



## Royal Commission into Aboriginal Deaths in Custody Recommendation

### 332. Standard guidelines for police custodial facilities

*That the Commonwealth, State and Territory Ministers for Police should formulate and adopt standard guidelines for police custodial facilities throughout Australia.<sup>1</sup>*

<b>Background<sup>2</sup></b>	<p>The Royal Commission into Aboriginal Deaths in Custody emphasised that the adoption of Standard Guidelines for Corrections in Australia should be replicated by the development and adoption of equivalent guidelines for police custodial facilities.</p> <p><i>There is absolutely no reason point of common sense or principle as to why the basic human rights of persons in police custody should receive less attention than of prisoners.</i></p>
<b>Intent</b>	That Ministers for Police adopt standard guidelines for the treatment of people in police custodial facilities across Australia.
<b>Responsibility</b>	The Commonwealth and all state and territory governments.
<b>Key contacts</b>	Minister for Police; Victoria Police.
<b>Key action taken</b>	
<b>2005 Review<sup>3</sup></b>	Victoria Police considered there had been <b>no progress</b> on Recommendation 332 and advised that this was an issue for the Australasian Police Ministers' Council.
<b>2018 Review<sup>4</sup></b>	Deloitte concluded that all governments had <b>fully implemented</b> Recommendation 332 through the Australasian Police Ministers' Council's standard guidelines. In 1993, the Australasian Police Ministers' Council considered and endorsed standard guidelines for police custodial facilities, which were developed in consultation with all jurisdictions.
<b>Since then</b>	<p><b>Victoria Police<sup>5</sup></b></p> <p>In 2023, Victoria Police advised that Recommendation 332 is not a matter for Victoria Police, noting that it requires action from the Commonwealth, state and territory Ministers for Police. Victoria Police has limited ability to formulate standard guidelines for police custodial facilities for jurisdictions outside of Victoria.</p>

<sup>1</sup> Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) Vol. 5, 24 ('RCIADIC').

<sup>2</sup> Ibid [36.2.36]-[36.2.42].

<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) vol 1, 380 ('2005 Review').

<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) 684-5 ('2018 Review').

<sup>5</sup> David Jones and Tyler McRae, 'Victoria Police Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (Response to AJC Request, Tranche Two).

## 332. Standard guidelines for police custodial facilities

However, Victoria Police has taken actions in accordance with the intent of the recommendation, including:

- On 21 October 2022, State Emergency Support Command facilitated a visit of Melbourne West Police station by four delegates from the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. While Victoria Police received positive verbal feedback, the delegates expressed disappointment that Victoria has not yet established a National Preventative Mechanism (NPM) despite being compelled to do so by the ratification of the Optional Protocol to the Convention Against Torture (OPCAT).
- Once established, the NPM will be expected to conduct independent inspections of places where people are detained which will likely result in recommendations reflective of best practice.
- State Emergency Support Command are currently providing advice to the Operational Infrastructure to assist with the development of standard designed guidelines for Victoria Police detention facilities.
- In 2023, the Australia New Zealand Policing Advisory Agency approved a Victoria Police proposal to explore a nationally consistent policy for management of persons in police custody and for this item to be added to the Agency business plan 2023-24.

### **Australian Federal Police**

The undated Australian Federal Police National Guideline on persons in custody and police custodial facilities states in the ‘policy’ section that:

*All forms of custody must be appropriate and justified in the circumstances. Police must minimise any potential for injury when exercising custody powers.*

*Any person in police custody must be treated with humanity, dignity and regard for their civil rights, and not be subjected to cruel, inhumane or degrading treatment.*

*Members must have regard to the Ministerial Council for Police and Emergency Management ‘Standard Guidelines for Police Custodial Facilities’.*

While the Ministerial Council for Police and Emergency Management ‘Standard Guidelines for Police Custodial Facilities’ are mentioned, we were unable to find a copy of these Guidelines.

### **Evidence of impact**

#### **Authorising documents**

Ministerial Council for Police and Emergency Management ‘Standard Guidelines for Police Custodial Facilities.’

#### **Outputs**

As above.

#### **Outcomes**

We could not locate a copy of the Standard Guidelines for Police Custodial Facilities endorsed by the Australasian Police Ministers’ Council in 1993.

The advice provided by Victoria Police suggests that standard guidelines for the treatment of people in police custody do not currently exist in Australia.

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The Australia New Zealand Policing Advisory Agency approved a Victoria Police proposal to explore a nationally consistent policy for management of persons in police custody and for this item to be added to their business plan 2023-24.

### Community views

#### Australian Law Reform Commission<sup>6</sup>

The Australian Law Reform Commission (ALRC) was informed by various stakeholders that police practices contribute to the over-incarceration of Aboriginal and Torres Strait Islander peoples. To address this, the ALRC recommended that governments review police procedures and practices—both in design and implementation—while involving a wide range of stakeholders, including Aboriginal and Torres Strait Islander communities.

### Related recommendations

#### ALRC Pathways to Justice 2018

#### Recommendation 14-1

Commonwealth, state and territory governments should review police procedures and practices so that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples.

#### 2005 Review

#### Recommendation 52

That Department of Justice:

- a) draw the attention of the Minister of Police to Recommendation 332, and
- b) provide a report to the Aboriginal Justice Forum on (a).

That the Victorian Government continue to implement and monitor Recommendation 332 through any monitoring process established as a consequence of this Review.

### Assessment summary<sup>7</sup>

Recommendation 332 intended that Ministers for Police adopt standard guidelines for the treatment of people in police custodial facilities across Australia. Previous reviews noted that standard guidelines were developed in 1993 in consultation with all jurisdictions through the Australasian Police Ministers' Council. We could not find a copy of these guidelines, more recent updates, or any evidence they are used to guide contemporary police practice.

The existence of guidelines in and of themselves does not guarantee any improvement in the treatment of people in custody, particularly Aboriginal people. It is unsurprising that the recommendations emerging from truth-telling, reviews and inquiries in Victoria all highlight the need for legislative change to improve the treatment of Aboriginal people in custody, rather than other measures.

<sup>6</sup> Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) ('Pathways to Justice').

<sup>7</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)').

## Assessment of Recommendation 332

**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

0

(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

0

(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

(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

0

(Score out of 3)

**Potential actions for further work**

None identified.

## 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)			
	Moderate (3-4)			
	Low (0-2)	Rec 332		

## **Bibliography**

Meeting with Aboriginal Justice Caucus (Project Team, In Person, 13 December 2023)

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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)

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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)

Jones, David and Tyler McRae, Victoria Police 'Victoria Police Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (Response to AJC Request Tranche Two, 2023)

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