



## Royal Commission into Aboriginal Deaths in Custody Recommendation

### 1. Public engagement and reporting on implementation

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

- a) That the Commonwealth Government and State and Territory Governments, in consultation with the Aboriginal and Torres Strait Islander Commission (ATSIC), agree upon a process which ensures that the adoption or otherwise of recommendations and the implementation of the adopted recommendations will be reported upon on a regular basis with respect to progress on a Commonwealth, State and Territory basis;*
- b) That such reports should be made not less than annually and that, subject to the agreement of its Commissioners to do so, ATSIC be given special responsibility and funding to enable it to monitor the progress of implementation of the adopted recommendations and to report thereon to the Aboriginal and Torres Strait Islander community;*
- c) That governments consult with appropriate Aboriginal organisations in the consideration and implementation of the various recommendations in this report;*
- d) That, wherever appropriate, governments make use of the services of Aboriginal organisations in implementing such recommendations; and*
- e) Ensure that local Aboriginal organisations are consulted about the local implementation of recommendations, and their services be used wherever feasible.<sup>1</sup>*

<b>Background<sup>2</sup></b>	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was the first comprehensive review of factors impacting the incarceration of Aboriginal people. Given its breadth and the widespread involvement of governments and Aboriginal communities and organisations, it was considered equally important that governments continue this approach to implement and report on implementation of RCIADIC recommendations.
<b>Intent</b>	Incorporate RCIADIC findings into public policy and involve Aboriginal organisations in considering, implementing and reporting on recommendations.
<b>Responsibility</b>	The Commonwealth and all state and territory governments.
<b>Key contact</b>	Koori Justice Unit, Department of Justice and Community Safety; Aboriginal Justice Caucus.

<sup>1</sup> Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 1, 29 ('RCIADIC').

<sup>2</sup> Ibid 26-9.

# 1. Public engagement and reporting on implementation

## Key Action Taken

### 2005 Review<sup>3</sup>

The Department of Victorian Communities assessed Recommendation 1 as **fully implemented**.

Following release of the RCIADIC National Report in April 1991, all Australian Governments agreed to annual jurisdictional reporting. The Victorian Government produced Royal Commission Implementation Reports in 1992, 1994 and 1995-96 that followed a 'recommendation-by-recommendation' reporting approach. These reports illustrated commitment on behalf of successive Victorian governments to implement RCIADIC recommendations to the furthest extent possible within Victoria. In these Reports, 289 recommendations were considered either implemented in full or in the process of ongoing implementation and development, 13 recommendations were unsupported, and 37 deemed not relevant to Victoria.

In 1997, Victoria participated in the National Summit into Deaths in Custody. The Summit was attended by Attorneys-General, Ministers for Police, Ministers for Community Services, Ministers for Aboriginal Affairs, Aboriginal representatives of the National Aboriginal Justice Advisory Committee (NAJAC) and the Human Rights and Equal Opportunity Commission. All government (excluding the Northern Territory) and Aboriginal representatives at the summit agree to develop jurisdictional based 'strategic plans' to address the issues highlighted by the RCIADIC and reduce the over-representation of Aboriginal people in custody.

Following this Summit, the Victorian Government worked with the Victorian Aboriginal Justice Advisory Committee' (VAJAC) to develop the Victorian Aboriginal Justice Agreement (AJA) 'as the State's key strategy for responding to the Royal Commission's Recommendations.' The first AJA was signed in May 2000.

No further reports on Royal Commission implementation were produced until the Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody (conducted during 2003-04 and published in 2005).

Under the AJA, the Victorian Government worked in partnership with Aboriginal organisations to implement specific recommendations. These organisations included the VAJAC, Victorian Aboriginal Legal Service (VALS) and local Aboriginal Community Justice Panels. It also involved a range of existing partnerships between Aboriginal organisations and government agencies in a broad range of social policy areas (e.g., housing, health and education) in the delivery of services.

It was through the Regional Aboriginal Justice Advisory Committees (RAJACs) that Victoria established a specific community-based framework for local consultation and management of Royal Commission related activities. Prior to this, local consultation and involvement was generally provided by Aboriginal community organisations involved in Royal Commission related program and service delivery.

<sup>3</sup> Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) 681-2 ('2005 Review').

## 1. Public engagement and reporting on implementation

### 2018 Review<sup>4</sup>

#### Commonwealth Government

Deloitte concluded that the Commonwealth Government had **partially implemented** Recommendation 1, having produced five annual implementation reports between 1992-3 and 1996-7. Following that, the Aboriginal and Torres Strait Islander Commission (ATSIC) was responsible for ongoing monitoring until it was disbanded in 2005.

The cessation of reporting on (or recognising) the RCIADIC had the effect of diminishing the Commonwealth Government's focus on the RCIADIC as a key national Aboriginal policy framework.

#### Victorian Government

Deloitte concluded that Victoria had **fully implemented** Recommendation 1 through publication of implementation reports, development of AJAs as part of the response to the RCIADIC, and continued engagement with Aboriginal organisations.

Phase 1 of the Victorian AJA was produced in direct response to the 1997 National Ministerial Summit into Indigenous Deaths in Custody, which was held to review the implementation of the RCIADIC recommendations.<sup>5</sup> Phase 1 ran from 2000 to 2006 and Phase 2 from 2006 to 2012.<sup>6</sup> Phase 3 commenced in 2013.<sup>7</sup> An independent evaluation of AJA Phase 2 was undertaken in 2011-12 and AJA Phase 3 specified benchmarks, performance indicators, targets and timelines that all AJA initiatives were to be measured against.<sup>8</sup>

In respect to parts c) and e) of the recommendation, the AJAs are a formal agreement between the Victorian Government and Aboriginal community to work together to improve justice outcomes for the Aboriginal community. They have their origins in implementing the RCIADIC recommendations. In respect to part d), it is Victorian Government policy to use Aboriginal community organisations, wherever possible, to deliver services to Aboriginal people.

### Since then

#### Victorian Aboriginal Justice Agreement

A key recommendation of the 2005 Review was the development of the second phase of the AJA (AJA2), many aspects of which responded to recommendations arising from the review. AJA2 ran from 2006 to 2012 and was monitored over time and independently evaluated in 2011-12.<sup>9</sup> The evaluation contributed to the development of the third phase, AJA3, which commenced in 2013.<sup>10</sup> AJA3 specified benchmarks, performance indicators, targets and timelines that all AJA initiatives were to be measured against. Evaluation of AJA3 included

<sup>4</sup> Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) ('2018 Review').

<sup>5</sup> Department of Justice (Vic), *Victorian Aboriginal Justice Agreement Phase 1: A Partnership between the Victorian Government and the Koori Community* (Agreement, 2000) ('AJA1').

<sup>6</sup> Ibid.; Department of Justice (Vic), *Victorian Aboriginal Justice Agreement Phase 2: A Partnership between the Victorian Government and the Koori Community* (Agreement, June 2006) ('AJA2').

<sup>7</sup> Department of Justice (Vic), *Victorian Aboriginal Justice Agreement Phase 3: A Partnership between the Victorian Government and the Koori Community* (Agreement, March 2013) ('AJA3').

<sup>8</sup> Department of Justice (Vic), *Evaluation of the Aboriginal Justice Agreement – Phase 2* (May 2012) ('Evaluation of AJA2'); AJA3.

<sup>9</sup> *Evaluation of AJA2*.

<sup>10</sup> AJA3.

## 1. Public engagement and reporting on implementation

partnership and place-based evaluations as well as a report synthesising the findings of over 60 programmatic reviews and evaluations of initiatives implemented under the AJA.<sup>11</sup>

Burra Lotjpa Dunguludja, the fourth phase of the Victorian AJA (AJA4), was developed with the Aboriginal community in 2018.<sup>12</sup> It continues key RCIADIC themes in seeking to address Aboriginal over-representation in the justice system, improve family and community safety, and strengthen Aboriginal self-determination. Several AJA4 commitments are directly relevant to RCIADIC recommendations.

The AJA 4 Monitoring, Evaluation and Learning Framework was developed with the AJC to be consistent with Aboriginal values, reflect Aboriginal priorities for what is measured and how it is measured, and ensure regular monitoring and transparent reporting of results. An 'Aboriginal Justice Indicators' data dashboard was also developed to enable local, regional and statewide monitoring of impacts via publicly available data.

### **Wirkara Kulpa<sup>13</sup>**

Wirkara Kulpa is Victoria's first Aboriginal Youth Justice Strategy. Its development was led by the AJC, with contributions from members of the Aboriginal community, including Aboriginal children and young people.

*Our vision is that Aboriginal children and young people are not in the youth justice system. This is because they are strong in their culture, connected to families and communities, and living healthy, safe, resilient, thriving and culturally rich lives.*

Wirkara Kulpa builds on the findings of the Koori Youth Justice Taskforce, which examined the care of nearly 300 Aboriginal children and young people under youth justice supervision. It identifies a set of priorities which the government must work toward in close partnership with the Aboriginal community. The priorities include diverting Aboriginal children and young people away from the youth criminal legal system, empowering change, protecting cultural rights, increasing connection to family community and culture, supporting healing and rehabilitation, working toward Aboriginal-led justice responses and creating a fair youth justice system.

For each priority, a set of tangible actions is identified to ensure there is a clear pathway to achieving genuine and lasting change. These include things like embedding Aboriginal-specific principles in a new Youth Justice Act, monitoring cultural safety in health care delivery and reducing the use of isolation in youth justice custody, which reiterate the intent of RCIADIC recommendations.

<sup>11</sup> Clear Horizon Consulting, *Evaluation of the Partnership Arrangements of the Aboriginal Justice Agreement (Phase 3)* (Report, 11 May 2018) ('AJA 3 Evaluation'); Clear Horizon Consulting, *Place-Based Evaluation of the Aboriginal Justice Agreement (Phase 3)* (Report, 10 June 2018) ('AJA 3 Place-based Evaluation').

<sup>12</sup> Department of Justice (Vic), *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4* (Agreement, 2018) ('AJA4').

<sup>13</sup> Koorie Youth Council and Department of Justice and Community Safety (Vic), *Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022–2032* (Strategy, February 2022) ('Wirkara Kulpa').

## 1. Public engagement and reporting on implementation

### **Victorian Aboriginal Affairs Framework<sup>14</sup>**

In developing the AJA, the Victorian Government acknowledged that it was not possible to tackle the over-representation of Aboriginal people in the criminal justice system without also tackling the disproportionately high levels of disadvantage. One of the actions within the AJA was to develop a ‘whole of government’ response to underlying issues contributing to the over-representation of Aboriginal people in the justice system. This action was completed through the development of the first Victorian Indigenous Affairs Framework in 2006.

Now the Victorian Aboriginal Affairs Framework 2018-2025, it is the Victorian Government’s overarching framework for working with Aboriginal people, organisations and the wider community across Victoria to drive action and improve outcomes in all areas. These includes areas like health, housing, education, land rights and economic development, that were all highlighted by the RCIADIC given significant disparities in access and outcomes between Aboriginal and non-Aboriginal populations.

Accordingly, addressing the underlying issues is an ongoing requirement of departments across all areas of government and results in the development and implementation of policies consistent with the intent of the Royal Commission Recommendations.

Targets and indicators in the VAAF are reported on via the annual Victorian Government Aboriginal Affairs Reports which are tabled in parliament and publicly available.<sup>15</sup>

### **Aboriginal-led review of implementation of recommendations from the RCIADIC**

For several years, the AJC advocated for an Aboriginal-led review of Victoria’s implementation progress. The AJC were also concerned by the lack of a consistent and transparent process to monitor progress of implementation of coronial recommendations in Victoria, given the importance of ensuring recommendations from the RCIADIC are fully addressed. Accordingly, this project will also examine implementation progress of coronial recommendations arising from inquests into Aboriginal deaths in custody in Victoria since 1991.

This project will help to provide a clear picture of where further work is required to address issues highlighted in RCIADIC and coronial recommendations and to prioritise incomplete recommendations.

## **Evidence of impact**

### **Authorising Document**

### **Aboriginal Justice Agreements<sup>16</sup>**

The 1997 Ministerial Summit on Deaths in Custody transferred much of the responsibility for responding to the RCIADIC to states and territories. Jurisdictional justice plans were seen as the best means for providing ongoing focus and prominence to the RCIADIC and allowing jurisdictions the flexibility to determine priorities and establish more strategic approaches to implementation and monitoring.

<sup>14</sup> Victorian State Government, *Victorian Aboriginal Affairs Framework 2018–2023* (Framework, 2018) ('VAAF 2018-2023').

<sup>15</sup> First Peoples – State Relations (Vic), 'Victorian Government Aboriginal Affairs Report', *Vic.gov.au: First Peoples – State Relations* (Web Page, 12 October 2023) <<https://www.firstpeoplesrelations.vic.gov.au/aboriginal-affairs-report>> ('Victorian Government Aboriginal Affairs Report').

<sup>16</sup> AJA1; AJA2; AJA3; AJA4.

# 1. Public engagement and reporting on implementation

The development of the AJA significantly expanded local, regional and state-wide mechanisms in Victoria that support community engagement and involvement in addressing justice-related issues. The AJA is integral to the ongoing response of Victorian Government agencies to issues raised in the RCIADIC. The AJA provides both an agreement (which outlines agreed principles and strategic objectives relevant to Victoria) and a statewide action plan that outlines initiatives and planning/administrative structures required to address Aboriginal justice issues. Importantly, the AJA established several forums that promote Aboriginal partnerships in the planning, design, implementation, monitoring and evaluation of justice-related RCIADIC initiatives within a framework that allows for emphasis to be placed on Victorian and local Aboriginal community issues and perspectives.

## **Victorian Aboriginal Affairs Framework 2018-2023**<sup>17</sup>

The Victorian Aboriginal Affairs Framework 2018-2023 (VAAF), now extended to 2025, is the Victorian Government’s overarching framework for working with Aboriginal Victorians, organisations and the wider community to drive action and improve outcomes.

The VAAF outlines how government will ‘plan’, ‘act’, ‘measure’ and ‘evaluate’ to progress change across government, address inequity and deliver stronger outcomes for and with Aboriginal people across Victoria.

## **Self-determination Reform Framework**<sup>18</sup>

The Self-determination Reform Framework (SDRF) guides public service action to enable self-determination in line with the Victorian Aboriginal Affairs Framework 2018-2023. It also provides a structure for government departments to report annually on this action and outlines four ‘enablers’ that are critical in transforming government systems and structures to enable self-determination. These include prioritisation of culture, addressing of trauma and support of healing, addressing of racism and promotion of cultural safety, and transfer of power and resources to communities. The latter drives government efforts to prioritise Aboriginal organisations in program and service delivery.

### **Outputs**

See below.

### **Outcomes**

#### **a) Process for reporting on implementation of recommendations**

The 2005 Review concluded that:

*There has been virtually no rigorous monitoring of the Royal Commission’s Recommendations in Victoria since 1991 until the current Review. If the Victorian Government is to be taken seriously in its commitment to reduce over-representation of Indigenous people in the criminal justice system, and that fact is acknowledged, then the process for monitoring and reporting must be more constant, and with an agreed process put into place with the Indigenous community.*<sup>19</sup>

<sup>17</sup> VAAF 2018-2023.

<sup>18</sup> Victorian State Government, *Self-Determination Reform Framework* (Framework, 30 August 2019) ('Self-Determination Reform Framework').

<sup>19</sup> 2005 Review, 715.

## 1. Public engagement and reporting on implementation

The shift away from annual reporting to the development of AJAs resulted in a move towards ongoing monitoring and periodic evaluations of these agreements and initiatives within them. The approach to monitoring and evaluation is developed in partnership with the AJC for each agreement, and for evaluations of specific initiatives.

The result of this shift was that the 'rigorous monitoring' of RCIADIC recommendations did not continue in an ongoing way as envisaged in the 2005 Review. In developing AJA4, the AJC was adamant that realisation of greater Aboriginal self-determination in the context of reducing Aboriginal over-representation in the criminal justice system required implementation of all RCIADIC recommendations to be revisited, with progress assessed through an 'Aboriginal lens'. The AJC's advocacy for this to occur resulted in this project.

### **b) Annual reports and reporting to the Aboriginal Community**

Annual reports were produced in 1992-3, 1994-5 and 1996-7 but may not have been accessible to the Aboriginal Community.<sup>20</sup> A different approach was adopted for the 2005 Review which included extensive engagement with and reporting back to Aboriginal communities across Victoria.

AJA evaluation findings are provided back to community members involved in those evaluations, including the AJC, AJF and RAJACs, and are made publicly available on the Aboriginal Justice Website.<sup>21</sup>

The Victorian Government Aboriginal Affairs Reports are produced annually and report on many of the underlying issues identified by the RCIADIC as contributing to the over-representation of Aboriginal people in the criminal justice system.<sup>22</sup> However, there are few examples of specific RCIADIC recommendations being discussed within these reports.

### **c) Governments consult with Aboriginal organisations on the implementation of recommendations**

Engagement with Aboriginal communities in relation to justice-related recommendations occurs through the Aboriginal AJC, Aboriginal organisations and RAJACs. For recommendations related to child welfare, health, housing, economic development and education it occurs through the relevant Aboriginal-government partnership forums and Aboriginal Community Controlled Organisation (ACCO) members.

### **d) Governments use the services of Aboriginal organisations in implementing recommendations**

<sup>20</sup> Aboriginal and Torres Strait Islander Commission, *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: First Annual Report 1992-3* (Report, 1994) ('Annual Report 1992-3'); Aboriginal and Torres Strait Islander Commission, *Implementation of the Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: Annual Report 1994-95* (Report, 1996) ('Annual Report 1994-95'); Aboriginal and Torres Strait Islander Commission, *Implementation of the Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: Annual/Five Year Report 1995-96* (Report, 1997) ('Annual Report 1995-96').

<sup>21</sup> Victorian State Government, 'Outcomes', *Victorian Aboriginal Justice Agreement* (Web Page, 24 March 2023) <<https://www.aboriginaljustice.vic.gov.au/outcomes>> ('Outcomes').

<sup>22</sup> First Peoples – State Relations (Vic), 'Victorian Government Aboriginal Affairs Report' 12.

## 1. Public engagement and reporting on implementation

‘Budget Paper 3: Service Delivery 2023-24’ indicates that 98% of grant and program funding administered by the Koori Justice Unit is provided to ACCOs.<sup>23</sup> Most community-based programs and services funded under the AJA are delivered by Aboriginal organisations. Where recommendations relate to the work of other Victorian Government–Aboriginal community partnerships, there are differing arrangements in place and different levels of engagement with and use of Aboriginal organisations for service delivery. The SDRF outlines ‘enablers’ critical to transforming government systems and structures, including the transfer of power and resources to communities. This ‘enabler’ drives government efforts to prioritise Aboriginal organisations in program and service delivery.

### **d) Ensure local Aboriginal organisations are consulted about local implementation**

The AJA3 Evaluation identifies ‘community ownership of initiatives’ as one element that makes the AJA and its programs effective:

*The involvement of Aboriginal Controlled Community Organisations or bodies (e.g. gathering places) as the prime delivery agent for services to Aboriginal people is central to the success of the AJA’s approach. Led by Aboriginal people, these organisations are best placed to understand community needs and deliver responsive services. Basing programs within Aboriginal organisations improves the credibility of programs within the community, strengthens coordination at the local level, and increases client access to a range of programs and services.<sup>24</sup>*

### **Community Views**

#### **Clear Horizon, Evaluation of the Partnership Arrangements of the Aboriginal Justice Agreement (2018)<sup>25</sup>**

*The need for the Agreement was first voiced in the findings and 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody. There was no doubt that a new approach to addressing not only Aboriginal deaths in custody but the wider systemic, structural discrimination that Aboriginal people face in Australian society, was needed.*

#### **Yoorrook Justice Commission<sup>26</sup>**

*Over the past 35 years, the over-representation of Aboriginal people in prison has been the subject of multiple inquiries, royal commissions and internal reviews. Most notably, the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC) exposed how disadvantage and discrimination leads to the over-imprisonment of First Peoples. It showed how each death in custody is caused by a dehumanising and punitive system. RCIADIC shone a spotlight on the harm done to people in prison and found a primary cause was the failure to provide proper care to First Peoples and respect for their fundamental human and cultural rights.*

<sup>23</sup> Department of Treasury and Finance (Vic), Parliament of Victoria, *Service Delivery 2023–24* (Budget Paper No No 3, 2023) 283.

<sup>24</sup> Department of Justice and Regulation (Vic), *Evaluation of the Aboriginal Justice Agreement Phase 3: Summary of Findings* (Report, 11 May 2018) 1 (‘Summary of Evaluation of AJA3’).

<sup>25</sup> *AJA 3 Evaluation*, 5.

<sup>26</sup> Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems, *Yoorrook Justice Commission* (Report, August 2023) 360 (‘Yoorrook for Justice’).

# 1. Public engagement and reporting on implementation

## Related recommendations

### Yoorrook for Justice<sup>27</sup>

#### Recommendation 3

To ensure State accountability for First Peoples related programs and policies by those responsible for their development and delivery:

- a) government bodies must ensure that First Peoples related programs and policies are rigorously monitored and evaluated
- b) monitoring and evaluation must be designed alongside the development of the program or policy so that it is built into the program or policy (and commences at the same time as implementation) with measurement focused on real outcomes
- c) where programs or policies have existing commitments to monitoring and evaluation, but little or no progress has been made, these must be actioned within six months
- d) where programs or policies do not have monitoring or evaluation included, the inclusion of these must be actioned urgently, and
- e) these monitoring and evaluation processes must be in accordance with the Burra Lotjpa Dunguludja (AJA4) Monitoring and Evaluation Framework including:
  - i. being consistent with First Peoples values
  - ii. reflecting First Peoples priorities for what is measured and how it is measured
  - iii. having an approved regular reporting cycle, and
  - iv. having a commitment to the open reporting of results.

#### Recommendation 4

The Victorian Government must as an urgent priority, having regard to the right of First Peoples to self-determination, negotiate in good faith with the First Peoples' Assembly of Victoria:

- a) the establishment of an independent and authoritative oversight and accountability commission for the monitoring and evaluation of First Peoples related policies and programs
- b) the detailed functions and membership of the commission, and
- c) to give the commission the necessary resources and authority to hold responsible government ministers, departments and entities to account for the success or failure of the programs they develop and deliver.

### Coronial Inquest<sup>28</sup>

#### Recommendation 2

That the Victorian Government in consultation with Victoria Police, the Department of Justice and Community Safety, the Department of Health, and peak Aboriginal and/or Torres Strait Islander organisations urgently develop a review and implementation strategy for the state's implementation of the 339 recommendations of the 1991 Final Report of the RCIADIC.

<sup>27</sup> Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, August 2023) ('Yoorrook for Justice').

<sup>28</sup> Coroner Simon McGregor, *Inquest into the Passing of Veronica Nelson* (Findings COR 2020 0021, 30 January 2023) Appendix C, 1 ('Inquest into the Passing of Veronica Nelson').

# 1. Public engagement and reporting on implementation

## 2005 Review<sup>29</sup>

### Recommendation 154

That the Victorian Government appoint an independent Commissioner for Aboriginal Social Justice charged with reporting annually to both the government and Aboriginal people on the implementation of the criminal justice and more general recommendations of the RCIADIC.

Further description was provided in the 2005 Review:

*In view of the demise of ATSIC and the uncertainty over the role of the Commonwealth auspiced Social Justice Commission, the Royal Commission's requirements with regard to Victoria would best be achieved by the appointment of an adequately resourced Aboriginal Social Justice Commissioner, charged with the task of reporting annually on progress with regard to implementation of both criminal justice and underlying influences aspects of the Royal Commission Recommendations. This position would report annually to both the Ministerial Committee chaired by the Premier, as envisaged in the VAJA of 2000 and to an appropriately constituted peak body representing the Indigenous people of Victoria. Reports would encompass comments relating to both the implementation of specific recommendations and to more outcome-focused performance indicators ...*

## Assessment Summary<sup>30</sup>

Actions have been taken that align with the intent of this recommendation and all its parts. The array of reports, reviews and agreements provides evidence of actions taken but there is significantly less evidence on the achievement of desired outcomes across the 339 RCIADIC recommendations. Similarly, the 'attitude of governments' to the implementation of some of the most critical recommendations is problematic.

This Aboriginal Justice Caucus (AJC) project arose from our concerns about waning awareness of and attention to Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recommendations in legislative, policy and program development across the justice sector. We also recognised that the focus of the AJC had been drawn away from holding agencies to account for their implementation of the RCIADIC recommendations.

### **a) Process for reporting on implementation of recommendations**

Early on, regular reviews of implementation of the recommendations of the RCIADIC were conducted in Victoria. The 2005 Review found these lacked rigour, with government self-assessments of progress vastly different to the experiences of Aboriginal people. These persistent differences continue to drive our advocacy for change.

Members of the Aboriginal community, particularly the Victorian Aboriginal Justice Advisory Committee, were key to the development, implementation, monitoring and evaluation of Aboriginal Justice Agreements (AJAs), and their associated governance structures. While these began as mechanisms to oversee the implementation of RCIADIC recommendations in Victoria, focus has shifted over time from implementation of specific recommendations to achievement of broader Aboriginal community aspirations to eliminate the over-representation of Aboriginal people, prevent deaths in custody, and realise greater Aboriginal self-determination.

<sup>29</sup> 2005 Review, 703 (see also 711–720).

<sup>30</sup> Meeting with Aboriginal Justice Caucus Working Group (Project Team, In Person, 19 September 2023) ('Working Group Meeting (19 September 2023)'); Meeting with Aboriginal Justice Caucus (Project Team, In person, 10 November 2023) ('Aboriginal Justice Caucus Meeting (10 November 2023)').

## 1. Public engagement and reporting on implementation

*In the face of a legal system that has always hurt us, Aboriginal and Torres Strait Islander communities in Victoria have always demanded self-determination... There is a desperate need for the progressive transfer of authority, resources and responsibilities until Aboriginal communities have oversight of all aspects of the justice system for Aboriginal people... We recommend that Aboriginal communities and organisations be properly funded to be involved in this transformational change. (Bonnie Dukakis, Executive Officer, Koorie Youth Council)<sup>31</sup>*

### **b) Annual reports and reporting to the Aboriginal community**

The production of reports does not necessarily mean they are accessible to our communities. The 2005 Review took a different approach with extensive engagement and communication with Aboriginal communities. Similarly, Aboriginal involvement in AJA evaluations means findings are provided back to community members involved in them, including the AJC, Aboriginal Justice Forum and Regional Aboriginal Justice Advisory Committees (RAJACs), and made publicly available on the [Aboriginal Justice Website](#).

Annual Victorian Government Aboriginal Affairs Reports describe progress against targets and indicators linked to many underlying issues identified in the RCIADIC. However, we question the accuracy of some of these reports and recognise that it is rare for them to include references to RCIADIC recommendations.

*To strengthen accountability and oversight, the government must establish an Aboriginal Justice Commissioner, overhaul the police oversight system, and ensure independent oversight of places of detention. (Chris Harrison, Co-chairperson, Aboriginal Justice Caucus)<sup>32</sup>*

### **c) Governments consult with Aboriginal organisations on the implementation of recommendations**

Engagement with Aboriginal communities in relation to justice-related recommendations occurs through the AJC, RAJACs and Aboriginal organisations. For recommendations related to child welfare, health, housing, economic development and education it occurs through the relevant Aboriginal - government partnership forums and member Aboriginal organisations. Our chairpersons represent the AJC on most of these forums.

*Aboriginal self-determination has always been central to the work that the Caucus does and we continue to advocate for government to transfer power, control and resources to Aboriginal community, so that we can have a truly Aboriginal led justice system.*

*Aboriginal led decision making is critical, and a self-determination model is needed to be flexible and able to adapt... according to the Community's needs and resources.*

*The implementation [processes] is severely lacking and that's where it needs to be pushed a lot greater... The [Collaborative Working Groups] make sure that they have that implementation coming back to us, so if it's not followed up and abided by, that's where we would take it to the Aboriginal Justice Forum and call them out for what they haven't done... (Chris Harrison, Co-chairperson, AJC)<sup>33</sup>*

### **d) Governments use the services of Aboriginal organisations in implementing recommendations**

The AJA3 Evaluation found the involvement of Aboriginal Community-Controlled Organisations (ACCOs) as the main providers of Aboriginal justice programs and services to community was central to the success of the AJA.

<sup>31</sup> Transcript of Proceedings, *Transcript of Day 3, Hearing Block 4 - Public Hearings* (WUR.0004.0003.0098, Yoorrook Justice Commission, Professor Eleanor Bourke (Chair), Ms Sue-Anne Hunter (Commissioner), Distinguished Professor Maggie Walter (Commissioner), Mr Travis Lovett (Commissioner), 3 March 2023) ('*Transcript of Day 3, Hearing Block 4 - Public Hearings*').

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

## 1. Public engagement and reporting on implementation

The Aboriginal community has always known that Aboriginal-led organisations are best placed to understand community needs and deliver responsive services. There has been growing recognition of this by governments. A range of Aboriginal organisations are funded to deliver programs and services that implement RCIADIC recommendations under the AJA and other Victorian Government - Aboriginal Community partnerships. However, there is considerable evidence, captured through submissions to government, consultations and reviews, that the needs of Aboriginal communities in Victoria are greater and more complex than the resources available to meet them. ACCOs continue to advocate for more sustainable long-term funding.

### **e) Ensure local Aboriginal organisations are consulted about local implementation**

Local Aboriginal organisations are represented on Local Aboriginal Justice Action Committees (LAJACs) and RAJACs through which most consultation and engagement about local implementation of justice-related recommendations occurs.

*Aboriginal communities must be empowered to make decisions on all matters that affect them. We know... we have further work to be done to bring Aboriginal communities and organisations together and to work out the details on an Aboriginal justice system, but there are also lessons that can be learnt from work that's currently underway. (Chris Harrison, Co-chairperson, AJC)<sup>34</sup>*

Overall, Recommendation 1 remains highly relevant, as does the importance of engaging Aboriginal organisations in the implementation of RCIADIC recommendations, and monitoring and reporting of progress.

---

<sup>34</sup> Ibid.

## Assessment of RCIADIC Recommendation 1

**Is the intent of the recommendation accurately described?**

Yes  No

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

0 – No action taken

1 – Action taken is of little relevance to the intent of the recommendation

2 – Action taken partially aligns with the intent of the recommendation

3 – Action taken fully aligns with the intent of the recommendation

3

(Score out of 3)

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

0 – No evidence

1 – Evidence of output rather than outcome

2 – Some evidence action contributed to outcome/s

3 – Clear link between action and impact or outcome/s

2

(Score out of 3)

**How relevant is the recommendation in the current context?**

0 – No relevance – refers to practices, agencies or laws that no longer exist

1 – Low – some relevance, but most aspects of the recommendation no longer apply

2 – Moderate – remains relevant, but some aspects of recommendation no longer apply

3 – High – entirely relevant to current context

3

(Score out of 3)

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

0 – No potential to improve Aboriginal justice outcomes

1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified

2 – Moderate – potential to progress one or two of the outcomes identified

3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

3

(Score out of 3)

### Potential actions for further work

#### Aboriginal Social Justice Commissioner

Establish a well-resourced, independent Aboriginal Social Justice Commissioner to strengthen oversight and accountability for Aboriginal justice outcomes.

#### Regular review of RCIADIC implementation

Regularly review implementation of RCIADIC recommendations, particularly in the early stages of related process, program, policy, or legislative reform work.

#### Implementation through the Aboriginal Justice Agreement

That the implementation of actions identified in Looking Back, Moving Forward occur through the next phase of the Victorian Aboriginal Justice Agreement, if not already progressed prior to its launch.

## Moderate priority for further work

### Relevance and potential impact

		Low (0-2)	Moderate (3-4)	High (5-6)
Extent of action taken and evidence of outcomes	High (5-6)			Rec 1
	Moderate (3-4)			
	Low (0-2)			

## Bibliography

- Meeting with Aboriginal Justice Caucus Working Group (Project Team, In Person, 19 September 2023)
- Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005)
- Meeting with Caucus, Aboriginal Justice (Project Team, In person, 10 November 2023)
- Clear Horizon Consulting, *Evaluation of the Partnership Arrangements of the Aboriginal Justice Agreement (Phase 3)* (Report, 11 May 2018)
- Clear Horizon Consulting, *Place-Based Evaluation of the Aboriginal Justice Agreement (Phase 3)* (Report, 10 June 2018)
- Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018)
- Department of Justice (Vic), *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4* (Agreement, 2018)
- Department of Justice (Vic), *Evaluation of the Aboriginal Justice Agreement – Phase 2*, May 2012)
- Department of Justice (Vic), *Victorian Aboriginal Justice Agreement Phase 1: A Partnership between the Victorian Government and the Koori Community* (Agreement, 2000)
- Department of Justice (Vic), *Victorian Aboriginal Justice Agreement Phase 2: A Partnership between the Victorian Government and the Koori Community* (Agreement, June 2006)
- Department of Justice (Vic), *Victorian Aboriginal Justice Agreement Phase 3: A Partnership between the Victorian Government and the Koori Community* (Agreement, March 2013)
- Department of Justice and Regulation (Vic), *Evaluation of the Aboriginal Justice Agreement Phase 3: Summary of Findings* (Report, 11 May 2018)
- Department of Treasury and Finance (Vic), Parliament of Victoria, *Service Delivery 2023–24* (Budget Paper No No 3, 2023)
- First Peoples – State Relations (Vic), 'Victorian Government Aboriginal Affairs Report', *Vic.gov.au: First Peoples – State Relations* (Web Page, 12 October 2023) <<https://www.firstpeoplesrelations.vic.gov.au/aboriginal-affairs-report>>
- Aboriginal and Torres Strait Islander Commission, *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: First Annual Report 1992-3* (Report, 1994)
- Aboriginal and Torres Strait Islander Commission, *Implementation of the Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: Annual Report 1994–95* (Report, 1996)
- Aboriginal and Torres Strait Islander Commission, *Implementation of the Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: Annual/Five Year Report 1995–96* (Report, 1997)

Koorie Youth Council and Department of Justice and Community Safety (Vic), *Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022–2032* (Strategy, February 2022)

McGregor, Coroner Simon, *Inquest into the Passing of Veronica Nelson* (Findings COR 2020 0021, 30 January 2023)

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

Victorian State Government, 'Outcomes', *Victorian Aboriginal Justice Agreement* (Web Page, 24 March 2023)  
<<https://www.aboriginaljustice.vic.gov.au/outcomes>>

Victorian State Government, *Self-Determination Reform Framework* (Framework, 30 August 2019)

Victorian State Government, *Victorian Aboriginal Affairs Framework 2018–2023* (Framework, 2018)

Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, August 2023)

Transcript of Proceedings, *Transcript of Day 3, Hearing Block 4 - Public Hearings* (WUR.0004.0003.0098, Yoorrook Justice Commission, Professor Eleanor Bourke (Chair), Ms Sue-Anne Hunter (Commissioner), Distinguished Professor Maggie Walter (Commissioner), Mr Travis Lovett (Commissioner), 3 March 2023)

Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems, *Yoorrook Justice Commission* (Report, August 2023)