

NSW Police Force *Aboriginal
Strategic Direction 2018-2023*
monitoring report

October 2023

LECC

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Conduct Commission

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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



PP208/439

23 October 2023

The Hon Ben Franklin, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

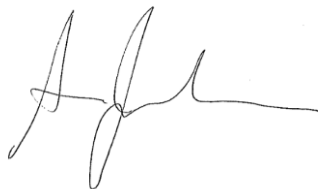
In accordance with s 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its report *NSW Police Force Aboriginal Strategic Direction 2018 – 2023 monitoring report*.

Pursuant to s 142(2) of the Act, we recommend that this report be made public immediately.

Yours sincerely



The Hon Peter Johnson SC
Chief Commissioner



Anina Johnson
Commissioner

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Recommendations

The NSW Police Force should:

1. Support Commands and Police Districts to develop localised approaches to working with communities that are aligned with the principles of Closing The Gap.....19
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4. Work with local communities and ACLOs to develop Region- or Command-specific training materials that reflect the history of the local Aboriginal communities, as well as current challenges and strengths.....28
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6. Increase the staffing and funding provided to the Aboriginal Coordination Team.....34
7. Review all guidance in the Bail Law Reform SOPs in relation to bail determinations for Aboriginal people. As part of the review the NSW Police Force should:
 - a) engage with internal Aboriginal strategic groups such as the PASAC, and external Aboriginal community groups and Aboriginal legal agencies, regarding the special vulnerabilities and needs of Aboriginal persons relevant to the consideration of bail concerns under s18(1)(k) of the *Bail Act 2013*
 - b) consider insights from the ALRC’s report Pathways to Justice in relation to bail determinations for Aboriginal people
 - c) provide the Commission with advice as to the timeframes, terms and outcomes of such a review 45
8. Work with BOCSAR to publish state-wide and local statistics about policing of Aboriginal people.....46

9. Review its operational training and procedures relating to proactive policing and other day-to-day policing actions that involve the use of discretion to give practical instruction to officers about
 - a) how to exercise discretion within the law in ways that will avoid over-representing Aboriginal people in the use of those police actions
 - b) options for diversion within the law49
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Foreword

There is a complicated and often adversarial history between Aboriginal communities across NSW and the NSW Police Force. This history continues to impact the day-to-day interactions these communities have with police. The other side of this relationship is the potential strengths that can flow from positive and respectful interactions.

The NSW Police Force knows how important it is to improve this relationship, and has worked since the Royal Commission into Aboriginal Deaths in Custody to develop stronger ties with communities. This work has been reflected in a series of overarching statements of commitment and organisational strategic direction. When the NSW Police Force finalised its *Aboriginal Strategic Direction 2018-2023*, the then-Commissioner of Police said the Direction ‘provides a blueprint for the NSW Police Force’s long-term, positive engagement with Aboriginal communities throughout NSW.’¹

The *Aboriginal Strategic Direction 2018-2023* provides the Law Enforcement Conduct Commission with the role of monitoring the progress of the NSW Police Force under the Strategic Direction. The Commission has undertaken this review at the request of the NSW Police Force. Reviewing the Strategic Direction also aligns with our function as the independent police oversight agency helping to promote the integrity of law enforcement in NSW.

In order to monitor progress, the Commission sought and received information from the NSW Police Force, and met with a range of individuals and organisations directly involved in addressing the over-representation of Aboriginal people in the criminal justice system. The Commission did not meet directly with communities for this review, but intends to take the time to build effective and lasting relationships with Aboriginal communities across the state over the next few years.

Our review identified positive developments during the life of the *Aboriginal Strategic Direction 2018-2023*. This includes practical programs aimed at building relationships and helping to improve the lives of Aboriginal people. We also heard about the essential role played by the NSW Police Force in helping to keep communities safe in times of crisis during the period, including natural disasters and the COVID-19 pandemic.

A strong recurring theme of our consultations was the value of the Aboriginal Community Liaison Officers working throughout the state. These individuals, along with the Aboriginal Coordination and Strategy Team, and all sworn and unsworn Aboriginal officers of the NSW Police Force, perform extremely important work in a very challenging cultural

¹ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 4.

context. The Commission acknowledges the daily cultural load experienced by these individuals working within a very hierarchical mainstream government institution to improve outcomes for their communities.

This report identifies a number of areas where future NSW Police Force Aboriginal Strategic Directions could be improved. The importance that police place on their work with Aboriginal peoples is reflected in the fact that the Aboriginal Strategic Direction Steering Committee is chaired by the Corporate Sponsor for Aboriginal Engagement, while the Commissioner of Police chairs the Police Aboriginal Strategic Advisory Council. We hope that these chairpersons, and the NSW Police Force more generally will take our observations into consideration when developing their approach to engagement with and service delivery to Aboriginal people and communities.

This report also considers the broader context in which the *Aboriginal Strategic Direction 2018 – 2023* occurred. Evidence published by the Commission and other NSW agencies repeatedly showed that, over the same period as the Aboriginal Strategic Direction, high levels of Aboriginal over-representation in police interactions continued, and in some cases, increased.

The report also considers NSW Police Force's role in the National Agreement on Closing The Gap, as this is the current whole-of-government framework to improve life outcomes for Aboriginal people. Police are a consistent point of contact between communities and government, particularly in regional and isolated communities. Police forces are also a significant element of the criminal justice system. For these reasons, police will be central to realising the Closing The Gap reforms and targets to reduce over-representation in the criminal justice system.

The Commission acknowledges the NSW Police Force's mandate to protect public safety. This report is not asking the NSW Police Force to bear responsibility for the ongoing legacy of colonisation, or that it be the sole agency responsible for achieving the Closing the Gap targets to reduce over-representation in the criminal justice system.

The report asks the NSW Police Force to continue its commitment to working fully in genuine partnership with Aboriginal peak bodies and the other NSW government agencies to meet the state targets to reduce Aboriginal over-representation in the criminal justice system. This report also asks the NSW Police Force to ensure that it is doing everything possible to ensure that its policing actions are consistent with, and do not undermine, the stated aims of its own Aboriginal Strategic Direction.

Please note there are references throughout this report to Aboriginal people. These references include both Aboriginal and Torres Strait Islander peoples.

1. Executive Summary

This report considers the activities undertaken by the NSW Police Force in relation to its *Aboriginal Strategic Direction 2018 - 2023* (ASD).

The NSW Police Force states that the ASD is:

the overarching document which guides the NSWPF in its management of Aboriginal issues. It seeks a genuine level of Aboriginal community ownership and involvement through a consultative and proactive approach.²

1.1 Programs and initiatives under the ASD

Our review showed that a number of NSW Police Force Commands and Districts have done a great deal of work to try to build and maintain effective relationships with Aboriginal communities and organisations providing communities with services and support. This work often occurred in the context of record flooding, a terrible season of bushfires, and the COVID-19 pandemic, all of which presented exceptionally challenging circumstances.

Despite this good work, the ASD did not achieve its intended outcomes. This report identifies some areas for improvement in the performance and reporting framework that underpins the ASD.

These observations are not criticisms of the Aboriginal Coordination and Strategy Team, or the Aboriginal Community Liaison Officers. The ASD clearly states that it is the role of the Steering Committee to monitor and drive implementation of the ASD. The Steering Committee is chaired by the Corporate Sponsor for Aboriginal Engagement, which is a Deputy Commissioner-level role.

All the parties we spoke to noted the importance and value of the Aboriginal Community Liaison Officer (ACLO) role. The NSW Police Force also told us about challenges in finding and retaining people to work as ACLOs. With the increasing capacity of Aboriginal community-controlled organisations, and higher-paid employment opportunities available in other government departments, this is likely to become even more challenging. The Commission believes the NSW Police Force should review the grading and responsibilities of the ACLO role, and consider a structure with multiple grades to allow for career development and recognition of specialist skills.

1.2 Use of police powers during the period

Even with the positive engagement and commitment demonstrated by some Commands, there are certain actions of the NSW Police Force

² NSW Police Force, *Aboriginal Strategic Direction 2018 - 2023* (Web Page)
<https://www.police.nsw.gov.au/safety_and_prevention/your_community/aboriginal_people_and_communities/aboriginal_issues/aboriginal_strategic_direction>.

that appear to undermine the goals of the ASD. The Commission has seen examples of continuing Aboriginal over-representation in the use of certain proactive, discretionary policing methods. These include the issuing of warnings under consorting legislation, and the application of Suspect Target Management Plans (STMPs).

Some of the official correspondence we have received from police about STMPs and consorting suggests there is a level of misunderstanding within the NSW Police Force regarding the aims of the ASD. Some police officers we spoke to also described that they saw an inherent conflict between building community relationships and enforcing the law. This attitude needs to be addressed internally by NSW Police Force.

1.3 Closing the Gap and the NSW Police Force

The National Agreement on Closing the Gap was signed in 2020. In NSW, a Closing the Gap Implementation Plan was developed with the support of Cabinet and a whole-of-government commitment to implementation. A great deal of planning and structural work has gone into developing the National Agreement and the NSW Implementation Plan. Aboriginal peak bodies and community representatives have been central to this work.

Police are a significant component of the criminal justice system, and thus hold significant influence over achievement of socio-economic outcomes 10 and 11 which aim to reduce Aboriginal over-representation in the criminal justice system. Achieving these targets will take a combined effort and is not the sole responsibility of the NSW Police Force. Nevertheless, the NSW Police Force needs to commit to a plan about what it will do to help NSW achieve the targets.

We note that the Aboriginal Strategic Direction 2018-23 was formulated before the National Agreement was signed. It is important that the strategies that post-date the National Agreement work to support the National Agreement and statewide Implementation Plan.

2. The context of the ASD

The NSW Police Force asked the Commission to review its progress under the ASD 2018 – 2023. The Commission considers that it is important to briefly look at the broader context that the ASD occurred in, as this shaped implementation and can also inform future strategic planning.

2.1 Extraordinary challenges

The Commission acknowledges that the time period covered by the ASD was an exceptionally challenging one, and that the NSW Police Force did a lot of good work to help communities during this time. The period was marked by one of the worst bushfire seasons on record, a global pandemic, and extreme flooding that continues to have an impact on the lives of people across New South Wales. These events all presented particular challenges for Aboriginal communities.

The NSW Police Force told us that during this time many of its staff and resources that would usually be focused on building relationships with Aboriginal communities were diverted to help keep those same communities as safe and healthy as possible. For example, the Aboriginal Community Liaison Officers and staff from the Aboriginal Coordination and Strategy Team helped to coordinate vaccination programs in communities across the state, and travelled to Northern New South Wales to support their colleagues working in communities such as Lismore and Coraki. The impact of the flooding is still being felt by the community in the Richmond Police District. We recognise the hard work of the police officers and Aboriginal Community Liaison Officers within that District to support the community while also dealing with the impact of the flooding on their own lives.

The role of police in responding to natural disasters and health emergencies highlights the importance of building strong links with community. It also highlights that the NSW Police Force often plays a key community service role, alongside its law enforcement role.

2.2 The impact of history

It is important to acknowledge the historical context that the NSW Police Force Aboriginal strategy occurs within. The complicated history of Aboriginal people and the criminal justice system is summarised in the Royal Commission into Aboriginal Deaths in Custody³ and the Australian Law Reform Commission's report *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*.⁴ It is unnecessary for this report to duplicate that history at

³ Royal Commission into Aboriginal Deaths in Custody (Final Report, April 1991) vol 2, chapter 10.

⁴ Australian Law Reform Commission, *Pathways to Justice- Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), chapter 2.

length. But it is important to acknowledge it, because it continues to have an impact on relationships between police and Aboriginal communities today.

Early in the colonisation of Australia the suppression and control of Aboriginal people was a state function that largely rested with the police. After Federation, the *Aborigines Protection Act 1909 (NSW)* gave police responsibility for issuing rations, removing children from their families, and controlling the movement of people on Aboriginal reserves.⁵ The Royal Commission highlighted that:

the antipathy which so many Aboriginal people have towards police is based not just on historical conduct but upon the contemporary experience of contact with many police officers [...] very often police are the visible and obvious target for Aboriginal frustrations which arise from their disadvantaged position in society in matters outside of police action.⁶

The Royal Commission recommended that Police Services should consider setting up Aboriginal-led units for developing policies and programs that relate to Aboriginal people.⁷ This led to the creation of the Aboriginal Community Liaison Officer positions and the Aboriginal Coordination and Strategy Team within the NSW Police Force. There is a continuing focus on Aboriginal employment across the varied teams and units within the NSW Police Force. There is also a clear statement of organisational commitment to building relationships with Aboriginal communities. The Corporate Sponsor for Aboriginal engagement is a Deputy Commissioner role, and the Corporate Owner is at Assistant Commissioner level.

Nationally, in 2017 the Australian Law Reform Commission recommended that all states and territories develop or renew Aboriginal Justice Agreements, as these are:

an important initiative to promote partnership with Aboriginal and Torres Strait Islander peoples, drive strategic planning, and facilitate collaborative, culturally appropriate, and effective criminal justice responses.⁸

New South Wales had two such agreements, with the second running until 2014, when it lapsed. Unlike Victoria and the Australian Capital Territory, New South Wales has not entered into any further justice agreements.⁹

2.3 New approaches to reform

The current approach to improving social outcomes is the National Agreement on Closing the Gap, which was signed by the

⁵ Christine Jennett, 'Police and Indigenous Peoples in Australia' in Mike Enders and Benoit Dupont (eds), *Policing the Lucky Country* (Hawkins Press, 2001) 50, 52.

⁶ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991) vol 2, chapter 13.2.

⁷ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991) vol 2, recommendation 225.

⁸ Australian Law Reform Commission, *Pathways to Justice- Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 500.

⁹ Australian Law Reform Commission, *Pathways to Justice- Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 501.

Commonwealth, state and territory governments in July 2020. Closing the Gap provides a framework for all government agencies to work in partnership with Aboriginal peak bodies and organisations to improve life outcomes for Aboriginal people, including criminal justice-related outcomes.

The National Agreement replaces the original Closing the Gap strategy which commenced in 2008. Ten years of the previous strategy saw outcomes for Aboriginal peoples getting worse, not better.¹⁰ It is important to note that the original Closing the Gap strategy was an agreement only between Australian governments. Under the new National Agreement, Aboriginal and Torres Strait Islander peoples are now equal parties to the Agreement alongside governments, with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations an equal signatory.

This new approach:

- means Australian governments and Aboriginal organisations share responsibility for achieving the targets¹¹
- is based on a belief (and supported by evidence)¹² that when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of services that affect them, better life outcomes are achieved¹³
- represents an unprecedented shift in the way governments work, by encompassing shared decision-making on the design, implementation, monitoring and evaluation of policies and programs to improve life outcomes for Aboriginal and Torres Strait Islander people.¹⁴

The Agreement has the following outcomes which are aligned to priority reform areas:¹⁵

- shared decision-making between Aboriginal and Torres Strait islander people and governments to accelerate policy and placed-based progress on Closing the Gap

¹⁰ Chris Holland, 'A ten-year review: The Closing the Gap Strategy and Recommendations for Reset' (The Closing the Gap Campaign Steering Committee, February 2018) 3.
<https://humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf>

¹¹ Aboriginal Affairs NSW, 'The National Agreement', *Closing the Gap in NSW* (Web Page) <https://www.aboriginalaffairs.nsw.gov.au/closingthegap/the-national-agreement/>.

¹² For example, studies have shown that Aboriginal controlled health services are 23% better at attracting and retaining Aboriginal clients than mainstream providers, and are more effective than other health services at improving Indigenous health. See National Aboriginal Community Controlled Health Organisation, 'Aboriginal Community Controlled Health Services are more than just another health service – they put Aboriginal health in Aboriginal hands' <<https://www.naccho.org.au/app/uploads/2021/09/Key-facts-1-why-ACCHS-are-needed-FINAL.pdf>>.

¹³ Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, *National Agreement on Closing the Gap*, July 2020, 2 <<https://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf>>.

¹⁴ Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, *National Agreement on Closing the Gap*, July 2020, 2.

¹⁵ Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, *National Agreement on Closing the Gap*, July 2020, 2.

- building the Aboriginal community-controlled sector
- improving mainstream institutions including governments, their organisations and their institutions being accountable for Closing the Gap and being culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund
- Aboriginal and Torres Strait Islander-led data including access to and capability in locally-relevant data and information
- 17 socio-economic outcomes, including new outcomes 10 and 11 to reduce adult and youth over-representation in the criminal justice system.

In New South Wales, parties to the Agreement are the NSW Government, Local Government NSW, and the NSW Coalition of Aboriginal Peak Organisations.

Despite achievement of socio-economic outcomes 10 and 11 clearly requiring the involvement of police, the NSW Police Force is not mentioned in the current NSW Closing the Gap Implementation Plan 2022-2024. Further, the NSW Police Force has not stated what it will do to help achieve socio-economic outcomes 10 and 11, and has not stated how, as a government institution, it will address the priority reform areas under the Agreement.

Section 7 of this report argues that the involvement of the NSW Police Force is central in Closing The Gap.

3. How we did our review

This review aimed to monitor and report on the NSW Police Force's progress in relation to its *Aboriginal Strategic Direction 2018- 2023* (ASD) and make suggestions for future strategic planning. We did this by comparing the intended components, aims, activities and outcomes of the ASD with what occurred in practice over the period.

3.1 Key documents

We gathered information from the following documents provided by the NSW Police Force Aboriginal Coordination and Strategy Team:

- Quarterly ASD Reports for all Police Area Commands 2018-2022
- Environmental Scans for all Police Area Commands 2018-2022
- Aboriginal Action Plans for all Police Area Commands 2018-2022
- Police Aboriginal Strategic Advisory Committee meeting minutes and agendas
- Aboriginal Strategic Direction Steering Committee minutes and agendas September 2021 – December 2022
- Training materials for 'Aboriginal Cultural Awareness Training' and 'Working With Aboriginal People and Communities'
- Completion numbers for Aboriginal Cultural Awareness training and locally-focused training 2018-2022
- ASD Annual Reports 2020-2021 and 2021-2022
- ASD Crime Prevention Grants closure reports for 2018 - 2023

3.2 Consultations

To inform this review we spoke to people within the NSW Police Force involved in the ASD, and other stakeholders in Aboriginal criminal justice in NSW. Appendix A contains a list of all consultations.

We did not consult directly with Aboriginal communities for this report. We know how important it is to talk with community, and we want to make sure we do it properly. The Commission will be developing an approach to community engagement that is considered, ongoing, and beneficial to communities, rather than a 'one off'. As we continue our monitoring role in the future, we intend to develop a more regular cycle for consulting with communities.

On 16 June 2023 the Commission provided the NSW Police Force with a draft of this report asking for its comment by mid July 2023. This included an opportunity to provide any additional information. The Commission was scheduled to meet with the ASD Steering Committee

on 12 July 2023 to discuss the draft report, however the NSW Police Force was unable to accommodate this plan. The NSW Police Force did provide some comment on the draft report in September 2023, and we have taken that into consideration in finalising the report.

A new Aboriginal Strategic Direction was provided to the Commission on 9 October 2023. The NSW Police Force advised the Commission that the new ASD came into effect on 28 August 2023. As the document was provided to us 2 weeks ahead of publishing this report, we have not commented on the new ASD in this report.

As the independent police oversight body, the Commission will continue to take an interest in the NSW Police Force's policing of Aboriginal communities and Aboriginal strategic planning.

3.3 Outside our review

We did not look at the work the NSW Police Force is doing to increase the number of Aboriginal people it employs, as this is not discussed in the *Aboriginal Strategic Direction 2018 – 2023*. We acknowledge that the Indigenous Police Recruitment Our Way Delivery (IPROWD) program run with TAFE NSW and the Australian Federal Police has already helped more than 1,000 participants into a policing, emergency services or justice career. We also acknowledge the work the NSW Police Force does in supporting victims of violence, including Aboriginal victims.

3.4 Complaints by Aboriginal people

The way the NSW Police Force responds to complaints made by or on behalf of Aboriginal people is a key indicator of how it works with Aboriginal communities.

The Commission is in the process of analysing a sample of complaints that were made by or on behalf of Aboriginal people about police.

The Commission's observations from this project will be provided to the NSW Police Force separately.

4. Implementing the Strategic Direction

This chapter discusses what we found when we reviewed NSW Police Force's progress under the Aboriginal Strategic Direction (ASD). We make some comments on the priorities, governance and reporting structures, and the grants program.

The ASD clearly states that it is the role of the Steering Committee to monitor and drive implementation of the ASD. The Steering Committee is chaired by the Corporate Sponsor for Aboriginal Engagement, which is a Deputy Commissioner-level role. The NSW Police Force recently told a Federal Senate Inquiry that:

from the very top of our organisation, from the Commissioner down, we have elevated Aboriginal engagement to tier 1 corporate sponsorship, which is the highest level of sponsorship that the organisation can have. It is led personally by our Deputy Commissioner of Police.¹⁶

As such the Commission considers the NSW Police Force senior executive ultimately responsible for the ASD and for appropriately supporting, leading and resourcing the ACLOs and Aboriginal Coordination and Strategy Team.

4.1 ASD framework

The ASD lists 4 priority areas:

1. Ensure community safety
2. Enhance communication and understanding between police and Aboriginal people
3. Collaborate with other agencies to reduce Aboriginal over-representation in the criminal justice system
4. Improve the safety and wellbeing of young Aboriginal people

The ASD aligns each of the 4 priorities with outcomes, actions and indicators of success. We refer to this matrix as the ASD framework. We reviewed available information about the NSW Police Force's activities in relation to the ASD framework as a method of monitoring progress against the ASD. Our key sources to obtain this information were:

- Annual Reports 2021 and 2022
- Action Plans and Quarterly Compass Reports
- ASD Crime Prevention Grants Closure Reports for 2018-2023

¹⁶ Evidence to Legal and Constitutional Affairs References Committee Inquiry in to missing and murdered First Nations Women and Children, Parliament of Australia, Sydney, 28 July 2023, 13 (Superintendent Christopher Nicholson).

- Conversations with Commanders and other NSW Police Force staff

Our key observations are that the ‘logic’ of the framework, or the relationship between framework components, is unclear. We also found there was a lack of information available to measure progress. Our full findings are at Appendix F.

4.1.1 Logic unclear

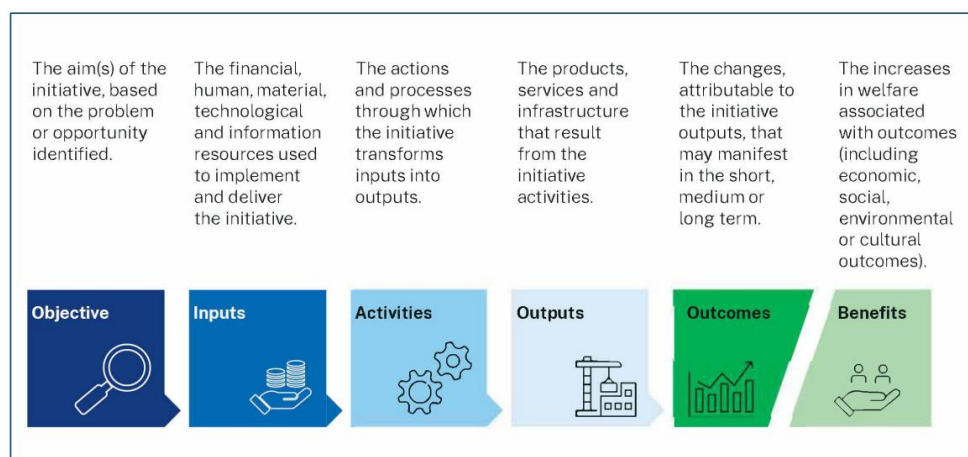
When trying to measure success under the ASD framework, we found in many cases that the relationship between priorities, actions, outcomes and indicators of success was unclear.

For example, the priority to ‘reduce over-representation’ includes outcomes and actions that relate to situations in which Aboriginal people are already in custody e.g. ‘police awareness of Custody Notification system’ and ‘Custody Managers trained in Working With Aboriginal Communities’. These actions are unlikely to impact the intended outcome. ‘Police awareness of the Custody Notification System for Aboriginal detainees’ is not going to impact over-representation.

We note that NSW Treasury’s initiative logic model defines the key components of an initiative and their relationship to each other (see Figure 1). The model highlights that:

- Activities are actions and processes through which an initiative transforms inputs in to outputs
- Outcomes are changes that are attributable to an initiative’s outputs.

Figure 1: NSW Treasury initiative logic model¹⁷



¹⁷ NSW Treasury, *Policy and Guidelines: Evaluation TPG22-22*, (Report, February 2023) 7.

As a NSW government agency, any NSW Police Force framework should have a coherent internal logic and be grounded in evidence. For example, if the NSW Police Force's aim is to reduce over-representation, the 'outcome' would be less Aboriginal people entering the criminal justice system, and the 'actions' should be things within the NSW Police Force's control that are proven to have an impact.

The broader NSW Treasury evaluation logic model is included at Appendix B.

4.1.2 Indicators of success not aligned with goals

The rationale behind selecting the various indicators of success was also unclear, and many of the indicators reflect problematic assumptions. For example:

- The priority 'improve community safety' lists 'increased levels of crime reporting' as an indicator of success. An increase in crime reporting could be explained by an increase in crime rate, which may mean the community is less safe. Increases in reporting could also be explained by a reduction in stigma about being the victim of a crime, which may encourage more victims of crime to come forward. Therefore it is unclear how increased levels of crime reporting means a safer community.
- Similarly, it is concerning that indicators of success for the priority 'collaborate with other agencies to reduce over-representation' include 'no fatalities or incidence of self-harm in police custody' and 'development of appropriate plans'. It is unclear how these relate to the priority or how they are likely to achieve it.
- It is also unclear why the 'number of information sessions held' was listed as an indicator of success for 'improving safety and wellbeing of young people'.

4.1.3 Challenges in measuring progress

While the ASD framework sets an intention for actions and improvement to the priority areas, we found it difficult to get a clear picture of whether the activities had actually influenced intended objectives. For example:

- The 4 priority areas imply change from a baseline (*reduce over-representation, ensure community safety and improve safety of young people*) without defining a starting point or describing how change would be measured.
- We found it difficult to obtain information from the NSW Police Force about activities and indicators of success. For example, the NSW Police Force published 2 Annual Reports under the ASD 2018 – 2023, for the years 2020-2021 and 2021-2022. The 2 ASD Annual Reports contained important information about

achievements in local communities during the periods, including sporting events and ACLO forums. Unfortunately, the Annual Reports did not clearly report against outcomes, actions or indicators of success for each priority area. In 2021 we asked the NSW Police Force to provide updates on actions and indicators of success, along with any supporting data sets or evidence. Appendix D shows that in many cases the NSW Police Force indicated that they did not 'own' the data identified as indicating success, and that as a result they were not able to report against the indicator.

- We also observed a disconnect between the reporting and activities occurring on the ground in Commands, and awareness of whether or not those activities were actually impacting the intended objectives. We heard anecdotal reports from Commanders and ACLOs about a great deal of positive work occurring on the ground in communities which related directly to priority areas 2 and 4 ('enhancing communication and understanding between police and Aboriginal people' and 'improving safety and wellbeing of young people'). We also saw these initiatives referred to in action plans, quarterly reports and closure reports for crime prevention grants. However, while this information is reported to the NSW Police Force, it is not clear how it analyses or measures these activities against the ASD framework. It is also unclear whether insights and successes from one Command are applied to improving implementation in other Commands and Regions.

4.1.4 Room for improvement

The above observations highlight that:

- the NSW Police Force is unable to determine the impact of its resource allocation or strategic framework under the ASD
- the potential value of the Commands' reporting requirements is currently underutilised
- there is little evidence to support the statement contained in the ASD that:

The ASD is a living document subject to ongoing review to ensure its relevance and currency to reflect emerging issues and to enable the development of innovative solutions.¹⁸

This approach is not up to the standard that the public or New South Wales government would expect of a public agency's strategic approach. As such, the NSW Police Force needs to review its strategic approach to Aboriginal communities, including the actual impacts of engagement, crime prevention, and community safety activities.

¹⁸ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 8
https://www.police.nsw.gov.au/_data/assets/pdf_file/0003/481215/ASD_2018-2023_Book_Updated_4Web.pdf

On 11 April 2023 the Commission wrote to the Commissioner of Police highlighting the significant overlap between the goals of the ASD and the goals of the National Agreement on Closing the Gap.¹⁹ We expressed concern that following up the current ASD with yet another stand-alone Aboriginal strategy separate from NSW Police Force's inter-agency work under Closing the Gap is not the best use of the NSW Police Force's resources. We suggested that, rather than push ahead with drafting another stand-alone ASD, the NSW Police Force's next Aboriginal strategy should focus on its role under Closing the Gap and the NSW Implementation Plans.

In June 2023 the Commission recommended to the NSW Police Force that any future Aboriginal Strategic Direction:

- Flows from and is aligned with NSW Police Force's inter-agency obligations under the NSW Closing the Gap Implementation Plan
- Reflects the standards of genuine co-design with Aboriginal peak organisations set by the National Agreement on Closing the Gap
- Reflects NSW Government standards in program design (e.g. as set out in the NSW Treasury's Policy and Guidelines on Evaluation, February 2023)

At the time of publishing this report the NSW Police Force had not responded to this recommendation.

4.2 Governance and consultation

The ASD has a three-tier governance framework:

1. Police Aboriginal Consultative Committees (Consultative Committees)
2. ASD Steering Committee (Steering Committee)
3. Police Aboriginal Strategic Advisory Council (Advisory Council).

The ASD states that each of these 3 tiers is aimed at:

- continually addressing and supporting ongoing activities and programs aimed at eliminating any barriers between police and Aboriginal people
- providing a forum for Aboriginal people and police to jointly participate in decision making as equal partners
- identifying strategies and social issues (funerals, sporting events) with a potential impact on operational priorities in the action plans
- addressing Aboriginal issues at a local, regional and state level

¹⁹ The National Agreement was signed in July 2020, after publication of the ASD 2018 – 2023. It is understandable that the ASD 2018 - 2023 did not reference Closing The Gap.

- bringing the consultative process to individual Aboriginal communities within the PAC or PD boundaries.²⁰

The Commission does not have a great deal of information about the operation of the Steering Committee and Advisory Council outside of the agendas and brief minutes of meetings held. Given the membership of each group, both would present an excellent opportunity to track and discuss the NSW Police Force's role in Closing the Gap.

We have considered the work of the Consultative Committees more closely, as these are intended to be the primary point at which the community can raise areas of concern and contribute to meeting the aims of the Strategic Direction.

4.2.1 Consultative Committees

Under the Strategic Direction, Consultative Committees are intended to be the core of the relationship between Aboriginal communities and the NSW Police Force. The Committees are the main point which community members can talk to police about what is working well in communities and what could work better. The meetings can involve other agency representatives, but the Strategic Direction stresses that committee meetings are not meant to be a 'consultative committee for broader community issues e.g. housing, employment or by other agencies for their own agendas.'²¹ Most of the Consultative Committee initiatives are aimed at improving relationships between police and community, as well as identifying the best crime prevention and community safety programs and approaches.

Appendix C lists attendance numbers at Consultative Committee meetings. It is important to acknowledge that the COVID 19 pandemic and natural disasters have had a substantial impact on attendance.

Our review identified some of the everyday challenges with how the Consultative Committees work in practice. The Commanders we spoke to told us about the difficulties they have experienced getting Aboriginal community members to attend Consultative Committee meetings. This has meant that they have hosted Consultative Committee meetings that usually only involve government agency staff and non-government representatives. Many of the ASD Action Plans and Quarterly Reports we reviewed also list Consultative Committee attendance and involvement as one of the ongoing challenges to be addressed for Commands.

Our interviews highlighted local perspectives on the challenge of engagement. For example:

²⁰ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 10.

²¹ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 12.

- A Commander with extensive leadership experience in regional districts with large and diverse Aboriginal populations suggested that empowering local decision-making groups that already exist was the best way to engage with the community. He suggested that ‘tapping in’ to ‘ready-made’ leadership or community groups was more effective than trying to get people to attend a Consultative Committee. This is especially the case because many community leaders already have multiple responsibilities, and expecting them to attend yet another meeting where the same types of issues are discussed is burdensome and inefficient.
- Another Commander said that he had daily ‘check ins’ with community members around children at risk and domestic violence which involved service providers and a local Aboriginal organisation.
- We also heard from some ACLOs that a single PACC per Command was not appropriate as there was such diversity among communities in different towns within the Region and each had different issues. They suggested that multiple PACC-type meetings would be more appropriate.
- A Commander in a metropolitan PAC said that engagement was a significant challenge especially with nearly 20 different clan groups represented in the PAC and high crime rates.
- A Regional Commander told us that his Command is involved in frequent community meetings that cover similar topics to the Consultative Committee and that this effectively replaces the Consultative Committee meeting, in an attempt to avoid ‘meeting fatigue’.

We asked the NSW Police Force to provide information about the number of Consultative Committee meetings held and the number of attendees from 2018 to 2022. This information (included at Appendix D) shows the variation in attendance numbers across the state. The reduction over the course of the COVID 19 pandemic is clear.

Clearly, it can be challenging to attract and maintain sufficient and representative membership for the Consultative Committees across the state. Some people we spoke to suggested that this could be due to ‘meeting fatigue’ and a feeling that the same ground is covered each meeting. As a community member noted during a 2023 Federal Parliamentary inquiry hearing:

They do have PACC [Consultative Committee] meetings – police, Aboriginal and community consultation mechanisms. But I’ve found, with the number of committees that are formulated in our community – and it may be the same or a consistent thing in other communities – and that we get involved with, it’s like you’re put back in an eternal whirlpool and we’re just talking about the same things all of the time. It seems like matters of real concern don’t really get aired, even though they’re spoken about much in each of those.

There are PACC meetings, the meetings with local government, meetings with Health, those sorts of things.²²

The Commission acknowledges the goodwill and hard work of many Commands and Police Districts trying to set up ongoing dialogue with communities. Preparing for the next period presents an opportunity for the NSW Police Force to consider letting Commands take a localised approach to engagement meetings driven by communities, rather than expect community members to attend Consultative Committee meetings and restricting discussion of topics related to other government agencies or organisations.

The Commission notes that Closing The Gap provides an existing framework for how government agencies can work locally with communities to improve outcomes, including a reduction in Aboriginal over-representation in the criminal justice system.

Recommendation 1: The NSW Police Force should support Commands and Police Districts to develop localised approaches to working with communities that are aligned with the principles of Closing The Gap.

4.2.2 Environmental scans

The ASD requires Commands and Police Districts to submit annual environmental scans (also known as community profiles). The environmental scan describes the local Aboriginal cultural groups, population, crime statistics and service providers within the Command. The Aboriginal Engagement Officer (police officer at Inspector level) is responsible for compiling the scans.²³

The purpose of environmental scans is to:

- provide information to the Commands and Police Districts to assist in practical decision making for future policing strategies and objectives
- assist in monitoring and analysing the external environment to establish the nature of the influences, either direct or indirect, which will affect the delivery of policing services to the Aboriginal community.²⁴

The plans follow a similar structure:

- ‘Aboriginal data’ – This is a combination of a history of the region as well as census data on population makeup
- Overview of the Command / District, focussing on current issues and possible resolutions

²² Evidence to Legal and Constitutional Affairs References Committee Inquiry in to missing and murdered First Nations Women and Children, Parliament of Australia, Toormina, 21 February 2023, 3 (Mr Greg Douglas, Chief Executive Officer of Kempsey Local Aboriginal Land Council).

²³ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 10.

²⁴ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 13.

- Statistics about charge information
- Crime Prevention programs and initiatives
- Contact details for relevant agency staff and community organisations

Contemporary history and community input

We reviewed the scans and found that often the opening segments dealing with Aboriginal history in the region were usually informed by one source, such as a local history publication or a Wikipedia entry. In some scans, the source of the information was not clear. We rarely saw evidence of the histories being informed by discussion with community or other sources of local community histories.

Some of the scans include concerning information about Aboriginal communities. For example:

- Several scans refer to areas being ‘discovered’ by European settlers in the 1800s.
- The word ‘Aborigine’ was used to refer to Aboriginal people approximately 120 times throughout all of the scans. The ASD clearly states that use of this word is offensive and inappropriate.²⁵
- One scan includes a warning at the beginning about language not to be used, listing a series of derogatory terms, and suggests that the word ‘Aboriginal’ should not be used.

We also found that the opening segments of most scans did not provide much, if any, information about more contemporary history that may be relevant to relationships between the community and the NSW Police Force.

For example, the Mid North Coast Police District environment scan does not mention the Bowraville murders and the impact on community relations with the NSW Police Force. However, the Mid North Coast environmental scan for 2022 is one of the few that shows local community input. It starts with the location of 6 known tribal groups in the Command. The geographical location of each group is shown on a map. The historical information at the start of the scan is drawn from a draft nation history prepared by the Birpai Land Council. It states that:

The Birpai Nation’s draft history, drawn from oral records passed down by Elders, records that their people experienced loss of life very soon after European ‘settlement’ (1820s/30s). In c.1840 they endeavoured to fight back, enlisting the help of the neighbouring Thungutti Nation but, as a result of the superior weaponry of the new arrivals, many were killed near a place subsequently known as Blackman’s Point. Cedar getters, as obsessed by ‘red gold’ as those who later suffered ‘gold fever’, brooked no interference in

²⁵ This does not include references that are the names of historic legislation or organisations, such as Protection Boards.

their quest for the magnificent old trees. Cedar Creek is, for Birpai people, a site of death.

Between 1840 and 1900 as the colony grew, the Birpai people were systematically dispossessed of their land and placed on to local reserves under the control of the Aboriginal Protection Board. Between 1900 and the 1940s they were moved away from the Hastings area to reserves at Purfleet, Taree and Burnt Bridge, Kempsey. (this would explain the relatively low percentage of Aboriginal people residing in the Hastings Valley by comparison with surrounding areas.)

This is a helpful model of an environmental scan. It contains relevant information which allows local police to better understand the historical background of the area in which they are working.

The scan then includes the names and roles the elders and community leaders in each district or town. The plan outlines crime prevention initiatives and also what strategies and actions are being used to target Aboriginal over-representation in the criminal justice system:

The Mid North Coast Police District remain focused on reducing the over-representation of Aboriginal People in the Criminal Justice System. Early access to support service for offenders is a priority with a number of community projects involving YP Space, Macleay Options and Community Housing who are key agencies the Police District are engaging. Short term initiatives including the placing of a warning on COPS for all Community Housing properties. This enables direct linking of Community Housing clients with their property managers who have access to link their clients with support services.

A longer term project is a purpose built, 24 hours Youth and Community Hub that will provide crisis accommodation, meals, shower and washing facilities as well as a safe place where clients can engage with services. A progression for young people, up to the age of 25, into medium and long term accommodation, [the project] will ensure support service continuity as clients engaged in training, employment while earning a positive rental history.

In data obtained from BOCASR for Local and Children's Court across the Mid North Coast PD or a 12 month period to March 2022 there has been a modest reduction of Aboriginal defendants appearing before those courts of 2.4%.

Newcastle PD also sought input from the Miromaa Aboriginal Language and Technology Centre in developing its environmental scan. Miromaa is a not-for-profit organisation operating in the Newcastle region.

[Greater resources for preparing scans](#)

One of the common features of the scans we reviewed is that there is little change from the first scans developed in 2018 to those issued in 2021 or 2022. This is partly because the early segments are reliant on census information issued in 2016. However, we also saw repetition in the segments of the scan that contain contemporary information, particularly the sections dealing with current issues and possible responses. This raises a question about the level of review involved in

updating scans. If issues remained static over time, it would be useful if the scan clearly indicated this was the case.

We understand that Commands have a wide range of reporting requirements, and that the intelligence analysts responsible for drawing together the reports also have a range of other operational responsibilities.

It may be worthwhile providing greater support at the Regional level to assist Inspectors in preparing environmental scans. This may help to ensure environmental scans are an intelligence base that drives the consideration of programs and initiatives that may be most successful in meeting the objectives in the ASD, as well as the use of proactive policing methods when policing Aboriginal communities.

Recommendation 2: The NSW Police Force work with local Aboriginal community representatives to review the information included in environmental scans. This should include community input to segments of the scan detailing community history.

4.2.3 Action plans

Under the ASD all Commands and District are required to submit action plans to the Aboriginal Coordination and Strategy Team. The ASD states that action plans should:

- guide police / Aboriginal interventions
- focus on local solutions for local issues
- provide Aboriginal people a voice in how their community is policed
- engage the Aboriginal community in the development and implementation of the plans
- comprise the policing priorities and the aims of the Aboriginal community
- be informed by the Aboriginal Environmental Scans
- be a feature of Senior Management Team meetings²⁶

As noted above, action plans are supposed to be developed alongside the members of the Consultative Committee. The plans should be taken to a Consultative Committee meeting for consideration and approval. This must be recorded in the minutes of the meeting, and the agreed action plan also has to be signed by both the Commander or a delegate²⁷ and one or more local community representatives on the Consultative Committee.

²⁶ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 11.

²⁷ The Aboriginal Engagement Officer is a sworn police officer at Inspector level. The AEO is often also the Crime Manager within the Command. There is roughly 1 AEO per Command.

We reviewed the 99 action plans provided by the NSW Police Force. Of these:

- 40 plans were signed by both the Commander (or a delegate) and one or more members of the Committee
- 10 plans were signed by the Commander (or delegate) but not by a member of the Committee.
- 49 plans were not signed by the Commander or a Committee member

Of note, the Tweed/Byron Police District plan for 2022 includes 11 signatures from members or attendees at a Consultative Committee meeting. Most plans that were signed by Committee members were signed by one or two members.

Some action plans we reviewed included detailed information about planned activities for next year, along with clearly allocated responsibilities. However, as we found with the environmental scans, there is much repetition in the content of the action plans developed within Commands from 2018 to 2022. Several of the action plans also included standard content that appears to have come from the template document, without a great deal of additional information.

4.3 Reporting

4.3.1 Quarterly reporting

The ASD states that Regional Sponsors are required to give a report at quarterly Steering Committee meetings. These reports should include information about:

- how the ASD objectives are being met
- crime prevention and diversionary strategies implemented, and discussion of any that did not move forward
- partnerships with other agencies and community organisations
- programs implemented
- what is working well
- problem areas
- activities of the ACLO
- intended approaches and actual actions against the four priority areas.

The quarterly reports we reviewed take differing approaches. Some provide high level summaries of what has been done during the reporting period. Some do not provide a great deal of additional information outside of the text included in the ASD itself under each of the key priorities.

Others provide more detail on particular topics, such as the details and amount of money provided under the crime prevention grant program. For example, one of Mt Druitt PAC's quarterly reports states that:

- Breaking Barriers Program was allocated \$9,000
- the Justice Reinvest program received \$8,000
- a domestic violence seminar series entitled Safer Mob received \$8,000
- a Koori Netball competition received \$2,200.

Quarterly reports are to be discussed at ASD Steering Committee meetings. The agenda for the September 2021 ASD Steering Committee meeting provides 20 minutes for discussion of quarterly reports, led by the Regional Sponsor for Northern Region. The minutes of the meeting show much of the regional focus was on responding to COVID 19, which was understandable given when the meeting was held. The Regional sponsors for all of the Regions each made a report, with the exception of Central Metropolitan.

If all 6 Regions provided an update, they would have had approximately 3 minutes each. The Commission asks the NSW Police Force to consider if the structure of the Steering Committee meetings and the quarterly reports are sufficient to consider and compare across the regions all the matters listed above, from the strengths and challenges faced by each Aboriginal community working with police to the initiatives taken to address complex issues such as Aboriginal over-representation in the criminal justice system.

4.4 Crime prevention grants

The crime prevention grants program is designed to support the implementation of the Strategic Direction. The grants are aimed at identifying and promoting 'innovative ways of decreasing the over-representation of Aboriginal people in the criminal justice system and building better communities.'²⁸ There is \$200,000 allocated each year for grant programs, and the program is administered by the Aboriginal Coordination Team.

The 2022 ASD Annual Report states that:

- \$87,755.54 went to crime prevention programs
- \$82,923.47 was spent on community engagement
- there was an underspend of \$29,320.99.²⁹

²⁸ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 16.

²⁹ NSW Police Force Aboriginal Coordination and Strategy Team, *Aboriginal Strategic Direction Annual Report 2021-2022*, (Report, 2022) 9.

The Commission requested all of the closure reports for crime prevention grants awarded during the life of the Strategic Direction.

A number of the reports did not appear to provide a full breakdown of costs for all programs. Table 3 suggests there was a substantial underspend each year.

Table 1: Community grants program underspend 2018 - 2022³⁰

Year	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Total spend	\$56,147	\$40,522	\$109,593	\$93,211	\$30,990

Most funded programs focussed on children and young people. Some programs connected with a targeted group, usually identified based on interaction with police or school attendance and behaviour. Others were open to a broader group, with all Aboriginal young people in a community able to take part.

Most programs received approximately \$5,000. This was spent meeting costs such as food, sporting equipment, art supplies, presenter or facilitator costs, and for those programs that involved going out of community, travel and accommodation.

There were a small number of grants that were provided to larger programs. One example was the Yuin Protocol on the South Coast of NSW, which received \$22,039. This is a strategic response to domestic and family violence, developed and coordinated with a range of Aboriginal services, including women’s health services and land councils. The program funding was used to fund a range of awareness raising merchandise. Another program with higher than usual funding was the Stock Camp program at Kindabung.

4.4.1 Feedback and assessment

While it can be challenging to assess and measure some of the intangible benefits of working with community, it is important to try and measure what impact a funded program may have had. Some of the closure reports, such as the example below, include comments from the members of the community who took part.

**Example of community feedback:
‘Bunbinya Mawang – We all, all together’**

Murrumbidgee Police District worked with TAFE NSW, the Aboriginal Legal Service NSW/ACT, Catholic Schools NSW and Leeton Shire Council to deliver the Bunbinya Mawang program. It was aimed at reducing young offending and domestic violence in the Leeton community. The program

³⁰ Amounts are rounded to the nearest dollar. Information taken from invoices in Grants Closure Reports provided to the Commission by the NSW Police Force, 5 May 2023.

was aimed at identifying community mentors, and providing that group with a better understanding of the work of various agencies and the way community can work alongside service providers. At the end of the program, participants submitted assessments including:

- It's a great learning curve!
- I got so much out of it, the Child Protection role blew my mind! I had no idea there were specialised police like that.
- Worst part of the course? It's too short, I think there is so much more we could learn together, I don't understand why we haven't already had courses like this.
- Breaking down barriers, my foster son (3 yrs old) has seen so much, he used to say, copper take my baby and coppers locked mum up, since coming to the course, coppers gave me a feed, cya coppers! It's just changed him.
- Validated my approach when I am working with community and gave me new skills and confidence.
- I would like to work with police, I really like the talent pool idea.
- I really want to raise the level of my work in the community and take it all the way.
- Enhanced the knowledge I already had, made me feel more comfortable and sure of myself as a mentor.

It is important for the NSW Police Force to share information about successful programs and initiatives between Commands looking to build the same capacities and strengths in their community.

There is a field in the closure report that provides the submitting officer with the opportunity to provide feedback on the outcomes and success of the program. In a number of the programs, the closure report notes that it is too early to be able to assess the impact through crime numbers or school attendance, and that the program will be assessed in 6 or 12 months' time. Based on the records provided to us, we were not always able to determine whether an assessment eventually took place, or if the relevant information was provided to the Aboriginal Coordination and Strategy Team.

4.5 Training

The ASD refers to two types of training: Working with Aboriginal communities training and locally-focused Aboriginal awareness training.

4.5.1 Working with Aboriginal Communities Training

This training is provided in face-to-face format by an Aboriginal member of the Aboriginal Coordination and Strategy Team with training qualifications. The training focuses on:

- unconscious bias and racism
- raising awareness and understanding of trauma and intergenerational grief suffered by Aboriginal communities
- understanding and developing a sensitivity to the differences in the culture and language of Aboriginal people
- cultural protocols to consider when interacting with Aboriginal people

In terms of operational policing the training addresses Safe Custody practices (30 minute checks), a Bail assistance Line for Youths, and the Protected Admissions Scheme under the *Young Offenders Act 1997* (NSW).

The training is mandatory for all recruits and all sworn and unsworn personnel performing duty in communities with high Aboriginal populations.³¹ Table 4 shows the rates of eligible officers' completion of training, by Region and Command. Clearly there was significant variability across the Regions, from 70% of eligible officers trained in Western Region, to 88% of officers trained in Central Metropolitan Region. We acknowledge the Aboriginal Strategy and Coordination Team adapted the face-to-face training to video format, so that the training was still available throughout the disruptions of COVID 19.³²

The training was not provided to Kings Cross PAC, Surry Hills PAC, and Specialist Commands (e.g. State Crime Command, Professional Standards Command, etc). Providing cultural awareness training to officers in these Commands is not mandatory. While training may be particularly relevant in PACs or PDs with larger Aboriginal populations, providing Aboriginal cultural awareness training to *all* sworn and unsworn personnel is important for the following reasons:

- the curriculum document says the training is for *all* employees.
- sworn officers may be re-deployed between PACs and PDs, so all officers should have the same level of understanding and awareness.
- officers may encounter Aboriginal communities and cultural considerations in any PAC or PD, not only those with large Aboriginal populations.
- as a public sector agency, the NSW Police Force is accountable for Closing the Gap Priority Reform 3 'Transforming government

³¹ NSW Police Force, *Aboriginal Strategic Direction 2018-2023*, 14.

³² Aboriginal Coordination Team, NSW Police Force, *ACT Training Timeline*, May 2021.

organisations' which includes 'identifying and eliminating racism within all institutions of government, supporting First Nations cultures, and improving engagement with First Nations'.³³ In light of this it is appropriate that *all* NSW Police Force employees have training around Aboriginal cultural awareness, unconscious bias and racism.

Recommendation 3: The NSW Police Force provide the 'Working with Aboriginal Communities' training to all sworn and unsworn employees state-wide.

4.5.2 Locally focused Aboriginal awareness training

The ASD states that locally focused Aboriginal Awareness Training should be an ongoing feature in all PACs and PDs, and should involve the ACLO, AEO, and Aboriginal Community representatives. Table 5 shows the numbers of sworn officers completing locally focused training, by PAC or PD. We note that half of all Commands (17 of 34) had less than 100 officers trained in the entire 5 year period. The Aboriginal Coordination and Strategy Team told us that in general, local training was impacted over the period by COVID 19 and natural disasters, or limited by vacancies in ACLO roles.

Some ACLOs told us that locally focused training was particularly important, possibly even more important, than the generic state-wide training. This is because there is significant diversity in communities within the one Region, let alone across Regions, and each community has a different relationship with police which is impacted by contemporaneous events and recent history. As such it was felt locally focused training was particularly useful to sworn officers' interactions with community.

Richmond and Central North Police Districts ensure all officers in those PDs meet with the ALCOs as part of their induction. This includes inductions for new recruits officers transferring in from other Regions. The ACLO will usually then take them out to meet members of the community. Making this approach more widespread would be a good starting point in improving the level of engagement and understanding between police officers and local communities. There may be benefit in the NSW Police Force exploring how to support PACs and PDs to ensure that locally focused training is developed and provided.

Recommendation 4: The NSW Police Force work with local communities and ACLOs to develop Region- or Command-specific training materials that reflect the history of the local Aboriginal communities, as well as current challenges and strengths. Table 2:

³³ Shane Hoffman, with assistance from the Closing the Gap Secretariat and the Coalition of Aboriginal and Torres Strait Islander Peak Organisation's Secretariat, *The National Agreement on Closing the Gap - And what it means for public servants* (Report, July 2022) 11 < <https://anzsog.edu.au/app/uploads/2022/07/National-Agreement-Explainer.pdf>>.

Table 2: Percentage of sworn officers completing mandatory Working With Aboriginal Communities training by Region and PAC³⁴

Region	Region total (%)	PAC or PD	PAC (%)
Central Metro	88.7	Eastern Beaches	94
		Inner West	74
		Leichardt	90
		South Sydney	99
		Kings Cross	0
		Surry Hills	0
North West Metro	79	Blacktown	72
		Mt Druitt	88
		Nepean	77
South West Metro	85.5	Campbelltown City	80
		Liverpool City	91
Northern	86.4	Brisbane Water	78
		Coffs/Clarence	86
		Hunter Valley	91
		Lake Macquarie	89
		Manning/Great Lakes	95
		Mid North Coast	79
		Newcastle City	94
		Port Stephens-Hunter	70
		Richmond	96
		Tuggerah Lakes	96
		Tweed/Byron	80
Southern	75	Lake Illawarra	77
		Monaro	67
		Murray River	87
		Murrumbidgee	61
		Riverina	73
		South Coast	81
		The Hume	67
Western	69.9	Barrier	87
		Central North	65
		Central West	82
		Chifley	83
		New England	72
		Orana Mid-West	63
		Oxley PD	46

³⁴Information provided by the Aboriginal Coordination Team on 18 January 2023. Data correct as at 4 January 2023.

Table 3: Officers completing locally focused training³⁵

Region	ASD Command	2018	2019	2020	2021	2022	Total officers trained per PAC
NORTHERN	Brisbane Water PD	0	0	0	0	9	9
	Coffs Clarence PD	0	0	0	188	0	188
	Hunter Valley PD	0	0	90	97	24	211
	Lake Macquarie PD	13	15	2	12	190	232
	Manning Great Lakes PD	0	10	0	0	17	27
	Mid North Coast PD	0	0	0	0	0	0
	Newcastle City PD	46	1	2	231	213	493
	Port Stephens Hunter PD	22	16	11	0	2	51
	Tuggerah Lakes PD	0	0	0	0	8	8
	Tweed Byron PD	0	0	0	0	15	15
	Richmond PD	0	30	0	0	0	30
	SOUTHERN	Lake Illawarra PD	9	16	26	143	123
Hume PD		4	9	64	99	5	181
Murray River PD		11	19	8	1	0	39
Murrumbidgee PD		4	3	10	22	2	41
Riverina PD		40	60	34	71	149	354
Monaro PD		5	20	19	109	179	332
South Coast PD		0	28	4	0	10	42
WESTERN	Barrier PD	0	15	17	38	17	87
	Central North PD	0	92	2	0	0	94
	Central West PD	6	32	2	0	0	40
	Chifley PD	17	19	9	15	12	72
	New England PD	25	25	20	20	25	115
	Orana Mid-West PD	0	0	0	0	0	0
	Oxley PD	0	0	0	0	16	16
	NWM	Blacktown PAC	0	0	0	10	41
Mt Druitt PAC		0	0	1	151	25	177
Nepean PAC		0	0	7	151	67	225
SWM	Campbelltown PAC	0	0	11	0	0	11
	Liverpool PAC	28	15	19	251	0	313
CMR	South Sydney PAC	0	2	91	120	206	419
	Leichhardt PAC	0	6	6	135	0	147
	Eastern Beaches PAC	29	59	0	21	46	155
	Inner West PAC	0	3	22	150	26	201
Total per year		259	495	477	2035	1427	4693

³⁵ Source: Information provided by the Aboriginal Coordination and Strategy Team, NSW Police Force, 18 January 2023. Data correct at 4 January 2023.

4.6 ACLOs and the Aboriginal Coordination and Strategy Team

The key positions held by Aboriginal people outside of commissioned officers are the Aboriginal Community Liaison Officers (ACLOs) and the staff working in the Aboriginal Coordination and Strategy Team. These roles are involved in many aspects of the day-to-day implementation of the ASD on the ground.

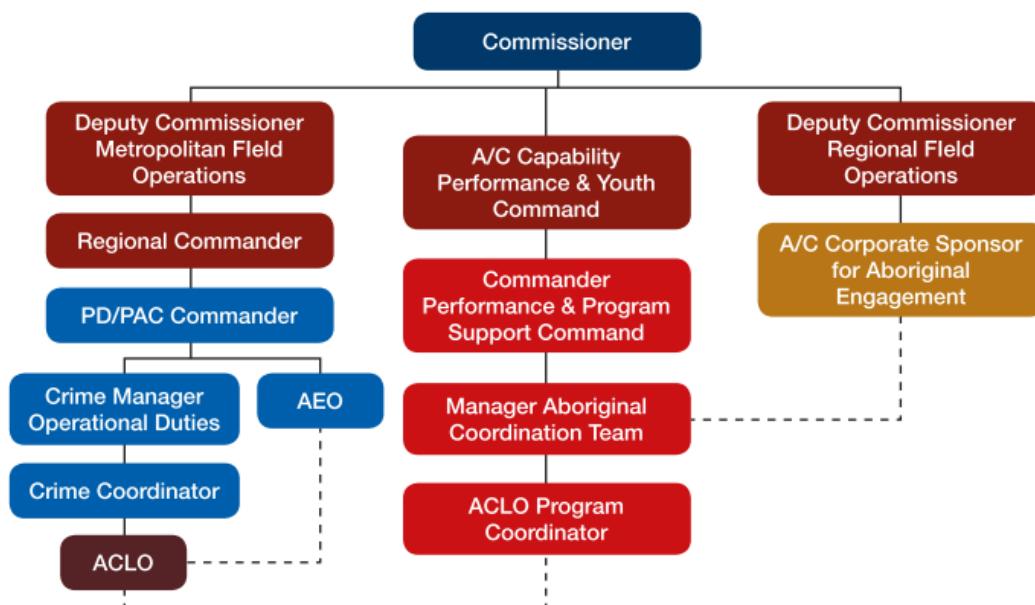
Throughout our consultations we heard that these individuals are extremely valuable to the NSW Police Force and do lots of important work in their communities.

4.6.1 ACLOs

ACLOs are unsworn, identified Aboriginal and Torres Strait Islander positions. ACLOs are stationed in PACs or PDs with large Aboriginal populations. In February 2022 the FTE provision for ACLOs across the NSW Police Force was 58.³⁶

ACLOs are members of the Crime Management Unit of the Command, reporting to the Crime Manager and the Aboriginal Engagement Officer³⁷ of the Command. ACLOs should be integrated into the core business of the Crime Management Unit. Figure 2 shows the position of ACLOs in the structure of the NSW Police Force.

Figure 2: ACLOs within the NSW Police Force³⁸



³⁶ NSW Police Force, *ACLO Program Handbook for Police Districts and Police Area Commanders*, Draft, February 2023, 6.

³⁷ The Aboriginal Engagement Officer is a sworn police officer at Inspector level. The AEO is often also the Crime Manager within the Command. There is roughly 1 AEO per Command.

³⁸ NSW Police Force, *ACLO Program Handbook for Police Districts and Police Area Commanders*, Draft, February 2023, 3.

A full list of the possible duties an ACLO may be tasked with can be found at Appendix D. Selected accountabilities of the ACLO role include:³⁹

- establish and maintain networks and build close personal rapport between NSW Police Force Staff, Elders, leaders, and members of the Aboriginal Community.
- provide advice and support to commands in the management of local Aboriginal issues
- maintain high visibility across all Aboriginal Communities within NSW including local Aboriginal people within the Command
- assist and provide support to community groups regarding crime prevention and preventative youth programs relevant to policing to reduce crime and build partnerships
- promote the role, purpose, and responsibilities of the ACLO and the ASD to the Aboriginal and wider community
- assist in establishing and maintaining Aboriginal support groups to provide support to Aboriginal persons in custody or victims of crime
- encourage Aboriginal communities to work with police to address issues involving crime, violence, and work together towards 'Close the Gap' [sic] targets and Aboriginal disadvantage within policing environments
- in conjunction with the Education Development Officer (EDO), assist in the development and the delivery of localised Aboriginal Cultural Awareness training.
- in conjunction with the Aboriginal Engagement Officer (AEO) assist with local induction of new staff into the PAC and PD
- balance police and community interests, whilst managing competing expectations from communities and police as to the ACLO role responsibilities
- address conflicts of interest with the Aboriginal community whilst maintaining integrity and ethical conduct to best meet community expectations and meet operational needs, and
- build relationships and trust within Aboriginal communities and within Commands to increase awareness and understanding of the ACLO role and its benefits to the community and policing

Clearly, the demands upon ACLOs are significant and varied. The ACLO role is currently graded Clerk Grade 3 / 4 under the *Crown Employees (Public Sector – Salaries 2021) Award*. The role is an unsworn officer located at the bottom of the 'chain of command'. This is not to mention

³⁹ NSW Police Force, *ACLO Program Handbook for Police Districts and Police Area Commanders*, Draft, February 2023, 12.

the cultural load⁴⁰ and identity strain⁴¹ that can be experienced by people in such roles.

Commanders and members of the Aboriginal Coordination and Strategy Team reported that retaining individuals in ACLO roles was a challenge. Appendix E shows ACLO distribution across the state and ACLO vacancies by quarter over the period. Western Region has the highest ACLO allocation, but also the highest number of vacancies throughout the period.

Some Commanders and Aboriginal Engagement Officers we spoke to felt that the ACLO role should a higher grade given the responsibilities and issues with retention. When we asked one senior officer what he would change about the work being done to engage with Aboriginal communities, said “I would find some way to pay these guys [ACLOs] what they are worth.” We also heard that dedicated vehicles and phones would help the ACLOs perform their duties, given the requirement to service communities residing across large geographical distances.

Priority reform 2 of the Closing the Gap agreement is focused on building the capacity of Aboriginal Community Controlled Organisations (ACCOs). Increased ACCO resourcing may create new local career opportunities for highly skilled Aboriginal people wanting to work in their own communities. We also heard that other government departments such as NSW Health and the Department of Communities and Justice offer similar employment opportunities with much higher salary grades, and that good candidates understandably choose these options over the 3 / 4 graded ACLO role.

The NSW Police Force should consider how to ensure it is an attractive employment option in this context. Reviewing the ACLO position may help ensure individuals are appropriately supported and remunerated for their duties and may help retain people to the role.

Recommendation 5: The NSW Police Force should review the ACLO role, including remuneration, career development within the role, responsibilities, and cultural support available to the role.

⁴⁰ According to Sivertsen et al “Cultural load” in the context of the workplace is the invisible workload employers knowingly or unknowingly place on Aboriginal and Torres Strait Islander employees to provide Indigenous knowledge, education and support. This is often done without any formally agreed alteration to their workload.’ See Nina Sivertsen, Courtney Ryder and Tahlia Johnson, ‘First Nations people often take on the ‘cultural load’ in their workplaces. Employers need to ease this burden’ *The Conversation* (online, 31 January 2023) <<https://theconversation.com/first-nations-people-often-take-on-the-cultural-load-in-their-workplaces-employers-need-to-ease-this-burden-193858>>.

⁴¹ Kelly Menzel, ‘Attention managers: if you expect First Nations’ staff to do all your ‘Indigenous stuff’, this isn’t support – it’s racism’ *The Conversation* (online, 24 May 2022) <<https://theconversation.com/attention-managers-if-you-expect-first-nations-staff-to-do-all-your-indigenous-stuff-this-isnt-support-its-racism-176143>>.

4.6.2 Aboriginal Coordination and Strategy Team

The Commission has consistently been told how central the Aboriginal Coordination and Strategy Team is to the delivery of the ASD. The Team's responsibilities include:

- identifying appropriate candidates for the ACLO roles across the state, and then ensuring they are provided with the support needed to perform their role
- interpreting the various policies that underpin the NSW Police Force's commitment to delivering the best possible services to Aboriginal communities
- developing and delivering generalist and specialised training courses on working with Aboriginal communities
- coordinating the ASD Crime Prevention Grants program
- provide executive and frontline support to police on issues impacting culturally responsive policing
- ASD Annual Reporting.

The team is relatively small given the range and importance of its responsibilities. We have also been told that there have been several challenging periods when roles in the team have not been filled.

If the NSW Police Force is going to deliver on its own commitments to Aboriginal communities, as well contribute to implementing the Closing the Gap agreement, it may be necessary to bolster the staffing of the Aboriginal Coordination and Strategy Team. This would allow the Team to devote time to all aspects of the NSW Police Force's work with communities, including developing local, relevant, targeted training and resources, and providing the ACLOs with the assistance and support they need to perform their essential functions.

Recommendation 6: **The NSW Police should consider increasing the staffing and funding provided to the Aboriginal Coordination and Strategy Team.**

5. Police practice

This section looks at the policing of Aboriginal communities in NSW that occurred over the same time period that the *Aboriginal Strategic Direction 2018 - 2023* (ASD) was in place. The ASD does not address the issue of day-to-day operational policing. However, the Commission considers it important to think about the ASD in terms of the broader context of over-representation of Aboriginal people in policing interactions in NSW.

The work of the Commission and others over the past 5 years shows that Aboriginal people are significantly over-represented in interactions with NSW police. For example:

- 54.7% of all people, and 71.8% of young people, subject to a Suspect Target Management Program in the financial year 2021-2022 were Aboriginal.⁴²
- 17% of all persons strip searched by NSW Police in 2018-2019 and 12% of all persons strip searched in 2019-2020 were Aboriginal.⁴³
- Aboriginal people are more than twice as likely to be searched by police than non-Aboriginal people, 10 times more likely in Surry Hills and Waterloo, and 7 times more likely in key regional areas.⁴⁴
- Aboriginal people were 46% of all adults subjected to the issuing of warnings under consorting legislation by general duties officers in the period 2019 to 2022.⁴⁵
- In the case of juvenile offenders, Aboriginal young people were more likely to be prosecuted than cautioned, compared with their non-Indigenous counterparts, even after adjusting for legal factors.⁴⁶
- Aboriginal people were 20.4% more likely to be refused bail by police after accounting for other relevant case characteristics.

⁴² Legislative Council, Parliament of New South Wales, Portfolio Committee No.5 – Regional NSW and Stronger Communities, *Budget Estimates 2022-2023: Responses to supplementary questions*, 27 September 2022, 60.

⁴³ Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices* (Report, December 2020) 15 <<https://www.lecc.nsw.gov.au/news-and-publications/publications/final-report-an-inquiry-into-nsw-police-force-strip-search-practices-15-december-2020.pdf>>

⁴⁴ Redfern Legal Centre, *NSW Police person searches – A disproportionate impact*, (Report, February 2023) <<https://rlc.org.au/sites/default/files/2023-02/230210%20police%20person%20searches%20%28pf%29.pdf>>

⁴⁵ This concerns the issue of warnings as described in s 93(X)(3) of the *Crimes Act 1900* (NSW) as opposed to arrests and/or prosecutions for an offence under 93X(1). See Law Enforcement Conduct Commission, *Review of the operation of the amendments to consorting laws under Part 3A Division 7 of the Crimes Act 1900* (Report, February 2023) 39.

⁴⁶ Don Weatherburn and Brendan Thomas, 'The influence of Indigenous status on the issue of police cautions' (2022) 56 (2-3), *Journal of Criminology* <<https://doi.org/10.1177/26338076221146326>>.

Aboriginality had no association with the likelihood of court bail.⁴⁷

- 75.6% of bail compliance checks conducted in 2021-2022 on young people with no court ordered bail conditions in place were conducted on Aboriginal young people. This is an increase from 72.5% in 2019-20.⁴⁸
- 17% of all Criminal Infringement Notices for offensive language issued in 2018 were issued to Aboriginal people.⁴⁹

Key priorities of NSW Police Force's ASD 2018 – 2023 included reducing Aboriginal over-representation in the criminal justice system and improving the safety and wellbeing of Aboriginal young people. The evidence summarised above highlights that the way the NSW Police Force is policing Aboriginal communities may be undermining these aims.

Crucially, many of the types of policing interactions described above relate to pro-active policing. This means officers have a substantial degree of discretion in how to choose to apply the law when an offence is detected, and influence the way an interaction with the person of interest will proceed. Police discretion:

... in Australia is premised on the principle that '[s]trict adherence to the letter of the law in many cases would be too harsh and justice may be better served by not introducing an offender into the criminal justice process.' That is, a police officer may elect not to proceed in response to a minor offence or may choose to otherwise divert the offender. ... Police discretion is regulated not just by laws and regulations but by policing manuals and instructions, as well as by directions from a more senior officer in certain circumstances.⁵⁰

Further, it:

... is a feature or characteristic of the sort of authority that police have, that much of it is discretionary – that police can decide for themselves how they will exercise it, if at all, in many of the circumstances they face.⁵¹

The statistics summarised above highlight that currently, NSW police officers may be using their discretion in a way that causes more Aboriginal people to come into the criminal justice system.

⁴⁷ Ilya Klauzner and Steve Yeong, NSW Bureau of Crime Statistics and Research 'What factors influence police and court bail decisions?' (March 2021) 236, *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin*, 21. BOCSAR notes that association is not the same as causation.

⁴⁸ Legislative Council, Parliament of New South Wales, Portfolio Committee No.5 – Regional NSW and Stronger Communities, *Budget Estimates 2022: Responses to supplementary questions*, 27 September 2022, 58.

⁴⁹ Australian Law Reform Commission, *Pathways to Justice- Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 12.171.

⁵⁰ Australian Law Reform Commission, *Pathways to Justice- Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 14.21-22.

⁵¹ Anna Crehan, "Appropriate" Police Discretion and Indigenous Over-Representation in the Criminal Justice System' (2010) 11 *Australian Journal of Professional and Applied Ethics* 4.

5.1 Suspect Target Management Program

The NSW Police Force Suspect Target Management Program (STMP) is a pre-emptive policing policy designed 'to interrupt criminal behaviour by proactively engaging high-risk and prolific suspects.'⁵² Once police identify an STMP target, they select a 'toolkit' to apply which contains a range of strategies about how police should interact with the target.

The STMP is not a statutory power and it does not provide police with any new powers. The STMP is discretionary because police choose who they put on the STMP, and how to use their existing powers to monitor them.

The STMP has been used disproportionately with Aboriginal young people. In 2020 we reported that Aboriginal and Torres Strait Islanders comprised 42% of all young people on a STMP.⁵³ At the time, we recommended that the NSW Police Force reduce the over-representation of young Aboriginal STMP targets. NSW Police Force accepted this recommendation. However, while the number of people on STMP decreased overall, over-representation of Aboriginal young people increased up to 2022. Figures submitted in response to supplementary questions for Budget Estimates 2021-2022 indicated that 54.7% of all people, and 71.8% of young people, subject to a Suspect Target Management Plan identified as Aboriginal.⁵⁴

The Commission is concerned that the way the STMP has been used is at odds with priorities of NSW Police Force's ASD and the Closing the Gap agreement to reduce over-representation of Aboriginal people in the criminal justice system. We have communicated our concerns to the NSW Police Force separately, and understand that the NSW Police Force is reconsidering its approach to the use of STMP.

The Commission considers that consultation with Aboriginal communities and organisations should be an important step in deciding how it should approach dealing with youth recidivism and community safety in ways that do not disproportionately increase police interactions with Aboriginal young people and risk increasing their representation in the criminal justice system.

A core principle of the Closing the Gap framework to which the NSW Police Force is accountable, is that over-representation statistics will not improve unless decision-making and design of policies impacting Aboriginal people are shared with Aboriginal peak organisations and communities.

⁵² State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, 12.

⁵³ Law Enforcement Conduct Commission, *Operation Tepito Interim Report* (Report, January 2020) 11.

⁵⁴ Legislative Council, Parliament of New South Wales, *Portfolio Committee No.5 - Regional NSW and Stronger Communities, Budget Estimates 2022-2023: Responses to supplementary questions*, 27 September 2022, 60.

The Commission intends to publish our final Operation Tepito report on the NSW Police Force's application of the STMP on young people later in 2023.

5.2 Consorting and discretion

The Commission completed its review of certain amendments to the New South Wales consorting laws in February 2023. One of the amendments it considered was the inclusion of kinship as a defence against consorting. To do this effectively, the Commission had to look more closely at the consorting warnings issued to Aboriginal people. As with other statistics relating to the use of police powers, Aboriginal people were over-represented in the number of people warned for consorting and those that were warned about.

When the Commission was preparing a discussion paper during the review, a draft of the paper was provided to the NSW Police Force for consideration and comment. On the issue of the potential impact on Aboriginal over-representation, the NSW Police Force initially provided the following response:

The NSWPF submits that the report fails to recognise that consorting laws are beneficial in achieving the goal of the Aboriginal Strategic Direction to reduce the numbers of Aboriginal and Torres Strait Islander people in the criminal justice system. The NSWPF submits that there is clear evidence of this in circumstances where police exercised discretion by not prosecuting 45 cases and instead warnings were issued. The NSWPF submits that consorting laws are used by police to keep people (including Aboriginal and Torres Strait Islander people) out of the criminal justice system and is consistent with the ASD.⁵⁵

The 45 people referenced above were Aboriginal people who had received the required number of warnings in order to be charged with consorting, which is a serious indictable offence. Most of the warnings issued to Aboriginal people were issued by general duties officers, and were issued in circumstances that were not consistent with the legislative intention of the laws, namely to disrupt serious organised criminal activity.

The Commission asked the NSW Police Force to explain how using the consorting laws was achieving the aims of the Strategic Direction, and received the following response from the Commander of State Crime Command:

The application of the consorting legislation is premised on its ability to deter future associations which reinforce criminal ties between individuals charged with an indictable offence and the Person Warned. As such, the Person Warned is assumed to be less likely to have further interaction with the criminal justice system due to the restricted negative influence of a pro-crime peer network and/or access to criminal capabilities via this network.

⁵⁵ Letter from the Commander of State Crime Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 3 August 2021.

The disruption of criminal [sic] can reduce future offending (or reoffending) and prevent future participation in the criminal justice system.

NSW Police Force's Aboriginal Coordination Team notes this assumption does not acknowledge the perspective of Aboriginal culture because of kinship and cultural ties to the country, community and family. Officers are advised in the SOPs that consorting does not apply with family members, including the extended Aboriginal kinship network, albeit this is worded as a defence to be applied at court ...

Suspected criminal activity or interactions that are not "reasonable in the circumstances" will continue to override family and kinship considerations. The Aboriginal Coordination Team notes this will continue to present challenges for Aboriginal People who have life-long obligations to their kinship network irrespective of circumstances.

The ASD urges discretion when considering warnings and cautions for minor offences and LECC has also raised officers' use of discretion and the application of consorting legislation outside the scope of *serious offending* more broadly in their review. State Crime Command will further clarify these items in the context of both Aboriginal and non-Aboriginal communities in the SOPs re-write.

State Crime Command will also expand the information available for working with Aboriginal People and kinship within the consorting SOPs [...] Furthermore, NSW Police Force provides cultural awareness training via the Aboriginal Coordination Team to increase officers' understanding of Aboriginal culture.⁵⁶

The NSW Police Force has introduced additional safeguards in its systems intended to reduce the number of warnings issued to Aboriginal people, particularly those warnings that are not directly related to serious organised criminal activity.

While the second response from the NSW Police Force provided some context, it is concerning that the first response suggested that issuing a consorting warning is a diversionary measure that achieves the aim of the ASD.

The issuing of a warning may be less serious than charging or prosecution. However, far from reducing the chance of an Aboriginal person entering the criminal justice system, issuing a person with a warning for consorting is the first of 4 steps that could lead to a very serious criminal charge. This is contrary to the aim of the ASD to reduce over-representation in the criminal justice system. The consorting Standard Operating Procedures have been amended to include additional quality assurance steps for warnings issued to Aboriginal people. The broader apparent misunderstanding around diversion can only be addressed with training and guidance to officers at all levels of the NSW Police Force.

⁵⁶ Letter from the Commander of State Crime Command, NSW Police Force to the Commissioner, Law Enforcement Conduct Commission, 4 February 2022.

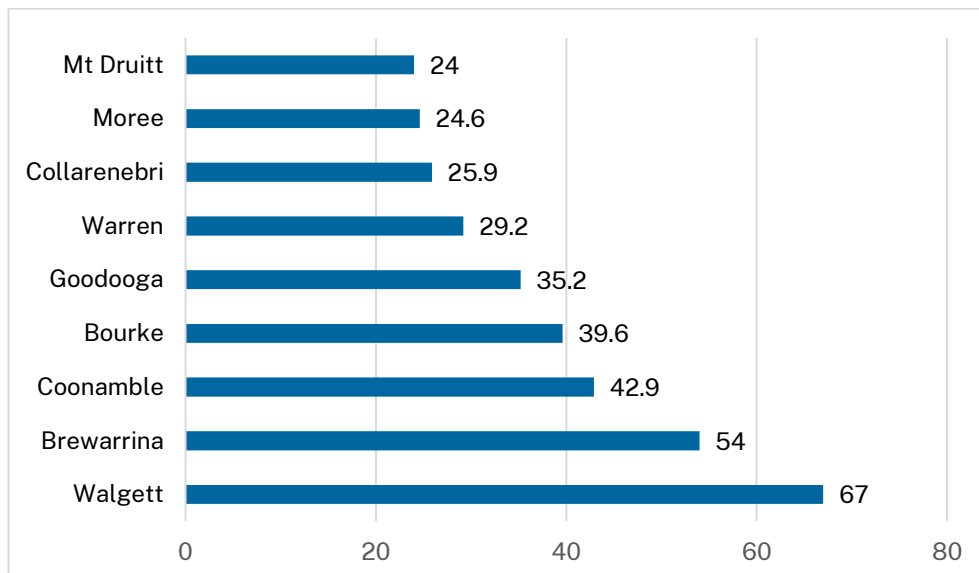
5.3 Response to COVID-19

During the COVID-19 pandemic, the NSW Police Force led and assisted Local Emergency Management Committees with implementation of Community Action Plans (CAPs) that were developed in consultation with Aboriginal Communities, NSW Health, NSW Aboriginal Affairs, Local Aboriginal Lands Councils. CAPs set out actions and responsibilities for an agreed approach.

The Commission acknowledges that during the pandemic, the NSW Police Force played a key role in helping keep communities safe. We have seen evidence of the positive work done by the NSW Police Force together with community and other government agencies to raise awareness and understanding of the need for vaccination. We also heard about police coordinating large-scale vaccination efforts in a number of Aboriginal communities. The ASD Annual Reports 2020-2021 and 2021-2022 describe police efforts in assisting communities with challenges presented by COVID-19.

However, other sources suggest the ways that some officers enforced the public health orders may have been counter-productive to supporting communities. The top 9 postcodes for police issuing COVID-19 fines per 1000 people were all in Western NSW in postcodes with large Aboriginal populations (see Figure 2). Walgett was the highest.

Figure 3: Top ten postcodes of COVID-19 fines per 1,000 people⁵⁷



⁵⁷ NSW Police Force data obtained by Redfern Legal Centre quoted in Mostafa Rachwani and Nick Evershed 'Incredible imbalance': NSW Covid fines during Delta higher in disadvantaged suburbs, *The Guardian* (online, 10 February 2022) < <https://www.theguardian.com/australia-news/datablog/2022/feb/10/incredible-imbalance-nsw-covid-fines-during-delta-higher-in-disadvantaged-suburbs>>.

The Dharriwaa Elders Group of Walgett made a statement about the harm they believed had been caused by police during the COVID 19 pandemic:

The NSW Government made a big mistake for our community in tasking police to lead the local emergency response to this public health crisis. Police have a long history as an intimidating presence in Walgett, without a track record of building trust or communicating well with the local Aboriginal community. We have learnt that police struggled to keep abreast of the changing public health order requirements and we know that police are not trained to be social workers or to understand our community ... This financial stress impacts children and young people in our community significantly and is a contributor to child poverty.⁵⁸

The Dharriwaa Elders Group asked the NSW Police Force to provide:

- more training for police officers to reduce racist and colonial approaches and attitudes
- timely data to local agencies including Aboriginal Community-Controlled Organisations regarding any new policing, social and public health issues as they arise.⁵⁹

In June 2023 Dharriwaa Elders Group secretary Virginia Robinson asked this of the NSW Police Force:

Instead of punishing us with fines that keep us in poverty, support us with our approach to build more wellbeing solutions that we know are really needed.⁶⁰

There have been numerous studies that have highlighted the detrimental impacts of fines on Aboriginal communities. Aboriginal and Torres Strait Islander people are over-represented as fine recipients. They are less likely than non-Indigenous people to pay a fine at the time of issue of the initial notice, for reasons such as financial capacity, itinerancy and literacy levels.⁶¹ This can result in the recipient losing their drivers licence and in some cases receiving a custodial sentence.

In 2013, the Audit Office found that Aboriginal people find it harder to retain their licence primarily due to unpaid fines. At the time of the audit, Aboriginal people were losing their licence for fine default at around three times the rate of non-Aboriginal people and faced real barriers to regaining it.

Another 2017 study into the barriers to driver licences for Aboriginal and Torres Strait Islander peoples in New South Wales and South Australia observed that reduced transport options for regional and

⁵⁸ Dharriwaa Elders Group, 'High numbers of COVID 19 Fines issued by NSW Police in Walgett' (Media Release, 5 May 2022) <<https://www.dharriwaaeldersgroup.org.au/images/downloads/DEGStatement5May2022.pdf>>.

⁵⁹ Dharriwaa Elders Group, 'High numbers of COVID 19 Fines issued by NSW Police in Walgett' (Media Release, 5 May 2022) <<https://www.dharriwaaeldersgroup.org.au/images/downloads/DEGStatement5May2022.pdf>>.

⁶⁰ Zaarkacha Marlan, 'Aboriginal elders support investigation into policing of COVID-19 fines in Walgett', ABC News (online, 12 June 2023) <<https://www.abc.net.au/news/2023-06-10/walgett-support-investigation-into-police-conduct-during-covid/102460878>>.

⁶¹ Australian Law Reform Commission, *Pathways to Justice- Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 387.

remote communities were ‘implicated in the over-representation of Aboriginal people incarcerated for transport offences’.⁶²

The Commission is aware that Western Region has taken a range of steps to try to work effectively with Aboriginal communities. As stated in section 3 of this report, the Commission has not undertaken direct consultations with communities to hear about how things are working on the ground.

Nevertheless, the Commission highlights the Walgett example to illustrate how the policing of communities may sometimes undermine the aims of the Aboriginal Strategic Direction which aims to build trust and relationships. The example also highlights that communities hold the answers about how they would like to work with police.

The harm described by the Walgett community may have been avoided if the NSW Police Force’s approach had reflected the following principles from Closing the Gap Priority Area 3 ‘Transforming government organisations’:

The Government Parties also commit to engaging with Aboriginal and Torres Strait Islander representatives before, during, and after emergencies such as natural disasters and pandemics to make sure that:

- a. government decisions take account of the impact of those decisions on Aboriginal and Torres Strait Islander people and
- b. Aboriginal and Torres Strait Islander people are not disproportionately affected and can recover as quickly as other Australians from social and economic impacts.

Recent statistics regarding proven public health order breaches show that Aboriginal people accounted for 19% of those with a breach in 2021 and 17% in 2022.⁶³ This is significantly higher than the level of Aboriginal people in the population. It raises a question about the way the NSW Police Force engaged with Aboriginal people about the public health orders.

5.4 Bail

There are two bail authorities in NSW – the police and the courts. Police bail decisions determine whether the accused will enter remand.⁶⁴ Recently the NSW Bureau of Crime Statistics and Research (BOCSAR) noted that:

⁶² Australian Law Reform Commission, *Pathways to Justice– Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 404.

⁶³ NSW Bureau of Crime Statistics and Research, Quarterly Crime Reports, 4th Quarter 2022.

⁶⁴ Ilya Klauzner, ‘Investigating bias towards Aboriginal people in police bail decisions’ (June 2023) 256, *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 7.

even if a court subsequently overturns a bail refusal, short episodes of remand are costly to the state and can have social, economic, legal, and emotional consequences for the accused.⁶⁵

A 2021 BOCSAR study considered legal and extra-legal factors influencing bail decisions by the courts and police. The study reported that Aboriginal defendants are 20.4% more likely to be refused bail by police than non-Aboriginal defendants, even after accounting for other relevant case characteristics.⁶⁶ Aboriginality had no association with the likelihood of court bail.⁶⁷

In June 2023 BOCSAR published a study on whether police custody managers exhibited bias towards Aboriginal defendants in their bail decisions, once accounting for the risk of reoffending and absconding when on bail. BOCSAR found

[...] no evidence to suggest that there is bias, in the form of a stricter threshold of release by police custody managers in their bail decisions, between Aboriginal and non-Aboriginal defendants. This suggests that strategies to reduce disparities in the likelihood of receiving bail should focus either on other criminal justice decisions (such as the decision to charge or arrest accused persons) or research should focus on structural factors of the criminal justice system (such as the potential presence of institutional bias).⁶⁸

The Commission acknowledges that an individual's circumstances may change between police refusing bail, and appearing before the courts, which may lead to the courts subsequently granting bail. The Commission also notes that the BOCSAR paper is very clear about the limitations of its methodology.⁶⁹ Nevertheless, the BOCSAR studies highlight the well-known, ongoing issue of Aboriginal over-representation at the point of bail decisions and suggest actions for reducing the disparity which are within NSW Police Force's influence.⁷⁰

The Commission acknowledges that police officers are statutorily bound by the *Bail Act 2013* (NSW) with respect to bail decisions. Separate to this, we have some concerns about the NSW Police Force Bail Standard Operating Procedures (SOPs). On 9 June 2022 we wrote to the NSW Police Force identifying concerns that the procedures governing police officer bail decisions may be inadequate to guide

⁶⁵ Ilya Klauzner, 'Investigating bias towards Aboriginal people in police bail decisions' (June 2023) 256, *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin*.

⁶⁶ Ilya Klauzner and Steve Yeong, NSW Bureau of Crime Statistics and Research 'What factors influence police and court bail decisions?' (March 2021) 236, *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 21.

⁶⁷ Ilya Klauzner and Steve Yeong, NSW Bureau of Crime Statistics and Research 'What factors influence police and court bail decisions?' (March 2021) 236, *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 21.

⁶⁸ Ilya Klauzner, 'Investigating bias towards Aboriginal people in police bail decisions' (June 2023) 256, *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 1.

⁶⁹ Ilya Klauzner and Steve Yeong, NSW Bureau of Crime Statistics and Research 'What factors influence police and court bail decisions?' (March 2021) 236, *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 21 states 'While our findings are suggestive of an association between extra-legal factors and the probability of bail, they should not be interpreted as causal. It is possible there are other important variables that are correlated with Aboriginality, age and/or gender which are omitted from our models. This would cause us to overestimate the effect of these factors on bail outcomes'.

⁷⁰ See Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 149 – 183 for a detailed discussion of these issues.

police to consider the special vulnerabilities and needs of Aboriginal people when determining bail, as is required under s18(1)(k) of the *Bail Act 2013* (NSW). We also noted that some of the statements in the Bail SOPs characterising Aboriginal culture may not be relevant to police bail determinations, and could potentially lead to determination of bail risk based on discriminatory factors.

Specifically, section 4.11 of the current Bail SOPs includes the text that: *'for many Aboriginal people, frequent short-term mobility is a normal part of life'*. This is clearly indicative of a flight risk, and may be relied on as a factor in support of a decision to refuse bail. It is not clear how relevant this statement is, given frequent short-term mobility could be considered a normal part of life for many individuals and groups in NSW society. To apply this 'fact' only to Aboriginal persons is clearly problematic and could be considered potentially discriminatory.

We requested that the NSW Police Force:

- review the wording of the section 4.11 of the Bail SOPs
- provide the Commission with advice as to the timeframes, terms and outcomes of such a review, and
- engage with internal Aboriginal strategic groups such as the PASAC, and external Aboriginal community groups or legal agencies, as these stakeholders are well placed to advise on the special vulnerabilities and needs of Aboriginal people relevant to the consideration of bail concerns under s18(1)(k) of the *Bail Act 2013*.

On 16 August 2022 the Commissioner of Police replied to our letter. The Commissioner did not address our request to amend the Bail SOPs, although she did indicate that:

The NSWPF agrees there is opportunity to strengthen the guidance offered to police officers in their assessment of bail concerns for Aboriginal people and will consider the most appropriate mechanism through which this guidance can be provided. The NSWPF will provide updates regarding this.

[...]

A review of current training courses has identified opportunities to further integrate cultural awareness training into custody management related courses. The Aboriginal Coordination Team and People and Capability Command will partner to facilitate course integration in relation to updated content and delivery.⁷¹

The Commission considers that wording of the Bail SOPs may be discriminatory and creates a risk that Aboriginality may be interpreted by police officers making bail decisions as a factor weighing against the granting of bail.

⁷¹ Letter from the Commissioner of Police, NSW Police Force to the Commissioner, Law Enforcement Conduct Commission, 16 August 2022.

We have not received any update from the NSW Police Force about the guidance and training updates mentioned in the Commissioner's August 2022 letter. We still consider that the NSW Police Force should review their Bail SOPs to remove any risk that the SOPs accommodate police officers deciding against bail due to Aboriginality.

Recommendation 7: The NSW Police Force should review all guidance in the Bail Law Reform SOPs in relation to bail determinations for Aboriginal people. As part of the review the NSW Police Force should:

- a) engage with internal Aboriginal strategic groups such as the PASAC, and external Aboriginal community groups and Aboriginal legal agencies, regarding the special vulnerabilities and needs of Aboriginal persons relevant to the consideration of bail concerns under s18(1)(k) of the *Bail Act 2013*
- b) consider insights from the ALRC's report *Pathways to Justice* in relation to bail determinations for Aboriginal people
- c) provide the Commission with advice as to the timeframes, terms and outcomes of such a review.

5.4.1 Bail pilots

During the period of the ASD, the NSW Police Force was involved in three bail pilot projects in Moree, Mt Druitt and Nowra. The pilots aim to help Aboriginal people comply with their bail conditions and avoid compounding charges associated with breaches.

Results of the pilots were not available at the time of writing this report, and in some of the sites the pilots had not been fully evaluated. We note that the pilots do not have any dedicated resources, meaning the work to support the pilots must occur on top of 'business as usual'.

The NSW Police Force is also collaborating with Youth Justice on 2 short-term remand pilots in South Sydney PAC and Riverina PD. The pilots aim to reduce the volume of children and young people experiencing avoidable short-term remand.

Design principles indicate that all short-term remand pilot solutions will:⁷²

- be culturally appropriate and consider the experiences and needs of Aboriginal, culturally and linguistically diverse young people
- prioritise the interests and needs of young people

⁷² Letter from the Commissioner of Police, NSW Police Force to the Commissioner, Law Enforcement Conduct Commission, 16 August 2022.

- recognise the complex needs and experiences of young people who have a physical or cognitive disability, mental illness or have experienced trauma
- recognise families as central to the young person's care needs and support network
- challenge the current service system
- be co-designed with agency partners and in collaboration with young people and a broader stakeholder group
- be informed by evidence
- include respectful and meaningful local Aboriginal stakeholder and community engagement.⁷³

On 26 April 2023 the NSW Police Force told us that there was no funding for the pilots, and that results were not yet available, as Youth Justice were in early conversations with BOSCAR regarding the evaluation process.⁷⁴

Bail pilots in Aboriginal communities are relevant to the NSW Police Force's ASD because of the direct aim to reduce the number of Aboriginal people in custody. The Commission will maintain an interest in the bail pilots and short-term remand pilots, and seek updates from NSW Police Force as these evolve.

⁷³ Letter from the Commissioner of Police, NSW Police Force to the Commissioner, Law Enforcement Conduct Commission, 16 August 2022.

⁷⁴ Letter from the Commander, Professional Standards Command, NSW Police Force to the Commissioner, Law Enforcement Conduct Commission, 23 April 2023.

6. The role of police in reducing Aboriginal over-representation

The examples presented in the previous chapter suggest:

- police may be choosing pathways in interactions with Aboriginal people that increase contact with the criminal justice system, including monetary penalties or incarceration, when there may be other alternatives available
- the policies that instruct officers about how to use proactive policing strategies may not provide clear advice on the implications or practical guidance on how to mitigate the disproportionate impact of these strategies on Aboriginal people, and
- some concerning contradictions and assumptions held by the NSW Police Force in relation to the use of their powers.

The Commission is not suggesting that the NSW Police Force is responsible for the complex social and historical dynamics which contribute to Aboriginal over-representation in the criminal justice system.

But given the critical role the NSW Police Force plays in the criminal justice system, and its purported commitments to reducing over-representation, the Commission is calling on the NSW Police Force to reflect on its own policies and practices and ensure that it is doing everything within its influence to help to reverse the over-representation issue. This could include looking at policies and procedures, future Aboriginal Strategic Directions, and quantitative data publication.

6.1 Policing is hand in hand with engagement

Reducing Aboriginal over-representation is listed as a priority of the ASD. It would therefore be reasonable to expect that the ASD addresses the role of police actions on over-representation.

The ASD focuses on engagement and relationship building. But it is silent on the impact of operational police actions, particularly proactive discretionary policing, on achieving the aims and priorities of the ASD. The Commission considers that any future NSW Police Force Aboriginal strategy requires the NSW Police Force to look at its own influence on over-representation. A strategy that purportedly aims to reduce over-representation but does not encompass the impact of proactive policing is neglecting a key factor.

An appropriate indicator of success for a strategy aiming to reduce over-representation would be a decrease in the numbers of Aboriginal people involved in discretionary policing interactions.

The Commission recognises that BOCSAR is the single ‘source of truth’ for criminal justice statistics in NSW. The NSW Police Force should strongly consider working with BOCSAR to publish statistical data about how many Aboriginal people are subject to proactive policing strategies.

Publishing statistical data about policing of Aboriginal people is aligned with Closing The Gap Priority Reform Area 4 (Shared Access to Data and Information at a Regional Level). Government commitments under this reform area include:

- sharing available, disaggregated regional data and information with Aboriginal and Torres Strait Islander organisations and communities
- making their data more transparent by telling Aboriginal and Torres Strait Islander people what data they have and how it can be accessed

As well as being a useful metric for a police strategy to reduce over-representation, this data could also be used jointly by police and communities to inform local shared decision-making in line with Closing the Gap.

Recommendation 8: The NSW Police Force should work with BOCSAR to publish state-wide and local statistics about policing of Aboriginal people and communities.

6.2 Policies and processes

Some NSW Police Force Commands have already implemented local policing practices aimed at diverting Aboriginal people from custody and the courts. For example, Richmond Police District no longer applies bail reporting conditions to low-level offenders. This is because the Command viewed reporting as overly onerous on the defendant, and not directly linked to preventing offending. It can be particularly challenging for Aboriginal people who live some distance from the police station and may not have a driver’s licence. This in turn may lead to people driving unlicensed to the police station for fear that they may otherwise be penalised for not reporting.

Richmond Police District has also implemented a practice where if an Aboriginal person is taken into custody for a minor offence, a supervisor will review the person’s case file and circumstances of the offending before proceeding to charge, to see if diversion to a service is a more appropriate option.⁷⁵

⁷⁵ Richmond PD emphasised that this practice does not occur for serious offending such as domestic violence.

There is an opportunity for the NSW Police Force to build upon the practical strategies developed in some local Commands to help address the over-representation of Aboriginal people in the criminal justice system, and in custody specifically.

The NSW Police Force should look at its policing practises, training, and procedures, to ensure it is doing everything possible to reduce over-representation. This is a significant task, but a practical way in which the NSW Police Force can support systemic change.

Recommendation 9: The NSW Police Force should review its operational training and procedures relating to pro-active policing and other day-to-day policing actions that involve the exercise of discretion to give practical instruction to officers about:

- a) how to exercise discretion within the law in ways that will avoid over-representing Aboriginal people in the use of those police actions
- b) options for diversion within the law.

Recommendation 10: The NSW Police Force should consider adding a component to the mandatory Aboriginal cultural training for current officers and policing students dedicated to the specific impact, opportunities and risks of proactive and operational policing in Aboriginal communities and options for diversion from the criminal justice system.

It is also important to note that between 2018 and the present time, the NSW Coroner has made a number of recommendations to the NSW Police Force around policies and protocols governing interactions with Aboriginal people (see Appendix G for a full table). The recommendations address:

- the cultural competency of the NSW Police Force, especially when dealing with families of those who have died
- the role of ACLOs providing cultural safety for Aboriginal families in contact with police and providing ongoing training for officers
- the need to collaborate with the Aboriginal Legal Service NSW/ACT on procedures for execution of bench warrants
- protocols for critical incidents involving Aboriginal people.

These recommendations result from inquiries into the deaths of Aboriginal people in police custody. While it is not the Commission's role to monitor the NSW Police Force's response to the Coroner's recommendations, we will maintain an interest in this area.

6.3 A paradigm shift is required

During consultations for this report, some police we spoke with expressed the view that NSW Police Force's role in keeping the community safe and upholding the law is in conflict with building relationships with Aboriginal communities and working on diverting people from the criminal justice system. The NSW Police Force told us that

the primary role of the NSWPF is law enforcement and suggesting NSWPF is responsible for achieving Closing the Gap outcomes 10 and 11 would lead to competing duties.⁷⁶

Such views may explain the contrast between the intentions of the ASD and the evidence of Aboriginal over-representation in NSW Police Force policing interactions.

This approach appears to see traditional policing work as separate from the need to collaborate with Aboriginal organisations on community-driven solutions to addressing the chronic social disadvantage that drives much offending. Some evidence exists to challenge this stance:

- Drivers for offending are located in chronic disadvantage in social outcomes e.g. education, housing, health, education, employment, and the impacts of intergenerational trauma including poor mental health and harmful substance use.⁷⁷ Strengthening communities may help alleviate the conditions that drive offending.⁷⁸
- The law provides some options for responding to crime other than custody e.g. diversion under the *Young Offender's Act 1997* (NSW)⁷⁹
- Indigenous incarceration rates in NSW are at an all-time high⁸⁰ while overall crime rates continue to decline.⁸¹ Therefore it is difficult to defend the view that the issue of public safety is relevant to the systemic trend of Aboriginal over-representation.

Operational policing practices and crime prevention must be closely linked with engaging with community and supporting community-led initiatives, rather than being seen as separate responsibilities.

⁷⁶ Letter from the Commissioner of Police, NSW Police Force, to the Commissioner, Law Enforcement Conduct Commission, 31 August 2023.

⁷⁷ For a comprehensive discussion see Australian Law Reform Commission, *Pathways to Justice– Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 61-62.

⁷⁸ Australian Law Reform Commission, *Pathways to Justice– Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018), 61-62.

⁷⁹ The Commission acknowledges the statutory limitations on diversionary options available for young people who commit serious indictable offences. We also acknowledge that the operation of the Young Offenders Act does not commence until after an offence is detected, that is, that there is no application of the YOA provisions prior to the detection of offences.

⁸⁰ NSW Bureau of Crime Statistics and Research, *Custody Statistics* (Web Page, 10 May 2023) <https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx>.

⁸¹ BOCSTAR found a decrease in property crime and murder 1990–2019 but an increase in sexual offences and assault. See Derek Goh and Jessie Holmes 'An update of long-term trends in property and violent crime in New South Wales: 1990-2019' (March 2020) 144 *NSW Bureau of Crime Statistics and Research Bureau Brief*.

Consistent with this, the Australian Law Reform Commission has argued that:

The perception of poor police practices needs to be addressed in order to improve relationships between police and Aboriginal and Torres Strait Islander peoples.⁸²

The Commission encourages the NSW Police Force to take a more holistic view of the issues and solutions. The NSW Police Force should be working in genuine partnership with communities in identifying what will work to reduce offending, and then finding ways for the community to achieve the outcome.

The Commission recognises that the NSW Police Force is already working towards this. Recently the NSW Police Force told a federal Senate Committee Inquiry that:

Whilst we acknowledge much work is yet to be done, progress is being made through listening to [Aboriginal] voices, learning from past mistakes and embracing a shared vision for a safe and inclusive relationship between the NSW Police Force and the New South Wales Aboriginal and Torres Strait Islander community.⁸³

The NSW Police Force is already involved in an inter-agency, community-led Justice Reinvestment model at Bourke.⁸⁴

The following section discusses the National Agreement on Closing the Gap which offers a framework and set of actions for how police can work with communities to create locally-driven solutions to help reduce over-representation and improve community safety.

⁸² Australian Law Reform Commission, *Pathways to Justice– Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018) 448.

⁸³ Evidence to Legal and Constitutional Affairs References Committee Inquiry in to missing and murdered First Nations Women and Children, Parliament of Australia, Sydney, 28 July 2023, 11 (Superintendent Christopher Nicholson).

⁸⁴ Justice reinvestment is one approach to reducing incarceration that involves redirection of money from corrections to local initiatives that strengthen communities with high levels of incarceration. See Australian Law Reform Commission, *Pathways to Justice– Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, January 2018) 62-63.

7. Policing is central to Closing the Gap

The first Closing the Gap strategy was signed in 2008, however life outcomes for Aboriginal people in the 10 years of the first strategy were not improving. In 2020, the Agreement underwent some important changes. Firstly, Aboriginal Peak Bodies became equal signatories to the Agreement alongside governments, with equal involvement both in setting the priorities and targets as well as working to meet them. The second major change saw all State and Territory governments becoming signatories to the agreement, and then developing their own implementation plans.

These changes mean that now, all NSW government agencies and institutions, including the NSW Police Force, are responsible for implementing the priority reforms and achieving the socio-economic outcomes.

Closing The Gap includes 2 socio-economic outcomes regarding over-representation in the criminal justice system:

- Aboriginal adults are not over-represented in the criminal justice system (outcome 10)
- Aboriginal young people are not over-represented in the justice system (outcome 11)

7.1 NSW Closing the Gap Implementation Plan

The 2022 – 2024 NSW Implementation Plan for Closing the Gap list key actions which will have to involve police. In relation to outcome 10 the Plan states that:

- Efforts are developed to prevent entry into the justice system and divert from arrest.
- There is an increase in adults receiving and complying with bail.

In relation to socio-economic outcome 11, the Implementation Plan states:

Achievement of this target requires a fundamental structural shift in the way the youth justice system works for Aboriginal young people. 'Business as usual' solutions will not be enough to achieve the commitments made in the National Agreement. We must ensure the Priority Reforms are implemented throughout the youth justice system, which is what this Key Action Area is about.⁸⁵

⁸⁵ NSW Government, *2022-2024 NSW Implementation Plan for Closing the Gap* (August 2022) 97 <https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/closingthegap/nsw-implementation-plan/2022-24-implementation-plan/NSW-Closing-the-Gap-Implementation-Plan-2022-2024.pdf>.

The Implementation Plan also proposes:

Developing an Aboriginal Youth Justice Partnership for NSW to facilitate shared decision-making on youth justice issues at the local, regional and state levels.⁸⁶

The Implementation Plan lists further areas which again have to involve the NSW Police Force:

- Programs that will prevent and respond early to youth offending are embedded.
- Young people are diverted from court and positive pathways are created with communities.

Overall, the NSW Implementation Plan provides important state-level detail around what the various state government agencies and service providers can do to try to achieve these outcomes:

A key factor in Aboriginal imprisonment is higher rates of arrest leading to more court proceedings and more convictions. Modelling by the Bureau of Crime Statistics and Research (BOCSAR) suggests that even a small reduction in Aboriginal adults facing prosecution could lead to the 15% reduction target being met. By leveraging police discretion around prosecutions in a positive way and facilitating equal access to court diversion programs we can reduce the over-representation of Aboriginal adults in custody.

[...]

We will co-design and implement a place-based community policing model, guided by the Closing the Gap Stronger Partnership Principles and building on existing community-police partnerships.⁸⁷

7.2 The NSW Police Force's actions in Closing The Gap are currently unclear

The Commission has met with the Department of Communities and Justice's Transforming Aboriginal Outcomes Team and representatives from the Closing the Gap Team within the Aboriginal Legal Service NSW/ACT. These are the 2 agencies listed as being primarily responsible for leading implementation of outcomes 10 and 11. Both agencies noted how central the NSW Police Force will be to state-wide success in reducing over-representation, and have said they look forward to working more closely with police in relation to these outcomes.

The NSW Police Force sits on a number of Closing The Gap working groups. However it is not clear what commitments the NSW Police Force has made to work towards implementing the Agreement and the associated targets and initiatives that relate directly to policing.

In response to a draft version of this report, the NSW Police Force told the Commission that the NSW Police Force is not responsible for the complex social, economic and intergenerational factors that have led to over-representation in the criminal justice system, and that that the primary role of the NSW Police Force is law enforcement, and the

⁸⁶ NSW Government, *2022-2024 NSW Implementation Plan for Closing the Gap* (August 2022) 98.

⁸⁷ NSW Government, *2022-2024 NSW Implementation Plan for Closing the Gap* (August 2022) 91.

suggestion that it is responsible for achieving Closing the Gap targets to reduce over-representation would ‘lead to competing duties’.⁸⁸

This position contrasts with public statements NSW Police Force has made about its partnership in and commitment to Closing the Gap.⁸⁹

The Commission believes that the NSW Implementation Plan for Closing the Gap should be amended to list the NSW Police Force as one of the agencies responsible for helping to achieve socio-economic outcomes 10 and 11. The NSW Police Force should also clarify and publish what its actions will be in relation to socio-economic targets 10 and 11 and the 4 priority reform areas.

Given the Agreement and NSW Implementation Plan is a whole-of-government approach to reducing over-representation, and given the aims of the ASD 2018 – 2023 aspire to the same outcomes as Closing the Gap, any future NSW Police Force Aboriginal strategies and policing practices ought to be aligned with Closing the Gap.

In June 2023 the Commission recommended to the NSW Police Force that any future Aboriginal Strategic Direction:

- Flows from and is aligned with NSW Police Force’s inter-agency obligations under the NSW Closing The Gap Implementation Plan, and
- Reflects the standards of genuine co-design with Aboriginal peak organisations set by the National Agreement on Closing the Gap

Integrating the NSW Police Force’s Aboriginal strategic efforts with Closing the Gap represents the most effective use of NSW government resources, and the best chance of achieving the state-wide targets to reduce Aboriginal over-representation in the criminal justice system.

Recommendation 11: The NSW Police Force should publish a Closing the Gap delivery plan which states how it will implement the priority reform areas and what actions and pathways it will take to help NSW achieve targets 10 and 11 to reduce over-representation.

Recommendation 12: The NSW government amend its Closing the Gap Implementation Plan to list the NSW Police Force as a responsible agency.

⁸⁸ Letter from the Commissioner of Police, NSW Police Force to the Commissioner, Law Enforcement Conduct Commission, 31 August 2023.

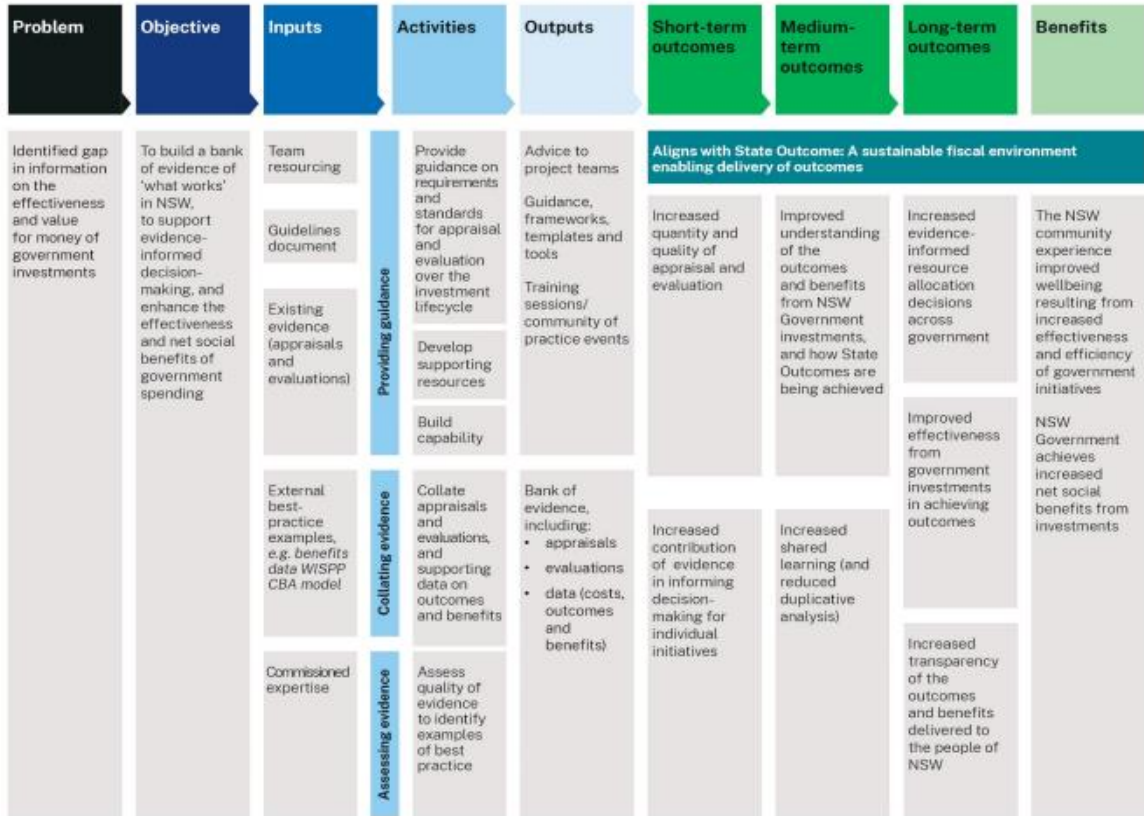
⁸⁹ For a recent example consider the comments of a NSW Police Force spokesperson in Alex Demetriadi, ‘Deaths in custody, from police operations in 2022 revealed in NSW report’, *Daily Telegraph*, (online, 7 June 2023).

Appendix A: Consultations

The Commission undertook consultations with the following individuals to inform our review of the NSW Police Force *Aboriginal Strategic Direction 2018 – 2023*.

Stakeholder	Date
Deputy Ombudsman, Aboriginal Programs	24 Oct 2022
Deputy Commissioner, Corporate Sponsor, Aboriginal Engagement, NSW Police Force	
Assistant Commissioner, Corporate Owner, Aboriginal Engagement, NSW Police Force	3 Nov 2022
Manager, Aboriginal Coordination and Strategy Team, NSW Police Force	
	23 Nov 2022
	5 Feb 2023
Transforming Aboriginal Outcomes team, Department of Communities and Justice	25 May 2023
	5 Jul 2023
Current Superintendent and former Commander at Bourke, Brewarrina, Nowra, Lismore, NSW Police Force	10 Jan 2023
Superintendent, Commander, Richmond Police District, NSW Police Force	12 Jan 2023
Commander, Central North Police District, NSW Police Force	25 Jan 2023
President of the NSW Children’s Court	15 Feb 2023
Chief Magistrate of the Local Court	
Deputy Chief Magistrates of the Local Court Sharon Freund	22 Feb 2023
Commander, Mt Druitt Police Area Command, NSW Police Force	24 Feb 2023
ACLOs and Acting Superintendent, Richmond Police District, NSW Police Force	7 Apr 2023
ACLO Coordinator, Aboriginal Coordination and Strategy Team, NSW Police Force	18 Apr 2023
Aboriginal Lecturer, NSW Police Force Academy	20 Apr 2023
Manager, Closing the Gap team, NSW Aboriginal Legal Service	25 May 2023
Director, Delivery team, Closing the Gap and the Voice, Aboriginal Affairs NSW, Department of Premier and Cabinet	5 Jul 2023
Acting Manager, Aboriginal Coordination and Strategy Team, NSW Police Force	5 Oct 2023

Appendix B: NSW Treasury Logic model



Source: NSW Treasury, *Policy and Guidelines: Evaluation TPG22-22*, February 2023, 52.

Appendix C: Attendees at Consultative Committees

REGION	PAC/PD	2018	2019	2020	2021	2022	PAC/PD TOTAL	REGION TOTAL
Northern	Brisbane Water	0	37	24	7	26	94	
	Coffs Clarence	0	116	20	17	30	183	
	Hunter Valley	0	0	0	0	17	17	
	Lake Macquarie	14	23	7	0	71	37	
	Manning Great Lakes	18	7	10	80	41	156	
	Mid North Coast	99	103	12	28	76	318	
	Newcastle City	34	39	10	8	5	96	
	Port Stephens Hunter	84	46	35	26	44	235	
	Tuggerah Lakes	0	37	24	7	26	94	
	Tweed Byron	44	25	18	16	61	164	
	Richmond	57	80	50	8	0	195	1589
Southern	Lake Illawarra	63	64	15	53	37	100	
	Hume	0	9	56	30	70	165	
	Murray River	42	29	102	68	57	298	
	Murrumbidgee	0	0	102	42	96	240	
	Riverina	0	30	0	2	70	102	
	Monaro	0	0	0	10	0	10	
	South Coast	91	54	10	30	38	223	1138
Western	Barrier	30	5	41	60	120	256	
	Central North	0	0	0	0	46	46	
	Central West	143	150	92	24	76	485	
	Chifley	30	60	5	0	30	125	
	New England	19	90	31	7	71	218	
	Orana Mid-West	0	0	0	0	0	0	
	Oxley	14	26	0	61	75	176	1306
North Western Metropolitan	Blacktown	0	0	0	0	14	14	
	Mt Druitt	84	63	0	0	35	182	
	Nepean	0	0	0	0	0	0	196
South Western Metropolitan	Campbelltown	60	60	30	30	45	225	
	Liverpool	30	97	0	2	92	221	446
Central Metropolitan	South Sydney	99	65	66	59	94	383	
	Leichhardt	26	29	13	15	49	132	
	Eastern Beaches	37	35	19	19	48	158	
	Inner West	57	60	57	59	48	281	954
TOTAL		1175	1375	827	715	1537	5629	

Appendix D: ACLO duties

Source: NSWPF, *ACLO Program Handbook for Police Districts and Police Area Commanders*, Draft, February 2023

5.2.1 Emergency Response Plans

ACLOs play a vital role in emergency response plans by:

- Providing advice and implementation strategies on managing natural disasters or emergencies that may affect communities within the PAC and PD, e.g. COVID-19, floods or bushfires and Sorry Business etc,
- Providing advice and assistance in the identification and management of vulnerable groups and other risks,
- Assisting in developing risk assessments, emergency response plans, public awareness and education, consequence management issues, evacuation management requirements, resource requirements, emergency management training and exercises,
- Providing advice, communication strategies and liaison with emergency services and communities during response operations, including evacuations, and
- Providing advice and liaison with the communities with regards to short-term immediate relief and long-term assistance after a disaster / emergency and represent community on recovery committees

5.2.2 Attending Community Events

ACLOs should take opportunities to attend various community events, gatherings and meetings which are important ways to:

- Maintain and continue the partnerships between NSW Police Force and Aboriginal communities,
- Break down barriers and establish positive communication and experiences between Police and Aboriginal communities,
- Seek community cooperation and input through partnerships with local service providers, circulate information about Police programs and priorities, and
- Promote the Aboriginal Strategic Direction and its objectives

5.2.3 Building Relationships

In building relationships between the PAC and PD and local Aboriginal communities, ACLOs can be deployed to:

- Establish and maintain contact between the PAC and PD and Aboriginal communities including Elders, youth and local representative bodies, e.g. Aboriginal Medical Service, Local Aboriginal Land Council, interagency meetings etc.,
- Identify and map local communities, organisations, service providers and other key contacts as a PAC and PD resource to inform the PAC and PDs Aboriginal Community Profile,
- Work with the Education Development Officer (EDO) to develop and deliver working with local Aboriginal cultural awareness training which complements and supports the corporate level training delivered by the Aboriginal Training Coordinator,
- Disseminate information about policing, local operations, programs, services, and initiatives to Aboriginal communities,
- Publicise the content and spirit of the Aboriginal Strategic Direction within Aboriginal communities and by demonstrating their own commitment by attending PACC meetings, and
- Distribute details of upcoming meetings such as PACC meetings, open days, NAIDOC events, etc to the Aboriginal people and communities.

Note: Emails and Microsoft Teams Meetings are not an effective tool to invite community people and should not replace face to face contact. NSW Police Force and ACLOs need to be aware not all community members have access to emails.

5.2.4 Responding to Domestic Violence

The role of ACLOs in domestic and family violence is to assist the Domestic Violence Liaison Officers (DVLOs). The following guidelines are set out to support ACLOs in performing their role around domestic and family violence.

ACLOs should:

- Assist the DVLO by contacting Aboriginal victims or parties involved,
- Provide victim support and referrals to appropriate services,
- Assist with building relationships between the victim and DVLO, and
- Assist in transporting victims and other witnesses to court

Due to the ACLOs unsworn status, ACLOs must not:

- Interpret legal documentation,
- Assist defendants (including explaining their options in terms of their court matter and negotiating terms on an ADVOs),
- Become involved in negotiating Parenting Plans or Parenting Orders,
- Offer legal advice to any person concerning Domestic Violence (DV) matters,
- Influence a defendant in ADVO matters to consent to or not contest the order, and
- Influence a defendant in criminal DV charge matters to plead guilty or not guilty.

5.2.5 Cultural Awareness: Men's & Women's business

Police who have completed the Corporate Working with Aboriginal Communities should be aware of the cultural requirement that men's business should be kept separate from women's business and vice versa. Where possible, an ACLO of the appropriate gender should be utilised, alternatively calling on the assistance of an appropriately qualified or respected Aboriginal persons (male or female) from the Aboriginal community.

5.2.6 Decision making

In consultation with the Crime Coordinator and / or the Aboriginal Engagement Officer, the ACLO makes decisions regarding the prioritisation of the workload and participation in projects with respect to local police issues affecting the Aboriginal communities, including:

- When to act independently and when to seek guidance or instruction,
- Identifying and establishing partnerships in the interest of achieving local policing priorities,
- Prioritising work tasks, project participation when considering time management constraints which would prevent any participation,
- Identifying and evaluating whether an emerging issue poses a significant risk to local police and what the most appropriate course of action or response may be, and
- Advising local management and frontline staff of the most viable, culturally appropriate, safe, and sensitive course of action in response to community pressures, emerging issues and operational issues affecting relationships with Aboriginal people

5.2.7 Responding to Victims of crime

A significant aspect of the customer service role of the ACLO is to provide support to Aboriginal victims of crime. ACLOs may meet primary or secondary Aboriginal victims of crime in several ways:

- ACLOs proactively initiate contact with victims
- Victims or family members ask for the ACLO
- Victims or family members disclose to an ACLO
- Police Officers refer victims or their family members to the ACLO
- Community workers or other government agencies refer victims to the ACLO
- Word of mouth (through a Koori Interagency or community engagements)

Appendix E: ACLOs across the State

NSW Police Force Region (No. of PACs/PDs)	ACLO vacancies by quarter																				
	ACLOs	2018				2019				2020				2021				2022			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
North (11)	14	2	2	2	1	1	1	2	2	2	1	2	2	2	1	1	1	1	0	1	3
South (8)	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	2	2
West (7)	26	1	2	1	2	2	3	1	2	2	4	4	3	2	3	3	4	5	4	6	6
NWM (3)	3	1	1	1	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0
SWM (2)	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CMR (4)	4	0	0	0	0	0	1	1	0	1	1	1	1	1	2	2	0	0	0	0	0

Source: NSW Police Force Aboriginal Coordination and Strategy Team, provided to the Law Enforcement Conduct Commission on 18 January 2023

Appendix F: NSW Police Force actions under the ASD framework 2018 - 2023

1. Ensure Community Safety

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
Contribute to interagency and whole of government strategies to protect those at risk of domestic violence, sexual assault and child abuse	Reduction of crime	No reporting	No reporting	DV Reports involving an Aboriginal person: 2018 - 13.2%; 2019 - 13.6%; 2020 - 14.1% Sexual assault reports involving an Aboriginal person: 2018 - 8.7%; 2019 - 10.5%; 2020 - 10.5%	No reporting	What is the context for this data? What do the % reflect?	% = of the 100% reports to police, the proportion that are about an Aboriginal victim, based on best known information.	On 16 June 2023 the Commission asked the NSWPF for updated figures for the 2018 – 2023 period. The NSWPF did not respond to this request.
	Increase in youth diversion	No reporting	No reporting	Aboriginal Youth Diversions: FY18/19 - 36.2%; FY19/20 - 38%; FY20/21 40.7%	No reporting	What is the context for this data? What do the % reflect?	% = of all youth diversions recorded, the proportion that involve diversion of an Aboriginal YP, based on best known information.	On 16 June 2023 the Commission asked the NSWPF for updated figures for the 2018 – 2023 period. The NSWPF did not respond to this request.
	Increased level of reporting by community individuals	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	In October 2021 we asked NSWPF (ACT) how this would be measured. They told us they were still trying to ascertain how best to capture the data. They also said there were challenges with data capture including: young people do not always identify as Aboriginal; nervousness in community about identifying as Aboriginal.	NSWPF unable to report on progress.
Work collaboratively with Registered Training Organisations and	Number of Aboriginal people completing driving program	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	In October 2021 we asked NSWPF (ACT) how this would be measured. NSWPF said it doesn't 'own' the driving programs - they are delivered by other agencies.	NSWPF unable to report on progress.

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
to deliver driver education programs in disadvantaged communities to promote road safety.	Number of Aboriginal people involved in road crashes/fatalities or crashes involving serious injury.	No reporting	No reporting	No. of Aboriginal people injured or fatal crashes: 2018 - 42; 2019 - 101; 2020 - 43	No reporting	Can we get copies of this COMPASS data?	This is measured using COMPASS data which shows total figures for road injuries/fatalities drawn from COPS. Power BI is then used over COPS to identify total number of Aboriginal status (total number) where data is known. Note that police officers have not been required to ask about Aboriginality. Estimate that figures will be underrepresented because of the number of unknowns re Aboriginality status in data.	On 16 June 2023 the Commission asked the NSWPF for updated figures for the 2018 – 2023 period. The NSWPF did not respond to this request.
	Reduction in driving and unlicensed offences	No reporting	No reporting	No. of Aboriginal people with driving and unlicensed offences: 2018 - 1971; 2019 - 1739; 2020 - 1953	No reporting	Can we get copies of this COPS data?	NSWPF told us in Oct 2021 that they would send us the list of licence offences within the dataset.	On 16 June 2023 the Commission asked the NSWPF for updated information for the 2018 – 2023 period. The NSWPF did not respond to this request.
Utilise PACC meetings, in addition to other strategies, as forums for community education	Number of ASD Crime Prevention Grants applied for	No reporting	No reporting	31 funded	34 applied and funded	What were the numbers for 18/19 and 19/20? What was the goal? (e.g. a specific number or a raise on previous years?)	While the indicator is 'number of grants' ACT told us there was no specific goal for what this number would be. ACT said analysis of success is qualitative based on the use of the money, and compared to the needs of various communities. They also said the indicator of success is achieving outcomes for the community, as requested by the community.	Original indicator of success determined to be unsuitable. NSWPF unable to report on original or updated indicator of success.
	Provide education, information and support about key issues and the number of forums held, resources distributed, social media metrics can be used as a measurement.	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	In October 2021 NSWPF advised that there was no system in place to measure this.	NSWPF unable to report on progress.
	Content of Aboriginal Action Plan.	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	NSWPF (ACT) told us in October 2021 that Action Plans are what the local community wants at a particular point in time. They said all action plans are now uploaded onto Service NSW, for transparency and accountability for what is to be actioned in each community.	The Commission did not locate any Action Plans on Service NSW. We also noted that over half of all Action Plans over the entire reporting period were not signed off by community or police, despite signing being a requirement of Action Plans.

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
Identify and target repeat victims of Aboriginal Family Violence in order to refer and follow up as appropriate.	Number of referrals made (DV related)	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	DVLOs do a lot of work that is not recorded in the system, therefore difficult to measure this.	NSWPF unable to report on progress.
	Number of follow up contacts with victim (DV related)	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	DVLOs do a lot of work that is not recorded in the system, therefore difficult to measure this.	NSWPF unable to report on progress.
	Rise in the number of DV victims reporting	No reporting	No reporting	Year to year change: 2018/19 +156 reports; 2019/20 +124 reports	No reporting		DVLOs do a lot of work that is not recorded in the system, therefore difficult to measure this.	NSWPF unable to report on progress.
ACLOs to undertake Crime Prevention Training (Safer by Design) to assist in the identification of safety issues in the Aboriginal community	Number of ACLOs trained	No reporting	No reporting	4	No reporting	How many ACLOs are there? What was the goal for number of ACLO's trained? Can we get a copy of the data from the PETE?	NSWPF trained 4 ACLOs as a test of the Safer by Design course, however the course is not perfectly suited to the needs for ACLO training. It is a course about building houses, which is not needed for ALCOs, although elements of the course may be able to be utilised within bespoke ACLO training. NSWPF is now working on developing bespoke ACLO training within PETE system. No timeframe for completion of this due to staffing shortage for the development of the course (they need to recruit a new trainer with course development skills).	Original indicator of success determined to be unsuitable.

2. Enhance Communication and Understanding between Police and Aboriginal people

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
Establish a Police Aboriginal Consultative Committee (PACC).	Police Aboriginal Consultative Committees active in all ASD commands.	No reporting	No reporting	PACCS active in ASD commands (Quarter ending March 2021): 26/35	No reporting	Is the goal 100%? What is the goal timeframe?	NSWPF aim that in every quarter, all PACCS are running, but it is dependent on local issues such as floods, fires, pandemics. Aim is for continual contact and regular engagement with communities.	We acknowledge that PACCS were heavily disrupted by bushfires, floods and COVID.
Collaborative development of Police Area Command or Police Districts Aboriginal Action Plans and Environmental Scans. Identify local crime issues through police data and community feedback. PAC or PD Aboriginal Action Plan developed and endorsed by the Commander and endorsed by a PACC member.	Environmental Scan Completed	No reporting	No reporting	Aboriginal Community Profiles completed for 2021: 32/35 (91.4%)	No reporting	Is the goal 100%? What is the goal timeframe?	Aim - All community profiles updated annually, there was an old template and now updating to a new one.	The Commission's review identified some concerns with the relevance of the information included in Environmental Scans.
	Aboriginal Action Plan completed	No reporting	No reporting	Aboriginal Action Plans completed for 2021 (88.5%)	No reporting	Is the goal 100%? What is the goal timeframe?		The Commission's review identified that less than 50% of Aboriginal Action Plans were signed off by Commanders and community members required by the ASD.
	Number of officers trained	No reporting	No reporting	Working with Aboriginal Communities (level 2 training) staff trained: 2018 - 3710; 2019 - 3992; 2020 - 5406	No reporting	What was the goal regarding number of officers trained? Can we get a copy of PETE/SAP data?	Manual data collection for number of officers trained, collected from SAP now to be collected from PETE. Note that there is a lot of movement of staff from PAC to PAC. Aim is that 100% of staff in ASD listed communities have had training, but this will shift over time with movement. They have training at the Academy, hoping that use of the PETE system and AV based training will make delivery more comprehensive.	Our review analysed the numbers of eligible sworn officers trained in 'Working with Aboriginal Communities' Training and found the following: Central Metro 89%, NW Metro 79%, SW Metro 86%, Northern 86%, Southern 75%, Western 70%. This is an average of 80% completion for the State.

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
	Local cultural awareness included in Command training days	No reporting	No reporting	Policing Aboriginal Communities (level 1 training) staff trained: 2018 - 953; 2019 - 780; 2020 - 1300	No reporting	What was the goal regarding number of officers trained? Can we get a copy of data?	As above.	Across the entire reporting period, 4,693 officers received local training.
Police to partner with the community in organising NAIDOC events eg. Touch football days	Activities to be reported in both the Environmental Scan and COMPASS reporting	No reporting	No reporting	Calendar year 2020 - NAIDOC events reported in COMPASS for all six regions	No reporting	Can we get COMPASS data? How many NAIDOC events happen across state? How many were Police involved in?	participation in NAIDOC activities is locally determined - it is about Aboriginal people, so wants and needs of local community dictate what involvement NSWPF will have in events.	NSWPF unable to report on indicator of success.

3. Collaborate with other Agencies to Reduce Aboriginal Over-Representation in the Criminal Justice System

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
<p>Enhance utilisation of police discretion when considering warnings and cautions for minor offences. Increased referral to MERIT. Establishment of Custody and Victim Support group. Aboriginal Lecturer participation in the Safe Custody Course. Ensure currency of Working with Aboriginal Communities training for Custody Managers. All police to be made aware of the existence of the Custody Notification Service (CNS) operated by the ALS (NSW/ACT), to enquire as to the Aboriginal status of a detainee, to contact the CNS when an Aboriginal person is detained</p>	Percentage of Youth/Adult diversions e.g. YOA, MERIT, Cannabis Cautioning Scheme (CCS)	No reporting	No reporting	MERIT Referrals: 2018 - 289; 2019 - 782; 2020 - 828 Cannabis Cautions: 2018 - 56; 2019 - 115; 2020 - 117	No reporting	Can we get COPS data? There is a big jump from 2018-2019 - was there a policy or legislative change?	We asked ACT why there was a significant increase in MERIT referrals and Cannabis cautions from 2018 to subsequent years. They said this may be due to the introduction of drug court, or changes to the MERIT scheme, or possibly better recording of Aboriginality status. NSWPF agreed to provide this as a percentage, but we have not received it.	Numbers of MERIT referrals and Cannabis cautions increase over time but NSWPF did not know reasons for increase. On 16 June 2023 the Commission asked the NSWPF for updated information.
	Increase in Youth diversion	No reporting	No reporting	Year to year change: 2018/19-2019/20 - 1.8%; 2019/20-2020/21 - 2.3%	No reporting	Can we see COMPASS data as well as raw data? For example, not just the year-to-year change	NSWPF agreed to provide as a percentage, but we have not received it.	NSW Police Force please provide additional information.
	No fatalities or incidence of self-harm in police custody	No reporting	No reporting	No progress listed	No reporting	How will this be measured and when reported?	Data prepared by AIC may be able to be used for the measure?	The Commission looked at AIC data for deaths in Police custody. Data from AIC: 2018 - 2019 = 5, 2019-2020 = 6, 2020-2021 = 7, 2021-2022 = 9 (McAlister M & Bricknell S 2022. Deaths in police custody and custody-related operations. Deaths in custody in Australia 2021-22. Statistical Report no. 41. Canberra: Australian Institute of Criminology. https://doi.org/10.52922/sr78849)
	Custody Notification Service number to be clearly displayed in interview rooms and Charge Room areas	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	There is no way to measure this, all charge rooms are unique	NSWPF unable to measure the nominated indicator of success. Indicator of success unlikely to achieve intended outcome.

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
and investigated, and to provide further opportunity for the Aboriginal person to contact the CNS after initial contact	Number of referrals received by the Aboriginal Legal Service (NSW/ACT).	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	ALS may have this data - NSWPF can only measure this if ALS have recorded it.	NSWPF unable to measure the nominated indicator of success. Indicator of success unlikely to achieve intended outcome.
PACC to play an active role in influencing Alcohol Outlet Density in communities, particularly those with high levels of alcohol-related assault / DV. Licensing officers to prepare submissions on behalf of the PACC where there are concerns that applications to establish new licences or packaged outlets may adversely affect communities.	Proportion of applications commented on by PACC	No reporting	No reporting	No progress listed	No reporting	Comment in Annual report stating that this indicator should be reviewed - is it possible to elaborate on this?	ACT are rewriting their recording systems to make it more measurable - at present it is entirely manual and localised, so currently reporting is not possible with much certainty across state.	NSWPF unable to measure the nominated indicator of success. Indicator of success unlikely to achieve intended outcome.
	Development of appropriate plans	No reporting	No reporting	No progress listed	No reporting	Comment in Annual report stating that this indicator should be reviewed - is it possible to elaborate on this?	As for Q26 - ACT are rewriting their recording systems to make it more measurable - at present it is entirely manual and localised, so currently reporting is not possible with much certainty across state.	NSWPF unable to measure the nominated indicator of success. Indicator of success unlikely to achieve intended outcome.

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
Identify the number of Aboriginal people returning to the community following completing a period of incarceration. Collaborate with other specialist agencies e.g. Community Offender Services, Juvenile Justice to develop strategies and programs to address recidivist offending behaviours.	Via PACC consult with the Aboriginal community to encourage cooperation with local strategies	No reporting	No reporting	Corrective Services NSW future release data is circulated to all commands every Wednesday and Thursday providing details of inmates who have been or are due to be released from incarceration	No reporting	Need more of an explanation on this point	Return to Community - CSNSW give release info to NSWPF to assist them to identify who is back in community and may need extra interactions or supports to prevent return to criminality.	On 16 June 2023 the Commission asked the NSWPF for updated figures for the 2018 – 2023 period. The NSWPF did not respond to this request.
Encourage participation in programs developed in consultation with the Aboriginal community (ASD Crime Prevention Grants) with a subsequent referral into the "Fit For" programs.	Number of Youth focused crime preventions programs run	No reporting	No reporting	260 programs driven by NSWPF across the state over the last three years	No reporting	What was the goal regarding numbers? E.g. increase on previous years or specific number? Where is this data housed and is it possible to get a copy?	While it's a quantitative indicator of success, there is no 'target' The reason is because the 'focus is about the outcomes achieved'. The ACT is currently building a toolbox of programs that have been successful - qualitative analysis - this will assist in identifying appropriate future programs.	On 16 June 2023 the Commission asked the NSWPF for updated figures for the 2018 – 2023 period. The NSWPF did not respond to this request.
	Number of Aboriginal youth participants in these programs	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	Can only be measured manually.	NSWPF unable to measure indicator of success.
	Number of Commands providing programs	No reporting	No reporting	No progress listed	No reporting	How will this be measured?	Can only be measured manually.	NSWPF unable to measure indicator of success.

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF 2021	LECC comments
Collaborate with other specialist agencies e.g. Community Offender Services, Juvenile Justice to develop strategies and programs to address recidivist offending behaviours.		No reporting	No reporting		No reporting		Nil	On 16 June 2023 the Commission asked the NSWPF for updated figures for the 2018 – 2023 period. The NSWPF did not respond to this request.

4. Improve the Safety and Well-being of Young Aboriginal People

Action	Indicator of Success	2018-2019	2019-2020	2020-2021	2021-2022	Questions LECC asked NSWPF in 2021	Information provided by NSWPF, 2021	LECC comments
	Number of Crime Prevention Grants applied for	No reporting	No reporting	Listed above	No reporting		Nil	On 16 June 2023 we noted to the NSW Police Force that it was unclear how this would indicate success in improving safety and wellbeing of young people.
Utilise available funding including ASD Crime Prevention Grant funds to deliver appropriate programs that target Aboriginal youth at risk. Examine options for partnerships to target underage substance abuse.	Participation of NSWPF in programs with other agencies	No reporting	No reporting	<p>Programs with other agencies:</p> <ul style="list-style-type: none"> - Brothers Against Domestic Violence (BAD V) (partnerships with Illawarra Koori Men's Support Group) - Bunbinya Mawang (partnership with TAFE NSW - Leeton; Leeton LALC; Aboriginal Schools and Community Worker; Intereach; Leeton Shire Council) - Caring for Country (collaboration with Vincentia High School; RS; Aboriginal Community Fulton Hogan) - Fit Together - EQUINE program (partnership with NSW Health; Drug and Alcohol; Mental Health; Durri AMS) - NSWPF Car Seat Program (partnership with TAFE NSW; Child Safe; NSW Health) - Eastern Beaches BBQ Program (partnership with Aboriginal Community; Local School; Randwick Council; Aboriginal Elders) 	No reporting	What was the goal? E.g. certain number?	Can only be measured manually.	NSWPF unable to report on this indicator of success. Unclear how this indicator of success would achieve the goal or priority.
Provide on-going support to the Aboriginal community to assist in the identification of young Aboriginal people using alcohol and illegal drugs. Raise awareness and promote the use of cautioning and Protected Admissions Scheme among police and Aboriginal communities. Respected persons provided with training to assist police in the cautioning process.	Number of information sessions provided at interagency meetings, school visits and community engagement days	No reporting	No reporting	No progress listed	No reporting	Comment in Annual report stating that this indicator should be reviewed - is it possible to elaborate on this?	Not measurable.	NSWPF did not measure this indicator of success.

Appendix G: NSW Coroner recommendations

Date of findings	Name of Inquiry	Coroner's recommendation/s to NSWPF	NSWPF response
18 April 2023	<u>Inquest into the death of Gordon Copeland</u>	<p>Recommendation 1 - Training for Moree Police – Aboriginal Culture and History – Policing in Context:</p> <p>That the NSW Police Force review their training in relation to the history of First Nations Peoples to ensure that it is as comprehensive as possible in relation to the history of colonisation and the ongoing impact of colonisation on First Nations peoples today. Where possible, Aboriginal Liaison officers should be engaged in delivering ongoing training for Police.</p> <p>Recommendation 2 - Training - Trauma-Informed Communication with family members during searches for Missing Persons:</p> <p>That the NSW Police Force consider providing officers with training on trauma-informed communication with families, particularly First Nations families, when they are concerned about a missing person.</p>	<u>'NSW Police noted the coroner's findings and will consider the recommendations.'</u>
14 April 2023	<u>Inquest into the death of Mr Stanley Leonard Russell</u>	<p>Recommendation 2:</p> <p>Consideration be given by the NSW Police Force to ensuring that that in Blacktown (and other communities with high populations of First Nations people):</p> <ul style="list-style-type: none"> (i) there is an Aboriginal Community Liaison Officer (ACLO) engaged at the relevant Police Area Command (PAC) or Police District (PD); (ii) that the police within the relevant PAC or PD be required to complete a training module on aboriginal cultural competency (iii) that any such cultural competency training includes specific training on the role of an ACLO and the ways in which an ACLO can assist an officer undertaking general duties in respect of First Nations people. <p>Recommendation 3:</p> <p>Consideration should be given by the NSW Police Force to:</p>	Appears there is no response to date.

Date of findings	Name of Inquiry	Coroner's recommendation/s to NSWPF	NSWPF response
		<p>(i) identifying appropriate ways for ACLOs to be involved prior to the execution of arrest warrants on First Nations people</p> <p>(ii) specifying the ways identified in accordance with recommendation 3(i) in the role description of ACLOs, the training given to ACLOs, and training given to other officers in the NSW Police Force as to the role of ACLOs.</p> <p>Recommendation 6:</p> <p>That the NSW Police Commissioner and the Aboriginal Legal Service consider jointly developing a procedure for the execution of bench warrants on Aboriginal and Torres Strait Islander defendants which encourages defendants to hand themselves in to the police and/or to the court and which involves:</p> <p>(i) the NSWPF, nominating a fixed period of time (to be determined as part of the policy and procedure) during which police will postpone execution of the warrant for the purpose of enabling the steps set out below to take place, with a view, if possible, to facilitating voluntary presentation by the person the subject of the warrant to a police station or court;</p> <p>(ii) mandatory notification by the NSWPF to the Aboriginal Legal Service within a fixed period of time of receiving the warrant:</p> <p>a. of the fact that a warrant has been received</p> <p>b. nominating a police officer as a contact for the warrant.</p> <p>(iii) by the Aboriginal Legal Service, either directly or by referral to other services or persons, upon receipt of a notification by the NSWPF, seeking to communicate directly or indirectly with the person the subject of the warrant and seeking to advise about and support them in handing themselves into the police or a court, preferably by appointment;</p> <p>(iv) by the NSWPF, additionally, using ACLOs engaged by the NSWPF to attempt to communicate directly or indirectly with the person the subject of the warrant to seek to encourage and support them to hand themselves into the police or a court, preferably by appointment and providing information about appropriate legal and support services to advise and assist in that process.</p> <p>(v) by the NSWPF, to establish clearly defined circumstances in which the notification requirement and the fixed period of time as set out in (i) above may be dispensed with;</p> <p>(vi) That any protocol that is developed be called the Stanley Protocol.</p>	

Date of findings	Name of Inquiry	Coroner's recommendation/s to NSWPF	NSWPF response
3 March 2023	<u>Inquest into the death of Darren Higgins</u>	<p>Recommendation to the Commissioner of Police, New South Wales AND the Commissioner of Police, Victoria:</p> <p>To give consideration to identifying in such Standard Operating Procedures and Policies how an Aboriginal Community Liaison Officer may be used to help provide a culturally safe context when dealing with families and relevant extended kin of a missing First Nations person, including when obtaining information to assist in a missing person investigation and when conducting a land or water search.</p> <p>Recommendation to the Commissioner of Police, New South Wales:</p> <p>To give consideration to arranging and offering currently available New South Wales Police training, in cultural safety and cultural awareness when dealing with First Nations persons, to officers within the New South Wales Missing Persons Unit.</p>	<p>The NSWPF's Missing Persons SOPs – Annexure A 'Initial Response – Missing Persons Checklist' it 'merely states: 'Consider the use of an Aboriginal Community Liaison Officer (ACLO) or Multicultural Community Liaison Officer (MCLO) if relevant and available'</p> <p>In relation to the evidence about consideration to be given to cultural awareness and training to officers within the Missing Persons Unit, Detective Chief Inspector Browne considered this a useful addition.</p>
10 October 2019	<u>Inquest into the death of Jordan CRUICKSHANK</u>	<ol style="list-style-type: none"> 1. The Commissioner of Police consider adding an item to the Senior Critical Incident Checklist, of advising the next of kin of their right to view the body of the deceased. 2. The Commissioner of Police consider introducing a mandatory training course and/or disseminating training material on the obligations of senior police under the equivalent section to the current Part 4.2.3 of the Critical Incident Guidelines, which includes: <ul style="list-style-type: none"> • that specific notifications need to be made if the deceased person is from the Aboriginal or Torres Strait Island community; • emphasis on the need for officers to familiarise themselves with the appropriate local contacts for those notifications, including Aboriginal Community Liaison Officers. 	The Commissioner of Police supports the two proposed recommendations.

Date of findings	Name of Inquiry	Coroner's recommendation/s to NSWPF	NSWPF response
5 July 2019	Inquest into the death of Rebecca Maher	<p>Nil recommendations specific about First Nations people to NSWPF but to the Attorney General of NSW and Commonwealth Minister for Aboriginal Affairs:</p> <ol style="list-style-type: none"> 1. That the Attorney General consider amending the Law Enforcement (Powers and Responsibilities) legislation to ensure that an Aboriginal person detained under Part 16 of LEPRA as intoxicated is provided with the same access to the Aboriginal Legal Service CNS as an Aboriginal person held in custody under Part 9 of LEPRA, and that the duty of police to put an Aboriginal person in custody in touch with the CNS is extended to Aboriginal persons detained under Part 16; 2. That the Commonwealth Minister for Aboriginal Affairs continue to work with the NSW government on funding options and on potential improvements to the Aboriginal Legal Service CNS model to enable it to provide its service to Aboriginal persons detained under Part 16 of LEPRA. <p>Recommendations to NSWPF (note these are not specific to First Nations people):</p> <ol style="list-style-type: none"> 1. That the NSWPF consider improvements to its education and training of police officers to provide clear and understandable information as to the nature of infectious diseases and associated risks. 2. That the NSWPF consider improvements to its education and training of police officers as to circumstances which call for persons detained as intoxicated to be searched, in particular circumstances where the person may be intoxicated with prescription drugs and might have such drugs on them when detained. 3. That the NSWPF consider the implementation of a requirement that all police officers who perform duty as custody manager at police stations undertake the Safe Custody Course, which would include education and training as to: <ol style="list-style-type: none"> a. The duty in respect of a person detained under Part 16 of LEPRA to make all reasonable efforts to identify and locate a "responsible person" b. Content of the NSWPF poster entitled "Safe Custody: Medical Risks" including that, when managing a person detained as intoxicated, it is dangerous and inappropriate to take the approach that the person will or can "sleep it off". 4. That the NSWPF consider modification to the CMS to require the custody manager: a. when making entries for inspections to record, where the detainee is intoxicated, (1) what occurred when the custody 	<p>The Commonwealth Minister for Aboriginal Affairs advising that the Commonwealth "is currently working with the NSW government on funding options after 31 June 2019 and on potential improvements to the CNS model to ensure it extends to protective custody".</p> <p>NOTE: The NSWPF Handbook Custody chapter states: 'You must also contact the Custody Notification Service if an Aboriginal or Torres Strait Islander is detained as an intoxicated person under Part 16 of LEPRA' AND the NSWPF Charge Room and Custody Management SOPs state: ' If the IP is an Aboriginal or Torres Strait Islander and is detained under Part 16 of LEPRA, the Custody Notification Service must be contacted on 02 8303 6666.'</p> <ol style="list-style-type: none"> 1. While the Commissioner supports this recommendation, it also has to remain cognisant of its non-delegable duty to its employees and its mandatory obligations to its employees under the Work Health and Safety Act 2011. The Commissioner provided evidence of a current review of infectious diseases policies relating to custody to ensure that the policies adequately assist police to perform custody duties. 2. The Commissioner is in favour of training which highlights the necessity for a police officer to properly consider individual circumstances when exercising the discretion to search a person detained under Part 16 of LEPRA. He submitted that the NSWPF will continue to maintain and upgrade its training in response to any issues that arise, such as this inquest, and in response to any legislative changes that occur.

Date of findings	Name of Inquiry	Coroner's recommendation/s to NSWPF	NSWPF response
		<p>manager attempted to rouse the detainee, and (2) the custody manager's assessment of the detainee's level of consciousness; and b. to record the efforts they have made to identify and locate a "responsible person", including consulting previous CMRs.</p> <p>5. That the NSWPF continue to review the circumstances of the death of Rebecca Maher at Maitland police station as a case study in training of police officers who are to undertake the duties of a custody manager.</p>	<p>3. The Commissioner supports this recommendation with respect to custody training generally rather than specifically to the "Safe Custody Course", subject to resources. Further, the NSWPF accepts that that all officers that conduct custody duties should undertake a form of safe custody training.</p> <p>4. The Commissioner supports this recommendation. He also noted the following initiatives undertaken by NSWPF in respect of these issues: (a) Nemesis messages disseminated in February and March 2019 that reminded officers of their obligations to rouse, and undertake risk assessment of, intoxicated persons who appear to be sleeping; (b) alteration of the CMS to record "responsible person" details, in addition to "next of kin"; (c) review and condensing of the safe custody course content to permit more officers to be trained; and (d) introduction of a new NSWPF Learning Management System in January 2020 to enhance and increase the education available to officers.</p> <p>5. The Commissioner supports this recommendation and resources have already been allocated to undertake the case study.</p>

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