

Independent Review into the Overrepresentation of First Nations People in the ACT Criminal Justice System

Information Paper #1



Jumbunna
Institute for Indigenous
Education and Research

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The Independent Review

As part of the ACT Government's commitment to reducing the over-representation of First Nations people in the justice system, the Government has commissioned an Independent Review. The Jumbunna Institute for Indigenous Education and Research at the University of Technology will undertake the Independent Review.

The Review is led by Professor Lindon Coombes, a descendant of the Yuallaraay people of north-west NSW. Professor Coombes heads up a distinguished team of First Nations and non-First Nations researchers with diverse experience in justice related issues and with community development in a justice context. Jumbunna also brings with it extensive experience in consulting and directly collaborating with First Nations communities and organisations across Australia.

Two Stages to the Independent Review

The Independent Review's terms of reference can be found [here](#).¹ There are two stages to the Independent Review.

The First Stage of the Review will assess the ACT Governments' progress in implementing the recommendations of the Australian Law Reform Commission's (ALRC) *Pathways to Justice Report*. The Review will determine whether recommendations have been implemented, partially implemented, not implemented or are no longer relevant. The Review report will also provide detail of any further planned implementation. The First Report of the Independent Review will be delivered to the ACT Government in June 2024.

The Second Stage of the Review will, through community dialogues and co-design work with community organisations, focus on developing additional strategies and recommendations for reducing Aboriginal and Torres Strait Islander over-representation in the ACT criminal justice system. The work will also acknowledge the specific context of the ACT as it impacts on the justice system. The Final Report of the Independent Review will be delivered to the ACT Government in late 2024.

Jumbunna will work closely with First Nations people in the ACT especially through those organisations listed in the terms of reference for the Review. We will also engage with those who have lived experience (including adults and young people) within the ACT criminal justice system.

The ALRC Pathways to Justice Report and Recommendations

The purpose of the ALRC Inquiry was to inquire into the over-representation of Aboriginal and Torres Strait Islander people in prison and develop recommendations for reform of laws and legal frameworks to reduce their disproportionate incarceration. Key principles underpinning the work of the Inquiry was that solutions should be developed and led by Aboriginal and Torres Strait Islander people and the importance of governments working with First Nations organisations and communities to implement the range of strategies needed to reduce Aboriginal and Torres Strait Islander incarceration.

¹ https://www.justice.act.gov.au/__data/assets/pdf_file/0004/2389153/Attachment-Final-Terms-of-Reference-Independent-Review-into-Overrepresentation.pdf

For example, the Inquiry recommended governments work with First Nations organisations to: develop and implement culturally appropriate bail support programs and diversion options; develop options to reduce the imposition of fines and infringement notices; and develop prison programs that address offending behaviours and prepare people for release. The Inquiry also noted that one way to achieve local involvement was through Aboriginal Justice Agreements, and further that Justice Reinvestment also emphasised local solutions to the particular drivers of incarceration at a community level.

The Inquiry also noted the importance of addressing the specific factors with regard to the incarceration of First Nations women. These included the impacts of family violence and the particular effects of women's incarceration on families and communities.

ALRC Recommendations

The ALRC report made 35 recommendations across 13 focus areas. The focus areas were:

- Justice Reinvestment (2 recommendations)
- Bail (2 recommendations)
- Sentencing and Aboriginality (3 recommendations)
- Community-Based Sentences (5 recommendations)
- Mandatory Sentences (1 recommendations)
- Prison Programs and Parole (2 recommendations)
- Access to Justice (5 recommendations)
- Aboriginal and Torres Strait Islander Women (2 recommendations)
- Fines and Driver Licences (4 recommendations)
- Alcohol (2 recommendations)
- Police Accountability (4 recommendations)
- Child Protection and Adult Incarceration (1 recommendations)
- Criminal Justice Targets and Aboriginal Justice Agreements (2 recommendations)

The ALRC Recommendations are included as an Appendix to this Information Paper.

We Would Like to Talk with You About the ACT Government's Performance in Implementing the ALRC Recommendations

The ALRC made many recommendations which cover the spectrum of the criminal legal system. In some cases, only a few of these recommendations may be relevant to the area in which you work, or alternatively you may have comments on all the recommendations. Please feel free to focus on those recommendations you would like to comment on.

QUESTIONS

You may wish to focus on those recommendations you are comfortable in answering. Which recommendations would you like to focus on?

To what extent and in what ways has the ACT Government implemented the recommendations in the Pathways to Justice report? Implementation might be identified as fully, partially or not implemented at all across various recommendations.

What has supported or helped to ensure full or partial implementation of recommendations to date? (eg Community-led approaches? Government-led approaches? Additional resourcing? Other reasons?)

How effective has full or partial implementation been? Is it possible to identify that this is having positive consequences for Aboriginal justice outcomes and/or any other positive outcomes?

If the implementation of the recommendation is not having a positive impact, why do think this is the case?

Where recommendations have not been implemented or are only partially implemented, is full or further implementation necessary? Are you aware of plans for (further) implementation of these recommendations?

What barriers have led to partial or no implementation of recommendations? How might these barriers be overcome?

We will be contacting key Aboriginal organisations for comment (either online or in person). You may also wish to provide written comments. These can be sent to either Fiona.allison@uts.edu.au or Christopher.cunneen@uts.edu.au. We will require any written submissions by **Friday 10 MAY 2024**.

Irrespective of whether we talk to you directly or via a written submission, **you will not be personally identified in the report back to the ACT Government.**

APPENDIX

ALRC Pathways to Justice Recommendations

4. Justice Reinvestment

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

Its functions should include:

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

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

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

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

5. Bail

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

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

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

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

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

6. Sentencing and Aboriginality

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

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

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

7. Community-based Sentences

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

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

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

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

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

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

8. Mandatory Sentencing

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

9. Prison Programs and Parole

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

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

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

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

10. Access to Justice

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

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

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

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

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

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

11. Aboriginal and Torres Strait Islander Women

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

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

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

12. Fines and Driver Licences

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

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

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

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

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

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

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

13. Alcohol

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

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

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

14. Police Accountability

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

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

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

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

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

15. Child Protection and Adult Incarceration

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

16. Criminal Justice Targets and Aboriginal Justice Agreements

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

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

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