



Royal Commission into Aboriginal Deaths in Custody Recommendation

98. Justices of the peace should not determine charges

Those jurisdictions which have not already done so should phase out the use of Justices of the Peace for the determination of charges or for the imposition of penalties for offences.¹

Background²	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that criticisms from Aboriginal people about lack of cultural sensitivity were made more frequently about Justices of the Peace than about magistrates. This contributed to poor sentencing decisions: <i>. . . whilst the lack of understanding of Aboriginal culture is a factor likely of itself to diminish the ability of justices to make proper sentencing decisions, equally alarming was an apparent lack of awareness or willingness to apply non-custodial sentencing options in circumstances where they appeared appropriate.³</i>
Intent	That Justices of the Peace do not determine charges or impose penalties for offences.
Responsibility	All state and territory governments.
Key contacts	Not applicable.
Key action taken	
2005 Review⁴	Court Services assessed Recommendation 98 as fully implemented due to: <ul style="list-style-type: none"> • Recommendation 98 having been implemented in Victoria prior to the RCIADIC. • Powers of Justices of the Peace to hear criminal charges and to conduct committal hearings were removed by the <i>Magistrates' Courts (Jurisdiction) Act 1984</i> (Vic).
2018 Review⁵	Deloitte assessed Recommendation 98 as being fully implemented noting that Justices of the Peace did not have these powers in Victoria.
Since then	In Victoria, a Justice of the Peace (JP) is a volunteer trained to act as an independent and objective witness to documents used for official or legal purposes. They can: <ul style="list-style-type: none"> • attest the execution of a document • witness a statutory declaration • witness an affidavit for use in court • certify copies of an original document

¹ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) vol 3, 79 ('RCIADIC').

² *Ibid* vol 3, 72-74 [22.4.8-22.4.15].

³ *Ibid* vol 3, 73 [22.4.10].

⁴ 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, 482-3 ('2005 Review').

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) 194 ('2018 Review').

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- certify a person's identity.⁶

The Code of Conduct for Honorary Justices outlines expectations of Justices of the Peace and Bail Justices in terms of their conduct and integrity, knowledge and competence, conflicts of interest, and requirements about notifications to the department.⁷

Evidence of impact

Authorising documents

Magistrates' Courts (Jurisdiction) Act 1984 (Vic)

The purpose of this Act was to amend the law relating to the jurisdiction of justices by inserting a section in the *Magistrates' Courts Act 1971* to limit the powers of Justices of the Peace:

*No justice other than a justice who is also a judge of the Supreme Court or the County Court or is a coroner or a deputy coroner or stipendiary magistrate shall be capable of acting as a justice in or in relation to the hearing and determination of any criminal matter (including any committal proceedings) other than in relation to an application for bail.*⁸

Outputs

The *Honorary Justices Act 2014* (Vic) sets out the framework for appointing, training, informing, regulating, and, where necessary, suspending or removing Justices of the Peace and Bail Justices.⁹ The Act also sets out the powers of a Justice of the Peace. They do not have powers to determine charges or impose penalties for criminal offences.

Outcomes

Powers of Justices of the Peace to hear criminal charges and to conduct committal hearings were removed by the *Magistrates' Courts (Jurisdiction) Act 1984* (Vic). This change occurred in Victoria prior to the RCIADIC.

Community views

None identified.

Related recommendations

2005 Review¹⁰

Recommendation 115

That the Department of Justice (Corrections Victoria):

- report on how incidents involving criminal offences within prisons are dealt with
- report to the Aboriginal Justice Forum on (a).

That the Victorian Government continue to implement and monitor Recommendation 98 through any monitoring process established as a consequence of this review.

⁶ Department of Justice and Community Safety (Vic), 'Justice of the Peace Handbook' (2022).

⁷ Ibid.; Department of Justice and Community Safety (Vic), *Honorary Justices Code of Conduct: Honorary Justices Regulations 2014 - Schedule 2* (Code of Conduct, May 2019) ('Honorary Justices Code of Conduct: Honorary Justices Regulations 2014 - Schedule 2').

⁸ *Magistrates' Courts (Jurisdiction) Act 1984* (Victoria) ('*Magistrates' Courts (Jurisdiction) Act*').

⁹ *Honorary Justices Act 2014* (Vic) ('*Honorary Justices Act*').

¹⁰ *2005 Review*, vol 1, 63.

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Assessment summary¹¹

Justice of the Peace powers to hear criminal charges and to conduct committal hearings were removed by the *Magistrates' Courts (Jurisdiction) Act 1984* (Vic). Since then, Justices of the Peace in Victoria have not had the powers referred to in this recommendation. The scope of their role, expected conduct, training and procedures for removal are set out in the *Honorary Justices Act 2014* (Vic).

Recommendation 98 is no longer relevant, and no further action is required.

Assessment of Recommendation 98

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

3

(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

0

(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 required.

¹¹ Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 27 February 2023) ('Working Group Meeting (27 February 2023)'); Meeting with Aboriginal Justice Caucus (Project Team, In Person, 19 July 2023) ('Aboriginal Justice Caucus Meeting (19 July 2023)').

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 98		
	Moderate (3-4)			
	Low (0-2)			

Bibliography

Meeting with Aboriginal Justice Caucus (Project Team, In Person, 19 July 2023)

Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 27 February 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)

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 and Community Safety (Vic), *Honorary Justices Code of Conduct: Honorary Justices Regulations 2014 - Schedule 2* (Code of Conduct, May 2019)

Department of Justice and Community Safety (Vic), 'Justice of the Peace Handbook' (2022)

Honorary Justices Act 2014 (Vic)

Magistrates' Courts (Jurisdiction) Act 1984 (Victoria)

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