

Submission to Australian Law Reform Commission (ALRC) review into Aboriginal and Torres Strait Islander rates of incarceration.

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Table of Contents

<i>Introduction.....</i>	<i>2</i>
<i>Social Norms.....</i>	<i>3</i>
<i>Family violence and victims support.....</i>	<i>4</i>
<i>Child abuse</i>	<i>5</i>
<i>Policing</i>	<i>7</i>
<i>Justice targets.....</i>	<i>8</i>
<i>Sentenced to a Job Program.....</i>	<i>8</i>
<i>Enabling environment and housing.....</i>	<i>10</i>
<i>Aboriginal Interpreter Service</i>	<i>10</i>
<i>Foetal Alcohol Spectrum Disorder (FASD).....</i>	<i>11</i>
<i>Mental illnesses</i>	<i>12</i>
<i>Driver education</i>	<i>12</i>

Introduction

This submission discusses a range of recommendations including changing social norms by supporting victims of crime, preventing child abuse by encouraging reporting of crimes through training for community members, and teaching protective behaviors through the school curriculum.

The recommendations also touch on why Indigenous complainants need safe places to report crimes. To break the cycle of offending, police require further resources to invest in building relationships of trust with Aboriginal and Torres Strait Islander communities.

For equal access to justice, we recommend that the introduction of a remote and rural justice of the peace (JP) magistrates program be considered, ensuring both accused and complainants have equal access to prompt justice. All complex legal documents and orders should be made accessible and translated into the most common Aboriginal languages through digital technology and Aboriginal interpreter services.

The high rates of offending particularly in rural and remote communities are related to poverty and economic marginalisation. The Northern Territory (NT) 'Sentence to a Job' program provides offenders with a pathway to becoming literate, numerate and employable, and should be considered as a long-term strategy throughout Australia to stopping recidivism. However, it is imperative to ensure that, on their return to their community, they are supported. They must not go back into the community without support or a bed as this limits their prospects of rehabilitation. It therefore makes sense that Government consider providing transitional housing to ensure offenders do not return to their communities without a home.

Early intervention programs should focus on those suffering FASD and mental health issues. Better training also needs to be mandatory for all personnel in the health and justice arena. This will ensure that more accused with FASD and mental health problems are identified early and diverted into therapeutic alternatives.

Currently, it is hard to determine which justice programs are working and which are not, as governments evaluate fewer than 10% of all spending on Indigenous affairs. With urgency, a national justice target needs to be agreed and, at the very least, a national auditable data collection and evaluation platform created to monitor justice programs. This will ensure that governments and bureaucrats make informed decisions on spending needs and are held accountable to the public.

Social Norms

There is significant violent offending among Indigenous populations. Violent behaviour is strongly influenced by cultural and social norms. Therefore, efforts to prevent violence must consider how social pressures and expectations influence individual behaviours. Fortunately, interventions that attempt to alter cultural and social norms to prevent violence are among the most prevalent within Indigenous communities. Rarely, however, are they thoroughly evaluated, making it difficult to assess their effectiveness.

Nonetheless, positive results have been reported. To change social norms to create safe communities, support for victims is an essential step in signalling intolerance for violent, antisocial and illegal behaviours. Victims need to feel safe and justified in making reports to police. The criminal justice system focuses mostly on the rehabilitation of offenders to prevent future criminal activity. However, to break the cycle of family dysfunction and lawlessness, victims and communities need to be supported in feeling safe to report criminal activities. It is recommended that:

- a public social norm campaign be instituted and, where appropriate, delivered via social media,
- all policies and public campaigns around changing social norms should be designed to create culturally-relevant general and specific deterrents to enable an aspirational environment, and
- an evaluated social marketing approach is developed and implemented to introduce a mandatory reporting campaign.

Preventative violence education is recommended, particularly as it relates to youth domestic violence, including men's behavioural change programs to encourage social norms that prevent domestic violence. Intervention programs in custodial facilities as part of offenders' management plans are also recommended. Community and family involvement are essential throughout their design and implementation if success is to be achieved. In relation to diversion and crime prevention, there is a key role for community leaders to play.

It is recommended that Government:

- support Community Safety Committees and provide additional aid including capability building and training on crime prevention strategies,
- establish a remote Justice of the Peace (JP) program throughout the Magistrates Court across all jurisdictions with high Indigenous populations,

- review legislative options for appropriate alignment to deal with community-based orders through the JP program, and
- apply appropriate assessment criteria for representation on Community Justice Groups and those representatives from peak Aboriginal and Torres Strait Islander groups to ensure they pass police checks, and that all Indigenous community representatives are chosen internally from within local families or descent groups.

Family violence and victims support

In many Indigenous communities, domestic violence is normalised and widely tolerated. Indigenous men, women and children are victimised at significantly higher rates than non-Indigenous people. Focusing on preventative measures, such as victim support, will be critical to the overall approach to reducing family violence. When victims are supported and encouraged to report violence, the act of reporting itself works to deter offenders and potential offenders by signalling intolerance for this criminal behaviour. Further, preventative measures that reduce family violence have the potential to reduce the rising rates of youth detention. This approach will require specific interventions. In most remote Indigenous communities, children are growing up where they are regularly exposed to violence. To reduce the rates of violent offences and incarceration, it is essential that a range of victim support and family violence programs are supported and implemented, including communication technologies and education campaigns in Aboriginal languages. The No More campaign's activities should be expanded into youth-justice rehabilitation programs through sport.

It is recommended that government:

- should consider establishing a Violent Offender Register like the UK's Clare's Law approach, and
- make available safe places for victims to report abuse and receive protection from offenders during investigative and judicial processes.

Providing support to victims of violence and child abuse, including community safety, must be a paramount priority to deter violent offenders and create the conditions in which Indigenous children and youths are socialised in violence-free environments so that they know how to behave in accordance with acceptable norms such as attending school, and entering vocations and professions through further education.

It is recommended that the Government:

- implement preventative violence and protective behaviours education, including curricula within schools and expanding mandatory reporting obligations, and
- ensure response agencies are adequately resourced to handle potential increases in reports of abuse.

Child abuse

Many factors influence whether a person will commit crimes. Causes of criminal behaviour vary among different people and different types of crimes. However, there is a consensus that child neglect is one of the strongest factors in increasing the risk of involvement in crime. Poverty, domestic violence, unemployment, sexual and physical child abuse, and alcohol and illicit substance misuse are also risk factors.¹

There is strong evidence that early intervention programs targeting at-risk children and youths are cost effective ways to reduce crime.² There is also research indicating that reducing disadvantage and increasing income equality can reduce crime.

Indigenous children remain at a greater risk of being abused. Child neglect remains the most common form of child abuse and it is worse in remote communities. Aboriginal children remain over-represented in adverse measures of child safety and wellbeing, and the youth justice system overall. Many Indigenous children are in the care of elderly relatives, young parents, older siblings, or parents struggling with personal issues. This can result, in some communities, in children as young as five years old on the streets at night, rather than in a household with adult carers, often because of their lack of safety in the households available to them or lack of adult supervision.³

Child sexual abuse is chronically undisclosed and underreported. It almost certainly affects a much larger portion of the Indigenous population than is reflected in official statistics. Offenders are mostly known to victims and can include immediate family members, extended family or community leaders.

To enhance effective child-abuse prevention strategies, there must be a continued commitment to provide preventative education against child sexual

¹ David Rose, *Thinking about Poverty* (Sydney: Federation Press, 2006), 107–8

² Don Weatherburn, *Law and Order in Australia: Rhetoric and Reality* (Sydney: Federation Press, 2004), Law and Order, op. cit., 179–182

³ For references to Aboriginal children and youths on the streets, especially at night, whether homeless or temporarily on the streets rather than in a household, see Rex Wild and Patricia Anderson, *Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (Darwin, NTG, 2007), 36 and 47–49; and *Australian Crime Commission, The Final Report of the National Indigenous Intelligence Taskforce 2006–2013*, op. cit., 8.

abuse to both children, adults and service providers, particularly in remote communities and regional centres. This education must be delivered regularly and should also form part of the mandatory school curriculum both in primary and secondary education. It is recommended that:

- governments consider the resources available to children who report abuse including whether or not there is a safe place to make a report, and whether or not there is a need to ensure there is an advocate service to support the child from risk of violence for making a report to police, and
- response agencies provide for adequate resources to handle potential increases in reports of abuse even though it is difficult to attract and retain qualified staff in the remote and rural areas, and governments should prioritise examining better ways to resource this.

Many people in Aboriginal communities know the identities of local child-abuse offenders, but usually are too frightened to make a report for fear of community reprisals.⁴ It is therefore vital that:

- governments examine the current mandatory reporting legislation and tighten its regulations against non-compliance.

If mandatory reporting procedures are more rigorously applied, and professionals are held more accountable, it would help to identify early incidents of child-abuse and ensure early intervention. As outlined in the 2007 *Little Children are Sacred Report*,⁵ service providers in the area of child sexual abuse had only a general understanding of what constituted child sexual abuse and did not feel confident they could identify it. Many admitted they were unsure of what they should do.

In one community, there were a significant number of service providers, including police and health workers, who were unaware of the child sexual abuse that was uncovered in their communities. They had considered their community to be safe and sound. This highlights significant knowledge and training gaps among service providers. Similar findings were reported in the unpublished Freedom of Information copy of the Australian Crime Commission's final report of the National Indigenous Intelligence Task Force 2006–2014. This report found that the failure of mandatory reporters to report suspected child abuse was, in some cases, to protect themselves, the victims or

⁴ Rex Wild and Patricia Anderson, *Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (Darwin, NTG, 2007)

⁵ Wild and Anderson, *Little Children are Sacred*, op. cit., 75.

the offenders, or to ensure that community members would not be deterred from using their services.

Policing

To develop an effective change in social norms in Indigenous communities, a closer partnership with police is required. There are difficulties in retaining all professional staff in rural and remote communities. Community policing is a must for changing social norms, as is building trusting relationships that allow victims to come forward and report crimes. Since the Royal Commission into Aboriginal Deaths in Custody many believe that recruiting Indigenous police officers is vital.

The Aboriginal Liaison Officer (ALO) Trial Program is one of the current NT Police, Fire and Emergency Services (NTPFES) Indigenous Employment Initiatives that has recently been launched in four Top End remote communities. This program is already achieving positive results and is being well received by community members. ALO's are assisting with reassurance patrols, language translation, witness liaison, community engagement, and front counter services. The experience they are gaining as Liaison Officers is assisting them greatly in their policing careers, and is vital in assisting police to be more effective in policing and intelligence gathering.

With the high costs of retaining police officers in remote communities, it is recommended that:

- every remote community have a school-based police apprenticeship program that offers scholarships for local Indigenous school-leavers to attend officer training.

Many of the recruits from remote communities will have the added benefit of speaking local languages, cultural capital, and general community intelligence. They are more likely also to stay in their communities in the longer term, which adds to the stability of their community engagement and assists with changing social norms.

Response options for consideration:

- review incentives to attract and retain police in remote communities,
- support a national rollout of the Aboriginal Liaison Officer (ALO) programs so that local Indigenous people can undertake careers in policing, and
- adequately resource police officers to participate in youth diversion programs.

Justice targets

All jurisdictions have developed a range of innovative programs and measures to deal with the escalating Indigenous incarceration rate in prisons and juvenile detention centres even though, under the current framework, it is impossible to determine which programs are working and which are not. Sara Hudson's Centre for Independent Studies (CIS) report of 2016, 'Mapping the Indigenous program and funding maze', outlined the systemic failure of government spending to alleviate chronic poverty, particularly among those who live in rural, remote, and very remote areas. Hudson poignantly highlighted in this report that 'there is much goodwill in Australia to improve Indigenous outcomes. However, too many programs are implemented because of their perceived benefit, rather than a rigorous assessment of a priori evidence'.⁶

Hudson's research examined total spending on Indigenous programs, and estimated this to be at least \$5.9 billion-per-year, comprising federal government expenditure of \$3.28 billion, state-and-territory government expenditure of \$2.35 billion, and income sourced by Indigenous not-for-profit sector of \$224 million. Less than 10% or 88 out of these 1082 programs had been evaluated either during or after implementation and, of those programs evaluated, few used methods that provided evidence of the program's effectiveness. Hudson outlined numerous issues including multiple service providers and NGOs operating with overlapping priorities within the same parameters with little evidence of success, and she argued that funding is not necessarily going to where it is most needed.

Ideally, there should be a closing the gap justice target that equally strives to reduce incarceration and victimisation of Indigenous Australians. This justice target must also ensure that there is an appropriate auditable data collection platform, and include reviews of all programs funded by the commonwealth, state and territories for their effectiveness.

Sentenced to a Job Program

The Sentenced to a Job program has been operating for approximately three years in the Northern Territory (NT) and is regarded as one of the most important programs of the NT Department of Correctional Services. Research indicates that when prisoners combine vocational education and training with 'real world' work opportunities linked to a job in the community, the likelihood of them returning to prison decreases significantly. This, in turn, produces direct savings to the criminal justice system and indirect savings to society as a

⁶ Hudson, 'Mapping the Indigenous program and funding maze' Centre for Independent Studies (2016), research report 18 cited at <https://www.cis.org.au/app/uploads/2016/08/rr18-Full-Report.pdf>

whole. Already, the early performance statistics for the Sentenced to a Job program are producing encouraging results in this regard.

The program itself is predicated on all participants being of 'open' classification at the lowest level of security that can be attained during their incarceration, serving a minimum of three-months imprisonment, and able to display significant personal responsibility for their attitude and behaviours both during their sentence and towards their employment as part of the Sentenced to a Job program. Prisoners performing paid work:

- contribute 5% of their salaries and wages to support NT Victims of Crime,
- pay board and lodgings to NT Department of Correctional Services, which helps reduce the cost of their incarceration to the NT taxpayer, and
- pay taxes like the rest of the community who are in paid employment.

Prisoners who have been convicted of a sexual offence or have a murder conviction are precluded from being involved in this program.

The introduction of the Sentenced to a Job program coincides with a more holistic and practical approach to prisoner rehabilitation and a significant shift by NT Department of Correctional Services to employment and training of detainees in prison industries within the prison system itself. Increasingly, prison industries are becoming more commercialised and focused on developing employment skills in prisoners that will meet the needs of the local community labour market. To complement this approach, pay rates for prisoners who are willing to work, and prices in the prisoners' canteen have been amended to encourage and motivate more prisoners to build a desire to become 'work ready'.

Partnerships with local employers, and educational, vocational and employment training providers across the NT are extremely positive and are a significant component of the approach in equipping prisoners to be work ready, and to gain and retain employment on release. Northern Territory Correctional Industries (NTCI) operates more than 20 separate business units across NT correctional centres that aim to offer import-replacement products or to add capacity to local businesses where that currently does not exist. NTCI does not compete with local businesses, but invites local business to become partners.

NTCI offers accredited training within its workshops from qualified supervisors and aims to ensure that prisoners leave correctional centres with skills that allow them to follow credible pathways to employment. It aims to develop a 'through-care' approach in the provision of education, training and employment to ensure a critical link with prison industries and external

stakeholders such as local employers. Its predominant approach is to replicate real-life work and living situations as far as feasibly possible, and this is already paying dividends with measurable recidivism reductions being realised among its participants.

NT Correctional Services has developed highly innovative ways to engage prisoners in practical programs that address their underlying issues and prepare them to become employed law-abiding citizens. This ability to connect with businesses and other departments is agile and highly impressive.

It is recommended that this program:

- is reviewed with a goal to expanding it nationally,
- is matched to job-skills shortages, especially in remote communities,
- is designed to include supported accommodation for offenders on post-release and bail programs, and
- implements an interdepartmental structure to support industry and create jobs for Sentenced to a Job programs.

In the medium to short-term, Government should provide:

- youth and adult bail housing, and
- transitional housing for prisoners from prison.

Enabling environment and housing

Key issues in remote Indigenous Australia are the lack of an economy and infrastructure to support to sustainable remote communities. A 2015 infrastructure audit of the 73 largest remote Indigenous communities in the NT found that less than 50% had mobile and data services. Only 26% had standard town planning regimes, less than 50% had a permanent police presence, and housing met only 60% of demand. Nearly all had no sea transport services, ensuring that communities in the north are inaccessible by land for half the year due to flooding. The impact of this lack of infrastructure is devastating for Indigenous communities. In the worst affected areas, overcrowding is at a rate of 19 adults and children per room. The solution is to build enabling environments across remote Australia. This will require large investments over coming decades.

Aboriginal Interpreter Service

It is recommended that:

- Aboriginal Interpreter Service (AIS) be funded to review all court documents, such as bail, domestic-violence and community-based orders, and reproduce them in plain English and the most widely-spoken Aboriginal languages. Governments could start by prioritising

bail and domestic violence orders, including conditions, considering that violence is the most frequent offence committed by Indigenous offenders.

- Translated court documents in plain English and Aboriginal languages be made available online, and easily playable on electronic devices to ensure persons engaging with the criminal justice system understand their rights and obligations.
- AIS assist government to develop culturally appropriate media campaigns to provide further education to Indigenous communities on issues such as family violence, substance abuse, and changing dysfunctional social norms. It should also invest in additional interpreter skills to ensure that all interpreters are adequately equipped to work in a legal environment, improve justice services, create Indigenous employment opportunities, and signal to the community that Aboriginal languages are valued.

Foetal Alcohol Spectrum Disorder (FASD)

- Train police officers, corrections staff, custody nurses, health professionals, teachers on the early symptoms of FASD and ensure that existing by-laws associated with the management of alcohol are enforced.
- Government should deliver training on FASD to its frontline staff, corrections staff, careers and NGO partners, and could potentially share this with police and health professionals.
- Develop a Supportlink type program that tracks referrals and assessments of those suffering from impairments, mental illness or/and FASD.
- Develop a culturally appropriate public-health campaign to highlight the risks of consuming alcohol while pregnant.
- As official and public awareness of the prevalence of FASD in Indigenous communities' increases, government and community service providers, including for police, NTDCS staff, child protection, education, and health services may be required to adjust programs and services to provide for a significant increase in clients.
- Additional and updated research into the effectiveness of alcohol management plans and restrictions in remote communities and restricted premises.
- Legislative and regulatory changes that strengthen enforcement provisions could improve the ability of police to target sly-grogging and reduce alcohol supply to restricted communities.

Mental illnesses

- Provide supported accommodation for those suffering from mental illnesses and cognitive impairments.
- Expand access to court-appointed clinicians, mental health or psychiatric nurses to remote court locations.
- Provide supported accommodation for those suffering from mental illnesses and cognitive impairments.
- Apply standards across jurisdictions that apply a standard to allow judiciary, court officers and counsel to request pre-sentence reports from professionals.
- Develop systems to collect data across on the rates of disability.

Driver education

- Resource and expand driver-licence training program, particularly in remote and regional communities.
- As recommended in the Forrest Report, the Commonwealth should provide a training budget to the NT for the creation of a remote drivers training program to help Indigenous people obtain their drivers licences.
- Develop an online traffic offenders program that can be delivered in Aboriginal languages.