



## Royal Commission into Aboriginal Deaths in Custody Recommendation

### 331. National Standards Body to adopt Aboriginal guidelines

*That the National Standards Body consider the formulation and adoption of guidelines specifically directed to the needs of Aboriginal prisoners. In that process the findings and recommendations of this Commission relating to custodial conditions and the treatment of Aboriginal persons in custody should be taken into account.<sup>1</sup>*

<b>Background<sup>2</sup></b>	<p>The Royal Commission into Aboriginal Deaths in Custody emphasised that both the Standard Minimum Rules (the Mandela Rules) and Australian Guidelines are directed to setting standards for the general treatment of prisoners and are primarily concerned with individual rights. They do not directly refer to the special, collective needs of groups such as those of Aboriginal and Torres Strait Islander people.</p> <p><i>Given the marked level of over-representation and the substantial number of Aboriginal people consistently held within Australian prison systems, the failure of the Guidelines to recognize the distinct needs of Aboriginal prisoners is a glaring omission.<sup>3</sup></i></p>
<b>Intent</b>	That the National Standards Body adopt guidelines specifically directed to the needs of Aboriginal people in prison.
<b>Responsibility</b>	The Commonwealth and all state and territory governments.
<b>Key contacts</b>	Corrections and Justice Services, Department of Justice and Community Safety.
<b>Key action taken</b>	
<b>2005 Review<sup>4</sup></b>	<p>The Department of Justice assessed Recommendation 331 as <b>not implemented</b>.</p> <p><b>Department of Justice</b></p> <p>Corrections Victoria considered there had been no progress on Recommendation 331 and advised that the review of the National Standards Guidelines had not considered the development of specific guidelines for Aboriginal people in custody. Guidelines for Aboriginal people had instead been incorporated into a generic set of guidelines for offenders (see also response to Recommendation 328).</p>

<sup>1</sup> Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 5, 22 ('RCIADIC').

<sup>2</sup> Ibid vol 5, 10-28 [36.2].

<sup>3</sup> Ibid vol 5, 20 [36.2.30].

<sup>4</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) vol 1, 530, 558, 642 ('2005 Review').

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**2018 Review<sup>5</sup>**

Deloitte assessed Recommendation 331 as **fully implemented** as all governments had met their obligations by devolving responsibility to the National Standards Body to review and amend the relevant guidelines.

The Commonwealth Government tasked the National Standards Body with developing guidelines for Aboriginal people in prison through a Corrective Services Administrators Working Party. Following a 1992 directive from Corrective Services Ministers, the Standard Guidelines were reviewed and amended in line with Recommendation 331, with the changes endorsed in 1994. States and territories supported this process and contributed to the development of the guidelines.

The 2012 Standard Guidelines incorporated principles recognising the specific needs and cultural backgrounds of Aboriginal and Torres Strait Islander people, including provisions for interpreters, culturally appropriate accommodation, access to elders, respect for spiritual beliefs, community consultation in program development, and culturally sensitive visitation practices.

**Since then**

**Guiding Principles for Corrections in Australia<sup>6</sup>**

The Guiding Principles for Corrections in Australia constitute outcomes or goals to be achieved by correctional services, rather than a set of absolute standards or laws to be enforced. The 2018 revision of the Guiding Principles focused on emerging trends and challenges facing corrections including the continued and increased overrepresentation of Aboriginal and Torres Strait Islander people.

**Indigenous Strategic Framework<sup>7</sup>**

The Indigenous Strategic Framework was developed by the Corrective Services Administrators' Council Indigenous Working Group with representation from most jurisdictions including Victoria. Endorsed by the Corrective Services Ministerial Council in 2016, the Framework is intended to be used in conjunction with the Guiding Principles for Corrections in Australia.

### Evidence of impact

**Authorising documents**

**Guiding Principles for Corrections in Australia<sup>8</sup>**

The guidelines represent a statement of national intent, around which each jurisdiction develops their own practices, policies and performance standards. They support Australian correctional services to achieve best practice across five outcome areas: governance; respect; safety and security; health and wellbeing; and rehabilitation and reintegration.

<sup>5</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) 684 ('2018 Review').

<sup>6</sup> Corrective Services Administrators' Council (CSAC), *Guiding Principles for Corrections in Australia* (Guidelines, rev ed, February 2018,4 ('Guiding Principles for Corrections in Australia').

<sup>7</sup> Corrective Services Administrators Council Indigenous Issues Working Group, *Indigenous Strategic Framework* (Policy Framework, April 2015) 1 ('Indigenous Strategic Framework').

<sup>8</sup> *Guiding Principles for Corrections in Australia*, rev ed, February 2018, 4.

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	<p><b>Indigenous Strategic Framework<sup>9</sup></b></p> <p>In 2013, the Corrective Services Administrators’ Council directed their Indigenous Working Group to develop a document outlining the Minimum Standard Guidelines for managing Aboriginal people in Corrections across Australia and New Zealand. The Group comprised senior officers working in Correctional Services with an understanding of the issues impacting on Aboriginal prisoners and offenders in their jurisdictions. The Victorian member of the team from Naalamba Ganbu and Nerrlinggu Yilam in Corrections Victoria.</p> <p>The Indigenous Strategic Framework guides the management of Aboriginal and Torres Strait Islander Offenders in Corrections across Australia and New Zealand. Endorsed by the Corrective Services Ministerial Council in 2016, it is intended to be used with the Guiding Principles for Corrections in Australia.</p>
<p><b>Outputs</b></p>	<p><b>Corrective Services Ministerial Council</b></p> <p>The Standard Guidelines were reviewed in accordance with Recommendation 331 with amendments endorsed in 1994 and revised Guidelines published and distributed. The 2012 Standard Guidelines were guided by principles which recognised the specific needs and cultural backgrounds of Aboriginal people. These were included in the Standard Guidelines alongside principles for the management of people in prison more generally.<sup>10</sup></p>
<p><b>Outcomes</b></p>	<p><b>Corrective Services Ministerial Council, Indigenous Strategic Framework</b></p> <p>The Indigenous Strategic Framework is a guide that provides key issues for consideration in managing Aboriginal people, focussing on systemic issues that can impact on their over-representation in the criminal justice system.<sup>11</sup> The Indigenous Strategic Framework consists of decision making principles and themes to ‘equip the reader with the basis for making informed decisions that align with best practice in managing Indigenous prisoners and offenders.’<sup>12</sup></p> <p>It is anticipated that understanding this decision-making framework and the principles and themes will assist policy, project and administrative officers to design, develop and implement programs and services that are responsive to the needs of Aboriginal people in the criminal justice system.<sup>13</sup></p>

<sup>9</sup> *Indigenous Strategic Framework*, 1.

<sup>10</sup> Corrective Services Administrators Council, *Standard Guidelines for Corrections in Australia* (Guidelines, rev ed, 2012,3 ('Standard Guidelines')).

<sup>11</sup> *Indigenous Strategic Framework*, 1.

<sup>12</sup> *Ibid* 3.

<sup>13</sup> *Ibid*.

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### The Framework Map

↓ Indigenous Strategic Decision Making Framework ↓

#### The Principles

<a href="#">Building Partnerships</a>
<a href="#">Protection and Security</a>
<a href="#">Divert low risk offenders</a>
<a href="#">Death in Custody</a>
<a href="#">Reduce Negative Impacts</a>
<a href="#">Build Cultural Awareness</a>
<a href="#">Build employability</a>
<a href="#">Adequately Scoped and Resourced</a>
<a href="#">Sanctions must not exclude</a>

#### Themes and decision making

<a href="#">Previous Contact with justice system</a>
<a href="#">Housing/accommodation</a>
<a href="#">Health/Chronic disease</a>
<a href="#">Social and emotional wellbeing</a>
<a href="#">Population/demographics</a>
<a href="#">Education/employment</a>
<a href="#">Income/economics</a>
<a href="#">Culture and obligation</a>



[Evaluation](#)

Interestingly, in Victoria, the Commissioner's Requirements outlining the minimum standards for the management of Aboriginal people in prison do not refer to the Indigenous Strategic Framework, suggesting that when it comes to informing operational matters, jurisdictional laws, policies and other commitments take precedence.

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Corrections  
Victoria  
Commissioner

### COMMISSIONER'S REQUIREMENTS

#### Aboriginal and Torres Strait Islander Prisoners

Section		2. Prisoner Management	
CR Number	2.7.1	Current Issue Date	June 2023
Legislation & Policy	Corrections Act 1986 Charter of Human Rights and Responsibilities Act 2006 Corrections Regulations 2019 Gender Equality Act 2020 Correctional Management Standards for Men's Prisons in Victoria Standards for the Management of Women Prisoners in Victoria Communications Protocol – Passings in Custody: Notifications and Processes for Aboriginal Persons		
Standard	Prisoner Management – Aboriginal and Torres Strait Islander Prisoners		
Attachments	Nil		
Forms	Application to Remove Aboriginal Status		

#### 1 PURPOSE

To provide prison staff with an understanding of the cultural needs of Aboriginal and Torres Strait Islander<sup>1</sup> people and establish the minimum standards across prisons for the management of people in prison who identify as Aboriginal.

#### 2 REQUIREMENT

- 2.1 Aboriginal or Torres Strait Islander prisoners are managed in a manner that is sensitive to their cultural needs.
- 2.2 Aboriginal people in prison have access to an equitable justice system that is shaped by self-determination, and protects and upholds their human, civil, legal and cultural rights.
- 2.3 Prisons will provide an environment which fosters the maintenance of cultural and community links for Aboriginal people in prison and develop networks that improve justice related programs and services, making them more responsive and accessible to Aboriginal people in prison.

Evidence presented in the 2022 final report of the Cultural Review of the Adult Custodial Corrections System (outlined in greater detail in relation to Recommendations 328 and 329) demonstrated significant gaps between policies, guidelines and practice across Victoria's prisons.<sup>14</sup>

#### Community views

None identified.

<sup>14</sup> The Cultural Review of the Adult Custodial Corrections System, *Safer Prisons, Safer People, Safer Communities. Final report of the Cultural Review of the Adult Custodial Corrections System* (December 2022) 1-39 ('Safer Prisons, Safer People, Safer Communities. Final report of the Cultural Review of the Adult Custodial Corrections System').

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### Related recommendations

#### 2005 Review

#### Recommendation 136<sup>15</sup>

That the Victorian Government continue to implement and monitor Recommendations 328 (relating to a review of the national standards guidelines) Recommendation 329 (relating to the consideration of introducing legislation embodying standard guidelines) and Recommendation 331 through any monitoring process established as a result of this Review.

### Assessment summary<sup>16</sup>

Recommendation 331 aimed to ensure that the National Standards Body adopted guidelines that specifically addressed the needs of Aboriginal people in prison. In response, the Standard Guidelines were reviewed and amended in 1994, and by 2012 they included principles recognising the cultural backgrounds and specific needs of Aboriginal and Torres Strait Islander people. In 2016, the Indigenous Strategic Framework was introduced to guide best-practice decision-making in the management of Aboriginal people in corrections. The Indigenous Strategic Framework consists of decision-making principles and themes to *'equip the reader with the basis for making informed decisions that align with best practice in managing Indigenous prisoners and offenders.'*<sup>17</sup>

However, in Victoria, Commissioner's Requirements outlining the minimum operational standards for managing Aboriginal people in prison do not reference the Indigenous Strategic Framework, indicating that state laws and policies take precedence. Evidence from the 2022 Cultural Review of the Adult Custodial Corrections System also highlighted significant gaps between policy and practice, suggesting existing guidelines are not being fully implemented.

*How do we make sure that those guidelines reflect our [Aboriginal community] standards? How do we make them accountable to us... For the system to change, there needs to be Aboriginal oversight.* (Chris Harrison, Co-chairperson, AJC and Chairperson, Aboriginal Community Justice Panels)

While this recommendation remains partially relevant, most of its objectives have been addressed, and its scope seems too limited to drive substantial improvements in Aboriginal justice outcomes in Victoria.

<sup>15</sup> 2005 Review, 642.

<sup>16</sup> Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 31 October 2023) ('Working Group Meeting (31 October 2023)'); Meeting with Aboriginal Justice Caucus (Project Team, In Person, 13 December 2023) ('Aboriginal Justice Caucus Meeting (13 December 2023)').

<sup>17</sup> Indigenous Strategic Framework, 3.

## Assessment of Recommendation 331

**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

**2**

(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

**1.5**

(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

**1.5**

(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

**2**

(Score out of 3)

### Potential actions for further work

None identified.

## 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)			
	Moderate (3-4)		<b>Rec 331</b>	
	Low (0-2)			

## **Bibliography**

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