supported the employment of Aboriginal Early Years Education Workers, which engage families in their child's preschool education. Currently, they are employed across six Child and Family Centres and one Primary School and work to improve educational outcomes for Aboriginal and Torres Strait Islander students, provide outreach to families, and support culturally responsive practice.

● *Tasmania has implemented Recommendation 289 by engaging Aboriginal and Torres Strait Islander children and their parents and carers in early education through the employment of Aboriginal Early Years Education Workers.*

In the **Northern Territory**, the Indigenous Education Council provides in their Strategic Plan that all Aboriginal and Torres Strait Islander four year olds in remote Northern Territory communities have access to early childhood education. The Northern Territory Government has also funded a Preschool Readiness Program which sought to promote Aboriginal and Torres Strait Islander preschool attendance.

● *The Northern Territory has partially completed Recommendation 289 by supporting preschool enrolment and readiness for Aboriginal and Torres Strait Islander children but has not addressed the involvement of parents and carers in its response.*

The **Australian Capital Territory** implemented strategies to address preschool attendance among Aboriginal and Torres Strait Islander children. These included the Aboriginal Preschool Program at the Narrabundah Early Childhood Education Centre, and the development of Holt and Mount Neighbourhood preschools in the early 1990s. The ACT Government has also adopted a strategy of proactive engagement with communities and families as part of childhood education policy reform.

The ACT Government also offers free public preschool, delivered by a qualified early childhood teacher for 600 hours per year for all children prior in the year prior to their first year of school. Aboriginal and Torres Strait Islander children are eligible to commence six months earlier than their same age cohort, providing up to 18 months of early childhood education.

Aboriginal and Torres Strait Islander children can also concurrently attend the Koori Preschool Program, which provides education 3-5 year old children in a culturally safe environment that includes Aboriginal and Torres Strait Islander perspectives embedded in the curriculum.

● *The Australian Capital Territory has implemented Recommendation 289 by implementing strategies to improve Aboriginal and Torres Strait Islander preschool attendance and proactively engaging with parents and carers.*

Additional commentary

The **Commonwealth** DET noted the Education Council's *National Aboriginal and Torres Strait Islander Education Strategy* was endorsed by education ministers on 18 September 2015. One of the Strategy's priority areas includes school and child readiness. This priority area outlines the importance of high quality, culturally inclusive early childhood education services, and schools working with families and communities to set a strong foundation for early learning (including a child's transition to school).

Recommendation 290

That curricula of schools at all levels should reflect the fact that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters. It is essential that Aboriginal viewpoints, interests, perceptions and expectations are reflected in curricula, teaching and administration of schools.

Background information

Culturally-relevant curricula are seen as being directly linked to improved self-esteem, engagement and educational achievement amongst Aboriginal and Torres Strait Islander students.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. School curricula are developed, reviewed and implemented jointly by both State and Territory, and Commonwealth governments.

Key actions taken and status of implementation


The **Commonwealth** Government's DET noted that Aboriginal and Torres Strait Islander history features throughout the Australian Curriculum. The DET provided an example of first year students learning about the Aboriginal and Torres Strait Islander Country/Place on which their school is located and why the Country/Place is important to Aboriginal and Torres Strait Islander people. The DET complemented this with an example from Year 9 History, where students learn about the extension of settlement, including the effects of contact (intended and unintended) between European settlers in Australia and Aboriginal and Torres Strait Islander people.

Goals 20 and 21 of the National Assessment of Educational Progress express a commitment from all governments to develop and implement Aboriginal and Torres Strait Islander studies curricula initiatives. Under this, the Commonwealth developed the National Reconciliation and Schooling Strategy, which includes the development of appropriate and consistent Aboriginal and Torres Strait Islander studies curricula for all schools across Australia. PM&C noted that the Australian Curriculum provides the opportunity for all Australian students to gain a deeper understanding and appreciation of Australia's First Peoples, histories, languages and cultures.


The DET noted that the Foundation to Year 10 Australian Curriculum includes that Aboriginal and Torres Strait Islander students are able to see themselves, their identities and their cultures reflected in the curriculum of each of the learning areas, can fully participate in the curriculum and can build their self-esteem. In addition, the Aboriginal and Torres Strait Islander Histories and Cultures cross-curriculum priority is designed for all students to engage in reconciliation, respect and recognition.

 *Recommendation 290 is complete given the development of an Australian Curriculum which integrates Aboriginal and Torres Strait Islander history and viewpoints on social, cultural and historical matters.*

In **New South Wales**, the Board of Studies reformed curriculums for all schools to include a greater emphasis on Aboriginal perspectives, such as in History, Geography, Legal Studies, General Studies, Studies of Religion, English, Science and Technology, Applied Sciences, and Visual and Performing Arts. The Department of Education and Training's *Aboriginal Education and Training Policy* also includes a commitment to develop further knowledge and understanding of the histories, cultures and experiences of Aboriginal people. Since 2016, the NSW Education Standards Authority has made improvements in the representation of Aboriginal histories and cultures in new K-12 syllabuses, building substantially on Australian Curriculum content.


 *New South Wales has addressed Recommendation 290 by incorporating Aboriginal history and viewpoints into its curriculum and programs in line with the NSW Department of Education and Training's Aboriginal Education and Training Policy.*

The **Victorian** Government, as part of its initial response to Recommendation 290, developed the Koori Educator Program, the Cross-sectoral Coordinator Program, the Language and Literacy Program, and the School Speakers Program for students to broaden their perspectives in relation to Aboriginal and Torres Strait Islander matters.


 *Victoria has addressed Recommendation 290 by incorporating Aboriginal and Torres Strait Islander history and viewpoints into its curriculum and programs.*

Following the RCIADIC, the **Queensland** Government implemented an approved and accredited Year 11 and 12 Aboriginal and Torres Strait Islander studies subject. Queensland state schools have been progressively delivering the Australian Curriculum since 2012, which embeds Aboriginal and Torres

Strait Islander Histories and Cultures across curriculum priority areas. The Department of Education chairs the Australian Curriculum and Reporting Authority Aboriginal and Torres Strait Islander Education Taskforce, which aims to embed these subjects across all learning areas. Currently, over 10 schools are engaging with their communities to develop Aboriginal and Torres Strait Islander language programs. The Indigenous Perspectives Curriculum and Pedagogy is also a statewide initiative implemented through workshops and coaching to increase teacher confidence in teaching cross-curriculum content.


 *Queensland has addressed Recommendation 290 by incorporating Aboriginal and Torres Strait Islander history and viewpoints into its curriculum and programs through the statewide Indigenous Perspectives Curriculum and Pedagogy initiative.*

The **South Australian** Government participated in an Australian Education Council working party to develop nationally agreed guidelines, curriculum statements, and best practices for Aboriginal and Torres Strait Islander studies. Currently, under the Department of Education and Child Development's 'Curriculum, pedagogy, assessment and reporting policy for reception to year 10', the use of the Australian Curriculum is mandated in all schools and prioritises Australian histories and cultures across curriculums. Schools are expected to maximise the learning of this priority as appropriate throughout the curriculum to achieve South Australia's Strategic Plan target 27.


 *South Australia has addressed Recommendation 290 by incorporating Aboriginal and Torres Strait Islander history and viewpoints into its curriculum and programs as per the Department of Education and Child Development's 'Curriculum, pedagogy, assessment and reporting policy for reception to year 10'.*

The **Western Australia** Government introduced an *Aboriginal Perspectives Across the Curriculum* program which has sought to broaden students' and teachers' understanding of Aboriginal and Torres Strait Islander cultures and perspectives.


All Western Australian schools plan curriculum in accordance with the Western Australian Curriculum and Assessment Outline, with a strong focus on the history, traditions, languages and cultures of Aboriginal and Torres Strait Islander people within the English, Humanities and Social Sciences, and Languages syllabuses. In addition, Aboriginal and Torres Strait Islander histories and cultures forms one of three cross-curriculum priorities.

 *Western Australia has addressed Recommendation 290 by incorporating Aboriginal and Torres Strait Islander history and viewpoints into its curriculum*

In **Tasmania**, a comprehensive suite of education resources is currently in development, which has been driven by the government's Reset Agenda. These resources will be supported by professional learning programs and learning tasks available across the Tasmanian system. The cross curriculum priority of Aboriginal and Torres Strait Islander Histories and Cultures is being incorporated into general learning materials, as appropriate, and in consultation with Aboriginal Education Services.

 *Tasmania has partially completed Recommendation 290 as it is currently developing, but has not yet implemented, a suite of resources that embed Aboriginal and Torres Strait Islander histories and cultures into curricula.*


The **Northern Territory** Government encourages the inclusion of Aboriginal and Torres Strait Islander perspectives in the curriculum through the *Indigenous Education Council Strategic Plan*. Further, the Northern Territory's policies include a mandatory requirement that schools embed Aboriginal and Torres Strait Islander perspectives and partnerships in their curricula.

 *The Northern Territory has addressed Recommendation 290 by making it mandatory to implement Aboriginal and Torres Strait Islander history and viewpoints into its curriculum and programs.*

The **Australian Capital Territory** Government has introduced a range of measures focused on incorporating Aboriginal and Torres Strait Islander perspectives and cultures into the curriculum. This

has included the provision of Aboriginal Education Workers, and consultation with Aboriginal and Torres Strait Islander organisations and community members.

The Australian Capital Territory Government noted that Aboriginal and Torres Strait Islander history and viewpoints are embedded into the Australian Curriculum and are embedded into all learning areas and year levels across all ACT public schools. It was noted that the ACT Education Directorate also provides a range of professional learning opportunities in this area, including cultural competence training and curriculum workshops.

 *The Australian Capital Territory has addressed Recommendation 290 as it has implemented measures to incorporate Aboriginal and Torres Strait Islander views and perspectives into its curriculum and regularly consults with Aboriginal and Torres Strait Islander communities.*

Additional commentary

The **Commonwealth's** PM&C noted that the implementation of the Aboriginal and Torres Strait Islander Histories and Cultures cross-curriculum priority is mandatory, however jurisdictions have the discretion to have their own syllabus under the curriculum. A review of the curriculum found that the cross-curriculum priorities should be implemented where appropriate and that this is the responsibility of individual schools.

Recommendation 291

That:

- a. *In designing and implementing programs at a local level which incorporate Aboriginal viewpoints on social, cultural and historical matters local schools should, wherever possible, seek the support and participation of the local Aboriginal community in addition to any other appropriate Aboriginal organisations or groups; and*
- b. *In engaging local Aboriginal people to assist in the preparation and delivery of such courses at a local level, school principals and the relevant education departments accept that in recognition of the expertise which local Aboriginal people would bring to such a program, payment for the services of such Aboriginal people would be appropriate.*

Background information


Educational programs at the local level should appropriately incorporate the views and perspective of Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people should also be remunerated for their specialised knowledge and skills that they can bring into schools.

Responsibility

The recommendation is the responsibility of the State and Territory Governments. Recommendation 291 is under the jurisdiction of the States and Territories as it involves the design and implementation of programs at a local level.


Key actions taken and status of implementation

In 1993, the **New South Wales** Board of Studies provided for the involvement of Aboriginal people in the development of schooling curricula, and the inclusion of Aboriginal people on syllabus committees. All new syllabuses developed since 2016 include recommendations to teachers to involve local Aboriginal communities and/or appropriate knowledge holders in the planning and programming of content relevant to Aboriginal histories and cultures. The NSW Aboriginal Education Consultative Group offers programs such as "Connecting to Country" and "Healthy Culture, Healthy Country" to assist schools with the process of localising related curriculum content. The Department of Education funds Aboriginal Education Consultative Groups to deliver local culturally responsive training to school staff.


 *New South Wales has completed Recommendation 291 by engaging and funding Aboriginal Education Consultative groups to design programs.*

The **Victorian** Government supported the establishment of Local Aboriginal Consultative Groups which provided input into the preparation and delivery of schooling programs to support Koori


students. The Koori Educator Program (1993) promoted a link between the school and Koori community through the allocation of 56 Koori Educators. The Department of Education has noted that it is common practice for schools to pay Aboriginal and Torres Strait Islander community members in return for their expertise.

 *Victoria has completed Recommendation 291 through involving Aboriginal and Torres Strait Islander people via the Koori Educator Program.*

In 1993, the **Queensland** Government restructured the Queensland Aboriginal and Torres Strait Islander Education Consultative Committee to enhance its capacity to provide independent advice to the Minister for Education on Aboriginal and Torres Strait Islander education. Additionally, the Queensland Government allocated funding to regional offices of the Department of Education to enable payment for Aboriginal and Torres Strait Islander community involvement in schooling, including initiatives such as developing community report cards on school performance and facilitating local school-community forums. The Queensland Government's *Embedding Aboriginal and Torres Strait Islander Perspectives* program requires that schools develop appropriate methods for engaging and paying Aboriginal and Torres Strait Islander people for Welcome to Country, guest speaker programs, artist in residence and general curriculum engagement.


 *Queensland has completed Recommendation 291 by engaging the Queensland Aboriginal and Torres Strait Islander Education Consultative Committee to provide advice regarding Aboriginal and Torres Strait Islander education and by allocating funding to pay for Aboriginal and Torres Strait Islander community involvement in schooling.*

In 1993, the **South Australian** Government increased the number of Aboriginal Education Workers by 20% and increased the level of funding to employ Aboriginal and Torres Strait Islander people as paid instructors by 25%. Currently, Aboriginal Community Engagement Officers and Aboriginal Secondary Education Transition Officers, both formerly known as Aboriginal Education Workers, are employed within schools to support community engagement and participation of the local Aboriginal and Torres Strait Islander community on language and cultural studies. When engaged by schools, members of the Aboriginal and Torres Strait Islander community receive hourly paid instructor fees. Representatives of the Pitjantjatjara Yankunytjatjara Education Committee and its Director respectively receive payment and a salary for their responsibilities.

 *South Australia has completed Recommendation 291 by engaging Aboriginal Community Engagement Officers and Aboriginal Secondary Education Transition Officers in local programs and compensating members of the Aboriginal and Torres Strait Islander community, including representatives of the Pitjantjatjara Yankunytjatjara Education Committee, for their contributions.*


As part of the **Western Australia** Government's initial response to Recommendation 291, 299 Aboriginal Student Support and Parent Awareness Committees were established, 65 Government and 5 non-Government schools implemented the Education Department's *Aboriginal Studies Program*, 22 primary schools and 2 preschools implemented the Aboriginal Language program, and 144 Government schools and 40 Catholic schools had accessed the *Aboriginal Speakers* program.

Currently, public schools in Western Australia have the flexibility to determine how to best meet the needs of their students, the expectations of their community and the requirements of the Curriculum. The Department of Education provides targeted funding allocations for schools to meet the specific learning needs of Aboriginal and Torres Strait Islander students. Schools may choose to implement local-level strategies, programs and approaches to address the outcomes of Aboriginal and Torres Strait Islander students.


 *Western Australia has partially completed Recommendation 291 by designing curriculum with Aboriginal and Torres Strait Islander perspective but have not addressed Aboriginal and Torres Strait Islander involvement in program delivery and development in their response.*

Following the RCIADIC, the **Tasmanian** Government developed a curriculum framework and guidelines, and facilitated consultation with community members through school-based Aboriginal Student Support and Parent Awareness Program Committees. Currently, Tasmania's Aboriginal

Education Framework is updated biennially and Tasmanian government schools are supported by Aboriginal Education Workers and Education Officers. People in these identified positions work with teachers and school leaders in developing culturally responsive curriculum and pedagogy and inclusive learning environments. The Aboriginal Sharers of Knowledge Program provides Tasmanian Government schools with opportunities to involve Aboriginal Cultural Educators to work with teachers to deliver learning programs that drew on the rich knowledge and experiences of the Aboriginal community. Presenters are contracted and paid at an appropriate rate.


 *Tasmania has fully addressed Recommendation 291 by engaging Aboriginal Education Workers, Education Officers and Cultural Educators to assist with the development of culturally responsive curriculum and learning programs, and compensating them accordingly.*

In their 1993-94 implementation report, the **Northern Territory** Government noted that Aboriginal Assistant Teachers had been employed in all non-urban schools and that an additional \$1 million in funding was provided through the *Aboriginal Education Programs Initiative #5* for the employment of Aboriginal Education Resource Officers across schools.

 *The Northern Territory has completed Recommendation 291 by implementing the Aboriginal Education Programs Initiative #5.*

The **Australian Capital Territory** schooling curriculum is developed through a consultative process including Aboriginal and Torres Strait Islander communities, the Aboriginal Education Consultative Groups, and individual Aboriginal Student Support and Parent Awareness committees.

The ACT Education Directorate indicated that they engage with Aboriginal and Torres Strait Islander people, businesses and organisations wherever possible. Examples of this engagement included collaboration in curriculum development and collaboration in the development of reconciliation action plans. The ACT Education Directorate also indicated that any Aboriginal and Torres Strait Islander organisation that is engaged is appropriately paid for the services provided.

 *The Australian Capital Territory has mostly completed Recommendation 291 by engaging Aboriginal and Torres Strait Islander individuals in the curriculum development process but have not addressed Aboriginal and Torres Strait Islander involvement in program delivery in their response.*

Recommendation 292

That the AECGs in each State and Territory take into account in discussing with governments the needs of the Aboriginal communities in their area, and that local Aboriginal Education Consultative Groups take into account when consulting with school principals and providers at the local level, the fact that many Aboriginal communities and organisations have identified the need for the education curriculum to include a course of study to inform students on social issues such as the legal system – including police and Courts – civil liberties, drug and alcohol use and sex education.

Background information

The RCIADIC Report advocates that teaching on drugs, alcohol, health, employment, welfare and the legal system should be part of the education system to assist Aboriginal and Torres Strait Islander children to counteract low self-esteem, loss of identity and loss of land.

Responsibility


The recommendation is the responsibility of the State and Territory Governments. Recommendation 292 is under the jurisdiction of the State and Territories as it relates primarily to AECGs and their consultation practices.

Key actions taken and status of implementation


In **New South Wales**, the role of Aboriginal Education Consultative Groups in consulting with communities is analysed in the NSW Government's response to Recommendations 295, 296, and 297. The NSW Government supports the delivery of Aboriginal drug and sex education through the provision of teaching resources.

Currently, the Department of Education partners with the NSW AECG through the "Together we are, Together we can, Together we will" 2010-2020 Partnership Agreement. An agreed priority under the Agreement is "ensuring that Aboriginal students have access to quality learning and training environments that enhance their capacity to live fulfilling and productive lives that contribute to the economic and social wellbeing of their communities".

As part of the Aboriginal Studies Years 7-10 syllabus, an option is to study Aboriginal interaction with the legal and political system. Students learn about the relationship between, and interactions with, Aboriginal Peoples and Australian political and legal systems, and explore Aboriginal initiatives and advocacy to access their rights to overcome disadvantage in political and legal systems. As part of the core Aboriginal Autonomy unit, students explore issues around human rights, autonomy, and social justice.


 *New South Wales has implemented Recommendation 292 by incorporating these focus areas into its curriculum and partnering with Aboriginal Education Consultative Groups.*

The **Victorian** curriculum in 1993 included information on the legal system, including police and courts, civil liberties, drug and alcohol use and sex education, as part of the Aboriginal and Torres Strait Islander studies component of *Studies of Society and the Environment*.


 *Victoria has addressed Recommendation 292 by incorporating these focus areas into its curriculum.*

The **Queensland** Government noted in their 1993 implementation report that many schools offer curricula which include social issues, such as legal studies and citizenship education, health and person development, and human relationships. A number of initiatives were utilised to promote community engagement, including the *Aboriginal Student Support and Parent Awareness Program*.

Currently, the Queensland Aboriginal and Torres Strait Islander Education and Training Committee provides advice to education and training ministers regarding educational content. At the regional and local levels, schools and Department of Education regional offices have also established a range of informal and formal mechanisms for local engagement with Aboriginal and Torres Strait Islander people. In addition, the DET has developed the Alcohol and Other Drugs education program and the Respectful Relationships education program for delivery in schools.


 *Queensland has addressed Recommendation 292 by consulting with the Queensland Aboriginal and Torres Strait Islander Education and Training Committee and by incorporating these focus areas into its curriculum and delivering associated education programs.*

The **South Australian** Government noted in 1993 that social issues would continue to be incorporated into schooling curricula, aided by the work of School Counsellors, Aboriginal Education Workers, and Aboriginal Education Resource Teachers. Currently, the SA Aboriginal Education and Training Consultative Council is funded to provide advice and community voice to the Department on education matters from an Aboriginal and Torres Strait Islander community perspective. The Department for Education has engaged with the Aboriginal Health Council of South Australia to deliver the health promotion curriculum across Aboriginal and Torres Strait Islander schools in South Australia. South Australian Government schools implement the Australian Curriculum which incorporates social issues.

 *South Australia has partially completed Recommendation 292 by funding and consulting with the SA Aboriginal Education and Training Consultative Council but has not expressly addressed incorporating these focus areas into its curriculum.*


In **Western Australia**, the *Aboriginal Health Program* (1994) produced a health curriculum for schools which addressed the intent of Recommendation 292. This was developed in collaboration with Aboriginal Liaison Officers, Aboriginal Education Workers, and community members in remote communities to ensure appropriateness. It was first trialled in Kalgoorlie and Hedland Education districts. It encompassed issues related to drug and alcohol use, sex education, and civil liberties.

Currently, the Western Australian Humanities and Social Sciences curriculum and the Health and Physical Education curriculum provide students with opportunities to develop skills, knowledge and understanding related to justice, rights and responsibilities, as well as safe choices relating to sexuality, alcohol and other drug use


 *Western Australia has implemented Recommendation 292 by developing a health curriculum for schools which was developed in collaboration with Aboriginal Liaison Officers, Aboriginal Education Workers, and community members in remote communities to ensure appropriateness*

The **Tasmanian** Government provided formal mechanisms for consultation between the Tasmanian Aboriginal Education Council and Government, and the views of local Aboriginal and Torres Strait Islander communities. The health curriculum which was compulsory in all schools, noted in the 1993 Tasmanian implementation report, also addressed issues of drug and alcohol abuse, personal relationships, self-esteem and sex education.

Currently, the Aboriginal Education Reference Group provides strategic advice to Aboriginal Education Services. In Tasmania, the Respectful Relationships initiative, together with the Personal, Social and Community Health Strand of the curriculum allows schools plenty of scope to inform students about sexual health, family violence, the effects of drugs and alcohol, help-seeking and protective strategies. Students also receive education about legal and political systems under the Civics and Citizenship strand of the curriculum.


 *Tasmania has addressed Recommendation 292 by consulting with the Aboriginal Education Reference Group and incorporating these focus areas into its curriculum via existing educational initiatives.*

No information could be found on the **Northern Territory's** implementation of Recommendation 292.

 *The Northern Territory has not implemented Recommendation 292.*

The **Australian Capital Territory** Government provided in their 1993-94 implementation report that Recommendation 292 was being addressed by the Aboriginal Education Consultative Groups. Consultation was utilised in developing curricula and planning culturally-appropriate units on social issues.

The ACT Government noted that as part of the Australian Curriculum, Humanities and Social Sciences includes topics such as democracy, civics and citizenship, justice, ethics and the legal system. In addition, within Health and Physical Education there is a focus on teaching about drugs, alcohol and sex education, and ensuring safety and wellbeing. Aboriginal and Torres Strait Islander perspectives are also embedded in these learning areas as part of the cross curriculum priority. The ACT Aboriginal and Torres Strait Islander Advisory Group meets quarterly to provide input into Education policy in the ACT.

 *The Australian Capital Territory has completed Recommendation 292 by consulting with Aboriginal Education Consultative Groups to develop curricula that incorporate these focus areas and has addressed their incorporation into the curriculum.*

Recommendation 293

That the introduction of the Aboriginal Student Support and Parent Awareness (ASSPA) Program be commended as being an appropriate recognition of the need for the participation of Aboriginal people at a local level in the delivery of school programs. The Commission notes, however, that the success of the program will be dependent on the extent to which the Aboriginal community is guaranteed adequate consultation, negotiation and support in devising and implementing this program.

Background information

Improved support for Aboriginal and Torres Strait Islander students, particularly via the involvement of their parents, has been perceived as conducive to increased engagement and educational outcomes.


Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. The ASSPA Program was a Commonwealth Government initiative.

Key actions taken and status of implementation

The **Commonwealth's** ASSPA Program was replaced by the Parent School Partnership Initiative (PSPi) in 2005, which provides funding to applicants to improve educational outcomes of Indigenous students and the participation of Indigenous people in that process. The PSPi concluded in 2009 (Commonwealth of Australia, 2013).

PM&C noted that the Children and Schooling Programme under the IAS funds a number of activities aimed at supporting Aboriginal and Torres Strait Islander families and communities to become more involved in their children's education. These activities focus on supporting parental and community engagement in helping children and young people learn at home and helping parents connect with schools, build relationships with school principals and teachers and overcome the barriers to sending children to school.

 *Recommendation 293 has been implemented through the ASSPA Program, which was completed in 2005 and has since been superseded by new initiatives focusing on expansion of parental involvement in Aboriginal and Torres Strait Islander education.*

Recommendation 294

That governments and Aboriginal Education Consultative Groups take note of the methodology employed in such programs as that at Batchelor College, Northern Territory in the training of Aboriginal, teachers and others for work in remote communities.

Background information


The Batchelor Institute of Indigenous Tertiary Education (Batchelor College) in the Northern Territory was commended in the RCIADIC Report for innovations in the training of Aboriginal and Torres Strait Islander teachers, including training in community based settings and differing levels of qualification. The continued development of such programs was suggested to increase the number of Aboriginal and Torres Strait Islander teaching graduates.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Education and training programs are overseen by the State and Territories. Policies relating to rural and remote communities more generally fall under the Commonwealth's jurisdiction.

Key actions taken and status of implementation

The *1993-94 Annual Report* noted that the **Commonwealth** Government's Ministerial Council on Education, Employment and Training and Youth Affairs appointed a taskforce to examine the best way of preparing teachers for work in remote community schools with Aboriginal and Torres Strait Islander students.


 *While the taskforce has demonstrated a commitment to study examples of successful programs, no evidence was observed to show that the methodology used in the Batchelor College program had been noted. As such, Recommendation 294 is mostly complete.*

In 1993, the **New South Wales** Government adapted the Batchelor College courses to NSW conditions in teacher education courses conducted by the University of Western Sydney and by the Australian Catholic University. In 2016, the NSW Education Standards Authority commenced an Initial Teacher Education Review in the priority area of Aboriginal Education, which is due for completion in 2018. As part of the Review, it engaged primarily Aboriginal experts in Aboriginal Education as expert panel members to make recommendations for improvement in Initial Teacher Education.


 *New South Wales has addressed Recommendation 294 by conducting the Initial Teacher Education Review.*

In their 1993 implementation report, the **Victorian** Government considered that Recommendation 294 was not applicable to Victoria, as no areas of Victoria are remote. Since then, the Victorian Department of Education has developed regional training courses for Aboriginal and Torres Strait Islander teachers and extended initiatives to promote the training of Aboriginal and Torres Strait Islander teachers.


The Victorian Government has noted that it encourages and supports teachers to work in rural and disadvantaged communities, including through a number of policies and programs. Policies and programs include; the Student Teacher Rural Practicum Placement Program, financial incentives to attract graduate teachers to work in rural areas, Teach for Australia and excellence in teaching Reforms.

 *Victoria has partially implemented Recommendation 294 by developing regional training courses for Aboriginal and Torres Strait Islander teachers and extended initiatives to promote the training of Aboriginal and Torres Strait Islander teachers. However, no evidence was observed to show that the methodology used in the Batchelor College program had been noted.*

In 1992, **Queensland** TAFE conducted the *Remote Area Teacher Education Program* (RATEP), which provided qualified Aboriginal and Torres Strait Islander teachers the opportunity to teach in their local areas, and enabled people to undertake teacher training without having to venture far from home. This was extended to encompass a number of award courses, including the Health Worker course, which had an intake of 59 students in 1993. RATEP now operates in 15 school communities where teacher coordinators support Aboriginal and Torres Strait Islander student teachers to become autonomous learners as they complete their teaching education.


 *Queensland has partially completed Recommendation 294 by conducting the RATEP but has not mentioned adopting the Batchelor College model in their response.*

The **South Australian** Government contributed funding to the *Anangu Teacher Education Program* in 1993 to support a mixed delivery program including distance education and on-site training. Currently, the Australian Professional Standards for Teachers are the public statement of what constitutes teacher quality, which have been endorsed for implementation by all Australian jurisdictions through the COAG Education Council. All universities with initial teacher education training programs are required to embed these standards into their training programs. Two of the standards specifically include a focus on Aboriginal and Torres Strait Islander learners and on understanding Aboriginal and Torres Strait Islander histories, culture and languages.


 *South Australia has partially implemented Recommendation 294 by supporting the Anangu Teacher Education Program and addressing Aboriginal and Torres Strait Islander education through the Australian Professional Standards for Teachers but has not addressed adopting the Batchelor College model in their response.*

In **Western Australia** in 1994, Edith Cowan University offered an external teacher training course which enabled Aboriginal Education Workers to participate without leaving their communities for extended periods of time. This was funded by the Western Australia Government. The Western Australia Government also supported Pundulmurra College to develop the *Certificate of Education Practice Course* for Aboriginal and Torres Strait Islander people working in schools.


Through the Department of Education, the Western Australian Government continues to provide professional learning that builds the capacity of teachers to effectively teach Aboriginal and Torres Strait Islander students, and to ensure that all staff and students develop a broader understanding of Aboriginal and Torres Strait Islander histories, cultures and languages. The Department facilitates professional learning sessions for both experienced and graduate teachers, including those working in regional and remote locations.

 *Western Australia has partially implemented Recommendation 294 by addressing Aboriginal and Torres Strait Islander education through teacher training. However WA has not addressed adopting the Batchelor College model in their response.*


The **Tasmanian** Government provided in their 1993 implementation report that Recommendation 294 was not directly applicable to Tasmania.

 *Recommendation 294 does not apply to Tasmania as there are no remote communities in Tasmania.*

In 1993-94, the **Northern Territory** Government provided ongoing financial support to Batchelor College.

 *Recommendation 294 does not apply to the Northern Territory.*

No information could be found on the **Australian Capital Territory's** implementation of Recommendation 294.

 *Recommendation 294 does not apply to the Australian Capital Territory as there are no remote communities in the Australian Capital Territory.*

Additional commentary

The **Commonwealth** DET advised that, in recognition of the status of the Batchelor Institute of Indigenous Higher Education as the only Aboriginal and Torres Strait Islander-run dual sector tertiary provider in Australia, the Commonwealth Government provides annual funding under the National Institutes program to support its operations. In 2017, Batchelor will receive \$7.3 million under this program.

PM&C noted that under the IAS's Children and Schooling Programme, the Commonwealth Government is supporting the Remote Principals Project with total funding of \$1.55 million. The project aims to build the quality of leadership in remote schools with high proportions of Aboriginal and Torres Strait Islander enrolments.

Recommendation 295

That:

- a. All teacher training courses include courses which will enable student teachers to understand that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters, and to teach the curriculum which reflects those matters;*
- b. In-service training courses for teachers be provided so that teachers may improve their skill, knowledge and understanding to teach curricula which incorporate Aboriginal viewpoints on social, cultural and historical matters; and*
- c. Aboriginal people should be involved in the training courses both at student teacher and in-service level.*

Background information

The RCIADIC Report highlighted the concern that some teachers sent to regional communities lacked knowledge of local Aboriginal and Torres Strait Islander culture and aspirations. This put them in suboptimal conditions to successfully communicate the importance of Aboriginal and Torres Strait Islander history and viewpoints.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The Commonwealth oversees the curriculum which guides teacher training courses. States and Territories are responsible for the implementation of the associated strategies.

Key actions taken and status of implementation

The **Commonwealth** DET noted that the Education Council's 2015 National Aboriginal and Torres Strait Islander Education Strategy identifies specific actions for the Australian Institute for Teaching and School Leadership. This includes the development of assessment criteria for Graduate Teacher Standards 1.4 (strategies for teaching Aboriginal and Torres Strait Islander students) and 2.4 (understand and respect Aboriginal and Torres Strait Islander people). Additionally, the provision of


advice to Initial Teacher Education assessment panels assists on how to assess competence against Graduate Teacher Standards 1.4 and 2.4.

 *Recommendation 295 is complete as progress has been made by the Commonwealth in integrating Aboriginal and Torres Strait Islander history and viewpoints into teaching through the National Aboriginal and Torres Strait Islander Education Strategy.*

The **New South Wales** Government provided in their 1992-93 implementation report that consultation would occur between Special Education and Curriculum Directorates, Human Resource Development Directorate personnel, and universities to ensure that courses incorporated Aboriginal viewpoints and experiences. Currently, the *NSW Professional Teacher Standards* require teachers to be able to apply effective methods for teaching Aboriginal students.

In addition, the Department of Education's Aboriginal Education Policy commits to mandatory Aboriginal cultural education for all staff. This is achieved through a number of ways. The Department of Education partners with the NSW AECG to deliver "Healthy Culture: Healthy Country" and "Engaging with Aboriginal Communities" professional development training for principals, school leaders, and Aboriginal staff, as well as corporate staff. This training is delivered by Aboriginal people.


Recently, the NSW Education Standards Authority commenced an Initial Teacher Education Review in the priority area of Aboriginal Education. As part of the Review, it engaged primarily Aboriginal experts in Aboriginal education as panel members to make recommendations for improvement in Initial Teacher Education.

 *New South Wales has fully addressed Recommendation 295 through the Department of Education's Aboriginal Education Policy.*

The **Victorian** Government introduced Cultural Awareness Programs to aid the development of administrators and teachers as the basis of Aboriginal Studies in schools. The Victorian Government also ensured that Teacher Training Courses sensitised prospective teachers to Koori culture.

Formal partnerships have also been established between Victorian universities and the Victorian Aboriginal Education Association to develop ways in which universities can cooperate and enhance their engagement with the Victorian Aboriginal and Torres Strait Islander community. In addition to this, the Marrung: Aboriginal Education Plan 2016-2026 has also been developed, with the key action to work with the Victorian Institute of Teaching and providers of initial teacher education programs to strengthen the integration of Koori culture.


The Victorian Government has also funded cultural Understanding and Safety Training for Schools in an ongoing capacity. This training program aims to build the capacity of all government school staff to better support Koori students and build more culturally inclusive practices. In addition to this, the Victorian Department of Education's Koori Education Workforce group has developed training materials for teachers.

 *Victoria has addressed Recommendation 295 through developing training programs for teachers both before and after entering service.*

In **Queensland**, the Board of Teacher Registration convened a conference in 1993 which emphasised the inclusion of studies relating to Aboriginal and Torres Strait Islander people in pre-teacher education programs. Recommendations from the conference were incorporated into course standards of teacher education.

Currently, the DET supports building the cultural capability of educators, school leaders and the education system through a variety of initiatives. These include delivering cultural capability training through the Centres for Learning and Wellbeing and Rural and Remote Teacher Education Centres of Excellence, as well as delivering the Hidden Histories – Crossing Cultures program, an interactive workshop which ensures that teachers and staff can gain an understanding of the history of Queensland from the perspective of Aboriginal and Torres Strait Islander people.


The Remote Indigenous Professional Development (RIPD) project promotes understanding and use of the early years learning framework for Aboriginal and Torres Strait Islander early childhood educators in regional, remote and very remote areas of Queensland, the Northern Territory and South Australia. Professional development workshops are facilitated by Aboriginal and Torres Strait Islander early childhood teaching experts (known as pedagogical leaders) with extensive cultural and early childhood education knowledge, and include site visits, connection with land and country, and practical learning experiences. In addition, Aboriginal and Torres Strait Islander pedagogical leaders facilitate a six-month Indigenous Mentoring Program, which builds on the RIPD project.

 *Queensland has fully addressed Recommendation 295 through a range of different initiatives, including the Remote Indigenous Professional Development program.*

The **South Australian** Government responded to Recommendation 295 through a range of initiatives.

- An Aboriginal Education Reference Library was established to provide information on best practices for teaching Aboriginal and Torres Strait Islander students. In-service training was facilitated through the provision of 120 Aboriginal Education Workers and 42 Aboriginal Education Resource Teachers.
- The introduction of a 'train the trainer course' in 1992 addressed the need to build teacher competence in Aboriginal and Torres Strait Islander viewpoints. Associated training initiatives were also introduced.

The Department for Education provided that Aboriginal and Torres Strait Islander people must lead or co-present cultural competence training for teachers and leaders. Conferences are held by the Department's Learning Improvement Division for Aboriginal and Torres Strait Islander Education Teachers.

 *South Australia has fully addressed Recommendation 295 through the introduction of relevant programs, including a "Train the Trainer" course and related conferences.*

Under **Western Australia's** *Teacher Registration Act 2012* (WA), teachers seeking registration in Western Australia must have completed an initial teacher education program which includes methods for teaching Aboriginal and Torres Strait Islander children and a broad understanding of Aboriginal and Torres Strait Islander history, culture, and language. The *Western Australian Strategic Plan for Aboriginal Education and Training* (2011-15) provided that all universities in Western Australia incorporate Aboriginal and Torres Strait Islander studies and education units in teacher education courses.

In Western Australian, every five years each initial teacher education programs undergo a process of accreditation against the Western Australian Standards for the Accreditation of Initial Teacher Education Programs. Under this process, providers must demonstrate how pre-service teachers are appropriately and adequately taught and assessed against the Australian Professional Standards for Teachers' graduate teacher standards, including:


- demonstrating broad knowledge and understanding of the impact of culture, cultural identity and linguistic background on the education of students from Aboriginal and Torres Strait Islander backgrounds; and
- demonstrating broad knowledge of, understanding of, and respect for Aboriginal and Torres Strait Islander histories, cultures and languages.

In addition to this, the Department of Education provides an online Aboriginal Cultural Appreciation Course to provide staff with an overview of Aboriginal and Torres Strait Islander history and cultures


 *Western Australia has mostly implemented Recommendation 295, however has not provided evidence that Aboriginal and Torres Strait Islander people are involved in the training courses both at student teacher and in-service level.*

Tasmania's *Aboriginal Education Framework* (2012-15) sought to increase training and staff qualifications in Aboriginal and Torres Strait Islander education leadership and cultural understanding. This measure also promoted teacher collaboration with local communities.

Currently, the University of Tasmania has a compulsory teacher training unit titled “Cultural Awareness: The Non-Indigenous and Aboriginal and Torres Strait Islander Interface”. The unit has four integrated foci: identity/nationalism, history, ethics and pedagogy. In-service professional learning is provided to support Tasmanian teachers in satisfying the requirements. In addition, the “From Gumnuts to Buttons” professional learning workshops provide teachers with a culturally appropriate classroom resources that raises student awareness of Tasmanian Aboriginal Histories and Cultures.


 *Tasmania has mostly addressed Recommendation 295 by implementing mandatory cultural awareness teacher training and introducing professional learning workshops, but has not mentioned the involvement of Aboriginal and Torres Strait Islander people expressly in receiving training.*

In the **Northern Territory**, teacher education at Batchelor College incorporates Aboriginal and Torres Strait Islander perspectives. The Northern Territory Government has incorporated Recommendation 295 into the design of training programs, and has extended additional training to teaching staff assigned to Aboriginal and Torres Strait Islander schools. The *Teacher Registration (Northern Territory) Act (NT)* includes Aboriginal and Torres Strait Islander people as prospective members of the Northern Territory Teacher Registration Board.

 *The Northern Territory has mostly addressed Recommendation 295 by offering relevant training at the Batchelor College and revising the design of training programs but has not specifically addressed the involvement of Aboriginal and Torres Strait Islander people in receiving training.*

In 1993, the **Australian Capital Territory** provided a compulsory unit on Aboriginal and Torres Strait Islander education as part of pre-service and in-service teacher training. Aboriginal and Torres Strait Islander parents, caregivers and community members have been actively included in the design and delivery of in-service programs.

The ACT Education Directorate also provides a range of professional learning activities that focus on integrating Aboriginal and Torres Strait Islander perspectives across all year levels and subject areas. In 2017 the ACT education directorate provided training for school leaders on Cultural Integrity in an effort to create a new organisational culture within the Education Directorate. Cultural Integrity training also currently provided to teachers, business managers and education support staff to encourage a whole system approach to Cultural Integrity. In addition to this, to the maximum extent possible, Aboriginal and Torres Strait Islander teachers, academics and other experts are involved in the design and delivery of professional learning.

 *The Australian Capital Territory has fully addressed Recommendation 295 by providing compulsory teacher training on Aboriginal and Torres Strait Islander education and involving the community in the design of these programs.*

Additional commentary

The **Commonwealth** PM&C noted that the Australian Curriculum is closely related to the Australian Professional Standards for Teachers, meaning that any teacher that has graduated after 2004 is required to meet these standards and is assessed annually on how well they are performing against them.

Recommendation 296

That:

- a. *AECGs consider such processes which might allow communities and teachers to negotiate and agree upon the role of teachers at local community level; and*
- b. *Governments, AECGs and, where appropriate, unions explore processes which will enable teachers, pupils and parents to negotiate guidelines for the teaching of Aboriginal students and the employment and conditions of teachers on local communities.*

Background information


There is an important need for implementing established processes to guide the negotiation and agreement of the role, employment and condition of teachers between relevant stakeholders in local communities.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The States and Territories have prime responsibility for the roles of teachers and their conditions of employment. However, the Commonwealth Government has contributed to addressing this recommendation.

Key actions taken and status of implementation

According to the *1991-92 Annual Report*, the **Commonwealth** Government arranged a meeting with AECGs to discuss the implementation of this recommendation.


 *The Commonwealth has mostly implemented Recommendation 296 through a meeting with AECGs. However, it is not clear to whether guidelines were negotiated for the teaching of Aboriginal and Torres Strait Islander people.*

The **New South Wales** Government's 1992-93 implementation report provided that the process of allowing communities and teachers to negotiate the local role of the teacher was facilitated by Regional Aboriginal Education Advisory Committees. The Aboriginal Education Consultative Group experienced strong representation on these committees.


Currently, the Department of Education's Local Schools, Local Decisions reform gives principals increased ability to make decisions in line with local need. This is carried out in consultation with local communities including Aboriginal communities. Under its 'Together we are, Together we can, Together we will' 2010-2020 Partnership Agreement Partnership Agreement with the department, the NSW Aboriginal Education Consultative Group commits to a focus on working in partnership through genuine consultation with Aboriginal communities to ensure quality teaching and learning.

NSW public schools are strongly encouraged to engage with local Aboriginal communities through Local and Regional Aboriginal Education Consultative Groups. The department funds the NSW AECG Inc. to deliver local culturally responsive training by Aboriginal people to school staff, including principals and school leaders, on engaging with Aboriginal communities.

The Department is also developing guidelines to further clarify roles and responsibilities, including for teachers, in NSW's Aboriginal Language and Culture Nests.


 *New South Wales has mostly implemented Recommendation 296 by allowing communities and teachers to negotiate the local role of the teacher, facilitated by Regional Aboriginal Education Advisory Committees. New South Wales has also strongly encouraged schools to engage with local Aboriginal communities through Local and Regional Aboriginal Education Consultative Groups. However, it is unclear whether teachers, pupils and parents can negotiate the employment and condition of teachers.*

The **Victorian** Government responded to Recommendation 296 through the *Koori Employment Strategy for the Teaching Service*, introduced in the Directorate of Schooling's Operational Plan for 1996-1998. The Victorian Government noted the involvement of the Victorian Aboriginal Education Association in the development of curriculum and efforts to establish culturally inclusive learning environments, including protocols for Koori education in Victorian schools. However, the Victorian government did not address the level of involvement of the community in defining the role of teachers or negotiating guidelines for the teaching of Aboriginal and Torres Strait Islander students.

 *Victoria has partially implemented Recommendation 296, as it is unclear to what extent the Koori Employment Strategy for the Teaching Service facilitated wider involvement of the community and other stakeholders.*


In 1993, **Queensland's** Department of Education provided a framework for the coordination of action across all education sectors and all levels of education. This plan was developed through a

consultative process with the Aboriginal and Torres Strait Islander communities of Queensland, including the Queensland Aboriginal and Torres Strait Islander Education Consultative Committee. Currently, local schools can involve community members in the recruitment of positions as part of standard departmental human resources processes. The recruitment of school principals must involve community input.

 *Queensland has partially implemented Recommendation 296, as it does not expressly address the wider involvement of the community and other stakeholders in its response.*


South Australia provides the Anangu people with curriculum and operational responsibility in Anangu schools. The South Australian Government provides additional remuneration and leave entitlements for teachers in remote communities, and Aboriginal Education Worker (AEWs) were granted provisional teacher registration status in Anangu Child Parent Centres.

The responsibilities of teachers are provided for in Education Regulation 42(2). Guidance regarding expectations of teachers is further defined in the Australian Professional Standards for Teachers. The curriculum is delivered through the Australian Curriculum Framework. Employment conditions for teachers are outlined in the Education Act and industrial agreements.


 *South Australia has partially implemented Recommendation 296 by granting the Anangu people with curriculum and operational responsibility in Anangu schools, but has not addressed processes for negotiation in its response.*

In their 1994 implementation report, the **Western Australia** Government allowed Aboriginal and Torres Strait Islander communities access to the appointment process of teachers via the WA Aboriginal Education Consultative Group. However, the roles and conditions of teachers were determined by industrial agreement.


The Western Australian Government has noted that one of the objectives of the *School Education Act 1999* is to acknowledge the importance of parent involvement and participation in the child's education.

 *Western Australia has partially implemented Recommendation 296 by allowing Aboriginal and Torres Strait Islander communities access to the appointment process of teachers via the WA Aboriginal Education Consultative Group. However, roles can and conditions of teachers employment are determined by industrial agreements.*

Tasmania responded to Recommendation 296 through the Aboriginal Education Consultative Group, which liaised with the Aboriginal and Torres Strait Islander education coordinator. The State Planning Group, in 1993, was also sensitive to the participation of Aboriginal and Torres Strait Islander community members in school decision-makers. The Tasmanian Government provided in their 1993 implementation report that part (b) of Recommendation 296 was beyond their responsibility. Currently, the Aboriginal Education Reference Group provides strategic advice to Aboriginal Education Services, Department of Education, in Tasmania.

 *Tasmania has partially implemented Recommendation 296 by inviting community input through the Aboriginal Education Reference Group but has not addressed part (b) of this recommendation.*


The **Northern Territory** Government noted in their 1993-94 implementation report that members of School Councils were involved with selection panels to make recommendations on all promotion positions in schools. This included representation of Aboriginal and Torres Strait Islander people in Aboriginal and Torres Strait Islander schools.

 *The Northern Territory has partially implemented Recommendation 296 by including Aboriginal and Torres Strait Islander representation on selection panels for promotions in schools but does not expressly address the wider involvement of the community and other stakeholders in its response.*

In the **Australian Capital Territory** the role of teachers is firmly embedded in the industrial framework through the Enterprise Bargaining Agreement and the role of teachers are not negotiated

or agree upon at a community level. Currently there is no process by which teachers, pupils and parents can negotiate teaching guidelines for the teaching of Aboriginal and Torres Strait Islander students and the employment and conditions of teachers.

However, the Australian Capital Territory Government noted in 1993 that school procedures and policies on education practice for Aboriginal and Torres Strait Islander people would be informed by Aboriginal Student Support and Parent Awareness committees, and Aboriginal Education Workers where practicable.

 *The Australian Capital Territory has partially implemented Recommendation 296 through the involvement of Aboriginal Student Support and Parent Awareness committees but has not addressed other parts of the response.*

Additional commentary

The **Commonwealth** PM&C noted that research suggests a high level of variability across universities in terms of the incorporation of Aboriginal and Torres Strait Islander histories in initial teacher education programs. There are currently no mandated requirements for education providers to involve Aboriginal people/community in training courses.

Recommendation 297

That:

- a. The vital role which Aboriginal Education Workers or persons performing a similar role but with another title—can play in ensuring effective Aboriginal participation in the education system be recognised;*
- b. Aboriginal Education Workers be given the recognition and remuneration which their role merits and that it be recognised that they suffer from conflicting expectations of community and Department as to their role; and*
- c. It be understood that there is a need for them to have accountability to the Aboriginal community as well as to their employer.*

Background information

There is an important need for Aboriginal Education Workers to be appropriately recognised and remunerated for their work and for their commitments to the Aboriginal and Torres Strait Islander community, in order to ensure their effective participation in the education system.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The States and Territories have prime responsibility for the roles of teachers and their conditions of employment. However, the Commonwealth Government has contributed to addressing this recommendation.

Key actions taken and status of implementation

According to the *1992-93 Annual Report*, the Australian Education Union was funded by the **Commonwealth** to undertake a national study documenting the terms and conditions of employment of Aboriginal and Torres Strait Islander Education Workers (AIEWs), as well as current working conditions, including the availability of training and recognition of such training. The findings of the study were intended to assist all education providers employing AIEWs to establish their own guidelines for the employment of AIEWs within a national framework.

PM&C supports activities to increase local Aboriginal and Torres Strait Islander employment in remote Northern Territory schools through the National Partnership Agreement on Northern Territory Remote Aboriginal Investment. This provides funding of \$119.8 million over 2015 to 2017. Workforce development is one of five elements funded to improve Aboriginal and Torres Strait Islander student outcomes.

 *The Commonwealth Government has acknowledged the importance of giving AIEWs proper recognition and remuneration for their roles, and funded a study to assist with implementation of Recommendation 297. While it is not clear if recognition and remuneration of AIEWs were appropriately altered following this study, implementation of Recommendation 297 is the responsibility of the States and Territories.*

The **New South Wales** Government noted in 1993 that Aboriginal Education Assistants would be represented on relevant syllabus committees, and involved with the Board of Studies in the development of resources. The NSW Government also conducted a review into the working conditions of Aboriginal Education Assistants in 1993.


Currently, a range of Aboriginal Education Officer roles now exist for all NSW Government schools, which provide high level support to educational service teams and schools to assist with implementing strategies that assist with Aboriginal education. These include Aboriginal Education and Wellbeing Advisors, Aboriginal Student Liaison Officers, and Aboriginal Community Liaison Officers. These officers are often required to liaise with the families and carers of students.

Improvements for Aboriginal Education Officers' remuneration have been addressed more recently since 1993. In 2010, the NSW Industrial Relations Commission varied the Crown Employees (School Administrative and Support Staff) Award to reflect outcomes of a review of these roles. Outcomes included new levels of remuneration, incremental progression including the removal of incremental barriers, and the removal of barriers to the accessing of overtime, excess travel time and waiting time.

Role Descriptions and selection criteria for Aboriginal education workers (including Aboriginal Education and Wellbeing Advisors, Aboriginal Student Liaison Officers, and Aboriginal Community Liaison Officers) include that these workers will:


- act as a conduit on the views of communities; lead development of consultative mechanisms between communities and the Department of Education; and
- support facilitation of community involvement in Aboriginal education, and community capacity building.

The Department's Aboriginal Education Policy recognises the importance of collaboration, between communities and schools. Collaboration is also implicit in the formal partnership the Department has with the NSW Aboriginal Education Consultative Group Incorporated, as the peak community advisory body to the Department on Aboriginal education. Experiencing and managing conflict around community expectations concerning Departmental policy is an expected outcome of these roles. The Department is confident that an Aboriginal education worker's accountability to the community and to their employer is managed within the department's aim, set out in its Aboriginal Education Policy, of improving the educational outcomes and wellbeing of Aboriginal students so that they excel and achieve in every aspect of their education.

 *New South Wales has implemented Recommendation 297 by appropriately recognising and remunerating Aboriginal Education Officers.*


The **Victorian** Government responded to Recommendation 297 with the *Aboriginal Employment Strategy*, which aimed to bolster the employment of Aboriginal and Torres Strait Islander people across all levels of the government sector. Under this initiative, 56 Koori Educators and 16 Cross-sectoral Coordinators were employed to support students across all sectors.

A reform of the Victorian Department of Education and Training's Koori Education Workforce took place in 2010. This reform resulted in 'Koori educators' and other related positions being re-classified as Koori Engagement Support Officers, with significantly higher remuneration and ongoing employment levels. The Koori community, through the Victorian Aboriginal Education Association was involved in this reform.

 *Victoria has mostly implemented Recommendation 297 through the Aboriginal Employment Strategy and reform of the Victorian Department of Education and Training's Koori Education Workforce. However, part c) of Recommendation 297 has not been implemented.*


The **Queensland** Government reviewed employment arrangements for Aboriginal and Torres Strait Islander para-professional education workers in Queensland schools and subsequently developed career structure and permanency for community education counsellors. Position descriptions for school-based Aboriginal and Torres Strait Islander community education counsellors were updated to include the development and maintenance of close communication networks between Aboriginal and Torres Strait Islander students, parents, and communities.

The Department of Education has undertaken initiatives aimed at growing and developing Aboriginal and Torres Strait Islander employees, including transitioning school-based employees previously employed through the Australian Government's Community Development Employment Program into state-funded positions.

 *Queensland has recognised Aboriginal and Torres Strait Islander community education counsellors by developing career structure and permanency for these roles but has not addressed key elements of the recommendation. As such, Recommendation 297 is partially implemented.*

In 1993, the **South Australian** Government introduced the *Education Department Equal Employment Opportunities Management Plan* which detailed a range of employment strategies to enhance Aboriginal Education Worker career opportunities through accredited training and development and ongoing professional support. Additionally, the Aboriginal Education Worker Industrial Agreement was revised to recognise the varied roles that AEWs perform.


Currently, the SA Aboriginal Education Worker Award covers Aboriginal Education Workers. The SA School and Preschool Education Staff Enterprise Agreement 2016 also has a number of provisions supporting the employment of Aboriginal Education Workers. The Department for Education also supports all school based Aboriginal Education Workers with undertaking relevant training.

 *South Australia has mostly addressed Recommendation 297 by providing Aboriginal and Torres Strait Islander Education Workers with appropriate award conditions and development pathways but has not addressed part (c) of this recommendation.*

The **Western Australia** Government responded to Recommendation 297 through the *Aboriginal Participation in School Decision Making* package (1994) which described the role of AEWs.

The Western Australian Government has recognised the importance of Aboriginal and Torres Strait Islander education officers by employing 525 Aboriginal and Torres Strait Islander education officers and committing to establishing an additional 50 positions.


Western Australia has also implemented the Aboriginal and Torres Strait Islander education officers Professional Learning Program, which aims to build the capacity of staff to support teaching and learning programs in schools. The Program provides funding and support for Aboriginal and Torres Strait Islander people to achieve a Certificate III or IV in Education Support, as well as providing alternative pathways to obtain a Bachelor of Education qualification.

 *Western Australia has partially addressed Recommendation 297, by recognising the importance of Aboriginal and Torres Strait Islander education officers and developing appropriate development pathways. However remuneration, and an understanding that Aboriginal and Torres Strait Islander education officers are accountable to the Aboriginal community as well as to their employer, have not been addressed.*

Tasmania's 1993 implementation report provided that Home-school Liaison Officers had an important role in implementing Recommendation 297, and that AEWs are accountable to the Tasmanian Aboriginal Community through the Tasmanian Aboriginal Education Council. More recently, the Tasmanian Government has noted that there are a number of Tasmanian Aboriginal and Torres Strait Islander people who work for Aboriginal Education Services and are supported by their line managers to traverse the community and professional expectations of their roles. All workers are required to complete a Performance Development Plan in consultation with their line manager or delegate.

 *Tasmania has fully addressed Recommendation 297.*

In 1993-94, the **Northern Territory** Department of Education employed 186 full-time and 107 part-time AEWs. The provision of Remote Area Teacher Education and mixed mode programs enabled AEWs to further develop professional skills required for career progression. Award conditions were also negotiated for AEWs.


 *The Northern Territory has mostly addressed Recommendation 297 by providing Aboriginal and Torres Strait Islander Education Workers with appropriate award conditions and development pathways but has not addressed part (c) of this recommendation.*

The **Australian Capital Territory** Government provided for the employment of Home School Liaison Officers, AEWs, and Aboriginal Mentors through the 1993 *Aboriginal Education Strategic Initiative Plan*. Remuneration and standards were maintained with the National Review of Aboriginal and Torres Strait Islander Education Workers.

Currently, the ACT Education Directorate employs 10 Aboriginal and Torres Strait Islander Education Officers who work across 11 ACT public schools. The role of Aboriginal and Torres Strait Islander Education Officers includes:

- supporting schools to engage with families and community;
- supporting teachers to embed Aboriginal and Torres Strait Islander perspectives across the curriculum;
- providing advice and leadership to schools on celebrating significant events and milestones for Aboriginal and Torres Strait Islander people;
- supporting schools to grow a culture of high expectations for Aboriginal and Torres Strait Islander students; and
- facilitating successful student transitions between year levels, between schools and to post school study or work.

The ACT Government has also noted that the Education Directorate is cognisant of the fact that Aboriginal and Torres Strait Islander Education Officers may need to manage conflicting expectations of community and employer and that the Officers have accountability to both.

 *The Australia Capital Territory has addressed Recommendation 297 by appropriately recognising and remunerating Aboriginal and Torres Strait Islander Education Workers in line with the National Review of Aboriginal and Torres Strait Islander Education Workers. The ACT government has also recognised that Aboriginal and Torres Strait Islander Education Officers may need to manage conflicting expectations of community and employer.*

Recommendation 298

That:

- a. Governments support Aboriginal community controlled adult education institutions and other institutions which provide a program of courses which have the support of the Aboriginal community;*
- b. Governments accept that courses delivered by such institutions should be regarded as courses entitling students to such payments or allowances as would be their entitlement in the event that they were participating for the same or equivalent time in a TAFE course; and*
- c. It be recognised that owing to the substantial historical educational disadvantage which Aboriginal people have experienced, a course for Aboriginal students may necessarily be longer than might be the case if the course were provided to non-Aboriginal students.*

Background information

Support of Aboriginal community controlled adult education institutions is critical to providing equity of access for Aboriginal and Torres Strait Islander people to educational services, raising the rates of

Aboriginal and Torres Strait Islander participation in education, and achieving equitable and appropriate educational outcomes for Aboriginal and Torres Strait Islander people.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The States and Territories have responsibility for adult and community education institutions. The Commonwealth Government is responsible for payments and allowances.

Key actions taken and status of implementation

Following the RCIADIC Report, the **Commonwealth** Government's ABSTUDY scheme of student assistance was expanded to include accredited higher education or TAFE equivalent courses conducted by private providers, including Aboriginal and Torres Strait Islander colleges. The level of assistance provided for such colleges is the same as that for participants in TAFE/higher education courses.

According to the *1995-96 Annual Report*, the Commonwealth supported community-controlled education providers via the Indigenous Education Strategic Initiatives Project, and provided \$15 million in capital for these providers via the Australian National Training Authority in 1996.


The DET noted that the Australian Government provides the Batchelor Institute of Indigenous Tertiary Education with National Institutes funding under the Higher Education Support Act 2003. This provides ongoing certainty of funding in recognition of the special status of this institution as the only Aboriginal and Torres Strait Islander-run dual sector tertiary provider, and the first Aboriginal and Torres Strait Islander-run higher education provide in Australia. Students enrolled at Batchelor are eligible for the full range of student payments and allowances payable to students studying public university or TAFE courses.

 *The Commonwealth Government has implemented policies and initiatives which provide support to Aboriginal community controlled adult education institutions and Aboriginal and Torres Strait Islander students at these institutions. Recommendation 298 is mostly complete as there is no clear evidence of a Commonwealth response to addressing educational disadvantage for Aboriginal and Torres Strait Islander students, as stipulated in section (c).*

The **New South Wales** Government provided in their 1992-93 implementation report that the Adult and Community Education sector has a strong role in Aboriginal education, given its non-bureaucratic, flexible and responsive nature. In 1992, TAFE NSW introduced an *Umbrella Course* for Aboriginal students which contained a compulsory literacy and numeracy course.

In 2015, the NSW Government implemented "Smart and Skilled", which provides eligible students with an entitlement to government subsidised training for specific courses. Aboriginal students are exempt for paying fees for any Smart and Skilled courses for which they are eligible. The "Smart and Skilled Adult Community Education Community Service Obligation" program provides extra support for learners to access training, including Aboriginal people in remote communities.


Both TAFE NSW and Adult Community Education providers provide additional services to help Aboriginal students improve their reading, writing and numeracy skills. Training providers contracted to deliver "Smart and Skilled" receive additional funding for Aboriginal students. In addition, vocational assistance aimed at Aboriginal job-seekers are provided by the New Careers for Aboriginal Program and the Training Services NSW Aboriginal Services team.

 *New South Wales has partially implemented Recommendation 298 by providing special provisions for Aboriginal students of the TAFE's Smart and Skilled courses but has not addressed key elements of the recommendation, including support for Aboriginal community controlled adult education institutes.*

In **Victoria**, Further and Adult Education providers offered a range of courses for adults in consultation with Aboriginal and Torres Strait Islander communities, including several Learn Local organisations that specifically tailor programs to meet the needs of Koori students.

The Indigenous Completions Initiative in Victoria provides additional funding for Koori students by requiring them to pay only the concession tuition fee for training at any level, including at Diploma


level and above. In addition to this, Koori students also attract a 50% higher level of funding in government subsidised training, allowing Training Providers to more flexibly support learners to successfully complete courses, including running courses over a longer period of time. The TAFE Community Service Fund also supports accredited training programs targeted at Aboriginal and Torres Strait Islander students.

 *Victoria has implemented Recommendation 298 by providing additional funding for Aboriginal and Torres Strait Islander students, allowing education provides greater flexibility in the length of courses and funding courses specifically tailored to the needs of Aboriginal and Torres Strait Islander students.*

In **Queensland**, Aboriginal and Torres Strait Islander people were permitted to make submissions on the development of future curricula. All courses designed for Aboriginal and Torres Strait Islander students and submitted for accreditation have been examined for their suitability in meeting the needs of Aboriginal and Torres Strait Islander students.


Currently, the Department of Education provides subsidies to enable eligible people to obtain their first post-school Certificate III qualification from registered, pre-qualified training organisations (which Aboriginal and Torres Strait Islander training organisations can apply to become). Disadvantaged students, including Aboriginal and Torres Strait Islander students, are paid a higher subsidy to encourage and support their participation.

The Queensland Government has noted that as the time taken to complete a training course is at the discretion of the individual training organisation, Aboriginal and Torres Strait Islander students are able to take additional time to complete a training course.

 *Queensland has implemented Recommendation 298 by appropriately reviewing all courses designed for Aboriginal and Torres Strait Islander students for accreditation, accrediting Torres Strait Islander training organisations and allowing flexibility in the time taken to complete courses.*

The **South Australian** *Aboriginal Education Program* operated in 12 TAFE Colleges in 1993, and offered a range of certificate courses which encouraged both junior and adult students to enrol in mainstream courses on completion of an Aboriginal Education course. The *Prisoner Education* program also offered certificate subjects in a classroom situation and in the Study Centre mode. The South Australian Government provided in their 1993 implementation report that all Aboriginal Community College courses were designed for Aboriginal and Torres Strait Islander students, with funds allocated on the basis of the cost of delivery.


Currently, the South Australian Certificate of Education (SACE) Board Aboriginal Education Strategy 2017 seeks to equip Aboriginal and Torres Strait Islander young people to achieve their SACE while maintaining their culture and identity. Initiatives include Homework Centres, which aim to assist Aboriginal and Torres Strait Islander students with their homework and study habits, while Aboriginal Education Teachers work with the leadership team, staff, students and the parents of students to improve learning outcomes. An Aboriginal Cultural Consultant is developing a state-wide operational framework in partnership with the Aboriginal and Torres Strait Islander community to ensure the curriculum is culturally competent.

 *South Australia has partially implemented Recommendation 298 by supporting the funding and delivery of Aboriginal Community College courses but has not addressed parts (b) and (c) of this recommendation.*


In response to Recommendation 298, the **Western Australia** Government offered a range of programs in partnership with Aboriginal and Torres Strait Islander community-based organisations, and provided funding for the delivery of short courses. The Western Australia Government also consults Aboriginal and Torres Strait Islander communities in the design and curriculum development of vocational education and training programs, in order to ensure cultural appropriateness.

Currently, Western Australia operates a number of training programs targeted at Aboriginal and Torres Strait Islander students, including the Aboriginal School Based Training program, specialist support for Aboriginal and Torres Strait Islander students through the Western Australian Group


Training Program, and the provision of Aboriginal support funding to TAFE Colleges. Western Australia also funds a number of Aboriginal and Torres Strait Islander- owned and operated registered training organisations to deliver culturally appropriate training on its behalf.

 *Western Australia has partially implemented Recommendation 298 by supporting the funding and delivery of Aboriginal targeted course, including through Aboriginal and Torres Strait Islander owned and operated registered training organisation. However parts (b) and (c) of this recommendation have not been addressed.*

The **Tasmanian** Government introduced an Aboriginal Cultural Centre which offered adult literacy and numeracy programs, along with courses in Performing and Visual Arts.

 *Tasmania has partially implemented Recommendation 298 by offering courses through the Aboriginal Cultural Centre but has not addressed key elements of the recommendation in their response.*


In 1993, the **Northern Territory** had a number of Aboriginal and Torres Strait Islander private providers registered as organisations qualified to conduct TAFE level courses. These organisations were eligible to apply for recurrent, capital and growth funding from the Northern Territory Employment and Training Authority. The Northern Territory worked closely with Aboriginal community-controlled adult education institutions, provided funds for a number of courses, and provided ongoing advice and support to the institutes.

 *The Northern Territory has mostly implemented Recommendation 298 by supporting a number of Aboriginal and Torres Strait Islander private providers with the delivery of TAFE level courses but has not appear to have addressed part (c) of the recommendation.*

The **Australian Capital Territory** Government provided an Aboriginal Education Worker in the Foundation course at the University of Canberra to address Aboriginal and Torres Strait Islander disadvantage. Designated places were also provided for Aboriginal and Torres Strait Islander people in mainstream courses. Skills Canberra's funding programs also take into account the additional learning and support needs of Aboriginal and Torres Strait Islander students by providing an additional funding to training organisations for each Aboriginal and Torres Strait Islander student enrolled either through the Australian Apprenticeships program or the Skilled Capital Program. This money can be used by the RTO to cover extra costs associated with Aboriginal and Torres Strait Islander students who need longer to complete their course.

The establishment of the Yarauna Sub-committee also contributed to the approval of specifically designed Aboriginal and Torres Strait Islander courses. The ACT Government also provides significant financial support for Aboriginal and Torres Strait Islander community controlled adult education providers and other courses which have the support of the Aboriginal and Torres Strait Islander community. This is achieved through the ACT Adult Community Education Grants program and Skills Canberra grants.

The ACT Australian Apprenticeship program also caters for students requiring a longer than average time to complete their course through flexible programs, which assess competency rather than imposing limits of completion time.

 *The Australian Capital Territory has implemented Recommendation 298 by providing designated places and additional funding for Aboriginal and Torres Strait Islander students, funding Aboriginal and Torres Strait Islander community controlled adult education providers and supporting students studying at Aboriginal and Torres Strait Islander community controlled adult education providers.*

Additional commentary

The **Commonwealth** DET noted that the majority of Aboriginal and Torres Strait Islander people who participate in VET churn through lower level skills training, which has minimal impact on supporting sustainable employment. In contrast, Aboriginal and Torres Strait Islander people who complete university have higher levels of full time employment, find work more quickly and have, on average,

higher commencing salaries than other graduates (2016 Graduate Outcomes Survey). Therefore, it is important to develop pathways for Aboriginal and Torres Strait Islander students into Cert III and IV courses as well as higher education.

DET advised that as part of the 2017-18 Budget, from 1 January 2018, access to ABSTUDY and other student payments for students undertaking VET courses at diploma level and above will be limited to courses approved for VET Student Loans and offered by VET providers approved to offer VET Student Loans for those courses. Students undertaking VET courses at certificate level will still have access to ABSTUDY, provided the courses and providers are accredited, as at present.

Recommendation 299

That:

- a. *At every stage of the application of the National Aboriginal Education Policy the utmost respect be paid to the first long-term goal expressed in the policy, that is: To establish effective arrangements for the participation of Aboriginal parents and community members in decisions regarding the planning, delivery, and evaluation of pre-school, primary, and secondary education services for their children.*
- b. *It be recognised that the aims of the Policy are not only to achieve equity in education for Aboriginal people but also to achieve a strengthening of Aboriginal identity, decision making and self-determination; and*
- c. *It is unlikely that either of these aims can be achieved without the achieving of the other.*

Background information

The involvement of Aboriginal and Torres Strait Islander parents and community members in decisions regarding education services for their children has been identified as important to achieving equity in education as well as to the empowerment of Aboriginal and Torres Strait Islander people, as promoted by the National Aboriginal Education Policy (NAEP). The NAEP is still current.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The NAEP is the joint responsibility of State and Territory, and Commonwealth governments.

Key actions taken and status of implementation


According to the *1994-95 Annual Report*, the **Commonwealth** provided funding to 3,900 ASSPA committees in 1994-95 to train ASSPA committees in financial management and educational issues. The *1995-96 Annual Report* notes that the Commonwealth maintained consultative arrangements with Aboriginal and Torres Strait Islander representatives through monitoring groups for education providers receiving funds under the Indigenous Education Strategic Initiatives Project.

PM&C noted that The Children and Schooling Program under the IAS funds a number of activities aimed at supporting Aboriginal and Torres Strait Islander families and communities to become more involved in their children's education. These activities focus on enhancing parental and community engagement.


 *The application of the NAEP is the responsibility of the States and Territories. The Commonwealth has contributed to the implementation of Recommendation 299 through its oversight role in providing funding and maintaining consultative arrangements.*

The **New South Wales** Government implemented Recommendation 299 in 1992 through the *School Education Operational Plan for Aboriginal Education* which aimed to enhance and develop community awareness of education policies and practices; and develop skills to enable community members to participate in decision making. The Board of Studies also implemented additional measures aimed at Aboriginal representation and recognition.

Currently, the Department of Education commits to collaborative decision making with Aboriginal people, parents, caregivers, families and their communities under its Aboriginal Education Policy. The Department is also committed to valuing and acknowledging the identities of Aboriginal students and incorporating the cultural contexts, values and practices of local communities into the mainstream delivery of education.


 *New South Wales has implemented Recommendation 299 by implementing the National Aboriginal Education Policy, committing to community engagement and involvement, and incorporating Aboriginal values and practices into the delivery of education.*

In **Victoria's** 1993 implementation report, it was noted that implementation proceeded through: the National Aboriginal Education Policy; the promotion of culturally relevant materials in preschools by the Office of Preschool and Childcare, and the Victorian Koori Early Childhood and Development Association; and involvement on the Steering Committee. The Office of Preschool and Childcare directed funding for Aboriginal and Torres Strait Islander assistant positions to community-based Aboriginal and Torres Strait Islander organisations.

 *Victoria has implemented Recommendation 299 by implementing the National Aboriginal Education Policy, providing cultural training, and procuring services through Aboriginal and Torres Strait Islander organisations.*

As part of **Queensland's** implementation of the national ASSPA program (1993), Aboriginal and Torres Strait Islander parents were provided with greater input in school-based decision making processes. Aboriginal and Torres Strait Islander members were also provided with opportunity to participate in school committees that were involved in the preparation of School Development Plans and associated school budgets. The Queensland Aboriginal and Torres Strait Islander Education Consultative Committee were tasked with advising the Minister for Education on all educational matters.


Currently, the Department of Education enhances the cultural rights of Aboriginal and Torres Strait Islander people across its leadership policies, programs and services through a variety of different initiatives and programs. These include measuring performance against Aboriginal and Torres Strait Islander key performance indicators, using a cultural capability action plan, and having a dedicated ministerial advisory council provide advice on Aboriginal and Torres Strait Islander education and training outcomes. In addition, Queensland state schools offer opportunities for parents to join a local Parents and Citizens Association to provide community input into school decision making.

 *Queensland has implemented Recommendation 299 by establishing arrangements for community participation and upholding Aboriginal and Torres Strait Islander cultural rights in its implementation of education policy.*

The **South Australian** Government, as part of its initial response to Recommendation 299, prioritised the role of Aboriginal Education Workers in working with communities, and the *Aboriginal Student Support and Parent Awareness Program*.


The SA Aboriginal Education and Training Consultative Council is supported and funded to provide the Aboriginal community, parent and student voice to the Department for Education on the delivery of early childhood and education services affecting Aboriginal children and young people. Implemented programs also seek to build the capacity of Aboriginal and Torres Strait Islander parents and carers in their roles as primary care givers.

Individual Learning Plans are required for all Aboriginal and Torres Strait Islander children and young people in SA government schools and involve students, teachers and their families working together to achieve the best possible health, wellbeing and learning outcomes for students. In addition, the SA Government has developed Aboriginal Student Awards (such as the Dame Roma Mitchell Scholarship), which aim to achieve a strengthening of identity, decision making and self-determination for Aboriginal and Torres Strait Islander students.

 *South Australia has implemented Recommendation 299 by implementing programs and initiatives that encourage and support the participation of Aboriginal and Torres Strait Islander communities and parents in education services.*


The **Western Australia** Government, in the early 1990s, facilitated and supported the establishment and operation of Aboriginal Student Support and Parent Awareness Committees in schools with significant Aboriginal and Torres Strait Islander enrolments.

Since this time, the Western Australian Aboriginal Cultural Standards Framework has been developed to support teachers to reflect on their approaches to the education of Aboriginal and Torres Strait Islander students, including the relationships with Aboriginal and Torres Strait Islander students, parents, families and communities. In 2017, two Elders in Residence were engaged by the Department of Education to provide strategic advice on public schooling directions and matters with respect to Aboriginal and Torres Strait Islander children and families.


 *Western Australia has implemented Recommendation 299 by implementing programs and initiatives that encourage and support the participation of Aboriginal and Torres Strait Islander communities and parents in education services.*

The **Tasmanian** Government established three regional Advisory Committees to formalise networks for parent and community involvement in education decision making. Programs were also introduced through Adult Education and TAFE to deliver programs to enhance Aboriginal and Torres Strait Islander identity and self-esteem.

Currently, there exist a variety of different groups and avenues through which Aboriginal and Torres Strait Islander community members can participate in the planning, delivery and evaluation of education services, including the Aboriginal Education Reference Group, Aboriginal Education Workers and Education Officers, and the Aboriginal Sharers of Knowledge Program.

 *Tasmania has fully implemented Recommendation 299 by implementing a range of programs and roles that support Aboriginal and Torres Strait Islander community participation in education design and promote cultural learning.*


The **Northern Territory** Government expanded the devolution of control over curriculum and class design to schools and the requirement for each School Council to develop an Action Plan for school improvement, Aboriginal parent and community involvement. As at 1994, there were 104 School Councils and 168 ASSPA groups through which Aboriginal and Torres Strait Islander people were participating.

 *The Northern Territory has partially implemented Recommendation 299 by expanding Aboriginal and Torres Strait Islander parent and community involvement in education-related decision making but has not addressed part (b) in their response.*

The **Australian Capital Territory** Government's *Aboriginal Education Strategic Initiatives Program* emphasised the involvement of Aboriginal and Torres Strait Islander parents and community in the planning, delivery and evaluation of education programs. This was enacted through a range of committees, the role of AEWs within schools, and contact with Aboriginal and Torres Strait Islander community organisations. To address the strengthening of Aboriginal and Torres Strait Islander identity, the ACT Government introduced the Artist-in-Residence program, the Mentor program, and the Aboriginal Speakers program in the early 1990s.

Since this time, the ACT Education Directorate's *Cultural Integrity policy* has been developed, using an extensive consultation process involving members of the Education Directorate's Aboriginal and Torres Strait Islander Staff Network, local experts, students and local community members.

Despite the cessation of Commonwealth funding for Aboriginal and Torres Strait Islander Education Consultative Groups at the end of 2014, the ACT Education Directorate has continued to support the existence and operation of a Group in the ACT.

 *The Australian Capital Territory has implemented Recommendation 299 by implementing programs and initiatives that encourage and support the participation of Aboriginal and Torres Strait Islander communities and parents in education services, as well as the strengthening of cultural identity.*

11 Equal opportunity

The recommendations in this chapter relate to: increasing economic opportunity (300-320); and improving the living environment: housing and infrastructure (321-327)

Key themes from recommendations (28 recommendations)

- Aboriginal and Torres Strait Islander people face particularly significant disadvantage in participating in the labour force due to discrimination, low levels of formal education, and cultural imperatives. Aboriginal and Torres Strait Islander people require additional support to address these issues.
- Active labour market policy programs, such as CDEP, are preferable to unemployment programs as they can deliver useful social outcomes such as further training and development and social development.
- Understanding the housing needs and community aspirations of Aboriginal and Torres Strait Islander people, as opposed to traditional conceptions of physical housing alone, is key to the effective development of the required housing stock. It will also help to build infrastructure that is more suited to and compatible with the needs of Aboriginal and Torres Strait Islander people in remote areas.

Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

Commonwealth | Key actions: The Commonwealth funds a number of programs that assist private sector employers to employ Aboriginal and Torres Strait Islander people, including Tailored Assistance Employment Grants. In addition, the Commonwealth launched the Indigenous Procurement Policy in 2015, which has resulted in more than \$407 million worth of contracts being won by Aboriginal and Torres Strait Islander businesses. The Commonwealth has also addressed employment outcomes through the *Employment Parity Initiative* and Vocational Training and Employment Centres initiatives.

Remaining gaps: Research on the impact of the overall taxation system on Aboriginal and Torres Strait Islander people has not been undertaken and not all Government contracts appear to comply with the RCIADIC's recommended approach.

New South Wales | Key actions: The NSW Government implemented programs dedicated to improving Aboriginal employment, such as the Aboriginal Enterprise Development Officer Program and the Careers for Aboriginal People Program. In addition, the NSW Government has taken steps to improve outcomes in the Aboriginal community housing sector through the Aboriginal Rental Housing Program.

Remaining gaps: No research has been undertaken by New South Wales into the impact of the taxation system, nor has the research been appropriately communicated to local communities and organisations. A greater incorporation of administrative and housing support needs is required in the provision of public housing, and more attention should be given to homemaker issues and the participation of Aboriginal people in new construction.

Victoria | Key actions: The Victorian Government has introduced a range of employment strategies and programs, such as the *Victorian Aboriginal Economic Strategy* to improve economic opportunity for Aboriginal and Torres Strait Islander people. Victoria has also addressed opportunities in the housing sector by encouraging the training and development of tradespeople through activities undertaken by the Aboriginal Housing Board.

Remaining gaps: It does not appear that integration of service delivery and administration has taken place in respect of public housing for Aboriginal and Torres Strait Islander people. Further consideration of government processes for letting contracts, homemaker schemes, the establishment of local employment promotion communities, and relevant research of Aboriginal and Torres Strait Islander economic circumstances is required to fully meet the objectives of the RCIADIC recommendations.

Queensland | Key actions: The Queensland Government has taken steps to improve employment through the *Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan* and through employment targets in the Public Service. Queensland has also addressed a jurisdiction-specific recommendation through the *Building our Regions* program, designed to improve economic independence and self-sufficiency of residents in remote communities.

Remaining gaps: Queensland has not fully addressed recommendations related to research into the economic status of Aboriginal and Torres Strait Islander people, or into the integration of service and administration

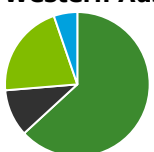
integration for public housing provision. Further work is also required on funding support for homemaking education, and the recruitment of Aboriginal and Torres Strait Islander people for new construction programs.

South Australia | Key actions: South Australia has sought to improve employment outcomes for Aboriginal and Torres Strait Islander people through its *Strategic Plan*, which sets employment targets, including in the public sector. South Australia also aims to support Aboriginal and Torres Strait Islander businesses through the Aboriginal Business Procurement Policy.



Remaining gaps: Further attention to the establishment of local employment promotion committees is needed to ensure that the objectives of the RICADIC recommendation are fully met. South Australia should also review its research practices, namely concerning economic research and accommodation needs surveys, to ensure that they are more attuned to the needs and circumstances of Aboriginal and Torres Strait Islander people.

Western Australia | Key actions: Western Australia has implemented initiatives to improve employment of Aboriginal and Torres Strait Islanders such as the 'Attract, Appoint and Advance: an employment strategy for Aboriginal people' policy in the public sector and policy of using local suppliers in remote Aboriginal and Torres Strait Islander communities.



Remaining gaps: Western Australia has not formed a body to study successful policies used to improve the self-sufficiency of Aboriginal and Torres Strait Islander people.

Tasmania | Key actions: Access to employment for Aboriginal people in the Tasmanian State Service is underpinned by *Employment Direction No.10*, which provides for identified and tagged positions. The Tasmanian Government is committed to the development of an Aboriginal Employment Strategy in the State Service, which targets employment. Access to equal opportunity in housing for Aboriginal people in remote locations is delivered by the Stronger Remote Aboriginal Services project, specifically for Flinders and Cape Barren Islands.



Remaining gaps: A review of Tasmania's active labour market programs is required to ensure that they are specifically designed to address Aboriginal and Torres Strait Islander participants, including procedures for preferential tendering agreements that favour Aboriginal and Torres Strait Islander workers. Further consideration of notification mechanisms relating to mining and tourism developments of culturally relevant land also needs to be undertaken.

Northern Territory | Key actions: The Northern Territory Government has implemented initiatives to improve employment, such as the *Indigenous Employment Program*. The Northern Territory has also developed the *Northern Territory Procurement Policy*, which gives preference for the letting of contracts to employers of Aboriginal and Torres Strait Islander people.



Remaining gaps: Further development of local employment promotion committees and initiatives, culturally sensitive housing stock assessments, and notification mechanisms for development of relevant land, are all required.

Australian Capital Territory | Key actions: The Australian Capital Territory Government has introduced labour market programs and employment targets to support greater Aboriginal and Torres Strait Islander employment in the public and private sectors. There has also been greater support of Aboriginal and Torres Strait Islander housing through the funding of homemaking skills through TAFE, and the provision of Liaison Officers to assist Housing ACT clients.



Remaining gaps: The Australian Capital Territory Government has not adopted any policies that support the preferential letting of government contracts to employers of Aboriginal and Torres Strait Islander employees, or developed culturally sensitive housing stock assessments, or undertaken research into the economic and taxation circumstances of Aboriginal and Torres Strait Islander people.

11.1 Increase economic opportunity (300-320)

Recommendation 300

That support be given to the aims of AEDP to:

- a. Increase opportunities for Aboriginal people in the mainstream labour market to achieve equity with other Australians in the rates and levels of permanent employment; and*
- b. Generate employment through greatly enhanced assistance for community development and the expansion of employment reaches an acceptable level, governments should be prepared to set targets for recruitment into the public sector at somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population.*

Background information

The Aboriginal Employment Development Policy (AEDP) was a comprehensive package of employment and training programs that was launched in 1986 to address the disparity between the employment and income statuses of Aboriginal and Torres Strait Islander people and other Australians. The AEDP recognises that improved employment opportunities for Aboriginal and Torres Strait Islander people in the mainstream labour market, including in the public sector, can lead to increased economic independence and reduce the disempowering effects of welfare dependence.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both State and Territory, and Commonwealth governments have joint responsibility for employment policy, including employment in the state and federal public sector.

Key actions taken and status of implementation

In 2007, under the **Commonwealth** Government's National Partnership Agreement on Indigenous Economic Participation, Aboriginal and Torres Strait Islander workforce strategies were incorporated into major Council of Australian Governments reforms. The growth of the Aboriginal and Torres Strait Islander business sector is one way the Commonwealth Government is supporting labour market growth and increasing employment opportunities for Aboriginal and Torres Strait Islander people. The Indigenous Business Sector Strategy will support the expansion and success of the sector and its workforce.

PM&C's Indigenous Procurement Policy (IPP), which replaced the Indigenous Opportunities Policy (IOP) in 2015, applies to all non-corporate Commonwealth entities. The policy has three parts: a target number of contracts that need to be awarded to Aboriginal and Torres Strait Islander businesses; a mandatory set-aside of contracts for Aboriginal and Torres Strait Islander businesses to apply when the majority of goods or services are being delivered in remote Australia and for all procurements valued between \$80,000 and \$200,000; and mandatory minimum requirements for Aboriginal and Torres Strait Islander employment and Aboriginal and Torres Strait Islander supplier use in certain high value contracts.

The Commonwealth Government increased funding by \$40 million over four years to expand representation of Aboriginal and Torres Strait Islander people in public and private sector employment in 1994. The Commonwealth Government expanded arrangements for traineeships in 1995 to include a subsidy of up to 100% of wages through the provision of National Training Wage and Aboriginal and Torres Strait Islander Program subsidies under the Training for Aboriginals Program (TAP) for Aboriginal and Torres Strait Islander people. The AEDP was replaced by the Indigenous Employment Policy in 1999, which was later renamed the Indigenous Employment Program.


The IAS was launched in 2014 as part of a restructure of Indigenous policy under the Closing the Gap agenda. The IAS replaced more than 150 individual programs and activities with five broad programs, including the Jobs, Land and Economy program.

The DoE noted their Job Active program which includes specific targets for Aboriginal and Torres Strait Islander people seeking jobs. To increase the employment providers' focus on outcomes for Aboriginal

and Torres Strait Islander job seekers, Indigenous Outcome Targets are incorporated into the Performance Framework as a standalone measure of performance. The achievement of Indigenous Outcome Targets then form a part of employment providers' ongoing performance assessment.

The DET advised that the Government is investing \$55.7 million in the Closing the Gap – Employment Services package to accelerate progress towards achieving parity in employment. The measures announced as part of this package enhance the ability of employment services to place more Indigenous job seekers into work. Aboriginal and Torres Strait Islander people receiving the Parenting Payment will also benefit from changes to the ParentsNext program. As part of the national rollout of ParentsNext (commencing on 1 July 2018), a more work focused servicing stream will be introduced in 30 locations (incorporating the existing 10 ParentsNext locations and 20 new locations where there are high concentrations of Aboriginal and Torres Strait Islander people who are receiving Parenting Payment).

The APSC noted that in 2015, alongside PM&C, they released the Commonwealth Aboriginal and Torres Strait Islander Employment Strategy (the Strategy). The goal of the Strategy is to increase representation of Aboriginal and Torres Strait Islander employees across the entire Commonwealth public sector to 3% by 2018. The Strategy provides opportunities for agencies to access or adapt existing initiatives to increase their Aboriginal and Torres Strait Islander representation. The number of Aboriginal and Torres Strait Islander people employed in the Commonwealth public sector has increased from 2.2% in 2015 to 2.4% in 2016.


 *The Commonwealth Government has supported a variety of policies targeting increased opportunities for Aboriginal and Torres Strait Islander people in the mainstream labour market, including in the public sector, which have fully addressed the requirements of Recommendation 300.*

In 1988, the **New South Wales** Government introduced the *NSW Aboriginal Employment Strategy* which established employment targets for Aboriginal people in the public sector. The Employment Strategy pursued a threefold aim of recruiting 450 Aboriginal people across the NSW public sector, achieving a 2% target for Aboriginal representation, and the improvement of career development and promotion opportunities for Aboriginal people. The New South Wales Aboriginal Employment Development Policy Coordinating Committee – which comprised officers of the Department of Industrial Relations, Employment, Training, and Further Education – developed the *NSW AEDP Business Plan* which highlighted the need for a coordinated approach to employment and training initiatives. The NSW Government also developed an *Aboriginal Enterprise Programme* and *Business Development Officers Projects* in 1993.

Currently, NSW Department of Industry delivers a range of programs, which aim to improve access to employment, mentoring and the creation of business opportunities for Aboriginal people these include:


- The Way Ahead for Aboriginal People, which provides employment and training advisory services support.
- The Aboriginal Enterprise Development Officer, which supports the development of sustainable Aboriginal businesses.
- The NSW Elsa Dixon Aboriginal Employment Program, which subsidises the salary of Aboriginal people, including School Based Traineeships in a NSW public service agency or local government authority and provides Aboriginal Community Small Grants to fund innovative projects that create employment and training opportunities.

Under the Aboriginal Employment Strategy, the current NSW Government employment target is 2.6%. New South Wales achieved the target of 2.6% Aboriginal representation across the sector, as committed to in the COAG Indigenous Economic Participation National Partnership Agreement.

 *The New South Wales Government has implemented Recommendation 300 through a range of policy initiatives to encourage Aboriginal employment, including The Way Ahead for Aboriginal People and the NSW Elsa Dixon Aboriginal Employment Program. The current NSW Public Sector employment target (2.6%) is lower than that of the proportion of Aboriginal people in the NSW population (2.9%).*

In **Victoria**, the *Aboriginal Capital Projects Program* provided assistance to Aboriginal and Torres Strait Islander communities and enabled the development of the economic and employment base in the early 1990s. The 1993 *Victorian Public Service Aboriginal Employment Strategy* contributed to an increased number of Aboriginal and Torres Strait Islander people in the Victorian Public Service. In 2010, the *Victorian Aboriginal Public Sector Employment and Career Action Plan 2010-15* introduced employment targets and a number of action areas including the development of pathways between education and employment, creating inclusive workplaces, and supporting employers to recruit and retain Aboriginal and Torres Strait Islander workers. The Victorian Government has set a 2% employment target for Aboriginal and Torres Strait Islander representation within the Victorian Public Service by 2022.

In 2013, the Victorian Government implemented the *Victorian Aboriginal Economic Strategy* which sought to build economic opportunity and prosperity for Aboriginal and Torres Strait Islander people through contributing to job and business aspirations, creating more job opportunities, and growing Aboriginal and Torres Strait Islander enterprise and investment. Strategies to encourage Aboriginal and Torres Strait Islander employment opportunities remains a focus of the Victorian Government in AJA 3.


 *The Victorian Government has fully implemented Recommendation 300 through a range of policy initiatives and employment targets to encourage Aboriginal and Torres Strait Islander employment under the Victorian Aboriginal Economic Strategy. The Victorian Public Sector's employment target exceeds that of the Aboriginal and Torres Strait Islander proportion of the population (0.8%).*

In their 1993 implementation report, the **Queensland** Government noted the continued provision of financial support to AEDP coordination and development arrangements, with a view to expanding opportunities for Aboriginal and Torres Strait Islander economic development.

More recently, the *Skilling Queenslanders for Work* initiative has invested \$240 million over four years to support up to 32,000 people through a suite of targeted skills and training programs to assist them with transitioning to work. The Department of Employment Small Business and Training also funds the Indigenous VET Partnership program, which provides a supported pathway for Aboriginal and Torres Strait Islander people to complete vocational qualifications that lead to real employment outcomes. In addition, the Department of Employment Small Business and Training has implemented several initiatives under the Early Childhood Education and Care (ECEC) Workforce Action Plan 2016-2019 to attract and retain Aboriginal and Torres Strait Islander educators in the ECEC workforce.

The Queensland Government also introduced a number of employment targets and recruitment and retention initiatives to promote the employment of Aboriginal and Torres Strait Islander people in the Queensland Public Service, including an overall target of 2.4% Aboriginal and Torres Strait Islander employment. This has more recently been increased to a whole of Government target of 3% by 2022, as outlined in the *Moving Ahead Strategy*.

The *Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan* calls for the direct employment of Aboriginal and Torres Strait Islander people for services including health, education and disability services. More recent initiatives include the 2013 *Queensland Aboriginal and Torres Strait Islander Economic Participation Framework*, the 2014 *Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan*, and the 2010 *Project 2800*, which sought to increase the participation and employment of Aboriginal and Torres Strait Islander people.


 *The Queensland Government has mostly implemented Recommendation 300 by implementing the Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan. However, Queensland has not specified broader mainstream employment opportunities in their response and has established an employment target that is lower than that of the Aboriginal and Torres Strait Islander proportion of the population (4.0%).*

The **South Australian** Government supported the implementation of the AEDP through a range of programs. The 1994 South Australian implementation report noted that a five-year strategy had been agreed between the Commonwealth and South Australian Government to promote public sector

employment for Aboriginal and Torres Strait Islander people. This initiative was guided by recruitment, career development and training, guidance and support, and promotion and marketing.


South Australia's more recent *Strategic Plan* established a number of employment targets for Aboriginal and Torres Strait Islander people. Target 51 aimed to halve the gap between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander unemployment rates by 2018, and Target 53 sets a goal to increase Aboriginal and Torres Strait Islander participation in public sector employment to 2% by 2014 and maintain or better those levels by 2020. Many agencies have not met this target and have set higher targets.

Additionally, the South Australian Certificate of Education Aboriginal Students Pathways Conference provides Aboriginal and Torres Strait Islander students with opportunities to explore their study, training and employment pathways. The Government's Aboriginal Economic Participation Strategy seeks to leverage opportunities for Aboriginal jobs and employment from government spending. The Governor's Aboriginal Employment Industry Clusters are employer led and aim to facilitate systemic change in ten participating industries, thereby leading to an increase in sustainable employment for Aboriginal people (nine of these are private sector industries).


 *The South Australian Government has mostly implemented Recommendation 300 by implementing the Aboriginal Economic Participation Strategy to encourage Aboriginal and Torres Strait Islander employment via government spending, and broader employment via its Strategic Plan. However, the employment target set by South Australia for Aboriginal and Torres Strait Islander public sector employment is not higher than the population proportion (2.0%).*

The **Western Australia** Government introduced a number of employment targets for Aboriginal and Torres Strait Islander people, and contributed to funding for a range of employment initiatives. In 1994, this involved Curtin University, Edith Cowan University, and Murdoch University in implementation. Curtin University pursued a target of 3% Aboriginal and Torres Strait Islander staff recruitment. More recently, the Western Australia Government's *Aboriginal Economic Participation Strategy 2012-16* sought to increase the participation of Aboriginal and Torres Strait Islander people in the economy, to strengthen Aboriginal and Torres Strait Islander culture, and to promote equal opportunity.

In addition to this, 'Attract, Appoint and Advance: an employment strategy for Aboriginal people' provides Western Australia with a public sector-wide workforce strategy to help public authorities realise good practices around attracting, appointing, retaining and developing Aboriginal and Torres Strait Islander people. This includes a cohesive set of actions towards exceeding the state target of 3.2% representation of Aboriginal and Torres Strait Islander people in public employment.


 *Western Australia has implemented Recommendation 300 by implementing a number of strategies to encourage Aboriginal and Torres Strait Islander employment in the public sector. The employment target set by Western Australia for Aboriginal and Torres Strait Islander public sector employment is higher than the population proportion (3.2%).*

The **Tasmanian** Government held committee meetings to guide the implementation of the AEDP in Tasmania in the early 1990s. The Tasmanian Government also targeted Aboriginal and Torres Strait Islander employees for recruitment into public sector roles, and provided work experience, education, and a range of networking and professional development opportunities. Tasmania's *Employment Direction No. 10* outlines policy relating to Aboriginal and Torres Strait Islander Employment in the Tasmanian State Sector. This measure sets out administrative arrangements that apply to the employment of Aboriginal and Torres Strait Islander people in the Tasmanian public sector. In addition, the Tasmanian State Service has set an Aboriginal and Torres Strait Islander Employment target of 3% by 2020.


 *The Tasmanian Government has partially implemented Recommendation 300 by targeting and supporting the employment of Aboriginal and Torres Strait Islander people in the public sector, under Employment Direction No. 10 but has not addressed labour policies outside of the public sector or set employment targets higher than the proportion of Aboriginal and Torres Strait Islander people in the population (4.6%).*

In the **Northern Territory**, the *Aboriginal Employment and Economic Development Policy* was developed to encourage and promote mainstream and community-based employment for Aboriginal and Torres Strait Islander people. The Northern Territory's 2015 *Indigenous Employment Program* offered a pre-employment program to attract Aboriginal and Torres Strait Islander job seekers.

Additionally, initiatives including the Northern Territory Public Service Indigenous Employment Program and the NT Indigenous Cadetship Support program were implemented to provide full-time employment opportunities for Aboriginal and Torres Strait Islander people. Employment programs and targets were implemented for Aboriginal and Torres Strait Islander people to encourage representation in the Northern Territory Public Service. These targets include a global target of 16% Aboriginal and Torres Strait Islander employment sector wide and 10% participation in senior or executive roles by 2020. The *Indigenous Employment and Career Development Strategy 2015-20* endorses that the Northern Territory Public Service reflect the Aboriginal and Torres Strait Islander population of the communities it serves. It seeks to build Aboriginal and Torres Strait Islander participation and capability.

 *The Northern Territory has mostly implemented Recommendation 300 through a range of policy initiatives and employment targets to encourage Aboriginal and Torres Strait Islander employment as part of the Indigenous Employment and Career Development Strategy 2015-20 but has not set an employment target higher than that of the proportion of Aboriginal and Torres Strait Islander people in the NT (25.5%).*

The **Australian Capital Territory** Government responded by introducing the *Jobskills* program, and developing the *Aboriginal and Torres Strait Islander Employment Strategy* which sought to promote employment opportunities in the private sector and to assist in the establishment of new business ventures for Aboriginal and Torres Strait Islander people. Employment targets have also been utilised in increasing the number of Aboriginal and Torres Strait Islander people employed across the public sector. The *ACT Public Service Employment Strategy for Aboriginal and Torres Strait Islander People 2011-15* sought to increase Aboriginal and Torres Strait Islander employees in the public sector from 0.9% to 2% by 2015.

 *The Australian Capital Territory has implemented Recommendation 300 implementing the Aboriginal and Torres Strait Islander Employment Strategy and the ACT Public Service Employment Strategy for Aboriginal and Torres Strait Islander People 2011-15 to promote Aboriginal and Torres Strait Islander employment more generally and in the public service specifically. In addition, the ACT's employment target exceeds that of the proportion of Aboriginal and Torres Strait Islander people in the ACT's population (1.6%).*

Additional commentary

The Strategy outlined by the **Commonwealth's** APSC focuses on four key action areas. First, to expand the range of Aboriginal and Torres Strait Islander employment opportunities. Second, to invest in developing the capability of Aboriginal and Torres Strait Islander employees. Third, to increase the representation of Aboriginal and Torres Strait Islander employees in senior roles. Finally, to improve the awareness of Aboriginal and Torres Strait Islander culture in the workplace.

Recommendation 301

That the Commonwealth, State and Territory Governments consider the desirability of entering into specific agreements (as, for example, are currently established under the Aboriginal Education Policy) for funding under the Commonwealth's AEDP which set out agreed objectives, strategies and outcomes.

Background information

Employment strategies remain the primary vehicle for government policy on Aboriginal and Torres Strait Islander economic development and can yield benefits beyond labour market programs.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both State and Territory, and Commonwealth governments have joint responsibility for employment policy.

Key actions taken and status of implementation

The **Commonwealth** Government's AEDP was replaced by the Indigenous Employment Policy in 1999, which was later renamed the Indigenous Employment Program. PM&C noted that the IOP was developed as a direct result of the National Partnership Agreement on Indigenous Economic Participation (NPAIEP), and works to strengthen procurement policies to maximise Aboriginal and Torres Strait Islander employment and business opportunities. It was replaced by the IPP in 2015 (see Recommendation for further detail on the IPP). The Commonwealth Government entered into the NPAIEP with the States and Territories in 2007 through COAG to increase the representation of Aboriginal and Torres Strait Islander people working in the public sector. PM&C noted that the NPAIEP expired on 30 June 2013 and although the NPAIEP wasn't renewed, Aboriginal and Torres Strait Islander employment and economic objectives are being pursued through COAG's Aboriginal and Torres Strait Islander economic development agenda and the Indigenous Procurement Policy.

● *Recommendation 301 is complete through the Commonwealth's introduction of the Indigenous Procurement Policy and by entering into the NPAIEP.*

As signatories to the *National Partnership Agreement on Indigenous Economic Participation*, and associated measures, **all States and Territories** worked to strengthen procurement policies to maximise Aboriginal and Torres Strait Islander employment and business opportunities. Currently, States and Territories are pursuing Aboriginal and Torres Strait Islander employment and economic objectives through COAG's Aboriginal and Torres Strait Islander economic development agenda and the *Indigenous Procurement Policy*.

● *New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory, and the Australian Capital Territory have implemented Recommendation 301 as a signatory to the National Partnership Agreement on Indigenous Economic Participation and through initiatives such as the Indigenous Procurement Policy.*

Additional commentary

In 1993, the **New South Wales** Government entered an agreement with the Commonwealth to develop employment strategies for the NSW public sector and local government. NSW welcomed agreements on funding under the Aboriginal Education Development Policy. Currently, providing opportunities to enable active engagement and participation of Aboriginal parents and communities in all aspects of education is an agreed priority under the Aboriginal Education Council's 2010-2020 Partnership Agreement with the NSW AECG.

The **Victorian** Government supported the aims of the *Aboriginal Employment Development Program* in order to increase the employment and economic opportunities of Aboriginal and Torres Strait Islander people. In 1993, funding was provided by the Commonwealth to support a range of Aboriginal Employment Strategy initiatives.

In 1993, the **Queensland** Police Services entered into agreement with the Commonwealth Department of Employment, Education and Training for funding an employment strategy under the AEDP. Under the Indigenous VET Partnerships Program, community-based organisations, registered training organisations and private companies can apply for funding to deliver training and support measures to maximise job opportunities for Aboriginal and Torres Strait Islander people. Approved organisations can also enter into service agreements with the Department, which detail the terms, conditions and key performance indicators to be achieved.

Western Australia responded to Recommendation 301 by promoting greater integration and cooperation between various government agencies. In 1994-95, the Western Australia Government also implemented the *Essential Service Maintenance Worker* project, *Ord River Irrigation* scheme stage employment program, and other public sector employment initiatives for Aboriginal and Torres Strait Islander people.

In 1993, the **Australian Capital Territory** Government entered into an agreement with the Commonwealth Department of Employment, Education and Training under the Aboriginal Employment and Development Program. This agreement jointly funded an Aboriginal and Torres Strait Islander project officer for 12 months to develop the *ACT Government Service Aboriginal and Torres Strait Islander Peoples' Employment and Career Development Strategy*.

Recommendation 302

That State and Territory Governments consider whether, in coordinating the planning and delivery of services under the AEDP, including the development and coordination of planning at regional and local levels, ATSIC regional boundaries should be adopted as the geographic basis for such planning and delivery, and (subject to their agreement to do so), ATSIC Regional Councils should be involved in the planning process and perhaps take responsibility for it.

Background information


State and Territory Government involvement in community planning can provide a focused approach for the expenditure of resources. In order to aid planning development and coordination of Aboriginal and Torres Strait Islander programs and services, the RCIADIC recommended that States and Territories use well-defined regional boundaries.

Responsibility


The recommendation is the responsibility of State and Territory Governments.

Key actions taken and status of implementation


The **New South Wales** response in 1993 centred on ensuring that staff of the Department of Industrial Relations, Employment, Training and Further Education's Aboriginal Employment Unit participated in the State Aboriginal Employment Development Policy Committee and Working Parties. While ATSIC was operating, the NSW Government took the ATSIC boundaries into consideration.

 *New South Wales has addressed Recommendation 302, noting that ATSIC regional boundaries no longer exist.*

In **Victoria's** 1993 implementation report, it was noted that a state committee for the implementation of AEDP was reformed and upgraded. Various agencies also established close relationships with ATSIC and its Victorian regional councils in aiding service design and delivery.

 *Victoria has addressed Recommendation 302, noting that ATSIC regional boundaries no longer exist.*


The **Queensland** Government promoted the establishment of links between Regional Councils, and cooperated with ATSIC in the development of *Aboriginal Employment Development Program* processes. Under the Indigenous VET Partnerships Program, applications for funding are developed in consultation with local DET and DATSIP Regional Offices, which involves consultation with local community members and organisations.

 *Queensland has addressed Recommendation 302, noting that ATSIC regional boundaries no longer exist.*


Consideration has been given by the **South Australia** Government to regional boundaries in coordinating the planning and delivery of services.

 *South Australia has addressed Recommendation 302.*


The **Western Australian** Government has noted that it recognises that the service delivery needs of certain groups varies markedly from one location to another. The Western Australian Government has also acknowledged the importance of monitoring wellbeing and other outcomes at a sub-state level. As such, Western Australia has developed a data collection that tracks Aboriginal wellbeing across eight sub-geographies of the state (similar in number to ATSIC's nine boundaries).

 *Western Australia has addressed Recommendation 302, noting that ATSIC regional boundaries no longer exist.*


Tasmania's 1993 implementation report provided that ATSIC's regional boundary was the whole of Tasmania. The Tasmanian Government sought to break the State into smaller regions.

 *Tasmania has addressed Recommendation 302 through its consideration of the use of ATSIC regional boundaries.*

In their 1993-94 implementation report, the **Northern Territory** Government noted that they provide support to ATSIC Regional Councils in developing planning techniques and processes.

 *The Northern Territory has addressed Recommendation 302.*

The ACT Government's Indigenous Business Development and Entrepreneur Program is open to all Aboriginal and Torres Strait Islander people in surrounding ACT regions. The Aboriginal and Torres Strait Islander Elected Body also inform and provide comment to the ACT Government on its delivery of services.

 *The Australian Capital Territory has addressed Recommendation 302 by adopting a regional approach to service delivery. The ACT Government's Indigenous Business Development and Entrepreneur Program encompasses Indigenous Businesses with both the ACT and surrounding NSW region. It is noted that ATSIC regional boundaries no longer exist.*

Recommendation 303

That State and Commonwealth Governments study the experience of the Aboriginal Economic Employment Officer program operated by the Western Australian Department of Employment and Training and other similar schemes which enhance local Aboriginal involvement in stimulating economic activity.

Background information

The RCIADIC Report commended the Western Australian Department of Employment and Training's Aboriginal Economic and Employment Development officer program for its innovative training techniques and recommended the study of similar initiatives.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both State and Territory, and Commonwealth governments have joint responsibility for employment policy.


Key actions taken and status of implementation

The **Commonwealth**, and **State and Territory** governments commissioned the National Centre for Vocational Education Research in 2007 to undertake a report entitled *A Review of Indigenous Employment Programs*, which evaluated Aboriginal and Torres Strait Islander participation in the national labour market and evaluated the effectiveness of employment programs.

The AIHW and the Australian Institute of Family Studies released the Closing the Gap Clearinghouse Issues Paper No. 3 *Increasing Indigenous employment rates* in 2012, which reviewed the extent to which policies and programs had been successful in increasing Aboriginal and Torres Strait Islander employment.

Historically, a key priority for Aboriginal and Torres Strait Islander economic development has been to encourage greater employment. PM&C is in the process of broadening their Aboriginal and Torres Strait Islander economic development goals with an emphasis on broad economic participation and wellbeing as key outcomes. A practical aim of this is to increase choice for Aboriginal and Torres Strait Islander people to participate in and contribute to the broader Australian economy through a range of opportunities, including employment, business ownership, and access to land and in the process, stimulate local economic activity. Policies that increase choices will empower more Aboriginal and Torres Strait Islander people to participate in the economy and thereby improve their material wellbeing.

In 2016, the Government allocated funding for PM&C to deliver an Indigenous Business Sector Strategy to provide Aboriginal and Torres Strait Islander people with a clear roadmap to take advantage of the transitioning economy and the increasing opportunities available to Aboriginal and Torres Strait Islander businesses through initiatives such as the IPP. The Government released the consultation draft of the Indigenous Business Sector Strategy on 3 May 2017, which outlines a suite of proposed new initiatives to support the Aboriginal and Torres Strait Islander business sector across Australia. The proposed actions draw on the ideas and solutions from the sector, and aim to foster more Aboriginal and Torres Strait Islander businesses and drive growth. There is a particular focus on increasing the number of Aboriginal and Torres Strait Islander women in business, and on building partnerships across governments, the corporate sector and Aboriginal and Torres Strait Islander businesses.

 *Recommendation 303 has been implemented as the Commonwealth Government has studied the experience of Aboriginal and Torres Strait Islander employment programs in two significant reports.*

The **New South Wales** Government launched programs to address Aboriginal workforce participation through the Department of Industrial Relations, Employment, Training and Further Education. These programs, introduced in 1993, were developed in consultation with representatives from Western Australia.

Currently, the Department of Industry operates an Aboriginal Enterprise Development Officer program, which offers a free service that seeks to increase the opportunities for Aboriginal people to become self-employed or to expand their business. The program offers participants with business training and support.


 *New South Wales has addressed Recommendation 303 by studying WA's program and implementing the Aboriginal Enterprise Development Officer program.*

The **Victorian** Government provided in their 1993 implementation report a commitment to expanding the involvement of Victoria's Aboriginal and Torres Strait Islander communities in economic activities, economic development, and access to government funding. The Victorian Government ensured that policy guidelines for programs such as the *Aboriginal Capital Projects Program* were flexible enough to be tailored to the needs of local communities. More recently under the Victorian Aboriginal Justice Agreement Phase 3 (AJA 3), the Victorian Government noted that the *Victorian Aboriginal Affairs Framework* identified economic participation as a key action area. As part of this Framework, various initiatives have been developed to encourage the participation of Aboriginal and Torres Strait Islander people in employment opportunities and the process of economic development.

Victoria operates a number of programs, aimed at improving Aboriginal and Torres Strait Islander economic participation. Programs include:


- Tharamba Bugheen, the Victorian Aboriginal Business Strategy 2017-2021, which aims to support and encourage the development of Aboriginal businesses in Victoria
- The Jobs Victoria Employment Network.
- Aboriginal and Torres Strait Islander economic development brokers - which support Aboriginal and Torres Strait Islander businesses and communities to access opportunities and support, aimed at building Aboriginal and Torres Strait Islander employment, economic prosperity and enterprise.
- A government procurement target of 1% of goods and services to be purchased from Aboriginal and Torres Strait Islander businesses.
- The Social Procurement Framework, which encourages procurement outcomes to support employment for disadvantaged Victorians including Aboriginal and Torres Strait Islander Victorians.

The Victorian Government has noted that it is of the view that Western Australia's program is no longer current.

 *While the Victorian Government has taken steps to improve economic participation, no evidence of it studying WA's program have been provided. As such, Recommendation 303 is partially complete.*


In 1993, **Queensland** Aboriginal Economic and Employment Development Officers were employed under the *Employment and Enterprise Local Facilitation Initiative* to initiate and foster employment and training programs. The then Department of Employment, Vocational Education, Training and Industrial Relations also studied the experience of the *Aboriginal Economic and Employment Officer* program operated by Western Australia.


Currently, DATSIP has policy leadership for Aboriginal and Torres Strait Islander economic participation for the Queensland Government. The Department of Employment Small Business and Training currently reviews good practice training and skilling initiatives across Australia and prepares an annual research plan that guides their investment and participation in priority research areas. Aboriginal and Torres Strait Islander early childhood, schooling and training and skill needs are prioritised across all the research themes.

 *Queensland has addressed Recommendation 303 by studying WA's program and implementing programs to improve economic participation for Aboriginal and Torres Strait Islander people.*


South Australia assisted with the development of community enterprise through the Business Breakthrough Unit of the *Aboriginal Education* program. Small Business Training was administered to 60 graduates in 1993 and the program aided those people to gain self-employment.

More recently, the SA Government undertook the Governor's Aboriginal Employment Industry Clusters initiative, which seeks to facilitate systemic change in ten participating industries by increasing sustainable employment for Aboriginal and Torres Strait Islander people.


 *While the South Australian Government has taken steps to improve economic participation through the Business Breakthrough Unit of the Aboriginal Education Program, it does not appear to have studied WA's program. As such, Recommendation 303 is partially complete.*

 **Western Australia** is not required to respond to Recommendation 303.

No information could be found on **Tasmania's** implementation of Recommendation 303.


 *Tasmania has partially implemented Recommendation 303 as it participated in the Review of Indigenous Employment Programs.*

The **Northern Territory** Government provided in their 1993-94 implementation report that it was common practice to study the Aboriginal and Torres Strait Islander employment and economic development policies and strategies offered by other States.

 *The Northern Territory has partially addressed Recommendation 303 by studying similar schemes but has not provided evidence of studying WA's program.*

The **Australian Capital Territory** Government consulted with State and Territory governments, ATSIC and the local Aboriginal and Torres Strait Islander community in developing an Aboriginal Employment Strategy. The intent of this strategy is to:

- Build on the momentum generated by previous programs to support and develop regional Aboriginal and Torres Strait Islander business and entrepreneurship
- Trial a new, more sustainable model for delivery of the Program
- Integrate formal training and education from the Canberra Institute of Technology into the Program, introducing local Aboriginal and Torres Strait Islander businesses to existing business support programs.

 *The Australian Capital Territory has partially addressed Recommendation 303 by consulting with State and Territory governments and other stakeholders to develop an Aboriginal Employment Strategy but has not addressed studying WA's program in their response.*

Recommendation 304

That spending on training and other active labour market policy programs (such as CDEP and job subsidy schemes) be given preference over spending on unemployment relief programs. The determination of priorities for particular training programs must be better attuned to the particular needs expressed by local Aboriginal groups in their regional and community plans, and the skill requirements of the local labour market.

Background information

It is recognised that labour market policy programs, such as CDEP, are preferable to unemployment relief programs as they can deliver useful social purposes such as access to productive activity and further training and development.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both State and Territory, and Commonwealth governments have joint responsibility for employment policy.


Key actions taken and status of implementation

The **Commonwealth** Government launched the Indigenous Economic Development Strategy 2011-2018 in 2011, which included the roll out of several labour market policy programs including Youth Careers Pathways, the IOP (since replaced by the IPP), the CDEP Program and the Northern Territory Indigenous Cadetship Program.

PM&C noted that the Community Development Programme, which commenced in 2015, aims to deliver better opportunities for remote job-seekers and to foster stronger economic and social outcomes in remote Australia. The program supports job seekers by providing training to build skills, address barriers and contribute to their community through a range of flexible activities, such as training and community development program. The Job Active program (see Recommendation 300) also provides training opportunities to program participants.

PM&C noted that Tailored Assistance Employment Grants (TAEGs) provide support to connect working age Aboriginal and Torres Strait Islander people with real and sustainable jobs. These can provide funding for activities that help Aboriginal and Torres Strait Islander people to overcome disadvantage in the labour market and connect them to employment, gain experience that builds work readiness, and contribute to the broader community. The Minister for Indigenous Affairs announced as part of the 2017-18 Budget that consultation will begin on a new employment and participation model for remote Australia. This process will allow PM&C to consider if parts of previous programs such as CDEP can be implemented into any new model to address labour market issues.


The Closing the Gap – Employment Services and the ParentsNext initiatives and recent Budget announcements – discussed in the response to Recommendation 300 – are also relevant to Recommendation 304.

 *The Commonwealth Government has expanded active labour market policy programs for Aboriginal and Torres Strait Islander people since the RCIADIC with consideration to regional and community needs and local labour market requirements. However, it is not clear to what extent these programs have been given preference over spending on unemployment relief programs. Recommendation 304 is therefore mostly complete.*


The **New South Wales** Government signed an agreement with the Commonwealth in 1993 to develop employment strategies for the NSW public sector and local government. This involved collaboration with local Aboriginal communities. As part of the *Careers for Aboriginal People Program*, the NSW Government provided training and employment advice for unemployed Aboriginal people.

More recently, the NSW Government has implemented a number of labour market initiatives, such as the Aboriginal Enterprise Development Officer program, the Aboriginal Participation in Construction Policy, and OCHRE Opportunity Hubs, which support the transition of Aboriginal young people from school to further education, training and employment. The NSW Government has employment and


skill development targets in place for Aboriginal people through the Infrastructure Skills Legacy Program.

 *The New South Wales Government has mostly implemented Recommendation 304 through the establishment of active labour market programs, such as the Aboriginal Economic Development Officer program, and OCHRE Opportunity Hubs, but have not indicated whether they have prioritised these programs over unemployment relief programs.*

The **Victorian** Government introduced a *Community Based Employment Program* in 1993 to provide employment counselling, training and job placement for mature aged people and young people. The *Landcare and Environment Action Plan* also encompassed 50 projects and promoted skill develop and training for young Aboriginal and Torres Strait Islander people. A range of other measures were introduced to address the intent of Recommendation 304. Employment and training initiatives have remained an ongoing focus of the Victorian Government under AJA 3.


 *The Victorian Government has mostly implemented Recommendation 304 through the establishment of active labour market policies but have not indicated whether they have prioritised these programs over unemployment relief programs.*

The **Queensland** Government provided funds for training and other active labour market programs, including the *Local Employment Initiatives Scheme* which supported Aboriginal and Torres Strait Islander people in participating in local economic opportunities. More recently, the Indigenous VET Partnership Program is a partnership between the Department of Employment Small Business and Training and DATSIP, which requires applications for funding to be endorsed by the Department of Employment Small Business and Training and DATSIP Regional Offices. Endorsement requires support from the Aboriginal and Torres Strait Islander community and local employers or industry. In 2018, Department of Education will pilot a Traineeship Program, which will target attraction strategies towards Aboriginal and Torres Strait Islander people in their local areas.

 *Queensland has mostly implemented Recommendation 304 by funding active labour market programs, such as the Local Employment Initiatives Scheme and the Indigenous VET Partnership Program but have not indicated whether these programs are prioritised over unemployment relief programs.*


The **South Australian** Government noted its view that Recommendation 304 was largely the jurisdiction of the Commonwealth. However, South Australian active labour market policies included the *Kick start employment strategy*, *Business Breakthrough*, an expansion of TAFE placements for Aboriginal and Torres Strait Islander students, and the *South Australian Youth Conservation Corps*.

More recent SA initiatives dedicated to improving Aboriginal and Torres Strait Islander employment opportunities in this space include Work Ready, Jobs First Employment Programs, Adult Community Education, Building Family Opportunities, and Aboriginal Workforce Participation Programs. The SA Government notes that CDEP has been replaced by the Community Development Programme.


 *South Australia has mostly implemented Recommendation 304 through the establishment of active labour market policies, including the Kick start employment strategy and the Aboriginal Workforce Participation Programs but have not indicated whether these programs are prioritised over unemployment relief programs.*

The **Western Australia** Government previously provided a network of Regional Employment Access Officers who were able to provide expert advice to CDEP communities on strategies to maximise employment and training outcomes for program participants. This led to the design and delivery of several regional training initiatives across Western Australia.


The Western Australia Government continues to prioritise Aboriginal jobseekers across the state through the use of Jobs and Skills Centres (previously Aboriginal Workforce Development Centres). However, the Western Australian Government noted that the Commonwealth Government has primary responsibility for funding active labour market programs over unemployment relief, such as with the Community Development Programme.

 *Western Australia has mostly implemented Recommendation 304, through the previous establishment of active labour market policies. However, Western Australia have not indicated whether these programs are prioritised over unemployment relief programs.*


The **Tasmanian** Government introduced two employment programs in the early 1990s – the *Tas Jobs for Youth* which provided a wage subsidy to employers, and *Local Employment Initiatives* which provided grants to community groups for enterprise developments. Neither of these program was specifically addressed towards Aboriginal and Torres Strait Islander people.

 *Tasmania has previously implemented active labour market programs. However, none of these programs have been specifically developed to address the needs of Aboriginal and Torres Strait Islander people. As such, Recommendation 304 is partially complete.*

In 1993, the **Northern Territory's** programs were focused on training and other market related employment strategies. Funding and coordination of programs was targeted to specific Aboriginal and Torres Strait Islander communities.

 *The Northern Territory has partially implemented Recommendation 304 as it has developed market related strategies that are specifically tailored to Aboriginal and Torres Strait Islander people but has not provided further information regarding these strategies.*

The **Australian Capital Territory's** *Employment and Training Grants Program* provided funding for disadvantaged people in the ACT labour market. In 1994-95, the ACT Government provided \$30,700 to the Caloola Training Farm to provide training and support services to Aboriginal and Torres Strait Islander people. Additionally, the *Equity Training Allowance* (1993-94) allocated \$500 per person to enable standard training programs to be tailored to the specific needs of Aboriginal and Torres Strait Islander participants. Currently, the Australian Capital Territory Government doesn't provide any unemployment relief schemes in the ACT as the ACT Government is of the view that this is Commonwealth responsibility.

 *The Australian Capital Territory has mostly implemented Recommendation 304 through the establishment of active labour market policies and programs, such as the *Employment and Training Grants Program* and the targeted *Equity Training Allowance*. However, they have not indicated whether these programs are prioritised over unemployment relief programs.*

Recommendation 305

That the emphasis on public sector recruitment of Aboriginal people should be continued. The emphasis should be not only to achieve a target total figure, but a target for Aboriginal employment at all levels in the public sector. The adoption of such latter targets involves the provision of training opportunities. The emphasis should be directed at the whole of the public sector including statutory authorities and government owned businesses and not designed merely to provide opportunities for employment within areas of service delivery to Aboriginal people (although it is very important to have Aboriginal people employed in those areas).

Background information

The involvement of Aboriginal and Torres Strait Islander people in policy making and service delivery can improve liaison and communication between government and Aboriginal and Torres Strait Islander clients as well as develop employment opportunities in the public sector.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both State and Territory, and Commonwealth governments have joint responsibility for employment policy, including employment in the state and federal public sectors.

Key actions taken and status of implementation

The APSIES was developed by the **Commonwealth** Government in 2005 to support and enhance Australian Public Service (APS) agencies' Aboriginal and Torres Strait Islander employment strategies. Under the strategy, the Commonwealth Government has committed to achieving a target of 2.6% in the Commonwealth public sector for Aboriginal and Torres Strait Islander representation. This is


slightly higher than the proportion of the working age population that is Aboriginal and Torres Strait Islander (2.5%), as estimated by the ABS (2013). As part of the APSIES, the Commonwealth Government oversees a range of strategies including the Pathways to Employment recruitment program, Indigenous Liaison officers, and the Australian Public Service (APS) Diversity Council.

The Australian Public Service Commission (APSC) noted that in 2015, alongside PM&C, they released the Commonwealth Aboriginal and Torres Strait Islander Employment Strategy (the Strategy). The Strategy builds on the APSIES, aiming to increase representation of Aboriginal and Torres Strait Islander employees throughout the Commonwealth public sector to 3% by 2018. The focus is on expanding the range of Aboriginal and Torres Strait Islander employment opportunities and investing in developing their capacity.


 *Recommendation 305 has been implemented, as the Commonwealth Government has committed to achieving a target total figure of Aboriginal and Torres Strait Islander employment at the Commonwealth level of the public service and directly provides and supports training opportunities for prospective employees through its strategies.*

For **all States and Territories**, refer to the jurisdictional response provided in Recommendation 300. Additional actions taken in response to Recommendation 305 are discussed as follows.


Following the RCIADIC, the **New South Wales** *Making it Our Business* strategic action plan for the advancement of Aboriginal career opportunities was introduced to strengthen professional and career development prospects. This was replaced by the *NSW Public Sector Aboriginal Employment Strategy 2014-17*, which introduced an aspirational target on 1.8% per classification across the sector. The Strategy aims to ensure that the NSW Public Sector has a capable Aboriginal workforce represented at all levels and in all agencies. In addition, the Premier has identified an increase in the number of Aboriginal people in senior leadership positions as one of her 12 key priorities.

 *The New South Wales Government has implemented Recommendation 305 by developing the NSW Public Sector Aboriginal Employment Strategy 2014-17 and establishing a target for employment per classification across the sector.*


The **Victorian** Government's response to Recommendation 300 apply to Recommendation 305.

 *The Victorian Government has implemented Recommendation 305 through a range of employment policies, including targets, developed to address Recommendation 300.*

In **Queensland**, DATSIP has partnered with key stakeholders including the Public Service Commission to implement *Moving Ahead*, a whole-of-government economic participation strategy, and the Workforce Strategy, which seeks to achieve a 3% Aboriginal and Torres Strait Islander employment target by 2022.

 *The Queensland Government has implemented Recommendation 305 by developing the *Moving Ahead Strategy*, which supports a 3% employment target rate for Aboriginal and Torres Strait Islander public sector workers.*


In **South Australia**, the South Australia Strategic Plan is committed to achieving a 2% target for Aboriginal and Torres Strait Islander employment in the public sector by 2020, with many agencies committing to higher targets. There is also a 2% target for Aboriginal and Torres Strait Islander employment at executive levels.

 *The South Australian Government has addressed Recommendation 305 by setting targets for Aboriginal and Torres Strait Islander employment both across the public sector and at executive levels as part of the South Australia Strategic Plan.*

The **Western Australia** Government introduced the 2011-15 *Western Australia Aboriginal Employment Strategy* which emphasised building long-term sustainable career pathways for Aboriginal and Torres Strait Islander Australians within the public sector. Currently the 'Attract, Appoint and Advance: an employment strategy for Aboriginal people' is the public sector-wide workforce strategy to provide employment opportunities for Aboriginal and Torres Strait Islander


people. The strategy provides a set of actions, aiming to exceed the Western Australian target of 3.2% representation of Aboriginal and Torres Strait Islander people in public employment.

The Western Australian Government also administers the Aboriginal Traineeship Program, which is designed to attract and provide Aboriginal and Torres Strait Islander youth up to the age of 24, providing opportunities to develop public administration skills and competencies through a Certificate III in Government (Public Administration) traineeship. On completion of the program, trainees are supported in transitioning to entry-level employment in government agencies where possible.


 *The Western Australian Government has completed Recommendation 305 by setting targets for Aboriginal and Torres Strait Islander employment across the public sector.*

In **Tasmania**, the Tasmanian State Service has set an Aboriginal Employment target of 3% by 2020. Current initiatives underway to support Aboriginal and Torres Strait Islander employment include:


- the Aboriginal and Torres Strait Islander Employment Register, which enables access to short-term, fixed-term employment opportunities in a range of agencies;
- employment Direction, which provides for roles to be identified to be filled by or tagged as desirable to be filled by an Aboriginal and Torres Strait Islander person;
- annual scholarships to support Aboriginal and Torres Strait Islander employees to undertake the Public Sector Management Program; and
- trainee positions for the Country Trainee Ranger Program, which seeks to improve the management and appreciation of Aboriginal and Torres Strait Islander heritage values on reserved land, in collaboration with the Aboriginal and Torres Strait Islander community.

 *Tasmania has met the requirements of Recommendation 305 by setting targets for Aboriginal and Torres Strait Islander employment and by introducing a range of public sector initiatives and programs designed to improve employment opportunities.*

The **Northern Territory** Government's response to Recommendation 300 apply to Recommendation 305.

 *The Northern Territory Government has implemented Recommendation 305 through a range of employment policies, including targets, as per their response to Recommendation 300.*

The **Australian Capital Territory's** *Equal Employment Opportunity Plans* included initiatives to facilitate the employment and career development of Aboriginal and Torres Strait Islander people. Policies were also developed to outline the various career paths accessible, and to provide appropriate corresponding training for Aboriginal and Torres Strait Islander people.

 *The Australian Capital Territory Government has implemented Recommendation 305, as per their response to Recommendation 300, and through initiatives to facilitate the employment of Aboriginal and Torres Strait Islander people through *Equal Employment Opportunity Plans*.*

Recommendation 306

That governments attempt to encourage Aboriginal employment in the private sector, but until the private sector level of Aboriginal employment reaches an acceptable level, governments should be prepared to set targets for recruitment into the public sector at somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population.

Background information

Aboriginal and Torres Strait Islander people are underrepresented in private sector employment, which may be due to barriers that impede participation. Additional support is required for Aboriginal and Torres Strait Islander people to address issues including discrimination, low levels of formal education, and cultural imperatives.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Both State and Territory, and Commonwealth governments have joint responsibility for employment policy.

Key actions taken and status of implementation


The **Commonwealth** Government's Employment Parity Initiative aims to increase the number of large Australian companies with a workforce reflective of the Aboriginal and Torres Strait Islander population. Large national employers are invited to join the program and to increase the level of Aboriginal and Torres Strait Islander employees within their organisation.

The Commonwealth Government has set a target of 2.6% in the Commonwealth public sector for Aboriginal and Torres Strait Islander representation. The APSC noted that this target was increased to 3% in 2015 as part of the Aboriginal and Torres Strait Islander Employment Strategy.


Under the IPP, suppliers to the Australian Government who win contracts valued over \$5 million for activity in regions with a significant Aboriginal and Torres Strait Islander population are required to develop and implement a training, employment and supplier plan.

 *The Commonwealth Government has implemented strategies and programs that provide direct incentives and support for greater Aboriginal and Torres Strait Islander employment in the private sector, and has implemented its own employment targets which are higher than the Aboriginal and Torres Strait Islander share of the population. As such, Recommendation 306 has been completed.*

NSW has an Aboriginal population of 2.9%. At the time the Aboriginal Employment Strategy was released, the NSW Public Sector had a 2.9% Aboriginal staff population. The Strategy introduced an aspirational target of 1.8% by 2021 to improve the distribution of Aboriginal employees across all classifications of the Public Sector. In 2017, the representation of Aboriginal people across the public sector was 3.2%, 0.3% above the 2.9% representation across the broader NSW population.


 *New South Wales has implemented Recommendation 306 through the establishment of employment targets in the public sector which are sufficiently high as they exceed that of the representative proportion of the population, and the development of employment initiatives in the private sector.*

The **Victorian** Government responded through the *Victorian Public Service Aboriginal Employment Strategy* which established targets for the employment of Aboriginal and Torres Strait Islander people in the public service. The *Victorian Aboriginal Economic Development Strategy 2013-20* furthers the Victorian Government's commitment to encouraging Aboriginal and Torres Strait Islander employment in the private sector. Additionally, the Victorian Government noted in AJA 3 that the *Victorian Aboriginal Affairs Framework* has set a 1% Aboriginal and Torres Strait Islander employment target for the Victorian public service to be achieved by 2018. This initiative was introduced to complement the Department of Justice's *Koori Employment Strategy 2011-15*, and the *Victorian Public Sector Aboriginal Employment and Career Development Action Plan 2010-15: Karreeta Yirramboi* which also introduce employment targets for Aboriginal and Torres Strait Islander representation in the public service.


 *The Victorian Government has implemented Recommendation 306 through employment targets which are sufficiently high as they exceed that of the representative proportion of the population.*

Alongside a commitment to the AEDP, **Queensland's** Government also introduced employment targets for Aboriginal and Torres Strait Islander employment in the private sector. These are outlined in Queensland's response to Recommendation 305. Under the *Queensland Aboriginal and Torres Strait Islander Economic Participation Framework (2013)*, the Queensland Government sought to promote Aboriginal and Torres Strait Islander participation in pillar industries and the broader economy, through partnerships, employment, and business growth. Within the public sector, the Queensland

Government has established public sector employment targets as part of the Moving Ahead and Workforce Strategy.


 *The Queensland Government has mostly implemented Recommendation 306 by setting targets for Aboriginal and Torres Strait Islander employment in the private sector along with corresponding targets for employment in the public sector. However, they have not set employment targets at higher target figures than that of the representative proportion of the population.*

The **South Australian** Government supported the implementation of Recommendation 306 through the *South Australian Aboriginal Employment Industry Cluster Initiative* which supported Aboriginal and Torres Strait Islander employment in the private sector. Included in this initiative were measures: to provide the promotion of culturally-sensitive best practice in recruitment and retention initiatives; to promote industry links to Aboriginal and Torres Strait Islander individuals and communities; and to promote the further training and skill development of Aboriginal and Torres Strait Islander people. This was supported by employment targets, such as those discussed in South Australia's response to Recommendation 305.


 *The South Australian Government has mostly implemented Recommendation 306 by promoting Aboriginal and Torres Strait Islander employment in the private sector through the South Australian Aboriginal Employment Industry Cluster Initiative in conjunction with setting public sector employment targets. However, they have not set employment targets at higher target figures than that of the representative proportion of the population.*

In 1994, the **Western Australia** Department of Education developed an *Aboriginal Career and Employment Strategy* to facilitate the employment of Aboriginal and Torres Strait Islander people. Measures within this program included cadetships and other forms of employment support. The Western Australian Government also utilised employment targets, which are included in response to Recommendation 305.


In addition to this, the Western Australian Government aims to increase the economic participation of Aboriginal and Torres Strait Islander people in the private sector through the recent Aboriginal Procurement Policy. This policy is set to commence on 1 July 2018 and will require government departments to award one per cent of contracts to registered Aboriginal and Torres Strait Islander business in 2018. This target will increase to two per cent in 2019 and three per cent in 2020.

 *The Western Australian Government has implemented Recommendation 306 by promoting Aboriginal and Torres Strait Islander employment in the private sector through the Aboriginal Procurement Policy. Western Australia has also set employment targets at higher target figures than that of the representative proportion of the population.*


The **Tasmanian** Government has established a target of 3% employment by 2020 in the Tasmania State Service, as part of the Aboriginal Employment Strategy.

 *Tasmania has mostly implemented Recommendation 306 by establishing targets in the public sector but have not set employment targets at higher target figures than that of the representative proportion of the population.*

In order to monitor the implementation of Recommendation 306, the **Northern Territory** Government established protocols for statistical data collection and reporting. No further information was located on the Northern Territory's implementation of Recommendation 306.

 *The Northern Territory has mostly implemented Recommendation 306. While they have established targets in the public sector, they have not set employment targets at higher target figures than that of the representative proportion of the population.*

The **Australian Capital Territory** Government consulted with local Aboriginal and Torres Strait Islander communities to examine options for encouraging Aboriginal and Torres Strait Islander employment and career development. Equal opportunity employment policies were also enacted, including employment targets which are outlined in Recommendation 305.

 *The Australian Capital Territory Government has implemented Recommendation 306 by setting employment targets in the public sector at a target rate higher than that of the representative proportion of the population.*

Recommendation 307

That Commonwealth, State and Territory Governments adopt a fair employment practice in relation to the letting of government contracts, which gives preference to those tenderers who can demonstrate that they have adopted and implemented a policy of employing Aboriginal persons in their workforce.

Background information

Providing employers who contract to the government with an incentive for adopting and implementing an Aboriginal and Torres Strait Islander employment strategy can encourage the further development and use of such strategies.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Commonwealth, and State and Territory governments are responsible for procuring government contracts.

Key actions taken and status of implementation


Under the IOP, suppliers to the **Commonwealth** Government who are awarded contracts valued over \$5 million for activity in regions with a significant Aboriginal and Torres Strait Islander population are required to develop and implement a training, employment and supplier plan. The IOP was replaced in 2015 by the IPP, which is discussed further in Recommendation 300.

The DET noted that under the IPP the Commonwealth Government is required to award 3% of new domestic contracts to Aboriginal and Torres Strait Islander businesses. In addition, the policy includes a mandatory set-aside for remote contracts as well as all contracts valued between \$80,000 and \$200,000, and minimum Aboriginal and Torres Strait Islander participation requirements in contracts valued at or above \$7.5 million in certain industries. PM&C noted that the Policy has been successful in increasing the value of Commonwealth procurements from Aboriginal and Torres Strait Islander businesses: in the first 18 months of the policy to December 2016, over \$400 million in contracts were awarded to around 700 Aboriginal and Torres Strait Islander businesses. This led to the Government's decision to bring forward the 3 percent target to 2016-17.

 *Recommendation 307 has been implemented, as the Commonwealth Government has implemented requirements for suppliers engaged in government contracts to adopt and implement Aboriginal and Torres Strait Islander employment strategies and set a clear target for securing Aboriginal and Torres Strait Islander business with its procurement policy.*

Following the RCIADIC, the **New South Wales** Government established a fund to subsidise, where necessary, the tender prices of firms with accredited Aboriginal policies. This formed part of a broader *Aboriginal Training and Employment Opportunities in NSW Government Funded Contracts* initiative (1995) which incorporated the intent of Recommendation 307.

The NSW Aboriginal Procurement in Construction (APIC) Policy supports greater participation by Aboriginal people in NSW construction projects. APIC sets a minimum requirement for 1.5% of the projects construction and design costs on Aboriginal participation for all NSW Government construction contracts over \$10 million or construction projects primarily directed to an Aboriginal community. In addition, a policy is in development to further support Aboriginal participation and employment beyond the existing APIC policy commitments.

 *The New South Wales Government addressed Recommendation 307 through implementation of construction policies and implementation of a broader procurement policy.*


The **Victorian** Government provided in their 1993 implementation report that policy required that agencies maximise local content where possible, and that local suppliers be given reasonable opportunity to win government business. At a Departmental level, the Victorian Government worked

in consultation with Aboriginal and Torres Strait Islander communities and organisations in providing work to encourage the participation of Aboriginal and Torres Strait Islander people.

Since the 1993 implementation report, the Victorian Government has implemented fair work initiatives in relation to the letting of government contracts, these initiatives include the Victorian Government's social procurement policy, Major Projects Skills Guarantee, and 1% Aboriginal Procurement Policy.

In addition to this, major transport infrastructure projects in Victoria such as the Level Crossing Removal Project, the Metro Tunnel Project, the CityLink Tulla Widening, the Monash Freeway Upgrade and the West Gate Tunnel Project give preference to those tenderers who can demonstrate good policies and practice of employing Aboriginal and Torres Strait Islander people in their workforce and supply chains.

The whole-of-government Social Procurement Framework, to be launched in 2018, seeks the following outcomes: Purchasing from Victorian Aboriginal and Torres Strait Islander businesses: Employment of Victorian Aboriginal and Torres Strait Islander people by suppliers to the Victorian Government. The Victorian government also has a procurement target of 1% of goods and services to be purchased from Aboriginal and Torres Strait Islander businesses.

 *The Victorian Government addressed Recommendation 307 through a range of fair work initiatives and the preferential treatment of tenderers, which demonstrate good policies, and practice of employing Aboriginal persons in their workforce and supply chains*


Queensland's Department of Family Services and Aboriginal and Islander Affairs implemented measures in 1992 to encourage all agencies which provided facilities in Aboriginal and Torres Strait Islander communities to ensure that tenders are structured in a way that demands the utilisation of Aboriginal and Torres Strait Islander labour. General government selection criteria included the use of equal opportunity work practices.

More recently, the *Queensland Government Building and Construction Training Policy* (2014) aimed to support employment opportunities and skills development for Aboriginal and Torres Strait Islander people in Queensland's building and construction industry. DATSIP has also developed the Queensland Indigenous Procurement Policy, in consultation with other agencies, to increase the share of Queensland Government procurement contracts awarded to Aboriginal and Torres Strait Islander businesses and includes a target to increase the value of such procurement to 3% of addressable spend by 2022, which is the portion of government spending that can conceivably be subject to the *Indigenous Procurement Policy*

 *The Queensland Government has addressed Recommendation 307 through the Queensland Indigenous Procurement Policy.*

South Australia's *Connecting Aboriginal People to Mining* program supported South Australian companies in resource industries and their supply chain to employ and train Aboriginal and Torres Strait Islander people. The South Australian Government provided funding of between \$500,000 and \$540,000 over the period from 2010-11 to 2014-15.

The SA Industry Participation Policy now incorporates the Aboriginal Business Procurement Policy, which creates a one-stop shop for agencies to support Aboriginal and Torres Strait Islander participation in all levels of procurement. For procurement opportunities up to \$220,000, agencies are encouraged to procure directly from eligible Aboriginal and Torres Strait Islander businesses. For procurement opportunities above that amount, agencies can lift the industry participation weighting above the minimum 15% introduced tailored measures to raise participation of Aboriginal and Torres Strait Islander businesses and employees in these contracts.


 *The South Australian Government has addressed Recommendation 307 through the Aboriginal Business Procurement Policy.*

Western Australia introduced a range of initiatives to promote Aboriginal and Torres Strait Islander employment and the awarding of tenders to organisations with proven equal opportunity employment


policies. This included the provision of funding for equal opportunity programs and the training of Aboriginal and Torres Strait Islander people.

Western Australia has had an Aboriginal Business Initiative in operation since 2012, which enables direct procurement from Aboriginal and Torres Strait Islander -owned businesses for goods and services.


The forthcoming Aboriginal Procurement Policy sets progressive targets for government agencies to award contracts to registered Aboriginal and Torres Strait Islander businesses commencing at one per cent of contracts from 1 July 2018, up to three per cent from 1 July 2020. The Department of Finance will review the Aboriginal Procurement Policy in 2019 and consider the viability of including other features, such as direct Aboriginal employment strategies. Strategies could include introducing price preferences during quote and tender processes for business that directly employ Aboriginal and Torres Strait Islander people.

 *The Western Australian Government has addressed Recommendation 307 through the Aboriginal Procurement Policy.*


In **Tasmania**, the Department of State Growth began a working partnership with Pakana Services in 2012. Pakana Services is a not-for-profit social enterprise that employs Tasmanian Aboriginal and Torres Strait Islander people and provides contracting services in conservation, land management and maintenance. In the absence of an Aboriginal and Torres Strait Islander land management enterprise, work had previously been allocated to other contractors who do not necessarily identify with the cultural and environmental values of these sites. The Department now engages Pakana to deliver extensive weed management, fencing and other conservation land management tasks, both independently and in conjunction with some specialist ecologists.

 *Tasmania has partially addressed Recommendation 307 by brokering a working partnership between the Department of State Growth and Pakana Services, but has not specified a broader procurement policy in their response.*

In the **Northern Territory**, Government policy promotes Aboriginal and Torres Strait Islander communities and organisations to participate in government work. In the 1990s, the Aboriginal Development Unit worked with Aboriginal and Torres Strait Islander communities to target contracts which would lead to an increase in the number of Aboriginal and Torres Strait Islander people employed or trained. Currently, the *Northern Territory Procurement Policy* and *Tender Weighting System* requires government agencies to give significant consideration to the extent to which a tenderer adopts a policy of Aboriginal and Torres Strait Islander employment.

 *The Northern Territory Government has addressed Recommendation 307 through the Northern Territory Procurement Policy and Tender Weighting System.*

The **Australian Capital Territory** Department of Education and Training had in place, in 1993, a policy of preference to tenderers who demonstrated implementation of social justice policies such as the Equal Employment Opportunity Policy. More recent action has not been identified.

 *The Australian Capital Territory has not implemented Recommendation 303.*

Recommendation 308

That Commonwealth and State Governments give consideration to establishing a body made up of representation from government (Department of Employment, Education and Training (DEET) and ATSIC, as well as State Governments) and Australian employer and employee peak bodies to discuss, with a view to setting in motion, a process of implementing the aims of the AEDP in the private sector.

Background information

Aboriginal and Torres Strait Islander people face particularly low rates of private sector employment. The design and implementation of strategies to address this require the coordinated involvement of representatives of government and Australian employer and employee peak bodies. The AEDP was

replaced by the Indigenous Employment Policy in 1999, which was later renamed the Indigenous Employment Program.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Commonwealth, and State and Territory governments are jointly responsible for employment policy.


Key actions taken and status of implementation

The **Commonwealth** Government established Industry Advisory Committees in 1992 to develop employment strategies for greater Aboriginal and Torres Strait Islander employment in the private sector, in conjunction with industry, representation from government, and relevant Aboriginal and Torres Strait Islander business representatives.

The Commonwealth Government entered into an agreement with the Australian Chamber of Commerce and Industry (ACCI) to increase the recruitment and career development of Aboriginal and Torres Strait Islander people within ACCI's member organisations and industries.

 *The Commonwealth Government has taken steps to coordinate employment strategies with Australian employer and employee peak bodies to improve Aboriginal and Torres Strait Islander employment in the private sector. Consideration has been given to establishing a body as specified in the recommendation, and as such Recommendation 308 is considered to be complete.*

All States and Territories were represented in the 1990s on Aboriginal Employment Development Policy Committees. These committees discussed Aboriginal and Torres Strait Islander employment and development related issues, coordinated a response to such issues, and sought to improve employment outcomes for Aboriginal and Torres Strait Islander people. As such, Aboriginal Employment Development Policy Committees set in motion the process of implementing the aims of the AEDP.

 *The New South Wales, Victoria, Queensland, South Australian, Western Australia, Tasmanian, Northern Territory and Australian Capital Territory Governments have implemented Recommendation 308 through their representation on Aboriginal Employment Development Policy Committees.*

Additional commentary

The **Commonwealth** Department of Employment noted that it is unclear whether any such committee, as outlined in Recommendation 308, was formed. However, it should be noted that employer groups such as the Australian Chamber of Commerce and Industry and the Business Council of Australia, and employee organisations such as the Australian Council of Trade Unions have undertaken initiatives in these areas.

PM&C noted that the Employment Parity Initiative (EPI) was launched in March 2015. This program aims to increase the number of large Australian companies with a workforce reflective of the size of the Aboriginal and Torres Strait Islander population. Large national employers are invited to join the program and to increase the level of Aboriginal and Torres Strait Islander employees within their organisation. The EPI seeks to leverage the business expertise, goodwill and networks of companies involved, by providing a platform to share experience and knowledge. Employers are also encouraged to incorporate more Aboriginal and Torres Strait Islander businesses into their supply chains. At the time of writing, eleven companies had signed on: Accor Pacific, Broadspectrum, Compass Group, Crown Resorts, Hutchinson Builders, ISS Facility Services, MSS Security, Sodexo Australia, Spotless Facility Services, St Vincent's Health Australia, and Woolworths Limited.

Recommendation 309

That increased funding be allocated to the establishment of local employment promotion committees comprised of representatives of Aboriginal groups, local employers, government departments and unions to:

- a. *Develop and implement suitable promotional marketing campaigns aimed at the total labour market;*
- b. *Lobby for local initiatives in improving employment options and broadening local understanding of the needs and aspirations of Aboriginal people in the region; and*
- c. *Increase the understanding in the Aboriginal community of the possible local employment options, the nature of the work involved and the skills required.*

In funding the establishment of the committees, priority should be given to locations where labour market opportunities exist and where the greatest disparity between Aboriginal and non-Aboriginal employment rates are identified.

Background information

Widespread awareness of the levels of Aboriginal and Torres Strait Islander disadvantage and a commitment to cooperate to address that disadvantage are required, particularly at the local level, to improve Aboriginal and Torres Strait Islander employment rates.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Commonwealth, and State and Territory governments are jointly responsible for employment policy.

Key actions taken and status of implementation


The **Commonwealth** Government established Local Aboriginal Employment Promotion Committees to promote the employment of Aboriginal and Torres Strait Islander people in the local labour market as well as provide support services such as job brokerage, information sharing and mentor support.

PM&C noted that the Commonwealth Government is supporting Aboriginal and Torres Strait Islander people in the implementation of Empowered Communities in eight regions across Australia. The current focus is on leaders working with their communities and other stakeholders to identify community needs, priorities and aspirations and understanding current government service delivery arrangements. This will enable them to articulate long-term Regional Development Agendas that address social, economic and cultural development, which will guide government investment. PM&C further noted that the Government has also provided \$14.4 million over three years until June 2019 for 'backbone organisations' to assist leaders in driving the implementation of the initiative.


 *Recommendation 309 has been implemented, as the Commonwealth Government has allocated funding to the establishment of local employment promotion committees that address employment needs and opportunities for Aboriginal and Torres Strait Islander people. As such, Recommendation 309 is complete.*

In 1994, the **New South Wales** Government was actively involved in implementing the Australian Traineeship System. The System acted as a mechanism for the planned training and employment of Aboriginal people in country areas. The program was marketed extensively among Aboriginal communities.


More recently, the Department of Industry, through Training Services NSW, has employed Aboriginal staff in each of its Regional offices across NSW to improve access to information, advice and support on skills programs that will support the employment and career development of Aboriginal people and to engage with local communities across a full range of policies, programs and services.

 *New South Wales has mostly implemented Recommendation 309 by employing Aboriginal staff in regional officers to promote local employment but has not established related committees to support these activities.*

The **Victorian** Government funded an Aboriginal Employment Officer as part of the Victorian Trades Hall Council. The Office of Local Government also employed an Aboriginal liaison officer to work with local government bodies to facilitate the employment of Aboriginal and Torres Strait Islander people in 1993.


 *The Victorian Government has taken steps to address Recommendation 309 but has only partially implemented the recommendation.*

The **Queensland** Government noted in their 1993 implementation report that Recommendation 309 was largely the responsibility of the Commonwealth Government. Currently, DATSIP is implementing the Youth Employment Program for young Aboriginal and Torres Strait Islander people who are finishing high school and looking for work or considering further education. Aboriginal and Torres Strait Islander people with a Certificate III or higher, who are not supported by a job agency, can also be supported through the Youth Employment Program.

 *The Queensland Government has taken steps to address Recommendation 309 by addressing part (c) of the recommendation through the Youth Employment Program for young Aboriginal and Torres Strait Islander people. As such, Recommendation 309 is partially complete.*

South Australia's *Kick Start employment and training strategy* offered programs for job creation and skill improvement at a local level. Under the funding arrangements in 1994, Aboriginal and Torres Strait Islander people were included as a priority group.

As mentioned previously in response to Recommendation 300, the SA Government has also implemented measures and initiatives to increase Aboriginal and Torres Strait Islander employment in the public and private sector. Aboriginal Participation Brokers also work in regions to facilitate and broker strategic and operational solutions to local learning, training and employment needs. A range of programs are available to Aboriginal and Torres Strait Islander employees and employers, such as the Aboriginal Job Ready Program, the Aboriginal Leadership Program, and the Aboriginal Pathways to Excellence Traineeship Program.


 *The South Australian Government has taken steps to address Recommendation 309 by supporting and promoting Aboriginal and Torres Strait Islander employment opportunities through a range of different local employment initiatives but have not expressly addressed the key objectives of this recommendation.*

The **Western Australia** Government noted in their 1994 implementation report the provision of funding and support for a number of Aboriginal Employment Promotion Committees which implemented programs to improve employment and training opportunities for Aboriginal and Torres Strait Islander people.

Since this time Western Australia has developed workforce development plans for each the state's regions. The consultation process captured all relevant stakeholders, including Aboriginal and Torres Strait Islander communities. Each plan identifies the region's current and future workforce development and skills needs and provides whole-of-government, industry and community sector strategies to ensure these needs can be addressed. This includes specific strategies focusing on improving the education, training and employment outcomes of Aboriginal and Torres Strait Islander people.

Advisory Groups are attached to all Aboriginal Workforce Development Centres (AWDC) across the state. The Advisory Groups are appointed to help guide towards meeting local needs. Aboriginal and Torres Strait Islander people are strongly represented on the membership of these Advisory Groups, which also include community, industry, youth and former clients of the centres.


AWDC activities include local initiatives to raise employer awareness of Aboriginal and Torres Strait Islander recruitment and retention strategies, increase the range of employment options for Aboriginal and Torres Strait Islander people, and link Aboriginal and Torres Strait Islander job seekers with appropriate training and job opportunities, and relevant services. It is expected that many of the members of the existing AWDC Advisory Groups will transition to support the new Jobs and Skills Centres during 2018.

 *The Western Australian Government has taken steps to address Recommendation 309 by supporting and promoting Aboriginal and Torres Strait Islander employment opportunities through workforce development plans and Aboriginal Workforce Development Centres. However, part a) and b) of this recommendation have not been fully implemented.*

No information could be found on the **Tasmanian** response to Recommendation 309.


 *Tasmania has not implemented Recommendation 303.*

The **Northern Territory** Government provided funding to employ Aboriginal and Torres Strait Islander people in their areas of expertise. This promoted the development of linkages between individual industry training councils and Aboriginal and Torres Strait Islander organisations.

 *The Northern Territory Government has taken steps to address Recommendation 309 by promoting linkages between Aboriginal and Torres Strait Islander organisations and industry training councils but has only partially implemented the recommendation.*

In 1994-95, the **Australian Capital Territory** established a local employment promotion committee alongside an ACT Area Consultative Committee. Since this time, the Australian Capital Territory Government has implemented the Skills Canberra's Field Officer program, which promotes traineeship and apprenticeship employment opportunities to employers across a wide range of industry areas, and promotes work-related training in qualifications that increase a graduate's chances of obtaining employment or improved employment status.

The Australian Capital Territory Government has also indicated that Skilled Canberra has committed to strengthening its relationship with the Aboriginal and Torres Strait Islander business community and Elected Body. Through this relationship, Skills Canberra intends to increase the understanding in the Aboriginal and Torres Strait Islander community of the possible local employment options, the nature of the work involved and the skills required. Skills Canberra also intends to gather advice from the Aboriginal and Torres Strait Islander Elected Body about ways to improve update of apprenticeship and traineeship opportunities in local initiatives aimed at improving employment options.

 *The Australian Capital Territory Government has mostly implemented Recommendation 309 through local employment promotion work and increasing the understanding in the Aboriginal and Torres Strait Islander community of the possible local employment option. However, part b) of this recommendation does not appear to be fully implemented.*

Additional commentary

The **Commonwealth** PM&C noted that Vocational Training and Employment Centres connect Aboriginal and Torres Strait Islander job seekers with guaranteed jobs, and bring together the support services necessary to prepare job seekers for long term employment. These centres operate with the support and involvement of local Aboriginal and Torres Strait Islander communities and their leaders, and are aligned to the values and needs of both communities and employers.

Recommendation 310

That the Commonwealth, and in particular the Department of Employment, Education and Training, analyse its current programs with a view to ensuring that they fully address the employment, education and training needs of potential and existing Aboriginal offenders. Where necessary, existing program guidelines should be modified and/or new program elements developed to increase access by such clients. In particular, DEET should examine means of assisting Aboriginal communities to become more involved in preventative, diversionary and rehabilitative programs to assist Aboriginal offenders, particularly where they would provide an alternative to incarceration.

Background information

Aboriginal and Torres Strait Islander people who have been in custody represent a particularly disadvantaged sector of the community and face limited employment opportunities. Further support with training and employment opportunities can improve employment rates and may prevent incarceration and reduce recidivism.


Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. The Commonwealth Government is responsible for the Department of Employment and Training.

Key actions taken and status of implementation

In 1992, the **Commonwealth's** ATSIC extended the Aboriginal Adult Education in Prisons Program. In 1994, the Commonwealth Government established a national network of Indigenous Prison Liaison Officers to cooperate with prison staff, community groups, and non-government organisations to increase training and job opportunities to ex-prisoners and coordinate community-based sentencing options. Also in 1994, the Aboriginal and Torres Strait Islander Employment and Training Transition Program was established to make employment, education and training options more accessible to Aboriginal and Torres Strait Islander ex-offenders immediately after their release.

As part of the Closing the Gap – Employment Services measure announced in the 2017-18 Budget, \$17.6 million has been committed to establish the Prison to Work program which will support Aboriginal and Torres Strait Islander prisoners to make a successful transition from Prison to Work.

 *Recommendation 310 has been implemented, as the Commonwealth Government has met its responsibilities by improving the accessibility of previous and current Aboriginal and Torres Strait Islander offenders to training and job opportunities.*

Additional commentary

The **Commonwealth** DET noted that the Department funds the University of Southern Queensland's *Making the Connections* project which takes digital technologies that do not require internet access into prisons to enable prisoners to enrol in a suite of pre-tertiary and undergraduate programs. This program aims to reduce the barrier to employment following incarceration. The DET further noted their position on the Prison to Work Advisory Committee chaired by PM&C. The Committee works to identify practical ways to address barriers to employment for Aboriginal and Torres Strait Islander people leaving prison and how best to support them as they transition from incarceration to employment, in order to reduce the risk of further incarceration. PM&C noted that the *Prison to Work Report*, released by COAG in December 2016, lists 55 possible actions that governments could undertake to improve prisoners' pathways to work, including how employment programs can be improved to better address the needs of Aboriginal and Torres Strait Islander prisoners.

Recommendation 311

That ATSIC ensure that in the administration of its Enterprise Program a clear distinction is drawn between those projects that are supported according to criteria of commercial viability and those that are supported according to social development or social service satisfaction criteria.

Background information


Projects supported according to social development or social service satisfaction criteria differ from those supported according to commercial viability and may require different levels of administrative and financial assistance.

Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. ATSIC falls under the Commonwealth Government's jurisdiction.

Key actions taken and status of implementation

Following a review of its Enterprise Program, the **Commonwealth's** ATSIC developed the Community Economic Initiatives Scheme in 1992 to support funding for projects with a social development focus.

 *Recommendation 311 has been implemented, as the Commonwealth Government achieved the objective of the recommendation via development of the Community Economic Initiatives Scheme by ATSIC.*

Recommendation 312

That the intention of Sections 17 and 18 of the Aboriginal and Torres Strait Islander Commission Act 1989 be clarified, by amendment to the legislation if necessary, in order to facilitate the funding of enterprises which are not necessarily commercially viable on the basis of social development criteria.

Background information


Projects supported according to social development or social service satisfaction criteria differ from those supported according to commercial viability and may require different levels of administrative and financial assistance.

Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. ATSIC falls under the Commonwealth Government's jurisdiction.

Key actions taken and status of implementation

Following a review of its Enterprise Program, the **Commonwealth's** ATSIC developed the Community Economic Initiatives Scheme in 1992 to support funding for projects with a social development focus.

 *Recommendation 312 has been implemented, as the Commonwealth Government deemed a legislative amendment to be unnecessary but achieved the objective of this recommendation via the development of the Community Economic Initiatives Scheme.*

Additional commentary

The **Commonwealth** PM&C noted that Aboriginal and Torres Strait Islander legislative authority for grant funding under the IAS is provided by Items 35-39 of Schedule 1AB of the Financial Framework (Supplementary Powers) Regulations 1997. There is nothing in Items 35-39 which limits IAS grants to organisations which are not commercially viable; however, as a matter of policy and in practice, the Department takes steps to ensure recipients of grant funding are appropriately governed and can deliver the project for which funding is provided.

Recommendation 313

That the ongoing review of the Enterprise Program by the Commonwealth Government should seek to develop the Program in such a way that:

- a. Adequate program flexibility is provided to allow for the diversity of aspirations and needs of different Aboriginal communities; and*
- b. Funding difficulties caused by cyclic government budgeting and delays between application and receipt of moneys are minimised.*

Background information

Greater flexibility and ease in funding arrangements are critical to improving the effectiveness of the Enterprise Program and its appropriateness for the needs of Aboriginal and Torres Strait Islander communities.

Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. The Enterprise Program falls under the jurisdiction of the Commonwealth Government.

Key actions taken and status of implementation

A review of the **Commonwealth** Government's Enterprise Program was undertaken and the Enterprise Program subsequently restructured into the Business Funding Scheme (BFS) (the commercially-oriented component), the Community Economic Initiatives Scheme (the socially-based component), and Enterprise Employment Assistance (a wage subsidy program), to better address the different objectives of its clients. An extensive review of the BFS was undertaken by ATSIC and a process of reform subsequently implemented, including amendments to funding arrangements and streamlining of the assessment process to improve performance.

- *Recommendation 313 has been implemented, as the Commonwealth Government has met its responsibilities to Recommendation 313 through undertaking a review process.*

Recommendation 314

That mechanisms for the notification and determination of Aboriginal interests in major mining and tourism development proposals incorporate:

- Provision of formal written notification concerning the development to appropriate Aboriginal organisations within the area affected by the development proposal; and*
- A process of consultation and negotiation between representatives of government, the developer and representatives of the Aboriginal groups with an interest in the area affected by the proposal, in order to facilitate participation by Aboriginal groups or communities in the equity, management and employment concerned with the projects.*

Background information

Mining and tourism industries offer significant opportunities for Aboriginal and Torres Strait Islander economic development, with particular benefit for Aboriginal and Torres Strait Islander people in rural and remote areas where employment opportunities are inherently limited.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Commonwealth, and state and territory governments have oversight of major mining and tourism development proposals.

Key actions taken and status of implementation

In 1993, the **Commonwealth** Government legislated the *Native Title Act*, which provides that native title holders or claimants have a right to negotiate about certain proposed future acts by governments that could affect native title on the land or water concerned, including the grant or extension of mining rights or leases, and requires governments to give notice of relevant 'future acts'. The Native Title Act includes principles on consultation and negotiation rights through Indigenous Land Use Agreements and other agreements. A National Aboriginal and Torres Strait Islander Tourism Industry Strategy was released in 1997 with an aim to promote Aboriginal and Torres Strait Islander tourism enterprises.


The Department of the Environment and Energy (DOEE) noted that certain mining and tourism developments require assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the Commonwealth Government's central piece of environmental legislation. Released in 2016, the *Engage Early – Indigenous Engagement Guidelines* for proponents on best practice Aboriginal and Torres Strait Islander engagement for environmental assessments under the EPBC Act provide guidance on how proponents should engage with and consult Aboriginal and Torres Strait Islander people during the EPBC Act assessment process. The Guidelines detail when Aboriginal and Torres Strait Islander communities should be consulted (in addition to the statutory public comment periods required under Part 8 of the EPBC Act), and set out the DOEE's expectations on how Aboriginal and Torres Strait Islander engagement should occur. The Guidelines were developed in close consultation with the Department's Indigenous Advisory Committee and included a public comment period. The Guidelines are available on the Department's website. The DOEE further noted that it should be read in conjunction with *Ask First: A guide to respecting Indigenous places and values* (published by the Australian Heritage Commission). The Ask First guidelines are a guide for proponents on Aboriginal and Torres Strait Islander heritage issues and include steps for consultation and negotiation.

- *Notification, consultation and negotiation processes relating to Aboriginal and Torres Strait Islander interests are evident in Commonwealth Government programs and policies. However, not all mining and tourism developments appear to require consultation and approval of Aboriginal and Torres Strait Islander groups in the area affected by the proposal. Recommendation 314 is therefore mostly complete.*

In **New South Wales**, the National Parks and Wildlife Service is committed to providing formal written notification to all relevant Aboriginal people both in the affected area and in the relevant community and government organisations. In 1995, the NSW Government established a Tourism Reference Group with the purpose of ensuring that Aboriginal tourism was managed by Aboriginal people in a culturally-sensitive manner.

Currently, the Department of Planning and Environment's *Social Impact Assessment Guideline for State significant mining, petroleum production and extractive industry development (2017)* identifies Aboriginal people and groups among categories to engage and refers proponents to the Office of Environment and Heritage's *Aboriginal cultural heritage consultation requirements* for guidance.

Draft Aboriginal cultural heritage legislation currently on public exhibition establish new consultation arrangements that would ensure the right Aboriginal people are consulted early in the development process.


 *The New South Wales Government has implemented Recommendation 314 by ensuring that the National Parks and Wildlife Service provides formal written notification concerning development on land of interest and by suggesting consultation of Aboriginal groups in its Social Impact Assessment Guideline.*

In their 1993 implementation report, the **Victorian** Government noted the Minister for Energy and Minerals' agreement that Aboriginal Affairs Victoria would be informed of licence applications. In facilitating prospective tourism, Tourism Victoria is guided by the *Planning and Environment Act 1987* (Vic), which listed as an objective the conservation and enhancement of sites of cultural value.

Mining and tourism development proposals in Victoria need to comply with the *Aboriginal Heritage Act 2006* which requires the preparation of a Cultural Heritage Management Plan by the proponent. Where a Registered Aboriginal Party has been appointed, the party evaluates the Cultural Heritage Management Plan. If a party has not been appointed over the proposed development area, the Secretary to the Department of Premier and Cabinet evaluates the Cultural Heritage Management Plan and must consult with the relevant Traditional Owner groups in making its decision.


Victoria's *Traditional Owner Settlement Act 2010* also provides for agreements requiring notification, negotiation and consent rights to be afforded to traditional owner corporations relating to major mining and tourism projects. Community benefits are to be paid to compensate for impact and can include non-monetary benefits such as employment and business opportunities.

The Victorian Department of Economic Development, Jobs, Transport and Resources has Community Engagement Guidelines for Mining and Mineral Exploration in Victoria, stating that 'licensees have a duty to consult with the community across the lifecycle of a licence'. The Victorian Government and the Victorian Aboriginal Economic Board also actively promote a number of initiatives which support Aboriginal procurement and employment opportunities, such as the State Government's 1% Aboriginal procurement target. The Victorian Government also noted that it is compliant with the *Native Title Act 1993*, which requires notification and can require negotiation with traditional owner groups when major mining or tourism projects are undertaken on land where native title does or might exist.


 *The Victorian Government has mostly implemented Recommendation 314. However, it has not completely addressed part (b) of this recommendation. A process of consultation and negotiation between representatives of government, the developer and representatives of the Aboriginal groups with an interest in the area affected by mining and tourism developments does not occur in all cases.*

Queensland's Mineral Resources Act 1989 (Qld) largely dealt with the intent of Recommendation 314 in establishing administrative arrangements to protect landholders' entitlements. These entitlements were further protected over land granted under the Aboriginal Land Act 1991 (Qld) and Torres Strait Islander Land Act 1991 (Qld), which provided for prior consent of landholders for entry for exploration purposes and before the grant of a mining lease. Initiatives were also introduced to encourage the representation of Aboriginal and Torres Strait Islander perspectives.

Following the commencement of the *Native Title Act 1993* (Cth), procedures were put in place to ensure compliance, which addresses notification and consultation with native title holders. For tourism development approvals under the *Planning Act 2016* (Qld), public notification of development applications may be required. The landowner's consent is required for the making of applications for any change of use of the land being developed. As the application is progressed, the assessment manager (either the state or local government) will confirm if the development proposal has any Native Title interests for that block. The type of development approval and the tenure of the land will determine whether the Native Title Body is notified under the assessment process.


 *The Queensland Government has implemented Recommendation 314 by developing processes for notification and consultation through a range of legislative measures, including the Mineral Resources Act 1989, the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991.*

At the time of the RCIADIC, **South Australian** legislation was already compliant with the intent of Recommendation 314. Currently, land that is subject to native title claim in South Australia is subject to Indigenous Land Use Agreements, which are voluntary agreements made under the *Native Title Act 1993* between native title groups and others and cover various matters, including access to land. Other pertinent legislation includes the *Mining Act 1971*, which deals with how mining operations can be undertaken on native land, and the *Aboriginal Heritage Act 1988*, which sets out consultation processes under the act for use of land. The Government has also recently announced a new tiered approach to relationship building which is intended to enable all South Australian Aboriginal and Torres Strait Islander groups to form a relationship with the government for the purpose of consultation and engagement.


 *The South Australian Government has implemented Recommendation 314 by implementing compliant legislation, such as the Native Title Act 1993, the Mining Act 1971 and the Aboriginal Heritage Act 1988.*

In **Western Australia**, the *Land (Title and Traditional Usage) Act 1993* (WA) requires that the Commissioner for Aboriginal Planning be notified of applications for title over Crown land or water. The Commissioner must then notify any relevant Aboriginal and Torres Strait Islander organisation, nominating the location and the nature of the activity proposed. Aboriginal and Torres Strait Islander people also have provision for objecting to mining and land title applications, particularly where rights of traditional usage will be impaired or extinguished.


Aboriginal and Torres Strait Islander participation in equity, management and employment associated with proposed projects can be facilitated via negotiation of an Indigenous Land Use Agreement. These agreements are between the developer and the native title party under section 31 of the *Native Title Act* — if the relevant project attracts the procedural 'right to negotiate' — or, potentially, as an incentive for the native title party to support the proposed development, in the case of a procedural right to be consulted.

 *Western Australia has implemented Recommendation 314 through the requirement to notify Aboriginal and Torres Strait Islander organisation about proposed developments. In addition to this, Aboriginal and Torres Strait Islander participation in equity, management and employment associated with proposed projects can be facilitated via negotiation of an Indigenous Land Use Agreement.*


In **Tasmania**, Mining Resources Tasmania established a consultation process with Aboriginal and Torres Strait Islander communities to allow for the consideration of interests regarding new mining and exploration licenses. Other Departments also consulted with local Aboriginal and Torres Strait Islander communities where activities would impact the value of Aboriginal and Torres Strait Islander land.

 *Tasmania has partially implemented Recommendation 314 by developing consultation processes for consideration of interests regarding new mining and exploration licenses, as well as other development applications, but has not addressed key elements of this recommendation.*

In their 1993-94 implementation report, the **Northern Territory** Government provided that the Department of Mines and Energy provided information, encouragement and assistance to Aboriginal and Torres Strait Islander individuals and groups with regard to exploration, mining, and mineral development. The Northern Government also provided support for Aboriginal and Torres Strait Islander tourism ventures where requested.

 *The Northern Territory Government has partially implemented Recommendation 314 by providing for the Department of Mines and Energy to engage with Aboriginal and Torres Strait Islander people and communities with regard to mineral development but has not addressed key elements of this recommendation.*

The Australian Capital Territory does not have any mining industries and therefore this recommendation is out of scope for the Australian Capital Territory Government.

 *Recommendation 314 is out of scope for the Australian Capital Territory Government.*

Recommendation 315

That the recommendations submitted to the Conservation and Land Management meeting (held at Millstream on 6-8 August 1990) by representatives of Aboriginal communities and organisations be implemented in Western Australia upon terms to be negotiated between Aboriginal people and appropriate Aboriginal organisations and communities on the one hand and National Park authorities on the other so as to protect and preserve the rights and interests of Aboriginal people with cultural, historical and traditional association with National Parks. The recommendations proposed at the Millstream meeting were:

- a. The encouragement of joint management between identified and acknowledge representatives of Aboriginal people and the relevant State agency;*
- b. The involvement of Aboriginal people in the development of management plans for National Parks;*
- c. The excision of areas of land within National Parks for use by Aboriginal people as living areas;*
- d. The granting of access by Aboriginal people to National Parks and Nature Reserves for subsistence hunting, fishing and the collection of material for cultural purposes (and the amendment of legislation to enable this, where necessary);*
- e. Facilitating the control of cultural heritage information by Aboriginal people;*
- f. Affirmative action policies which give preference to Aboriginal people in employment as administrators, rangers, and in other positions within National Parks;*
- g. The negotiation of lease-back arrangements which enable title to land on which National Parks are situated to be transferred to Aboriginal owners, subject to the lease of the area to the relevant State or Commonwealth authority on payment of rent to the Aboriginal owners;*
- h. The charging of admission fees for entrance to National Parks by tourists;*
- i. The reservation of areas of land within National Parks to which Aboriginal people have access for ceremonial purposes; and*
- j. The establishment of mechanisms which enable relevant Aboriginal custodians to be in control of protection of and access to sites of significance to them.*

Background information

Aboriginal and Torres Strait Islander people possess in-depth expertise and experience relating to native land management and a strong cultural, historical and traditional association with the lands held by National Parks. Inclusion of their perspectives and experience is important for effective conservation and land management policies that are respectful of cultural heritage and connection.

Responsibility

The Commonwealth and the Western Australian governments have responsibility for this recommendation. Conservation and land management practices in Western Australia fall under the jurisdiction of the State and Territories. National Parks and Nature Reserves fall under the jurisdiction of the Commonwealth Government.


Key actions taken and status of implementation

In 1992, the **Commonwealth's** Australian Nature Conservation Agency (ANCA) implemented several recommendations, including developing and administering its Aboriginal Recruitment, Training and Career Development Strategy through a funding agreement with the former Department of Employment, Education and Training (DEET). A review of the strategy found that approximately 12% of ANCA staff were Aboriginal and Torres Strait Islander in 1995.

The Commonwealth Government provided funding for the employment of Aboriginal and Torres Strait Islander people in various activities involved in the management of state-run parks via the Australian National Parks and Wildlife Service's Contract Employment Program for Aboriginals in Natural and Cultural Resource Management (CEPANCRM).

In 1995, CEPANCRM funds were utilised to establish models for designating living areas for Aboriginal and Torres Strait Islander people in National Parks via the Indigenous Protected Areas Program. Also in 1995, the Commonwealth Government amended the *National Parks and Wildlife Conservation Act 1975* and the *Aboriginal Land Claim (Jervis Bay Territories) Act* to address components of this recommendation.

The DOEE noted all of the elements described in the recommendation are reflected in the current joint management arrangements of Commonwealth National Parks on the Australian mainland – Kakadu, Uluru-Kata Tjuta and Booderee. There are no Aboriginal populations associated with the three Commonwealth National Parks located on Islands (Christmas, Cocos and Norfolk). Additionally, it should also be noted that there are no Commonwealth National Parks in Western Australia.

 *The Commonwealth Government has addressed many of the elements of Recommendation 315 via relevant amendments to acts relating to land management and conservation in Australia and funding support for relevant organisations. Specific actions relating to Western Australia are the responsibility of the State given no Commonwealth National Parks are located in Western Australia. For this reason, Recommendation 315 is complete.*

In **Western Australia**, joint committees between the Government and Aboriginal and Torres Strait Islander people were implemented for the management of National Parks and the preparation of management plans. The Western Australian Government has also amended the Conservation and Land Management Act 1984 and various regulations to recognise Aboriginal connection to lands and ensure that the State has an obligation to manage conservation areas in collaboration with Traditional Owners, and to protect and conserve Aboriginal culture and heritage alongside ecological and social objectives. These changes helped to:

- provide for Aboriginal people to become more involved in managing land
- enable the use of parks and reserves for Aboriginal customary activities
- establish a legal framework to enable joint management of lands and waters between the Government and other parties
- introduce a new management objective to protect and conserve the value of the lands and waters to the culture and heritage of Aboriginal people
- enable national parks, nature reserves and conservation parks to be jointly vested with Aboriginal corporations, so that traditional owners can be recognised on the title of national parks, nature reserves and conservation parks
- enable joint vesting of terrestrial reserves.

Park entry fees are also set out in the Conservation and Land Management Act 1984.

The Western Australian Government has commenced implementing these statutory provisions and entered into a number of joint management arrangements across the state, which provide for, among other things:


- the joint management of conservation estate
- the involvement of Aboriginal people in the preparation of management plans
- the recruitment of designated Aboriginal positions
- mechanisms for Aboriginal people to control protection and access of Aboriginal sites of significance.

In addition to amendments to the Conservation and Land Management Act 1984, *The Land (Titles and Traditional Usage) Act 1993 (WA)* acknowledges traditional land usage rights of Aboriginal and Torres Strait Islander people. This includes the provision for Aboriginal and Torres Strait Islander people to take flora and fauna for food on land other than nature reserves, with the consent of the occupier of that land.

In 1994, the Western Australia Government implemented the *Conservation and Tourism for Aboriginal People in the Top End of Australia – Cooperative Project* which sought to meet vocational education and training needs, and deliver employment and enterprise opportunities for Aboriginal and Torres Strait Islander people. It also provided Aboriginal and Torres Strait Islander people with oral and written English skills.

The Western Australia Government also supports the control of Aboriginal and Torres Strait Islander cultural information by Aboriginal and Torres Strait Islander custodians. The Western Australia Department of Parks and Wildlife has utilised affirmative actions, and has an employment target that 7% of its employees be Aboriginal and Torres Strait Islander people.

More recently, the State Government has two election commitments including a \$20 million investment in the State's Aboriginal Ranger Program, and to enable joint management and vesting of marine reserves, that further meets the Recommendation.

 Western Australia has mostly implemented Recommendation 315, however has not provided any evidence of actions relating to parts (g), (i), and (j) of this recommendation.

Additional commentary

Although it is outside the scope of this recommendation, the PM&C noted that in responding to Recommendation 315(c), the **Commonwealth** Government is assisting two Aboriginal and Torres Strait Islander communities in the Northern Territory within the boundaries of National Parks to achieve localised decision making and improve land administration jointly with the National Park. These actions are being undertaken through its responsibility for the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Recommendation 316

That the relevant Governments, in consultation with relevant Aboriginal organisations give consideration to funding the establishment of a small unit, comprising Aboriginal people drawn from northern Western Australia, the Northern Territory and northern Queensland, which would be based in the northern part of the country. The function of the unit would be to study, in consultation with the residents of remote communities in those areas, the means of achieving greater self-sufficiency in those communities. The Unit would have the task of keeping remote communities advised of successful initiatives achieved in other communities and assisting remote communities in the preparation of their community plans, so as to assist them in developing economic independence, or at least a greater degree of self-sufficiency.

Background information

Improving self-sufficiency in Aboriginal and Torres Strait Islander people, particularly in remote and rural communities, can have positive impacts on other social outcomes, such as health and employment.

Responsibility


The Commonwealth, and the Queensland, Western Australian and Northern Territory governments have responsibility for this recommendation. This recommendation covers different States and

Territories and falls under the jurisdiction of both State and Territory, and Commonwealth governments.

Key actions taken and status of implementation


The **Commonwealth** Government implemented the Remote Jobs and Communities Programme (RJCP) in 2013 to improve coordination of employment, participation and community-development services, and to build self-sufficiency in rural communities. In 2015, the RJCP was replaced with the CDP. This provides opportunities for job seekers in remote Australia, aged 18 to 49 years, to participate in work-like activities five days a week, 12 months a year.

PM&C noted a number of programs which aimed to address the core objective of Recommendation 316. The NPARSD, which commenced in 2009, aimed to improve the range and standard of services delivered, and improve community engagement and development in selected locations. The position of Coordinator-General for Remote Indigenous Services was created with the aim to drive the development and delivery of services and facilities by governments to a standard broadly comparable with non- Aboriginal and Torres Strait Islander communities of similar size, location and needs elsewhere in Australia. In 2014 PM&C implemented the IAS, supported by PM&C's Regional Network. The Regional Network consists of 37 offices split between 12 regions across the country, positioning senior decision makers close to the communities they serve. The Commonwealth funds Indigenous Engagement Officers, which provides jobs to Aboriginal and Torres Strait Islander people in local communities.

 *Recommendation 316 has been implemented, as the Commonwealth Government did not support the establishment of a small research unit for the purposes of Recommendation 316 but implemented programs that addressed the core objective of Recommendation 316 in improving economic self-sufficiency.*

In 1993, the **Queensland** Government established an Aboriginal Deaths in Custody Interdepartmental Committee to link with the ATSIC State Advisory Committee to determine Aboriginal and Torres Strait Islander views on Recommendation 316. The Department for Industry and Skills' *Building our Regions* program has supported critical community and economic infrastructure development in Aboriginal and Torres Strait Islander communities for the purpose of encouraging economic independence and self-sufficiency. Remote Aboriginal and Torres Strait Islander councils have received capability development assistance in identifying and prioritising projects for funding and in developing quality applications. Funded projects have included fibre optic infrastructure to enhance the connectivity of these remote communities.

The Building our Regions program has supported critical community and economic infrastructure development in Aboriginal and Torres Strait communities, which supports economic independence and self-sufficiency. Remote and Indigenous councils have received capability development assistance in identifying and prioritising projects for funding and in developing quality applications. Funded projects have included fibre optic infrastructure to enhance the connectivity of these remote communities.

 *The Queensland Government has implemented Recommendation 316. While the proposed unit was not established, Queensland implemented the Building our Regions program, which has achieved similar aims to those identified in this recommendation.*

Western Australia worked collaboratively with ATSIC and resource agencies in the development of regional and community planning in the north of the state. The Western Australia Government noted in their 1994 implementation report that the Commonwealth Government did not support the establishment of a unit for the purposes of Recommendation 316.

The Western Australian Government noted that its Regional Services Reform Unit recently undertook the most extensive on-the-ground consultation process ever undertaken with remote Aboriginal and Torres Strait Islander communities in Western Australia. The expansion of economic opportunities formed one of the three focus areas of the consultations. For communities that are not part of mainstream arrangements for essential and municipal services, building greater capacity for self-sufficiency was a key element of discussion.

○ *Western Australia has not implemented Recommendation 316.*

The **Northern Territory** Government supported the *National Commitment to Improved Outcomes in the Delivery of Programs and Services to Aboriginal and Torres Strait Islander people* which promoted greater cooperation and coordination between governments. The Northern Territory Government also supported cooperation between Commonwealth agencies through the Northern Territory Aboriginal Affairs Forum.

● *The Northern Territory Government has implemented Recommendation 316 by supporting and engaging in initiatives and programs that have achieved similar aims to those of the unit discussed in this recommendation.*

Recommendation 317

That further extension of the CDEP Scheme (or some similar program) to rural towns with large Aboriginal populations and limited mainstream employment opportunities for Aboriginal people be considered.

Background information

Providing further support to Aboriginal and Torres Strait Islander people in rural towns is necessary to address economic disadvantage that may be compounded by limited employment opportunities in these areas.

Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. The CDEP Scheme, and rural and regional policy more widely, falls under the jurisdiction of the Commonwealth Government.

Key actions taken and status of implementation

In 2013, the **Commonwealth** Government implemented the RJCP to supplement and eventually replace the CDEP Scheme in 2015. The RJCP provides employment programs and support services to Aboriginal and Torres Strait Islander people in rural communities.

● *Recommendation 317 has been implemented as the Commonwealth Government has extended community employment programs to rural areas through the development of the RJCP.*

Recommendation 318

That in view of the considerable demands placed on staff of ATSIC by the expansion of the CDEP Scheme, consideration be given to developing a mechanism for devolving to appropriate consenting Aboriginal organisations, in particular resource agencies, responsibility for some aspects of the administrative support of CDEP, including in particular:

- a. *Advising communities on the types of work which the community may wish to consider undertaking;*
- b. *Advising communities on the potential for incorporating other types of funding for employment and enterprise development into a CDEP project;*
- c. *Dissemination of information (collected by ATSIC) on successful schemes;*
- d. *Financial and administrative support for management of a scheme; and*
- e. *Assisting in the provision or co-ordination of training for participants and managers of CDEP.*

Those Aboriginal organisations should be adequately resourced to carry out the tasks which are devolved to them.

Background information

It is important that Aboriginal and Torres Strait Islander communities and organisations retain choice in engaging resource agencies and be able to contribute to administration of the CDEP Scheme where efficiencies can be achieved.


Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. The CDEP Scheme, and rural and regional policy more widely, falls under the jurisdiction of the Commonwealth Government.

Key actions taken and status of implementation

A decision was made by the **Commonwealth** in 1995 to devolve responsibilities and delegations in the CDEP to Regional Councils in relation to existing projects, ensuring that Aboriginal and Torres Strait Islander people could be further involved in implementation and planning of the CDEP Scheme.

PM&C noted that although the CDEP no longer exists, as of 2015 the CDP aims to deliver better opportunities for remote job-seekers and to foster stronger economic and social outcomes in remote Australia. It supports job seekers to build skills, address barriers and contribute to their community through participating in a range of flexible activities. Of the 40 providers delivering services, 26 of these are Aboriginal and Torres Strait Islander organisations.

 *The Commonwealth Government has implemented Recommendation 318 by appropriately devolving the CDEP to Regional Councils.*

Additional commentary

The **Commonwealth** PM&C noted that CDP participants receive personalised assistance from their provider to help build their skills, get a job and to participate to their maximum capacity. CDP providers work closely with communities to develop activities that benefit people in their regions and meet the broader aspirations of the community.

Recommendation 319

That in the coming review of the CDEP Scheme consideration be given to

Funding

- a. *Improved mechanisms for the combining of funds from different programs (such as the Aboriginal Enterprise Incentive Scheme and the Enterprise Program) to supplement the capital and recurrent funding of CDEP in order to facilitate greater Aboriginal community control over infrastructural components of projects;*
- b. *The introduction of a mechanism which ensures that CDEP projects are not used as a substitute for the provision of an adequate level of municipal and other social services, unless funds equivalent to those which would have been provided in respect of municipal and social services are provided to supplement the operation of CDEP;*
- c. *The recognition by the Department of Finance of CDEP as a discrete program with considerable offset savings to the government (in respect of administrative savings from non-payment of Unemployment Benefits), and the automatic provision of the 20% on-cost component--not from the ATSIC existing global allocation;*

Equity Considerations

- d. *The improved policing of payments under CDEP to ensure that all participants in CDEP receive an income equivalent to Unemployment Benefit regardless of work actually performed, subject to the participants' performance of their obligations under the scheme;*
- e. *Addressing issues of access to income, and meaningful work activities for women participants in CDEP;*

Administrative and Financial Management Support

- f. *The enhanced involvement of Aboriginal controlled organisations and resource agencies in the provision of administrative expertise and advice in the operation of particular schemes;*
- g. *Improvements in the financial control systems for CDEP and provision for the training of CDEP managers in the maintenance of financial controls;*
- h. *Initiatives for the development of ATSIC staff training in negotiation and consultation skills, and in cultural sensitivity, in order to improve the effectiveness and minimise the burden of consultation and support provided by ATSIC to communities on CDEP;*

Training and Employment Potential

- i. *An improved level of training and planning support for projects, and for the development of medium and long term plans for CDEP projects which reflect the aspirations of participants for access to mainstream employment opportunities, enterprise development or culturally appropriate work;*
- j. *Increased co-ordination between ATSIC and DEET in respect of the training requirements of both new and ongoing CDEP projects, and in relation to the enterprise development potential of CDEP projects; and*
- k. *The dissemination of information to Aboriginal communities who are on CDEP or who are planning to apply to receive CDEP funds about successful work programs undertaken by other communities under CDEP.*

Background information

In order for the review of the CDEP Scheme to be effective, considerations must be made of the wider social and structural context in which Aboriginal and Torres Strait Islander clients live, including issues of equity and economic situation.


Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. The CDEP Scheme, and rural and regional policy more widely, falls under the jurisdiction of the Commonwealth Government.

Key actions taken and status of implementation

Means of addressing issues raised in points (a) (b) (e) (g) and (i) were identified by the **Commonwealth** Government as part of the Three Year Operational Plans developed for the CDEP Scheme. In 1995, guidelines for the conduct of spot checks and project reviews were expanded in the CDEP Procedures Manual to assist in addressing point (d).

The CDEP was replaced with the RJCP, which has since been superseded by the CDP. PM&C, which has policy oversight of the program, advised that the CDP addressed many of the concerns that the review had with CDEP including the creation of meaningful activities that support the community; introducing no show no pay to ensure participants are paid subject to meeting their mutual obligations; enhancing the involvement of Aboriginal and Torres Strait Islander controlled organisations in the provision of expertise and advice; and improving financial control systems and training for managers.

 *The Commonwealth Government has implemented Recommendation 319 through ongoing processes and changes to the CDEP Scheme, and the introduction of the CDP.*

Recommendation 320

That further research be undertaken in relation to

- a. *The particular economic circumstances of Aboriginal people in discrete geographical areas, in order to:*

- i. determine the contribution which Aboriginal people make to the local or regional economy;*
 - ii. identify the sources of and amounts of funding which might be available to them; and*
 - iii. facilitate realistic economic planning by Aboriginal people which is consistent both with the prevailing economic circumstances and with their aspirations and lifestyle; and*
- b. The impact of the overall taxation system on Aboriginal people and on Aboriginal organisations, and the extent to which Aboriginal people benefit from the Australian taxation system.*
- c. Where research is commissioned or funded, a condition of the research being undertaken should be the active involvement of Aboriginal people in the area which is the subject of the research, the communication of research findings across a wide cross-section of the local Aboriginal community in an easily understood form, and the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.*

Background information

Due to their differing socioeconomic circumstances, the impact of economic policy, including Australia's taxation policies, may have unanticipated impacts on Aboriginal and Torres Strait Islander people and their contributions to the local or regional economy.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The imperative to ensure that government policy is based on sound evidence and research is relevant to all levels of government.

Key actions taken and status of implementation

The **Commonwealth** Government has provided funding to the Australian National University's Centre for Aboriginal Economic Policy Research, which focuses on Aboriginal and Torres Strait Islander economic policy from a national perspective. In the 2017-18 Budget, the Government announced additional funding to strengthen Aboriginal and Torres Strait Islander Research and Evaluation.

Indigenous Business Australia, an Australian Government body, prepares an annual report that reviews the circumstances of Aboriginal and Torres Strait Islander people and their contributions to the economy.


PM&C noted that in 2016, the Government allocated \$1.9 million for PM&C to deliver an Indigenous Business Sector Strategy to provide Aboriginal and Torres Strait Islander people with a clear roadmap to take advantage of the transitioning economy and the increasing opportunities available to Aboriginal and Torres Strait Islander businesses. PM&C further noted that they had conducted public consultations with around 120 stakeholders as part of developing the Indigenous Business Sector Strategy. A further round of consultations will be undertaken in 2017, with implementation also in 2017.

 *Recommendation 320 has been partially implemented, as although the Commonwealth has funded and continues to fund research into Aboriginal and Torres Strait Islander economic policy, there is no evidence of research into the impact of taxation outlined in part (b) of the recommendation. Further, the final part of the recommendation – that Aboriginal and Torres Strait Islander people be involved in research, that the results of the research be widely disseminated in an easy to understand form, and that proposals for further action be formulated – does not appear to have been consistently implemented.*

The **New South Wales** Department of Aboriginal Affairs provided support to community organisations which sought to develop plans consistent with Recommendation 320. The Department of Aboriginal Affairs also completed a series of community development plans and associated research.


Since the RCIADIC, there has been a significant amount of research in this area. Economic prosperity has been identified as a research priority under the NSW Aboriginal Affairs research agenda –

Transforming the relationship between Aboriginal peoples and the NSW Government 2018-2023. This will be progressed in partnership with the Centre for Aboriginal Economic Policy Research at the Australian National University. The first study will investigate how Aboriginal economic prosperity is defined and who defines its meaning.

 *The New South Wales Government has partially implemented Recommendation 320 by undertaking relevant research to address part (a), but part (b), and requirement to disseminate the research, findings, have not been addressed.*


The **Victorian** Government, in collaboration with ATSIC and relevant Commonwealth Government agencies in 1993, contributed to the establishment of a database which clearly identified the needs and planning requirements of Aboriginal and Torres Strait Islander people in regional locations. In the *Victorian Aboriginal Affairs Framework (2013)*, the Victorian Government reiterated a commitment to delivering measurable results towards Aboriginal and Torres Strait Islander economic participation, based on accurate and reliable data.

Since this time, the Victorian Aboriginal Economic Board has been established as a part of the implementation of the Victorian Aboriginal Economic Strategy 2013-2020. The Victorian Aboriginal Economic Board is comprised of leaders in the corporate sector, Aboriginal and Torres Strait Islander communities, tertiary education and government. The Board meets regularly on its three priority areas: (1) to encourage more businesses to procure Aboriginal and Torres Strait Islander goods and services (2) to encourage Aboriginal and Torres Strait Islander entrepreneurs and enterprises (3) to increase place-based opportunities. The Board also plays a role in procuring research on Aboriginal and Torres Strait Islander economic development, education, training, entrepreneurship, business development and procurement.


 *The Victorian Government has partially implemented Recommendation 320, as there is no evidence that key parts of (a) and (b) have been addressed.*

The former **Queensland** Office of Aboriginal and Torres Strait Islander Affairs conducted research into the economic circumstances of Aboriginal and Torres Strait Islander people in 1996. This formed part of the *Queensland Aboriginal and Torres Strait Islander Economic Development Strategy*. The research included the compilation of statistics on Aboriginal and Torres Strait Islander employment status, occupation, industry, education and training levels, and the development of a profile on *Queensland Community Development Employment Projects*.

Currently, the Queensland Government supports and promotes all agencies utilising tools such as Indigenous Employment Opportunity Plans, Key Result Areas, and various other models for capital investment projects that maximise local employment, training and business supply opportunities for Aboriginal and Torres Strait Islander people. DATSIP has also undertaken research to develop a whole-of-government integrated capital investment program to develop local employment, skills development and business opportunities.

 *The Queensland Government has partially implemented Recommendation 320 by undertaking relevant research under the Queensland Aboriginal and Torres Strait Islander Economic Development Strategy to address part (a), but part (b), and requirement to disseminate the research, findings, have not been addressed.*


The **South Australian** Government developed an Aboriginal Economic Participation Strategy in 2015 focused on leveraging opportunities for improved Aboriginal and Torres Strait Islander employment and economic participation. The SA Government undertook a survey of Aboriginal and Torres Strait Islander business operating or intending to operate in South Australia. The majority of respondents supported the development of a locally based Aboriginal and Torres Strait Islander business register, resulting in the development of Aboriginal Business Connect – a free online register of South Australian Aboriginal and Torres Strait Islander owned businesses.

 *The South Australian Government has partially implemented Recommendation 320 by undertaking a survey of Aboriginal and Torres Strait Islander businesses but has not addressed key elements of this recommendation.*


The **Western Australia** Government supported the conduct of research on the economic circumstances and need for programs and services for Aboriginal and Torres Strait Islander people in discrete geographical areas. Support was provided for staff and committees in order to promote the implementation of Recommendation 320.

In addition to regular Western Australian lead research into Aboriginal and Torres Strait Islander economic interests and strategy development, the Western Australian Government uses economic research covering the topics outlined in the recommendation, from sources such as the Productivity Commission and Centre for Aboriginal Economic Policy Research, to inform policy development.


In 2016 and 2017, the Regional Services Reform Unit within the Department of Communities undertook a consultation process including exploring economic and social matters with remote Aboriginal and Torres Strait Islander community residents – a process that involved communities that are home to 90 per cent of Western Australia’s remote Aboriginal and Torres Strait Islander residents. The Unit partnered with Aboriginal and Torres Strait Islander organisations in conducting the process and in the dissemination of consultation findings in a variety of formats, including formats specifically designed for community consumption.


 *The Western Australian Government has partially implemented Recommendation 320 by undertaking additional economic research and a consultation process relating to economic and social matters with remote Aboriginal community residents. However, key parts of this recommendation have not specifically been addressed.*

No information could be found on **Tasmania’s** implementation of Recommendation 320.

 *Tasmania has not implemented Recommendation 320.*

As part of the *Stronger Futures* measures, the **Northern Territory** conducted consultation and prepared a discussion paper on the views of Aboriginal and Torres Strait Islander people regarding effective and ineffective policies, and further actions required to reduce disadvantage.

 *The Northern Territory has not implemented Recommendation 320.*

 No relevant evidence was provided on actions taken by the **Australian Capital Territory** Government towards the implementation of Recommendation 320. *The Australian Capital Territory has not implemented Recommendation 320.*

Additional commentary

The **Commonwealth** PM&C noted that they are currently undertaking work to measure the contribution of Aboriginal and Torres Strait Islander businesses to the Australian economy. The information will form part of a body of evidence that shows the contribution that Aboriginal and Torres Strait Islander people make to support the economy.

While no evidence was observed of actions that have responded to part (b) of the recommendation, the Australian Taxation Office (ATO) noted that they have conducted research with Aboriginal and Torres Strait Islander groups to ensure that the ATO offers contemporary services to this community. This includes:

- understanding how or when the different client experiences, market segments and revenue products administered by the ATO are used or accessed by Aboriginal and Torres Strait Islander groups;
- providing tailored advice and services to take a ‘whole of client’ view; and
- providing the ATO with guidance on how it can ensure that Aboriginal and Torres Strait Islander people have the same opportunities to make informed decisions in managing their tax and superannuation affairs.

11.2 Improving the living environment: housing and infrastructure (321-327)

Recommendation 321

That any future accommodation needs survey include not only an emphasis on the physical housing needs but also incorporate assessments that relate to management, administrative and housing support needs; in respect of remote communities such surveys should also establish the need for hostel accommodation in service towns where people may be required to spend time utilising services not available in remote areas.

Background information

Alternative housing arrangements, as opposed to traditional conceptions of physical housing alone, may be more suited to and compatible with the needs of Aboriginal and Torres Strait Islander people in remote areas.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Housing policy and planning falls under the jurisdictions of both the Commonwealth, and State and Territory governments.


Key actions taken and status of implementation

A variety of surveys have been conducted into the housing needs of Aboriginal and Torres Strait Islander communities on a national basis by **Commonwealth** Government entities, which focus on such issues as homelessness, overcrowding and affordability. These surveys include the ABS' Population Census, Community Housing and Infrastructure Needs Survey, and NATSISS, and surveys undertaken by the AIHW.


All States and Territories cooperated with ATSIC in conducting a housing needs survey in 1993, which covered matters relating to management, administration, and the housing support needs of Aboriginal and Torres Strait Islander people. Additionally, all States and Territories signed the *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders*. The Commitment called for greater coordination in the delivery of programs and services by all levels of government to Aboriginal and Torres Strait Islander people.

 *Recommendation 321 has been implemented through surveys conducted by Commonwealth Government entities.*

In 1995, the **New South Wales** Government negotiated and developed a bilateral agreement with the Commonwealth on the provision of housing and infrastructure services. The Department of Family and Community Services is currently examining the projected supply of social housing against projected demand for social housing by Aboriginal people, based on demand modelling utilising ABS income data to inform policy settings.

 *The New South Wales Government has partially implemented Recommendation 321 by negotiating and developing a bilateral agreement with the Commonwealth on housing and infrastructure needs but has not addressed support for remote communities or proposed housing research in their response.*

The **Victorian** Government supported the activities of the Aboriginal Housing Board, through the provision of funding and staff, in assisting with the implementation of Recommendation 321. Aboriginal Housing Victoria has responsibility for the provision of appropriate, affordable housing for Aboriginal and Torres Strait Islander people.


 *The Victorian Government has partially implemented Recommendation 321 by cooperating with ATSIC in conducting research, but has not addressed key elements of this recommendation.*

The **Queensland** Government cooperated with ATSIC in conducting a housing needs survey in 1993, which covered matters relating to management, administration and the housing support needs of


Aboriginal and Torres Strait Islander people. Steps were also taken towards improved data collection and collation.

Currently, the Department of Housing and Public Works (DHPW) records local housing need through its State-wide Housing Register. Consultation with communities about housing need has also occurred in the development of the National Partnership on Remote Indigenous Housing (2008-09, 2015-16), the National Partnership on Remote Housing (2016-17, 2017-18) and the Queensland Housing Strategy 2017-2027.


The DHPW has also responded to community aspirations for tenancy management, with approximately a third of all social housing dwellings in Aboriginal and Torres Strait Islander Local Government Areas (LGAs) managed by councils. As such, the DHPW has supported Aboriginal and Torres Strait Islander Councils to increase their responsibilities in property and tenancy management, including the option of becoming registered under the National Regulatory System for Community Housing. DHPW has also delivered a range of accommodation in regional centres to better enable people in remote communities to access education, training and employment.

 *The Queensland Government has fully addressed Recommendation 321 by having the DHPW regularly consult Aboriginal and Torres Strait Islander communities on their housing and accommodation needs through the development of several agreements and strategies, and by incorporating the needs of remote communities into accommodation delivery.*


In **South Australia**, accommodation needs surveys are conducted as part of a variety of programs. The remote housing tenancy audit establishes housing and new bedrooms required to address overcrowding while Housing SA has provided information and data to the Australian Government's Remote Housing Review Panel regarding the number of applicants applying for housing in regional centres. Recently, a review was conducted of the Ceduna Transitional Accommodation Centre, which assessed Centre policy and operational settings and the level of demand from people to relocate from their remote community to the Ceduna township.

 *The South Australian Government has partially implemented Recommendation 321 by collecting relevant information on remote housing for the Remote Housing Review Panel to incorporate into accommodation decision making but has not specifically addressed the needs of Aboriginal and Torres Strait Islander people in their response.*

In **Western Australia**, the Western Australia Government contributed to the collation and integration of data relating to Aboriginal and Torres Strait Islander housing needs. However, no details have been provided relating to the data collected.

 *The Western Australian Government has partially implemented Recommendation 321 by contributing to the collation and integration of data relating to Aboriginal and Torres Strait Islander housing needs. However, Western Australia has not specifically addressed parts of the recommendation relating to the data to be collected.*


In **Tasmania**, the Australian Government provided funding for Employment Related Accommodation as part of the former National Partnership Agreement on Remote Indigenous Housing (NPARIH). This funding was initially intended to provide metro/regional centre accommodation options for Aboriginal and Torres Strait Islander people leaving remote locations to access training and employment opportunities. However, extensive consultation with Flinders Island Aboriginal Association Inc. and Cape Barren Island Aboriginal Association Inc. has indicated targeted on-island housing is likely to better service community and cultural direct need. Planning for implementation is currently underway. Options for hostel style accommodation located in Tasmanian metro centres are also proposed under the agreed funding.

 *Tasmania has fully addressed Recommendation 321 by consulting on the concerns of Aboriginal and Torres Strait Islander communities with regards to housing and infrastructure needs, and taking them into consideration in planning and implementation of accommodation projects.*

As part of the **Northern Territory's** implementation of Recommendation 321, the Aboriginal Community Housing and Infrastructure Database was launched in 1993 with data gathered on 640


communities. The database was designed for the purpose of continuous assessment of new housing need and assessment of the condition and adequacy of existing housing stock.

Data continues to be gathered to help inform new housing requirements, determine the condition of existing housing, and housing related infrastructure. Under the NT Government's \$1.1 billion Remote Housing Program, communities are consulted about their specific accommodation needs.

 *The Northern Territory Government has fully addressed Recommendation 321 by undertaking regular data-gathering and consultation as part of its Remote Housing Program.*

The **Australian Capital Territory** Government provided funding for an Aboriginal Emergency Accommodation Project which provided crisis accommodation for Aboriginal and Torres Strait Islander people. The Housing Advisory Committee also provided advice on the strategic direction and priorities for the Housing Trust. This included Aboriginal and Torres Strait Islander representation.

Currently Housing ACT conduct a biennial survey of their tenants. The survey includes questions about satisfaction with physical housing needs, overall service provision (i.e. tenancy management) as well as satisfaction with dwelling proximity to transport and services etc. The ACT Government has also partnered with the ACT Aboriginal and Torres Strait Islander Elected Body and has developed public housing specifically for older members of the Aboriginal and Torres Strait Islander community in Canberra.

 *The Australian Capital Territory Government has implemented Recommendation 321 through their biennial survey on housing. Parts of Recommendation 321 relating to remote communities are not relevant to the Australian Capital Territory.*

Additional commentary

As part of the **Commonwealth** Government's response, the ABS noted that the Community Housing Needs Survey is conducted to collect reliable national statistics on Aboriginal and Torres Strait Islander housing and infrastructure. The data inform a number of policy and decision making processes relating to the needs based allocation of funding to Aboriginal and Torres Strait communities and housing organisations.

Recommendation 322

That quantification of required housing stock take into account community aspirations as to the number of people who are likely to share a house, its location and potential impact on present and future infrastructure requirements.

Background information


Understanding the housing needs and community aspirations of Aboriginal and Torres Strait Islander people is key to the effective development of required housing stock.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Housing policy and planning falls under the jurisdictions of both the Commonwealth, and State and Territory governments.

Key actions taken and status of implementation

As part of the **Commonwealth** Government's Community Housing and Infrastructure Program (CHIP), ATSIC promoted effective consultation and appropriate design of housing. Findings from surveys conducted on Aboriginal and Torres Strait Islander housing needs (see Recommendation 321) have informed government assessments regarding the adequacy, effectiveness and efficiency of relevant housing policy.


 *Recommendation 322 has been implemented, as the Commonwealth Government has shown consideration of community aspirations in its assessment of required housing stock for Aboriginal and Torres Strait Islander people. While it is unclear as to whether this has translated into appropriate housing provision, implementation of this is under the responsibility of the States and Territories.*

All States and Territories contributed to the National Needs Assessment conducted by ATSIC in 1992, which studied the housing needs of Aboriginal and Torres Strait Islander people.


In 1993, the **New South Wales** Government conducted community consultations and provided for Aboriginal people to provide input into the design of housing. As part of the *Aboriginal Rental Housing Program* (1993), Aboriginal community organisations were asked to complete an application form detailing housing needs.

The-then Department of Housing (Now Department of Family and Community Services) also incorporated a range of designs to cater for the different needs of Aboriginal people. The NSW Government contributed to funding for the Aboriginal Housing Office, and launched a range of initiatives such as the *Build and Grow Aboriginal Community Housing Strategy* (2010) which sought to address Recommendation 322.


In NSW, an 'extra bedroom' policy is applied for tenants of Aboriginal Housing Office properties. This policy allows tenants to be allocated housing with one extra or spare bedroom, acknowledging the kinship obligations of demand sharing.

 *The New South Wales Government has implemented Recommendation 322 through their support of the Aboriginal Rental Housing Program, the work of the Aboriginal Housing Office, and other associated initiatives, which seek to accommodate Aboriginal housing needs and cultural sensitivities.*

Key initiatives undertaken by the **Victorian** Government have included the *Victorian Homelessness Action Plan* and the *Victorian Aboriginal Affairs Framework 2013-18* which set out targets towards housing and services provision for Aboriginal and Torres Strait Islander people. Aboriginal Housing Victoria conducts research into the housing requirements of Aboriginal and Torres Strait Islander people in Victoria, and advises the Department of Human Services on housing needs. The Victorian Government also noted in AJA 3 the establishment of an Indigenous Homelessness Working Group which had responsibility for identifying evidence-based housing and support models that assist Aboriginal and Torres Strait Islander people.


 *The Victorian Government has implemented Recommendation 322 through their support of the National Needs Assessment and the work of Aboriginal Housing Victoria.*

The **Queensland** Government conducted community consultations to develop appropriate designs for Aboriginal and Torres Strait Islander housing. The *Housing Act 2003* (Qld) also provides consideration to local and regional differences, cultural diversity, Aboriginal and Torres Strait Islander custom, and the needs, views and interests of Aboriginal and Torres Strait Islander community members and representatives. Currently, planning schemes have been adopted for 15 Aboriginal and Torres Strait Islander LGAs, which provide a framework for the growth of communities including by identifying areas suitable for development.

 *The Queensland Government has implemented Recommendation 322 through the Housing Act, which takes into consideration such concerns as local and regional differences, cultural diversity, and Aboriginal and Torres Strait Islander custom.*


The **South Australian** Government provided in their 1993 implementation report that the South Australia Housing Trust, the Aboriginal Housing Unit, and the Housing Policy Branch of State Aboriginal Affairs had quantified required housing stock in line with Recommendation 322. This is further set out in the *Housing Act 1991* (SA), which states that the design of housing must incorporate the need for access to employment and the need for accessibility and suitability for habitation by various people groups.

Housing SA also regularly undertakes a tenancy audit, which includes household mapping (e.g. occupancy, relationships) and future new housing needs, in alignment with infrastructure capacity and works required. Housing SA has adopted the Canadian National Occupancy Standard to assess overcrowding.

 *The South Australian Government has implemented Recommendation 323 through its support of the South Australia Housing Trust, the Aboriginal Housing Unit, and the Housing Policy Branch of State Aboriginal Affairs.*


The **Western Australia** Government noted that the housing application system, and application review process, allowed for consideration of the housing stock and design needs of Aboriginal and Torres Strait Islander people.

The Western Australian Government also noted that the Department of Communities actively seeks opportunities to support the capacity and capability of the Aboriginal and Torres Strait Islander workforce through Aboriginal and Torres Strait Islander corporations that have the governance structures in place to support the delivery of housing maintenance services to their community.


 *The Western Australia Government has implemented Recommendation 322 through their consideration of the housing stock and design needs of Aboriginal and Torres Strait Islander people.*

In **Tasmania's** 1993 implementation report, it was noted that the Aboriginal and Torres Strait Islander community representatives had control over the allocation of Aboriginal Housing Program stock, thus ensuring that the community's aspirations as to the number of tenants sharing a house were addressed. Regional Allocation Committees were established to provide input into meeting locational and access needs.


The former NPARIH supplied new build housing to both Flinders Island and Cape Barren Island Aboriginal and Torres Strait Islander communities to cater for shortfalls in forecast housing needs. Twelve houses were delivered of a variety of configurations catering for community diversity and social demographics. Utilising the funds from the early conclusion of the NPARIH, the Stronger Remote Aboriginal Services Program proposes six new units on Flinders Island and modifications/upgrades to all existing housing stock to cater for the community's changing needs, such as ageing in place requirements and accessibility.

 *The Tasmanian Government has implemented Recommendation 322 by ensuring that Aboriginal and Torres Strait Islander community representatives have control over the allocation of Aboriginal Housing Program stock.*

The **Northern Territory** has not identified any actions of relevance to respond to Recommendation 322.

 *The Northern Territory Government has partially implemented Recommendation 322 as they have contributed to ATSIC's work on the National Needs Assessment but have not addressed key elements of the recommendation in their response.*

The **Australian Capital Territory** Government has commenced long-term asset planning for its substantial social housing portfolio. This planning uses long-term trends in demography and tenant need to inform the growth and renewal of the portfolio over the next 5 years and has been undertaken in consultation with the ACT Environment, Planning and Sustainable Development to ensure alignment with broader city and urban infrastructure planning.

 *The Australian Capital Territory Government not implemented Recommendation 322.*

Additional commentary

As part of the **Commonwealth** Government's response, the ABS noted that the Census of Population and Housing is collected every five years and supports release of data to local level, providing housing and population counts. Population estimates and projections of Aboriginal and Torres Strait Islander people are released as the estimated resident population after each Census.

Recommendation 323

That:

- a. Increased funding be made available to Aboriginal community groups for the implementation of homemaker schemes. Groups that may be appropriate to receive such funding should include women's groups, housing organisations and community councils; and
- b. Adult education providers, and particularly Aboriginal community controlled adult education providers, be encouraged and supported to provide:
 - a. courses in homemaking and domestic budgeting; and
 - b. courses for training Aboriginal persons as community advisers and teachers in homemaking.

Background information

Homemaker services have been seen to deliver significant benefits to Aboriginal and Torres Strait Islander housing stock, including upkeep and maintenance of housing and infrastructure.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Adult education and training schemes, and funding for such initiatives, fall under the responsibility of both the Commonwealth, and State and Territory governments.


Key actions taken and status of implementation

The **Commonwealth** Government's ATSIC promoted the provision of homemaker services as part of its funding under the CHIP. The Household Organisational Management Expenses Program provided assistance to families with tenancy issues or problems maintaining their homes due to personal or financial difficulty. While not the exclusive recipients of the program, Aboriginal and Torres Strait Islander people were one of the specific target groups.

PM&C noted the CDP, which commenced in 2015, works closely with communities to develop activities that benefit people in their regions and meet the broader aspirations of the community. Specifically, activities can include budgeting, language, literacy and numeracy.


DSS invests approximately \$100 million per year to support activity funded under the Financial Wellbeing and Capability activity. This provides a range of services such as financial counselling, and financial capability workers who provide budgeting support and financial literacy education.

Under the NPARIH, prospective tenants of new houses are offered Living Skills support training as part of tenancy management. PMC noted that, as at June 2016, the proportion of Aboriginal and Torres Strait Islander households in public housing in the Northern Territory was 43% (excluding remote housing). Of all individuals and families in the Northern Territory receiving Commonwealth Rent Assistance, 24% were Aboriginal and Torres Strait Islander individuals and families.


 *The Commonwealth Government has provided increased funding to Aboriginal and Torres Strait Islander people via national programs to assist with homemaking and development of financial skills. While there is still scope for increased funding for the implementation of homemaker schemes directed at Aboriginal and Torres Strait Islander community groups, given that 43% of Aboriginal and Torres Strait Islander householders in the Northern Territory are in public housing, the training provided through this program is considered to be widely available. As such, Recommendation 323 is complete.*

The 1993 **New South Wales** implementation report provided that Aboriginal communities could negotiate with TAFE NSW to provide courses to meet the areas of concern in Recommendation 323. TAFE NSW also introduced courses in lifestyle and nutrition, alongside other training and employment skills. The *Education Act 1990* (NSW) also provided for education to have regard for the needs, cultures, and issues of Aboriginal people.

Currently, the Department of Family and Community Services' *Aboriginal Child, Youth and Family Strategy* provides funding to communities to deliver supported playgroups, parenting programs, and family workers. In addition, nine Aboriginal child and Family Centres bring together a range of early childhood, health and family support services to improve the overall health and wellbeing of children, and support for their families.


 *The New South Wales Government has partially addressed Recommendation 32 by supporting the delivery of family support services through the Aboriginal Child, Youth and Family Strategy, but does not appear to have funded courses on homemaking skills.*

The **Victorian** Government allocated funding to Aboriginal and Torres Strait Islander agencies for Aboriginal Family Aides. These funds provided Aboriginal and Torres Strait Islander people the ability to furnish their homes without necessarily falling into rental arrears. The Victorian Government also provided representatives to work with Local Aboriginal Education Consultative Groups to support community initiatives such as men's groups, homework centres, cultural identity projects, and home management support.


 *The Victorian Government has partially addressed Recommendation 32, but does not appear to have funded courses on homemaking skills.*

In 1992, the **Queensland** Government helped to facilitate homemaker schemes in conjunction with ATSIC. Queensland's *Learning, Earning, Active Places 2011-14* sought to combat Aboriginal and Torres Strait Islander disadvantage through improving access to education. Under this initiative, education was provided on health, wellbeing, positive lifestyle choices, and home skill training.


As part of its role in supporting and delivering tenancy management in Queensland's Aboriginal and Torres Strait Islander LGAs, the Queensland Government has also implemented programs to raise awareness about tenant rights and responsibilities, including home safety and maintenance. In 2015-16, the Queensland Government delivered more than 14,000 intensive support services in Aboriginal and Torres Strait Islander LGAs where the State is the tenancy manager. These services aim to identify and assist with issues which may impact on a tenant's ability to sustain housing. DATSIP is also delivering the Kickstart and Housing upgrade initiative in Mossman Gorge, which provides training and employment opportunities and supports Aboriginal and Torres Strait Islander home ownership.

 *The Queensland Government has partially implemented Recommendation 322 by developing programs aimed at improving Aboriginal and Torres Strait Islander capabilities in home safety and maintenance, but does not appear to have addressed funding of homemaking education in its response.*

As part of **South Australia's** response to Recommendation 323, the Department of Employment, Technical and Further Education established Women's Learning Centres to provide training in arts and craft activities, home-making services, and women's studies. The South Australian Government also implemented a three-year Aboriginal and Torres Strait Islander homemaker program for rural and remote communities.

 *South Australia has mostly implemented Recommendation 322 by funding and providing courses on homemaking skills through Women's Learning Centres but has not addressed elements of part (b) of the recommendation.*


The **Western Australia** Government increased the scope of training courses offered at TAFE to include the areas identified in Recommendation 323. More recently, the *Western Australia Affordable Housing Strategy 2010-20* was introduced to improve community-owned housing stock and housing management practices. The Western Australia Government has also funded the *Support and Tenant Education Program* which aids tenants experiencing difficult meeting rental obligations.

 *Western Australia has partially implemented Recommendation 322 by funding the Support and Tenant Education Program, and offering TAFE to include the areas identified in the recommendation. However, no information was provided as to whether increased funding has been*


made available to Aboriginal and Torres Strait Islander community groups for the implementation of homemaker schemes.

The **Tasmanian** Government provides funding for the Tasmanian Aboriginal Corporation to provide family support services, which are targeted towards at-risk Aboriginal and Torres Strait Islander families to promote the safety, stability and wellbeing of vulnerable children, young people and their families, and to build community capacity and resilience. This includes the provision of community education programs in areas of personal development and family life, parent education and skills development.


The Tasmanian Government also provides funding to the Karadi Aboriginal Corporation to manage the Karadi Neighbourhood House in Hobart. This Neighbourhood House offers the community a broad range of capacity development activities.

 *Tasmania has mostly implemented Recommendation 322 by funding the Tasmanian Aboriginal Corporation to provide community education programs that address the objectives of this recommendation but has not addressed elements of part (b) of the recommendation.*

The **Northern Territory** Government implemented a *Tenancy Sustainability Program* to provide Aboriginal and Torres Strait Islander people with case management and life skills training services. This covered topics including money and resource management, visitor and crowding management, household management and functionality, and maintaining a safe, healthy and hygienic home.

 *The Northern Territory has mostly implemented Recommendation 322 through the Tenancy Sustainability Program but has not addressed elements of part (a) of this recommendation.*

The **Australian Capital Territory** offered adult education courses focusing on homemaking skills through evening TAFE courses. The ACT Government also provided Liaison Officers to assist Housing ACT clients with applications, tenancy related matters, arrears and ongoing engagement.

 *The Australian Capital Territory has mostly implemented Recommendation 322 by funding courses on homemaking skills but has not addressed elements of part (b) of the recommendation.*

Recommendation 324

That the model which Tangentyere Council offers for integrating the various service delivery and administrative needs associated with Aboriginal housing be studied in other regions.

Background information

The RCIADIC commended the Tangentyere Council in Alice Springs for its innovative approach to offering integrated housing services, which included a philosophy of Aboriginal and Torres Strait Islander control, direct and indirect provision of Aboriginal and Torres Strait Islander schooling to town camp children, and the provision of convenient services such as the integration of a rent collection service into a bank agency.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The recommendation invites consideration of Tangentyere Council by other regions to inform housing policy, which falls under both Commonwealth, and State and Territory governments.


Key actions taken and status of implementation

Tangentyere Council has been the subject of a number of case studies by the **Commonwealth** Government, and visits from Aboriginal and Torres Strait Islander communities in examining leading practice in integrated service delivery, housing management and CDEP. However, PM&C noted that the exact model that Tangentyere Council offers was not implemented, although funding was provided to the Northern Territory Government for remote housing through the NPARIH, the Strategy and the Northern Territory Remote Aboriginal Investment.


The *Coordinator-General for Remote Indigenous Services Act 2009* established the role of Coordinator-General to monitor, assess and promote the development and delivery of services and facilities by governments in remote areas.

 *Recommendation 324 has been implemented through the case studies of the Tangentyere Council model, and as the creation of the role of Coordinator-General is considered to be in the spirit of Recommendation 324 in its approach to integrated service delivery.*

In 1995, the **New South Wales** Housing Management Steering Committee assessed the appropriateness of the model developed by Tangentyere Council. Currently, the Aboriginal community housing sector in New South Wales provides integrated service delivery to tenants in a mostly informal way with several housing providers operating as multi-service providers, similar to the Tangentyere Council model. Formalised wrap-around service delivery, which is planned and sustainable, is a priority for the Aboriginal Housing Office (AHO) and will be a key aspect of the AHO's forthcoming Aboriginal Housing Strategy.


 *The New South Wales Government has addressed Recommendation 324 by studying the Tangentyere Council model.*

In their 1993 implementation report, the **Victorian** Government referred Recommendation 324 to the Commonwealth. However, the Victorian Government has not taken any actions since this time.


 *The Victorian Government has not taken actions towards the implementation of Recommendation 324. Instead, this recommendation was referred to the Commonwealth.*

In their 1993 implementation report, the **Queensland** Government referred Recommendation 324 to the Commonwealth. The Queensland government has noted that it has sought to support Aboriginal and Torres Strait Islander Local Government Authorities to have more control over local housing arrangements, where they wish to do so.

The Queensland Government has also noted that staff attend regular inter-agency meetings in remote communities designed to facilitate coordinated / co-operative responses to local issues. Indigenous Councils and community organisations also attend. Additionally, tenants of housing in remote communities can choose to pay rent via direct debit of their bank account or through automatic deductions from wages or Centrelink

 *The Queensland Government has partially implemented Recommendation 324 by seeking to support Aboriginal and Torres Strait Islander Local Government Authorities to have more control over local housing arrangements, where they wish to do so (in a manner similar to the Tangentyere Council model). However, no evidence indicating that the Tangentyere Council model has been studied in Queensland was provided.*

Housing **South Australia** officers met with the Tangentyere Council and visited two of its facilities as part of the Transitional Accommodation Centre. The South Australian Government also engaged with APY Land communities, conducted baseline community profiles on major APY Lands, established a Regional Operations Centre in Adelaide, and conducted a survey which collected information on Aboriginal and Torres Strait Islander populations and infrastructure. This involved the study of service delivery and administrative needs associated with Aboriginal and Torres Strait Islander housing.

 *The South Australia Government has addressed Recommendation 324 by studying the Tangentyere Council model and meeting with the Tangentyere Council.*

The **Western Australia** Government provided in their 1994 implementation report that the Aboriginal Housing Board was cognisant of the Tangentyere Council model and its benefits in relation to town camper populations. The Western Australian Government also noted that the management of service and administrative functions relating to housing, essential and municipal services in remote Aboriginal and Torres Strait Islander communities are consolidated under a single directorate within the Department of Communities.

- *The Western Australian Government has addressed Recommendation 324 by studying the Tangentyere Council model.*

The **Tasmanian** Government investigated the Tangentyere Council Model as part of the delivery of Aboriginal and Torres Strait Islander housing and noted that there is limited relevance in the Tasmanian context with respect to consulting with Local Government on Aboriginal and Torres Strait Islander services. The Department of Health and Human Services regularly consulted with Flinders Island Council on initiatives under the NPARIH, and are consulting with the Council on the Stronger Remote Aboriginal Services program. The main focus of these consultations is to alert the Council of intended activity in terms of town planning and building.

- *The Tasmanian Government has addressed Recommendation 324 by studying the Tangentyere Council model although it considers that the model is of limited relevance to the Tasmanian context.*

In the **Northern Territory's** 1993-94 implementation report, the Northern Territory Government recognised Tangentyere Council's role in the provision of Housing and Education services and supported this initiative through the provision of funding.

- *The Northern Territory Government has addressed Recommendation 324 by studying and supporting the Tangentyere Council model with funding.*

The **Australian Capital Territory** Government examined the Tangentyere housing model and considered aspects of the model as part of the Aboriginal and Torres Strait Islander housing review.

- *The Australian Capital Territory Government has addressed Recommendation 324 by studying the Tangentyere Council model and considering aspects for inclusion in its Aboriginal and Torres Strait Islander housing review.*

Recommendation 325

That the question of providing assistance to Aboriginal housing organisations in relation to administration costs and the cost of repair of housing stock receive close attention. In this respect the CDEP scheme appears to offer an excellent opportunity for communities to solve some of the problems of the cost of housing repairs while at the same time providing work of a type that opens the way for training in important areas of skill development.

Background information

The CDEP Scheme can help to facilitate the labour component of the cost of housing repairs while providing valuable work experience that can lead to enhanced skills for CDEP participants.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Housing policy and planning falls under the joint responsibility of the Commonwealth, and State and Territory governments.

Key actions taken and status of implementation


In 1999, the **Commonwealth** Government's Fixing Houses for Better Health program was established as a sub-program of the CHIP and involved recruiting and training local Aboriginal and Torres Strait Islander people to repair and maintain houses in the community, alongside contracted tradespeople and employed staff.

In 2008, the Commonwealth Government partly funded the Place to Call Home program, which was dedicated to building 600 new homes for Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander individuals and families who were homeless.

PM&C noted that under the National Partnership Agreement for Remote Indigenous Housing the Commonwealth provided State governments with \$340 million in funding for reforms to housing owned by Indigenous Community Housing Organisations. This funding included a contribution to the

administrative costs each jurisdiction would incur in undertaking the reforms and a 'make good' component to enable repair/refurbishment of housing to a public housing standard.

PM&C noted that the CDP supports job seekers in remote Australia to build skills, address barriers and contribute to their communities through a range of flexible activities. The CDP also allows providers to engage with communities in their regions to ensure activities are aimed at generating outcomes to benefit the community. Specifically, these activities include those that benefit job seekers and improve community facilities (i.e. delivery of a housing maintenance activity).


 *The CDEP Scheme is no longer in existence, however, the Commonwealth Government has funded initiatives that provide assistance to Aboriginal and Torres Strait Islander people with housing stock repair and maintenance. Recommendation 325 is therefore complete.*

All States and Territories have, through the development and implementation of the *National Partnership Agreement for Remote Indigenous Housing* and the *Commonwealth Aboriginal and Torres Strait Islander Employment Strategy*, provided increased focus on providing business and employment opportunities. Outputs delivered include an increase in the percentage of works delivered under the agreement and the percentage of contracts awarded to Aboriginal and Torres Strait Islander businesses.


Under the *Remote Housing Strategy*, the States and the Northern Territory agreed to develop a range of housing related projects under the CDP for delivery by CDP providers. The Northern Territory is required to inform PM&C, who then work with local CDP providers, about any proposed works to be delivered, and associated work requirements, within relevant communities in advance (where possible) of works commencing. This allows CDP providers the opportunity to assist skill development and prepare housing related projects for local Aboriginal and Torres Strait Islander participants.

The **New South Wales** Government provided technical advice to Aboriginal organisations on property assessments for acquisition and maintenance purposes. CDEP funds were allocated to landscaping and minor repairs and maintenance as part of the *Aboriginal Rental Housing Program*. The NSW Aboriginal Housing Organisation encouraged Aboriginal employment in local and regional communities by regularly engaging Aboriginal builders, and through funding allocations.

Currently, the Asset Maintenance Service contract for social housing requires maintenance contractors to engage Aboriginal people to undertake maintenance work to a minimum of 1.5% of the contract value. Currently the contractors are achieving 3% contract value. Achievements to date include the establishment of training opportunities in TAFE Colleges, engagement of Aboriginal organisations as an avenue to identify training needs, and establishment of mentors and additional employment opportunities with the Asset Maintenance Service contractors and subcontractors. This is monitored to ensure that the training and employment opportunities continue for the life of the contract. The Aboriginal Housing Office is committed to Aboriginal employment and procurement of Aboriginal business in its construction projects as well as general business requirements.

 *The New South Wales Government has implemented Recommendation 325 by cooperating with the Commonwealth and providing funds towards Aboriginal building teams through the Asset Maintenance Service.*


The **Victorian** Government supported Aboriginal and Torres Strait Islander building teams, and the Aboriginal Housing Board encouraged the construction of new houses by Aboriginal and Torres Strait Islander building companies to facilitate the training and development of Aboriginal and Torres Strait Islander tradespeople.

 *The Victorian Government has implemented Recommendation 325 through cooperating with the Commonwealth and by providing funds towards Aboriginal and Torres Strait Islander building teams.*

In their 1993 implementation report, the **Queensland** Government noted that the Commonwealth Government through ATSIC had primary responsibility for Recommendation 325. The Queensland Government has since responded to Recommendation 325 by supporting Aboriginal and Torres Strait Islander training, education and employment in the delivery of social housing construction and other

infrastructure projects under the National Partnership Agreement on Remote Indigenous Housing and the National Partnership Agreement on Remote Housing.


In 2012, the DHPW created local housing officer roles to support the standardisation of tenancy management in communities funded by the National Partnership on Remote Housing. DHPW has also supported Aboriginal and Torres Strait Islander LGA Councils to undertake their own construction, facilitate skill and economic development, and increase community control in the delivery of housing.

 *The Queensland Government has implemented Recommendation 325 by providing assistance with housing construction and delivery to Aboriginal and Torres Strait Islander communities through the National Partnership Agreement on Remote Indigenous Housing and the National Partnership Agreement on Remote Housing.*

The **South Australian** Government responded to Recommendation 325 through the introduction of building programs for Aboriginal and Torres Strait Islander people, such as the *Aboriginal Rental Housing Program*, and the *Aboriginal Education Program* which offered rental assistance, and training and trade skill development, respectively.


As Aboriginal and Torres Strait Islander community managed housing has become ineligible for funding support under the National Partnership on Remote Housing, Housing SA has developed a project to support the transition to independent operation. This has included a capital response of approximately \$7 million to address the backlog of maintenance and to fund a support program to ensure all dwellings are returned to a safe, healthy and tenable standard. Housing SA multi-trade contractors, in partnership with local Aboriginal and Torres Strait Islander Business Enterprises, are primarily leading the work.

A second initiative involves a 12-month contract with a mainstream community housing provider or consultant to work with Aboriginal and Torres Strait Islander housing providers to focus on housing viability through operational capacity building and governance. Housing SA also provides emergency maintenance to homes in the APY Lands.


 *The South Australian Government has implemented Recommendation 325 through programs such as the Aboriginal Rental Housing Program, and the Aboriginal Education Program, and through partnerships administered by Housing SA.*

In 1994, the **Western Australia** Government allocated partnership funding towards capital works projects, repairs and maintenance to support Aboriginal and Torres Strait Islander building initiatives.

The Western Australian Government also noted that Aboriginal and Torres Strait Islander community housing and regional service providers contracted by the Western Australian Government build administration costs into their contractual pricing frameworks. A number of these providers (as well as non-Aboriginal and Torres Strait Islander providers) seek to use local Aboriginal and Torres Strait Islander workers and businesses when delivering services in remote Aboriginal and Torres Strait Islander communities.

 *The Western Australian Government has implemented Recommendation 325 through partnership funding towards capital works projects, repairs and maintenance to support Aboriginal and Torres Strait Islander building initiatives.*


In **Tasmania**, the current funding agreements for property and tenancy management, for Cape Barren Aboriginal Association Inc. and the Flinders Island Aboriginal Associations Inc., support the direct employment of Aboriginal and Torres Strait Islander people in key roles within the organisations.

 *The Tasmanian Government has partially addressed Recommendation 325 by requiring the employment of Aboriginal and Torres Strait Islander people in key roles in relevant organisations as part of current funding agreements for property and tenancy management.*


The **Northern Territory's** *Aboriginal Housing Program* allocated funding to communities for the renovation and upgrading of dwellings, and a small proportion to repairs and maintenance. In their

1994-95 implementation report, the Northern Territory Government supported the notion of using CDEP for housing management, maintenance and construction.

Currently, the Northern Territory Government's procurement policy and guidelines are consistent with Recommendation 325. The Northern Territory has largely adopted these initiatives in its delivery of housing and infrastructure related programs.

 *The Northern Territory Government has implemented Recommendation 325 through the Aboriginal Housing Program and its procurement policy and guidelines.*

The **Australian Capital Territory** cooperated with Commonwealth partnership arrangements in ensuring the provision of funds to Aboriginal and Torres Strait Islander building initiatives. For example, the program *A Place to Call Home* provides as a target that 50% of new homes be allocated to homeless Aboriginal and Torres Strait Islander people. This was achieved in the three years to 2011-12.

 *The Australian Capital Territory Government has partially addressed Recommendation 325 through the *A Place to Call Home* program but has not addressed key elements of the recommendation.*

Additional commentary

The **Commonwealth** PM&C noted that governments have provided funding for public and community Indigenous housing systems for almost 50 years through various programs, including the CHIP and the Australian Remote Indigenous Accommodation Program.

Recommendation 326

That in recognition of both the depressed economic conditions in many remote communities and the importance of Aboriginal participation in the control of new construction:

- a. *Where governments require tenders to be called for public works, they introduce procedures to enable Aboriginal communities to participate in the determination of the award of the construction contract;*
- b. *Such contracts should provide for the employment of labour from the community as far as is possible;*
- c. *The training of local persons in preparation for employment pursuant to such contracts should be a high priority for training providers; and*
- d. *Contracts should be let where possible to local tenderers, provided that their tender price is not unreasonably high.*

Pending these arrangements being put in place, and with consequent improvements in income for housing organisations, governments and authorities should take into account the need of housing organisations for assistance with their recurrent costs, in addition to funding for new dwellings.

Background information

Remote communities face disproportionately high levels of economic disadvantage that can affect the circumstances of Aboriginal and Torres Strait Islander people living in these areas. New construction of public works in these communities provide Aboriginal and Torres Strait Islander people with new opportunities for employment, economic growth and engagement.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Procurement policy for public works falls under the jurisdiction of both Commonwealth, and State and Territory governments.

Key actions taken and status of implementation

In 1993, the **Commonwealth** introduced a contracting policy to increase Aboriginal and Torres Strait Islander participation in the award of contracts for construction and associated works for local


communities. An independent evaluation of this policy concluded that the policy had not generated employment as envisioned and would require further action. In 1994, ATSIC funded the CAT/National Technology Resource Centre to research the building consultancy and buying processes in remote communities.

PM&C noted the incorporation of the suggestions outlined in Recommendation 326 into a number of contracts. One example includes the contracts associated with the \$700 million road works which will include targets for Aboriginal and Torres Strait Islander employment and procurement. Similarly, the \$5 billion Northern Australia Infrastructure Facility also requires private sector project proponents to provide strong employment, training and business development opportunities for Aboriginal and Torres Strait Islander people. Similar targets are being developed for major infrastructure developments jointly funded under City Deals (Townsville, Launceston and Western Sydney).


 *The Commonwealth Government has taken steps to address the intention of Recommendation 326, with some examples of contracts that are consistent with the recommendation. However, given that there is no evidence of a consistent approach across all contracts, Recommendation 326 is considered partially complete.*

In their 1994-95 implementation report, the **New South Wales** Government noted that Aboriginal organisations had the ability to participate in the development of contracts where the work to be performed is to fulfil Aboriginal needs. The NSW Government also announced the *Aboriginal Participation in Construction Policy* (2015) which established mandatory project requirements to support Aboriginal people in construction work. Under the APIC policy, all NSW government construction contracts over \$10 million and/or contracts primarily directed to Aboriginal communities, includes requirement for expenditure on Aboriginal participation. The target must be at least 1.5% of the projects construction and design costs. Head contractors have scope to determine how to meet this target including through employment, engagement of Aboriginal businesses or by supporting Aboriginal organisations and community initiatives.

In addition, under the *Aboriginal Procurement in Construction Policy*, the NSW Government identifies construction projects where Aboriginal employment is required. The NSW Procurement Board provides an exemption from competitive tendering for Aboriginal owned businesses. A NSW agency may purchase goods and services valued up to \$150,000 from a recognised Aboriginal business, provided the supplier's rates for the goods or services are reasonable and consistent with normal market rates and the agency obtains at least one written quotation.

 *The New South Wales Government has partially implemented Recommendation 326 by providing opportunities to Aboriginal businesses through the Aboriginal participation in Construction Policy but has not addressed parts (a) and (c) of this recommendation.*


In 1993, the **Victorian** Government provided Aboriginal and Torres Strait Islander communities with the right to make decisions on the allocation of funding under the *Capital Projects Program*. Aboriginal Affairs Victoria also provided input into this process to ensure that projects maximised the employment of Aboriginal and Torres Strait Islander people in the completion of the work.

 *The Victorian Government has implemented Recommendation 326 through the Capital Projects Program and initiatives to encourage the employment of Aboriginal and Torres Strait Islander people in the completion of construction work.*

In 2013, the **Queensland** Government introduced the *Queensland Procurement Policy* which sought to ensure that competitive local suppliers were given a full, fair and reasonable opportunity to supply the Queensland Government. The Queensland Government works in partnership with Aboriginal and Torres Strait Islander communities to support increased employment and training opportunities from housing construction, maintenance and infrastructure development.

All tenders let for new housing construction in remote Aboriginal and Torres Strait Islander communities have a requirement for the proponent to comply with the Indigenous Economic Opportunities Plan, which seeks to provide employment, training and business supply opportunities for Aboriginal and Torres Strait Islander people. The Queensland Indigenous Procurement Policy also


includes a target to increase the value of Queensland Government procurement with Aboriginal and Torres Strait Islander business to 3% of addressable spend by 2022.

 *The Queensland Government has partially implemented Recommendation 326 by providing opportunities to Aboriginal and Torres Strait Islander businesses through the Indigenous Economic Opportunities Program but has not addressed parts (a) and (c) of this recommendation.*

The **South Australian** Government provided in their 1993 implementation report that tendering processes allowed Aboriginal and Torres Strait Islander communities to participate in the award of contracts. A number of other initiatives were introduced to provide training for Aboriginal and Torres Strait Islander people, to establish local labour requirements, and to promote employment opportunities for Aboriginal and Torres Strait Islander tradespeople.

More recently, Housing SA has implemented a process to include local Aboriginal and Torres Strait Islander employment in contracts for capital and maintenance services, with a target of 35% employment in 2017. Housing SA has employed a Senior Project Officer for Aboriginal and Torres Strait Islander Employment who works with contractors to promote skill development through training, apprenticeships and job-based experience.

The National Partnership on Remote Housing also includes a 30% performance benchmark for engagement of Aboriginal and Torres Strait Islander business enterprise in capital works. In addition, Housing SA's procurement process enables direct procurement within new SA Government guidelines to enable Aboriginal and Torres Strait Islander business engagement to undertake works.

 *The South Australian Government has implemented Recommendation 326 through a range of initiatives established by Housing SA.*


In 1994, **Western Australia's** Homeswest program had both an Aboriginal Tender Preference Scheme and a Regional Preference Scheme. The then Department of Training also contributed funds to be used for adult vocational education and training facilities in remote locations including Halls Creek, South East Kimberley, Fitzroy Crossing, and Ngaanyatjarra Lands. Western Australia's *Regional Development Policy Framework* establishes policy and project priorities, including employment, infrastructure and skills, and education. The *Training Together Working Together* policy, and the associated Aboriginal Workforce Development Centre, also assists in offering a range of programs to promote Aboriginal and Torres Strait Islander skill development and workforce engagement.

Currently, the Housing Directorate (within the Western Australian Department of Communities), has Aboriginal Employment Targets in construction and civil works contracts which mandate specific employment targets for each region (20 per cent for Kimberley and Pilbara) for all new contracts awarded by the Directorate. The targets are reviewed annually and increased from 2020 onwards. For construction and civil works in the Kimberley and Pilbara regions, contractors must submit an Aboriginal Employment Plan as part of their tender submission.


In addition, the Western Australian Government is currently developing the North West Aboriginal Housing Fund to construct new homes in the Kimberley and Pilbara. The project has reserved funding for service and construction contracts for Aboriginal and Torres Strait Islander organisations. All projects under the fund will be required to achieve Aboriginal and Torres Strait Islander employment targets and facilitate local Aboriginal and Torres Strait Islander apprenticeships and traineeships.

 *Western Australia has implemented Recommendation 326 through a range of policies developed by the Western Australian Department of Communities, Housing Directorate.*


In **Tasmania**, Skills Tasmania has responsibility for administering skill development opportunities and training. Aboriginal and Torres Strait Islander people are part of the target group for Skills Tasmania. Additionally, Tasmania allocates national partnership funding to the development of additional properties, repairs and maintenance, local Aboriginal and Torres Strait Islander employment, and implementation of service delivery.

 *The Tasmanian Government has not implemented Recommendation 326.*

In their 1993-94 implementation report, the **Northern Territory** Government provided that it was policy to encourage Aboriginal and Torres Strait Islander participation in government works such as through community consultation initiatives. The Northern Territory's *Indigenous Responsive Program* provides training, skill development and employment opportunities for Aboriginal and Torres Strait Islander people. Currently, the Northern Territory Government has a policy of employing labour from the community as far as is possible and utilising local suppliers when completing housing and related infrastructure programs in remote areas (provided tender prices are not unreasonably high).

 *The Northern Territory Government has partially implemented Recommendation 326 by implementing the Indigenous Responsive Program and through its procurement policy and guidelines but has not expressly addressed elements of parts (b) and (c) of the recommendation in its response.*

This recommendation is of limited relevance to the **Australian Capital Territory** as there are no remote Aboriginal Communities in the Australian Capital Territory.

 *Recommendation 326 is not applicable to the ACT.*

Recommendation 327

That:

- a. *Relevant Aboriginal training institutions and Aboriginal housing organisations, in consultation with DEET, devise and implement a strategy specifically directed to the training of Aboriginal people to build and maintain essential community infrastructure; and*
- b. *This training program should be adequately co-ordinated with employment strategies established under the AEDP and CDEP.*

Background information

Aboriginal and Torres Strait Islander communities have been identified as being under serviced by relevant municipal and State authorities with regard to essential community infrastructure and services. Increased involvement of Aboriginal and Torres Strait Islander people in building and maintaining these facilities can contribute to community development as well as to training and employment opportunities.

Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. DEET was a Commonwealth Department.


Key actions taken and status of implementation

In 1991, the **Commonwealth** Government provided additional resources to undertake a Community Infrastructure Training Program, designed to provide Aboriginal and Torres Strait Islander people with improved access to employment and associated training on infrastructure projects. The Commonwealth Government developed a Community Enterprise training package, in conjunction with DEET, the Department of Health, Housing and Community Services, ATSIC and the Housing Industry Association to assist communities to become involved in housing construction projects. In 1994, ATSIC committed \$60 million over three years under the Health Infrastructure Priority Projects scheme for 31 large-scale housing and infrastructure projects.

PM&C noted that through the development and implementation of the National Partnership Agreement for Remote Indigenous Housing and the Commonwealth Aboriginal and Torres Strait Islander Employment Strategy, there has been an increased focus on providing business and employment opportunities. PM&C further noted that outputs delivered include an increase in the percentage of works delivered under the agreement and the percentage of contracts awarded to Aboriginal and Torres Strait Islander businesses.

Under the Remote Housing Strategy, the States and the Northern Territory agreed to develop a range of housing related projects under the CDP for delivery by CDP providers. The Northern Territory are

required to inform PM&C, who then work with local CDP providers, about any proposed works to be delivered, and associated work requirements, within relevant communities in advance (where possible) of works commencing. This allows CDP providers the opportunity to assist skill development and prepare housing related projects for local Aboriginal and Torres Strait Islander participants.

 *The Commonwealth Government has completed Recommendation 327 via a number of programs and initiatives, including through the CDP. While the AEDP and CDEP no longer exist, the CDP allows job seekers to undertake training that will improve their job readiness and assist in gaining employment.*

12 Reconciliation, land needs and international obligations

The recommendations in this chapter relate to: conforming with international obligations (328-333); addressing land needs (334-338); and the process of reconciliation (339).

Key themes from recommendations (12 recommendations)

- Aboriginal and Torres Strait Islander people are disproportionately represented in Australia’s incarcerated population. Given the differences in cultural practices and customs, there is a need to ensure that guidelines and practices are respectful of the needs of Aboriginal and Torres Strait Islander prisoners.
- States and Territories have a specific responsibility to ensure that legislation regarding correctional services conform to Standard Guidelines for Corrections in Australia, and uphold humane conditions.
- The Commonwealth Government should make a declaration under Article 22 of the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* and take all steps necessary to become a party to the *Optional Protocol to the International Convention on Civil and Political Rights* to provide a right of individual petition to the Committee Against Torture and the Human Rights Committee.
- Land plays a central role in the identity of Aboriginal and Torres Strait Islander people, and land rights are vital to ensure that communities can preserve the cultural, historical and traditional integrity of their land.
- Land needs of Aboriginal and Torres Strait Islander communities should be incorporated into legislation, and that such legislation should encompass a process for restoring unalienated Crown land to those Aboriginal and Torres Strait Islander people who claim such land on the basis of ongoing association.

Legend Complete Mostly Complete Partially Complete Not Implemented Out of Scope

Commonwealth | Key actions: In 1993, the Australasian Police Ministers’ Council endorsed standard guidelines for police custodial facilities. Australia has also adhered to international obligations, including the First Optional Protocol to the International Covenant on Civil and Political Rights, and introduced the *Native Title Act 1993*, which established a national scheme to provide for the recognition and protection of native title. In 1993, Australia lodged declarations with the United Nations under Article 22 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Remaining gaps: The Commonwealth has not explicitly outlined land right transfer arrangements for long-term leases. While significant steps have been taken to advance the objectives of reconciliation, this remains an ongoing process.

New South Wales | Key actions: New South Wales upholds humane prison conditions through a standardised Performance Framework and active systems for monitoring compliance. The *Aboriginal Land Rights Act 1983* was introduced to address Aboriginal land needs.

Remaining gaps: Further consideration of entitlements to unalienated crown land is required in order for New South Wales to fully meet the RCIADIC’s objectives. In addition, while the NSW Reconciliation Council has received ongoing funding, further work is required to advance the reconciliation agenda in New South Wales.

Victoria | Key actions: The Victorian Government has decommissioned a number of older prisons, and updated facilities. In addition, protections for Aboriginal and Torres Strait Islander heritage and cultural sites are enshrined in the *Mineral Resources Development Act 1990*.

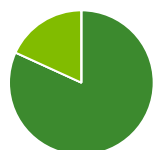
Remaining gaps: Victoria has not implemented accelerated processes for granting freehold title over appropriate public lands to Aboriginal and Torres Strait Islander communities and elements of its land title legislation are not aligned with the RCIADIC recommendations.

Queensland | Key actions: The Queensland Government has complied with the Standard Guidelines for Corrections in Australia by establishing a program for the rebuilding of correctional facilities, including capital works. Provisions for the addressing of land related needs have been included in the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.



Remaining gaps: The Queensland Government has not fully addressed the process of claiming unalienated crown land by Aboriginal and Torres Strait Islander people. While Queensland has enacted initiatives such as the Wages and Savings Reparations scheme, further work is needed to advance reconciliation.

South Australia | Key actions: South Australia has installed an Aboriginal and Torres Strait Islander person on the Parole Board and improved representation on the Prisoner Assessment Committee. The *Native Title (South Australia) Act 1994* has also been enacted to bring State laws in line with Commonwealth native title legislation.



Remaining gaps: The South Australian Government has supported the provision of freehold title over appropriate public lands to local Aboriginal and Torres Strait Islander communities, however, further consideration of an accelerated process is required. While South Australia has developed a new tiered approach to relationship building, further work is needed to progress reconciliation.

Western Australia | Key actions: Western Australia has implemented all recommendations related to international obligations, including adopting standard Guidelines for corrections. Western Australia has also made significant progress on addressing land needs through implemented native title legislation.



Remaining gaps: Western Australia has not implemented a process to accelerate the granting of freehold land to local Aboriginal and Torres Strait Islander communities and current legislation does not allow the granting of inalienable freehold title.

Tasmania | Key actions: Tasmania has incorporated the Standard Guidelines for Corrections in Australia into the practices of Corrective Services, and is currently participating a further review to ensure comprehensive compliance. The *Aboriginal Lands Act 1995* was introduced to address the absence of native title in Tasmania, and the Aboriginal Land Council of Tasmania is the democratically elected body that manages land returned under the Act.



Remaining gaps: Further consideration of legislative measures relating to the lease of pastoral land is required. Furthermore, while Tasmania has expressed a commitment to the reconciliation process through its Reset Agenda and through provisions in the *Aboriginal Lands Act 1995*, further action is required to fully meet the RCIADIC recommendation.

Northern Territory | Key actions: The Northern Territory Government has ensured that prison practices are compliant with the Standard Guidelines and has been actively involved in their most recent review. In addition, the Northern Territory has taken actions to control entry to Aboriginal and Torres Strait Islander land through the issue of permits, and approval processes.



Remaining gaps: The Northern Territory Government has not fully addressed the development of an accelerated process for the granting of land title based on need. In addition, while the Northern Territory has expressed its agreement to participate in reconciliation, further significant action is required.

Australian Capital Territory | Key actions: The Australian Capital Territory Government has incorporated the principles of the Standard Guidelines into ACT Corrective Services policy development and planning, and has also cooperated with the Commonwealth's National Standards Body in the development of the Standard Guidelines.



Remaining gaps: The ACT Government has not enacted a legislative response to implement the granting of land title to Aboriginal and Torres Strait Islander people. While the ACT Government has demonstrated its commitment to reconciliation through the establishment of ATSIC and relevant legislative reform, further actions will need to be considered.

12.1 Conforming with international obligations (328-333)

Recommendation 328

That as Commonwealth, State and Territory Governments have adopted Standard Guidelines for Corrections in Australia which express commitment to principles for the maintenance of humane prison conditions embodying respect for the human rights of prisoners, sufficient resources should be made available to translate those principles into practice.

Background information

The RCIADIC found that the treatment of incarcerated Aboriginal and Torres Strait Islander people was sub-standard, and the Commissioner provided evidence that the human rights of prisoners had not been adequately maintained. However, the RCIADIC recognised that additional resources were needed to implement the Standard Guidelines.

Responsibility


The recommendation is the responsibility of the State and Territory Governments. Recommendation 328 is the responsibility of the States and Territories as they provide funding for prisons.

Key actions taken and status of implementation

In 1993, the **New South Wales** Government introduced a new case management system for juvenile justice based on the United Nations Rules and Principles for juveniles in custody. This included casework and support intervention, contact with families, and health in ensuring that juveniles in custody were able to maintain links with the community.


Corrective Services NSW (CSNSW) ensures that NSW correctional centres are maintained to provide for humane prison conditions. CSNSW has developed a standardised Performance Framework to monitor the operations of both public and privately operated prisons. This Framework includes Service Specifications that govern the operation of both public and privately operated prisons and a KPI regime that measures the performance of all prisons against 17 key indicators.

The CSNSW Governance and Continuous Improvement Division has established systems for monitoring compliance through the Operational Performance Review Branch. Operational reviews aim to ensure compliance and ensure performance that informs continuous improvement strategies to achieve best practice in custodial and community standards. Standards are based on the *(National) Standard Guidelines for Corrections in Australia*. In addition, an Inspector of Custodial Services is appointed to inspect adult correctional facilities and juvenile justice centres, and report to Parliament on the findings of these inspections.

 *New South Wales has addressed Recommendation 328, as evidenced by the strict monitoring and maintenance procedures applied to the conditions and operations of NSW correctional centres and prisons.*


The **Victorian** 1993 implementation report notes that the Victorian Government decommissioned a number of older prisons, established three new prisons, and upgraded facilities at Bendigo and Beechworth including the installation of sewerage to each cell. Additionally, the Victorian Government noted in AJA 3 that efforts would be made to ensure the transparency of Aboriginal and Torres Strait Islander conditions in detention through visitor programs.

Since this time, Corrections Victoria has been a part of the development, and is a signatory to, the Corrective Services Administrators Council (CSAC) - Indigenous Strategic Framework. The Indigenous Strategic Framework guides the management of Aboriginal and Torres Strait Islander prisoners and offenders in Corrections across Australia and New Zealand. This framework was developed by the Corrective Services Administrators Council (CSAC) Indigenous Issues Working Group and endorsed by the Corrective Services Ministerial Council (CSMC) in July 2016.


 *Victoria has addressed Recommendation 328, as evidenced by the upgrades to prisons following the RCIADIC and adoption of Standard Guidelines for Corrections in Australia.*

In **Queensland's** 1993 implementation report, it was noted that Standard Guidelines were recognised by the Queensland Corrective Services Commission and that the Queensland Government had established a program for the rebuilding of correctional facilities, including capital works. It was also provided that juvenile justice practices met the United Nations Minimum Rules for Administration of Juvenile Justice.


More recently, the Standard Guidelines for Corrections in Australia (2004) provide basic standards and entitlements for offenders in Queensland and are currently under review. Queensland complies with these Standards and in most cases, provides higher standards than those stipulated.

 *Queensland has addressed Recommendation 328, as evidenced by capital works involved with rebuilding correctional facilities following the RCIADIC.*


The **South Australian** Government noted in 1993 that the Standard Guidelines for Corrections in Australia were referred to in policy generation and as a benchmark for performance measurement. More recently, the South Australian Government has implemented initiatives in response to the Department for Correctional Services' Service Principles, including the instalment of an Aboriginal and Torres Strait Islander person on the Parole Board, improved support to funeral leave, prisoner access to Elders, affirmative action in recruitment, and improved representation on the Prisoner Assessment Committee. The Corrective Services Administrators Council (CSAC) Indigenous Strategic Framework for Managing Indigenous Offenders was also endorsed in 2016 and will be promoted by the CSAC Senior Officers Indigenous Issues Working Group throughout their jurisdictions, including Aboriginal and Torres Strait Islander Legal Services and Organisations.

 *South Australia has addressed Recommendation 328, as evidenced by initiatives implemented by the Department for Correctional Services.*


The **Western Australia** Government provided in their 1994 implementation report that guidelines had been implemented and that all standards from the Guidelines were met in Western Australia prisons. The Western Australian Government has also noted its commitment to the national standards set out in the Standard Guidelines for Corrections in Australia (Corrective Services Administrators Council, 2012) and noted that the Department of Justice has developed a Healthy Prisons Standard based on internationally recognised tools for achieving consistency of delivery, analysis and outcomes for all offenders. The concept was developed by the World Health Organization and is now widely accepted as a benchmark for what should be provided in any custodial environment.

 *Western Australia has addressed Recommendation 328 by adopting Standard Guidelines for Corrections in Australia.*

Tasmania supports the Standard Guidelines for Corrections in Australia last issued in 2012. Tasmania is currently participating in a further review to ensure the Guidelines reflect contemporary custodial and community corrections practices. The Standard Guidelines are incorporated into Corrective Services practices in Tasmania.

 *Tasmania has addressed Recommendation 328 by incorporating the Standard Guidelines into Corrective Services practices and is currently reviewing their appropriateness for contemporary corrections practices.*

In their 1993-94 implementation report, the **Northern Territory** Government provided that prison practices were compliant with Standard Guidelines, including in the design of the Alice Springs Prison. The Northern Territory Correctional Services is a signatory to the Standard Guidelines, which were updated in 2012. Northern Territory Correctional Services was represented on the working group that reviewed the Standard Guidelines for Corrections in Australia.

 *The Northern Territory has addressed Recommendation 328 by ensuring that prison practices are compliant with the Standard Guidelines.*

The **Australian Capital Territory** Government commented in their 1993-94 implementation report that the principles of Recommendation 328 had been incorporated in ACT Corrective Services policy


development and planning, and that practices related to ACT Juvenile Justice Services were in conformity to international principles.

In drafting the *Corrections Management Act 2007*, the ACT Government incorporated humane treatment of detainees as one of the four key objectives of the Act. Section 7 requires that the Act promotes 'public safety and the maintenance of a just society, particularly by ensuring that detainees are treated in a decent, humane and just way'. Consistent with this requirement, the Alexander Maconochie Centre is the first prison in Australia to be specifically designed and managed to be compliant with human rights principles.

ACT Correctional Services and the ACT Health Directorate operate the Alexander Maconochie Centre and the Hume Health Centre consistent with the Standard Guidelines for Corrections in Australia. These guidelines were revised in 1992 with regard to the recommendations of the RCIADIC. The prison is designed to operate consistent with human rights principles and with the World Health Organisation Healthy Prison Concept. This concept provides that:

- everyone is and feels safe;
- everyone is treated with respect and as a fellow human being;
- everyone is encouraged to improve him or herself and is given every opportunity to do so through the provision of purposeful activity; and
- everyone is enabled to maintain contact with their families, and is prepared for release.

ACT Correctional Services and the Alexander Maconochie Centre are subject to scrutiny by the ACT Human Rights Commissioner (as well as other external bodies such as the Ombudsman) and considerable resources are utilised to facilitate and respond to that scrutiny.

 *The Australian Capital Territory has addressed Recommendation 328 by incorporating the guidelines into ACT Corrective Services policy.*

Recommendation 329

That the National Standards Body comprising Ministers responsible for corrections throughout Australia give consideration to the drafting and introduction of legislation embodying the Standard Guidelines and in drafting such legislation give consideration to prisoners' rights contained in Division 4 of the Victorian Corrections Act 1986.

Background information


The RCIADIC called for the introduction of legislation to protect the minimum entitlements of Aboriginal and Torres Strait Islander people in prisons. The RCIADIC highlighted the example of Division 4 of the *Corrections Act 1986* (Vic), which provided for prisoner rights such as the right of daily access to the open air, the right to adequate food, medical and psychiatric care, the right to annual review of classification.

Responsibility

The recommendation is the responsibility of the State and Territory Governments. Recommendation 329 is the responsibility of the States and Territories as they enact legislation to provide prisoners' rights.

Key actions taken and status of implementation


In 1993, the **New South Wales** Government amended the *Standard Guidelines for the Management of Offenders* to ensure adequate recognition was given to the needs and rights of Aboriginal people. Additionally, the *Crimes (Administration of Sentences) Act 1999* (NSW) and the *Crimes (Administration of Sentences) Regulation 2014* (NSW) provide for similar rights as are set out in the *Corrections Act 1986* (Vic). The *Standard Guidelines for Corrections in Australia* was revised in 1992 to reflect recommendations of the RCIADIC. The current 2012 *Standard Guidelines* are guided by principles which recognise the specific needs and cultural backgrounds of Aboriginal people.

 *The New South Wales Government has addressed the principles of Recommendation 329 through existing legislation, including the Crimes (Administration of Sentences) Act 1999 (NSW) and the Crimes (Administration of Sentences) Regulation 2014 (NSW).*

Victorian legislation already provided for the protection of Aboriginal and Torres Strait Islander people's rights in prison. The *Corrections Act 1986* (Vic) provides for a prisoner's rights to be outdoors, have adequate food and clothing, have medical care or special care where required, to practise religion, to make complaints, to receive visits, to have annual reviews of classification, and to have access to education.

 *The Victorian Government had already incorporated the principles of Recommendation 329 into legislation at the time of the RCIADIC.*


Queensland's *Corrective Services Act 2006* (Qld) provides prisoners a general right for basic human rights, including humane treatment, dignity, and a consideration of the offender's age, sex, cultural background, or disability. Under this Act, prisoners have rights to access religious and educational programs, to make complaints and benefit from similar rights in relation to letters and visits. Special provisions are also made for Aboriginal and Torres Strait Islander prisoners, including the provision to be incarcerated as close as is practicable to the offender's family.

 *The Queensland Government has addressed the principles of Recommendation 329 through the Corrective Services Act 2006 (Qld).*

In **South Australia**, the *Correctional Services Act 1982* (SA) extends the right to education, to receive and send letters, to have visitors, to have access to legal aid, to make a complaint, to access education, and for prisoners to have their classifications reviewed. However, there is no provision to be outdoors or to access certain medical treatments. The CSAC Senior Officers Indigenous Issues Working Group also developed an Indigenous Framework for Managing Indigenous Offenders in 2016, which was endorsed by the Corrective Services Ministers Conference.

 *The South Australian Government has addressed the principles of Recommendation 329 through the Correctional Services Act 1982 (SA).*


The **Western Australia** Government provides in the *Prison Act 1981* (WA) and the *Prisons Regulations 1982* a prescription to rights for prisoners, including Aboriginal and Torres Strait Islander prisoners. These rights include the right to send letters, the right to medical care and treatment, the right to practise religion, the right to wear clothing other than prison clothing when on an authorised absence from prison, the right to receive visits, the right to make a request or complaint, and the right to clean food and water.

 *The Western Australian Government has addressed the principles of Recommendation 329 through the Prison Act 1981 (WA).*

Tasmanian legislation provides a set of rights for prisoners in the *Corrections Act 1997* (Tas), which incorporates the rights provided by Victorian legislation.


 *Tasmania has addressed the principles of Recommendation 329 through the Corrections Act 1997.*

In the **Northern Territory**, prisoner rights are provided in the *Correctional Services Act 2014* (NT). The rights included in this legislation include the right to receive visitors, the right to send and receive letters, the right to access a medical officer, the right to make a complaint, the right to attend religious services, the right to access education, the right to access outdoor space, and the right to food, clothing, personal hygiene facilities and exercise. However, the *Change the Record* report notes that this set of rights is not as comprehensive as those prescribed under the relevant Victorian legislation.

 *The Northern Territory Government has addressed the principles of Recommendation 329 through the Correctional Services Act 2014 (NT).*

In 1994, the **Australian Capital Territory** Government contributed to the revision of the National Standard Guidelines for Corrections to make specific reference to the needs of Aboriginal and Torres Strait Islander offenders. More recently, the *Corrections Management Act 2007* (ACT) provides detainees with the following rights: access to sufficient food and drink; access to suitable clothing;

access to facilities for personal hygiene; suitable accommodation and bedding; access to open air and exercise; access to telephone, mail and other communication methods; the right to receive visits; access to news and education; access to health services and facilities; and the right to practice religion.

 *The Australian Capital Territory Government has addressed the principles of Recommendation 329 through the Corrections Management Act 2007 (ACT).*

Additional commentary

There is a current review of the *Standard Guidelines for Corrections in Australia*. The current review was commissioned by the Corrections Services Administrators' Council in December 2016 to ensure that contemporary custodial and community corrections practices are reflected in the Guidelines. An inter-jurisdictional Working Group has been established to undertake the review and report on progress. The Working Group will be reviewing key principles for the management of Aboriginal and Torres Strait Islander offenders for incorporation into the Guidelines.

Recommendation 330

That the National Standards Body establish and maintain direct consultation with relevant Aboriginal organisations including Aboriginal Legal and Health Services.

Background information

The RCIADIC report noted an absence of express consideration given to the particular needs of Aboriginal and Torres Strait Islander people in the Australian Guidelines. The Commonwealth of Australia and all States and Territories agreed to the Guidelines in 1989 as setting standards for the conduct of prisons throughout Australia. This was attributed to the absence of consultation with any Aboriginal and Torres Strait Islander organisation in the drafting or adoption of the Guidelines.

Responsibility


The recommendation is the responsibility of the State and Territory Governments. Recommendation 330 is the responsibility of the States and Territories as they enact legislation to provide prisoners' rights.

Key actions taken and status of implementation

It was resolved at the 1992 annual meeting of the Corrective Services Ministers that it was not practicable for the Ministerial Council, which meets only once annually, to maintain direct consultation with relevant Aboriginal and Torres Strait Islander organisations. As such, it was agreed that this responsibility would be devolved to the States and Territories. Since then, all States and Territories have noted in their implementation reports that Recommendation 330 is not their responsibility.

The Corrective Services Ministerial Council and the Corrective Services Administrators Council established the Corrective Services Administrators Council Indigenous Working Group to assist in addressing the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

All **States and Territories** are party to the Indigenous Working Group. As part of their work, the Indigenous Working Group produced an *Indigenous Strategic Framework* in 2016, recommending building links to Aboriginal and Torres Strait Islander organisations, including health organisations. The Indigenous Working Group members undertake consultation as a group and within their jurisdictions in order to inform their work. The Indigenous Working Group reports to both Corrective Services Administrators and Ministers on a regular basis.

 *New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory have addressed Recommendation 330 through their contributions to the Corrective Services Administrators Council Indigenous Working Group.*

Recommendation 331

That the National Standards Body consider the formulation and adoption of guidelines specifically directed to the needs of Aboriginal prisoners. In that process the findings and recommendations of this Commission relating to custodial conditions and the treatment of Aboriginal persons in custody should be taken into account.

Background information

Aboriginal and Torres Strait Islander people are disproportionately represented in Australia's incarcerated population. Given the differences in cultural practices and customs, there is a need to ensure that guidelines are respectful of the needs of Aboriginal and Torres Strait Islander prisoners.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Recommendation 331 concerns both Commonwealth, and State and Territory governments. The National Standards Body, under leadership of the Commonwealth, requires a cooperative approach from States and Territories to guide implementation.

Key actions taken and status of implementation

The **Commonwealth** Government assigned responsibility to the National Standards Body to arrange for the preparation of the guidelines through a Corrective Services Administrators Working Party. In 1992, administrators were directed by the Corrective Services Ministers to review the Standard Guidelines in accordance with Recommendation 331 and to submit their recommendations for changes. These amendments were endorsed at the 1994 meeting and the amended Guidelines subsequently published and distributed.

 *Recommendation 331 is complete as the Commonwealth Government has met its obligations by devolving responsibility to the National Standards Body to review and amend the relevant guidelines.*

All **States and Territories** have noted their support of the role of the National Standards Body and have assisted the Commonwealth Government in the development of Standard Guidelines in line with Recommendation 331. The 2012 Standard Guidelines are guided by principles which recognise the specific needs and cultural backgrounds of Aboriginal and Torres Strait Islander people. This includes a provision for interpreters, accommodation in a supportive environment, access to community elders, consideration for the spiritual beliefs of Aboriginal and Torres Strait Islander prisoners, the establishment of programs in consultation with community groups, and cultural sensitivity relating to visitation.

 *New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory have implemented Recommendation 331 through ongoing cooperation with the Commonwealth's National Standards Body and agreement to the 2012 Standard Guidelines.*

Recommendation 332

That the Commonwealth, State and Territory Ministers for Police should formulate and adopt standard guidelines for police custodial facilities throughout Australia.

Background information

It is in the interest of the welfare of Aboriginal and Torres Strait Islander prisoners that police custodial facilities be held to consistent standards nation-wide.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Recommendation 332 concerns Ministers for Police at both a Commonwealth, and State and Territory level.

Key actions taken and status of implementation

In 1993, the Australasian Police Ministers' Council considered and endorsed standard guidelines for police custodial facilities, which were developed in consultation with all jurisdictions. A commitment

was made to ensure that new cells at Jervis Bay Territory would comply with accepted design standards.

 *The Commonwealth, New South Wales, Victorian, Queensland, South Australian, Western Australian, Tasmanian, Northern Territory and Australian Capital Territory Governments have implemented Recommendation 332 through the Australasian Police Ministers' Council's standard guidelines.*

Recommendation 333

While noting that in no case did the Commission find a breach of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, it is recommended that the Commonwealth Government should make a declaration under Article 22 of the Convention and take all steps necessary to become a party to the Optional Protocol to the International Convention on Civil and Political Rights in order to provide a right of individual petition to the Committee Against Torture and the Human Rights Committee, respectively.

Background information

The International Convention on Civil and Political Rights is a multilateral treaty adopted by the United Nations that commits its parties to respect the civil and political rights of individuals. The right of individual petition allows any person, non-governmental organisation or group of individuals to make a claim to be a victim of a violation of the rights set forward in the convention to the Committee Against Torture and the Human Rights Committee.


Responsibility

The recommendation is solely the responsibility of the Commonwealth Government. Recommendation 333 is addressed to the Commonwealth Government.

Key actions taken and status of implementation

In 1991, Australia acceded to the First Optional Protocol to the International Covenant on Civil and Political Rights. The Protocol came into effect on 25 December 1991. The **Commonwealth** Government has announced its commitment to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by December 2017, after which time the Government will fund the Office of the Commonwealth Ombudsman to coordinate the network of Australian inspectorates. This will facilitate improved oversight of places of detention in Australia.

In 1993, Australia lodged declarations with the United Nations under Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 14 of the Convention on the Elimination of all forms of Racial Discrimination.

 *Recommendation 333 has been implemented, as the Commonwealth Government has fulfilled its responsibilities to the recommendation by becoming a party to the Protocol.*

12.2 Addressing land needs (334-338)

Recommendation 334

That in all jurisdictions legislation should be introduced, where this has not already occurred, to provide a comprehensive means to address land needs of Aboriginal people. Such legislation should encompass a process for restoring unalienated Crown land to those Aboriginal people who claim such land on the basis of cultural, historical and/or traditional association.

Background information

The RCIADIC Report recognised that land needs of Aboriginal and Torres Strait Islander people often go beyond housing to include recreational, cultural, historical, traditional, and community land use. Recommendation 334 calls for the land needs of Aboriginal and Torres Strait Islander communities to

be incorporated into legislation, and for land to be made available where unalienated Crown land is available and appropriate.

Responsibility


The Commonwealth, and all State and Territory governments have responsibility for this recommendation. This recommendation calls for the involvement of all jurisdictions – States and Territories, and the Commonwealth – in allowing secure title to land to be obtained by Aboriginal and Torres Strait Islander communities.

Key actions taken and status of implementation

In the *Mabo* case of 1992, the **Commonwealth's** High Court provided the first judicial recognition of native title under Australian common law. The Commonwealth responded by introducing the *Native Title Act 1993* which established a national scheme to provide for the recognition and protection of native title by establishing the National Native Title Tribunal.


In 1998, the Commonwealth enacted the *Native Title Amendment Act 1998* owing to concerns that the *Wik* decision could have significant repercussions for Australian pastoral and suburban land. The *Wik* decision, handed down by the High Court in 1996, ruled that statutory pastoral leases did not bestow exclusive land rights on the leaseholder. This means that native rights could co-exist with pastoral leases. The AGD noted that section 47B of the *Native Title Act* allows in certain circumstances for prior extinguishment of native title to be disregarded over crown land not currently in use.

PM&C noted that about 40% of Australia has been returned or recognised to Aboriginal and Torres Strait Islander interests under native title and various state and territory based statutory Aboriginal and Torres Strait Islander land schemes. A further 35-40% is available for claim. The Australian Government has committed through the *White Paper on Developing Northern Australia* to finalising native title claims within a decade and has committed to finalise claims under the *Aboriginal Land Rights (Northern Territory) Act 1976* within three years.

 *The Commonwealth has implemented its responsibilities for Recommendation 334. Legislation has been enacted to establish processes for land claims based on native title.*


In **New South Wales**, the *Aboriginal Land Rights Act 1983* (NSW) provides for the constitution of Aboriginal Land Councils which are able to make claims for Crown Land. However, the *Change the Record* report notes that this legislation has little regard for cultural, historical, or traditional association with claimed land.

Currently, native title legislation provides the framework for access to land on the basis of cultural association. The Aboriginal cultural heritage reforms currently on public consultation propose a more contemporary concept of cultural heritage in legislation and better interaction with the *Aboriginal Land Rights Act 1983*. The *NSW National Parks and Wildlife Act 1974* provides for Aboriginal ownership and lease back of national parks in NSW. Six parks are owned or leased by Aboriginal people. Negotiations are currently underway to transfer ownership of a seventh park.

 *The New South Wales Government has implemented Recommendation 334 by meeting its requirements in the *Aboriginal Land Rights Act 1983* and the *NSW National Parks and Wildlife Act 1974*.*


The **Victorian** Government noted in their 1993 implementation report that the *Capital Projects Program* provided funding for the acquisition of land for a variety of purposes, including for reasons of significance to Aboriginal and Torres Strait Islander people. Crown land and properties were leased to Aboriginal and Torres Strait Islander organisations.

Victoria's *Traditional Owner Settlement Act 2010* provides for agreements for Crown land transfers to traditional owner corporations. Grants of land in freehold title can be for cultural or economic purposes; grants of Aboriginal title can also be jointly managed in partnership with the State.

 *The Victorian Government has implemented Recommendation 334 through the *Traditional Owner Settlement Act 2010* and funding provided for the acquisition of land for a variety of purposes.*


In **Queensland**, the Aboriginal Land Act 1991 (Qld) and the Torres Strait Islander Land Act 1991 (Qld) provides for land to be granted as inalienable freehold to Aboriginal and Torres Strait Islander people. This includes a right for owners of freehold title to control entry onto their land, and to control mining upon their land subject only to a contrary decision by the Governor in Council. This legislation included provisions to make vacant Crown land claimable by Aboriginal and Torres Strait Islander people on the basis of historical, traditional and economic and cultural viability grounds.

Currently, legislation no longer requires land to be claimed but does provide a process whereby Aboriginal and Torres Strait Islander people may make formal application to have certain categories of land declared transferable under the Acts. Transferable land must be granted as soon as practicable under the Acts, subject to legislated considerations and approvals.


 *The Queensland Government has implemented Recommendation 334 by meeting its requirements in the Aboriginal Land Act 1991 (Qld) and the Torres Strait Islander Land Act 1991 (Qld).*

The **South Australian** Government enacted the *Native Title (South Australia) Act 1994 (SA)* to bring State laws into consistency with the Commonwealth's native title legislation. Additionally, the 1994 South Australian implementation report noted that provision was made for the Aboriginal Lands Trust to hold freehold inalienable titles to land on behalf of all Aboriginal and Torres Strait Islander people. At the time, 20% of South Australia's land was under Aboriginal and Torres Strait Islander freehold ownership.

Currently, there exist legislation which provide a comprehensive means to address the land needs of Aboriginal and Torres Strait Islander people, namely the *APY Land Rights Act 1981* and the *Aboriginal Lands Trust Act 2013*. Native title has also been determined over approximately 58% of South Australia.


 *The South Australian Government has implemented Recommendation 334 by meeting its requirements in the APY Land Rights Act 1981, and the Aboriginal Lands Trust Act 2013.*

The **Western Australia** Government introduced the *Land Act 1993 (WA)*, the *Aboriginal Affairs Planning Authority (AAPA) Act 1972 (WA)*, and the *Land (Titles and Traditional Usage) Act 1993 (WA)* to meet the land needs of Aboriginal and Torres Strait Islander people. Provision was made for the Aboriginal Lands Trust to acquire land through purchase or creation of reserves on Crown land and through excisions from pastoral leases. The Western Australia Government is also able to grant land title to Aboriginal and Torres Strait Islander people on the basis of traditional usage. The Western Australian Government noted that it supports the ongoing divestment of the Aboriginal Lands Trust estate to Aboriginal and Torres Strait Islander people.


 *The Western Australian Government has implemented Recommendation 334 by meeting its requirements in the Land Act 1993 (WA), the Aboriginal Affairs Planning Authority (AAPA) Act 1972 (WA), and the Land (Titles and Traditional Usage) Act 1993 (WA).*

Following the RCIADIC, the **Tasmanian** Government introduced mechanisms to allow for the grant of unallocated Crown land on the basis of significant sites. The Tasmanian *Aboriginal Lands Act 1995* created the Aboriginal Land Council of Tasmania and vested in them twelve parcels of culturally significant Crown land, held on an inalienable freehold title. Such land is "Aboriginal land". There is provision for management by local communities and individuals.

The Act has since been amended to return further parcels (including the Crown land comprising almost all of the large and significant Cape Barren Island), and to provide for land acquired other than by Parliamentary process to be also declared Aboriginal land. The ALCT is a body of elected community representatives, providing Tasmanian Aboriginal and Torres Strait Islander people with a direct role in the ongoing management of both natural and cultural heritage on Aboriginal and Torres Strait Islander land. Its operational funding is provided by the State Government.


 *The Tasmanian Government has implemented Recommendation 334 by meeting its requirements in provisions outlined in the Aboriginal Lands Act 1995.*

The **Northern Territory** Government provided in their 1993-94 implementation report that Commonwealth Aboriginal Land Rights had been in place since 1976, enabling Aboriginal and Torres Strait Islander people to claim unalienated Crown land on the basis of traditional and cultural association.

 *The Northern Territory Government has implemented Recommendation 334 by meeting its requirements through existing Commonwealth Aboriginal Land Rights.*

The **Australian Capital Territory** Government established a consultation process with Aboriginal and Torres Strait Islander community groups to ensure that areas of cultural significance and heritage value are identified in any development of land.

The ACT *Human Rights Act 2004* recognises the unique and distinct cultural rights of Aboriginal and Torres Strait Islander people, including their right to have their material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs recognised and valued. The ACT does not currently have any law on this subject and is subject to Commonwealth law in the form of the Native Title Act 1993.

 *The Australian Capital Territory Government has not implemented Recommendation 334. While there exists a consultation process to ensure that areas of cultural significance and heritage value are identified in any development of land, there has been no legislative response to implement the granting of land title to Aboriginal and Torres Strait Islander people.*

Recommendation 335

That in recognising that improvement in the living standards of many Aboriginal communities (especially for those people living in inadequate housing and environmental circumstances on the fringes of towns and on other discrete areas of Aboriginal occupation of land) cannot be ensured without the security of land title, governments provide, by legislation and/or administrative direction, an accelerated process for the granting of land title based on need.

Background information

The RCIADIC Report noted that land needs for Aboriginal and Torres Strait Islander people often go beyond housing to include community life, recreational, and other purposes. As such, land rights should be granted on the basis of need to address this consideration and to contribute to the improvement in the living standards of Aboriginal and Torres Strait Islander communities.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The States and Territories support the implementation of Recommendation 335 through supporting the Commonwealth's national leadership position, and by contributing funding for the purchase of land.


Key actions taken and status of implementation

The **Commonwealth** introduced the *Native Title Act 1993* which established a national scheme to provide for the recognition and protection of native title. In 1995, the Commonwealth established the Indigenous Land Corporation (ILC) as a statutory authority controlled by Aboriginal and Torres Strait Islander people. The ILC was tasked with assisting Aboriginal and Torres Strait Islander people to acquire and manage land. Initially, the Commonwealth also supported the ILC through funding provision.


The *Stronger Futures in the Northern Territory Act 2012* also provides for the granting of rights and interests and the promotion of economic development for town camps and community living areas in the Northern Territory.

 *Recommendation 335 has been implemented, as the Commonwealth Government has provided administrative direction and support to the States and Territories in their respective changes to land rights management.*

As at 2018, 2,778 claims in New South Wales had been granted by Crown Lands since the commencement of the *Aboriginal Land Rights Act 1983 (NSW)*. Additionally, the NSW Government provided funding for the NSW Aboriginal Land Councils to purchase property. The *Aboriginal Land Rights Act 1983* was amended in 2015 to facilitate negotiated settlements or Aboriginal Land Agreements of outstanding land claims to accelerate the return of land to Aboriginal communities.


 *The New South Wales Government has fully implemented Recommendation 335 by facilitating accelerated return of land through amendments to the Aboriginal Land Rights Act 1983.*

The **Victorian** Government provided in their 1993 implementation report that support had been provided for the provision of freehold title over appropriate public lands to local Aboriginal and Torres Strait Islander communities where justified by historical significance.

 *The Victorian Government partially implemented Recommendation 335 through providing support for the provision of freehold title over appropriate public lands to local Aboriginal and Torres Strait Islander communities. However, no legislative support or administrative direction has been provided, and there is no evidence of an accelerated process being developed in response to this recommendation.*


Queensland's *Aboriginal Land Act 1991 (Qld)* and *Torres Strait Islander Land Act 1991 (Qld)* provide for the granting of certain lands to Aboriginal and Torres Strait Islander people without a claim being made for such land. This includes existing Aboriginal Deeds of Grant in Trust communities and reserves and the Aurukun and Mornington Island Shire Leases. The Queensland Government in their 1993 implementation report provided that the claims process, including the issuing of title to successfully claimed land, was intended to be as simple as possible while also accounting for Aboriginal and Torres Strait Islander relationships with land.

Currently, representations and requests by Aboriginal and Torres Strait Islander trustees, individuals and representative bodies to the Department of National Resources and Mining in respect of pursuing and/or accelerating these opportunities are, where possible, taken into account in making decisions, including consideration of available resources and interagency and native title considerations.

 *The Queensland Government has fully implemented Recommendation 335 by providing for granting of certain lands without need for claim as part of its legislation and by taking into account requests for acceleration of land grants in native title considerations.*

The **South Australian** Government provided for the transfer of Crown land to the Aboriginal Lands Trust. As at 1994, the Trust had power to lease the land to an organisation, a Community Council, or an individual for up to 99 years.

Currently, the *Aboriginal Lands Trust Act* allows for land to be vested in the Trust and held on behalf of Aboriginal and Torres Strait Islander people. Crown land may also be transferred to Aboriginal and Torres Strait Islander communities as a result of and as part of the settlement of native title claims by negotiation.


 *The South Australian Government partially implemented Recommendation 335 through providing support for the provision of freehold title over appropriate public lands to local Aboriginal and Torres Strait Islander communities. However, there is no evidence of an accelerated process being developed in response to this recommendation.*

The **Western Australia** Government introduced the *Land (Titles and Traditional Usage) Act 1993 (WA)* and supported the activities of the Aboriginal Lands Trust to provide greater security of land tenure for Aboriginal and Torres Strait Islander communities. In 1994, the Aboriginal Affairs Department's *Land Program* sought to acquire land through the purchase or creation of reserves on Crown land and through excisions from pastoral leases.


The Western Australian Government has also increased its focus on providing secure land tenure to Aboriginal and Torres Strait Islander people and organisations through land tenure improvements on the Aboriginal Lands Trust estate. Using provisions available under the *Aboriginal Affairs Planning*

Authority Act 1972, the Aboriginal Lands Trust is issuing leases to Aboriginal and Torres Strait Islander corporations and approving land use development applications that:


- support economic development opportunities for Aboriginal and Torres Strait Islander people;
- attract investment (private and government);
- support improved service delivery to Aboriginal and Torres Strait Islander communities; and
- enable residential development in Aboriginal Town Based Reserves.

 *Western Australia has partially implemented Recommendation 335 through providing support for the provision of freehold title over appropriate public lands to local Aboriginal and Torres Strait Islander communities. However, there is no evidence of an accelerated process being developed in response to this recommendation.*


In their 1993 implementation report, the **Tasmanian** Government provided that they were prepared to negotiate land ownership, but only on the basis of need and only in respect to unallocated Crown land. More recently, the Tasmanian Government has noted that the only community in Tasmania to which this recommendation is relevant is Cape Barren Island, where all former Crown land is now Aboriginal land.

 *Recommendation 335 is out of scope for the Tasmanian Government.*

In 1994, the **Northern Territory** Government had a policy of providing title to Aboriginal Associations for housing development in or on the fringes of urban development. The Northern Territory Government also supported Town Camps, including through the provision of \$30.3 million over the years 1988/89 to 1991/92.

 *The Northern Territory Government partially implemented Recommendation 335 through providing title to local Aboriginal and Torres Strait Islander communities for housing developments in or on the fringes of urban development. However, there is no evidence of an accelerated process being developed in response to this recommendation.*

The **Australian Capital Territory** participates in the national scheme for the recognition and protection of native title and its coexistence with existing land management schemes. This is provided in the 1994 ACT implementation report.

 *The Australian Capital Territory Government partially implemented Recommendation 335 through participation in the national scheme for the recognition and protection of native title, however there is no evidence of other action being taken to implement this recommendation.*

Additional commentary

The **Commonwealth** PM&C noted that the key principle underpinning initiatives in land reform is increasing the capacity of Aboriginal and Torres Strait Islander land owners to operate autonomously and have options to use their rights in land and water. The Northern Australia White Paper, for example, provides a number of Aboriginal and Torres Strait Islander specific measures. This includes funding to build capacity (\$20.4 million), land tenure reforms pilots that will broaden land use and economic opportunity (\$8.6 million) and township leasing and land administration funding to support the negotiation of township leases and improved land administration in the Northern Territory (\$17.1 million). In addition, the Commonwealth Government is driving the establishment of a self-sufficient Prescribed Bodies Corporate sector by investing in capacity building and supporting Aboriginal and Torres Strait Islander people to acquire and manage land.

Recommendation 336

That unalienated Crown land granted on the basis of cultural, historical and/or traditional association of Aboriginal people should be granted under inalienable freehold title and should carry with it the right of the Aboriginal owners to, inter alia:

- a. *Determine who may enter the land and the terms of such entry; and*

- b. *Control the impact of development on the land in so far as such development may threaten the cultural and/or social values of the Aboriginal owners and their communities.*

Background information

Land plays a central role in the identity of Aboriginal and Torres Strait Islander people, and land rights are vitally important to ensuring that Aboriginal and Torres Strait Islander communities can preserve the cultural, historical and traditional integrity of their land. Recommendation 336 calls for granted land rights to be inalienable.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The States and Territories support the implementation of Recommendation 335 through supporting the Commonwealth's national leadership position, and by contributing funding for the purchase of land.

Key actions taken and status of implementation

The **Commonwealth** has contributed to negotiations for long-term land leases over land held by Aboriginal and Torres Strait Islander people. These leases are purposed to allow the Commonwealth to retain ultimate control of the land, while underlying ownership remains with the traditional owners. PM&C advised that the policy change to community entity township leases has been welcomed as empowering local traditional owners and communities.

PM&C noted that about 40% of Australia has been returned to Aboriginal and Torres Strait Islander interests under native title and various state and territory based statutory Indigenous land schemes. A further 35-40% is available for claim. The AGD noted that section 47B of the *Native Title Act* allows in certain circumstances for prior extinguishment of native title to be disregarded over crown land not currently in use.

- *Recommendation 336 is complete given the return of land to Aboriginal and Torres Strait Islander interests alongside implementation of Section 47B of the Native Title Act.*

In **New South Wales**, unalienated crown land may be claimed by Aboriginal Land Councils constituted under the *NSW Aboriginal Land Rights Act 1983* if the land is not lawfully being used or occupied by Government or required for essential Government purposes at the date of the claim. Title under the *Aboriginal Land Rights Act* is not claimed or transferred on the basis of cultural, historical and/or traditional associations, however once transferred is managed in accordance with those associations held by the ALC's members. Membership can be based on residence in, or association with, the ALC area. Land successfully claimed is transferred to the Aboriginal Land Council in freehold title meaning the Aboriginal Land Council has the absolute right as property owner to determine who may enter the land and the terms of such entry.

Title or access to land based on traditional association can be claimed under the Commonwealth *Native Title Act 1993*. The terms of a determination of native title under the *Native Title Act* can provide rights to enter and determine who may enter land, particularly if freehold title to land is part of the determination of native title. The terms of any Indigenous Land Use Agreement under the *Native Title Act*, whether related to a determination of native title or not, can set out the terms for the terms of entry to land for cultural purposes, and may provide rights to determine who may enter the land. In New South Wales, land of cultural and traditional significance is being returned, in small quantities, to native titleholders through Indigenous Land Use Agreements, as part of the settlement of native title claims.

- *New South Wales has mostly implemented Recommendation 336 through the provision of appropriate public lands to Aboriginal communities. However, land title is not granted on the basis of cultural, traditional or historical associations to land.*


In 1993, **Victorian** Government policy provided the provision of appropriate public lands to Aboriginal and Torres Strait Islander communities on the basis of historical or cultural ties. This included the grant of freehold title, subject to the same rights and responsibilities of ownership as generally apply

in Victoria. The *Mineral Resources Development Act 1990* (Vic) also provides protection for Aboriginal and Torres Strait Islander heritage and cultural sites.


 *The Victorian Government has implemented Recommendation 336 through the provision of appropriate public lands to Aboriginal and Torres Strait Islander communities, and by the protections afforded in the Mineral Resources Development Act 1990 (Vic).*

In **Queensland**, the *Aboriginal Land Act 1991* (Qld) and the *Torres Strait Islander Land Act 1991* (Qld) include the provision to make vacant Crown land claimable by Aboriginal and Torres Strait Islander people on the basis of historical, traditional, and economic and cultural viability grounds. This includes a right for owners of freehold title to control entry onto their land, and to control mining upon their land subject only to a contrary decision by the Governor in Council.

Currently, there is now the option within discrete Aboriginal and Torres Strait Islander communities for a trustee to make available some land for alienable freehold, with the support of the community and native titleholders.

 *The Queensland Government has implemented Recommendation 336 through the provision of appropriate public lands to Aboriginal and Torres Strait Islander communities, and by the protections afforded in the Aboriginal Land Act 1991 (Qld) and the Torres Strait Islander Land Act 1991 (Qld).*


South Australia's response to Recommendation 335 is also relevant to Recommendation 336. The resolution of native title claims has resulted in unalienated Crown land being granted to Aboriginal and Torres Strait Islander people. To date, there have been 11 Indigenous Land Use Agreements that have provided for the transfer of over 80 freehold titles in land to Aboriginal and Torres Strait Islander groups. The *Aboriginal Lands Trust Act 1966* also provides for land to be granted or transferred to the Trust. Once land is held under freehold title by the Aboriginal Lands Trust or by Aboriginal and Torres Strait Islander groups, they are able to determine who enters the land, the terms of entry and the impact of any development on the land.

 *The South Australian Government has implemented Recommendation 336 through the provision of appropriate public lands to Aboriginal and Torres Strait Islander communities, and by the protections afforded in the Aboriginal Lands Trust Act 1966 (SA).*

The **Western Australia** Government provided in their 1994 implementation report that Aboriginal and Torres Strait Islander organisations and traditional owners were consulted and provided with opportunity to participate in the planning of all developments affecting land where traditional usage rights exist. Entry to Aboriginal and Torres Strait Islander land requires a permit to be issued under the *Aboriginal Affairs Planning Authority Act 1972* (WA), after consultation with the Aboriginal Lands Trust and local communities.


Inalienable freehold title is not an available tenure under current legislation in Western Australia. However, Aboriginal and Torres Strait Islander organisations who hold a crown lease or a lease of an Aboriginal Lands Trust property can determine who enters the land and the terms of entry.

Control of the impact of development on the cultural values of land is managed through compliance with the *Aboriginal Heritage Act 1972*. Western Australia also has a Land Use and Development policy which requires development of the Aboriginal Land Trust estate to be considered and approved by the Aboriginal Land Trust Board, and comply with relevant statutory authority regulations and native title future act provisions under the *Native Title Act 1993* (Cth).


 *Western Australia has partially implemented Recommendation 336 through the provision of appropriate public lands to Aboriginal communities, including determining the right of entry to the land and control of development on the land. However, Inalienable freehold title is not available under current legislation in Western Australia.*

Tasmania's response to Recommendation 334 is also relevant to Recommendation 336. In addition, the Tasmanian *Aboriginal Lands Act 1995* preserves some pre-existing access rights to some parcels


of Aboriginal land, but the Aboriginal Land Council of Tasmania otherwise has the powers of any freehold landowner.

 *The Tasmanian Government has implemented Recommendation 336 through the provision of appropriate public lands to Aboriginal and Torres Strait Islander communities, and by the protections afforded in the Aboriginal Lands Act 1995.*

The **Northern Territory** Government included actions towards the implementation of this recommendation in their response to Recommendation 334. Additionally, entry to Aboriginal and Torres Strait Islander land is controlled by the issue of permits, and development cannot occur without the owner's consent and other necessary approvals.

 *The Northern Territory Government has implemented Recommendation 336 through the provision of appropriate public lands to Aboriginal and Torres Strait Islander communities, and by protections afforded by the issue of permits regarding Aboriginal and Torres Strait Islander land use and development.*

The **Australian Capital Territory** Government provided in the 1997-98 implementation report that the ACT had no legal right to grant estates in freehold or to grant a lease that exceeds the permitted period.

 *Recommendation 336 is out of scope for the Australian Capital Territory Government.*

Recommendation 337

That governments recognise that where appropriate unalienated crown land is unavailable to be claimed on grounds of cultural, historical or traditional association with the land or where, due to the processes of the history of colonisation, Aboriginal people are no longer able to, nor seek to, make claims to particular areas of unalienated crown land on the basis of cultural, historical or traditional association there remain land needs of Aboriginal people which should be met by governments. These needs should be accommodated by a process which:

- a. Enables Aboriginal communities or groups to obtain secure title to unalienated crown land or to purchase land for social, recreational and community purposes (including the obtaining of additional land in circumstances in which an Aboriginal community is on Aboriginal land but where the area of that land is established as being too small to accommodate the community);*
- b. Enables Aboriginal communities or groups to obtain secure title to land so as to improve the environmental circumstances in which they live;*
- c. Provides adequate funding in order that land may be purchased on the open market in pursuance of the needs identified in paragraphs (a) and (b); and*
- d. Where pastoral land is held on lease from the Crown, permits Aboriginal communities traditionally or historically associated with the land to have priority when leases come up for renewal.*

Background information

The RCIADIC Report noted that the land needs of Aboriginal and Torres Strait Islander people should be incorporated into legislation and processes pertaining to the securing of land based on native title, in the event that appropriate land is unavailable, should be established.


Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. The States and Territories support the implementation of Recommendation 335 through supporting the Commonwealth's national leadership position, and by contributing funding for the purchase of land.

Key actions taken and status of implementation

The **Commonwealth** enacted the *Native Title Act 1993*, and the *Native Title Act Amendment 1998*, which contribute to the implementation of this recommendation. However, the determination of native title under this legislation is complex and involves a long timeframe.

Where unalienated Crown land is unavailable, the Commonwealth has provided financial support towards land purchase for Aboriginal and Torres Strait Islander people on the open market. In the 1990s, this function was implemented by ATSIC and the ILC. PM&C noted that the ILC was established to assist Aboriginal and Torres Strait Islander people to acquire and manage land under mainstream title.

 *Recommendation 337 has been implemented, as the Commonwealth has provided support for land claims on the basis of native title. Where unalienated Crown land has been unavailable, funds have been provided for the purchase of land on the open market.*


New South Wales legislation acknowledges the relationship of Aboriginal people to lands and water in NSW and acknowledges the dispossession of their land by Aboriginal people by successive governments without compensation.

In relation to part a) of this recommendation, in New South Wales Aboriginal Land Councils can claim unalienated Crown land not legally used or occupied, or required for essential public purposes at the date of claim. Land transferred to an Aboriginal Land Council under the ALRA is transferred in freehold title but subject to native title rights and interests. In 2015, the *NSW Aboriginal Land Rights Act 1983* was amended to enable Aboriginal Land Councils to negotiate land swaps or transfers, or forego certain lands they own, or forego land claims, in return for transfers to them of land of greater environmental, cultural, or economic value.

In relation to part b) of this recommendation Aboriginal Land Councils in New South Wales may use and develop land as determined by their members, including the management of land and investments for economic purposes.

In relation to part c) of this recommendation, the NSW Aboriginal Land Council manages an investment fund established by the diversion of 7.5% of land tax collected in NSW between 1983 and 1998. The Council can use this fund to oversee, support and fund the network of 120 Local Aboriginal Land Councils (LALCs). Its elected Council may set policy and budget to use income from the fund to acquire land on behalf of Aboriginal land councils, and councils individually may use their assets to acquire land.

In relation to part d) of this recommendation, no specific provision exists for priority Aboriginal access to pastoral land.

 *The New South Wales Government has mostly implemented Recommendation 337 through the *Aboriginal Land Rights Act 1983* but has not addressed elements of part (d) of this recommendation.*

The **Victorian** Government has taken steps to address Recommendation 337 through the Capital Projects Program (outlined in Recommendation 334) and the Victorian Traditional Owner Settlement Act 2010.


In relation to part a) of this recommendation, Victoria's *Traditional Owner Settlement Act 2010* provides for agreements which enable traditional owner groups to obtain secure title to unalienated crown land for cultural or economic purposes.

In relation to part b) of this recommendation, the Act provides for funding agreements for economic development opportunities as determined by the group.

In relation to part c) of this recommendation, settlements under the Act include funding to enable the traditional owner corporation to meet its settlement obligations and provide 'seed capital' to enable economic development opportunities, including the purchase of land. In addition, traditional owner


corporations receive ongoing compensation for high-impact activities that may have an impact on their recognised rights.

Part d) of this recommendation is not directly relevant to Victoria as Victoria has negligible pastoral lease land.


 *The Victorian Government has implemented Recommendation 337 through the Capital Projects Program and the Victorian Traditional Owner Settlement Act 2010.*

In **Queensland**, the *Aboriginal Land Act 1991* (Qld) and the *Torres Strait Islander Land Act 1991* (Qld) enable Aboriginal and Torres Strait Islander people to claim vacant Crown land on grounds of economic or cultural viability. Aboriginal and Torres Strait Islander people were provided with title and control over all lands that were transferred. As at 2015, no acquisition fund was currently provided for the purchase of land for Aboriginal and Torres Strait Islander people, nor is there a provision for priority tenure rights to Aboriginal and Torres Strait Islander people upon expiry of a pastoral lease expiry. However, these components of the recommendation can be met through native title determinations and/or Indigenous Land Use Agreements under the *Native Title Act 1993* (Cth).

The Queensland Government has noted that there are currently no proposal to address parts c) and d) of this recommendation, but rather to focus on increasing the Aboriginal and Torres Strait Islander land estate through *the Aboriginal Land Act* and the *Torres Strait Islander Land Act*. It was also noted that to date, approximately 6,000,000 ha of land has been granted under these Acts.


 *The Queensland Government has partially implemented Recommendation 337 through legislation but has not addressed parts (c) and (d) of this recommendation.*

The **South Australian** Government responded to Recommendation 337 in their response to Recommendation 334. The South Australian Government did not provide funds to purchase land on the open market, however the Aboriginal Lands Trust was provided with power to do so. Additionally, provisions were made in accordance with part (d) of Recommendation 337 through the Department of Lands and the Department of Environment and Planning.

 *The South Australian Government has fully implemented Recommendation 337.*

In **Western Australia**, the land needs of dispossessed Aboriginal and Torres Strait Islander people who cannot claim land through traditional association was addressed through the *Land (Titles and Usage) Act 1993* (WA). This legislation conferred power to the Minister for Aboriginal Affairs to grant Aboriginal and Torres Strait Islander people title to land for the purposes of advancing the interests of Aboriginal and Torres Strait Islander people. The Western Australia Government provided funds to assist Aboriginal and Torres Strait Islander groups in the purchase of properties. Preferential treatment was not provided to Aboriginal and Torres Strait Islander people in the acquisition of pastoral leases.

The Western Australian Government also supports the ongoing divestment of the Aboriginal Lands Trust estate to Aboriginal and Torres Strait Islander people. Currently, the Aboriginal Land Trust estate comprises approximately 24 million hectares, or 9.54 per cent of the state's land mass. The ALT's Land Transfer Program focuses on divestment of land to Aboriginal and Torres Strait Islander organisations that have sound governance and financial practices. Since 1987, the trust has transferred 81 parcels of land to Aboriginal and Torres Strait Islander ownership or control. Aboriginal and Torres Strait Islander people or organisations can also secure title to land such as freehold or leasehold through the provisions of the *Land Administration Act 1997*.

 *The Western Australian Government has fully implemented Recommendation 337.*

In 1993, the **Tasmanian** Government's policy was to negotiate land management or ownership of specific sites or unalienated Crown land. Currently, Tasmania's response to Recommendation 334 is also relevant to Recommendation 337. The Tasmanian *Aboriginal Lands Act 1995* meets points (a) and (b) of this recommendation. With regards to part (c), the Aboriginal Land Council of Tasmania has been able to access external funds for the purchase of some land. With regards to part (d), the Tasmanian government does not consider pastoral leasehold to be relevant to Tasmania.

- *The Tasmanian Government has implemented Recommendation 337, noting that part (d) of this recommendation is not relevant in Tasmania.*

The **Northern Territory** Government provided in their 1993-94 implementation report that legislative and administrative processes already applied to address Recommendation 337.

- *The Northern Territory Government has fully implemented Recommendation 337.*

As at 1997, the **Australian Capital Territory** Government had no legal right to grant estates in freehold.

- *Recommendation 337 is out of scope for the Australian Capital Territory Government.*

Recommendation 338

That as an interim step all land held under leasehold, being former Aboriginal reserve or mission land and being now held for or on behalf of Aboriginal people, be forthwith transferred under inalienable freehold title to the present leaseholder(s) pending further consideration by Aboriginal people as to the appropriate Aboriginal body which should thereafter hold the title to such land.

Background information

The RCIADIC Report commented that Aboriginal and Torres Strait Islander people have not been awarded justice with regards to their land needs. Legitimate acknowledgement of Aboriginal and Torres Strait Islander land needs should encompass the granting of inalienable freehold title which provides protection and recognition of land ownership.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. While the RCIADIC Report noted that this recommendation was predominantly addressed to Western Australia, all jurisdictions are responsible for its implementation.

Key actions taken and status of implementation

The **Commonwealth** has contributed to negotiations for long-term land leases over land held by Aboriginal and Torres Strait Islander people. These leases are purposed to allow the Commonwealth to retain control of the land, while underlying ownership remains with the traditional owners. PM&C advised that this change to community entity township leases has been welcomed as empowering local traditional owners and communities.

The AGD noted that Section 47A of the Native Title Act allows in certain circumstances for prior extinguishment of native title to be disregarded over land the subject of a grant of freehold or leasehold under legislation for the benefit of Aboriginal and Torres Strait Islander people, or land held in trust or reserved for Aboriginal and Torres Strait Islander people.

- *Recommendation 338 is considered to be mostly complete, as the available evidence suggests that the Commonwealth's policy of long-term leases has not fully addressed the issue of land ownership or the granting of freehold title for Aboriginal and Torres Strait Islander people.*

The **New South Wales** Government noted in their 1995-96 implementation report that all land of the former Aboriginal Land Trust has been transferred to the appropriate local Aboriginal Land Council in freehold title on the passing of the *Aboriginal Land Rights Act 1983*.


- *The New South Wales Government has fully implemented Recommendation 338.*

In their 1993 implementation report, the **Victorian** Government provided that Recommendation 338 did not apply to any land in Victoria. In 1992, land at Manatunga was transferred to the Murray Valley Aboriginal Cooperative Ltd through the *Aboriginal Lands (Manatunga Land) Act 1992* (Vic).


- *The Victorian Government has indicated that Recommendation 338 is not relevant to their State.*

Queensland's *Aboriginal Land Act 1991* (Qld) and *Torres Strait Islander Land Act 1991* (Qld) provide for existing Aboriginal and Torres Strait Islander reserves and Deeds of Grant in Trust to be granted

without a claim being made. The Acts require consultation with the people concerned prior to the appointment of trustees, which must be in accordance with any Aboriginal and Torres Strait Islander tradition applicable to the land.


 *The Queensland Government has fully implemented Recommendation 338.*

The **South Australian** Government provided in their 1994 implementation report that Recommendation 338 was covered by existing legislation, including Part IV of the *Aboriginal Lands Trust Act 1966* (SA). Yalata, Davenport, Umoona, Gerard, Raukkan, Point Pearce, and Nepabunna have been transferred to the Aboriginal Lands Trust, as former mission sites, together with other smaller areas. While the freehold is held by the Aboriginal Lands Trust, there are long term leases to communities that were entered into in the 1980s and run for terms of 99 years with rights of renewal for the same period.

 *The South Australian Government has fully implemented Recommendation 338.*

In **Western Australia**, the land needs of Aboriginal and Torres Strait Islander people have been met through the provisions of the *Land Act 1993* (WA) and the *Aboriginal Affairs Planning Authority Act 1972* (WA). Land was reserved through this process, vested in the Aboriginal Lands Trust and leased to the appropriate Aboriginal and Torres Strait Islander incorporated body for 99 years. This arrangement has many of the same features of security as inalienable freehold title. Aboriginal and Torres Strait Islander groups also have the option of applying for freehold title to land they hold through leasing arrangements.


All of the Aboriginal Lands Trust estate is held by the trust on behalf of Aboriginal and Torres Strait Islander people. The land estate is comprised of freehold properties, pastoral leases, general-purpose leases, and reserves for the use and benefit of Aboriginal and Torres Strait Islander people. Western Australia supports the ongoing divestment of the trust estate to Aboriginal and Torres Strait Islander people. The trust estate comprises approximately 24 million hectares or 9.54 per cent of the state's land mass.

 *The Western Australian Government has fully implemented Recommendation 338.*


In **Tasmania**, lands of this sort do not exist, with the former exception of Cape Barren Island, where all former Crown land is now Aboriginal land.

 *The Tasmanian Government has indicated that Recommendation 338 is not relevant.*

As at 1994, all relevant areas in the **Northern Territory** had been scheduled as Aboriginal Freehold under the *Aboriginal Land Rights (Northern Territory) Act 1976* (NT). Title to these reserve areas were issued as inalienable freehold.

 *The Northern Territory Government has fully implemented Recommendation 338.*

The **Australian Capital Territory** Government noted in their 1997 implementation report that Recommendation 338 was not applicable.

 *Recommendation 338 is out of scope for the Australian Capital Territory Government.*

Additional commentary

The **Commonwealth** PM&C noted that transferring lands from trust type or leasehold arrangements to ownership enabling economic development has progressed in Queensland and to an extent in South Australia and that the progress in Western Australia has been slower.

12.3 The process of reconciliation (339)

Recommendation 339

That all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if community division, discord and injustice

to Aboriginal people are to be avoided. To this end the Commission recommends that political leaders use their best endeavours to ensure bi-partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged.

Background information

Reconciliation represents an important process for the recognition and healing of injustices experienced by the Aboriginal and Torres Strait Islander people of Australia. Given the magnitude of this legacy of suffering and the significant disadvantages still experienced today by the Aboriginal and Torres Strait Islander people, it is important that political leaders actively demonstrate long-term and bi-partisan support for the concept of reconciliation, to ensure its successful passage.

Responsibility

The Commonwealth, and all State and Territory governments have responsibility for this recommendation. Recommendation 339 is addressed to all political leaders and their parties.


Key actions taken and status of implementation

In 1991, the **Commonwealth's** Council for Aboriginal Reconciliation (CAR) was established under the *Council for Aboriginal Reconciliation Act 1991*. The CAR has since been superseded by a non-government, not-for-profit foundation known as Reconciliation Australia, which promotes a continuing national focus for reconciliation.

In 1992, the High Court provided judicial recognition of native title under Australian common law with the decision for *Mabo & Ors v Queensland (No 2)*. In 1996, National Reconciliation Week was launched to celebrate and mark the milestones made in Australia's reconciliation journey.

In 2008, Prime Minister Kevin Rudd delivered an Apology to the Stolen Generations to the Australian Parliament in recognition of the harmful policies of past governments. Over the past decade there have been repeated attempts to hold a referendum on constitutional recognition of Aboriginal and Torres Strait Islander people as First Australians and the complete abolition of Section 25 which allows the States to prevent people from voting based on their race and Section 51(xxvi) of the Australian Constitution which permits the Federal Parliament to make laws for classes of citizens based on their race.

PM&C noted that in 2015, the sunset provision in the *Aboriginal and Torres Strait Islander People Recognition Act 2013* was extended to 28 March 2018 to ensure that the Act of Recognition continues until a referendum can be held. In addition, the Joint Select Committee recommended options for Constitutional change and further consultations with Aboriginal and Torres Strait Islander people as well as the broader community to build support for a referendum.

 *The Commonwealth Government has taken many significant steps, both symbolic and legislative, to advance the objectives of reconciliation. Recommendation 339 remains partially complete as reconciliation remains an ongoing process and there are next steps to be taken to address the issue of constitutional recognition.*

The **New South Wales** Government worked in cooperation with the strategies developed by the Council for Aboriginal Reconciliation. In 1996, Premier Carr affirmed the support and commitment of the NSW Government to the goals and processes of Aboriginal reconciliation, and extended an apology to Aboriginal people. Additionally, NSW formed an Aboriginal reference group as a consultative and advisory body. In 2010, the NSW Government recognised Aboriginal people in the NSW Constitution. Ongoing funding has also been provided to the NSW Reconciliation Council since its formation.

The **Victorian** Government has supported the process of reconciliation and worked in conjunction with the Council for Aboriginal Reconciliation. The work of Aboriginal Affairs Victoria aimed to promote reconciliation and to assist Aboriginal and Torres Strait Islander communities to become self-managing.

The **Queensland** Government, in 1992, formed an Aboriginal Deaths in Custody Interdepartmental Committee which had the purpose of working closely with the Aboriginal and Torres Strait Islander

Commission State Advisory Council to ensure a consideration of Aboriginal and Torres Strait Islander views on reconciliation.

The Queensland Government indicated its support for reconciliation through the 2009-12 Reconciliation Action Plan and the Aboriginal and Torres Strait Islander Cultural Capability Framework, which requires all departments to develop Cultural Capability Action Plans. Initiatives such as the inclusion of an acknowledgement of Aboriginal and Torres Strait Islander contributions in the preamble to the Constitution of Queensland and the Wages and Savings Reparations scheme support this process.

In their 1994 implementation report, the **South Australian** Government provided bipartisan support for reconciliation and improvement of Aboriginal and Torres Strait Islander affairs. All Aboriginal and Torres Strait Islander landholding Acts incorporate a role for Parliamentary Committees which are comprised of bipartisan members.

In 2013, the Parliament of SA passed the *Constitution (Recognition of Aboriginal Peoples) Amendment Bill 2012*, which was assented by the Governor on 28 March 2013, and which formally and constitutionally recognises Aboriginal and Torres Strait Islander South Australians. The SA Government became a partner of the national RECOGNISE Campaign in 2016 and has recently announced a new tiered approach to relationship building, which is intended to enable all South Australian Aboriginal and Torres Strait Islander groups to form a relationship with government, with a clear pathway towards Treaty.

In 1994, the **Western Australia** Government provided support for the concept of constructive reconciliation between Aboriginal and Torres Strait Islander people and wider Australian communities and to adopt the vision of the Council for Aboriginal Reconciliation. This was paired with the implementation of policies to deal with inadequate health, housing, education and employment options for Aboriginal and Torres Strait Islander people.

Since the previous implementation report, Western Australia has legislated for the recognition of Aboriginal and Torres Strait Islander people in the state's Constitution. This amendment recognises Aboriginal people as the First People of Western Australia and that they are the traditional custodians of the land.

The Western Australian Government also passed the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2015*, which acknowledges that the Noongar people are the traditional owners of the lands in the south-west of the state.


The **Tasmanian** Government provided a commitment in 1993 to reconciling the differences between Aboriginal and Torres Strait Islander communities and the wider Tasmanian community. This included a recognition of land, culture, education, welfare, and health issues as they concerned Aboriginal and Torres Strait Islander people. The Tasmanian Government enacted the *Aboriginal Lands Act 1995* to "promote reconciliation with the Tasmanian Aboriginal community by granting to Aboriginal people certain parcels of land of historic or cultural significance". Since 2015, the Tasmanian Government's Reset Agenda is underpinned by a reconciliation theme, noting the further recognition of "Tasmanian Aboriginal people's deep and continuous historical connection to the land and sea of Tasmania".

In 1993, the **Northern Territory** Government noted in their implementation report an agreement to participate in the reconciliation process.

The **Australian Capital Territory** implementation reports note that the ACT Government established ATSIC as a consultative mechanism between the Government and the ACT Aboriginal and Torres Strait Islander community. ATSIC participated in legislative reform and the implementation of policies and programs related to health, education, training, and the administration of justice. The ACT Government also took receipt of Aboriginal and Torres Strait Islander artwork for the Legislative Assembly during NAIDOC week, and staged a number of other community initiatives to pay recognition to Aboriginal and Torres Strait Islander people.

In 2018, the first Reconciliation Day Public Holiday was held on Monday 28 May 2018. The ACT has been recognised as the first Australian State or Territory to gazette Reconciliation Day as a Public

Holiday. On 10 May 2018 the ACT Legislative Assembly also agreed to recognise traditional custodians each sitting day, instead of just at the beginning of each session.

 *New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory have taken many significant steps, both symbolic and legislative, to advance the objectives of reconciliation. Recommendation 339 remains partially complete as reconciliation remains an ongoing process and there are next steps to be taken to address the issue of constitutional recognition.*

Conclusion

The RCIADIC made 339 recommendations which focused on improving the interaction of Aboriginal and Torres Strait Islander people with police and the justice system, as well as other policies, such as health, education and self-determination, in recognition of the broader social issues leading to higher rates of incarceration.

This review was limited to whether actions had been taken to respond to each recommendation, not whether the actions had been successful in achieving the desired outcomes of the RCIADIC. We also did not undertake an assessment of the appropriateness of the recommendations, nor whether the recommendations of the RCIADIC are still relevant today.

Of the 339 recommendations, the review found that the Commonwealth had full responsibility for 29 recommendations, and joint responsibility with the States and Territories for 194 recommendations. The States and Territories were found to have sole responsibility for 116 recommendations. Our review found that across all the recommendations, 64% have been implemented in full, 14% have been mostly implemented, 16% have been partially implemented and 6% have not been implemented. The most action has been taken to respond to recommendations that relate to the justice system, prison safety, and reconciliation, land needs and international obligations. The least action has been taken to respond to recommendations that relate to non-custodial approaches and self-determination.

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Appendix A – Consultation with government agencies

Following an initial desktop review, an interim copy of the report was provided to government agencies for comment to ensure that a complete and accurate list of key actions were recorded for each recommendation. The agencies listed below were consulted during the development of this report.

- Commonwealth Government:
 - Attorney-General’s Department
 - Australian Bureau of Statistics
 - Australian Communications and Media Authority
 - Australian Federal Police
 - Australian Institute of Criminology
 - Australian Institute of Health and Welfare
 - Department of Communications and the Arts
 - Department of Education and Training
 - Department of Employment
 - Department of the Environment and Energy
 - Department of Health
 - Department of Infrastructure and Regional Development
 - Department of the Prime Minister and Cabinet
 - Department of Social Services
 - National Archives of Australia
 - National Health and Medical Research Council
 - Office of the Registrar of Indigenous Corporations
- New South Wales Government:
 - Aboriginal Affairs NSW
 - Corrective Services
 - Department of Education
 - Department of Family and Community Services
 - Department of Finance, Services and Innovation
 - Department of Industry
 - Department of Justice
 - Department of Planning and Environment
 - Department of Premier and Cabinet
 - Liquor and Gaming NSW
 - Ministry of Health
 - NSW Police
 - NSW Treasury
 - Office of Environment and Heritage
- Victoria Government:
 - Coroners Court of Victoria
 - Corrections Victoria
 - Court Services Victoria
 - Crime Statistics Agency
 - Department of Economic Development, Jobs, Transport and Resources
 - Department of Education and Training

- Department of Environment, Land, Water and Planning
- Department of Health and Human Services
- Department of Justice and Regulation
- Department of Justice and Regulation
- Department of Premier and Cabinet
- Department of Treasury and Finance
- Justice Human Research Ethics Committee
- Koori Justice Unit
- Office of Liquor, Gaming and Racing
- Sentencing Advisory Council
- Victoria Police
- Victoria Police
- Victorian Law Reform Commission
- Queensland Government:
 - Department of the Premier and Cabinet
 - Department of Innovation, Tourism Industry Development and the Commonwealth Games
 - Department of Transport and Main Roads
 - Department of Employment, Small Business and Training
 - Department of Natural Resources, Mines and Energy
 - Department of Local Government, Racing and Multicultural Affairs
 - Department of Education
 - Department of Housing and Public Works
 - Queensland Corrective Services
 - Department of State Development, Manufacturing, Infrastructure and Planning
 - Department of Aboriginal and Torres Strait Islander Partnerships
 - Department of Child Safety, Youth and Women
 - Queensland Police Service
- South Australia Government:
 - Department of the Premier and Cabinet
 - Attorney-General's Department
 - Department for Child Protection
 - Department for Correctional Services
 - Department for Education (formerly Department for Education and Child Development)
 - Department for Environment and Water (formerly Department for Environment, Water and Natural Resources)
 - Department for Industry and Skills (formerly Department of State Development)
 - Department for Planning, Transport and Infrastructure
 - Department of Human Services (formerly Department for Communities and Social Inclusion)
 - Department of the Premier and Cabinet
 - SA Health
 - South Australia Police
- Western Australia Government:
 - Department of Biodiversity, Conservation and Attractions
 - Department of Communities
 - Department of Education
 - Department of Finance
 - Department of Justice
 - Department of Local Government, Sport and Cultural Industries
 - Department of Planning, Lands and Heritage
 - Department of the Premier and Cabinet
 - Department of Training and Workforce Development
 - Department of Treasury

- Main Roads Western Australia
- Mental Health Commission
- Public Sector Commission
- WA Country Health Service
- WA Health
- Western Australia Police Force
- Western Australian Equal Opportunity Commission
- Tasmania Government:
 - Department of Premier and Cabinet
 - Department of Education
 - Department of Health and Human Services
 - Department of Police, Fire and Emergency Management
 - Department of Justice
 - Department of State Growth
 - Department of Treasury and Finance
- Northern Territory Government:
 - Department of the Chief Minister (Office of Aboriginal Affairs)
 - Department of Attorney-General and Justice
 - Department of Housing and Community Development
 - Northern Territory Police, Fire and Emergency Services
 - Territory Families
 - Department of Health
- Australian Capital Territory Government:
 - Chief Minister, Treasury and Economic Development Directorate
 - Justice and Community Safety Directorate
 - Community Services Directorate
 - Education Directorate
 - Health Directorate
 - ACT Policing
 - Environment, Planning and Sustainable Development Directorate

Appendix B – Recommendations concordance

This appendix provides a concordance that sets out the responsibility for implementation of each recommendation, and the status of implementation for each government with responsibility for implementing the recommendation.

Table B.1 Summary of implementation statuses for each jurisdiction by theme

	Coronial matters	The justice system	Aboriginal and Torres Strait Islander disadvantage	Non-custodial approaches	Prison safety	Self-determination	Cycle of offending	Health and education	Equal opportunity	Reconciliation, land needs and international obligations
Commonwealth										
Complete	13	12	11	10	33	12	17	27	23	7
Mostly complete	4	0	3	5	6	5	6	7	2	1
Partially complete	2	1	1	1	1	7	1	1	2	1
Not implemented	0	0	0	0	0	1	0	0	0	0
New South Wales										
Complete	30	11	8	28	59	14	16	36	11	8
Mostly complete	6	0	1	3	4	2	6	4	3	2
Partially complete	6	0	1	8	2	5	1	6	4	1
Not implemented	2	1	0	0	1	3	2	2	0	0
Victoria										
Complete	32	10	7	22	56	11	14	29	10	8
Mostly complete	8	1	2	6	7	5	9	7	2	0
Partially complete	1	1	1	8	2	5	1	10	5	2
Not implemented	3	0	0	3	1	3	1	1	1	0
Queensland										
Complete	34	9	9	24	53	13	17	33	11	9
Mostly complete	7	1	2	3	7	5	6	4	3	0
Partially complete	2	1	0	7	6	5	2	10	5	2
Not implemented	1	0	0	5	0	1	1	1	0	0

	Coronial matters	The justice system	Aboriginal and Torres Strait Islander disadvantage	Non-custodial approaches	Prison safety	Self-determination	Cycle of offending	Health and education	Equal opportunity	Reconciliation, land needs and international obligations
South Australia										
Complete	23	10	4	17	49	10	14	28	10	9
Mostly complete	10	1	3	8	9	1	4	8	4	0
Partially complete	10	1	3	11	8	4	4	11	4	2
Not implemented	1	0	0	3	0	9	3	1	0	0
Western Australia										
Complete	31	10	3	22	48	10	12	29	12	8
Mostly complete	5	1	4	5	10	2	4	8	2	0
Partially complete	4	0	3	10	7	6	7	10	4	3
Not implemented	4	1	0	2	1	6	3	1	1	0
Tasmania										
Complete	24	8	3	18	42	7	6	18	8	8
Mostly complete	5	2	0	4	11	0	2	5	2	0
Partially complete	7	0	5	12	8	10	10	20	5	1
Not implemented	7	2	2	5	5	6	7	3	3	0
Northern Territory										
Complete	27	9	5	21	37	9	15	39	9	9
Mostly complete	8	2	2	3	18	2	2	5	3	0
Partially complete	7	1	3	13	9	8	5	4	6	2
Not implemented	2	0	0	2	2	5	5	2	1	0
Australian Capital Territory										
Complete	32	9	5	17	59	12	15	25	8	5
Mostly complete	7	0	1	9	6	1	6	5	3	0
Partially complete	4	2	2	8	1	3	3	11	2	2
Not implemented	1	0	0	4	0	6	1	3	3	1

Table B.2 Recommendations concordance

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
1	<p>That having regard to the great input which has been made to the work of the Commission, not only by governments and departments of government but also by Aboriginal communities, organisations and individuals, on the one hand, and non-Aboriginal organisations and individuals, on the other, it is highly desirable that the attitude of governments to the recommendations and the implementation of those adopted be carried out in a public way as part of the process of education and reconciliation of the whole society. To this end the Commission recommends:</p> <p>a. That the Commonwealth Government and State and Territory Governments, in consultation with ATSIC, agree upon a process which ensures that the adoption or otherwise of recommendations and the implementation of the adopted recommendations will be reported upon on a regular basis with respect to progress on a Commonwealth, State and Territory basis;</p> <p>b. That such reports should be made not less than annually and that, subject to the agreement of its Commissioners so to do, ATSIC be given special responsibility and funding to enable it to monitor the progress of the implementation of the adopted recommendations and to report thereon to the Aboriginal and Torres Strait Islander community;</p> <p>c. That governments consult with appropriate Aboriginal organisations in the consideration and implementation of the various recommendations in this report;</p> <p>d. That, wherever appropriate, governments make use of the services of Aboriginal organisations in implementing such recommendations; and</p> <p>e. Ensure that local Aboriginal organisations are consulted about the local implementation of recommendations, and their services be used wherever feasible.</p>	Combined	PC	MC	C	C	PC	C	MC	PC	PC
2	<p>That subject to the adoption by governments of this recommendation and the concurrence of Aboriginal communities and appropriate organisations, there be established in each State and Territory an independent Aboriginal Justice Advisory Committee to provide each Government with advice on Aboriginal perceptions of criminal justice matters, and on the implementation of the recommendations of this report. The Aboriginal Justice Advisory Committee in each State should be drawn from, and represent, a network of similar local or regionally based committees which can provide the State Advisory Committee with information of the views of Aboriginal people. It is most important that the views of people living outside the urban centres be incorporated. The terms of reference of each State, local or regional Advisory Committee is a matter to be negotiated between governments and Aboriginal people. The Commission suggests however that matters which might appropriately be considered include, inter alia:</p> <p>a. The implementation of the recommendations of this report, or such of them as receive the endorsement of the Government;</p>	State and Territory	N/A	C	C	MC	C	C	NI	MC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>b. Proposals for changes to policies which affect the operation of the criminal justice system;</p> <p>c. Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;</p> <p>d. Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and</p> <p>e. The dissemination of information on policies and programs between different agencies, and between parallel bodies in different States.</p>										
3	<p>The Commission notes that some of the recommendations of this report, particularly those relating to the custodial environment, are particularly detailed. The monitoring of the implementation of recommendations could only be carried out in close liaison with the authorities responsible for implementing them. In order to ensure that the State Aboriginal Justice Advisory Committee is able to give informed advice to the Attorney-General or Minister for Justice, it should be assisted by a small Secretariat, staffed by people with knowledge of Aboriginal interactions with the criminal justice system. The role of the Secretariat should be to provide information to the Advisory Committee, assist it in the development of policy proposals, and liaise on behalf (and at the direction of) the Committee with other agencies. The Secretariat should be located within the Department of Attorney-General or Minister for Justice but be accountable to the Advisory Committee on terms to be negotiated between government and Aboriginal people but with the maximum degree of autonomy from government as may be consistent with it fulfilling its function to assist the Advisory Committee to give informed, independent advice to government.</p>	State and Territory	N/A	C	C	C	PC	C	N/A	C	C
4	<p>That if and where claims are made in respect of the deaths based on the findings of Commissioners:</p> <p>a. Governments should not, in all the circumstances, take the point that a claim is out of time as prescribed by the relevant Statute of Limitations; and</p> <p>b. Governments should, whenever appropriate, make the effort to settle claims by negotiation so as to avoid further distress to families by litigation.</p>	Combined	N/A	PC	C	PC	C	NI	PC	C	C
5	<p>That governments, recognising the trauma and pain suffered by relatives, kin and friends of those who died in custody, give sympathetic support to requests to provide funds or services to enable counselling to be offered to these people.</p>	State and Territory	N/A	C	C	C	C	C	C	C	C
6	<p>That for the purpose of all recommendations relating to post-death investigations the definition of deaths should include at least the following categories:</p> <p>a. The death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;</p> <p>b. The death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care while in such custody or detention;</p> <p>c. The death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and</p>	State and Territory	N/A	C	C	C	MC	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	d. The death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.										
7	That the State Coroner or, in any State or Territory where a similar office does not exist, a Coroner specially designated for the purpose, be generally responsible for inquiry into all deaths in custody.	State and Territory	N/A	C	C	C	C	C	C	C	C
8	That the State Coroner be responsible for the development of a protocol for the conduct of coronial inquiries into deaths in custody and provide such guidance as is appropriate to Coroners appointed to conduct inquiries and inquests.	State and Territory	N/A	C	MC	C	C	C	PC	MC	PC
9	That a Coroner inquiring into a death in custody be a Stipendiary Magistrate or a more senior judicial officer.	State and Territory	N/A	C	C	C	C	C	PC	C	C
10	That custodial authorities be required by law to immediately notify the Coroner's Office of all deaths in custody, in addition to any other appropriate notification.	State and Territory	N/A	C	C	C	C	C	C	C	C
11	That all deaths in custody be required by law to be the subject of a coronial inquiry which culminates in a formal inquest conducted by a Coroner into the circumstances of the death. Unless there are compelling reasons to justify a different approach the inquest should be conducted in public hearings. A full record of the evidence should be taken at the inquest and retained.	State and Territory	N/A	PC	C	C	C	C	C	C	C
12	That a Coroner inquiring into a death in custody be required by law to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death.	State and Territory	N/A	PC	MC	C	MC	C	C	C	C
13	That a Coroner inquiring into a death in custody be required to make findings as to the matters which the Coroner is required to investigate and to make such recommendations as are deemed appropriate with a view to preventing further custodial deaths. The Coroner should be empowered, further, to make such recommendations on other matters as he or she deems appropriate.	State and Territory	N/A	C	C	C	C	C	C	C	C
14	That copies of the findings and recommendations of the Coroner be provided by the Coroner's Office to all parties who appeared at the inquest, to the Attorney-General or Minister for Justice of the State or Territory in which the inquest was conducted, to the Minister of the Crown with responsibility for the relevant custodial agency or department and to such other persons as the Coroner deems appropriate.	State and Territory	N/A	MC	C	MC	C	C	C	MC	C
15	That within three calendar months of publication of the findings and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister of the Crown with responsibility for that agency or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person.	State and Territory	N/A	MC	C	MC	MC	NI	NI	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
16	That the relevant Ministers of the Crown to whom responses are delivered by agencies or departments, as provided for in Recommendation 15, provide copies of each such response to all parties who appeared before the Coroner at the inquest, to the Coroner who conducted the inquest and to the State Coroner. That the State Coroner be empowered to call for such further explanations or information as he or she considers necessary, including reports as to further action taken in relation to the recommendations.	State and Territory	N/A	PC	MC	MC	PC	NI	NI	PC	C
17	That the State Coroner be required to report annually in writing to the Attorney-General or Minister for Justice, (such report to be tabled in Parliament), as to deaths in custody generally within the jurisdiction and, in particular, as to findings and recommendations made by Coroners pursuant to the terms of Recommendation 13 above and as to the responses to such findings and recommendations provided pursuant to the terms of Recommendation 16 above.	State and Territory	N/A	C	C	C	C	C	C	PC	C
18	That the State Coroner, in reporting to the Attorney-General or Minister for Justice, be empowered to make such recommendations as the State Coroner deems fit with respect to the prevention of deaths in custody.	State and Territory	N/A	C	C	C	C	C	C	C	C
19	That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known.	Combined	MC	MC	C	C	C	MC	MC	MC	MC
20	That the appropriate Aboriginal Legal Service be notified immediately of any Aboriginal death in custody.	Combined	MC	C	C	C	C	PC	C	C	MC
21	That the deceased's family or other nominated person and the Aboriginal Legal Service be advised as soon as possible and, in any event, in adequate time, as to the date and time of the coronial inquest.	State and Territory	N/A	PC	PC	MC	MC	C	NI	C	MC
22	That no inquest should proceed in the absence of appearance for or on behalf of the family of the deceased unless the Coroner is satisfied that the family has been notified of the hearing in good time and that the family does not wish to appear in person or by a representative. In the event that no clear advice is available to the Coroner as to the family's intention to be appear or be represented no inquest should proceed unless the Coroner is satisfied that all reasonable efforts have been made to obtain such advice from the family, the Aboriginal Legal Service and/or from lawyers representing the family.	State and Territory	N/A	NI	MC	C	MC	PC	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
23	That the family of the deceased be entitled to legal representation at the inquest and that government pay the reasonable costs of such representation through legal aid schemes or otherwise.	Combined	C	C	C	C	PC	MC	PC	NI	PC
24	That unless the State Coroner or the Coroner appointed to conduct the inquiry otherwise directs, investigators conducting inquiries on behalf of the Coroner and the staff of the Coroners Office should at all times endeavour to provide such information as is sought by the family of the deceased, the Aboriginal Legal Service and/or lawyers representing the family as to the progress of their investigation and the preparation of the brief for the inquest. All efforts should be made to provide frank and helpful advice and to do so in a polite and considerate manner. If requested, all efforts should be made to allow family members or their representatives the opportunity to inspect the scene of death.	Combined	C	C	C	C	MC	C	C	C	C
25	That unless the State Coroner, or the Coroner appointed to conduct the inquiry, directs otherwise, and in writing, the family of the deceased or their representative should have a right to view the body, to view the scene of death, to have an independent observer at any post-mortem that is authorised to be conducted by the Coroner, to engage an independent medical practitioner to be present at the post-mortem or to conduct a further post-mortem, and to receive a copy of the post-mortem report. If the Coroner directs otherwise, a copy of the direction should be sent to the family and to the Aboriginal Legal Service.	Combined	C	C	MC	C	C	C	C	MC	C
26	That as soon as practicable, and not later than forty-eight hours after receiving advice of a death in custody the State Coroner should appoint a solicitor or barrister to assist the Coroner who will conduct the inquiry into the death.	State and Territory	N/A	MC	MC	C	MC	PC	PC	MC	MC
27	That the person appointed to assist the Coroner in the conduct of the inquiry may be a salaried officer of the Crown Law Office or the equivalent office in each State and Territory, provided that the officer so appointed is independent of relevant custodial authorities and officers. Where, in the opinion of the State Coroner, the complexity of the inquiry or other factors, necessitates the engaging of counsel then the responsible government office should ensure that counsel is so engaged.	State and Territory	N/A	C	C	C	MC	MC	C	PC	C
28	That the duties of the lawyer assisting the Coroner be, subject to direction of the Coroner, to take responsibility, in the first instance, for ensuring that full and adequate inquiry is conducted into the cause and circumstances of the death and into such other matters as the Coroner is bound to investigate. Upon the hearing of the inquest the duties of the lawyer assisting at the inquest, whether solicitor or barrister, should be to ensure that all relevant evidence is brought to the attention of the Coroner and appropriately tested, so as to enable the Coroner to make such findings and recommendations as are appropriate to be made.	State and Territory	N/A	C	C	C	PC	C	C	PC	C
29	That the Coroner in charge of a coronial inquiry into a death in custody have legal power to require the officer in charge of the police investigation to report to the	State and Territory	N/A	C	C	C	PC	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	Coroner. The Coroner should have power to give directions as to any additional steps he or she desires to be taken in the investigation.										
30	That subject to direction, generally or specifically given, by the Coroner, the lawyer assisting the Coroner should have responsibility for reviewing the conduct of the investigation and advising the Coroner as to the progress of the investigation.	State and Territory	N/A	C	C	C	PC	C	C	C	C
31	That in performing the duties as lawyer assisting the Coroner in the inquiry into a death the lawyer assisting the Coroner be kept informed at all times by the officer in charge of the police investigation into the death as to the conduct of the investigation and the lawyer assisting the Coroner should be entitled to require the officer in charge of the police investigation to conduct such further investigation as may be deemed appropriate. Where dispute arises between the officer in charge of the police investigation and the lawyer assisting the Coroner as to the appropriateness of such further investigation the matter should be resolved by the Coroner.	Combined	PC	MC	C	C	PC	C	NI	C	PC
32	That the selection of the officer in charge of the police investigation into a death in custody be made by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank.	Combined	C	C	NI	MC	MC	C	C	C	C
33	That all officers involved in the investigation of a death in police custody be selected from an Internal Affairs Unit or from a police command area other than that in which the death occurred and in every respect should be as independent as possible from police officers concerned with matters under investigation. Police officers who were on duty during the time of last detention of a person who died in custody should take no part in the investigation into that death save as witnesses or, where necessary, for the purpose of preserving the scene of death.	Combined	C	C	C	C	C	C	C	MC	C
34	That police investigations be conducted by officers who are highly qualified as investigators, for instance, by experience in the Criminal Investigation Branch. Such officers should be responsible to one, identified, senior officer.	Combined	C	C	C	C	C	C	C	PC	C
35	That police standing orders or instructions provide specific directions as to the conduct of investigations into the circumstances of a death in custody. As a matter of guidance and without limiting the scope of such directions as may be determined, it is the view of the Commission that such directions should require, inter alia, that: a. Investigations should be approached on the basis that the death may be a homicide. Suicide should never be presumed; b. All investigations should extend beyond an inquiry into whether death occurred as a result of criminal behaviour and should include inquiry into the lawfulness of the custody and the general care, treatment and supervision of the deceased prior to death; c. The investigations into deaths in police watch-houses should include full inquiry into the circumstances leading to incarceration, including the circumstances of arrest or apprehension and the deceased's activities beforehand;	Combined	MC	C	C	C	C	C	MC	C	MC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>d. In the course of inquiry into the general care, treatment or supervision of the deceased prior to death particular attention should be given to whether custodial officers observed all relevant policies and instructions relating to the care, treatment and supervision of the deceased; and</p> <p>e. The scene of death should be subject to a thorough examination including the seizure of exhibits for forensic science examination and the recording of the scene of death by means of high quality colour photography.</p>										
36	Investigations into deaths in custody should be structured to provide a thorough evidentiary base for consideration by the Coroner on inquest into the cause and circumstances of the death and the quality of the care, treatment and supervision of the deceased prior to death.	Combined	C	C	MC	C	C	C	C	C	C
37	That all post-mortem examinations of the deceased be conducted by a specialist forensic pathologist wherever possible or, if a specialist forensic pathologist is not available, by a specialist pathologist qualified by experience or training to conduct such post-mortems.	State and Territory	N/A	C	C	C	PC	C	NI	C	C
38	The Commission notes that whilst the conduct of a thorough autopsy is generally a prerequisite for an adequate coronial inquiry some Aboriginal people object, on cultural grounds, to the conduct of an autopsy. The Commission recognises that there are occasions where as a matter of urgency and in the public interest the Coroner may feel obligated to order that an autopsy be conducted notwithstanding the fact that there may be objections to that course from members of the family or community of the deceased. The Commission recommends that in order to minimise and to resolve difficulties in this area the State Coroner or the representative of the State Coroner should consult generally with Aboriginal Legal Services and Aboriginal Health Services to develop a protocol for the resolution of questions involving the conduct of inquiries and autopsies, the removal and burial of organs and the removal and return of the body of the deceased. It is highly desirable that as far as possible no obstacle be placed in the way of carrying out of traditional rites and that relatives of a deceased Aboriginal person be spared further grief. The Commission further recommends that the Coroner conducting an inquiry into a death in custody should be guided by such protocol and should make all reasonable efforts to obtain advice from the family and community of the deceased in consultation with relevant Aboriginal organisations.	State and Territory	N/A	PC	MC	MC	PC	PC	PC	PC	MC
39	That in developing a protocol with Aboriginal Legal Services and Aboriginal Health Services as proposed in Recommendation 38, the State Coroner might consider whether it is appropriate to extend the terms of the protocol to deal with any and all cases of Aboriginal deaths notified to the Coroner and not just to those deaths which occur in custody.	State and Territory	N/A	NI	NI	NI	NI	NI	NI	NI	NI
40	That Coroners Offices in all States and Territories establish and maintain a uniform data base to record details of Aboriginal and non-Aboriginal deaths in custody and	Combined	C	C	C	C	C	C	PC	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	liaise with the Australian Institute of Criminology and such other bodies as may be authorised to compile and maintain records of Aboriginal deaths in custody in Australia.										
41	That statistics and other information on Aboriginal and non- Aboriginal deaths in prison, police custody and juvenile detention centres, and related matters, be monitored nationally on an ongoing basis. I suggest that responsibility for this be established within the Australian Institute of Criminology and that all custodial agencies co-operate with the Institute to enable it to carry out the responsibility. The responsibility should include at least the following functions: a. Maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders); b. Report annually to the Commonwealth Parliament; and c. Negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody. Such definition should include at least the following categories: i. the death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile; ii. the death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention; iii. the death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and iv. the death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.	Combined	MC	C	C	C	C	C	C	C	C
42	That governments require the provision of and publish, on a regular and frequent basis, detailed information on the numbers and details of the people passing through their police cells.	Combined	C	C	NI	PC	C	MC	MC	MC	MC
43	That a survey such as the 1988 National Police Custody Survey be conducted at regular intervals of, say, two to five years, with the aim of systematically monitoring and evaluating the degree to which needed improvements in legislation, attitudes, policies and procedures that affect police custody are implemented.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
44	That the Australian Institute of Criminology co-ordinate and implement the recommended series of national surveys. The experience of the first national survey points to the fact that careful planning with all the relevant authorities will be needed to ensure that the maximum amount of useful information is derived from the surveys.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
45	That the appropriate Ministerial Councils strive to achieve a commonality of approach in data collections concerning both police and prison custody.	Combined	C	C	C	C	C	C	C	C	C
46	That the national deaths in custody surveys which I have recommended be undertaken by the Australian Institute of Criminology include the establishment of uniform	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	procedures and methodologies which would not only enhance the state of knowledge in this area but also facilitate the making of comparisons between Australian and other jurisdictions, and facilitate communication of research findings.										
47	That relevant Ministers report annually to their State and Territory Parliaments as to the numbers of persons held in police, prison and juvenile centre custody with statistical details as to the legal status of the persons so held (for example, on arrest; on remand for trial; on remand for sentence; sentenced; for fine default or on other warrant; for breach of non-custodial court orders; protective custody or as the case may be), including whether the persons detained were or were not Aboriginal and Torres Strait Islander people.	State and Territory	N/A	C	C	C	MC	MC	MC	C	C
48	That when social indicators are to be used to monitor and/or evaluate policies and programs concerning Aboriginal people, the informed views of Aboriginal people should be incorporated into the development, interpretation and use of the indicators, to ensure that they adequately reflect Aboriginal perceptions and aspirations. In particular, it is recommended that authorities considering information gathering activities concerning Aboriginal people should consult with ATSIC and other Aboriginal organisations, such as NAIHO or NAILSS, as to the project.	Combined	C	C	C	MC	MC	C	MC	C	C
49	That proposals for a special national survey covering a range of social, demographic, health and economic characteristics of the Aboriginal population with full Aboriginal participation at all levels be supported. The proposed census should take as its boundaries the ATSIC boundaries. The Aboriginal respondents to the census should be encouraged to nominate their traditional/contemporary language affiliation. I further recommend that the ATSIC Regional Councils be encouraged to use the special census to obtain an inventory of community infrastructure, assets and outstanding needs which can be used as data for the development of their regional plans.	Combined	PC	C	C	C	C	C	C	C	C
50	That in the development of future national censuses and other data collection activity covering Aboriginal people, the Australian Bureau of Statistics and other agencies consult, at an early stage, with ATSIC- to ensure that full account is taken of the Aboriginal perspective.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
51	That research funding bodies reviewing proposals for further research on programs and policies affecting Aboriginal people adopt as principal criteria for the funding of those programs: a. The extent to which the problem or process being investigated has been defined by Aboriginal people of the relevant community or group; b. The extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research; c. The requirement that Aboriginal people from the relevant community or group receive the results of the research delivered in a form which can be understood by them; and	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	d. The requirement that the research include the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.										
52	That funding should be made available to organisations such as Link-Up which have the support of Aboriginal people for the purpose of re-establishing links to family and community which had been severed or attenuated by past government policies. Where this service is being provided to Aboriginal people by organisations or bodies which, not being primarily established to pursue this purpose, provide the service in conjunction with other functions which they perform, the role of such organisations in assisting Aboriginal people to re-establish their links to family and community should be recognised and funded, where appropriate.	Combined	C	C	C	C	C	C	NI	PC	PC
53	That Commonwealth, State and Territory Governments provide access to all government archival records pertaining to the family and community histories of Aboriginal people so as to assist the process of enabling Aboriginal people to re-establish community and family links with those people from whom they were separated as a result of past policies of government. The Commission recognises that questions of the rights to privacy and questions of confidentiality may arise and recommends that the principles and processes for access to such records should be negotiated between government and appropriate Aboriginal organisations, but such negotiations should proceed on the basis that as a general principle access to such documents should be permitted.	Combined	C	C	C	C	C	MC	C	C	PC
54	That in States or Territories which have not already so provided there should be legislative recognition of: a. The Aboriginal Child Placement Principle; and b. The essential role of Aboriginal Child Care Agencies.	State and Territory	N/A	C	MC	C	C	C	C	MC	C
55	That government and funding bodies reflect the importance of the National Aboriginal Language Policy in the provision of funds to Aboriginal communities and organisations.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
56	The Commission notes that many Aboriginal people have expressed the wish to record and make known to both Aboriginal and non-Aboriginal people aspects of the history, traditions and contemporary culture of Aboriginal society. This wish has been reflected in the establishment of many small local community museums and culture centres. The Commission notes that many opportunities exist for projects which introduce non-Aboriginal people to Aboriginal history and culture. One illustration is the work done by the Kaurna people in South Australia to restore the Tjilbruke track; another is the Brewarrina Museum. The Commission recommends that government and appropriate heritage authorities negotiate with Aboriginal communities and organisations in order to support such Aboriginal initiatives.	Combined	C	C	C	C	C	C	C	C	C
57	That Governments agree that: a. The records of the Commission be held in archives in the capital city of the state in which the inquiry, which gathered those records, occurred; and	Combined	C	C	C	PC	C	C	NI	C	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	b. A relevant Aboriginal body, for example the Aboriginal Affairs Planning Authority in the case of Western Australia, be given responsibility for determining access the material jointly with the normal authority for determining such matters.										
58	That Governments give consideration to amending the liquor laws to provide a right of appeal to persons excluded from a hotel where that exclusion or its continuation is harsh or unreasonable.	State and Territory	N/A	NI	C	N/A	PC	NI	C	C	C
59	That Police Services use every endeavour to police the provisions of Licensing Acts which make it an offence to serve intoxicated persons.	Combined	C	C	PC	C	C	C	C	C	C
60	That Police Services take all possible steps to eliminate: a. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and b. The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers. When such conduct is found to have occurred, it should be treated as a serious breach of discipline.	Combined	C	C	C	C	C	C	C	C	C
61	That all Police Services review their use of para-military forces such as the New South Wales SWOS and TRG units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.	Combined	C	C	C	C	C	C	C	C	C
62	That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.	Combined	C	C	C	C	C	C	MC	MC	C
63	That having regard to the desirability of Aboriginal people deciding for themselves what courses of action should be pursued to advance their well-being, ATSIC consider, in the light of the implementation of the National Aboriginal Health Strategy, the establishment of a National Task Force to focus on: a. The examination of the social and health problems which Aboriginal people experience as a consequence of alcohol use; b. The assessment of the needs in this area and the means to fulfil these needs; and c. The representation of Aboriginal Health Services and other medical resources in such a project.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
64	That Aboriginal people be involved at every level in the development, implementation and interpretation of research into the patterns, causes and consequences of Aboriginal alcohol use and in the application of the results of that research.	Combined	C	C	C	C	C	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
65	That if Aboriginal people identify it as a priority (and ATSIC is well placed to make such a judgement) the Ministerial Council on Drug Strategy, as the body which manages the NCADA, act to develop and implement, in conjunction with Aboriginal people and organisations, an ongoing program of data collection and research to fill the many gaps which exist in knowledge about Aboriginal alcohol and other drug use and the consequences of such use. Particular areas of need are: a. Information about alcohol consumption among urban Aboriginal groups; b. Information about alcohol consumption among Aboriginal youth; c. Longitudinal data in all areas; d. An emphasis on good quality data utilising standard methodology and definitions; and e. Evaluation research which assists in developing improved Aboriginal prevention, intervention and treatment initiatives in the alcohol and other drugs field.	Combined	MC	MC	C	C	PC	MC	PC	MC	PC
66	That if Aboriginal people identify it as a priority, organisations which support research into Aboriginal issues, including the NCADA and the Australian Institute of Aboriginal and Torres Strait Islander Studies, encourage more comprehensive and diverse research into the extent, causes and consequences of alcohol use among Aboriginal people. In particular, that appropriate steps be taken to ensure that the NCADA national research and training centres at the University of New South Wales, Curtin University and the Flinders University of South Australia establish mechanisms to encourage new graduates, researchers from other fields and Aboriginal people to conduct research in this area and identify research priorities and methods to implement them.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
67	That the National Drug Abuse Data System of the NCADA institute a regular research program to establish baseline data and monitor changes over time in relation to the health, social and economic consequences of alcohol use among Aboriginal people.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
68	That responsible authorities accurately identify Aboriginal people in administrative data sets such as those covering mortality, morbidity and other social indicators, where such action will provide basic information which will assist Aboriginal organisations to achieve their research and service development goals. While it is acknowledged that primary responsibility for the management of such data sets lies with the States and Territories, Commonwealth agencies such as ATSIC, the AIH and the AIC should be involved in this exercise in a co-ordinating role.	Combined	MC	C	MC	MC	MC	MC	PC	MC	C
69	That with the aim of assisting Aboriginal organisations to develop effective programs aimed at minimising the harm arising from alcohol and other drug use, priority be given by research funding bodies to research investigating the causal relationships between alcohol and other drugs, including their availability, and consequences on community well-being and criminal activity.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
70	That organisations developing policies and programs addressing Aboriginal alcohol issues:	Combined	C	C	C	C	C	C	NI	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>a. Recognise the inadequacy of single factor explanations (such as the disease model of problematic alcohol use) of the causes of alcohol dependence and misuse among individuals; and</p> <p>b. Take into account the fact that multiple explanations are necessary to explain the causes of alcohol misuse and related problems at the community level. It is therefore inappropriate to focus too strongly on any one explanation to the exclusion of others.</p>										
71	That research funding bodies consider commissioning or otherwise sponsoring research investigating Aboriginal conceptualisation's of the nature and causes of alcohol dependence and misuse and the prevention, intervention and treatment approaches which stem from these.	Combined	C	C	PC	C	PC	MC	PC	PC	PC
72	That in responding to truancy the primary principle to be followed by government agencies be to provide support, in collaboration with appropriate Aboriginal individuals and organisations, to the juvenile and to those responsible for the care of the juvenile; such support to include addressing the cultural and social factors identified by the juvenile and by those responsible for the care of the juvenile as being relevant to the truancy.	Combined	MC	C	C	C	C	PC	C	PC	MC
73	That the provision of housing and infrastructure to Aboriginal people in remote and discrete communities, including the design and location of houses, take account of their cultural perceptions of the use of living space, and that budgetary allocations include provision for appropriate architectural and town planning advice to, and consultation with, the serviced community.	Combined	C	C	C	C	C	C	C	C	C
74	That the work of the Centre for Appropriate Technology in Alice Springs in the design of items specifically for infrastructural and technological innovations appropriate to remote communities, and that of similar research units, be appropriately encouraged and supported.	Combined	C	C	C	C	PC	PC	NI	C	N/A
75	That Aboriginal communities be given equitable access to ongoing expenditure by the Commonwealth, State and Territory, and local authorities on roads. In addition, where new roads or changes to existing roads are proposed, it is recommended that no development should take place until the impact on Aboriginal land and the possible impact on Aboriginal communities that public access may have are established in consultation with those communities likely to be affected by the development proposal.	Combined	C	PC	MC	C	MC	MC	PC	PC	N/A
76	That the integrated analysis of infrastructure, housing, essential services and health as illustrated by the Nganampa Health Council's UPK Report be considered as a model worthy of study and adaption for the development of community planning processes in other States and areas.	Combined	C	C	C	MC	MC	PC	PC	C	C
77	That the distinction between communities with or without formal local government authority status should be abolished for purposes of access to Commonwealth roads funding. The Minister for Aboriginal Affairs and the Federal Minister for Local Government should establish a review of Commonwealth Local Road Funds and specific	Commonwealth	PC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	purpose funding with, amongst others, one specific term of reference being to find feasible solutions to the problem of inequity for Aboriginal people in the provision and maintenance area of roads.										
78	That with respect to the provision of grants the Queensland State Government should ensure that Aboriginal and Islander Community Councils are considered against the average standards used for mainstream local government councils. Aboriginal Community Councils should have access to the Capital Works Subsidy Scheme available to mainstream local Government Authorities. The operation of the Aerodrome Local Ownership Scheme should be extended to Aboriginal Community Councils.	State and Territory	N/A	N/A	N/A	C	N/A	N/A	N/A	N/A	N/A
79	That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.	State and Territory	N/A	C	NI	NI	C	C	C	C	C
80	That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.	State and Territory	N/A	C	C	C	C	C	C	C	C
81	That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.	State and Territory	N/A	PC	PC	C	PC	C	PC	PC	PC
82	That governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences.	State and Territory	N/A	PC	PC	C	PC	PC	PC	PC	PC
83	That: a. The Northern Territory Government consider giving a public indication that it will review the two kilometre law at the end of a period of one year in the expectation that all relevant organisations, both Aboriginal and non- Aboriginal, will negotiate as to appropriate local agreements relating to the consumption of alcohol in public that will meet the reasonable expectations of both Aboriginal and non-Aboriginal people associated with particular localities; and b. That other Governments give consideration to taking similar action in respect of laws operating within their jurisdictions designed to deal with the public consumption of alcohol.	State and Territory	N/A	C	PC	MC	MC	PC	PC	PC	MC
84	That issues related to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organisations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan.	State and Territory	N/A	C	C	MC	MC	NI	NI	C	NI
85	That: a. Police Services should monitor the effect of legislation which decriminalises drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells when they should more appropriately have been taken to	Combined	MC	PC	NI	NI	PC	PC	PC	NI	MC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>alternative places of care;</p> <p>b. The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences. Such monitoring should also assess differences in police practices between urban and rural areas; and</p> <p>c. The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public.</p>										
86	<p>That:</p> <p>a. The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and</p> <p>b. Police Services should examine and monitor the use of offensive language charges.</p>	Combined	MC	C	PC	PC	PC	C	C	PC	MC
87	<p>That:</p> <p>a. That all Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;</p> <p>b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;</p> <p>c. That administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons and in particular should take account of the following matters:</p> <p>i. all possible steps should be taken to ensure that allowances paid to police officers do not operate as an incentive to increase the number of arrests;</p> <p>ii. a statistical data base should be established for monitoring the use of summons and arrest procedures on a Statewide basis noting the utilisation of such procedures, in particular divisions and stations;</p> <p>iii. the role of supervisors should be examined and, where necessary, strengthened to provide for the overseeing of the appropriateness of arrest practices by police officers;</p> <p>iv. efficiency and promotion criteria should be reviewed to ensure that advantage does not accrue to individuals or to police stations as a result of the frequency of making charges or arrests; and</p> <p>v. procedures should be reviewed to ensure that work processes (particularly relating to paper work) are not encouraging arrest rather than the adoption of other options such as proceeding by summons or caution; and</p> <p>d. Governments, in conjunction with Police Services, should consider the question of whether procedures for formal caution should be established in respect of certain types of offences rather than proceeding by way of prosecution.</p>	Combined	C	C	C	PC	PC	MC	NI	PC	C
88	<p>That Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal organisations, whether there is a sufficient emphasis on community policing. In the course of that process of review, they should, in negotiation with appropriate Aboriginal organisations and people, consider whether:</p> <p>a. There is over-policing or inappropriate policing of Aboriginal people in any city or</p>	Combined	MC	MC	MC	C	C	PC	MC	C	MC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	regional centre or country town; b. The policing provided to more remote communities is adequate and appropriate to meet the needs of those communities and, in particular, to meet the needs of women in those communities; and c. There is sufficient emphasis on crime prevention and liaison work and training directed to such work.										
89	That, the operation of bail legislation should be closely monitored by each government to ensure that the entitlement to bail, as set out in the legislation, is being recognised in practice. Furthermore the Commission recommends that the factors highlighted in this report as relevant to the granting of bail be closely considered by police administrators.	Combined	MC	C	PC	PC	PC	PC	NI	C	MC
90	That in jurisdictions where this is not already the position: a. Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, the Aboriginal Legal Service, or a person nominated by the Service, be notified of that fact; b. An officer of the Aboriginal Legal Service or such other person as is nominated by the Service, be granted access to a person held in custody without bail; and c. There be a statutory requirement that the officer in charge of a station to whom an arrested person is taken give to that person, in writing, a notification of his/her right to apply for bail and to pursue a review of the decision if bail is refused and of how to exercise those rights.	Combined	C	C	MC	PC	PC	MC	PC	PC	C
91	That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation: a. to enable the same or another police officer to review a refusal of bail by a police officer; b. to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and c. to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station.	State and Territory	N/A	MC	PC	NI	PC	PC	NI	PC	MC
92	That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.	State and Territory	N/A	C	C	C	C	C	PC	PC	C
93	That governments should consider whether legislation should provide, in the interests of rehabilitation, that criminal records be expunged to remove references to past convictions after a lapse of time since last conviction and particularly whether convictions as a juvenile should not be expunged after, say, two years of non-conviction as an adult.	State and Territory	N/A	C	C	C	C	NI	C	C	C
94	That: a. Sentencing and correctional authorities should accept that community service may be performed in many ways by an offender placed on a community service order; and	State and Territory	N/A	C	C	C	C	C	C	C	PC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	b. Consistent with the object of ensuring that offenders do not re-offend, approval should be given, where appropriate, for offenders to perform Community Service work by pursuing personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending.										
95	That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with Aboriginal community organisations, programs be designed to reduce that incidence of offending.	State and Territory	N/A	C	C	C	C	C	C	C	MC
96	That judicial officers and persons who work in the court service and in the probation and parole services and whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today. The Commission further recommends that such persons should wherever possible participate in discussion with members of the Aboriginal community in an informal way in order to improve cross-cultural understanding.	Combined	C	C	C	C	MC	MC	PC	C	C
97	That in devising and implementing courses referred to in Recommendation 96 the responsible authorities should ensure that consultation takes place with appropriate Aboriginal organisations, including, but not limited to, Aboriginal Legal Services.	Combined	C	C	C	C	C	C	NI	C	MC
98	Those jurisdictions which have not already done so should phase out the use of Justices of the Peace for the determination of charges or for the imposition of penalties for offences.	State and Territory	N/A	C	C	NI	NI	MC	C	PC	C
99	That legislation in all jurisdictions should provide that where an Aboriginal defendant appears before a Court and there is doubt as to whether the person has the ability to fully understand proceedings in the English language and is fully able to express himself or herself in the English language, the court be obliged to satisfy itself that the person has that ability. Where there is doubt or reservations as to these matters proceedings should not continue until a competent interpreter is provided to the person without cost to that person.	Combined	PC	PC	PC	PC	PC	PC	PC	C	PC
100	That governments should take more positive steps to recruit and train Aboriginal people as court staff and interpreters in locations where significant numbers of Aboriginal people appear before the courts.	Combined	MC	C	C	C	C	C	PC	MC	PC
101	That authorities concerned with the administration of non-custodial sentencing orders take responsibility for advising sentencing authorities as to the scope and effectiveness of such programs.	State and Territory	N/A	C	C	C	C	C	MC	C	PC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
102	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.	State and Territory	N/A	C	MC	MC	NI	C	C	MC	C
103	That in jurisdictions where a Community Service Order may be imposed for fine default, the dollar value of a day's service should be greater than and certainly not less than, the dollar value of a day served in prison.	State and Territory	N/A	MC	C	C	MC	C	MC	MC	PC
104	That in the case of discrete or remote communities sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should in appropriate circumstances relate to sentences in individual cases.	State and Territory	N/A	PC	MC	C	C	PC	PC	C	N/A
105	That in providing funding to Aboriginal Legal Services governments should recognise that Aboriginal Legal Services have a wider role to perform than their immediate task of ensuring the representation and provision of legal advice to Aboriginal persons. The role of the Aboriginal Legal Services includes investigation and research into areas of law reform in both criminal and civil fields which relate to the involvement of Aboriginal people in the system of justice in Australia. In fulfilling this role Aboriginal Legal Services require access to, and the opportunity to conduct, research.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
106	That Aboriginal Legal Services recognise the need for maintaining close contact with the Aboriginal communities which they serve. It should be recognised that where charges are laid against individuals there may be a conflict of interests between the rights of the individual and the interests of the Aboriginal community as perceived by that community; in such cases arrangements may need to be made to ensure that both interests are separately represented and presented to the court. Funding authorities should recognise that such conflicts of interest may require separate legal representation for the individual and the community.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
107	That in order that Aboriginal Legal Services may maintain close contact with, and efficiently serve Aboriginal communities, weight should be attached to community wishes for autonomous regional services or for the regional location of solicitors and field officers.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
108	That it be recognised by Aboriginal Legal Services, funding authorities and courts that lawyers cannot adequately represent clients unless they have adequate time to take instructions and prepare cases, and that this is a special problem in communities without access to lawyers other than at the time of court hearings.	Combined	C	C	C	PC	PC	MC	C	NI	NI
109	That State and Territory Governments examine the range of non-custodial sentencing options available in each jurisdiction with a view to ensuring that an appropriate range of such options is available.	State and Territory	N/A	C	C	C	C	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
110	That in view of the wide variety of pre-release and post-release support schemes conducted by Corrective Services authorities and other agencies and organisations in various parts of the country it is the view of the Commission that a national study designed to ascertain the best features of existing schemes with a view to ensuring their widespread application is highly desirable. In such a study it is most important that consultation take place with relevant Aboriginal organisations.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
111	That in reviewing options for non-custodial sentences governments should consult with Aboriginal communities and groups, especially with representatives of Aboriginal Legal Services and with Aboriginal employees with relevant experience in government departments.	State and Territory	N/A	C	MC	C	MC	C	MC	C	C
112	That adequate resources be made available to provide support by way of personnel and infrastructure so as to ensure that non-custodial sentencing options which are made available by legislation are capable of implementation in practice. It is particularly important that such support be provided in rural and remote areas of significant Aboriginal population.	State and Territory	N/A	C	C	C	C	C	C	C	C
113	That where non-custodial sentencing orders provide for a community work or development program as a condition of the order the authorities responsible for the program should ensure that the local Aboriginal community participates, if its members so choose, in the planning and implementation of the program. Further, that Aboriginal community organisations be encouraged to become participating agencies in such programs.	State and Territory	N/A	C	C	C	MC	C	C	C	C
114	Wherever possible, departments and agencies responsible for non-custodial sentencing programs for Aboriginal persons should employ and train Aboriginal people to take particular responsibility for the implementation of such programs and should employ and train Aboriginal people to assist to educate and inform the community as to the range and implementation of non-custodial sentencing options.	State and Territory	N/A	C	C	C	C	C	C	C	NI
115	That for the purpose of assessing the efficacy of sentencing options and for devising strategies for the rehabilitation of offenders it is important that governments ensure that statistical and other information is recorded to enable an understanding of Aboriginal rates of recidivism and the effectiveness of various non-custodial sentencing orders and parole.	Combined	C	C	C	C	C	C	C	PC	C
116	That persons responsible for devising work programs on Community Service Orders in Aboriginal communities consult closely with the community to ensure that work is directed which is seen to have value to the community. Work performed under Community Service Orders should not, however, be performed at the expense of paid employment which would otherwise be available to members of the Aboriginal community.	State and Territory	N/A	PC	PC	PC	C	C	C	C	MC
117	That where in any jurisdiction the consequence of a breach of a community service order, whether imposed by the court or as a fine default option, may be a term of	State and Territory	N/A	C	C	C	NI	C	C	PC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	imprisonment, legislation be amended to provide that the imprisonment must be subject to determination by a magistrate or judge who should be authorised to make orders other than imprisonment if he or she deems it appropriate.										
118	That where not presently available, home detention be provided both as a sentencing option available to courts as well as a means of early release of prisoners.	State and Territory	N/A	C	NI	NI	C	PC	PC	C	PC
119	That Corrective Services authorities ensure that Aboriginal offenders are not being denied opportunities for probation and parole by virtue of the lack of adequate numbers of trained support staff or of infrastructure to ensure monitoring of such orders.	State and Territory	N/A	PC	MC	C	MC	C	C	C	C
120	That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.	State and Territory	N/A	PC	C	C	PC	PC	C	PC	NI
121	That: a. Where legislation does not already so provide governments should ensure that sentences of imprisonment are not automatically imposed in default of payment of a fine; and b. Such legislation should provide alternative sanctions and impose a statutory duty upon sentencers to consider a defendant's capacity to pay in assessing the appropriate monetary penalty and time to pay, by instalments or otherwise.	State and Territory	N/A	C	C	C	MC	C	PC	PC	C
122	That Governments ensure that: a. Police Services, Corrective Services, and authorities in charge of juvenile centres recognise that they owe a legal duty of care to persons in their custody; b. That the standing instructions to the officers of these authorities specify that each officer involved in the arrest, incarceration or supervision of a person in custody has a legal duty of care to that person, and may be held legally responsible for the death or injury of the person caused or contributed to by a breach of that duty; and c. That these authorities ensure that such officers are aware of their responsibilities and trained appropriately to meet them, both on recruitment and during their service.	Combined	C	C	C	C	C	C	C	C	C
123	That Police and Corrective Services establish clear policies in relation to breaches of departmental instructions. Instructions relating to the care of persons in custody should be in mandatory terms and be both enforceable and enforced. Procedures should be put in place to ensure that such instructions are brought to the attention of and are understood by all officers and that those officers are made aware that the instructions will be enforced. Such instructions should be available to the public.	Combined	C	C	C	C	C	C	C	MC	C
124	That Police and Corrective Services should each establish procedures for the conduct of de-briefing sessions following incidents of importance such as deaths, medical emergencies or actual or attempted suicides so that the operation of procedures, the actions of those involved and the application of instructions to specific situations can be discussed and assessed with a view to reducing risks in the future.	Combined	MC	C	C	C	C	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
125	That in all jurisdictions a screening form be introduced as a routine element in the reception of persons into police custody. The effectiveness of such forms and of procedures adopted with respect to the completion of such should be evaluated in the light of the experience of the use of such forms in other jurisdictions.	Combined	C	MC	MC	PC	C	MC	C	MC	C
126	That in every case of a person being taken into custody, and immediately before that person is placed in a cell, a screening form should be completed and a risk assessment made by a police officer or such other person, not being a police officer, who is trained and designated as the person responsible for the completion of such forms and the assessment of prisoners. The assessment of a detainee and other procedures relating to the completion of the screening form should be completed with care and thoroughness.	Combined	C	C	C	C	C	C	C	C	C
127	That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following: a. The introduction of a regular medical or nursing presence in all principal watch-houses in capital cities and in such other major centres as have substantial numbers detained; b. In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness, injury or self-harm at the time of reception; c. The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement; d. The establishment of locally based protocols between police, medical and para-medical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises; e. The establishment of proper systems of liaison between Aboriginal Health Services and police so as to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody; and f. The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by officers with respect to the management of: i. intoxicated persons; ii. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions; iii. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour; iv. persons with an impaired state of consciousness; v. angry, aggressive or otherwise disturbed persons; vi. persons suffering from mental illness;	Combined	C	PC	MC	C	C	PC	PC	MC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	vii. other serious medical conditions; viii. persons in possession of, or requiring access to, medication; and ix. such other persons or situations as agreed.										
128	That where persons are held in police watch-houses on behalf of a Corrective Services authority, that authority arrange, in consultation with Police Services, for medical services (and as far as possible other services) to be provided not less adequate than those that are provided in correctional institutions.	Combined	C	MC	C	MC	C	C	C	C	C
129	That the use of breath analysis equipment to test the blood alcohol levels at the time of reception of persons taken into custody be thoroughly evaluated by Police Services in consultation with Aboriginal Legal Services, Aboriginal Health Services, health departments and relevant agencies.	Combined	MC	NI	NI	C	C	NI	PC	PC	MC
130	That: a. Protocols be established for the transfer between Police and Corrective Services of information about the physical or mental condition of an Aboriginal person which may create or increase the risks of death or injury to that person when in custody; b. In developing such protocols, Police Services, Corrective Services and health authorities with Aboriginal Legal Services and Aboriginal Health Services should establish procedures for the transfer of such information and establish necessary safeguards to protect the rights of privacy and confidentiality of individual prisoners to the extent compatible with adequate care; and c. Such protocols should be subject to relevant ministerial approval.	Combined	MC	C	MC	MC	PC	MC	PC	PC	MC
131	That where police officers in charge of prisoners acquire information relating to the medical condition of a prisoner, either because they observe that condition or because the information is voluntarily disclosed to them, such information should be recorded where it may be accessed by any other police officer charged with the supervision of that prisoner. Such information should be added to the screening form referred to in Recommendation 126 or filed in association with it.	Combined	C	C	C	C	C	C	C	C	C
132	That: a. Police instructions should require that the officer in charge of an outgoing shift draw to the attention of the officer in charge of the incoming shift any information relating to the well being of any prisoner or detainee and, in particular, any medical attention required by any prisoner or detainee; b. A written check list should be devised setting out those matters which should be addressed, both in writing and orally, at the time of any such handover of shift; and c. Police services should assess the need for an appropriate form or process of record keeping to be devised to ensure adequate and appropriate notation of such matters.	Combined	C	C	C	C	C	PC	NI	MC	C
133	That: a. All police officers should receive training at both recruit and in-service levels to enable them to identify persons in distress or at risk of death or injury through illness,	Combined	C	C	C	C	C	PC	MC	MC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>injury or self-harm;</p> <p>b. Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining unconscious or semi-rousable persons and the specific action to be taken by officers in relation to those matters which are to be the subject of protocols referred to in Recommendation 127;</p> <p>c. In designing and delivering such training programs, custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services; and</p> <p>d. Where a police officer or other person is designated or recognised by a police service as being a person whose work is dedicated wholly or substantially to cell guard duties then such person should receive a more intensive and specialised training than would be appropriate for other officers.</p>										
134	That police instructions should require that, at all times, police should interact with detainees in a manner which is both humane and courteous. Police authorities should regard it as a serious breach of discipline for an officer to speak to a detainee in a deliberately hurtful or provocative manner.	Combined	C	C	C	C	C	C	C	C	C
135	In no case should a person be transported by police to a watch- house when that person is either unconscious or not easily roused. Such persons must be immediately taken to a hospital or medical practitioner or, if neither is available, to a nurse or other person qualified to assess their health.	Combined	C	C	C	C	C	C	C	C	C
136	That a person found to be unconscious or not easily rousable whilst in a watch-house or cell must be immediately conveyed to a hospital, medical practitioner or a nurse. (Where quicker medical aid can be summoned to the watch-house or cell or there are reasons for believing that movement may be dangerous for the health of the detainee, such medical attendance should be sought).	Combined	C	C	C	C	C	MC	C	C	C
137	<p>That:</p> <p>a. Police instructions and training should require that regular, careful and thorough checks of all detainees in police custody be made;</p> <p>b. During the first two hours of detention, a detainee should be checked at intervals of not greater than fifteen minutes and that thereafter checks should be conducted at intervals of no greater than one hour;</p> <p>c. Notwithstanding the provision of electronic surveillance equipment, the monitoring of such persons in the periods described above should at all times be made in person. Where a detainee is awake, the check should involve conversation with that person. Where the person is sleeping the officer checking should ensure that the person is breathing comfortably and is in a safe posture and otherwise appears not to be at risk. Where there is any reason for the inspecting officer to be concerned about the physical or mental condition of a detainee, that person should be woken and checked; and</p> <p>d. Where any detainee has been identified as, or is suspected to be, a prisoner at risk</p>	Combined	C	MC	MC	MC	C	C	C	MC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	then the prisoner or detainee should be subject to checking which is closer and more frequent than the standard.										
138	That police instructions should require the adequate recording, in relevant journals, of observations and information regarding complaints, requests or behaviour relating to mental or physical health, medical attention offered and/or provided to detainees and any other matters relating to the well being of detainees. Instructions should also require the recording of all cell checks conducted.	Combined	C	C	C	C	C	C	C	C	C
139	The Commission notes recent moves by Police Services to install TV monitoring devices in police cells. The Commission recommends that: a. The emphasis in any consideration of proper systems for surveillance of those in custody should be on human interaction rather than on high technology. The psychological impact of the use of such equipment on a detainee must be boree in mind, as should its impact on that person's privacy. It is preferable that police cells be designed to maximise direct visual surveillance. Where such equipment has been installed it should be used only as a monitoring aid and not as a substitute for human interaction between the detainee and his/her custodians; and b. Police instructions specifically direct that, even where electronic monitoring cameras are installed in police cells, personal cell checks be maintained.	Combined	C	C	C	C	C	C	C	C	C
140	That as soon as practicable, all cells should be equipped with an alarm or intercom system which gives direct communication to custodians. This should be pursued as a matter of urgency at those police watch-houses where surveillance resources are limited.	Combined	C	C	C	C	C	C	C	C	C
141	That no person should be detained in a police cell unless a police officer is in attendance at the watch-house and is able to perform duties of care and supervision of the detainee. Where a person is detained in a police cell and a police officer is not so available then the watch-house should be attended by a person capable of providing care and supervision of persons detained.	Combined	C	C	C	C	C	C	C	NI	C
142	That the installation and/or use of padded cells in police watch- houses for punitive purposes or for the management of those at risk should be discontinued immediately.	Combined	PC	C	C	PC	PC	PC	C	PC	PC
143	All persons taken into custody, including those persons detained for intoxication, should be provided with a proper meal at regular meal times. The practice operating in some jurisdictions of excluding persons detained for intoxication from being provided with meals should be reviewed as a matter of priority.	Combined	C	C	MC	C	C	MC	C	MC	C
144	That in all cases, unless there are substantial grounds for believing that the well being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a police cell. Wherever possible an Aboriginal detainee should be accommodated with another Aboriginal person. The views of the Aboriginal detainee and such other detainee as may be affected should be sought. Where	Combined	C	C	MC	MC	C	C	NI	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	placement in a cell alone is the only alternative the detainee should thereafter be treated as a person who requires careful surveillance.										
145	That: a. In consultation with Aboriginal communities and their organisations, cell visitor schemes (or schemes serving similar purposes) should be introduced to service police watch-houses wherever practicable; b. Where such cell visitor schemes do not presently exist and where there is a need or an expressed interest by Aboriginal persons in the creation of such a scheme, government should undertake negotiations with local Aboriginal groups and organisations towards the establishment of such a scheme. The involvement of the Aboriginal community should be sought in the management and operation of the schemes. Adequate training should be provided to persons participating in such schemes. Governments should ensure that cell visitor schemes receive appropriate funding; c. Where police cell visitor schemes are established it should be made clear to police officers performing duties as custodians of those detained in police cells that the operation of the cell visitor scheme does not lessen, to any degree, the duty of care owed by them to detainees; and d. Aboriginal participants in cell visitor schemes should be those nominated or approved by appropriate Aboriginal communities and/or organisations as well as by any other person whose approval is required by local practice.	Combined	C	PC	PC	C	C	MC	NI	C	C
146	That police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody.	Combined	MC	C	C	C	C	C	NI	MC	MC
147	That police instructions should be amended to make it mandatory for police to immediately notify the relatives of a detainee who is regarded as being 'at risk', or who has been transferred to hospital.	Combined	MC	C	PC	PC	MC	MC	C	MC	MC
148	That whilst there can be little doubt that some police cell accommodation is entirely substandard and must be improved over time, expenditure on positive initiatives to reduce the number of Aboriginal people in custody discussed elsewhere in this report constitutes a more pressing priority as far as resources are concerned. Where cells of a higher standard are available at no great distance, these may be able to be used. More immediate attention must be given to programs diverting people from custody, to the provision of alternative accommodation to police cells for intoxicated persons, to ball procedures and to proceeding by way of summons or caution rather than by way of arrest. All these initiatives will reduce the call on outmoded cells. The highest priority is to reduce the numbers for whom cell accommodation is required. Where, however, it is determined that new cell accommodation must be provided in areas of high Aboriginal population, the views of the local Aboriginal community and organisations should be taken into account in the design of such accommodation. The design or re-design of any police cell should emphasise and facilitate personal interaction between custodial officers and detainees and between detainees and visitors.	Combined	C	C	MC	C	C	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
149	That Police Services should recognise, by appropriate instructions, the need to permit flexible custody arrangements which enable police to grant greater physical freedoms and practical liberties to Aboriginal detainees. The Commission recommends that the instructions acknowledge the fact that in appropriate circumstances it is consistent with the interest of the public and also the well being of detainees to permit some freedom of movement within or outside the confines of watch-houses.	Combined	C	C	C	PC	MC	C	NI	PC	C
150	That the health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public. Services provided to inmates of correctional institutions should include medical, dental, mental health, drug and alcohol services provided either within the correctional institution or made available by ready access to community facilities and services. Health services provided within correctional institutions should be adequately resourced and be staffed by appropriately qualified and competent personnel. Such services should be both accessible and appropriate to Aboriginal prisoners. Correctional institutions should provide 24 hour a day access to medical practitioners and nursing staff who are either available on the premises, or on call.	State and Territory	N/A	C	C	C	C	C	C	C	C
151	That, wherever possible, Aboriginal prisoners or detainees requiring psychiatric assessment or treatment should be referred to a psychiatrist with knowledge and experience of Aboriginal persons. The Commission recognises that there are limited numbers of psychiatrists with such experience. The Commission notes that, in many instances, medical practitioners who are or have been employed by Aboriginal Health Services are not specialists in psychiatry, but have experience and knowledge which would benefit inmates requiring psychiatric assessment or care.	Combined	MC	C	C	MC	PC	C	PC	MC	MC
152	That Corrective Services in conjunction with Aboriginal Health Services and such other bodies as may be appropriate should review the provision of health services to Aboriginal prisoners in correctional institutions and have regard to, and report upon, the following matters together with other matters thought appropriate: a. The standard of general and mental health care available to Aboriginal prisoners in each correctional institution; b. The extent to which services provided are culturally appropriate for and are used by Aboriginal inmates. Particular attention should be given to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal prisoners. Such programs should be provided, where possible, by Aboriginal people; c. The involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal prisoners; d. The development of appropriate facilities for the behaviourally disturbed; e. The exchange of relevant information between prison medical staff and external health and medical agencies, including Aboriginal Health Services, as to risk factors in the detention of any Aboriginal inmate, and as to the protection of the rights of privacy and confidentiality of such inmates so far as is consistent with their proper care; f. The establishment of detailed guidelines governing the exchange of information	State and Territory	N/A	C	C	C	C	MC	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>between prison medical staff, corrections officers and corrections administrators with respect to the health and safety of prisoners. Such guidelines must recognise both the rights of prisoners to confidentiality and privacy and the responsibilities of corrections officers for the informed care of prisoners. Such guidelines must also be public and be available to prisoners; and</p> <p>g. The development of protocols detailing the specific action to be taken by officers with respect to the care and management of:</p> <p>i. persons identified at the screening assessment on reception as being at risk or requiring any special consideration for whatever reason;</p> <p>ii. intoxicated or drug affected persons, or persons with drug or alcohol related conditions;</p> <p>iii. persons who are known to suffer from any serious illnesses or conditions such as epilepsy, diabetes or</p> <p>iv. persons who have made any attempt to harm themselves or who exhibit, or are believed to have exhibited, a tendency to violent, irrational or potentially self-injurious behaviour,</p> <p>v. apparently angry, aggressive or disturbed persons;</p> <p>vi. persons suffering from mental illness; vii. other serious medical conditions; viii. persons on medication; and</p> <p>vii. such other persons or situations as agreed.</p>										
153	<p>That:</p> <p>a. Prison Medical Services should be the subject of ongoing review in the light of experiences in all jurisdictions;</p> <p>b. The issue of confidentiality between prison medical staff and prisoners should be addressed by the relevant bodies, including prisoner groups; and</p> <p>c. Whatever administrative model for the delivery of prison medical services is adopted, it is essential that medical staff should be responsible to professional medical officers rather than to prison administrators.</p>	State and Territory	N/A	C	C	C	MC	MC	MC	C	C
154	<p>That:</p> <p>a. All staff of Prison Medical Services should receive training to ensure that they have an understanding and appreciation of those issues which relate to Aboriginal health, including Aboriginal history, culture and life-style so as to assist them in their dealings with Aboriginal people;</p> <p>b. Prison Medical Services consult with Aboriginal Health Services as to the information and training which would be appropriate for staff of Prison Medical Services in their dealings with Aboriginal people; and</p> <p>c. Those agencies responsible for the delivery of health services in correctional institutions should endeavour to employ Aboriginal persons in those services.</p>	State and Territory	N/A	C	C	MC	PC	C	MC	MC	C
155	<p>That recruit and in-service training of prison officers should include information as to the general health status of Aboriginal people and be designed to alert such officers to the foreseeable risk of Aboriginal people in their care suffering from those illnesses and</p>	State and Territory	N/A	C	C	C	C	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	conditions endemic to the Aboriginal population. Officers should also be trained to better enable them to identify persons in distress or at risk of death or harm through illness, injury or self-harm. Such training should also include training in the specific action to be taken in relation to the matters which are to be the subject of protocols referred to in Recommendation 152 (g).										
156	That upon initial reception at a prison all Aboriginal prisoners should be subject to a thorough medical assessment with a view to determining whether the prisoner is at risk of injury, illness or self-harm. Such assessment on initial reception should be provided, wherever possible, by a medical practitioner. Where this is not possible, it should be performed within 24 hours by a medical practitioner or trained nurse. Where such assessment is performed by a trained nurse rather than a medical practitioner then examination by a medical practitioner should be provided within 72 hours of reception or at such earlier time as is requested by the trained nurse who performed such earlier assessment, or by the prisoner. Where upon assessment by a medical practitioner, trained nurse or such other person as performs an assessment within 72 hours of prisoners' reception it is believed that psychiatric assessment is required then the Prison Medical Service should ensure that the prisoner is examined by a psychiatrist at the earliest possible opportunity. In this case, the matters referred to in Recommendation 151 should be taken into account.	State and Territory	N/A	C	C	MC	MC	C	MC	C	C
157	That, as part of the assessment procedure outlined in Recommendation 156, efforts must be made by the Prison Medical Service to obtain a comprehensive medical history for the prisoner including medical records from a previous occasion of imprisonment, and where necessary, prior treatment records from hospitals and health services. In order to facilitate this process, procedures should be established to ensure that a prisoner's medical history files accompany the prisoner on transfer to other institutions and upon re-admission and that negotiations are undertaken between prison medical, hospital and health services to establish guidelines for the transfer of such information.	State and Territory	N/A	C	C	C	C	C	C	PC	C
158	That, while recognising the importance of preserving the scene of a death in custody for forensic examination, the first priority for officers finding a person, apparently dead, should be to attempt resuscitation and to seek medical assistance.	Combined	C	C	C	C	C	C	C	C	C
159	That all prisons and police watch-houses should have resuscitation equipment of the safest and most effective type readily available in the event of emergency and staff who are trained in the use of such equipment.	Combined	C	C	C	C	MC	C	C	C	C
160	That: a. All police and prison officers should receive basic training at recruit level in resuscitative measures, including mouth to mouth and cardiac massage, and should be trained to know when it is appropriate to attempt resuscitation; and b. Annual refresher courses in first aid be provided to all prison officers, and to those police officers who routinely have the care of persons in custody.	Combined	C	C	C	C	C	C	MC	PC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
161	That police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee's condition.	Combined	C	C	C	C	C	C	C	C	C
162	That governments give careful consideration to laws and standing orders or instructions relating to the circumstances in which police or prison officers may discharge firearms to effect arrests or to prevent escapes or otherwise. All officers who use firearms should be trained in methods of weapons retention that minimise the risk of accidental discharge.	Combined	C	C	C	C	C	C	C	C	C
163	That police and prison officers should receive regular training in restraint techniques, including the application of restraint equipment. The Commission further recommends that the training of prison and police officers in the use of restraint techniques should be complemented with training which positively discourages the use of physical restraint methods except in circumstances where the use of force is unavoidable. Restraint aids should only be used as a last resort.	Combined	C	C	C	C	PC	PC	MC	C	C
164	The Commission has noted that research has revealed that in a significant number of cases detainees or prisoners who had inflicted self-harm were subsequently charged with an offence arising from the incident. The Commission recommends that great care be exercised in laying any charges arising out of incidents of attempted self-harm and further recommends that no such charges be laid, at all, where self-harm actually results from the action of the prisoner or detainee (subject to a possible exception where there is clear evidence that the harm was occasioned for the purpose of gaining some second advantage).	Combined	C	C	C	C	C	C	C	C	C
165	The Commission notes that prisons and police stations may contain equipment which is essential for the provision of services within the institution but which may also be capable, if misused, of causing harm or self-harm to a prisoner or detainee. The Commission notes that in one case death resulted from the inhalation of fumes from a fire extinguisher. Whilst recognising the difficulties of eliminating all such items which may be potentially dangerous the Commission recommends that Police and Corrective Services authorities should carefully scrutinise equipment and facilities provided at institutions with a view to eliminating and/or reducing the potential for harm. Similarly, steps should be taken to screen hanging points in police and prison cells.	Combined	C	C	C	PC	PC	C	C	C	C
166	That machinery should be put in place for the exchange, between Police and Corrective Services authorities, of information relating to the care of prisoners.	Combined	C	C	C	C	C	C	C	C	C
167	That the practices and procedures operating in juvenile detention centres be reviewed in light of the principles underlying the recommendations relating to police and prison custody in this report, with a view to ensuring that no lesser standards of care are applied in such centres.	State and Territory	N/A	C	C	C	C	C	PC	MC	C
168	That Corrective Services effect the placement and transfer of Aboriginal prisoners according to the principle that, where possible, an Aboriginal prisoner should be placed in an institution as close as possible to the place of residence of his or her family.	State and Territory	N/A	C	C	C	MC	C	MC	PC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	Where an Aboriginal prisoner is subject to a transfer to an institution further away from his or her family the prisoner should be given the right to appeal that decision.										
169	That where it is found to be impossible to place a prisoner in the prison nearest to his or her family sympathetic consideration should be given to providing financial assistance to the family, to visit the prisoner from time to time.	State and Territory	N/A	C	C	C	PC	PC	C	PC	C
170	That all correctional institutions should have adequate facilities for the conduct of visits by friends and family. Such facilities should enable prisoners to enjoy visits in relative privacy and should provide facilities for children that enable relatively normal family interaction to occur. The intervention of correctional officers in the conduct of such visits should be minimal, although these visits should be subject to adequate security arrangements.	State and Territory	N/A	MC	C	C	MC	C	MC	C	MC
171	That Corrective Services give recognition to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance.	State and Territory	N/A	C	C	C	C	C	C	MC	C
172	That Aboriginal prisoners should be entitled to receive periodic visits from representatives of Aboriginal organisations, including Aboriginal Legal Services.	State and Territory	N/A	C	C	C	C	C	C	C	C
173	That initiatives directed to providing a more humane environment through introducing shared accommodation facilities for community living, and other means should be supported, and pursued in accordance with experience and subject to security requirements.	State and Territory	N/A	C	C	C	C	C	PC	MC	C
174	That all Corrective Services authorities employ Aboriginal Welfare Officers to assist Aboriginal prisoners, not only with respect to any problems they might be experiencing inside the institution but also in respect of welfare matters extending outside the institution, and that such an officer be located at or frequently visit each institution with a significant Aboriginal population.	State and Territory	N/A	C	C	C	C	MC	C	C	C
175	That consideration be given to the principle involved in the submission made by the Western Australian Prison Officers' Union that there be a short transition period in a custodial setting for prisoners prior to them entering prison routine.	State and Territory	N/A	C	C	C	C	C	C	PC	C
176	That consideration should be given to the establishment in respect of each prison within a State or Territory of a Complaints Officer whose function is: a. To attend at the prison at regular (perhaps weekly) intervals or on special request for the purpose of receiving from any prisoner any complaint concerning any matter internal to the institution, which complaint shall be lodged in person by the complainant; b. To take such action as the officer thinks appropriate in the circumstances; c. To require any person to make enquiries and report to the officer, d. To attempt to settle the complaint;	State and Territory	N/A	C	C	C	MC	C	PC	MC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>e. To reach a finding (if possible) on the substance of the complaint and to recommend what action if any, should be taken arising out of the complaint; and</p> <p>f. To report to the complainant, the senior officer of the prison and the appointing Minister (see below) the terms of the complaint, the action taken and the findings made.</p> <p>This person should be appointed by, be responsible to and report to the Ombudsman, Attorney-General or Minister for Justice. Complaints receivable by this person should include, without in any way limiting the scope of complaints, a complaint from an earlier complainant that he or she has suffered some disadvantage as a consequence of such earlier complaint.</p>										
177	That appropriate screening procedures should be implemented to ensure that potential officers who will have contact with Aboriginal people in their duties are not recruited or retained by police and prison departments whilst holding racist views which cannot be eliminated by training or re-training programs. In addition Corrective Services authorities should ensure that all correctional officers receive cross-cultural education and an understanding of Aboriginal-non-Aboriginal relations in the past and the present. Where possible, that aspect of training should be conducted by Aboriginal people (including Aboriginal ex-prisoners). Such training should be aimed at enhancing the correctional officers' skills in cross-cultural communication with and relating to Aboriginal prisoners.	Combined	C	C	C	C	MC	C	MC	MC	C
178	That Corrective Services make efforts to recruit Aboriginal staff not only as correctional officers but to all employment classifications within Corrective Services.	State and Territory	N/A	C	C	C	C	C	PC	C	C
179	That procedures whereby a prisoner appears before an officer for the purpose of making a request, or for the purpose of taking up any matter which can appropriately be taken up by the prisoner before that officer, should be made as simple as possible and that the necessary arrangements should be made as quickly as possible under the circumstances.	State and Territory	N/A	C	C	C	C	MC	MC	MC	C
180	That where a prisoner is charged with an offence which will be dealt with by a Visiting Justice, that Justice should be a Magistrate. A charge involving the possibility of affecting the period of imprisonment should always be dealt with in this way. All charges of offences against the general law should be heard in public courts.	State and Territory	N/A	C	C	PC	PC	PC	C	MC	C
181	That Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention. In any event, Corrective Services authorities should provide certain minimum standards for segregation including fresh air, lighting, daily exercise, adequate clothing and heating, adequate food, water and sanitation facilities and some access to visitors.	State and Territory	N/A	C	C	C	C	C	C	NI	C
182	That instructions should require that, at all times, correctional officers should interact with prisoners in a manner which is both humane and courteous. Corrective Services	State and Territory	N/A	C	C	C	C	C	MC	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	authorities should regard it as a serious breach of discipline for an officer to speak to a prisoner in a deliberately hurtful or provocative manner.										
183	That Corrective Services authorities should make a formal commitment to allow Aboriginal prisoners to establish and maintain Aboriginal support groups within institutions. Such Aboriginal prisoner support groups should be permitted to hold regular meetings in institutions, liaise with Aboriginal service organisations outside the institution and should receive a modest amount of administrative assistance for the production of group materials and services. Corrective service authorities should negotiate with such groups for the provision of educational and cultural services to Aboriginal prisoners and favourably consider the formal recognition of such bodies as capable of representing the interests and viewpoints of Aboriginal prisoners.	State and Territory	N/A	C	C	C	C	C	C	C	C
184	That Corrective Services authorities ensure that all Aboriginal prisoners in all institutions have the opportunity to perform meaningful work and to undertake educational courses in self- development, skills acquisition, vocational DET including education in Aboriginal history and culture. Where appropriate special consideration should be given to appropriate teaching methods and learning dispositions of Aboriginal prisoners.	State and Territory	N/A	C	C	C	C	C	C	C	C
185	That the Department of Education, Employment and Training be responsible for the development of a comprehensive national strategy designed to improve the opportunities for the DET of those in custody. This should be done in co-operation with state Corrective Services authorities, adult education providers (including in particular independent Aboriginal-controlled providers) and State departments of employment and education. The aim of the strategy should be to extend the aims of the Aboriginal Education Policy and the Aboriginal Employment Development Policy to Aboriginal prisoners, and to develop suitable mechanisms for the delivery of DET programs to prisoners.	Combined	C	C	C	C	C	C	C	C	C
186	That prisoners, including Aboriginal prisoners, should receive remuneration for work performed. In order to encourage Aboriginal prisoners to overcome the educational disadvantage, which most Aboriginal people presently suffer, Aboriginal prisoners who pursue education or training courses during the hours when other prisoners are involved in remunerated work should receive the same level of remuneration. (This recommendation is not intended to apply to study undertaken outside the normal hours of work of prisoners.)	State and Territory	N/A	C	C	C	C	C	C	C	C
187	That experiences in and the results of community corrections rather than institutional custodial corrections should be closely studied by Corrective Services and that the greater involvement of communities and Aboriginal organisations in correctional processes be supported.	State and Territory	N/A	C	C	C	C	C	C	C	C
188	That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed	Combined	C	C	C	C	C	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.										
189	That the Commonwealth Government give consideration to constituting ATSIC as an employing authority independent of the Australian Public Service.	Commonwealth	NI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
190	That the Commonwealth Government, in conjunction with the State and Territory Governments, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations and also implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.	Combined	MC	MC	MC	MC	NI	PC	PC	NI	NI
191	That the Commonwealth Government, in conjunction with the State and Territory Governments, develop means by which all sources of funds provided for or identified as being available to Aboriginal communities or organisations wherever possible be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to the communities and organisations to determine the priorities for the allocation of such funds.	Combined	PC	NI	PC	PC	NI	NI	PC	PC	NI
192	That in the implementation of any policy or program which will particularly affect Aboriginal people the delivery of the program should, as a matter of preference, be made by such Aboriginal organisations as are appropriate to deliver services pursuant to the policy or program on a contractual basis. Where no appropriate Aboriginal organisation is available to provide such service then any agency of government delivering the service should, in consultation with appropriate Aboriginal organisations and communities, ensure that the processes to be adopted by the agency in the delivery of services are appropriate to the needs of the Aboriginal people and communities receiving such services. Particular emphasis should be given to the employment of Aboriginal people by the agency in the delivery of such services and in the design and management of the process adopted by the agency.	Combined	C	C	C	C	PC	MC	PC	PC	PC
193	That the Commonwealth Government, in negotiation with appropriate Aboriginal organisations, devise a procedure which will enable Aboriginal communities and organisations to properly account to government for funding but which will be least onerous and as convenient and simple as possible for the Aboriginal organisations and communities to operate. The Commission further recommends that State and Territory Governments adopt the same procedure, once agreed, and with as few modifications as may be essential for implementation, in programs funded by those governments.	Combined	MC	PC	PC	C	NI	C	NI	PC	NI
194	That Commonwealth, State and Territory Governments, in negotiation with appropriate Aboriginal communities and organisations, agree upon appropriate performance indicators for programs relevant to Aboriginal communities and organisations. The Commission further recommends that governments fund Aboriginal organisations and	Combined	C	PC	C	PC	NI	PC	PC	NI	PC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	communities to enable the appropriate level of infrastructure and training as is required to develop, apply and monitor performance indicators.										
195	That, subject to appropriate provision to ensure accountability to government for funds received, payments by government to Aboriginal organisations and communities be made on the basis of triennial rather than annual or quarterly funding.	Combined	PC	MC	MC	MC	NI	PC	PC	NI	NI
196	That whilst governments are entitled to require a proper system for accounting of funds provided to Aboriginal organisations and communities, those organisations and communities are equally entitled to receive a full explanation of the funding processes which are adopted by governments. The Commission recommends that governments ensure that Aboriginal communities and organisations are given prompt advice, in writing and in plain English or, where appropriate, in Aboriginal languages, as to decisions concerning funding applications and as to financial and other matters relevant to the assessment of applications for funding made by those organisations and communities so as to enable those organisations and communities to make appropriate planning decisions.	Combined	C	PC	MC	MC	NI	C	C	MC	C
197	That ATSIC Councillors and Commissioners at an early stage be encouraged to consult with Aboriginal organisations and communities to develop a program for training staff of Aboriginal organisations and communities in appropriate management and accounting procedures to ensure the efficiency and integrity of the organisations which are culturally appropriate. In particular, there should be a commitment to devising management procedures which provide rules for the relationship, obligations and rights, both individually and as between each other, of directors, managers and staff of Aboriginal organisations.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
198	That governments commit themselves to achieving the objective that Aboriginal people are not discriminated against in the delivery of essential services and, in particular, are not disadvantaged by the fact that the low levels of income received by Aboriginal people reduce their ability to contribute to the provision of such services to the same extent as would be possible by non-Aboriginal Australians living in similar circumstances and locations.	Combined	C	C	C	PC	C	C	PC	C	C
199	That governments recognise that a variety of organisational structures have developed or been adapted by Aboriginal people to deliver services, including local government type services to Aboriginal communities. These structures include community councils recognised as local government authorities, outstation resource centres, Aboriginal land councils and co-operatives and other bodies incorporated under Commonwealth, State and Territory legislation as councils or associations. Organisational structures which have received acceptance within an Aboriginal community are particularly important, not only because they deliver services in a manner which makes them accountable to the Aboriginal communities concerned but also because acceptance of the role of such organisations recognises the principle of Aboriginal self-determination. The Commission recommends that government should recognise such diversity in	Combined	PC	C	C	C	PC	PC	PC	PC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	organisational structures and that funding for the delivery of services should not be dependent upon the structure of organisation which is adopted by Aboriginal communities for the delivery of such services.										
200	That the Commonwealth Government negotiate with State and Territory Governments to ensure that where funds for local government purposes are supplied to local government authorities on a basis which has regard to the population of Aboriginal people within the boundaries of a local government authority equitable distribution of those funds is made between Aboriginal and non-Aboriginal residents in those local government areas. The Commission further recommends that where it is demonstrated that equitable distribution has not been provided that local government funds should be withheld until it can be assured that equitable distribution will occur.	Combined	PC	PC	PC	PC	PC	NI	PC	PC	N/A
201	The Commission has observed the operations of the Tangentyere Council in Alice Springs and the co-operative relationship established with the Alice Springs Town Council. It is imperative that the Tangentyere Council be provided with stable and adequate funding to enable it to continue and to enhance its provision of services and that governments, local government authorities, Aboriginal organisations and communities consider the adoption of similar models for local governance modified according to the desires of particular communities.	State and Territory	N/A	NI	PC	C	PC	NI	N/A	PC	N/A
202	That where such courses are not already available, suitable training courses to provide necessary administrative, political and management skills should be available for persons elected to regional councils of ATSIC, elected to, appointed to, or engaged in Aboriginal organisations involved in the delivery of services to Aboriginal people and other Aboriginal community organisations. The content of such training courses should be negotiated between appropriate education providers (including Aboriginal education providers) other appropriate Aboriginal organisations and government. Such courses should be funded by government and persons undertaking such courses should be eligible for such financial assistance in the course of studies as would be available under ABSTUDY guidelines.	Combined	C	C	MC	C	C	NI	NI	MC	C
203	That the highest priority be accorded to the facilitation of social, economic and cultural development plans by Aboriginal communities, and on a regional basis, as a basis for future planning of: a. Economic development goals; b. Training, employment and enterprise projects; c. CDEP schemes; d. The provision of services and infrastructure; and e. Such other social and cultural needs as are identified.	Combined	PC	C	C	C	NI	PC	PC	NI	MC
204	The preparation of community development plans should be a participative process involving all members of the community, and should draw upon the knowledge and expertise of a wide range of professionals as well as upon the views and aspirations of Aboriginal people in the local area. It is critical that the processes by which plans are	Combined	PC	C	C	MC	C	PC	NI	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	developed are culturally sensitive, unhurried and holistic in approach, and that adequate information on the following matters is made available to participants: a. The range of Aboriginal needs and aspirations; b. The opportunities created by government policies or programs; c. The opportunities and constraints in the local economy; d. The political opportunities to influence the local arena.										
205	That: a. Aboriginal media organisations should receive adequate funding, where necessary, in recognition of the importance of their function; and b. All media organisations should be encouraged to develop codes and policies relating to the presentation of Aboriginal issues, the establishment of monitoring bodies, and the putting into place of training and employment programs for Aboriginal employees in all classifications.	Combined	C	C	NI	NI	NI	NI	NI	NI	PC
206	That the media industry and media unions be requested to consider the establishment of and support of an annual award or awards for excellence in Aboriginal affairs reporting to be judged by a panel of media, union and Aboriginal representatives.	Combined	C	C	NI	C	C	NI	C	C	NI
207	That institutions providing journalism courses be requested to: a. Ensure that courses contain a significant component relating to Aboriginal affairs thereby reflecting the social context in which journalists work; and b. Consider, in consultation with media industry and media unions, the creation of specific units of study dedicated to Aboriginal affairs and the reporting thereof.	Combined	PC	NI	PC	PC	C	C	NI	PC	C
208	That, in view of the fact that many Aboriginal people throughout Australia express disappointment in the portrayal of Aboriginal people by the media, the media industry and media unions should encourage formal and informal contact with Aboriginal organisations, including Aboriginal media organisations where available. The purpose of such contact should be the creation of a better understanding, on all sides, of issues relating to media treatment of Aboriginal affairs.	Combined	C	C	NI	C	NI	C	NI	C	NI
209	That continuing support should be given to Aboriginal organisations such as the Aboriginal Arts Board in their endeavours to protect the interests of Aboriginal artists and to ensure the continuing expansion of the production and marketing of Aboriginal art and craft work.	Combined	MC	C	C	C	C	C	PC	C	C
210	That: a. All employees of government departments and agencies who will live or work in areas with significant Aboriginal population and whose work involves the delivery of services to Aboriginal people be trained to understand and appreciate the traditions and culture of contemporary Aboriginal society; b. Such training programs should be developed in negotiation with local Aboriginal communities and organisations; and	Combined	MC	C	C	C	C	C	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	c. Such training should, wherever possible, be provided by Aboriginal adult education providers with appropriate input from local communities.										
211	That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to further pursue their programs designed to inform the Aboriginal community regarding antidiscrimination legislation, particularly by way of Aboriginal staff members attending at communities and organisations to ensure the effective dissemination of information as to the legislation and ways and means of taking advantage of it.	Combined	C	C	C	C	C	C	C	C	C
212	That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to consult with appropriate Aboriginal organisations and Aboriginal Legal Services with a view to developing strategies to encourage and enable Aboriginal people to utilise anti-discrimination mechanisms more effectively, particularly in the area of indirect discrimination and representative actions.	Combined	C	C	C	C	C	C	C	C	C
213	That governments which have not already done so legislate to proscribe racial vilification and to provide a conciliation mechanism for dealing with complaints of racial vilification. The penalties for racial vilification should not involve criminal sanctions. In addition to enabling individuals to lodge complaints, the legislation should empower organisations which can demonstrate a special interest in opposing racial vilification to complain on behalf of any individual or group represented by that organisation.	Combined	MC	PC	MC	MC	MC	MC	C	PC	C
214	The emphasis on the concept of community policing by Police Services in Australia is supported and greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live.	Combined	C	C	C	C	C	C	PC	C	C
215	That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including: a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination; b. Any problems perceived by Aboriginal people; and c. Any problems perceived by police. Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.	Combined	C	C	C	C	C	C	C	C	C
216	That the Northern Territory Department of Correctional Services should, at the conclusion of the review of the Aboriginal Community Justice Project, establish regular meetings with Magistrates to monitor the effective operation of the program and	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	establish a mechanism to ensure that the views of the Aboriginal communities in which the program operates are considered in the context of these meetings.										
217	That the review of the Aboriginal Community Justice Project should undertake a detailed consideration of the resources required by the Project to operate effectively. Consideration should be given to the creation of specific liaison officer positions employing Aboriginal people to facilitate communications between the court and the community.	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C	N/A
218	That in reviewing the Aboriginal Community Justice Project the Northern Territory Department of Correctional Services should undertake extensive consultations with all Aboriginal communities which wish to participate in the program. In pursuing this consultation, care should be given to canvassing the entire range of community opinions and the means by which these may be brought, in any relevant case, to the Court's attention.	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C	N/A
219	The Australian Law Reform Commission's Report on the Recognition of Aboriginal Customary Law was a significant, well- researched study. The Royal Commission received requests from Aboriginal people through the Aboriginal Issues Units regarding the progress in implementation of the recommendations made by the Australian Law Reform Commission and in some cases from communities which had made proposals to the Law Reform Commission. This Commission urges government to report as to the progress in dealing with this Law Reform Report.	Combined	C	NI	NI	NI	NI	NI	NI	NI	NI
220	That organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates.	Combined	C	NI	C	C	C	C	NI	C	C
221	That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal affairs budget	State and Territory	N/A	C	C	C	NI	NI	NI	NI	PC
222	That the National Police Research Unit make a particular study of efforts currently being made by Police Services to improve relations between police and Aboriginal people with a view to disseminating relevant information to Police Services and	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	Aboriginal communities and organisations, as to appropriate initiatives which might be adopted.										
223	That Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of: a. Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained; b. The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication; c. Concerns of the local community about local policing and other matters; and d. Processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their communities.	Combined	MC	MC	MC	MC	C	PC	PC	C	MC
224	That pending the negotiation of protocols referred to in Recommendation 223, in jurisdictions where legislation, standing orders or instructions do not already so provide, appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person other than such arrests or detentions for which it is agreed between the Aboriginal Legal Services and the Police Services that notification is not required.	Combined	C	C	C	C	C	PC	C	PC	C
225	That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate.	Combined	MC	C	C	PC	PC	PC	NI	NI	MC
226	That in all jurisdictions the processes for dealing with complaints against police need to be urgently reviewed. The Commission recommends that legislation should be based on the following principles: a. That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services; b. That the name of a complainant should remain confidential (except where its disclosure is warranted in the interests of justice), and it should be a serious offence for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint; c. That where it is decided by the independent authority to hold a formal hearing of a complaint, that hearing should be in public; d. That the complaints body report annually to Parliament; e. That in the adjudication of complaints made by or on behalf of Aboriginal persons one member of the review or adjudication panel should be an Aboriginal person nominated by an appropriate Aboriginal organisation(s) in the State or Territory in	Combined	MC	PC	MC	MC	PC	MC	PC	PC	MC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>which the complaint arose. The panel should also contain a person nominated by the Police Union or similar body;</p> <p>f. That there be no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint;</p> <p>g. That Aboriginal Legal Services be funded to ensure that legal assistance, if required, is available to any Aboriginal complainant</p> <p>h. That the complaints body take all reasonable steps to employ members of the Aboriginal community on the staff of the body;</p> <p>i. That the investigation of complaints should be undertaken either by appropriately qualified staff employed by the authority itself, or by police officers who are, for the purpose of and for the duration of the investigation, under the direction of and answerable to, the head of the independent authority;</p> <p>j. That in the course of investigations into complaints, police officers should be legislatively required to answer questions put to them by the head of the independent authority or any person acting on her/his behalf but subject to further legislative provisions that any statements made by a police officer in such circumstances may not be used against him/her in other disciplinary proceedings;</p> <p>k. That legislation ensure that the complaints body has access to such files, documents and information from the Police Services as is required for the purpose of investigating any complaint.</p>										
227	That the Northern Territory Police Service School-based Program be studied by other Police Services and that the progress and results of the program should be monitored by those services.	Combined	C	C	C	C	C	C	PC	N/A	C
228	<p>That police training courses be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions. Furthermore, such training should incorporate information as to:</p> <p>a. The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;</p> <p>b. The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and</p> <p>c. The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation.</p>	Combined	C	C	C	C	C	PC	PC	C	C
229	That all Police Services pursue an active policy of recruiting Aboriginal people into their services, in particular recruiting Aboriginal women. Where possible Aboriginal recruits should be taken in groups.	Combined	C	MC	MC	MC	PC	PC	NI	PC	C
230	That where Aboriginal applicants wish to join a service who appear otherwise to be suitable but whose general standard of education is insufficient, means should be available to allow those persons to undertake abridging course before entering upon the specific police training.	Combined	PC	C	PC	C	C	C	PC	C	PC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
231	That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances.	Combined	C	C	C	C	C	C	C	C	C
232	That the question of Community Police in Queensland and the powers and responsibilities of Community Councils in relation to them be urgently reviewed.	State and Territory	N/A	N/A	N/A	C	N/A	N/A	N/A	N/A	N/A
233	That the question of Aboriginal police aides in Western Australia be given urgent consideration in light of recent developments, including the Police Aides Review (1987), the development of programs for police aides in other jurisdictions and the investigations into the work of police aides reported in the report of Commissioner Dodson and in this National Report and the recommendations of this report. In the consideration of Aboriginal police aides special attention should be given to the wisdom of police aides being engaged to work in communities other than those from which they were recruited.	State and Territory	N/A	N/A	N/A	N/A	N/A	C	N/A	N/A	N/A
234	That Aboriginal Legal Services throughout Australia be funded to such extent as will enable an adequate level of legal representation and advice to Aboriginal juveniles.	Combined	C	C	C	C	NI	C	NI	NI	C
235	That policies of government and the practices of agencies which have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies.	State and Territory	N/A	C	C	C	C	C	C	MC	C
236	That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding.	Combined	C	C	C	PC	PC	PC	PC	PC	C
237	That at all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both government and community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy.	Combined	C	C	C	C	C	MC	PC	C	PC
238	That once programs and strategies for youth have been devised and agreed, after negotiation between governments and appropriate Aboriginal organisations and communities, governments should provide resources for the employment and training of appropriate persons to ensure that the programs and strategies are successfully implemented at a local level. In making appointment of trainers preference should be given to Aboriginal people with a proven record of being able to relate to, and	Combined	MC	MC	MC	MC	MC	MC	NI	NI	MC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	influence, young people even though such candidates may not have academic qualifications.										
239	That governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary. The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.	Combined	C	C	MC	C	C	C	C	C	C
240	That: a. Police administrators give police officers greater encouragement to proceed by way of caution rather than by arrest, summons or attendance notice; b. That wherever possible the police caution be given in the presence of a parent, adult relative or person having care and responsibility for the juvenile; and c. That if a police caution is given other than in the presence of any such person having care and responsibility for the juvenile such person be notified in writing of the fact and details of the caution administered.	Combined	C	MC	MC	C	C	C	PC	C	C
241	The Commission notes that in some jurisdictions (in particular South Australia and Western Australia) Children's Aid Panels or Screening Panels apply. These panels provide an option lying between police cautions, on the one hand, and appearances in children's courts, on the other hand. The Commission is unable to recommend that such panels be established in places where they do not presently exist, nor that panels be abolished in places where they do exist. The Commission, however, draws attention to evidence suggesting that the potential benefits which may flow from the provision of such panels are not fully realised in the case of Aboriginal juveniles. The Commission draws attention to the desirability of studies being done on a wide scale to determine the efficacy of such initiatives. The Commission recommends that for South Australia and Western Australia the following matters should be made clear by legislation, standing orders or administrative directions so as to provide: a. That the fact of arrest is not to be taken into account in determining whether a child is referred to a Children's Court as opposed to being referred to an alternative body such as a Children's Aid Panel; b. That the decision to proceed by way of summons or attendance notice rather than by cautioning a juvenile should not be influenced by the existence of such panels; c. That there should be adequate representation of Aboriginal people on the list of panel members; d. That the panels should be so constituted that there be adequate representation of Aboriginal members of the panel on any occasion in which an Aboriginal juvenile's case is being considered;	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>e. That in no case should there be consideration of the case of an Aboriginal juvenile unless one member, at least, of the panel is an Aboriginal person; and</p> <p>f. That an Aboriginal juvenile should not be denied consideration by a Children's Aid Panel by virtue of the juvenile's inability, on financial grounds, to make restitution for property lost, stolen or damaged.</p>										
242	<p>That, except in exceptional circumstances, juveniles should not be detained in police lockups. In order to avoid such an outcome in places where alternative juvenile detention facilities do not exist, the following administrative and, where necessary, legislative steps should be taken:</p> <p>a. Police officers in charge of lockups should be instructed that consideration of bail in such cases be expedited as a matter of urgency;</p> <p>b. If the juvenile is not released as a result of a grant of bail by a police officer or Justice of the Peace then the question of bail should be immediately referred (telephone referral being permitted) to a magistrate, clerk of Court or such other person as shall be given appropriate jurisdiction so that bail can be reconsidered;</p> <p>c. Government should approve informal juvenile holding homes, particularly the homes of Aboriginal people, in which juveniles can lawfully be placed by police officers if bail is in fact not allowed; and</p> <p>d. If in the event a juvenile is detained overnight in a police lock-up every effort should be made to arrange for a parent or visitor to attend and remain with the juvenile whether pursuant to the terms of a formal cell visitor scheme or otherwise. Such steps should be in addition to notice that the officer in charge of the station should give to parents, the Aboriginal Legal Service or its representative.</p>	Combined	MC	MC	MC	MC	C	MC	PC	PC	MC
243	<p>That where an Aboriginal juvenile is taken to a police station for interrogation or as a result of arrest, the officer in charge of the police station at which the juvenile is detained should be required to immediately advise the relevant Aboriginal Legal Service and the parent or person responsible for the care and supervision of the juvenile of the fact of the child being detained at the police station (without prejudice to any obligation to advise any other person).</p>	Combined	C	C	C	C	MC	C	C	C	C
244	<p>That no Aboriginal juvenile should be interrogated by a police officer except in the presence of a parent, other person responsible for the care and supervision of the child or, in the absence of a parent or such other person, an officer of an agency or organisation charged with responsibility for the care and welfare of Aboriginal juveniles.</p>	Combined	C	C	MC	C	MC	NI	MC	C	C
245	<p>That legislation, regulations and/or police standing orders, as may be appropriate, be amended so as to require compliance with the above recommendations.</p>	Combined	MC	MC	MC	MC	MC	PC	MC	MC	MC
246	<p>That the State, Territory and Commonwealth governments act to put an end to the situation where insufficient accurate and comprehensive information on inputs to and activities of Aboriginal health programs is available. Such information is needed if Aboriginal organisations, governments and the community are to be in a position to understand and monitor what is taking place in this area, to estimate the benefits</p>	Combined	C	C	C	C	C	C	PC	C	PC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	derived therefrom and to develop appropriate policies and programs to address existing and newly emerging needs.										
247	<p>That more and/or better quality training be provided in a range of areas taking note of the following:</p> <p>a. Many non-Aboriginal health professionals at all levels are poorly informed about Aboriginal people, their cultural differences, their specific socio-economic circumstances and their history within Australian society. The managers of health care services should be aware of this and institute specific training programs to remedy this deficiency, including by pre-service and in-service training of doctors, nurses and other health professionals, especially in areas where Aboriginal people are concentrated;</p> <p>b. The rotation of staff through country hospitals means that many professional staff are ill-prepared to provide appropriate health care services to Aboriginal people. Staff on such rotations should receive special training for their rural placements, and resources to make this possible should routinely be provided as part of the operating budgets of the relevant facilities;</p> <p>c. The primary health care approach to health development is highly appropriate in the Aboriginal health field, but health professionals are not well trained in this area. The pre-service and in-service training of doctors, nurses and other health professionals should provide such staff with a firm understanding of and commitment to primary health care. This should be a special feature of the training of staff interested in working in localities where Aboriginal people are concentrated;</p> <p>d. Health care staff working in areas where Aboriginal people are concentrated should receive specific orientation training covering both the socio-cultural aspects of the Aboriginal communities they are likely to be serving and the types of medical and health conditions likely to be encountered in a particular locality. Such orientation programs must be complemented by appropriate on-the-job training;</p> <p>e. Effective communication between non-Aboriginal health professionals and patients in mainstream services is essential for the successful management of the patients' health problems. Non-Aboriginal staff should receive special training to sensitise them to the communication barriers most likely to interfere with the optimal health professional/patient relationship; and</p> <p>f. Aboriginal people often present to mainstream health care facilities with unusual health conditions and unusual presentations of common conditions, as well as urgent, life-threatening conditions. The training of health professionals must enable them to cope successfully with these conditions.</p>	Combined	C	C	C	C	C	C	PC	C	PC
248	That health departments, academic institutions and other relevant training authorities monitor the proposed Monash University/Victorian Aboriginal Health Service's Aboriginal Primary Health Care Unit, with a view to learning from its experiences and that those interested in this field study the philosophies and methods of operation of the Aboriginal community-controlled health services.	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
249	That the non-Aboriginal health professionals who have to serve Aboriginal people who have limited skills in communicating with them in the English language should have access to skilled interpreters.	Combined	C	PC	MC	C	C	C	N/A	C	NI
250	That effective mechanisms be established for communicating vital information about patients, between the mainstream and Aboriginal community-based health care services. This must be done in an ethical manner, preserving the confidentiality of personal information and with the informed consent of the patients involved. Such communication should be a two-way process.	Combined	MC	C	C	MC	C	C	PC	C	C
251	That access to health care services and facilities, including specialised diagnostic facilities, in areas of Aboriginal population should be brought up to community standards. The greater needs, for the time being, of Aboriginal people should be fully recognised by the responsible authorities in their consideration of the allocation of staff and equipment.	Combined	MC	MC	MC	PC	MC	MC	MC	C	PC
252	That hospitals that are regularly attended by Aboriginal people should review existing procedures in casualty, in consultation with Aboriginal Health and Medical Services, to reduce the likelihood of Aboriginal patients receiving ineffective diagnosis and treatment. The usefulness of standard protocols in such situations should be explored in the reviews.	State and Territory	N/A	C	C	PC	PC	MC	PC	C	C
253	That the physical design of and methods of operating health care facilities be attuned to the needs of the intended patients. Particularly where high concentrations of Aboriginal people are found, their special needs in these regards should be taken into consideration. The involvement of Aboriginal people in the processes of designing such facilities is highly desirable.	Combined	C	C	C	PC	C	C	NI	C	C
254	That health departments and other mainstream health authorities accept as policy, and implement in practice, the principle that Aboriginal people should be involved in meaningful ways in decision-making roles regarding the assessment of needs and the delivery of health services to the Aboriginal community. One application of this principle is that efforts should be made to see that Aboriginal people are properly represented on the Boards of hospitals serving areas where Aboriginal patients will be a significant proportion of hospital clients.	Combined	C	C	C	C	MC	MC	PC	C	C
255	That the holding of negative stereotypes of both Aboriginal people and people with drinking problems be addressed through effective staff selection and supervision, along with pre-service and in-service education, to reduce the ignorance, and through clear instructions by employing authorities that such stereotyping of Aboriginal people and those with drinking problems will not be tolerated in the health care setting.	Combined	C	PC	PC	PC	PC	PC	PC	C	PC
256	That more Aboriginal staff be employed through affirmative action programs as health care workers (and, indeed, in other capacities such as support staff) in those mainstream health care facilities which serve Aboriginal clients and patients and that	Combined	C	C	C	C	C	C	PC	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	their involvement must be well thought out, be at appropriate levels, and be structured so that they contribute effectively with the minimum amount of role conflict.										
257	That special initiatives now in place in a number of tertiary training institutions. such as medical schools, to facilitate the entry into and successful completion of courses of study and training by Aboriginal students be expanded for use in all relevant areas of health services training.	Combined	C	C	C	C	C	C	PC	C	MC
258	That in areas where Aboriginal people are concentrated and the state or territory governments provide or intend to provide a particular service or services to Aboriginal people, the governments invite community-controlled Aboriginal Health Services to consider negotiating contracts for the provision of the services to Aboriginal people and also, where appropriate, to non-Aboriginal people.	State and Territory	N/A	C	C	C	C	C	PC	C	C
259	That Aboriginal community-controlled health services be resourced to meet a broad range of functions, beyond simply the provision of medical and nursing care, including the promotion of good health, the prevention of disease, environmental improvement and the improvement of social welfare services for Aboriginal people.	Combined	C	C	MC	C	PC	C	PC	C	C
260	That: a. Funding bodies should facilitate program evaluation of Aboriginal community-controlled health services, not with the aim of making decisions on levels of funding, but with the aim of assisting the services to operate most effectively and efficiently; b. Representatives of the Aboriginal community should be invited to participate in the control of the evaluation research activity; and c. Performance indicators should be drawn up co-operatively between the managers of the services and the funding bodies.	Combined	PC	PC	PC	PC	MC	C	PC	C	PC
261	That the use of Aboriginal hospital liaison officers be expanded in hospitals which serve Aboriginal patients and that they be seen and used as respected members of the therapeutic team.	State and Territory	N/A	C	C	C	C	C	PC	C	C
262	That the States recognise the contributions of Aboriginal Health Workers and in so doing review the Northern Territory's experience of the establishment of appropriate career structures and the registration of them.	State and Territory	N/A	MC	PC	C	MC	MC	C	C	PC
263	That where there is a high level of non-compliance by a range of Aboriginal patients with advice tendered to them by health professionals, the health professionals should examine their styles of operation with a view to checking whether those styles can be improved.	Combined	MC	PC	PC	PC	PC	PC	C	C	PC
264	That: a. There be a substantial expansion in Aboriginal mental health services within the framework of the development, on the basis of community consultation, of a new national mental health policy; b. There be close scrutiny by those developing the national policy of the number of	Combined	C	C	C	C	C	C	PC	C	PC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	models that exist for such expansion; and c. Aboriginal people be fully involved in the policy development and implementation process.										
265	That as an immediate step towards overcoming the poorly developed level of mental health services for Aboriginal people priority should be given to complementing the training of psychiatrists and other non-Aboriginal mental health professionals with the development of a cadre of Aboriginal health workers with appropriate mental health training, as well as their general health worker training. The integration of the two groups, both in their training and in mental health service delivery, should receive close attention. In addition, resources should be allocated for the training and employment of Aboriginal mental health workers by Aboriginal health services.	Combined	C	C	C	C	PC	C	PC	C	MC
266	That the linking or integrating of mental health services for Aboriginal people with local health and other support services be a feature of current and expanded Aboriginal mental health services.	Combined	C	C	C	C	C	C	C	C	NI
267	That aerial medical services and the appropriate authorities review the effectiveness of practices relating to medical diagnosis at a distance, for example by radio or telephone, and consider the implementation of standard diagnostic protocols, where they are not currently being used.	Combined	C	C	N/A	PC	C	PC	C	C	N/A
268	That the National Health and Medical Research Council actively stimulate research into health concerns identified as priorities by appropriate Aboriginal health advisory bodies (such as the proposed Council of Aboriginal Health), particularly research that involves Aboriginal people at both the development and implementation stages.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
269	That compliance with the National Health and Medical Research Council's Advisory Notes on Aboriginal health research ethics be a condition of Aboriginal health research funding from all sources.	Combined	C	C	C	C	C	C	C	C	C
270	That: a. Aboriginal people be involved in each stage of the development of Aboriginal health statistics; and b. Appropriate Aboriginal health advisory bodies (such as the proposed Council of Aboriginal Health) consider developing an expanded role in this area, perhaps in an advisory capacity to the Australian Institute of Health, and that the aim of this involvement should be to ensure that priority is given to the collection, analysis, dissemination and use of those Aboriginal health statistics most relevant to Aboriginal health development.	Combined	C	C	C	MC	MC	MC	MC	C	PC
271	That the implementation of the National Aboriginal Health Strategy, as endorsed by the Joint Ministerial Forum, be regarded as a crucial element in addressing the underlying issues the Commission was directed to take into account, and that funds be urgently made available to allow the Strategy to be implemented.	Combined	C	C	PC	C	C	C	NI	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
272	That governments review the level of resources allocated to the function of ensuring that the holder of liquor licences meet their legal obligations (in particular laws relating to serving intoxicated persons), and allocate additional resources if needed.	State and Territory	N/A	C	C	C	C	C	C	MC	C
273	That consideration be given to legislating for the appointment of community workers who would have the power to inspect licensed premises to ensure that licensees comply with the applicable legislation and licence conditions.	State and Territory	N/A	NI	NI	NI	NI	NI	NI	NI	NI
274	That governments consider whether there is too great an availability of liquor, including too many licensed premises, and the desirability of reducing the number of licensed premises in some localities, such as Alice Springs, where concentrations of Aboriginal people are found.	State and Territory	N/A	NI	PC	C	C	C	C	C	C
275	That the Northern Territory Government review its liquor legislation in the light of the size of the Aboriginal population of the Territory and its needs, and include in such a review the desirability of appointing at least one Aboriginal person to be a member of the Northern Territory Liquor Commission.	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C	N/A
276	That consideration be given to the desirability of legislating to provide for a local option as to liquor sales trading hours, particularly in localities where there are high concentrations of Aboriginal people.	State and Territory	N/A	C	C	C	C	C	C	C	N/A
277	That legal provision be available in all jurisdictions to enable individuals, organisations and communities to object to the granting, renewal or continuance of liquor licences, and that Aboriginal organisations be provided with the resources to facilitate this.	State and Territory	N/A	C	MC	MC	MC	MC	MC	MC	MC
278	That legislation and resources be available in all jurisdictions to enable communities which wish to do so to control effectively the availability of alcoholic beverages. The controls could cover such matters as whether liquor will be available at all, and if so, the types of beverages, quantities sold to individuals and hours of trading.	State and Territory	N/A	C	PC	C	C	C	C	C	C
279	That the law be reviewed to strengthen provisions to eliminate the practices of 'sly grogging'.	State and Territory	N/A	C	C	C	C	C	C	C	N/A
280	That ATSIC and other organisations be encouraged to provide resources to help Aboriginal communities identify and resolve difficulties in relation to the impact of beer canteens the communities.	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C	N/A
281	That Aboriginal communities that seek assistance in regulating the operation of beer canteens in their communities be provided with funds so as to enable effective regulation, especially where a range of social, entertainment and other community amenities are incorporated into the project.	State and Territory	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C	N/A
282	That media campaigns and other health promotion strategies targeted at Aboriginal people at the local and regional levels include Aboriginal involvement at all stages of development to ensure that the messages are appropriate.	Combined	C	C	C	C	C	PC	PC	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
283	That the possibility of establishing early intervention programs in Aboriginal health services and in hospitals and community health centres with a high proportion of Aboriginal patients be investigated. This would include the training needs of staff in intervention techniques.	Combined	C	PC	PC	C	PC	PC	PC	PC	PC
284	That Aboriginal organisations consider adopting alcohol-free workplace policies and be encouraged and given support to develop employee assistance programs.	State and Territory	N/A	C	C	C	PC	C	C	C	C
285	That Aboriginal organisations and Councils (including ATSIC) be encouraged to give consideration to the further implementation of programs to employ multipurpose Aboriginal drug and alcohol community workers, and that appropriate assistance is sought in the training of Aboriginal people to fill such roles.	State and Territory	N/A	C	C	C	C	C	PC	C	C
286	That the Commonwealth Government, in conjunction with the States and Territories Governments and nongovernment agencies, act to co-ordinate more effectively the policies, resources and programs in the area of petrol sniffing.	Combined	C	C	C	C	C	C	C	C	C
287	That the Commonwealth, States and Territories give higher priority to the provision of alcohol and other drug prevention, intervention and treatment programs for Aboriginal people which are functionally accessible to potential clients and are staffed by suitably trained workers, particularly Aboriginal workers. These programs should operate in a manner such that they result in greater empowerment of Aboriginal people, not higher levels of dependence on external funding bodies.	Combined	MC	MC	MC	MC	MC	MC	MC	C	MC
288	That all workers, both Aboriginal and non-Aboriginal, involved in providing alcohol and other drug programs to Aboriginal people, receive adequate training. Priority training needs include: a. Relevant cross-cultural awareness and communication training for non-Aboriginal workers such as health and welfare staff who provide services to Aboriginal people; b. Skills training for Aboriginal alcohol and other drug treatment workers, particularly those who have recovered from alcohol problems themselves but have no formal training in the area.	Combined	C	C	C	C	C	C	C	C	C
289	That a. governments, State Aboriginal Education Consultative Groups and local AECGs should pay great attention to the fact that the scope of the National Aboriginal and Torres Strait Islander Education Policy extends to pre- schooling programs and that it should be recognised that to a considerable extent the success of the whole NAEP will turn on the success of the pre-schooling initiatives; b. That pre-schooling programs should have as a major aim the involvement not only of the children, but of the parents or those responsible for the care of the children.	Combined	C	C	C	C	C	C	C	PC	C
290	That curricula of schools at all levels should reflect the fact that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters. It is essential that Aboriginal viewpoints, interests, perceptions and expectations are reflected in curricula, teaching and administration of schools.	Combined	C	C	C	C	C	C	PC	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
291	That: a. In designing and implementing programs at a local level which incorporate Aboriginal viewpoints on social, cultural and historical matters local schools should, wherever possible, seek the support and participation of the local Aboriginal community in addition to any other appropriate Aboriginal organisations or groups; and b. In engaging local Aboriginal people to assist in the preparation and delivery of such courses at a local level, school principals and the relevant education departments accept that in recognition of the expertise which local Aboriginal people would bring to such a program, payment for the services of such Aboriginal people would be appropriate.	State and Territory	N/A	C	C	C	C	PC	C	C	MC
292	That the AECGs in each State and Territory take into account in discussing with governments the needs of the Aboriginal communities in their area, and that local Aboriginal Education Consultative Groups take into account when consulting with school principals and providers at the local level, the fact that many Aboriginal communities and organisations have identified the need for the education curriculum to include a course of study to inform students on social issues such as the legal system- including police and Courts-civil liberties, drug and alcohol use and sex education.	State and Territory	N/A	C	C	C	PC	C	C	NI	C
293	That the introduction of the Aboriginal Student Support and Parent Awareness Program be commended as being an appropriate recognition of the need for the participation of Aboriginal people at a local level in the delivery of school programs. The Commission notes, however, that the success of the program will be dependent on the extent to which the Aboriginal community is guaranteed adequate consultation, negotiation and support in devising and implementing this program.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
294	That governments and Aboriginal Education Consultative Groups take note of the methodology employed in such programs as that at Batchelor College, Northern Territory in the training of Aboriginal, teachers and others for work in remote communities.	Combined	MC	C	PC	PC	PC	PC	N/A	N/A	N/A
295	That: a. All teacher training courses include courses which will enable student teachers to understand that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters, and to teach the curriculum which reflects those matters; b. In-service training courses for teachers be provided so that teachers may improve their skill, knowledge and understanding to teach curricula which incorporate Aboriginal viewpoints on social, cultural and historical c. Aboriginal people should be involved in the training courses both at student teacher and in-service level.	Combined	C	C	C	C	C	MC	MC	MC	C
296	That: a. AECGs consider such processes which might allow communities and teachers to negotiate and agree upon the role of teachers at local community level; and	Combined	MC	MC	PC	PC	PC	PC	PC	PC	PC

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	b. Governments, AECGs and, where appropriate, unions explore processes which will enable teachers, pupils and parents to negotiate guidelines for the teaching of Aboriginal students and the employment and conditions of teachers on local communities.										
297	That: a. The vital role which Aboriginal Education Workers or persons performing a similar role but with another title—can play in ensuring effective Aboriginal participation in b. Aboriginal Education Workers be given the recognition and remuneration which their role merits and that it be recognised that they suffer from conflicting expectations of community and Department as to their role; and c. It be understood that there is a need for them to have accountability to the Aboriginal community as well as to their employer.	Combined	C	C	MC	PC	MC	PC	C	MC	C
298	That: a. Governments support Aboriginal community controlled adult education institutions and other institutions which provide a program of courses which have the support of b. Governments accept that courses delivered by such institutions should be regarded as courses entitling students to such payments or allowances as would be their entitlement in the event that they were participating for the same or equivalent time in a TAFE course; and c. It be recognised that owing to the substantial historical educational disadvantage which Aboriginal people have experienced, a course for Aboriginal students may necessarily be longer than might be the case if the course were provided to non-Aboriginal students.	Combined	MC	PC	MC	C	PC	PC	PC	MC	C
299	That: a. At every stage of the application of the National Aboriginal Education Policy the utmost respect be paid to the first long-term goal expressed in the policy, that is: To establish effective arrangements for the participation of Aboriginal parents and community members in decisions regarding the planning, delivery, and evaluation of pre-school, primary, and secondary education services for their children. b. It be recognised that the aims of the Policy are not only to achieve equity in education for Aboriginal people but also to achieve a strengthening of Aboriginal identity, decision making and self-determination; and c. It is unlikely that either of these aims can be achieved without the achieving of the other.	Combined	C	C	C	C	C	C	C	PC	C
300	That support be given to the aims of AEDP to: a. Increase opportunities for Aboriginal people in the mainstream labour market to achieve equity with other Australians in the rates and levels of permanent employment; and b. Generate employment through greatly enhanced assistance for community development and the expansion of employment reaches an acceptable level, governments should be prepared to set targets for recruitment into the public sector at	Combined	C	MC	C	MC	MC	C	PC	MC	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population.										
301	That the Commonwealth, State and Territory Governments consider the desirability of entering into specific agreements (as, for example, are currently established under the Aboriginal Education Policy) for funding under the Commonwealth's AEDP which set out agreed objectives, strategies and outcomes.	Combined	C	C	C	C	C	C	C	C	C
302	That State and Territory Governments consider whether, in coordinating the planning and delivery of services under the AEDP, including the development and coordination of planning at regional and local levels, ATSIC regional boundaries should be adopted as the geographic basis for such planning and delivery, and (subject to their agreement to do so), ATSIC Regional Councils should be involved in the planning process and perhaps take responsibility for it.	State and Territory	N/A	C	C	C	C	C	C	C	C
303	That State and Commonwealth Governments study the experience of the Aboriginal Economic Employment Officer program operated by the Western Australian Department of Employment and Training and other similar schemes which enhance local Aboriginal involvement in stimulating economic activity.	Combined	C	C	PC	C	PC	N/A	PC	PC	PC
304	That spending on training and other active labour market policy programs (such as CDEP and job subsidy schemes) be given preference over spending on unemployment relief programs. The determination of priorities for particular training programs must be better attuned to the particular needs expressed by local Aboriginal groups in their regional and community plans, and the skill requirements of the local labour market.	Combined	MC	MC	MC	MC	MC	MC	PC	PC	MC
305	That the emphasis on public sector recruitment of Aboriginal people should be continued. The emphasis should be not only to achieve a target total figure, but a target for Aboriginal employment at all levels in the public sector. The adoption of such latter targets involves the provision of training opportunities. The emphasis should be directed at the whole of the public sector including statutory authorities and government owned businesses and not designed merely to provide opportunities for employment within areas of service delivery to Aboriginal people (although it is very important to have Aboriginal people employed in those areas).	Combined	C	C	C	C	C	C	C	C	C
306	That governments attempt to encourage Aboriginal employment in the private sector, but until the private sector level of Aboriginal employment reaches an acceptable level, governments should be prepared to set targets for recruitment into the public sector at somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population.	Combined	C	C	C	MC	MC	C	MC	MC	C
307	That Commonwealth, State and Territory Governments adopt a fair employment practice in relation to the letting of government contracts, which gives preference to those tenderers who can demonstrate that they have adopted and implemented a policy of employing Aboriginal persons in their workforce.	Combined	C	C	C	C	C	C	PC	C	NI

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
308	That Commonwealth and State Governments give consideration to establishing a body made up of representation from government (DEET and ATSIC, as well as State Governments) and Australian employer and employee peak bodies to discuss, with a view to setting in motion, a process of implementing the aims of the AEDP in the private sector.	Combined	C	C	C	C	C	C	C	C	C
309	That increased funding be allocated to the establishment of local employment promotion committees comprised of representatives of Aboriginal groups, local employers, government departments and unions to: a. Develop and implement suitable promotional marketing campaigns aimed at the total labour market; b. Lobby for local initiatives in improving employment options and broadening local understanding of the needs and aspirations of Aboriginal people in the region; and c. Increase the understanding in the Aboriginal community of the possible local employment options, the nature of the work involved and the skills required. In funding the establishment of the committees, priority should be given to locations where labour market opportunities exist and where the greatest disparity between Aboriginal and non-Aboriginal employment rates are identified.	Combined	C	MC	PC	PC	PC	PC	NI	PC	MC
310	That the Commonwealth, and in particular the Department of Employment, DET, analyse its current programs with a view to ensuring that they fully address the employment, DET needs of potential and existing Aboriginal offenders. Where necessary, existing program guidelines should be modified and/or new program elements developed to increase access by such clients. In particular, DEET should examine means of assisting Aboriginal communities to become more involved in preventative, diversionary and rehabilitative programs to assist Aboriginal offenders, particularly where they would provide an alternative to incarceration.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
311	That ATSIC ensure that in the administration of its Enterprise Program a clear distinction is drawn between those projects that are supported according to criteria of commercial viability and those that are supported according to social development or social service satisfaction criteria.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
312	That the intention of Sections 17 and 18 of the Aboriginal and Torres Strait Islander Commission Act 1989 be clarified, by amendment to the legislation if necessary, in order to facilitate the funding of enterprises which are not necessarily commercially viable on the basis of social development criteria.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
313	That the ongoing review of the Enterprise Program by the Commonwealth Government should seek to develop the Program in such a way that: a. Adequate program flexibility is provided to allow for the diversity of aspirations and needs of different Aboriginal communities; and b. Funding difficulties caused by cyclic government budgeting and delays between application and receipt of moneys are minimised.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
314	<p>That mechanisms for the notification and determination of Aboriginal interests in major mining and tourism development proposals incorporate:</p> <p>a. Provision of formal written notification concerning the development to appropriate Aboriginal organisations within the area affected by the development proposal; and</p> <p>b. A process of consultation and negotiation between representatives of government, the developer and representatives of the Aboriginal groups with an interest in the area affected by the proposal, in order to facilitate participation by Aboriginal groups or communities in the equity, management and employment concerned with the projects.</p>	Combined	MC	C	MC	C	C	C	PC	PC	N/A
315	<p>That the recommendations submitted to the Conservation and Land Management meeting (held at Millstream on 6-8 August 1990) by representatives of Aboriginal communities and organisations be implemented in Western Australia upon terms to be negotiated between Aboriginal people and appropriate Aboriginal organisations and communities on the one hand and National Park authorities on the other so as to protect and preserve the rights and interests of Aboriginal people with cultural, historical and traditional association with National Parks. The recommendations proposed at the Millstream meeting were:</p> <p>a. The encouragement of joint management between identified and acknowledge representatives of Aboriginal people and the relevant State agency;</p> <p>b. The involvement of Aboriginal people in the development of management plans for National Parks;</p> <p>c. The excision of areas of land within National Parks for use by Aboriginal people as living areas;</p> <p>d. The granting of access by Aboriginal people to National Parks and Nature Reserves for subsistence hunting, fishing and the collection of material for cultural purposes (and the amendment of legislation to enable this, where necessary);</p> <p>e. Facilitating the control of cultural heritage information by Aboriginal people;</p> <p>f. Affirmative action policies which give preference to Aboriginal people in employment as administrators, rangers, and in other positions within National Parks;</p> <p>g. The negotiation of lease-back arrangements which enable title to land on which National Parks are situated to be transferred to Aboriginal owners, subject to the lease of the area to the relevant State or Commonwealth authority on payment of rent to the Aboriginal owners;</p> <p>h. The charging of admission fees for entrance to National Parks by tourists;</p> <p>i. The reservation of areas of land within National Parks to which Aboriginal people have access for ceremonial purposes; and</p> <p>j. The establishment of mechanisms which enable relevant Aboriginal custodians to be in control of protection of and access to sites of significance to them.</p>	Combined	C	N/A	N/A	N/A	N/A	MC	N/A	N/A	N/A
316	<p>That the relevant Governments, in consultation with relevant Aboriginal organisations give consideration to funding the establishment of a small unit, comprising Aboriginal people drawn from northern Western Australia, the Northern Territory and northern Queensland, which would be based in the northern part of the country. The function of the unit would be to study, in consultation with the residents of remote communities in</p>	Combined	C	N/A	N/A	C	N/A	NI	N/A	C	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	those areas, the means of achieving greater self-sufficiency in those communities. The Unit would have the task of keeping remote communities advised of successful initiatives achieved in other communities and assisting remote communities in the preparation of their community plans, so as to assist them in developing economic independence, or at least a greater degree of self-sufficiency.										
317	That further extension of the CDEP Scheme (or some similar program) to rural towns with large Aboriginal populations and limited mainstream employment opportunities for Aboriginal people be considered.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
318	That in view of the considerable demands placed on staff of ATSIC by the expansion of the CDEP Scheme, consideration be given to developing a mechanism for devolving to appropriate consenting Aboriginal organisations, in particular resource agencies, responsibility for some aspects of the administrative support of CDEP, including in particular: a. Advising communities on the types of work which the community may wish to consider undertaking; b. Advising communities on the potential for incorporating other types of funding for employment and enterprise development into a CDEP project; c. Dissemination of information (collected by ATSIC) on successful schemes; d. Financial and administrative support for management of a scheme; and e. Assisting in the provision or co-ordination of training for participants and managers of CDEP. Those Aboriginal organisations should be adequately resourced to carry out the tasks which are devolved to them.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
319	That in the coming review of the CDEP Scheme consideration be given to: Funding a. Improved mechanisms for the combining of funds from different programs (such as the Aboriginal Enterprise Incentive Scheme and the Enterprise Program) to supplement the capital and recurrent funding of CDEP in order to facilitate greater Aboriginal community control over infrastructural components of projects; b. The introduction of a mechanism which ensures that CDEP projects are not used as a substitute for the provision of an adequate level of municipal and other social services, unless funds equivalent to those which would have been provided in respect of municipal and social services are provided to supplement the operation of c. The recognition by the Department of Finance of CDEP as a discrete program with considerable offset savings to the government (in respect of administrative savings from non-payment of Unemployment Benefits), and the automatic provision of the 20% on-cost component--not from the ATSIC existing global allocation; Equity Considerations d. The improved policing of payments under CDEP to ensure that all participants in CDEP receive an income equivalent to Unemployment Benefit regardless of work actually performed, subject to the participants' performance of their obligations under	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	<p>the scheme;</p> <p>e. Addressing issues of access to income, and meaningful work activities for women participants in CDEP; Administrative and Financial Management Support</p> <p>f. The enhanced involvement of Aboriginal controlled organisations and resource agencies in the provision of administrative expertise and advice in the operation of</p> <p>g. Improvements in the financial control systems for CDEP and provision for the training of CDEP managers in the maintenance of financial controls;</p> <p>h. Initiatives for the development of ATSIC staff training in negotiation and consultation skills, and in cultural sensitivity, in order to improve the effectiveness and minimise the burden of consultation and support provided by ATSIC to communities on CDEP;</p> <p>Training and Employment Potential</p> <p>i. An improved level of training and planning support for projects, and for the development of medium and long term plans for CDEP projects which reflect the aspirations of participants for access to mainstream employment opportunities, enterprise development or culturally appropriate work;</p> <p>j. Increased co-ordination between ATSIC and DEET in respect of the training requirements of both new and ongoing CDEP projects, and in relation to the enterprise development potential of CDEP projects; and</p> <p>k. The dissemination of information to Aboriginal communities who are on CDEP or who are planning to apply to receive CDEP funds about successful work programs undertaken by other communities under CDEP.</p>										
320	<p>That further research be undertaken in relation to:</p> <p>a. The particular economic circumstances of Aboriginal people in discrete geographical areas, in order to:</p> <p>i. determine the contribution which Aboriginal people make to the local or regional economy;</p> <p>ii. identify the sources of and amounts of funding which might be available to them; and</p> <p>iii. facilitate realistic economic planning by Aboriginal people which is consistent both with the prevailing economic circumstances and with their aspirations and lifestyle; and</p> <p>b. The impact of the overall taxation system on Aboriginal people and on Aboriginal organisations, and the extent to which Aboriginal people benefit from the Australian taxation system.</p> <p>Where research is commissioned or funded, a condition of the research being undertaken should be the active involvement of Aboriginal people in the area which is the subject of the research, the communication of research findings across a wide cross-section of the local Aboriginal community in an easily understood form, and the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.</p>	Combined	PC	PC	PC	PC	PC	PC	NI	NI	NI
321	<p>That any future accommodation needs survey include not only an emphasis on the physical housing needs but also incorporate assessments that relate to management,</p>	Combined	C	PC	PC	C	PC	PC	C	C	C

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	administrative and housing support needs; in respect of remote communities such surveys should also establish the need for hostel accommodation in service towns where people may be required to spend time utilising services not available in remote areas.										
322	That quantification of required housing stock take into account community aspirations as to the number of people who are likely to share a house, its location and potential impact on present and future infrastructure requirements.	Combined	C	C	C	C	C	C	C	PC	NI
323	That: a. Increased funding be made available to Aboriginal community groups for the implementation of homemaker schemes. Groups that may be appropriate to receive such funding should include women's groups, housing organisations and community councils; and b. Adult education providers, and particularly Aboriginal community controlled adult education providers, be encouraged and supported to provide: i. courses in homemaking and domestic budgeting; and ii. courses for training Aboriginal persons as community advisers and teachers in homemaking.	Combined	C	PC	PC	PC	MC	PC	MC	MC	MC
324	That the model which Tangentyere Council offers for integrating the various service delivery and administrative needs associated with Aboriginal housing be studied in other regions.	Combined	C	C	NI	PC	C	C	C	C	C
325	That the question of providing assistance to Aboriginal housing organisations in relation to administration costs and the cost of repair of housing stock receive close attention. In this respect the CDEP scheme appears to offer an excellent opportunity for communities to solve some of the problems of the cost of housing repairs whilst at the same time providing work of a type that opens the way for training in important areas of skill development.	Combined	C	C	C	C	C	C	C	C	PC
326	That in recognition of both the depressed economic conditions in many remote communities and the importance of Aboriginal participation in the control of new construction: a. Where governments require tenders to be called for public works, they introduce procedures to enable Aboriginal communities to participate in the determination of the award of the construction contract; b. Such contracts should provide for the employment of labour from the community as far as is possible; c. The training of local persons in preparation for employment pursuant to such contracts should be a high priority for training providers; and d. Contracts should be let where possible to local tenderers, provided that their tender price is not unreasonably high. Pending these arrangements being put in place, and with consequent improvements in income for housing organisations, governments and authorities should take into	Combined	PC	PC	C	PC	C	C	NI	PC	N/A

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	account the need of housing organisations for assistance with their recurrent costs, in addition to funding for new dwellings.										
327	That: a. Relevant Aboriginal training institutions and Aboriginal housing organisations, in consultation with DEET, devise and implement a strategy specifically directed to the training of Aboriginal people to build and maintain b. This training program should be adequately co-ordinated with employment strategies established under the AEDP and CDEP.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
328	That as Commonwealth, State and Territory Governments have adopted Standard Guidelines for Corrections in Australia which express commitment to principles for the maintenance of humane prison conditions embodying respect for the human rights of prisoners, sufficient resources should be made available to translate those principles into practice.	State and Territory	N/A	C	C	C	C	C	C	C	C
329	That the National Standards Body comprising Ministers responsible for corrections throughout Australia give consideration to the drafting and introduction of legislation embodying the Standard Guidelines and in drafting such legislation give consideration to prisoners' rights contained in Division 4 of the Victorian Corrections Act 1986.	State and Territory	N/A	C	C	C	C	C	C	C	C
330	That the National Standards Body establish and maintain direct consultation with relevant Aboriginal organisations including Aboriginal Legal and Health Services.	State and Territory	N/A	C	C	C	C	C	C	C	C
331	That the National Standards Body consider the formulation and adoption of guidelines specifically directed to the needs of Aboriginal prisoners. In that process the findings and recommendations of this Commission relating to custodial conditions and the treatment of Aboriginal persons in custody should be taken into account.	Combined	C	C	C	C	C	C	C	C	C
332	That the Commonwealth State and Territory Ministers for Police should formulate and adopt standard guidelines for police custodial facilities throughout Australia.	Combined	C	C	C	C	C	C	C	C	C
333	While noting that in no case did the Commission find a breach of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, it is recommended that the Commonwealth Government should make a declaration under Article 22 of the Convention and take all steps necessary to become a party to the Optional Protocol to the International Convention on Civil and Political Rights in order to provide a right of individual petition to the Committee Against Torture and the Human Rights Committee, respectively.	Commonwealth	C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
334	That in all jurisdictions legislation should be introduced, where this has not already occurred, to provide a comprehensive means to address land needs of Aboriginal people. Such legislation should encompass a process for restoring unalienated Crown land to those Aboriginal people who claim such land on the basis of cultural, historical and/or traditional association.	Combined	C	C	C	C	C	C	C	C	NI

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
335	That in recognising that improvement in the living standards of many Aboriginal communities (especially for those people living in inadequate housing and environmental circumstances on the fringes of towns and on other discrete areas of Aboriginal occupation of land) cannot be ensured without the security of land title, governments provide, by legislation and/or administrative direction, an accelerated process for the granting of land title based on need.	Combined	C	C	PC	C	PC	PC	N/A	PC	PC
336	That unalienated crown land granted on the basis of cultural, historical and/or traditional association of Aboriginal people should be granted under inalienable freehold title and should carry with it the right of the Aboriginal owners to, inter alia: a. Determine who may enter the land and the terms of such entry; and b. Control the impact of development on the land in so far as such development may threaten the cultural and/or social values of the Aboriginal owners and their communities.	Combined	C	MC	C	C	C	PC	C	C	N/A
337	That governments recognise that where appropriate unalienated crown land is unavailable to be claimed on grounds of cultural, historical or traditional association with the land or where, due to the processes of the history of colonisation, Aboriginal people are no longer able to, nor seek to, make claims to particular areas of unalienated crown land on the basis of cultural, historical or traditional association there remain land needs of Aboriginal people which should be met by governments. These needs should be accommodated by a process which: a. Enables Aboriginal communities or groups to obtain secure title to unalienated crown land or to purchase land for social, recreational and community purposes (including the obtaining of additional land in circumstances in which an Aboriginal community is on Aboriginal land but where the area of that land is established as being too small to accommodate the community); b. Enables Aboriginal communities or groups to obtain secure title to land so as to improve the environmental circumstances in which they live; c. Provides adequate funding in order that land may be purchased on the open market in pursuance of the needs identified in paragraphs (a) and (b); and d. Where pastoral land is held on lease from the Crown, permits Aboriginal communities traditionally or historically associated with the land to have priority when leases come up for renewal.	Combined	C	MC	C	PC	C	C	C	C	N/A
338	That as an interim step all land held under leasehold, being former Aboriginal reserve or mission land and being now held for or on behalf of Aboriginal people, be forthwith transferred under inalienable freehold title to the present leaseholder(s) pending further consideration by Aboriginal people as to the appropriate Aboriginal body which should thereafter hold the title to such land.	Combined	MC	C	N/A	C	C	C	N/A	C	N/A
339	That all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if community division, discord and injustice to Aboriginal people are to be avoided. To this end the Commission recommends that political leaders use their best endeavours to ensure bi-	Combined	PC	PC	PC	PC	PC	PC	PC	PC	PC

Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody

#	Recommendation	Responsibility	CW	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
	partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged.										

Note: C = Complete; MC = Mostly Complete; PC = Partially Complete; NI = Not Implemented; N/A = Out of scope.

Appendix C – Government responses to the report

Governments were invited to provide a thematic response to the findings from the draft report. Responses were received from Queensland, Western Australia, and the Australian Capital Territory. The responses are reproduced on the following pages.

Queensland

The Queensland Government appreciates the role of this report in highlighting the response of the states and territories and the Australian Government to the landmark Royal Commission into Aboriginal Deaths in Custody (RCIADIC).

This report demonstrates that Queensland has implemented most of the relevant recommendations.

Notwithstanding the progress that has been made in implementing the recommendations, we know there is more to do as over-representation of Aboriginal and Torres Strait Islander people in the justice system is not decreasing as hoped.

As a result of RCIADIC, the Queensland Police Service (QPS) undertook a major revision of policies, practices and training relating to custody including components of diversion of drunk persons, the Drug Diversion Assessment Program and the Cell Visitor Scheme. QPS has also developed a number of initiatives regarding custody programs, cultural competence and the delivery of policing services on remote Aboriginal communities. Cross Cultural Liaison Officers and Police Liaison Officers (PLOs) were created along with an Indigenous Recruit Preparation Program aimed at increasing the number of Aboriginal and Torres Strait Islander police officers.

In corrections, Queensland employs a range of strategies to aid in the rehabilitation and reintegration of Aboriginal and Torres Strait Islander prisoners and offenders, including:

- delivering cultural appropriate programs in correctional centres and in the community that address substance abuse and family violence
- implementing recommendations from the Queensland Parole System Review
- employing Cultural Liaison and Cultural Development Officers in correctional centres and probation and parole officers
- providing access for Aboriginal and Torres Strait Islander Elder groups and chaplaincy services in correctional centres.

In 2017, Queensland Corrective Services launched the Murrighagun Cultural Centre which provides advisory, planning and support services to reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

Prioritising the needs of Aboriginal and Torres Strait Islander children and young people and reducing their over-representation in the justice system are fundamental objectives of youth justice in Queensland. The First Nation's Action Board and Youth Justice Cultural Unit were established to ensure youth justice policy, programs and interventions are designed and delivered appropriately for Aboriginal and Torres Strait Islander young people, their families and communities.

The Department of Justice and Attorney-General has embedded the delivery of culturally appropriate court processes. Community Justice Groups (CJGs) play an integral role in empowering communities to address criminal justice issues. CJGs are run by members of the local Aboriginal and Torres Strait Islander community and provide key support in both Magistrates Courts and Murri Courts, by preparing bail and sentencing submissions, regularly attending court when Aboriginal and Torres Strait Islander offenders and victims are present, and pro-actively referring victims and offenders to culturally suitable programs or services.

Murri Courts, which deliver a culturally appropriate court process that respects and acknowledges Aboriginal and Torres Strait Islander cultures, operate in Brisbane, Caboolture, Cairns, Cherbourg (which is a discrete Aboriginal community), Cleveland, Mackay, Maroochydore, Mount Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville, and Wynnum.

To understand and prevent Aboriginal deaths in custody, the Coroners Court of Queensland is responsible for investigating all deaths in custody and making recommendations to prevent similar deaths. The *Coroners Act 2003* was introduced as a comprehensive legislative framework governing the jurisdiction, powers and duties of coroners to address identified problems with the former coronial system in Queensland.

In addition, innovative Social Benefit Bonds are being piloted that will test ways government can partner with social service providers and private investors to help address challenging social issues. One Social Benefit Bond aims to reduce youth re offending, and another to increase the reunification of Aboriginal and Torres Strait Islander children currently in out-of-home care with a female parent.

Queensland acknowledges that a focus on the justice system alone will not bring about meaningful change and that prevention, including improving social, educational, health and economic outcomes needs to be paramount.

Queensland has implemented a range of educational strategies including:

- The Be well Learn well early intervention program delivers allied health services to eight remote Far North and North Queensland state schools.
- Children and Family Centres (CFCs): Queensland's ten CFCs target Indigenous children and co-locate early childhood education and care, family support, and child and maternal health services.
- Pre-Prep supports children living in 35 discrete Aboriginal and Torres Strait Islander communities.
- Aboriginal and Torres Strait Islander Early Years Services are funded to provide early childhood and family support services in remote Indigenous communities.
- Developing an Aboriginal and Torres Strait Islander education action plan.

Queensland also recognises that closing the gap in health outcomes is a long-term and challenging process and involves collective effort from the health system, workforce and primary health care sector. The *Statement of Action towards closing the gap in health outcomes* aims to address systemic barriers in order to progress efforts to improve Aboriginal and Torres Strait Islander health and wellbeing in Queensland.

Queensland is also implementing a range of initiatives to improve the economic participation of Aboriginal and Torres Strait Islander people, guided by *Moving Ahead: A strategic approach to increasing the participation of Aboriginal people and Torres Strait Islander people in Queensland's economy 2016-2022*.

While this review provides useful information about progress, many responses have been superseded and the policy context has changed significantly since the 1991 RCIADIC report was handed down.

Queensland believes that the focus should now be on the present and future. Queensland is committed to working with Aboriginal and Torres Strait Islander people to ensure that responses both within and outside the criminal justice system are appropriate. While meeting the intent of RCIADIC, we will focus on implementing evidence-based approaches which respond to contemporary issues and needs.

Western Australia

The Western Australian Government welcomes the opportunity to contribute to this latest national review. This statement and the accompanying advice on the 301 recommendations for Western Australia's response are generally focused on current actions. Further historical information is available in Western Australia's 1993, 1994, 1995, 1997 and 2000 assessment reports.

The State notes that the RCIADIC was established 30 years ago under former Prime Minister, the Hon Robert Hawke, and that many institutions have since changed, as well as government approaches in the pursuit of Aboriginal wellbeing. Despite this, significant challenges remain for government and communities in achieving better outcomes. This includes working in partnership with mutual respect and dual responsibility to address Aboriginal over-representation in the justice system.

Contemporary evidence from the Productivity Commission's Report on Government Services suggests that, within a custodial setting, Aboriginal people do not die of unnatural causes at a greater rate than non-Aboriginal people. However, the ratio of Aboriginal people in prisons, in remand centres, police lock-ups or juvenile detention centres as compared with non-Aboriginal people is significant. For instance, in Western Australia (WA), as at 30 June 2017, some 38 per cent of Western Australia's prison population was Aboriginal, despite Aboriginal people comprising approximately 3 per cent of the State's total population (Figure 1). Aboriginal youth detention rates are also disproportionately high.

Figure 1: Productivity Commission data: prisoner deaths in WA from unnatural causes

Year	Rate per 100 prison pop. Aboriginal (unnatural causes)	Rate per 100 prison pop. non-Aboriginal (unnatural causes)
2013/14	0 (0 people)	0.1 (3 people)
2014/15	0.5 (1 person)	0.6 (2 people)
2015/16	0.14 (3 people)	0.08 (3 people)
2016/17	0.08 (2 people)	0 (0 people)

Table: Productivity Commission data show for the four most recent reporting periods that, on average, Aboriginal Western Australians die at a rate comparable to their non-Aboriginal counterparts.

Another consideration in undertaking the assessment is the scope of the RCIADIC, which extended far beyond custodial environments. As a result, some 40 per cent of the 339 RCIADIC recommendations are focused on social issues. This includes youth issues, education, alcohol, health, employment, housing, land rights, self-determination and reconciliation. Consequently, the RCIADIC might be seen more as a holistic review of Aboriginal wellbeing as aligned to institutions and the policy environment circa 1987.

Notwithstanding the value of this current review as a broad 'health check', the continuance of some challenges, and the means to respond generally to recommendations which refer to discontinued institutions, jurisdictions might consider that any future assessment against the RCIADIC could consider a refined approach. This could factor the passage of time, evidence suggesting general parity between the Aboriginal and non-Aboriginal rate of deaths in custody from unnatural causes, and other current accountability mechanisms: such as annual national reporting on custodial environments, and assurances afforded by coronial investigations.

Jurisdictions might also ensure that any future process is optimised to complement other efforts. This potentially includes work stemming from the process to refresh the Closing the Gap agenda, noting both this work and the RCIADIC is socially-focused.

In terms of this latest review, WA has assessed that of the 301 RCIADIC recommendations for Western Australian response:

- **248 recommendations have been implemented** – this includes continuing efforts where government work cannot ever truly be finalised e.g. creating economic opportunities or continuing to recruit Aboriginal people;
- **25 recommendations are ongoing** – this includes longer term work such as the transfer of lands to Traditional Owners across WA’s vast geography or more recent initiatives under the McGowan Government;
- **8 recommendations are partially implemented** – this includes where the State has implemented a recommendation with some appropriate variation such as first confirming that a person wishes to engage the Aboriginal Legal Service rather than assume this;
- **9 recommendations are not implemented** – because WA does not support a recommendation in the modern day institutional and policy environment, including because a recommendation may not be feasible in WA, or would tend to result in unintended consequences;
- **7 recommendations have been superseded since 1991** – this includes for organisations that no longer exist or in relation to beer canteens that no longer exist in WA (responses have been included to the extent applicable); and
- **4 recommendations mainly applicable to the media industry** – although the Government has provided some commentary on these recommendations from a WA perspective.

The State will continue to refine custodial-based practices that have been developed over many years. WA also notes recent developments to promote safer custodial environments in a more culturally secure way as outlined in detail in WA’s response.

Finally, WA considers that the evidence outlined above strongly supports efforts to seek to reduce Aboriginal incarceration rates. Specific details of key initiatives are outlined in the WA response against the recommendations in more detail. This includes the McGowan Government’s Target 120 initiative which seeks to break the cycle of reoffending for prolific juvenile offenders, which is likely to have a significant impact on Aboriginal youth (and later adults). The Service Priority Review (SPR) is another key pillar of Government action which is anticipated to include a whole of government justice target that would complement efforts to reduce Aboriginal incarceration rates. More broadly speaking, two of the four SPR directions for reform are to build a public sector better focused on community needs and to create an environment to enable the public sector to do its job more effectively.

Australian Capital Territory

The National Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) demonstrates the importance of recognising and responding to the breadth of factors that lead to high rates of Aboriginal and Torres Strait Islander incarceration. The ACT Government supports ongoing meaningful collaboration with Aboriginal and Torres Strait Islander people to improve the criminal justice system, reduce recidivism and address the over-representation of Aboriginal and Torres Strait Islander people in the justice system. The *Human Rights Act 2004* (ACT) establishes a framework which requires all ACT public authorities to consider and act consistently with human rights. In 2018 the Government released for consultation Human Rights Standards for ACT Corrective Services, outlining how detainees will be supported from initial contact with corrections through to release.

Work continues on the implementation of recommendations in all ten focus areas outlined in the report. Highlighted below are a number of key actions being undertaken in the ACT, aligned to the select focus areas.

Self-determination

In 2008 the ACT Government established the **ACT Aboriginal and Torres Strait Islander Elected Body**, the only forum of its kind in Australia. Consisting of seven community representatives, the Elected Body is a unique, democratically elected group that directly advises government and provides a strong community voice on a range of matters. It plays an important role in ensuring government accountability and monitors and reports on the effectiveness and accessibility of programs and services for Aboriginal and Torres Strait Islander people. This includes holding annual Hearings, where government representatives answer questions from the community including on the achievement of specified targets.

In 2015, following extensive consultation with Aboriginal and Torres Strait Islander Canberrans and service providers, the ACT Government signed the **Aboriginal and Torres Strait Islander Agreement 2015-2018**. The Agreement is a commitment by the ACT Government, the Elected Body, the ACT Public Service and its service partners to work with the community to meet the vision of equitable outcomes for individuals and members of the Aboriginal and Torres Strait Islander community in the ACT.

The justice system

In addition, the ACT Government has entered into the **Aboriginal and Torres Strait Islander Justice Partnership** with the Elected Body which seeks to reduce Aboriginal and Torres Strait Islander over-representation in the ACT justice system, as both victims and offenders. The Justice Partnership aims to improve justice outcomes for Aboriginal and Torres Strait Islander people in the ACT through the development and implementation of policies and programs that have long-term benefits for the local community. Being a partnership, it embodies the need for the government and the community to work together to achieve this. An important aspect of the Partnership has been the establishment of a Caucus, made up of Aboriginal and Torres Strait Islander staff of justice-related government agencies and community sector organisations, to provide advice and feedback into the governance of the Partnership.

The Blueprint for Youth Justice 2012-2022 is the ACT Government's 10-year strategy for youth justice reform. It continues to guide positive progress on reducing the number of young people in contact with the youth justice system through early intervention, prevention and diversion strategies. A Blueprint Taskforce was established in mid-2017 with key community and government representatives to review progress and recommend key priorities for the next five years. The Taskforce has been consulting with the community and reviewing evidence to inform future refinements, including efforts to reduce the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system. Since the introduction of the Blueprint there has been a 33 per cent reduction in Aboriginal and Torres Strait Islander young people under youth justice supervision; a 35 per cent reduction in Aboriginal and Torres Strait Islander young people under community-based supervision; and a 66 per cent reduction in nights spent in custody by Aboriginal and Torres Strait Islander young people.

Cycle of offending

Key aspects of the ACT's **Justice Reinvestment work** has focused on initiatives within the Aboriginal and Torres Strait Islander Community. **Ngurrambai** is a two year bail support trial being delivered by the Aboriginal Legal Service which is designed to reduce the number of Aboriginal and Torres Strait Islander people on remand, and the time spent on remand. The trial involves the development of a culturally appropriate operational model that includes conducting assessments, developing a bail plan, the provision of culturally appropriate intensive case management and referral to services and programs. The provision of this support has filled a gap in bail support services which would have resulted in Aboriginal and Torres Strait Islander people being ineligible for bail.

Yarrabi Bamirr, Ngunnawal words for Walk Tall, works with a small number of high and complex needs Aboriginal and Torres Strait Islander families. This service model has an immediate and long term impact on the cost of service provision and quality of support to families as it seeks to improve life outcomes and prevent or reduce contact with the justice system.

Facilitating access and participation in restorative justice processes are the specialist Indigenous Guidance partners and convenors. These identified roles ensure that Aboriginal and Torres Strait Islander people receive a culturally appropriate service and maximise the positive benefits that participation in restorative justice can provide.

The **Galambany Court** has existed as part of the ACT Magistrates Court jurisdiction since 2004. Aboriginal and Torres Strait Islander Panel Members assist in the sentencing process by making culturally relevant recommendations to the presiding Galambany Court Magistrate. The panel discuss the offence with the defendant and take into account their family history, events of trauma and grief, their current circumstances and significant events of cultural relevance. The **Warrumbul Court** will commence operation in the Children's Court in September 2018, performing a similar role for young Aboriginal and Torres Strait Islander people in the criminal justice system.

Aboriginal and Torres Strait Islander disadvantage

In the 2016-17 reporting period 98 per cent of offenders released from the Alexander Maconochie Centre (AMC) prison entered the **Extended Throughcare program**, surpassing the target of 90 per cent. Extended Throughcare provides critical support and linkages to services and housing to assist people to re-connect with the community and avoid reoffending upon release. ACT Corrective Services also has an Indigenous Throughcare Transition Officer who provides support to Aboriginal and Torres Strait Islander detainees both pre-release and post-release.

The ACT established an **Inspector of Correctional Services** in 2018, in response to a key recommendation to the *Independent Inquiry into the Treatment in Custody of Detainee Steven Freeman (2017)* (the Moss Report). The role of the Inspector is to examine the whole correctional system, identify areas for improvement and prevent poor practices. In addition, the Inspector has special powers to investigate critical incidents such as deaths in custody.

Other responses to the Moss Report include improved information-sharing arrangements between ACT Corrective Services and ACT Policing, and better detainee management processes, including a new induction process and observation and assessment regimes. The Inspector will play an important role in ensuring reforms are working and will provide a comprehensive agenda for future improvements, leading to sustainable change towards best practice.

ACT Policing works in partnership with stakeholders to support whole-of-government initiatives and strategies to protect Aboriginal and Torres Strait Islander adults and youths. This includes support of the delivery of the ACT Justice Partnership 2015-18 to prevent and reduce the number of Aboriginal and Torres Strait Islander people coming into contact with the criminal justice system.

The ACT Government will utilise the findings of this review in our continuing work to implement the RCIADIC recommendations. The review will support the setting of priorities, in collaboration with Aboriginal and Torres Strait Islander Canberrans, to reduce disproportionate incarceration rates in the Territory and to deliver more equitable outcomes in the future.

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