31. Public Health Association of Australia

Name of organisation: Public Health Association of Australia

Proposal 2–1

Proposal 2–2

PHAA supports this proposal to work with peak Aboriginal and Torres Strait Islander organisations to provide culturally appropriate bail support and diversion options. Aboriginal and Torres Strait Islander people, particularly young females, are more likely than others to experience short periods of time in prison on remand and short sentences.[1](https://www.alrc.gov.au/#_ENREF_1) Increased availability of culturally appropriate bail support programs and diversion options would assist in decreasing these incidences of short stays in prison due to a lack of other suitable alternatives.

1 Avery A, Kinner SA. A robust estimate of the number and characteristics of persons released from prison in Australia. Australian and New Zealand journal of public health. 2015;39(4):315-8.

Question 3–1

Question 3–2

Question 3–3

Question 3–4

Question 3–5

Question 4–1

PHAA supports the abolition of mandatory sentencing which has been widely condemned, has no evidence base for deterrence, rehabilitation or reducing recidivism, and has been consistently opposed by the Law Council of Australia.[2](https://www.alrc.gov.au/#_ENREF_2) Mandatory sentences specifically prevent the consideration of personal circumstances and mitigating factors – the same underlying social issues which need to be addressed in order to actually reduce the risk of offending. Criticisms of mandatory sentencing include that it defies the separation of powers by compromising the independence of the judiciary, that they disproportionately affect Aboriginal and Torres Strait Islander people, that they risk non-compliance with international human rights laws,[3](https://www.alrc.gov.au/#_ENREF_3) their arbitrary nature being in conflict with the rule of law, the increased risk of disproportionate sentences, and the resulting increase in prison populations.[4](https://www.alrc.gov.au/#_ENREF_4) The risk that removing judicial discretion will reduce fairness in sentencing is recognised by the general community.[5](https://www.alrc.gov.au/#_ENREF_5) As far back as 2008, the Sentencing Advisory Council in Victoria concluded that mandatory and presumptive sentencing are costly in both economic and social terms, and are unlikely to achieve their aims.[6](https://www.alrc.gov.au/#_ENREF_6)

2 Law Council of Australia. Policy discussion paper on mandatory sentencing. Canberra: Law Council of Australia; 2014

3 Solonec T. Tough on crime discrimination by another name: the legacy of mandatory sentencing in Western Australia. Indigenous Law Bulletin. 2015;8(18):7-11

4 Grey A. Mandatory sentencing around the world and the need for reform. New Criminal Law Review. 2017;20(3):391-432

5 Stobbs N, Mackenzie G, Gelb K. Sentencing and public confidence in Australia: The dynamics and foci of small group deliberations. Australian & New Zealand Journal of Criminology. 2014;48(2):219-37

6Hoel A, Gelb K. Mandatory Sentencing Sentencing Matters Research Paper. Melbourne: Sentencing Advisory Council of Victoria; 2008

Question 4–2

For non-violent and non-sexual crimes, imprisonment should be the punishment of last resort for Aboriginal and Torres Strait Islander people. However, the abolition of short sentences of imprisonment as a sentencing option carries a high risk that offenders will simply be given longer sentences instead. Such a proposal could therefore only be successful in reducing overall imprisonment rates under strict conditions. Suitable community-based sentence alternatives would have to be available throughout the country, including in regional and remote areas. One of the negative consequences of prison stays, particularly for Aboriginal and Torres Strait Islander people, is being removed from your community and support networks. Visits from family are beneficial for prisoners and are related to reduced re-offending up to 5 years later.[7](https://www.alrc.gov.au/#_ENREF_7)

The distances to prison can often be prohibitive for families and loved ones, adding to the existing logistical and emotional difficulties involved in visiting prisoners.[8](https://www.alrc.gov.au/#_ENREF_8) Replacing short sentences with suitable, local, and culturally appropriate community-based sentencing options would help to alleviate the problems caused by the separations of families through imprisonment. If, however, the short sentences were replaced with longer ones because no suitable alternatives could be found, the problems would be exacerbated.

Early intervention programs, which identify and address social and health behaviours likely to lead to contact with the criminal justice system should be developed in each jurisdiction, particularly in the areas of mental health, substance use and dependence, and violence. Evidence based education and vocational programs targeting disaffected youth are required.

Culturally appropriate and effective alternatives to incarceration such as court diversion programs, Circle Sentencing, youth and adult drug courts and magistrates’ referrals into treatment should be implemented in each jurisdiction.

7 Duwe G, Clark V. Blessed Be the Social Tie That Binds: The effects of prison visitation on offender recividism. Criminal Justice Policy Review. 2011;24(3):271-96

8 Flynn C. Getting there and being there: visits to prisons in Victoria - the experiences of women prisoners and their children. Probation Journal. 2014;61(2):176-91

Question 4–3

Question 4–4

Proposal 4–1

See response to Question 4-2

Question 4–5

Proposal 5–1

With Aboriginal and Torres Strait Islander people more likely than non-Indigenous people to be in prison on remand and on short sentences,[1](https://www.alrc.gov.au/%22%20%5Cl%20%22_ENREF_1%22%20%5Co%20%22Avery%2C%202015%20#92) they are disproportionately affected by the unavailability of prison programs for these categories of prisoners. Evidence-based programs designed to reduce risk factors for offending should be available to those in prison regardless of legal status, especially where they are addressing risk factors for mortality post-release from prison. For example, more than half of the Aboriginal and Torres Strait Islander people entering prison consume alcohol at risky levels,[9](https://www.alrc.gov.au/%22%20%5Cl%20%22_ENREF_9%22%20%5Co%20%22Australian%20Institute%20of%20Health%20and%20Welfare%2C%202015%20#373) and around half link their offending to alcohol and/or substance misuse.[10](https://www.alrc.gov.au/#_ENREF_10) They have different risk factors for alcohol dependence than non-Indigenous prisoners, indicating a need for culturally appropriate programs.[11](https://www.alrc.gov.au/#_ENREF_11) However, Aboriginal and Torres Strait Islander ex-prisoners are at increased risk of alcohol-related mortality after release from prison, suggested that currently available alcohol treatment programs in prison are inadequate, and that continued support post-release is essential.[12](https://www.alrc.gov.au/#_ENREF_12)

1 Avery A, Kinner SA. A robust estimate of the number and characteristics of persons released from prison in Australia. Australian and New Zealand journal of public health. 2015;39(4):315-8

9 Australian Institute of Health and Welfare. The health of Australia's prisoners 2015. Cat. no. PHE 207. Canberra: Australian Institute of Health and Welfare; 2015

10 National Indigenous Drug and Alcohol Committee. An economic analysis for Aboriginal and Torres Strait Islander offenders - prison vs residential treatment. ANCD Research Paper 24. Canberra: Australian National Council on Drugs; 2012

11 Kinner SA, Dietze PM, Gouillou M, Alati R. Prevalence and correlates of alcohol dependence in adult prisoners vary according to Indigenous status. Australian and New Zealand journal of public health. 2012;36(4):329-34

12 Forsyth SJ, Alati R, Ober C, Williams GM, Kinner SA. Striking subgroup differences in substance-related mortality after release from prison. Addiction. 2014;109(10):1676-83

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

Question 6–7

Question 6–8

Question 6–9

Question 6–10

Proposal 7–1

PHAA supports the proposal to work with peak Aboriginal and Torres Strait Islander organisations to increase the availability of culturally appropriate community-based sentencing options and support services. These programs and services should be available throughout the country so that there are locally available options, reducing the need for people to travel long distances to access them.

Question 8–1

Question 8–2

PHAA does not support Alcohol Mandatory Treatment (AMT) programs and encourages the development of better pathways to treatment. While the AMT program in the Northern Territory may have provided opportunities for people previously unable to access health care services, significant concerns remained in regard to criminalising a medical problem, the lack of demonstrated long-term health benefits, and the cost of implementing AMT.[13](https://www.alrc.gov.au/#_ENREF_13) Alternative pathways to treatment are required with adequate treatment places and appropriate encouragement through a range of community support services.

PHAA supports Banned Drinker Registers (BDR), linked to identification scanning at the point of sale, as a less-racially driven and much more whole-of-community approach to limiting opportunities for people with alcohol-related problems to access alcohol. We encourage appropriate resourcing for a comprehensive evaluation of the BDR.

13 Price Waterhouse Cooper's Indigenous Consulting. Evaluation of the Alcohol Mandatory Treatment Program. Darwin: Northern Territory Department of Health; 2017

Question 9–1

Proposal 10–1

Question 10–1

PHAA supports justice targets being added to the Closing the Gap targets, encompassing reducing the gap in incarceration rates between Aboriginal and Torres Strait Islanders and non-Indigenous Australians.

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

Other comments?

File [170904\_phaa\_submission\_on\_incarceration\_rates\_of\_aboriginal\_and\_torres\_strait\_islander\_peoples.docx](https://www.alrc.gov.au/system/files/webform/170904_phaa_submission_on_incarceration_rates_of_aboriginal_and_torres_strait_islander_peoples.docx)