

# Recommendations

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## 4. Justice Reinvestment

**Recommendation 4–1** Commonwealth, state and territory governments should provide support for the establishment of an independent justice reinvestment body. The purpose of the body should be to promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration, and to provide expertise on the implementation of justice reinvestment.

Its functions should include:

- providing technical expertise in relation to justice reinvestment;
- assisting in developing justice reinvestment plans in local sites; and
- maintaining a database of evidence-based justice reinvestment strategies.

The justice reinvestment body should be overseen by a board with Aboriginal and Torres Strait Islander leadership.

**Recommendation 4–2** Commonwealth, state and territory governments should support justice reinvestment trials initiated in partnership with Aboriginal and Torres Strait Islander communities, including through:

- facilitating access to localised data related to criminal justice and other relevant government service provision, and associated costs;
- supporting local justice reinvestment initiatives; and
- facilitating participation by, and coordination between, relevant government departments and agencies.

## 5. Bail

**Recommendation 5–1** State and territory bail laws should be amended to include standalone provisions that require bail authorities to consider any issues that arise due to a person's Aboriginality, including cultural background, ties to family and place, and cultural obligations. These would particularly facilitate release on bail with effective conditions for Aboriginal and Torres Strait Islander people who are accused of low-level offending.

The *Bail Act 1977* (Vic) incorporates such a provision.

As with all other bail considerations, the requirement to consider issues that arise due to a person's Aboriginality would not supersede considerations of community safety.

**Recommendation 5–2** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to:

- develop guidelines on the application of bail provisions requiring bail authorities to consider any issues that arise due to a person’s Aboriginality, in collaboration with peak legal bodies; and
- identify gaps in the provision of culturally appropriate bail support programs and diversion options, and develop and implement relevant bail support and diversion options.

## **6. Sentencing and Aboriginality**

**Recommendation 6–1** Sentencing legislation should provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

**Recommendation 6–2** State and territory governments, in partnership with relevant Aboriginal and Torres Strait Islander organisations, should develop and implement schemes that would facilitate the preparation of ‘Indigenous Experience Reports’ for Aboriginal and Torres Strait Islander offenders appearing for sentence in superior courts.

**Recommendation 6–3** State and territory governments, in partnership with relevant Aboriginal and Torres Strait Islander organisations and communities, should develop options for the presentation of information about unique systemic and background factors that have an impact on Aboriginal and Torres Strait Islander peoples in the courts of summary jurisdiction, including through Elders, community justice groups, community profiles and other means.

## **7. Community-based Sentences**

**Recommendation 7–1** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations and community organisations to improve access to community-based sentencing options for Aboriginal and Torres Strait Islander offenders, by:

- expanding the geographic reach of community-based sentencing options, particularly in regional and remote areas;
- providing community-based sentencing options that are culturally appropriate; and
- making community-based sentencing options accessible to offenders with complex needs, to reduce reoffending.

**Recommendation 7–2** Using the Victorian Community Correction Order regime as an example, state and territory governments should implement community-based sentencing options that allow for the greatest flexibility in sentencing structure and the imposition of conditions to reduce reoffending.

**Recommendation 7–3** State and territory governments and agencies should work with relevant Aboriginal and Torres Strait Islander organisations to provide the necessary programs and support to facilitate the successful completion of community-based sentences by Aboriginal and Torres Strait Islander offenders.

**Recommendation 7–4** In the absence of the availability of appropriate community-based sentencing options, suspended sentences should not be abolished.

**Recommendation 7–5** In the absence of the availability of appropriate community-based sentencing options, short sentences should not be abolished.

## 8. Mandatory Sentencing

**Recommendation 8–1** Commonwealth, state and territory governments should repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction of an offender that has a disproportionate impact on Aboriginal and Torres Strait Islander peoples.

## 9. Prison Programs and Parole

**Recommendation 9–1** State and territory corrective services agencies should develop prison programs with relevant Aboriginal and Torres Strait Islander organisations that address offending behaviours and/or prepare people for release. These programs should be made available to:

- prisoners held on remand;
- prisoners serving short sentences; and
- female Aboriginal and Torres Strait Islander prisoners.

**Recommendation 9–2** To maximise the number of eligible Aboriginal and Torres Strait Islander prisoners released on parole, state and territory governments should:

- introduce statutory regimes of automatic court-ordered parole for sentences of under three years, supported by the provision of prison programs for prisoners serving short sentences; and
- abolish parole revocation schemes that require the time spent on parole to be served again in prison if parole is revoked.

## 10. Access to Justice

**Recommendation 10–1** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to:

- establish interpreter services within the criminal justice system where needed; and
- monitor and evaluate their use.

**Recommendation 10–2** Where needed, state and territory governments should establish specialist Aboriginal and Torres Strait Islander sentencing courts. These courts should incorporate individualised case management, wraparound services, and be culturally competent, culturally safe and culturally appropriate.

**Recommendation 10–3** Relevant Aboriginal Torres Strait Islander organisations should play a central role in the design, implementation and evaluation of specialist Aboriginal and Torres Strait Islander sentencing courts.

**Recommendation 10–4** Where not already in place, state and territory governments should introduce special hearing processes to make qualified determinations regarding guilt after a person is found unfit to stand trial.

**Recommendation 10–5** Where not already in place, state and territory governments should implement Recommendation 7–2 of the ALRC Report *Equality, Capacity and Disability in Commonwealth Laws* to provide for a fixed term when a person is found unfit to stand trial and ensure regular periodic review while that person is in detention.

## 11. Aboriginal and Torres Strait Islander Women

**Recommendation 11–1** Programs and services delivered to female Aboriginal and Torres Strait Islander offenders within the criminal justice system—leading up to, during and post-incarceration—should take into account their particular needs so as to improve their chances of rehabilitation, reduce their likelihood of reoffending and decrease their involvement with the criminal justice system. Such programs and services, including those provided by NGOs, police, courts and corrections, must be:

- developed with and delivered by Aboriginal and Torres Strait Islander women; and
- trauma-informed and culturally appropriate.

**Recommendation 11–2** Police engaging with Aboriginal and Torres Strait Islander people and communities should receive instruction in best practice for handling allegations and incidents of family violence—including preventative intervention and prompt response—in those communities.

## 12. Fines and Driver Licences

**Recommendation 12–1** Fine default should not result in the imprisonment of the defaulter. State and territory governments should abolish provisions in fine enforcement statutes that provide for imprisonment in lieu of, or as a result of, unpaid fines.

**Recommendation 12–2** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to develop options that:

- reduce the imposition of fines and infringement notices;
- limit the penalty amounts of infringement notices;

- avoid suspension of driver licences for fine default; and
- provide alternative ways of paying fines and infringement notices.

**Recommendation 12–3** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations and community organisations to identify areas without services relevant to driver licensing and to provide those services, particularly in regional and remote communities.

**Recommendation 12–4** State and territory governments should review the effect on Aboriginal and Torres Strait Islander peoples of statutory provisions that criminalise offensive language with a view to:

- repealing the provisions; or
- narrowing the application of those provisions to language that is abusive or threatening.

## 13. Alcohol

**Recommendation 13–1** All initiatives to reduce the harmful effects of alcohol in Aboriginal and Torres Strait Islander communities should be developed with, and led by, these communities to meet their particular needs.

**Recommendation 13–2** Commonwealth, state and territory governments should enable and provide support to Aboriginal and Torres Strait Islander communities that wish to address alcohol misuse to:

- develop and implement local liquor accords; and/or
- develop plans to prevent the sale of full strength alcohol or reduce the availability of particular alcohol ranges or products within their communities.

## 14. Police Accountability

**Recommendation 14–1** Commonwealth, state and territory governments should review police procedures and practices so that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples.

**Recommendation 14–2** To provide Aboriginal and Torres Strait Islander people and communities with greater confidence in the integrity of police complaints handling processes, Commonwealth, state and territory governments should review their police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations.

**Recommendation 14–3** Commonwealth, state and territory governments should introduce a statutory requirement for police to contact an Aboriginal and Torres Strait Islander legal service, or equivalent service, as soon as possible after an Aboriginal and Torres Strait Islander person is detained in custody for any reason—including for protective reasons. A maximum period within which the notification must occur should be prescribed.

**Recommendation 14–4** In order to further enhance cultural change within police that will ensure police practices and procedures do not disproportionately contribute to the incarceration of Aboriginal and Torres Strait Islander peoples, the following initiatives should be considered:

- increasing Aboriginal and Torres Strait Islander employment within police;
- providing specific cultural awareness training for police being deployed to an area with a significant Aboriginal and Torres Strait Islander population;
- providing for lessons from successful cooperation between police and Aboriginal and Torres Strait Islander peoples to be recorded and shared;
- undertaking careful and timely succession planning for the replacement of key personnel with effective relationships with Aboriginal and Torres Strait Islander communities;
- improving public reporting on community engagement initiatives with Aboriginal and Torres Strait Islander peoples; and
- entering into Reconciliation Action Plans.

## **15. Child Protection and Adult Incarceration**

**Recommendation 15–1** Acknowledging the high rate of removal of Aboriginal and Torres Strait Islander children into out-of-home care and the recognised links between out-of-home care, juvenile justice and adult incarceration, the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children.

## **16. Criminal Justice Targets and Aboriginal Justice Agreements**

**Recommendation 16–1** The Commonwealth Government, in consultation with state and territory governments, should develop national criminal justice targets. These should be developed in partnership with peak Aboriginal and Torres Strait Islander organisations, and should include specified targets by which to reduce the rate of:

- incarceration of Aboriginal and Torres Strait Islander people; and
- violence against Aboriginal and Torres Strait Islander people.

**Recommendation 16–2** Where not currently operating, state and territory governments should renew or develop an Aboriginal Justice Agreement in partnership with relevant Aboriginal and Torres Strait Islander organisations.