

9. Prison Programs and Parole

Contents

Summary	283
Prison programs	284
Existing programs	285
Key gaps	286
Remand and people serving short sentences	287
Female Aboriginal and Torres Strait Islander offenders	292
Best practice characteristics of prison programs	294
Culturally appropriate programs	296
Design, development and delivery	296
A trauma-informed approach	297
Content	298
Parole	301
Court-ordered parole	304
Parole conditions and revocation of parole	310
Treatment of time on parole upon revocation	312
Transitioning into the community	314
The provision of throughcare	315

Summary

9.1 Most of the Aboriginal and Torres Strait Islander prison population is either being held on remand or serving sentences of less than two years. Up to 30% of the Aboriginal and Torres Strait Islander prisoner population is imprisoned on remand,¹ and up to 50% of Aboriginal and Torres Strait Islander prisoners are serving a sentence of 2 years or less.² Chapter 7 of this Report stresses the need to divert Aboriginal and Torres Strait Islander offenders serving short sentences to community-based sentences, where possible. Nonetheless, when in prison, they require assistance to address offending behaviours and to transition back into the community. For female offenders in particular, programs need to be trauma-informed and culturally safe.

9.2 In this chapter, the ALRC recommends that prison programs be developed with relevant Aboriginal and Torres Strait Islander organisations. The programs should be made available to Aboriginal and Torres Strait Islander people serving short sentences or held on remand. Additionally, programs designed for female Aboriginal and Torres

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

2 Ibid table 25.

Strait Islander prisoners should be developed designed and delivered by Aboriginal and Torres Strait Islander organisations and services.

9.3 The ALRC recognises the critical role that release on parole has in assisting offenders transition out of prison and reintegrate into society. To this end, the ALRC recommends reforms that aim to encourage eligible Aboriginal and Torres Strait Islander prisoners to apply for parole and encourages throughcare programs that provide support for people released.

Prison programs

9.4 Up to 76% of Aboriginal and Torres Strait Islander prisoners in 2016 had been imprisoned previously, as compared with 49% of the non-Indigenous prison population.³ Aboriginal and Torres Strait Islander prisoners are more likely to have been in prison at least five times previously, and are less likely than non-Indigenous prisoners to have never been in prison before.⁴ Most repeat offenders had previously received a prison sentence, and generate ‘churn’ in the prison system.⁵

9.5 Rates of repeat offending vary by jurisdiction. For example, in New South Wales (NSW), the Bureau of Crime Statistics and Research (BOCSAR) found that 87% of Aboriginal and Torres Strait Islander offenders convicted in 2004 were reconvicted in ten years, compared to 58% of non-Indigenous offenders.⁶

9.6 Prison programs⁷ that address known causes of offending—such as poor literacy, lack of vocational skills, drug and alcohol abuse, poor mental health, poor social and family ties—may provide some of the supports needed to reduce the rates of Aboriginal and Torres Strait Islander repeat offending.⁸ Connection to culture for Aboriginal and Torres Strait Islander peoples is also an important element of prison rehabilitation programs. 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.⁹

9.7 The availability and effectiveness of prison programs can also be affected by:

3 Ibid table 8.

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

5 See, eg, Probation and Parole Officers' Association of NSW, Submission No 41 to Legislative Council Standing Committee on Law and Justice, Parliament of NSW, *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (1 June 2005).

6 W Agnew-Pauley and J Holmes, 'Re-Offending in NSW' (Issue paper 108, NSW Bureau of Crime Statistics and Research, August 2015) 2–4; NSW Government, *Submission 85*. See also ch 3.

7 Prison programs are courses or activities made available to people in prison, and are provided or supervised by corrective services.

8 See, eg, Australian Institute of Criminology, *Study in Prison Reduces Recidivism and Welfare Dependence: A Case Study from Western Australia 2005–2010* (2016) 8; LM 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.

9 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 8, 16.

- budget allocations;
- corrective services' policies on prisoner classifications and prisoner transfers;¹⁰ and
- the size of the prison population, which has expanded nationwide creating greater demand for programs.¹¹

9.8 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. The Report also noted the additional challenges faced by Aboriginal and Torres Strait Islander female prisoners.¹²

Male and female prisoners face many of the same issues while in prison and in their post-release life. However, female prisoners face additional challenges, such as (usually) poorer access to education and training opportunities while in prison, and problems in gaining access and custody of children when out of prison. Some women also encounter particular difficulties in returning to unsafe environments.¹³

Existing programs

9.9 While the many prison programs set out below are designed for Aboriginal and Torres Strait Islander prisoners to address their offending behaviours in culturally appropriate ways, the delivery of these types of programs is challenging given the majority are designed for male offenders and rarely delivered to prisoners serving sentences of six months or less.

9.10 The Gundi program provides work experience to prisoners, involving them in the construction of mobile homes for use in Aboriginal and Torres Strait Islander communities, which are then distributed by the NSW Aboriginal Housing Office. The program is run by Corrective Services NSW. Participants are aided in gaining a range of skills and qualifications upon completion, including formal TAFE qualifications up to Certificate III.¹⁴ The NSW Government advised that over 60 participants completed the program in 2017, with 'employment options [increasing] for participants through the engagement of local Aboriginal Land Councils, mining companies, energy companies and state-wide construction organisations'.¹⁵

10 Australasian Institute of Judicial Administration, above n 9, 21. For example, 39% of inmates in NSW in 2016 did not complete drug and alcohol-related programs due to transfers or release.

11 Ibid 19. 'many prison systems have increased their rated capacity without commensurate increases in access to rehabilitation, sporting and education/vocational programs or medical and psychological services'.

12 Council of Australian Governments, above n 8, 6.

13 Ibid.

14 Ibid 68.

15 NSW Government, *Submission 85*.

9.11 The Torch Project allows for the artwork of Aboriginal and Torres Strait Islander prisoners to be sold in the community, with the proceeds used to fund post-release pathways to a life outside of incarceration for the artists involved. The project elevates culture, and aims to introduce artists to the arts industry and increase self-sufficiency.¹⁶

9.12 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. The program is run by ACT Corrective Services. Former prisoners can remain within CALM following release through optional participation in seed collecting, tree planting, and bush regeneration activities.¹⁷

9.13 There are other programs available to Aboriginal and Torres Strait Islander prisoners that address various criminogenic needs. Examples include Men's Cultural Journey, Dilly Bag, and Growing Up Kids.¹⁸ The NSW Government submission mentioned Yetta Dhinnakkal, a working farm maintained by prisoners, where inmates are offered practical and vocational training and provide culturally relevant intensive case management.¹⁹

9.14 Information was provided to the ALRC about the delivery of the Driver Knowledge Test to adults in prisons and young offenders in juvenile justice centres. Corrective Services NSW, Juvenile Justice and Roads and Maritime Services NSW entered into a memorandum of understanding to make the test available to prisoners in NSW. This initiative aims to support a reduction in recidivism for licensing offences and to increase the number of Aboriginal and Torres Strait Islander people with a driver licence.²⁰ Another example is the Aboriginal Inmate Birth Certificate Program run by Corrective Services NSW that provides financial assistance to eligible Aboriginal prisoners who wish to obtain a birth certificate for the purposes of obtaining 'qualifications, completing vocational training or accessing services. In 2016–17—working with the NSW Registry of Births Deaths & Marriages—the program provided 800 birth certificates to inmates across the state'.²¹

Key gaps

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:

16 Council of Australian Governments, above n 8, 82.

17 Ibid 132.

18 Victorian Aboriginal Legal Service, *Submission 39*.

19 NSW Government, *Submission 85*.

20 Ibid.

21 Ibid.

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

9.15 Aboriginal and Torres Strait Islander peoples are more likely to reoffend on release from prison than non-Indigenous people.²² While various prison programs address the criminogenic needs of Aboriginal and Torres Strait Islander prisoners, few are available to people held on remand or to prisoners serving short sentences—areas where Aboriginal and Torres Strait Islander peoples are over-represented.²³ There are also few available programs that address the specific challenges of female Aboriginal and Torres Strait Islander prisoners, whether on remand or serving long or short sentences.

Remand and people serving short sentences

9.16 There are key differences between those prisoners held on remand and those prisoners serving short sentences—namely, the presumption of innocence applies to prisoners held on remand.²⁴ The presumption of innocence raises legal and ethical questions about the extent to which prison programs addressing offending behaviours should be made available to prisoners on remand.

9.17 However, as noted in a 2016 South Australian report,

effects associated with remand in custody (particularly for those subsequently not convicted) include: increased likelihood of further offending as a consequence of contact with the prison system; increased risk of suicide and mental distress, disintegration of social supports and family ties; disruption to employment and housing that may increase likelihood of reoffending on release; limited access to supports, programs and services that might address factors underpinning the alleged offence.²⁵

9.18 While the discussion in this section discusses the availability of programs for Aboriginal and Torres Strait Islander remandees and prisoners serving short sentences together, the ALRC cautions that states and territories should take into account legal and ethical considerations arising from the presumption of innocence in designing and delivering programs to Aboriginal and Torres Strait Islander remandees.

9.19 Up to 30% of the Aboriginal and Torres Strait Islander prisoner population are held on remand.²⁶ Of those that are convicted, a large proportion are given a sentence not exceeding time served on remand²⁷ or are sentenced to a short term of

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

23 See ch 3.

24 Bail and remand and short sentences are further discussed in chs 5 and 7.

25 Department of Correctional Services (SA), *Strategic Policy Panel Report—A Safer Community by Reducing Reoffending: 10% by 2020* (2016) 28.

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

27 See ch 5.

imprisonment that exceeds time served on remand.²⁸ In 2016, up to 50% of Aboriginal and Torres Strait Islander prisoners were serving a sentence of 2 years or less.²⁹ This can be more pronounced in some jurisdictions. For example, CLANT advised that most prisoners in the NT were either on remand (30%) or serving sentences of less than 12 months (40%).³⁰

9.20 Generally, people on remand or serving short sentences do not have access to prison programs.³¹ For example, while the Sentence to a Job program operating in the Northern Territory (NT) has received positive results but, like many other prison programs, is only available to those serving a sentence of more than three months.³² The Criminal Lawyers Association of the Northern Territory (CLANT) noted generally that it was a serious concern that, in the NT, prison programs are only available on a limited basis.³³ Citing the NT Department of Correctional Services' 2015–16 Annual Report, CLANT noted that 95% of NT prisoners had not participated in the Sentence to a Job program and that other programs had ceased altogether or were only available to fewer than half the inmates.³⁴ CLANT advised that most NT prison inmates were either on remand (30%) or serving sentences of less than 12 months (40%)³⁵ meaning access to programs is very limited.

9.21 There may be both policy and practical reasons for limited access in other jurisdictions.³⁶ 'Offence-based' programs may not be provided to people on remand because the offences charged are yet to be proven.³⁷ Further, 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.³⁸ These reasons have been articulated by the Australian Institute of Judicial Administration, who noted:

Access to programs also tended to be restricted to prisoners who had been sentenced and who were serving a minimum sentence. Such restrictions are justified based on the premise that people should not be undertaking programs until there has been a finding of guilty and based on the practical realities of delivering programs ... Many prisoners also spend less than six months in prison and are often released without addressing their rehabilitation needs. As rehabilitation takes time, it becomes

28 See ch 7.

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

30 Criminal Lawyers Association of the Northern Territory, *Submission 75*. See also ch 3.

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

32 For an overview of the program see J Cashman, *Submission 105*.

33 Criminal Lawyers Association of the Northern Territory, *Submission 75*.

34 *Ibid.*

35 *Ibid.* See also chs 3, 5 and 7.

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

37 *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'.

38 *Ibid* 16–7.

increasingly difficult to rehabilitate prisoner who have complex needs by addressing their offending behaviour in short time frames.³⁹

9.22 By contrast, the Victorian Aboriginal Legal Service (VALS) noted:

prisoners on remand and serving short sentences face the same disruption as those serving longer sentences and require the same level of support and rehabilitation services as those serving longer sentences. Unless people held on remand and serving short sentences are provided with access to positive programs their detention is a purely punitive experience that compounds their disadvantage and increases their likelihood of reoffending.⁴⁰

9.23 In recognition of the failure to deliver programs across all prisoner groups, states and territories are beginning to focus on the remand population as well as prisoners serving short sentences. For example, in the ACT the majority of cultural programs and some offence-based programs have been made available to prisoners on remand, including female Aboriginal and Torres Strait Islander remandees.⁴¹ The ACT's *Standard Guidelines for Corrections in Australia* (2012) states that the 'treatment of remand prisoners should not be less favourable than that of sentenced prisoners.'⁴²

9.24 In September 2017, Corrective Services NSW established 10 'High Intensity Program Units' for prisoners to attend upon where they are serving sentences of six months or less⁴³ because 'these inmates tend to reoffend at higher rates than those with longer sentences'.⁴⁴ These facilities 'focus on delivering rehabilitation services and programs and enhanced release planning' to these prisoners. Two units—operating in Wellington and the Mid-North Coast—are specifically for 'short sentenced Aboriginal inmates'.⁴⁵ The programs at these facilities have a 'strong emphasis' on education and employment preparation, supported by 'targeted cultural support and traditional knowledge for Aboriginal inmates', including a two week 'cultural strengthening program' and participation by local community Elders. Two facilities operating over three locations deliver programs and services tailored for female prisoners, using a trauma-informed framework, with a particular focus on returning to secure and safe accommodation.⁴⁶

9.25 In 2016, the South Australian Government released a policy that aimed to decrease reoffending rates by 10% by 2020. This comprised six strategies, including to prioritise developing programs for women, prisoners on short sentences and individuals on remand, and ensuring that targeted and culturally appropriate services and programs are available to Aboriginal offenders.⁴⁷ This policy was based on the recommendations

39 Australasian Institute of Judicial Administration, above n 9, 16–17.

40 Victorian Aboriginal Legal Service, *Submission 39*.

41 ACT Government, *Submission 110* app A.

42 Legal Aid ACT, *Submission 107*.

43 Corrective Services NSW, *Reducing Reoffending* <www.correctiveservices.justice.nsw.gov.au>.

44 NSW Government, *Submission 85*.

45 *Ibid*.

46 *Ibid*.

47 South Australian Government, *10 by 20—Reducing Reoffending 10% by 2020* (2016) 8, strategies 3–4.

of the Strategic Policy Panel Report.⁴⁸ The SA government has committed to implementing these by mid-2018 and to evaluate these by 2020.⁴⁹

9.26 The *Efficacy, Accessibility and Adequacy of Prison Rehabilitation Programs for Indigenous Offenders across Australia* Report recommended, among other things, that programs be developed for Aboriginal and Torres Strait Islander prisoners sentenced to less than six months imprisonment. The Report noted that there are limitations to the effectiveness of such programs stating that, ‘by their nature, those programs will be limited’. The Report also recommended ‘investigating’ the possibility of extending throughcare to short-term prisoners, and that attention should be given to the development of appropriate rehabilitation programs for remandees.⁵⁰

9.27 The majority of stakeholders supported the recommendation that corrective services in each state and territory develop culturally appropriate prison programs for Aboriginal and Torres Strait Islander prisoners on remand or serving a short sentence.⁵¹ Stakeholders described some of the issues that followed from remandees and those on short sentences not having access to prison programs. Of particular concern was the likelihood of reoffending, which was compounded by limited access to parole for prisoners who had not completed programs.⁵² Further, when granted parole, such prisoners are likely to leave prison unsupervised without any further skills or understanding of their criminal conduct.⁵³ This problem was highlighted by the Law Council of Australia, who submitted with regard to the lack of remand programs in SA that:

The Society advises that many of remandees are Aboriginal men who alleged to have committed domestic violence offences who have been refused bail under section 10A of the *Bail Act 1985* (SA), very many of whom are Aboriginal, serve time in custody on remand, and plead guilty on the first available opportunity. They are often released after a period of weeks or months on remand, with their family lives, their working lives and their social and cultural lives having been completely disrupted. It is those people who particularly need programs directed to cessation of domestic violence.⁵⁴

48 Department of Correctional Services (SA), above n 25, 6.

49 South Australian Government, above n 47, 14.

50 Australasian Institute of Judicial Administration, above n 9, 3, 65.

51 See, eg, Law Council of Australia, *Submission 108*; Legal Aid NSW, *Submission 101*; Jesuit Social Services, *Submission 100*; NSW Bar Association, *Submission 88*; Change the Record Coalition, *Submission 84*; Public Health Association of Australia, *Submission 31*; Australian Red Cross, *Submission 15*.

52 Many people on short sentences may not be eligible for parole. Generally, a person needs to receive a prison sentence of over twelve months to receive a non-parole period: See, eg, Sentencing Advisory Council (Vic), *Parole* <www.sentencingcouncil.vic.gov.au>. As discussed in greater detail below, 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: ‘Parole Supervision and Reoffending (2014)’ (Trends & Issues in Crime and Criminal Justice No 485, Australian Institute of Criminology, 2014).

53 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.

54 Law Council of Australia, *Submission 108*.

9.28 The Human Rights Law Centre noted:

These 'short termers' (serving six months or less) account for more than half of prisoners released each year and without access to appropriate programs, are at greater risk of reoffending. A lack of stable housing, work, family and social ties, together with a lack of post-release support, heightens this risk even further.⁵⁵

9.29 The Aboriginal Legal Service of Western Australia (ALSWA) submitted that the lack of support programs available for remand prisoners and prisoners serving short sentences was a 'serious flaw' in the current system:

prisoners on remand may spend several months in custody prior to the disposition of their charges (and even up to 18 months awaiting a trial in a superior court). Depending on the circumstances, the court may impose a sentence of imprisonment and backdate the sentence to the time when the offender first went into custody. Therefore, some offenders will be released from custody at the time or very soon after the sentencing date. For others, even a short period as a sentenced prisoner precludes participation in programs. Such offenders are released into the community with no support and the risk of reoffending is therefore high.⁵⁶

9.30 Legal Aid WA observed that few programs were available in regional prisons, and where they were available, were often not suitable for Aboriginal prisoners, who may have low levels of English and/or literacy skills.⁵⁷ Legal Aid WA also drew the ALRC's attention to the consequential and related issue of prisoners being denied parole because they had not attended suitable programs, providing a case study of a 20 year old Aboriginal man on a 22 month sentence who was unable to access programs and therefore was denied parole. This may occur where a person has been held on remand, and, due to time served, receives only a short sentence on conviction, with parole to follow shortly thereafter. However, as there were no programs available on remand, the person does not qualify for parole.⁵⁸

9.31 Other potential flow-on effects of completing programs in prison when on a short sentence were also raised by stakeholders. For instance, prison programs were described as being 'the only tool for people in custody to demonstrate to the Department for Child Protection that they are addressing issues or concerns that the Department might have'.⁵⁹

9.32 Legal Aid NSW submitted that a key barrier to accessing community-based drug and alcohol services for remanded prisoners is a Corrective Services NSW policy, which requires that, in order to be eligible for an assessment report for residential rehabilitation programs, a prisoner must have entered a guilty plea or be on remand awaiting a bail determination in the Supreme Court of NSW. This means, for example, that a remandee who has pleaded not guilty to an offence being heard in the District

55 Human Rights Law Centre, *Submission 68*.

56 Aboriginal Legal Service of Western Australia, *Submission 74*.

57 Legal Aid WA, *Submission 33*. Legal Aid ACT, *Submission 107* also observed there to be a 'paucity' of Aboriginal programs that address complex and inter-related issues of most Aboriginal and Torres Strait Islander prisoners. See also ch 10 for a discussion of access to interpreters.

58 Legal Aid WA, *Submission 33*.

59 Law Society of Western Australia, *Submission 111*.

Court of NSW would be ineligible to access a residential rehabilitation program. Legal Aid NSW suggested that this policy be revised and provided some practical reform options to expand the availability of programs. For instance, it suggested the establishment of a free call service to rehabilitation providers.⁶⁰

Female Aboriginal and Torres Strait Islander offenders

9.33 The *Prison to Work* Report highlighted that the drivers of incarceration may be ‘acute’ for Aboriginal and Torres Strait Islander female offenders. They are likely to have experienced victimisation, sexual abuse and family violence as well as poor mental health, substance misuse, unemployment and low education.⁶¹ The Report noted:

Despite this experience of violence and their complex needs, Aboriginal and Torres Strait Islander women tend to access women’s services and programs in prison less than non-Indigenous women, particularly those aimed at women who have dependent children.⁶²

9.34 Aboriginal and Torres Strait Islander women tend to serve short sentences or be held on remand, meaning they may be unable to access prison programs.⁶³ The NSW Government submission noted that ‘short sentences can be problematic for women as they are often incarcerated just long enough to lose their accommodation, links to community support and can serve to complicate and disrupt their lives, resulting in relapse, reoffending and in many cases, homelessness’.⁶⁴ The *Prison to Work* Report stated that to ‘be female, Aboriginal and/or Torres Strait Islander and a prisoner is to experience a very complex disadvantage’.⁶⁵

9.35 Even for longer term prisoners, when compared to the range and availability of options offered to Aboriginal and Torres Strait Islander men, women’s prison programs are limited.⁶⁶ Female Aboriginal and Torres Strait Islander prisoners have been described as a group that is ‘invisible’ to policy makers.⁶⁷

9.36 There are some programs available to female Aboriginal and Torres Strait Islander prisoners. The National Family Violence Prevention Legal Service (NFVPLS) provided examples of programs delivered by their Forum members across Australia. These included:

- **Strong Women, Strong Mother** (WA): delivered by Aboriginal Family Law Services in WA, the program seeks to educate participants about family violence, healthy relationships, the emotional wellbeing of children and creating stronger children for the community.

60 Legal Aid NSW, *Submission 101*.

61 Council of Australian Governments, above n 8, 141. See also, Law Council of Australia, *Submission 108*.

62 Council of Australian Governments, above n 8, 32.

63 See ch 11 for a discussion of Aboriginal and Torres Strait Islander women’s experiences with the criminal justice system. See also Top End Women’s Legal Service, *Submission 52*.

64 NSW Government, *Submission 85*.

65 Council of Australian Governments, above n 8, 32.

66 Ibid 32–4; Australasian Institute of Judicial Administration, above n 9, 61.

67 Law Council of Australia, *Submission 108*; Women’s Legal Service NSW, *Submission 83*.

- **Dilly Bag** (Victoria): delivered by the Aboriginal Family Violence Prevention and Legal Service (Victoria), this program works with Aboriginal women in prison and on community-based orders. It uses culture and cultural strength to help women recover from trauma.
- **Prison support program** (Victoria): delivered by Aboriginal Family Violence Prevention and Legal Service Victoria to Aboriginal women who are survivors of violence or abuse. The program provides culturally safe and holistic support and links women into services and provides community legal education. The program is provided to women on remand and women exiting prison.⁶⁸

9.37 Legal Aid NSW pointed to the Bolwara Transitional Centre as a model currently only available to female Aboriginal or Torres Strait Islander prisoners serving longer sentences in metropolitan areas, and further identified the below programs for expansion:

- The Miranda Project (NSW);
- Rosa Coordinated Care (based in Nowra);
- WEAVE creating futures justice program; and
- Miruma residential diversionary program.⁶⁹

9.38 Stakeholders called for better and more accessible prison programs for all female Aboriginal and Torres Strait Islander prisoners.⁷⁰ For example, Legal Aid WA supported the implementation of more programs for female Aboriginal and Torres Strait Islander prisoners, stating that programs should

be linked to the factors contributing to the offending behaviour, including intergenerational trauma. Programs must be culturally and gender appropriate to ensure the best response possible. It is further suggested that the programs use plain English (unless an interpreter is required) and facilitators of the programs should ideally be appropriate community representatives to promote a more engaging program e.g. a female facilitator when speaking to female victims and likewise, a male facilitator when speaking to male offenders about family violence.⁷¹

9.39 It has been acknowledged that female Aboriginal and Torres Strait Islander prisoners require particular care, and access to appropriate services that ‘acknowledge their higher levels of need and likely history of victimisation that is entwined with their offending’.⁷² In 2014, the Office of the Inspector of Custodial Services of Western

68 National Family Violence Prevention Legal Services, *Submission 77*.

69 Legal Aid NSW, *Submission 101*.

70 See, eg, Law Council of Australia, *Submission 108*; Legal Aid NSW, *Submission 101*; NSW Bar Association, *Submission 88*; National Family Violence Prevention Legal Services, *Submission 77*; Aboriginal Legal Service (NSW/ACT), *Submission 63*; Legal Aid WA, *Submission 33*.

71 Legal Aid WA, *Submission 33*.

72 Council of Australian Governments, above n 8, 33–4. Also see Women’s Legal Service NSW, *Submission 83*.

Australia recommended the implementation of specific strategies targeted at reducing recidivism among young female prisoners.⁷³

9.40 The factors that drive ‘female imprisonment and offender complexities are significantly different from male offenders’⁷⁴ Key issues in relation to prison programs for female Aboriginal and Torres Strait Islander prisoners 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.⁷⁵
- 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.⁷⁶
- many female prisoners are parents—up to 80% of Aboriginal and Torres Strait Islander women in prison are mothers.⁷⁷ 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.⁷⁸

Best practice characteristics of prison programs

9.41 The NT Anti-Discrimination Commission noted that prison programs should be ‘culturally appropriate in content and delivery, and be evaluated’.⁷⁹ This sentiment was echoed by other stakeholders,⁸⁰ with many highlighting the need for trauma-informed programs designed by Aboriginal and Torres Strait Islander people.⁸¹

9.42 The need for specialised programs targeted, not only at Aboriginal and Torres Strait Islander people generally, but to their specific needs—such as programs targeted at mental health needs—was also raised.⁸² Similarly, the importance of individualised

73 Office of the Inspector of Custodial Services, *Recidivism Rates and the Impact of Treatment Programs* (2014) vi.

74 NSW Government, *Submission 85*.

75 Council of Australian Governments, above n 8, 33; Law Council of Australia, *Submission 108*.

76 Council of Australian Governments, above n 8, 32. See also Women’s Legal Service NSW, *Submission 83*; Human Rights Law Centre, *Submission 68*; Australian Lawyers for Human Rights, *Submission 59*.

77 Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) 21.

78 Council of Australian Governments, above n 8, 33; Law Council of Australia, *Submission 108*; Legal Aid NSW, *Submission 101*.

79 Northern Territory Anti-Discrimination Commission, *Submission 67*.

80 See, eg, Law Council of Australia, *Submission 108*; Legal Aid NSW, *Submission 101*; Jesuit Social Services, *Submission 100*; Victorian Aboriginal Legal Service, *Submission 39*.

81 See, eg, Northern Territory Government, *Submission 118*; Legal Aid ACT, *Submission 107*; Jesuit Social Services, *Submission 100*.

82 See, eg, NSW Bar Association, *Submission 88*.

case management, holistic support, and a therapeutic approach that addresses criminogenic needs, and support on release was emphasised.⁸³

9.43 The *Prison to Work* Report 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.⁸⁴ VALS particularly recommended that the Commonwealth Government undertake research into the ‘programmatically needs’ of Aboriginal and Torres Strait Islander female prisoners.⁸⁵

9.44 With regard to persons held on remand or serving short sentences, the Law Council of Australia observed that facilitating access to programs relies particularly on effective early assessment of a person’s criminogenic needs. It noted that prison can be a ‘circuit breaker for many people from the issues that have led them to being imprisoned or remanded for example, poverty, lack of housing, mental health conditions or lack of employment’.⁸⁶ The Reception Transition Triage operated by Corrections Victoria was identified as a good model that seeks to identify and address immediate needs that ‘without intervention would escalate or compound’.⁸⁷ The NSW Government submission outlined the approach taken by NSW Corrective Services, which includes early identification of Aboriginal and Torres Strait Islander prisoners (as high risk of reoffending) and intervention. NSW Government advised that, in 2016–17, 29% of program attendees in offence-based programs were Aboriginal. The proportion of attendees in offence-based programs is higher than the percentage of Aboriginal and Torres Strait Islander people as a proportion of the prison population.⁸⁸

9.45 NFVPLS identified the following best practice elements for prison programs for Aboriginal and Torres Strait Islander peoples, particularly women:

- programs for Aboriginal and Torres Strait Islander people need to be **designed and delivered by Aboriginal and Torres Strait Islander organisations** with relevant experience and expertise;
- programs must take a **strengths-based approach** that incorporates culturally-based healing and builds resilience and reduces the vulnerability of participants, particularly women who are victims/survivors of family violence;
- programs should focus on building **participants’ self-esteem** and well-being;
- programs must include a strong **local community focus** that strengthens friendships, relationships and connections within the community;

83 See, eg, Northern Territory Government, *Submission 118*; Aboriginal Legal Service (NSW/ACT) Supplementary Submission, *Submission 112*; Law Council of Australia, *Submission 108*; Legal Aid ACT, *Submission 107*; Legal Aid NSW, *Submission 101*; Legal Aid WA, *Submission 33*.

84 Council of Australian Governments, above n 8, 51. See also Australasian Institute of Judicial Administration, above n 9, 2.

85 Victorian Aboriginal Legal Service, *Submission 39*.

86 Law Council of Australia, *Submission 108*.

87 *Ibid.*

88 NSW Government, *Submission 85*.

- activities should support participants to **develop and undertake leadership roles** and speak out on issues within their community; and
- programs should increase participants' access **to support and legal services within their community**, both mainstream and Aboriginal and Torres Strait Islander specific services.⁸⁹

Culturally appropriate programs

9.46 A key element of best practice prison programs is that they are culturally appropriate. In discussing what constitutes a culturally appropriate program for Aboriginal and Torres Strait Islander prisoners on remand or serving short sentences, and for female Aboriginal and Torres Strait Islander prisoners, stakeholders advised that programs should be:

- designed, developed and delivered by Aboriginal and Torres Strait Islander organisations where possible;
- trauma-informed, especially where being delivered to female Aboriginal and Torres Strait Islander prisoners; and
- focused on practical application, particularly for prisoners on remand or short sentence who need the skills on release to reintegrate.

9.47 These characteristics are briefly outlined below.

Design, development and delivery

9.48 Prison programs for Aboriginal and Torres Strait Islander peoples need to be led by Aboriginal and Torres Strait Islander organisations where possible. Stakeholder submissions stressed the importance of prison programs being developed and delivered by Aboriginal and Torres Strait Islander organisations where available.⁹⁰ This was key to the provision of culturally appropriate programs. Kingsford Legal Centre acknowledged research conducted by Queensland Corrective Services that supports the proposition that culturally appropriate programs are effective in reducing recidivism.⁹¹

9.49 Legal Aid NSW suggested that Aboriginal and Torres Strait Islander representatives needed to be involved with the development and delivery of prison programs in order to provide approaches that were local, holistic and trauma-informed, noting that many prisoners are descendants of the Stolen Generation and that 'their trauma is different to that of non-Indigenous population'.⁹²

9.50 ALSWA emphasised the need for Aboriginal and Torres Strait Islander specific programs, and the need for these to be developed in collaboration with peak Aboriginal and Torres Strait Islander organisations such as Aboriginal and Torres Strait Islander legal services and Aboriginal Family Violence Prevention Legal Services. It suggested

89 National Family Violence Prevention Legal Services, *Submission 77*. Emphasis added.

90 See, eg, Legal Aid NSW, *Submission 101*; Victorian Aboriginal Legal Service, *Submission 39*; Kingsford Legal Centre, *Submission 19*.

91 Kingsford Legal Centre, *Submission 19*.

92 Legal Aid NSW, *Submission 101*.

that programs should provide a ‘one-stop shop’—a culturally appropriate model providing legal and family assistance with holistic support and case management.⁹³

9.51 VALS recommended that the delivery of programs be:

- designed, delivered and managed by Aboriginal and Torres Strait Islander people;
- well resourced and consistent;
- supported by case management by Aboriginal community controlled organisations, both in prison and in transition;⁹⁴
- supported by prison staff who are trained in cultural awareness; and
- designed around Aboriginal understandings of health, which includes ‘mental health, physical, cultural and spiritual health’, and understands that land is central to wellbeing.⁹⁵

9.52 The Commissioner for Children and Young People (WA) suggested the implementation of culturally appropriate support for young offenders in custody. For young people, culturally appropriate programs should address underlying issues, take a trauma-informed approach and encourage young people to re-engage with school, learning and community.⁹⁶ The Commissioner also noted the need for a ‘particular focus on Aboriginal young women in the justice system’, who were described as a ‘particularly vulnerable group in the prison population’. It was suggested that women with current or prior experience in the youth justice system be consulted and involved in the design and development of such programs.⁹⁷ The Miranda Project further suggested that programs be developed ‘by Aboriginal women for Aboriginal women to be delivered by Aboriginal women’.⁹⁸

A trauma-informed approach⁹⁹

9.53 Understanding the effects of trauma has been identified as a key requirement for prison programs delivered to Aboriginal and Torres Strait Islander prisoners, and in particular, for female prisoners.¹⁰⁰

9.54 The *Prison to Work* Report found that support for Aboriginal and Torres Strait Islander female prisoners could be improved, and recommended that the

93 Aboriginal Legal Service of Western Australia, *Submission 74*. See also Law Society of Western Australia, *Submission 111*; Law Council of Australia, *Submission 108*.

94 This point is also made by the Law Council of Australia: Law Council of Australia, *Submission 108*.

95 Victorian Aboriginal Legal Service, *Submission 39*.

96 Commissioner for Children and Young People Western Australia, *Submission 16*.

97 *Ibid.*

98 Community Restorative Centre, *Submission 61*.

99 For a more detailed discussion of what constitutes a trauma-informed approach, see ch 1.

100 See, eg, Jesuit Social Services, *Submission 100*; National Association of Community Legal Centres, *Submission 94*; NSW Bar Association, *Submission 88*; Queensland Law Society, *Submission 86*; Change the Record Coalition, *Submission 84*; Women’s Legal Service NSW, *Submission 83*; Criminal Lawyers Association of the Northern Territory, *Submission 75*; Victorian Aboriginal Legal Service, *Submission 39*.

Commonwealth Government work with states and territories to ‘explore options’ for pilot programs for women while in prison and to provide better throughcare which would accommodate the needs and likely experiences of ‘trauma, abuse and family violence of female Aboriginal and Torres Strait Islander prisoners’.¹⁰¹ It also recommended that state and territory governments consider ways to ‘better facilitate women’s access to their children while in prison’.¹⁰²

9.55 The NSW Government submitted that Corrective Services NSW do take a different, trauma-informed approach to addressing the needs of female Aboriginal offenders than men, citing the Out of Dark program for women who had experienced domestic and family abuse as victims. In 2016–17, 24 women participated, of which 10 (42%) were Aboriginal.¹⁰³

9.56 In Victoria, the *Dilly Bag Program* provides ‘intensive assistance’ to Aboriginal women in prison who are recovering from traumatic experiences.¹⁰⁴ VALS supported the development of such programs for Aboriginal and Torres Strait Islander accused peoples and offenders, noting that the need for

therapeutic and holistic programs for those on remand and serving short sentences is felt most acutely by Aboriginal and Torres Strait Islander people who are more likely to be held on remand and are more likely to be incarcerated for less than 12 months than any other group.¹⁰⁵

9.57 CLANT also observed it be ‘essential that rehabilitation programs for women be designed and delivered using a trauma-informed approach’.¹⁰⁶ Women’s Legal Service NSW sought culturally safe, strength based and trauma-informed programs that respond to the specific needs of Aboriginal and Torres Strait Islander women in prison, including women held on remand. This was echoed by the Queensland Law Society and Change the Record.¹⁰⁷

Content

9.58 Stakeholders submitted that programs must:

- address offending behaviours, especially for people on short sentences and female Aboriginal and Torres Strait Islander prisoners serving any term of imprisonment;
- provide practical assistance; and
- provide case management, including beyond the end of a sentence.

101 Council of Australian Governments, above n 8, 32–4, finding 4.

102 Ibid 10. See also ch 11.

103 NSW Government, *Submission 85*.

104 Council of Australian Governments, above n 8, 79.

105 Victorian Aboriginal Legal Service, *Submission 39*.

106 Criminal Lawyers Association of the Northern Territory, *Submission 75*. See also NSW Bar Association, *Submission 88*.

107 Queensland Law Society, *Submission 86*; Change the Record Coalition, *Submission 84*; Women’s Legal Service NSW, *Submission 83*.

Address offending behaviours

9.59 The *Sisters Day In* program is an example of a program that addresses offending behaviour. It is an early intervention and prevention program to reduce Aboriginal women's vulnerability to family violence.¹⁰⁸ The Kunga Stopping Violence program, operated by the Central Australian Aboriginal Legal Aid Service focuses on community reintegration for Aboriginal and Torres Strait Islander women who have been imprisoned for violent offending. National Aboriginal and Torres Strait Islander Legal Service (NATSILS) noted that 'all Kunga participants have disclosed histories of some form of domestic, family, sexual or community violence' and that the program has been designed to support women with strategies in relation to: drug and alcohol dependencies; emotional intelligence; intergenerational trauma; domestic and family violence; accommodation; and positive thinking. Women are supported for up to 12 months post release.¹⁰⁹

9.60 The Public Health Association of Australia suggested there be an emphasis on programs that target substance misuse.¹¹⁰ The Australian Red Cross observed that, in order to achieve one of the aims of imprisonment—to prevent recidivism—it is essential for offenders to be able to address the 'complex and multiple' reasons for offending. Accordingly, despite the stated logistical and practical challenges, programs should be available for female Aboriginal and Torres Strait Islander offenders, prisoners serving short sentences, and people on remand, and have a throughcare focus.¹¹¹

Practical assistance

9.61 Programs that provide practical assistance are also required, and may be especially beneficial for prisoners on remand. The NT Anti-Discrimination Commissioner noted that in the NT Ombudsman Report, women and stakeholders clearly articulated those programs that were required, including programs around basic literacy and numeracy, trauma and grief, and loss.¹¹²

9.62 Prison programs that provided practical assistance to support reintegration, such as helping prisoners organise post-release accommodation, finances and employment are needed.¹¹³ Legal Aid WA submitted that this need superseded that of programs that focus only on offending behaviours.¹¹⁴ ALSWA suggested that programs for

108 Council of Australian Governments, above n 8, 79.

109 National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*.

110 Public Health Association of Australia, *Submission 31*.

111 Australian Red Cross, *Submission 15*. See also NSW Bar Association, *Submission 88*; Human Rights Law Centre, *Submission 68*; Aboriginal Legal Service (NSW/ACT), *Submission 63*; Legal Aid WA, *Submission 33*.

112 Northern Territory Anti-Discrimination Commission, *Submission 67*. See also Ombudsman NT, 'Women in Prison II—Alice Springs Women's Correctional Facility' (Investigation Report, Volume 1 of 2, May 2017) recs 6-7.

113 See, eg, National Aboriginal and Torres Strait Islander Legal Services, *Submission 109* 108; Legal Aid WA, *Submission 33*; Public Interest Advocacy Centre, *Submission 25*.

114 Legal Aid WA, *Submission 33*. See also comments on parole in the Aboriginal Legal Service (NSW/ACT) Supplementary Submission, *Submission 112*.

remandees can be effective if they respond to the ‘underlying needs of the prisoner rather than focusing on the specific offence or offences for which the prisoner is in custody’. These could address ‘practical needs’ such as housing, literacy and financial literacy, employment and training, substance abuse, driver licences and unpaid fines, and programs that help transition back into the community upon release.¹¹⁵ The Miranda Project proposed that short-term programs needed to move beyond addressing criminogenic needs, and focus on social and welfare concerns such as housing, social connections and poverty, and legal literacy (identified as particularly important for female offenders).¹¹⁶

9.63 VALS acknowledged the gap in practical services for female Aboriginal and Torres Strait Islander prisoners, and recommended programs that:

- provide tailored service delivery;
- provide transition planning, supported by case management; and
- involve ‘wrap around’ service delivery regarding culture; employment; health, including mental health; education; housing; community and legal services; and child specialist services.¹¹⁷

9.64 NSW Government highlighted the issue of unemployment among prisoners, where only 16% of Aboriginal prisoners in NSW had been employed in the community on entry into prison, compared with 39% of non-Indigenous prisoners; highlighting a need for employment and education programs.¹¹⁸

9.65 The *Prison to Work* Report noted the practical barriers to employment that prisoners experience on release. It suggested that some barriers that could be easily overcome with assistance, such as opening a bank account or applying for valid identity documents, while others were more difficult to overcome, such as transport and accommodation. The *Prison to Work* Report also identified ‘intangible barriers’ to employment, such as changing entrenched behaviours, reintegration into civic life, and a lack of agency stemming from institutionalisation. It noted that ‘unrealistic demands and expectations made of ex-prisoners occur when they are at their most vulnerable, which is in the period immediately following their release’.¹¹⁹

9.66 In 2017, the Commonwealth Department of Employment released a consultation paper on the proposed Prison to Work—Employment Service Offer that was developed from the *Prison to Work* Report. The Employment Service Offer will target Aboriginal and Torres Strait Islander prisoners who wish to participate and provide them with assistance to help prepare for employment post release. It plans to provide all participating Aboriginal and Torres Strait Islander prisoners with employments services from three months before their scheduled release date; an assessment to

115 Aboriginal Legal Service of Western Australia, *Submission 74*. ALSWA also observed that, as most people on remand, have prior convictions, there may be ‘standing’ to address criminogenic needs as well.

116 Community Restorative Centre, *Submission 61*.

117 Also see National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*.

118 NSW Government, *Submission 85*.

119 Council of Australian Governments, above n 8, 5.

identify any needs or barriers; a ‘Transition Plan’; and a ‘Facilitated Transfer’ to an employment service provider. The program will be cross-coordinated between government and private providers with demonstrated cultural competence.¹²⁰ Where operating in a women’s prison, the provider should provide a trauma-informed approach.¹²¹ The Department of Employment has published an intention that sentenced, adult Aboriginal and Torres Strait Islander prisoner serving sentences of over three months will be eligible to participate in the Employment Service Offer.¹²²

Case management and throughcare

9.67 The need for pre-release case management was highlighted, with Legal Aid NSW noting:

We also consider there is a need for improved pre-release case management for prisoners on short sentences. The PLS often speaks to inmates who are serving short sentences with a parole period who do not speak with Community Corrections until very close to their “automatic” release date. In some cases, this may be only a few weeks before their earliest possible release date. The absence of post-release planning for these inmates is particularly concerning where they are referred to short-term temporary accommodation upon release.¹²³

9.68 Many stakeholders supported the inclusion of programs and case management that included plans for post-release housing or housing support, assistance with Centrelink and, even, transportation from prison.¹²⁴ The NT Anti-Discrimination Commissioner suggested that programs be provided by registered providers in modules that could be completed in the community where a prisoner had not finished the program by the time they are released.¹²⁵

Parole

9.69 When a person is sentenced to a term of imprisonment above a prescribed length,¹²⁶ a court generally imposes a non-parole period¹²⁷ as well as a head sentence.¹²⁸ 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 services, and must follow their reasonable directions. Breach of parole may result in a return to prison.

120 Department of Employment, ‘Prison to Work—Employment Service Offer 2018–2021’ (Consultation Paper, Australian Government, 2017) 5, 9 <www.employment.gov.au>.

121 Ibid 11; Northern Territory Anti-Discrimination Commission, *Submission 67*. See also Mental Health Commission of New South Wales, *Submission 20*.

122 Department of Employment, above n 119, 8.

123 Legal Aid NSW, *Submission 101*.

124 See, eg, National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; Jesuit Social Services, *Submission 100*; NSW Bar Association, *Submission 88*; Public Interest Advocacy Centre, *Submission 25*.

125 Northern Territory Anti-Discrimination Commission, *Submission 67*.

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

127 The non-parole period is the minimum period that the offender must spend in prison.

128 NSW Law Reform Commission, *Parole*, Report No 142 (2015) xvii. The head sentence is the maximum period that the offender can spend under sentence.

9.70 Parole does not commence upon the completion of a sentence. Rather, parole is part of the sentence. The *Review of the Parole System of Victoria* observed there to be a ‘lack of awareness generally that parole represents only conditional release’, and reiterated that ‘a parolee remains under sentence while on parole’.¹²⁹ 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.¹³⁰

9.71 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.¹³¹ Parole generally 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.¹³² 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.¹³³

9.72 Some Aboriginal and Torres Strait Islander prisoners who are eligible for parole instead serve out their entire head sentence in prison. The result is that these prisoners 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.

9.73 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.¹³⁴ In 2014–15, 53% of prisoners in the NT served their full sentence in prison (meaning they were released unsupervised).¹³⁵

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

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

131 ‘Parole Supervision and Reoffending (2014)’, above n 52, 6; *R v Shrestha* (1991) 173 CLR 48.

132 ‘Parole Supervision and Reoffending (2014)’, above n 52, 6.

133 Ian Callinan, above n 128, 32.

134 Council of Australian Governments, above n 8, 97.

135 *Ibid* 125.

9.74 The *Evaluation of the Aboriginal Justice Agreement—Phase 2: Final Report*, revealed that, in 2011, in Victoria, 67% of Aboriginal and Torres Strait Islander offenders released from prison were not released on parole.¹³⁶

9.75 Stakeholders have articulated two key reasons why eligible Aboriginal and Torres Strait Islander prisoners may not apply for parole. First, eligible Aboriginal and Torres Strait Islander prisoners may believe that they are unlikely to be granted parole by the parole authority; this may be due living arrangements, previous offending, or lack of attendance in prison programs. It may also be related to a complex history in dealing with government representatives. 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.

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.

9.76 This recommendation aims to encourage eligible Aboriginal and Torres Strait Islanders to apply for parole, which would provide supported transition from prison to community life. As highlighted above, a supported transition into the community reduces the risk of reoffending and further incarceration.

9.77 The granting of parole takes one of two forms: automatic, or court-ordered parole and discretionary parole. 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. Discretionary parole requires that offenders sentenced to parole-eligible sentences must make an application to the relevant parole authority prior to the expiration of the non-parole period for specific authorisation for parole.

9.78 NSW, Queensland, and SA have legislative frameworks for court-ordered parole.¹³⁷ These jurisdictions operate under a mixed system of parole where prisoners on short sentences receive automatic court-ordered parole and prisoners on longer sentences are subject to discretionary parole.¹³⁸ NSW introduced court-ordered parole

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

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

138 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 50; *Penalties and Sentences Act 1992* (Qld) s 160B(3); *Correctional Services Act 1982* (SA) s 66. See also, Queensland Corrective Services, *Queensland Parole System Review: Final Report* (2016) [256].

in 1983 following the 1978 *Nagle* Royal Commission into NSW prisons.¹³⁹ SA introduced court-ordered parole in 1984,¹⁴⁰ and Queensland in 2006,¹⁴¹ with the objective of diverting low risk offenders from custody while ensuring post-release supervision.¹⁴²

9.79 There is a form of court-ordered parole in WA. Parole eligibility is set by the sentencing court, and the Parole Review Board (PRB) determines if an eligible prisoner will be released on parole and under what conditions. There are two categories of prisoners for the purposes of parole: prescribed and others. A ‘prescribed prisoner’ includes personal violent offenders, and prior personal violent offenders who have reoffended.¹⁴³ Statute stipulates that the PRB *may* make a parole order for prescribed prisoners, and *must* make a parole order in respect of any other offender.¹⁴⁴ Meaning that, for all prisoners other than prescribed prisoners, parole is automatic—decided by offence type, not length.¹⁴⁵ Prescribed offences include assaults, threats, and stalking¹⁴⁶—offence types that include a significant number of Aboriginal and Torres Strait Islander prisoners.¹⁴⁷

9.80 In the ACT, NT, Tasmania and Victoria,¹⁴⁸ 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.

Court-ordered parole

9.81 There are advantages to court-ordered parole. Court-ordered parole ensures that greater numbers of low-level offenders are released on parole, thus limiting the number of offenders who are released to the community unsupervised.¹⁴⁹ Whether release on parole is automatic or by application, only prisoners who accept the conditions of parole—which in SA are set by the parole board—will be released on parole.¹⁵⁰

139 *Probation and Parole Act 1983* (NSW) s 19.

140 *Correctional Services Act Amendment Act 2014* (SA).

141 Corrective Services Bill 2006 (Qld). Queensland Corrective Services, above n 137, [259].

142 Queensland Corrective Services, above n 137, [263].

143 *Sentence Administration Act 2003* (WA) s 23(1).

144 *Ibid* s 23(3).

145 Aboriginal Legal Service of Western Australia, *Submission 74*.

146 See *Sentence Administration Act 2003* (WA) sch 2.

147 See ch 3.

148 *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.

149 Council of Australian Governments, above n 8, 70. Not all offence categories with certain sentence lengths will result in court ordered parole. Sex offenders, serious violent offenders, and offenders who have had a court ordered parole date cancelled do not receive an automatic release date in Queensland: *Penalties and Sentences Act 1992* (Qld) s 160B. In SA, offenders who receive a prison sentence of five years or less will be excluded from court ordered parole when the offence was committed while the person was on parole, or if the person was convicted of a sexual, personal violence, arson or firearms offence: *Correctional Services Act 1982* (SA) s 66.

150 *Correctional Services Act 1982* (SA) s 68(4). See also, Legal Aid WA, *Submission 33*.

9.82 A large proportion of Aboriginal and Torres Strait Islander prisoners receive a prison sentence that would enable them to receive court-ordered parole if available in all jurisdictions.¹⁵¹

9.83 The *Prison to Work* Report observed that, in NSW where court-ordered parole is available, a ‘large proportion’ of Aboriginal and Torres Strait Islander prisoners were granted parole on terms set by the court, rather than needing to apply for parole, noting:

Given the role that parole can play in ensuring offenders are supervised and supported during reintegration, the arrangements for granting parole can be a real benefit to Aboriginal and Torres Strait Islander prisoners whose complex needs and history of offending mean that they would not otherwise be granted parole on application.¹⁵²

9.84 A 2016 review of the parole system in Queensland reported that court-ordered parole had been introduced in that jurisdiction in response to growing prisoner numbers; the ‘extraordinary’ growth in the number of people serving sentences of less than one year; and a decline in number of applications for release on parole that were being approved.¹⁵³ The majority of offenders who received court-ordered parole orders in 2015–16 in Queensland had received a prison sentence of less than 12 months.¹⁵⁴

9.85 Stakeholders supported the introduction of court-ordered parole. Legal Aid WA advocated for the introduction of court-ordered parole based on the NSW model, observing that Aboriginal ‘offenders face difficulty in being granted parole due to limited resources and consequential lack of suitable prison rehabilitation programs’. The current system results in unfair outcomes that are outside of the control of the offender, and ‘greater use of automatic parole would assist in reducing the number of Aboriginal people in prison’, and provide for supervised release where currently the offender may be released without supervision. Legal Aid WA suggested a system that combined automatic parole and discretionary parole, depending on the level of seriousness of each offence. It suggested that court-ordered parole be available to offenders sentenced to a term of imprisonment of less than five years, where the offending had not involved sexual offending or serious violence—mixing the approaches of SA and Queensland.¹⁵⁵

9.86 ALSWA also supported the expansion of the current WA scheme, suggesting that this would ‘place a far greater onus’ on government to ‘ensure that there are sufficient programs and services available for Aboriginal and Torres Strait Islander prisoners’ as the department will know that each ‘prisoner subject to automatic parole will be released on a specified date’.¹⁵⁶

151 See ch 3, fig 3.16.

152 Council of Australian Governments, above n 8, 70. The ALRC notes that SPA can vary or remove court imposed conditions before an offender is released on parole (*Crimes (Administration of Sentences) Act 1999* (NSW) s 128(2)(b)). Changes to the program will implement a statutory parole, where standard conditions will be set by statute, with SPA retaining the ability to vary or impose conditions, see also NSW Government, *Submission 85*.

153 Queensland Corrective Services, above n 137, [363]–[365].

154 *Ibid* fig 4.1.

155 Legal Aid WA, *Submission 33*.

156 Aboriginal Legal Service of Western Australia, *Submission 74*.

9.87 Jesuit Social Services had similar reasons for supporting court-ordered parole in the NT, where it noted court-ordered parole was ‘urgently needed’. In the NT, it was observed that often relevant programs are not available and parole is not granted, through no fault of the offender. It was also suggested that, if court-ordered parole existed, correctional services would be accountable to provide programs prior to the release.¹⁵⁷

9.88 CLANT noted that, in the NT, prison numbers increased by 100% between 2005 and 2015, but grants of parole only increased by 20%, stating

it follows that there has either been a large decrease in the proportion of prisoners who apply for parole, or a large decrease in the proportion of grants of parole to applicants, or both. This is of serious concern, and should be addressed by way of legislative reform.¹⁵⁸

9.89 CLANT supported the implementation of the NSW scheme of court-ordered parole, as did the Law Council of Australia.¹⁵⁹

9.90 The Institute of Public Affairs did not support court-ordered parole and submitted that court-ordered parole had potential to ‘undermine the concept of corrections’.¹⁶⁰ The NSWLRC noted that court-ordered parole may affect one of the key functions of parole—the incentive for good behaviour:

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.¹⁶¹

9.91 In 2016, a BOCSAR study found that, after parole orders had expired, court-ordered parolees were more likely to reoffend than those released by the State Parole Authority (SPA), and suggested greater supports following parole in order to reduce their chances of reoffending.¹⁶² BOCSAR suggested that SPA released parolees (ie, those released on discretionary parole) may be less likely to reoffend due to the ‘selective processes of the SPA in choosing who should be granted parole or because SPA parolees are more motivated to participate in rehabilitation programs while in custody’.¹⁶³

9.92 BOCSAR also noted the likelihood that people serving short sentences may not have qualified for program inclusion due to their exit date from prison and other factors

157 Jesuit Social Services, *Submission 100*.

158 Criminal Lawyers Association of the Northern Territory, *Submission 75*.

159 Law Council of Australia, *Submission 108*; Criminal Lawyers Association of the Northern Territory, *Submission 75*.

160 Institute of Public Affairs, *Submission 58*. See also, E Stavrou, S Poynton and D Weatherburn, ‘Parole Release Authority and Re-Offending’ (Contemporary Issues in Crime and Justice Number 194, NSW Bureau of Crime Statistics and Research, July 2016) 2, 84.

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

162 E Stavrou, S Poynton and D Weatherburn, above n 159, 84; Associate Professor L Bartels, *Submission 21*.

163 E Stavrou, S Poynton and D Weatherburn, above n 159, 1.

discussed above.¹⁶⁴ And, although this study appears to favour discretionary parole, the authors expressed favour for release on parole rather than unsupervised release and noted:

The relative rates of re-offending following court-ordered and Board-ordered parole is only one issue of importance in judging the merits of different parole regimes. There is good evidence that offenders subjected to parole supervision are less likely to re-offend than offenders released without any supervision.¹⁶⁵

9.93 Nonetheless, in 2016, a review of Queensland’s parole system recommended retaining court-ordered parole as a way to keep down prison numbers and ensure supervised release of those on shorter sentences.¹⁶⁶ For similar reasons,¹⁶⁷ the NSWLRC also recommended retention of their scheme in 2014.¹⁶⁸

9.94 Eligible Aboriginal and Torres Strait Islander prisoners may not apply for parole because they believe—rightly or wrongly—that they are unlikely to be granted parole by the parole authority. 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, and provides a solution for the set of circumstances when Aboriginal and Torres Strait Islander prisoners prefer to avoid coming before a parole authority. The ALRC recommends that the regimes in NSW, Queensland and SA be adopted in other states and territories.

Overriding court-ordered parole

9.95 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.¹⁶⁹

9.96 The *Crimes (Administration of Sentences) Regulation 2014* (NSW) sets out the circumstances in which the 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.¹⁷⁰

164 Ibid. BOCSAR’s findings reiterate the importance of the availability of prison programs for Aboriginal and Torres Strait Islander prisoners serving short sentences.

165 Ibid 2.

166 Queensland Corrective Services, above n 137, rec 2.

167 NSW Law Reform Commission, *Parole*, Report No 142 (2015) [2.67]–[2.85].

168 Ibid rec 2.3.

169 Queensland Corrective Services, above n 137, [418].

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

9.97 In NSW, the total number of people released to parole in 2015 was 6598. Of these, 5,625 were court-ordered parole. The SPA revoked 109 parole orders prior to release, of which 85% were court-based orders.¹⁷¹

9.98 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.

9.99 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.¹⁷²

9.100 Of the court-ordered parole jurisdictions, only NSW's override mechanism has a statutory basis.¹⁷³ Queensland relies on a Court of Appeal decision.¹⁷⁴ SA appears not to have a pre-release safeguard at all. However, prisoners must accept any parole conditions set before release is granted.¹⁷⁵

9.101 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.

9.102 Housing issues—particularly homelessness, inadequate housing, and overcrowding—tend to disproportionately affect Aboriginal and Torres Strait Islander peoples.¹⁷⁶ 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

171 NSW State Parole Authority, *2015 Annual Report* (2016) 14, 17.

172 Queensland Corrective Services, above n 137, 89.

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

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

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

176 Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016—Report* (2016) 10.1.

'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 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.¹⁷⁷

9.103 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.¹⁷⁸

9.104 The Public Interest Advocacy Centre (PIAC) noted issues with court-ordered parole arising from a lack of accommodation as a particular obstacle for Aboriginal and Torres Strait Islander peoples:

Aboriginal and Torres Strait Islander people should not be imprisoned at disproportional rates, and for greater periods of time, simply because of a lack of housing options post-release.¹⁷⁹

Ongoing need for prison programs, support and supervised parole

9.105 Stakeholders highlighted the importance of prison programs for people on short sentences and support and supervision while on parole even in jurisdictions with court-ordered parole. Legal Aid NSW noted the need for programs in prison in support of parole. It also stressed the importance of Aboriginal and Torres Strait Islander organisations' participation in parole processes, and noted the positive impacts on rates of breach and revocation of supervised orders in areas where Aboriginal Client Service Officers are employed by Community Corrections.¹⁸⁰

9.106 VALS stressed both a need for extra parole support services and a refocus on support and rehabilitation for parolees instead of 'overly stringent supervision':

Services like the VALS' Reconnect program have proven successful in supporting prisoners on parole by providing a post-release worker who assists them in identifying and achieving goals, transitioning back into the community and meeting their parole

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

178 Ibid 46.

179 Public Interest Advocacy Centre, *Submission 25*.

180 Legal Aid NSW, *Submission 101*.

conditions. VALS believes any changes to the parole system must be rehabilitation focused and increase funding to programs like Reconnect that have a proven track record of reducing reoffending.¹⁸¹

9.107 VALS noted that since the changes to the Victorian parole regime in 2013, there had been a sharp increase in prisoners ‘maxing out’ their sentences to avoid parole. This increased the prison population and the numbers of recidivists, as people were leaving prison without supervision.¹⁸²

9.108 The ALRC encourages states and territories to provide appropriate prison programs so that people released on court-ordered parole have been provided with rehabilitative services in prison that aim to address offending behaviours and provide practical assistance.

Parole conditions and revocation of parole

9.109 All jurisdictions require supervision as a standard condition of parole, whether explicitly or in practice.¹⁸³ For example, a person subject to standard parole conditions in NSW must:

- be of good behaviour;
- not commit any offence;
- adapt to normal lawful community life;
- submit to the supervision and guidance of the Community Corrections Officer (hereafter referred to as “the Officer”);
- report to the Officer;
- be available for interview;
- reside at an approved address;
- permit the Officer to visit the offender’s residential address at any time;
- not leave New South Wales without permission;
- not leave Australia without permission;
- enter employment or training arranged or agreed on by the Officer;
- notify the Officer of any intention to change his or her employment;
- not associate with any person or persons specified by the Officer;

181 Victorian Aboriginal Legal Service, *Submission 39*.

182 Victorian Aboriginal Legal Service, *Submission 39*.

183 NSW Law Reform Commission, *Parole*, Report No 142 (2015) 195. See, eg, *Crimes (Sentence Administration Act) 2005 (ACT) s 137*; *Parole Act (NT) s 5*; *Corrective Services Act 2006 (Qld) s 200*; *Correctional Services Act 1982 (SA) s 68*; *Sentence Administration Act 2003 (WA) s 29*.

- not frequent or visit any place or district designated by the Officer; and
- not use prohibited drugs, obtain drugs unlawfully or abuse drugs lawfully obtained.¹⁸⁴

9.110 Additional obligations can be imposed by the relevant parole authority. These may include, for example, electronic monitoring, abstinence from alcohol, psychological assessment and counselling (including drug and addiction counselling), that the offender not be involved in the control of an organisation, that the offender not associate with children, or that the offender not possess firearms.¹⁸⁵

9.111 It is observed in the *Prison to Work* Report that complying with parole conditions can be a difficult task for many parolees, particularly when they are simultaneously searching and competing for employment opportunities.¹⁸⁶ This difficulty can be amplified for parolees in non-metropolitan communities who are relying on limited public transport options to meet their parole requirements, such as reporting for parole, visiting Centrelink, and attending interviews.¹⁸⁷

9.112 The *Queensland Parole System Review: Final Report* found three key areas of concern in relation to management of parolees through the use of parole conditions:

- first, that parole conditions are sometimes imposed which are not specific to the offending patterns and risks associated with the offender, and which may even be contrary to the offender reengaging with their support networks;
- second, that the number of conditions imposed is sometimes excessive and ‘sets people up to fail’ by making offenders answerable to up to 50 conditions, and that excessive conditions result in offenders focusing their energies on meeting parole obligations rather than searching for a job, getting qualifications, or finding long-term accommodation; and
- finally, that the circumstances of Aboriginal and Torres Strait Islander parolees are not taken into account, for example, by the setting of parole conditions which prevent return to community, or which restrict access to family members and support networks because they also have criminal histories.¹⁸⁸

9.113 Breach of standard conditions by parolees appears to be common. For example, about half of revocations in NSW during 2011–12 were reportedly for technical breach of parole conditions—where no reoffending or criminal conduct had taken place. This included failures to reside at an approved address, to report, and to abstain from alcohol.¹⁸⁹ As was noted in the *Prison to Work* Report:

[P]risoners (and many service providers) commented on the difficulties involved with complying with as many as sixty parole conditions, particularly when it comes to

184 State Parole Authority (NSW), *Parole Conditions* <www.paroleauthority.nsw.gov.au>.

185 NSW Law Reform Commission, *Parole*, Report No 142 (2015) 211–5.

186 Council of Australian Governments, above n 8, 22.

187 *Ibid* 35, 42.

188 Queensland Corrective Services, above n 137, 181–2.

189 NSW Law Reform Commission, *Parole Question Paper 5: Breach and Revocation* (2013) 6.

associating with other people with criminal records, which often includes family members. A significant number of prisoners said that they had chosen to serve out their full sentence, as they were convinced they would be breached as soon as they were paroled.¹⁹⁰

9.114 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.¹⁹¹

9.115 Factors that particularly impact on Aboriginal and Torres Strait Islander parolees have been identified to 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.¹⁹²

9.116 Legal Aid NSW stressed the need for parole conditions to be culturally appropriate and designed to support rehabilitation and reintegration: ‘parole conditions can be overly strict, rigid, and focused on monitoring. Most parole breaches are for a failure to reside as required by the parole conditions’.¹⁹³

Treatment of time on parole upon revocation

9.117 Stakeholders drew 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. 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);¹⁹⁴ or
- 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 head sentence, and must be served again in prison upon the parolee’s return (as in the ACT, the NT, Tasmania and Victoria).¹⁹⁵

190 Council of Australian Governments, above n 8, 42.

191 Queensland Corrective Services, above n 137, 181–2.

192 Ibid 122, 146–50, 221; Council of Australian Governments, above n 8, 29–30; NSW Law Reform Commission, *Parole*, Report No 142 (2015) 204.

193 Legal Aid NSW, *Submission 101*.

194 *Crimes (Administration of Sentences) Act 1999* (NSW) s 164(2); *Corrective Services Act 2006* (Qld) s 211(2); *Correctional Services Act 1982* (SA) s 74(1); *Sentence Administration Act 2003* (WA) s 71(1)(a), 71(2)(a).

195 *Crimes (Sentence Administration) Act 2005* (ACT) s 160(3); *Parole Act* (NT) s 14(1)(a); *Corrections Act 1997* (Tas) s 79(5)(a); *Corrections Act 1986* (Vic) ss 77B(2), 77C.

9.118 Option 2 has potential adverse consequences. It extends the time a person serves under sentence¹⁹⁶ and it operates as a disincentive for eligible people to apply for parole,¹⁹⁷ increasing the prison population and the number of people released from prison without supervision. Further, as noted by Legal Aid ACT, the provisions are also ‘unnecessarily punitive. In effect, they impose an ‘additional sentence’ on offenders, for small contraventions that are often of a civil rather than criminal nature’.¹⁹⁸

9.119 The Attorney-General and Minister for Justice of the NT reported that the rate of eligible people declining parole was growing, and that up to 47% of people who declined parole between January 2016 and February 2017 did so because conditions on parole were considered too onerous and parole was too hard.¹⁹⁹

9.120 The NT sought to address this by amending the *Parole Act* (NT) in August 2017 so that an offender whose conduct breaches the conditions of their parole may be reimprisoned for a short term as a sanction. This term of imprisonment does not revoke parole, so that when completed, the person picks up their parole where they left off. If the breach is serious or repetitive however, the person still returns to prison and any parole period is not counted as time served (except for any previous term of imprisonment as a sanction).²⁰⁰ CLANT noted that, while these amendments are likely to decrease the severity of the current regime, it still supported the recommendation to abolish the repayment of ‘street time’ in the NT.²⁰¹ Aboriginal Legal Service NSW/ACT supported amending parole in the ACT to recognise ‘time served’ under sentence in the community if parole is later revoked.²⁰²

9.121 Stakeholders expressed strong concerns over parole revocation schemes that discounted ‘street time’ on revocation, and the affect these may have on Aboriginal and Torres Strait Islander prisoners.²⁰³

9.122 VALS expressed strong support for this abolition of street time regimes, noting:

Under the current system in Victoria parolees can have parole revoked for a minor breach, such as being minutes late to a curfew, and be back in prison serving the full remainder of their sentence. Recognising time spent on parole is a way of recognising and rewarding the positive actions of parolees towards rehabilitation and is in stark contrast to the current system in Victoria, which is a punitive approach that provides

196 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).

197 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 11 May 2017 (Natasha Fyles) 1812.

198 Legal Aid ACT, *Submission 107*.

199 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 11 May 2017 (Natasha Fyles) 1812–4.

200 Ibid 1813–4; Parole Amendment Bill 2017 (NT) cl 13B(3).

201 Criminal Lawyers Association of the Northern Territory, *Submission 75*.

202 Aboriginal Legal Service (NSW/ACT), *Submission 63*; also see NSW Bar Association, *Submission 88*.

203 See, eg, Law Society of Western Australia, *Submission 111*; Law Council of Australia, *Submission 108*; Legal Aid ACT, *Submission 107*; Jesuit Social Services, *Submission 100*; NSW Bar Association, *Submission 88*; Change the Record Coalition, *Submission 84*; Aboriginal Legal Service of Western Australia, *Submission 74*; Aboriginal Legal Service (NSW/ACT), *Submission 63*; Public Interest Advocacy Centre, *Submission 25*.

little incentive for parolees to comply with parole conditions and severe punishment, such as a separate criminal conviction, for breaches of parole.²⁰⁴

9.123 Statutory provisions that stipulate that time spent on parole does not count as time served if the parolee returns to prison due to a breach can greatly increase a person's time under sentence. Accordingly it can act as a disincentive for Aboriginal and Torres Strait Islander people—who can find compliance with standard conditions difficult—to apply for parole. The ALRC recommends the immediate abolition of the relevant provisions, and the adoption of regimes that count time on parole as time served if parole is revoked.

Transitioning into the community

9.124 Incarceration leads to a disruption in a person's life, including loss of employment, and potentially a loss of housing, relationships and social supports. Release from prison without support to transition into the community can lead to a cycle of reoffending. This was highlighted by stakeholders to this Inquiry.

9.125 Legal Aid NSW drew a picture of release without support:

Our solicitors report that clients have been released without accommodation, arrangements for transport, at night in a country town when there is no train until morning, without medications or prescriptions, and without any treatment for their substance addiction. It is not uncommon for inmates to be released from the Sydney Central Law Courts or the Downing Centre Court complex in their prison greens and with no accommodation arrangements, having received no treatment in custody for their substance abuse and/or mental health issues and at potential risk of reoffending within a short time. The sense of hopelessness that stems from having nowhere to go when released, no plan or purpose, can undermine any attempts to improve an offender's mental health while in prison.²⁰⁵

9.126 Legal Aid WA observed there to be a gap in the case management and transition into the community of prisoners with mental health and cognitive impairments.²⁰⁶

9.127 NSW Council of Social Service noted that finding 'safe, stable and affordable housing' was the greatest challenge faced by prisoners on release and community organisations working in the area of reintegration and transition.²⁰⁷ ALSWA strongly supported the provision of resources for culturally competent throughcare services for Aboriginal and Torres Strait Islander prisoners.²⁰⁸

9.128 Women's Legal Service NSW submitted that return to community without support can be particularly harmful when women have made their first disclosure of family violence, sexual assault or child abuse in custody. It highlighted that support such as the mentoring program previously run by Women in Prison Advocacy Network

204 Victorian Aboriginal Legal Service, *Submission 39*.

205 Legal Aid NSW, *Submission 101*.

206 Legal Aid WA, *Submission 33*.

207 NSW Council of Social Service, *Submission 45*.

208 Aboriginal Legal Service of Western Australia, *Submission 74*.

(now Women's Justice Network) have had positive impacts of supporting women post-release—the key being a decrease in reoffending.²⁰⁹

9.129 The National Association of Community Legal Centres (NACLC) noted the importance of culturally safe transition support services that are alert to issues about returning to community and any additional cultural, family and community factors.²¹⁰

9.130 Homelessness following prison has been demonstrated to play a role in reoffending.²¹¹ PIAC noted the need for more community-managed, supported transitional accommodation for ex-prisoners, more crisis accommodation, more affordable accommodation, and more social housing.²¹²

The provision of throughcare

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

Prisoner through care 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 through care 'starts in custody well before walking out of the prison gate', and provides hands on, intensive support, especially at the moment of release.²¹³

9.132 This definition emphasises the importance of intervention, service coordination, and support at all critical points—not just release. 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 competent, strength based, and utilise Aboriginal and Torres Strait Islander controlled organisations and/or ex-prisoner organisations.²¹⁴ In relation to women, Dorinda Cox highlighted the need to reconceive the design of throughcare models for Aboriginal and Torres Strait Islander women in prison who have experienced family violence, stating:

The current through care models offered to Aboriginal women are founded in mainstream psychology and are individualist in their approach. They are built on the premise that post release Aboriginal women are able to function based on the work done through cognitive skills courses. But sadly, the reality is that many return to

209 Women's Legal Service NSW, *Submission 83*.

210 National Association of Community Legal Centres, *Submission 94*.

211 Public Interest Advocacy Centre, *Submission 25*; Matthew Willis and Toni Makkai, 'Ex-Prisoners and Homelessness: Some Key Issues' (2008) 21(9) *Parity* 6; Eileen Baldry, *Ex-Prisoners, and Accommodation: What Bearing Do Different Forms of Housing Have on Social Reintegration?* (Australian Housing and Urban Research Institute, 2003) 6–7.

212 Public Interest Advocacy Centre, *Submission 25*.

213 Council of Australian Governments, above n 8, 62.

214 *Ibid* 23; Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) 104.

families and communities that are not able to support women recently released from prison, nor are the mainstream agencies able to case manage the social and cultural obligations that Aboriginal women have in family and community contexts. At systemic level we set Aboriginal women up to fail, we expect them to live separately from their support mechanisms and their cultural obligations – not engaging the families and communities in their journey back into society, thus creating a revolving door for Aboriginal women in the justice system.

Mapping the journey into, through and post release from the justice system is critical in understanding the challenges, barriers and experiences to build a new system that enables diversionary away from the current high levels of Aboriginal women in prison and to be responsive to the transmission of intergenerational trauma of Aboriginal people and communities.²¹⁵

9.133 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.²¹⁶

9.134 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;²¹⁷ and the limited availability of services in remote communities.²¹⁸ The following section provides a brief summary of throughcare programs highlighted by stakeholders.

9.135 YWCA Darwin provides a voluntary transitional program for female offenders; which provides 6 months pre and 12 months post-release support. The program provides women with case management support, learning opportunities and practical assistance to re-engage with the community,²¹⁹ including reconnection with children, family and community, accommodation and education and employment pathways and help with transport. It focuses on personal development, and parenting, life and social skills. Women are eligible whether they are on remand, sentenced or under a community corrections order. An independent evaluation of this program is currently underway.²²⁰

9.136 NATSILS noted the Western Australian, *Fairbridge Bindjareb* program provides workplace training to operate machinery. Those placed in the program are relocated to Karnet Prison Farm and travel to Fairbridge Village daily to participate. This includes training, qualifications, lifestyle and personal development training, the

215 D Cox, *Submission 120*.

216 Council of Australian Governments, above n 8, 38.

217 Ibid 46.

218 Ibid 91.

219 YWCA Darwin, *Submission 93*.

220 Ibid.

inclusion of mentors and Elders, and the provision of temporary accommodation where required.²²¹

9.137 The Community Restorative Centre (CRC) drew attention to their post-release programs in NSW, and recommended that best practice reintegration support should start prior to release and be community-based, long-term, and be staffed by skilled and dedicated workers able to incorporate system advocacy on behalf of their clients.²²²

9.138 ACT Corrective Services provides an Extended Through Care Program (ETCP) to all sentenced detainees as well as female detainees on remand.²²³ Detainees are identified for the ETCP four months prior to release. A case manager works with each detainee to develop a release plan. Detainees are referred to partner service providers that provide support in particular areas of need. A lead service provider is identified for each detainee and is provided with brokerage funding to support the client during the extended throughcare process. Aboriginal and Torres Strait Islander detainees have a choice of providers depending on their individual needs and preferences, and may choose between Aboriginal and Torres Strait specific services or mainstream services in some areas. The ETCP case manager also assists detainees with basic needs upon release by providing a release pack and assistance with clothing, basic household items and food.²²⁴

9.139 The ALRC supports the Aboriginal and Torres Strait Islander led development and delivery of throughcare to Aboriginal and Torres Strait Islander prisoners exiting the prison system as a means of lowering the likelihood of repeat offending within the community.

221 National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*.

222 Community Restorative Centre, *Submission 61*. The CRC submission noted ‘Although there are strong arguments to be made with regard to the need to increase accessibility to various forms of prison programs inside prisons “unless there is a strong linkage between these programs and the community, then any benefits obtained through participation are unlikely to be transferred out of the custodial environment”’.

223 A Griffiths, F Zmudski and S Bates, *Evaluation of ACT Extended Throughcare Pilot Program Final Report* (UNSW, 2017) 10.

224 Ibid 1–6.

