

# Appendix C – Government responses to the report

Governments were invited to provide a thematic response to the findings from the draft report. Responses were received from Queensland, Western Australia, and the Australian Capital Territory. The responses are reproduced on the following pages.

## Queensland

The Queensland Government appreciates the role of this report in highlighting the response of the states and territories and the Australian Government to the landmark Royal Commission into Aboriginal Deaths in Custody (RCIADIC).

This report demonstrates that Queensland has implemented most of the relevant recommendations.

Notwithstanding the progress that has been made in implementing the recommendations, we know there is more to do as over-representation of Aboriginal and Torres Strait Islander people in the justice system is not decreasing as hoped.

As a result of RCIADIC, the Queensland Police Service (QPS) undertook a major revision of policies, practices and training relating to custody including components of diversion of drunk persons, the Drug Diversion Assessment Program and the Cell Visitor Scheme. QPS has also developed a number of initiatives regarding custody programs, cultural competence and the delivery of policing services on remote Aboriginal communities. Cross Cultural Liaison Officers and Police Liaison Officers (PLOs) were created along with an Indigenous Recruit Preparation Program aimed at increasing the number of Aboriginal and Torres Strait Islander police officers.

In corrections, Queensland employs a range of strategies to aid in the rehabilitation and reintegration of Aboriginal and Torres Strait Islander prisoners and offenders, including:

- delivering cultural appropriate programs in correctional centres and in the community that address substance abuse and family violence
- implementing recommendations from the Queensland Parole System Review
- employing Cultural Liaison and Cultural Development Officers in correctional centres and probation and parole officers
- providing access for Aboriginal and Torres Strait Islander Elder groups and chaplaincy services in correctional centres.

In 2017, Queensland Corrective Services launched the Murrighagun Cultural Centre which provides advisory, planning and support services to reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

Prioritising the needs of Aboriginal and Torres Strait Islander children and young people and reducing their over-representation in the justice system are fundamental objectives of youth justice in Queensland. The First Nation's Action Board and Youth Justice Cultural Unit were established to ensure youth justice policy, programs and interventions are designed and delivered appropriately for Aboriginal and Torres Strait Islander young people, their families and communities.

The Department of Justice and Attorney-General has embedded the delivery of culturally appropriate court processes. Community Justice Groups (CJGs) play an integral role in empowering communities to address criminal justice issues. CJGs are run by members of the local Aboriginal and Torres Strait Islander community and provide key support in both Magistrates Courts and Murri Courts, by preparing bail and sentencing submissions, regularly attending court when Aboriginal and Torres Strait Islander offenders and victims are present, and pro-actively referring victims and offenders to culturally suitable programs or services.

Murri Courts, which deliver a culturally appropriate court process that respects and acknowledges Aboriginal and Torres Strait Islander cultures, operate in Brisbane, Caboolture, Cairns, Cherbourg (which is a discrete Aboriginal community), Cleveland, Mackay, Maroochydore, Mount Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville, and Wynnum.

To understand and prevent Aboriginal deaths in custody, the Coroners Court of Queensland is responsible for investigating all deaths in custody and making recommendations to prevent similar deaths. The *Coroners Act 2003* was introduced as a comprehensive legislative framework governing the jurisdiction, powers and duties of coroners to address identified problems with the former coronial system in Queensland.

In addition, innovative Social Benefit Bonds are being piloted that will test ways government can partner with social service providers and private investors to help address challenging social issues. One Social Benefit Bond aims to reduce youth re offending, and another to increase the reunification of Aboriginal and Torres Strait Islander children currently in out-of-home care with a female parent.

Queensland acknowledges that a focus on the justice system alone will not bring about meaningful change and that prevention, including improving social, educational, health and economic outcomes needs to be paramount.

Queensland has implemented a range of educational strategies including:

- The Be well Learn well early intervention program delivers allied health services to eight remote Far North and North Queensland state schools.
- Children and Family Centres (CFCs): Queensland's ten CFCs target Indigenous children and co-locate early childhood education and care, family support, and child and maternal health services.
- Pre-Prep supports children living in 35 discrete Aboriginal and Torres Strait Islander communities.
- Aboriginal and Torres Strait Islander Early Years Services are funded to provide early childhood and family support services in remote Indigenous communities.
- Developing an Aboriginal and Torres Strait Islander education action plan.

Queensland also recognises that closing the gap in health outcomes is a long-term and challenging process and involves collective effort from the health system, workforce and primary health care sector. The *Statement of Action towards closing the gap in health outcomes* aims to address systemic barriers in order to progress efforts to improve Aboriginal and Torres Strait Islander health and wellbeing in Queensland.

Queensland is also implementing a range of initiatives to improve the economic participation of Aboriginal and Torres Strait Islander people, guided by *Moving Ahead: A strategic approach to increasing the participation of Aboriginal people and Torres Strait Islander people in Queensland's economy 2016-2022*.

While this review provides useful information about progress, many responses have been superseded and the policy context has changed significantly since the 1991 RCIADIC report was handed down.

Queensland believes that the focus should now be on the present and future. Queensland is committed to working with Aboriginal and Torres Strait Islander people to ensure that responses both within and outside the criminal justice system are appropriate. While meeting the intent of RCIADIC, we will focus on implementing evidence-based approaches which respond to contemporary issues and needs.

## Western Australia

The Western Australian Government welcomes the opportunity to contribute to this latest national review. This statement and the accompanying advice on the 301 recommendations for Western Australia's response are generally focused on current actions. Further historical information is available in Western Australia's 1993, 1994, 1995, 1997 and 2000 assessment reports.

The State notes that the RCIADIC was established 30 years ago under former Prime Minister, the Hon Robert Hawke, and that many institutions have since changed, as well as government approaches in the pursuit of Aboriginal wellbeing. Despite this, significant challenges remain for government and communities in achieving better outcomes. This includes working in partnership with mutual respect and dual responsibility to address Aboriginal over-representation in the justice system.

Contemporary evidence from the Productivity Commission's Report on Government Services suggests that, within a custodial setting, Aboriginal people do not die of unnatural causes at a greater rate than non-Aboriginal people. However, the ratio of Aboriginal people in prisons, in remand centres, police lock-ups or juvenile detention centres as compared with non-Aboriginal people is significant. For instance, in Western Australia (WA), as at 30 June 2017, some 38 per cent of Western Australia's prison population was Aboriginal, despite Aboriginal people comprising approximately 3 per cent of the State's total population (Figure 1). Aboriginal youth detention rates are also disproportionately high.

**Figure 1: Productivity Commission data: prisoner deaths in WA from unnatural causes**

Year	Rate per 100 prison pop. <b>Aboriginal</b> (unnatural causes)	Rate per 100 prison pop. <b>non-Aboriginal</b> (unnatural causes)
2013/14	0 (0 people)	0.1 (3 people)
2014/15	0.5 (1 person)	0.6 (2 people)
2015/16	0.14 (3 people)	0.08 (3 people)
2016/17	0.08 (2 people)	0 (0 people)

Table: Productivity Commission data show for the four most recent reporting periods that, on average, Aboriginal Western Australians die at a rate comparable to their non-Aboriginal counterparts.

Another consideration in undertaking the assessment is the scope of the RCIADIC, which extended far beyond custodial environments. As a result, some 40 per cent of the 339 RCIADIC recommendations are focused on social issues. This includes youth issues, education, alcohol, health, employment, housing, land rights, self-determination and reconciliation. Consequently, the RCIADIC might be seen more as a holistic review of Aboriginal wellbeing as aligned to institutions and the policy environment circa 1987.

Notwithstanding the value of this current review as a broad 'health check', the continuance of some challenges, and the means to respond generally to recommendations which refer to discontinued institutions, jurisdictions might consider that any future assessment against the RCIADIC could consider a refined approach. This could factor the passage of time, evidence suggesting general parity between the Aboriginal and non-Aboriginal rate of deaths in custody from unnatural causes, and other current accountability mechanisms: such as annual national reporting on custodial environments, and assurances afforded by coronial investigations.

Jurisdictions might also ensure that any future process is optimised to complement other efforts. This potentially includes work stemming from the process to refresh the Closing the Gap agenda, noting both this work and the RCIADIC is socially-focused.

In terms of this latest review, WA has assessed that of the 301 RCIADIC recommendations for Western Australian response:

- **248 recommendations have been implemented** – this includes continuing efforts where government work cannot ever truly be finalised e.g. creating economic opportunities or continuing to recruit Aboriginal people;
- **25 recommendations are ongoing** – this includes longer term work such as the transfer of lands to Traditional Owners across WA’s vast geography or more recent initiatives under the McGowan Government;
- **8 recommendations are partially implemented** – this includes where the State has implemented a recommendation with some appropriate variation such as first confirming that a person wishes to engage the Aboriginal Legal Service rather than assume this;
- **9 recommendations are not implemented** – because WA does not support a recommendation in the modern day institutional and policy environment, including because a recommendation may not be feasible in WA, or would tend to result in unintended consequences;
- **7 recommendations have been superseded since 1991** – this includes for organisations that no longer exist or in relation to beer canteens that no longer exist in WA (responses have been included to the extent applicable); and
- **4 recommendations mainly applicable to the media industry** – although the Government has provided some commentary on these recommendations from a WA perspective.

The State will continue to refine custodial-based practices that have been developed over many years. WA also notes recent developments to promote safer custodial environments in a more culturally secure way as outlined in detail in WA’s response.

Finally, WA considers that the evidence outlined above strongly supports efforts to seek to reduce Aboriginal incarceration rates. Specific details of key initiatives are outlined in the WA response against the recommendations in more detail. This includes the McGowan Government’s Target 120 initiative which seeks to break the cycle of reoffending for prolific juvenile offenders, which is likely to have a significant impact on Aboriginal youth (and later adults). The Service Priority Review (SPR) is another key pillar of Government action which is anticipated to include a whole of government justice target that would complement efforts to reduce Aboriginal incarceration rates. More broadly speaking, two of the four SPR directions for reform are to build a public sector better focused on community needs and to create an environment to enable the public sector to do its job more effectively.

## Australian Capital Territory

The National Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) demonstrates the importance of recognising and responding to the breadth of factors that lead to high rates of Aboriginal and Torres Strait Islander incarceration. The ACT Government supports ongoing meaningful collaboration with Aboriginal and Torres Strait Islander people to improve the criminal justice system, reduce recidivism and address the over-representation of Aboriginal and Torres Strait Islander people in the justice system. The *Human Rights Act 2004* (ACT) establishes a framework which requires all ACT public authorities to consider and act consistently with human rights. In 2018 the Government released for consultation Human Rights Standards for ACT Corrective Services, outlining how detainees will be supported from initial contact with corrections through to release.

Work continues on the implementation of recommendations in all ten focus areas outlined in the report. Highlighted below are a number of key actions being undertaken in the ACT, aligned to the select focus areas.

### Self-determination

In 2008 the ACT Government established the **ACT Aboriginal and Torres Strait Islander Elected Body**, the only forum of its kind in Australia. Consisting of seven community representatives, the Elected Body is a unique, democratically elected group that directly advises government and provides a strong community voice on a range of matters. It plays an important role in ensuring government accountability and monitors and reports on the effectiveness and accessibility of programs and services for Aboriginal and Torres Strait Islander people. This includes holding annual Hearings, where government representatives answer questions from the community including on the achievement of specified targets.

In 2015, following extensive consultation with Aboriginal and Torres Strait Islander Canberrans and service providers, the ACT Government signed the **Aboriginal and Torres Strait Islander Agreement 2015-2018**. The Agreement is a commitment by the ACT Government, the Elected Body, the ACT Public Service and its service partners to work with the community to meet the vision of equitable outcomes for individuals and members of the Aboriginal and Torres Strait Islander community in the ACT.

### The justice system

In addition, the ACT Government has entered into the **Aboriginal and Torres Strait Islander Justice Partnership** with the Elected Body which seeks to reduce Aboriginal and Torres Strait Islander over-representation in the ACT justice system, as both victims and offenders. The Justice Partnership aims to improve justice outcomes for Aboriginal and Torres Strait Islander people in the ACT through the development and implementation of policies and programs that have long-term benefits for the local community. Being a partnership, it embodies the need for the government and the community to work together to achieve this. An important aspect of the Partnership has been the establishment of a Caucus, made up of Aboriginal and Torres Strait Islander staff of justice-related government agencies and community sector organisations, to provide advice and feedback into the governance of the Partnership.

**The Blueprint for Youth Justice 2012-2022** is the ACT Government's 10-year strategy for youth justice reform. It continues to guide positive progress on reducing the number of young people in contact with the youth justice system through early intervention, prevention and diversion strategies. A Blueprint Taskforce was established in mid-2017 with key community and government representatives to review progress and recommend key priorities for the next five years. The Taskforce has been consulting with the community and reviewing evidence to inform future refinements, including efforts to reduce the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system. Since the introduction of the Blueprint there has been a 33 per cent reduction in Aboriginal and Torres Strait Islander young people under youth justice supervision; a 35 per cent reduction in Aboriginal and Torres Strait Islander young people under community-based supervision; and a 66 per cent reduction in nights spent in custody by Aboriginal and Torres Strait Islander young people.

### Cycle of offending

Key aspects of the ACT's **Justice Reinvestment work** has focused on initiatives within the Aboriginal and Torres Strait Islander Community. **Ngurrambai** is a two year bail support trial being delivered by the Aboriginal Legal Service which is designed to reduce the number of Aboriginal and Torres Strait Islander people on remand, and the time spent on remand. The trial involves the development of a culturally appropriate operational model that includes conducting assessments, developing a bail plan, the provision of culturally appropriate intensive case management and referral to services and programs. The provision of this support has filled a gap in bail support services which would have resulted in Aboriginal and Torres Strait Islander people being ineligible for bail.

**Yarrabi Bamirr**, Ngunnawal words for Walk Tall, works with a small number of high and complex needs Aboriginal and Torres Strait Islander families. This service model has an immediate and long term impact on the cost of service provision and quality of support to families as it seeks to improve life outcomes and prevent or reduce contact with the justice system.

Facilitating access and participation in restorative justice processes are the specialist Indigenous Guidance partners and convenors. These identified roles ensure that Aboriginal and Torres Strait Islander people receive a culturally appropriate service and maximise the positive benefits that participation in restorative justice can provide.

The **Galambany Court** has existed as part of the ACT Magistrates Court jurisdiction since 2004. Aboriginal and Torres Strait Islander Panel Members assist in the sentencing process by making culturally relevant recommendations to the presiding Galambany Court Magistrate. The panel discuss the offence with the defendant and take into account their family history, events of trauma and grief, their current circumstances and significant events of cultural relevance. The **Warrumbul Court** will commence operation in the Children's Court in September 2018, performing a similar role for young Aboriginal and Torres Strait Islander people in the criminal justice system.

### Aboriginal and Torres Strait Islander disadvantage

In the 2016-17 reporting period 98 per cent of offenders released from the Alexander Maconochie Centre (AMC) prison entered the **Extended Throughcare program**, surpassing the target of 90 per cent. Extended Throughcare provides critical support and linkages to services and housing to assist people to re-connect with the community and avoid reoffending upon release. ACT Corrective Services also has an Indigenous Throughcare Transition Officer who provides support to Aboriginal and Torres Strait Islander detainees both pre-release and post-release.

The ACT established an **Inspector of Correctional Services** in 2018, in response to a key recommendation to the *Independent Inquiry into the Treatment in Custody of Detainee Steven Freeman (2017)* (the Moss Report). The role of the Inspector is to examine the whole correctional system, identify areas for improvement and prevent poor practices. In addition, the Inspector has special powers to investigate critical incidents such as deaths in custody.

Other responses to the Moss Report include improved information-sharing arrangements between ACT Corrective Services and ACT Policing, and better detainee management processes, including a new induction process and observation and assessment regimes. The Inspector will play an important role in ensuring reforms are working and will provide a comprehensive agenda for future improvements, leading to sustainable change towards best practice.

**ACT Policing** works in partnership with stakeholders to support whole-of-government initiatives and strategies to protect Aboriginal and Torres Strait Islander adults and youths. This includes support of the delivery of the ACT Justice Partnership 2015-18 to prevent and reduce the number of Aboriginal and Torres Strait Islander people coming into contact with the criminal justice system.

The ACT Government will utilise the findings of this review in our continuing work to implement the RCIADIC recommendations. The review will support the setting of priorities, in collaboration with Aboriginal and Torres Strait Islander Canberrans, to reduce disproportionate incarceration rates in the Territory and to deliver more equitable outcomes in the future.