

5. Prison Programs, Parole and Unsupervised Release

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Summary

5.1 Recidivism rates in the Aboriginal and Torres Strait Islander prison population are high. Up to 76% of Aboriginal and Torres Strait Islander prisoners in 2016 had been imprisoned previously—compared with 49% of the non-Indigenous prison population.¹ Aboriginal and Torres Strait Islander prisoners are more likely to have been in prison at least five times previously,² and are less likely than non-Indigenous prisoners to have never been in prison before.²

5.2 The Terms of Reference for this Inquiry ask the ALRC to look into the ‘availability and effectiveness’ of programs, including prison programs, for Aboriginal and Torres Strait Islander offenders. In this chapter, the ALRC focuses on the importance of effective prison programs in reducing the Aboriginal and Torres Strait Islander recidivist prison population, and proposes that programs be developed for Aboriginal and Torres Strait Islander peoples serving short sentences and who are held on remand, as well as for Aboriginal and Torres Strait Islander women.

5.3 The ALRC also recognises the critical role that release on parole has in helping offenders transition out of prison and reintegrate into society. To this end, the ALRC makes proposals for law reform that aim to encourage eligible Aboriginal and Torres Strait Islander prisoners to apply for parole. Throughcare programs that provide support for people released, who would otherwise be unsupervised at the end of their sentences, are also canvassed.

1 Australian Bureau of Statistics, *Prisoners in Australia, 2016, Cat No 4517.0* (2016) table 8.

2 Australian Institute of Health and Welfare, *The Health of Australia’s Prisoners 2015* (2015) 20.

The availability and effectiveness of prison programs

5.4 Prison programs are courses provided to people in prison by corrective services or supervised by corrective services. Programs that address the known causes of offending—such as poor literacy, lack of vocational skills, drug and alcohol abuse, poor social and family ties—may be able to provide some of the support needed to decrease recidivism rates.³ The reach of such programs may, however, be affected by a number of external factors over which corrective services have little to no control, such as health and housing.⁴

5.5 There have been recent inquiries into the availability and effectiveness of prison programs. In 2016, the Council of Australian Governments (COAG) published the *Prison to Work* report, which highlighted the importance of cultural competence in programs; coordination in the delivery of throughcare and post-release services; and the need for an increased focus on the delivery of programs to female prisoners—with particular emphasis on Aboriginal and Torres Strait Islander female prisoners.⁵ The report also noted a paucity of long-term, evaluated prison programs in Australia—meaning that the evidence base for ‘what works’ in relation to Aboriginal and Torres Strait Islander prisoners is not well-established.⁶

5.6 The ALRC has not sought to replicate the work of the *Prison to Work* report, and relies heavily on its findings as well as those in the Australian Institute of Judicial Administration’s 2016 report *Efficacy, Accessibility and Adequacy of Prison Rehabilitation Programs for Indigenous Offenders across Australia* to inform much of this section of the Discussion Paper.

5.7 The availability and effectiveness of prison programs can be affected by budget allocations and corrective services’ policies on prisoner classifications and prisoner transfers.⁷ Availability may also be affected by the size of the prison population, which has recently expanded nationwide, creating greater demand.⁸

5.8 The *Prison to Work* report highlighted some current programs relevant to Aboriginal and Torres Strait Islander prisoners, including:

- **Gundi program, run by NSW Corrective Services:** provides work experience to prison participants to construct mobile homes for use in Aboriginal and Torres Strait Islander communities, which are then distributed by the NSW

3 See, eg, Australian Institute of Criminology, *Study in Prison Reduces Recidivism and Welfare Dependence: A Case Study from Western Australia 2005–2010* (2016) 8; Lois M Davis et al, *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults* (RAND Corporation, 2013); Council of Australian Governments, *Prison to Work Report* (2016) 51.

4 Australasian Institute of Judicial Administration, *Efficacy, Accessibility and Adequacy of Prison Rehabilitation Programs for Indigenous Offenders across Australia* (2016) 63; Council of Australian Governments, above n 3, 16.

5 Council of Australian Governments, above n 3, 6.

6 Ibid 51; Australasian Institute of Judicial Administration, above n 4, 2.

7 Australasian Institute of Judicial Administration, above n 4, 21. For example, 39% of inmates in NSW in 2016 did not complete drug and alcohol-related programs due to transfers or release.

8 Ibid 19.

branch of the Aboriginal Housing Office. Participants are aided in gaining a range of skills upon completion, including formal TAFE qualifications up to the level of Certificate III.⁹

- **The Torch Project, run as a collaboration between Corrections Victoria and a non-government organisation:** the Torch Project allows for artwork of Aboriginal and Torres Strait Islander prisoners to be sold in the community, with the proceeds used to fund post-release pathways for the artists involved. The project elevates culture, and aims to introduce artists to the arts industry and increase self-sufficiency.¹⁰
- **Culture and Land Management Program, run by ACT Corrective Services:** the Culture and Land Management Program (CALM) allows for Aboriginal and Torres Strait Islander prisoners to engage in gardening and horticulture, build literacy and numeracy skills, engage in arts and crafts, and develop skills in land management. Ex-prisoners can remain within CALM following release through optional participation in seed collecting, tree planting, and bush regeneration activities.¹¹

Remand and short sentences

Proposal 5–1 Prison programs should be developed and made available to accused people held on remand and people serving short sentences.

Question 5–1 What are the best practice elements of programs that could respond to Aboriginal and Torres Strait Islander prisoners held on remand or serving short sentences of imprisonment?

5.9 Up to 30% of the Aboriginal and Torres Strait Islander prisoner population are imprisoned on remand.¹² Of those that are convicted, a large proportion are released with time served or are sentenced to a short term of imprisonment—in 2016, up to 50% of Aboriginal and Torres Strait Islander prisoners were serving a sentence of 2 years or less.¹³

5.10 Generally, people on remand or serving short sentences do not have access to prison programs.¹⁴ There may be both policy and practical reasons for limited access.¹⁵ ‘Offence-based’ programs may not be provided to people on remand because the

9 Council of Australian Governments, above n 3, 68.

10 Ibid 82.

11 Ibid 132.

12 Australian Bureau of Statistics, above n 1, table 8.

13 Ibid table 25.

14 Council of Australian Governments, *Prison to Work Report* (2016) 22.

15 Australasian Institute of Judicial Administration, *Efficacy, Accessibility and Adequacy of Prison Rehabilitation Programs for Indigenous Offenders across Australia* (2016) 16.

offences charged are yet to be proven,¹⁶ and corrections staff cannot accurately assess when a person held on remand will be released and whether there will be sufficient time to complete a program in prison. People on short sentences are generally not in prison long enough to access and complete a prison program.¹⁷ Many people on short sentences may not be eligible for parole,¹⁸ and are likely to leave prison unsupervised without any further skills or understanding of their criminal conduct.¹⁹

5.11 The ALRC welcomes submissions on the practical application of this proposal. Corrections Victoria has previously indicated they consider it important to make programs available to all prisoners, including those on remand and short sentences.²⁰ The ALRC seeks input on what programs, if any, could work for these prisoners. It may be, for example, that programs on life skills or other matters could be introduced to remand prisoners.

Programs for 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.

Question 5–2 What are the best practice elements of programs for Aboriginal and Torres Strait Islander female prisoners to address offending behaviour?

5.12 Aboriginal and Torres Strait Islander women are likely to serve short sentences and periods on remand, meaning they are likely to be part of the cohort discussed above and be unable to access prison programs.²¹ Even for longer term prisoners, when compared to the range and availability of options offered to men, women's programs are limited.²²

16 Ibid. '[Access to prison programs] was frequently determined by a prisoner's offence or offending history that was indicative of needs that could be addressed by the program'.

17 Ibid 16–7.

18 Generally, a person needs to receive a prison sentence of over twelve months to receive a non-parole period.

19 Australasian Institute of Judicial Administration, *Efficacy, Accessibility and Adequacy of Prison Rehabilitation Programs for Indigenous Offenders across Australia* (2016) 17; Council of Australian Governments, *Prison to Work Report* (2016) 41, 90, 125.

20 Council of Australian Governments, *Prison to Work Report* (2016) 77.

21 See ch 9.

22 Council of Australian Governments, above n 3, 32–4; Australasian Institute of Judicial Administration, above n 4, 61.

5.13 Key issues in relation to prison programs for Aboriginal and Torres Strait Islander women identified by stakeholders include:

- Female offenders are likely to be victims of family violence and sexual assault. Programs should acknowledge the role of family violence in Aboriginal and Torres Strait Islander women's incarceration cycles.²³
- Female offending can interact with histories of trauma and abuse. This means that prison programs that are able to successfully address these histories in a culturally competent way may be more likely to be successful in reintegration.²⁴
- Many female prisoners are parents—up to 80% of Aboriginal and Torres Strait Islander women in prison are mothers.²⁵ Female offenders often have children removed from their care, and require programs that facilitate reconnection with children upon release, such as programs that address issues around parenting capability or that model positive engagement with children.²⁶

5.14 The ALRC welcomes submissions regarding the availability and effectiveness of prison programs for Aboriginal and Torres Strait Islander female offenders and remandees, and is particularly interested in any best practice models. The ALRC notes, for example, the Kunga Stopping Violence program, run via the Central Australian Aboriginal Legal Aid Service (CAALAS). The program focuses on community reintegration for Aboriginal and Torres Strait Islander women who have been imprisoned for violent offending.²⁷

Parole for eligible Aboriginal and Torres Strait Islander prisoners

5.15 When a person is sentenced to a term of imprisonment above a prescribed length,²⁸ a court generally imposes a non-parole period (the minimum period that the offender must spend in prison) as well as a head sentence (the maximum period that the offender can spend under sentence).²⁹ Upon the expiration of the non-parole period, the offender may be conditionally released as a parolee, subject to parole conditions as set by the parole authority. Parolees are supervised by community corrections, and must follow their reasonable directions. Breach of parole may result in a return to prison.

5.16 Parole is not release. The *Review of the Parole System of Victoria* observed there to be a 'lack of awareness generally that parole represents only conditional release',

23 Council of Australian Governments, above n 3, 33.

24 Ibid 32.

25 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) 21.

26 Council of Australian Governments, above n 3, 33.

27 Emma Williams and Eileen Cummings, 'I'm Moving Forward Now': *Formative, Realist-Informed Evaluation of the Kunga Stopping Violence Program* (2016) 3.

28 See, eg, *Crimes (Sentencing Procedure) Act 1999* (NSW) s 50; *Correctional Services Act 1982* (SA) s 66.

29 NSW Law Reform Commission, *Parole*, Report No 142 (2015) xvii.

and reiterated that ‘a parolee remains under sentence while on parole’.³⁰ As was noted by the NSW Law Reform Commission (NSWLRC):

an offender continues to serve his or her term of imprisonment while on parole: parole is an integral part of the original sentence.... [P]arole is not a discount or leniency. Instead it is a component of the original sentence. The offender remains subject to conditions and restriction of liberty, and may be returned to prison if parole is revoked.³¹

5.17 The setting of a parole date is seen to incentivise good behaviour and rehabilitation while an offender is in prison, and parole is seen to facilitate prisoner reintegration back into society.³²

5.18 Parole involves case management to provide suitable accommodation, make referrals to required services, and help parolees manage financial, personal and other problems. Research published by the Australian Institute of Criminology in 2014 suggests that prisoners who receive parole have significantly lower rates of recidivism or commit less serious offences than those released unsupervised; and that parole is most effective when it involves active supervision that is rehabilitation focused.³³

5.19 As observed in the *Review of the Parole System of Victoria*, parole benefits not just the offender, but also the wider community, by ‘recognising that the wider community benefits from the rehabilitation of offenders’ through a decrease in recidivism and crime rates.³⁴

5.20 The ALRC has heard that eligible Aboriginal and Torres Strait Islander prisoners rarely apply for parole at the end of their non-parole period. Stakeholders have articulated two key reasons. First, eligible Aboriginal and Torres Strait Islander prisoners may believe that they are unlikely to be granted parole by the parole authority. Second, in jurisdictions that do not count time served on parole in the case of revocation, being granted parole creates too great a risk of increased prison time.

5.21 The following proposals aim to address these two barriers and encourage eligible Aboriginal and Torres Strait Islanders to apply for parole, which would provide supported transition from prison to community life.

Eligible Aboriginal and Torres Strait Islander people might not apply for parole

5.22 Stakeholders have told the ALRC that many Aboriginal and Torres Strait Islander prisoners who are eligible for parole instead serve out their entire head sentence in prison. The result is that this cohort can spend a greater proportion of their sentence in prison than is required under the relevant legislative schemes; that correctional facilities are put under additional strain due to the increased prison population; and that these Aboriginal and Torres Strait Islander prisoners are then released into the community without supervision at the end of their head sentence.

30 Ian Callinan, *Review of the Parole System in Victoria* (2013) 67.

31 NSW Law Reform Commission, *Parole*, Report No 142 (2015) 27.

32 Australian Institute of Criminology, *Parole Supervision and Reoffending* (2014) 6.

33 Ibid.

34 Ian Callinan, above n 30, 32.

5.23 This issue was highlighted in the *Prison to Work* report, which observed that large numbers of Aboriginal and Torres Strait Islander prisoners either did not apply for or receive parole. This was particularly the case in jurisdictions with high Aboriginal and Torres Strait Islander prison populations. For instance, in WA it was reported that 80% of Aboriginal and Torres Strait Islander prisoners in 2013–14 were not released on parole.³⁵ In 2014–15, 53% of prisoners in the NT served their full sentence in prison (meaning they were released unsupervised).³⁶

5.24 The *Evaluation of the Aboriginal Justice Agreement—Phase 2: Final Report*, revealed that, in Victoria, 67% of Aboriginal and Torres Strait Islander offenders released from prison were not released on parole in 2011.³⁷

Discretionary and court ordered parole

Proposal 5–3 A statutory regime of automatic court ordered parole should apply in all states and territories.

Question 5–3 A statutory regime of automatic court ordered parole applies in NSW, Queensland and SA. What are the best practice elements of such schemes?

5.25 Court ordered parole permits automatic release on parole on the date set by the court without application to the parole authority at the end of the non-parole period. Under court ordered parole, when a person is sentenced to a term of imprisonment for less than three years,³⁸ the parole date set by the court at the time of sentencing is the ‘automatic’ release date.³⁹ The court may have full discretion in setting the parole date, or it may be constrained by relevant sentencing legislation requiring the setting of a non-parole period.⁴⁰ NSW, Queensland, and SA have legislative frameworks for court ordered parole.⁴¹

5.26 Figures released in 2016 suggest that in most states and territories, between 30% and 50% of Aboriginal and Torres Strait Islander peoples sentenced to a term of imprisonment received head sentences of between six months and two years.⁴² In Tasmania and the NT, the figures are 57% and 61% respectively. In NSW,

35 Council of Australian Governments, above n 3, 97.

36 Ibid 125.

37 Nous Group, *Evaluation of the Aboriginal Justice Agreement—Phase 2: Final Report* (2012) [10.2.5].

38 Five years in South Australia: *Correctional Services Act 1982* (SA) s 66.

39 NSW Law Reform Commission, *Parole*, Report No 142 (2015) 28. Parole is only available for sentences over 6 months (NSW) or 12 months (Queensland and South Australia). See *Crimes (Sentencing Procedure) Act 1999* (NSW) s 50; *Penalties and Sentences Act 1992* (Qld) s 160B(3); *Correctional Services Act 1982* (SA) s 66.

40 Compare, for example, *Crimes (Sentencing Procedure) Act 1999* (NSW) s 51 and *Corrective Services Act 2006* (Qld) s 184.

41 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 50; *Penalties and Sentences Act 1992* (Qld) s 160B(3); *Correctional Services Act 1982* (SA) s 66.

42 Australian Bureau of Statistics, above n 1, table 25.

approximately 40% of all prison terms were between six months and two years for Aboriginal and Torres Strait Islander offenders.

5.27 Court ordered parole does not operate in the ACT, NT, Tasmania, WA and Victoria.⁴³ In these jurisdictions, all offenders who are sentenced to parole-eligible sentences must apply for parole to the relevant parole authority prior to the expiration of the non-parole period, regardless of the length of the head sentence. This system of parole is termed ‘discretionary parole’.⁴⁴

5.28 There are advantages to court ordered parole. Court ordered parole ensures that greater numbers of low-level offenders are released on parole, limiting the number of offenders who are released to the community unsupervised.⁴⁵ There are also limitations. Primarily, court ordered parole may affect one of the key functions of parole—the incentive for good behaviour. The NSWLRC notes:

Automatic parole ... ensures that offenders (who are not sentenced to a fixed term) are supervised for a period and have the opportunity to attempt to reduce their recidivism risk. However, it cannot provide an incentive for good behaviour in custody or for offenders to participate in programs unless there is a means to revoke or override automatic parole for some offenders on this basis.⁴⁶

Means to revoke or override automatic parole

5.29 An order for court ordered parole does not guarantee release on the prescribed date. There are means to revoke the non-parole period when ‘exceptional circumstances’ arise after sentencing, where the prisoner would represent a ‘sufficiently significant danger’ to the community if released on parole such that the grant of parole ought not be made.⁴⁷

5.30 In NSW, revocations for court ordered parole are uncommon.⁴⁸ The *Crimes (Administration of Sentences) Regulation 2014* (NSW) sets out the circumstances in which the State Parole Authority (SPA) can revoke an offender’s court ordered parole while they are still in custody:

- where the offender requests revocation;
- where the SPA decides that the offender is unable to adapt to normal lawful community life; or
- where the SPA decides that satisfactory post-release accommodation or plans have not been made or cannot be made.⁴⁹

43 *Crimes (Sentence Administration) Act 2005* (ACT) s 135; *Parole Act* (NT) s 5; *Corrections Act 1997* (Tas) s 72; *Corrections Act 1986* (Vic) s 74; *Sentence Administration Act 2003* (WA) s 20.

44 Discretionary parole also applies in the court ordered parole jurisdictions of NSW, Queensland and South Australia for sentences of imprisonment longer than the court ordered parole cut off.

45 Council of Australian Governments, above n 3, 70.

46 NSW Law Reform Commission, *Parole*, Report No 142 (2015) 34.

47 Queensland Corrective Services, *Queensland Parole System Review: Final Report* (2016) 88.

48 New South Wales Law Reform Commission, above n 29, table 3.2.

49 *Crimes (Administration of Sentences) Regulation 2014* (NSW) cl 222(1)(a)–(c).

5.31 The ALRC recognises that corrective services and parole authorities are well-placed to observe and make decisions about the suitability of prisoners for release on parole. The length of time that elapses between the time of sentence and the end of a non-parole period can be substantial, and there are many reasons why a person, once deemed suitable for parole, can present a risk to the community by the time the non-parole period has been served.

5.32 The 2016 *Queensland Parole System Review: Final Report* provided a summary outlining the importance of including a pre-release override mechanism for automatic parole:

Firstly, it operates to safeguard community safety by allowing an offender's parole order to be suspended or cancelled on limited grounds before they are released to the community. This approach allows QCS [Queensland Corrective Services] to consider the offender's behaviour close to release and, where appropriate, make a recommendation that the offender's parole be amended, suspended or cancelled before they are released into the community. Secondly, the ability to suspend or cancel a parole order because of conduct in custody would, to some degree, aid in the maintenance of prison discipline by providing an offender with an incentive to behave while in custody. Finally, the system retains certainty for the Court, and for the community, as to the length of time in custody that will actually be served by a prisoner unless the offender, by his or her conduct while in prison, demonstrates an unacceptable risk to the community close to his or her release.⁵⁰

5.33 Of the court ordered parole jurisdictions, only NSW's override mechanism has a statutory basis.⁵¹ Queensland relies on a Court of Appeal decision as the basis for its safeguard powers.⁵² SA appears not to have a pre-release safeguard at all, though prisoners must accept any parole conditions set before release is granted.⁵³

Accommodation as an obstacle to court ordered parole

5.34 Court ordered parole may be revoked before release due to unsuitable post-release accommodation, or because plans in relation to post-release accommodation have not, or cannot, be made. This is a major hurdle for many Aboriginal and Torres Strait Islander prisoners.

5.35 Housing issues—particularly homelessness, inadequate housing, and overcrowding—tend to disproportionately affect Aboriginal and Torres Strait Islander peoples.⁵⁴ The NSWLRC summarised the issue:

Previous Australian research has found that between 7% and 11% of NSW prisoners were living in primary homelessness before their entry into custody. The term 'primary homelessness' is generally used to describe the circumstances of people living on the street, sleeping rough or living in cars and squats. People with transient living arrangements—living in refuges, shelters or couch surfing—are described as

50 Queensland Corrective Services, above n 47, 89.

51 *Crimes (Administration of Sentences) Regulation 2014* (NSW) cl 222(1)(a)–(c).

52 *Foster v Shaddock* [2016] QCA 163 (17 June 2016).

53 *Correctional Services Act 1982* (SA) s 68(4).

54 Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016—Report* (Produced for the Steering Committee for the Review of Government Service Provision, 2016) 10.1.

living in secondary homelessness.... Corrective Services NSW reports that, in 2011–12, 5% of receptions in NSW prisons were living in primary homelessness prior to their entry into custody and over 50% were living in secondary homelessness. For those offenders who did have stable housing before entering custody, imprisonment can often mean that such housing is no longer available when the offender is approaching the parole date. Offenders who lived in mortgaged properties or private rental properties are likely to have lost their housing due to inability to pay while in custody. Some offenders will have lost access to their previous residence due to relationship or family breakdown. Offenders who were previously accommodated in public housing will have lost their tenancy after being in custody for more than three months.⁵⁵

5.36 The NSWLRC further emphasised that:

One of the biggest issues ... has been the difficulty that offenders with court based parole orders can have in arranging suitable post-release accommodation. Clause 222(1)(c) of the [Crimes (Administration of Sentences)] Regulation gives SPA the power to revoke a court based parole order before an offender is released if satisfactory accommodation or post-release arrangements have not been made or cannot be made. A lack of suitable accommodation is the main reason for SPA revoking parole prior to release.⁵⁶

5.37 The ALRC welcomes submissions relating to the benefits and disadvantages of court ordered parole for Aboriginal and Torres Strait Islander offenders.

Counting time spent on parole when parole revoked

Proposal 5–4 Parole revocation schemes should be amended to abolish requirements for the time spent on parole to be served again in prison if parole is revoked.

5.38 Stakeholders in this Inquiry have drawn attention to the operation of some parole revocation schemes that require time served on parole to be served again in prison if parole is revoked.

5.39 The decision to return a parolee to prison usually sits with the parole authority, and not all breaches of parole will result in a return to prison. Where breaches of parole result in a return to prison, the length of the remaining prison term can be affected depending on the parole revocation scheme operating. There are two options:

- Option 1: Time spent on parole, beginning on the date of release on parole and ending on the date of breach (or date of revocation), counts towards the head sentence (as in NSW, Queensland, SA, and WA).
- Option 2: Time spent on parole, beginning on the date of release on parole and ending on the date of breach (or date of revocation), does not count towards the

55 NSW Law Reform Commission, *Parole*, Report No 142 (2015) 47.

56 *Ibid* 46.

head sentence, and must be served again in prison upon the parolee's return (as in the ACT, the NT, Tasmania and Victoria).

5.40 Option 2 has potential adverse consequences. It extends the time a person serves under sentence⁵⁷ and it operates as a disincentive for eligible people to apply for parole, increasing the prison population and the number of people released from prison without supervision.

5.41 Standard conditions of parole can be difficult for Aboriginal and Torres Strait Islander people to comply with, especially where conditions of release clash with cultural obligations and prevent reconnection with family and community.⁵⁸ Factors that particularly affect the ability of Aboriginal and Torres Strait Islander parolees to comply with conditions, include: remoteness; substance abuse issues; mental health issues; poor literacy skills; lack of access to appropriate programs; difficulty in obtaining suitable long-term housing; difficulty in finding stable employment; and issues around family violence, particularly for women.⁵⁹

5.42 The ALRC welcomes submissions on whether or not a nationally consistent approach—modelled on the NSW, Queensland, SA, and WA approaches—is necessary or desirable.

The provision of throughcare

5.43 Throughcare aims to support the successful reintegration of offenders returning to the community at the end of their head sentence—ie, prisoners released without parole. The *Prison to Work* report described the concept of 'throughcare' in the following terms:

Prisoner throughcare projects provide comprehensive case management for a prisoner in the lead up to their release from prison and throughout their transition to life outside. Projects aim to make sure prisoners receive the services they need for successful rehabilitation into the community... Good throughcare 'starts in custody well before walking out of the prison gate', and provides hands on, intensive support, especially at the moment of release.⁶⁰

5.44 The *Prison to Work* definition emphasised the importance of intervention, service coordination, and support at all critical points—not just release.

5.45 Throughcare programs generally involve intensive one-to-one rehabilitation support; individual structured assessments; and individual case plans, created before release and followed through in the community. Throughcare models are more likely to be successful for Aboriginal and Torres Strait Islander people if they are culturally

57 To illustrate, a person handed down a head sentence of 35 months in the NT who had their parole revoked could spend upwards of 50 months under sentence even though no reoffending or criminal conduct had taken place (for example, the person may have breached a condition of their parole which requires them to abstain from alcohol).

58 Queensland Corrective Services, above n 47, 181–2.

59 Ibid 122, 146, 149–50.

60 Council of Australian Governments, above n 3, 62.

competent, strength-based, and utilise Aboriginal and Torres Strait Islander controlled organisations and/or ex-prisoner organisations.⁶¹

5.46 Agencies responsible for throughcare include corrective services; other law and justice agencies (such as parole authorities); government departments; and service providers who focus on specific areas such as accommodation, employment, addiction, mental health and vocational skills. The diversity and number of organisations involved means that close interagency collaboration is a key factor in the success or failure of any throughcare initiative. Close collaboration can provide for continuity of service provision as the offender moves from incarceration to supported transition to life in the community.⁶²

5.47 Throughcare is currently provided by both independent and government agencies. For example:

- the North Australian Aboriginal Justice Agency (NAAJA) operates the Throughcare Support Program (TSP), which provides wraparound support and services to individuals exiting prison via a TSP officer within corrective services, case management in the community on release, and legal advice throughout;⁶³
- ACT Corrective Services provides an Extended Through Care Program (ETCP) to all sentenced detainees as well as female detainees on remand,⁶⁴ and has been shown to provide some benefit to Aboriginal and Torres Strait Islander women.⁶⁵

5.48 The ALRC recognises that throughcare is a growing area and that various forms currently exist. There are challenges in the provision of throughcare for Aboriginal and Torres Strait Islander peoples, including the difficulty of finding suitable housing;⁶⁶ and the limited availability of services in remote communities.⁶⁷

5.49 The ALRC welcomes submissions on areas of reform in throughcare specific to Aboriginal and Torres Strait Islander peoples, and any further related information.

61 Ibid 23; Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) 104.

62 Council of Australian Governments, above n 3, 38.

63 North Australian Aboriginal Justice Agency, 'Throughcare Project' <<http://www.naaaja.org.au/our-services/indigenous-throughcare-project/>>.

64 UNSW, *Evaluation of ACT Extended Throughcare Pilot Program Final Report* (2017) 10.

65 Ibid 67. The evaluation found that, although successful overall, the ETCP failed to lower recidivism rates for Aboriginal and Torres Strait Islander male prisoners. The ETCP showed some success for Aboriginal and Torres Strait Islander females but the results were worse than for the overall treatment group which included non-Indigenous participants.

66 Council of Australian Governments, above n 3, 46.

67 Ibid 91.