

## 2. THE FINDINGS OF THE COMMISSIONERS AS TO DEATHS (RECOMMENDATIONS 4 - 5)

As part of its review, the RCIADIC considered the immediate causes of death of the ninety-nine Indigenous people who died whilst in the custody of police, juvenile detention facilities or correctional facilities between 1 January 1980 and 31 May 1989. The RCIADIC also examined the level of custodial care received by each of these deceased persons leading up to their death.

Following these considerations, a number of Recommendations were made with respect to financial and compensatory claims sought in relation to the deaths in custody, including the provision of support services for those persons impacted and affected by a death in custody.

Chapter 3 of the National Report looked into tangible impediments to compensatory claims following a death in custody and the support and counselling services available in this regard. Specifically, the RCIADIC recommended that Governments:

- Should not, in all the circumstances, take the point that a claim made in respect of a death in custody based on the findings of the Commissioners is out of time as prescribed by the relevant Statute of Limitations and should seek to settle claims by negotiation (Recommendation 4); and
- Should give sympathetic support to requests to provide funds or services to enable counselling to relatives, kin and friends of those who have died in custody (Recommendation 5).

The RCIADIC considered that the implementation of Recommendations 4 and 5 was necessary to assist those families and friends affected by the death in custody, organisations and advisers. However, the extent to which jurisdictions have implemented these Recommendations is inconsistent, and difficult to accurately quantify.

This Report has not identified a collective approach in the State, Territory and the Commonwealth jurisdictions to ensure that their respective Statute of Limitations regimes will not impede access to, or stifle, claims for compensation in relation to a death in custody and appeals arising from such matters. It is also apparent that these jurisdictions have not employed a coordinated approach to assist the family and friends affected by an Indigenous death in custody.

### 1. Background

Chapter 3 of the National Report looked solely at the immediate causes and circumstances of the deaths in custody. It did not delve into the broader issues

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associated with the deaths in custody or the investigations into those deaths by the relevant authorities. These broader issues are addressed elsewhere in the National Report.

By way of background to Recommendations 4 and 5, the RCIADIC recognised that the findings of Commissioners as to the immediate cause(s) of the deaths in custody will foreshadow the ability of a compensation claim to be brought by families and third parties with respect to the death. The RCIADIC also noted that the circumstances of the deaths in custody highlight the support services offered at that time, or the lack thereof, to the deceased's familial and social network.

Relevantly, the RCIADIC noted that of the 99 deaths in custody:

- 30 were by hanging, all of which were self-inflicted;
- 23 were by external trauma, 4 of which were self-inflicted;
- 9 involved substance misuse; and
- 37 were due to natural causes.<sup>1</sup>

The RCIADIC concluded that in all cases, the immediate causes of the deaths did not involve foul play "in the sense of unlawful, deliberate killing of Aboriginal prisoners by police and prison officers."<sup>2</sup> However, the RCIADIC emphasised that this finding did not detract from the gravity of the problem being faced in relation to Indigenous deaths in custody. Indeed, it was stated that there were at times "glaring deficiencies"<sup>3</sup> in the standard of care offered.

This Chapter is not dedicated to examining these deficiencies, as the oversights in standards of care discovered by the RCIADIC are dealt with elsewhere in the National Report. That being said, the RCIADIC was acutely aware that some causes of the 99 deaths in custody were of such a character that families of the deceased may consider pursuing claims in connection to the death. This facet of the RCIADIC's findings was the basis for two RCIADIC Recommendations in connection with how jurisdictions should address such claims.

## 2. Claims as to deaths (Recommendation 4)

***Recommendation 4:*** *That if and where claims are made in respect of the deaths based on the findings of Commissioners:*

- (a) *Governments should not, in all the circumstances, take the point that a claim is out of time as prescribed by the relevant Statute of Limitations; and*
- (b) *Governments should, whenever appropriate, make the effort to settle claims by negotiation so as to avoid further distress to families by litigation.*

<sup>1</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1, ch 3.

<sup>2</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1, ch 3, para 3.

<sup>3</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1, ch 3, para 3.

The RCIADIC recognised that investigations into Indigenous deaths in custody were likely to be deficient until a broader picture of the circumstances of the deaths was available (generally following Commission hearings, investigations and alike). Consequently, it was noted that the findings and outcome of any review or report into the death in custody would likely precede and pre-empt any claims made in respect of the death. The RCIADIC was mindful that for such reasons, Statutes of Limitations often unfairly prevented a family from bringing a claim. The RCIADIC also saw a corresponding need, in appropriate circumstances, to encourage the negotiation of settlements to avoid the stresses associated with litigation.

The translation of these Recommendations into statutory reform has not been expressly implemented in legislation in any jurisdiction.

In 1996, the Aboriginal and Torres Strait Islander Social Justice Commissioner recommended that in States where a strict limitation of actions period applies, legislation be amended to provide that the basic limitation period may be waived where a court determines that, in all the circumstances, it is just to so waive it.<sup>4</sup> While some jurisdictions (for example, Victoria and the Northern Territory) provide the possibility to make an application to extend the limitation period, with prescribed factors to be taken into account, a legislative provision for waiver along the lines recommended by the Social Justice Commission has not been adopted, nor has any legislative provision been enacted that limits applicability of limitation periods in cases relating to Indigenous deaths in custody.

The extent to which Recommendation 4 has been implemented for practical purposes, through the policy of Crown litigators, is more difficult to gauge.

## **2.1 Queensland**

While Queensland has indicated that the Department of Justice and Attorney General has implemented Recommendation 4 and that Crown Law is fully aware of its responsibilities regarding deaths in custody, it also acknowledges that Crown Law's conduct is governed by the individual instructing agency.<sup>5</sup>

## **2.2 South Australia**

Likewise, South Australia has indicated that Recommendation 4 has been implemented in that the statute of limitations should not generally be involved to prevent hearing of compensation claims where there has been a delay by the length of the RCIADIC. However, that there may be special cases where departure from that principle is warranted.<sup>6</sup>

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<sup>4</sup> Australian Human Rights Commission, *Indigenous Deaths In Custody: Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner (1996)*. See <https://www.humanrights.gov.au/publications/indigenous-deaths-custody-recommendations-social-justice-commissioner>

<sup>5</sup> Queensland Government, "Queensland Government Progress Report on Implementation 1996/97", page 173. The Report notes the following in relation to Recommendation 4 - "Implemented. Crown Law is fully aware of the responsibilities in custodial death matters. However, the conduct of Crown Law is (in the final analysis) governed by the instructing agency".

<sup>6</sup> South Australia, "RCIADIC, 1993 Implementation Report, South Australian Government", page 69.

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Adoption of Recommendation 4 appears limited to a commitment by the Attorney-General's Department and the Department of Justice to take appropriate and necessary action. In this regard, we note that at Strategic Direction 2, the South Australian Attorney-General's Department states that "[t]he Justice Portfolio, through our policies, programs and practices, is committed to continuing the development of more culturally inclusive dispute resolution and court processes, including specific processes for young Aboriginal people."<sup>7</sup>

### 2.3 Western Australia

A year 2000 implementation report by the Government of Western Australia into the Recommendations of the RCIADIC found that Recommendation 4 had been implemented and concluded that "[n]o further reporting is required"<sup>8</sup>. This report also indirectly indicated that it is Western Australian Government policy not to seek to rely on the Statute of Limitations in relation to death in custody claims. However, we have not been able to source any clear policy statements of the Government of Western Australia in this regard.

### 2.4 New South Wales

In New South Wales, the 1992/93 report on the implementation of the Recommendations of the RCIADIC confirmed that instructions had been issued to the Crown Solicitor's Office in respect of claims made out of time and that those instructions provided that where claims are technically out of time, the Crown is not to pursue the issue without first consulting with the Attorney-General.<sup>9</sup> A source for this instruction has not been located.

### 2.5 Northern Territory

In the Northern Territory, the 1992/93 report on the implementation of the Recommendations of the RCIADIC (and subsequent reports) advised that:

- even if the limitation period is pleaded, the person making the claim is entitled to apply to the Courts under section 44 of the *Limitation Act* (NT) to extend the limitation period; and
- it is the practice of the Solicitor for the Northern Territory to settle claims by negotiation wherever possible.<sup>10</sup>

<sup>7</sup> South Australia, Attorney-General's Department and Department of Justice, *Aboriginal Justice Strategic Directions 2004 - 2006*, page 5.

<sup>8</sup> WA Government, "2000 Implementation Report: Royal Commission Into Aboriginal Deaths in Custody" (June 2001): [http://www.daa.wa.gov.au/Documents/ReportsPublications/RCIADIC\\_Implementation\\_Report2000.pdf](http://www.daa.wa.gov.au/Documents/ReportsPublications/RCIADIC_Implementation_Report2000.pdf)

<sup>9</sup> New South Wales, "Implementation of Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, New South Wales Government Report 1992/93", page 24.

<sup>10</sup> NT Government, "Implementation of Northern Territory Government Responses to the Recommendations of the Royal Commission Into Aboriginal Deaths in Custody: 1992-93 Interim Report" (1993), page 2. See also the 1994-95 and 1996-97 reports of the same name.

This Report has confirmed that section 44 of the *Limitation Act* (NT) still allows for extensions to be made to limitation periods. No further sources were located in relation to implementation of this recommendation in the Northern Territory.

## 2.6 Australian Capital Territory

In the ACT, the 1992/93 report on the implementation of the Recommendations of the RCIADIC (and subsequent reports dated 1993/94 and 1995/96) noted that the ACT Government was unaware of any claims arising from Indigenous deaths in custody in the ACT.<sup>11</sup> However, if such a claim were to be received, it would be settled by negotiation where possible.<sup>12</sup> The ACT Attorney-General's Department was listed as the agency responsible for Recommendation 4.<sup>13</sup>

## 2.7 Victoria

Victoria does not appear to have legislated an implementation of Recommendation 4, however, an October 2005 Review Report prepared on behalf of the Victorian Aboriginal Justice Forum recommends that the State Coroner and Department of Justice (Court Services) provide a report to the Aboriginal Justice Forum on whether any claims have been made and the Victorian Government's policy on this issue.<sup>14</sup> Further, that the Victorian Government continue to implement and monitor Recommendation 4 through any monitoring process established as a consequence of the review.<sup>15</sup> However, it is unclear what system of implementation and monitoring, if any, have been established in this regard.

## 2.8 Tasmania

In its 1997 progress report, Tasmania was said to have "implemented" Recommendation 4 by noting that "[t]he Government's view is that a decision as to whether or not to plead the statute [of limitations] would depend upon the circumstances of each particular case. However, the Government generally tries to settle litigation if a reasonable settlement can be obtained."<sup>16</sup>

## 2.9 Commonwealth

It does not appear that the Commonwealth has legislated an implementation of Recommendation 4, nor does it appear that this jurisdiction has produced any guidelines or policies in this regard.

Despite a clear lead from the RCIADIC, for the most part Recommendation 4 has not been implemented in the spirit in which it was made. Importantly, the RCIADIC made

<sup>11</sup> ACT, "ACT Government Implementation Report: Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody 1992/93", page 15.

<sup>12</sup> Ibid.

<sup>13</sup> ACT, "ACT Government Implementation Report: Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody 1995/96", page 33.

<sup>14</sup> Victoria, "Victorian Implementation Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody: Review Report: Volume 1: October 2005", page 54. See <[http://assets.justice.vic.gov.au/justice/resources/35d22f8e-efa3-4104-9d95-04347d7a9965/implementation\\_review\\_vol1\\_section1.pdf](http://assets.justice.vic.gov.au/justice/resources/35d22f8e-efa3-4104-9d95-04347d7a9965/implementation_review_vol1_section1.pdf)

<sup>15</sup> Ibid.

<sup>16</sup> Tasmania, "Aboriginal Deaths in Custody, Tasmanian Government Progress Report on Implementation to June 1997", pages 91-92.

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it clear that it was not making a recommendation that a government pay compensation; it was merely a recommendation to remove barriers to any such claim in the event that a family member of a deceased person sought this course of action.<sup>17</sup>

### 3. Support and counselling services (Recommendation 5)

**Recommendation 5:** *That governments, recognising the trauma and pain suffered by relatives, kin and friends of those who died in custody, give sympathetic support to requests to provide funds or services to enable counselling to be offered to these people.*

In the years following the RCIADIC, Commonwealth funding was provided to the States and Northern Territory to provide counselling and support services to families following an Indigenous death in custody<sup>18</sup>. The manner in which those funds were used by the States and Northern Territory differed among them and the results were mixed. For example, in New South Wales, some funds granted were used to acquire capital assets rather than contact family members of those that had died in custody. Despite this, the jurisdictions pursued a variety of counselling projects and provide generic levels of support through various bodies like the Coroners Court.<sup>19</sup> However, the funding that was provided was either insufficient to fully address Recommendation 5 or was quickly expended. The extent to which any of the current administrative arrangements are directed specifically in support of Recommendation 5 is not clear.

#### 3.1 Commonwealth

In response to Recommendation 5, the Commonwealth made funds available to both States and Territories to enable counselling and support to kin and friends of those who have died in custody.<sup>20</sup> The funds were made available on the condition that the States and Territories develop and administer family counselling in full consultation with Indigenous communities.<sup>21</sup> In particular, the Commonwealth provided \$1.98 million<sup>22</sup> to the Aboriginal and Torres Strait Islander Commission to give financial

<sup>17</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1, ch 3, para 3.3.97.

<sup>18</sup> Commonwealth, "Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, First Annual Report 1992-93, Volume 2", page 10.

<sup>19</sup> For example, see the Queensland State Coroner's Guidelines 2003 section 3.4 which provides for Communication with the family of the deceased through the assistance of counsellors. In this regard, we also note the apparent lack of funding within the counselling services generally, provided by the Coroner's Court. For example, the Aboriginal Legal Service of Western Australia noted the under-resourcing and the lack of regional access to culturally appropriate services available in Western Australia: see Aboriginal Legal Service of Western Australia, Submission to the Law Reform Commission of Western Australia - Review of Coronial Practice in Western Australia Project No. 100 (December 2010), [3.6].

<sup>20</sup> Commonwealth, "Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, First Annual Report 1992-93, Volume 2", page 10.

<sup>21</sup> *Ibid.*

<sup>22</sup> The \$1.98 million being distributed as follows: \$200,000 to the Northern Territory, \$20,000 to Tasmania, \$650,000 to Western Australia, \$250,000 to South Australia, \$500,000 to Queensland, \$60,000 to Victoria and \$300,000 to New South Wales.

assistance to the State and Northern Territory jurisdictions to enable them to offer counselling to families of those who have died in custody.<sup>23</sup> Since that time, there have been a range of policies acknowledging the broad range of mental health issues facing Indigenous communities and making reference to initiatives involving the provision of counselling in Indigenous communities.<sup>24</sup> However, it is unclear whether Commonwealth funding specific to the implementation of Recommendation 5 has been provided on an ongoing basis in this more recent timeframe.

### 3.2 Queensland

Between 1993 and 1994 the Aboriginal and Torres Strait Islander Commission provided grants to the Department of Families, Youth and Community Care in Queensland of \$500,000. These funds were to provide counselling and support services to those families who have lost family members through a death in custody.

The success of these funds in achieving the support recognised in Recommendation 5 is invariably difficult to measure. While the Queensland Government Progress Report on Implementation 1996/97 notes that Recommendation 5 is 'Implemented' and the Family Counselling and Support Program continues "to provide support to families and individuals suffering grief or trauma following the loss of a family member through a death in custody",<sup>25</sup> the extent to which current administrative arrangements continue to be supportive of this funding initiative remains unclear.

### 3.3 Western Australia

As was the case in Queensland, the Western Australian Implementation Report noted that all funds had been provided in accordance with grant conditions and that the grant was acquitted in entirety in the period ending 1999-2000.<sup>26</sup>

### 3.4 South Australia

As at 1993, South Australia had indicated that the Commonwealth had provided funds specifically for the purpose of Recommendation 5 and that this assistance had

<sup>23</sup> Ibid.

<sup>24</sup> See, for example, the *National Strategic Framework for Aboriginal and Torres Strait Islander People's Mental Health and Wellbeing (2004-2009)*, see

<[http://www.naccho.org.au/download/aboriginal-](http://www.naccho.org.au/download/aboriginal-health/social_and_emotional_well_being_framework_20042009.pdf)

health/social\_and\_emotional\_well\_being\_framework\_20042009.pdf>. As at 2013 it was reported that the Department of Health and Ageing (as it then was) was renewing this framework. However the Department of Health website does not provide an updated version. A range of different services providing counselling in various Indigenous communities is also described in Purdie, Dudgeon & Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (2010) Australian Government Department of Health and Ageing. See <[http://aboriginal.telethonkids.org.au/media/54847/working\\_together\\_full\\_book.pdf](http://aboriginal.telethonkids.org.au/media/54847/working_together_full_book.pdf)>

<sup>25</sup> Queensland Government, "Queensland Government Progress Report on Implementation 1996/97", page 173.

<sup>26</sup> WA Government, "2000 Implementation Report: Royal Commission Into Aboriginal Deaths in Custody" (June 2001) see

<[http://www.daa.wa.gov.au/Documents/ReportsPublications/RCIADIC\\_Implementation\\_Report2000.pdf](http://www.daa.wa.gov.au/Documents/ReportsPublications/RCIADIC_Implementation_Report2000.pdf)>

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been provided direct to the Aboriginal Health Council for provision to relatives and friends of those who died in custody.<sup>27</sup>

### 3.5 New South Wales

In New South Wales, the July 1996/December 1997 report on the implementation of the responses of the RCIADIC stated that the Department of Aboriginal Affairs received a grant of \$300,000 which it in turn provided to the National Committee to Defend Black Rights ('NCDBR') to provide appropriate counselling and support programmes to families.<sup>28</sup> However, the NCDBR used the funds to acquire capital assets rather than making contact with families and which resulted in its contract being terminated in March 1995.<sup>29</sup> In May 1995, Tranby Aboriginal Co-operative College was given a grant to conduct a family conference.<sup>30</sup> As at the date of the report, the Department of Aboriginal Affairs was still considering how best to use the remaining funds from the original grant to it to assist Indigenous families who have had a family member die in custody.<sup>31</sup> Currently in New South Wales, counselling and bereavement support following a death in custody is potentially available to those in Sydney through the New South Wales Department of Forensic Medicine in Glebe, and in some regional areas through Community Health Services. These services are specifically targeted towards or limited to Indigenous people but are nevertheless consistent with Recommendation 5.

### 3.6 Northern Territory

With respect to the Northern Territory, a range of Commonwealth funded mental health counselling projects are conducted in Northern Territory communities by the Department of Health and Community Services and other Government entities. Interestingly, the 1993/94 Northern Territory implementation report stated that consultation with relatives of persons who have died in custody in the NT indicated a desire for compensation and not counselling.<sup>32</sup> Further to this issue, the 1994/95 Northern Territory implementation report noted that, as an alternative, funding was channelled to three Indigenous organisations to pilot community based Indigenous mental health worker projects resulting in funds of \$166,497 being expended on three Indigenous mental health workers for 12 months plus approximately \$20,000 to employ a consultant to evaluate the pilot projects.<sup>33</sup> In support of these projects, a further \$220,000 was awarded to extend two community based mental health worker projects for a further two years.<sup>34</sup> By way of update, the 1996/97 Northern Territory Implementation report noted that funding had been provided to employ four (two of

<sup>27</sup> South Australia, "RCIADIC, 1993 Implementation Report, South Australian Government", page 70.

<sup>28</sup> New South Wales, "Implementation of Government Responses to the Royal Commission into Aboriginal Deaths in Custody, New South Wales Government Report July 1996/December 1997", page 153.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> NT Government, "Royal Commission into Aboriginal Deaths in Custody: Implementation of the Recommendations 1993/94", page 9.

<sup>33</sup> NT Government, "Royal Commission into Aboriginal Deaths in Custody: Implementation Report 1994/95", pages 9 - 10.

<sup>34</sup> NT Government, "Royal Commission into Aboriginal Deaths in Custody: Implementation Report 1994/95", page 10.



which are part time) additional Indigenous mental health workers.<sup>35</sup> At present, while a range of services offer bereavement counselling in the Northern Territory, no evidence was found of arrangements for systematic provision of counselling in connection with deaths in custody.

### 3.7 Australian Capital Territory

The ACT Government has stated that it would give sympathetic consideration to requests for assistance from relatives, kin and friends of those who died in custody and that criminal compensation may be available where an Indigenous person dies in custody in the ACT as a result of a criminal action.<sup>36</sup> The ACT 1995/96 implementation report noted that as part of the ACT's approach to improving services to all victims of crime, the *Victims of Crime Act* 1994 (ACT) and *Acts Revision (Victims of Crime) Act* 1994 (ACT) were passed and which legislation provided for the appointment of a coordinator (at a cost of \$70,000 each financial year) whose role is to ensure that the needs of victims of crime are appropriately catered for by agencies of the criminal justice system.<sup>37</sup> Further, in July 1999, the ACT Coronial Support Service was established to provide counselling to persons affected by coronial proceedings.<sup>38</sup>

### 3.8 Victoria

An October 2005 Review Report prepared on behalf of the Victorian Aboriginal Justice Forum recommended that the Department of Human Services (Mental Health Branch) maintain a record of the number of cases where counselling support is sought through the Victorian Aboriginal Health Services in connection with Indigenous deaths in custody and to report annually to the Aboriginal Justice Forum on the number of cases where counselling is sought. Further, that the Victorian Government continues to implement and monitor Recommendation 5 through any monitoring process established as a consequence of the review.<sup>39</sup> While the Department of Human Services (Mental Health Branch) has an Indigenous Policy Framework<sup>40</sup> and has established the Youth Justice Koori initiatives<sup>41</sup> in response to the RCIADIC, it is unclear what system of implementation and monitoring has been established directly in response to Recommendation 5.

### 3.9 Tasmania

<sup>35</sup> NT Government, "Royal Commission into Aboriginal Deaths in Custody: Implementation Report 1996/97", page 3.

<sup>36</sup> ACT, "ACT Government Implementation Report: Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody 1995/96", page 33.

<sup>37</sup> Ibid.

<sup>38</sup> ACT, "1999 - 2000 ACT Government Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody", page 30.

<sup>39</sup> Victoria, "Victorian Implementation Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody: Review Report: Volume 1:October 2005", page 54. See <[http://assets.justice.vic.gov.au/justice/resources/35d22f8e-efa3-4104-9d95-04347d7a9965/implementation\\_review\\_vol1\\_section1.pdf](http://assets.justice.vic.gov.au/justice/resources/35d22f8e-efa3-4104-9d95-04347d7a9965/implementation_review_vol1_section1.pdf)>

<sup>40</sup> See <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/indigenous-policy-framework>>

<sup>41</sup> See <[http://assets.justice.vic.gov.au/justice/resources/35d22f8e-efa3-4104-9d95-04347d7a9965/implementation\\_review\\_vol1\\_section1.pdf](http://assets.justice.vic.gov.au/justice/resources/35d22f8e-efa3-4104-9d95-04347d7a9965/implementation_review_vol1_section1.pdf)>

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The 1992/93 Commonwealth Government implementation responses to the Recommendations of the RCIADIC noted, in relation to Recommendation 5, that \$20,000 was allocated to Tasmania to fund a "Prison and Police Officer" cross-cultural project.<sup>42</sup>

Tasmania acknowledged in its 1993 progress report on implementation of the Recommendations of the RCIADIC that while the Department of Justice considered bereavement counselling for relatives of prisoners should be provided by appropriately trained counsellors, it had limited resources to provide that counselling.<sup>43</sup>

In its 1997 progress report, Tasmania was said to have implemented Recommendation 5. It noted that if a death in custody did occur at the Ashley Youth Detention Centre, the Department of Community and Health Services would "purchase appropriate counselling services".<sup>44</sup>

As at 2002, a report on major coronial issues in Tasmania recorded the availability of counselling through the coroner's office in some defined circumstances which did not specifically refer to deaths in custody.<sup>45</sup> No information was found indicating a systematic policy for provision of counselling following Indigenous deaths in custody in Tasmania at present.

While financial contribution was provided by the Commonwealth to the States and Northern Territory directly in response to Recommendation 5, those funds were quickly expended and we assume are now exhausted. Further, while a variety of counselling services and projects were established specifically for the purpose of addressing Recommendation 5 those appear to have been taken over by more general services provided by the State and Territory Governments and which address a broad range of issues affecting mental health and wellbeing in the Indigenous community (not limited to deaths in custody).

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<sup>42</sup> Commonwealth, "Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, First Annual Report 1992-93, Volume 2", page 11.

<sup>43</sup> Tasmania, "Aboriginal Deaths in Custody, Tasmanian Government Progress Report on Implementation to December 1993", page 33.

<sup>44</sup> Tasmania, "Aboriginal Deaths in Custody, Tasmanian Government Progress Report on Implementation to June 1997", pages 83-84.

<sup>45</sup> Magistrates' Court of Tasmania Report on Major Coronial; Issues 2001-2 - See <[http://www.courtlists.tas.gov.au/magistrate/reports/ar\\_2002/ch\\_10.htm](http://www.courtlists.tas.gov.au/magistrate/reports/ar_2002/ch_10.htm)>