

# **NSW Government Submission to the Australian Law Reform Commission Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander Peoples**

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NSW Department of Justice

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# 1. Introduction

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The NSW Government welcomes the opportunity to contribute to the Australian Law Reform Commission (ALRC) inquiry into the overrepresentation of Aboriginal and Torres Strait Islander Peoples in the criminal justice system. This submission has been prepared by the NSW Department of Justice on behalf of the NSW Government.

The NSW Government is endeavouring to reduce Aboriginal<sup>1</sup> overrepresentation in the criminal justice system, and to improve the way the justice system interacts with Aboriginal offenders and victims of crime, whilst steadfastly maintaining its commitment to put community safety first.

The challenge is significant; Aboriginal people continue to be over-represented at all points in the criminal justice system in Australia, being approximately 2.9% of the NSW adult population<sup>2</sup> but accounting for 24% of all prisoners.<sup>3</sup>

Although the overall number of young people in detention is decreasing, young Aboriginal people in NSW make up roughly half of the youth detention population; being 17 times more likely to be in youth detention than non-Aboriginal young people.<sup>4</sup> Aboriginal women make up 31% of the NSW female prison population, and the proportion of Aboriginal women in custody is growing even faster than the proportion of Aboriginal men.<sup>5</sup> The drivers for female imprisonment and offender complexities are significantly different from male offenders. Aboriginal people nationally and in NSW are significantly overrepresented as victims of crime.<sup>6</sup>

This submission highlights key reforms and initiatives being undertaken by the NSW Government, namely:

1. Major reforms to **sentencing and parole** legislation, which have a focus on making safer communities by increasing access to supervision that addresses the causes of offending;
2. More than \$237 million investment (2017-2020)<sup>7</sup> in additional initiatives to **reduce reoffending**, with a focus on treating the causes of offending and targeting those at the highest risk of reoffending; and
3. Significant reforms to **drivers' licence disqualification**, to address the disproportionate number of Aboriginal people who drive unlicensed. More than 14% of those sentenced and almost a third of those imprisoned for unauthorised driving identify as Aboriginal.<sup>8</sup>

These initiatives focus on reforming the criminal justice system to reduce contact with the criminal justice system for key groups, significantly Aboriginal people, whilst also ensuring community safety. The reforms aim to address how the system as a whole supports Aboriginal people and those with other vulnerabilities (such as poor access to education or employment, mental health issues and cognitive impairment), acknowledging that within these groups Aboriginal people are often further overrepresented.

The reforms being undertaken in NSW address a number of the major proposals outlined by the ALRC in its July 2017 Discussion Paper. They will be delivered alongside localised justice programs under development or already being implemented in partnership with local Aboriginal communities, with a particular focus on improving employment and education outcomes. The evaluation of the community-based sentences reforms, strengthening parole reforms and operational reoffending reforms will consider the effectiveness of the reforms for Aboriginal people.

In the short timeframe, it was not possible to provide a response to all questions posed by the ALRC. The NSW Department of Justice welcomes the opportunity to meet with the ALRC and provide further information.

## 2. Key plans and strategies

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### 2.1 Targets to reduce reoffending

Reoffending rates are a key driver of Aboriginal overrepresentation in the criminal justice system. Research by the NSW Bureau of Crime Statistics and Research (BOCSAR) found that 87% of Aboriginal offenders convicted in 2004 were reconvicted within 10 years, compared to 58% of non-Aboriginal offenders.<sup>9</sup> A history of offending significantly increases the likelihood that a person will be imprisoned.<sup>10</sup> Research indicates that reductions in the rate at which Aboriginal offenders are re-imprisoned will result in substantial reductions in prisoner numbers.<sup>11</sup>

NSW has established strong targets to reduce reoffending:

- A State Priority to reduce adult reoffending by 5% by 2019; and
- A Premier's Priority to reduce domestic violence reoffending by 25% by 2019 (to be reported in 2021).

In 2016 the NSW Government announced the investment of \$237 million in new and expanded initiatives to reduce reoffending (discussed in Section 5), in addition to significant reforms to other areas of the justice system.

### 2.2 NSW Aboriginal overrepresentation priorities

The NSW Department of Justice has identified Aboriginal overrepresentation priorities which focus on reducing the overrepresentation of Aboriginal people at all points of contact with the criminal justice system. The priorities focus on changing processes within five key areas:

1. Violent offending and reoffending;
2. Juvenile overrepresentation;
3. Justice order (suspended sentence, parole, good behaviour bonds and bail) breaches;
4. Driver licencing offending and reoffending; and
5. Female overrepresentation.

Justice agencies will continue to work with other agencies such as NSW Health and Family and Community Services to address systemic disadvantage Aboriginal people face in areas like health and education. Rigorous evaluation of all initiatives will underpin the work to achieve the five designated priorities.

#### **Case example: Bourke Targeted Domestic Violence Reoffending Intervention Project ("Bourke Reintervention Project")**

The Office for Police works closely with the New South Wales Police Force (NSWPF) and other government agencies to develop and advance domestic violence interventions, policies and legislation. The Office for Police also contributes to the Premier's Priority to Reduce Domestic Violence Reoffending in New South Wales by ensuring the outcomes of such interventions are accurately recorded, evaluated, and used to inform future policy decisions.

Established in June 2016, the Bourke Intervention Project, which is run by the Office for Police and the NSWPF, set out to explore an alternative approach to implementing target based interventions

in a community impacted by high domestic violence reoffending rates. These interventions aim to discourage alcohol consumption by offenders for whom alcohol is a contributing factor to their domestic violence history.

The aim of the project was not only to determine the effectiveness of a specific target based intervention on domestic violence reoffending in a remote community, but to also gain insight of its potential to be adopted in other communities. Key to this project was identifying community priorities and data collection avenues to inform key learnings from the project as well as building trust between police, the community and service providers.

Office for Police is working with the NSW Police Force and BOCSAR to evaluate the Bourke Intervention Project. BOCSAR's NSW Recorded Crime Statistics quarterly update June 2017 reported a 24.5% decrease in recorded domestic violence incidents in the Bourke LGA over the 24 months to June 2017.<sup>12</sup> The Office for Police and BOCSAR will continue monitoring to determine any causal link between the project and this result.

## 2.3 Other NSW Justice strategies

Corrective Services NSW (CSNSW) is implementing the *Strategy for supporting Aboriginal offenders to desist from re-offending* (2014). Integral to this strategy is CSNSW collaborating with other government and non-government agencies to reduce the incarceration and re-offending rates of Aboriginal people. CSNSW actively seeks the knowledge and expertise of Aboriginal community members to advise on strategies for enhanced program relevance and effectiveness, and to motivate Aboriginal offenders to engage with both mainstream and specialist programs and services. A copy of the strategy can be accessed here:

[http://www.correctiveservices.justice.nsw.gov.au/Documents/aboriginal/Aboriginal\\_Strategy\\_11111\\_4\\_Accessible.pdf](http://www.correctiveservices.justice.nsw.gov.au/Documents/aboriginal/Aboriginal_Strategy_11111_4_Accessible.pdf).

The NSW Police Force has an *Aboriginal Strategic Direction 2012–2017* to guide its management of Aboriginal issues. Priorities include ensuring community safety, reducing involvement of Aboriginal people in the criminal justice system, improving the safety of Aboriginal people in the criminal justice system and reducing Aboriginal youth offending. A key premise of this strategy is to involve Aboriginal people in the consultation and decision-making process of localised crime prevention and diversion initiatives, so that they understand the objectives and the intent of the NSW Police Force, and can build trust with the police force. Aboriginal Action Plans have been developed by 41 Local Area Commands to tailor policing strategies to local needs. A copy of the direction can be accessed here:

[http://www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0004/105178/ASD\\_2012-2017\\_Book\\_Revised\\_FA\\_Proof.pdf](http://www.police.nsw.gov.au/_data/assets/pdf_file/0004/105178/ASD_2012-2017_Book_Revised_FA_Proof.pdf).

One of the four key priorities for Juvenile Justice NSW within the *Juvenile Justice Plan on a Page 2017/20* is Aboriginal engagement. The initiatives under this priority focus efforts to deliver better outcomes for Aboriginal young people in detention and in the community and to deliver services in a culturally sensitive way. The Aboriginal engagement priority will be supported by the development of an *Aboriginal Strategic Plan and Implementation Plan in 2017/18*. Initiatives within this plan include Aboriginal specific programs to reduce inter-generational violence, alcohol and other drug issues. The *Aboriginal and Torres Strait Islander Cultural Respect Framework* and the *Good Practice Guide* are tools for ensuring cultural standards and practices are met during program development and service delivery. Juvenile Justice is committed to developing and preserving closer ties with Aboriginal communities and to recruiting and retaining Aboriginal and Torres Strait Islander staff to strengthen capacity to work with Aboriginal young people.

The NSW Department of Justice has been developing its *Justice Disability Strategy* in conjunction with its Justice Disability Advisory Council since late 2016. The Disability Justice Strategy will contain actions designed to tackle this over representation as well as support this cohort when in contact with the criminal justice system. The unit developing the strategy will be working closely Aboriginal service delivery areas to ensure the recommendations are fit for purpose and culturally appropriate.

## 2.4 Other agency strategies and plans

As the ALRC acknowledges, contact with the justice system is often a symptom of the chronic social and economic disadvantage experienced by many Aboriginal people. Some of the other key NSW agency strategies which aim to support Aboriginal communities in NSW include:

- The NSW Health *Aboriginal Family Health Strategy 2011–2016* aims for all Aboriginal people live safe and healthy lives free of family violence. The strategy can be accessed at: <http://www.health.nsw.gov.au/aboriginal/Pages/pub-family.aspx>.
- The Transport for NSW *NSW Aboriginal Road Safety Action Plan 2014–2017* aims to reduce the number and severity of crashes involving Aboriginal people. This includes increasing the levels of legal and safe driving among Aboriginal people. The action plan can be accessed at: <http://roadsafety.transport.nsw.gov.au/aboutthecentre/strategies/aboriginal-road-safety/index.html>.
- The Family and Community Services *Their Futures Matter: A new approach* strategy sets out a future vision and long-term strategy for out of home care and for improving outcomes for vulnerable children and families in NSW. The NSW Government will adopt an investment approach for vulnerable children and families which will better target interventions to improve the outcomes of services and ensure the sustainability of the child protection and out of home care system. This will involve undertaking actuarial analyses of the lifetime costs of children and young people in out of home care and families in the system. The strategy can be accessed at: <http://www.theirfuturesmatter.nsw.gov.au/>.
- The Family and Community Services *NSW Homelessness Strategy* (currently under development) will focus on preventing and managing homelessness. The strategy will create a framework for collective action across government, non-government sectors and the community to ensure fewer people experience homelessness, people find secure places to live and people are empowered to tackle the issues that put them at risk of homelessness. Information about specialist homelessness services can be accessed at: [www.facs.nsw.gov.au/homelessnessservices](http://www.facs.nsw.gov.au/homelessnessservices).



## 3. Sentencing and parole reforms

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The ALRC has identified sentencing and parole as two key criminal justice pathways that influence Aboriginal incarceration rates. In May 2017, the NSW Government announced a number of significant reforms to sentencing and parole,<sup>13</sup> which passed the NSW Parliament on 18 October 2017. The reforms address a number of the proposals for flexibility and alternatives to custody being considered by the ALRC, while maintaining the NSW Government's commitment to putting community safety first. A Washington State Institute for Public Policy meta-analysis found rehabilitation programs in the community can significantly reduce reoffending.<sup>14</sup>

The reforms aim to reduce reoffending by providing more offenders with supervised sentences, instead of unsupervised sentences and short prison sentences. There will be greater flexibility for judicial officers to impose appropriate sentences and conditions will better address the offender's needs and the causes of offending.

More offenders will receive supervised sentences and rehabilitation programs that are proven to reduce reoffending. There will be greater flexibility to impose supervised sentences that target offenders' risks of reoffending with programs and other activities. The reforms strengthen parole by making supervision a mandatory condition, give the State Parole Authority more flexibility to reconsider an offender for parole following refusal to grant parole or after revoking parole, and introducing a back-end home detention scheme for eligible and low-risk offenders.

The new sentences and conditions will be in plain language. Explanations of the different conditions will be targeted for different cultural groups to help them understand their order. About 200 additional Community Corrections Officers will provide extra supervision to the thousands of offenders anticipated to join the scheme, who were previously unsupervised. Research by BOCSAR has found that parolees supervised more intensively were less likely to re-offend than those supervised less intensively. BOCSAR also found more intensive supervision by parole officers who also provided rehabilitative support lowered the risk of re-offending, but parole officers who simply carried out more intensive checks on compliance with the conditions of parole did not lower reoffending.<sup>15</sup>

### 3.1 Community based sentences

As indicated above, the range of new community based sentences are designed to be more accessible for offenders and provide greater flexibility to enable courts to tailor them to the individual circumstances of offenders and target their risks and criminogenic needs.

The Intensive Corrections Order (or ICO) is currently available in NSW as a community based sentence for offenders sentenced to up to two years imprisonment. Under the proposed reforms it will be strengthened and become more accessible.

The ICO will be strengthened to provide for all offenders to be subject to supervision, and courts will be given greater flexibility to tailor sentences.<sup>16</sup> Supervision will focus on activities and programs to address offenders' risks and needs in order to reduce the likelihood of reoffending. The additional optional conditions of the new ICO will remove barriers to offenders, including Aboriginal offenders, accessing intensive supervision under the current ICO, such as its 32 hour per month mandatory community service work requirement.

Barriers to accessing the ICO for some groups of people, including Aboriginal people, will also be reduced. For example, the mandatory 32 hour per month work requirement is very difficult for



people in parts of rural and regional NSW to comply with, because there is not enough work in those areas to comply with it. In addition, people with mental health and cognitive impairments, substance abuse issues, or who are otherwise unfit, are assessed as unsuitable for the ICO because it is unrealistic to expect them to be able to do this much work per month. These offenders are either diverted into short prison terms, or receive suspended prison sentences. Research from BOCSAR has found that for every 10 additional offenders given a suspended sentence, an additional 3-4 offenders end up in prison, increasing the prison population.<sup>17</sup>

The amended ICO will be available throughout NSW, including regional and remote areas where a lack of community service work can lead to short prison sentences rather than community corrections orders being imposed. Other conditions will be able to be imposed to ensure the offender is held accountable for his or her behaviour, with increased access to supervision and interventions to address his or her risk of reoffending. A clear legislative framework to provide flexible and proportionate sanctions will be introduced which will provide Community Corrections and the State Parole Authority with powers to impose community based sanctions on offenders who breach their ICOs. A similar scheme will be established for breaches of parole. Further details about the regime are below at 3.4.

The Community Correction Order (or CCO) will replace community service orders and good behaviour bonds. The CCO will be a flexible non-custodial sentence that courts can tailor to reflect the nature of the offender and the offence. Courts will be able to select from the range of conditions, such as supervision by Community Corrections Officers, programs, community service work and curfews, to ensure offenders receive supervision and interventions and are held accountable for their behaviour. CCOs will be able to be imposed for a period of up to three years. Breach and revocation of CCOs will be dealt with by the sentencing court, which will have power to re-sentence the offender on revocation of the order.

At the bottom of the hierarchy of new community based sentences in NSW will be the Conditional Release Order (or CRO). This order will replace good behaviour bonds currently made under section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* and are intended as an option to deal with less serious low level offending. CROs will have a range of flexible conditions such as supervision, non-association requirements and will place restrictions where appropriate. CROs will be able to be imposed for a period of up to two years. Breach and revocation of CROs will be dealt with by the sentencing court, which will have power to re-sentence the offender on revocation of the order.

## 3.2 Short sentences

The NSW Government does not support the ALRC's suggestion to abolish short sentences (Question 4-2). It is acknowledged that there are problems associated with short sentences including limited opportunity for CSNSW to work with inmates, preclusion of supervision required for effective reintegration, significant disruption to employment, family, housing and support relationships, and exposure of a first offender to undesirable influences that can be counterproductive to rehabilitation.<sup>18</sup>

The ten new High Intensity Program Units that commenced in September 2017 are specifically targeting interventions at short sentenced prisoners. Two of the High Intensity Program Units will be specifically for short sentenced Aboriginal inmates. The High Intensity Program Units are discussed in more details at 5.3 of this submission.

The ALRC's paper demonstrates how short custodial sentences have a particularly adverse effect on Aboriginal women. Short sentences can be problematic for women as they are often

incarcerated just long enough to lose their accommodation, links to community support and can serve to complicate and disrupt their lives, resulting in relapse, reoffending and in many cases homelessness.

While the ability for the judiciary to have sentencing discretion is crucial, consideration at sentencing is given to the links a woman has in the community and whether a short term period of custody would be detrimental. Community supervision, coupled with access to specialist and mainstream support services can assist women to maintain tenancies, and address their offending behaviour while remaining in their communities. This approach is particularly important when women are the primary care givers for children, as incarceration can result in children being placed in care if other family members cannot provide support.

However, in some cases short sentences are an appropriate sentencing option and abolishing them would conflict with the need to ensure that courts are provided with adequate sentencing options and discretions. As the ALRC notes in its discussion paper for the inquiry, the NSW Law Reform Commission highlighted the risk of 'sentence creep', where courts may decide to impose short prison sentences of seven months to avoid the prohibition on sentences of up to six months.

Instead of abolishing short sentences, the NSW Law Reform Commission recommended abolishing the current suite of community based sentences in NSW and replacing them with options designed to encourage greater use of community sentencing options, and increased offender access to supervision and programs. The NSW Government's proposed reforms to community based sentencing options build on the NSW Law Reform Commission's recommendations.

### 3.3 Victim safety

There are circumstances where short-sentences are appropriate in the interest of the victim's safety, particularly in circumstances of domestic and family violence.

Since the age of 15, one in four Australian women had experienced physical or sexual violence from a current or former partner.<sup>19</sup> Aboriginal women in NSW experience physical assault at 4.9 times the rates for non-Aboriginal women, according to police records.<sup>20</sup> Between April 2016 and March 2017 in NSW:

- Of the 26 alleged offenders proceeded against by the NSW Police Force for domestic violence related murder, four were Aboriginal or Torres Strait Islander (approximately 15%).
- Around 19% of total domestic violence related assault offences were committed by an Aboriginal person, and 19% of domestic violence related sexual assaults.<sup>21</sup>
- The Aboriginal status of victims of domestic violence related offences recorded by the NSW Police Force was: around 9% of domestic violence related assaults, indecent assault and acts of indecency; 8% of other sexual offences; and approximately 7% of offences for harassment, threatening behaviour and private nuisance.<sup>22</sup>
- Stalking and Intimidation contributed to 25% of Aboriginal offenders being given a sentence of imprisonment between January and September 2016.<sup>23</sup> Most of these offences committed in a domestic violence context received sentences of 12 months or less, with many being less than 6 months.

The reforms to community based sentences will give the judiciary additional options before imprisonment becomes the last resort, but offenders who are sentenced for domestic violent offences will be ineligible for an ICO unless the court is satisfied the conditions of the ICO can adequately protect the safety of the victim or other potential co-residents.

### 3.4 Parole

The ALRC requests information about the best practice aspects of the NSW statutory regime of automatic court ordered parole (Question 5-3). The ALRC proposes that statutory regime of court ordered parole, which is already in effect in NSW, should be established in all states and territories.

In NSW, offenders serving prison sentences of up to three years are subject to court-based parole. Sections 44 and 50 of the *Crimes (Sentencing Procedure) Act 1999* require the court to set a non-parole period. The court must make a parole order directing the release of the offender at the end of the non-parole period. The State Parole Authority (SPA) can vary or remove court imposed conditions before an offender is released on parole (section 128(2)(b) of the *Crimes (Administration of Sentences) Act 1999*).

The disadvantages with the current scheme of court-based parole include that there is a delay between setting parole conditions and the actual release of the offender on parole. At the time they are imposed, court imposed conditions may no longer be relevant to the offender or it may be impossible to comply with them.

The NSW Government has recently announced changes to the automatic court-based parole scheme that builds on recommendations from the NSW Law Reform Commission<sup>24</sup>. The existing NSW scheme will be replaced with an automatic statutory-based parole scheme for sentences of three years or less, and the standard parole conditions will be set by statute. All offenders on statutory parole will be subject to the same standard conditions as other parolees, including the new requirement to be supervised. Statutory parole will be substantially the same as court-based parole but will simplify the framework, making sure conditions are more relevant and timely and saving courts the necessity of making parole orders.

The NSW Law Reform Commission considered that SPA is best placed to determine the conditions required closer to the time of release, with the benefit of advice from Community Corrections. SPA will continue to have the power to impose and vary additional conditions. An advantage of this new scheme is that additional parole conditions appropriate to each individual offender will be imposed closer to the time of release of the offender and the same standard conditions of parole supervision will apply to all parolees.

Graduated sanctions: The reforms include the introduction of a clear legislative framework to provide flexible and proportionate sanctions for breaches of parole. This regime will give Community Corrections and SPA greater powers to manage less serious breaches in real time. A Community Corrections officer will be able to use the following sanctions to respond to a breach of parole:

- Note the breach and take no further action;
- Informal warning;
- Formal warning from a senior officer;
- Give a binding reasonable direction to the offender about the offender's behaviour (for example, directing the offender to report more frequently, or to undergo drug testing);
- Impose a curfew on the offender of up to 12 hours in any 24; or
- Report the breach to SPA.

A clear Community Corrections policy will guide officers' discretion to ensure that responses are consistent, proportionate and escalate in the face of repeated behaviour.

Community Corrections will continue to report more serious breaches (and repeated breaches) to SPA for action. The breach report will include a recommendation about the action the Authority should take. SPA will be able to use the following to respond to a breach of parole:

- Note the breach and take no further action;
- Formal warning;
- Varying the existing additional conditions on the offender's parole order;
- Impose further additional conditions;
- Impose electronic monitoring;
- Impose up to 30 days home detention; or
- Revoke parole and return the offender to custody.

## 4. Bail, remand and diversion

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At the pre-sentence stage, the ALRC has identified that the number of Aboriginal prisoners on remand due to bail refused and bail breaches is another key driver of Aboriginal overrepresentation.

In 2015 there were 2,945 Aboriginal persons who had a bail breach established against them in the Local Court. Among these offenders, 32% involved a new offence, 25% involved a breach of curfew, 17% involved a breach of reporting requirements and 14% involved the failure to reside at a designated location. It should be noted that it is possible to breach more than one condition so these categories are not independent of each other. Among Aboriginal offenders found guilty in 2015 who were bail refused at finalisation, 28% or 1 in 4 received a non-custodial sentence<sup>25</sup>.

The significant investment in interventions to reduce reoffending in NSW is designed to break the cycle of offending. A key factor influencing the high rate of refusal of bail for Aboriginal people is that Aboriginal people are more likely to have a history of offending, a factor which the court takes into account when considering whether a person is a risk to the community and should be granted bail or not.

The sentencing and parole reforms will also assist with avoiding breaches of orders and parole, as they will encourage more flexible and appropriate conditions for Aboriginal offenders. In addition, there are a number of projects underway in NSW to better understand the common causes of bail breaches by Aboriginal people, to encourage more appropriate bail conditions and to divert people away from court altogether. Aboriginal people in NSW account for one quarter of breaches of Apprehended Domestic Violence Orders (ADVOs),<sup>26</sup> and a number of programs being piloted in NSW include a focus on reducing domestic violence reoffending, including specific programs for Aboriginal domestic violence offenders.

### 4.1 Reducing breach of bail and other orders

The ALRC proposes that bail authorities should be required to take cultural considerations into account when making bail determinations. As referenced in the ALRC discussion paper, the *Bail Act 2013* (NSW) ss18(a) and 18(k) currently requires the bail authority to consider the accused's background, circumstances, community ties and special vulnerability or needs the person has because of being Aboriginal or Torres Strait Islander.

The NSW Aboriginal Overrepresentation Priorities includes several initiatives aimed to better understand and reduce bail and other justice order breaches including research to better understand the causes of bail breaches and better support for Aboriginal offenders on bail (including SMS reminders and an increased number of Aboriginal support staff in courts).

The Dubbo Aboriginal Bail Project has recently been launched as a pilot. It will:

- Encourage accused people who are on bail to seek variations of conditions rather than breaching conditions;
- Encourage accused people who are required to report to police to present themselves to the police station to prevent a breach of their bail conditions;
- Support accused people in getting police bail after they have been arrested by providing relevant information to police;
- Support accused people in getting court bail by providing relevant information to courts;

- Reduce breaches of bail by providing the local police and court with informed local advice on realistic and accountable bail provisions for accused people; and
- Link accused people to community support services to reduce the likelihood of defendants breaching their bail conditions.

To assess the impact of the program, a 12 month before and after assessment will be undertaken, with data aiming to capture all interactions with persons on bail and the outcome of that interaction (such as a warning or breach).

In August 2017 the NSW Government announced that the 'What's Your Plan' Aboriginal program piloted in Orange will be expanded to 46 sites across NSW. Aboriginal Community Client Service Officers offer culturally appropriate, one-on-one support for defendants who have received interim or final Apprehended Domestic Violence Orders (ADVO). In the session the defendant makes a plan for how they will comply with their ADVO, tailored to their individual needs. The program is voluntary. BOCSAR will be evaluating the program to ensure it achieves its aims of reducing domestic violence offending. A preliminary report will be produced in October 2018.

In March 2016, the Justice Health & Forensic Mental Health Network (part of NSW Health), commenced a pilot Aboriginal Court Diversion & Bail Support Program at Campbelltown Local Court. There were 72 patients referred to the 16-week program in 2016/17, with 42 individuals being successfully diverted from custody at sentencing. Additionally, 150 referrals were made to community providers. A further 12 clients are currently enrolled. All of the program participants have complex mental health and/or drug & alcohol concerns as well as significant social needs including primary health, employment, education, relationships and housing. There have been no breaches of bail or return to custody among participants.

The Custody Notification Service operated by the Aboriginal Legal Service provides support to Aboriginal people who are in custody awaiting bail. NSW is the only state to legislate the Custody Notification Service<sup>27</sup> and the ALRC proposes that other States similarly legislate. The NSW Government supports the continuation of the Custody Notification Service as an important Commonwealth funded service.

## 4.2 Diversion

The ALRC identifies specialist courts and diversionary programs as potential initiatives to support Aboriginal people appearing before the courts and to reduce Aboriginal incarceration.

A number of significant diversion programs in NSW focus on offenders with drug and alcohol concerns. Both the Adult Drug Court and the Magistrates Early Referral into Treatment (MERIT) Program have had success breaking the drug-crime cycle by providing access to substance abuse treatment for both Aboriginal and non-Aboriginal participants.

The NSW Adult Drug Court program is a highly supervised and intensive program of treatment and rehabilitation for adult offenders who have serious drug problems. The program operates in collaboration with both the health sector and criminal justice system. In 2013-14 (most recent data available), 28% of Drug Court clients were Aboriginal. A 2008 report suggested the NSW Drug Court was more effective than conventional sanctions in reducing the risk of recidivism among both Aboriginal and non-Aboriginal offenders whose crime is drug-related, with better outcomes if a person is supervised by a judicial officer.<sup>28</sup> Although expensive to administer, the NSW Drug Court was found to be a cost effective intervention.



The MERIT Program is an interagency diversion service engaging NSW Health, Department of Justice and NSW Police at the Local Court level. MERIT offers case management program and diverts defendants with drug problems to an intensive three month drug treatment program, prior to sentencing. This case management and alcohol and drug treatment services are provided by NSW Health and non-government organisations.

The program is available in 65 local courts across NSW, and to around 80% of defendants. Participation in the program is voluntary. For the calendar year 2016, 19% of MERIT participants were Aboriginal. MERIT was been highlighted as a program that works in the Productivity Commission's 2016 *Overcoming Indigenous Disadvantage Report*.<sup>29</sup>

### **4.3 Mental health and cognitive impairment**

Consistent with the research highlighted by the ALRC in its discussion paper, recently commissioned research by the Indigenous Justice Clearinghouse confirmed that Aboriginal people with cognitive disability are over-represented in their contact with all criminal justice agencies, both in NSW and nationally. They are more likely to come to the attention of police, more likely to be charged, more likely to be imprisoned and less likely to be granted parole.<sup>30</sup>

Diversion options are being expanded in NSW for offenders with mental health issues and/or cognitive impairment. The Justice Health & Forensic Mental Health Network delivers diversion services for adults and young people with identified mental illness in 22 local courts, 19 Children's Courts and a custodial service at Silverwater Correctional Complex. These services conduct mental health assessments of those referred and provide advice to the Magistrate on diversion options. A total of 3,009 adults and young people with identified mental illness were diverted away from custody in 2016-17. Of those, 20% identified as Aboriginal or Torres Strait Islander.

The Statewide Community and Court Liaison Service (SCCLS) is a service of the Justice Health & Forensic Mental Health Network. This service provides court based identification and assessment of defendants with mental health issues and cognitive impairments, resulting in a pathway for diversion under section 32 of the Mental Health (Forensic Provisions) Act 1990. In 2016-17 the SCCLS screened 13,305 individuals and of those 618 identified as Aboriginal or Torres Strait Islander. Of those screened, 497 (80.4%) had a mental health diagnosis. Of those identified as having a mental health diagnosis, 384 (77%) were diverted from the judicial system into community mental health treatment. The remaining 113 (23%) people found to have a mental health problem were bail refused by the magistrate and linked to mental health services in a custodial setting.

In September 2017, the Cognitive Impairment Diversion Program (CIDP) was launched as a pilot in Gosford and Penrith Local Courts. The program involves expanding the SCCLS to include court based identification, assessment and diversion of defendants with cognitive impairment, and linking them with the National Disability Insurance Scheme (NDIS). The program will expand an existing monitoring and compliance function in the criminal justice system (Community Corrections) to monitor a defendant's compliance with a cognitive impairment diversion plan to ensure that the court and community can be confident defendants are appropriately managed in the disability sector and do not require criminal justice interventions.



## 5. Custody, rehabilitation and throughcare

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The terms of reference for the ALRC inquiry ask the ALRC to consider the availability and effectiveness of programs for Aboriginal offenders, both inside and outside prison. The ALRC notes examples of successful programs including the Gundi program run by Corrective Services NSW (CSNSW), and highlights the importance of providing comprehensive case management for prisoners while in custody, and to support the transition from custody back into the community (also referred to as ‘throughcare’).

The NSW Government has announced a \$237 million investment (2017-2020) in new and expanded initiatives to reduce re-offending, with a focus on ensuring the right interventions are provided to offenders who need them.

These initiatives are primarily being delivered by CSNSW. The program of work includes:

- Expanded programs for offenders, including implementation of High Intensity Program Units;
- Improved case management for offenders, including a new model of supervision for offenders on community orders;
- Establishment of a new custodial case management model;
- System wide measures targeting priority offenders, including the Extra Offender Management Service and the Local Coordinated Multiagency offender management (LCM) voluntary programs; and
- Better re-integration outcomes, including Australia’s first social impact investment scheme aimed at reducing re-offending.

The information in this section provides a brief snapshot of some of the work that CSNSW is undertaking including:

- Improving the assessment of inmates’ needs at intake and other critical points during incarceration;
- Providing appropriate transitional support post release;
- Programs focusing on Aboriginal women needs including access to their children; and
- Working with Commonwealth and State agencies to better co-ordinate employment, welfare and health related services.

### 5.1 Understanding the needs of Aboriginal offenders

CSNSW undertakes risks assessments to ensure that the specific needs of Aboriginal offenders are identified and to ensure resources are appropriately allocated to those offenders assessed to be at the greatest risk of reoffending.

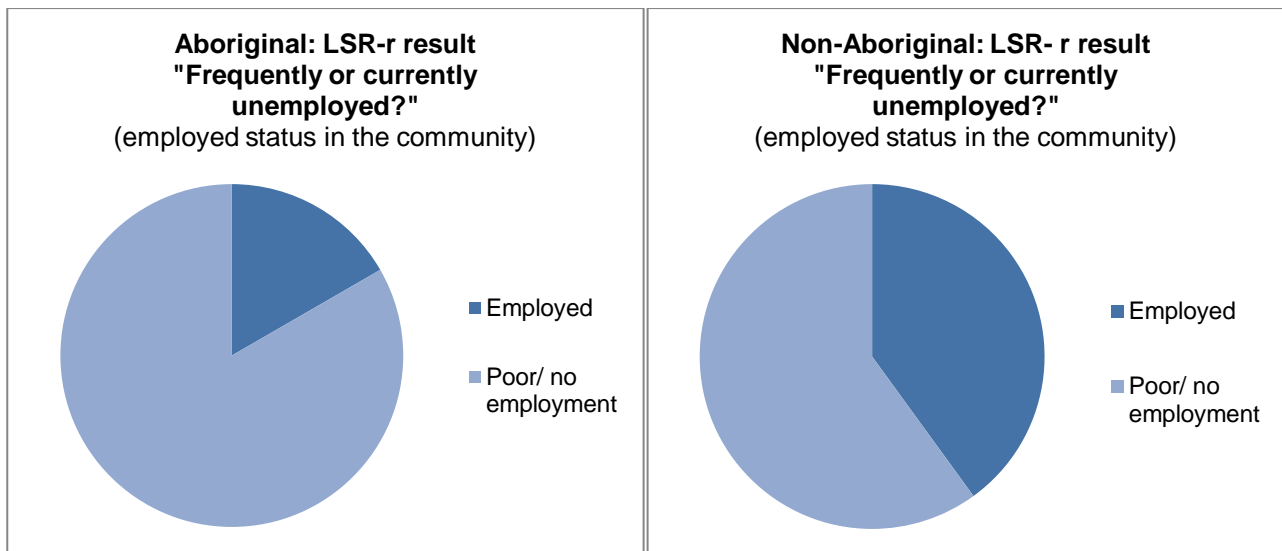
The NSW Government’s strategy for reducing adult reoffending targets new resources towards individuals assessed to be a moderate to high risk of reoffending. This includes programs, services and reintegration support provided by non-government organisations. As Aboriginal inmates are more likely to reoffend the NSW Government’s targeting strategy will ensure that a greater proportion of Aboriginal offenders receive the interventions they require.

This approach is working. In 2016/17, 29% of all offenders in custody who participated in offence based programs were Aboriginal, even though Aboriginal offenders make up 24% of the total prisoner population. This was a 7% higher participation rate than the previous year.

Employment, education and antisocial attitudes are consistently identified as key criminogenic needs for Aboriginal offenders. For Aboriginal women in contact with the justice system, lifetime exposure to violence is also an important factor that needs to be addressed through trauma informed approaches.

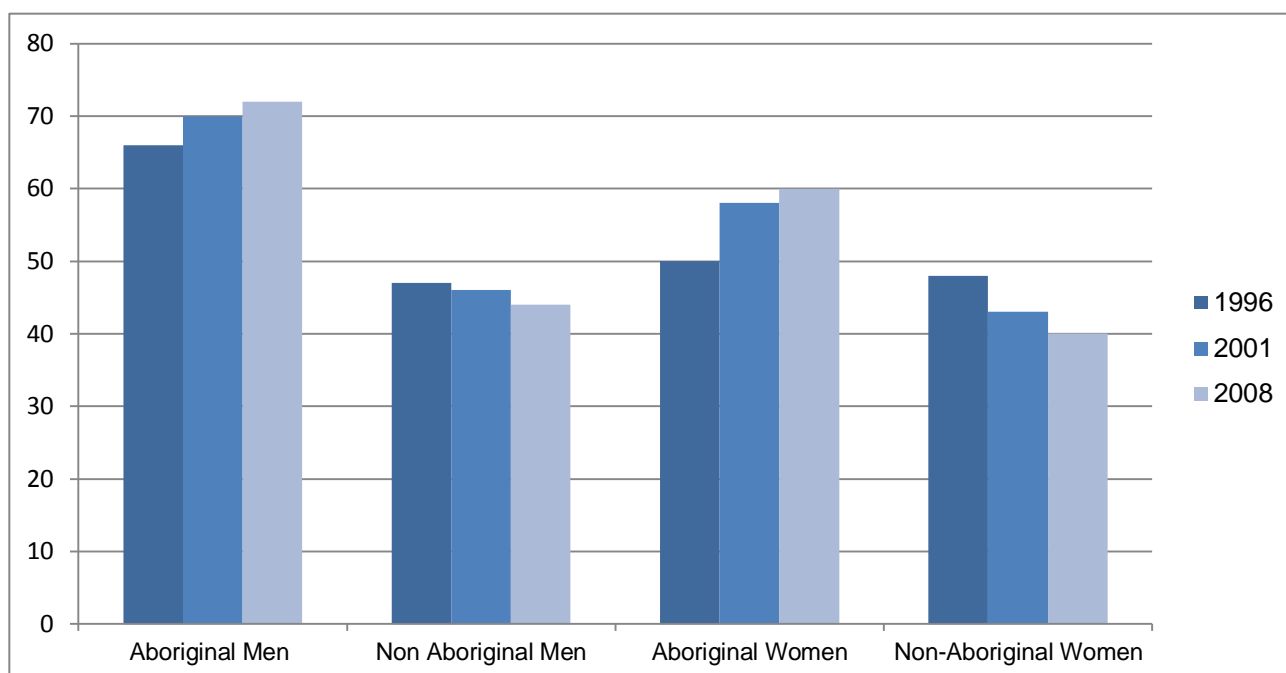
Aboriginal offenders have lower levels of education, higher levels of unemployment, unstable accommodation and, for Aboriginal women, greater exposure to violence and trauma. Only 16% of Aboriginal inmates in NSW had been employed in the community and 84% were unemployed at arrest or frequently unemployed in the period prior to incarceration. This can be compared to non-Aboriginal inmates in NSW, of which 39% had been employed in the community while 61% were unemployed at arrest or frequently unemployed in the period prior to incarceration.

*Pre-custody Employment Status – Aboriginal compared to non-Aboriginal Inmates NSW:*



The report *Select Committee on Regional and Remote Indigenous Communities Indigenous Australians Incarceration and the Criminal Justice System 2010* also found a strong negative association between school non-completion and imprisonment, with the imprisonment rate of Aboriginal people who had completed school at 164 per 100,000 population and the imprisonment rate of Aboriginal people who had not completed school at 2,217 per 100,000.

**Inmates with no school certificate  
NSW Inmate Health Survey 1996, 2001 and 2008**



The data supports CSNSW's own findings that the criminogenic needs of Aboriginal offenders differ from non-Aboriginal offenders, with education and employment posing the greatest need.

*Top four Criminogenic needs for offenders identified by CSNSW:*

<b>Ranking</b>	<b>Non-Aboriginal Females</b>	<b>Non-Aboriginal Males</b>	<b>Aboriginal Females</b>	<b>Aboriginal Males</b>
1	Alcohol/Drug Problems	Alcohol/Drug Problems	<b>Education Employment</b>	<b>Education Employment</b>
2	Companions	<b>Education Employment</b>	Attitudes Orientation	Attitudes Orientation
3	<b>Education Employment</b>	Financial	Leisure Recreation (ns)	Alcohol/Drug Problems
4	Accommodation	Companions	Financial (ns)	Companions

## 5.2 Female offenders

In recognition of the extensive history and experience of trauma and victimisation experienced by many Aboriginal female offenders,<sup>31</sup> CSNSW takes a different approach to addressing their needs. Training has been designed to provide staff with the skills to assist offenders who have a history of exposure to sexual and physical violence. In 2016-17 CSNSW successfully trialled the Trauma Informed Practice Training (TIP) at the Brush Farm Corrective Services Academy for Custodial Corrections staff. This training will be mandatory for all new Custodial Corrections staff.

Out of the Dark is a program for women who have experienced domestic and family abuse as victims. It is designed to help participants identify issues around domestic and family violence and identifies the options and support available for women experiencing this.

Approved Counselling Services (ACS) provides support for inmates who have been victims of a violent crime as a child or as an adult prior to their incarceration. A history of victimisation can contribute to offending behaviour and is a common experience for many offenders. Through this scheme, inmates can commence counselling in custody and continue it in the community if required. The service is currently provided at Dillwynia, Emu Plains, Wellington, Silverwater Women's Correctional Centres and Bolwarra House Transitional Centre.

## 5.3 Programs available in custody

CSNSW custody based programs:

- Directly target factors that address offending behaviour;
- Address cultural factors specific to Aboriginal offenders;
- Focus on community integration through a range of education, vocational training and employment programs;
- Are trauma-informed and seek to enhance community and family connections for Aboriginal women; and
- Emphasise cultural awareness that takes into account local Country, language, art and traditional customs.

High Intensity Program Units (HIPUs) for short sentenced inmates: Ten HIPUs were established in September 2017. Consistent with the NSW Government's focus on reducing reoffending, the HIPUs will focus on delivering rehabilitation services and programs and enhanced release planning to inmates serving short sentences (less than 6 months), as these inmates tend to reoffend at higher rates than those with longer sentences.

Two HIPUs (Wellington and Mid-North Coast) are dedicated to the specific needs of Aboriginal and Torres Strait Islander inmates. A strong emphasis on education and employment preparation will be supported through targeted cultural support and traditional knowledge for Aboriginal inmates. The cultural support programs are designed to promote engagement levels of participants and will be underpinned by a focus on identity, local language and traditional art. Local community Elders will be included in the delivery of ongoing assistance to inmates and staff throughout the duration of these programs. The HIPU's will provide support during times of need, including death or illness in the inmate's family. Where appropriate, Elders and/or other services will be provided to assist in family engagement work.

Aboriginal offenders in these locations will participate in a two-week cultural strengthening program prior to commencing criminogenic program participation. The culturally-specific strategies and support gained through these first two weeks can be referred to/utilised throughout the Explore,

Question, Understand, Investigate, Practise to Succeed (EQUIPS) (offence-specific) programs to assist participants connect to the content. Exercises in the EQUIPS programs such as completing a self-management plan can be represented in a meaningful way e.g. as a drawing, carving or artwork rather than in writing.

Two HIPUs over three locations (Dillwynia, Wellington and Mid-North Coast) will provide programs and services that reflect the specific characteristics and reintegration needs of female inmates using a trauma informed framework. This will include addressing family violence, providing access to children (face to face or virtual), engaging in externally provided mentoring programs and a particular focus on exiting to secure and safe accommodation. From the trauma-informed framework, women will be provided with Victims Services counselling to support them to address their own trauma as well as their criminogenic needs.

Gundi Program: The Gundi program provides participants with 'real world' construction experience, skills and qualifications. Over the last year participants have completed houses in Collarenebri and 46 modular cells for the South Coast and Cessnock correctional centres. Over 60 participants have completed the program this year. Employment options have increased for participants through the engagement of Local Aboriginal Land Councils, mining companies, energy companies and state wide construction organisations.

Bundian Way: The Bundian Way project focuses on community engagement and cultural learning for Aboriginal offenders. With the assistance of the Eden Local Aboriginal Land Council participants help maintain the 360km Aboriginal walking track and participate in cultural activities during the camp. The most recent camps took place in May 2017 with clearing and track redevelopment the main focus of the work, complemented by cultural activities that included basket weaving, identifying native plants and skinning raw didgeridoos.

Clean Slate Without Prejudice Program - Never Going Back: The Tribal Warrior Association and the Redfern Police Local Area Command in partnership with CSNSW implement the Never Going Back program. This program assists selected Aboriginal offenders in their transition to community living. To date, eight Aboriginal inmates from the Long Bay Correctional Complex have participated in the program. The program has the capacity to accommodate 10 inmates at any one time. It is offered at the National Centre for Indigenous Excellence (NCIE) in Redfern three days per week. Participants are given access to exercise programs, training programs and structured opportunities for Aboriginal inmates to connect with the community in which they intend to reside upon release from custody.

Yetta Dhinnakkal: Yetta Dhinnakkal is a working farm maintained by inmates. Programs address offending behaviour and training in rural work skills through culturally relevant intensive case management. Vocational training courses in information technology, horticulture, construction, visual arts and contemporary craft. Practical skills include small motor maintenance, welding, road sealing, building skills, literacy and numeracy and first aid. CSNSW continues to provide a guide for Aboriginal inmates to programs and services from entry to exit.

## 5.4 Health needs

The health status of the Aboriginal custodial population, particularly Aboriginal women, is marked by even higher levels of health disadvantage than the broader custodial population. Those in custody have commonly had minimal contact with health services in the community. This is particularly significant where their health condition impacts their offending behaviour, such as drug and alcohol use.

In-custody programs focusing on Aboriginal patients in NSW include:

- Aboriginal Youth Health Access Program: supports Aboriginal young people leaving custody to access community-based health services. They learn about Medicare, bulkbilling, confidentiality and privacy when making appointments to see a health professional. All participants are given the opportunity to obtain a Medicare card.
- Aboriginal Sexual Health Education: group programs and one-on-one clinics in all Juvenile Justice centres, covering Aboriginal sexual health, sexually transmitted infections and blood borne viruses, sexual health risks and risky behaviours, and sexual health related cancers.
- Antenatal Care & Parenting Coordinator: antenatal education to young Aboriginal and non-Aboriginal pregnant women in custody or those in contact with the justice system.
- Annual Close the Gap health promotion initiatives across adult and juvenile custodial settings and the Forensic Hospital, delivering targeted health screenings for Aboriginal patients and where appropriate, establishing tailored, culturally appropriate care plans. In 2017, the Network's Close the Gap initiatives engaged 914 patients across 39 sites.
- Aboriginal Chronic Care Program (ACCP) clinicians in correctional centre health clinics identify, treat and follow-up chronic conditions among Aboriginal people in custody. Sixteen sites are funded to operate specific clinics for 4 hours per week. Two centres are supported by Aboriginal Health Workers. 1,262 patients were engaged in ACCP in 2016-17.
- Opioid Substitution Treatment (OST) is a long-term treatment approach to opioid dependence involving regular provision of long-acting opioid medication (methadone, buprenorphine or buprenorphine-naloxone). The Australian Institute of Health and Welfare (AIHW) National Opioid Pharmacotherapy Statistics Annual Data (NOPSAD) collection 2016 shows that the Justice Health & Forensic Mental Health Network, the largest public provider of OST in NSW, providing pharmacotherapy to 1,586 patients on a snapshot day in 2016. 26% of these patients were Aboriginal. For the 2017-18 financial year, Justice Health & Forensic Mental Health Network has targets to maintain patients entering custody who are on OST and to increase by 5% the number of patients initiated onto OST. This will increase the number of Aboriginal people able to access OST in custody. Additionally, Justice Health & Forensic Mental Health Network provides patient support to transition care and reintegration into the community.

## 5.5 Leaving custody

NEXUS is an offender-centred approach to reintegration, through which CSNSW staff assist inmates to plan their release back into their chosen community. It is made available to all offenders at up to three occasions within a custodial sentence. An information brochure is provided on admission, a worksheet is provided during case management meetings and a comprehensive booklet is provided at between six and three months prior to release.

Through NEXUS, participants are guided through CSNSW's Exit Checklist that contains information on various areas where the offender would need help to be able to easily re-enter the community. For example, participants are provided guidance on how to get identification cards, how to deal with Centrelink, how to open a bank account, how to find a job and/or where to go should they have no accommodation.



Between October 2010 and August 2017 there have been 36,284 NEXUS sessions. Of these, those that identify as Aboriginal offenders have attended 10,501 (28.9%) sessions, indicating a slightly higher proportional attendance rate than non-Aboriginal offenders. As part of the NEXUS process, Aboriginal offenders receive free birth certificates which assist with identification which is essential for opening bank accounts and access to Centrelink. In some centres, Aboriginal offenders are able to be released with an established bank account if they previously did not have one. If an Aboriginal offender requests culturally specific programs, this will be facilitated as part of the NEXUS process.

In future, the NEXUS program will be updated to include a state-wide rather than local Aboriginal component. There will also be more information available around Aboriginal specific services such as community programs and links made while in custody to culturally appropriate services.

Housing and Accommodation Support Initiative (HASI) commenced in 2003 to provide supports to people with a diagnosis of severe mental illness or mental disorder and significant functional impairment so they can live independently in the community, including people leaving custody. Support is provided through a coordinated model so that people with severe mental illness can live as independently as possible in the community.

At least 100 Aboriginal people with a severe mental illness (approximately 9% of overall program participants) are supported through HASI at any time. HASI is available in every Local Health District. Evaluation of the supports received by Aboriginal people through HASI has found that participation in the program results in fewer court appearances and keeps participants out of prison. Supports provided by HASI were found to enable Aboriginal participants to engage with their families, the broader community and a range of support services, manage their own health and medication, maintain accommodation tenancies, gain employment and live a more ordered life. In some cases, people exit prison into HASI.

HASI has recently been retendered and an expected minimum number of Aboriginal clients is now a benchmark for non-government organisations to report against. The benchmark is based on the proportion of Aboriginal people exiting adult acute mental health units.

Community Living Supports (CLS) is an enhancement to HASI that has been implemented since July 2016 as a key component of the NSW Government's ten-year reform of the mental health system. Like HASI, CLS provides coordinated clinical care and psychosocial supports but in this case to people who already have stable accommodation. Social housing places are not available in CLS. CLS targets people who have high and complex needs and includes a focus on Aboriginal people, people exiting correctional facilities and community based offenders.

CLS sets benchmarks for the number of Aboriginal clients, based on the proportion of Aboriginal people in mental health inpatient units in each Local Health District. Culturally appropriate service delivery by funded non-government organisations is mandatory. As of May 2017, program data indicated that 10% of the approximately 650 CLS participants are Aboriginal. It was further found that 3% of program participants are community based offenders (eg. parolees) and a further 3% had exited a correctional facility.

HASI Plus is a more intensive version of HASI, providing 16-24 hour a day supports (including housing, clinical care and psychosocial supports) to people with high levels of severe mental illness and functional impairment. There are currently 58 HASI Plus packages available in Northern Sydney, Hunter New England and Western Sydney. This includes access for people living outside of these Local Health Districts.



Eligibility for HASI Plus includes people who have been in long term institutional care, including hospital, prisoners with mental illness exiting correctional facilities and forensic patients.

Other Mental Health Projects: NSW Ministry of Health funds Mental Health projects through 16 Aboriginal community controlled health services. These projects will receive \$2.26 million in 2017-18. Aboriginal community controlled health services improve the mental health and wellbeing of Aboriginal people by working collaboratively and in partnership with Local Health Districts and other support organisations to provide culturally sensitive and safe mental health assessment, treatment, support and information.

The Connections Program coordinates post-release links to health and welfare services in the community for adults in custody with drug and alcohol concerns, providing support with transition of care and reintegration in the community. In 2016-17 the Connections Program assessed and supported 770 patients with drug and alcohol problems being released from custody and provided 223 patients with abstinence-based treatment plans. Thirty five percent (or 272) of Connections participants identified as Aboriginal.

The Connections Program also monitors if participants return to custody within two years following engagement with the program and compares their recidivism rates pre and post involvement with the program. Between 2007 and 2015, recidivism rates among Aboriginal participants decreased by 17%.

The Community Integration Team (CIT) operates in 11 locations across NSW. It provides transitional care for young people with significant drug and alcohol and mental health concerns on release from custody to the community. Care is coordinated prior to and during the critical post release period up to 3 months, with links provided to appropriate specialist and generalist community services. 662 young people were newly managed by CIT in 2016-17. Of these, 48% identified as Aboriginal or Torres Strait Islander.

## 6. Driving issues

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### 6.1 Road trauma

Aboriginal people are overrepresented in road trauma statistics and face barriers to obtaining, retaining and regaining driver licences. The road safety measures that are required to reduce the NSW road trauma statistics impact on the accessibility of the driver licencing system.

Aboriginal people are over-represented in serious casualty road trauma compared to non-Aboriginal people. Aboriginal people make up 2.9% of the NSW population but are involved in approximately 4.7% of serious casualty road trauma.<sup>32</sup> Aboriginal fatalities have more than tripled from 7 to 23 (increase of 229%) from 2005 to 2016\* compared to non-Aboriginal fatalities, which have decreased by 28% from 501 in 2005 to 359 in 2016. Both Aboriginal and non-Aboriginal serious injuries have increased. The number of Aboriginal people seriously injured on NSW roads has steadily increased since 2005 (414 to 602 in 2016p, 45%), compared to just a 2% increase in the number of non-Aboriginal people seriously injured 11,353 (in 2005) to 11,529 (in 2016p).<sup>33</sup>

In January 2009, the NSW Roads and Maritime Services commenced collection of an indicator of Aboriginality at the time of a new licence issues or renewal of an existing NSW Driver Licence based on a self-identification approach. The purpose of the collection was to increase awareness of licencing and registration issues and contribute to an understanding of how road safety and support services can be improved for this group of the population.

### 6.2 Aboriginal licencing

The Aboriginal Licence Holders Statistical Report found that Aboriginal licence holders are 2.7 times more likely to have had a driver sanction of any kind of imposed on them in the last six years, three times more likely to have had a fine default licence suspension issued and ten times more likely to have had a court disqualification. An Aboriginal Driver Licencing Interagency Committee was established in response to the NSW Auditor General's report: *Safe and Legal Driving among Aboriginal People* and is made up of representatives from across government.

The *Aboriginal Road Safety Action Plan 2014 – 2017* was developed to improve road safety outcomes for Aboriginal people in NSW. It contains 31 actions promoting collaborative and coordinated action, developing a stronger evidence base, safer roads, safer vehicles, safer people, safe and legal driving, transport disadvantage and post-crash response and treatment. The Plan is delivering much-needed support for Aboriginal communities including training for child car seat installation, driver licencing access programs, more alternative transport options and targeted road safety improvements.

### 6.3 Driver disqualification reforms

On 14 August 2017, the NSW Government announced major reforms to the driver disqualification framework to make them more effective in reducing unauthorised driving and repeat offending. The proposed legislative reforms were considered by NSW Parliament later in 2017.<sup>34</sup>

The reforms arose from the NSW Government's response to the Law and Safety Committee's Report on driver licence disqualification. That report noted that the evidence shows that long disqualifications can severely limit a person's ability to gain employment, undertake education and

care for their families. Lengthy disqualification periods are also ineffective, providing no incentive for a person to return to lawful driving.<sup>35</sup>

One of the reforms announced will enable certain disqualified drivers that have been offence-free for a minimum period of two or four years to apply to the Local Court to have their disqualifications lifted early. This mechanism will enable certain disqualified drivers who have complied with their disqualification period to return earlier to lawful driving.

The Local Court will need to consider the safety of the public in determining whether lifting a disqualification is appropriate. Disqualified drivers who have been convicted of serious driving offences, for example involving death or grievous bodily harm, will not be eligible to have their disqualifications lifted early. Drivers who have had their disqualification lifted will still need to apply to NSW Roads and Maritime Services (RMS) and complete standard road safety and knowledge tests to get their licences back.

The reforms will address issues with the current unauthorised driving framework which contributes to the overrepresentation of Aboriginal people in prison. Maximum penalties for unauthorised driving offences will be reduced to make them fairer and more proportionate (ALRC Discussion Paper Question 6-2).

Currently, the maximum penalties for most repeat unauthorised driving offences in NSW are similar to the State's maximum penalties for offences such as high range drink driving. In a similar way to other traffic offences, minimum and automatic disqualifications for unauthorised driving offences will apply to unauthorised driving offences and multiple disqualifications for unauthorised driving offences will be able to run concurrently, unless otherwise ordered by the court. The lower maximum penalties will mean when an offender is imprisoned for unauthorised driving they will generally spend less time in custody, ensuring the prison system can focus resources on more serious offenders who have committed offences that pose a direct risk to community safety.

The reforms will also:

- Expand on the spot vehicle sanctions to allow NSW Police to confiscate number plates or vehicles (for 3 or 6 months) for repeat unauthorised drivers and those who commit certain serious driving offences as a community safety measure; and
- Abolish the Habitual Traffic Offender Scheme, which has been proven not to be a deterrent.<sup>36</sup>

The NSW Government does not support the suggestion by the ALRC to remove the enforcement measure of driver licence suspension altogether (Question 6-7). Suspension or cancellation of a person's licence is one of the most effective enforcement actions to recover debts, notwithstanding that lengthy disqualification periods are also ineffective.<sup>37</sup> The solutions proposed by the NSW Government focus on ensuring that there is more flexibility in the responses to driving offences and protecting people from suspension caused by fine default (Question 6-8).

## 6.4 Obtaining a licence

There are a range of programs to assist Aboriginal people to obtain a licence in NSW. The Restricted Provisional P1 Licence (RP1) pilot commenced on 1 July 2013 to help young drivers from selected remote communities to qualify for their provisional P1 licence. The pilot enables young learner drivers in targeted areas to obtain a Provisional (P1) with 50 hours of on-road driving experience (including 10 hours of night time driving) rather than the standard 120 hours of supervised driving required under the NSW Graduated Licensing Schemes (GLS). The targeted areas include Brewarrina, Walgett, Bourke, Broken Hill City, Balranald and Hay Local Government Areas.

As a balancing road safety measure, an additional condition is attached to the licence that restricts driving to trips for work, education or medical purposes only.

The take-up rate of RP1 licences has been low. Research suggests that systemic barriers such as literacy, access to proof of identity documents, access to roadworthy vehicles and supervising drivers, petrol and licensing costs and unpaid Revenue NSW fines prevent disadvantaged young people from achieving even the 50 hours of supervised driving experience required to access the pilot.

While the RP1 licence is still available, the NSW Government is addressing the ongoing licensing needs of young people in remote areas by addressing the barriers to obtaining, retaining and regaining licences through the Driver Licensing Access Program and Safer Driver Course Disadvantaged Learner Initiative.

Driver Licensing Access Program (DLAP): The Graduated Licensing Scheme (GLS) requirement to obtain 120 log book hours of on-road supervised driving experience ensures novice drivers gain on-road experience before driving solo. However it poses challenges for learner drivers who are disadvantaged, have limited access to supervising drivers, roadworthy vehicles and other supports that enable them to successfully obtain a driver licence.

In addition to the road safety benefits, having a driver licence provides mobility for people to have better access to health, education and employment opportunities thereby increasing their potential for social and economic success.

The achievement of these objectives is even more important for rural, culturally and linguistically diverse and Aboriginal communities, where the absence of a driver licence can exacerbate the disadvantage experienced by some people.

The NSW Government recognises the barriers preventing young people entry to the licensing system and established the DLAP in 2015. Amongst other things, its objectives are to improve road safety outcomes, provide culturally appropriate support and contribute to improved access to education, employment, health and other community participation.

The Driving Change program commenced in 2013 and was designed by The George Institute (TGI) for Global Health to assist young Aboriginal people aged 16 – 24 to attain their driver licence. TGI worked in partnership with organisations in 11 NSW communities to deliver a range of licensing support services. The communities included Redfern, Shellharbour, Griffith, Dubbo, Taree, Condobolin, Raymond Terrace, Wagga, Dareton, Campbelltown and Kempsey.

The Driving Change Program's service delivery model was developed to specifically address the significant underrepresentation of Aboriginal people among driver licence holders in NSW which is attributable to particular licensing barriers experienced by Aboriginal people.

The Safer Driver Course (SDC) for young (16-25 years) learner drivers commenced in NSW on 1 July 2013. An Australian first, it aims to address the higher crash rate for young provisional drivers in the first six months of driving solo. The curriculum framework for the course was developed by a board of independent road safety experts and is based on best practice in young driver education and adolescent cognitive developmental principles, which highlight the importance of extended supervised driving experience and low risk driving strategies for young learners.

The course is available to all learners in NSW for a fee, set at an affordable level by the NSW Government. Additional costs are met by the NSW Government through the Community Road Safety Fund.

The Safer Driver Course (SDC) Disadvantage Learner Initiative offers 1,000 free SDC places per year to assist young learner drivers from disadvantaged backgrounds and Aboriginal communities, with limited financial means, to access the course. It enables disadvantaged young learner drivers in NSW to benefit from the road safety outcomes provided by the course as well as help meet the supervised driving requirements of the GLS. The initiative is implemented under the governance arrangements that are already in place for the program management and delivery of the SDC.

Delivery of the Driver Knowledge Test to inmates: CSNSW and Juvenile Justice NSW deliver training programs to inmates and young offenders in order to reduce recidivism. Driver licensing has been identified as an area that can greatly increase the employability of offenders after release as well as providing a form of identification. CSNSW, Juvenile Justice NSW and RMS have formalised the delivery of the Driver Knowledge Test (DKT) to inmates and young offenders in correctional centres through an MOU which commenced in late 2016. The initiative to deliver the DKT in correctional centres supports the NSW Government's initiative to reduce recidivism for licensing offences and increase the number of Aboriginal licence holders.

## 6.5 Retaining a licence

The Driving and Licences Offences Project (DLOP) provides support for Aboriginal people appearing in court for driving or licencing offences. It currently operates in Mt Druitt, Penrith, Condobolin, Dubbo, Moree, Sydney (the Downing Centre), Maclean, Bourke, Kempsey, Broken Hill, Walgett, Toronto, Taree, Batemans Bay, Griffith, Campbelltown, Wollongong, Coffs Harbour and Wagga Wagga Local Courts.

In July 2017, the DLOP engaged with 3375 Aboriginal people attending court with driving offences. Many of these offenders were referred to services such as: Births, Deaths and Marriages for identification; the State Debt Recovery Office to put in place time to pay plans to deal with fines; or referrals to Work Development Order (or WDO) programs to reduce fines and driver licencing programs to help retain or regain their licence. WDOs are available to all inmates who experience financial hardship due to fines and who meet the criteria to participate.

The Aboriginal Inmate Birth Certificate Program run by CSNSW provides financial assistance to eligible Aboriginal inmates who wish to obtain a birth certificate for the purpose of obtaining qualifications, completing vocational training or accessing Centrelink services. In 2016-17, working with Births Deaths and Marriages, the program provided 800 birth certificates to inmates across the state.

The aim of the Mandatory Alcohol Interlock Program (MAIP), which commenced 1 February 2015, is to reduce drink driving-related deaths and injuries on NSW roads. This is achieved by keeping offenders in the licensing system on a closely monitored basis, with the interlock physically

preventing drink driving. Over 4,440 offenders have had interlock devices fitted since the MAIP program started and over 10,550 interlock orders have been issued (as at 14 August 2017). Offenders with an interlock exemption order are required by RMS to complete a drink drive education program before they can re-apply for their licence.

The NSW Sober Driver Program is a state-wide education and relapse prevention program for repeat drink drive offenders convicted of two or more offences within five years. The program has been in place since 2003 and was developed by a whole-of-government expert group, based on best practice adult learning principles. Research has shown that in relative terms, after accounting for confounding variables of Aboriginal status and high offending, participants in the Sober Driver Program were 44% less likely to re-offend compared with a comparison group.

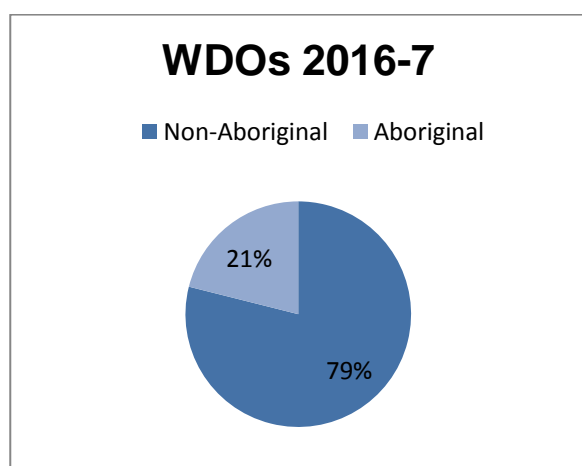
## 6.6 Work development orders

Work and Development Orders (or WDOs) were introduced as a trial NSW in 2009, and expanded from 2011 onwards. Under the WDO scheme people who cannot pay fines due to hardship, illness, addiction, or homelessness can clear their debt by undertaking activities that benefit them and the community including: program attendance; medical treatment; counselling; education; driving lessons; or community work.

The scheme is limited to people who have serious medical, mental health or addiction problems, a cognitive impairment or intellectual disability, are homeless, or who are in serious financial hardship.

NSW accepts applications from organisations to become WDO sponsors, including organisations outside NSW supporting clients with NSW fines debt. The WDO programs continue to grow with sponsor organisation numbers increasing at a rate of 30% per annum. There are over 2000 sponsors across Australia providing assistance through a WDO. Over half (53%) of organisation sponsors have supported a WDO for an Aboriginal customer since the scheme commenced.

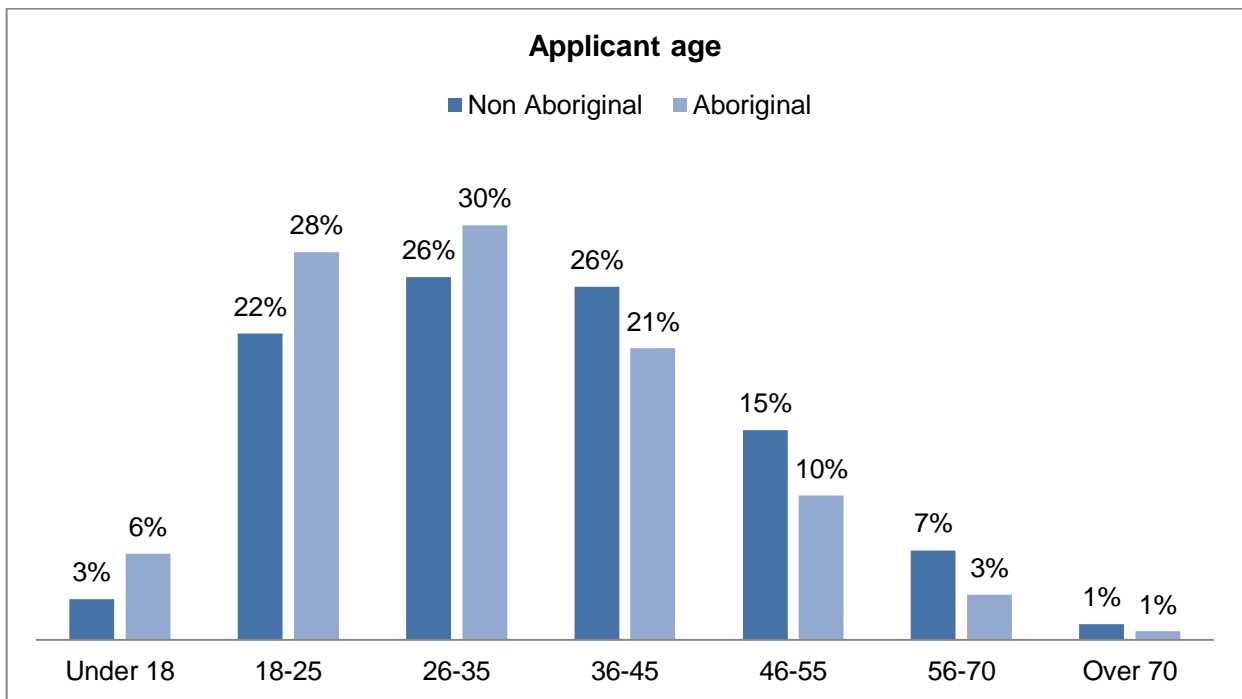
Information from Revenue NSW indicates that more than 75,000 WDOs have been issued in NSW since the introduction of the WDO scheme, resolving more than \$90M of debt. In 2016/2017 there was strong participation in WDO from Aboriginal people. There were 4,874 WDOs approved, representing 21% of all WDOs. More Aboriginal males participate in a WDO than females. Aboriginal participants tended to be younger than non-Aboriginal participants, with 64% being 35 and under, compared with 51% non-Aboriginal participants. The average debt per participant was \$3,281, which is approximately 7% higher than the average non-Aboriginal participant.



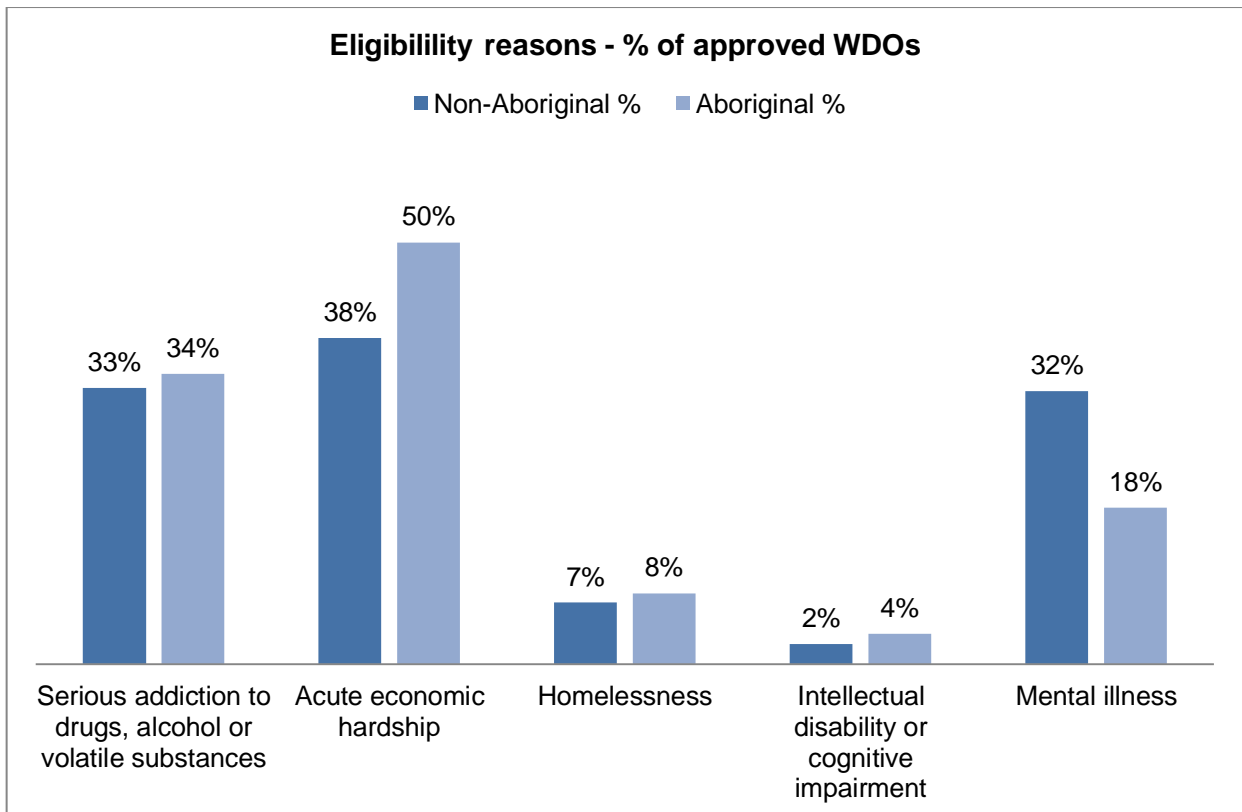
Gender	Number of WDOs approved in 2016-7
Male	3050
Female	1817
Non-specific*	7

\*Non-specific was a gender option introduced in late August 2016, in response to feedback from sponsors who requested a non-binary gender option.

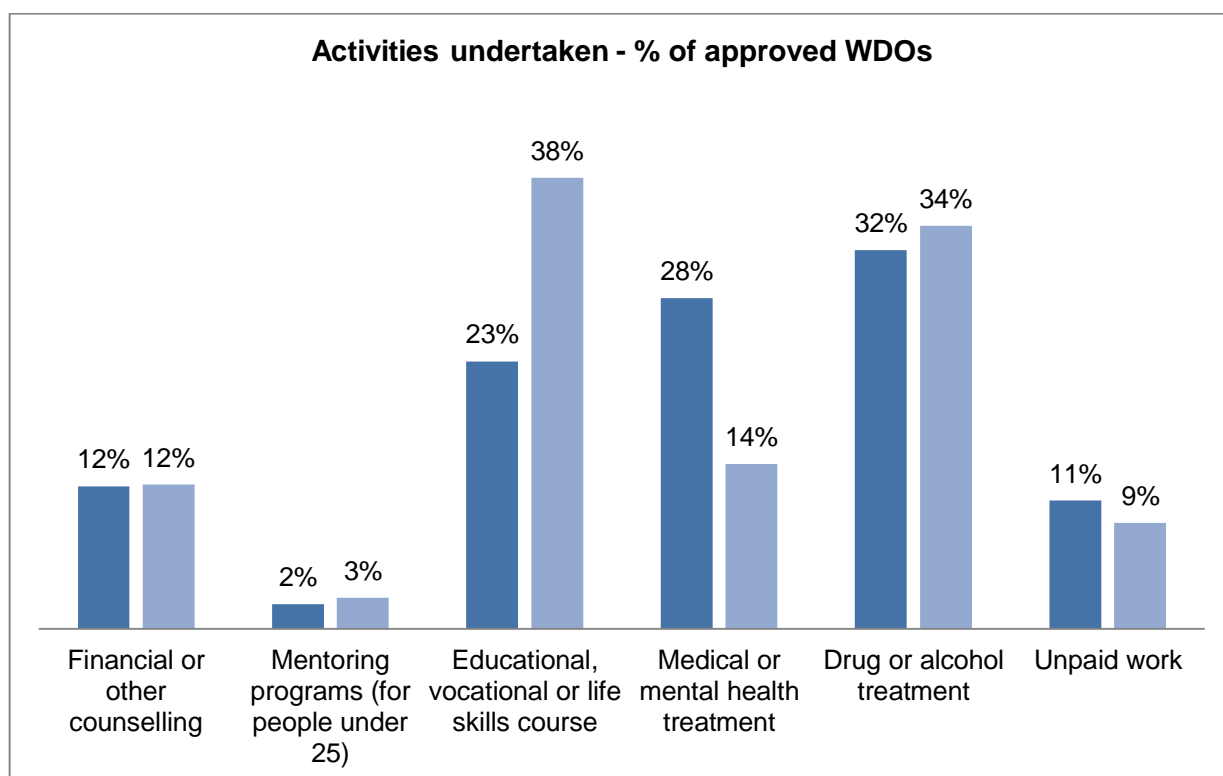




The most common eligibility criterion for Aboriginal participants is acute economic hardship. This is also the case for non-Aboriginal participants. Of note, WDO participants can choose multiple criteria when applying for a WDO. Aboriginal participants are more likely to undertake Educational, Vocational or Life Skills Courses followed by Drug and Alcohol as an approved activity under the WDO program and less likely to undertake Medical or Mental Health Treatment. Mentoring programs are available to participants 25 years of age and under, therefore have overall lower participation rates for all participants.







## 6.7 Fines and infringement notices

The NSW Government acknowledges that fines have a disproportionate impact on Aboriginal people and other vulnerable groups and is currently considering options to make fines fairer and more flexible.

The Commissioner of Fines Administration has established a steering committee to oversee a review of the penalty notice system. The committee includes representation from the Department of Premier and Cabinet, the NSW Department of Justice, Legal Aid NSW, NSW Police, issuing authorities and non-government community partners. The review will consider the impact of fines on Aboriginal people and the way in which penalty notices are set, decision making at the point of issue and the collection process.

A range of alternatives to fines such as cautions suggested by the ALRC are already available in NSW, including the successful Work and Development Order program which the ALRC proposes be introduced in other states.

Other flexible options in NSW include:

- Issuing officers may issue cautions under s.19A(1) of the *Fines Act 1996* (NSW). Cautions guidelines assist issuing officers when exercising this discretion.
- Reviewing agencies have powers to withdraw penalty notices under s.24E(e) of the *Fines Act* on the basis that an official caution should have been given.

Although imprisonment is an available option under the *Fines Act 1996* (NSW), the NSW Office of State Revenue (OSR) has not issued a warrant of commitment since the State Debt Recovery Office commenced operations 1998. The OSR is currently exploring options to abolish Part 4

Division 6 of the *Fines Act* (Imprisonment) and replace it with an alternative sanction involving court referral.

The NSW Government does not support abolition of the court's ability to order imprisonment for fine default altogether (ALRC Discussion Paper Proposal 6-1). The principle of 'imprisonment as a last resort' protects against imprisonment for fine default unless necessary.

## 7. Working with the community

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In August 2011, the NSW Government established the Ministerial Taskforce on Aboriginal Affairs to provide advice on possible areas of reform in education, employment, service delivery and accountability. Aboriginal communities and other key stakeholders expressed a strong desire for change and the need for government to build a genuine and sustainable partnership with Aboriginal communities and organisations.

Throughout the consultations, Aboriginal people repeatedly raised the importance of respect for Aboriginal culture and need for healing to address the impact of trans-generational trauma as a result of colonisation and the policies and practices of successive governments.

Released in April 2013, OCHRE (Opportunity Choice Healing Responsibility Empowerment) is the NSW Government's plan to support strong Aboriginal communities in which Aboriginal people actively influence and fully participate in social, economic and cultural life. It does this by building Aboriginal people's pride and identity, supporting Aboriginal students to stay in school, supporting Aboriginal young people to get jobs and growing local Aboriginal leaders' and communities' capacity to drive their own solutions.

OCHRE is made up of the following key initiatives:

- Staying accountable: A robust accountability framework includes independent monitoring and assessment, program evaluation and a commitment to working with Aboriginal communities to set the measures of success – as well as regular public reporting on progress and lessons learnt.
- Local languages, local cultures: Aboriginal Language and Culture Nests address the loss of Aboriginal languages and culture and the resulting impact on the wellbeing of Aboriginal peoples in NSW through the teaching of languages in public schools.
- Supporting Aboriginal students to succeed: Through Opportunity Hubs and Connected Communities schools. By working with the community, businesses and other stakeholders, Opportunity Hubs match the needs of individuals to the local services, agencies or mentors best placed to help them. The Hubs are run by experienced organisations with strong links to Aboriginal community organisations, local businesses, regional industries and services.
- Growing jobs and economic opportunities: The NSW Aboriginal Economic Prosperity Framework (AEPF) is a suite of integrated commitments to support participation by Aboriginal people in the NSW economy. The AEPF brings together interconnected actions in the areas of education, training, employment, housing, business development and land rights.
- Local communities, local initiatives: Seven regional alliances represent communities within their area and negotiate with the NSW Government on issues of mutual interest and priority.
- Healing: By acknowledging that healing and intergenerational trauma and loss are real, significant and ongoing issues for Aboriginal people, OCHRE initiatives advance the dialogue across NSW to promote healing.

Informed by some 2,700 Aboriginal people through an extensive consultation process undertaken by a Ministerial Taskforce on Aboriginal affairs, OCHRE rejects traditional top-down deficit based approaches. Instead, the plan embraces increased accountability, strengthened Aboriginal governance, investments in culture and language and a focus on education and employment as necessary to improve outcomes for Aboriginal people in NSW. For more information see [http://www.aboriginalaffairs.nsw.gov.au/pdfs/OCHRE/AA\\_OCHRE\\_final.pdf](http://www.aboriginalaffairs.nsw.gov.au/pdfs/OCHRE/AA_OCHRE_final.pdf).

## End Notes

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<sup>1</sup> The term Aboriginal is used throughout the submission, reflecting that the Traditional Owners of NSW are Aboriginal Australians and the significant majority of Indigenous Australians in NSW are of Aboriginal descent. Unless otherwise noted, statistics and programs which refer to Aboriginal people in NSW include both Aboriginal and Torres Strait Islander Australians.

<sup>2</sup> Australian Bureau of Statistics (ABS) (2017) *Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians 2016*, cat. no. 2075.0, ABS, Canberra, accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/0/4E7978922DB02C96CA257A230015F235?Opendocument> (Sept 2017)

<sup>3</sup> ABS (2017) *Prisoners in Australia 2016*, cat. no. 4517.0, ABS, Canberra, accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~New%20South%20Wales~18> (Sept 2017).

<sup>4</sup> Australian Institute of Health and Welfare (2015) *Indigenous young people under supervision*, accessed at <http://www.aihw.gov.au/youth-justice/indigenous/> (Aug 2017)

<sup>5</sup> ABS (2017) *Prisoners in Australia 2016*, as above

<sup>6</sup> At 4.12, Steering Committee for the Review of Government Service Provision (2016) *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, accessed at <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016> (July 2017)

<sup>7</sup> This funding includes \$4 million which is directed to sentencing and parole reforms, as referenced in the previous point.

<sup>8</sup> See for example in 2016, of the 946 people imprisoned for 'Traffic and vehicle regulatory offences' as their principal offence in NSW, 277 were Indigenous people: BOCSAR (2017) *New South Wales Criminal Courts Statistics 2016*, accessed at [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_publication/bocsar\\_pub\\_byyear.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_publication/bocsar_pub_byyear.aspx) (July 2017)

<sup>9</sup> Agnew-Pauley W and Holmes J (2015) *Re-offending in NSW*, Crime and Justice Bulletin: Contemporary Issues in Crime and Justice, no. 108.

<sup>10</sup> See Chapter 11 in Productivity Commission (2016) *Overcoming Indigenous Disadvantage: Key Indicators 2016*, as above.

<sup>11</sup> Weatherburn D, Froyland G, Moffatt S and Corben S (2009) *Prison Populations and Correctional Outlays: The Effect of Reducing Re-Imprisonment*, Crime and Justice Bulletin: Contemporary Issues in Crime and Justice, no. 138.

<sup>12</sup> BOCSAR (2017) *NSW Recorded Crime Statistics quarterly update June 2017*, accessed at [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_publication/bocsar\\_pub\\_byyear.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_publication/bocsar_pub_byyear.aspx) (Sept 2017)

<sup>13</sup> NSW Department of Justice, *Justice Reforms webpage*, accessed at <http://www.justice.nsw.gov.au/reform> (July 2017)

<sup>14</sup> Washington State Institute for Public Policy (2013) *Inventory of Evidence-Based and Research-Based Programs for Adult Corrections*, accessed at [http://www.wsipp.wa.gov/ReportFile/1542/Wsipp\\_Inventory-of-Evidence-Based-and-Research-Based-Programs-for-Adult-Corrections\\_Final-Report.pdf](http://www.wsipp.wa.gov/ReportFile/1542/Wsipp_Inventory-of-Evidence-Based-and-Research-Based-Programs-for-Adult-Corrections_Final-Report.pdf) (Sept 2017)

<sup>15</sup> Weatherburn D and Ringland C (2014) *Re-offending on parole*, Crime and Justice Bulletin: Contemporary Issues in Crime and Justice, no.178.

<sup>16</sup> At least one of the following additional conditions must be imposed: GPS Monitoring; Home detention; Curfews; Programs; Alcohol/drug abstinence; Non-association requirement; Place restriction requirement; and or up to 750 hours of community service work

<sup>17</sup> Menéndez P and Weatherburn, D (2014) *The effect of suspended sentences on imprisonment*, Crime and Justice Statistics Bureau Brief no. 97.

<sup>18</sup> NSW Law Reform Commission (2013) *Sentencing Report 139*, as above.

<sup>19</sup> Cox, P (2015) *Violence against women: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey 2012*, Horizons Research Report, Issue 1, Australia's National Research Organisation for Women's Safety (ANROWS), Sydney. See also Our Watch (2016) *Facts and Figures* <https://www.ourwatch.org.au/Understanding-Violence/Facts-and-figures>

<sup>20</sup> Figure from 2015 at Table 4A.12.6 in Productivity Commission (2016) *Overcoming Indigenous Disadvantage: Key Indicators 2016*, as above.

- <sup>21</sup> BOCSAR (2017) *Domestic Violence Statistic, NSW Recorded Crime Statistics July 2016 to June 2017*, BOCSAR Reference: kr17-15176.
- <sup>22</sup> BOCSAR (2017) *Domestic Violence Statistic, NSW Recorded Crime Statistics July 2016 to June 2017*, as above.
- <sup>23</sup> Weatherburn D and Routledge K (2017) *Indigenous imprisonment in NSW: A closer look at the trend* <http://www.bocsar.nsw.gov.au/Documents/BB/Report-2017-Indigenous-Imprisonment-in-NSW-BB126.pdf>
- <sup>24</sup> NSW Law Reform Commission (2015) *Report 142: Parole*, [http://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc\\_completed\\_projects/lrc\\_parole/lrc\\_parole.aspx](http://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_completed_projects/lrc_parole/lrc_parole.aspx)
- <sup>25</sup> BOCSAR, unpublished data.
- <sup>26</sup> Poynton S, Stavrou E, Marott N and Fitzgerald J (2016) *Breach rate of Apprehended Domestic Violence Orders in NSW*, Crime and Statistics Issue Paper 119, Bureau of Crime Statistics and Research <http://www.bocsar.nsw.gov.au/Documents/BB/Report-2016-Breach-rate-of-Apprehended-Domestic-Violence-Orders-in-NSW-BB119.pdf>
- <sup>27</sup> *Law Enforcement (Powers and Responsibilities) Regulation 2016* (NSW)
- <sup>28</sup> Weatherburn D, Jones C, Snowball L and Hua J (2008) *The NSW Drug Court: A re-evaluation of its effectiveness*, <http://www.bocsar.nsw.gov.au/Documents/CJB/cjb121.pdf>
- <sup>29</sup> At 11.9 of the Report, accessed at <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>
- <sup>30</sup> McCausland R, McEntyre E and Baldry E (2017) *Indigenous People, Mental Health, Cognitive Disability and the Criminal Justice System*. Indigenous Justice Clearinghouse Research Brief 22, NSW Department of Justice: Sydney
- <sup>31</sup> The rate of domestic assault for Aboriginal women is still more than six times the rate of non-Indigenous women (see Grech K and Burgess M (2011) *Trends and patterns in domestic violence assaults: 2001 to 2010*, accessed at <http://www.bocsar.nsw.gov.au/Documents/BB/bb61.pdf>. See also section 3.3 of this submission.
- <sup>32</sup> Road Crashes Analysis 2012 – 2016p (fatal and matched serious injuries) published by the Centre for Road Safety
- <sup>33</sup> Road Crashes 2005 – 2016p longer term analysis (fatalities and serious injuries [total hospitalisations]) published by the Centre for Road Safety
- <sup>34</sup> October 2017 update: The legislative reforms passed the NSW Parliament and received assent on 13 October 2017 and will come into effect on 28 October 2017.
- <sup>35</sup> See NSW Auditor General's report in *Safe and Legal Driving Amongst Aboriginal People* <http://www.audit.nsw.gov.au/publications/performance-audit-reports/2013-reports/improving-legal-and-safe-driving-among-aboriginal-people/legal-and-safe-driving-among-aboriginal-people>
- <sup>36</sup> Moffatt S and Poynton S (2007) *The deterrent effect of higher fines on recidivism: Driving offences*, Contemporary Issues in Crime and Justice Number 106, Bureau of Crime Statistics and Research: Sydney
- <sup>37</sup> See Audit Office of NSW (2013) *New South Wales Auditor-General's Report - Performance Audit: Improving legal and safe driving among Aboriginal people*. <http://www.audit.nsw.gov.au/publications/performance-audit-reports/2013-reports/improving-legal-and-safe-driving-among-aboriginal-people/legal-and-safe-driving-among-aboriginal-people>