5. ABORIGINAL SOCIETY TODAY (RECOMMENDATIONS 48 - 57)

The Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) found that,

"on almost every statistical indicator of the status, or well-being, of the Aboriginal population,…its members are in a highly disadvantaged position. This is the case in both absolute terms and in comparison with the position of the non-Aboriginal society. While the aggregate statistics conceal a wide variety of circumstances in which Aboriginal people live, ranging from comparative affluence in a few cases to poverty, the conclusion we must draw is that the level of Aboriginal disadvantage is very great, and that it underlies the phenomena of Aboriginal over-representation in custody and Aboriginal deaths in custody."

In reaching this conclusion, the RCIADIC used social indicators, demographic data and other quantitative and qualitative information about Indigenous society extensively.

In Chapter 11 of the RCIADIC National Report, the RCIADIC identified some issues with the data concerning Indigenous people and its collection and use and made recommendations to address those issues.

The RCIADIC also made recommendations to address two key factors in overcoming Indigenous disadvantage:
1. supporting Indigenous people to re-establish links to family and community which have been severed or attenuated by past government policies (i.e. supporting the Stolen Generations); and
2. facilitating strong Indigenous identity.

These Recommendations can be categorised as follows:

- Collection of information regarding Indigenous people (Recommendations 48 - 51);
- Support for the Stolen Generations (Recommendations 52 and 53);
- Current adoption and fostering policies (Recommendation 54);
- Indigenous identity (Recommendations 55 and 56); and
- Location of and access to RCIADIC records (Recommendation 57).

This Chapter examines the extent to which these Recommendations have been implemented by the Federal, State and Territory governments.

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1 Royal Commission into Aboriginal Deaths in Custody, National Report, 1991, Chapter 11, Para. 11.3.25.
1. Collection of information regarding Indigenous people
(Recommendations 48-51)

The RCIADIC expressed some reservations about the collection and use of information regarding Indigenous people. It observed that:

"Aboriginal people, quite apart from being the most controlled group within the Australian community, must also have been the group most studied by non-Aboriginal people. The studies were intrusive enough in themselves, but much of the research conducted into Aboriginal society, although ill-informed, nonetheless helped shape official attitudes towards Aboriginal people. This in turn provided a theoretical basis to justify policies of government which had such a disastrous impact on the lives of Aboriginal people.

Obviously the work of social scientists can also play a useful role in informing non-Aboriginal people about Aboriginal society and, by correcting past misconceptions, can assist to ensure that present policies do not repeat the errors of the past.

However, for Aboriginal people there remains an understandable hostility towards much of the research which is still performed. Whilst recognising the value to themselves which may be gained from the work of academic and other researchers, Aboriginal people now insist on having control over the research so that what is studied reflects Aboriginal needs and priorities and the process of study meets their cultural requirements."²

The RCIADIC noted that, in order to provide the accurate and reasonably complete picture necessary to properly inform effective policy-making concerning Indigenous people, data concerning Indigenous people must:

- reflect the priorities of Indigenous people (rather than the priorities of bureaucracies); and
- be collected and used in a way which focuses on improving the overall quality of life of Indigenous people (rather than focussing on the indicators/statistics themselves, as positive changes in specific indicia may not reflect improvements in real world conditions).³

In order to satisfy these requirements, it is important that Indigenous people be actively involved in the development and use of social indicators relating to Indigenous people.

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² See footnote 1, Para. 11.12.1, 11.12.2, 11.12.3.
³ See footnote 1, Chapter 11, Paras. 11.2.5, 11.2.7 and 11.2.8.
1.1 Incorporation of Indigenous views into development, interpretation and use of social indicators

**Recommendation 48:** That when social indicators are to be used to monitor and/or evaluate policies and programs concerning Aboriginal people, the informed views of Aboriginal people should be incorporated into the development, interpretation and use of the indicators, to ensure that they adequately reflect Aboriginal perceptions and aspirations. In particular, it is recommended that authorities considering information gathering activities concerning Aboriginal people should consult with ATSIC and other Aboriginal organisations, such as NAIHO or NAILSS, as to the project.\(^4\)

Current ethical guidelines for the conduct of research in relation to Indigenous people are consistent with the Recommendation that the informed views of Indigenous people be incorporated into the development, interpretation and use of relevant social indicators. The most prominent example is the ethics guidelines in relation to health research developed, in conjunction with Indigenous organisations, by the National Health and Medical Research Council (‘NHMRC Guidelines’).\(^5\) The core values underpinning the NHMRC Guidelines emphasise meaningful collaboration between researchers and Indigenous communities\(^6\).

The NHMRC Guidelines have been adopted by all State and Territory governments,\(^7\) except for Tasmania where the State Department of Health has not expressly adopted the NHMRC guidelines in its health research.\(^8\)

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\(^4\) See footnote 1, Recommendation 48.

\(^5\) *Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* (National Health and Medical Research Council, 2003), available at <http://www.nhmrc.gov.au/guidelines/publications/e52>. The NHMRC Guidelines, together with the National Statement on Ethical Conduct in Research Involving Humans, are the authoritative statement on health research involving Aboriginal and Torres Strait Islander Peoples and are made under the National Health & Medical Research Council Act 1992 (Cth). *Keeping Research on Track: A guide for Aboriginal and Torres Strait Islander peoples about health research ethics* is a companion document to *Values and Ethics*. Both documents are currently under review.

\(^6\) In particular, the “reciprocity” value, incorporates the principle of “inclusion”, “the basis for mutual obligation, [which] describes the degree of equitable and respectful engagement with Aboriginal and Torres Strait Islander Peoples, their values and cultures in the proposed research” and the principle of “benefits”, which “describes the establishment or enhancement of capacities, opportunities or outcomes that advance the interests of Aboriginal and Torres Strait Islander Peoples and that are valued by them.” (NHMRC Guidelines, section 2.2.1)

\(^7\) See, for example, *WA Health Research Governance Policy and Procedures* (2012) at page 6 - “[a]ll human research and experimentation conducted within WA Health will be reviewed, approved, conducted and monitored, under the guidance of its established bodies and in accordance with the principles that have their origin in [among other documents] the … National Health and Medical Research Council “Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research”* - available at <http://www.health.wa.gov.au/circularsnew/circular.cfm?Circ_ID=12923>.

\(^8\) Tasmania’s Department of Health and Human Services is not a registered Human Research Ethics Committee (HREC) – a committee which ensures the compliance with the NHMRC guidelines. The only HREC in Tasmania is the University of Tasmania. See “List of Human Research Ethics Committees registered with NHMRC”, available at <https://www.nhmrc.gov.au/health-ethics/human-research-ethics-committees-hrecs/list-human-research-ethics-committees-registere>.

5. ABORIGINAL SOCIETY TODAY (RECOMMENDATIONS 48-57)
Outside the health sphere:

- the Australian Institute of Aboriginal and Torres Strait Islander Studies ('AIATSIS') has published ethics guidelines which also emphasise the importance of meaningful collaboration with Indigenous communities\(^9\); and
- the Queensland Government has published protocols for consultation with Indigenous people for use by Queensland Government Officers.\(^{10}\)

Although this Recommendation has been implemented in various jurisdictions in particular areas,\(^{11}\) implementation has been somewhat piecemeal and does not appear to have been monitored or reported in any Australian jurisdiction other than Queensland.\(^{12}\) Published government policies or protocols, such as that of the Queensland government and/or government adoption of ethical guidelines for research in relation to Indigenous people (similar to the NHMRC Guidelines in relation to health research), would more fully implement Recommendation 48.

1.2 Support for special national Indigenous survey

**Recommendation 49:** That proposals for a special national survey covering a range of social, demographic, health and economic characteristics of the Aboriginal population with full Aboriginal participation at all levels be supported. The proposed census should take as its boundaries the ATSIC boundaries. The Aboriginal respondents to the census should be encouraged to nominate their traditional/contemporary language affiliation. I further recommend that the ATSIC Regional Councils be encouraged to use the special census to obtain an inventory of community infrastructure, assets and outstanding needs which can be used as data for the development of their regional plans.\(^{13}\)

Recommendation 49 has been partially implemented by the Australian Bureau of Statistics ('ABS') conducting the National Aboriginal and Torres Strait Islander Social Survey ('NATSISS').\(^{14}\) The most recent NATSISS (conducted during 2008 and 2009

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\(^{11}\) In Tasmania, the Department of Police and Emergency Management has an Aboriginal Strategic Plan (2014-2022) which has as one of its guiding principles that it "will consult with individuals and Aboriginal organisations to progress action to improve community safety and service delivery." As part of this commitment to incorporating the views of Aboriginal people into police policy, District and Assistant Aboriginal Liaison Officers have been appointed by Tasmania Police.

\(^{12}\) The Queensland Government Progress Report on Implementation (October 1997) indicates the status of the implementation of this recommendation as "ongoing" and states that there is an ongoing commitment to consultation with Aboriginal and Torres Strait Islander communities to ensure appropriate information is gathered and particular needs are identified and that a variety of mechanisms were being adopted to ensure maximum community support, such as developing internal guides for consultation. There have been no further reports since 1997.

\(^{13}\) See footnote 1, Recommendation 49.

\(^{14}\) 2008 National Aboriginal and Torres Strait Islander Social Survey (Australian Bureau of Statistics, 2010). The survey was funded with the support of the Council of Australian Governments, as agreed

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and published in October 2010) is "a multi-faceted social survey which provides broad information across key areas of social concern for Indigenous Australians, nationally, by state and territory and remoteness area. Information from the NATSISS contributes to existing data on Indigenous people and the formulation of government policies and legislation."\(^{15}\) The next NATSISS is being conducted from September 2014 to the end of April 2015.

Whilst the NATSISS is a special national survey covering a range of social, demographic, health and economic characteristics of the Aboriginal population within the terms of Recommendation 49, it appears that the "full Aboriginal participation at all levels" aspect of the Recommendation has not yet been achieved. The ABS consults with Indigenous people in the development of the NATSISS surveys.\(^{16}\) However, "consultation" alone falls well short of the recommendation that "full Aboriginal participation at all levels be supported". Professor Maggie Walter has observed that, "from an Indigenous stakeholder point of view, the institutional understanding of Aboriginal and Torres interests, perspectives and life experiences still appear very limited" and, in particular, that in 2013 (as in 2003) the ABS did not employ any Indigenous people in the team working on NATSISS.\(^{17}\)

Professor Walter has commented that, "Aboriginal and Torres Strait Islander peoples, despite roundtables and consultation, remain largely marginalised from the design, production and use of the NATSISS data" and that "Aboriginal and Torres Strait Islanders need to be intimately involved in all aspects of planning, developing, designing, implementing and analysis of NATSISS; in terms of working directly on the survey within the ABS and in guiding its design, development, implementation and interpretation of results".\(^{18}\) Increasing the active engagement of Indigenous people in the collection and use of data concerning them requires further work.

1.3 Consultation with ATSIC in development of national censuses and other data collection activity covering Indigenous people

**Recommendation 50:** That in the development of future national censuses and other data collection activity covering Aboriginal people, the Australian Bureau of

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\(^{16}\) "In developing the survey, advice was sought from a range of people and groups, including representatives from Indigenous peak bodies; government departments with Indigenous responsibilities; universities with a background in relevant academic research; and the ABS Advisory Group for Aboriginal and Torres Strait Islander Statistics". See, National Aboriginal and Torres Strait Islander Social Survey: Users’ Guide, 2008 (Introduction) (Australian Bureau of Statistics, 2010).


\(^{18}\) See footnote 17.
Statistics and other agencies consult, at an early stage, with ATSIC - to ensure that full account is taken of the Aboriginal perspective.\(^{19}\)

With the demise of ATSIC in 2005, Recommendation 50 is no longer applicable in its terms. However, the ABS has created specialist advisory groups in relation to the collection of information concerning Indigenous people, including the Aboriginal and Torres Strait Islander Demographic Statistics Expert Advisory Group and the Advisory Group on Aboriginal and Torres Strait Islander Statistics.\(^{20}\)

The ABS also conducts the "Aboriginal and Torres Strait Islander Statistics Program", the purpose of which is to "build stronger relationships with Aboriginal and Torres Strait Islander communities and organisations through the Indigenous Community Engagement Strategy, to increase data quality, statistical capability and to manage provider load."\(^{21}\) The ABS describes the status of this particular "development" as "ongoing".\(^{22}\)

1.4 Adoption by research funding bodies of Indigenous involvement criteria as principal criteria for the funding of research programs

**Recommendation 51:** That research funding bodies reviewing proposals for further research on programs and policies affecting Aboriginal people adopt as principal criteria for the funding of those programs:

\begin{itemize}
  \item[a.] The extent to which the problem or process being investigated has been defined by Aboriginal people of the relevant community or group;
  \item[b.] The extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research;
  \item[c.] The requirement that Aboriginal people from the relevant community or group receive the results of the research delivered in a form which can be understood by them; and
  \item[d.] The requirement that the research include the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.\(^{23}\)
\end{itemize}

This Recommendation has been implemented in relation to health research through the development and application by the National Health and Medical Research Council (‘NHMRC’) of its funding guidelines in relation to Indigenous health research.\(^{24}\) The NHMRC Guidelines are consistent with the criteria in this

\(^{19}\) See footnote 1, Recommendation 50.

\(^{20}\) The objective of the Aboriginal and Torres Strait Islander Demographic Statistics Expert Advisory Group is to maximise the relevance, quality, knowledge and usefulness of selected national and sub-national demographic statistics compiled and released by the ABS: Terms of Reference (ABS), available at <http://www.abs.gov.au/websitedbs/c311215.nsf/88e17471717cd5ca25778a001d9500/0a906fb6f13c76da257a93001f7bce/$FILE/Terms%20of%20Reference.pdf>. We have not been able to locate the terms of reference for the Advisory Group on Aboriginal and Torres Strait Islander Statistics.


\(^{22}\) See footnote 21.

\(^{23}\) See footnote 1, Recommendation 51.

\(^{24}\) See footnote 5.

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Recommendation and are the authoritative statement on health research involving Aboriginal and Torres Strait Islander Peoples. The status and authority of the NHMRC Guidelines derive from the requirement of the National Health & Medical Research Council Act 1992 (Cth) that the NHMRC issue ethical guidelines for the conduct of medical research involving humans as developed by the Australian Health Ethics Committee.

The NHMRC is the national research funding body that requires all institutions or organisations receiving NHMRC funding for research to establish a Human Research Ethics Committee, and to subject all research involving humans to ethical review. All health research involving Indigenous people is therefore required to comply with the NHMRC Guidelines. The NHMRC Guidelines have been adopted and applied in connection with health research conducted by the States.25

For research in areas other than health, the Australian Institute for Aboriginal and Torres Strait Islander Studies (‘AIATSIS’) has published Guidelines for Ethical Research in Australian Indigenous Studies (‘AIATSIS Guidelines’), which are also consistent with the Indigenous involvement criteria set out in Recommendation 51.26

Under the Australian Research Council Act 2001 (Cth), the Australian Research Council (‘ARC’) is required to prepare rules relating to eligibility criteria, which must be approved by the Minister.27 The Discovery Indigenous scheme provides funding to Administering Organisations to support research programs led by an Indigenous Australian researcher and build research capacity of higher degree research and early career researchers. The guidelines for this funding are available on the ARC website.28

2. Support for the Stolen Generations (Recommendations 52-53)

The RCIADIC documented the devastating impact on the lives of many Indigenous people of the Australian government’s assimilation policies, including child separation. The RCIADIC identified the need to support the Stolen Generations and to help them re-unite with their families. More generally, it was recommended that governments facilitate a process of reclamation by Indigenous people of their own immediate history,29 through means such as providing them with access to government archival records of family history.

2.1 Funding for services re-establishing Aboriginal links to lost families and communities

25 For example, the WA Health Research Governance Policy and Procedures (2012) require that all human research and experimentation conducted within the Western Australian Department of Health be reviewed, approved, conducted and monitored, under the guidance of its established bodies and in accordance with NHMRC standards including the NHMRC Guidelines.
26 AIATSIS is a national Aboriginal research funding body which funds Aboriginal research generally. However we note the AIATSIS website states that it did not invite grant applications for 2012 due to funding constraints.
27 Australian Research Council Act 2001 (Cth), section 60.
28 This website can be accessed through the following link: <http://www.arc.gov.au/ncgp/di/di_default.htm>.
29 See footnote 1, Chapter 11, paragraph 11.7.19.
Recommendation 52: That funding should be made available to organisations such as Link-Up which have the support of Aboriginal people for the purpose of re-establishing links to family and community which had been severed or attenuated by past government policies. Where this service is being provided to Aboriginal people by organisations or bodies which, not being primarily established to pursue this purpose, provide the service in conjunction with other functions which they perform, the role of such organisations in assisting Aboriginal people to re-establish their links to family and community should be recognised and funded, where appropriate.30

This Recommendation appears to have been largely implemented. The national Link-Up31 network is funded by the Australian Government through the Department of Prime Minister and Cabinet, and by State governments, to provide family tracing, reunions and counselling for members of the Stolen Generations. The services provided by the Link-Up network are provided by Indigenous organisations32 working co-operatively and in association with the AIATSIS, located in the ACT.33

The adequacy of the funding provided for Link-Up services is beyond the scope of this Report. However, a 2007 report commissioned by OATSIH to assess the effectiveness of Link-Up services (and other, "Bringing them Home" - related services) in meeting the needs of Indigenous peoples affected by past Government policies of forced removal noted that no Link-Up services have been provided in Tasmania since 2004.34

Other than the Indigenous community controlled organisations which directly provide Link-Up services to Indigenous people, various National and State organisations provide reference and other services to support the provision of Link-Up services and to facilitate the use of those services. AIATSIS is funded by the Office for Aboriginal and Torres Strait Islander Health ('OATSIH') to assist Link-Up workers. State Government agencies, including libraries, assist to provide referrals for Link-Up services.35

30 See footnote 1, Recommendation 52.
31 The Australian Government provided funding to establish the National Link-Up Program, formally known as the Access to Effective Family Tracing and Reunion Services Program, in response to the recommendations of the "Bringing them Home Report" (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Human Rights and Equal Opportunity Commission, 1997).
32 Link-Up services are provided in Western Australia by organisations, including Yorgum Aboriginal Corporation (based in Perth), Kimberley Stolen Generation Aboriginal Corporation (based in Broome), Central Australian Stolen Generations & Families Aboriginal Corporation (NT), the Northern Territory Stolen Generations Aboriginal Corporation, Nunkuwarrin Yunti of South Australia Inc., Link-Up (NSW) Aboriginal Corporation, Link-Up Victoria and Link-Up (QLD) Aboriginal Corporation.
33 The terms of a national agreement, setting out the terms of co-operation between the parties in the provision of Link-Up services, were agreed between each of the Link-Up services and Australian Institute of Aboriginal and Torres Strait Islander Studies during August 2013, available at <http://www.yorgum.com.au/wp-content/jdf/Yorgum-Newsletter-Dec-13.pdf>.
35 The State Library of Western Australia's website provides a directory of "Bringing Them Home Counsellor Services" provided through a number of Aboriginal Health Service Aboriginal Corporation's
2.2 Access to governmental archival records

**Recommendation 53:** That Commonwealth, State and Territory Governments provide access to all government archival records pertaining to the family and community histories of Aboriginal people so as to assist the process of enabling Aboriginal people to re-establish community and family links with those people from whom they were separated as a result of past policies of government. The Commission recognises that questions of the rights to privacy and questions of confidentiality may arise and recommends that the principles and processes for access to such records should be negotiated between government and appropriate Aboriginal organisations, but such negotiations should proceed on the basis that as a general principle access to such documents should be permitted. It appears that this Recommendation has been largely implemented. In addition to general access to information rights provided by ‘Freedom of Information’ legislation, there are specific protocols and procedures in place in Western Australia and the Northern Territory in relation to accessing records relating to the family and community history of Indigenous people. The Northern Territory protocol recognises the broad right of Indigenous people to access family history records, currently in the possession of the Northern Territory Government, to assist in reconnecting Indigenous families. This appears most consistent with the general principle in the Recommendation that access to relevant documents should be allowed. The Western Australian policy is narrower in its terms, providing that applicants for information have the right to access their own information and that personal information will not be given to third parties.

In addition to the assistance available from Link-Up services, various government agencies provide specialist research assistance to Indigenous people in an effort to trace personal family histories. Despite this, the level of governmental support and

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36 See footnote 1, Recommendation 53.
37 For example, Freedom of Information Act 1992 (WA); Government Information (Public Access) Act 2009 (NSW); Right to Information Act 2009 (Qld); Freedom of Information Act 1982 (Cth).
38 In Western Australia, the Department of Aboriginal Affairs has published a Policy for Access to Restricted Information Managed by the Aboriginal History Research Unit (available at http://www.daa.wa.gov.au/en/Aboriginal-History-Research-Unit/); the Northern Territory has a Protocol for Access to Northern Territory Government Records by Aboriginal People researching their Families.
40 For example, Communities and Personal Histories section of Aboriginal and Torres Strait Islander Services (Qld); Aboriginal History Research Unit of the Department of Indigenous Affairs and the Department of Child Protection (WA). In Victoria, a Memorandum of Understanding (made on 9 March 2000) between the Director-General of the National Archives and the Chairman of the Victorian Aboriginal Child Care Agency sets out arrangements to assist Victorian Indigenous people to access records held by the National Archives for the purposes of re-establishing family and community links.

5. ABORIGINAL SOCIETY TODAY (RECOMMENDATIONS 48-57)
other assistance in researching family histories varies across Australia. In Tasmania, there is no specific government contact to assist with research, nor has there been any Link-Up service provision since 2004.

Also, there appears to be no commitment by jurisdictions other than the Northern Territory to the suggestion that, although questions of confidentiality and rights to privacy may arise, access to relevant documents should be permitted.

3. Current adoption and fostering policies (Recommendation 54)

By the time the RCIADIC was completed, Aboriginal children were no longer placed with non-Aboriginal families in most States. Although the principle of Aboriginal child placement had been accepted by all welfare Ministers in Australian States and Territories, there was only legislative embodiment of this principle in New South Wales, Victoria and the Northern Territory. In order to protect the connection to family and culture for Indigenous children who were the subject of placement arrangements the RCIADIC recommended:

Recommendation 54: That in States or Territories which have not already so provided there should be legislative recognition of:

a. The Aboriginal Child Placement Principle; and

b. The essential role of Aboriginal Child Care Agencies.

The first part of this Recommendation regarding the legislative recognition of the Aboriginal Child Placement Principle has been implemented across Australia. By way of example, Section 12(2) of the Children and Community Services Act 2004 (WA) expresses the Aboriginal Child Placement Principle in the following terms:

"In making a decision under this Act about the placement under a placement arrangement of an Aboriginal child or a Torres Strait Islander child, a principle to be observed is that any placement of the child must, so far as is consistent with the child's best interests and is otherwise practicable, be in accordance with the following order of priority —

a. placement with a member of the child's family;

b. placement with a person who is an Aboriginal person or a Torres Strait Islander in the child's community in accordance with local customary practice;"

(including sensitive personal information that would normally be exempt from public access under the Archives Act 1983 (Cth).

41 See footnote 1, Recommendation 54.

42 See footnote 1 at paragraph 11.8.1.

43 Section 12 of the Children and Community Services Act 2004 (WA); Section 12 of the Care and Protection of Children Act; Section 13 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) and Section 34 of the Adoption Act 2000 (NSW); Section 5C of the Child Protection Act (1999) (QLD); Section 9 of the Children, Young Persons and Their Families Act 1997 (TAS); Section 4(5) of the Children's Protection Act 1993 (SA); Sections 12-14 of the Children, Youth and Families Act 2005 (VIC); Section 10 of the Children and Young People Act 2008 (ACT).
c. placement with a person who is an Aboriginal person or a Torres Strait Islander;
d. placement with a person who is not an Aboriginal person or a Torres Strait Islander but who, in the opinion of the CEO, is sensitive to the needs of the child and capable of promoting the child’s ongoing affiliation with the child’s culture, and where possible, the child’s family.”

However, other than in Queensland and South Australia, there is little legislative recognition of the role of Aboriginal Child Care Agencies specifically. Rather, there is a general requirement for consultation with an Indigenous entity (which may be an individual or an organisation). For example, in Western Australia, as part of the adoption process for an Indigenous child, the Department of Child Protection must either consult with an Indigenous person (who may be an employee of the Department) with relevant knowledge of the child or the child’s family or community or an Aboriginal or Torres Strait Islander agency which in the Department’s opinion has relevant knowledge of the child’s family or community.44

The Queensland legislation indicates a stronger emphasis on Indigenous self-determination in relation to child placement arrangements through a more explicit recognition of a role of Aboriginal Child Care Agencies independent of government agencies. Under Section 6 of the Child Protection Act 1999 (Qld), the relevant Department is required to work with a recognised entity when making all decisions about an Indigenous child. The Department is required to either:

- provide the recognised entity with an opportunity to participate in the decision-making, where the decision is significant; or
- consult with the recognised entity on all other decisions.

A ‘recognised entity’ may be any individual or organisation with whom it is appropriate to consult about issues relating to the protection and care of Aboriginal or Torres Strait Islander children. If the entity is an individual, he or she must:

- be an Aboriginal or Torres Strait Islander person;
- have appropriate knowledge of or expertise in child protection; and
- not be an officer or employee of the department.

If the recognised entity is an organisation, its members must include Indigenous persons who have appropriate knowledge of or expertise in child protection and are not officers or employees of the department. It must also provide services to Aboriginal or Torres Strait Islander people.45

In South Australia, no decision or order may be made under the Children’s Protection Act 1993 (SA) unless “consultation has first been had with a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation.”46

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44 Section 16A of the Adoption Act 1994 (WA). There are similar requirements in New South Wales (Section 11 of the Children and Young Persons (Care and Protection) Act 1998 (NSW), and Section 33 of the Adoption Act 2000 (NSW)).

45 Section 246I of the Child Protection Act 1999 (Qld).

46 Section 5 of the Children’s Protection Act 1993 (SA)
4. Indigenous Identity (Recommendations 55-56)

The RCIADIC heard extensive evidence of the debilitating anger and alienation caused by attempts, both by non-Indigenous persons and by Indigenous persons, to define "Aboriginality". The RCIADIC identified the need to move beyond historical conceptions of Aboriginality to accommodate new ways of "being Aboriginal" as "once Aboriginal people are released from prehistory and recognised as having a present and even a future, the space is made for them to adapt and invent." The need to preserve and revitalise Indigenous culture was identified as critical in giving support to many Indigenous people. The RCIADIC recognised that important components of this were Indigenous culture being both respected and understood and the preservation of Indigenous languages.

4.1 National Aboriginal Language Policy

Recommendation 55: That government and funding bodies reflect the importance of the National Aboriginal Language Policy in the provision of funds to Aboriginal communities and organisations.

In August 2009, the Australian Government adopted a new National Indigenous Languages Policy which was aimed at keeping Indigenous languages alive and supporting Indigenous Australians to connect with their language, culture and country. The National Indigenous Languages Policy was announced "to coordinate action among the agencies involved in the maintenance and revival of Indigenous languages, including government, Indigenous languages organisations and educational and research institutions." Implementation of the National Indigenous Languages Policy is coordinated by the Ministry for the Arts which sits within the Attorney-General's Department. The Australian Government provides funding through the Indigenous culture, languages and visual arts program.

The major objectives of the Policy include:

- National Attention - to bring national attention to Indigenous languages – the oldest surviving languages in the world; and the pressures they face.
- Critically Endangered Languages - reinforce use of critically endangered Indigenous languages that are being only partly spoken to help prevent decline in use and to maintain or extend their common, everyday use as much as possible.
- Working with Languages to Close the Gap - in areas where Indigenous languages are being spoken fully and passed on, making sure that government recognises and works with these languages in its agenda to Close the Gap.

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47 See footnote 1 at paragraphs 11.12.4 and 11.12.5 (Indigenous perceptions of non-Indigenous attempts to define Aboriginality) and paragraphs 11.12.14 to 11.12.16 (alienation experienced by members of the Stolen Generations when their Aboriginality is rejected by other Indigenous people).
48 See footnote 1 at paragraph 11.12.10.
49 See footnote 1, Recommendation 55.
- Strengthening Pride in Identity and Culture - to restore the use of rarely spoken or unspoken Indigenous languages to the extent that the current language environment allows.
- Supporting Indigenous Language Programs in Schools - to support and maintain the teaching and learning of Indigenous languages in Australian schools.

Levels of policy support for Indigenous languages are inconsistent among the States and Territories. New South Wales has been prominent in its funding support for measures to protect and support Indigenous languages through its creation of the Centre of Aboriginal Languages Coordination and Development, provision of specialist assistance to Indigenous communities through the Aboriginal Languages Research and Resource Centre and financial support for the Department of Aboriginal Affairs' Community Language Assistance Program. New South Wales has also introduced an "Aboriginal Languages framework K-10" syllabus for NSW schools. The syllabus' stated aim, for Indigenous students, "includes increasing self-esteem through an enhanced understanding of their linguistic heritage and an ability to communicate in (an) ancestral language(s); assisting them to obtain skills in language revitalisation that can be used to enhance long-term cultural revival in their local Aboriginal community; and increasing the links between schools, student learning and community language revival in their local Aboriginal community."

South Australia and Western Australia also have specific Indigenous language education policies and curriculums. However, New South Wales is the sole state which has a comprehensive state-wide policy on Indigenous languages.

Organisations which work to address the issue of language loss and coordinate community language programs in Victoria and Tasmania are funded by the Australian Government.

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52 Following a merit based process, the NSW Aboriginal Education Consultative Group (NSW AECG Inc.) has been granted $1.277 million (approximately $400,000 every year for three years) to develop the Centre of Aboriginal Languages Coordination and Development, with the aims of locating the Centre in an Aboriginal organisation that is accessible and appropriate to Aboriginal community members; attracting wider investment by the public and private sector in NSW Aboriginal language activities; increasing the number of Aboriginal language revitalisation activities across NSW; and increasing Aboriginal ownership and control of Aboriginal language revival.

53 The Community Language Assistance Program provides grants of $5000 to $50,000 to projects to revive NSW Aboriginal Languages.


55 In South Australia, the Languages Statement 2007–2011 promotes the teaching of Indigenous languages at the school, district and State Office level. Languages are taught at the discretion of school administrations and most often with a LOTE focus. In Western Australia, the curriculum for the secondary subject "Aboriginal Languages of Western Australia" includes guiding principles and protocols for the participation of Indigenous communities in the language program.

56 The New South Wales government has also instructed Aboriginal Affairs to work with the NSW Aboriginal Education Consultative Group Inc. in order to re-write the out-dated NSW Aboriginal Languages Policy.

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Although this Recommendation has been wholly implemented by the Australian Government and by New South Wales, implementation in the other States and Territories appears to be inconsistent and limited.

4.2 Support of Indigenous cultural education initiatives

**Recommendation 56:** The Commission notes that many Aboriginal people have expressed the wish to record and make known to both Aboriginal and non-Aboriginal people aspects of the history, traditions and contemporary culture of Aboriginal society. This wish has been reflected in the establishment of many small local community museums and culture centres. The Commission notes that many opportunities exist for projects which introduce non-Aboriginal people to Aboriginal history and culture. One illustration is the work done by the Kaurna people in South Australia to restore the Tjilbruke track; another is the Brewarrina Museum. The Commission recommends that government and appropriate heritage authorities negotiate with Aboriginal communities and organisations in order to support such Aboriginal initiatives.\(^{58}\)

This Recommendation appears to have been implemented. On 31 March 2015, the Australian Government announced a new approach to funding Indigenous arts and languages. The Indigenous Visual Arts Industry Support (‘IVAIS’), Indigenous Culture Support (‘ICS’), Indigenous Languages Support (‘ILS’) programs, and the Indigenous Employment Initiative (‘IEI’) have been consolidated into the Indigenous Languages and Arts (‘ILA’) and Indigenous Visual Arts Industry Support. The Government has stated that in 2015-16, it will provide more than $43 million to support Indigenous arts and languages through these programs.\(^{59}\)

A new Indigenous Advancement Strategy (‘IAS’) began on 1 July 2014 and replaced more than 150 individual programmes and activities with five flexible, broad-based programmes.\(^{60}\) The total Indigenous-specific funding managed by the Department of Prime Minister and Cabinet is $8.6 billion, consisting of $4.9 billion over four years to the IAS and $3.7 billion allocated through National Partnership Agreements, Special Accounts and Special Appropriations.

State and Territory governments administer funding and grants programs to support and protect various aspects of Indigenous culture. For example:

- The New South Wales Office of Environment and Heritage has adopted a policy in relation to the preservation of Aboriginal cultural heritage sites.\(^{61}\)

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\(^{57}\) The Victorian Aboriginal Corporation for Languages was established in 1994. The Tasmanian Aboriginal Centre works to protect Tasmanian Indigenous culture and heritage.

\(^{58}\) See footnote 1, Recommendation 56.

\(^{59}\) These changes were announced on 31 March 2015 by the Minister for the Arts, Senator the Hon George Brandis QC - see &lt;http://arts.gov.au/indigenous&gt;.

\(^{60}\) Details of the Indigenous Advancement Strategy are available at &lt;http://www.dpmc.gov.au/indigenous-affairs/about/indigenous-advancement-strategy&gt;.

\(^{61}\) The policy is available at &lt;http://www.environment.nsw.gov.au/resources/cultureheritage/09122ACHOpPolicy.pdf&gt;.
This policy does not specifically deal with the issues raised in the Recommendation in relation to the recording and making known aspects of Indigenous history. Rather, the policy deals with the preservation of various Indigenous cultural heritage sites which consists of places and items that are of significance to Indigenous people because of their traditions, observances, customs, beliefs and history. Some of the issues which the policy deals with include conserving significant aboriginal cultural heritage and developing partnerships and enhancing communication. The NSW Government has also taken steps to ensure that official events and ceremonies incorporate Aboriginal cultural practices and ceremonies.\(^{62}\)

- In Western Australia the Department of Culture and the Arts has an Indigenous Arts Grant Program open to Indigenous arts activity in all art form areas.\(^{63}\)
- The Queensland Department of Aboriginal and Torres Strait Islander Partnerships administers various funding and grants programs.\(^{64}\)
- The work of Aboriginal Heritage Tasmania (a division of the Department of Primary Industries, Parks, Water and Environment) includes working with the Tasmanian Indigenous community on community lead projects and improving respect and understanding for Indigenous culture through education.\(^{65}\)

5. LOCATION OF AND ACCESS TO RCIADIC RECORDS (RECOMMENDATION 57)

**Recommendation 57:** That Governments agree that:

- The records of the Commission be held in archives in the capital city of the state in which the inquiry, which gathered those records, occurred; and
- A relevant Aboriginal body, for example the Aboriginal Affairs Planning Authority in the case of Western Australia, be given responsibility for determining access to the material jointly with the normal authority for determining such matters.\(^{66}\)

The first part of this Recommendation (i.e. location of RCIADIC records in the capital city of the State in which the inquiry, which gathered those records, occurred) has been implemented.\(^{67}\)

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\(^{66}\) See footnote 1, Recommendation 57.


5. ABORIGINAL SOCIETY TODAY (RECOMMENDATIONS 48-57)
The National Archives of Australia has a detailed research guide into the RCIADIC. All the records of the RCIADIC were created under Letters Patent issued by the Governor-General and are therefore Commonwealth records. All of the States and the Northern Territory also issued Letters Patent for those parts of the inquiry directed towards deaths which occurred in custody in their respective jurisdictions.

In brief, the arrangements for public access to the Commission’s records are as follows:

- Records which were publicly available at the time that the Royal Commission was in operation, such as transcripts of open hearings, are publicly available.
- Individuals and organisations may obtain access to submissions or exhibits which they placed before the Royal Commission, and to related transcripts.
- Records subject to non-publication directions by a Royal Commissioner (including suppressed names) will not be considered for public access until they enter the open access period (unless the person requesting the records is also the person who provided the particular evidence).
- Access to other records will be provided at the discretion of the Department of the Prime Minister and Cabinet (which has administrative responsibility for the records) in consultation with relevant government agencies and Aboriginal organisations. Before release, records will be assessed for possible Aboriginal or Torres Strait Islander cultural sensitivities, and for possible State or Territory government sensitivities.

The second part of the Recommendation (i.e. a relevant Aboriginal body be given responsibility for determining access to the material jointly with the normal authority) does not, however, appear to have been implemented.

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