

ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community: Volume Two

**ANALYSIS AND FINDINGS IN RELATION TO SPECIFIC COMMUNITY
POLICING PROGRAMS AND ENGAGEMENT ACTIVITIES**

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Report by the Commonwealth and ACT Ombudsman,
Michael Manthorpe PSM, under the *Ombudsman Act 1976* (Cth)
and the *Ombudsman Act 1989* (ACT)

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VOLUME TWO EXECUTIVE SUMMARY

Volume Two provides additional detail to complement the information provided in Volume One of this Report.

Volume Two considers each of ACT Policing’s community policing activities, diversionary programs and community engagement initiatives, and provides an in depth analysis of the issues we considered in this investigation.

We have provided our analysis and findings in relation to each program or activity. We have not made specific recommendations (beyond the broader recommendations already made in Volume One), instead providing suggestions for improvement in each area. Without being overly prescriptive about ‘how’ ACT Policing should alter its current processes, we have described the benefits that may be derived from implementing our suggested administrative changes.

We also provide suggestions and guidance for how ACT Policing can strengthen the administration underpinning each of its activities.

We will work with ACT Policing to monitor the implementation of changes to each individual program, as well as its implementation of our recommendations in Volume One.

Part 6: ADMINISTRATION OF COMMUNITY POLICING ACTIVITIES

Field Contacts policy and procedure

6.1. ACT Policing members undertake ‘field contacts’ as part of their operational duty. The term ‘field contact’ broadly covers any interaction between an ACT Policing officer and a member of the public. Field contacts are likely to be the first point of contact between a member of the public and police. The manner ACT Policing members engage with a member of the public may be a determining factor in whether the individual enters the criminal justice system or is diverted to alternative pathways or services.

6.2. ACT Policing does not have policy or procedures to guide decision making by its officers when interacting with members of the public. With the exception of the Aboriginal Tent Embassy Protocol (discussed below), there is no procedure to inform officers’ contact with members of the public who ACT Policing suspects has committed a criminal offence.

6.3. ACT Policing advised that its officers receive extensive operational training on interviewing techniques and engagement with vulnerable people, including people with mental health issues and people who are intoxicated. ACT Policing officers do not receive specific operational training on field contacts.

6.4. There is no requirement for officers to capture demographic information during interactions with members of the public. ACT Policing provided two case notes as examples where the subject had been identified as an Aboriginal or Torres Strait Islander person. ACT Policing also advised that some interactions with ACT Aboriginal and Torres Strait Islander persons are entered into ACT Policing’s digital case management file as case notes or information reports, but there is no guidance on when an electronic record should be made.

6.5. The development of operational policies and procedures to inform ACT Policing’s contact with members of the public who are suspected of committing a criminal offence, including exercising police powers of search and seizure, may assist ACT Policing to ensure that officers responsible for exercising police powers are well supported in the field. Formalising this guidance may assist ACT Policing to demonstrate to the public that officers are accountable for their behaviour, and members of the public should expect the same operational response, irrespective of the individual officer involved.

6.6. Noting that it is not practical for guidance to cover all interactions with the public, formal guidance should be supplemented with cultural awareness training to ensure officers are aware of conscious and unconscious bias, and the manner in which this may affect operational decision making, when interacting with members of the Aboriginal and Torres Strait Islander community.

Aboriginal Tent Embassy Protocol

6.7. ACT Policing’s *Protocol for Police Attendance at the Aboriginal Tent Embassy* (the Protocol) provides guidance to ACT Policing officers who attend the Aboriginal Tent Embassy, a permanent protest site set up on the on the lawns opposite Old Parliament House in Canberra.

6.8. The Protocol was developed by ACT Policing’s Aboriginal Liaison Officers (ALOs) and provides guidance to officers on how to engage with Aboriginal and Torres Strait Islander peoples at the Tent Embassy in a culturally capable manner. The Protocol includes guidance on cultural protocols to be observed, such as directions not to interrupt Ceremonies around the Sacred Fire, and to refrain from walking on an Indigenous flag on the ground. The Protocol also provides that officers should engage with ALOs to facilitate a conversation with the relevant ACT Aboriginal or Torres Strait Islander community Elder prior to attending the site.

6.9. A copy of the Protocol was distributed to ACT Policing members by email once in 2017 and again in 2018, but it has not been otherwise formalised or made accessible to all ACT Policing officers (for example, on the ACT Policing intranet).

6.10. The development of the Protocol is a positive example of guidance developed by ACT Policing to support appropriate operational engagement with the ACT Aboriginal and Torres Strait Islander community, and highlights the value of the ALO role as both facilitator and community representative. ACT Policing advised that positive outcomes had been achieved in certain circumstances where the Protocol has been followed by officers in attendance at the Tent Embassy. Formalising the Protocol and ensuring that it is appropriately promulgated and promoted to officers will ensure officers are aware of both it and the support ALOs may provide to supplement operational actions.

Use of Cautions policy and procedure

6.11. A caution is a formal warning that may be given by police as an alternative to criminally charging a person for an offence. Police have the discretion to issue a caution in certain circumstances. Under its *Reconciliation Action Plan 2018–20 (RAP)*,¹ ACT Policing has committed to developing and implementing intervention strategies with the ACT Aboriginal and Torres Strait Islander community to increase the use of cautions for ACT Aboriginal and Torres Strait Islander peoples.

6.12. ACT Policing has a standard operating procedure to guide decision making by members in relation to the issue and recording of cautions in criminal and traffic matters. The procedure provides that a caution is an appropriate alternative to criminally charging a person, including a child, for an offence in certain circumstances, including where:

- the alleged offender has not previously been charged with an offence
- the circumstances of the incident are considered suitable for resolving without referring charges to the ACT Law Courts
- other support processes and mechanisms, such as family support, in combination with a police caution, are identified as appropriate in addressing any criminal conduct.

6.13. The procedure sets out under what circumstances a caution might be issued, internal approval processes and record keeping requirements.

6.14. The procedure sets out the factors an officer should consider when deciding whether to issue a caution, referring to the criteria set out in the ACT Director of Public

¹ Australian Federal Police Reconciliation Action Plan 2018–20, [Reconciliation Action Plan 2018-20 | Australian Federal Police \(afp.gov.au\)](https://www.afp.gov.au/reconciliation-action-plan-2018-20)

Prosecutions *Prosecution Policy of the ACT*.² Factors include the availability of any alternatives to prosecution, and the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender or victim.

6.15. ACT Policing’s procedure provides specific guidance in relation to children and young people under section 94 of the *Children and Young People Act 2008* (ACT) and lists a number of principles that should be considered. One of the issues expressly provided for is that, where practicable and appropriate, decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community.

Operation of the procedure

6.16. Based on the information provided to us, we understand that the process leading up to issuing a caution is not linear with respect to when a caution may be issued, particularly where a minor is involved. ACT Policing advised that in practice, it would be unusual for a member to issue a caution prior to ACT Policing conducting an interview.

6.17. ACT Policing’s procedures for managing interviews and Watch House intake both require that an officer ask whether a person identifies as Aboriginal or Torres Strait Islander. In practice, this may mean that officers gain the information required from the individual (including Aboriginal and Torres Strait Islander status) to accurately inform the exercise of their discretionary power to issue a caution.

6.18. There are some factors expressly listed for consideration in exercising the discretion to caution a person under the ACT Director of Public Prosecutions *Prosecution Policy* that are not currently reflected in ACT Policing’s procedure. Section 94 of the *Children and Young People Act 2008* (ACT) also expressly includes a number of provisions that are relevant to the exercise of the power to caution relating to access to legal assistance, detention and special vulnerability that should be considered by ACT Policing for inclusion in the procedure.

6.19. Ensuring information about the Aboriginal and Torres Strait Islander status is also captured as part of the cautioning process will enable ACT Policing to progress its specific commitment under the RAP to increase the use of cautions for ACT Aboriginal and Torres Strait Islander peoples.

Arrests policy and procedure

6.20. Arrest is a process used by the police to bring someone into police custody so that the process of questioning and charging them with an offence can take place. Under its RAP, ACT Policing has committed to developing and implementing intervention strategies with the ACT Aboriginal and Torres Strait Islander community aimed at reducing the number of Aboriginal and Torres Strait Islander people arrested using police discretion.³

6.21. When an Aboriginal and Torres Strait Islander person is arrested in the ACT, ACT Policing is legally required to notify the Aboriginal Legal Service NSW/ACT (ALS).⁴ The ALS is legal service initiated, governed and operated by Aboriginal community members that provides legal advice to the ACT Aboriginal and Torres Strait Islander community.

²The Officer of the Director of Public Prosecutions website
https://www.dpp.act.gov.au/about_the_dpp/the_prosecution_policy

³ Australian Federal Police Reconciliation Action Plan 2018–20 page 14

⁴ *Crimes Act 1914* (Cth) s 23H.

6.22. ACT Policing has not developed a policy or procedure on requirements for members exercising arrest powers.

6.23. As with cautions, officers may determine an individual is an Aboriginal and Torres Strait Islander person where an arrest is followed by an interview, or the person is processed through the Watch House. However, the development of an arrest policy and procedure expressly setting out legislative requirements may assist ACT Policing to inform officers of their legal obligation to notify ALS when an Aboriginal or Torres Strait Islander person is arrested.

6.24. A policy that expressly sets out and supports ACT Policing officers in their decision making, including the factors they should consider to determine whether an arrest is appropriate in the circumstances and any alternatives to arrest that are open to them to take, may also support ACT Policing to carry out its obligation under the RAP.

6.25. ACT Policing keeps statistics on the overall number of Aboriginal and Torres Strait Islander people arrested and charged in the ACT each year, but does not retain records of decisions to notify the ALS of the arrest of an Aboriginal or Torres Strait Islander person. Strengthening arrest data may also assist ACT Policing to track and report on progress against justice strategies and commitments.

Custody policy and procedure

6.26. ACT Policing operates its City Watch House (Watch House) 24 hours a day as part of the City Police Station. Other ACT Policing stations in Woden, Gungahlin and Tuggeranong are used as temporary holding cells for people placed in police custody, pending release or transfer to the Watch House. ACT Policing advised that the current practice in the ACT is to process all individuals subject to arrest through the Watch House immediately or shortly after detainment at another holding cell.

6.27. ACT Policing has developed Watch House procedures that provide guidance to officers on intake procedures, guidance on monitoring persons in custody, duty of care for ‘at risk’ detainees, use of force and administration of detainee searches. ACT Policing’s Watch House procedures are comprehensive and provide ACT Policing members with clear information about what is required when placing an Aboriginal or Torres Strait Islander person into custody in the Watch House.

6.28. When a person is lodged at the Watch House, ACT Policing procedures require members to take detainees through an intake questionnaire and assessment. It is mandatory for officers to ask individuals during the intake process whether they identify as Aboriginal or Torres Strait Islander.

6.29. If a person identifies as Aboriginal or Torres Strait Islander, ACT Policing is required to manage the custody of Aboriginal and Torres Strait Islander peoples under the *Duty of care of ‘at-risk’ and special needs detainees in the Watch House*. This procedure sets out requirements to assist members with decision making, including in relation to detainees’ fitness for custody, the cell placement of Aboriginal and Torres Strait Islander detainees, and managing detainees with various vulnerabilities such as intoxication or mental illness. It also sets out mandatory requirements for conducting detainee checks, requiring that officers check ‘at risk’ detainees every fifteen minutes for the first two hours, then

no greater than one hour intervals after that. This requirement is consistent with recommendation 137(b) of the *Royal Commission into Aboriginal Deaths in Custody*.⁵

6.30. The procedure on duty of care for ‘at risk’ detainees includes additional requirements specific to Aboriginal and Torres Strait Islander detainees. If a person identifies as Aboriginal or Torres Strait Islander, Watch House staff are required to notify ALS by phone and record detainee details on an ALS register sheet. The Watch House Day Shift Sergeant is required to send an email to ALS each morning with a summary of Aboriginal and Torres Strait Islander intakes.

6.31. ACT Policing is not able to easily report on overall numbers of notifications made to the ALS when Aboriginal and Torres Strait Islander people are lodged in the Watch House, advising that to collate this data would require a manual calculation based on emails sent to ALS. Strengthening this data may assist ACT Policing to track and report on progress against justice strategies and commitments.

Training for Watch House staff

6.32. The Royal Commission into Aboriginal Deaths in Custody recommended that members be trained to identify persons at risk through illness, injury or self-harm, and receive information on the general health status of the Aboriginal population and dangers of detaining unconscious or semi-rousable persons.⁶ It also recommended that members responsible for guarding cells receive more specialised training than members who do not hold such responsibilities and that Aboriginal Health Services and ALS advice informs the training.⁷

6.33. ACT Policing advised that prior to commencing work in the Watch House, staff are required to complete online training on duty of care, special care needs, intoxication, suicide and self-harm awareness, governance and reporting, and Watch House assessment, and have up-to-date First Aid and Use of Force qualifications. Online training is supplemented by on the job training. ACT Policing was not able to advise whether officers who work at the Watch House have completed Cultural Connections training.

⁵ Royal Commission into Aboriginal Deaths in Custody, National Volume 5, 1991

⁶ Recommendation 133(a)-(b) Royal Commission into Aboriginal Deaths in Custody, National Volume 5, 1991

⁷ Recommendation 133(d), Royal Commission into Aboriginal Deaths in Custody, National Volume 5, 1991

Custody outside the City Watch House

6.34. ACT Policing manages custody situations outside the Watch House according to the *AFP National Guideline on persons in custody and police custodial facilities* (National Guideline).⁸ A ‘custody situation’ is where a person’s right to freedom of movement is restricted and where a person is:

- in the company, care, custody or control of a member or special member, and is restricted from leaving that company for the time being
- placed in a holding room
- lodged in police cells or an area or facility controlled by police
- subject to administrative detention
- arrested.

6.35. The National Guideline requires arresting members to notify ALS by facsimile and record all ALS notifications in PROMIS when an Aboriginal or Torres Strait Islander person is taken into custody, consistent with s23H of the Crimes Act.

6.36. The National Guideline provides ‘*Where a person has been arrested and is to be conveyed to the watch-house the member must, on arrest: ensure compliance with Part 23C of the Crimes Act (investigation periods)*’, but does not provide guidance for staff on the two hour pre-charge detainment limit protection for Aboriginal and Torres Strait Islander people, or guidance on the how to calculate this time with an explanation of the delays allowed under the Act. The Guideline assumes a high level of understanding on behalf of ACT Policing members regarding the application of pre-charge detainment limits under the Act.

6.37. ACT Policing may benefit from amending its National Guideline to include practical guidance to ACT Policing members on how to apply the Crimes Act protections for Aboriginal and Torres Strait Islander people. This may assist ACT Policing to ensure that pre-charge two hour detention limits are not exceeded, consistent with legislative requirements.

Interviews policy and procedure

6.38. Formal interviewing usually occurs after an arrest has been made. Where the subject of an interview identifies as Aboriginal or Torres Strait Islander and is suspected of committing a crime, there are specific legal requirements ACT Policing must follow. This includes providing access to an Interview Friend—a person made available to support the interview subject to accompany them while the interview is occurring and to provide assistance.⁹

6.39. ACT Policing’s ‘Suspect Interview Plan’ sets out scripting and procedural requirements to be followed by ACT Policing officers, so that interviews with suspects satisfy legal requirements under Part 1C of the Crimes Act. The Interview Plan only covers suspect interviews, it does not provide guidance for interviewing members of the public who are witnesses to crimes.

⁸ AFP National Guideline on persons in custody and police custodial facilities

<https://www.afp.gov.au/sites/default/files/PDF/IPS/AFP%20National%20Guide%20on%20Person%20in%20Custody%20and%20Police%20Custodial%20Facilities%20and%20People%20in%20Custody%2010MAY2012.pdf>

⁹ *Crimes Act 1914* (Cth) s 23H.

6.40. The Interview Plan expressly prompts officers to ask the person being interviewed whether they identify as Aboriginal or Torres Strait Islander. Where a person does so, officers are required to pause the interview and arrange for an Interview Friend to be present during the interviewing process, unless the person expressly and voluntarily waives the right to an Interview Friend.

6.41. The Interview Plan also requires members to contact the ALS to notify them of an Aboriginal or Torres Strait Islander person being the subject of an interview, unless the person has arranged separate legal representation to attend the interview. This is a separate legal requirement to the Interview Friend requirement in the *Crimes Act*. The Interview Plan does not include information for members on the administrative process an officer should follow to arrange for an Interview Friend to attend an interview.

6.42. The National Guideline, referred to above, covers interviews in police custody. It provides ‘*For indigenous Australians, s 23H of the Crimes Act 1914 (Cth) provides for: contact with and presence of an interview friend, unless expressly and voluntarily waived by the person,*’ but does not provide additional administrative guidance on how these provisions should be applied in practice. The National Guidelines also links to the now repealed *Aboriginal Interview Friends and Interpreters—Statutory List Pursuant to Section 23J of the Crimes Act 1914*. ACT Policing advised that the list of interview friends is now maintained by Anglicare.

6.43. Like the National Guideline, the Interview Plan sets out relevant sections of the *Crimes Act*,¹⁰ but does not provide further practice guidance to assist officers to apply the legislation in practice. For example, the Interview Plan identifies the two legislative considerations for members:

- First, whether they ‘believe on reasonable grounds’ that the person is ‘an Aboriginal or a Torres Strait Islander’.¹¹
- Second, whether they ‘believe on reasonable grounds that, having regard to the person’s level of education and understanding, the person is not at a disadvantage in respect of the questioning referred to in that subsection in comparison with members of the Australian community generally’.¹²

6.44. By assuming a high level of understanding on behalf of the officer, there is a risk that decision made by officers will be inconsistent with legislative requirements, and between decision makers. Including practical guidance for ACT Policing members on how to apply these legislative requirements may assist ACT Policing to ensure that ACT Aboriginal and Torres Strait Islander community members have access to Interview Friends where required.

6.45. ACT Policing does not keep statistics regarding the use of Interview Friends. Improving data captured in relation to Interview Friends may assist ACT Policing to assess compliance with *Crimes Act* requirements and, more broadly, contribute relevant information at a program level to assist program stakeholders, including the ACT government and ALS, to assess program accessibility and effectiveness.

¹⁰*Crimes Act 1914 (Cth) ss 23H(1) and (8).*

¹¹ *Crimes Act 1914 (Cth) s 23H(1).*

¹² *Crimes Act 1914 (Cth) s 23H(8).*

Part 7: COMMUNITY POLICING DIVERSIONARY PROGRAMS

Restorative Justice Conferencing

7.1. Restorative Justice Conferencing was established in 2005 under the *Crimes (Restorative Justice) Act 2004* (ACT) to provide a diversionary option to prevent offenders from entering the justice system in specified circumstances. Restorative Justice Conferencing is a voluntary process which allows for an exchange of information between an offender and a victim. The purpose of the conference is to provide:

- victims with an opportunity to talk about how an offence has affected them and others close to them
- offenders with an opportunity to accept responsibility for their actions and repair the harm done
- victims, offenders and their supporters a chance to meet and discuss the crime and the outcome.

7.2. Restorative Justice Conferencing can advantage victims of crime by allowing the victim to have a role in deciding how offenders can make amends for their actions. Restorative Justice can also provide advantages for offenders who participate in conferences and complete terms their conferencing agreements including avoiding court, reduced sentences and suspended sentences.¹³

7.3. ACT Policing’s *Standard Operating Procedure on Diversionary Conferencing Restorative Justice* covers ACT Policing’s policy approach and procedure relating to the management of referrals to restorative justice for eligible offenders. It provides clear information on the purpose and nature of the program. Procedural guidance includes sufficient information on eligibility requirements, consistent with obligations under the *Crimes (Restorative Justice) Act 2004* (ACT).

7.4. We note that the copy of the *Standard Operating Procedure on Diversionary Conferencing Restorative Justice* we received as part of this investigation was updated in 2019. A 2018 version is published on the AFP’s Information Publication Scheme website¹⁴ and we would suggest updating this with the current version.

Alcohol and Drug Diversions

7.5. ACT Health Directorate manages the Diversion Service programs which are aimed at diverting people arrested and/or charged with drug or alcohol related offences out of the judicial system into the health system. ACT Policing is responsible for providing referrals of eligible offenders to ACT Health’s Diversion Service programs.

7.6. Under the *ACT Policing Purchasing Agreement 2017–21*, ACT Policing has committed to referring 80 or more people to drug diversion programs.¹⁵ AFP’s RAP also includes

¹³ ACT Policing website on Restorative Justice Conferencing <https://police.act.gov.au/about-us/programs-and-partners/restorative-justice-conferencing>

¹⁴ AFP website, Information Publication Scheme, <https://www.afp.gov.au/about-us/information-publication-scheme>

¹⁵ ACT Policing Purchase Agreement 2017–21, page 18

a commitment to work with the ACT Justice and Community Safety Directorate to maximise the use of diversion options for Aboriginal and Torres Strait Islander adult and young offenders.¹⁶

7.7. There is no policy document outlining ACT Policing’s commitments under the RAP or the *ACT Policing Purchasing Agreement 2017–21*. ACT Policing’s *Alcohol and Other Drug Diversion Program referral procedure* provides clear guidance for AFP members for the management of alcohol and other drug diversions. The Standard Operating Procedure provides information for officers on determining eligibility for a drug or alcohol referral, the referral process, how to record diversions in ACT Policing’s case management system and links to relevant legislation. The procedure does not prompt ACT Policing members to identify Aboriginal and Torres Strait Islander people as part of the referral process for alcohol and drug diversions.

7.8. Specifically reflecting ACT Policing’s commitments under the RAP and *ACT Policing Purchasing Agreement 2017–21* in policy, and linking this with clear procedural guidance that incorporates referral targets, may assist ACT Policing to ensure that referrals of all eligible offenders are made in all appropriate circumstances. Updating the existing procedure to provide clear guidance to officers on when demographic information should be requested and recorded as part of the process may strengthen ACT Policing’s ability to provide assurance that it is appropriately identifying and referring all eligible persons for these programs including ACT Aboriginal and Torres Strait Islander people consistent with RAP commitments.

7.9. Strengthening record keeping in relation to referrals made to alcohol and drug diversions may assist ACT Policing to assess program participation and effectiveness, and enable ACT Policing to report on progress against RAP commitments.

Front Up Program

7.10. Front Up is a support program to assist Aboriginal and Torres Strait Islander people in the ACT who have an outstanding warrant, have breached bail or breached a community-based sentence. Under the program, ALS negotiates on a person’s behalf to have the matter brought before court to resolve the outstanding matters without the need for police custody or the individual to have ongoing contact with police.

7.11. ACT Policing has a specific commitment in its RAP to reduce the custody rates of Aboriginal and Torres Strait Islander people through the improved use of the Front Up Program.

7.12. There is currently no internal procedure or guidance to assist ACT Policing officers to carry out this commitment in practice. ACT Policing advised that, in practice, it supports Front Up by providing a list of individuals who have an outstanding warrant or a breach of bail to the ALS. The list includes the individual’s name, address, phone number and relevant Breach of Justice item. The ALS contact these individuals to support court attendance. ACT Policing does not currently maintain any information regarding the numbers of referrals to the Front Up program.

7.13. ACT Policing has committed to improving the Front Up referral process by ensuring that the list is sent on a weekly basis on an agreed time and day, and to include additional

¹⁶ AFP Reconciliation Action Plan 2018–20

information on the list, such as the length of time a person has appeared on the list. ACT Policing has also scheduled monthly meetings between its Community Safety Team and ALS to discuss programs impacting the ACT Aboriginal and Torres Strait Islander community, including Front Up.

7.14. The development of internal guidance ACT Policing Officers to manage for Front Up referrals may assist ACT Policing to ensure that referrals of ACT Aboriginal and Torres Strait Islander community members are made in all appropriate circumstances. Strengthening record keeping in relation to referrals made, including data concerning referrals, may assist ACT Policing to assess program participation and effectiveness.

Sobering Up Shelter

7.15. ACT Policing officers have specific obligations when dealing with a member of the public who is intoxicated in certain circumstances. Under the *Intoxicated People (Care and Protection) Act 1994 (ACT)*, ACT Policing officers may only take an intoxicated person into custody if they are satisfied there are no other reasonable alternatives for the person’s care and protection.¹⁷

7.16. In the ACT, one alternative to detaining individuals in the City Watch House is to refer the intoxicated person to the Canberra Sobering Up Shelter. Catholic Care has responsibility for running the Shelter and provides overnight support, care and monitoring for people over the age of 18 recovering from alcohol or other drug intoxication.¹⁸

7.17. Relevant to the Aboriginal and Torres Strait Islander Community, ACT Policing also has a specific commitment under the RAP to ensuring the use of alternative options to custody for intoxicated Aboriginal and Torres Strait Islander people using police discretion.¹⁹

7.18. ACT Policing has a better practice guide which provides procedural guidance to assist officers when releasing intoxicated peoples into the care of the Shelter, including information on eligibility criteria and operating hours. ACT Policing members must complete admission statements at the Shelter upon arrival. The guidance does not require or otherwise prompt officers to consider the Aboriginal or Torres Strait Islander status of any intoxicated person as part of the referral process. There is currently no requirement for ACT Policing members to record information on referrals to the Shelter.

7.19. Amending internal guidance relating to Sobering Up Shelter referrals to include a provision for members to identify people as Aboriginal or Torres Strait Islander may assist ACT Policing to ensure that referrals of intoxicated ACT Aboriginal and Torres Strait Islander people are made in all appropriate circumstances.

7.20. Strengthening record keeping requirements in relation to referrals made, including the collection and assessment of data concerning referrals, may assist ACT Policing to measure success against its RAP commitments.

¹⁷ *Intoxicated People (Care and Protection) Act 1994 (ACT)* s 4.

¹⁸ CatholicCare, Sobering Up Shelter information page, <https://catholiccare.cg.org.au/services/the-sobering-up-shelter/>

¹⁹ AFP Reconciliation Action Plan 2018–20.

Police Community Youth Club

7.21. The Police Community Youth Club (PCYC) program provides an avenue for ACT Policing and the ACT Government to divert young people from the justice system. ACT Policing provides annual funding to the Canberra PCYC to deliver a range of diversionary programs for ACT youth at risk of entering or re-entering the justice system, with a priority focus on connecting ACT Aboriginal and Torres Strait Islander community youth to these programs.²⁰

7.22. ACT Policing members are also responsible for referring individual ‘at risk’ youth, including Aboriginal and Torres Strait Islander youth, to PCYC programs. Enrolment in certain PCYC programs can only occur if a referral is made by ACT Policing.

7.23. These responsibilities are consistent with ACT Policing’s responsibilities under the *Blueprint for Youth Justice in the ACT 2012–22* (the Blueprint) and relevant legislation. The Blueprint provides that ACT Policing should facilitate adequate access for ACT Aboriginal and Torres Strait Islander community children and young people to PCYC diversionary programs, with a view to diverting children and young people from the formal justice system. Under s 94(d) of the *Children and Young People Act 2008* (ACT), decisions made about ACT Aboriginal and Torres Strait Islander community children and young people must be made in a way that involves the ACT Aboriginal and Torres Strait Islander community.

7.24. ACT Policing does not currently have a policy or procedure to assist members to identify suitable candidates for referrals, and there is no internal guidance on the process that should be followed. ACT Policing does not record information on referrals made to PCYC.

7.25. Figures collected by PCYC show that nearly a quarter of all program participants in 2018–19 identified as Aboriginal or Torres Strait Islander,²¹ which suggests that program enrolments are occurring in practice. However, in the absence of a policy or procedure, there is a risk that referrals do not occur in all appropriate circumstances.

7.26. The development of a policy and including guidance identifying youth as Aboriginal and Torres Strait Islander, and processes for consulting with the ACT Aboriginal and Torres Strait Islander community regarding individual referrals of youth to PCYC programs may assist ACT Policing to ensure that referrals are made consistent with Blueprint for Youth Justice commitments and in accordance with the Children and Young People Act.

7.27. Strengthening record keeping requirement in relation to referrals made may assist ACT Policing to assess program participation and the effectiveness of PCYC as a diversionary option.

²⁰ ACT Government, *Blueprint for Youth Justice in the ACT 2012–22*.

²¹ Canberra Police Community Youth Club, *Annual Report 2019*, p10, <https://static1.squarespace.com/static/54517b68e4b03274c1f8829c/t/5e24d5213e92f9543982770b/1579472550101/2019+annual+report.pdf>

Part 8: ADMINISTRATION OF COMMUNITY ENGAGEMENT INITIATIVES

Community events

8.1. ACT Policing attends a number of community events with a view to proactively engaging and building trust with the Aboriginal and Torres Strait Islander community. Since 1 July 2017, ACT Policing members have attended around 40 Aboriginal and Torres Strait Islander community events including NAIDOC Week activities, sporting events and CPO Community Forums. ACT Policing advised that it also collaborates with a range of organisations on community policy approaches and initiatives.

8.2. ACT Policing attendance at community events is not informed by an engagement strategy and is generally managed informally. No specific advice is given to members about the purpose of attending community events, but members may consult with ACT Policing’s Aboriginal Liaison Officers (ALOs) in advance of attending events.

8.3. ACT Policing does not formally record consultation with community members regarding member attendance at these community events, nor does it record feedback received from the ACT Aboriginal and Torres Strait Islander community during these events. ACT Policing advised that members who attend events may take diary notes, although this is not a requirement. ACT Policing does not review contacts with the ACT Aboriginal and Torres Strait Islander community for the purpose of developing ‘better practice’ or to inform improvements in future interactions, or for the purpose of developing additional guidance for officers.

8.4. Strengthening approaches to record keeping following ACT Policing attendance at community events would enable ACT Policing to monitor and action feedback provided at these events. Ensuring that these records are stored in a place accessible to ACT Policing members would assist ACT Policing to inform its members about any issues or concerns facing the community, and may assist to ensure that positive engagement examples are learned from and built upon.

8.5. Additionally, improving consultation with the ACT Aboriginal and Torres Strait Islander community at appropriate stages before, during and after attendance at community events would assist ACT Policing to increase the transparency and accountability of these engagement activities. It would also provide assurance to the community that it will be kept informed of the progress of any commitments or initiatives relevant to its relationship with and outcomes for the community. Approaching engagement in this manner may assist ACT Policing to demonstrate that its engagement with the community is meaningful and of value to all parties.

Aboriginal and Torres Strait Islander Advisory Board to the Chief Police Officer

8.6. ACT Policing’s Aboriginal and Torres Strait Islander Advisory Board to the Chief Police Officer (the Board) is an ACT Policing initiative in support of strengthening engagement and co-operation between ACT Policing and the ACT Aboriginal and Torres Strait Islander community.

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8.7. Established in late 2018, the Board provides advice to the Chief Police Officer (CPO) and oversight of ongoing initiatives, with a view to improving outcomes for Aboriginal and Torres Strait Islander peoples residing in the ACT. Prior to temporary COVID-19 directions restricting large gatherings, the Board met every 8–9 weeks.

8.8. The Board comprises the CPO, the Chair of the Aboriginal and Torres Strait Islander Elected Body, ACT Aboriginal and Torres Strait Islander Elders, ACT Policing’s Aboriginal Liaison Officers, representatives of the ALS and ACT Policing’s Secretariat. ACT Policing invites visiting members, for example, the Deputy Chief Police Officers, Sergeants, representatives from ACT Policing Community Safety, and experts as required.

8.9. The Advisory Board’s Terms of Reference set out the Board’s purpose, membership, meeting frequency and secretariat responsibilities, and outline the expected outcomes of the Board:

- Provide an external, expert perspective in developing and reviewing ACT Policing’s strategies to improve justice and social outcomes for Aboriginal and Torres Strait Islander people.
- Advise the Chief Police Officer in developing and enhancing strategic partnerships with a range of national and international stakeholders including across the public and private sectors and within agencies, departments and governments.
- Monitor the AFP’s progress against strategies including the ACT Policing Community Engagement Strategy and RAP as it applies to ACT Policing.

8.10. The Advisory Board’s Terms of Reference provide that:

The effectiveness of the Board will be measured by the effectiveness and quality of ACT Policing’s strategic initiatives to improve community engagement and justice and social outcomes for Aboriginal and Torres Strait Islander people in the ACT. A qualitative assessment by participants will be required with the utility of the Board being reviewed on a yearly basis.

8.11. We were not given any evidence of measurement of the Board’s effectiveness is determined with reference to this performance measure. Information provided by ACT Policing suggests that the AFP RAP Advisory Board monitors progress against RAP deliverables on a periodic basis. However, we did not receive any information in relation to the approach taken by the Board to monitor progress against RAP deliverables as they apply to ACT Policing.

8.12. In August 2019, an informal review of the Board was undertaken following consultation with all Board members. This consultation resulted in an expansion of Board membership and an increase in meeting frequency. However, the review did not provide an assessment of Board outcomes, or otherwise link performance to broader strategic outcomes, including the effectiveness and quality of ACT Policing’s engagement with the ACT Aboriginal and Torres Strait Islander community.

8.13. ACT Policing advised that the development of specific strategic effectiveness measures and accountability of the Board is an open action item for the Board.

Board membership and Aboriginal and Torres Strait Islander representation

8.14. Under the Terms of Reference, standing expert members must be appointed by the CPO on the basis of recommendations from the Aboriginal and Torres Strait Islander Elected

Body, Torres Strait Islander Corporation and respected Aboriginal and Torres Strait Islander Elders.

8.15. The inclusion of representatives from the ACT Aboriginal and Torres Strait Islander Community on the Board is consistent with the Elected Body engagement protocol recommendation that agencies ‘seek advice from ACT Aboriginal and/or Torres Strait Islander organisations and existing community networks.’²² We were not provided with any information regarding decisions to appoint particular representatives to the Board, including any consultation with the community that may have occurred as part of the process.

Consultation with the ACT Aboriginal and Torres Strait Islander community

8.16. The meeting minutes we reviewed provided examples of feedback received from ACT Aboriginal and Torres Strait Islander community representatives on the Board. Issues raised as part of this feedback were recorded as actions items where appropriate, allocated to a responsible individual and followed up at subsequent meetings.

8.17. However, ACT Policing does not directly communicate issues discussed at Board meetings and action items to the ACT Aboriginal and Torres Strait Islander community. ACT Policing relies on ACT Aboriginal and Torres Strait Islander community representatives on the Board to communicate Board discussions, actions items and outcomes to members of the ACT Aboriginal and Torres Strait Islander community.

8.18. ACT Policing advised that it intends to directly communicate relevant Board discussions and actions to the wider ACT Aboriginal and Torres Strait Islander community, with a view to ‘raising the public profile of the Board’ and ‘enabling a larger communication feedback loop’.

8.19. ACT Policing’s commitment to develop Board effectiveness measures will enable it to appropriately assess whether the Board is meeting its objectives. In our view, ACT Policing would benefit from consulting with the ACT Aboriginal and Torres Strait Islander community when developing these effectiveness measures. Including consultation as part of this process is consistent with the ACT Aboriginal and Torres Strait Islander Agreement 2019–28 principle that ‘Aboriginal and Torres Strait Islander Peoples have a strong voice, are decision makers on issues that impact them and lead in the achievement of positive life outcomes’²³ and the Productivity Commission’s Indigenous Evaluation Strategy.²⁴

8.20. ACT Policing’s further commitment to communicate relevant Board discussions and actions to the wider ACT Aboriginal and Torres Strait Islander community is a positive development and consistent with Elected Body Protocol principles that emphasise the importance of feedback and follow-up with community to successful community

²² ACT Aboriginal and Torres Strait Islander Elected Body, ‘Protocols for working with Aboriginal and/or Torres Strait Islander peoples’, September 2015, page 9, <https://atsieb.com.au/wp-content/uploads/2016/07/Protocols-for-working-with-Aboriginal-and-Torres-Strait-Islander-peoples.pdf>

²³ ACT Aboriginal and Torres Strait Islander Agreement 2019–2028, page 4.

²⁴ Productivity Commission, *Indigenous Evaluation Strategy* <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy/indigenous-evaluation-strategy.pdf>

engagement.²⁵ Once actioned by ACT Policing, this will strengthen Board transparency and accountability.

8.21. The ability of ACT Policing to keep appropriate records of decision-making processes and outcomes is a key element of effective governance, accountability and transparency of the Board, and essential to ensuring Board decisions that impact on the ACT Aboriginal and Torres Strait Islander community involve the community in a manner that supports joint ownership of goals, and outcomes.

Chief Police Officer Community Forums

8.22. Our investigation considered the administration and management of ACT Policing’s Chief Police Officer (CPO) Community Forums, including the nature of ACT Policing’s engagement with members of the ACT Aboriginal and Torres Strait Islander community, and whether the forums support joint decision making and ownership of issues that impact the ACT Aboriginal and Torres Strait Islander community.

8.23. The forums were introduced in 2017 as a way for ACT Policing to proactively engage with members of the ACT Aboriginal and Torres Strait Islander community in a family-friendly environment. Six forums have been held in the last three years: two in 2017, two in 2018 and one in 2019. Forums in were suspended in the earlier part of 2020 due to COVID-19 restrictions.²⁶ ACT Policing held a virtual forum on 4 November 2020.

8.24. The forums are attended by the CPO and are open for all members of the ACT Aboriginal and Torres Strait Islander community to attend. ACT Policing advised the forums serve a number of purposes:

- Providing an opportunity for the CPO to share information on ACT Policing strategies, programs and initiatives which may impact the ACT Aboriginal and Torres Strait Islander community.
- Providing a safe and approachable environment for community members to voice concerns, provide feedback and ask questions.
- Allowing ACT Policing to recognise and acknowledge any concerns about the way it interacts with the ACT Aboriginal and Torres Strait Islander community.
- Assisting ACT Policing to identify what work needs to be done to improve its relationship with the ACT Aboriginal and Torres Strait Islander community.

8.25. ACT Policing advised its approach to the forums is deliberately informal to encourage participation by the ACT Aboriginal and Torres Strait Islander community. It has not sought to formally define the forum purpose or seek agreement with the ACT Aboriginal and Torres Strait Islander community about expected forum outcomes. ACT Policing has not developed documents to support the management or administration of the forums.

8.26. ACT Policing advised it intends to formalise future forums, including through the preparation of agenda items, meeting minutes and a record of action items.

²⁵ ACT Aboriginal and Torres Strait Islander Elected Body, ‘Protocols for working with Aboriginal and/or Torres Strait Islander peoples’, September 2015, P. 11.

²⁶ ACT Policing website, accessed on 18 August 2020, <https://police.act.gov.au/connect-us/community-events-and-engagement>

Actioning community feedback from forums

8.27. Forums are promoted through the ACT Aboriginal and Torres Strait Islander Elected Body. Promotional posters detail the date, time and location of the forums, and invite community members to suggest discussion topics by email to ACT Policing or through the Elected Body.

8.28. ACT Policing did not provide records of consultation with ACT Aboriginal and Torres Strait Islander community members or its partners regarding the timing and location of the forums. There are no records to show that ACT Policing has received input on discussion topics from the ACT Aboriginal and Torres Strait Islander community in advance of the forums. ACT Policing provided records of feedback from community members received at previous forums. It is unclear whether this feedback was taken into account by ACT Policing to inform agenda items for subsequent forums.

8.29. ACT Policing does not currently make discussion topics available to community members prior to the forums, nor are the forums supported by a publicly available agenda. ACT Policing advised that time is allocated for community members to ask questions. Records of attendance are not kept.

8.30. As with other community events, there is no established approach for agreeing on and recording action items that may arise from each forum. It is unclear how feedback provided is taken into account by ACT Policing, including feedback specific to ACT Policing’s operational role in the community.

Improving accessibility and consultation with the community

8.31. The forums are a good initiative in support of strengthening engagement and trust between police and the ACT Aboriginal and Torres Strait Islander community. However, in the absence of an agreement with the community about the purpose of forums and what they should achieve, the benefits that may be derived from engagement are likely to be limited.

8.32. Strengthening ACT Policing’s engagement under the CPO forums is consistent with the relationship principle set out in the ACT Aboriginal and Torres Strait Islander Agreement 2019–2028 that public authorities operating in the ACT seek and follow up on both positive and negative feedback received from Aboriginal and Torres Strait Islander Peoples.²⁷

8.33. In our view, both ACT Policing and the ACT Aboriginal and Torres Strait Islander community may benefit from formalising arrangements for the forums, including through the development of a formal agreement with the community. Strengthening approaches to better support meaningful consultation with the community before, during and after the forums, and appropriately actioning and communicating outcomes, will increase ACT Policing’s ability to support community participation in a transparent and accountable manner. This approach should also enable ACT Policing to enhance organisational awareness of issues concerning the ACT Aboriginal and Torres Strait Islander community.

²⁷ ACT Aboriginal and Torres Strait Islander Agreement 2019–2028