Chapter 27 of the National Report, the Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) examined approaches that may be implemented to achieve a more meaningful application of the principle of self-determination for Indigenous people in Australia.

The Recommendations contained in Chapter 27 of the National Report built on the discussion in Chapter 20 on the history of the Federal Government’s policy of self-determination. Importantly, the National Report noted the absence of agreement on the meaning of self-determination between Governments and Indigenous organisations and communities administering Aboriginal affairs or programs, despite the movement towards self-determination as a key government policy for Aboriginal affairs.¹

The RCIADIC emphasised the importance of increasing Indigenous participation and involvement in decision-making to transform Aboriginal affairs. The National Report noted that government can achieve this 'not so much by "doing" things - more by letting go of the controls'.² As such, many of the Recommendations are directed at removing barriers to Aboriginal people, organisations and communities participating in activities, programs and decision-making which impacts them.

This Chapter examines the extent to which these Recommendations have been implemented by Federal, State and Territory governments in legislation and policy. However, the most significant development in this area has been the Commonwealth ‘Intervention’ or “Emergency Measures” in Northern Territory in 2007 and the Stronger Futures policy implemented in 2010 by the Commonwealth in response to the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse titled ‘Ampe Akelyernemane Meke Mekarle: Little Children are Sacred.’¹ The sweep and intrusiveness of the NT Intervention brings into question any earlier movements towards self-determination for Indigenous communities, particularly in the Northern Territory.

1. Guidelines for procedures and processes

Recommendation 188: That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.

² Ibid [27.9.2].
In the National Report, the RCIADIC noted that Indigenous community-controlled organisations are the most effective and well-equipped to deal with issues of concern as they are more likely to receive support from Indigenous people themselves. However, at the date of the National Report, the approach for addressing and promoting self-determination was rather fragmented, as there was a wide range of agencies and organisations dealing with Indigenous people, some with little Indigenous involvement. The RCIADIC particularly supported the development of written understandings between Indigenous organisations and other agencies about the definition of self-determination and the processes that will be utilised to foster that principle.

1.1 Commonwealth

The Council of Australian Governments entered into the National Indigenous Reform Agreement (‘Closing the Gap’) which became effective from 2 November 2012. This agreement identifies strengthening leadership amongst Indigenous people as a critical component of Closing the Gap. The Agreement states that "Indigenous people need to be engaged in the development of reforms that will impact on them." Further Principle D2 for Service Delivery for programs and services for Indigenous Australians states that engagement should be central to the design and delivery of programs and services.

The Commonwealth has also nominated the Australian Indigenous Leadership Centre (AILC) as a key strategy. The AILC was founded in 2001 by Indigenous leaders and is the only national provider of accredited Indigenous leadership program.

There have been a variety of efforts to implement this Recommendation on a State level, the highlights of which are set out below.

1.2 Queensland

In Queensland, there have been legislative and policy shifts to incorporate self-determination into the implementation of policy. The Environmental Protection Act 1994 (Qld) is to be administered with consultation with, and having regard to the views and interests of, Aboriginal and Torres Strait Islanders as well as industry, interest groups and the community generally. Similarly the Community Services Act 2007 (Qld) states that community services should have regard to Indigenous tradition and Island custom as well as the disadvantage historically experienced by Indigenous communities. On a policy level promotion of self-determination has been included in broad committees as well as discrete areas that particularly affect Aboriginal people. A joint Department of Aboriginal and Torres Strait Islander Policy and QPS Steering Committee have been formed to take over responsibility for the

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5 Environmental Protection Act 1994 (QLD) s 6.
6 Community Services Act 2007 (QLD) s 5(f).
function of Aboriginal and Torres Strait Islander Policing. This Committee has a direct function in developing the Queensland Aboriginal and Torres Strait Islander Police program which provides an effective policy presence within communities.

Self-determination is included in the objectives of the Health Department. A draft Strategic Policy Framework entitled “Transition to Aboriginal and Torres Strait Islander Community Control of Health in Queensland” was based on the principle of self-determination and gave Aboriginal and Torres Strait Islander people control over the way services are provided in their community. An Aboriginal Community Controlled Health Service means an incorporated Indigenous organisation that was initiated by and is based and governed by a local Indigenous body elected by the local Indigenous community, which delivers holistic and culturally appropriate health services to the community which controls it.

In terms of land management, the Wet Tropics Management Authority often liaises with Rainforest Aboriginal people of the Wet Tropics World Heritage Area for matters of policy and protocol development and the preparation of grants for Rainforest Aboriginal organisation for on ground management involvement. This focus on equitable participation in decision making represents self-determination in services for Indigenous people but also involvement in polices that particularly affect them.

1.3 Western Australia

Western Australia had some pre-existing legislation and policy encouraging self-determination prior to the RCIADIC. The Aboriginal Affairs Planning Authority Act 1972 (WA) (“AAPA”) was enacted for the purpose of establishing an Aboriginal Affairs Planning Authority and Aboriginal Affairs Advisory Council to provide consultation for the economic, social and cultural advancement of persons of Indigenous descent in Western Australia. The purpose of the Advisory Council was to advise the Authority on matters relating to the interests and well-being of Indigenous people and was made up of people of Indigenous descent chosen by persons of Indigenous descent. Under AAPA, the Department of Aboriginal Affairs took a lead role in establishing a Working Party to examine issues relating to effective community management. The Aboriginal Affairs Coordinating Committee has endorsed the development of a coordinated, interagency strategy to build the capacity of Indigenous individuals, families and communities.

At a regional level,

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8 Ibid.
10 Ibid.
12 Aboriginal Affairs Planning Authority Act 1972 (WA).
13 Aboriginal Affairs Planning Authority Act 1972 (WA) s 18.
the Western Australian Regional Development Council has a priority the development of leadership with Indigenous people being well represented.\textsuperscript{15} A key outcome for this priority is the encouragement of Indigenous leaders to develop local solutions to Indigenous challenged and enhance representation of Indigenous people at all levels of government policy development and service delivery.\textsuperscript{16}

At a local level in WA, the *Aboriginal Communities Act 1979* (WA) granted incorporated communities the power to make laws relating to the community lands in regards to matters that were necessary or convenient for the purpose of securing decency, order and good conduct on the community lands.\textsuperscript{17} This included the prohibition of alcohol, the regulation of admission of persons, vehicles and animals and the prevention of damage to the grounds of the community lands.\textsuperscript{18}

Further, the *Children and Community Services Act 2004* (WA) states that Indigenous people should be allowed to participate in the protection and care of their children with as much self-determination as possible.\textsuperscript{19} A number of government departments in WA have also made significant effort to implement this principle into policy development. These are outlined in the *Report on Implementation of the National Report of RCIADIC (WA Implementation Report)* published in 2000 and include the following initiatives which are remain active at the time of writing:

- ARTSWA - maintaining representation of Indigenous artists and establishing consultation processes for an Aboriginal Arts Policy.

- Conservation and Land Management (CALM) - negotiating in relation to native title claims and regional forest agreements.

- Department of Commerce and Trade - obtains comment from the Aboriginal Economic Development Council for all proposed programs targeting Indigenous people.

- Department of Education Services - policy advice is tendered through the Aboriginal Education and Training Council.

- Department of Family and Children's Services - the Department has in place a strategic plan for Indigenous services including high level Indigenous employees, including a member of the executive and an Aboriginal Advisory Committee that advises the executive on Indigenous issues.


\textsuperscript{16} Ibid.

\textsuperscript{17} *Aboriginal Communities Act 1979* (WA) s 7.

\textsuperscript{18} Ibid.

\textsuperscript{19} *Children and Community Services Act 2004* (WA) s 13.
Department of Resources Development - in facilitating State Agreements has required the proponents to enter into negotiations with the Traditional Land Owners.

Department of Training - this Department operates within a number of State and national frameworks that express a commitment to self-determination and a partnership approach.

Education Department of Western Australia - has established 17 Education District Councils of Aboriginal Education, the State Aboriginal Education Council and the Aboriginal Early Childhood Education Advisory Committee.

Ministry of Housing - The Aboriginal Housing Board is the principal policy and planning body in relation to Aboriginal housing issues and is also a member of the Ministry of Housing Board of Commissioners.

Ministry of Justice - works closely with the State Aboriginal Justice Council on the development of an Aboriginal Justice Plan. The Ministry also has the benefit of the Aboriginal and Policy Services Branch which provides advice and consultation on Ministry policy and how it relates to Indigenous people.\(^{20}\)

1.4 Australian Capital Territory

The ACT has a number of forums allowing the local Indigenous community to engage with development and delivery of policies and programs. The Aboriginal and Torres Strait Islander Elected Body represent Indigenous interests for a period of three years.\(^{21}\) The Elected Body monitors and reports on the effectiveness of programs conducted by government agencies for Indigenous people and recommend any reasonable action it considers necessary to protect Indigenous cultural material considered sacred or significant when asked by a government agency.\(^{22}\) The ACT Multicultural Strategy 2010-2013 has also aimed to ensure the representation of Indigenous people on panels, committees and advisory roles.

The ACT Government has focussed on building leadership capacity of the ACT Indigenous community through a number of programs. These include:

- The United Ngunnawal Elders Council - a body providing advice to the ACT Government in relation to heritage and connection to land matters for the Ngunnawal people.

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\(^{20}\) For a detailed summary of the policies, see *WA Implementation Report*, above n 14, 110.


\(^{22}\) Ibid 51.
Elders Camps - the 2011-2012 budget provided funding of $36,000 for two Aboriginal Elders Camps which focussed reconciling different Indigenous tradition custodian groups that make up the regional area of the ACT.

Aboriginal and Torres Strait Islander Leadership Grants - this grant provides funding support to Aboriginal and Torres Strait Islander people for both formal and informal leadership development for individuals.

Aboriginal and Torres Strait Islander Cultural Grants - aims to showcase the culture of Indigenous peoples living in the ACT through projects that contribute to sustainable communities by promoting cultural diversity.

ACT Genealogy Project - builds the capacity of Indigenous people from the ACT to know and tell histories and identify family connections.23

1.5 Victoria

The Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody (Victorian Implementation Review) was published in October 2005 and states that this Recommendation has been fully implemented.24 This was based on advice from Aboriginal Affairs Victoria - Department for Victorian Communities which noted that it is government policy to support Indigenous communities in their efforts to become self-managing. To this end, Indigenous organisations are funded to deliver programs and Indigenous representatives are included in government advisory committees, taskforces and planning forums.25 From 2000 to 2005, the Government developed a number of strategies such as the Koori Services Improvement Strategy, and the Indigenous Partnership Strategy.26 These policies help create a shared vision and agreed priorities for government and community action, establish appropriate monitoring systems, develop stronger and more sustainable approaches to Indigenous disadvantage and empower local communities.27 Partnerships have been developed at a local level through to State wide bodies such as Premier's Aboriginal Advisory Council (‘PAAC’) and Aboriginal

23 Ibid 51-2.
25 Ibid 280.
26 Ibid.
27 Ibid 281.
Victoria was also an active partner in the Shepparton COAG whole-of-government trial which focused on ensuring an equitable relationship between Governments and Indigenous communities, ensuring communities could set their own directions and ensuring government was easier to work with. This was achieved through an Aboriginal Community Facilitation Group and a COAG steering group.

The Victorian Implementation Review also highlighted the existence of the Victorian Aboriginal Affairs Framework 2013-2018 (‘VAAF’) formerly the Victorian Indigenous Affairs Framework. VAAF is the result of extensive consultation with Indigenous Victorians and represents a clear framework for working together to close the gap. It incorporates an overarching framework for inclusion plans which document how the Victorian Government will improve government access for Aboriginal people. The Framework states as one of the guiding principles for Aboriginal Affairs that "closing the gap can only be achieved through a partnership built on genuine engagement with Aboriginal people and organisations across Victoria".

The Victorian Implementation Review however also noted that the broad nature of the RCIADIC’s Recommendation lacked a clear definition of ‘self-determination’ and as a result implementation and monitoring is difficult. This is further noted in the Government Response to the Charter of Human Rights and Responsibilities Act 2006 (VIC) (‘The Charter’). The Charter sets the basic rights, freedoms and responsibilities of all people in Victoria and states it is founded on a number of principles including that "human rights have a special importance for the Aboriginal people of Victoria." A number of sections correspond specifically to Aboriginal people such as section 19(2) which recognises their distinct cultural rights and mandates that they must not be denied the right to enjoy their identity and culture, maintain their language, kinship ties and their spiritual, material and economic relationship with the land and waters. The right to self-determination was not included in the original charter however section 44 provided that a review was to be made of the first 4 years of operation and must cause a copy of the review was to be laid before each House of Parliament on or before 2011. This review was to include consideration of whether self-determination should be included in the Charter. The Final Report of the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 was tabled in the Parliament on 14 September 2011 and the Government Response was tabled on 14 March 2012. The Government Response noted the flexible nature of international expressions of the right to self-

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28 Ibid.
29 Ibid 284.
31 Ibid 6.
33 Ibid s 19(2).
34 Ibid s 44.

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determination as well as a lack of clarity of how the right should be understood.\textsuperscript{36} The Government agreed with the Scrutiny of Acts and Regulations Committee that it "would be undesirable to include the right to self-determination in the Charter without greater certainty regarding its meaning and application."\textsuperscript{37}

2. Independence of ATSIC

**Recommendation 189:** That the Commonwealth Government give consideration to constituting ATSIC as an employing authority independent of the Australian Public Service.

In the National Report, the RCIADIC expressed concern that ATSIC staff were public servants, and therefore their primary accountability was to the CEO (appointed by the Minister), as opposed to Indigenous individuals or organisations. In particular the RCIADIC viewed the employment of public servants, and the lack of local teams within regional areas, as risk factors contributing toward centralised bureaucratic determination of program implementation (and little opportunity for local Aboriginal organisations to contest head office perspectives). This Recommendation was not implemented, and ASTIC was abolished with effect from 24 March 2005 by the Howard Government. Until 2013, a significant portion of ATSIC’s work was undertaken by the Department of Families, Housing, Community Services and Indigenous Affairs, now the Department of Social Services. Department employees are members of the APS. However, both Department and the Australian Public Service have developed policies for fostering Indigenous employment in recent years. Following the 2013 Federal election, the Indigenous Affairs portfolio has had a dedicated Minister, and sits within the Department of Prime Minister and Cabinet.

3. Funding Services

**Recommendation 190:** That the Commonwealth Government, in conjunction with the State and Territory Governments, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations and also implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.

**Recommendation 191:** That the Commonwealth Government, in conjunction with the State and Territory Governments, develop means by which all sources of funds provided for or identified as being available to Aboriginal communities or organisations wherever possible be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to the communities and organisations to determine the priorities for the allocation of such funds.


\textsuperscript{37} Ibid [2.13].
**Recommendation 193:** That the Commonwealth Government, in negotiation with appropriate Aboriginal organisations devise a procedure which will enable Aboriginal communities and organisations to properly account to government for funding but which will be least onerous and as convenient and simple as possible for the Aboriginal organisations and communities to operate. The Commission further recommends that State and Territory Governments adopt the same procedure, once agreed, and with as few modifications as may be essential for implementation, in programs funded by those governments.

In the National Report, the RCIADIC expressed concern about the "current confusing and complex funding arrangements which already bedevil Aboriginal communities". It identified a number of issues such as decision making about funding being dominated by government agendas rather than Indigenous communities, the multiplicity of funding sources and overlap between programs, and the inability of communities to plan ahead.

The RCIADIC observed that the process for funding allocation involved Indigenous organisations and communities applying to external bodies, which would be allocated for specific purposes. The source of funding would be responsible for determining what the priorities of a community or organisation were. In the RCIADIC's view, government agencies and departments should not have control of decision making on issues directly affecting Aboriginal people. Rather, communities should be able to negotiate their own agendas and apply funding accordingly. The RCIADIC therefore supported the implementation of a system of block grant funding, in order to grant Aboriginal communities and organisations as much freedom as possible to decide where funding should be spent and set their own priorities. In addition, the RCIADIC recommended the provision of a minimum level of funding on a triennial basis, to enable communities to plan ahead and therefore achieve long term goals which they set for themselves.

The RCIADIC further recognised that Indigenous communities often receive, or are eligible to receive, funding from a multiplicity of different government agencies, departments and programs (which often overlap). At the time of the National Report communities frequently had to deal with many different bodies (up to 35 in some cases), which was both frustrating and inefficient. It was anticipated that ATSIC would also not provide a consolidated source of funding, and the complexity would remain. Although several funding programs were in existence, they were not actively brought to the attention of Aboriginal organisations and communities. It was up to the communities themselves to do their research and seek out funding. For these reasons, the RCIADIC's view was that if and when possible, funding should be allocated through a single source.

Although the RCIADIC observed the importance of properly managing and accounting for government funds, it was also concerned about the multiplicity of complicated accounting processes required by funding agencies. It recommended that simple, uniform accounting and bookkeeping procedures be developed, in order to increase both efficiency and autonomy of Indigenous organisations.

To date, there is no evidence of a Commonwealth-administered program of block funding as contemplated by Recommendation 190. Triennial funding is available for
some specific groups and areas. For example, the Department of Regional Australia, Local Government, Arts and Sport accepts applications for triennial funding for Indigenous culture, languages and visual arts. However, a minimum or baseline level for triennial funding does not exist. Applicants will be assessed against the following criteria:

- quality and relevance of the applicant’s strategic plan for the funding;
- capacity of applicant to fulfil their plan;
- ability to carry out the activity to a high standard (this will include a consideration of the applicant’s planning, governance and financial management track record); and
- need for funding and provision of a realistic budget.

The requirements are reasonably strict, however unsuccessful applicants may apply for annual funding for their activities.

Funding sources have not been amalgamated into a single source administered by the Commonwealth Government (Recommendation 191). Funding continues to be provided on a departmental or project basis at both Federal and State level. Individual grants are subject to various different requirements, such as different audit conditions. From July 2007 to 2011, funding to Indigenous organisations was administered under 84 different programs, to 820 Indigenous organisations.

Further, accountability for funding, and the regularity and form of reporting is wholly dependent on the requirement of the particular department provided by funding, and the nature of the project itself. OCHREStreams, an Australian Government Department of Health-funded web portal (operated by the Improvement Foundation) has been developed to provide a single online point of reporting for Indigenous health services. Health services are able to extract data from their clinical software and submit it straight to OCHREStreams. OCHREStreams aims to alleviate the reporting burden by reducing the amount of manual data entry required for report submissions. OCHREStreams is being implemented nationally, and currently more than 320 Aboriginal Community Controlled Health Organisations and Aboriginal Medical Services are registered to the portal. The Improvement Foundation has received approval from the Department of Health to continue delivering the portal until 30 June 2017.

Although each of these Recommendations calls for Commonwealth action (in cooperation with the States), Victoria has independently attempted to address some of these issues. Since 2009, the Victorian Department of Human Services and Department of Health have endorsed the Simplifying Funding and Reporting for Aboriginal Community Controlled Organisations (‘ACCOs’) initiative. The initiative includes three key components: flexible funding arrangements, round table reporting and simplification of reporting.
The Departments first implemented flexible funding arrangements in 2010. As part of this initiative, the Department of Health introduced a block funding model which essentially means that categories of funding have been grouped together as a "block" to allow for flexible use of funds across categories. There are now only 3 categories of funding - Aged & Home Care, Acute Health and Drug Services. The Department believes that "this new way of funding provides an Aboriginal organisation with greater freedom in the way funding is allocated within each [new category] to meet the needs of the community". ACCOs may redirect any recurrent health funds between the 3 categories through negotiations with their region, in order to adequately address local priorities. The Department believes that block funding will alleviate the administrative burden of approval processes, and inspire open discussions about service delivery.

Similarly, the Department of Human Services has introduced a “flexible funding” arrangements that also “aim to provide flexibility in the use of funding to ACCOs to further reflect community needs and reduce administrative burden”. The arrangements are available for recurrent funding in the areas of Family and Community Services, and Youth Justice Services. The arrangements allow for funding to be transferred within (but not between) these two categories of services, in order to better meet local needs. The review process for redirecting funds involves close consultation between ACCO staff, and Children, Youth and Families Services regional staff.

In March 2010, the Departments also began implementing Round Table Reporting in regional areas (following successful pilot programs being run in 2009). The Departments provide guidelines relating to the general structure and purpose of the process, however Indigenous organisations and the departments are expected to work together to develop customised round table reporting processes which meet the needs and expectations of individual organisations. The objectives of Roundtable reporting are:

- To provide Aboriginal organisations with an opportunity to talk with their funding body about their organisation and their community, rather than just service provision.
- To improve the consistency and quality of information being reported by Aboriginal organisations and receive feedback.
- To reduce the administrative burden on Aboriginal organisations by using the meeting to address and replace current reporting requirements.

Feedback from regional visits conducted in 2011 highlighted that round table reporting had been received positively by ACCOs and has helped strengthen relationships between ACCOs and departmental staff. However, feedback suggests that the administrative reporting burden on ACCOs has not yet been reduced.

In November 2011, the Departments developed a report entitled "Simplifying Reporting for Funded Aboriginal Community Controlled Organisations". The report set out 15 recommendations for reducing the administrative burden of reporting
requirements on ACCOs. Recommendations included providing training to ACCO staff, monitoring compliance and streamlining data entry and collection processes. The Department of Human Services is currently developing implementation plans for the Recommendations.

4. Delivery of Programs and Services

**Recommendation 192:** That in the implementation of any policy or program which will particularly affect Aboriginal people the delivery of the program should, as a matter of preference, be made by such Aboriginal organisations as are appropriate to deliver services pursuant to the policy or program on a contractual basis. Where no appropriate Aboriginal organisation is available to provide such service then any agency or government delivering the services should, in consultation with appropriate Aboriginal organisations and communities, ensure that the processes to be adopted by the agency in the delivery of services are appropriate to the needs of the Aboriginal people and communities in receiving such services. Particular emphasis should be given to the employment of Aboriginal people by the agency in the delivery of such services and in the design and management of the process adopted by the agency.

The RCIADIC acknowledged the importance of empowering Indigenous people at a local level to determine what policies, programs and process should apply to their communities. The RCIADIC noted the wide spectrum of control and management of Indigenous agencies; some agencies are controlled and managed by Indigenous people, while other agencies have little Indigenous involvement.

The RCIADIC further noted the evolution of organisations controlled by Indigenous people as being one of the most remarkable developments since the policy of self-determination was introduced. The National Report emphasised that Indigenous community controlled organisations receive the greatest support from Indigenous people as they serve Indigenous interests including legal rights, healthcare, childcare, Indigenous culture, arts and crafts, land ownership and leases. The RCIADIC noted that decisions that are made by Indigenous-run organisations enable Indigenous people to determine cultural, social and financial priorities.

4.1 Commonwealth

The Commonwealth and States have implemented this broad and aspirational policy in varying ways. The Commonwealth's Australian Public Service Commission has implemented a policy titled 'Australian Public Service Indigenous Employment Strategy' which aims to foster indigenous employment within the Australian public service and the Department of Social Services (formerly FaHCSIA) maintains a strategic plan on indigenous employment, titled 'Implementation for Aboriginal and Torres Strait Islander Workforce Strategy 2010-2012.'

The National Indigenous Reform Agreement was entered into by the Commonwealth and each of the States and Territories in 2012 with the intention of 'closing the gap' of Indigenous disadvantage. An element of the Agreement is the Remote Engagement and Coordination Implementation Plan which intends to increase
Indigenous employment and professional skills and delivering Government funded services. This Agreement sets out six core Service Delivery Principles, as follows:

1. Priority principle: Programs and services should contribute to Closing the Gap by meeting the targets endorsed by COAG while being appropriate to local community needs;

2. Indigenous engagement principle: Engagement with Indigenous men, women and children and communities should be central to the design and delivery of programs and services;

3. Sustainability principle: Programs and services should be directed and resourced over an adequate period of time to meet the COAG targets;

4. Access principle: Programs and services should be physically and culturally accessible to Indigenous people recognising the diversity of urban, regional and remote needs;

5. Integration principle: There should be collaboration between and within Governments at all levels and their agencies to effectively coordinate programs and services; and

6. Accountability principle: Programs and services should have regular and transparent performance monitoring, review and evaluation.

The Australian Public Service Commission also manages the Australian Public Service Indigenous Employment Strategy. This strategy (in place until 30 June 2016) supports Australian Public Service agencies to improve their Indigenous employment outcomes.\(^{38}\) Since 2006, the APSC Strategy has recruited 700 Indigenous Australians into the APS through its Pathways to Employment program. The Strategy has also provided targeted learning and development programs to over 1,700 Indigenous APS employees resulting in a substantial reduction in the gap between APS staff overall and Indigenous APS staff.\(^{39}\) The Strategy encompasses an Indigenous Specific talent development program to address the underrepresentation of Indigenous Australians in key APS leadership roles as well as an APS Indigenous Employment and HR Forum to explore a range of issues regarding Indigenous employment in the APS. The Commission has also released a Building and Indigenous Employment Strategy information kit to assist Commonwealth agencies to develop their own strategies.\(^{40}\)

Under the "Closing the Gap" reform agenda in 2008 the Federal Government along with all State and Territory governments (except Tasmania) committed to increase


\(^{39}\) Ibid.

\(^{40}\) Ibid.
Indigenous representation in the public sector to 2.6% by 2015. The States have individually established various independent initiatives to address this issue.

4.2 Northern Territory

The Northern Territory government entered into the National Partnership Agreement on Stronger Futures (‘Agreement’) with the Commonwealth Government in 2012. The Agreement establishes a ten year commitment to support COAG's seven building blocks to Close the Gap. Relevant initiatives of this Agreement included building the capacity of ACCOs, developing public sector traineeships and assisting school leavers. According to the NT Employment Strategy 2012-2015, increasing Indigenous workforce participation is a priority.

4.3 The Australian Capital Territory

The ACT Government Community Services Directorate in consultation with the ACT Public Service Aboriginal and Torres Strait Islander Staff Network and the Aboriginal and Torres Strait Islander Elected Body consulted on the development of an Employment Strategy for Aboriginal and Torres Strait Islander people. The Employment Strategy aims to attract and retain Indigenous people to the ACT public service through enhanced education and training opportunities. The commitment of the ACT government is to more than double the employment of Indigenous people across the Service by 2015.

4.4 New South Wales

The NSW Ministerial Taskforce on Aboriginal Affairs report dated March 2013 emphasises building the capacity of Indigenous non-government organisations to deliver services to local communities. The Taskforce recommended the implementation of a local decision making model that would strengthen the Indigenous voice in issues that affect them and develop community leadership and governance. Further the Taskforce recommended the development of an Indigenous NGO capacity building strategy to ensure that such NGOs are functional, sustainable and effective and there is an increased Aboriginal workforce capacity across government funded NGOs. Finally the Taskforce recommended an increased focus within the Public Service Commission on Indigenous employment.

41 Ibid.
46 Ibid.
and career development and Indigenous cultural competence in NSW public reforms.  

### 4.5 Queensland

In addition to the initiatives described above at Recommendation 188, the Queensland government has implemented a Learning Earning Active Places Strategy (‘LEAP’) from 2011-2014 that outlines how the government would work with Aboriginal and Torres Strait Islander peoples to improve access to education, employment, health and housing opportunities. Relevant employment strategies include providing mentoring and professional development support for Indigenous workers in the community services sector, training and support of Indigenous managers and increasing the number of Indigenous Queenslanders with higher level qualifications.  

### 4.6 Victoria

The Victorian Implementation Review listed this Recommendation as fully implemented. Aboriginal Affairs Victoria (‘AAV’) saw Recommendations 190-204 as a suite designed to achieve the overarching goal of self-determination. The Review listed a number of key policies that represent steps towards that goal:

- the Department of Human Services (‘DHS’) *Victorian Aboriginal Health Outcomes Agreement* - the negotiation of principles governing the relationship between the DHS and Indigenous community controlled health services and the establishment of a locally based community led planning approach;

- the DHS *Koori Services Improvement Strategy (KSIS)* - an expanded ‘whole of department’ Indigenous policy framework;

- *Reconciliation and Respect* - the development of a whole of government approach in Indigenous affairs policy development, coordination and service delivery and increased recognition and respect for Indigenous people; and

- the *Indigenous Partnership Strategy* and whole of government policy frameworks for priority issues - empower local communities and create a shared visions and agreed priorities for action within the government and community sectors.

In addition, there are many ACCOs in Victoria which are responsible for implementing policies and services that affect Indigenous people. The Victorian

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47 Ibid.

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government has invested in capacity building for such organisations through various funding initiatives.\textsuperscript{49}

Such initiatives are supported by the Department of Human Services Framework which has emphasised ACCOs as a priority. The Framework lists 6 key deliverables for developing this sector:

1. Supporting the infrastructure needs of ACCOs with a focus on workforce development;
2. Supporting the ACCOs to strengthen the workforce capabilities of direct service delivery staff in human services;
3. Support the transition of Aboriginal Housing Victoria to own and manage its own property portfolio and assist Aboriginal Housing Victoria to become a Registered Housing Association;
4. Support the development of partnerships and relationships between Aboriginal Community Controlled Organisations and mainstream organisations;
5. Promote disability inclusion within ACCOs; and
6. Establish annual Aboriginal Human Services Awards and a biannual Indigenous human services newsletter to recognise good practice in service delivery.\textsuperscript{50}

The AAV also stated that the hierarchy prioritising Indigenous organisations has been adopted across Victorian government.\textsuperscript{51}

4.7 Western Australia

There is little current or published information regarding Western Australian policy in implementing this Recommendation after the 2000 report. The WA Government's Implementation Report ('WA Implementation Report') highlighted a number of areas where the Recommendation was being implemented. The Aboriginal Affairs Department builds and supports partnerships between Indigenous people, Government and the broader community. This is primarily achieved through the facilitation of a number of committees including:

- The Aboriginal Lands Trust (statutory committee);
- The Aboriginal Cultural Material Committee (statutory committee);

\textsuperscript{49} Victorin Implementation Review, above n 24, 292.
\textsuperscript{51} Victorian Implementation Report, above n 24, 295.
- The Aboriginal Justice Council;
- Regional Aboriginal Justice Councils;
- The Commission of Elders;
- The Intergovernment Working Group on Environmental Health;
- The Aboriginal Affairs Coordinating Committee;
- Interagency Steering Committees.\(^{52}\)

A number of WA government departments have implemented strategies to increase participation of Indigenous people. These include:

- Conservation and Land Management (‘CALM’) - promoted Aboriginal Tourism enterprise opportunities on conservation lands managed by CALM. They have also allocated Sandalwood harvesting contracts to Aboriginal Communities;
- Department of Commerce and Trade - implemented a number of initiatives to build the capacity of Indigenous corporations such as the Client Based Business Planner Scheme, funding seminars and conferences for Indigenous organisations, maintaining a database of Indigenous consultants and establishing a Western Australia Indigenous Traders Network to promote the services of Indigenous organisations;
- Department of Education Services - implemented through the Aboriginal Education and Training Council which is made up of a majority Indigenous members and makes effort to secure the services of Indigenous consultants;
- Department of Family and Children's Services - established key senior Indigenous positions, employs Senior Aboriginal Officers to design and procure services, purchases services from Indigenous organisations and requires all service providers to ensure service provisions reflects the cultural makeup of the target group;
- Department of Training - has resource agreements with independent Indigenous community based training providers, provides advice to Indigenous organisations to establish or maintain their status as a registered training organisations, maintains and supports Indigenous employment, education and training committees aligned with TAFE colleges and campuses as well as funding the employment of Indigenous staff and places

\(^{52}\) *WA Implementation Report*, above n 14, 121.
Indigenous economic and employment development officers with Indigenous organisations across WA.\textsuperscript{53}

- Department of Health - gives preference to purchasing services from relevant Indigenous organisations, engages in joint regional planning processes and now has a shared State agenda for improving Indigenous health, the \textit{Western Australia Aboriginal Health Strategy};

- Ministry of Housing - the Aboriginal Housing and Infrastructure Unit is predominantly staffed by Indigenous people and administers programs developed by the Aboriginal Housing Board, opportunities linking construction training to government and private sector projects as well as training incentives for builders;

- Ministry of Justice - Indigenous agencies and tutors for Indigenous prisoners are employed on a contract basis in prisons wherever possible, Indigenous agencies also provide culturally appropriate programs to detainees and Community Based Services contracted over 40 Indigenous communities to manage community based sentencing options;

- Western Australian Police Service - include within their Purpose and Direction mission statement a strategic intention to develop action based on local knowledge, experience and contacts and to develop purposeful partnerships with other organisations and communities to assist with the self-determination of Aboriginal people with regard to police practices, policies and procedures.\textsuperscript{54}

5. Performance Indicators

\textbf{Recommendation 194}: That Commonwealth, State and Territory Governments, in negotiation with appropriate Aboriginal communities and organisations, agree upon appropriate performance indicators for programs relevant to Aboriginal communities and organisations. The Commission further recommends that governments fund Aboriginal organisations and communities to enable appropriate level of infrastructure and training as is required to develop, apply and monitor performance indicators.

At the time of the National Report, a wide range of agencies dealt directly with Indigenous people, however no mainstream process had been adopted for the delivery of services. There had been little agreement in the process for monitoring performance and the National Report recognised that Indigenous organisations had often resented demands to demonstrate 'achievement'.\textsuperscript{55} Recommendation 194 aimed to develop agreed-upon indicators to encourage better monitoring practices. It further aimed to reduce the burden on Indigenous organisations and communities

\textsuperscript{53} Ibid 123.
\textsuperscript{54} Ibid 122-8.
\textsuperscript{55} \textit{National Report}, above n 1, [27.4.30].
through the provision of funding to support monitoring requirements. To date, there does not appear to be any standard set of KPIs which apply across funded projects. In fact, if KPIs are included in funding agreements at all, they vary from department to department and project to project. Overall there does not appear to be any standard set of KPIs that have been developed which would apply consistently to all funded projects.

5.1 Commonwealth

The Commonwealth government has taken steps to streamline appropriate performance indicators through its Indigenous Advancement Strategy (IAS). The IAS began on 1 July 2014. This has resulted in five broad based programmes whereby organisations and individuals apply for funding under one set of guidelines through one application form with a single Head Agreement. These programmes are:

- Jobs, Land and Economy;
- Children and Schooling;
- Safety and Wellbeing;
- Culture and Capability; and
- Remote Australia Strategies.

The funding application form lists suggested KPIs, however tailored alternatives may be selected to meet specific community needs.

In addition, in 2009, the Commonwealth Government made a commitment to reduce the reporting burden faced by Aboriginal and Torres Strait Islander Health Services. Importantly, the National Advisory Group on Aboriginal and Torres Strait Islander Health Information and Data undertook the development of national health KPIs. These national KPIs continue to contribute to the evidence used to evaluate and determine funding and program development.

5.2 Victoria

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57 Ibid.
In Victoria, the Victorian Aboriginal Affairs Framework 2013-2018 (‘VAAF’) has been implemented to establish more rigorous performance management and reporting framework.\(^{61}\) The VAAF is the result of extensive consultation with Indigenous Victorians and provides a clear structure for working together to close the gap in Indigenous disadvantage. The VAAF uses specific KPIs to measure performance and movement towards outcomes.\(^{62}\)

5.3 Western Australia

The WA Report in 2000 stated that this Recommendation had, as of the date of issue, been "partially implemented".\(^{63}\) It noted that performance indicators had been developed in the provision of some services relating to municipal infrastructure in discrete Indigenous communities, however there had not been widespread funding to develop, apply and monitor performance indicators for other services.\(^{64}\)

5.4 Queensland

Up until 2012, the Queensland Department of Aboriginal and Torres Strait Islander Affairs released quarterly reports for discrete Indigenous communities with data on key indicators, such reports ended in 2012 and there is limited information on the development of these indicators.\(^{65}\) No further published policy in relation to this Recommendation could be found. The Aboriginal and Torres Strait Islander Health Performance Framework reports annually to find areas of improvement in the health of Indigenous people including such indicators as "efficiency, responsiveness, accessibility, continuity and sustainability".\(^{66}\) However, policy implementing frameworks for other services appears to be lacking.

5.5 Remaining States and Territories

This Recommendation does not appear to have been implemented in South Australia, the Australian Capital Territory, New South Wales, the Northern Territory or Tasmania.

6. Government Payments to Aboriginal Organisations

**Recommendation 195:** That, subject to appropriate provision to ensure accountability to government for funds received, payments by government to Aboriginal organisations and communities be made on the basis of triennial rather than annual or quarterly funding.

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\(^{61}\) Victorian Aboriginal Affairs Framework, above n 30, 27.

\(^{62}\) Ibid.

\(^{63}\) WA Implementation Report, above n 14, 129.

\(^{64}\) Ibid.


The RCIADIC recognised that, when given adequate funding and placed in a position where they are respected service deliverers, Indigenous organisations have been largely more successful than their mainstream counterparts in delivering services to Indigenous people. However the National Report also noted that the performance of such organisations suffers because of the planning constraints of funding on annual basis. To this end, the RCIADIC recommended that funding shift from an annual to triennial basis in order to provide Indigenous organisations with the capacity to forward plan particularly in the areas of staff retention and development of long term strategies. This Recommendation does not appear to have been implemented uniformly across the Commonwealth, States or Territories but rather on a piecemeal basis.

6.1 Commonwealth

The Commonwealth now primarily funds organisations through the Indigenous Advancement Strategy. Through the Strategy, $4.5 billion will be granted over the next 4 years. This funding however will be awarded through an annual (rather than triennial) open, competitive grant funding round.

6.2 States and Territories

Triennial funding has also largely not been implemented on a State or Territory basis. While some initiatives such as the Indigenous Culture Support program (‘ICS’) have engaged in triennial funding this has been inconsistently applied. For example, in Western Australia, in 2009-2010 to 2011-2012 the Broome Aboriginal Media Association was granted triennial funding to develop music as a medium of cultural transmission for Indigenous people in Broome and the wider community. Triennial funding support has also been given since 2003 to Goolarri Media Enterprises in Broome to support music development in the Kimberley and the Ibijerri Aboriginal & Torres Strait Islander Theatre Co-Op Ltd in Victoria. In 2009-2010 over 100 organisations which also form part of the ICS remained under annual funding including many arts, media and cultural initiatives.

Western Australia has partially implemented Recommendation 195 through the use of forward estimate projection of expenditures. For state agencies that have financial arrangements with Indigenous organisations, projected arrangements may be made on a triennial basis.

At both the Commonwealth level and in Victoria, triennial funding is offered for health services. Again health services must be considered slightly differently. In 2007 to 2008, Commonwealth triennial funding agreements were offered for nine percent of

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67 National Report, above n 1, [27.4.19].
70 WA Implementation Report, above n 14, 130.
health services.\textsuperscript{71} Victoria had planned on a three year basis since 2003 and as such has also been able to offer triennial funding for a significant number of services.\textsuperscript{72}

7. **Explanation and advice regarding funding processes**

**Recommendation 196:** That whilst governments are entitled to require a proper system for accounting of funds provided to Aboriginal organisations and communities, those organisations and communities are equally entitled to receive a full explanation of the funding processes which are adopted by governments. The Commission recommends that governments ensure that Aboriginal communities and organisations are given prompt advice, in writing and in plain English or, where appropriate, in Aboriginal languages, as to decisions concerning funding applications and as to financial and other matters relevant to the assessment of applications for funding made by those organisations and communities so as to enable those organisations and communities to make appropriate planning decisions.

The RCIADIC explained that many Indigenous people have resented the "constant and critical monitoring" which their organisations receive from the government, officials and others.\textsuperscript{73} To increase the transparency and reduce feelings of unfairness amongst Indigenous people, the RCIADIC noted that governments should openly explain their funding processes to allow organisations to appropriately plan and respond to performance requirements.

7.1 **Commonwealth**

At a Commonwealth level, the Indigenous Advancement Strategy offers clear guidelines on the process of selecting successful applicants for annual funding.\textsuperscript{74} Unsuccessful applicants are also able to apply to the Department for feedback following the selection process.\textsuperscript{75} Whether such feedback is available in Aboriginal languages, and whether it is in written or verbal form is unclear.

7.2 **States and Territories**

In some States, funding initiatives do provide guidelines on the process of selecting organisations. For example, the Indigenous Workforce Participation Initiatives Program Funding in the Northern Territory shares guidelines which provide information as to eligibility, priority areas, applying for funding, assessing


\textsuperscript{73} National Report, above n 1, [27.4.22].

\textsuperscript{74} Australian Government, Department of Prime Minister and Cabinet, above n 56.

\textsuperscript{75} Australian Government, Department of Prime Minister and Cabinet, above n 58.
applications and funding administration.\textsuperscript{76} In Queensland the Department of Aboriginal and Torres Strait Island and Multicultural Affairs provides a guide for feedback for Indigenous clients. The Department also provides advice on funding applications including verbal advice and guidelines in plain English. The WA Report indicated that this Recommendation was undergoing implementation in a number of departments including Education, Ministry of Justice, Training and Family and Children Services. Applicants are entitled to seek feedback on their application or through ongoing consultation with Indigenous committees.\textsuperscript{77}

8. 

\textbf{Staff Training in Aboriginal Organisations}

\textit{Recommendation 197:} That ATSIC Councillors and Commissioners at an early stage be encouraged to consult with Aboriginal organisations and communities to develop a program for training staff of Aboriginal organisations and communities in appropriate management and accounting procedures to ensure the efficiency and integrity of the organisations which are cultural appropriate. In particular, there should be a commitment to devising management procedures which provide rules for the relationship, obligations and rights, both individually and as between each other, of directors, managers and staff of Aboriginal organisations.

This Recommendation reflects two concerns in the National Report. Indigenous organisations experienced difficulties because many office bearers, having come from backgrounds of disadvantage, were not experienced in management and accounting and were not equipped navigate the complex bureaucratic frameworks within which their organisations had to operate.\textsuperscript{78} Compounding this difficulty was the fact that, in some instances, when non-Indigenous staff were retained to assist with these tasks, a lack of clarity about their role and obligations made them unwilling to give frank advice to their organisations for fear of being considered disloyal.

ATSIC ceased to exist in 2005, and the available historical information about steps it took to implement this Recommendation before that time is limited. However, in substance, this Recommendation has been implemented to a significant extent.

This Recommendation encompasses:

- providing centrally administered, culturally appropriate programs to train staff of Indigenous organisations and communities in efficient management and accounting procedures; and

- developing documented management procedures for Indigenous organisations that set out the rights, obligations and responsibilities of directors management, and staff respectively.


\textsuperscript{77} WA \textit{Implementation Report}, above n 14, 131.

\textsuperscript{78} \textit{National Report}, above n 1, [27.4.10] - [27.4.12].

17. 

\textbf{THE PATH TO SELF-DETERMINATION (RECOMMENDATIONS 188 - 204)}
In 2006, the Commonwealth Government enacted the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) ("CATSI Act"), a central legislative framework for the incorporation of Indigenous organisations. The CATSI Act documents the powers and duties of officeholders and employees within incorporated Indigenous organisations.\(^{79}\) It also establishes the Registrar of Indigenous Corporations, whose functions include providing advice to people about the management of their corporations and conducting public education on the governance of Indigenous corporations.\(^{80}\) In performing those functions, the Registrar aims to "facilitate and improve the efficiency, sustainability and accountability of Indigenous corporations."\(^{81}\) Corporations incorporated under the CATSI Act must have a majority of Indigenous members and directors, and their incorporation rules are approved by the Registrar.

Indigenous organisations may still incorporate under the various State and Territory legislative frameworks governing incorporated associations, but the Registrar of Indigenous Corporations has noted the ability to take account of Indigenous customs and traditions in the company constitution, and access to training, as advantages of incorporation under the Commonwealth framework.\(^{82}\) Importantly, there is also no registration fee.

Governance training for Indigenous organisations' personnel appears to be a well-developed feature in the educational sector. Accredited programs provided under the auspices of the office of the Registrar of Indigenous Corporations are available at a range of locations around Australia.\(^{83}\) In 2008, the National Indigenous Reform Agreement ("Closing the Gap") entered into by the Council of Australian Governments provided for further initiatives for leadership development in remote areas.\(^{84}\) The Australian Indigenous Governance Institute also provides governance training.\(^{85}\) In the Northern Territory, Commonwealth government funding has enabled a three year NT Aboriginal Governance and Management Program to build the strength and effectiveness of NT Aboriginal organisations and support good governance in Aboriginal communities. That program has been initiated by Indigenous groups, through the Aboriginal Peak Organisations of the NT.

9. **Closing the Gap**

**Recommendation 198:** That governments commit themselves to achieving the objective that Aboriginal people are not discriminated against in the delivery of

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\(^{79}\) Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), p 6-4.

\(^{80}\) Ibid s 658-1(d) and (e).

\(^{81}\) Ibid s 658-5(a).


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essential services and, in particular, are not disadvantaged by the fact that the low levels of income received by Aboriginal people reduce their ability to contribute to the provision of such services to the same extent as would be possible by non-Aboriginal Australians living in similar circumstances and locations.

This Recommendation focuses on prevention of discrimination against Indigenous Australians in the delivery of essential services, particularly because of lower income levels. In 1992, the COAG expressed an equivalent aim: to "ensure that Aboriginal peoples and Torres Strait Islanders receive no less a provision of services to other Australian citizens." The objective has been described as "normalisation" of Indigenous living conditions and access to services, and, by 2009 was expressed more specifically in terms of relevant communities being entitled to "standards of services and infrastructure broadly comparable with that in non-Indigenous communities of similar size, location and need elsewhere in Australia." Since 2008, the National Indigenous Reform Agreement ("Closing the Gap") (NIRA) and associated National Partnership Programs have involved particular government focus on the adequate delivery of essential services to Indigenous people. The Local Government (Financial Assistance) Act 1995 (Cth) also emphasises the importance of the equitable provision of services.

The Recommendation draws a comparison with non-Indigenous Australians living in "similar circumstances and locations". However, it can be appreciated that the disproportionate number of Indigenous Australians living in remote areas is also a contributing factor to the challenges in ensuring equal access to services. Accordingly, programs aimed at ensuring equal access to essential services in remote communities contribute particularly to the implementation of this Recommendation.

9.1 Commonwealth

The National Partnership Agreement for Remote Service Delivery is intended to contribute to raising the standard and range of services delivered to Indigenous families to be broadly consistent with those provided to other Australians in similarly sized and located communities. Overarching Bilateral Indigenous Plans between

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87 Sullivan, above n 86, 3-4. This paper identifies a perceived tension in Indigenous policy in Australia between objectives associated with self-determination and those associated with service delivery: "This era has turned its back on the vision of a semi-autonomous, decolonised and modernised discrete realm for Aboriginal and Torres Strait Islander people, where they would largely manage themselves in culturally appropriate ways. The new era is characterised by the intention to re-engage the State with its Indigenous peoples and normalise their relationships within their communities and with the wider population."


89 NPARSD, above n 84.
the Commonwealth and each State and Territory respectively, as part of the "Closing the Gap" initiative, express similar intentions. Each bilateral agreement sets out specific initiatives of the relevant State and Territory governments aimed at addressing the objectives.

9.2 Northern Territory

In the Northern Territory, the Remote Service Delivery National Partnership Agreement focuses on fifteen priority locations and is complemented by the 2009 'A Working Future' policy, part of a 20-year strategic plan for the Northern Territory known as 'Territory 2030'. However, government reports have been sceptical about the success of the programme to date, particularly in the area of building capacity to improve service delivery in remote communities over the long term.

9.3 South Australia

South Australia has a specific authority responsible for managing the delivery of services to outback communities. In the ACT, an elected body of Indigenous representatives has functions that include oversight of service delivery to Indigenous people. In Western Australia, the Remote Areas Essential Services programme offers essential repairs and maintenance services to remote Indigenous communities.

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90 The "Closing the Gap" targets are in the areas of Early Childhood, Schooling, Health, Economic Participation, Healthy Homes, Safe Communities and Governance and Leadership. All of these are relevant, but the targets relating to early childhood, schooling, health and healthy homes are particularly closely linked to the issue of equitable service delivery. For bilateral agreements, see Council on Federal Financial Relations, National Agreements <http://www.federalfinancialrelations.gov.au/content/national_agreements.aspx>.

91 Ibid. Specific initiatives of Commonwealth and the relevant State or Territory government are set out for each "Closing the Gap" target in the Schedules.

92 Angurugu, Galiwin’ku, Gapuwiyak, Gunbalanya, Hermannsburg, Lajamanu, Maningrida, Milingimbi, Nguiu, Ngukurr, Numbulwar, Umbakumba, Wadeye, Yirrkala and Yuendumu, communities.

93 See Office of the Northern Territory Coordinator-General for Remote Services, Report: June 2011 to August 2012 (2012) 4 <http://www.territorystories.nt.gov.au/bitstream/handle/10070/241806/NTCGRS_fullreport_2012.pdf?sequence=1>; "The final overarching theme is the lack of long term planning by government agencies aimed at building local capacity to sustainably manage their own services. Far too many programs continue to be fragmented, short term and uncoordinated, and are often delivered by non-Indigenous providers operating in competition with Aboriginal organisations and each other. A major proportion of the delivery of services to remote communities (e.g. early childhood, youth and family support) is now outsourced to third party non-Indigenous, not-for-profit organisations who do not receive the level of scrutiny and accountability that might reasonably be expected of multi-million dollar, multi-year contracts. These third parties are not accountable to parliaments and too often are unaccountable to the communities in which they operate. Funds are being diverted to build the capital base and operational capacity of non-resident agencies rather than funding and building the skills and capabilities of local Aboriginal people and organisations. The questions which must be asked are: what will the long term effect be of this 'confetti approach' to funding non-resident organisations on remote Aboriginal communities? What long term employment options, skills base, organisational capacity and governance capability will exist in these remote towns in ten years from now if this approach is allowed to continue?".

94 The Outback Communities Authority is required both to manage the provision of public services in outback communities and to "promote improvements in the provision of public services and facilities to outback communities". See Outback Communities (Administration and Management) Act 2009 (SA) s 6(1).

95 Aboriginal and Torres Strait Islander Elected Body Act 2008 (ACT) s 8(f) to (h).
in Western Australia, however little information was available about other relevant initiatives.\footnote{96}

\section*{9.4 Victoria}

In Victoria, the high importance of access to services has been acknowledged in a 2013 headline Indigenous policy document, with obligations placed on each government department to report on the issue.\footnote{97} In Tasmania, the bilateral agreement acknowledges the size and limited resources of the jurisdiction and the comparatively small size of the Indigenous population.\footnote{98} Relevant government initiatives are listed which are often of broader application but will assist Indigenous people.\footnote{99}

\section*{9.5 Other States and Territories}

Legislative provisions directly providing for equitable and non-discriminatory service delivery have been enacted in Western Australia, New South Wales and South Australia.\footnote{100}

By its very existence, the "Closing the Gap" initiative acknowledges that the Federal Government of the time had considered the issue of unequal service delivery underlying this Recommendation and found significant need for improvement. Although they do not specifically reference the implementation of this Recommendation, it is clear that the current Federal and State government initiatives and programmes do aim to assist and support improvements in the provision of services such as health, education and housing to Indigenous Australians.

The existence of these programmes provides evidence of a strong commitment to the aim identified in this Recommendation. However, as identified above in relation to the Northern Territory, there may be concern about the level of success in implementing the objectives.\footnote{101} For example, the Productivity Commission's most recent progress report on the "Closing the Gap" initiative indicates regression, rather than progress, in the headline indicator "Access to clean water and functional

\begin{footnotes}
\footnote{96}{The Western Australian National Partnership Agreement identifies specific areas and initiatives for Western Australia. See Commonwealth of Australian and Western Australia, \textit{Overarching Bilateral Indigenous Plan} <http://www.federalfinancialrelations.gov.au/content/npc/health_indigenous/indigenous-reform/WA.pdf>. However, there was limited information available on their implementation.}
\footnote{97}{\textit{Victorian Aboriginal Affairs Framework}, above n 30.}
\footnote{99}{Ibid 11-62.}
\footnote{100}{Aboriginal Affairs Planning Authority Act 1972 (WA) s 42; Local Government Act 1993 (NSW) s 8; Local Government Act 1999 (SA) ss 3, 6 and 8. See also \textit{Family and Community Services Act 1972 (SA) s 10}; \textit{Racial Discrimination Act 1977 (NSW)}. Legislative provisions against discrimination have exceptions for "positive discrimination" where needed to enhance the availability of services to a particular group. See, e.g. \textit{Anti-Discrimination Act 1977 (NSW) s 21}; \textit{Family and Community Services Act 1972 (SA) s 10(3)}.}
\footnote{101}{See above n 94.}
\end{footnotes}
sewage and electricity services."  A comprehensive review of the success of such programmes in addressing inequity in access to services is beyond the scope of this Report. However, it is to be hoped that the stated expression of the objective in so many government policies will result in improvements in the achievement of the objectives over time. In particular, the resolution of a perceived tension between the implementation of this Recommendation and Recommendation 199 below may be seen as an important goal.  

10. Recognition of Aboriginal Organisations

Recommendation 199: That governments recognise that a variety of organisational structures have developed or been adapted by Aboriginal people to deliver services, including local government type services to Aboriginal communities. These structures include community councils recognised as local government authorities, outstation resource centres, Aboriginal land councils and co-operatives and other bodies incorporated under Commonwealth, State and Territory legislation as councils or associations. Organisational structures which have received acceptance within an Aboriginal community are particularly important, not only because they deliver services in a manner which makes them accountable to the Aboriginal communities concerned but also because acceptance of the role of such organisations recognises the principle of Aboriginal self-determination. The Commission recommends that government should recognise such diversity in organisational structures and that funding for the delivery of services should not be dependent upon the structure of organisation which is adopted by Aboriginal communities for the delivery of such services.

This Recommendation is directed towards acknowledging diversity in the organisational structure of Indigenous organisations. Despite the fact that government funding remains available to a wide range of organisations, this Recommendation has not been fully implemented.

10.1 Commonwealth

As discussed above in relation to Recommendation 197, since 2006 the Commonwealth Government has established and maintained the CATSI Act framework and registry for the incorporation of Indigenous organisations, and encouraged organisations to adopt that structure (by, for example, fee exemptions and the availability of training for organisations registered using this structure).

The intention of the CATSI Act clearly is to establish a paradigm for the legal incorporation of Indigenous organisations. On one level, this imposes a level of centralised regulation and homogeneity (which has been described as

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103 See above n 87.

104 See Recommendation 197.
"mainstreaming") inconsistent with the spirit of Recommendation 199. However, CATSI Act structure allows an individual organisation to reflect its own individual traditions and customs in its rules. It also remains open to organisations to incorporate under other available structures under State and Territory laws, unless the organisation wishes to make a claim under Native Title legislation, in which case it must be incorporated under the CATSI Act.

An important aspect of this Recommendation is the recognition of the intrinsic value of diversely constituted Indigenous organisations in delivering services. The National Indigenous Reform Agreement ('NIRA') made by the Coalition of Australian Governments recognises that the delivery of services by Indigenous organisations may be an important contributor to achieving the desired outcomes, but does not emphasise the recognition of a multiplicity of organisations in the indigenous sector, with differing existing organisational structures, as playing a significant role in this. An academic review of this issue in the context of remote desert communities has suggested that a failing in the NIRA is a lack of express recognition and engagement of "grass-roots" community organisations which the author characterised as "the hidden ingredient for the success of government Aboriginal and Torres Strait Islander development objectives."

Grant funding for Indigenous services comes from many different sources, and a comprehensive review of the conditions for eligibility for all sources is beyond the scope of this Report. As a result it is not possible to be definitive about the extent to which availability of funding in particular cases may be contingent on an organisation adopting a certain structure. Equally, there are likely to be instances of successful finding of services through grass-roots organisations; it is beyond the scope of this Report to evaluate the extent of these. On balance, and taking into account the approach in the CATSI Act and the NIRA, it appears that there remains considerable further scope for engagement (or re-engagement) with grass roots Indigenous organisations in relation to service delivery and we therefore conclude that this Recommendation has not been implemented.

11. Negotiation regarding allocation of funds

**Recommendation 200:** That the Commonwealth Government negotiate with State and Territory Governments to ensure that where funds for local government purposes are supplied to local government authorities on a basis which has regard to

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106 Ibid. Sullivan makes a conservative estimate of 5000 not-for-profit Indigenous organisations in Australia (and around 1073 in the arid and semi-arid regions, which are remote and typically lack the depth of service providers in more settled areas).
107 NIRA, above n 3. The "service delivery principles" (Schedule D) provide that attention is to be given to (i) "recognising when indigenous delivery is an important contributor to outcomes (direct and indirect) and in those instances fostering opportunities for Indigenous service delivery" and (ii) "supporting the capacity of the Indigenous service sector and communities to play a role in delivering services."
108 Sullivan, above n 105.
109 Ibid 5.
the population of Aboriginal people within the boundaries of a local government authority equitable distribution of those funds is made between Aboriginal and non-Aboriginal residents in those local government areas. The Commission further recommends that where it is demonstrated that equitable distribution has not been provided that local government funds should be withheld until it can be assured that equitable distribution will occur.

The RCIADIC noted an inequality in the provision of services at a local government level between Aboriginal and non-Aboriginal people. The National Report explained that local governments receive funding based upon numbers in the local government areas, which includes Aboriginal and non-Aboriginal people. However the funding is untied so local governments are able allocate funds disproportionately to the benefit of non-Aboriginal people and do not have to account for the inequity.

11.1 Commonwealth

This Recommendation has been partially implemented. The Commonwealth government has addressed the issue of equity in the provision of local government funding, but has not expressly provided for withholding of funds as contemplated in the final sentence of Recommendation 200.

The Local Government (Financial Assistance) Act 1995 (Cth) was enacted to provide financial assistance to the States and Territories. The objects of this Act emphasise the importance of the equitable provision of services and the provision by local governing bodies of services to Indigenous communities, as well as increasing accountability, transparency and consistency in the allocation of such funding. However the Act does not refer specifically to the distribution of funds based on the Indigenous population of an area.

Further while reporting obligations in relation to the allocation of funds are imposed, the Act does not expressly provide for the consequences (for example, withholding of funds) in the event of deficiencies being identified as a result of such a report. Whether such withholding of funds may have occurred in practice is beyond the scope of this Report.

Section 16 of the Act requires the Minister to formulate national principles to govern the allocation of funds to local government bodies in each State and Territory. There is no express obligation imposed on the Minister to draft principles relating to the equitable delivery of services by local government bodies to Aboriginal people. However, the current principles under this section include a principle that "[f]inancial assistance shall be allocated to councils in a way which recognises the needs of Aboriginal Peoples and Torres Strait Islanders within their boundaries."

12. Tangentyere Council

Recommendation 201: The Commission has observed the operations of the Tangentyere Council in Alice Springs and the cooperative relationship established with the Alice Springs Town Council. It is imperative that the Tangentyere Council be provided with stable and adequate funding to enable it to continue and to enhance its provision of services and that governments, local government authorities, Aboriginal
organisations and communities consider the adoption of similar models for local governance modified according to the desires of particular communities.

The RCIADIC considered that the relations between Tangentyere Council and the Alice Spring Municipal Council was an important development and was of great significance for Aboriginal affairs in Australia. The National Report describes how the tensions between the Tangentyere Council and Alice Springs Municipal Council were overcome to improve the delivery of local government services. The National Report describes the relations as follows:

'The Town Council accepted that it would not interfere in the operations of the camps, and Tangentyere would provide the municipal services required by those camps. The campers paid rates to the council in return for the general benefits which they shared as a part of the municipality.

Far from regarding this arrangement as either cost inefficient or as conceding 'sovereignty' to Tangentyere, the Town Council representatives, who appeared before me, saw it as a successful arrangement which flowed out of an excellent, friendly and co-operative approach which benefitted all.'

Despite the beneficial relationship between Tangentyere and the Town Council, there does not appear to be formalised legislation or any administrative implementation of Recommendation 201 with respect to Tangentyere and adequacy of funding arrangements. Funding for Tangentyere appears to be tied to annual grants from Commonwealth and Northern Territory government and philanthropic organisations. It is unclear how stable, ongoing or adequate this funding is.

With respect to the adoption of the Tangentyere local governance model across the Northern Territory and more broadly, it does not appear that this has been implemented. In the Northern Territory, it appears that developments in Northern Territory governance has largely overtaken the Tangentyere governance model. There was no legislative or administrative policy identified at a Commonwealth level that suggests the model has been implemented by other local government bodies and Aboriginal councils.

13. Administrative, political and management training

**Recommendation 202:** That where such courses are not already available, suitable training courses to provide necessary administrative, political and management skills should be available for persons elected to regional councils of ATSIC, elected to, appointed to, or engaged in Aboriginal organisations involved in the delivery of services to Aboriginal people and other Aboriginal community organisations. The content of such training courses should be negotiated between appropriate education providers (including Aboriginal education providers) other appropriate

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110 National Report, above n 1,[27.5.7].
111 Ibid [27.5.9] to [27.5.13].
112 Ibid [27.5.15] to [27.5.16].
113 See also discussion of the NT Intervention at Recommendations 203 and 204.
Aboriginal organisations and government. Such courses should be funded by government and persons undertaking such courses should be eligible for such financial assistance in the course of studies as would be available under ABSTUDY guidelines.

The RCIADIC acknowledged the burden placed on Aboriginal people to take charge and run their own communities as a result of the movement towards self-determination.\textsuperscript{114} The National Report describes how Aboriginal people were 'keen to grasp the opportunity for self-determination, but they were not trained for the tasks suddenly presented to them.'\textsuperscript{115}

The National Report describes how the absence of education and experience to manage communities and the administrative mess left by non-Aboriginal people placed pressure on Aboriginal people which in turn created enmities.\textsuperscript{116} Advisors were sent to the communities, but their involvement in the community rarely resulted in Aboriginal people or the community attaining self-determination.\textsuperscript{117}

The RCIADIC noted that while there has been change, predominantly due to Aboriginal people gaining and sharing experiences, the need for training was still great.\textsuperscript{118} The RCIADIC stated that Aboriginal people required training:

"not only as to administrative skills but also political skills; knowledge and understanding of how the dominant society operates is essential. This is not a question of submitting to that society, it is a question of gaining the skills to manipulate it in the same way that non-Aboriginal people take for granted in their process of self-determination."\textsuperscript{119}

The National Report noted a particular need for skills and training in Aboriginal organisations, local communities performing local government functions and ATSIC Councillors.\textsuperscript{120}

There have been varying levels of implementation of this Recommendation by Commonwealth and State and Territory governments in legislation and policy. As noted at Recommendation 197, the Office of the Registrar of Indigenous Corporations was established under the CATSI Act which runs courses that are directed towards building director’s skills and improving governance and management for Aboriginal people. There are legislative provisions in NSW and Queensland that require organisations or education providers to ensure there is adequate training, support and advice for Aboriginal organisations to assist in the provision of their services and to build capacity.

13.1 Victoria

\textsuperscript{114} National Report, above n 1, [27.6.1].
\textsuperscript{115} Ibid [27.6.1].
\textsuperscript{116} Ibid [27.6.2].
\textsuperscript{117} Ibid [27.6.3].
\textsuperscript{118} Ibid [27.6.4].
\textsuperscript{119} Ibid.
\textsuperscript{120} Ibid [28.6.5].
In Victoria, one of the strategic areas of the *Victorian Aboriginal Affairs Framework 2013-2018* is to develop successful education and training outcomes to enable Aboriginal Victorians ‘to have increased choice, economic opportunity and healthier and most prosperous lives.’ Further, the Victorian Government Aboriginal Affairs Report 2012 identified a number of programs, initiatives and plans of the Government that implement this Recommendation.

### 13.2 Northern Territory

The Northern Territory’s Department of Housing and Department of Education has implemented programs that are consistent with Recommendation 202. In Queensland, there appears to be a general policy directed towards improving the participation of Aboriginal people in education and training.

We were unable to locate legislation or policy to implement this Recommendation in South Australia, Tasmania, the ACT or Western Australia.

### 14. Facilitation of Social, Economic and Cultural Development Plans

**Recommendation 203:** That the highest priority be accorded to the facilitation of social, economic and cultural development plans by Aboriginal communities, and on a regional basis, as a basis for future planning of:

- a. Economic development goals;
- b. Training, employment and enterprise projects;
- c. CDEP schemes;
- d. The provision of services and infrastructure; and
- e. Such other social and cultural needs as are identified.

**Recommendation 204:** That the preparation of community development plans should be a participative process involving all members of the community, and should draw upon the knowledge and expertise of a wide range of professionals as well as upon the views and aspirations of Aboriginal people in the local area. It is critical that the processes by which plans are developed are culturally sensitive, unhurried and holistic in approach, and that adequate information on the following matters is made available to participants:

- a. The range of Aboriginal needs and aspirations;
- b. The opportunities created by government policies or programs;
- c. The opportunities and constraints in the local economy; and
- d. The political opportunities to influence the local arena.

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121 *Victorian Aboriginal Affairs Framework*, above n 30, 15.
In the National Report, the RCIADIC supported the recommendations of the House of Representatives Standing Committee on Aboriginal Affairs which argued that:

"the development of community plans [is] crucial to the design and implementation of programs at a local level. Community plans must be wide ranging, covering the physical, socioeconomic and cultural aspirations of local people. There must be much more than just a town or infrastructure plan and should embrace the future development strategies of people in a broad sense."\textsuperscript{122}

The RCIADIC emphasised the importance of community planning having regard to a community's needs and aspirations on economic options, law and justice issues, education and health services for self-determination and empowerment to become a reality.\textsuperscript{123}

While there have been varying levels of legislative and policy implementation of Recommendations 203 and 204, the most significant development in this area has been the Commonwealth "Intervention" or "Emergency Measures" in Northern Territory in 2007 and the Stronger Futures policy implemented in 2010 by the Commonwealth. The Intervention coincided with reforms in the Northern Territory through the \textit{Local Government Act 2008} (NT) which sought to centralise local government administration and service delivery to larger government areas away from small and rural communities.

The NT Intervention was introduced by the Commonwealth government in response to the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse titled 'Ampe Akelyernane Meke Mekarle: Little Children are Sacred.' The NT Intervention introduced a range of legislative measures directed at Aboriginal people and communities including income management measures to quarantine and control welfare income, the abolition of the Community Development Employment Projects scheme in NT and the introduction of alcohol bans in prescribed communities. The NT Intervention was reviewed in June 2008 and, in October 2008, the Northern Territory Emergency Response Review Board Report was released. The Government issued an interim response on 23 October 2008 and a final response on 21 May 2009.

The second overarching recommendation of the Review Board was accepted by the Government in its interim response. The second overarching recommendation states as follows:

"In addressing these needs both governments acknowledge the requirement to reset their relationship with Aboriginal people based on genuine consultation, engagement and partnership."\textsuperscript{124}  

\textsuperscript{122} \textit{National Report}, above n 1, [27.7.4].  
\textsuperscript{123} Ibid [27.7.3].  
The Stronger Future policy which followed the Northern Territory Response Review Board Report forms part of the COAG Closing the Gap initiatives. These initiatives are directed at improving government engagement with Indigenous communities and government cooperating to better coordinate funding and services for Indigenous communities. However, the Human Rights Commissions Social Justice Report 2012 notes the impact of the NT Intervention and local government reform on Aboriginal communities. The Social Justice Report notes that despite the introduction of bodies established by the government to engage with Indigenous communities, there is widespread disengagement. Carmen Lawrence in her speech at the Fulbright Conference, ‘Healthy People, Prosperous Country’ stated that:

"Dependency is an inevitable by-product of learned helplessness; many Indigenous people are now so accustomed to having things done to them and for them, rather than being active participants, that they have lost their sense of mastery, competence and self-respect. The key elements of the intervention almost seem to have been designed to reinforce this dependency rather than to cultivate a relationship between government and Indigenous people which will enhance their social responsibility and their willingness to exercise it."¹²⁵

While these initiatives intended to improve government engagement with Indigenous communities, the policies appear disempowering to Indigenous people and diminish their ability to exercise self-determination. As such, we do not consider that Recommendation 203 and 204 have been implemented by the Commonwealth government.

¹²⁵ Carmen Lawrence ‘Healthy People, Prosperous Country’ (Speech delivered at the Fulbright Conference, Flinders University, Adelaide, 11 July 2008).