

4 The justice system

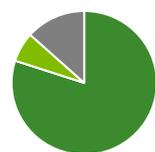
The recommendations in this chapter relate to: Aboriginal society today (48-57); relations with the non-Aboriginal community (58-59); the criminal justice system – relations with police (60-61); and young Aboriginal people and the juvenile justice system (62).

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.

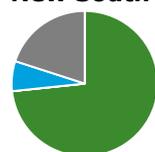
Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

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.



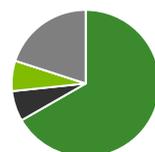
Remaining gaps: The RCIADIC recommended an inventory of community infrastructure be established. The ABS collected data on housing and infrastructure in Aboriginal and Torres Strait Islander Communities, however these data are no longer collected.

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.



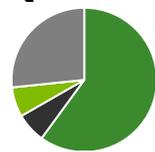
Remaining gaps: In New South Wales, there are no legal mechanisms to provide the right of appeal to persons excluded from a hotel.

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:

- The Aboriginal Child Placement Principle; and*
- 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/66CFE1ED3DAA02BCA257AB1001C9182/\\$File/LLL%20part%203.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/66CFE1ED3DAA02BCA257AB1001C9182/$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.*