15. Australian Red Cross

Name of organisation: Australian Red Cross

Proposal 2–1

Australian Red Cross supports the proposal to adopt a provision that requires bail authorities to consider any “issues that arise due to a person’s Aboriginality”, acknowledging that community safety is of utmost importance and that any provisions should be balanced with the need to ensure community safety.

We support the findings of the Human Rights Law Centre and Change the Record Coalition[[i]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn1%22%20%5Co%20%22) that recommends legislation is amended to include consideration for the historical and systematic factors  contributing to the over representation of Aboriginal and Torres Strait Islander peoples.

Further, we acknowledge the impact of imposed bail conditions. Many common conditions included in bail agreements do not take cultural obligations into consideration. This results in bail conditions being a large contributor to breaches of bail[[ii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn2%22%20%5Co%20%22) and, as a result, imprisonment rates for Aboriginal and Torres Strait Islander peoples[[iii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn3%22%20%5Co%20%22).

This provision is likely to reduce the number of Aboriginal and Torres Strait Islander peoples held on remand as a result of bail refusal.  Applying such a provision will support greater judicial discretion and ensure courts consider bail applications with due consideration made to the person’s cultural practices, obligations, and historical disadvantage.

[[i]](https://www.alrc.gov.au/%22%20%5Cl%20%22_ednref1%22%20%5Co%20%22) Human Rights Law Centre & Change The Record Coalition (2017). Over Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women’s Growing Over-Imprisonment. Downloaded 2/08/2017 from <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf>

[[ii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_ednref2%22%20%5Co%20%22) Price Waterhouse Coopers Indigenous Consulting (2017). Indigenous incarceration: Unlock the facts. Downloaded 27/6/2017 from <https://www.pwc.com.au/press-room/2017/indigenous-incarceration.html>

[[iii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_ednref3%22%20%5Co%20%22) Parliament of Australia (2013). Value of a justice reinvestment approach to criminal justice in Australia. Canberra: Commonwealth of Australia. Downloaded 14/07/2017 from <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index>

Proposal 2–2

Australian Red Cross supports the proposal for governments to work with peak Aboriginal and Torres Strait Islander organisations to develop solutions and meet identified service gaps to increase the number of Aboriginal and Torres Strait islander peoples who are able to access bail and diversionary options.

Australian Red Cross further supports the close collaboration with Aboriginal and Torres Strait Islander organisations and communities to identify, scale and adapt evidenced based successful solutions to meet local needs in relation to bail and diversionary options.

Diversionary options continue to be less accessible to Aboriginal and Torres Strait Islander peoples than others in the community, which in turn contributes to rising remand rates[[i]](https://www.alrc.gov.au/#_edn1). In addition to the limited use of diversionary options, it is well documented that Aboriginal and Torres Strait Islander peoples are less likely to receive bail and more likely serve a period on remand[[ii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn2). This can be partly attributed to the fact that Aboriginal and Torres Strait Islander peoples are more likely to have a criminal record, which impacts on their eligibility for bail.

Australian Red Cross works closely in partnership with Aboriginal and Torres Strait Islander organisations in the design, development and delivery of justice programs and believes that, in order to be successful, these must be driven and owned by Aboriginal and Torres Strait Islander communities and organisations

[[i]](https://www.alrc.gov.au/#_ednref1) Closing the Gap Clearinghouse (AIHW & AIFS) 2013. Diverting Indigenous offenders from the criminal justice

system. Produced for the Closing the Gap Clearinghouse. Resource sheet no. 24. Canberra: Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies.

[[ii]](https://www.alrc.gov.au/#_ednref2) Blandford, J. and Sarre, R., (2009). Policing in South Australia’s remote and rural communities: preliminary observations from a novel police diversionary strategy for young Indigenous offenders. Police Practice and Research Journal, 10(3) p.187. Retrieved 14/07/2017 from <http://web.a.ebscohost.com.proxy.library.adelaide.edu.au/ehost/pdfviewer/pdfviewer?sid>

Question 3–1

Question 3–2

Question 3–3

Question 3–4

Question 3–5

Question 4–1

Question 4–2

Question 4–3

Question 4–4

Proposal 4–1

Australian Red Cross supports the proposal for governments to work with peak Aboriginal and Torres Strait Islander organisations to ensure that community based sentences are readily available and ensure barriers relating to remoteness and unattainable eligibility requirements are addressed.

The National Association of Community Legal Centres  have acknowledged that “the continued growth in imprisonment rate, despite falling crime rates, has been attributed to the introduction of harsher sentencing policies and political responses to social concerns about levels of crime”[[i]](https://www.alrc.gov.au/#_edn1).

Australian Red Cross believes that prisons should focus on people involved in serious crime and who pose a high risk to the community. Evidence shows that many people going into prison come from highly disadvantaged communities, are being imprisoned fro minor offences  and often have multiple and complex problems that are not addressed in prison.

Unless current sentencing practices are addressed, prison and recidivism rates will continue to increase. There are a number of areas where changes in sentencing practices could improve outcomes for Aboriginal and Torres Strait Islander peoples in contact with the justice system, communities and victims, including eliminating mandatory sentencing and other minimum and maximum penalties that impose increasing restrictions on judicial discretion[[ii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn2).

For this reason, we support the greater resourcing of community alternatives to prison. This should also include ongoing strengthened training for judicial officers and organisations providing support and programs that address justice-related issues, relating to Aboriginal and Torres Strait Islander issues and culture.  It is critical that local communities and peak Aboriginal and Torres Strait Islander organisations are at the centre of developing such solutions. Knowledge of the impact of reforms at the local level will help to ensure that people, who would have otherwise been fined, are not more readily ordered to the newly created alternative community based sentences, thus increasing the overall number of people involved in the justice system.

[[i]](https://www.alrc.gov.au/#_ednref1) Parliament of Australia (2013). Value of a justice reinvestment approach to criminal justice in Australia. Canberra: Commonwealth of Australia. Downloaded 14/07/2017 from <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index>

[[ii]](https://www.alrc.gov.au/#_ednref2) Law Council of Australia (2016) News from the Law Council of Australia: the mandatory sentencing debate.  Canberra: Law Council of Australia. Downloaded 7/07/2017 from <http://www.lawcouncil.asn.au/lawcouncil/index.php/law-council-media/news/352-mandatory-sentencing-debate->

Question 4–5

Proposal 5–1

Australian Red Cross supports the proposal for programs to be developed and delivered to people on remand and those serving short sentences.

We acknowledge the complexities and logistics relating to providing programs for people on remand and those serving short sentences. However, the aim of any prison system must be also to prevent people from re-offending. To achieve this, it is essential that there is an opportunity for people to address the complex and multiple problems that they face, while in prison. In this way, people will be better supported to successfully re-enter society and ultimately reduce the likelihood of the cycle of crime continuing for them, their families and their communities[[i]](https://www.alrc.gov.au/#_edn1).

Programs must however be developed by or alongside of Aboriginal and Torres Strait Islander organisation and communities. While these programs need not necessarily focus on meeting a criminogenic need, they must be proven to be holistic, culturally safe and appropriate.

Further, programs with a needs-based through-care focus that support and encourage community linkages should be a priority for people on remand or serving short sentences.  We have a number of programs that provide practical examples including;

* **WorkREDI** is a structured support, education and pre and post release mentoring program for adult offenders. WorkREDI supports offenders in a ‘through-care’ approach over a 9 month period (12 weeks prior to release and 6 months following release.). Participants are supported to successfully reintegrate back into society with a focus on developing the work ready skills needed for employment and/or other training opportunities.
* **Step Out** - is a through-care model that supports young people aged between 14 and 25 to assist them to realise that they have the ability to ‘step out’ of reoffending and support them to become an active part of their community The young people work with dedicated mentors with similar life experience to help them achieve their goals and reconnect with the community. According to local police, nine out of 10 participants would be institutionalised without this support.

[**[i]**](https://www.alrc.gov.au/#_ednref1) Australian Red Cross (2016) Vulnerability Report: Rethinking Justice. Accessed on 1/8/2017 from <http://www.redcross.org.au/files/VulnerabilityReport2016.pdf>

Question 5–1

Proposal 5–2

Question 5–2

Proposal 5–3

Question 5–3

Proposal 5–4

Proposal 6–1

Question 6–1

Question 6–2

Question 6–3

Question 6–4

Question 6–5

Question 6–6

Proposal 6–2

Australian Red Cross supports the proposal to introduce work and development orders. For many people living on a very limited income, unpaid fines and fees can be the first step into the justice system. The inability to pay a car registration or a public transport fare can escalate into imprisonment in lieu orders, so that Australians living in poverty end up paying fines by doing time in prison. The wide implementation of Work and Development Orders would provide an important diversionary option for vulnerable people struggling to pay existing fines.

The opportunity created through the scheme to address health problems and provide skills development and community engagement is supported by Australian Red Cross. People with a criminal record face difficulties in gaining employment, and often have poor education, lower socioeconomic status, high levels of drug and alcohol misuse, high levels of mental ill health and poor work histories. Not only do Work and Development Orders provide an opportunity to divert people from the system, but they also provide a unique opportunity to gain work place experience through volunteering and community work that can be conducted as part of the scheme[[i]](https://www.alrc.gov.au/#_edn1) (1). It is important that such a measure is sufficiently funded, in order to maximise participation in the scheme.

In some NSW regions, Australian Red Cross is a Work and Development Order Sponsor.  Our Driver Mentor Program in Wagga Wagga matches learner drivers with mentor driving instructors to help learner drivers obtain experience and meet ‘road hour’ requirements. This program currently offers 10% of participants the much needed opportunity to gain skills and credentials whilst simultaneously reducing their outstanding debt. For those under the age of 25, we provide mentoring as an approved activity. The program allows the young persons debt to be reduced by $1,000 per month. For those over 25, participation in one of the offered educational or skill development programs allows the individual to reduce their debt by $50 per hour.

[[i]](https://www.alrc.gov.au/#_ednref1) Ramakers A, Apel R, Nieuwbeerta P, Dirkzwager AJE & Van Wilsem J (2014). Imprisonment length and post-prison employment prospects. Criminology 52 pp. 399–427.

Question 6–7

Question 6–8

Question 6–9

Question 6–10

Proposal 7–1

Australian Red Cross supports the proposal for governments to work with Aboriginal and Torres Strait Islander organisations to identify gaps and build the infrastructure required to implement culturally appropriate community-based sentencing options. This is necessary, in order to improve the supports available and ultimately reduce the number of Aboriginal and Torres Strait Islander peoples who breach community based sentences.

Current legislation and stringent conditions attached to community based-orders are well understood to be drivers that result in the breach of community based orders, such as parole and breach of bail[[i]](https://www.alrc.gov.au/#_edn1)[[ii]](https://www.alrc.gov.au/#_edn2). Given that Aboriginal and Torres Strait islander peoples experience even higher rates of imprisonment for Justice Procedure Offences, we acknowledge the importance of this proposal in creating solutions that could have a significant impact on reducing remand rates and overall prison numbers.

We recommend the review of existing models aimed at supporting Aboriginal and Torres Strait Islander peoples be conducted as a collaboration between government, local Aboriginal and Torres Strait Islander communities, and Aboriginal and Torres Strait Islander peak bodies.  Australian Red Cross also supports the application of a community led justice reinvestment approach, as an appropriate vehicle to encourage a collaboration of this type in communities with high rates of offending.

[[i]](https://www.alrc.gov.au/#_ednref1) Grunseit, A., Forell, S., and McCarron, E. (2008). Taking justice into custody: the legal needs of prisoners. Sydney: Law and Justice Foundation of NSW. Downloaded 11/07/2017 from <http://www.lawfoundation.net.au/ljf/app/21457b6b736f1c99ca257491000b6e43.html>

[[ii]](https://www.alrc.gov.au/#_ednref2) Australasian Legal Information Institute (2016). NSW: University of New South Wales & University Of Technology. Downloaded 14/07/2017 from <http://www.austlii.edu.au/>

Question 8–1

Question 8–2

Question 9–1

Proposal 10–1

Question 10–1

Our  position is that the Closing the Gap policy should have a focus on Aboriginal and Torres Strait Islander incarceration and justice issues and should incorporate targets for reducing rates of  imprisonment for Aboriginal and Torres Strait Islander peoples[[i]](https://www.alrc.gov.au/#_edn1). (1)

We recommend:

* COAG include a Closing the Gap Target to reduce Indigenous incarceration by 50%.
* The Commonwealth lead the approach to enabling the development of strategies by Aboriginal and Torres Strait Islander organisations and communities to achieve this target.

Australian Red Cross emphasises the need to draw on the expertise, experience and previous recommendations put forward by Aboriginal and Torres Strait Islander organisations in the inquiry into Indigenous incarceration rates.

[**[i]**](https://www.alrc.gov.au/#_ednref1) Australian Red Cross (2016) Vulnerability Report: Rethinking Justice. Accessed on 1/8/2016 from <http://www.redcross.org.au/files/VulnerabilityReport2016.pdf>

Proposal 11–1

Question 11–1

Proposal 11–2

Question 11–2

Proposal 11–3

Question 12–1

Question 12–2

Question 12–3

Question 12–4

Question 12–5

Question 12–6

Question 13–1

As outlined in our Vulnerability Report[[i]](https://www.alrc.gov.au/#_edn1), Australian Red Cross supports the broader sector view that justice reinvestment offers a strong approach to transforming our justice systems. Evidence outlines that a justice reinvestment approach is more efficient and effective addressing the causes and reducing the need for (and greater cost of) incarceration while keeping communities safe.

The Australian application of justice reinvestment is driven by a community-led approach that redirects money away from incarcerating people and invests in locally driven and owned solutions aimed at addressing the underlying causes of crime[[ii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn2).

For a justice reinvestment approach to be successful, solutions to offending must be designed in partnership. To achieve this, policies and strategies must support appropriate resourcing and capacity building of Aboriginal communities and the agencies that work alongside them. Red Cross recommends place-based approaches are used to resource and build capacity, as these are underpinned by principles of empowerment and self-determination.

Further to this, a large scale commitment to justice reinvestment needs to be supported by a consistent national approach to data sharing and collection across a range of portfolio areas relevant to justice (including health, housing, education and child protection). In addition, a national reporting mechanism would ensure commitment to achieving measurable targets.

[**[i]**](https://www.alrc.gov.au/#_ednref1) Australian Red Cross (2016) Vulnerability Report: Rethinking Justice. Accessed on 1/8/2017 from <http://www.redcross.org.au/files/VulnerabilityReport2016.pdf>

[[ii]](https://www.alrc.gov.au/#_ednref2) Unlocking the future. Maranguka Justice Reinvestment Project in Bourke. Preliminary assessment.  Accessed 2\8\2017  <http://www.justreinvest.org.au/wp-content/uploads/2016/11/KPMG-Preliminary-Assessment-Maranguka-Justice-Reinvestment-Project.pdf>

Other comments?

Australian Red Cross welcomes the opportunity to make a submission to the ALRC Inquiry into incarceration rates of Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait peoples are over-represented within the justice system. Aboriginal and Torres Strait Islander people represent only 2.83%[[i]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn1)  of the Australian population, but make up 27% of our prison population and 55% of the youth justice population[[ii]](https://www.alrc.gov.au/#_edn2) .  We believe that this disparity is a national crisis that requires a national response where Aboriginal and Torres Strait Islander people are central to the design and implementation of strategies to address.

While the majority of Aboriginal and Torres Strait Islander peoples never come in contact with the law, for those who do, the justice system can start a vicious cycle of incarceration. The overrepresentation of Aboriginal and Torres Strait Islander peoples in the justice system is a result of a combination of disadvantage, substance abuse and institutional bias in the justice system[[iii]](https://www.alrc.gov.au/%22%20%5Cl%20%22_edn3).  The history of dispossession and trauma experienced by Aboriginal and Torres Strait Islander peoples is an underlying factor that requires a unique response from the justice system.

Prisons are a necessary part of society and play an important role in ensuring community safety. People who break the law warrant appropriate punishment, including appropriate custodial sentences. However, the aim of any justice system must be also to prevent people from re-offending, and for people who do not pose a threat to community safety, alternatives to incarceration must be considered.

Australian Red Cross believes that, in order to be successful, any response to justice issues for Aboriginal and Torres Strait Islander peoples must be driven and owned by Aboriginal and Torres Strait Islander communities and organisations.  Australian Red Cross further emphasises the need for this response to prioritise the necessary resources to work in partnership with Aboriginal and Torres Strait Islander organisations and communities to identify, scale and adapt proven solutions to meet local needs impacting on justice issues.

We further encourage the adoption of a Closing the Gap target to reduce Aboriginal and Torres Strait Islander incarceration by 50%. We believe that this target is necessary in order to drive accountability across States, Territories and the Commonwealth, and ensure that this important issue is kept on the national agenda.

We would welcome an opportunity to discuss this submission further, and to work collaboratively with the Commonwealth and others in order to achieve a reduction in the incarceration of Aboriginal and Torres Strait Islander peoples.

[[i]](https://www.alrc.gov.au/#_ednref1) Price Waterhouse Coopers Indigenous Consulting (2017). Indigenous incarceration: Unlock the facts. Downloaded 27/6/2017 from <https://www.pwc.com.au/press-room/2017/indigenous-incarceration.html>

[[ii]](https://www.alrc.gov.au/#_ednref2) Australian Bureau of Statistics. (2017) Census Reveals: We’re a Fast Changing Nation.  Accessed on 8/07/2017 from [http://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/6E48F1297C95696BCA258148000DBE59?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs%40.nsf/mediareleasesbyReleaseDate/6E48F1297C95696BCA258148000DBE59?OpenDocument)

[[iii]](https://www.alrc.gov.au/#_ednref3) Snowball, L and Weatherburn, D, (2007) Does racial bias in sentencing contribute to Indigenous overrepresentation in prison? (2007) The Australian Journal of Criminology 40(3) pp.272-290.