

Australian Law Reform Commission Discussion Paper Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

Queensland Youth Justice, Department of Justice and Attorney General (DJAG) acknowledges the traditional custodians of the lands and waters on which we work and recognise their continuing connection to those lands and waters. We pay our respects to the elder's past, present and those emerging.



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On 20 July 2017, Mr Sean Harvey, Assistant Director General (ADG), Queensland (Qld) Youth Justice was requested by the Australian Law Reform Commission (ALRC) to provide a formal written response to the discussion paper on the *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*. The following submission provides a reflection on Qld Youth Justices' thinking and the Department's response to the complexity of reducing the incarceration rates of Aboriginal and Torres Strait Islander peoples. The aim of this submission is an attempt to highlight the necessity with which justice systems coming into contact with Aboriginal and Torres Strait Islander peoples must be "fit-for-purpose". For if change is situated only within the other, then we render ourselves (the system) powerless to effect the change we would wish to see.

Introduction

There is a multiplicity of diversity within Aboriginal and/or Torres Strait Islander cultures, family and community structures and experiences. The factors contributing to poor outcomes are often multiple, complex and interconnected. This complex foundation, coupled with a history of trauma, the existence of lateral violence, low numbers of Aboriginal and Torres Strait Islander peoples working within the justice system, and the pervasive fear of getting it wrong should not be viewed as barriers, but rather as opportunities for the development of open minded and self-reflective systems able to deal with the historical context of the disadvantage experienced by Aboriginal and Torres Strait Islander peoples. Such a system would maintain a desire to learn and grow in its cultural safety and cultural capability, acknowledging these as the essential qualities of a system aimed at reducing incarceration rates of Aboriginal and Torres Strait Islander peoples.

Queensland Youth Justice Context

The Department of Justice and Attorney General (DJAG) is committed to strengthening our organisational cultural capability in the way we do business; ensuring we are inclusive of Aboriginal and Torres Strait Islander people and communities and are responsive to the issues they face and effective in our collective efforts as an agency. The DJAG Aboriginal and Torres Strait Islander Cultural Capability Action Plan (the Action Plan) 2015-19, clearly outlines DJAG's commitment to having a workforce whose programs and practices embody the spirit of reconciliation and who recognise the significant contribution which Aboriginal and Torres Strait Islander staff and people can make towards the work of our department in improving outcomes for young people.

Qld Youth Justice have been proactive in their approaches to building cultural capability by embedding new ways of achieving and working towards best practice outcomes for Aboriginal and Torres Strait Islander young people. The Youth Justice First Nations Action Board (YJFNAB) is a representative body of Aboriginal and Torres Strait Islander staff within Youth Justice that were formed at the request of Mr Sean Harvey, ADG to contribute to finding new solutions to the significant over-representation of Aboriginal and Torres Strait Islander young people in that system. The aim of the YJFNAB has been to provide a cultural lens across all Youth Justice initiatives; delivering alternative views and ways of working with First Nations young people, from the perspective of First Nations people. The impact proposed by such a move is to increase the cultural safety of the Qld Youth Justice system that is working at unprecedented levels with Aboriginal and Torres Strait Islander young people.

The department has also recently created the first Aboriginal and Torres Strait Islander Cultural Directorate within Qld Youth Justice. The Directorate will provide critical expert advice and support to both central and regional youth justice staff; particularly in the implementation of new initiatives such as the inclusion of 17 year olds into the Qld youth justice system as well as the implementation of the 83 recommendations from the Independent Review of Youth Detention in Queensland. Both of these initiatives have a strong focus on providing more cultural programs and supports for Aboriginal and Torres Strait Islander young people both in detention as well as in the community. The Directorate will also be instrumental in leading a large body of work around "Cultural Safety" which will focus on culturally transforming our business and moving youth justice towards a "culturally safe" place for all employees. This work will enable youth justice to fully utilise a cultural lens to provide meaningful input and decision making in regards to the best outcomes for Aboriginal and Torres Strait Islander young people and communities.

Response to Incarceration Rates of Aboriginal and Torres Strait Islander Peoples Discussion Paper

Cultural Safety

Cultural Safety is a term that has not been clearly defined in an Australian context (Phillips, 2015). The term has its beginnings in New Zealand in relation to the failure rates of Maori nursing students (Wepa, 2003). The student, Hinerangi Mohi, used the term to highlight that one's cultural safety was as important, if not more important, as one's legal or ethical safety (Pere 1997)). What was inherent in the original conception of cultural safety, says Phillips (2015), was that the cultures of recipients, professionals and institution are critical to the outcomes of any clinical or service delivery interactions. This situates the importance of how we define cultural safety. Taking from the suggested definition of cultural safety proffered by Bin-Sallik and employed in the ALRC discussion paper we note:

[c]ultural safety extends beyond cultural awareness and cultural sensitivity. It empowers individuals and enables them to contribute to the achievement of positive outcomes. It encompasses a reflection on individual cultural identity and recognition of the impact of personal culture on professional practice.

Definitions which refer only to the capabilities or competencies of individual professionals continues to locate responsibility for improving justice outcomes with individual professionals alone. In doing so, such definitions ignore the institutional and structural factors at play when Aboriginal and Torres Strait Islander peoples come in contact with the [justice] system (Phillips, 2015). Such a definition would be outside the intent of the original definition which aimed to portray that the knowledge, skills and attitudes of individual workers are critical, but so too is the respectful *application* of these principles in institutional practices, policies and systems (Phillips, 2015).

It should also be highlighted that to miss the original intention of the term would be to miss the implicit understanding of the nature of partnerships between Aboriginal and Torres Strait Islander individuals and communities, and the institutions with which they engage (Fredericks 2009b, Rochecouste, Oliver et al. 2014). Furthering the definition noted above, Bin-Sallik (2003) also suggests there is an inherent power imbalance that exists in terms of the engagement of Aboriginal and Torres Strait Islander peoples with white institutions given colonisation and their

ongoing marginalisation in society. This is the reason Ramsden (2002) argued that cultural safety in the context of nursing education and the New Zealand health care system was first and foremost a task of breaking down ethnocentric world-views, and therefore concerned with values and beliefs as much as individual actions or institutional practices and policies. Applying Phillips (2015) contentions to the justice context, if the justice system assumes 'cultural safety', but does not address the prejudice of imposed values and beliefs inherent in a Western justice system, then the institution risks merely implementing 'cultural awareness', that is, the focus of change and problematisation continues to rest on 'the [marginalised] other'.

The cultural safety standpoint proposes that the **legislative amendment (Proposal 2-1)** (ALRC 2017, p. 44) could have positive implications for bail authorities from the perspective that any transformation of the justice system, the law and legal frameworks that sit within it, must recognise, as Phillips (2015) cites, that at the heart of *cultural safety* are notions of strengthening and validating [*Aboriginal and Torres Strait Islander*] cultural identity in an essentially western, individualised and alienating justice system; identifying the othering effects and workings of white privilege within such systems; breaking down the myth of mono-culturalism as 'normal', and empowering and giving voice to *Aboriginal and Torres Strait Islander* worldviews, beliefs and customs. Developing practices and policy from within a culturally safe framework further safeguards the therapeutic jurisprudence of the justice system.

Therapeutic Jurisprudence

Therapeutic Jurisprudence as a legal theory can be defined as '*... the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical wellbeing of the people it affects*' (Slobogin 1995, p 196). As such therapeutic jurisprudence as theory turns the mirror back on the justice system and its role as actor upon its participants. As Brookbanks (2001) suggests therapeutic jurisprudence is a paradigm shift in ethical thinking about the role of law. Therefore therapeutic jurisprudence is not the panacea for ethical action, instead bringing into sharp focus the potential conflict of values inherent within a complex justice system.

Therapeutic jurisprudence is a key consideration when answering **Question 3-1, systemic and background factors** (ALRC, p. 51); and when determining whether or not to implement **specialist sentencing reports (Question 3-3)** (ALRC p. 68) as it raises in both the issue of who defines the terms of knowledge production. As we learn from Foucault; Australian policy regarding Aboriginal and Torres Strait Islander affairs could be seen as nothing more than the consequential employment of the mono-cultural content of *knowledge-power*, and those norms and disciplines

which are diversely applied throughout the justice system. When applying Cunneen and Rowe's (2014) perspective to the implementation of *specialist sentencing reports*, it is reasonable to suggest such reports may be necessary to counter the colonial effects perpetuated by the knowledge control inherent in criminal justice systems. The current lack of such mechanisms may demonstrate an inability to acknowledge the situating of power and in doing so may reduce the likely success of attempts to reduce over-representation. Specialist sentencing reports can be seen as mechanisms to provide other relevant information which might otherwise not be achieved due to positivist paradigms which Hull (2009) suggests dominates research and informs policy in contemporary justice systems.

Positivist Theory

Inherent in *positivist theory* is the tendency to establish a standardized view of the social world by its reduction to simple constructs intended to create concrete truths (Crotty 1998). Previous authors have suggested some criminologists have explained Aboriginal over-representation in terms of patterns of behaviour and consequences (Hull 2009). As Weatherburn, Fitzgerald & Hua (2003) see it: *Indigenous people are more likely to be repeat offenders, repeat offenders are less likely to be cautioned and more likely to be charged, and they are also less likely to get bail and less likely to avoid a prison sentence if convicted. Thus, at each point in the criminal justice system the higher offending rate and longer offending history of Aboriginal people increases their level of representation. Therefore, to reduce rates of Aboriginal imprisonment we must reduce Aboriginal offending.*

Methodologically positivist approaches make inferences about Aboriginal and Torres Strait Islander offending using arrest rates, re-offending rates and self-report data (Hull 2009). In this manner one research project compared Aboriginal and Torres Strait Islander offenders with non-offending Aboriginal and Torres Strait Islander peoples so as to identify underlying factors that precipitate offending (Weatherburn, Snowball & Hunter 2006). However, while such statistical analysis forms the crux of this methodology (Hull 2009), such interpretations expound the erroneous view of Aboriginal and/or Torres Strait Islander peoples as homogenous. Blagg (2008) argues it is exactly such attempts to eliminate, restructure and reconstitute Aboriginal and Torres Strait Islander identity which is the heart of the problem.

This suggests there are primary considerations when developing solutions to ***Question 5-1, remand and short sentences*** (ALRC p. 95). That is, when the positivist argument is followed to its end, it is an ideology which leads to policy attempts to address over-representation by

mainstreaming Aboriginal and Torres Strait Islander prisoners into rehabilitation programs to reduce recidivism (Hull 2009). Gilbert and Wilson (2009) suggest Aboriginal and Torres Strait Islander drop-out rates are higher, and participation rates lower than non-Indigenous participants for such programs. A deficit in fit-for-purpose programs has been acknowledged as inhibitory to the participation and successful reintegration of Aboriginal and Torres Strait Islander peoples from prison (Willis & Moore 2008). Nevertheless, the policies promoted in strategic justice plans persist in attempts to reduce over-representation through mainstream programs that fail to address the specific needs and circumstances of Aboriginal and Torres Strait Islander peoples. It could be contended the justice systems contributes to the production of recidivism in its attempts to have equality instead of equity, and that future transformation must therefore be concerned with systemic and structural arrangements which embed Aboriginal and/or Torres Strait Islander lens'.

Aboriginal and Torres Strait Islander Lens

Blagg (2008) suggests any attempts to deal with over-representation without understanding Aboriginal and Torres Strait Islander perspectives amounts to little more than ticking the Aboriginal box. There needs to be a fundamental shift away from the traditional social policy framework in being paternalistic, to an approach of empowerment in Aboriginal and Torres Strait Islander peoples, families and communities. Use of an Aboriginal and or Torres Strait Islander cultural lens advocates the benefits of becoming more attuned to the effectiveness and sophistication embodied in hundreds of generations of Aboriginal and Torres Strait Islander people's knowledge and spiritual connection to this country and its people. The idea of a cultural lens is indicative of the fact that we all have one. That is as humans, we communicate and understand our world through the context of our beliefs and values, which we learn from our family behaviours, traditions and ultimately our personal experiences. An Aboriginal and or Torres Strait Islander lens within the justice system is about acknowledging that for decision makers our cultural lens may unconsciously influence those decisions, particularly if we are members of non-Aboriginal and non-Torres Strait Islander cultures. It can lead to limitations in our understanding of, and appreciation for the values and behaviours of others via unconsciously comparing them to our own norms, ways of thinking, and what we hold as important in the world.

There is an often disregarded body of research that suggests the most effective interventions are ones that integrate and actively engage with local First Nations people at all stages (including development, implementation, delivery and evaluation) (Stewart, Hedwards, Richards et al., 2014; Healing Foundation, 2014; Higgins and Davis, 2014). It is critical that interventions are owned and driven by the community rather than continuously imposed by government or courts.

Community involvement in the development and implementation of an initiative can be a vitally important factor in whether the program will meet local needs, receive community support and generate community ownership (Healing Foundation, 2014; Higgins and Davis, 2014; Preuss and Napanangka Brown, 2006).

It is well documented that interventions that offer a holistic approach, address multi systemic trauma, connect or reconnect young people to country, family and community, and are deeply rooted in culture, identity and spirituality are likely to increase protective factors. They are also likely to decrease risk factors of offending, and thus have a genuine impact of reducing the over representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system (Powell, Ross, Kickett et al., 2012; Phillips and Bamblett, 2009). As such, Aboriginal and/or Torres Strait Islander lenses are in practice as much about process as they are about the specific practice, program or policy arrived at.

Design Methodologies

Design methodologies, whilst not new, have been acknowledged as vital for the success of new initiatives developed by an adaptive Government (Shergold 2015). Shergold (2015) further suggests development of policy should include iterative stages which enable approaches to have fast cycle development and early evaluation. Design methodologies value drawing diverse people together who have a stake in an issue to encourage divergent thinking as the antidote to individual bias. From the design perspective the process of designing responses to complex problems is as important as the response itself. The need to achieve greater context specificity and better outcomes for a diverse client group is a prominent motivation behind the growing appetite for using design process within Youth Justice.

Design as a methodology emphasises 'user understanding', 'prototyping/testing' and 'collaboration'. A service design methodology seeks to understand the behaviours, needs and desires of the people who will use a service (i.e. by delivering it or receiving it) by spending time with them. This approach ensures solutions are both fit for purpose and desirable to the people who will use them. Further to this the model applies in the same form at different scales. It can be used as the framework for an overall project or describe a process that can be followed for smaller tasks within the project (Senova 2017).

Queensland Specific Initiatives

The following section outlines service delivery responses which Qld Youth Justice is either practicing or exploring as systemic responses to Aboriginal and Torres Strait Islander young people involved in the justice system. Firstly, it is acknowledged that these responses should in no way be considered the remedy for Aboriginal and Torres Strait Islander over-representation. However, each response endures utility for its adherence to an Aboriginal and Torres Strait Islander cultural lens; ability to increase the cultural safety of the system in which they sit and empowerment of self-determination for the young people, the families and the communities they will come into contact with.

On Country

Everything about Aboriginal society is inextricably woven with, and connected to, land. Culture is the land, the land and spirituality of Aboriginal people, our cultural beliefs or reason for existence is the land. You take that away and you take away our reason for existence... Removed from our lands, we are literally removed from ourselves. (Dodson, 1977)

Healing, and more importantly spiritual healing, is an essential concept and practice for Aboriginal and Torres Strait Islander peoples. It involves the application of existing cultural knowledge, and the development of new ways to practice this in a contemporary context. This in turn aims to address trauma and restore and sustain holistic wellbeing. Healing is an educational process of awakening, learning about the self, having an ever-deepening self-knowledge and a returning to wholeness that leads to transformation, transcendence and integration. The abovementioned idea of healing is an extension of the Western concept of health.

Aboriginal health means not just the physical well-being of an individual but refers to the social, emotional, and cultural well-being of the whole Community in which each individual is able to achieve their full potential as a human being, thereby bringing about the total well-being of their Community. It is a whole-of-life view and includes the cyclical concept of life-death-life. Health care services should strive to achieve the state where every individual is able to achieve their full potential as a human being and this bring about the total well-being of their community (Aboriginal Health and Medical Research Council of NSW 2013: 1). Atkinson (2008) explains that it happens through the experience of safety, community support, re-building a sense of family and

community, using ceremony and strengthening cultural and spiritual identity. This process is what an On Country model aims to facilitate.

An On Country intervention model is a physical residential facility that delivers a holistic approach aimed at addressing the underlying causes of offending from within an Aboriginal and Torres Strait Islander lens. It proposes an opportunity to deliver life skills and vocational training grounded in culture (e.g. land and sea care, fire management, environmental protection) and underpinned by cultural healing principles which include:

- Physically, socially and culturally safe and meaningful spaces for Aboriginal and Torres Strait Islander people, and for the community which they are located;
- Founded from an Aboriginal and Torres Strait Islander worldview, and strengthen connections between families, communities, land/sea and culture;
- Developed, led and primarily staffed by Aboriginal and Torres Strait Islander people, but also draw on complementary skills from mainstream partners and professions;
- Operated with and for their own communities, and work to empower individuals and communities to overcome the causes and symptoms of trauma; and
- Facilitate healing through an experimental approach and emphasis on 'what works', drawing on both traditional and modern healing practices.

Qld Youth Justice has explored On Country models for their applicability to **Proposal 4-1, availability of community-based sentencing options** (ALRC, p. 88). Qld Youth Justice have recently opened an invitation to offer process for a Cultural Mentoring Program in Townsville. The purpose of the Cultural Mentoring Program funding is to purchase a client-centered, culturally safe service for young Aboriginal and Torres Strait Islander males and females aged 10-17 years who are involved with the youth justice system, or are at risk of entering the youth justice system. Qld Youth Justice will purchase a service which explores the young person's cultural needs, including connection to land and sea and the role of family and kinship networks.

In line with the shift in methodology Qld Youth Justice are trialling the procurement of culturally appropriate services, which allows greater consideration to potential funded organisation's skills and capabilities to work from appropriate Aboriginal and Torres Strait Islander cultural frameworks. The proposed outcomes of this program overlap with **Proposal 7-1** (ALRC, p. 139) to reduce breaches of community-based sentences, thereby reducing recidivism. It may also demonstrate the viability of how culturally appropriate community-based support services and programs could contribute as community-based sentencing options.

Restorative Justice

Current research indicates that Restorative Justice (RJ) approaches are most effective in contributing to positive behavioural change when delivered to serious, repeat offenders guilty of interpersonal offences (Strang, Sherman, Mayo-Wilson, Woods, & Ariel, 2013). A wealth of previous research also articulates the numerous benefits for victims involved in RJ conferences (Angel, 2005; Strang, Sherman, Woods & Barnes, 2011; Strang, 2004). Moreover, effective outcomes are most likely where there is a tangible victim of the person's offending, allowing offenders to learn the personal impact of their offending behaviour on the victim and requiring them to face up to the direct consequences of their actions (Strang., 2004). However, previous research also signals that Aboriginal and Torres Strait Islander young people are more likely than non-Indigenous young people to reoffend after diversion through a conference (Dennison et al. 2006; Hayes & Daley, 2003; Luke & Lind, 2002). This evidence base has prompted youth justice to further explore how to strengthen RJ outcomes for Aboriginal and Torres Strait Islander young people.

Research in Australia and overseas has shown that strategies which empower local Aboriginal communities with self-determination have the greatest potential for immediate and long-term success in reducing Aboriginal crime (NSW Aboriginal Justice Advisory Council, 2003:7). These understandings have led some youth justice systems to acknowledge the potential to relinquish 'professional' decision making in favour of the 'will' of the community. Sharing responsibility for decision making processes and enabling families, victims and community to be the primary decision making mechanism and develop plans that hold young people accountable for their behaviour and address their underlying needs (as cited in *Playing to Win – Youth Offenders Out of Court - And Sometimes In: Restorative Practices in the New Zealand youth justice system*).

Mornington Island Restorative Justice Project

In response to ***Question 3–2, reparation or restoration as a sentencing principle*** (ALRC, p. 52) youth justice are currently trialling how the criminal justice system becomes more responsive to Aboriginal and Torres Strait Islander offenders through the use of RJ. The Remote Youth Justice Service Centre (RYJSC) are piloting an innovative new way of delivering Youth Justice conferencing that would increase community ownership of the Restorative Justice (RJ) conferencing process for young people. The Mornington Island Restorative Justice Conferencing

model (MIRJC) will enable a transition from delivery by RYJSC staff to community-based service delivery through an existing, justice-focussed, Mornington Island Non-Government Organisation (NGO). Currently RYJSC visit the community on a fly-in, fly-out basis. This means that staff are not embedded in the community, the service is compressed into a shorter timeframe than other locations which do not have the same travel limitations.

The outsourcing of the RJ Conferencing process will hand-over control to local people living in community who will have a better understanding of the personal and cultural factors that impact on young offenders and the victims of their offences.

Youth Justice expects the model will enable young people to be engaged in conferencing led by local convenors (employed by the local NGO) who can better manage local stakeholders and cultural considerations, may deliver services in language, should deliver more relevant outcomes, in better timeframes (with more fidelity to the RJ model) and with lower costs. It is expected that the amount of conferencing undertaken would increase.

It is clear that the benefits of a successful implementation are many, and well worth the investment that will be required. There will be benefits for:

- young people (better quality and more relevant conferencing experience)
- the victims (relevant conference outcomes)
- the community (local ownership of the process, improved skills of local people, valuing the language skills and cultural knowledge of local people, new employment opportunities for local people)
- Youth Justice (reduced cost over time, better conferencing practice, increased number of young people referred and completing conferences)

Family Led Decision Making

Family Led Decision Making (FLDM) is rooted in the belief that families have a shared history, wisdom, untapped resources, and an unrivalled commitment to their children. It is about empowering families and their support network to think and plan creatively for their children and young people, create community partnerships, and utilise family strengths and resources to resolve worries and concerns. The following information is intended to suggest the practical value FLDM could offer in response to **Questions 3-3, 3-4 & 3-5, specialist sentencing reports;**

particularly the role FLDM could play as the mechanism for the preparation of the reports suggest in **Question 3-5** (ALRC, p. 68).

FLDM making is an umbrella term for a range of strengths-based processes that adhere to a common set of principles and bring children, young people, family, community supports and professionals together to discuss wellbeing concerns, problem solve and plan for future action (Huntsman, 2006). Recognised FLDM approaches include Family Group Conferencing, Group Decision Making and Family Decision Making (Harris, 2008). These terms are sometimes used interchangeably in literature. The overall aim of FLDM is to empower the family to make decisions in relation to their own support needs as well as their children's support needs while statutory responsibility is retained by youth justice services.

Aboriginal and Torres Strait Islander FLDM seeks to promote self-determination for Aboriginal and Torres Strait Islander peoples in responding to youth criminal activity through the leadership of an independent Aboriginal and Torres Strait Islander community-controlled organisation. The convenors provide culturally-appropriate engagement and support to families to enable their participation in decision-making.

Qld Youth Justice is currently designing pilot sites aimed at testing the impact of Aboriginal and Torres Strait Islander FLDM on youth justice working in a new way. The implementation of the Aboriginal and Torres Strait Islander FLDM pilot represents the possibility for a new way of working for Youth Justice more broadly, and within restorative justice specifically. A new way of working and its processes are what we hope to interrogate in the pilot, not the FLDM model which is well-grounded in theory and evidence-based best practice. Therefore, a program theory which concentrates on what is being done differently will be developed. The outcomes for youth justice in Aboriginal and Torres Strait Islander FLDM are situated in the key *differences* to standard statutory mechanisms:

- It is a shared practice model between FLDM service providers and departmental staff. The FLDM service providers' involvement and influence in the meeting and the pre-meeting coordination is important because it is intended that Aboriginal and/or Torres Strait Islander people increase ownership over the whole process. The ***independence*** of the FLDM service providers from the department is considered to be one of the reasons for an expected increased ownership of the process. Youth Justice expects this could also improve the information provided to the courts as suggested by **Question 3-3**, and increase the likelihood

of positive outcomes as suggested by **Question 3-4** for FLDM's ability to achieve information that would otherwise be unlikely to be submitted.

- It is an Aboriginal and Torres Strait Islander family-led decision making approach which is enabled by an impartial third party who makes sure that all participants have a chance to speak and are listened to. The ***impartiality*** of FLDM service providers is considered to be the reasoning that will help families develop clearer relationships between the youth justice system and family members.
- The process is led by Aboriginal and Torres Strait Islander community-controlled organisations and Aboriginal and Torres Strait Islander conveners. Drawing on ***cultural knowledge and strengths*** is the reasoning for improved family and community engagement as well as trust in the process, and the need to adapt the process to reflect unique cultural practices and needs in the location.

Building stronger cultural practice which acknowledges the centrality of Aboriginal and Torres Strait Islander family and kinship require the provision of mechanisms for family/kinship participation outside of adversarial processes. This move would align with Aboriginal and Torres Strait Islander people's preference for collectivism and the concept and practice of collective responsibility for dealing with matters affecting family in the resolution of disputes. Holistic ideologies which could also be seen to encompass Aboriginal and Torres Strait Islander conceptions of well-being (Aboriginal Health and Medical Research Council of NSW 2013: 1). Therefore, Aboriginal and Torres Strait Islander communities are best placed to meet the needs of their children, families and communities and only increased community ownership for decision-making can address this important issue and satisfy First Nations peoples right to self-determination (Redfern Statement, 2016; RCIADIC 1991).

New Zealand is a jurisdiction which has undergone significant reform in this regard. Within restorative practices New Zealand has taken the ethical policy position that *the right thing to do* is to meet the needs of Maori young people and families over-represented within that justice system. In this regard the New Zealand justice system has recognised the centrality of family through their *Children, Young Persons and their Families Act 1989 (CYPF Act)*. This centrality is made visible through the principle that, wherever possible, a child's or young person's family, whanau, hapū, iwi, and family group should *participate in the making of decisions affecting that child or young person*, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapū, iwi, and family group (as cited in *Playing to Win – Youth Offenders Out of Court - And Sometimes In: Restorative Practices in the New Zealand youth*

justice system). It is important to highlight the close resemblance this principle holds with the view put forth by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1991):

That policies of government and the practices of agencies which have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies.

The acknowledgement regards the long held awareness and discomfort of Aboriginal and Torres Strait Islander peoples with the mono-cultural nature of systems such as the justice system. A recommendation to shift away from a system where professional decision making is *done to or for* those involved in such systems could enable families and communities to better assume, *where appropriate*, ownership in formalised decision making processes. The Aboriginal and/or Torres Strait Islander FLDM is a process receiving some recognition for its potential to deliver such outcomes within statutory environments (Department of Communities, Child Safety and Disability Services 2017).

Aboriginal and Torres Strait Islander Cultural Capability training

Cultural competence is a developmental process underpinned by the ability to acknowledge issues and experiences from another's perspective, and within a cultural context (ACT Department of Training and Education, 2010). It can be defined as a distinct, but cumulative relationship between cultural awareness (knowing), cultural sensitivity (appreciating), cultural competence (practising, demonstrating) and cultural proficiency (embedding as organisational practice). The following information is intended to suggest the practical and critical value cultural competency could offer in response to a number of **Proposals and Questions** outlined within the discussion paper.

Qld Youth Justice currently deliver Aboriginal and Torres Strait Islander Cultural Capability training across the state to all youth justice staff at all levels throughout the organisation. The aim of the training is to build on the capacity of Youth Justice Staff to work with Aboriginal and Torres Strait Islander young people, their families and the community in a culturally appropriate manner.

It assists in increasing staffs cultural capability in all areas, as well as creating a more culturally appropriate supportive work environment for Youth Justice Aboriginal and Torres Strait Islander staff.

The training is facilitated by Aboriginal and/or Torres Strait Islander youth justice staff and delivered over two (2) days. The training aims to generate discussion and better practice at a team level while also developing empathy and reflexivity for individual staff in a safe training environment. The training involves discussions and activities designed to provide a safe and fun training environment to foster learning and clarification on the following key topics:

- Aboriginal Cultural elements
- Torres Strait Islander Cultural elements
- Localised Aboriginal and Torres Strait Islander engagement tools and resources
- Aboriginal and Torres Strait Islander Cultural identity and Stereotypes

At the organisational level is it critical that organisations provide their staff with policies, procedures, programs and systems which have been developed within and validated by the culture for which services are being delivered. This is essential when considering the **Proposals and Questions** within **Police Accountability** (ALRC, p. 15) however this should not just be limited to the Police but rather be across all aspects of the justice system.

Justice Reinvestment

Justice Reinvestment (JR) at Cherbourg is currently a proof of concept project which is in the process of consulting widely with community to establish whether the community sees value in implementing a full JR process. Core to the JR methodology has been positioning JR to be truly community led. A concept which comes with challenges, given the historical context of government engagements in discrete communities. A steering group has been established, and in order for this to have a range of community voices, a decision was made to include six community representatives (ranging in age and gender), as well as a Youth Justice community representative. The structure of the steering group has proven to be a great asset to JR in Cherbourg, with champions for systemic change emerging from within this group. The importance and value of community champions is a strong learning that is currently emerging from JR. Alongside this, the importance of a dedicated community resource to champion and engage community during JR has become evident.

The project is positioned to change how government traditionally engages with community, and some key learnings in undertaking this are that we need to be responsive to the community's needs. JR is a fairly complex methodology, and the importance and value in following the process itself has been identified. This has raised the question of how is the best way to pass information that is gathered back to the community. To support this a key learning has been to ensure engagement is with key people and that community representatives are supported in the sharing of this information. The need to engage widely with the community, and to ensure that the most vulnerable in community are included in this process, is exceptionally important. Community has also consistently highlighted a need to take adequate time in consulting, and key learnings in undertaking this has been employing different strategies to reach the community (e.g. radio station, community events, individual meetings, and reaching out to young people). Key to the entire process has been a willingness for continued learning, and an acknowledgement that as government we do not have all the answers. The Cherbourg community identifies a preference for young people to live productive, crime-free lives, and as government, we need to consider how we can empower communities to achieve this.

Transition to Success (T2S)

T2S is a voluntary therapeutic vocational and training program which provides alternative education and learning options for young people in, or at risk of entering, the youth justice system. T2S helps young people return to school, transition into further education or gain employment. Any young person in the community who is aged 15 or older and is disengaged, or at risk of being excluded/disengaged from mainstream education. Each T2S site, of which there are 9 active and several more in the pre-planning stage, will run 2 certificate programs plus a summer program per year.

Certificate courses have been successfully run in since the start of 2015 including:

- Certificate II in Resources and Infrastructure
- Certificate I in Construction
- Certificate II in Rural Operations
- Certificate II in Horticulture
- Certificate II in Kitchen Operations
- Certificate I and II in Workplace Practices

T2S isn't just a program, it is a way of working with young people that achieves real results in a trauma-informed and experiential learning framework.

T2S is only possible by partnerships with government and non-government organisations as well as registered training organisations and local business.

Data

- 476 YP referred to T2S programs across 10 sites

- 304 enrolments into certificates with 246 Certificates issued (78% enrolment to completion rate)
- 234 YP have enrolled into T2S with 179 individual graduates
- 59 YP have found employment
- 31 YP have transitioned into further education
- 50 YP have transitioned back to school
- 78% of graduates have transitioned to further employment or further education.
- Of all graduates 75% have not reoffended or reoffended at a reduced impact
- Of the Youth Justice referrals 64% did not reoffend or reoffended at a reduced impact.

Aurukun T2S update:

T2S in Aurukun is run by Youth Justice staff in partnership with PCYC and the local health service (Apunipima). The program aims to build confidence, literacy and numeracy, cultural connection, and work skills. This term young people have engaged in literacy and numeracy activities, lure and crab pot making, life skills and wellness activities, as well as obtaining a Construction White Card. Current program numbers are 4 YJ and 4 non YJ participants

Future T2S plans include

- Developing the white card completion on to a Cert 1 in construction with partnership with TAFE whom are visiting Aurukun.
- Deadly Runners program focussed on Health fitness and Healthy Relationships aimed at whole of community , and T2S student participation.

Where to from here

In conclusion, Qld Youth Justice acknowledges the complexity of the work undertaken by the ALRC and recognise there are no easy or simple solutions. To truly address the over-representation of Aboriginal and Torres Strait Islander peoples involved in the justice system it is critical to concede that “historical, social and economic” contexts play a huge part in the incarceration of Aboriginal and Torres Strait Islander peoples, not just law and justice. It is also important to ensure responses are based on cultural healing principles that are founded from an Aboriginal and Torres Strait Islander worldview, and strengthen connections between families, communities, land/sea and culture.

Qld Youth Justice is committed to strengthening our organisational cultural capability in the way we do business as well as continuing to be proactive in our approaches to building cultural capability by embedding new ways of achieving and working towards best practice outcomes for Aboriginal and Torres Strait Islander young people, their families and communities. Qld Youth Justice will continue to develop, implement and support all initiatives highlighted within this document.