

Submission to Australian Law Reform Commission

# Incarceration Rates of Aboriginal and Torres Strait Islander People (Discussion Paper 84)

September 2017

National Association of Community Legal Centres

ABN 67 757 001 303 ACN 163 101 737

Tel: 61 2 9264 9595

Fax: 61 2 9264 9594

Email: [nacalc@clc.net.au](mailto:nacalc@clc.net.au)

Web: [www.nacalc.org.au](http://www.nacalc.org.au)

Mail: PO Box A2245 Sydney South NSW 1235 Australia

 @nacalccomms

# Contents

<b>Executive Summary</b>	<b>1</b>
<b>Approach to Reform</b>	<b>2</b>
Aboriginal and Torres Strait Islander Incarceration in the Federal Context	2
Female Offenders	2
Other Issues/Areas	3
Children and Young People	3
Civil and Family Law	3
A Human Rights Act/Bill of Rights	3
<b>Pathways to Engagement with the Justice System</b>	<b>3</b>
Child Protection and Out-of-Home-Care	4
Pathways for Victims of Child Sexual Abuse	4
<b>Prevention and Early Intervention</b>	<b>5</b>
Justice Reinvestment	5
<b>Access to Justice</b>	<b>5</b>
Interpreter Services	5
Access to Legal Help	6
Legal Assistance Providers	7
Increasing Availability and Access to Legal Services	8
Custody Notification Services	9
<b>Sentencing</b>	<b>9</b>
Mandatory Sentencing	9
Alternative Pathways	10
<b>Incarceration</b>	<b>10</b>
Approaches to Provision of Corrective Services and Prison Programs	10
<b>Pre and Post-Release Support and Planning</b>	<b>12</b>
Culturally Safe Transition Support Services	12
<b>Justice Targets</b>	<b>13</b>

## Executive Summary

This submission is made in response to Australian Law Reform Commission's Discussion Paper, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*. The submission is made on behalf of the National Association of Community Legal Centres (NACLC), including **knowmore**, which was established by NACLC.

NACLC welcomes the opportunity to contribute to the work of the Australian Law Reform Commission (ALRC). This submission builds on correspondence provided to the Commonwealth Attorney-General and ALRC at the commencement of the Inquiry.

**NACLC** is the peak body for all community legal centres (CLCs) in Australia. CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to everyday people, including Aboriginal and Torres Strait Islander people. For example, the 2015 NACLC Census of CLCs in Australia revealed that 15.3% of CLC clients, on average, identified as an Aboriginal and/or Torres Strait Islander person. Some Family Violence Prevention Legal Services (FVPLS) and Aboriginal and Torres Strait Islander Legal Services (ATSILS) have chosen to join state and territory CLC associations and so also now come under the NACLC umbrella.

**knowmore** is a free, national community legal service providing legal advice and assistance, information and referral services via a free advice line and face-to-face services in key locations, for people considering telling their story or providing information to the Royal Commission into Institutional Responses to Child Sexual Abuse (the 'Royal Commission').

As a member of the Change the Record Steering Committee, NACLC also draws the ALRC's attention to the submission made by Change the Record as well as its groundbreaking *Blueprint for Change* (2015).

We also note that a number of individual CLCs have made submissions to the Inquiry and NACLC draws the ALRC's attention to submissions made by those CLCs including:

- Arts Law Centre of Australia
- Caxton Legal Centre
- Community Legal Centres NSW
- Human Rights Law Centre
- Kingsford Legal Centre
- Public Interest Advocacy Centre
- Queensland Advocacy Incorporated
- Top End Women's Legal Service, and
- Women's Legal Service NSW.

This submission does not respond to all issues canvassed in the Discussion Paper, rather it provides general comments on the ALRC's approach to reform, and addresses a number of particular issues discussed in the Discussion Paper. In some specific areas, for example with respect to approaches to the provision of corrective services and prison programs, or pre and post-release support and planning, the submission draws on the particular prison outreach work of **knowmore**.

NACLC would welcome the opportunity to discuss these issues in more detail. The most appropriate contact person for this submission is:

Amanda Alford

Director Policy & Advocacy

Ph: (02) 9264 9595 Email: [amanda\\_alford@clc.net.au](mailto:amanda_alford@clc.net.au)

## Approach to Reform

There have been numerous reviews and inquiries into access to justice-related issues for Aboriginal and Torres Strait Islander peoples over many years, with limited positive reform or real change to issues such as the over-representation of Aboriginal and Torres Strait people in the criminal justice system, or access to legal assistance.

As a result, we welcome indications that the ALRC has considered the existing evidence base, and will more fully consider it in the Final Report, building on significant work done to make meaningful recommendations for reform. We also welcome the ALRC's recognition of the range of factors that contribute to imprisonment rates, including that 'law is only one piece in a much larger historical, social and economic context that contributes to the drivers of incarceration'.

## Aboriginal and Torres Strait Islander Incarceration in the Federal Context

We consider that it is important that the Commonwealth Government lead reform in this area and that the ALRC's Final Report provide a blueprint for such reform.

While much of the legislation and many of the issues relevant to this Inquiry are state or territory based, we welcome the ALRC's acknowledgement of its role in considering proposals for uniformity between state and territory laws and to consider proposals for complementary Commonwealth, state and territory laws.

In our view, reports such as *Equality, Capacity and Disability in Commonwealth Laws* released by the ALRC provide useful examples of how the ALRC might adopt an approach that recognises its role, but is able to usefully make recommendations about modelling in Commonwealth laws and potential national uniformity.

## Female Offenders

We welcome the specific and detailed consideration given to female offenders in the Discussion Paper, particularly given Aboriginal and Torres Strait Islander women are the fastest growing group of prisoners in Australia, the nature of factors that contribute to the over-representation of Aboriginal and Torres Strait Islander women, and the unique impacts of incarceration on women.

In addition to the pathways outlined below, we also note the pathways for female offenders linked to their experience of sexual assault, family violence and child sexual abuse. For example, studies of Aboriginal women in NSW prisons have found that over 75% of Aboriginal women had been sexually assaulted as a child, almost 50% had been sexually assaulted as adults and almost 80% were victims of family violence. We draw the ALRC's attention to the submission made by centres such as Women's Legal Services NSW that address this in more detail.

We support the recommendations made in the Change the Record/Human Rights Law Centre Report, *Over-Represented and Overlooked*, and were pleased to see detailed references to the report in the Discussion Paper.

## Other Issues/Areas

### Children and Young People

The Discussion Paper does not include a section that considers the over-representation of Aboriginal and Torres Strait Islander children and young people in the justice system. Given the particular experiences of children and young people, recent revelations of systemic abuse of children in such circumstances, and the broad evidence base upon which the ALRC could draw in this area, we suggest that the ALRC consider inclusion of a section and recommendations on children and young people in the Final Report.

We also draw the ALRC's attention to the pathways outlined below, including in particular between care and protection and out-of-home-care and future offending and concerns about the impact early interaction with the criminal justice system has on their life course.<sup>1</sup>

### Civil and Family Law

In our view, consideration of the overrepresentation of civil and family law matters in Aboriginal and Torres Strait Islander communities, and how these matters interact and intersect with criminal justice outcomes is an intersection not currently appropriately considered in the context of this Inquiry. While we understand that the scope of the Inquiry is already broad, we suggest some discussion of these issues and intersections in the Final Report.

### A Human Rights Act/Bill of Rights

The Discussion Paper and issues raised within it clearly reveal the existing limited framework for the protection and promotion of rights in Australia, including for example the limited rights provided for under the Australian Constitution and the clear ability of the Commonwealth Parliament to make laws that are specifically inconsistent with the rights and freedoms under international instruments to which Australia is a party.

In light of this and the systemic rights abuses detailed in the Discussion Paper, we consider that a vital recommendation with respect to ensuring protection of the rights of Aboriginal and Torres Strait Islander peoples and to provide a meaningful framework within which to address over-representation in the justice system is for the enactment of a Commonwealth Human Rights Act.

## Pathways to Engagement with the Justice System

There is overwhelming evidence of clear pathways and relationships between early interaction with child protection and out-of-home-care systems and experiences, youth and juvenile justice and incarceration later in life.



<sup>1</sup> See, eg, Judge Peter Johnstone, President of the Children's Court of NSW, Aboriginal Legal Service Symposium, Noah's on the Beach, Newcastle, Friday 5<sup>th</sup> August 2016, 'Cross-Over Kids: The Drift of Children from the Child Protection System into the Criminal Justice System', 5.

In our view, in the Discussion Paper the ALRC has perhaps not sufficiently considered these pathways or the systemic reforms needed to address the impact of these pathways on the over-representation of Aboriginal and Torres Strait Islander people in the justice system.

These pathways are considered throughout this submission, however two particular elements- child protection and out-of-home-care and pathways for victims of child sexual abuse - are addressed in more detail below.

## Child Protection and Out-of-Home-Care

The pathways outlined above are particularly significant for Aboriginal and Torres Strait Islander peoples given the over-representation of Aboriginal and Torres Strait Islander children in child protection systems and in out-of-home care across all jurisdictions.<sup>2</sup>

While welcoming the ALRC's comments in relation to the relationship between child protection and adult incarceration, as well as its inclusion of information contained in NACLC's previous contribution on these issues, we encourage the ALRC to make more concrete recommendations in this area.

In the Discussion Paper, the ALRC states: "While there are strategies at state level, there has not been a national review of the laws and processes operating within the care and protection systems of the various states and territories. The ALRC considers that such a review would be timely".<sup>3</sup>

We would support the ALRC making a recommendation of this type in the Final Report.

## Pathways for Victims of Child Sexual Abuse

There are consistently similar pathways into the adult corrective services system for many survivors of child sexual abuse.

It is the experience of **knowmore** that many prisoner clients have reported similar 'pathways' leading to the adult correctional system, as outlined above. Usually this starts with childhood abuse (in either a non-institutional or institutional setting, and frequently experienced in both settings), leading to trauma and a lifetime of institutional involvement, with abuse occurring before and/or during one or more of these stages. Many are now recidivist adult offenders.

Very few Aboriginal and Torres Strait Islander prisoner clients report ever gaining any criminal or civil justice outcomes or therapeutic healing support to help deal with the consequences of this abuse, which they now see as contributing to their continuing along the above pathway. In addition, many Aboriginal and Torres Strait Islander prisoner clients are only now making disclosures about their experience of childhood sexual abuse.

---

<sup>2</sup> See, eg, SNAICC – National Voice for our Children, *The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal* (2016), Melbourne, 9; Australian Institute of Health and Welfare 2017. *Child protection Australia 2015–16*. Child Welfare series no. 66. Cat. no. CWS 60. Canberra: AIHW.

<sup>3</sup> ALRC Discussion Paper, [1.24].

## Prevention and Early Intervention

### Justice Reinvestment

We support a justice reinvestment approach in Australia and consider that it is a crucial element of addressing the high levels of imprisonment of Aboriginal and Torres Strait Islander peoples.

One of the key elements in any solution focussed on addressing over-representation in the criminal justice system is to address disadvantage, including through approaches such as justice reinvestment which seek to divert funding from prisons to community programs. Accordingly, we strongly support investment in community-based and led programs that seek to address the issues and disadvantage underlying offending behaviour.

The Senate Legal and Constitutional Affairs Committee,<sup>4</sup> the Aboriginal and Torres Strait Islander Social Justice Commissioner and organisations and communities across Australia have recognised the potential benefits of a justice reinvestment approach in Australia and the need for additional support and funding of such an approach.

Briefly, we consider that:

- the Commonwealth Government must play a leadership role in encouraging State and Territory Governments to adopt justice reinvestment strategies
- additional research, funding and pilot programs are an important step in introducing such approaches across Australia, and
- justice reinvestment approaches must be tailored to the needs of the particular community and must involve Aboriginal and Torres Strait Islander peoples and communities in determining how such approaches are implemented in communities.

We draw the ALRC's attention in particular to the work of its member the Federation of Community Legal Centres in Victoria in leading Smart Justice, a coalition of 25 legal and community organisations seeking to promote understanding of criminal justice policies that are effective, evidence-based and human rights compliant; as well as the work of the Change the Record Coalition outlined earlier in this submission.

## Access to Justice

### Interpreter Services

#### **ALRC Proposal 11-1**

*Where needed, state and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to establish interpreter services within the criminal justice system.*

We support Proposal 11-1 given the vital importance of ensuring that Aboriginal and Torres Strait Islander people who come into contact with the justice system are able to understand the system and processes, any charges laid, and are able to provide their lawyers with instructions.

The proposal reflects Policy Solution 8.3 in the CTR Blueprint for Change that calls on Government to increase the availability of interpreters for legal and other services, particularly in remote and regional areas.

---

<sup>4</sup> See, eg, Senate Legal and Constitutional Affairs Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, (June 2013).



## Access to Legal Help

### **ALRC Question 11-2**

*In what ways can availability and access to Aboriginal and Torres Strait Islander legal services be increased?*

The focus of this section of the submission on access to legal assistance for Aboriginal and Torres Strait Islander people is on the four publicly funded legal assistance providers, given our role as the peak body for CLCs in Australia, and in light of the prohibitively high cost of private legal assistance for many Aboriginal and Torres Strait Islander people.

In considering the extent of access to legal assistance for Aboriginal and Torres Strait Islander peoples, it is important to outline briefly broader factors that impact on access to legal assistance for Aboriginal and Torres Strait Islander peoples, including:

- **Intergenerational and Multi-Faceted Disadvantage:** The systemic, intergenerational and multi-faceted disadvantage experienced by Aboriginal and Torres Strait Islander people across a range of indicators directly impacts on the ability of Aboriginal and Torres Strait Islander people to access legal assistance.
- **Remoteness:** There is a significant lack of access to legal services in remote areas. In 2011, 43% of Aboriginal and Torres Strait Islander people were living in outer regional, remote and very remote areas.<sup>5</sup> This remoteness creates a significant barrier to access legal assistance.
- **Lack of Awareness:** In some instances Aboriginal and Torres Strait Islander people may lack awareness of their rights, or what remedies or legal assistance is available when legal issues arise. In addition, Aboriginal and Torres Strait Islander people may not recognise the legal issue arising from particular circumstances.
- **Language and Interpreters:** In some instances Aboriginal and Torres Strait Islander people require access to interpreters to facilitate communication with legal assistance providers and the legal system more broadly, either because they do not speak English as their first language, they speak Aboriginal English, or they have hearing difficulties. Unfortunately, as outlined in the submission made by the National Aboriginal and Torres Strait Islander Legal Services, there is a shortage of appropriate interpreting services across Australia.
- **Mistrust of Government and Justice System:** As a result of historical and ongoing marginalisation, systemic discrimination and negative engagement with Government authorities, police and the justice system, Aboriginal and Torres Strait Islander people may be hesitant to seek legal assistance or engage with the justice system.

In addition, a crucial factor in assessing and considering the extent of access to legal assistance by Aboriginal and Torres Strait Islander people is the significant level of unmet legal need in Australia.

The level of unmet legal need has been widely recognised, including by the Law and Justice Foundation's Legal Australia-Wide Survey and the Productivity Commission in its recent Access to Justice Arrangements Inquiry, and is reflected in the high turnaway rates record by legal assistance providers. Unfortunately, unmet legal need, including for Aboriginal and Torres Strait Islander peoples often has serious flow-on effects and leads to greater and more complex legal problems and ultimately to higher costs to the justice system and other areas of government spending.<sup>6</sup>

<sup>5</sup> See, eg, Productivity Commission of Australia, Steering Committee for the Review of Government Service Provision, *Overcoming Disadvantage: Key Indicators 2014* (November 2014), 3.12.

<sup>6</sup> See, eg, Productivity Commission of Australia, *Access to Justice Arrangements*, Final Report, Vol 2, 759, 781.

## Legal Assistance Providers

There are four publicly funded legal assistance providers in Australia—CLCs, Legal Aid Commissions (LACs), Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS). The nature, purpose, work and capacities of each of these legal assistance providers are complementary, but not interchangeable. Legal assistance providers play a crucial role in the Australian legal system for vulnerable and disadvantaged members of the community and are vital to ensuring access to legal assistance for Aboriginal and Torres Strait Islander peoples.

It is our policy and firm belief that the most appropriate providers of legal services for Aboriginal and Torres Strait Islander peoples are the specifically dedicated ATSILS and FVPLS staffed and managed, as far as is possible, by Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander peoples have experienced, and continue, to experience, historical marginalisation from mainstream services, and generally prefer to and feel culturally secure in attending Aboriginal and Torres Strait Islander specific services. Importantly, both ATSILS and FVPLS offer community-controlled culturally safe services to Aboriginal and Torres Strait Islander peoples.

As recognised by the Productivity Commission in its 2014 *Access to Justice Arrangements* report, 'Aboriginal and Torres Strait Islander Australians often have complex legal needs and face substantial barriers in accessing legal assistance. The nature and complexity of their civil law needs means that specialist legal assistance services remain justified'.<sup>7</sup>

### *Aboriginal and Torres Strait Islander Legal Services*

Aboriginal and Torres Strait Islander Legal Services (ATSILS) across Australia are the largest provider of legal assistance to Aboriginal and Torres Strait Islander people, providing approximately 200,000 legal assistances to Aboriginal and Torres Strait Islander people each year.

### *Family Violence Prevention Legal Services*

There are 14 FVPLS across Australia and service delivery has traditionally been limited to 31 specific rural and remote locations. The primary functions of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are experiencing, or who have experienced, family violence. The FVPLS provide a holistic service delivery model that attempts to address the complex and intersectional legal and non-legal issues facing clients.

### *Community Legal Centres*

As outlined above, CLCs are independently operating community-based not-for-profit organisations that provide free and accessible legal and related services to everyday people, including Aboriginal and Torres Strait Islander peoples and communities.

The 2016 NACLC National Census of CLCs indicated that the average proportion of CLC clients identifying as an Aboriginal or Torres Strait Islander person was 15.4% and that assistance to Aboriginal and Torres Strait Islander people is amongst the top three client groups/areas in which CLCs offer assistance.<sup>8</sup>

---

<sup>7</sup> Productivity Commission of Australia, *Access to Justice Arrangements*, Final Report, Vol 2, 761, Finding 22.1.

<sup>8</sup> NACLC, National Census of Community Legal Centres National Report (2016), available here:

<http://www.nacalc.org.au/resources/NACLC%20Census%202016%20National%20Report%20-%20FINAL.pdf>.

There will be occasions when ATSILS and FVPLS are unable to assist a client because of real or perceived conflict, lack of resources, or because it is a specialist area of law that is outside their practice expertise. It may also be the case that in some matters, particularly in smaller communities, a person may not wish to consult, or be seen to consult a particular legal service where other members of family or community attend or work. It is therefore important that Aboriginal and Torres Strait Islander people have the choice to access other, culturally appropriate legal assistance providers if they so wish.

As a result, CLCs provide vital culturally appropriate services to Aboriginal and Torres Strait Islander peoples and are an important part of the framework to ensure Aboriginal and Torres Strait Islander people are able to access the legal help they need.

### **Increasing Availability and Access to Legal Services**

We remain concerned about ongoing underfunding and funding uncertainty on the ability of Aboriginal and Torres Strait Islander peoples to access legal assistance. There is a high level of unmet legal need in Australia and underfunding of legal assistance services to meet such need.

As a result, we suggest the following would increase availability and access to legal services:

1. Permanently reverse planned Commonwealth funding cuts to ATSILS (consistent with the submissions made by Change the Record and NATSILS)
2. Increase funding to the legal assistance sector consistently with the recommendation made by the Productivity Commission in its 2014 Access to Justice Arrangements, by an additional \$200 million per year (with 60% from the Commonwealth Government and 40% to be contributed by State and Territory Governments).
3. Commit to implementing an appropriate process for determining adequate and sustainable longer-term funding contributions to the legal assistance sector (including in particular ATSILS and FVPLS) by Federal, State and Territory Governments, in consultation with the sector.
4. Reinstate the FVPLS as a stand-alone national programme and provide it with a direct allocation of funding.
5. Provide funding for a regular national survey of legal need, similar to the Legal Australia-Wide (LAW) Survey undertaken in 2008, to examine met and unmet legal need in Australia and ensure such work appropriately considers Aboriginal and Torres Strait Islander peoples and communities.
6. Provide the peak bodies for ATSILS and FVPLS—National Aboriginal and Torres Strait Islander Legal Services and National Family Violence Prevention Legal Services Forum—with additional, predictable and long-term funding and support.

### **Funding for Civil and Family Law**

In considering funding of Aboriginal and Torres Strait Islander legal assistance services (and legal assistance services that assist Aboriginal and Torres Strait Islander people), it is also important to consider particularly issues relating to access to assistance in civil and family law matters. As a result of finite resources and prioritisation of assistance in matters where there is a risk of incarceration, limited LACs and ATSILS funding is often (but not always) directed more towards assistance in criminal rather than civil or family law matters.

This is not to say that LACS and the ATSILS do not provide family and civil law services, or that they do not have female clients, however their required focus on representation in criminal law cases strongly works against funding being used for family and civil law problems, and against gender equity in the allocation of legal assistance funding. This also has flow-on effects with respect to conflicts of interest, often precluding Aboriginal and Torres Strait Islander women from accessing ATSILS.

As a result, there is particular and significant unmet legal need amongst Aboriginal and Torres Strait Islander women for legal assistance in civil and family law matters and the need for additional funding for such assistance. This need for additional funding for civil and family law was recognised by the Productivity Commission in its 2014 Access to Justice Arrangement Report.

## Custody Notification Services

### **ALRC Proposal 11-3**

*State and territory governments should introduce a statutory custody notification service that places a duty on police to contact the Aboriginal Legal Service, or equivalent service, immediately on detaining an Aboriginal and Torres Strait Islander person.*

We support Proposal 11-3 which calls for State and Territory Governments, in consultation with ATSILS, to introduce custody notification laws that make it mandatory for the police to notify ATSILS of any Aboriginal and Torres Strait Islander person taken into custody.

## Sentencing

### Mandatory Sentencing

#### **ALRC Question 4-1**

*Noting the incarceration rates of Aboriginal and Torres Strait Islander people:*

*a) should Commonwealth, state and territory governments review provisions that impose mandatory or presumptive sentences; and*

*b) which provisions should be prioritised for review?*

We consider that mandatory sentencing laws are arbitrary and undermine basic rule of law principles by preventing courts from exercising discretion and imposing penalties tailored appropriately to the circumstances of the case and the offender. Of particular concern is the disproportionate impact of such laws on Aboriginal and Torres Strait Islander peoples in light of the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.<sup>9</sup>

Significant concern has been expressed over many years, including for example by the United Nations Human Rights Committee, about mandatory sentencing laws and the disproportionate imposition of punishment along with failure to comply with Australia's international human rights obligations.

There are a number of Australian jurisdictions that have mandatory sentences for criminal offences. Broadly we suggest that the ALRC recommend in its Final Report that Commonwealth, state and territory governments review with a view to abolishing all provisions that impose mandatory or presumptive sentences. In prioritising any specific provisions however, we suggest provisions in the Northern Territory and Western Australia are of particular concern, and notably these jurisdictions have the highest rates for the imprisonment of Aboriginal and Torres Strait Islander people in Australia.

---

<sup>9</sup> See, eg, United Nations Committee against Torture, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Australia (2014) [12].

## Alternative Pathways

Women's Legal Services Australia, a national network of CLCs, has emphasised that:

- In sentencing and considering possible diversionary options, greater consideration should be given to primary caregiving responsibilities for a child/ren, any history of violence experienced and any history of mental health and substance abuse. This is consistent with the United Nations Bangkok Rules.<sup>10</sup> Imprisonment of women and particularly pregnant women and women caring for children should be as a last resort.
- If a mother is imprisoned, wherever possible, her children under six years of age should be able to live with her, as currently occurs successfully at centres such as the Emu Plains Correctional Centre.
- In the experience of Women's Legal Services across Australia, clients consistently tell centres that maintaining a relationship with children while in prison is an important factor that can contribute to reducing recidivism. Similarly, an inability to maintain contact with children contributes to recidivism. In addition, Toohey cites several studies which found children's coping skills were also enhanced and "problematic behaviour" was reduced by maintaining contact with their incarcerated parents.<sup>11 12</sup>

## Incarceration

### Approaches to Provision of Corrective Services and Prison Programs

There is in practice insufficient emphasis upon trauma-informed and culturally secure approaches to the provision of corrective services across Australian prisons. This is significant given that such approaches, along with prison programs and pre and post-release support and planning play a central role in supporting prisoners and reducing recidivism.

During its work with Aboriginal and Torres Strait Islander prisoners, **knowmore** staff have seen instances, and heard complaints from Aboriginal and Torres Strait Islander prisoners, about a lack of cultural awareness within prisons. **knowmore's** Aboriginal and Torres Strait Islander engagement staff have also reported the absence of cultural awareness training for staff in many of the prisons visited and have suggested that trauma-informed training should also include enhanced cultural awareness training.

Aboriginal and Torres Strait Islander prisoners have reported to **knowmore** their sense that some non-Indigenous correctional centre staff often ignore the importance of Aboriginal and Torres Strait Islander cultures which effectively forces Aboriginal and Torres Strait Islander prisoners to give up their cultural values in the prison environment, with an accompanying loss of dignity and flow-on effect on wellbeing and likelihood of rehabilitation.

**knowmore** has also had concerns expressed to its staff by prisoners, particularly in Western Australia, about the lack of Aboriginal and/or Torres Strait Islander correctional officers.

---

<sup>10</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, E/2010/30 adopted by the UN General Assembly on 21 December 2010, Rule 41(b)

<sup>11</sup> Julie-Anne Toohey, "Children and Their Incarcerated Parents: Maintaining Connections – How Kids' Days at Tasmania's Risdon Prison Contribute to Imprisoned Parent-Child Relationships," *Changing the Way We Think About Change, The Australian and New Zealand Critical Criminology Conference 2012* at 33.

<sup>12</sup> See, eg, WLSA Submission to *NSW Parliamentary Child Protection Inquiry, 2016*.

**knowmore's** work with Aboriginal and Torres Strait Islander prisoners has highlighted the connections between childhood complex trauma and pathways into the Corrective Services system. A more trauma-informed corrective services system would be far more likely to mean systems could talk a common language; would be more likely to understand how their policies and practices may trigger and aggravate peoples' trauma and their behaviour rather than serving as a deterrent (and could adapt accordingly); and could respond sensitively and appropriately to people to help reduce their ongoing risks and patterns of offending.

We suggest that there would be significant benefits in ensuring that trauma informed practice principles and cultural awareness training be addressed during the induction of all correctional staff (together with information about the over-representation of survivors and Indigenous people within the prison population) and that these training programs be continued throughout their employment.

We also suggest that internal practices and services including psychological services, mental health services and other psycho-social support for people in prisons are likewise grounded in a trauma-informed approach. This should be inclusive of culturally safe and appropriate trauma-screening practices as part of all routine intake processes for people in prisons and in their through-care. In **knowmore's** view, such culturally secure trauma screening, support and treatment practices for Aboriginal and Torres Strait Islander people within prison who have experienced child sexual abuse should:

- Be inclusive of support over the phone when people need it, as well as access to regular and ongoing culturally secure, trauma-informed counselling.
- Support prisoners with locating a confidential space and culturally secure language for how to talk about what happened to them as a child (if they choose to talk).
- Ensure culturally secure ways (additional to talking therapies) that can offer healing processes for people in prison and post release (examples might include symbolism through art, music, writing, physical – body work, sport, dance and spiritual healing). This may also include group options where safe and appropriate to do so, and
- Involve Aboriginal and Torres Strait Islander counsellors.

We have not undertaken detailed research around other or international service models that might be used to guide reforms in this area. It is suggested that a review of international examples of trauma-informed, culturally secure corrective services models may help inform further recommendations for reform by the ALRC of current correctional practices across Australia.

### *Programs for Aboriginal and Torres Strait Islander women*

**Proposal 5-2** *There are few prison programs for female prisoners and these may not address the needs of Aboriginal and Torres Strait Islander female prisoners. State and territory corrective services should develop culturally appropriate programs that are readily available to Aboriginal and Torres Strait Islander female prisoners.*

We support Proposal 5-2 and emphasise the need for specific prison programs for Aboriginal and Torres Strait Islander women in prison. We draw the ALRC's attention to the submission made by Women's Legal Services NSW on these issues.

### *Limited access to external support providers*

In addition, in **knowmore's** experience, few prisons were found to have established links or partnerships with existing external support service providers, particularly providers of culturally appropriate support for Aboriginal and Torres Strait Islander peoples. This has meant that **knowmore** staff have found it extremely difficult to source external support services for Aboriginal and Torres



Strait Islander prisoners. Support is even more difficult for prisons in rural, regional and remote parts of Australia.

## Pre and Post-Release Support and Planning

Many Aboriginal and Torres Strait Islander prisoners assisted by **knowmore** have expressed concerns about re-offending on release and, in particular, a return to substance abuse in the absence of support and stable housing.

While this is a common complaint across the whole prison population, these concerns are perhaps more acute for Aboriginal and Torres Strait Islander survivors who accessed the **knowmore** service, with many reporting a longstanding history of institutionalisation and incarceration, consistent with the pathways noted earlier in this submission, from out of home care to juvenile justice and into the adult prison system. The normalisation of being 'institutionalised' has resulted in many survivors feeling safer inside prison and struggling to live outside. One prisoner told **knowmore**:

*"I want to get out and never come back but there's blokes in here already talking about what offences they're going to commit when they get out so they can get back inside ... and that's real sad ..."*

There is a well-demonstrated need for more effective and coordinated Transition Support Services for Aboriginal and Torres Strait Islander people exiting prisons. The model for such services must be one that allows for sufficient notice of release and appropriate time to case plan accordingly, inclusive of:

- assistance with housing
- transportation from prison
- assistance with Centrelink and/or finding employment
- re-establishing relationships with family (when safe to do so), and
- case coordination on release across mental health, parole/reporting requirements, physical health needs etc.

## Culturally Safe Transition Support Services

Any transitional support service needs to be cognisant of the additional cultural, family and community factors that impact on the experiences of incarceration on prisoners, and their needs for support pre and post-prison.

There are important considerations for Aboriginal and Torres Strait Islander people when they go back to community (if they can). In **knowmore's** experience for example:

- Where people have offended in their community, returning is rarely a possibility due to either formal parole conditions or because community will not support it. There may also be people in their own family or community who offended against them when they were children.
- For many who are returning to community there are a number of needs and challenges. There can be a strong desire to have some connection with their family. If this is not an option there is a desire to connect with extended family or even part of country. There is often an inner conflict and anguish around the level of support that the reconnection experience with family (even extended family) can provide.
- Many note that this connection can also be the source of ongoing triggers, not only of past traumas for which most people have not had any treatment. Family members outside quite often have their own experience of trauma and do not understand how it has impacted their own lives so continue to engage in cyclic behaviours that perpetuate more trauma.

- Other issues can also impact on a person to cause his /her return to prison, including their own return to patterns of substance misuse; instability in the family home such as overcrowding in accommodation; or unemployment and illness.

## Justice Targets

### **ALRC Question 10-1**

*Should the Commonwealth Government develop justice targets as part of the review of the Closing the Gap policy? If so, what should these targets encompass?*

We strongly support the introduction of justice targets into the COAG Closing the Gap Strategy. Justice targets are a vital tool in attempts to address the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system and would facilitate measurement of government initiatives against clear targets. The inclusion of a justice target in the Closing the Gap would also strengthen and support the necessary commitment to justice reinvestment strategies.

As proposed in the CTR Blueprint for Change, we support calls for Commonwealth, State and Territory Governments to work with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies, through COAG to set the following justice targets:

- i. Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people by 2040, with an interim target of halving the gap by 2030; and
- ii. Cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040

In addition, specific sub-targets should also be developed that include a focus on the importance of resourcing Aboriginal and Torres Strait Islander community controlled organisations, which deliver front line services that would assist in meeting an identified Justice Target. For example, a key mechanism to support any such justice targets is to ensure Aboriginal and Torres Strait Islander people have equitable access to adequately funded legal assistance across Australia.



*NACLC acknowledges the traditional owners of the lands across Australia and particularly the Gadigal people of the Eora Nation, traditional owners of the land on which the NACLC office is situated. We pay deep respect to Elders past and present.*