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His Honour Judge Matthew Myers AM
 Commissioner
 Australian Law Reform Commission
 GPO Box 3708
 SYDNEY NSW 2001

Dear Commissioner

The ACT Government welcomes the opportunity to contribute to the Australian Law Reform Commission inquiry into the incarceration rates of Aboriginal and Torres Strait Islander people.

This is a significant inquiry. The overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system is a national tragedy, and one that we are committed to addressing in the ACT through the *Aboriginal and Torres Strait Islander Justice Partnership 2015-2018* and an ambitious justice reform program.

The ACT Government is actively seeking innovative, effective solutions to reducing contact with the criminal justice system and for improving access to justice for Aboriginal and Torres Strait Islanders. The recommendations that arise from this Inquiry will be reviewed with interest.

Please find the ACT Government submission to the Inquiry enclosed. For further information regarding ACT Aboriginal and Torres Strait Islander justice matters and current projects, please contact Julie Field, Executive Director, Legislation, Policy and Programs on (02) 6207 0522.

Yours sincerely

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4.10.17.

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

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ACT
Government

*Australian Law Reform Commission Inquiry into the
Incarceration Rate of Aboriginal and Torres Strait
Islander People* | **ACT Government Submission**

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1. Introduction

The ACT Government welcomes the opportunity to make this submission to the Australian Law Reform Commission (ALRC) inquiry into the incarceration rates of Aboriginal and Torres Strait Islander people.

Rather than respond to the specific questions raised in the Discussion Paper, in providing this submission the ACT Government seeks to:

- describe the justice reform agenda in the ACT, as it applies to Aboriginal and Torres Strait Islander people;
- outline the current initiatives being implemented that are designed to reduce overrepresentation and improve access to justice for Aboriginal and Torres Strait Islanders in the ACT; and
- identify the issues limiting progress or requiring further action.

The ACT Government is committed to an ambitious justice reform agenda and to implementing targeted strategies to address the factors that lead to contact with the justice system. While progress may be slow, and largely undetectable in statistical terms at this time, there is a strong appetite for affirmative action to reduce incarceration rates and improve justice outcomes for Aboriginal and Torres Strait Islander people. Importantly, focus has turned to the development of alternative, culturally appropriate models of justice and service support. It is to these initiatives that this submission predominately relates.

2. The ACT context

In the ACT, Aboriginal and Torres Strait Islander people are 18 times more likely to be incarcerated than non-Indigenous people. While not commonly recognised, this gap between Aboriginal and Torres Strait Islander and non-Indigenous incarceration is greater than in any other jurisdiction in Australia.¹

Constituting 1.6 per cent of the ACT population,² Aboriginal and Torres Strait Islander people make up 22 per cent of the ACT's detainee population. The ACT remains below the national average for Aboriginal and Torres Strait Islander people as a percentage of the total detainee population; however, the daily average nearly doubled between 2005 and 2015.

The March 2017 ACT Criminal Statistical Profile shows that in the last 12 months;

- Aboriginal and Torres Strait Islander apprehensions increased by 17 per cent;

¹ Australian Bureau of Statistics, *Prisoners in Australia, 2016*, (2016), cat.No. 4517.0.

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Australian%20Capital%20Territory~25>>

² Australian Bureau of Statistics, *Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016*, (2017), cat.No 2071.0,

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20Data%20Summary~10>>

- charges related to Aboriginal and Torres Strait Islander people cleared by arrests increased by 15 per cent; and
- all Aboriginal and Torres Strait Islander charges increased by six (6) per cent.³

2.1. Young people

The ACT's statistics in youth justice also show marked differences between Aboriginal and Torres Strait Islander and non-Indigenous young people.

Comprising three (3) per cent of young people aged 10 -17 years in the ACT,⁴ Aboriginal and Torres Strait Islander young people:

- make up one quarter of young people under youth justice supervision;⁵
- are thirteen (13) times as likely as non-Indigenous young people to be under supervision;⁶ and
- constitute 30 per cent of young people entering youth detention in the last five years.⁷

2.2. Domestic violence, child protection and rates of victimisation

Aboriginal and Torres Strait Islander people are also overrepresented as victims in the criminal justice system, and domestic violence and care and protection statistics. In the last five years approximately five (5) per cent of victims registered with Victim Support ACT and three (3) per cent of clients of the Domestic Violence Crisis Service (DVCS) identified as Aboriginal and Torres Strait Islander people.

In a recent Inquiry into *System Level Responses to Family Violence in the ACT*, notification and out-of-home care rates for Aboriginal and Torres Strait Islander children were reported as higher than national rates.⁸

These statistics underscore the ACT Government's commitment to tackling the underlying drivers of offending and disadvantage, and delivering a whole-of-government response to improve justice for Aboriginal and Torres Strait Islander families. Offending and crime cannot be disassociated from the broader social, historical, cultural and economic factors that perpetuate intergenerational trauma and disadvantage in Aboriginal and Torres Strait Islander communities across Australia. While changes to the laws and legal frameworks are essential to curbing incarceration rates, substantial progress will require parallel action in social policy and a shift from crisis-driven interventions to prevention and early intervention.

³ All these measures have upward five-year trends that are statistically significant.

⁴ Australian Institute of Health and Welfare, *Australian Capital Territory – youth justice supervision in 2015-16*, Youth Justice Fact Sheet no.75, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129559062>> 2.

⁵ Ibid.

⁶ Ibid.

⁷ ACT Government, *Statistical Profile Key Highlights Summary: ACT Criminal Justice*, (March 2017),

http://cdn.justice.act.gov.au/resources/uploads/JACS/2_ACT_Criminal_Justice_Statistical_Profile_Key_Highlights_Summary_-_March_2017_Final.pdf

⁸ Glanfield L 2016, *Report of the Inquiry: Review into the system level responses to family violence in the ACT*, ACT Government, http://www.cmd.act.gov.au/__data/assets/pdf_file/0010/864712/Glanfield-Inquiry-report.pdf> 41

3. Justice reform in the ACT

The ACT Government's commitment to closing the gap on Aboriginal and Torres Strait Islander incarceration rates is an extension of broader reform goals in the ACT criminal justice system.

The ACT's Justice Reform Program comprises three interlinked program streams that all explicitly consider the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system. In each stream, Aboriginal and Torres Strait Islander heads of service from the justice sector were engaged on Advisory Groups and in core design workshops, with community consultations conducted as a vital stage of development.

3.1. Justice Reform Strategy

The Justice Reform Strategy was a two-year program of work (2014-16) that examined sentencing laws and practice in the ACT.⁹ The Strategy aimed to create a community based sentencing alternative to imprisonment, and consider reforms relating to restorative justice and therapeutic jurisprudence.

The Strategy considered a number of sentencing issues that have either specific impact or general relevance for Aboriginal and Torres Strait Islander offenders. These include:

- the introduction of the Intensive Correction Order (ICO) that provides an opportunity for imprisonment to be served in the community. These orders allow for intensive supervision and increased compliance with court orders;
- expansion of the Restorative Justice Scheme to include adults and more serious offences including funding a special Indigenous Guidance Partner to allow a diversion option for a cohort of Aboriginal and Torres Strait Islander offenders and victims which they previously would not have had access to; and
- consideration of the experience of Aboriginal and Torres Strait Islander defendants at the point of sentencing (see 7.1 'Aboriginal and Torres Strait Islander Experience Court Reports' below for further information).

3.2. Justice Reinvestment Strategy

Justice Reinvestment (JR) aims to reduce crime, enhance public safety and strengthen communities by developing a smarter, more cost-effective approach to criminal justice.¹⁰ The JR Strategy seeks to deliver improved outcomes in the community and justice systems and to direct resources to reduce the causes, rather than the consequences, of crime.

Major projects under the JR Strategy include the development of an ACT Justice System Costing Model; ACT Justice Services and Programs Map; Justice and Human Services System Data Snapshots; and an Evaluation Framework.

The Strategy also includes two trials that will focus exclusively on the Aboriginal and Torres Strait Islander community:

⁹ ACT Government, *Justice Reform Strategy*, <<http://www.justice.act.gov.au/page/view/3830/title/justice-reform-strategy>>

¹⁰ ACT Government, *Justice Reinvestment Strategy*, <<https://justice.act.gov.au/page/view/3829/title/justice-reinvestment-strategy>>

- *Yarrabi Bamirr Trial*

The first trial targets Aboriginal and Torres Strait Islander families with high and complex needs and will be conducted in partnership with Winnunga Nimmityjah Aboriginal Health Service, ACT Policing, Aboriginal Legal Service (NSW/ACT) and the Domestic Violence Crisis Service. Families will be offered intensive case management support to improve life outcomes and reduce, or prevent, contact with the criminal justice system. Through high level liaison and coordination, the trial will identify and dismantle blocks in the justice and broader service systems and build the evidence base for a family-centric service support model.

- *Bail Support Trial*

The second trial is a Bail Support Program targeted for Aboriginal and Torres Strait Islander offenders. The trial is being designed as a practical solution to reducing the number of detainees on remand which amount to approximately 30 per cent of ACT detainees.¹¹

A literature review commissioned under the Justice Reform Strategy and undertaken by the Australian Institute of Criminology summarised the bail support services available in other Australian and international jurisdictions, and outlined a set of best practice principles to inform the design of a program for adult offenders. The ACT has also had the success of the After Hours Crisis Support Service (AHCSS) for young offenders to draw upon. Aside from curbing the number of young people on unsentenced detention, the AHCSS has provided an opportunity to intervene early and divert young people from further contact with the system.

The program will be holistic in nature and will prioritise support over supervision. Through individual support plans offenders will be linked into key services including alcohol and other drug (AOD) and mental health treatment and will be assisted to overcome the system barriers to housing.

3.3. Aboriginal and Torres Strait Islander Justice Partnership

The *Aboriginal and Torres Strait Islander Justice Partnership 2015-18* is the second formal justice agreement that the ACT Government has delivered with the ACT Aboriginal and Torres Strait Elected Body. The first Agreement was in response to a joint report launched in 2008 by the ACT Council of Social Services and the former Aboriginal Justice Centre entitled *Circles of Support: Towards Indigenous Justice: Prevention, Diversion and Rehabilitation*. Not only was it the first Aboriginal and Torres Strait Islander Justice Agreement, it was the first formal agreement between the ACT Government and the Aboriginal and Torres Strait Islander community.

Building on the work of the first Agreement, the *ACT Aboriginal and Torres Strait Islander Justice Partnership 2015-18* aims to address the over-representation of Aboriginal and

¹¹ ACT Government, *Justice Reform Strategy: Second Stage Report*, (July 2016), <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/JACS_IRStrat_PArt_2.3_FINAL_.pdf> 39..

Torres Strait Islander people in the ACT justice system, as both victims and offenders.¹² The Partnership details targets, actions, measures and areas of accountability to achieve three key objectives:

1. Reducing over-representation by:
 - a. Reducing recidivism; and
 - b. Increasing access to diversionary programs;
2. Improving access to justice services; and
3. Improving data collection and reporting.

Holistic cross-government work is essential to achieving the Partnership's aims and objectives, and ultimately, to bringing about long-term improvements in the Aboriginal and Torres Strait Islander community. The Partnership is supported by a number of current government strategies that, whether stated or not, seek to address the contributing factors that lead people into contact with the justice system, including:

- ACT Aboriginal and Torres Strait Islander Agreement 2015-18;
- Blueprint for Youth Justice in the ACT 2012-22;
- Human Services Blueprint;
- A Step Up for Our Kids Strategy; and the
- Justice and Community Safety Directorate Aboriginal and Torres Strait Islander Employment Action Plan 2016-19.

While the justice agreements and related strategies may not have reduced custody rates to date, their value cannot be overstated. The Partnership maintains focus on the issue and strives to keep all parties accountable to the commitments agreed to. The establishment of an Aboriginal and Torres Strait Islander Caucus has been significant in this regard. Based on a similar model used in Victoria, the Caucus is made up of Aboriginal and Torres Strait Islander representatives from justice and related services and monitors progress under the Partnership. From their professional and community standpoint, the Caucus members are able to consider reports of lead agencies and advise on claims of achievement when the statistics or experience on the ground suggest otherwise.

Closing the gap in Aboriginal and Torres Strait Islander disadvantage requires clearly aligned plans with targets that stretch all areas of government towards innovation and reform. As attention moves towards drafting the next iterations of a number of key strategies, there is an opportunity to acknowledge what is, and is not, working and reset the approach.

¹² ACT Government, *ACT Aboriginal and Torres Strait Islander Justice Partnership 2015-18*, <https://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/ACT_JACS_ATSIEB_Justice_Agreement_15-18.pdf>

4. Policing

The ACT has a unique arrangement where the Australian Federal Police (AFP) is responsible for policing services in the ACT under a purchase agreement with the ACT Government. Services are provided through its community arm, ACT Policing.

Under the ACT *Aboriginal and Torres Strait Islander Justice Partnership 2015 – 2018*, ACT Policing has committed to a number of measures specifically aimed at reducing the number of Aboriginal and Torres Strait Islander people coming into contact with the criminal justice system. These include to increase the use of cautions and drug and alcohol diversions and to refer 100% of eligible young offenders to restorative justice. While the statistics show that sustained action is required to see positive results, the targets are a demonstration of ACT Policing's commitment to improve diversions and reduce incarceration rates.

ACT Policing employs Community Liaison Officers (ICLOs) in identified positions to establish and maintain positive relationships with community members and foster mutual understanding between the Aboriginal and Torres Strait Islander community and police. In an effort to reduce offending and disrupt intergenerational crime, ICLOs and members of the Community Safety Team work alongside community organisations to proactively engage and assist at-risk Aboriginal and Torres Strait Islander young people and their families. In addition, ACT Policing provides monetary and in-kind support to various community services, programs and events with the aim of building a more positive profile among the community and to divert Aboriginal and Torres Strait Islanders from contact with the criminal justice system.

Recognising the need to build cultural competence among members, the AFP's Malunggang Indigenous Officers Network (MION) developed a cultural awareness training program for all recruits to improve understanding of the historical and contemporary issues experienced by Aboriginal and Torres Strait Islander communities, and how these issues translate on the interface between the police and the community. MION is a voluntary employee network which aims to provide support for internal Aboriginal and Torres Strait Islander employees as well as provide advice to management on Aboriginal and Torres Strait Islander issues.

5. Access to justice and culturally sensitive services

In the ACT, culturally appropriate legal assistance and community justice programs are primarily provided by three legal services: the Canberra office of the Aboriginal Legal Service (NSW/ACT) (the ALS); the Women's Legal Centre; and Legal Aid ACT.

5.1. Aboriginal Legal Service (NSW/ACT)

The ALS assists Aboriginal and Torres Strait Islander men, women and children through representation in court, advice and information, outreach support, referrals and access to brokerage funds. As a small jurisdiction, the ACT Government has committed significant additional resources to augment the funding provided by the Federal government to ensure that the local community has access to, and receives, much needed services.

In addition to an additional lawyer, the ACT Government funds field officers that work with the ALS' lawyers as cultural translators and deliver four key community justice programs:

- *Front Up Program*

This program supports Aboriginal and Torres Strait Islander men and women who have an outstanding warrant or have breached bail to 'front up' and seek resolution of the matter without them being held in custody.

- *Interview Friends*

The Interview Friends Program provides support to Aboriginal and Torres Strait Islanders who have been arrested by having another Aboriginal or Torres Strait Islander person accompany them during the police interview process to ensure the rights of the person in custody are protected.

- *Galambany Court Support*

The Galambany Court Support Program provides culturally appropriate support and assistance to Aboriginal and Torres Strait Islander adults who are about to be or who have been sentenced by the Galambany Court. The program is designed to provide practical assistance and service liaison support to ensure participants comply with orders of the Court.

- *Extended Throughcare Program Support*

The Extended Throughcare program works in collaboration with the ACT Corrective Services Throughcare Unit to provide practical, culturally-appropriate support for Aboriginal and Torres Strait Islander people exiting the Alexander Maconochie Centre following a custodial sentence.

5.2. Custody Notification Service

The ALS also provides the Custody Notification Service (CNS) that investigating officers are to contact when an Aboriginal or Torres Strait Islander is taken into police custody in connection with an offence which is punishable by more than 12 months imprisonment and any Commonwealth offence. The CNS is a key measure to protect the welfare and fundamental legal rights of Aboriginal and Torres Strait Islanders in custody. The ACT Government remains fully committed to the service and supports expanding the CNS nationally. Work is ongoing to strengthen the legislative provisions for the service.

5.3. Aboriginal and Torres Strait Islander Women's Access to Justice Program

The ACT Government has engaged the Women's Legal Centre in the ACT to provide culturally appropriate case management support and legal assistance for Aboriginal and Torres Strait Islander women and their children. Women can seek support for a range of law and justice matters including domestic and family violence, care and protection, family law and discrimination issues. Following concerns of unmet need for legal assistance and case management support, the ACT Government has recently increased the funding under the agreement to build capacity in the program and ensure better outcomes for Aboriginal and Torres Strait Islander women and their families.

5.4. Legal Aid ACT

Legal Aid ACT also provides legal services for the Aboriginal and Torres Strait Islander, and is the referral point when a conflict of interest prevents the ALS from acting on community members' behalves. Legal Aid ACT is able to assist Aboriginal and Torres Strait Islander people with any legal matter, and employs experienced Aboriginal Liaison Officers to provide support, advocacy and service liaison.

5.5. Aboriginal and Torres Strait Islander frontline staff

Providing a culturally sensitive and specialist service response is considered critically important to achieving positive justice outcomes for Aboriginal and Torres Strait Islander people. In ACT Corrective Services the number of Aboriginal and Torres Strait Islander staff doubled between mid 2015 to mid 2017 (from 10 to 21). In addition, the following justice agencies either have, or are the process of actively recruiting, Aboriginal and Torres Strait Islander frontline staff:

- ACT Policing;
- Victim Support ACT;
- Child and Youth Protection Services, including youth justice;
- Human Rights Commission;
- Canberra Community Law; and the
- ACT Ombudsman's office.

5.6. ACT Law Courts and Tribunal 'Access to Courts Consultation'

In May 2017, the ACT Law Courts and Tribunal Cultural Diversity Committee conducted a workshop with the Aboriginal and Torres Strait Islander community to identify practical measures to improve access to the Law Courts. Led by the Judiciary, the project engaged independent Aboriginal consultants to conduct a literature review, facilitate a one-day workshop and report back to the Committee on the findings. The workshop focused on improving access to Courts for defendants in criminal matters; victims of crime and those seeking protection orders; and those with child protection or civil litigation matters. Attended by the Chief Justice, Chief Magistrate and judicial officers from the Cultural Diversity Committee, the event was a unique and important opportunity to build a positive relationship between the Judiciary and the Aboriginal and Torres Strait Islander community.

5.7. Literacy and the law

There is a need to consider the extent to which the language, structure or format of information provided to court users operates as a barrier to justice and to develop innovative solutions in this area. Despite the efforts of legal assistance services to educate and support Aboriginal and Torres Strait Islander people to understand their legal obligations, there remains concern that people who are the subject of bail conditions or good behaviour orders often do not understand their obligations or the consequences of non-compliance. Under the Bail Support trial (see 3.2 above) infographics are being designed as a key strategy for improving client understanding of their bail order and

individual support plan. If proven effective, infographics could be a practical measure for making court documentation and correspondence more accessible.

6. Alternative justice models

Alternative justice models offer a mechanism for the Aboriginal and Torres Strait Islander community to participate in the justice system and contribute to positive justice outcomes. Reducing incarceration and reoffending rates, and increasing community safety through less crime relies on all levels of government working together with Aboriginal and Torres Strait Islander communities, peak bodies and the social service sector to develop culturally appropriate solutions.

6.1. Galambany Circle Court

The Galambany Circle Court (Galambany Court – formerly the Ngambra Circle Sentencing Court) has existed as part of the ACT Magistrates Court jurisdiction since 2004. The Galambany Court provides a culturally sensitive sentencing process that recognises the ongoing disadvantage experienced by Aboriginal and Torres Strait Islander people in the criminal justice system. The Court draws on the skills, commitment and cultural expertise of a panel of respected elders and leaders from the Aboriginal and Torres Strait Islander community in determining an appropriate sentence for an offender.

Community Panel Members are involved at two stages of the circle sentencing process. Firstly, the panel assess a defendant's suitability for circle sentencing. Secondly, the panel sits alongside the presiding Magistrate and makes sentencing recommendations following a discussion with the defendant about the nature of the offence, their current circumstances, family history, experiences of trauma and grief and any events of cultural relevance.

Galambany Court is best conceptualised as a 'step in the sentencing proceeding' rather than a stand-alone court. Circle sentencing in the ACT is currently only available for adults; however, work towards establishing a circle court for Aboriginal and Torres Strait Islander children and young people is underway.

6.2. Restorative Justice

The Restorative Justice Unit (RJU) has been part of the ACT criminal justice system for over 12 years. The RJU brings victims, offenders and their personal supporters together to talk about an offence in a carefully managed, safe environment. Two Indigenous Guidance Partners provide cultural support, aiding engagement and increasing participation by Aboriginal and Torres Strait Islanders.

Previously only available for youth matters, in 2016 the RJU commenced the referral of adult matters and expanded to more serious matters for adults and young people. Preparations are underway to implement Phase 3 of the Restorative Justice Scheme and commence the referral of adult domestic violence and sexual offence matters in 2018. Expansion of the scheme increases the options available to victims and strengthens the ACT diversionary framework.

7. Cultural considerations at sentencing

In March 2015, the ACT Standing Committee on Justice and Community Safety tabled its report on the *Inquiry into Sentencing* in the ACT¹³ and recommended a number of important reforms that the government has considered, and in part, implemented under the Justice Reform Strategy.

7.1. Aboriginal and Torres Strait Islander Experience Court Reports

The ACT Government agreed to the Standing Committee's recommendation (Recommendation 18) to legislate to explicitly require the courts to consider the Aboriginal or Torres Strait Islander status of offenders, acknowledging that it was important to first determine the best approach.

In response to a related recommendation (Recommendation 20), the ACT Government commissioned Legal Aid ACT to design a framework for the creation of specialised reports similar to *Gladue* reports in Canada. Aboriginal and Torres Strait Islander Experience Court Reports aim to inform the court of any relationship between the offending of an accused person and his or her Indigenous status. The reports provide the courts with pre-sentence information about an offender's community, family and personal circumstances and the impact of the cultural, social and historical issues confronted by Aboriginal and Torres Strait Islander people.

The proposal has recently been completed and is being considered in the development of a trial of this type of specialised report.

7.2. Culturally relevant sentencing options

Embedding culturally relevant sentencing options in the justice framework is essential for achieving a reduction in incarceration and reoffending rates. The Standing Committee's recommendations (Recommendation 22) reference the provision of a 'diversity of sentencing options so as to foster appropriate pathways for the punishment and rehabilitation of Indigenous offenders and reduce rates of Indigenous imprisonment in the ACT'.¹⁴

Outward Bound Australia has been engaged to deliver a 'Skills for Life' program as an initial step towards addressing this need. Targeting Aboriginal and Torres Strait Islander young men and women aged 18 to 25 years, 'Skills for Life' builds resilience, self-awareness, self-confidence, teamwork skills and leadership qualities through gender-specific overnight and five-day camps. Outward Bound engaged an Aboriginal and Torres Strait Islander consultant to tailor its high impact adventure therapy program for Aboriginal and Torres Strait Islander participants and integrate a cultural program into the course framework.

¹³ Standing Committee on Justice and Community Safety, *Inquiry into Sentencing*, (March 2015), Report Number 4, <http://www.parliament.act.gov.au/_data/assets/pdf_file/0019/707212/JACS-Ctee-report-for-Inquiry-into-Sentencing-FINAL.pdf>

¹⁴ ACT Government, *Justice Reform Strategy: Second Stage Report*, (July 2016) <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/JACS_JRStrat_PArt_2.3_FINAL_.pdf> 26.

7.3. Mandatory sentencing

While mandatory minimum sentencing and mandatory non-parole periods have not been introduced in the ACT, it is an issue covered in the Inquiry's Terms of Reference that warrants mention. It is the ACT Government's position that any form of mandatory sentencing can lead to unjust, indiscriminate, and potentially arbitrary outcomes for individuals. Mandatory sentencing can interfere with the balance required in sentencing and undermine judicial independence, removing from the judge or magistrate the ability to deal with the circumstances of each individual case. As such, the ACT Government remains strongly opposed to the mandatory sentencing approach.

8. Offender programs

ACT Corrective Services (ACTCS) has developed a cultural program stream that runs alongside its compendium of cognitive based learning programs delivered at the AMC, and in the community for offenders under supervision. Programs are designed to assist rehabilitation and re-integration and reduce reoffending while strengthening cultural connection.

Cultural programs within the AMC include:

- *A Culture and Land Management Program* that integrates aspects of traditional culture, art, music, horticulture and land management while improving language, literacy and numeracy skills;
- *The Indigenous Traditional Culture Healing Yarning Arts Program* focusing on art and music to create positive social bonds and self pride;
- *An Elders and Community Leaders Visitation Program* that provides an important cultural link and allows Elders to support and monitor the welfare of Aboriginal detainees;
- *Counselling through Relationships Australia's Aboriginal and Torres Strait Islander Dhunlung Yarra Service* staffed by Aboriginal professionals;
- A weekly social and emotional well-being program delivered by Winnunga Nimmityjah Aboriginal Health Service;
- Pastoral care under a specific Aboriginal and Torres Strait Islander chapel service;
- Celebrations to mark NAIDOC Week including a family day and a community exhibition of detainee artworks; and
- Reintegration activities with Aboriginal organisations and programs for selected detainees as part of the Transitional Release Centre (TRC) day release program.

Importantly, key Aboriginal and Torres Strait Islander organisations are involved in program delivery in the AMC, providing continuity upon release.¹⁵

¹⁵ See *Table 1. ACTCS Cultural Programs by detainee sex and legal status* at Appendix A for further details.

8.1. Programs on remand

Detainees on remand have access to a range of offence related programs and access to all cultural programs. Aboriginal and Torres Strait Islander detainees may access cultural programs upon entry.

Offence specific programs such as the Violence Intervention Program (VIP), the Domestic Violence Program (DAP), the Sober Driver Program and the Adult Sex Offender Program (ASOP) are not available given that their participation could have legal implications at sentencing. See Appendix A for a full description of programs offered.¹⁶

8.2. Programs for female detainees

The unique and complex needs of women in prison require a tailored program response. A vast majority of female detainees have experienced a life punctuated by trauma, disadvantage and loss, and many are the survivors of physical and sexual violence. In the AMC, female detainees have access to range of programs and rehabilitation supports focused on trauma, alcohol and drug abuse, parenting and building positive relationships. Individual counselling services are also available through the AMC Corrections Psychological Support Service (CPSS), ACT Health Alcohol and Drug Service, Directions ACT (AOD service) and Relationships Australia Dhunlung Yarra Service.

8.3. Post-release support

Post-release support is provided through the Extended Throughcare Program that is designed to work with detainees pre-release and coordinate the service response post-custody to support full reintegration back into the community. Through service agreements with community organisations, clients are provided outreach support, advocacy, service liaison and access to brokerage funds. As the program transitions into its next phase of development, greater attention has been given to the cultural needs of Aboriginal and Torres Strait clients and the need for a tailored service response.

9. Promoting compliance with court orders

For Aboriginal and Torres Strait Islander people in the ACT, over a third of police charges result from offences against justice procedures, government security and government operations, a much higher proportion than for non-Indigenous offenders.¹⁷

Using a co-location model, ACTCS partnered with the Winnunga Nimmityjah Aboriginal Health Service to create a reporting centre for Aboriginal and Torres Strait Islander adult offenders on supervised orders. The service enables offenders to meet reporting conditions at a culturally appropriate facility while encouraging access to the range of health and wellbeing services offered there.

¹⁶ See Table 2. *ACTCS Compendium of Programs by detainee sex and legal status.*

¹⁷ ACT Government, *Statistical Profile Key Highlights Summary: ACT Criminal Justice*, (March 2017), <http://cdn.justice.act.gov.au/resources/uploads/IACS/2_ACT_Criminal_Justice_Statistical_Profile_Key_Highlights_Summary_-_March_2017_Final.pdf>

ACTCS has also earmarked a culturally sensitive interview space at the Community Corrections premises that will provide an appropriate place for Aboriginal and Torres Strait Islander offenders to meet with correctional staff and legal representatives. In addition to physical considerations, ACTCS employs Aboriginal and Torres Strait Islander staff in identified and non-identified positions to provide culturally appropriate monitoring and support, and develop cultural competence within ACTCS.

These service improvements, while valuable, are yet to curb the rate of justice procedures among Aboriginal and Torres Strait Islander offenders. Work is now underway to expand the remit of the community justice program, Front Up, which would see ACTCS refer a client at risk of being breached for additional community support.

10. Female offenders

As with other jurisdictions in Australia, the ACT is experiencing a marked increase in female detainee numbers, with a peak of 45 women recorded in the first quarter of 2017.¹⁸ In the same period, Aboriginal and Torres Strait Islander females accounted for around one quarter of total female detainees at the AMC. Of these, 42 per cent were in custody for remand and 58 per cent were sentenced detainees.

The impact of female incarceration can be especially devastating for families where children are involved. In recognition of this, ACTCS Extended Throughcare Program is accessible to female offenders held on remand or under sentence. In addition, work is underway to strengthen the community justice response for Aboriginal and Torres Strait Islander women in order to prevent and divert women from contact with the system, and ensure they have access to a culturally appropriate system response.

11. Youth Justice

Aboriginal and Torres Strait Islander young people continue to be a focus for youth justice responses in the ACT. In 2012, the ACT Government introduced the *Blueprint for Youth Justice in the ACT 2012-2022* (the Blueprint), a ten-year strategy aimed at improving outcomes for young people in the justice system in the ACT. Over the past five years, the Blueprint has demonstrated strong results through an initial action plan and continued collaboration between government and community organisations. In the long term, the Blueprint seeks to achieve a community where fewer children and young people are at risk or engaged in offending, and the ACT is a safer place to live.

Since the introduction of the Blueprint, progress toward reducing the number of Aboriginal and Torres Strait Islander young people under supervision is evident, with a 31 per cent decrease between 2011-12 and 2015-16.¹⁹ Aboriginal and Torres Strait Islander young

¹⁸ ACT Corrective Services, Internal data source (July 2017).

¹⁹ AIHW youth justice in Australia 2015-16, Table 11b.

people in detention has also declined, with a reduction of almost 48 per cent since 2011-12.²⁰

While the ACT has achieved significant reductions in the number of young people in contact with the youth justice system, reducing the over-representation of Aboriginal and Torres Strait Islander young people in the justice system remains an ongoing challenge. Further work is also required to enhance support for young people and their families at key touch points in the youth justice system.

In August 2017, the Blueprint for Youth Justice Taskforce (the Taskforce) convened to address these issues, and develop the areas of focus for the next five years of the Blueprint. The Taskforce will oversee a series of focus groups and targeted engagements with stakeholders in youth justice and community members, including young people, to identify priorities for the next five years.

12. Out-of-home care

Although Aboriginal and Torres Strait Islander children make up only three per cent of the ACT's child population, 26 per cent of children in out of home care identify as Aboriginal and Torres Strait Islander. In the ACT, Aboriginal and Torres Strait Islander children and young people are 12.6 times more likely to be in out of home care than non-Indigenous children and young people. Nationally, Aboriginal and Torres Strait Islander children and young people are 9.8 times more likely than non-Indigenous children and young people to be in out of home care.²¹

The ACT continues to place most Aboriginal and Torres Strait Islander children and young people with relatives, kin and other Aboriginal and Torres Strait Islander carers whenever possible. In 2015-16, the proportion of Aboriginal and Torres Strait Islander children placed with relatives/kin when they cannot live safely at home in the ACT was 60 per cent.²²

In 2015, the ACT introduced *A Step Up for Our Kids: One Step can Make a Lifetime of Difference* (Out of Home Care Strategy 2015-20). Under the Strategy, dedicated services were introduced to provide support to Aboriginal and Torres Strait Islander families. The service system has a specific focus on keeping Aboriginal and Torres Strait Islander families together with a view to reducing Aboriginal and Torres Strait Islander children coming into care.

In line with this objective, the ACT Government recently announced a Family Group Conferencing pilot, aimed at empowering Aboriginal and Torres Strait Islander families to identify their own solutions to keeping children safe at home and out of the statutory care system. The pilot supports the Government's commitment to implement the *Aboriginal and*

²⁰ AIHW Youth Justice in Australia 2015-16, Tables S90b/75b.

²¹ AIHW 2016, *Child Protection in Australia 2015-16*. Table 5.2: Children in out-of-home care, by Indigenous status, states and territories, 30 June 2016 (number and number per 1,000), p.52

²² AIHW 2016, *Child Protection in Australia 2015-16*. Figure 5.5: Aboriginal and Torres Strait Islander children in out-of-home care, by relationship of carer, states and territories, 30 June 2016, p.54

Torres Strait Islander Child Placement Principle. Delivery of Family Group Conferencing adheres to the prevention and participation domains of the placement principle.

Child and Youth Protection Services provide a range of supports for Aboriginal and Torres Strait Islander children and young people involved with the statutory child protection system. This work is led by the Cultural Services Team in the Community Services Directorate, which provides support and advice to Child and Youth Protection Services staff when working with Aboriginal and Torres Strait Islander children, young people and their families.

The Cultural Services Team develops a Cultural Plan for each Aboriginal and Torres Strait Islander child and young person in out of home care, advises on placement decisions under the *Children and Young People Act 2008* and in line with the *Aboriginal and Torres Strait Islander Child Placement Principle*, and provides cultural input into all aspects of case management and engagement. The team also works with families, assists Child and Youth Protection Services staff to understand the cultural experience of Aboriginal and Torres Strait Islander families and engages with community based agencies such as Uniting, Winnunga Nimmityjah Aboriginal Health Service and Gugan Gulwan Youth Aboriginal Corporation.

In June 2017, the ACT Minister for Disability, Children and Youth announced an independent review of Aboriginal and Torres Strait Islander children involved with the ACT child protection system. The review will provide a deeper understanding of the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the system and how the ACT should best respond.

13. Traffic offences and fines

Aboriginal and Torres Strait Islander people experience significant barriers to obtaining and sustaining a licence relating to low level literacy, low income, challenges navigating a mainstream system and limited access to both licenced drivers and registered vehicles for supervised practice. What starts as a social justice issue often becomes a criminal justice issue.

Over recent years between 12% and 14% of offending among Aboriginal and Torres Strait Islander people in the ACT related to traffic and vehicle regulatory offences. Sentencing databases illustrate that traffic and vehicle regulatory offences ordinarily result in the imposition of a monetary fine; however, between 15% and 18% of traffic-related charges result in a term of imprisonment²³.

Nationally there is recognition that tailored supports are necessary to improve access to the licensing system and ensure drivers undertake road safety education. Projects such as the *Driving Change* program in NSW can help to remove the social and systemic barriers to

²³ ACT Government, *Statistical Profile: ACT Criminal Justice*, (March 2017), <http://cdn.justice.act.gov.au/resources/uploads/JACS/4_ACT_Criminal_Justice_Statistical_Profile_March_2017_-_FULL_VERSION_-_FINAL_17_07_07.pdf>

licence participation and in turn prevent the domino effect into offending. A proposal for a driver licensing pilot project in the Aboriginal and Torres Strait Islander community is currently being considered for delivery in the ACT.

13.1. Infringements and the Work and Development Program

For many Aboriginal and Torres Strait Islander people, financial barriers prevent payment of fines, leading to increased contact with the criminal justice system when unresolved debt leads to disqualified driving. The Work and Development Program provides eligible clients with an opportunity to pay off traffic or parking infringements incurred in the ACT by undertaking unpaid work, education, mentoring, counselling or treatment. Having identified a lack of culturally appropriate options under the scheme, cross government work is underway to register Aboriginal organisations and programs as providers to increase uptake by Aboriginal and Torres Strait Islanders.

14. Data collection

Data collection relating to Aboriginal and Torres Strait Islander people is inconsistent across the law and justice sector, hindering policy-making and making it difficult to determine the true performance of certain measures. Under the *Justice Reinvestment Strategy* and the *Aboriginal and Torres Strait Islander Justice Partnership*, the ACT Government has been striving to resolve the blind spots in the data.

A significant advancement in this area has been the introduction of a new court management system in the ACT Law Courts and Tribunal. The criminal module of the Integrated Court Management System (ICMS) is scheduled to go live in mid 2018 with reports to be made available in mid 2019. While the courts will not be directly identifying Aboriginality, the ICMS will use data migrated from ACT Policing and flag those defendants who identified as Aboriginal or Torres Strait Islander at the point of arrest. Once implemented, the ICMS will have the ability to report on Aboriginal and Torres Strait Islander case outcomes and sentences, filling what has been a significant gap in criminal justice data to date.

15. Looking ahead

The issues in the criminal justice system cannot be addressed solely at the crisis point and are inextricably linked with issues in health, early childhood, education, employment, economic participation, housing and child protection. As the ninth Closing the Gap report shows, national progress against headline indicators has been slow and must accelerate. All levels of government are compelled to reflect on the evidence and consider where and how to change course.²⁴

Breaking the cycle of disadvantage and intergenerational trauma requires solutions that are both future-oriented and responsive to the past. Providing meaningful employment and

²⁴ Department of Prime Minister and Cabinet, 'Executive Summary', *Closing the Gap: Prime Minister's Report 2017*, (Executive Summary), < <http://closingthegap.pmc.gov.au/executive-summary> >

access to appropriate housing is as critical as providing culturally sensitive programs that respond to trauma, loss and grief, addiction, violent behaviour, experiences of abuse and mental illness. Intervening early and interrupting the trajectory from state care to imprisonment is crucial, yet the balance of funding invariably tips towards the pointy-end. In a climate of fiscal restraint, innovation becomes increasingly important. Funding arrangements that offer a level of flexibility encourage community-led innovation where projects develop at the pace of the community and in response to emerging trends. Funding models that respond to the unique needs and requirements of each community reflect the fundamental principle of self-determination and, as such, offer promise.²⁵

Aboriginal and Torres Strait Islander communities across Australia have tirelessly explained that in order to have a positive impact, the response must have local and cultural relevance. Aligned with the Commonwealth Government's commitment to 'work with Aboriginal and Torres Strait Islander people',²⁶ the ACT Government recognises that true gains are made when Aboriginal and Torres Strait Islander people are actively engaged in program design, implementation and evaluation. The ACT Government is committed to strengthening decision-making structures and ensuring Aboriginal and Torres Strait Islander people have the opportunity to guide policymaking in key domains.

15.1. COAG targets and national action

The ACT Government has consistently supported setting justice targets under the COAG 'Closing the Gap' strategy. Overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system is a national issue that requires a national strategy.

The ACT experience suggests that collective national action became harder when the National Indigenous Justice Forums ceased. Held between 2006 and 2012, the Forums were an opportunity for frontline staff and policy-makers to share program and policy successes, and learn about justice initiatives found to work across Australia and internationally. A proposal to align the Forums with the work of the Indigenous Justice Clearinghouse has yet to be implemented. Although a strong national justice coalition of peak organisations has emerged to drive the *Change the Record* campaign, winding back the National Forums reinforced traditional silos, and resulted in a regression in terms of developing a national approach. Maintaining dialogue across jurisdictions is crucial to building a national framework capable of achieving a reduction in incarceration rates.

The ACT Government supports nuanced 'stretch' justice targets that commit all jurisdictions to developing practical, holistic solutions to reducing incarceration while accounting for unique jurisdictional challenges. Similarly, there is a need to develop clear targets to overcome the national crisis in child protection.²⁷ Sustainable solutions lie in preventing

²⁵ Putt J & Yamaguchi J 2015, 'The implementation of Indigenous crime and justice policies and programs in Australia: issues and challenges', *Indigenous Justice Clearinghouse*, Brief 18, < <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief018.pdf>>

²⁶ Department of Prime Minister and Cabinet, 'A New Way of Working Together', *Closing the Gap: Prime Minister's Report 2017*, < <http://closingthegap.pmc.gov.au/a-new-way-of-working-together>>

²⁷ Secretariat of National Aboriginal and Islander Child Care 2017, *Closing the Gap Report declares national progress "too slow"*, < <http://www.snaicc.org.au/closing-gap-report-declares-national-progress-slow/>>

contact with the justice system and working with children and families early to strengthen and stabilise their circumstances. Overcoming disadvantage in Aboriginal and Torres Strait Islander communities requires a complete set of targets and sustained financial investment to deliver improvements in all key areas.

16. Conclusion

The situation in the ACT mirrors the national crisis with Aboriginal and Torres Strait Islander people overrepresented in the criminal justice system, as both offenders and victims. Despite targeted government strategies and significant justice reforms, incarceration rates have risen. This submission has looked primarily at those initiatives or services being delivered or developed in the ACT to address this crisis on a local level.

The justice reform approach in the ACT has included a consideration of cultural matters and has strived to account for the impact of intergenerational oppression and trauma. Racism, discrimination and unintended bias can thrive in settings with generous discretionary powers and poor cultural understanding. Embedding cultural best practice guidelines at all points of contact in criminal justice and child protection systems and setting hard employment inclusion targets are crucial mechanisms for building cultural proficiency and reducing systemic discrimination in these systems.

While sustained, strategic action on national, state and regional levels is required to redress the disadvantage, the reforms and initiatives underway in the ACT offer a degree of optimism and a platform from which to continually advance.

APPENDIX A

Table 1. ACTCS Cultural Programs by detainee sex and legal status

Program	Women		Men	
	Remand	Sentenced	Remand	Sentenced
In-Custody				
<i>Culture and Land Management Program</i> : Integrates traditional culture, art, music, horticulture and land management with language, literacy and numeracy skills. Delivered with community agencies including Winnunga Nimmityjah Aboriginal Health Service	X	X	X	X
<i>ITCHY (Indigenous Traditional Culture Healing Yarning) Arts Program</i> : An arts and music rehabilitation program delivered with Gugan Gulwan Youth Aboriginal Corporation and Winnunga Nimmityjah Aboriginal Health Service.			X	X
<i>Winnunga Social Wellbeing Program</i>	X	X	X	X
<i>Elders and Community Leaders Visitation Program</i> : A program strengthening cultural connection through visits to the AMC by local community Elders and other respected leaders.	X	X	X	X
<i>Indigenous Pastoral Care</i> : Culturally relevant pastoral care under a specific Aboriginal and Torres Strait Islander chapel service.	X	X	X	X
<i>Indigenous Counselling</i> : provided by Dhunlung Yarra Service staffed by Aboriginal professionals within Relationships Australia Canberra and Region.	X	X	X	X
<i>Transitional Release Centre</i> : Opportunity to undertake reintegration activities including approved day release. For Indigenous detainees, this includes the Winnunga Nimmityjah Aboriginal Health Service Men's Group.				X
<i>NAIDOC Week AMC Family Day</i> : An annual opportunity for family and friends to acknowledge and celebrate Aboriginal and Torres Strait Islander culture.	X	X	X	X
<i>NAIDOC Community Art Exhibition</i> : An exhibition of detainee and offender artwork at the Community Services #1 Gallery in Narrabundah.	X	X	X	X
Community-Based				
<i>NAIDOC Community Art Exhibition</i> : (as above). Provided in the community for current or previous ACTCS clients	X	X	X	X
<i>Yeddung Mura (Good Pathways) Aboriginal Corporation</i> : ²⁸ Additional casework support for Aboriginal and Torres Strait Islander people leaving custody.	-	-	-	-
<i>Aboriginal Legal Service</i> : ²⁹ Throughcare support to Aboriginal and Torres Strait Islander clients (provided as part of the Community Justice Programs).	-	-	-	-
<i>Aboriginal Client Services Officer</i> : An Identified Position within ACTCS for a Community Corrections Officer to act as a liaison point for Aboriginal and Torres Strait Islander people on probation or parole		X		X
<i>Community Based Reporting Centre</i> : Community Corrections clients may report to Winnunga Nimmityjah Aboriginal Health Service for supervised community-based orders		X		X

²⁸ Eligibility under review to improve outcomes for Aboriginal and Torres Strait Islander clients.

²⁹ As above.

Table 2. ACTCS Compendium of Programs by detainee sex and legal status

Program	Women		Men	
	Remand	Sentenced	Remand	Sentenced
<i>Exploring Change</i> : A readiness program designed to prepare participants for group programs and explore individuals' motivation to change.	X	X	X	X
<i>Adult Sex Offender Program (ASOP)</i> : A therapeutic group-based program for adult men who have been convicted of a sexual offence or sexually motivated offence (current or prior).				X
<i>Cognitive Self Change Program (CSC)</i> : A group program designed to facilitate skill development in areas such as objectivity, recognition of risky thinking and attitudes and beliefs that can lead to harmful behaviour.		X		X
<i>Domestic Abuse Program (DAP)</i> : A 40 hour group program for men who are convicted of a domestic abuse offence against their female partner or spouse.				X
<i>Violence Intervention Program (VIP)</i> : A modularised, group based therapeutic program targeted at men who have been convicted of a violence related offence.				X
<i>Self Management and Recovery Training (SMART) Program</i> : A psycho-educational program assisting all offenders with an AOD or other addiction.	X	X	X	X
<i>First Steps to Anger Management Program</i> : A CBT based program for men who have significant issues in managing their emotional regulation, in particular, anger.			X	X
<i>First Steps Alcohol and Drug Course</i> : A 12 hour drug educational program targeting men and women with offending behaviour related (but not causal) to substance abuse.	X	X	X	X
<i>Sober Driver Program</i> : An 18 hour group education program to increase understanding of the legal, health and social impacts of drink or drug driving and assist participants to develop strategies and skills to prevent reoffending.		X		X
<i>Being a Man and a Dad</i> : A group program designed for men in custody with parenting roles.			X	X
<i>Harm Minimisation</i> : A two hour session which discusses way to minimise harms associated with AOD use.	X	X	X	X
<i>Seasons for Growth</i> : An educational program for all detainees who have experienced significant loss, grief or change.	X	X	X	X
<i>Out of the Dark</i> : A 12 hour program for women who have experienced domestic and family violence. <i>NB>Women who have been victims of domestic violence but have also been perpetrators are not eligible to participate.</i>	X	X		
<i>Self Care for Women</i> : Focused on learning strategies to cope with stress and improve mental and physical health.	X	X		
<i>Directions ACT</i> : Individual AOD counselling.	X	X	X	X
<i>ACT Health Alcohol and Drug Service (ADS)</i> : Individual counselling.	X	X	X	X
<i>Solaris Therapeutic Community</i> : A voluntary program for adult males who have alcohol and other drug dependency issues.				X
<i>Schema Group Therapy</i> : A group program focused on strengthening coping strategies, weakening maladaptive coping modes and breaking schema-driven life patterns using a therapeutic community approach to treatment and recovery.		X		X
<i>Real Understanding of Self-Help (RUSH) Program</i> : A group program to assist individuals who are vulnerable to suicidal and self-harming behaviour.		X		X