



## Royal Commission into Aboriginal Deaths in Custody Recommendation

### 75. Equitable access to roads expenditure

*That Aboriginal communities be given equitable access to ongoing expenditure by the Commonwealth, State and Territory, and local authorities on roads. In addition, where new roads or changes to existing roads are proposed, it is recommended that no development should take place until the impact on Aboriginal land and the possible impact on Aboriginal communities that public access may have are established in consultation with those communities likely to be affected by the development proposal.<sup>1</sup>*

<b>Background<sup>2</sup></b>	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) highlighted the need for more accessible and appropriate funding for Aboriginal and Torres Strait Islander communities that are outside formal local government structures. The Commission also emphasised the importance of respecting and incorporating Aboriginal and Torres Strait Islander values relating to land and the natural environment in development processes.
<b>Intent</b>	Provide Aboriginal communities equitable access to ongoing government expenditure on roads. Consult affected Aboriginal communities on likely impacts of road developments.
<b>Responsibility</b>	The Commonwealth and all state and territory governments.
<b>Key contacts</b>	Department of Transport and Planning.
<b>Key action taken</b>	
<b>2005 Review<sup>3</sup></b>	<p>The Department of Infrastructure assessed Recommendation 75 as <b>fully implemented</b>.</p> <p><b>Department of Infrastructure</b></p> <p>The Department of Infrastructure advised that this recommendation was largely met by VicRoads' existing processes in relation to road funding, and investigations and consultation on new road projects. VicRoads completed detailed planning to prioritise road projects within the parameters set by the State Government's policy initiatives, strategic directions and planning policy framework. Further detailed studies were carried out in consultation with local councils, road user associations, local communities and other government agencies to establish plans and strategies for future development and management of road networks and corridors. All project proposals were assessed against objective criteria (examples below). Under this system Aboriginal communities had the same access to road funding as any other community group.</p>

<sup>1</sup> Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 2, 451 ('RCIADIC').

<sup>2</sup> Ibid vol 2, 450-51 [18.6.31]-[18.6.33].

<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, 182, 184-5 ('2005 Review').

## 75. Equitable access to roads expenditure

	<p>Prioritisation of projects was generally based on these criteria:</p> <ul style="list-style-type: none"> <li>• For maintenance projects – quality of road surface, road features and bridges and their need for maintenance, rehabilitation or improvement works, reducing accident rates and improving accident black spots.</li> <li>• For new projects - improving traffic flows and transport efficiency, accommodating projected traffic volumes, improving roads to agreed standards, increasing overtaking opportunities, reducing accident rates and improving accident black spots.</li> </ul>
<p><b>2018 Review<sup>4</sup></b></p>	<p><b>Commonwealth Government</b></p> <p>Deloitte found Recommendation 75 was <b>fully implemented</b> by the Commonwealth Government through measures that recognised and incorporated Aboriginal and Torres Strait Islander needs into development planning and road funding. This included the Commonwealth Grant Commission adopting the Aboriginal Peoples and Torres Strait Islander Principle to promote fairer funding and providing infrastructure programs such as Roads to Recovery and Financial Assistance Grant to support local roads, including those managed by Aboriginal and Torres Strait Islander councils.</p> <p><b>Victorian Government</b></p> <p>Deloitte concluded that the Victorian Government had <b>mostly implemented</b> Recommendation 75 prioritising some funding for roads servicing Aboriginal communities, however there was no evidence this arrangement, reported in the 1994 Implementation Report, was still in place.</p> <p>Victorian road policies incorporated consideration of Aboriginal and Torres Strait Islander heritage, supported by legislation requiring consultation and negotiation with Traditional Owners, protection of cultural heritage, and provision of community benefits, including employment and business opportunities, in relation to road projects.</p>
<p><b>Since then</b></p>	<p><b>Department of Transport and Planning<sup>5</sup></b></p> <p>In their 2024 response, the Department of Transport and Planning (DTP) noted their engagement with Traditional Owners on road projects as required under the <i>Native Title Act 1993 (Cth)</i>, <i>Aboriginal Heritage Act 2006 (Vic)</i> and <i>Traditional Owner Settlement Act 2010 (Vic)</i>. However, DTP committed to going beyond compliance by fostering meaningful engagement with Aboriginal communities through the <i>Wurrek-al: Talking with Purpose First Peoples Engagement Framework</i>. This framework guides DTP’s efforts to align its projects and services with the aspirations of First Peoples. Additionally, DTP is developing partnership agreements with Registered Aboriginal Parties and Traditional Owner groups to formalise engagement protocols, with one agreement finalised and discussions underway with six more groups.</p>

<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) 152-3 ('2018 Review').

<sup>5</sup> Department of Transport and Planning (Vic), 'Response from the Department of Transport and Planning Regarding RCIADIC Recommendations. '.

## 75. Equitable access to roads expenditure

### Evidence of impact

#### Authorising documents

Consultation with Aboriginal communities on the impacts of proposed road developments is supported by several legislative frameworks:

- The *Native Title Act 1993* (Cth) requires notification and negotiation with Traditional Owner groups where road works may affect land subject to native title.
- The *Aboriginal Heritage Act 2006* (Vic) empowers Traditional Owner corporations to approve cultural heritage management plans and protect heritage that could be impacted by road activities.
- The *Traditional Owner Settlement Act 2010* (Vic) further requires notification and negotiation for major road projects, with community benefits provided to offset impacts, including non-financial outcomes such as employment and business opportunities.

#### Outputs

The engagement framework and partnership agreements with Traditional Owner groups, which formalise protocols for consultation and collaboration.

#### Outcomes

We could not find any recent evidence of Aboriginal communities being given roads funding apart from a 1994 Implementation Report indicating some funds were set aside for Aboriginal communities like Lake Tyers and Framlingham.

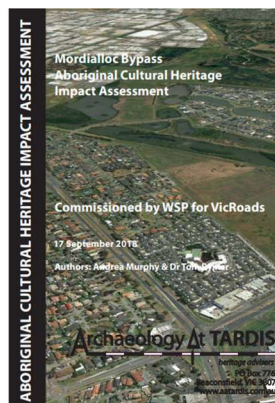
In terms of the consistency and quality of consultation with Traditional Owners in relation to the impacts of proposed roads, there are examples of where their needs and expectations have been met and other, well publicised projects, where this was not the case.

Reaching an agreement



The site of the \$66 million proposed Ripenswood interchange project, south of Bendigo, which is jointly funded between the Victorian and Commonwealth Governments. (VIC Central Victoria Corridor Network)

The Dja Dja Wurrung corporation followed a cultural heritage management plan in partnership with VicRoads, which involved undertaking a heritage survey before the project started in April.



Chandler Hwy Upgrade – Beyond compliance

- Respect, recognition and acknowledgment
- 2 Welcome to country and smoking ceremonies for this project (opening of new bridge and at final completion of project).
  - Interpretive elements to be incorporated into viewing platform; Woi-Wurrung language included on interpretive signs; Wurundjeri artwork.



#### Investigation into the planning and delivery of the Western Highway duplication project<sup>6</sup>

In this investigation the Victorian Ombudsman confirmed the situation was complicated:

*The impact of the project on Aboriginal cultural heritage was recognised as a key issue when planning began in 2008. Consultation did take place, on numerous occasions, with*

<sup>6</sup> Victorian Ombudsman, *Investigation into the Planning and Delivery of the Western Highway Duplication Project* (30 July 2020) 6-7 ('Investigation into the Planning and Delivery of the Western Highway Duplication Project').

## 75. Equitable access to roads expenditure

*the Registered Aboriginal Parties for the area, though some people have disputed that those consulted were properly representative of the Djab Wurrung peoples.*

*While consultation with local residents and landholders was extensive, consultation with Aboriginal communities was limited to the officially recognised body. This complied with legislation, and underlines the statutory importance rightly given to Registered Aboriginal Parties. But given the history of dispossession of the Djab Wurrung, was this good enough? . . .*

*Eastern Maar has now indicated it is satisfied that Aboriginal cultural heritage impacted by the project will be adequately protected. This outcome also enjoys the support of the Victorian Aboriginal Heritage Council. But it is not supported by many others.*

### Community views

#### **Oral submissions to the Victorian Ombudsman investigation<sup>7</sup>**

*It connects all our mob, through that one dreaming and one songline. [...] [The highway duplication works] will take out part of our dreaming.*

*We're holding on to the last of what's left.*

*You can't separate the land from the tree, or the tree from the land. [...] It's still going to go through and take out a part of sacred Country.*

#### **Aboriginal artefacts found at VicRoads' Calder Highway project site<sup>8</sup>**

The Dja Dja Wurrung corporation followed a cultural heritage management plan in partnership with VicRoads, which involved undertaking a heritage survey before the project started in April 2015. Aboriginal artefacts were found on the proposed site of the VicRoads Ravenswood Interchange project in central Victoria, along with three scar trees that, through an arrangement with Bendigo Council, were preserved and displayed.

*At the end of the day, we want to put back what we take out of the ground, that's our belief system. . .*

*In terms of us as people we really value our culture. It's important that we do keep them and preserve them as much as we can.*

*Sometimes unfortunately they are lost. It's just the nature of the beast, but at all times we try and preserve them and relocate them if we can.*

(Trent Nelson, then Chairman, Dja Dja Wurrung Clans Aboriginal Corporation)

It's challenging to determine when the cultural significance of a find outweighs a development.

*It's extremely difficult ... it's so hard to qualify just blanketly.*

(Rodney Carter, CEO, Dja Dja Wurrung Clans Aboriginal Corporation)

<sup>7</sup> Ibid 6.

<sup>8</sup> Larissa Romensky, 'Aboriginal Artefacts Found at VicRoads' Calder Hwy Project Site', *ABC Central Victoria, ABC News* (online, 11 December 2015) <<https://www.abc.net.au/news/2015-12-11/aboriginal-archeological-finds-at-vicroads-site/7019422>>.

## 75. Equitable access to roads expenditure

### Related recommendations

#### 2005 Review<sup>9</sup>

#### Recommendation 9

That the Department of Infrastructure and the Department for Victorian Communities:

- (a) ensure that appropriate levels of road funding are allocated to Lake Tyers and Framlingham Aboriginal Trusts, and
- (b) provide a report to the Secretaries Group for Aboriginal Affairs on (a).

That the Victorian Government continue to implement and monitor Recommendation 75 through any monitoring process established as a result of this Review.

### Assessment summary<sup>10</sup>

Recommendation 75 intended for governments to provide Aboriginal communities equitable access to ongoing roads expenditure and consult on the likely impacts of road developments.

The Department of Transport and Planning (DTP) engages with Traditional Owners on road projects as required under relevant legislation, including the *Native Title Act 1993 (Cth)*, *Aboriginal Heritage Act 2006 (Vic)*, and *Traditional Owner Settlement Act 2010 (Vic)*.

*Through the Traditional Owner Settlement Act (TOSA), the Aboriginal Cultural Heritage Act and Native Title, the Department are bound to work with our people. Although investment might not go straight to Aboriginal communities, there are ways for meaningful engagement through the TOSA, the Heritage Act and Native Title through Cultural Heritage Management Plans and otherwise, for people to be remunerated appropriately for that.* (Ebony Hickey, Chairperson, Barwon South West RAJAC and Deputy Chairperson, Eastern Maar Aboriginal Corporation).

Additionally, DTP committed to meaningful engagement beyond compliance through the Wurrek-al: Talking with Purpose First Peoples Engagement Framework. Partnership agreements with Registered Aboriginal Parties and Traditional Owner groups have been initiated by DTP, with one finalised and discussions underway with six others.

*The State will identify land that's surplus to their needs to look at handing it back to the Registered Aboriginal Parties, recognised Aboriginal groups, or Native Title holders depending on what region it's in. Lots of that will be roadways, road culverts, paths, drains, pipeage, infrastructure that's been attached for roads or previous road use, the decommissioning of old highways and old roadways back into environmental spaces. It's not all done right, but there is the potential for it to be done right. Other than the Western Highway, the state has been pretty forthcoming with lots of that work.* (Ebony Hickey, Chairperson, Barwon South West RAJAC and Deputy Chairperson, Eastern Maar Aboriginal Corporation).

The engagement framework and partnership agreements with Traditional Owner groups formalise protocols for consultation and collaboration on road developments. However, no evidence was found of outcomes related to equitable access to ongoing road expenditure by Commonwealth, State or local authorities.

<sup>9</sup> 2005 Review, vol 1, 33.

<sup>10</sup> 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, 12 February 2025) ('Aboriginal Justice Caucus Meeting (12 February 2025)').

## Assessment of Recommendation 75

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

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

1.5

(Score out of 3)

### Potential actions for further work

No actions 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)		Rec 75	
	Low (0-2)			

## **Bibliography**

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