18. ACCOMMODATING DIFFERENCE: RELATIONS BETWEEN ABORIGINAL AND NON-ABORIGINAL PEOPLE (RECOMMENDATIONS 205 - 213)

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) identified that discriminatory attitudes and behaviours of the non-Indigenous population are salient factors contributing to the high rate of Indigenous deaths in custody. Racism is not only manifested in individual conduct but "in the structures and methods of functioning of the powerful institutions of Australian society." It exists, therefore, at both an individual and institutional level.

As institutional racism is harder to tackle the RCIADIC’s Recommendations focus on addressing individual racism, considering that an individual's ideas are more malleable to change. Ultimately, community attitudes and beliefs help shape public policy and drive change, and it is in this respect that tackling racism at the grass-roots level will go some way toward affecting a systemic shift. The RCIADIC identified that individual racism has stemmed from deficiencies in education, legislation and local government policy. Accordingly, it found that facilitating improvement in these areas required two categories of action:

- Educating the Non-Aboriginal Community (Recommendations 205 - 210); and
- Combatting Racism & Discrimination (Recommendations 211 - 213).

1. EDUCATING THE NON-ABORIGINAL COMMUNITY (RECOMMENDATIONS 205 - 210)

The RCIADIC noted that, while individual racism is partly borne of self-interest, overwhelmingly negative community attitudes toward the Indigenous population are grounded in ignorance perpetuated by deficiencies in several areas, namely:

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2 Ibid [28.1.2].
3 RCIADIC, above n1, [28.1.2].
4 RCIADIC, above n1 , [28.1.3] -[28.1.4].
5 RCIADIC, above n1, [28.1.7].
• Formal Education;
• Media Reportage of Aboriginal Affairs;
• Marketing of Culture; and
• Public Service Training.

1.1 Formal Education

Throughout a large part of the 20th century, ignorance of the non-Indigenous population was escalated as a result of European ethnocentrism which permeated Australia’s educational and cultural policy. The RCIADIC noted that “generation after generation of Australians grew up subject to the prevailing concept of Aboriginal inferiority”, their education derived from schools that virtually ignored Aboriginal history and culture. While much had been done to address these issues, the RCIADIC considered that there were some improvements yet to be made which would promote Indigenous culture and help communities to embrace difference. These recommendations were addressed in Chapter 33 of the National Report. For the sake of consistency, the implementation of those recommendations will be considered under the equivalent review chapter.

1.2 Media Reportage

The media has considerable influence in shaping public opinion, including attitudes toward Indigenous people. Specific examples of the media’s own culpability for perpetuating a racist agenda, as identified by the RCIADIC, include the reporting of Indigenous people as “problems”; giving little exposure to Indigenous achievements; and drawing more attention to the racial identity of young criminal offenders who are Indigenous than to those who are not. While much of this type of reporting had been significantly improved at the time of writing, the RCIADIC considered that those improvements should be consolidated in order to ensure that the media’s influence over public opinion remained a positive, accurate and non-discriminatory one. To this end, the RCIADIC made a number of recommendations to encourage Indigenous participation in the media; to promote Indigenous affairs as an important field of journalistic endeavour; and to ensure the accuracy and fairness of its presentation.

2. ENCOURAGING INDIGENOUS PARTICIPATION IN MEDIA

The RCIADIC considered that Indigenous involvement in media would have a considerable impact on facilitating a broader understanding of Indigenous affairs. It recommended that such participation could be stimulated through funding and encouraging media organisations to develop codes, policies and monitoring bodies relating to the presentation of Aboriginal issues.

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6 RCIADIC, above n1, [28.1.7].
7 RCIADIC, above n1, [28.1.16].
8 Ibid.
9 Recommendation 205(a) & (b).
10 Recommendations 206 - 208.
Recommendation 205(a): That Aboriginal media organisations should receive adequate funding, where necessary, recognition of the importance of their function.

With no evidence of any State or Territory policies providing for the creation or development of Indigenous media organisations, funding arrangements have fallen within the ambit of the Commonwealth. Indeed, significant inroads have been made in this area with a number of policies having been implemented to provide ongoing support.

The Indigenous Broadcasting Program (IBP) was a funding initiative primarily developed to support Indigenous community radio broadcasting throughout Australia. The IBP was, however, introduced prior to the 1991 Report, so it can only be assumed that the RCIADIC considered this particular program insufficient support for Indigenous media and/or that more responsibility for funding should be assumed by the States.

Although the Commonwealth increased funding of the IBP, it did so on an indexation basis and focussed mainly on consolidating Indigenous radio programming rather than facilitating Indigenous access to other forms of media in remote communities. However, in a bid to streamline the development of media infrastructure in Indigenous communities and Indigenous programming content, administrative control of Indigenous broadcasting was moved from the arts to the communications portfolio, and then the Indigenous Affairs Group of the Department of the Prime Minister and Cabinet. These changes were in response to an independent review of the Commonwealth Government's investment in the Indigenous broadcasting and media sector, which concluded that the paperwork associated with applying for funding was excessive and out of proportion with the amount of funding available.

On 1 July 2014 the IBP was replaced by a new Indigenous Advancement Strategy (IAS). The IAS is said to provide a new flexible programme structure whereby

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12 The Indigenous Broadcasting Program was introduced in 1987.
organisations and individuals are able to apply for funding under one set of guidelines, through one application form, and have a single Funding Agreement with the Department."\footnote{See: Department of Prime Minister and Cabinet, Indigenous Advancement Strategy Fact Sheet (2014), https://www.dpmc.gov.au/sites/default/files/files/ia/IAS_overarching_October_edition(1).docx.} The Commonwealth has committed $4.9 billion over four years to the IAS, however, the amount that will be dedicated to Indigenous media organisations remains unclear.

In addition to these general funding schemes, in 2006 the Commonwealth provided approximately $48.5m over four years to pilot the National Indigenous Television Service (NITV), a service which would promote Indigenous culture and issues through community developed content; and would grow and nurture a new generation of Indigenous talent in media and journalism by providing employment and training.\footnote{See: National Indigenous TV Ltd, Response to ACMA Consultation Paper, http://www.acma.gov.au/webwr/_assets/main/lib310010/national%20indigenous%20tv%20ltd.pdf} In a bid to ensure that Indigenous programming becomes more widely available on free-to-air television, NITV has now become part of the Special Broadcasting Service (SBS) and continues to receive Commonwealth funding.

**Recommendation 205 (b):** That all media organisations should be encouraged to develop codes and policies relating to the presentation of Aboriginal issues, the establishment of monitoring bodies, and the putting into place of training and employment programs for Aboriginal employees in all classifications.

Section 123 of the Broadcasting Services Act 1992 (Cth) provides for industry groups representing commercial, community and subscription broadcasting services, including those that specifically target their services to Indigenous communities,\footnote{Broadcasting Services Act 1992 (Cth) s 123 (1)(b) and (ba).} to develop codes of practice in consultation with the Australian Communications & Media Authority (ACMA). ACMA must include those codes in the Register of Codes of Practice provided:

a. codes provide appropriate community safeguards for the matters covered;

b. codes are endorsed by the majority of broadcasting service providers in that section of the industry; and

c. members of the public have been given opportunity to comment on the codes.\footnote{Broadcasting Services Act 1992 (Cth) s 123(4)). For all registered codes, see: http://www.acma.gov.au/theACMA/About/The-ACMA-story/Regulating/broadcasting-codes-schemes-index-radio-content-regulation-i-acma}

To the extent that the Registered Codes of Practice contain the specific content recommended by the RCIADIC, there have been some encouraging developments. The community radio, community television, and SBS codes of practice have a dedicated code pertaining to the portrayal of Indigenous Australians; respectful, accurate and
sensitive portrayal of culture and customs; and, in some cases, encourage consultation with Indigenous media organisations.\textsuperscript{21}

Commercial radio and television codes of practice have broadly prohibited racial stereotyping, discriminatory content, and content that condones or encourages prejudice, violence or hatred,\textsuperscript{22} in addition to guidelines or advisory notes regarding the portrayal of Indigenous Australians.

The extent to which these codes are enforceable is not wholly apparent. Certainly, the \textit{Broadcasting Services Act 1992} (Cth) empowers ACMA to impose a condition on a "licensee" (a media organisation) requiring it to comply with the applicable code,\textsuperscript{23} or determine a standard in relation to a matter if it is satisfied that the relevant code has not been operating to provide appropriate community safeguards.\textsuperscript{24}

Although these codes do not contain a direction as to the employment and training of Indigenous Australians, many organisations, including SBS, Foxtel, ABC and News Limited, have adopted a Reconciliation Action Plan (RAP) that addresses this component of the RCIADIC's Recommendation. RAPs were a concept introduced by Reconciliation Australia in 2006 to encourage organisations to take practical steps "to build strong relationships and enhanced respect between Aboriginal and Torres Strait Islander peoples and other Australians."\textsuperscript{25}

Additionally, the Commonwealth's agency for supporting Australian screen production, Screen Australia, provides support and funding for Indigenous internship and mentorship programs.\textsuperscript{26} State film agencies such as Film Victoria,\textsuperscript{27} Screen NSW,\textsuperscript{28} and Screen West\textsuperscript{29} currently provide similar schemes.

\begin{footnotesize}
\begin{enumerate}
\item See: Community Radio Broadcasting, \textit{Codes of Practice & Guidelines} (23 October 2008) , Code 4; Australian Community Television Alliance, \textit{Community Television Broadcasting Codes of Practice} (9 June 2011), Code 3.4; SBS, \textit{Codes of Practice 2006} (incorporating amendments as at 12 December 2012), Code 1.3.1; SBS, \textit{Codes of Practice 2006} (incorporating amendments as at 12 December 2012), Annexure A.
\item \textit{Broadcasting Services Act 1992} (Cth) s 125.
\end{enumerate}
\end{footnotesize}
Corporation’s Indigenous participation initiative is in the discussion stage of development.\textsuperscript{30}

Finally, the ‘special measures’ exception at section 8(1) of \textit{Racial Discrimination Act 1975 (Cth)} and Article 1.4 of the \textit{International Convention on the Elimination of All Forms of Racial Discrimination}\textsuperscript{31} to which the exception refers may permit a media organisation to give preference to Indigenous job applicants in order to address cultural inequity in the workplace.

3. PROMOTING THE REPORTING OF INDIGENOUS AFFAIRS

The RCIADIC considered that media dispersion of Indigenous affairs would help to nurture cross cultural understanding of Indigenous issues, culture, and customs. While Recommendation 205 was aimed at providing the means for the reporting of Indigenous affairs, the RCIADIC implicitly recognised that its implementation alone would not be capable of nurturing such an understanding. Indeed, for media organisations to be capable of disseminating Indigenous affairs across a broader spectrum of Australian society, they first need to be of the opinion that Indigenous affairs are worthy of reporting.

With this in mind, the RCIADIC identified that both incentivising the reportage of Indigenous issues and promoting it as a worthy field of journalistic endeavour would go some way toward encouraging a greater media uptake of Indigenous affairs, and may catapult Indigenous issues to the forefront of Australia’s public policy agenda.

\textit{Recommendation 206:} That the media industry and media unions be requested to consider the establishment and support of an annual award or awards for excellence in Aboriginal affairs reporting to be judged by a panel of media, union and Aboriginal representatives.

While there is no apparent legislative implementation of this Recommendation, its purpose appears to have been achieved in part by virtue of the Media Entertainment & Arts Alliance (the Alliance) having established awards both nationally and locally.

The Alliance is the Australian trade union and professional organisation covering the media, sports, entertainment and arts industry. One of its various award initiatives, the national Walkley Awards, has recognised excellence in the coverage of Indigenous affairs since 1997.

At the State and Territory level, the Alliance supported Queensland Clarion Awards for journalism contains a specific category for Indigenous issues reporting. The Alliance's South Australian, Western Australian, Northern Territory, Tasmanian and NSW


\textsuperscript{31} Opened for signature on 21 December 1965 and entered into force on 4 January 1969.
Regional media awards contain broad 'current affairs' or 'social equity affairs' categories that could easily encompass Indigenous affairs reporting.

There are also numerous state-based non-Alliance journalistic awards. In New South Wales, the Kennedy Awards established the John Newfong Award for Outstanding Reporting of Indigenous Affairs, and the New South Wales Multicultural and Indigenous Media Awards. In Queensland, the A V Myer Indigenous Award for Exceptional Talent recognises outstanding emerging talent in the screen arts and broadcast sector, the Red Ochre Award recognises the outstanding contributions of Aboriginal and Torres Strait Islander peoples to art in Australia, and the Telstra National Aboriginal and Torres Strait Islander Art Award recognises the contribution of Aboriginal and Torres Strait Islander artists working in both the media. In Victoria, the Quill Awards recognise broader categories of journalistic endeavour that again may encompass Indigenous affairs reporting.

**Recommendation 207:** That institutions providing journalism courses be requested to:

a. ensure that courses contain a significant component relating to Aboriginal affairs thereby reflecting the social context in which journalists work; and

b. consider, in consultation with media industry and media unions, the creation of specific units of study dedicated to Aboriginal affairs and the reporting thereof.

This Recommendation recognises that to "move beyond the stereotypes that characterise the representation of Indigenous people in the mainstream media" journalism educators need to promote Indigenous affairs as a relevant public issue for journalistic enquiry. Further, the Recommendation recognises that a collaborative approach between the education provider and the Indigenous community will help to ensure the accuracy and quality of the resulting reportage.

As tertiary education is a Federal responsibility, the States do not appear to have implemented this Recommendation. Between 2005 and 2009, the Department of Immigration and Citizenship in partnership with several universities, Media Monitors and the Special Broadcasting Service (SBS) funded the *Journalism in Multicultural Australia Project*, now the *Reporting Diversity Project*. The project was established to "raise awareness about the way multicultural issues were being reported in the Australian media in order to identify ways of improving journalistic practice." Research conducted by the Project in consultation with key media and community stakeholders would define areas in which resource materials could be created for the education of journalism students and professionals in the journalism industry. Such resources included materials aimed at encouraging community harmony through accurate reporting of multicultural issues, such as Indigenous affairs.

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33 Griffith University, the University of Canberra, the University of South Australia, Charles Darwin University, and the University of Western Sydney.

Despite this initiative, the extent to which the Federal government itself has encouraged Australian universities to adopt specific training on Indigenous affairs remains unclear. Certainly, most of the approximately 29 universities providing journalism education also have departments devoted to Indigenous studies from which journalism students may elect to study units. At Monash University, the journalism and Indigenous studies are encompassed within the School of Journalism, Australian and Indigenous Studies. Some universities even require at least one unit of Indigenous studies to be undertaken as a mandatory course requirement. However, a single mandatory subject or a number of elective units can hardly be considered the "significant" component relating to Indigenous affairs that the RCIADIC had envisaged when making this Recommendation.

That being said, some ad-hoc 'Work Integrated Learning' programs have been experimented with by the University of Queensland’s School of Journalism and Communication, Curtin University and Edith Cowan University, such as the provision of student placements in remote communities to report on rural health and intensive Reporting Indigenous Issues courses. A study by Edith Cowan University determined that widespread adoption of similar Work Integrated Learning programs could prove a valuable tool for instilling cultural competency in, and improving the reporting standards for, future journalists.

**Recommendation 208:** That, in view of the fact that many Aboriginal people throughout Australia express disappointment in the portrayal of Aboriginal people by the media, the media industry and media unions should encourage formal and informal contact with Aboriginal organisations, including Aboriginal media organisations where available. The purpose of such contact should be the creation of a better understanding, on all sides, of the issues relating to media treatment of Aboriginal affairs.

To address the inaccurate and inequitable portrayal of Indigenous people and issues in the media, the RCIADIC recommended that the media industry and unions should be encouraged to formally and informally confer with Aboriginal organisations. Given that media organisations are predominantly nationally managed or owned, this Recommendation has largely been implemented at the Federal level.

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35 For example the University of Wollongong, Charles Sturt University, and the University of South Australia.
36 In 2008, Edith Cowan University placed journalism students in remote communities through the Combined Universities Centre for Rural Health (an initiative funded by the Commonwealth Department of Health and Ageing).
37 The University of Queensland’s School of Journalism and Communication piloted a 10 day intensive Indigenous Issues course to the National Aboriginal and Islander Day of Observance Week (NAIDOC Week) in 2009.
The *Special Broadcasting Service Act 1991* (Cth) imposes a duty on the SBS to be “aware of, and responsive to, community needs and opinions on matters relevant to the Charter.”[^39] Matters relevant to the SBS Charter include the function of the SBS to “promote understanding and acceptance of cultural, linguistic and ethnic diversity of the Australian people.”[^40] In order to perform its duties, SBS is required to establish a Community Advisory Committee whose primary function is to advise the Board on community needs and opinions.[^41] This could include the needs and opinions of Indigenous people. Further, Committee members must have interests "relevant to, and an understanding of, ethnic, Aboriginal or Torres Strait Islander communities."[^42]

In fulfilling this duty, the SBS has developed a document entitled 'The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities.'[^43] The Guideline was created to assist media practitioners producing programs about Aboriginal and Torres Strait Islander issues, or made on lands of Indigenous people. The Guideline is based on 6 core principles which emphasise the importance of consultation with Indigenous people and encourage media practitioners to be aware of and challenge their own prejudices, stereotyped beliefs and perceptions about Indigenous people. The document also acts as a guide for production crews entering Aboriginal or Torres Strait Islander communities or travelling within Indigenous lands.

The Commercial Radio Australia *Codes of Practice and Guidelines* also encourage commercial broadcasters to contact representatives of the National Indigenous Media Association of Australia (NIMAA) "for advice on an appropriate spokesperson on a news story focussing on the Aboriginal or Torres Strait Islander communities, or simply checking on the sensitivity of broadcasting details of an issue concerning those people."[^44]

### 4. MARKETING OF CULTURE

The domestic and international Indigenous art market has long provided an important source of income for Indigenous people, despite the fact that such income is often not reflective of the value of the work. The RCIADIC considered that the proliferation of Indigenous art is a symbol of broader acceptance of Indigenous culture and has seen a change in the position of Indigenous people in Australian society.[^45] It also considered

[^39]: Special Broadcasting Service Act 1991 (Cth) s 10(1)(g).
[^40]: Special Broadcasting Service Act 1991 (Cth) s 6(2)(c).
[^41]: Special Broadcasting Service Act 1991 (Cth) s 50.
[^42]: Special Broadcasting Service Act 1991 (Cth) s 50(4)(b).
[^44]: Commercial Radio Australia, *Codes of Practice & Guidelines* (September 2013), 33.
[^45]: RCIADIC, above n1, [28.1.24].
that the vast market for Indigenous art and craft created a legitimate means of raising awareness of Indigenous culture, beliefs and ways of seeing the world.\textsuperscript{46}

**Recommendation 209:** That continuing support should be given to Aboriginal organisations such as the Aboriginal Arts Board in their endeavours to protect the interests of Aboriginal artists and to ensure the continuing expansion of the production and marketing of Aboriginal art and craft work.

This Recommendation has been implemented broadly and enthusiastically across the Commonwealth and most States. The Australia Council (the Australian Government's arts funding and advisory body) adopted the *National Aboriginal and Torres Strait Islander Arts Policy* in May 1997, one of the objectives of which is to "develop better ways to support Aboriginal and Torres Strait Islander artists and arts organisations".\textsuperscript{47} The policy also outlines the role of the Council and the Aboriginal and Torres Strait Islander Arts Board (now the ATSIA Panel) to prioritise the assistance of Indigenous artists, organisations and communities to participate in cultural life and to determine how much they wish to participate in the commercial art market - both domestically and internationally. The ATSIA Panel also assists Indigenous people to "claim, control and enhance their cultural inheritance" by funding both the development and promotion of Indigenous art. One such funding initiative is the National Indigenous Arts Infrastructure Program.\textsuperscript{48} This program aims to strengthen Indigenous management and control, and the integrity and diversity, of Indigenous art and cultural practice by supporting both well-established and developing Indigenous arts organisations.

More recently, the Australia Council has developed Protocols for producing Indigenous Australian visual arts. These Protocols are designed to be an initial point of reference in planning a work with Indigenous visual arts practitioners, or using Indigenous cultural material. They are intended to "encourage ethical conduct and promote interaction based on good faith and mutual respect."\textsuperscript{49}

Departments, advisory and policy bodies of the New South Wales, Victorian, Tasmanian, Western Australian and Queensland governments\textsuperscript{50} each appear to support the ultimate objective of this Recommendation through the creation of specific

\textsuperscript{46} Ibid.


\textsuperscript{50} Aboriginal Arts Advisory Board (Tasmania); Arts Victoria (Vic); Western Australia Department of Culture and the Arts; Arts SA; Arts NSW; Arts Queensland.
Indigenous arts policies and implementation strategies. \(^{51}\) Pursuant to these policies, funding programs have been put in place which directly help Indigenous artists to develop professionally and to market and showcase their work. Specific examples of such funding and support programs include:

- Arts Victoria Indigenous Professional Development Program; \(^{52}\)
- New South Wales Regional Arts Fund;
- Indigenous Regional Arts Development Fund (QLD);
- Queensland Indigenous Arts Marketeering and Export Agency;
- Project Assistance (SA);
- Individual Artist Development Program (SA);
- Indigenous Arts Grants Program (WA); and
- Aboriginal Arts Fund (TAS).

In this respect, the various arts bodies of the State governments have assumed the role of supporting the interests of Indigenous artists directly, rather than through supporting or establishing a separate Indigenous arts organisation.

5. PUBLIC SERVICE TRAINING

To combat institutionalised racism, the RCIADIC considered that government service providers - such as healthcare professionals, law enforcement officers and education providers - should acquire an understanding and respect for the communities to which they are providing services. This understanding would need to be cultivated not only amongst those who directly provide the service, but also amongst those in a position to make decisions about the provision of those services (i.e. the administration). Accordingly, the RCIADIC examined what training should be provided; who should develop it; and how it should be provided.

**Recommendation 210: That:**

a. all employees of government departments and agencies who live or work in areas with significant Aboriginal population and whose work involves the delivery of services to Aboriginal people be trained to understand and appreciate the traditions and culture of contemporary Aboriginal society;

b. such training programs should be developed in negotiation with local Aboriginal communities and organisations; and

c. such training should, wherever possible, be provided by Aboriginal adult education providers with appropriate input from local communities.

All Commonwealth government departments have adopted RAPs to develop recognition and support of Indigenous culture and traditions and facilitate the development of strong

\(^{51}\) NSW Aboriginal Arts and Cultural Strategy 2010 - 2014; the Queensland Aboriginal and Torres Strait Islander Arts Policy and Strategy; WA Department of Culture and Arts Indigenous Arts and Culture Action Plan 2012–2014.

bonds with the Indigenous community. There are three key purposes to which a RAP must speak. These are broadly as follows:

1. To build and maintain relationships between the Indigenous and non-Indigenous community;
2. To build an understanding of, and respect for, Indigenous culture; and
3. To maximise the access of Indigenous people to employment and career advancement opportunities.

In respect of the second purpose, many of the RAPs contain action items for the development and delivery of cultural awareness training to all new starters and current staff. Such training is often ongoing and supported by Indigenous groups. For example, the Australian Federal Police’s (AFP) RAP states that a key objective is to “improve our understanding of Indigenous cultures to enable the AFP to conduct better business.” In aid of this objective, the AFP undertook to provide Cultural Awareness Training to all staff by June 2008. Similarly, the Department of Families, Housing, Community and Indigenous Affairs has established mandatory twice-yearly Cultural Appreciation Program training which has been incorporated into staff performance agreements. The Western Australian, South Australian and Queensland governments also have RAPs pursuant to which cultural awareness training, workshops and Indigenous protocols have been implemented.

Although RAPs do not appear to be universally adopted in New South Wales, certain departments have actively implemented cultural training policies. The New South Wales Ministry of Health, for example, published Respecting the Difference: An Aboriginal Cultural Training Framework for NSW Health in October 2011, which outlines general and local content training depending on the level of direct engagement with the Indigenous community. Pursuant to its Aboriginal Strategic Direction 2007-2012 and Aboriginal Strategic Direction 2012-2017, NSW Police has maintained its Policing Aboriginal Communities Training and local cultural awareness training for all sworn and unsworn staff.

In October 2010, the Victorian Government released its Aboriginal Inclusion Framework for implementation across all Victorian public sector departments in an attempt to “foster

systemic change to organisational behaviour, which is ‘built in, not bolted on’. The framework recognised that achieving substantive inclusion of Indigenous people in all aspects of culture, community and administration cannot be achieved through employment initiatives alone. Consistent with the RCIADIC’s Recommendation, it places an emphasis on improving service delivery to the Indigenous population by "earning respect and building relationships with Aboriginal communities to allow open dialogue and the need to understand local issues from the perspective of the communities involved."

Pursuant to this overarching framework many Victorian government departments have built their own framework, the majority of which emphasise the importance of training, or have adopted protocols for communicating with and about Indigenous communities.

For example, the Department of Education and Early Childhood Development established and trained Koorie Engagement Support Officers to liaise with Indigenous communities. It also adopted various protocols for communicating with and about the Indigenous community, including the Welcome to Country and Acknowledgement of Country Guide, developed in partnership with the Victorian Aboriginal Education Association.

The Department of Health, in partnership with the Victorian Aboriginal Community Controlled Health Organisation, developed a program to improve the quality of care to Indigenous patients (ICAP Program). The ICAP Program identified four key result areas which would form the basis of quality of care reporting by hospitals and other healthcare service providers, one of which includes demonstrated progress in creating culturally aware staff by providing or coordinating cross-cultural training for hospital staff. The ICAP Program further submits that development, planning, implementation and evaluation of such a training program should involve the input of the Indigenous community.

The Office of the Commissioner for Public Employment in the Northern Territory requires all public sector staff who work with Indigenous clients to complete a cultural awareness course. However, it is unclear whether this course was developed with the input of local Indigenous communities.

58 Department of Planning and Community Development, Victorian Government Aboriginal Inclusion Framework, October 2010, 6.
59 Department of Planning and Community Development, Victorian Government Aboriginal Inclusion Framework, October 2010, 12.
At the time of writing, it is unclear what training initiatives have been adopted by the Tasmanian public service.

6. COMBATING RACISM AND DISCRIMINATION

The RCIADIC considered nation-wide anti-discrimination legislation to be an effective mechanism for combating both the institutionalised discrimination of Indigenous people and individual racism. Further, it considered that the then newly introduced legislative provisions prohibiting indirect discrimination provided an opportunity to commence class or representative actions, which could be a means of eradicating more systemic discrimination.62

Critical to the ability of the legislative regime to "change public definitions of what are acceptable behaviours", especially in so far as those behaviours affect Indigenous people, is the extent to which the legislation is actually utilised. The RCIADIC reported that lack of knowledge as to legal protections was inhibiting the capacity of the legislation to bring about the necessary change.

The Commonwealth's Human Rights and Equal Opportunity Commission (HREOC) and the equivalent State Equal Opportunity Commissions are the vehicles through which the legislation can be shaped, disseminated and utilised. The RCIADIC suggested that these bodies could more proactively engage in the process of educating the Indigenous community as to their rights under anti-discrimination laws. Accordingly, it recommended that:

Recommendation 211: HREOC and State Equal Opportunity Commissions should be encouraged to further pursue their programs designed to inform the Aboriginal community regarding anti-discrimination legislation, particularly by way of Aboriginal staff members attending at communities and organisations to ensure the effective dissemination of information as to the legislation and ways and means of taking advantage of it.

Recommendation 212: HREOC and State Equal Opportunity Commissions should be encouraged to consult with appropriate Aboriginal organisations and Aboriginal Legal Services with a view to developing strategies to encourage and enable Aboriginal people to utilise anti-discrimination mechanisms more effectively, particularly in the area of indirect discrimination and representative actions.

Responding directly to this Recommendation, the Commonwealth legislature implemented Part IIA of the Australian Human Rights Commission Act 1986 (Cth) which provides for an Aboriginal and Torres Strait Islander Social Justice Commissioner. Section 46C of the Act outlines the Commissioner's functions which relevantly include:

62 RCIADIC, above n1, [28.3.28]
63 RCIADIC, above n1, [28.3.1]
• promoting discussion and awareness of human rights in relation to Indigenous persons;\(^{64}\) and
• undertaking research and education programs for the purposes of promoting respect for human rights of Indigenous people and the enjoyment and exercise of human rights by Indigenous people.\(^{65}\)

Further the Commissioner is required to produce annual social justice and native title reports.\(^{66}\) The reports outline the efficacy of various legislative and human rights initiatives to address social, political and economic inequality and recommends ways to improve the Indigenous community’s engagement with its legal rights.

Victoria, Queensland, Western Australia\(^{67}\) and New South Wales\(^{68}\) have each implemented the recommendation. In Victoria, for example, the Equal Opportunity and Human Rights Commission (VEOHR) has had an Indigenous Engagement Program since 1991. The Program provides a means of informing the local Indigenous population of their rights and avenues of redress, and it is administered by Indigenous staff members. Further, VEOHR has entered into co-operative arrangements with the Victorian Aboriginal Legal Service to improve the education of the Indigenous community and referrals between the two organisations. Other VEOHR initiatives include workshops and step-by-step guides on how to bring a complaint to the Commission.\(^{69}\)

Shortly after the RCIADIC published the National Report, Queensland introduced the Anti-Discrimination Act 1991 (Qld).\(^{70}\) The Act established the Anti-Discrimination Commission Queensland\(^{71}\) which is required to:

• undertake research and educational programs to promote the purposes of the Act, and to coordinate programs undertaken by other people or authorities on behalf of the State;\(^{72}\) and

\(^{64}\) Australian Human Rights Commission Act 1986 (Cth) s 46C(1)(b).
\(^{65}\) Australian Human Rights Commission Act 1986 (Cth) s 46C(1)(c).
\(^{66}\) Australian Human Rights Commission Act 1986 (Cth) s 46C(1)(a).
\(^{67}\) See www.eoc.wa.gov.au. The Equal Opportunity Commission of WA consults with the Indigenous community in the Pilbara region and Christmas and Cocos islands and has a Policy Framework for Substantive Equality which includes "empowering groups that are the target of racism through advocacy, public education and the provision of credible, and persuasive information".
\(^{68}\) See www.antidiscrimination.lawlink.nsw.gov.au. The Anti-Discrimination Board of NSW has an Aboriginal and Torres Strait Islander Outreach Program which includes the provision of advice to, and consultation with, Indigenous communities as to their rights. Further 'Good Service' provides information sessions for indigenous communities about their rights as consumers.
\(^{70}\) The Act came into effect on 2 July 1992.
\(^{71}\) Anti-Discrimination Act 1991 (Qld) s 234.
\(^{72}\) Anti-Discrimination Act 1991 (Qld) s 235(d).
to consult with various organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the Act.\textsuperscript{73}

The Commission introduced the Aboriginal and Torres Strait Islander Unit in November 2003, with a view to improving the education of Indigenous people about their rights under the Act and to ensure that Indigenous rights remain on the human rights agenda in Queensland. The Unit's functions include visiting Indigenous communities and hosting information sessions.

While South Australia, the Australian Capital Territory, and Tasmania each have legislative vehicles to disseminate information about race discrimination,\textsuperscript{74} they do not appear to have education programs specifically directed toward Indigenous communities in those regions. The Northern Territory Anti-Discrimination Commission\textsuperscript{75} has published online videos that briefly define discrimination in a host of Indigenous languages. However, it is not clear whether the Commission has implemented any face-to-face initiatives targeted at, and organised by, the Indigenous community. The Commission does not appear to have adopted a program to inform Indigenous communities about how to bring a discrimination complaint to the Commission.

The RCIADIC determined that systemic discrimination of the Indigenous population was exacerbated by the use of language as a form of violence.\textsuperscript{76} Accordingly, the RCIADIC expounded the educative value of racial vilification legislation stating that "[t]he simple fact that an act is known to be unlawful will dissuade most citizens from performing that act...Law can also change attitudes over time and it is not necessarily the case that overall attitudinal change has to precede a change in the law."\textsuperscript{77}

At the time of the National Report, only Western Australia and New South Wales prohibited racial vilification. While Western Australia criminalised racial vilification,\textsuperscript{78} New South Wales instead amended its anti-discrimination legislation to prohibit it. The New South Wales legislation distinguishes between 'racial vilification' and 'serious racial vilification', reserving criminal penalties for the latter. Despite the RCIADIC's concern that the imposition of criminal sanctions would make martyrs out of the offenders "particularly when it is words, not acts, which are in issue",\textsuperscript{79} the RCIADIC championed the New South Wales legislation as a "landmark piece of social legislation"\textsuperscript{80} and a near model law for helping to remould the way in which the non-Indigenous population spoke to and about Indigenous people. The RCIADIC therefore recommended:

\textsuperscript{73} Anti-Discrimination Act 1991 (Qld) s 235(e).
\textsuperscript{74} Equal Opportunity Commission of South Australia; ACT Human Rights Commission; Office of the Anti-Discrimination Commissioner Tasmania.
\textsuperscript{75} See http://www.adc.nt.gov.au/.
\textsuperscript{76} RCIADIC, above n 1, [28.3.35].
\textsuperscript{77} RCIADIC, above n 1, [28.3.46].
\textsuperscript{78} Criminal Code Act Compilation Act 1913 (WA) ss 76-80.
\textsuperscript{79} RCIADIC, above n 1, [28.3.44].
\textsuperscript{80} RCIADIC, above n 1, [28.3.39].
Recommendation 213: That governments which have not already done so legislate to proscribe racial vilification and to provide a conciliation mechanism for dealing with complaints of racial vilification. The penalties for racial vilification should not involve criminal sanctions. In addition to enabling individuals to lodge complaints, the legislation should empower organisations which can demonstrate a special interest in opposing racial vilification to complain on behalf of any individual or group represented by that organisation.

Since 1991, all remaining States and the Australian Capital Territory have implemented legislative prohibitions on racial vilification. Only the Northern Territory is yet to specifically legislate against racial vilification in its anti-discrimination legislation. The construction of the prohibition, however, is by no means uniform with some States imposing civil and criminal sanctions in spite of the concern expressed by the RCIADIC in doing so.\(^{81}\)

In 1995 the Commonwealth passed the *Racial Hatred Act 1995* (Cth) which inserted Part IIA into the *Racial Discrimination Act 1975* (Cth). It relevantly provides that it is unlawful to "do an act... [that] is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people" on the grounds of race.\(^{82}\) Mindful of the RCIADIC’s caution in attaching criminal sanctions to the unlawful behaviour, the Act does not distinguish between intentional and unintentional vilification.

Tasmania is the only State to have emulated both the RCIADIC’s Recommendation and the Commonwealth model in full, making it unlawful, but not criminal, to incite hatred on the basis of race.\(^{83}\) In contrast, the Victorian, Queensland, South Australian and Australian Capital Territory Acts impose both civil and criminal sanctions for racial vilification.\(^{84}\) Notably, the criminal standard in Victoria, Queensland and Australian Capital Territory legislation provides that the behaviour needs to have been 'intended' to incite racial hatred or was reckless to the fact. No such distinction applies for the imposition of a criminal penalty in the South Australian jurisdiction, however, it is implied that the DPP would only prosecute more serious instances of vilifying conduct.

In addition to the prohibitions on racial vilification, the Commonwealth, most States and the Australian Capital Territory have implemented mechanisms for lodging

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\(^{82}\) *Racial Discrimination Act 1975* (Cth) s 18C(1).

\(^{83}\) *Anti-Discrimination Act 1998* (Tas) s 19.

representative complaints, and a process for conciliating such complaints with the relevant equal opportunity or human rights commission.

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85 See: Australian Human Rights Commission Act 1986 (Cth) s 46PB; Racial and Religious Tolerance Act 2001 (Vic) s 20; Anti-Discrimination Act 1991 (Qld) s 134; Anti-Discrimination Act 1998 (Tas) s 60.