INCREASING ECONOMIC OPPORTUNITY (RECOMMENDATIONS 300-320)

The Royal Commission into Aboriginal Deaths in Custody (‘RCIADC’) acknowledged that former attempts to address poverty through improving economic opportunities for Indigenous people had largely failed. The RCIADC was unequivocal in drawing the link between economic factors and the disproportionately high rates of Indigenous people in custody:

It is clear from available information that by nearly every economic measure, Aboriginal people are significantly poorer than any other sector of Australian society. High levels of unemployment, particularly amongst Aboriginal youth, low income and occupational status levels are continuing features of Aboriginal life. The resulting effect is that for many Aboriginal people, dependency on welfare payments is an inescapable conclusion. I point out that this situation is part of the historical legacy of the dispossession of Aboriginal people and their continuing exclusion from economic power structures rather than the making of Aboriginal people themselves.

Twenty of the RCIADC’s 339 Recommendations addressed these policy shortcomings in relation to economic opportunity. These Recommendations can be broadly categorised in the following three classes:

1. Unemployment (Recommendations 300-310 and 315-319) - see paragraphs 1 to 15 below;
2. Economic Opportunity (Recommendations 311-314) - see paragraphs 16 to 20 below; and
3. Research (Recommendation 320) - see paragraph 21 below.

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

1. Unemployment - Recommendations 300 and 301

Recommendation 300: That support be given to the aims of AEDP to:

a. Increase opportunities for Aboriginal people in the mainstream labour market to achieve equality with other Australians in the rates and levels of permanent employment; and

2 Ibid, [17].
b. Generate employment through greatly enhanced assistance for community development and the expansion of economic bases of Aboriginal communities, including a recognition of and support for traditional Aboriginal economic activities as a legitimate form of employment.

**Recommendation 301:** That the Commonwealth, State and Territory Governments consider the desirability of entering into specific agreements (as, for example, are currently established under the Aboriginal Education Policy) for funding under the Commonwealth’s AEDP which set out agreed objectives, strategies and outcomes.

The RCIADC acknowledged that although Indigenous economic development has received little attention in comparison to studies of other aspects of Indigenous disadvantage, Governments had come to recognise the significant contribution that economic factors make to the disadvantage which Aboriginal people experience.³

In August 1985, the Committee of Review of Aboriginal Employment and Training Programs released the ‘Report of the Committee of Review of Aboriginal Employment and Training Programs’ (‘Miller Report’).⁴ The Miller Report urged a major reconsideration of the whole approach to Indigenous labour market disadvantage⁵ and highlighted the need for longer-term solutions that enabled Aboriginal people to become more independent and responsible for their own livelihood.⁶

The Government's response to the Miller Report was the announcement of a new policy, the Aboriginal Employment Development Policy (‘AEDP’). The primary objectives of the AEDP were:

(a) employment equity with other Australians;
(b) income equity with other Australians;
(c) equitable participation in primary, secondary and tertiary education; and
(d) reduction in Aboriginal welfare dependency.

Despite recommending that the aims of the AEDP be supported, the RCIADC considered some aspects of the AEDP’s policy objectives to be problematic. For example, the RCIADC noted that the statistical employment equity objectives were unachievable without a disproportionate increase to Indigenous peoples incomes in rural towns to levels higher than the average income of non-Aboriginal Australians.⁸

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³ Commonwealth, above n1, [34.1.1].
⁶ Committee of Review of Aboriginal Employment and Training Programs, Parliament of Australia, above n4, 10.
⁸ Commonwealth, above n1, [34.1.22].
The RCIADIC recognised that the failure of previous attempts to address Indigenous employment problems stemmed largely from an assumption that Indigenous people would inevitably be integrated into the mainstream, non-indigenous urban-based labour market. This approach left major policy gaps in relation to education and economic programs for Indigenous people residing in rural and remote areas. The RCIADIC noted that the geographical distribution of the Aboriginal population, of whom one-third are located in rural settlements or towns, would inhibit the likely achievement of the AEDP policy goals within the targeted timeframe of the year 2000. Despite the abovementioned problems with the AEDP’s policy objectives, the RCIADIC recommended that the general approach of the AEDP should be supported.9

The AEDP was replaced by the Indigenous Employment Policy in 1999 (which was later renamed the Indigenous Employment Programme (‘IEP’)).

In 2008, the Closing the Gap agenda was released and then in 2014 as part of a restructure of Indigenous policy, the Commonwealth Government announced the Indigenous Advancement Strategy (‘IAS’) which commenced on 1 July that year and consolidates an array of individual programs and policies.10

To the extent that aspects of the AEDP have carried through to the Closing the Gap agenda, the IAS and other current programs, the findings of this Report suggest that the Commonwealth Government and each of the State and Territory Governments have taken steps to implement this Recommendation.

1.1 Commonwealth

In 2008, the Commonwealth Government launched the Closing the Gap agenda in partnership with each of the State and Territory governments. The Council of Australian Governments (‘COAG’) set the following targets:

- to close the life-expectancy gap within a generation;
- to halve the gap in mortality rates for Indigenous children under five within a decade;
- to ensure access to early childhood education for all Indigenous four years olds in remote communities within five years;
- to halve the gap in reading, writing and numeracy achievements for children within a decade;
- to halve the gap in Indigenous Year 12 achievement by 2020; and
- to halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade.

These targets are set out in the National Indigenous Reform Agreement.11

On 1 July 2014, the IAS commenced, replacing more than 150 individual programs and activities with five broad programs as follows:12

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9 Commonwealth, above n1, [34.1.25].
• **Jobs, Land and Economy Programme**: aimed at increasing Indigenous employment, business and economic development.\(^{13}\)

• **Children and Schooling Programme**: aimed at increasing Indigenous school attendance, improving education outcomes and supporting the transition to further education and work.\(^{14}\)

• **Safety and Wellbeing Programme**: aimed at increasing the safety and wellbeing of Indigenous Australians in their communities.\(^{15}\)

• **Culture and Capability Programme**: aimed at promoting constitutional recognition of Indigenous Australians and their participation in society.\(^{16}\)

• **Remote Australia Strategies Programme**: aimed at addressing social and economic issues facing Indigenous Australians in remote parts of Australia including improving infrastructure, housing, employment, education and community safety.\(^{17}\)

The IAS aims to support a new way of engaging with Indigenous people, communities and industries, business and service providers allowing for joint development and implementation of solutions that will sustainably improve outcomes, including through regionally and/or place-based solutions.\(^{18}\)

There is a 12 month transition period (**Transition Period**) which follows the commencement of the IAS to allow for the continued provision of services and adjustment to the new regime.\(^{19}\)

In addition to the IAS, some of the Commonwealth Government programs which currently exist include the following:

• **Indigenous Australian Government Development Programme (IAGDP)**: an entry-level employment and development program for Indigenous Australians interested in working in the Australian Public Service (APS). The program provides ongoing employment with structured learning and aims to increase the representation of Indigenous Australians working in Government.\(^{20}\)

• **Indigenous Cadetship Support (ICS)**: this program links Indigenous full time tertiary students in a cadetship arrangement with employers who provide them with paid work placements that complement their course of study.\(^{21}\) Cadets are also provided with financial assistance during full time

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\(^{13}\) Ibid 11-2.

\(^{14}\) Ibid 12-4.

\(^{15}\) Ibid 14-5.

\(^{16}\) Ibid 15-6.

\(^{17}\) Ibid 17.

\(^{18}\) Ibid 3.

\(^{19}\) Ibid.


Upon completion of their course of study, students are offered ongoing employment with the employer.\(^{23}\)

- **Indigenous Opportunities Policy (IOP):** aims to promote employment and training opportunities for Indigenous Australians and the engagement of Indigenous business suppliers through the Australian Government procurement processes.\(^{24}\) It applies to those Australian Government procurement processes that involve activity in regions where the Indigenous population is equal to or higher than the national average\(^{25}\) and where expenditure exceeds:\(^{26}\)
  - $6 million for construction projects; and
  - $5 million for all other projects.

- **Learn Earn Legend! (LEL):** promotes the importance of education, training and employment to young Indigenous peoples.\(^{27}\)

- **Indigenous Employment Programme (IEP):** offers funding and support for employers, businesses and other organisations for activities or projects that help increase employment outcomes for Indigenous people. This was originally the Indigenous Employment Policy but it was transformed into the IEP.\(^{28}\)

- **Remote Jobs and Communities Program (RJCP):** a program operated by the Commonwealth Government in which job seekers in 60 remote regions across Australia are engaged in community development projects. The program aims to support people to build their skills and therefore be more engaged in activities that contributes to the strength and sustainability of communities.\(^{29}\)

- The RJCP supports a broad range of participants but through the Community Development Fund, it is particularly focused on the Indigenous employment sector.\(^{30}\) Participants in the Community Development Employment Projects scheme (discussed below in

\(^{23}\) Ibid 5.
\(^{26}\) Department of Employment, above n24.
\(^{30}\) Ibid.
paragraph 0) must be involved in the RJCP in order to participate in that scheme.31

It is unclear how these programs will continue to interact with the IAS following the Transition Period.

In addition to standalone Federal policies, the Commonwealth, through COAG, has entered into the National Partnership Agreement on Indigenous Economic Participation (‘NPA’) with the States and Territories. The aim of the NPA was to invest in improving employment opportunities for Aboriginal and Torres Strait Islander job seekers in the private and public sectors.32 An element of this agreement is to increase the representation of Indigenous Australians working in the public-sector employment to 2.6% in all States and Territories (except Tasmania).33 In 2012, the Australian Public Service Indigenous Employment Strategy 2012-16 was released. It aimed to increase Indigenous representation in the Australian public service. At the Commonwealth public service level, a target of 2.7% was set for Indigenous representation in the Australian public service.34 This Report has been unable to verify whether this target has been met.

The term of the NPA expired on 30 June 2013 and whilst it does not appear that a further agreement has been entered into, responsibility for the NPA was transferred to the Department of Prime Minister and Cabinet on 18 September 2013.35 This Report has been unable to verify the current status of the NPA.

1.2 Northern Territory

The Northern Territory Government Employment Program Unit coordinates the recruitment and induction of indigenous cadets on behalf of Northern Territory Public Service (‘NTPS’) agencies.36 The Northern Territory's Indigenous Employment Program offers a pre-employment program specifically designed to attract Indigenous job seekers.37 Programs such as the NTPS Indigenous Apprenticeship

31 Department of Social Services, Funding agreement 2013-2018 Remote Jobs and Communities Program (2013) 5 [4.1].
33 Ibid 4.
37 Ibid.

May 2015
Program\textsuperscript{38} and the NT Indigenous Cadetship Support program\textsuperscript{39} function to provide Indigenous people with the opportunity to work on a full time basis within the NTPS.

1.3 ACT

The ACT Public Service Employment Strategy for Aboriginal and Torres Strait Islander People 2011-2015 seeks to increase Indigenous employees in the public service from 0.9% to 2% by 2015.\textsuperscript{40}

This Report has been unable to verify whether this target has been achieved.

1.4 South Australia

Each year the South Australian Certificate of Education (‘SACE’) Aboriginal Students Pathways Conference is hosted to provide Indigenous students in years 10, 11 and 12, with the opportunity to explore their study, training and employment pathways.\textsuperscript{41} The conference is designed to inspire Indigenous students to continue successfully with their SACE, by exposing them to a range of Indigenous role models from a diverse array of industries.\textsuperscript{42}

The Aboriginal Workforce Participation Programs are designed to facilitate solutions for both Indigenous job seekers and employers for local learning, training and employment of indigenous people in local jobs.\textsuperscript{43}

1.5 New South Wales

The NSW Elsa Dixon Aboriginal Employment Program (‘EDAEP’) promotes ‘diversity, innovation and service responsiveness in the NSW workforce by reducing barriers to employment and improving promotional opportunities for Aboriginal people’.\textsuperscript{44} The EDAEP encourages the employment of Aboriginal people in NSW Public Service agencies and Local Government Authorities. The EADP also provides special incentives for the employment of Aboriginal people with a disability and promotes innovation in achieving vocational outcomes for Aboriginal people.\textsuperscript{45}

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\textsuperscript{40} Commissioner for Public Administration 2011-2015, ACT Public Service, \textit{Public Service Employment Strategy for Aboriginal and Torres Strait Islander People} (2011) 8.


\textsuperscript{42} Ibid.


\textsuperscript{45} Ibid.

24. INCREASING ECONOMIC OPPORTUNITY (RECOMMENDATIONS 300-320)
Additionally, the EDAEP achieves this by providing funding to organisations to support Aboriginal education, employment and training by:46

- subsidising the salary for a 12 month period for the permanent employment of an Indigenous person in a NSW public service agency or local council;

- subsidising the salary of a temporary position for a period of up to 12 months for a position that will provide significant skill development for an Indigenous personal already permanently employed in a NSW public service agency or local council;

- funding community projects which have the potential to create education, employment and training opportunities for Indigenous Australians;

- supporting work experience for Indigenous students in their final year of a degree or post degree course; and

- subsidising the salary of an Indigenous student completing a school based traineeship in a NSW public service agency or local council.

- In addition, the NSW Public Sector Indigenous Cadetship Program provides opportunities for Indigenous students to combine undergraduate university study with part time employment in NSW Government agencies.47

1.6 Queensland

In December 2013, the Queensland Aboriginal and Torres Strait Islander Economic Participation Framework (‘QLD Framework’) was released with the aim of enabling Indigenous Queenslanders to participate in Queensland’s economy through increased employment, labour force participation, career development and home and business ownership.48

Pursuant to the QLD Framework the Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan (‘QLD Action Plan’) was released in July 2014.49 The QLD Action Plan strives to engage Indigenous Queenslanders in the real economy in four key areas:50

- individual capacity;

- direct employment;

46 Ibid.
48 Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, Queensland Aboriginal and Torres Strait Islander Economic Participation Framework (2013) 4.
49 Ibid.
50 Ibid 3.
• Government infrastructure, services and policy; and
• private and other sector business and partnerships.

Programs, policies and initiatives have then been developed to target these key areas. ⁵¹

In 2010 the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs undertook an initiative called ‘Project 2800’. It was a Queensland Government initiative committed to providing 2800 employment opportunities for Indigenous people in the public sector by 2013. ⁵² This Report is unable to confirm whether this objective has been achieved.

The Embedding Aboriginal and Torres Strait Islander Perspectives in Schools (‘EATSIPS’) program aims to incorporate Indigenous perspectives into school culture, pedagogy and curriculum. ⁵³ Whilst this program relates to schools, one of the strategies for achieving the aims of EATSIPS is the employment of Indigenous staff. The Department of Education Training and Employment has established an employment strategy that will assist in meeting the EATSIPS targets for Indigenous Employment. ⁵⁴

The Queensland Government Building and Construction Training Policy (QGBCT Policy) ⁵⁵ commenced on 1 July 2014. It aims to support ‘employment opportunities and skills development in Queensland’s building and construction industry’. ⁵⁶

The QGBCTC Policy requires that 10% of the total labour hours ⁵⁷ on Queensland Government projects which are either:

• located within certain towns and communities; ⁵⁸ or
• those which are deemed by Queensland Government agencies or the Director-General of the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to be ‘Indigenous projects’, ⁵⁹
• be fulfilled by Indigenous apprentices, trainees and local Indigenous workers. ⁶⁰

1.7 Western Australia

⁵¹ Ibid 9-16.
⁵³ Queensland Government, Embedding Aboriginal and Torres Strait Islander Perspectives in Schools, Department of Education and Training (2011) 9.
⁵⁴ Ibid 66.
⁵⁶ Ibid.
⁵⁷ Ibid.
⁵⁹ Ibid 10.
⁶⁰ Ibid.
On 4 September 2012, the Western Australian Government launched the Aboriginal Economic Participation Strategy 2012-2016 (‘AEP Strategy’).  

The AEP Strategy aims to ‘increase the potential for Aboriginal people to participate fully in the [Western Australian] economy to strengthen Aboriginal culture and society, and to ensure Aboriginal people have the same opportunities in life as non-Aboriginal people’.  

The objectives of the AEP Strategy are as follows:  

- Increase the potential for Aboriginal people to have the same equality of opportunity in life as non-Aboriginal people including participating more fully in the economy and strengthening Aboriginal culture and society;  
- Provide education pathways that will equip Aboriginal students with the skills necessary to work, undertake further study, establish business and allow a broad and increased participation in the economy;  
- Increase Aboriginal participation and representation in employment and the broader economy and grow Aboriginal owned business, joint ventures between Aboriginals and non-Aboriginals and increase Aboriginal employment in Aboriginal businesses;  
- Increase the economic self-sufficiency of Aboriginal families and communities whilst reducing welfare dependence and encouraging the development of Aboriginal owned assets and intergenerational wealth; and  
- Increase decision making by Aboriginal people and shared responsibility for economic participation outcomes and improve collaboration and coordination across all levels of government.  

In March 2014, the Department of Aboriginal Affairs produced a progress report on the AEP Strategy noting that of the 69 initiatives undertaken, five have been completed, 63 are in progress and one is on hold.  

The Aboriginal Business Directory WA is a free service in which Aboriginal businesses operating in Western Australia can list their details and receive free promotion and exposure to potential customers.  

1.8 Victoria  

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63 Ibid 13-8.  
64 Department of Aboriginal Affairs, Annual Report 2014, Government of Western Australia (2014) 35.  

The VAES aims to build opportunity and economic prosperity for all Aboriginal Victorians. The goals of the VAES are to:

- build foundations and aspirations for jobs and business throughout life;
- create more job opportunities across the economy; and
- grow Aboriginal enterprise and investment.

1.9 Tasmania

In 2012, Tasmania’s Aboriginal Education Framework (2012-2015) (‘TAEF’) was released with the aim of providing ‘every Tasmanian with opportunities to learn and reach their potential, to lead fulfilling and productive lives and to contribute positively to the community.’

The TAEF operates in connection with the Aboriginal and Torres Strait Islander Education Action Plan 2010-2014 (‘Education Action Plan’). The TAEF aims to develop cultural awareness of Indigenous Australians in the Tasmanian school system and assist and support the educational needs of Indigenous students, their families and their communities.

2. Unemployment: Recommendation 302:

That State and Territory Governments consider whether, in coordinating the planning and delivery of services under the AEDP, including the development and coordination of planning at regional and local levels, ATSIC regional boundaries should be adopted as the geographic basis for such planning and delivery, and (subject to their agreement to do so), ATSIC Regional Councils should be involved in the planning process and perhaps take responsibility for it.

This Report concludes that Recommendation 302 has been implemented to the extent that consideration of the now dismantled ATSIC boundaries was required.

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68 Ibid.
71 Department of Premier and Cabinet, above n69.
On 16 March 2005 the Australian Parliament passed the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*. Under this Act, the Howard Government abolished the peak indigenous body, ATSIC, and all of its regional councils.

In effect, the bill did away with ATSIC as an elected representative body with powers and responsibilities, and distributed its program functions among other Commonwealth departments.

In the second reading speech, Senator Ellison stated:

*The Bill does one thing. It abolishes ATSIC. The bulk of the Australian Government's reforms to Indigenous affairs are proceeding independently of this Bill...For too long many mainstream agencies were not closely involved in Indigenous issues. Setting up a second rate specialist agency like ATSIC to do their job for them did not work*\(^{72}\).

As set out above at paragraph 1.1, there is now national coordination of Government programs and services to Indigenous Australians through the IAS.

Whilst the abolition of ATSIC necessarily renders the implementation of this Recommendation impossible, the replacement 'whole of government' approach that has been adopted is indicative of an acknowledgement that services must be more effectively distributed to remote communities through regional bodies that have an ongoing presence in the community.

3. **Unemployment : Recommendation 303:**

*That State and Commonwealth Governments study the experience of the Aboriginal Economic Employment Officer program operated by the Western Australian Department of Employment and Training and other similar schemes which enhance local Aboriginal involvement in stimulating economic activity.*

This Report finds Recommendation 303 has been partially implemented with the National Centre for Vocational Education Research (‘NCVER’) 2007 report entitled ‘A Review of Indigenous Employment Programs’, which was conducted on behalf of the Commonwealth, State and Territory Governments.\(^ {73}\) The NCVER report evaluated Indigenous participation in the national labour market and evaluated the effectiveness of the AEDP, the IEP, the CDEP, Working Nation programs and the Job Network program.\(^ {74}\)

Additionally, in March 2012, the Australian Institute of Health and Welfare and the Australian Institute of Family Studies released the Closing the Gap Clearinghouse Issues Paper No. 3 ‘Increasing Indigenous employment rates’.\(^ {75}\) The paper was an overview of why Indigenous Australians have lower employment rates than non-

\(^{72}\) *Aboriginal and Torres Strait Islander Commission Amendment Bill* 2004, Second Reading, Senator Ellison.

\(^{73}\) Dockery and Milsom, above n5, 5.

\(^{74}\) Ibid.

Indigenous Australians and which policies and programs have been successful in increasing Indigenous employment.\textsuperscript{76}

This Report has been unable to identify any State or Territory specific studies, however, the reports discussed above do consider various programs and schemes which operate nationally.

4. **Unemployment: Recommendation 304:**

That spending on training and other active labour market policy programs (such as CDEP and job subsidy schemes) be given preference over spending on unemployment relief programs. The determination of priorities for particular training programs must be better attuned to the particular needs expressed by local Aboriginal groups in their regional and community plans, and the skill requirements of the local labour market.

One of the key messages of the RCIADC was that new goals needed to be geared toward self-determination, education and training. A renewed effort needs to be made to prevent problems from reoccurring across generations rather than merely accommodate the practical repercussions of systemic disadvantage.

A sound economic basis will help us to cut the welfare umbilical cord that binds us. Increasingly, we must become active producers, instead of passive users, in the context of the Australian economy. Unless these imperatives are achieved, Aborigines will continue to be gripped by a counter-productive 'hand-out mentality' and destined to be a race of economic cripples and perpetual dependants [sic].\textsuperscript{77}

This Report finds that Recommendation 304 has only been partially implemented. The preference when dealing with immediate issues such as unemployment is still to favour social security expenditure rather than spending on training and labour market programs. This Report has, however, found evidence that Governments are allocating resources equivalent to amounts spent on social security expenditure on the ability for future generations to maximise their employment potential through education and training.

In December 2014 the third annual Indigenous Expenditure Report (‘Expenditure Report’) was released.\textsuperscript{78} The Expenditure Report noted some important factors on Indigenous expenditure at both the Commonwealth and the State and Territory levels of government in the 2012-13 fiscal year:\textsuperscript{79}

- $30.3 billion in total was spent on Indigenous services;
- $5.5 billion was spent on Indigenous economic participation;
- $4.5 billion was spent on social security support; and

\textsuperscript{76} Ibid, 2.
\textsuperscript{77} Commonwealth, above n1, [34.1.12].
• $1 billion was spent on labour and employment services.

The Expenditure Report defines 'economic participation' as including both labour and employment services and social security support.\(^{80}\)

Encouragingly, however, $4.5 billion was spent during the same period on early childhood development and education (which includes both school and tertiary levels).\(^{81}\) Whether such expenditure is having the desired positive effects on Indigenous learning outcomes and therefore participation in the broader economy, however, is outside the scope of this Report.

Examples of training and active labour market policy programs were discussed previously in paragraphs 1.1 to 1.9 (inclusive). Some additional programs which were not discussed earlier are:

- the Community Development Employment Projects (CDEP) scheme; and

The CDEP scheme is a program administered by the Department of Social Services in which eligible participants are required to be involved in the RJCP which was discussed earlier. The Commonwealth Government provides funding to CDEP providers (i.e. employers) to be used as wages to CDEP participants (i.e. Indigenous job seekers) and to cover administration costs.\(^{82}\)

There are difficulties in classing this scheme as an 'employment' scheme because the CDEP wages are derived from unemployment benefits which would have otherwise been paid to the participants. Whilst the Australian Bureau of Statistics records the CDEP participants who joined CDEP prior to July 2009 as 'employed', new participants will now receive 'income support benefits instead of CDEP wages' are classified as 'unemployed'.\(^{83}\)

The implementation of the IEDS heralded the beginning of a more proactive approach from the Commonwealth Government, involving the roll out of a number of programs directed towards education, training and employment. The programs under the IEDS include the following, which evidence the Government spending on active labour market policy programs:

- Youth Careers Pathways;\(^{84}\)
- Indigenous Opportunities Policy.\(^{85}\)

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\(^{80}\) Commonwealth, above n78, 11.
\(^{81}\) Commonwealth, above n79.
\(^{85}\) Department of Employment, above n27.
• Aboriginal and Torres Strait Islander Education Action Plan 2010-2014;\textsuperscript{86}
• Community Development Employment Projects Program;\textsuperscript{87}
• Working on Country Indigenous Ranger Program;\textsuperscript{88}
• Young Indigenous Leadership Program-IMPACT;\textsuperscript{89} and
• Northern Territory Indigenous Cadetship Program.\textsuperscript{90}

The IEDS was to be implemented by a series of action plans, the first of which expired in 2013. As at the date of writing, it does not appear that a new action plan has been adopted to support the continuation of the IEDS, however, the programs implemented under it still appear to be in operation.\textsuperscript{91}

In addition, the Education Action Plan, which expired in 2014 had the following investment priorities:\textsuperscript{92}

• readiness for school;
• engagement and connections;
• attendance;
• literacy and numeracy;
• leadership, quality teaching and workforce development; and
• pathways to real post-school options.

As discussed earlier, however, some States still appear to utilise the basis of the Education Action Plan in their own current policies.\textsuperscript{93}

In August 2011, the NSW Government established the Ministerial Taskforce on Aboriginal affairs to advise the Minister for Aboriginal Affairs on the development of Aboriginal policy, particularly in areas of Aboriginal education and economic opportunity. In doing this ‘the NSW Government indicated its strong commitment to bring the voice of Aboriginal people to the core of government’.\textsuperscript{94}

5. Employment: Recommendation 305:

\textsuperscript{86} Commonwealth, above n80.
\textsuperscript{90} Department of State Development, above n43.
\textsuperscript{92} Commonwealth, above n80.
\textsuperscript{93} Refer to [1.9] above.
\textsuperscript{94} NSW Government Ministerial Taskforce on Aboriginal Affairs, Final Report (March 2013) 2.
That the emphasis on public sector recruitment of Aboriginal people should be continued. The emphasis should be not only to achieve a target total figure, but a target for Aboriginal employment at all levels in the public sector. The adoption of such latter targets involves the provision of training opportunities. The emphasis should be directed at the whole of the public sector including statutory authorities and government owned businesses and not designed merely to provide opportunities for employment within areas of service delivery to Aboriginal people (although it is very important to have Aboriginal people employed in those areas).

The RCIADC noted the importance of employment in the public sector as an avenue for improving Indigenous employment levels. This Report finds that Recommendation 305 has been implemented.

An element of COAG’s National Partnership for Economic Participation involves increasing public-sector Indigenous employment and career development to increase the number of Indigenous Australians employed in the Commonwealth public sector. Additionally, jobs are being created in Government service delivery which were previously subsidised through the CDEP. All Governments share responsibility for increasing Indigenous employment.

The Australian Public Service Indigenous Employment Strategy assists Australian Public Service (‘APS’) agencies to improve their Indigenous employment outcomes. It achieves this through a number of strategies, including the following:

- the Pathways to Employment recruitment program;
- the APS Indigenous Employment Forum;
- APS Indigenous Cultural Capability Framework;
- APS-wide entry and exit survey;
- Indigenous Liaison Officers;
- the 3rd Census of Indigenous APS Employees; and
- APS Diversity Council.

In addition to the aforementioned Indigenous Cadetship Support and Northern Territory Public Service (NTPS) Apprenticeship Program, the Commonwealth Government has established the IEP, which aims to increase opportunities for Indigenous people and their communities through employment, business support and economic development activities.

The IEP provides a pre-employment program which aims to equip candidates with foundational skills that enable them to enter into a Northern Territory Public Sector career. On completion, successful participants are promised a permanent position within the NTPS.

The primary objectives of the IEP are to:

95 Commonwealth, above n 1, [34.2.16].
• encourage and help Aboriginal and Torres Strait Islander people to take up training and employment opportunities, stay in jobs and improve their future employment prospects;
• help communities, industry bodies and groups of employers to develop strategies that support local and regional economic growth; and
• help to develop sustainable businesses and job opportunities in urban and regional areas.

Similarly the NTPS Graduate Development Program (GDP) is aimed at developing the skills, experience, knowledge and abilities of graduates by combining on-the-job training with professional and personal development opportunities.

This program is distinct as it is specifically designed to equip graduates with skills and experience that gives them the level of competence required for management positions. In this respect, the GDP appears to be more closely engaged with realising the target contained within this Recommendation, which specifies the need for increased Aboriginal employment at 'all levels in the public sector'.

The Vacation Employment Program also provides students currently undertaking full-time degree studies at an Australian recognised university with the opportunity to gain valuable workplace experience in the NTPS. The program provides paid short-term employment within the NTPS agencies for the duration of the major university vacation periods. The positions range from administrative to fieldwork, and candidates have the opportunity to acquire skills including database maintenance, communications, research, working with legislation and event coordination.

5.1 Northern Territory

The Northern Territory Government has also implemented its own strategy to emphasise Indigenous employment in the Northern Territory Public Service (‘NTPS’). The Indigenous Employment and Career Development Strategy 2015-2020 recognises a need for the Northern Territory Public Sector to 'strive to achieve a public sector that reflects the Aboriginal and Torres Strait Islander population of the Northern Territory community its serves'. The Strategy's objective is to 'increase and encourage Indigenous employment participation and capability at all levels of NTPS work activity, and in all areas within agencies'. This is consistent with Recommendation 305.

In support of this objective, the Strategy identifies the following principles as being critical to success:

• a long term commitment to improving Indigenous employment, participation and capability in the NTPS must come from all levels of staff across NTPS agencies;

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• the NTPS must innovate to find new ways of attracting, developing and retaining Indigenous people in the NTPS workforce; and

• the NTPS must engage with Indigenous and non-Indigenous employees to develop an organisational culture which values and respects Indigenous culture and accommodates cultural differences.

5.2 Australian Capital Territory

The ACT Public Service’s Employment Strategy for Aboriginal and Torres Strait Islander People was developed by the ACT Government in conjunction with the ACT Aboriginal and Torres Strait Islander Elected Body and aims to double the number of Aboriginal and Torres Strait Islander employees in the ACT Public Service by 2015.\(^{99}\) This policy was developed following the recommendation of the ACT Aboriginal and Torres Strait Islander Elected Body Estimates-type hearings, that 'ACT Government implement sector-wide Aboriginal and Torres Strait Islander recruitment, retention and development strategy'. Whilst this policy was not initiated directly as a result of the Recommendations of the RCIADC, it nevertheless addresses the outcomes targeted by this Recommendation.

Consistent with the above strategy, the ACT Community Services Directorate's Aboriginal and Torres Strait Islander Employment Action Plan 2011-2013 sought to grow the Aboriginal and Torres Strait Islander workforce in the Community Services Directorate.

The ACT Legislative Assembly's Standing Committee on Health, Ageing, Community and Social Services conducted an Inquiry into ACT Public Service Aboriginal and Torres Strait Islander Employment, producing its second report in March 2014.

The Committee found that the 'the ACT Public Service Employment Strategy for Aboriginal and Torres Strait Islander people has much to commend it but its implementation is disappointing.'\(^{100}\) Specifically, the Committee found that while there has been progress in increasing numbers of Indigenous employees in the ACT public service, it is unlikely that the 2015 employee numbers targets will be met.

To address this deficiency, the report includes a number of strategies in respect of employment strategy implementation, including that the ACT implement a project management approach to ensure the targets and other identified outcomes in the strategy are met.\(^ {101}\)


5.3 South Australia

South Australia's Strategic Plan Target 51: ‘Aboriginal employment’ has set a target to halve the gap between Aboriginal and non-Aboriginal unemployment rates by 2018. The Aboriginal Employment Industry Cluster builds the capacity of employers to increase and sustain employment of Aboriginal people, including within the public sector. The initiative is led and supported by the South Australian and Australian Governments. The South Australian Aboriginal Leadership Program promotes opportunities for Aboriginal people to participate on South Australian Government boards and committees and for public sector employees to apply for senior positions. The Aboriginal Public Sector Program assists public sector agencies to source Aboriginal applicants from an Aboriginal Employment Register where they are referred to short term public sector vacancies.

In addition, Strategic Plan Target 53: Aboriginal Employees sets a specific target of increasing the participation of Aboriginal people in the South Australian public sector, spread across all classifications and agencies, to 2 per cent by 2014 and maintain or better those levels through to 2020.

5.4 New South Wales

The 'Making It Our Business' strategic action plan for the advancement of Aboriginal Employment in NSW was implemented by NSW, ACT and the Commonwealth. It is both a strategic framework and resource guide, designed to improve Aboriginal employment in the NSW public sector, to strengthen professional and career development opportunities for Aboriginal employees. Many agencies have established Aboriginal employment strategies and plans based on the key result areas highlighted in the strategic framework. The key result areas highlighted were:

- recruitment;
- skills acquisition and career development;
- retention;
- cultural education; and
- community engagement.

A number of agencies developed successful strategies to support and strengthen Indigenous employment and have implemented programs that have increased the recruitment and retention rates of Indigenous employees. An independent analysis of the strategy found that the NSW Government made good progress in Aboriginal employment over the last ten years through implementation of the strategy. The Making it Our Business strategy has been replaced with the NSW Public Sector Aboriginal Employment Strategy 2014 - 2017, which continues to demonstrate the NSW Government's commitment to 'growing and developing a talented and versatile Aboriginal workforce in the Public Sector'.

The elements of the new strategy are:

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24. INCREASING ECONOMIC OPPORTUNITY (RECOMMENDATIONS 300-320)
• attract Aboriginal staff;
• retain Aboriginal staff;
• support career development and progression;
• improve Aboriginal cultural competency in the workplace; and
• know our Aboriginal Workforce and plan for results.

The Strategy is also supported by the Government Sector Employment Act 2013, which makes workforce planning and management a priority and appoints the head of each government sector department or agency responsible for workforce diversity within the agency, and for ensuring that workforce diversity is integrated into workforce planning in the agency.

5.5 Western Australia

The Western Australian Aboriginal Employment Strategy 2011-2015: Building a diverse public sector workforce focuses on building long term, sustainable career pathways for Indigenous Australians within the public sector.103

The Western Australian Aboriginal Employment Strategy sets a public sector target of 3.2 per cent by 2015, representing the estimated Aboriginal proportion of the total working age population in 2015.

The Strategy proposes to achieve the target through a range of initiatives focussed on 5 general themes:

• create culturally inclusive workplaces;
• attract Aboriginal people;
• build capability and careers;
• foster Aboriginal leaders; and
• be accountable.

The WA Government’s ‘State of the WA public sector 2014: Measuring up’ report shows that Aboriginal employment levels in the WA public sector continue to outperform other states, except for the Northern Territory.104

5.6 Queensland

The Queensland Government has also taken steps to emphasise the continued recruitment of Aboriginal people in the Queensland public sector and to set employment targets. Most relevantly, the Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan identifies direct employment of

Aboriginal people for services such as health, education and disability services as a strategy.\textsuperscript{105}

An occasional report on Indigenous employee job security in the Queensland Public Service found that the Queensland public sector had been effective in increasing the percentage representation of Indigenous people within its workforce between 2000 and 2008.\textsuperscript{106}

However, the Queensland Public Service Workforce Characteristics 2013/14 report prepared by the Public Service Commission shows that the percentage representation of Indigenous people within the Queensland public sector decreased in 2013/14 down to 2.08%.\textsuperscript{107}

5.7 Tasmania

The Tasmanian Government has also taken steps to recognise the importance of public sector recruitment.

Most relevantly, the Tasmanian government has made Employment Direction No. 10 ‘Aboriginal and Torres Strait Islander Employment in the Tasmanian State Sector’, which specifies administrative arrangements applicable to the employment of Indigenous people in the Tasmanian State Service.\textsuperscript{108}

The Employment Direction deals specifically with 'identified positions' (being a position in which Indigenous people are the principal groups affected by the duties of the position) and 'tagged positions' (being positions involving working with, providing a service to, or developing policies and programs affecting, Indigenous people). The policy does not, therefore, directly respond to Recommendation 305 which proposes that targets for aboriginal employment in the public sector should be directed at the whole of the public sector, and not limited to providing opportunities for employment within areas of service delivery to Indigenous people.

The Tasmanian Government also maintains an Aboriginal and Torres Strait Islander Employment Register.

5.8 Victoria

The Victoria Public Service Commission has prepared 'Karreeta Yirramboi', the Victorian Aboriginal Public Sector Employment and Career Action Plan 2010-2015.

\begin{itemize}
  \item \textsuperscript{108} Employment Direction No 10 <http://www.dpac.tas.gov.au/__data/assets/pdf_file/0016/186010/ED10_AboriginalTorresStraitIslanderEmployment.PDF>
\end{itemize}
The objective of the plan is to increase Aboriginal employment in the Victorian public sector to 1% by 2015.\textsuperscript{109}

The action areas under the plan include building pathways between education and public sector employment, making the public sector an employer of choice for Aboriginal people, creating inclusive workplaces, supporting employers to recruit and retain Aboriginal employees and driving change.

Each of these initiatives demonstrates that efforts are being made by the Federal, State and Territory Governments to recruit Indigenous Australians into the public sector.

6. Employment - Recommendation 306:

That governments attempt to encourage Aboriginal employment in the private sector, but until the private sector level of Aboriginal employment reaches an acceptable level, governments should be prepared to set targets for recruitment into the public sector at somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population.

The RCIADC revealed that the greatest discrepancy between Indigenous and non-Indigenous employment exists within the private sector.\textsuperscript{110} Indigenous people are disadvantaged by poor education and lack of job skills, discrimination, geographic location and cultural factors.

This Report finds that Recommendation 306 has been partially implemented, with the Commonwealth Government contributing most significantly to the promotion of private sector employment. The demands of regular employment often place considerable stress on Indigenous families, who are often disadvantaged by lower incomes, poorer health outcomes and greater involvement in the criminal justice system. There can be no question that the existence of a criminal record may prejudice many private employers, and it is a sad fact that many Indigenous people are the subject of such records.\textsuperscript{111}

As such, employers within the private sector must recognise that there are cultural imperatives for Indigenous people which make it difficult for them to participate in exactly the same ways in which non-Indigenous people might participate\textsuperscript{112}. Just as other individuals within the community have come to benefit from flexible work arrangements, similarly, Indigenous people should be approached with the same degree of flexibility by means of awards and special arrangements with employers.

\textsuperscript{110} Commonwealth, above n1, [34.2.29].
\textsuperscript{111} Ibid [34.2.30].
\textsuperscript{112} Ibid [34.2.31].
The Indigenous Opportunities Policy (IOP) provides an example of practical and targeted responses to this Recommendation. Under the IOP, suppliers to the Australian Government who win contracts valued over $5 million ($6 million for construction) for activity in regions with a significant Indigenous population are required to develop and implement an Indigenous training, employment and supplier plan. This is an effective way for the Government to use its purchasing power proactively to increase the use of Indigenous businesses and resources in the private sector through Government funded contracts.

The Australian Employment Covenant (AEC) is another example of how industry has taken a lead role in partnering with governments and Indigenous Australians to help ‘Close the Gap’ in employment and employment opportunities. Since it was first announced in 2008, the AEC has secured commitments from employers across Australia to place over 50,000 Indigenous Australians into employment.

Indigenous Business Australia (IBA) works to increase economic independence for Indigenous Australians by providing home and business loans and joint venture investment partnerships. Through these initiatives Indigenous Australians increase their capacity to work with and benefit from the private sector to pursue business opportunities and own their own homes.

A substantial part of recruiting into the private sector comes down to connecting suitable candidates with employers in appropriate fields. The establishment of agencies such as Job Services Australia and Ironbark Employment and Training has facilitated the placement of people in jobs that match their skill-set and involvement with these programs is often a prerequisite to receiving government benefits.

Each of the above programs relies upon educational initiatives that support candidates by equipping them with skills that empower them to access these opportunities and integrate effectively into the private sector.

The Indigenous Youth Careers Pathways program provides school-based traineeships in targeted high schools across the country with a view to increasing the number of Aboriginal and Torres Strait Islander people who make the transition from school into further education, training or employment.

Similarly, the Aboriginal and Torres Strait Islander Education Action Plan (2010–14) has created a platform for ongoing structured investments in Indigenous education and training so that they are better equipped for employment in the private sector. Some of the key investment priorities include readiness for school, engagement, attendance, leadership, quality teaching and pathways to real post-school options.

The Australian Chamber of Commerce and Industry has worked in conjunction with the Department of Employment and Workplace Relations (DEWR) and the Northern Territory Chamber of Commerce and Industry (NTCCI) to create this industry program.

The main objectives of the program are:

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113 Indigenous Opportunities Policy Guidelines

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• development of an ‘industry specific’ approach to Indigenous Employment;
• establishing and maintaining stronger partnerships between Industry and Indigenous jobseekers; and
• provision of quality advice to stakeholders on Indigenous issues within the private sector.

These programs form the foundational action required to see that Indigenous people are empowered to embrace the opportunities that should continue to be extended to them.

Implementation of this Recommendation has been significantly limited by the deeply entrenched socioeconomic disadvantages experienced by Indigenous people. Notwithstanding this, the aforementioned programs form part of an effective response by creating mechanisms that promote smooth transitions into the workforce.

The Indigenous Employment Program supports activities that:

• encourage and help employers to provide sustainable employment opportunities for Indigenous people;
• encourage and help Indigenous people to take up training and employment opportunities, stay in jobs and improve their future employment prospects;
• help communities, industry bodies and groups of employers to develop strategies that support local and regional economic growth; and
• help to develop sustainable businesses and job opportunities in urban and regional areas.

6.1 Queensland

The Queensland Government has also taken steps to encourage Indigenous employment in the private sector and to otherwise assist in improving Indigenous representation in the workforce. Though not stated as being directly in response to the RCIADC Recommendations, these steps support implementation of the Recommendations.

The Queensland Government published the Queensland Aboriginal and Torres Strait Islander Economic Participation Framework in December 2013. The intention of the Framework is to "set a basis for Aboriginal and Torres Strait Islander individuals, families and communities, all levels of government, industry and business, and the non-government sector to work together to enable Aboriginal and Torres Strait Islander people to participate in Queensland's economy."114

One of the priorities for action under the Framework is to 'facilitate Aboriginal and Torres Strait Islander people contributing to the four pillar industries and the broader Queensland economy, through partnerships, employment and business growth.' In

support of this priority, the Queensland Government has entered into agreements with the construction and agricultural sectors to address barriers to Indigenous employment in those areas, and have also signed memoranda of understanding with industry to implement projects with an aim to increase direct employment and supply chain arrangements for Indigenous businesses.

These industry agreements are also supported by the Queensland Government Building and Construction Training Policy which applies from 1 July 2014 which is aimed at supporting employment opportunities and skills development in Queensland’s building and construction industry.\(^115\)

The Policy requires contractors to employ apprentices and trainees and undertake other workforce training as a mandated component of being awarded work on eligible Queensland Government projects (being building projects with a contact sum of $500,000 or greater (including GST), and civil construction projects with a contact sum of $3 million or greater (including GST)) in Indigenous communities and the Town of Weipa and projects selected as Indigenous projects.

Further action items aimed at improving participation in the private sector are set out in the Queensland Aboriginal and Torres Strait Islander Economic Participation Action Plan and include mentoring high growth Indigenous businesses and capacity building.

The Action Plan also identifies the need for an increased role for Indigenous people in government projects, particularly in respect of government infrastructure and services. This aligns with the RCIADC Recommendation as it relates to increased representation of Indigenous people in the public sector.

### 6.2 New South Wales

The NSW Government has also taken steps to encourage Aboriginal employment in the private sector, including through coordinated OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) Policy.\(^116\) One of the major initiatives under the OCHRE Policy is linking education and employment through, most relevantly:

- the Opportunity Hubs initiative which supports young Indigenous people in the transition from school into tertiary education, training and/or employment including through engagement with local employers; and
- identification of opportunities for economic participation for Indigenous communities. In furtherance of this initiative, the NSW Government has entered various industry-based agreements with key industry groups to improve employment and job retention outcomes for Indigenous people. Most recently, the NSW Government has entered industry-based


agreements with the Master Builders Association\textsuperscript{117} and the NSW Minerals Council.\textsuperscript{118}

The NSW Government has also entered into a Memorandum of Understanding with the NSW Indigenous Chamber of Commerce identifying how they will work together to support the development of Indigenous business and employment across NSW.\textsuperscript{119} These actions demonstrate that the NSW Government has taken steps to encourage employment of Indigenous people in the private sector in accordance with Recommendation 306.

### 6.3 South Australia

The South Australian Government has also implemented a number of initiatives to encourage Indigenous employment in the private sector.

Most notably, the South Australian Government (with the Commonwealth) has supported the establishment of the "South Australian Aboriginal Employment Industry Cluster Initiative" which operates to:

- provide an avenue for employers to share and promote best practice and develop culturally safe recruitment and retention strategies;
- provide a single entry point for industry to access state and Australian government services and members of the Aboriginal community;
- link skills development and education to employment opportunities and industry demand;
- support small employers to partner with larger companies with similar skill needs to deliver cost efficient pre-employment programs;
- build cultural competence in the workplace and across the industry;
- create stronger connections to Indigenous communities; and
- provide advice for permanent change to everyday recruitment practices to ensure Indigenous people are employed outside of specific projects.\textsuperscript{120}


This policy framework supports the initiative in South Australia's strategic plan, "Target 51" to halve the gap between Indigenous and non-Indigenous unemployment rates by 2018.\textsuperscript{121}

6.4 Victoria

The Victorian Aboriginal Economic Development Strategy 2013 - 2020\textsuperscript{122} demonstrates the Victorian Government's commitment to attempt to encourage Indigenous employment in the private sector. Most relevantly, the strategy recognises the need for new partnerships between government, the private sector and community to build more sustainable jobs. This is stated as being a shared responsibility.

The strategy also contemplates the establishment of the 'Victorian Aboriginal Economic Board' whose work will include championing industry agreements to build opportunities for Indigenous Victorians and other economic related initiatives.

These initiatives support Recommendation 306.

7. Unemployment: Recommendation 307:

\textit{That Commonwealth, State and Territory Governments adopt a fair employment practice in relation to the letting of government contracts, which gives preference to those tenderers who can demonstrate that they have adopted and implemented a policy of employing Aboriginal persons in their work force.}

The RCIADC noted that requiring parties who contract to Commonwealth, State or Territory Governments to implement an Indigenous employment strategy would stimulate more companies to develop such strategies. The Federal Government has made significant investments in working with the private sector, however, this Report finds that Recommendation 307 is partially implemented. One example has involved requiring government contractors to incorporate Indigenous business in their supply chain under the Indigenous Opportunities Policy (IOP).

The IOP was developed as part of the Council of Australian Government's (COAG) commitment under the National Partnership Agreement on Indigenous Participation. It aims to maximise Indigenous employment opportunities and the engagement of Indigenous businesses through Australian Government procurement processes.

Under the IOP, suppliers to the Australian Government who win contracts valued over $5 million ($6 million for construction) for activity in regions with a significant Indigenous population are required to develop and implement an Indigenous Training, Employment and Supplier plan approved by the IOP Administrator. This policy is designed to change the way businesses operate and encourage them to adopt new and inclusive practices. As a result of awarding large Government

\textsuperscript{121} SA Strategic Plan Target 51 <http://saplan.org.au/targets/51-aboriginal-unemployment>.


24. INCREASING ECONOMIC OPPORTUNITY (RECOMMENDATIONS 300-320)
contracts to eligible businesses, more Indigenous Australians are benefiting from training and employment, and more Indigenous businesses are involved in the delivery of goods and services. In this respect the policy succeeds.

One of the objectives of the National Partnership Agreements on Indigenous Economic Participation is the strengthening of current Government procurement policies to maximise Indigenous employment. One of the ways in which this is achieved is through the exemption to Division Two of the Commonwealth Procurement Rules for Indigenous Small and Medium Enterprises.\(^\text{123}\)

Similarly, the Northern Territory Procurement Policy\(^\text{124}\) and Tender Weighting System require Government Agencies to give significant weight to the extent to which a tenderer adopts a policy of employing Indigenous employees and trainees. The assessment of each tender is be carried out using a comparative analysis of weighted scores and 20% of the score must be allocated to an assessment of Local Development and Value Adding, which comprises questions relating to Indigenous participation in the business’s workforce.

The RCIADC noted that, whilst these programs and policies continue to be effective incentives for larger companies to employ Indigenous people, more action needs to be taken to ensure that smaller businesses, particularly those in rural towns, are also encouraged to employ Indigenous people.\(^\text{125}\)

The South Australian Connecting Aboriginal People to Mining (CAPM) program supports South Australian companies in resource industries and their supply chain to train and employ Aboriginal people.\(^\text{126}\) It also provides Aboriginal jobseekers with an opportunity to undertake accredited training in a supportive and structured environment that leads to employment within the resource industries sector at the completion of training.

The South Australian Government has committed to funding CAPM over four years, commencing in 2010-11. Between $500,000 and $544,000 is available each financial year to support projects that connect Indigenous job seekers to employment in the mining, resource and supporting industry sectors.

In 2011 the Government of South Australia also implemented guidelines for contractors and contracting agencies on Workforce Participation in Government Construction Procurement. The Guidelines set minimum percentage components of


\(^{125}\) See footnote 1, paragraph 34.2.36.

labour hours worked on building and civil construction contracts to be undertaken by Indigenous people.\textsuperscript{127}

The policy encourages the employment of apprentices, trainees, Aboriginal people and local people with barriers to employment and up-skilling of workers through building and civil construction works. It rests on a partnership between Government and contractors and supports the long term employment and skilling needs of the construction industry.

In response to this Recommendation, NSW has implemented the Aboriginal Participation in Construction Policy. The \textit{Aboriginal Participation in Construction Guidelines} aim to improve workforce diversity in the construction and related industries by facilitating the development of Indigenous enterprises and encouraging government contractors to provide Indigenous people with apprenticeships, on-the-job skills training and career opportunities for those first entering the industry.\textsuperscript{128}

To achieve this, NSW Government agencies, on selected construction projects:

- require service providers to meet agreed Indigenous participation targets and report on the delivery of Indigenous development outcomes; and
- seek to use service providers with a commitment and demonstrated ability to effectively plan and implement Indigenous participation appropriate to the needs of the service provider, the project and employees.

Government agencies are required to identify construction projects that have the potential to deliver improved employment outcomes for Indigenous people and enterprises. This requirement applies to construction projects that are to take place in areas where there is a significant Indigenous population, or where Indigenous people are one of the main client groups for the construction project, such as a school or hospital.

The Queensland Indigenous Employment Policy for Queensland Government - Building and civil construction projects (IEP 20\%) policy does not implement this Recommendation \textit{per se} as it does not require the Government to give preference to those tenderers who have adopted a policy of employing Indigenous persons. However, the policy does require a 20 per cent minimum benchmark of total labour hours, with half of the deemed labour hours required to involve accredited training and the Indigenous workforce is to be recruited from the local Indigenous communities.\textsuperscript{129}

This policy does not apply to Queensland Government contracts generally. Rather, it applies to all civil construction projects (with no minimum project cost threshold) and to building projects exceeding $250,000 (GST inclusive) undertaken directly by

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departments or funded by departments through grants in the specified Indigenous communities and the townships of Weipa, Coen and Laura. Otherwise, the State Procurement Policy as of June 2012 does not appear to implement the Recommendation. The Queensland Government Progress Report on Implementation 1996/1997 expressed a concern that the Recommendation may be inconsistent with the WTO Agreement on Government Procurement which provides that agreement members are to bid equally against domestic suppliers.\footnote{130}

From 1 July 2014 the Queensland Indigenous Employment Policy for Queensland Government - Building and Civil Construction Projects (IEP 20%) was replaced by the Queensland Government Building and Construction Training Policy. This policy is aimed at supporting employment opportunities and skills development in Queensland's building and construction industry. It also focuses on increasing the economic independence of Indigenous Queenslanders in the industry.\footnote{131}

Additionally, the Queensland Government has implemented the Program of Action 2011-2014,\footnote{132} which states as one of its aims to:

\begin{quote}
Increase employment opportunities and support Indigenous businesses by strengthening Queensland Government purchasing policies. Strategies under consideration include requiring successful contractors of major government construction, maintenance and cleaning and infrastructure projects to implement Indigenous training, employment and supplier strategies and encouraging government departments to join the Australian Indigenous Minority Supplier Council (AIMSC).
\end{quote}

One of the targets of the Program of Action is to review government procurement policies including requirements for Indigenous employment. This indicates that, in Queensland, Recommendation 307 is still being considered, however does not appear to be fully implemented at the time of writing.

8. Unemployment: \textbf{Recommendation 308}:

That Commonwealth and State Governments give consideration to establishing a body made up of representation from government (DEET and ATSIC, as well as State Governments) and Australian employer and employee peak bodies to discuss, with a view to setting in motion, a process of implementing the aims of the AEDP in the private sector.

This Report has not found any evidence of Recommendation 308 having been implemented at the Federal, State or Territory levels.


May 2015
9. **Unemployment: Recommendation 309:**

That increased funding be allocated to the establishment of local employment promotion committees comprised of representatives of Aboriginal groups, local employers, government departments and unions to:

a. **Develop and implement suitable promotional marketing campaigns aimed at the total labour market;**

b. **Lobby for local initiatives in improving employment options and broadening local understanding of the needs and aspirations of Aboriginal people in the region; and**

c. **Increase the understanding in the Aboriginal community of the possible local employment options, the nature of the work involved and the skills required.**

In funding the establishment of the committees, priority should be given to locations where labour market opportunities exist and where the greatest disparity between Aboriginal and non-Aboriginal employment rates are identified.

This Report has not found any evidence of Recommendation 309 having been implemented at the Federal, State or Territory levels.

10. **Unemployment - Recommendation 310:**

That the Commonwealth, and in particular the Department of Employment, Education and Training, analyse its current programs with a view to ensuring that they fully address the employment, education and training needs of potential and existing Aboriginal offenders. Where necessary, existing program guidelines should be modified and/or new program elements developed to increase access by such clients. In particular, DEET should examine means of assisting Aboriginal communities to become more involved in preventative, diversionary and rehabilitative programs to assist Aboriginal offenders, particularly where they would provide an alternative to incarceration.

This Recommendation has been implemented.

The Employment and Training Transition Project (ETPP) was developed in response to this Recommendation and aimed to make employment, education and training opportunities more accessible to Indigenous offenders in the immediate post release period.

In addition, State Governments have implemented programs to assist in the employment, education and training needs of offenders. An example of such a program directed at Indigenous offenders is the Konnect program in Victoria which
aims to provide a culturally specific response to assist Indigenous men and women to prepare for their release and successfully transition to life in the community.\textsuperscript{133}

11. Unemployment: Recommendation 315:

That the recommendations submitted to the Conservation and Land Management meeting (held at Millstream on 6-8 August 1990) by representatives of Aboriginal communities and organisations be implemented in Western Australia upon terms to be negotiated between Aboriginal people and appropriate Aboriginal organisations and communities on the one hand and National Park authorities on the other so as to protect and preserve the rights and interests of Aboriginal people with cultural, historical and traditional association with National Parks. The recommendations proposed at the Millstream meeting are set out below.

The RCIADC noted that National Parks holds the potential to allow Indigenous people to become involved in land management activities. This Recommendation has been partially implemented.

**Recommendation 315(a):**
The encouragement of joint management between identified and acknowledged representatives of Aboriginal people and the relevant State agency.

In July 2003, the Government of Western Australia released a consultation paper titled Indigenous Ownership and Joint Management of Conservation Lands in Western Australia (‘Paper’).\textsuperscript{134} One of the proposals in the Paper was for legislative changes to the Conservation and Land Management Act 1984 (WA) (‘CALM Act’) to facilitate joint management of National Parks and conservation lands in WA. In March 2012 the CALM Act was amended to enable joint management of lands and waters by the Department of Parks and Wildlife and other landowners or interested parties, including Indigenous people. This allows Indigenous people to become joint managers of land without being a landowner, and regardless of whether native title is determined. This provides an opportunity for engagement with joint management by Aboriginal groups for which native title rights have been extinguished. The Report finds that this Recommendation has been implemented.

**Recommendation 315(b):**
The involvement of Aboriginal people in the development of management plans for National Parks.

The CALM Act establishes the Conservation Commission of WA, the functions of which include having certain land vested in it, and extend to the joint management of certain nature reserves (though not explicitly jointly with Indigenous bodies).

\textsuperscript{133} Konnect program information
\textsuperscript{134} Indigenous Ownership and Joint Management of Conservation Lands in Western Australia
In additional to this, following the amendment to the CALM Act as outlined above, the Department of Parks and Wildlife is able to enter into a formal joint management agreement under section 56A of the CALM Act with other parties, providing a legal framework for the management of specific lands and waters. The Department's intention is to work with Indigenous groups and organisations to constructively enable Indigenous people to participate and engage with the management of lands and waters, and combine traditional and contemporary land management objectives.  

**Recommendation 315(c):**  
*The excision of areas of land within National Parks for use by Aboriginal people as living areas.*

Recommendation 315(c) has not been implemented. However, section 23 of the Wildlife Conservation Act 1950 provides a defence to the charge of an offence under the Act of taking flora or fauna if the accused is an Aboriginal person who took the flora or fauna for a customary purpose. This defence only applies to land to which the CALM Act applies, which includes (amongst others) State forest, national parks, conservation parks, marine parks and nature reserves.  

**Recommendation 315(d):**  
*The granting of access by Aboriginal people to National Parks and Nature Reserves for subsistence hunting, fishing and the collection of material for cultural purposes (and the amendment of legislation to enable this, where necessary).*

In addition to section 23 of the Wildlife Conservation Act 1950 as referred to above, section 103A of the CALM Act permits Indigenous persons to do certain things for customary purposes including preparing or consuming food customarily eaten by Indigenous persons, preparing or using medicine customarily used by Indigenous persons or engaging in artistic, ceremonial or other cultural activities customarily engaged in by Indigenous persons.

**Recommendation 315(e):**  
*Facilitating the control of cultural heritage information by Aboriginal people.*

Recommendation 315(e) has not been implemented. Under the Aboriginal Heritage Act 1972 (WA), 'Aboriginal cultural material' remains under the control of the Governor.

**Recommendation 315(f):**  
*Affirmative action policies which give preference to Aboriginal people in employment as administrators, rangers, and in other positions within National Parks.*

Recommendation 315(f) has been partially implemented. The WA Department of Parks and Wildlife includes as part of its employment strategy the aim to have 7% of

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24. **INCREASING ECONOMIC OPPORTUNITY (RECOMMENDATIONS 300-320)**
its workforce to be Indigenous people. The movement to joint management of National Parks as outlined above will also provide employment opportunities for Indigenous people.

**Recommendation 315(g):**
The negotiation of lease-back arrangements which enable title to land on which National Parks are situated to be transferred to Aboriginal owners, subject to the lease of the area to the relevant State or Commonwealth authority on payment of rent to the Aboriginal owners.

The aforementioned 2003 consultation paper proposed the transfer of freehold title to Indigenous people with lease-back to the State. This Report finds no evidence of this proposal having been implemented.

**Recommendation 315(h):**
The charging of admission fees for entrance to National Parks by tourists;

This Recommendation appears to have been satisfied. Admission fees are now prescribed by Part 8 of the *Conservation and Land Management Regulations 2002* (WA) for entry into the following parks (by region) in Western Australia:

- **North West:**
  King Leopold Ranges Conservation Park, Karijini, Millstream Chichester, Mirima, Mitchell River, Purnululu (Bungle Bungle), Geikie Gorge National Park. Tunnel Creek and Windjana Gorge national parks.
- **Coral Coast:**
  Cape Range, François Peron, Kalbarri, Lesueur and Nambung (Pinnacles) national parks.
- **Around Perth:**
  Avon Valley, John Forrest, Serpentine, Walyunga and Yanchep national parks.
- **Golden Outback:**
  Cape Arid, Cape Le Grand and Stokes national parks.
- **South West:**
  Beedelup, D’Entrecasteaux, Fitzgerald River, Gloucester, Greater Beedelup, Porongurup, Shannon, Stirling Range and Warren national parks.

**Recommendation 315(i):**
The reservation of areas of land within National Parks to which Aboriginal people have access for ceremonial purposes.

This Report was unable to find reference to the reservation of areas within National Parks for ‘ceremonial purposes’ in WA. Section 103A of the *CALM Act*, however, allows Aboriginal people to do things for ‘customary purposes’, which include

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ceremonial activities. Whilst this Report was not able to find evidence of the reservation of land for ceremonial purposes, it would seem that the rights contained in the CALM Act would facilitate a similar purpose to the aims of this Recommendation.

**Recommendation 315(j):**
The establishment of mechanisms which enable relevant Aboriginal custodians to be in control of, protection of and access to sites of significance to them.

Despite the aforementioned 2003 consultation paper proposing alternative management methods for protected areas, this Report found no legislative reference specifically to Aboriginal people being granted control, protection of and access to culturally significant sites.

12. **Unemployment: Recommendation 316:**

That the relevant Governments, in consultation with relevant Aboriginal organisations give consideration to funding the establishment of a small unit, comprising Aboriginal people drawn from northern Western Australia, the Northern Territory and northern Queensland, which would be based in the northern part of the country. The function of the unit would be to study, in consultation with the residents of remote communities in those areas, the means of achieving greater self-sufficiency in those communities. The Unit would have the task of keeping remote communities advised of successful initiatives achieved in other communities and assisting remote communities in the preparation of their community plans, so as to assist them in developing economic independence, or at least a greater degree of self-sufficiency.

The RCIADC acknowledged the need for regionally focused bodies to ensure that:

> strategies to enhance Aboriginal economic development are tailored to local needs and conditions, and that there is Aboriginal involvement in the development of strategies.\(^{138}\)

The lack of co-ordination between State/Territory programs with those run by Commonwealth agencies was identified as a significant barrier to Aboriginal economic development on a community level.

It was suggested that 'State agency involvement in the development of the State and Regional AEDP plans would help to ensure better co-ordination and better dissemination of information about activities in this area by both levels of government'.\(^ {139}\)

Recommendation 316 called for the establishment of ‘a small unit’, comprising Aboriginal people drawn from northern Western Australia, the Northern Territory and northern Queensland, which would consult with residents in remote communities about strategies for achieving greater self-sufficiency in those communities. The unit

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\(^{138}\) Commonwealth, above n1, [34.1.54].

\(^{139}\) Commonwealth, above n1, [34.1.57].
was to be tasked with keeping remote communities advised of successful initiatives achieved in other communities and assisting remote communities in the preparation of their community plans.

Whilst there is no evidence of the establishment of a single 'small unit' that only comprises Aboriginal members and answers the Recommendation's specifications exactly, the Australian Government appears to have responded to its substantive demands by implementing a program involving numerous regional units focused on assisting communities in developing economic independence.

On 1 July 2013 the Australian Government implemented the Remote Jobs and Communities Program ('RJCP') to provide a more streamlined and flexible approach to employment, participation and community-development services in 60 remote regions across Australia.\textsuperscript{140}

The new program builds on the strengths of four existing programs: Job Services Australia ('JSA'), Disability Employment Services ('DES'), the IEP and the Community Development Employment Projects ('CDEP').

Under the RJCP, there is a single provider in each region. The provider works with individuals, communities and local employers to help more people transition into jobs and build stronger, self-sufficient communities. The program is available to both Indigenous and non-Indigenous job seekers in remote Australia, however 85% of job seekers and communities in these areas are Indigenous people, and thus the RJCP forms an important part of the Government's agenda for 'Closing the Gap'.

The introduction of Community Action Plans ('CAP') creates a system where communities must embrace responsibility for setting and realising their own economic goals. Each RJCP region must have a CAP that includes all communities within a region and RJCP providers will work with communities and other stakeholders to develop it.

From June 2015, following the release of Andrew Forrest's report \textit{Creating Parity - the Forrest Review} relating to Indigenous training and employment programs, the RJCP will be reformed to introduce the Work for the Dole program in remote areas (5 days a week, 12 months per year), as well as the establishment of new businesses. This includes funding of $25 million annually for the creation of local enterprises, which will create intermediate labour markets and greater work experience and jobs in remote communities.\textsuperscript{141}

The implementation of the RJCP is an effective response to the overarching objective behind Recommendation 316: to introduce a greater level of community consultation in the interest of achieving economic independence for individual communities. Furthermore, increasing the economic prosperity of Indigenous people


is directly relevant to achieving gains in other areas such as health, education, and child protection.\textsuperscript{142}

13. **Unemployment: Recommendation 317:**

*That further extension of the CDEP Scheme (or some similar program) to rural towns with large Aboriginal populations and limited mainstream employment opportunities for Aboriginal people be considered.*

Recommendation 317 has been implemented, with the Commonwealth Government's recent RCJP. From 1 July 2013 the Australian Government implemented the aforementioned RJCP to supplement the existing CDEP program and provide a more streamlined approach to employment and community development in 60 remote regions across Australia. The RJCP will replace the CDEP in remote areas from 30 June 2015.

The new program has been structured so that communities in remote regions have access to similar employment programs and support services as provided by the CDEP in non-remote locations (see above). The Government undertook an extensive process to select the providers to deliver the program's activities in each region. Whilst the Government invited applications from any organisation that considered it could demonstrate its connection to the relevant community, ultimately Indigenous organisations constituted a large portion of the providers that were selected. Other successful RJCP providers include small, medium, large, for-profit and not-for-profit organisations.

14. **Unemployment: Recommendation 318:**

*That in view of the considerable demands placed on staff of ATSIC by the expansion of the CDEP Scheme, consideration be given to developing a mechanism for devolving to appropriate consenting Aboriginal organisations, in particular resource agencies, responsibility for some aspects of the administrative support of CDEP schemes, including in particular:*

\begin{itemize}
  \item[a.] Advising communities on the types of work which the community may wish to consider undertaking;
  \item[b.] Advising communities on the potential for incorporating other types of funding for employment and enterprise development into a CDEP scheme;
  \item[c.] Dissemination of information (collected by ATSIC) on successful schemes;
  \item[d.] Financial and administrative support for management of a scheme; and
\end{itemize}

\textsuperscript{142} NSW Ombudsman, *Addressing Aboriginal disadvantage* (October 2011), 48.
e. Assisting in the provision or co-ordination of training for participants and managers of CDEP.

Those Aboriginal organisations should be adequately resourced to carry out the tasks which are devolved to them.

This Recommendation cannot be achieved as the CDEP Scheme was abolished on 1 July 2013. The Scheme was replaced with the RJCP in 60 remote locations across Australia. The Program is coordinated by a single service provider with a permanent presence in each remote region.

15. Unemployment: Recommendation 319:

That in the coming review of the CDEP Scheme consideration be given to:

Funding

a. Improved mechanisms for the combining of funds from different programs (such as the Aboriginal Enterprise Incentive Scheme and the Enterprise Program) to supplement the capital and recurrent funding of CDEP in order to facilitate greater Aboriginal community control over infrastructural components of projects;

b. The introduction of a mechanism which ensures that CDEP projects are not used as a substitute for the provision of an adequate level of municipal and other social services, unless funds equivalent to those which would have been provided in respect of municipal and social services are provided to supplement the operation of CDEP;

c. The recognition by the Department of Finance of CDEP as a discrete program with considerable offset savings to the government (in respect of administrative savings from non-payment of Unemployment Benefits), and the automatic provision of the 20% oncost component—not from the ATSIC existing global allocation;

Equity Considerations

d. The improved policing of payments under CDEP to ensure that all participants in CDEP receive an income equivalent to Unemployment Benefit regardless of work actually performed, subject to the participants’ performance of their obligations under the scheme;

e. Addressing issues of access to income, and meaningful work activities for women participants in CDEP;

Administrative and Financial Management Support

f. The enhanced involvement of Aboriginal controlled organisations and resource agencies in the provision of administrative expertise and advice in the operation of CDEP;

g. Improvements in the financial control systems for CDEP schemes and provision for the training of managers in the maintenance of financial controls;

h. Initiatives for the development of ATSIC staff training in negotiation and consultation skills, and in cultural sensitivity, in order to improve the
effectiveness and minimise the burden of consultation and support provided by ATSIC to communities on CDEP;

Training and Employment Potential
i. An improved level of training and planning support for projects, and for the development of medium and long term plans for CDEP projects which reflect the aspirations of participants for access to mainstream employment opportunities, enterprise development or culturally appropriate work;

j. Increased co-ordination between ATSIC and DEET in respect of the training requirements of both new and ongoing CDEP projects, and in relation to the enterprise development potential of CDEP schemes; and

k. The dissemination of information to Aboriginal communities who are on CDEP or who are planning to apply to receive CDEP funds about successful work programs undertaken by other communities under CDEP.

The CDEP was abolished on 1 July 2013. This Report has not located any information on whether, in structuring the RJCP, consideration has been given to any of these Recommendations.

16. Economic Opportunity (Recommendations 311-314)

The RCIADC made several Recommendations aimed at enhancing Aboriginal business enterprises. The Recommendations supported the funding of programs and enterprises with both social development and economic goals whilst also proposing improvements to the mechanisms for notifying and determining Indigenous interests in major mining and tourism development proposals.

17. Economic Opportunity: Recommendation 311:

That ATSIC ensure that in the administration of its Enterprise Program a clear distinction is drawn between those projects that are supported according to criteria of commercial viability and those that are supported according to social development or social service satisfaction criteria.

ATSIC was formally dismantled in 2005. The implementation and coordination of Australian Government policies in relation to Indigenous Australians is now carried out through the IAS

18. Economic Opportunity: Recommendation 312:

That the intention of Sections 17 and 18 of the Aboriginal and Torres Strait Islander Commission Act 1989 be clarified, by amendment to the legislation if necessary, in order to facilitate the funding of enterprises which are not necessarily commercially viable on the basis of social development criteria.

24. INCREASING ECONOMIC OPPORTUNITY (RECOMMENDATIONS 300-320)
With the dismantling of ATSIC, ss 17 and 18 of the ATSIC Act were repealed. This Recommendation is no longer relevant.

19. **Economic Opportunity: Recommendation 313:**

That the ongoing review of the Enterprise Program by the Commonwealth Government should seek to develop the Program in such a way that:

- **a.** Adequate program flexibility is provided to allow for the diversity of aspirations and needs of different Aboriginal communities; and
- **b.** Funding difficulties caused by cyclic government budgeting and delays between application and receipt of moneys are minimised.

As above, this Recommendation relates to ATSIC’s now dismantled Enterprise Program. This Recommendation is no longer relevant.

20. **Economic Opportunity: Recommendation 314:**

That mechanisms for the notification and determination of Aboriginal interests in major mining and tourism development proposals incorporate:

- **a.** Provision of formal written notification concerning the development to appropriate Aboriginal organisations within the area affected by the development proposal; and
- **b.** A process of consultation and negotiation between representatives of government, the developer and representatives of the Aboriginal groups with an interest in the area affected by the proposal, in order to facilitate participation by Aboriginal groups or communities in the equity, management and employment concerned with the projects.

This Recommendation has been partially implemented.

20.1 **Commonwealth**

The Commonwealth enacted the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). This Act does not expressly provide that consultation be undertaken or notice be given to the appropriate Indigenous organisations within an area affected by a development proposal. However, in effect, the Act requires notification and a level of consultation between Government and Indigenous community representatives, under the consent application process that is provided for in sections 40, 41 and 42.\(^{143}\) This means that notifying the Land Council is a prerequisite to obtaining an exploration licence and such notification will extend to Aboriginal stakeholders beyond the Land Council. This is because section 42\(^{144}\).

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\(^{143}\) *The Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ss 40, 41 and 42.

\(^{144}\) *The Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 42.
stipulates that the Land Council must consult with the traditional Aboriginal owners of
the land, and any Aboriginal community or group that may be affected by the grant of
the licence, before they refuse or grant the licence.

The Native Title Act 1976 (Cth) requires the Minister to notify Aboriginal bodies and
consider any submissions made by those bodies before granting a mining
exploration licence. Similar provisions are included in subsections 26B(6) and 26C(5)
of the Act with respect to the granting of mining licences.

20.2 Northern Territory

The NT Indigenous Tourism Strategy recognises land and Indigenous tourism are
inextricably linked. Given that almost all the significant natural icons of the
Territory are on Indigenous-owned land, the strategy emphasises that decisions
about the use, development and management of these sites must involve a process
of inclusion and consultation with Indigenous Australians.

Decisions regarding the use of land should be able to value the tourism assets held
by indigenous people in a way that informs decision-making. Many tourism
opportunities lie within the National Parks estate. The Northern Territory Government
is currently working toward joint management arrangements that will recognise and
provide opportunity for Traditional Owners to participate in park management.

The Local Government Association of the Northern Territory (‘LGANT’) also plays an
active role in ensuring that consultation and negotiation is conducted between
representatives of Government, developers and Indigenous groups with an interest
in affected areas.

The LGANT has implemented assessment processes that involve consultation and
negotiation between traditional owners, land councils and those with development
proposals.

LGANT recognises that where developments impact on indigenous cultural heritage,
councils must exercise leadership in ensuring that local Aboriginal needs, aspirations
and cultural and spiritual values are taken into account…LGANT supports
development assessment processes being undertaken on Aboriginal land which
equates with the processes undertaken in other parts of the Northern Territory
including the establishment of one or more planning authorities under the Planning
Act.

LGANT supports planning authorities having representation which includes local
governments, land councils, traditional owners and the Northern Territory
government.

145 Northern Territory Indigenous Tourism Strategy t
146 Northern Territory Indigenous Tourism Strategy, August 2003-2004, NT Tourist Commission
(NTTC), 11.
147 Local Government Association of the Northern Territory Policy Statement, January 2014, 5(d) and
6.1(c).
148 Ibid, 6.1(d).
Each of the aforementioned legislative provisions, strategies and government agencies effectively support a system where development relies on consultation and consent. Collectively, they appear to succeed by pursuing the same overarching goal; collaborative development proposals that value Indigenous heritage, and provide justice and equity for all.

20.3 Tasmania

In Tasmania, the *Aboriginal Heritage Protection Bill 2013* (which, at the time of drafting has passed in the House of Assembly and is being considered by a Committee of the Legislative Council) provides for an Aboriginal Heritage Council to be constituted by Indigenous people residing in Tasmania and for any person who proposes to undertake works that would, or would be likely to, harm Indigenous heritage to obtain an Aboriginal Heritage Permit before carrying out those works. In granting the Permit, the Minister will consult with the Aboriginal Heritage Council and any relevant person who may have an interest. The Bill's objects include involving the Indigenous community in the management and protection of Aboriginal heritage and to promote the management of Aboriginal heritage as an integral part of the State’s resource management and planning system.

20.4 South Australia

Under the *Mining Act 1971* (SA), native title holders must be given notice of proposed mining operations on any land over which they hold exclusive possessory rights.

Section 58A stipulates the manner in which Notice of entry be given:

1. A mining operator must, at least 21 days before first entering land to carry out mining operations, serve on the owner of the land notice of intention to enter the land (the prescribed notice of entry) describing the nature of the operations to be carried out on the land.
2. The notice must be served—
   a. in the case of native title land—as prescribed by the *Native Title (South Australia) Act 1994*; or
   b. in other cases—personally or by post.

Section 63K of the Act provides for a 'native title mining agreement' to be negotiated by the mining operators. The negotiation process commences with the operator giving notice to the affected 'native title parties'. If a native title declaration establishes who the holders of native title in the land are, that notice must be given to the registered representative of those people. If there is no native title declaration, the notice must be given to all who hold or may hold native title in the land.

The Government of South Australia has also established mining approval processes through the *Primary Industries and Resources SA Minerals Regulatory Guidelines*.
MG 1 Guidelines for miners, dated February 2009. The Guidelines require mining operators to engage with stakeholders as a pre-condition of submission to Primary Industries and Resources SA, including Indigenous groups.

Similarly, the Memorandum of Understanding between the South Australian Tourism Commission and the Department for Environment and Heritage requires the Department to consult with relevant Indigenous groups in the review and development of management plans for 'protected areas'. However, it is not clear what 'management plans' or 'protected areas' are. There does not appear to be any legislation or guideline which provides for Indigenous groups to be notified of specific developments.

20.5 New South Wales

Prior to the RCIADC Recommendations, NSW passed the *Aboriginal Land Rights Act 1983* (NSW). This Act does not provide for the Aboriginal community to be given notice of mining development. However, section 45 of that Act provides that mineral and natural resources in land transferred to an Aboriginal Land Council will be vested in that Aboriginal Land Council and that mining activities may not be undertaken on any such land without the consent of the Aboriginal Land Council.

The *Mining Act 1992* (NSW) contains a number of provisions requiring that notice of certain mining activities must be given to the affected Aboriginal community or that the consent of native title holders must be obtained before those activities are carried out. These are listed below:

**Section 12 - Fossicking**

(6) *A person must not carry out fossicking on any land that is, or in waters that are, the subject of an approved determination of native title under the Commonwealth Native Title Act to the effect that native title exists, except with the consent of the relevant registered native title body corporate with respect to that native title.*

**Section 13A - Notice of application for exploration licence**

(1) *Within 14 days (or such other period as may be prescribed by the regulations) after lodging an application for an exploration licence, the applicant must cause notice of the application to be published in a newspaper circulating generally in the State and in at least one newspaper circulating in the locality of the proposed exploration area.*

**Section 32D - Provisions relating to applications for low-impact licence**

(1) *A person may not be granted a low-impact exploration licence unless notice of the application for the licence has been served on all:*

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24. INCREASING ECONOMIC OPPORTUNITY (RECOMMENDATIONS 300-320)
(a) registered native title bodies corporate, and

(b) registered native title claimants, and

(c) representative Aboriginal/Torres Strait Islander bodies,

in relation to any of the land that will be affected by the proposed prospecting operations to be authorised by the licence.

Lastly, the Department of Local Government and the Local Government and Shires Associations of NSW prepared a resource kit in 2007 setting out guidelines for Local Councils, including guidelines for consulting with Aboriginal communities in developing Regional Environmental Plans and Local Environmental Plans and in granting development consent.¹⁵⁰

20.6 Queensland

In Queensland, the Aboriginal Cultural Heritage Act 2003 (Qld) imposes a duty of care to protect Aboriginal cultural heritage. The Act includes a set of Guidelines, compliance with which results in satisfying the duty of care.


The aims of the Recommendation have already been catered for under the Mineral Resources Act 1989. The Act established comprehensive administrative arrangements to protect landholders’ entitlements by:

- encouraging agreements between landholders and project developers;
- valuating objections by landholders and others where agreement cannot be reached;
- enabling wide community input to the assessment of project proposals;
- identifying general and site-specific conditions that will minimise the impact of exploration and mining on other land uses;
- protecting specified improvements on land; and
- enabling fair compensation to be assessed.

20.7 Victoria

In Victoria, the *Aboriginal Heritage Act 2006* (Vic) requires a Cultural Heritage Management Plan to be prepared for activities to be carried out in areas on cultural heritage sensitivity or where activities are classified as high impact activity under the Act. \(^{152}\) The Cultural Heritage Management Plan sets out the measures to be taken before, during and after an activity to manage and protect the Aboriginal cultural heritage identified in the assessment. As a part of the process, the sponsor must give written notice of their intention to prepare the plan to each relevant registered Aboriginal party and to the owner or occupier of any land within the area to which the plan relates. This allows registered Aboriginal parties to evaluate the plan, to consult with the sponsor in the development of the plan and to consider whether the activity will be conducted in a way that avoids or minimises harm to Aboriginal cultural heritage.

20.8 Western Australia

The Western Australian *Aboriginal Heritage Act 1972* (WA) provides that areas of significant Aboriginal heritage are not able to be altered in any way without the Minister's permission. Planning Western Australia gives details of its policy of consulting with Aboriginal groups in chapter 4 of its Coastal Planning and Management Manual. \(^{153}\) Planning WA's Coastwest Grants program has also published Guidelines on Undertaking Indigenous Consultation. \(^{154}\)

20.9 Australian Capital Territory

This Report finds that this Recommendation has not been implemented in the Australian Capital Territory.

21. Research: Recommendation 320:

*That further research be undertaken in relation to:*

a. The particular economic circumstances of Aboriginal people in discrete geographical areas, in order to:

i. determine the contribution which Aboriginal people make to the local or regional economy;

ii. identify the sources of and amounts of funding which might be available to them; and

\(^{152}\) *Aboriginal Heritage Act 2006* (Vic).


iii. facilitate realistic economic planning by Aboriginal people which is consistent both with the prevailing economic circumstances and with their aspirations and lifestyle; and

b. The impact of the overall taxation system on Aboriginal people and on Aboriginal organisations, and the extent to which Aboriginal people benefit from the Australian taxation system.

Where research is commissioned or funded, a condition of the research being undertaken should be the active involvement of Aboriginal people in the area which is the subject of the research, the communication of research findings across a wide cross-section of the local Aboriginal community in an easily understood form, and the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.

The RCIADC noted the need for further research into the economic circumstances of Indigenous people:

"It is clear that the entire field of Aboriginal economic issues is under-researched compared with other fields of study of Aboriginal people... It is clear that research needs to be both general, relating to the way in which government policies and programs impact on the overall economic situation of Aboriginal people, and specific, relating to the particular nature and constraints of the local economic environment."

21.1 Commonwealth

This Recommendation has been and continues to be implemented at the Commonwealth level. The primary body responsible for carrying out research in this field is the Australian National University’s Centre for Aboriginal Economic Policy Research (‘CAEPR’). CAEPR is a social science research body focusing on Indigenous economic policy from a national perspective. It is funded from a variety of sources including the Department of Prime Minister and Cabinet. It has conducted studies and research on topics including the economic value of resources available to specific Aboriginal communities and the economic status of certain communities.

Since its establishment in 1990, CAEPR’s principal objective has been to undertake high-quality, independent research that will assist in furthering the social and economic development of Aboriginal and Torres Strait Islander people in Australia.

The Centre undertakes ongoing evidence-based research every three years:

"Such information is an essential tool for Aboriginal people in designing solutions, but it is critical that research is undertaken in such a way that the findings are accessible to Aboriginal people."

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155 Commonwealth, above n1, [34.6.19].
156 Ibid.
The Australian Government body, Indigenous Business Australia (‘IBA’) also prepares an annual report that reviews, among other things, the circumstances of Indigenous Australians and the contributions they make to the nation’s economy. The report is prepared according to Parliamentary Reporting and Legislative requirements and sets out IBA’s operations and performance each year. In addition to this, IBA recently released their corporate plan for 2013-2016, which has as its objective of creating ‘a nation in which the First Australians are economically independent and an integral part of the economy’.

In 2012, IBA worked with Social Ventures Australia to develop the Indigenous Economic Impact reporting tool to identify the strengths and weaknesses of each investment. The tool measures the return on IBA investments in terms of social benefits, such as the level of Indigenous employment and training, and procurement from Indigenous suppliers. It allows IBA to monitor the results of its investments beyond direct financial returns.

21.2 Northern Territory

In the Northern Territory, a valuable contribution to research has been the Department of Social Services’ Stronger Futures in the Northern Territory Report on Consultations and related Discussion Paper. Between late June and mid-August 2011, more than 480 meetings were held with people in around 100 communities and town camps across the Northern Territory. The consultations included 101 whole-of-community meetings, 378 smaller meetings with individuals, families and other groups in communities.

The comprehensive consultation process provided a framework for gathering the views of Indigenous people regarding what policies were working and what further needed to be done to address the level of disadvantage being experienced by Indigenous people, particularly in remote communities and town camps.

The value of ongoing research conducted in this field depends upon the active involvement of Aboriginal people in the area of research, and the clear communication of findings across a wide cross-section of the Aboriginal community. Adherence to these conditions will support productive responses and the formulation of proposals for further action by Indigenous and non-Indigenous organisations.

*In this environment, simply directing additional funds to more Aboriginal programs and services is not the solution. In order to change direction,*

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160 Ibid.
there is a need for government to work with Aboriginal leaders in developing a new 'roadmap' for building on the social and economic capital of Aboriginal communities.\textsuperscript{161}

21.3 Queensland

The Queensland Government appears to have partially implemented this Recommendation. The Closing the Gap Report\textsuperscript{162} outlines enterprise development initiatives, skills and workforce development opportunities, labour force participation rates and employment and unemployment rates. The Closing the Gap Report is not, however, confined to Indigenous people in discrete geographical areas. Furthermore, this Report was unable to find evidence of research in relation to the impact of the overall taxation system or whether research was undertaken with the active involvement of Indigenous people in each of the relevant areas.

The Queensland Government Progress Report on Implementation 1996/1997 noted that research was undertaken by the Office of Aboriginal and Torres Strait Islander Affairs, Department of Families, Youth and Community Care, into the economic circumstances of Aboriginal and Torres Strait Islander peoples in the context of the development of the draft Queensland Aboriginal and Torres Strait Islander Economic Development Strategy.\textsuperscript{163} The research included the compilation of statistics on the Queensland Indigenous population's employment status, the occupation and industry of employed persons, education and training levels and the development of a profile on Queensland Community Development Employment Projects scheme, existing government economic development programs and the opportunities and constraints for economic development on Cape York Peninsula. The authors of this Report were unable to locate this research.

21.4 Victoria

The Victorian Aboriginal Affairs Framework prioritises 'improved effort and reform' to build the prosperity of the Indigenous community through economic participation.\textsuperscript{164} The Framework addresses economic outcomes and reiterates the Government's commitment to delivering measurable results, based on accurate and reliable data.

\textsuperscript{161} Addressing Aboriginal disadvantage: the need to do things differently, A Special Report to Parliament under s 31 of the Ombudsman Act 1974, October 2011, 1.
21.5 Western Australia

The Western Australian Government appears to have partially implemented this Recommendation. The Western Australian Department of Indigenous Affairs released a report in 2005 entitled "Overcoming Indigenous Disadvantage in Western Australia", with a view to providing Western Australian specific data based on the Overcoming Indigenous Disadvantage framework used by the Commonwealth Productivity Commission. This report presented data drawn from a wide range of sources, including consultation with government agencies and indigenous organisations, to provide a comprehensive foundation for a plan of action for Indigenous affairs in Western Australia.\(^{165}\) Whilst subsequent reports have been released by the Western Australian Department of Indigenous Affairs in more recent years, including the report "Closing the Gap in Indigenous Life Outcomes", they have not provided data of the same quality and detail, nor do they appear to have engaged in broad consultation with indigenous organisations.

21.6 Other States and Territories

Tasmania, the Australian Capital Territory, New South Wales and South Australia have not implemented this Recommendation.