



Royal Commission into Aboriginal Deaths in Custody Recommendation

23. Family of the deceased entitled to legal representation

That the family of the deceased be entitled to legal representation at the inquest and that government pay the reasonable costs of such representation through legal aid schemes or otherwise.¹

Background²	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) emphasised the need for adequate legal representation for families of the deceased. Acknowledging the difficulties families faced in obtaining legal representation, the Commission identified a pressing need for sufficient funding to support legal aid schemes including Aboriginal legal services given the additional workload involved in representing families at inquests.
Intent	Ensure families are entitled to legal representation at inquests, with government covering reasonable costs through legal aid schemes or alternative funding.
Responsibility	The Commonwealth and all state and territory governments.
Key contact	Coroners Court of Victoria; Department of Justice and Community Safety; Victorian Aboriginal Legal Service (VALS).

Key Action Taken

2005 Review³	<p>The State Coroner assessed Recommendation 23 as partially implemented.</p> <p>State Coroner</p> <p>The State Coroner advised that implementation of Recommendation 23 was both sensible and desirable and a matter for government and legal aid agencies. Coroners had previously commented on the necessity of legal aid in coronial inquests.</p> <p>Review Team</p> <p>The Review Team noted that in two of the seven Aboriginal deaths that had occurred in Victoria since the RCIADIC, relatives cited difficulties in securing legal representation.</p> <p><i>Why should it be so difficult for families to be represented at the Inquest? Why do you have to go through all that extra stress?</i></p> <p><i>We couldn't pay for legal representation at the Inquest, but we are ever grateful for the help we got from VALS and [name withheld].⁴</i></p>
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¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 1, 175 ('RCIADIC').

² *ibid* 157-169 [4.6.1].

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) vol 1, 466, 502 ('2005 Review').

⁴ *Ibid* 123. Quotations from interviews with Family A and Family B conducted as part of the 2005 Review.

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2018 Review⁵

Commonwealth Government

Deloitte found Recommendation 23 was **fully implemented** by the Commonwealth Government through funding provided to Aboriginal and Torres Strait Islander Legal Services (ATSILS). In the wake of the RCIADIC, the Commonwealth Government agreed to fund legal representation for families at inquests relating to deaths in custody.

Between 2015 and 2020, the Commonwealth Government invested over \$370 million in ATSILS under the Indigenous Legal Assistance Program for culturally appropriate, accessible legal assistance and related services. Funded services had discretion to target their support to areas of greatest need. Where applicants met eligibility requirements, these services could include legal assistance at inquests.

Victorian Government

Deloitte concluded that Recommendation 23 was **fully implemented** by the Victorian Government through the administration of Commonwealth funds for Aboriginal legal services. This conclusion appears largely based on the Victorian Government's 1994 Implementation Report.

Since then

Coroners Court of Victoria⁶

The State Coroner issued Practice Direction 6 in 2020 which sets out specific procedures for investigating Aboriginal deaths in custody. This directive aims to ensure that investigations are undertaken with greater cultural sensitivity, and outlines requirements for notifying VALS of any Aboriginal death in custody so that they can facilitate legal advice being provided to senior next of kin early in the coronial process.

Additional funding

The Commonwealth Closing the Gap 2023 Implementation Plan describes action underway to increase ATSILS' capacity for legal assistance in coronial processes. The National Indigenous Australians Agency provided further detail on the two parts of this action, noting that \$9.3 million was provided over four years (2021-22 to 2024-25) to:

A) Support ATSILS to provide legal assistance to families of deceased individuals in coronial inquiries, and to support clients involved in complex and/or expensive criminal cases.

In addition, \$13.5 million was provided over three years (2022-23 to 2024-25) to:

B) Support ATSILS to ensure First Nations families can access culturally appropriate and timely legal assistance before, during and after coronial processes.⁷

Both streams of funding were intended to support the identification and resolution of systemic issues which drive deaths in custody and over-incarceration.

⁵ 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) 52-3 ('2018 Review').

⁶ Coroners Court of Victoria, *Practice Direction No 6 of 2020: Indigenous Deaths in Custody*, 22 September 2020 ('Practice Direction 6').

⁷ National Indigenous Australians Agency, 'Support ATSILS to Provide Legal Assistance to Families in Coronial Inquiries and During the Process', *Australian Government: National Indigenous Australians Agency* (Web Page, 30 September 2024) <<https://www.niaa.gov.au/our-work/closing-gap/support-atsils-provide-legal-assistance-families-coronial-inquiries-and-during>> ('Support ATSILS to Provide Legal Assistance to Families in Coronial Inquiries and During the Process').

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National Access to Justice Partnership

The additional funding for ATSILS to provide legal assistance in coronial processes was due to end in June 2025 in line with the expiry of the National Legal Assistance Partnership (NLAP). In September 2024 the Commonwealth Government committed to investing \$3.9 billion in support for frontline legal assistance services to be delivered through a new partnership agreement with the states and territories. This funding is intended to support Legal Aid Commissions, Community Legal Centres, Women’s Legal Services, ATSILS and Family Violence Prevention Legal Services; and allow for salaries in community sector legal assistance providers to better align with the rest of the sector, ensuring these services can recruit and retain staff.

Evidence of impact

Authorising Document

Commonwealth Closing the Gap Implementation Plan 2023.⁸

The Commonwealth Government’s Closing the Gap Implementation Plan includes an action to increase ATSILS capacity for legal assistance in coronial processes. This action is the responsibility of the Commonwealth Attorney-General, with a delivery date of June 2025.

Practice Direction 6 of 2020 - Indigenous Deaths in Custody.⁹

Action to be taken immediately after the death of an Aboriginal person in custody:

The investigating coroner will contact the Principal In-House Solicitors or Senior Legal Counsel within 48 hours of the death to allocate the case for legal support and advice (see RCIADIC Recommendations 26-28 and 30-31). The Principal In-House Solicitors or Senior Legal Counsel will make contact with the Victorian Aboriginal Legal Service (VALS) to facilitate legal advice being provided to senior next of kin on their rights in relation to the coronial process.

The Coroners Process Information for Family and Friends¹⁰

In relation to legal representation, the Coroners Process Booklet notes several options:

Families attending an inquest at the Court can choose to have a lawyer represent them. However, the Court cannot help a family choose a lawyer.

If families want legal representation, they will usually have to pay for a private solicitor.

There are contact details for Victoria Legal Aid and Victorian Aboriginal Legal Services at the end of this publication, which may be able to provide advice and assistance.

The Law Institute of Victoria has a referral service to help people find a lawyer experienced in coronial procedures.

You can get free legal advice (and sometimes representation) from Victoria Legal Aid, the Victorian Bar or a community legal centre.

⁸ Commonwealth of Australia, *Closing the Gap: Commonwealth 2023 Annual Report, Commonwealth 2024 Implementation Plan* (Annual Report, February 2024) 92 ('Closing the Gap: Commonwealth 2023 Annual Report, Commonwealth 2024 Implementation Plan').

⁹ *Practice Direction 6*.

¹⁰ Coroners Court of Victoria, *The Coroners Process Information for Family and Friends* (Booklet, May 2020) 41 ('Coroners Process Booklet').

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However, if families decide not to ask a lawyer to represent them, the person helping the coroner, as well as the coroner's guidance and support, can help you understand and take part in the inquest.

Outputs

The Coroners Court of Victoria Practice Direction 6 of 2020 requires VALS to be contacted within 48 hours of an Aboriginal death in custody, so that they can provide legal advice to the senior next of kin. This provides the family of the deceased the opportunity to seek legal advice and representation early in the coronial process.

Outcomes

Commonwealth Government funding to support ATSILS to provide legal assistance to families in coronial inquiries and during the process including:

- \$9.3 million over four years for legal assistance to families of deceased individuals in coronial inquiries, and to support clients involved in complex and/or expensive criminal cases, and
- \$13.5 million over three years so families can access culturally appropriate and timely legal assistance before, during and after coronial processes.¹¹

Given this funding is time limited, ATSILS are concerned there may not be future funding specifically for supporting and representing Aboriginal families in relation to coronial processes and inquests. Furthermore, VALS have previously identified issues with the amount of funding and the need for greater investment so a broader range of supports can be provided to bereaved families in the lead up to, during and after a coronial inquest.

Community Views

Victorian Aboriginal Legal Service¹²

VALS continue to highlight the need for governments to provide adequate funding to support legal representation for Aboriginal families involved in coronial inquests.

VALS has considerable experience, particularly the Wirraway legal team, in providing culturally safe and competent legal representation and support for Aboriginal families engaging in coronial inquests. The funding and resources required for coronial inquests – which average \$40,000, at cost, for services including legal representation, community support and communications – are provided by VALS. Due to the recognised expertise in coronial inquests and reputation for culturally safe and competent services within Aboriginal communities in Victoria, demand for legal services and holistic support for coronial inquests is expected to increase in the future.

This cost estimate excludes future legal representation and support for related civil and criminal proceedings arising from coronial inquests. VALS aim to continue supporting Aboriginal families post-inquest to prevent further trauma from repeated storytelling across multiple organisations. In line with Recommendation 23, VALS recommended that:

The Commonwealth Government should continue funding VALS to provide culturally safe legal assistance and representation to Aboriginal families participating in coronial

¹¹ National Indigenous Australians Agency, 'Support ATSILS to Provide Legal Assistance to Families in Coronial Inquiries and During the Process'.

¹² Victorian Aboriginal Legal Service, 'Submission to the Review of Experiences of Bereaved Families Going Through a Coronial Process' 12-13.

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processes, beyond the 2020-2024 National Legal Assistance Program (NLAP). This funding should be expanded to include future legal representation and support services required by Aboriginal participants in coronial inquests for civil and criminal proceedings that arise as a result of the decisions and recommendations of coroners at the conclusion of coronial inquests.

In response to the Commonwealth Government's announcement of funding to be provided under the National Access to Justice Partnership, VALS reiterated their concerns about its sufficiency to meet the complex legal needs of Aboriginal communities, and increasing demand. VALS' chair, Crystal McKinnon noted:

Their own review said that we are funded inadequately and that our people are being denied justice – but they ignored the review, and they ignored us.¹³

Related recommendations

2005 Review¹⁴

Recommendation 91

That the State Coroner and VALS provide a report to the Aboriginal Justice Forum on any problems involved in the provision of legal representation and assistance for relatives in the context of inquests into Aboriginal deaths in custody.

That the Victorian Government continue to implement and monitor Recommendation 23 through any monitoring process established as a consequence of this Review.

Assessment Summary¹⁵

The intent of Recommendation 23 was to ensure that families whose loved ones pass in custody can access legal representation at inquest, funded by government.

Actions taken closely align with the intent of Recommendation 23. Practice Direction 6 requires the Victorian Aboriginal Legal Service (VALS) to be contacted within 48 hours of a death in custody to provide early legal advice to the next of kin. State and Commonwealth Government funding supports legal representation for Aboriginal families at inquests related to deaths in custody, primarily channelled through Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions under the National Access to Justice Partnership (previously the National Legal Assistance Partnership).

While government funding and the implementation of Practice Direction demonstrate efforts to address these issues, we remain concerned about the adequacy of funding available. Delays in approving funding remain a significant issue, with some cases experiencing up to seven months of waiting for limited hearing days due to legal grant challenges. Additionally, uncertainty surrounds the long-term financing of legal representation through VALS, as coronial funding is often temporary.

¹³ Dechlan Brennan, "'They ignored the review, and they ignored us' - Victoria's Aboriginal Legal Service slams federal government', *National Indigenous Times* (online, 6 September 2024) <<https://nit.com.au/06-09-2024/13561/hard-not-to-think-they-contrived-this-to-situation-to-silence-aboriginal-voices-vals-says-in-response-to-legal-services-funding-announcement>>.

¹⁴ 2005 Review, 502.

¹⁵ Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 6 December 2024) ('*Working Group Meeting (6 December 2024)*'); Meeting with Aboriginal Justice Caucus (Project Team, In person, 11 June 2025) ('*Aboriginal Justice Caucus Meeting (11 June 2025)*').

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VALS is capable of continuing to provide the legal representation, expertise and supports required by Aboriginal families engaged in coronial inquests, as well as ensuring the provision of holistic and culturally safe and competent bereavement supports in the future, if adequately funded and appropriately resourced.

Insufficient funding undermines the effectiveness of legal representation for Aboriginal families and their rights and interests. Often close family members who aren't the 'senior next of kin' require legal representation to be involved in the inquest independently. Any government funding must be sufficient to support the entire family. Recommendation 23 remains relevant. Full implementation of this recommendation would make it easier for families to obtain legal representation and may mean they can access assistance for a longer period.

Assessment of RCIADIC Recommendation 23

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

1

(Score out of 3)

Potential actions for further work

Timeliness of grant approval

Government must streamline the grants process to ensure it is more timely and easier for families to access funding.

Certainty of adequate funding for the costs of legal representation

Governments to provide adequate funding for culturally safe legal assistance and representation to Aboriginal families participating in coronial processes. This funding must increase in line with community needs and to cover ongoing legal representation and support for Aboriginal families in civil and criminal proceedings that arise as a result of the decisions and recommendations of coroners at the conclusion of coronial inquests.

Low 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 23	High (5-6)
	Moderate (3-4)	Moderate (3-4)	Moderate (3-4)
	Low (0-2)	Low (0-2)	Low (0-2)

Bibliography

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