

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

FIRST REPORT

**ACT GOVERNMENT RESPONSES TO THE AUSTRALIAN LAW REFORM
COMMISSION'S *PATHWAYS TO JUSTICE REPORT* RECOMMENDATIONS**

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ACRONYMS

ABS	Australian Bureau of Statistics
ACAT	ACT Civil and Administrative Tribunal
ACCO	Aboriginal Community-Controlled Organisation
ACTCS	ACT Corrective Services
ACTS	ACT Courts and Tribunal
AFP	Australian Federal Police
AJAC	Aboriginal Justice Advisory Committee
ALRC	Australian Law Reform Commission
ALS	Aboriginal Legal Service NSW/ACT
AMC	Alexander Maconochie Centre
ANU	Australian National University
AOD	Alcohol and other drugs
ATSIEB	Aboriginal and Torres Strait Islander Elected Body
CDP	Cultural Development Program
CPLAS	Care and Protection Legal Advocacy Service
CSD	Community Services Directorate
CYPS	Child and Youth Protection Services
DASL	Drug and Alcohol Sentencing List
DATO	Drug and Alcohol Treatment Orders
DV/FV	Domestic violence/family violence
ECG	Executive Coordination Group
EQUIPS	Explore, Question, Understand, Investigate and Plan to Succeed
FFT	Functional Family Therapy
FGC	Family Group Conferencing
FV Unit	ACT Policing Family Violence Unit
GBO	Good Behaviour Orders
HRC	ACT Human Rights Commission
ICO	Intensive Corrections Orders
JACS	Justice and Community Safety Directorate
JBT	Jervis Bay Territory
JHP	Justice Housing Program
JPP	Justice Policy Partnership
JRU	Justice Reinvestment Unit
LO	Liaison Officer/s
OBOW	Our Booris Our Way
RAP	Reconciliation Action Plan
RR25by25	Reducing Recidivism in the ACT by 25% by 2025
RRRAC	Reducing Recidivism Research Advisory Committee
TAP	Transitional Accommodation Program
TCCS	Transport Canberra and City Services
UTS	University of Technology Sydney

EXECUTIVE SUMMARY

The First Report covers the First Stage of the Jumbunna Institute for Indigenous Education and Research (Jumbunna Research) *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System* (the Review), commissioned by the ACT Government.

The report assesses the ACT Governments' progress in implementing the 35 recommendations of the Australian Law Reform Commission's (ALRC) Report 133, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (2017) to determine if and to what extent the recommendations have been implemented.

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.

The ALRC Inquiry focussed on the disproportionate incarceration of Aboriginal and Torres Strait Islander *adults*, and there was no particular focus on youth justice issues. However, in the course of this Review we have commented on youth justice matters where stakeholders have raised particular issues of relevance, and in line with the Terms of Reference.

There was no comprehensive government response to the ALRC report, and our Review is in the form of a stocktake of the ACT Government in satisfying the intent of the recommendations (as described by the ALRC), irrespective of whether the actions undertaken occurred prior to or after the release of the ALRC report (2017). Our assessment was made on the basis of information derived from the following sources:

- ACT Government responses to the recommendations and follow-up comments on the draft First Report which have been supplied to the evaluation team.
- Qualitative data from 13 stakeholder interviews (10) and written submissions (3) on implementation, and impacts and barriers to implementation. Stakeholders included both First Nations and non-Indigenous community-based organisations/legal service providers)
- Criminal justice system data where available to assess any changes which have occurred over the period 2017-2023.

Part 1 of the Report outlines the approach taken by the evaluation team for reviewing and assessing ACT Government implementation of the ALRC Recommendations. **Part 2** is a contextual overview of ACT Government policy and data relevant to the implementation of the ALRC Recommendations. **Part 3** covers broader issues that have been identified in our research as barriers or limitations to implementation of the ALRC Recommendations. **Part 4** is an in-depth discussion of each of the ALRC Recommendations. It presents the government response to each recommendation as well as analysis of the information provided through the stakeholder interviews.

Progress on Reducing Over-Representation

We note that there has been important progress to date, although not in reducing over-representation. The imprisonment rate for Aboriginal and Torres Strait Islander people in the ACT was approximately **5% lower** in 2023 than it was in 2017, and this occurred while at the same time the national rate of Indigenous imprisonment **increased** by 10%. The **level of Aboriginal and Torres Strait Islander over-representation in the ACT has grown significantly by 27% since 2017** and is much higher than the national average. This outcome is partly explained by the comparatively lower level of non-Indigenous imprisonment in the ACT and the fact that, while the First Nations imprisonment rate fell by 5%

between 2017 and 2023, the non-Indigenous rate of imprisonment in the ACT fell far more quickly by 31% over the same time period. **There has been little change since 2017 in prior imprisonment with nearly nine in every ten First Nations men in prison in the ACT having been previously imprisoned.** The percentage of Aboriginal and Torres Strait Islander people on remand in the ACT in 2023 was 49%. This was higher than the national average for First Nations people on remand which was 41%.

There has also been the introduction of innovative and specifically First Nations’ programs including Ngurrambai Bail Support, Front Up, Galambany Court and Empowerment Yarning Circles, although as we discuss in the Report, these are hampered by lack of sufficient support and much still needs to be done.

While the ACT government has satisfied the intent the of many of the ALRC Recommendations, there were multiple barriers and limitations to effective implementation which were identified by stakeholders. These included in particular the perceived lack of coordination and accountability, ongoing issues of racism including systemic racism, the absence of data which both inhibited more targeted implementation of programs and the ability to hold government accountable.

Aboriginal and Torres Strait Islander participation in all stages of implementation of measures designed to reduce over-representation was identified by stakeholders as a broader issue needing attention. The limited funding available to Aboriginal and Torres Strait Islander services was also raised as a barrier.

Several stakeholders also pointed out that many of the programs relied upon in the ACT Government response to the implementation of the ALRC Recommendations pre-date the 2017 ALRC report. While we have not taken this into account in determining whether an ALRC Recommendation has been implemented or not, it is relevant to the point of whether the reform agenda to reduce over-representation has stalled in recent years and needs reinvigoration.

The ALRC Recommendations

Although there were 35 Recommendations in the ALRC, there are two separate parts to Recommendations 5-2 and 9-2). As a result, there were in fact 37 individual recommendations assessed in this report. The results are summarised as follows:

Implemented 14 (5 with caveats)	Partially Implemented 13 (1 with caveats)	Not Implemented 8 (3 with caveats)	No Longer Relevant 2
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Recommendations (R)		Status	Caveats, cautions and notes on effectiveness
4-1	National justice reinvestment body	Implemented (with a caveat)	<ul style="list-style-type: none"> Pending whether final design of the national justice reinvestment body aligns with R4-1.
4-2	Justice reinvestment trials	Implemented (with caveats)	<ul style="list-style-type: none"> Further investment is needed for community-based responses to drivers of justice system contact. Not clear how First Nations peoples are influencing policy changes in and outside of a criminal justice system context.

			<ul style="list-style-type: none"> • The Executive Coordination Group appears government-led and largely consists of government representatives. • There is a need for stronger focus on community-led or community-based approaches.
5-1	Bail provisions and Aboriginal and Torres Strait Islander status	Not Implemented (with caveats)	<ul style="list-style-type: none"> • The ACT Government is taking steps towards the <i>possible</i> implementation of R5-1 through the current ACT Law and Sentencing Advisory Council review.
5-2*	Guidelines – bail provisions	Not implemented (with caveats)	<ul style="list-style-type: none"> • There are currently no guidelines in place to support implementation of the above standalone bail provisions. • The Law and Sentencing Advisory Council review of bail provisions (as above) may address issues related to effective use of any provisions.
5-2*	Bail support and diversion options	Partially implemented	<ul style="list-style-type: none"> • Unclear whether there has been sufficient <i>identification with Aboriginal and Torres Strait Islander organisation participation</i> of gaps in bail support/diversion followed by appropriate responses to these gaps in alignment with R5-2. • Ngurrambai Bail Support program is only available for adults and more Aboriginal and Torres Strait Islander specific community-based and led programs through which young people in particular could be supervised are needed. • Lack of available supports in community further hindering the effectiveness of the bail program, including gaps in mental health and drug/alcohol services and housing. • Lack of solutions for First Nations people who come to the ACT from interstate and who are arrested and refused bail due in part to issues of reporting. • Lack of availability of data on remanded/sentenced Aboriginal and Torres Strait Islander people and for which offences (for mapping gaps).
6-1	Legislated sentencing provisions and Aboriginal and Torres Strait Islander status	Not implemented	<ul style="list-style-type: none"> • There has been no amendment to legislation in the ACT to require courts to take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

6-2	Experience Reports – superior courts	Implemented (with caveats)	<ul style="list-style-type: none"> • The Aboriginal Court Experience Report are currently operating as a pilot scheme. • Issues impacting effectiveness include: <ul style="list-style-type: none"> ○ Potential reluctance of key players (including the DPP/courts) to draw links between offending and the historical and ongoing impacts of colonisation, and the tempering down of factors unique to Aboriginal people. ○ Reports are not available for certain offences and are administratively burdensome.
6-3	Factors – summary courts	Partially implemented	<ul style="list-style-type: none"> • As above. • Further, the pilot is limited to Galambany Circle Sentencing List operating in the Supreme Court, where background factors <i>may</i> be considered through s 33(1)(m) of the <i>Crimes (Sentencing) Act 2005</i>. • Information was not provided relating to options for the use of Experience Reports in the courts of summary jurisdiction.
7-1	Community-based options	Partially implemented	<ul style="list-style-type: none"> • The only specific option identified is the Empowering Yarning Circles, run by Yedung Mura in and outside of AMC. • There is no specific evidence that it addresses offenders with complex needs, including disability and mental illness. • Significant difference in the use of and access to community-based sentencing options compared to imprisonment (see Report Section 2.2.4).
7-2	Flexibility of community-based options	Implemented	<ul style="list-style-type: none"> • The effectiveness of current mechanisms requires further consideration. • There is virtually no difference between 2017 and 2023 in the proportion of First Nations men who have been previously imprisoned (89% in 2017 compared to 88% in 2023) (see Part 2 of this Report). • Recommendations for sentencing made to the court frequently include conditions that lack flexibility in number and nature, potentially impeding effectiveness of mechanisms in place. • There are also subtle differences when compared to Victoria scheme. For example, in Victoria an Adjourned Undertaking and a Community

			Corrections Order can also include a justice plan for offenders with intellectual disability.
7-3	Completion of community-based options	Partially implemented	<ul style="list-style-type: none"> • Gaps in programs/supports related to geography and cohort require further consideration to increase completion rates, including: <ul style="list-style-type: none"> ○ Over-reliance on Yeddung Mura and a lack of ancillary community-based supports addressing drivers of recidivism. ○ Absence of traffic offender programs. ○ Significant portion of people from interstate, as well as those residing in Jervis Bay, who are unable to access community service orders in the ACT. (Difficulties accessing this data is also noted).
7-4	Suspended sentences	Implemented	<ul style="list-style-type: none"> • ACT Government identifies having no intention to abolish suspended sentences.
7-5	Short sentences	Implemented	<ul style="list-style-type: none"> • ACT Government identifies having no intention to abolish short sentences.
8-1	Mandatory sentencing	Implemented (with a caveat)	<ul style="list-style-type: none"> • Recent legislative changes that would allow the DPP to make sentencing submissions to the court (s. 34AA) may lead to what are effectively presumptive terms of imprisonment. • Impacts of ‘tough on crime’ approaches for certain offences (e.g. driving offences, DV/FV) may influence the potential for introducing mandatory minimum.
9-1	Prison programs	Partially implemented	<ul style="list-style-type: none"> • Existing programs/services are predominantly mainstream. • Lack of Aboriginal and Torres Strait Islander designed and led programs/services • Capacity/resourcing issues for existing programs/services (e.g. reliance on Yeddung Mura to provide both pre- and post-release support; limited access to housing programs and other supports). • Gaps in specific programs/services for focus cohorts of Aboriginal and Torres Strait Islander women, young people, those on short sentences and/or remand. • Lack of medium-long term funding for cohort focused programs/services.

			<ul style="list-style-type: none"> • Extent to which Throughcare and TAP are working with focus cohorts of women, those on short sentences and/or remand is not clear.
9-2*	Court-ordered parole	Not implemented	<ul style="list-style-type: none"> • Parole decisions are currently made by the Sentence Administration Board.
9-2*	Street time	Implemented (with caveats)	<ul style="list-style-type: none"> • The Sentencing (Parole Time Credit) Legislation Amendment Bill (2019) (ACT) gives certain offenders credit for time served for period complying with parole obligations and is noted. Methods of calculation are identified as in line with those used in other jurisdictions. However, in reality/practice calculations are complex. Automatic court-ordered parole (R 9-1) or easier processes related to street time would be preferable to the above legislative amendment. • Issues related to eligibility, complicated legal processes and discretionary decision-making to be addressed. • Push for avoiding release on bail/parole in current political, media and public discourse is a risk factor for implementation. • Information was not provided regarding the extent of First Nations peoples' access to the scheme (e.g. number of applications submitted/considered/successful).
10-1	Interpreters	Partially implemented (with caveats)	<ul style="list-style-type: none"> • Limited to DV/FV matters (through Safer Families initiative – Enhancing Access to Justice for Non-English Speakers). • Can be difficult to ascertain who is responsible for organising/paying for interpreter services.
10-2	Specialist courts	Implemented	<ul style="list-style-type: none"> • Circle sentencing available in children and magistrates courts; in the Supreme Court currently as a pilot (from March 2024). • A guilty plea is a common requirement for specialist courts in Australia. However, concerns that informal inducements can lead to a guilty plea and the requirement of acceptance of individual responsibility can be dealt with ways that do not require a guilty plea (e.g. the Aotearoa New Zealand model for restorative justice referral). • Some concerns that there is not sufficient Aboriginal and Torres Strait Islander community buy-in.

10-3	Aboriginal participation in courts	Partially implemented	<ul style="list-style-type: none"> • Some engagement of Aboriginal and Torres Strait Islander organisations in design and evaluation, but more notably in implementation. • Room for improvement in engagement around ongoing design, development and evaluation.
10-4	Unfit to stand trial	Implemented	<ul style="list-style-type: none"> • Potential issues around implementation, e.g. courts are seen by some as responding to community concerns related to culpability and bypassing the <i>Mental Health Act</i>; courts less frequently ordering forensic mental health reports as a matter of course when fitness is raised by defence, with pushback on lawyers to obtain reports.
10-5	Periodic review	Implemented	<ul style="list-style-type: none"> • s. 180 of the <i>Crimes Act</i> was recently the subject of a Review by the Chief Psychiatrist. The Government has announced an ACT Government taskforce to consider and respond to the Chief Psychiatrist's Report.
11-1	Programs/ services for women	Partially implemented	<ul style="list-style-type: none"> • Significant gaps remain, including no prison specifically for Aboriginal and Torres Strait Islander women and no Aboriginal and Torres Strait Islander women's shelter, as well as capacity issues for meeting community needs. • Further programs/services are required for Aboriginal and Torres Strait Islander women, both on remand and sentenced, that are culturally safe, trauma informed and designed to meet their needs (e.g. childcare arrangements, debt, DV/FV). • Information was not provided regarding First Nations female staffing of most programs identified. However, Mulleun Mura identifies its female staff as First Nations and Winnunga and Yeddung Mura are both ACCOs. • It is also not clear to what extent Aboriginal and Torres Strait Islander women have been involved in the development of these programs or the extent of their engagement with most of them (except where self-evident e.g. Mulleun Mura). • It is also noted that usage data for services shown in Appendix 3 is limited in the identification of whether clients are male or female (with the exception of Ngurrambai and Front Up).
11-2	Police and DV/FV	Partially implemented	<ul style="list-style-type: none"> • Unclear how the Mandatory First Nations Cultural Literacy Training Program relates to policing DV/FV specifically.

			<ul style="list-style-type: none"> • FV Unit’s training package does not include Aboriginal and Torres Strait Islander specific. However, this is currently under review. • The ACT Police acknowledge issues associated with the risk of misidentification of primary aggressor.
12-1	Abolish imprisonment for unpaid fines	Not implemented	<ul style="list-style-type: none"> • Referral for prosecution is discretionary and it is not clear whether imprisonment might arise as a sentence resulting from prosecution. • Further data is needed that clearly demonstrates that the focus is on community service not incarceration. The majority of infringement notices are issued for parking and traffic offences, followed by failure to vote. However, infringement notices also can be issued for some public order offences (e.g. being intoxicated in public places and public disorder). These are typically the offences where Aboriginal and Torres Strait Islander people are over-represented. There was no data available on the use of infringement notices for these latter offences.
12-2	Reducing impacts of fines/notices	Partially implemented	<ul style="list-style-type: none"> • Initiatives identified either have no focus on Aboriginal and Torres Strait Islander people and/or there is no data available on their application to this group (e.g. Work Development Orders are identified as very valuable by stakeholders, but it is not clear how many Aboriginal and Torres Strait Islander people are making use of and completing these orders). • The 2023 Legislative Assembly Inquiry (Penalties and Minor Offences and Vulnerable People) includes some focus on Aboriginal and Torres Strait Islander people and issues and may lead to relevant reform. However, the extent to which Aboriginal and Torres Strait Islander people are involved in developing relevant initiatives is unclear.
12-3	Driver licensing services	Partially implemented	<ul style="list-style-type: none"> • The ACT Government points to the Nations Justice Branch-led Commissioning process: At this point, it is not clear whether and how this process will ultimately support implementation of this recommendation. • Road Safety Action Plan: Information was not provided regarding road fatalities specific to

			<p>Aboriginal and Torres Strait Islander people. (However, commitment to do so is noted).</p> <ul style="list-style-type: none"> • Access Canberra: <ul style="list-style-type: none"> ○ Aboriginal and Torres Strait Islander data related to driver licensing, vehicle safety or proof of ID cards is not collected. ○ There are no policies and procedures specific to providing services relating to the licensing of a driver specific to Aboriginal or Torres Strait Islander people.
12-4	Offensive language provisions	Not implemented	<ul style="list-style-type: none"> • s. 392 of the <i>Crimes Act</i> provides an offence for ‘offensive behaviour’ that prohibits behaving in a riotous, indecent, offensive or insulting manner. The issue of whether this offence could be narrowed to align more closely with R12-4 is not under active consideration.
13-1	Alcohol initiatives (First Nations developed and led)	Implemented	<ul style="list-style-type: none"> • Implemented through co-design of the Aboriginal and Torres Strait Islander specific residential rehabilitation service and detainee health and wellbeing strategy, the funding of Winnunga health services (where related to AOD) and the Aboriginal and Torres Strait Islander designated position on the Liquor Advisory Board (currently unfilled). However, not as whole-of-community approaches, as is effectively the focus of R13-1. • The importance of having an ACT-based Indigenous-specific rehabilitation facility (currently only available interstate), and clearer access or pathways to interstate rehabilitation facilities would be beneficial.
13-2	Government support for alcohol management	Not implemented (with a caveat)	<ul style="list-style-type: none"> • It could be considered R13-2 is not particularly relevant to the ACT as there are no specific arrangements which restrict the sale of alcohol to First Nations people or communities in the ACT. • R13-2 is aimed more at local communities developing alcohol management plans rather than the distinct situation of the ACT as a whole territory (jurisdiction).
14-1	Review police practice/ procedure	Partially implemented	<ul style="list-style-type: none"> • It is noted that ACT Policing have engaged and/or conducted reviews of practice and procedure and at least some of the Commonwealth/ACT Ombudsman recommendations (e.g. with respect to training, engagement) have been implemented.

			<ul style="list-style-type: none"> • Stronger mechanisms to enforce accountability for racism and racial profiling are required, as is mechanisms increased use of cautions/diversions.
14-2	Review police complaints process	Not implemented	<ul style="list-style-type: none"> • Although there is reference to internal reviews and the establishment of Workplace Issues and Complaint Resolution (WICR) team within the AFP, without further detail it is not possible to identify what the stated reforms to the complaint management process mean or what has been done to implement internal and Ombudsman recommendations so as to <i>ensure greater practical independence, accountability and transparency of investigations</i> as required by 14-2. • The extent to which legislative protections against discrimination or breaches of human or cultural rights are utilised to positive effect by Aboriginal and Torres Strait Islander people is not clear. • Police complaint processes were identified as torturous, lengthy and difficult without satisfactory outcomes.
14-3	Custody Notification Service	Implemented (with a caveat)	<ul style="list-style-type: none"> • Information was not provided indicating the number of Aboriginal and Torres Strait Islander people in custody, compared with the number of notifications made.
14-4	Cultural change	Partially implemented	<ul style="list-style-type: none"> • Partially implemented by the AFP RAP and responses to the Ombudsman investigation recommendations (including the development of the ACT Policing Strategy for Engagement with First Nations People and Communities and training). Police are also making attempts to increase Aboriginal and Torres Strait Islander employment. The creation of a First Nations Branch within ACT Policing is positive. • It was acknowledged by government that ACT Policing's record keeping practices need to be improved for First Nations Peoples. • An engagement and consultation strategy with the Aboriginal and Torres Strait Islander community is under development.
15-1	National inquiry – child protection	No relevant	<ul style="list-style-type: none"> • Recommendation 15-1 is not relevant to the ACT as it is directed to the Commonwealth Government to establish a national inquiry. • Implementation of Our Booris Our Way recommendations is progressing. However,

			numbers of children in placements have not reduced and heavier investment is required. We note in the Report further areas for improvement within the ACT.
16-1	Justice targets	No longer relevant	<ul style="list-style-type: none"> • The <i>National Agreement on Closing the Gap</i> sets targets including those relevant to Recommendation 16-1.
16-2	Justice agreement	Implemented	<ul style="list-style-type: none"> • Potential issues/areas for improvement were raised, including: <ul style="list-style-type: none"> ○ Lack of community understanding/ engagement with the Agreement. ○ Importance of a robust Agreement that can hold government agencies to account.

* ALRC Recommendation where there were two parts to the Recommendation.

1. INTRODUCTION

1.1 The 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 (Jumbunna Research) at the University of Technology Sydney (UTS) has been commissioned by the ACT Government to undertake the *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System* (the Review).

The aim of the project is to review and assess the ACT Government's progress in implementing the recommendations of the Australian Law Reform Commission's Report 133, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*.

The deliverables for the Review are as follows:

- The researcher will deliver a first report that sets out an evaluation of the extent to which the ACT Government has implemented the measures recommended by the Australian Law Reform Commission and any other relevant recommendations of previous reports which are identified in the course of this evaluation.
- For the Australian Law Reform's recommendations that focus on collaboration between Commonwealth, state and territory governments, the ACT's role in supporting a national response to these recommendations should be assessed.
- Where the researcher identifies that a measure has not been implemented, or only partial implementation has been achieved, the researcher should make recommendations on actions required.
- The researcher should make additional recommendations for action, where the researcher identifies additional practical measures that it considers would have an appreciable impact on overrepresentation rates of First Nations people in incarceration in the ACT.

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.

This document completes the first stage and is the First Report of the Review.

1.2 The ALRC Report and Recommendations

The Australian Law Reform Commission's Report 133, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report* was completed in December 2017.

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. Two key principles underpinning the work of the Inquiry were that solutions should be developed and led by Aboriginal and Torres Strait Islander people, and that governments should work with First Nations organisations and communities to implement the range of strategies needed to reduce Aboriginal and Torres Strait Islander incarceration.

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 First Nations involvement was through Aboriginal Justice Agreements. The Inquiry also emphasised justice reinvestment as a process for developing local Aboriginal and Torres Strait Islander led solutions to the particular drivers of incarceration at a community level.

The Inquiry highlighted 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 [Aboriginal and Torres Strait Islander status] (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)

Of special note is that the ALRC Inquiry focussed on the disproportionate incarceration of Aboriginal and Torres Strait Islander **adults**. There was no particular focus on youth justice and First Nations young people. This focus is reflected in the recommendations, which, with one exception, relate to the adult criminal justice system. However, in the course of this Review we have commented on youth justice matters where stakeholders have raised particular issues of relevance, or in the case of Aboriginal and Torres Strait Islander sentencing courts where the Warrumbul youth court forms part of the total approach to circle sentencing courts.

We note that the one Recommendation (15-1) which recognises the links between out-of-home care, juvenile justice and adult incarceration, and calls on the Commonwealth Government to establish a national inquiry into *child protection laws and processes* affecting Aboriginal and Torres Strait Islander children.

The ALRC Recommendations are included in various sections of this Report and appear in their totality in Appendix 1.

1.3 Assessing Implementation of the ALRC Recommendations

It is important to recognise at the outset that there was no explicit response by the ACT Government to the ALRC report, nor any explicit undertaking or commitment to implement all or in part any of the ALRC Recommendations. The current information included in this Report was provided by the ACT Government to enable a stocktake on whether the ALRC Recommendations have been implemented, and to what extent implementation has impacted on Aboriginal and Torres Strait Islander over-representation.

There are several implications that arise from this point.

- Government responses to the recommendations which have been supplied to the evaluation team provide some indication as to whether particular recommendations are supported or not. However, there is no comprehensive government plan or other document related to the ALRC report against which the implementation of the recommendations might be measured, other than the recommendations themselves and their intended effect or outcomes.
- There is also a question of temporality. Normally, assessing the implementation of recommendations would be based on government actions *following* the release of an Inquiry's recommendations. In this case, many of the government responses relate to actions undertaken prior to the release of the ALRC report, or they have been undertaken in relation to specific ACT strategies which do not in themselves seek to implement specific ALRC Recommendations.

As a result, we have sought to assess implementation on the basis of whether actions undertaken by government meet the intent of the recommendations as described by the ALRC, irrespective of whether the actions undertaken occurred prior to or after 2017. We have used qualitative data from stakeholder interviews and submissions, as well as a combined government submission¹ in making decisions about the extent of implementation, including where stakeholder input suggests that possibly more or less has been achieved in implementation than indicated by the ACT Government response to the request for

¹ The combined government submission we refer to in our Report as the 'ACT Government response to the request for information'.

information.² We have also used criminal justice system data where available to assess any changes which have occurred over the period 2017-2023. We acknowledge that assessing implementation in some cases requires a nuanced approach, particularly where implementation may be partial.

1.4 Research Plan for the First Report

Support for the research was provided by the Justice and Community Safety Directorate (JACS) who assisted as a point of contact for work and provided coordination and collation of information from within the ACT Government. JACS also provided some assistance with facilitating consultation with Aboriginal Community-Controlled Organisations (ACCOs), legal service providers, the legal profession and the non-government sector.

An initial Project Plan was developed by Jumbunna Research and approved by JACS. An Ethics Application was prepared and submitted to the Human Research Ethics Committee, UTS and was approved (ETH23-9016 - Independent Review of ACT Implementation of ALRC Recommendations).

An Information Paper was prepared by Jumbunna Research which outlined the overall Project and the specific requirements for Stage 1 of the research. The Information Paper also contained a list of seven questions for discussion. The Information Paper invited written or verbal comment on the implementation of any or all of the ALRC Recommendations. The Information Paper was distributed to relevant agencies and made available on the JACS website. It was also referenced in the Community Services Directorate (CSD) newsletter.

Government agencies were requested by JACS to provide responses to the implementation of the ALRC Recommendations. Responses were received relating to all the recommendations and the combined response provided by JACS we refer to as the 'ACT Government response to the request for information'. We also made contact with relevant personnel from the ACT Directorates via email or phone for further clarification as required, and specifically invited staff from the First Nations Justice Branch within JACS to contact us if they wanted to provide any information on a confidential basis. We also spoke with a number of members who were also part of the Justice Caucus. The material provided by the ACT Government was assessed to determine whether each recommendation had been implemented, partially implemented or not implemented, within the context noted in 1.3 above.

The timeframe and the parameters for work in Stage 1 precluded any *extensive* community engagement. In respect of Aboriginal and Torres Strait Islander organisations, we invited participation from the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) (both current and former members), United Ngunnawal Elders Council, Winnunga Nimmityjah Aboriginal Health and Community Services, Yedung Murra Aboriginal Corporation, Gugan Gulwan Youth Aboriginal Corporation, Yerrabi Yurwang Child and Family Aboriginal Corporation, Sisters In Spirit Aboriginal Corporation, Our Booris Our Way Committee and Clybucca Dreaming. Other non-Indigenous community-based organisations contacted who provide services to Aboriginal and Torres Strait Islander people included Beryl Women Inc. (10 organisations)

In respect of legal service providers, we invited participation from the Aboriginal Legal Service NSW/ACT (ALS), Legal Aid ACT, Canberra Community Legal Centre (Dhurrawang Aboriginal Human Rights Program), and Women's Legal Centre (Mulleun Mura). The broader legal profession

² For example, if stakeholders identify a relevant community-based program funded by ACT Government but not identified in the ACT Government response to the request for information or alternatively that a recommendation has not been implemented or at least not to the extent identified in the government response to the request for information.

was also invited to respond via the CEOs of the ACT Law Society and ACT Bar Association. As far as we are aware the Information Paper was distributed to members of the Law Society and the Bar Association. (Six legal service provider/legal profession).

In the end we were able to conduct recorded interviews with members of 10 community-based organisations/legal service providers. Almost half of the interviews involved multiple staff members. We also received three written submissions. The content of these interviews has been analysed and included in the overall assessment of the implementation of the ALRC Recommendations.

Participants in the interviews, as well as those providing written submissions, have been guaranteed anonymity, in line with our ethical requirements. Given the sensitive nature of comments and the small size of the jurisdiction, we have also decided not to name the specific organisations that have contributed to the research. Where direct quotations have been used, we have referred generically as to whether they have come from 'legal service provider/legal profession', 'Aboriginal and Torres Strait Islander or other non-government service provider' or 'First Nations community member'.

1.5 Structure of the Report

Part 2 of the Report is a contextual overview of relevant policy and data on the criminal justice system. The policy overview is particularly important in undertaking this review because many of the innovations put forward by government as satisfying the implementation of the ALRC Recommendations pre-date the ALRC report. The data section provides analysis of select measures on contact with the criminal justice system drawn primarily from the Australian Bureau of Statistics (ABS) and the Productivity Commission's Reports on Government Services.

Part 3 of the Report provides summary information on the implementation of the ALRC Recommendations. It also discusses some of the more general barriers and limitations to implementing the recommendations.

Part 4 of the Report is an in-depth discussion of each of the 35 ALRC Recommendations. It presents the government response to each recommendation as well as analysis of the information provided through the stakeholder interviews.

2. POLICY AND DATA ON THE CRIMINAL JUSTICE SYSTEM CONTEXT

This part of the Report provides the broader policy context to understanding the ACT Government's implementation of the ALRC Recommendations. It also provides relevant criminal justice system data on current Aboriginal and Torres Strait Islander contact with the criminal justice system and, where data is available, on changes since the time the ALRC report was released in 2017.

We also acknowledge at the outset that there are factors particular to the ACT that influence Aboriginal and Torres Strait Islander contact with the criminal justice system. The Ngunnawal peoples are the traditional custodians of the lands and other people or families with connection to the lands of the ACT and region now covered by the ACT. The Aboriginal and Torres Strait Islander population of the ACT is approximately 9,500 people. The population includes not only the Ngunnawal and other people or families with connection to the lands of the ACT and region, but also First Nations people from across Australia. It is the smallest First Nations population of all states and territories. Aboriginal and Torres Strait Islander people constitute approximately 2.1% of the total population of the ACT. After Victoria (1.2%), this is the second smallest proportional representation in any state or territory in Australia.³ The total population of the ACT is 452,508, which is the smallest Australian jurisdiction by population after the Northern Territory (NT). The ACT has an Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and an Aboriginal and Torres Strait Islander Agreement 2019–2028.

As we explore further below, the ACT has the lowest rate of incarceration in Australia at approximately half the national rate, and the lowest number of people incarcerated.⁴ It has also had a decrease in imprisonment rates between 2017 and 2023. However, at the same time, it has the greatest level of Aboriginal and Torres Strait Islander over-representation in Australia. There is one prison in the ACT, the Alexander Maconochie Centre (AMC) which houses remand and sentenced prisoners of all genders and minimum to maximum classifications. There is also the Bimberi Youth Justice Centre for children and young people aged 12-21 on remand and sentenced.

As we discuss further below the government also has a commitment to justice reinvestment both in terms of program development and the transfer of money away from prison expansion to community-based programming. The policy context also discusses Building Communities Not Prisons and the reducing recidivism strategy (RR25by25) and the various relevant programs within the ACT.

2.1 The Broader Policy Context

2.1.1 *The Aboriginal and Torres Strait Islander Elected Body (ATSIEB), the ACT Aboriginal and Torres Strait Islander Agreement 2019–2028 and the Aboriginal and Torres Strait Islander Justice Caucus.*

The Elected Body currently has six members representing First Nations peoples in the ACT. The first Elected Body was formed in 2008. Elections are held every three years.

³ ABS (2023) *Estimates of Aboriginal and Torres Strait Islander Australians 2021*.

⁴ ABS (2024) *Corrective Services Australia December Quarter 2023*.

There are currently five portfolios attached to specific members. These are:

- Chief Minister, Treasury and Economic Development; Environment, Planning and Sustainable Development; and Canberra Health Services.
- Transport Canberra and City Services; ACT Health; and Coalition of Peaks.
- Community Services and Education.
- Major Projects Canberra.
- Justice and Community Services.

The vision for ATSIEB is for all Aboriginal and Torres Strait Islander people living in the ACT to be fully engaged in shaping and creating their future wellbeing. Its role is to work with the ACT Government and local Aboriginal and Torres Strait Islander community to deliver the ACT Aboriginal and Torres Strait Islander Agreement 2019–2028. The full list of functions of the Elected Body, as determined in the *Aboriginal and Torres Strait Islander Elected Body Act 2008*, can be found at <https://atsieb.com.au/our-work/functions/>.

The Aboriginal and Torres Strait Islander Agreement 2019–2028 reflects the commitment of the ACT Government and the ATSIEB to deliver outcomes that improve the health and wellbeing of Aboriginal and Torres Strait Islander people. It builds on the previous Agreement (2015-2018). The Agreement enables Aboriginal and Torres Strait Islander peoples to exercise self-determination and have the ability and resources to provide their own solutions, acknowledging that Aboriginal and Torres Strait Islander leadership is central to the process of ensuring the long-term emotional and physical wellbeing for First Nations communities.⁵

The core areas of the Agreement are:

- Children and Young People.
- Cultural Integrity.
- Inclusive Community.
- Community Leadership.

Significant areas for the Agreement are:

- Connecting the Community.
- Life Long Learning.
- Economic Participation.
- Health and Wellbeing.
- Housing.
- Justice.

The Agreement is not specifically an Aboriginal and Torres Strait Islander **Justice** Agreement. Justice is an element, but not the only focus area. Under the justice area of the Agreement there were nine Priority Actions developed for Phase 1 of the Agreement; six of these are relevant to adults in the justice system.⁶

- Enabling Aboriginal and Torres Strait Islander offenders to have the ability to adhere to their Court appointed Community Based Orders.
- Building an innovative engagement approach to engage with men and boys across the community to establish community led solutions to men’s business.

⁵ ACT Government and ACT ATSIEB (2019) *Aboriginal and Torres Strait Islander Agreement 2019–2028*, p.2

⁶ See <https://www.act.gov.au/__data/assets/pdf_file/0007/2381173/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028-Core-Focus-Area-Justice.pdf>.

- Supporting Aboriginal and Torres Strait Islander people post release to engage with their community and have access to appropriate housing, healthcare, education and employment.
- Establishing partnerships across the ACT Government to develop activities and initiatives on Country to promote health and wellbeing and improve justice outcomes.
- Engaging and supporting community-controlled organisations to deliver a suite of justice programs.
- Coordinating Health Care Services to Aboriginal and Torres Strait Islander detainees in the AMC.

Successes at the end of Phase 1 were identified as supporting Aboriginal and Torres Strait Islander people post release to engage with their community and have access to appropriate housing, healthcare, education and employment; and establishing partnerships across the ACT Government to develop activities and initiatives on Country to promote health and wellbeing and improve justice outcomes.⁷ Phase 2 (July 2022 to December 2024) identified outcomes to be achieved as ‘reduced contact between Aboriginal and Torres Strait Islander peoples and the criminal justice system, and where contact occurs increase culturally appropriate interactions, encourage connection to community, and equips Aboriginal and Torres Strait Islander peoples with the tools to thrive outside of the system’.⁸

In addition to meeting Closing the Gap targets to reduce adult and juvenile incarceration, Phase 2 set ACT headline indicators (relating to adults) as a decrease in rate of return to custody for adults within two years; a decrease in adult imprisonment; and an increase in 18-25 year olds referred to restorative justice.⁹

The role of the Aboriginal and Torres Strait Islander Justice Caucus is to collaborate to provide policy contributions to JACS to inform justice related policy and the ACT Government’s Justice Action Plan under the Agreement. The Caucus also monitors and provides guidance on actions and priorities for the ACT Government to progress the Justice Action Plan. The Aboriginal and Torres Strait Islander Justice Caucus is an Aboriginal and Torres Strait Islander only forum mostly made up of employees of the ACT Government who have an interest in Justice policy/programs and Service Providers who deliver Justice programs supporting Aboriginal and Torres Strait Islander peoples interacting with the Justice system. Service Providers are Gugan Gulwan, Yeddung Murra, Clybucca, Winnunga, Tjillari and ATSIEB. The Caucus meets quarterly.

2.1.2 Justice Reinvestment Initiative

The ACT Government has committed to a range of justice reinvestment initiatives that focus on early intervention and high-quality services to prevent incarceration. These include Raising the Minimum Age of Criminal Responsibility, Building Communities, Not Prisons and Reducing Recidivism.¹⁰

⁷ See <https://www.act.gov.au/__data/assets/pdf_file/0010/2381329/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028-Phase-2-Focus-Area-Action-Plan-Justice.pdf>

⁸ See <https://www.act.gov.au/__data/assets/pdf_file/0010/2381329/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028-Phase-2-Focus-Area-Action-Plan-Justice.pdf>

⁹ See <https://www.act.gov.au/__data/assets/pdf_file/0010/2381329/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028-Phase-2-Focus-Area-Action-Plan-Justice.pdf>

¹⁰ Justice and Community Safety Directorate, Annual Report 2021-22 <<https://www.justice.act.gov.au/annual-report-2020-21/b.2-performance-analysis-output-1.1-policy-advice-and-justice-programs/justice-reinvestment>>

Currently, justice reinvestment in the ACT includes:

- Prioritising reducing recidivism by funding programs to assist detainees and vulnerable community members, removing the need to expand the high security campus at the AMC.
- Enhancing the rehabilitation framework at the AMC, including the construction of a purpose-built reintegration centre – delivering up to 80 beds, and increasing the range of rehabilitation programs available to detainees.¹¹
- Providing more supported housing options for people on bail and exiting detention, which is a major factor in re-offending.
- Providing early support for people living with a mental illness or disability.
- Providing more pathways for safe and sustainable bail.
- Enhancing community building capabilities.¹²

The justice reinvestment principles and pillars are detailed below at 2.1.5.

The pathways to justice reinvestment include:

- **Place-based:** programs/supports that are accessible and reflect community needs (e.g. Strong Connected Neighbourhoods Program on Ainslie Avenue and Illawarra Court).
- **Point in the system:** addressing systemic issues at crucial points in the justice system (e.g. arrest, bail, remand) to reduce recidivism and future contact with the justice system (e.g. Restorative Justice as a diversion or post-sentence).
- **Cohort:** focusing efforts on overrepresented groups and targeting services/support (e.g. Yarrabi Bamirr, family centric support model).¹³

The ACT Government's justice reinvestment initiatives focus on early intervention and services to prevent incarceration¹⁴ and currently include the Strong Connected Neighbourhoods Program, Yarrabi Bamirr, Ngurrambai and the Drug and Alcohol Court.¹⁵

¹¹ It is noted in the ACT Government response to the request for information that 'changing circumstances and shifting accommodation priorities at the AMC has meant the Government has paused work on the reintegration centre. Deferral of the project allowed focus on repairs and upgrades to existing critical infrastructure. Arising from the 2023-24 Budget Process, the government is currently developing a masterplan for the AMC to inform longer-term infrastructure requirements, including planning for a future reintegration precinct. In the absence of the reintegration centre, the government has focussed on reintegration and rehabilitation programs such as the Transitional Release Program that supports detainees to transition back into the community. There is a recent ministerial statement on Justice Reinvestment in the ACT which discusses this issue.' See

<https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2024/act-justice-reinvestment-supports-progress-towards-recidivism-target#:~:text=The%20ACT%20Government%E2%80%99s%20focus%20on%20justice%20reinvestment%20has,are%20returning%20to%20prison%20within%20a%20two-year%20period>.

¹² Justice and Community Safety Directorate <<https://www.justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons>>

¹³ Justice and Community Safety Directorate <<https://www.justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons>>.

¹⁴ ACT Government, Justice and Community Safety Directorate, *Annual Report 2020-21*

<<https://www.justice.act.gov.au/annual-report-2020-21/b.2-performance-analysis-output-1.1-policy-advice-and-justice-programs/justice-reinvestment>>

¹⁵ Justice and Community Safety Directorate <<https://www.justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons>>.

Earlier justice reinvestment programs in the ACT have included:

- **ACT Corrective Services (ACTCS) Throughcare Model:** The Throughcare model of case management involves identification of the offender’s criminogenic risk, the development of a case plan to target offending behaviour and identification of, and referral to, appropriate government and community resources to address this risk. Visiting agencies include women’s services, legal services, Centrelink, accommodation service providers and alcohol and other drug agencies including Alcoholics Anonymous weekly meetings on site for detainees, as well as Aboriginal and Torres Strait Islander elders and support service and Kairos Prison Ministries.
- **ACT Property Crime Reduction Strategy:** A key objective within the launched whole of government ACT Property Crime Reduction Strategy 2012-15 (the Strategy), was stopping the cycle of offending using, among other things, justice reinvestment.
- **Shine for kids** (pilot program): Funding was provided to Crime Prevention Budget for an exploratory pilot program at the AMC aimed at breaking the inter-generational cycle of offending and improving the health and education outcomes for children of detainees. The ‘Shine for Kids’ pilot Prison In-Visits program focussed on building and maintaining positive relationships between the child and their imprisoned parent, while also supporting and enhancing the child’s health and education outcomes, which then impact positively on their future life choices. This program is now run by an independent not for profit agency and continues to provide services to detainees and their children including for First Nations people.
- **Strong Connected Neighbourhoods** (previously the High-Density Housing Safety and Security Project). See below for a description of this project.

2.1.3 *Building Communities Not Prisons*

Imprisonment is expensive. In 2023, the ACT Government spent over \$77 million on adult prisons and nearly \$24 million on community corrections.¹⁶

The ACT has one adult prison facility, the AMC which was operating at full capacity only a few years ago. In a change in policy direction, in 2019 the ACT Government expanded its justice reinvestment efforts, investing a further \$70.9 million to ‘Build Communities, Not Prisons’. This included an initial \$14.6 million for new and expanded community programs. The package focussed on bringing together strengths-based supports and inclusive pathways that lead to better life outcomes for people cycling in and out of prison.¹⁷ The package also included legislative reforms and policy initiatives, including accommodation and support for people on bail, and a reintegration centre.¹⁸

A Matrix of Initiatives associated with *Building Communities Not Prisons* is reproduced in Appendix 2.

¹⁶ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 8A.1.

¹⁷ ACT Government (2019) *RR25BY25*, p.6

¹⁸ Bartels, L. (2019). ‘Australian governments should follow the ACT’s lead in building communities, not prisons’, *The Conversation*. <<https://theconversation.com/australian-governments-should-follow-the-acts-lead-in-building-communities-not-prisons-111990>>

2.1.4 Major Programs relevant to Justice Reinvestment and Building Communities Not Prisons¹⁹

The following outlines various Aboriginal and Torres Strait Islander specific programs relevant to justice reinvestment and Building Communities Not Prisons and introduced prior to the December 2017 ALRC report and its recommendations.

Yarrabi Bamirr

Yarrabi Bamirr (meaning ‘walk tall’ in the Ngunnawal language) is a family-centric support model working with Aboriginal and Torres Strait Islander families to improve life outcomes and reduce or prevent their contact with the justice system, particularly trans-generational offending. The objective of Yarrabi Bamirr is to deliver programs and promote ongoing participation opportunities that address families’ complex needs by using a comprehensive family-centric approach that is codesigned with clients and their families. With culturally appropriate support, families will become self-managing, self-reliant and less likely to engage in offending behaviour. The program is targeted to Aboriginal and Torres Strait Islander families with children that have extensive experience with the ACT justice system and have experienced intergenerational trauma.²⁰

Winnunga Nimmityjah²¹ began delivering the Winnunga Justice Reinvestment Family Trial from April 2017. An evaluation of the Winnunga Justice Reinvestment Trial showed an increase in services to Aboriginal and Torres Strait Islander offenders had a positive impact on the participants and their families. The evaluation concluded that Winnunga provided a proactive, intensive and problem-oriented system of case management.²² As a result of the positive results in the evaluation, there were calls for expanding the program because the program was unable to meet First Nations community needs for culturally-specific support.²³

The program is delivered by Aboriginal and Torres Strait Islander organisations including Winnunga, Yeddung Mura and Clybucca Dreaming with referrals of potential clients from the ACM.²⁴

Ngurrambai Bail Support Program

The Ngurrambai Bail Support Program includes court-based bail support, outreach bail support and support of bail applications from detainees in AMC. Ngurrambai Support Officers provide support to individuals applying for or granted bail. This support includes the development of a bail plan unique to each person, with goals set that support a person’s immediate needs and compliance with their bail conditions. The ACT Bail Support Program is a separately funded initiative aiming to expand and strengthen the Ngurrambai Bail Support Trial to assist people to successfully apply for bail and also successfully comply with their bail orders. A Program Support Officer also attends court on Saturday

¹⁹ Sources: RR25by25 p.10, Justice and Community Safety Directorate <<https://www.justice.act.gov.au/aboriginal-and-torres-strait-islander-justice-affairs/programs-and-services>>

²⁰ Justice and Community Safety Directorate ><https://www.justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons/yarrabi-bamirr>>

²¹ Winnunga also provide culturally responsive justice health services for First Nations people in the AMC including intake medical assessments, Aboriginal Health Checks and ongoing clinical care. See <<https://www.winnunga.org.au/>>.

²² Payne, J. and Fogarty, M. (2019) *The ACT Justice Reinvestment Trial*, Centre for Social Research and Methods, ANU.

²³ Canberra Times, (2020) ‘ACT Government Commits \$1.5 million to keep Indigenous Canberrans out of prison’; Krishnan, S. (2020). ‘Why culturally-specific support for Indigenous families is crucial in reducing incarceration rates’. SBS News. See also, Justice Reform Initiative (2024) *Alternatives to Incarceration in the Australian Capital Territory*, p.53.

²⁴ For Usage Data see Appendix 3, Table 1

mornings for Bail Applications. This initiative offers case management support for men and women who meet eligibility requirements. It is operated by the ALS.²⁵

The *Interim Evaluation of the Ngurrumbai Bail Support Program* Report found that ‘where a bail has been put in place through the NBSP, a client is highly likely to receive bail, thereby reducing the chance of being remanded into custody. On this basis, it can be said that the program is achieving its principal objective of reducing the number of Aboriginal and Torres Strait Islander people on remand’. The evaluation also noted ‘an improvement in the ability of the ALS to actively support their clients, both at court and in the community. There was also an increased awareness across several community organisations and government agencies of the program’s existence’.²⁶

Front Up

Front Up is a support program for Aboriginal and Torres Strait Islander people who have an outstanding warrant(s) or have breached bail or a community-based sentence to assist them to present to Court and negotiate on their behalf to have the matter resolved, where possible, without a period of custody. It is operated by the ALS.²⁷

Aboriginal Legal Service Duty Lawyer and Trial Advocate Services

The ALS Duty Lawyer Service delivers, under the supervision of a Supervising Solicitor, culturally appropriate Duty Lawyer Services for Aboriginal and Torres Strait Islander people in the Magistrates Court and Childrens Court of the ACT. This includes the provision of legal advice, representation, assistance and referrals, to ensure Aboriginal and Torres Strait Islander people in the ACT are enabled to address their legal needs. Funding for 2023-24 was \$118,120 (plus CPI) and in 2024-25 it is \$122,018 (plus CPI).

The ALS Trial Advocate Service delivers, under the supervision of a Supervising Solicitor, culturally appropriate Trial Advocate Services for Aboriginal and Torres Strait Islander people in the ACT. This includes the provision of legal advice, representation, assistance and referrals, to ensure Aboriginal and Torres Strait Islander people in the ACT are enabled to address their legal needs. Funding for 2023-24 was \$159,350 (plus CPI) and in 2024-25 it is \$164,609 (plus CPI).

Extended Throughcare Support

Extended Throughcare Support is a client-centred program designed to enable Aboriginal and Torres Strait Islander clients to succeed on their journey from prison to living sustainably back in the community. Extended Throughcare Support operates in collaboration with the ACTCS Throughcare Unit to provide individualised and intensive case management and trauma informed support. Throughcare assists a detainee’s transition back into community through the provision of needs such as mobile phones, medicine, identification documents and assistance with services such as housing, Centrelink and other providers and programs. The throughcare support is provided by Yeddung Mura.²⁸

²⁵ For Usage Data see Appendix 3, Table 2. See also <https://www.alsnswact.org.au/ngurrumbai_bail_support> and <<https://www.justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons/ngurrumbai>>.

²⁶ Bartels, et al. (2022) *Interim Evaluation of the Ngurrumbai Bail Support Program*, Centre for Social Research & Methods, ANU, p. v.

²⁷ For Usage Data see Appendix 3, Table 3. See also <<https://www.alsnswact.org.au/bail>>.

²⁸ For Usage Data see Appendix 3, Table 4

Empowerment Yarning Circles

Empowering Yarning Circles is a series of yarning circles that focus on enabling ex-detainees to stay in the community and rebuild their lives. The program supports re-establishing links to community and culture, restoring relationships with family, friends and peers and supporting and enabling clients to manage their own lives. The Yarning Circles involve focussed interventions that over time empower client's capacity to navigate the issues they face and self- manage their affairs to achieve longer term goals focussed on staying out of the justice system, restoring family relationships and participating in the broader community.²⁹

Mulleun Mura

Mulleun Mura is a program for Aboriginal and Torres Strait Islander women within the Women's Legal Centre. It provides legal advice and representation, cultural support, and referrals for First Nations women who are experiencing domestic and family violence and who need assistance with their family law matter, which can include care arrangements for their children. The service attends mediations and family dispute resolution conferences to try and resolve the matter outside of court wherever possible. They also provide advice to Aboriginal women on engaging with Care and Protection authorities.

Dhurrawang Aboriginal Human Rights Program

The Dhurrawang Aboriginal Human Rights Program provides legal assistance to Aboriginal and Torres Strait Islander peoples experiencing financial or other disadvantage in the areas of housing, human rights, social security and discrimination. It is part of Canberra Community Law.

Galambany and Warrumbul Circle Sentencing Courts

The ACT Magistrates Court has had a circle sentencing court since 2004 (originally known as the Ngambra circle sentencing court, known since 2010 as the Galambany Court. Galambany (adults) and Warrumbul (youth) Circle Sentencing Courts provides culturally relevant sentencing options for Aboriginal and Torres Strait Islander people allowing offenders to be diverted from the mainstream system into culturally meaningful and sensitive justice processes.³⁰ The Aboriginal and Torres Strait Islander Panel of Elders has an opportunity to work collaboratively with the magistrate to address offending behaviour.³¹ There are a number of eligibility requirements that need to be satisfied for referral to the Galambany Court. These include:

- The defendant identifies as an Aboriginal or Torres Strait Islander person and has ties to an Aboriginal and Torres Strait Islander community, either in the ACT or elsewhere
- The offence can be finalised in the Magistrates Court
- The offence is not a sexual offence
- The defendant has pleaded guilty, and
- The defendant consents to be assessed as to his or her suitability for circle sentencing and agrees to participate fully in the processes of the Galambany Court.

²⁹ For Usage Data see Appendix 3, Table 5

³⁰ In Ngunnawal language, Galambany means 'we all, including you' and Warrumbul means 'youth'. These names were gifted by Ngunnawal Elders of the United Ngunnawal Elders Council.

³¹ For Usage Data on the Galambany Court Support scheme, see Appendix 3, Table 6

The Practice Direction for the Galambany Court notes that the aims of the court are to:

- a) Involve Aboriginal and Torres Strait Islander communities in the sentencing of Aboriginal and Torres Strait Islander defendants
- b) Increase the confidence of Aboriginal and Torres Strait Islander communities in the sentencing process
- c) Reduce barriers between the ACT Magistrates Court and Aboriginal and Torres Strait Islander communities
- d) Draw upon the strengths, including cultural strengths, of Aboriginal and Torres Strait Islander offenders and their community
- e) Provide culturally appropriate, restorative and effective sentencing options for Aboriginal and Torres Strait Islander defendants
- f) Provide Aboriginal and Torres Strait Islander defendants with support services to assist them to overcome their offending behaviour
- g) Provide support to victims of crime and enhance their rights and participation in the Galambany Circle Sentencing Court process, and
- h) Reduce the risk factors related to re-offending by Aboriginal and Torres Strait Islander defendants.³²

A cost benefit analysis of the court found that by investing in the Galambany Court, the ACT Government reduces its overall expenditure on courts, policing and prison. The analysis also found that for Aboriginal and Torres Strait Islander people Galambany helped increase employment retention, education opportunities and the health of offenders and their family members, and reduced risks of homelessness. Galambany also helped to reduce violence against women and reduce the number of children in care and protection.³³ The number of people accessing the Galambany Court has grown in recent years from an estimated average³⁴ of 45 sentenced offenders per year during 2014-2016, to over 170 per year in 2022/23 and 2023/24.³⁵

Drug and Alcohol Court

Although not Aboriginal and Torres Strait Islander specific, the Drug and Alcohol Court is also relevant to keeping Aboriginal and Torres Strait Islander people out of prison. The Drug and Alcohol Court was established in 2019.³⁶ The Court deals with offences that relate to serious drug and alcohol use. An evaluation of the Court found that the Court ‘does not appear to be working for Indigenous participants’. A 2022 evaluation found that of the 17 Indigenous participants to date, only one has graduated (6%), compared with seven out of 39 non-Indigenous participants (18%). Conversely, eight Indigenous

³² Magistrates Court of the ACT (2024) *Practice Direction – Galambany Court (2/22024)*. See also <<https://www.justice.act.gov.au/aboriginal-and-torres-strait-islander-justice-affairs/galambany-circle-sentencing-court>> .

³³ Daly, et al., (2020) *Cost Benefit Analysis of the Galambany Court*, Report commissioned by the Justice and Community Safety Directorate, ACT Government.

³⁴ Daly, et al., (2020) *Cost Benefit Analysis of the Galambany Court*, Report commissioned by the Justice and Community Safety Directorate, ACT Government, p. 23.

³⁵ Data provided by ACT Courts and Tribunals. Counts are distinct persons. The same individual may be sentenced by the Court multiple times in a single year.

³⁶ See <<https://www.justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons/drug-and-alcohol-court>>.

participants have had their order cancelled (47%), compared with 18% of non-Indigenous participants.³⁷ The Report recommended that the Court consult with representatives from key Indigenous organisations, including Winnunga, Yeddung Mura, Tjillari, the Gulanga Program at the ACT Council of Social Services (ACTCOSS) and the Aboriginal Legal Service, as well as the Elders in the Galambany Court on how to better support Aboriginal and Torres Strait Islander participants.³⁸

A more recent report (2024) by KPMG³⁹ found that 27% of participants in Drug and Alcohol Sentencing List (DASL) between 2019 and 2023 identified as Aboriginal and/or Torres Strait Islander. Although there are two case studies in the report on individual Aboriginal participants in the program, there is no information on the proportion of Indigenous participants who graduated from the court, or had their orders cancelled compared to non-Indigenous participants.

JACS noted that whilst some additional consultation on how to improve DASL for Aboriginal and Torres Strait Islander participants has been undertaken, further work is required to continue implementation of the recommendations from the 2022 report.

The Commissioning Process, Co-Design and Justice Reinvestment

We note that over the next two years, First Nations justice support programs managed by the JACS Directorate are undertaking a commissioning process in partnership with the ACT First Nations Community. This commissioning process will involve a series of workshops with the Aboriginal and Torres Strait Islander Justice Caucus, members of the community with lived experience of the justice system, ACCOs, independent members of the First Nations community and those with experience in education, housing and health who will meet to review and redesign the First Nations justice support space. The focus will be on four distinct phases in an individual's justice journey: early diversion from the system; diversion from custody; transitioning from detention; and minimising return to the justice system. First Nations people know best what works for the First Nations community and the ACT Government is committed to sharing decision making authority with community in alignment with Closing the Gap Priority Reform One: Formal Partnerships and Shared Decision-Making.⁴⁰

We also note that under the 2024-25 Budget, the ACT Government will fund community engagement and co-design of a justice reinvestment fund to support the delivery of community-led programs focussed on addressing gaps in the justice system and improving criminal justice outcomes. The funding includes components for an external facilitator to coordinate community engagement and co-design phase of development as well as resourcing for program oversight and support.⁴¹

³⁷ Rossner, M., et. al., (2022) *ACT Drug and Alcohol Sentencing List: Process and Outcome Evaluation Final Report*, Centre for Social Research & Methods, ANU, p.109.

³⁸ Rossner, M., et. al., (2022) *ACT Drug and Alcohol Sentencing List: Process and Outcome Evaluation Final Report*, Centre for Social Research & Methods, ANU, pp. 118, 200.

³⁹ KPMG (2024) *Cost Benefit Analysis of the Drug and Alcohol Sentencing List*.

⁴⁰ ACT Government supplementary response to Draft First Report. See also: <<https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/one>>.

⁴¹ ACT Government supplementary response to Draft First Report.

2.1.5 Reducing Recidivism in the ACT by 25% by 2025⁴²

Under the RR25BY25 Plan the ACT Government committed to invest more than \$132 million over four years to develop and implement new programs and measures to reduce the rate of reoffending.⁴³

It was noted that this was the first time an Australian jurisdiction has committed to redirecting millions of dollars that would otherwise be spent on expanding prisons to evidence-based programs focussed on rehabilitation and reintegration and addressing the root causes of people's offending.⁴⁴

The initial focus was on keeping adult offenders out of prison through reinvesting criminal justice funds that would otherwise have been sought to expand the AMC, to other parts of the justice and human service system.

The commitment came in response to the significant growth in the number of people detained at AMC in the period prior to 2020. Between December 2012 to December 2019, detainees at the AMC increased by 60% from 268 to 429. In addition, the ACT has a complex prison cohort. Three-quarters (77%) of the ACT's detainees have previously been imprisoned under sentence, while the national average is 58%.⁴⁵ In addition at the time of the release of the RR25BY25 the ACT had seen a 119% increase in the number of people identifying as Aboriginal and Torres Strait Islander detained at the AMC; from 48 in 2012 to 105 in 2019.⁴⁶ Aboriginal and Torres Strait Islander detainees were also more likely to return to prison within two years, 48% for male detainees and 58% for female detainees, compared with non-Aboriginal and Torres Strait Islander male detainees, 41%, and non-Aboriginal and Torres Strait Islander female detainees, 29%.⁴⁷ The ACT female imprisonment rate increased by 95% between 2015 and the June 2018 quarter, almost four times the national rate of 23.5%. Further, of women incarcerated at the AMC in 2018-19 more than half were unsentenced, 55%.⁴⁸

The 2024-25 budget by the ACT Government builds on previous government investment since 2018-19 in initiatives to reduce recidivism and supports phase 2 of the reducing recidivism plan. Phase 2, RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT will continue to build on the first phase of the *RR25BY25 Plan (2020-2023)*. Structured community engagement and co-design will serve as a framework to guide future policy and funding decisions to deliver community-led support programs focussed on addressing gaps in the justice system and improving criminal justice outcomes. *RR25by25 and Beyond* is being developed and targeted for a release in mid-2024.

Key Principles of RR25by25

The 6 Key Principles that underpin the ACT Government's justice reinvestment, Building Communities Not Prisons and RR25by25 efforts are:

1. Restorative practices – a framework of practices within human services, that aims to build healthy communities, increase social capital, decrease crime and antisocial behaviour, repair harm and restore relationships.

⁴² Sources: ACT Government (2019) RR25BY25. Reducing Recidivism in the ACT by 25% by 2025. 2020-2025; See also Edwards, B., Taylor, H. and Bartels, L. (2022) *Reducing Recidivism by 25% by 2025 Plan Evaluation Framework*, Centre for Social Research and Methods, ANU.

⁴³ ACT Government (2019) *RR25BY25*, p.1

⁴⁴ ACT Government (2019) *RR25BY25*, p.3

⁴⁵ ACT Government (2019) *RR25BY25*, p.6

⁴⁶ ACT Government (2019) *RR25BY25*, p.7

⁴⁷ ACT Government (2019) *RR25BY25*, p.7

⁴⁸ ACT Government (2019) *RR25BY25*, p.7

2. Cultural integrity – it is important to take into account the unique systemic and historical factors affecting Aboriginal and Torres Strait Islander peoples. Services need to build cultural capacity, provide cultural advice as to what works in reducing offending, and be based on an understanding of the modern-day impacts of historical colonisation and dispossession of land and culture.
3. Human rights – under the *Human Rights Act 2004* no-one may be deprived of liberty, except on the grounds, and in accordance, with the procedures established by law.
4. Trauma informed – it is important to contextualise offending within experiences of intergenerational trauma, family and sexual violence, child removal, mental illness, disability, and poverty. Informed practices are needed to provide alternatives to incarceration, including holistic, trauma informed diversion programs for people who have experienced deep and intergenerational trauma.
5. Evidence informed – initiatives will bring together data, evaluations and stakeholder views in order to support Government decisions to invest in what works to reduce crime and reoffending while increasing community safety and strengthening communities.
6. Gender informed – the number of female detainees in prisons in Australia is growing at a rate faster than that of men, necessitating a focus on female offenders and how to rehabilitate and address their criminogenic and life needs while in custody. The challenges women face while in prison are considerably greater than men, involving high levels of trauma including family and sexual violence and highly disadvantaged backgrounds. The impacts on women in custody are far greater where they are primary carers (of children or parents).⁴⁹

Key Priority Areas of RR25by25

The 7 Key Priority Areas (or Pillars) highlighted as the focus of RR25by25 are:

1. Reducing the over-representation of Aboriginal and Torres Strait Islander people in custody
2. Responding to justice housing needs
3. Supporting people with substance use disorders in the justice system
4. Supporting people living with a mental illness or disability in the justice system
5. Supporting detainee reintegration
6. Developing community capacity
7. Responding to women in the justice system.⁵⁰

Building Communities Not Prisons has led the strategy to focus on Aboriginal and Torres Strait Islander people, housing, alcohol and other drug services, mental health and disability, reintegration, developing community capacity and women. A multi-component response is required to meet the diverse needs of people involved in the criminal justice system and these initiatives have been designed to operate in a mutually enabling manner, working across the government and community sector.⁵¹

⁴⁹ ACT Government (2019) *RR25BY25*, p.4

⁵⁰ ACT Government (2019) *RR25BY25*, pp.9-21

⁵¹ ACT Government (2019) *RR25BY25*, p.5

Evaluating and measuring outcomes of RR25by25

The primary indicator to measure success is the rate at which adult detainees return to custody within two years.

Indicative measures will focus on the:

- Referral, participation and completion rates of offenders participating in the targeted programs
- Referral, participation and completion rates of detainees engaging in programs within the Reintegration Centre
- Proportion of supported housing places that are fully utilised in the Justice Housing Program (JHP) and Bail Accommodation (broken down by specific cohorts), and
- Proportion of detainees released to unstable housing or homelessness.⁵²

Longer term indicators will focus on:

- Reduction in the rate of reoffending
- Reduction in the seriousness of offending
- Reduction in the frequency of offending
- Reduction in the over-representation of Aboriginal and Torres Strait Islander people in custody
- Reduction in the female prison population, and
- Improved levels of health, wellbeing and social connectedness among program participants.⁵³

There is an Executive Coordination Group to provide strategic oversight and advice on the implementation of RR25by25, as well as monitor progress and report on the implementation of the reducing recidivism strategies. There is also a Reducing Recidivism Research Advisory Committee comprised of members drawn from government, the legal profession, academics and the community sector.

2.1.6 Other relevant initiatives not Aboriginal and Torres Strait Islander specific

Strong Connected Neighbourhoods Program

Strong Connected Neighbourhoods (formerly known as the High-density Housing Program), began in 2008. It is a place-based justice reinvestment program. The program works with residents living in public housing sites on Ainslie Avenue Braddon and Reid, and Illawarra Court Belconnen. The program works with high and complex needs residents who have been, are currently, or are at risk of becoming, involved in the criminal justice system. It provides pro-social and law-abiding community engagement and facilitates access to services. It has supported residents to develop stronger connections in the community, develop self-confidence and boost residents' self-esteem.

⁵² ACT Government (2019) *RR25BY25*, p.27

⁵³ ACT Government (2019) *RR25BY25*, p.27

A recent independent evaluation⁵⁴ found that by proactively taking measures to strengthen the Ainslie Avenue community, incidents of violent crime have reduced by 50% and reduced property crime by 60%. The evaluation also found that the Program provides a realised saving of police time to government of at least \$0.42 to \$0.51 for every \$1 invested.

The program is delivered by Reclink and is a collaborative multi-agency initiative between JACS, CSD (Housing ACT), Canberra Health Services and ACT Policing.

Justice Housing Program

The Justice Housing Program (JHP) is an ACT Government program introduced as part of the RR25by25 Strategy. The program provides 10 transitional shared accommodation houses for people leaving the AMC who are able to live independently. Accommodation is provided for up to three months and assists people to find more permanent accommodation and access community services. An evaluation of the JHP recommended further investment in housing options for people exiting prison.⁵⁵

Prisoners Aid (ACT)

Prisoners Aid ACT is a community organisation that assists people involved in the justice system, including people in or exiting prison, families of people in prison, visitors to prison and people involved in the court system. For those in prison, Prisoners Aid provides practical help such as storing property while they are in prison, helping obtain key documentation such as identification, working through government forms such as translating them to plain English, or liaising with various government or services bodies as requested.⁵⁶

ACT Intermediary Program

While not an interpreter service, the ACT Intermediary Program provides support to witnesses who might face language barriers. Intermediaries are officers of the court, often drawn from allied health professions including Speech Pathology, Social Work, Psychology and Occupational Therapy, who facilitate communication between witnesses and police, and witnesses, lawyers and others at court during the criminal trial process.⁵⁷

Disability Justice Strategy 2019–2029 (ACT)

The ACT Disability Justice Strategy 2019–2029 aims to achieve equity and inclusion for people with disability in the justice system.⁵⁸

The three goals of the Disability Justice Strategy are:

- Goal 1: People with disability are safe and their rights are respected.
- Goal 2: The ACT has a disability responsive justice system.

⁵⁴ Morgan, A., et al., (2018) *Reducing Crime in Public Housing Areas through Community Development: An Evaluation of the High Density Housing Program in the ACT*, Australian Institute of Criminology, Canberra.
<<https://www.aic.gov.au/publications/rr/rr6>> .

⁵⁵ Taylor, H., et al., (2023) *Process Evaluation of the Justice Housing Program*, ANU.

⁵⁶ Justice Reform Initiative (2024) *Alternatives to Incarceration in the Australian Capital Territory*, p.43.

⁵⁷ See <<https://www.hrc.act.gov.au/intermediaries>>.

⁵⁸ See <<https://www.act.gov.au/open/disability-justice-strategy>>.

- Goal 3: Change is measured and achieved.⁵⁹

Since 2019, 11 Disability Liaison Officers (DLOs) have been established across the justice system, in both government agencies and non-government organisations. In 2023, temporary funding was secured to recruit dedicated Disability Liaison Officers at ALS NSW/ACT through to 30 June 2024.⁶⁰

In 2022, an external consultant was engaged to conduct an independent evaluation (‘Independent Evaluation’) of the implementation and outcomes of the First Action Plan of the DJS.⁶¹ The Independent Evaluation found that while the COVID-19 pandemic initially impacted delivery of actions under the First Action Plan, most actions had been successfully completed, were in progress, or had been initiated. Positive change is occurring, with attitudes, processes, and practices towards people with disability shifting in the right direction.⁶²

2.2 Criminal Justice System Select Data

Below we have provided select criminal justice system data on current Aboriginal and Torres Strait Islander contact with the criminal justice system and, where data is available, on changes since the time the ALRC report was released in 2017.

2.2.1 Imprisonment⁶³

Overall, the ACT has the lowest general imprisonment rate in Australia.⁶⁴ While Aboriginal and Torres Strait Islander people make up only 2.1% of the ACT population, they comprise 27.2 % of the ACT prison population.⁶⁵

However, despite its relatively low general imprisonment rate, as we show below, the ACT simultaneously has the greatest disparity (the level of over-representation) in Australia between Aboriginal and Torres Strait Islander imprisonment and non-Indigenous imprisonment rates as measured through the ratio between the two rates of imprisonment. Despite this there have been **some** slight improvements.

The imprisonment rate for Aboriginal and Torres Strait Islander people in the ACT in 2023 was 1593.2. It was approximately **5% lower** in 2023 than it was in 2017 (1679.5 in 2017 compared to 1593.2 in 2023). Thus, there has been a slight decline of the seven year period.⁶⁶

The ACT does not have the highest rate of Aboriginal and Torres Strait Islander imprisonment in Australia – for example, it is consistently about half that of Western Australia (WA).⁶⁷ In 2023 the

⁵⁹ Disability Justice Strategy Fourth Annual Progress Report 2023, p.5
<https://www.act.gov.au/__data/assets/pdf_file/0005/2407559/Disability-Justice-Strategy-Fourth-Annual-Progress-Report.pdf>.

⁶⁰ Disability Justice Strategy Fourth Annual Progress Report 2023, p.16
<https://www.act.gov.au/__data/assets/pdf_file/0005/2407559/Disability-Justice-Strategy-Fourth-Annual-Progress-Report.pdf>.

⁶¹ See <https://www.act.gov.au/__data/assets/pdf_file/0011/2439722/Evaluation-of-the-Disability-Justice-Strategy-First-Action-Plan.pdf>.

⁶² See <https://www.act.gov.au/__data/assets/pdf_file/0011/2439722/Evaluation-of-the-Disability-Justice-Strategy-First-Action-Plan.pdf>.

⁶³ **Note about financial years:** reference to 2023 is the financial year 2022/23. The same for other years relying on ABS, Productivity Commission data.

⁶⁴ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 8A.5.

⁶⁵ ABS (2024), *Prisoners in Australia 2023*, Table 15.

⁶⁶ See Appendix 4, Table 1.

⁶⁷ ABS (2024), *Prisoners in Australia 2023*, Table 18.

Aboriginal and Torres Strait Islander imprisonment rate was about 30% **lower** than the national average of 2265.8.⁶⁸ At the time of the ALRC report in 2017, the ACT Aboriginal and Torres Strait Islander imprisonment rate was 18% lower than the national rate of Indigenous imprisonment. This represents an improvement driven by a slight decline (5%) in the ACT Aboriginal and Torres Strait Islander rate compared to an **increase** in the national rate of Indigenous imprisonment by 10% over the seven year period.⁶⁹

However, in 2023 the level of over-representation of Aboriginal and Torres Strait Islander people compared to non-Aboriginal people in prison in the ACT is the **highest** in Australia at 21.3. That is, First Nations people are 21 times more likely to be in prison in the ACT compared to non-Indigenous people. **The level of over-representation has grown significantly by 27% since 2017** when it was 15.5. It is also much higher than the national average of over-representation in 2023 which was 15.2.

The more extreme level of Aboriginal and Torres Strait Islander over-representation in prison in the ACT compared to other states and territories is partly explained by the comparatively lower level of non-Indigenous imprisonment in the ACT. Non-Indigenous people are imprisoned in the ACT at half the rate they are across Australia (74.9 in the ACT compared to 149 nationally).⁷⁰ It has been compounded by the fact that while the Aboriginal and Torres Strait Islander imprisonment rate fell slightly by 5% between 2017 and 2023, the non-Indigenous rate of imprisonment in the ACT fell far more quickly by 31% over the same time period.⁷¹ This dramatic drop in non-Indigenous imprisonment in the ACT raises a range of law, policy and practice questions as to why a similar drop was not evident for Aboriginal and Torres Strait Islander people over the same period. In other words, why haven't the achievements in reducing prison numbers for non-Indigenous people been replicated for First Nations people? This is a question which will be addressed in the second stage of the current evaluation.

2.2.2 *Prior Imprisonment*

The ACT has the highest rate of prior imprisonment in Australia, with 80% of all people in prison having been previously imprisoned, which is well above the national average of 61%.⁷²

For Aboriginal and Torres Strait Islander men there is virtually no difference between 2017 and 2023 in the proportion of First Nations men who have been previously imprisoned (89% in 2017 compared to 88% in 2023).⁷³

The proportion of Aboriginal and Torres Strait Islander men previously imprisoned in the ACT is also greater in both 2017 and 2023 compared to Aboriginal and Torres Strait Islander men nationally. In 2017, 89% of Aboriginal and Torres Strait Islander men in the ACT had been previously imprisoned, compared to 77% of First Nations men nationally. In 2023, the percentages for previous imprisonment were similar, 88% in the ACT compared to 79% nationally.

In both 2017 and 2023, Aboriginal and Torres Strait Islander men were also more likely than other men in the ACT to have been previously imprisoned: 89% of First Nations men previously imprisoned

⁶⁸ See Appendix 4, Table 1.

⁶⁹ See Appendix 4, Table 1.

⁷⁰ See Appendix 4, Table 1.

⁷¹ See Appendix 4, Table 1.

⁷² ABS (2024), *Prisoners in Australia 2023*, Table 14.

⁷³ See Appendix 4, Table 2.

compared to 72% of non-Indigenous men in 2017; 88% of First Nations men previously imprisoned compared to 78% of non-Indigenous men in 2017.⁷⁴

In short, there has been little change since the ALRC report in that nearly nine in every ten First Nations men in prison in the ACT have been previously in gaol.

Interpreting the data for Aboriginal and Torres Strait Islander women on prior imprisonment is somewhat more difficult because of the relatively small numbers. However, it is clear, even with these limitations, that the majority of Aboriginal and Torres Strait Islander women have been previously imprisoned.

Data on people who were released from prison and returned to prison with a new sentence within two years is also relevant. In the ACT in 2023 some 47.1% of Aboriginal and Torres Strait Islander people returned to prison within two years. By way of comparison, 29.3% of non-Indigenous people returned within two years. The national average for Aboriginal and Torres Strait Islander people was 54.3% and for non-Indigenous people 35.5%.⁷⁵ Data on Aboriginal and Torres Strait Islander status and return to prison within two years is not available for 2017 so it is not possible to determine whether the situation has improved or worsened over the period.

2.2.3 *Sentenced and Remand*

The percentage of Aboriginal and Torres Strait Islander people on remand in the ACT in 2023 was 49%. This was **higher than the national average for First Nations people on remand** which was 41%. The Aboriginal and Torres Strait Islander remand rate was also **higher than the non-Indigenous rate** (44%) in the ACT.⁷⁶

Interpreting the remand data by gender for Aboriginal and Torres Strait Islander people in the ACT is more difficult because of the relatively small numbers for women.

It is not possible to determine the extent to which remand rates for Aboriginal and Torres Strait Islander people have changed since 2017 because of the absence of earlier ABS data by Aboriginal and Torres Strait Islander status. However, the aggregate data for all persons for 2017 shows that 39% people in prison were held on remand.⁷⁷ **The aggregate data for all persons for 2023 shows a higher remand percentage of 47% than in 2017.**⁷⁸

2.2.4 *Community Corrections*

In 2023 Aboriginal and Torres Strait Islander people comprised 17.6% of all people on community corrections orders.⁷⁹

The age standardised community corrections rate for 2023 for Aboriginal and Torres Strait Islander people was 1742.1. The age standardised community corrections rate for 2023 for non-Indigenous

⁷⁴ See Appendix 4, Table 2.

⁷⁵ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table CA.4.

⁷⁶ See Appendix 4, Table 3.

⁷⁷ ABS (2017), *Prisoners in Australia 2017*, Table 14.

⁷⁸ ABS (2024), *Prisoners in Australia 2023*, Table 14.

⁷⁹ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 8A.6.

people was 160.6. Thus, Aboriginal and Torres Strait Islander people were 10.8 times more likely than non-Indigenous people to be on a community-based order.⁸⁰

The age standardised community corrections rate for 2017 for Aboriginal and Torres Strait Islander people was 2539.6. The age standardised community corrections rate in 2017 for non-Indigenous people was 248.4. Thus, Aboriginal and Torres Strait Islander people were 10.2 times more likely than non-Indigenous people to be on a community-based order.⁸¹

The rate at which both Aboriginal and Torres Strait Islander people and non-Indigenous people were on community-based orders was lower in 2023 than 2017. The rate of decline was equivalent for both groups. What is more significant is the difference between the over-representation of Aboriginal and Torres Strait Islander people in prison compared to their over-representation on community-based orders. Aboriginal and Torres Strait Islander people are over-represented in both groups, however the rate of over-representation in prison (21.3) is double the rate of over-representation for community corrections (10.8) which suggests **a significant difference (for whatever reasons) in the use of and access to community-based sentencing options compared to prison for Aboriginal and Torres Strait Islander people.** This is also evidenced in the statistic that Aboriginal and Torres Strait Islander people comprise 27.2 % of the ACT prison population, but ‘only’ 17.6% of all people on community corrections orders. The reasons for this differential will be explored further in Stage 2 of this project.

The available data on completion of community-based orders by Aboriginal and Torres Strait Islander people in the ACT is **positive**. Some 82.5% of Aboriginal and Torres Strait Islander people complete community-based orders, which is well above the national average of 70% of completions for First Nations people.⁸² It is also significant that there is very little difference between Aboriginal and Torres Strait Islander completion rates and non-Indigenous completion rates in the ACT (82.5% and 84.2%, respectively). The completion of community-based orders by Aboriginal and Torres Strait Islander people in the ACT in 2023 is also **substantially higher** than it was 2017 when completions were 56.1%.⁸³

It is also noteworthy that the ACT has the lowest ratio of community corrections offenders to staff in Australia at 5.6 compared to a national average of 15.4.⁸⁴ This is also a substantial improvement from 2017 when there were 11.6 community corrections offenders for every one community corrections staff member in the ACT.⁸⁵

2.2.5 Policing: Aboriginal and Torres Strait Islander people in Policing Roles

The proportion of police staff (both operational and non-operational) who are Aboriginal and Torres Strait Islander compared with the proportion of the population aged 20–64 years who are Aboriginal and Torres Strait Islander is high by national standards: only the ACT and New South Wales (NSW) have a greater proportion of Aboriginal and Torres Strait Islander police staff than the proportion of Aboriginal and Torres Strait Islander people in the community.⁸⁶

⁸⁰ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 8A.8.

⁸¹ Productivity Commission (2018), *Report on Government Services 2017*, Part C: Justice, Table 8A.9.

⁸² See Appendix 4, Table 4.

⁸³ Productivity Commission (2018), *Report on Government Services 2017*, Part C: Justice, Table 8A.19.

⁸⁴ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 8A.9.

⁸⁵ Productivity Commission (2018), *Report on Government Services 2017*, Part C: Justice, Table 8A.7.

⁸⁶ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 6A.2.

2.2.6 Policing: Satisfaction with Police and Police Integrity

In 2023, the ACT had the second lowest proportion (after the NT) in Australia of adults who reported they were ‘satisfied’ or ‘very satisfied’ in general with the services provided by police. The level of satisfaction in the ACT has fallen by 10 percentage points since 2017. The level of satisfaction from those adults who had contact with the police over the previous 12 months was close to the national average.⁸⁷

In relation to police integrity, the proportion of adults in the ACT who reported that police performed their job professionally and were honest was slightly higher than the national average. However, in relation to the question of whether ‘police treated people fairly and equally’, the ACT had the second lowest proportion of adults in Australia (after the NT) who agreed with the statement. The proportion of adults in the ACT believing that police treat people fairly and equally has fallen nearly 20 percentage points since 2017.⁸⁸

While the questions concerning satisfaction and integrity do not specifically address Aboriginal and Torres Strait Islander people, they do speak to the broader questions of police legitimacy. **The declining belief among those surveyed over recent years that police treat people ‘fairly and equally’ does raise issues relating to systemic discrimination and its potential impact on Aboriginal and Torres Strait Islander people.**

2.2.7 Police Diversion

In 2023, the ACT had the lowest proportional use of youth diversion for all young people in Australia. For Aboriginal and Torres Strait Islander young people in the ACT the situation was particularly worrisome. **Only 10% of First Nations youth were diverted compared to 30% for non-Indigenous youth.** The proportion of Aboriginal and Torres Strait Islander young people diverted by police declined dramatically after 2016. The ACT currently has the lowest use of diversion for Aboriginal and Torres Strait Islander young people in Australia – it is three times lower than, for example, in NSW, Victoria, WA and the NT.⁸⁹

The ACT Police provided further data on Aboriginal and Torres Strait Islander and non-Indigenous offenders aged under 18 years old by clearance type for 2023-24. Table 5 in Appendix 4 confirms that there is infrequent use of diversionary options and most young people go through the court process. However, the failure to use diversionary options for Aboriginal and Torres Strait Islander children was more pronounced. For example, only 2.2% of Aboriginal and Torres Strait Islander young people were issued a caution compared to 13.5% of non-Indigenous young people. They were also less likely than non-Indigenous young people to receive any of the other diversionary options available.

Although the ALRC report and recommendations did not focus on youth justice, the issue of police diversion and Aboriginal and Torres Strait Islander youth is important for the broader question of policing and Aboriginal and Torres Strait Islander people more generally. **The disparity in use of diversion highlights whether there are problems with systemic discrimination in police practices.**

⁸⁷ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 6A.6. The ACT Police response to the draft report notes that the ‘ACT Policing would recommend a statement around the reliability of the data noting changes in survey methodology has made it increasingly difficult to make valid comparisons to both the national average and year on year’. However, the Productivity Commission notes in relation to Table 6A.6 that ‘Data is comparable (subject to caveats) across jurisdictions and over time’. The same comments also apply below to Table 6A.7.

⁸⁸ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 6A.7.

⁸⁹ Productivity Commission (2024), *Report on Government Services 2024*, Part C: Justice, Table 6A.9.

In addition, the failure to divert a young person can lead to the accumulation of a criminal record which then impacts on sentencing, including later in an adult court. In other words, early disparities in treatment compounds through the criminal justice system.

The ACT Police response to the Review in relation to the issue of diversion focusses on Restorative Justice diversion and notes, ‘We consider there are numerous possibilities as to why ACT Policing is submitting less referrals to Restorative Justice (RJ):

- Victims or offenders do not want to participate, or offenders deny involvement in the offence
- Many offences are not eligible for RJ, due to the legislated eligibility criteria
- Cautions are issued instead of RJ referral due to the length of the RJ process’.

The Police response states further that the long wait times (16 weeks) for a referral to be allocated to a convenor may negatively impact on the willingness of either the victim or offender to participate. It is also noted that First Nations people suspected of an offence and/or arrested and charged may not identify to the police officer in the initial process so are not recorded as Indigenous. However, ACT Policing’s response does not address the systemic problems in the low use across all forms of diversion applicable to young people and particularly Aboriginal and Torres Strait Islander young people.

2.2.8 *Criminal Courts and Sentencing*

Analysis of sentencing outcomes is complex, given the range of factors that impact on any particular individual sentencing decision. These factors include, for example, the seriousness of the offence, the impact on the victim, the offender’s criminal history, personal circumstances and prospects for rehabilitation, the legislative framework, the potential importance of specific and general deterrence and community protection, and so on.

Table 6 in Appendix 4 shows the principal sentence for finalised defendants with a guilty outcome in all ACT criminal courts by whether they were Aboriginal and Torres Strait Islander or not. First Nations people were 10% of defendants with a guilty outcome. However, they comprised 20% of custodial sentences to prison, 18% of ‘intensive penalties in the community’ and 16% of suspended sentences of imprisonment.⁹⁰ All these three sentencing outcomes are at the upper end of the sentencing hierarchy.

2.2.9 *Summary of the Issues Raised by the Data.*

As indicated below, there are mixed results in relation to achievements in reducing Aboriginal and Torres Strait Islander contact with the criminal justice system.

The imprisonment rate for Aboriginal and Torres Strait Islander people in the ACT was approximately **5% lower** in 2023 than it was in 2017. Thus, there has been a slight decline of the seven year period.

In 2023 the Aboriginal and Torres Strait Islander imprisonment rate was about 30% **lower** than the national average. While there has been an improvement since 2017 in the ACT, the national rate for Aboriginal and Torres Strait Islander imprisonment rose by 10% over the seven year period.

The level of Aboriginal and Torres Strait Islander over-representation has grown significantly by 27% since 2017 in the ACT. This growth in over-representation can be partly explained by the comparatively

⁹⁰ We have used ABS definitions of sentencing outcomes as we are relying on ABS data (ABS (2024) *Criminal Courts, Australia 2022-2023*).

lower level of non-Indigenous imprisonment in the ACT. The non-Indigenous rate of imprisonment in the ACT fell by 31% over 2017-2023.

For Aboriginal and Torres Strait Islander men there is virtually no difference between 2017-2023 in the proportion of First Nations men who have been previously imprisoned: nearly nine in every ten First Nations men in prison in the ACT have been previously in gaol. The proportion of Aboriginal and Torres Strait Islander men previously imprisoned in the ACT is also greater compared to Aboriginal and Torres Strait Islander men nationally.

The percentage of Aboriginal and Torres Strait Islander people on remand in the ACT in 2023 was 49%. This was higher than the national average for First Nations people on remand which was 41%.

Aboriginal and Torres Strait Islander people were 10.8 times more likely than non-Indigenous people to be on a community-based order. The rate of over-representation in prison (21.3) is double the rate of over-representation for community corrections (10.8) which suggests a significant difference (for whatever reasons) in the use of and access to community-based sentencing options compared to prison for Aboriginal and Torres Strait Islander people.

Data on completion of community-based orders by Aboriginal and Torres Strait Islander people in the ACT is positive. Some 82.5% of Aboriginal and Torres Strait Islander people complete community-based orders, which is well above the national average of 70% of completions for First Nations people.

The proportion of police staff (both operational and non-operational) who are Aboriginal and Torres Strait Islander people compared with the proportion of the population aged 20–64 years who are Aboriginal and Torres Strait Islander is high by national standards.

The proportion of adults in the ACT who believe that police treat people fairly and equally has fallen nearly 20 percentage points since 2017. While the questions concerning satisfaction and integrity do not specifically address Aboriginal and Torres Strait Islander people, they do speak to the broader questions of police legitimacy. The declining belief among those surveyed over recent years that police treat people ‘fairly and equally’ also raises issues of potential systemic discrimination.

The ACT currently has the lowest use of diversion for Aboriginal and Torres Strait Islander young people in Australia – it is three times lower than, for example, in NSW, Victoria, WA and the NT. The disparity in use of diversion highlights whether there are problems with systemic discrimination in police practices. Early disparities in treatment compounds through the criminal justice system.

Aboriginal and Torres Strait Islander people were 10% of defendants with a guilty outcome in all ACT criminal courts in 2023. However, they comprised 20% of custodial sentences to prison, 18% of ‘intensive penalties in the community’ and 16% of suspended sentences of imprisonment.⁹¹ All these three sentencing outcomes are at the upper end of the sentencing hierarchy.

The Galambany sentencing courts are a positive innovation, and the number of people being sentenced by the court has grown significantly in recent years.

⁹¹ We have used ABS definitions of sentencing outcomes as we are relying on ABS data (ABS (2024) *Criminal Courts, Australia 2022-2023*).

3. ASSESSMENT OF THE IMPLEMENTATION OF THE ALRC RECOMMENDATIONS

3.1 Assessing implementation of each ALRC recommendation

As noted in our Introduction, we have sought to assess the implementation of the ALRC Recommendations on the basis of whether actions undertaken by the ACT Government meet the intent of the recommendations as described by the ALRC, irrespective of whether the actions undertaken occurred prior to or after 2017. We have used qualitative data from stakeholder interviews and submissions, as well as government submissions in making decisions about the extent of implementation.

We have also used criminal justice system data where available to assess any changes which have occurred over the period 2017-2023. For example, the data on imprisonment in the ACT shows a 5% decline in Aboriginal and Torres Strait Islander imprisonment between 2017-2023 which is positive but much smaller than the decline in non-Indigenous imprisonment over the same period (30%).

Table 3.1 below identifies each of the recommendations and whether they are fully, partially or not implemented, or no longer relevant. Key criteria and methods applied to this assessment process are as follows. Firstly, we have considered *all* aspects or parts of individual recommendations. Where recommendations are more straightforward, the assessment process has also been less complex. Recommendation 6-1, for instance, requires legislative provisions that ensure factors affecting Aboriginal and Torres Strait Islander peoples are accounted for during sentencing. The ACT does not currently have such provisions in place, so the recommendation is identified as not implemented. Other similar examples include, for instance, Recommendations 7-4, 7-5, 9-2, 10-4, 10-5, 16-2.

Where all aspects of each recommendation have not been implemented sufficiently, a recommendation may be identified as partially implemented. The ALRC Recommendations may, for example, require introduction or implementation of programs with the participation of Aboriginal and Torres Strait Islander people. Where programs are in place, but Aboriginal and Torres Strait Islander involvement has not occurred or perhaps has occurred to a minimal extent we have identified implementation as partial. Examples include Recommendations 5-2, 10-3, 11-1, 12-3.

In some cases, approaches or programs have been developed/implemented in line with a recommendation, but with significant or notable gaps or omissions remaining. Examples include Recommendation 11-1 related to introduction of programs and services for Aboriginal and Torres Strait Islander women. The absence of a female-only prison and women's shelter for Aboriginal and Torres Strait Islander women in the ACT has contributed to identification of this recommendation as partial. See also, for example, Recommendations 10-1, 12-2, 12-3.

We have noted where gaps in information provided by the ACT Government on implementation (including data) has led to identification of a recommendation as partially or not implemented. These gaps might relate, for instance, to the way a recommendation was implemented or its level of engagement with or utility for Aboriginal and Torres Strait Islander people.

For example, Recommendation 9-1 refers to introduction of prison programs addressing offending behaviour/preparing people for release, including for those on remand/short sentences. The information provided by the ACT Government on relevant programs in the ACT is not sufficient to identify their application to these particular groups and this recommendation is identified as partially implemented. Other examples include Recommendations 11-1, 11-2. Gaps in information provided have also impacted on our assessment of Recommendation 14-2 related to government review of ACT police complaints mechanisms to ensure independence and accountability. Though the response provided

identifies that some action has been taken in this context, it is insufficient to fully understand the process of review undertaken or outcomes it delivered. Stakeholder comments also commonly identified continuing problems in this area. We have therefore identified this recommendation as not implemented.

Recommendation 14-2 is an example of ALRC Recommendations that involve both a process and specified outcomes. In other instances, it is clear that the ACT Government has initiated or engaged in the required process and the outcome of that process is not clear, but we have still been able to identify the recommendation as at least partially implemented – particularly where outcomes are not entirely in the control of the ACT Government. Recommendation 4-1 is an example of this. This requires that the ACT Government support establishment of a national justice reinvestment body that will carry out certain justice reinvestment related activities. The ACT Government has been actively involved in the current Commonwealth-led process of the design of the national body, and though the outcomes of that design process are not clear we identify their involvement as sufficient to classify Recommendation 4-1 as fully implemented.

In other instances, the ACT Government has engaged with a relevant process, but we have identified the recommendation as not implemented as the outcomes are uncertain. For instance, the ACT Government discusses the Law and Sentencing Advisory Council review of bail provisions to describe implementation of Recommendation 5-1 related to the development of stand-alone bail provisions that consider Aboriginal and Torres Strait Islander status in bail decision-making. In this instance, outcomes of the review process are too uncertain for the recommendation to be identified as implemented.

Some recommendations are identified as fully implemented, but with caveats. This is the case where there are conditions or limitations impacting on implementation or on our assessment of a recommendation. This includes, for instance, where a pilot has been introduced (e.g. Recommendation 6-2 and the Supreme Court pilot of Aboriginal Court Experience Reports) or where other ‘unknowns’ arise.

For instance, Recommendation 8-1 requires that mandatory sentencing/presumptive sentencing legislative provisions are repealed. While the ACT Government reports that it does not have mandatory sentencing provisions in place, concerns were raised by stakeholders about potential provisions leading to presumptive sentencing. Recommendation 8-1 is therefore identified as fully implemented, with caveats. As a further example, Recommendation 13-2 requires government support for community-led alcohol management mechanisms, which we have identified as not implemented, with a caveat that this recommendation is not particularly relevant to the ACT. See also Recommendations 5-1, 5-2, 8-1, 10-1.

Recommendations 15-1 and 16-1 are identified as no longer relevant. These recommendations relate to a national inquiry into child protection laws and establishment of national criminal justice targets, and both primarily require action on the part of the Commonwealth (although Recommendation 16-1 requires input and action from state and territory governments).

3.1.1 Table 3.1 Assessment of 35 ALRC Recommendations

Implemented, Partially Implemented, Not Implemented, No Longer Relevant

RECS	RECS Detail	Implemented	Partially Implemented	Not Implemented	No Longer Relevant
4-1	National justice reinvestment body	X [with caveats]			
4-2	Justice reinvestment trials	X [with caveats]			
5-1	Bail provisions and Aboriginal and Torres Strait Islander status			X [with caveats]	
5-2*	Guidelines – bail provisions			X [with caveats]	
	Bail support and diversion options		X		
6-1	Legislative provisions and Aboriginal and Torres Strait Islander status			X	
6-2	Experience Reports – superior courts	X [As a pilot scheme]			
6-3	Factors – summary courts		X		
7-1	Community-based options		X		
7-2	Flexibility of community-based options	X			

7-3	Completion of community-based options		X		
7-4	Suspended sentences	X			
7-5	Short sentences	X			
8-1	Mandatory sentencing	X [with a caveat]			
9-1	Prison programs		X		
9-2*	Court-ordered parole			X	
	Street time	X [with a caveat]			
10-1	Interpreters		X [with caveats]		
10-2	Specialist courts	X			
10-3	Aboriginal participation in courts		X		
10-4	Unfit to stand trial	X			
10-5	Period review	X			
11-1	Programs/services for women		X		
11-2	Police and DV/FV		X		
12-1	Abolish imprisonment for unpaid fines			X	

12-2	Reducing impacts of fines/notices		X		
12-3	Driver licensing services		X		
12-4	Offensive language provisions			X	
13-1	Alcohol initiatives (First Nations developed and led)	X			
13-2	Government support for alcohol management			X [with a caveat]	
14-1	Review police practice/procedure		X		
14-2	Review police complaints process			X	
14-3	Custody Notification Service	X [with a caveat]			
14-4	Cultural change		X		
15-1	National inquiry – child protection				X
16-1	Justice targets				X
16-2	Justice agreement	X			

*There are two separate parts to Recommendations 5-2 and 9-2

3.2 Generic issues related to implementation

We now turn to the broader issues that have been identified in our research as barriers or limitations to implementation of the ALRC Recommendations.

3.2.1 *Implementation overall*

Stakeholders in general indicated the ACT should be doing better to address Aboriginal and Torres Strait Islander over-representation – potentially ‘leading the country’ in this area, ‘but we’re not’, as one legal service provider/legal professional stated. The size of the jurisdiction also means, for some, that real change is possible. There are ‘many areas for improvement. That said, the ACT as a small jurisdiction and has the opportunity to do much better’ and the ability to make sustained improvement fairly quickly with proper funding and political will, one legal service provider/legal professional suggested.

The ACT is also seen as comparatively progressive, in some respects – for example, the ACT Government’s position on raising the minimum age of criminal responsibility is noted in this context. However, both the government’s intention for the AMC to be centred on a human rights approach and its justice reinvestment approach were identified by some stakeholders as not having fulfilled their promise (see also Recommendation 4-1).

The AMC is just a horrible place for a human being. We can't understand why it runs the way that it does. And if you look at their website, it looks like it must be a great place to be, but in reality it is not, and those people are in there, bored, not enough to do. It's the opposite of [the human rights prison that it was set up to be]. So, the reinvestment, where is it? I just don't know. (Legal service provider/legal professional)

Stakeholders identified too that debate and discussion in the ACT has centred more recently on a somewhat more punitive approach to offending and the prioritisation of community safety, with the national discussion of domestic violence and of more restrictive access to bail identified as two relevant examples in this context. Some were concerned that this might influence agendas and impede implementation of ALRC Recommendations (e.g. see Recommendations 5-1, 8-1).

3.2.2 *Lack of coordination and accountability*

There was a sense amongst some stakeholders that ACT Government responses to over-representation in general are not implemented in a sufficiently integrated fashion. ‘My view as to how the ACT government operates in this space of trying to address Indigenous justice issues is that it’s haphazard and it’s not structured’ (Legal service provider/legal professional). Good programs are seen as coming and going, disappearing when they are de-funded or when government priorities shift, alongside a lack of clear direction more broadly.

We did have something ... called Narrabundah House designed for our young Aboriginal people in transition and young Aboriginal people in the justice system. They came in, changed the model. We have no Aboriginal children in that Narrabundah House anymore. It still operates – to what degree, we don't know ... We don't know how that model looks anymore. (Aboriginal and Torres Strait Islander or other non-government service provider)

Whatever happened to the Driver Licensing program? That was a great justice reinvestment program. It was funded through the ACT Safety Directorate. And it was only piloted for a particular time. And the funding just stopped... It just stuck out to me as an obvious program

that could be put back on the agenda that I really saw that actually worked, that made a difference. And I just never understood why that went away. (Legal service provider/legal profession)

Similar issues were evident in ALRC implementation, with stakeholders identifying the latter as piecemeal or ad hoc in nature. For one stakeholder, this was evident in the almost scatter gun approach evident in the ACT Government's written responses to this review.

... looking at how's the government going in the implementation ... and the information you are able to provide us as to what they're doing. There are no dates, it's just a jumble of information that's being thrown on a piece of paper and sent off. And I think that's telling in relation to their overall approach to this stuff... (Legal service provider/legal professional)

Stakeholders identified difficulties in keeping track of implementation by government of the ALRC Recommendations, including because of its lack of formal coordinated response to the 2017 report. This was apparent in conversations with stakeholders about implementation of government strategies and initiatives in general, as well as ALRC Recommendations. It was also an issue for the team conducting this review, to an extent.

There's a lot of reports and there's a lot of things that the government may do that the community isn't even aware of So, what the government does and what the community is aware of are very different things and we won't always know. That's a real problem. (Legal service provider, legal professional)

The latter point relates both to a lack of coordination within the ACT Government's approach, but also problems of engagement with and transparency to stakeholders and the broader community. From an outside perspective there seems to be lack of consultation with frontline justice delivery through which an understanding of challenges at the coalface might be identified to inform responses to over-representation in the ACT. The same could be said for ongoing community consultation (see also below). This leads to an absence of shared understanding, direction and buy-in to the work to be done and ultimately impacts on outcomes.

It doesn't seem to have an umbrella [sitting across this or] order [through] which you can engage with the government or them engage with ACCOs and know that we're on a path and the journey's ahead of us. And we know where we're trying to get to and what we're trying to achieve ... (Legal service provider/legal professional).

There needs to be a sense of direction and structure so people can act, can be pulled in and engage and know where government is trying to get to. And that's just completely lacking. It's just not there. (Legal service provider/legal professional)

Perhaps exacerbating the above issues, it was suggested that there was a lack of First Nations people in senior leadership roles across government and within the justice sector.

Stakeholders identified the need for a more systematic, transparent mechanism for implementation that engages key stakeholders to ensure effective oversight of responses to over-representation. This approach would support both identification of positive community led initiatives and evaluation of these initiatives. Current approaches mean there is little accountability on the part of the ACT Government to either community and stakeholders and around recommendations such as those of the ALRC, leaving recommendations unimplemented or inadequately implemented.

The ACT government, they're good with the talk but they're not great when it comes to implementing any of the recommendations ... But we've got all these inquiries, all these

reports, but the recommendations don't get implemented (Aboriginal and Torres Strait Islander or other non-government service provider)

The ACT Government's approach to Our Booris Our Way (OBOW) was highlighted as more positive in this regard (see Recommendation 15-1 related to child protection).

There is some shape in relation to what's happening in the child protection space with the Our Booris Our Way report, and the group that sits around that and some of the implementation in relation to working with Indigenous families in the child protection space. But that's just one part of the whole picture of trying to address the chronic and difficult concerns that face community when we talk about Aboriginal people in the justice space and there just doesn't seem to be an overarching shape or organisation and a pathway laid. (Legal service provider/legal professional)

The benefits of more integrated responses, in particular in a small jurisdiction such as the ACT, were also discussed as follows.

For a long time now the ACT has implemented a co-ordinated, integrated criminal justice system response to Family Violence via the ACT Family Violence Intervention Program. That program has always been overseen by a coordinating committee with representation on the committee of numerous stakeholders – police, prosecution service, legal services, care and protection, community sector supports. As part of this program an individual case tracking or case management system was introduced. There could be very real benefit to a similar model being introduced to achieve the overarching, coordinated approach which would provide transparency, accountability and ongoing evaluation. (Legal service provider/legal profession)

3.2.3 *Individual and systemic racism*

Issues of racism, both individual and systemic were raised by some stakeholders.

ACT is a very government-run state, and [it has] very biased and racial government and services. And it trickles down into everywhere... The bias that they still have on our young men, women, and not only our youth – the bias and the racism [are] huge still. (Aboriginal and Torres Strait Islander or other non-government service provider).

Some stakeholders identified racism within ACT Government systems as likely to impact on implementation in different ways, including manifesting as an inability to trust Aboriginal and Torres Strait Islander people to implement solutions to over-representation (see below). Related to the above discussion of limited accountability, racism was seen as an issue impacting individuals and operating at a systemic level, including where there are limited (culturally safe) mechanisms for complaints about racism to be raised.

There's no Aboriginal and Torres Strait Islander representation within the AMC hierarchy/bureaucracy. There's no Aboriginal people they can go to, to seek review of an assault, for example, that might have occurred. If it's the detainee's allegation that they've been treated unfairly, or in a racially motivated manner, even if they are wrong about that, there's no one for them to speak to, to have a review conducted. (Legal service provider/legal profession)⁹²

⁹² We note in relation to the AMC that detainees may request support from the AMC Cultural Services Unit.

The ACT Human Rights Commission mechanisms were discussed in this context. ‘Very often the process is ineffective, other than to give people the idea that, well, look, it would be good if it worked, and it’s nice that we have the opportunity to tell someone what happened’ (Legal service provider/legal profession). ‘Even when someone quite senior in the community says, hey, do something. It’s just we feel like we do a lot of talking but we’re not heard’ (Legal service provider/legal profession). The barriers to accessing human rights complaint mechanisms are discussed further below (Section 4.11.3).

The absence of relevant government data on outcomes and participation by Aboriginal and Torres Strait Islander people in various parts of the criminal justice system (as we discuss below), also impedes more concrete analysis of potential systemic discrimination.

3.2.4 Access to data

The absence of relevant government data was briefly noted above in discussion of ACT Government material submitted for this review. This has, at times, impacted on our ability to assess implementation. In discussion of Recommendation 9-2 we identified having no access to data measuring numbers of applications for street time, how often applications have been successful or the extent to which Aboriginal and Torres Strait Islander people in particular have been able to make an application.

Data is important more broadly (outside of this review) to evaluation of measures implemented to reduce over-representation and their effectiveness. This was raised by stakeholders, for instance, in discussion of government measures aimed at addressing the disproportionate impacts of fines/infringement notices on Aboriginal and Torres Strait Islander people (see Recommendation 12-2). To fully assess the effectiveness of these measures for Aboriginal and Torres Strait Islander people, Aboriginal and Torres Strait Islander specific data is required. One stakeholder (First Nations community member) stated: ‘Well, what I’d be saying is, give us the data on the Aboriginal people that access that program ... and it probably wouldn’t be more than five, I wouldn’t think.’ A legal service provider/legal profession also stated that ‘getting our hands on proper data is a constant thing that I find we’re up against with the ACT’. In discussion of the Custody Notification Service, for instance, this stakeholder suggested that it was not possible to make an accurate assessment of how well the service is working without data on numbers of eligible persons in custody (see Recommendation 14-3).

Data is also, of course, essential for identifying what implementation measures should be introduced.

This idea that if we're going to try and tackle the overrepresentation of people on remand at the AMC and whether or not bail should be easier to get for Aboriginal people in certain circumstances, or what should the threshold be for people to get bail. The starting point we need to have is how many? What's the data telling us? And I've always been challenged by not being able to get succinct, fulsome data from the ACT on these issues. I know ACT is small. They can't have a BOCSAR [Bureau of Crime Statistics and Research]. But where's the data, for God's sake? Where's the data? What's the data telling us? What is the level of people on remand, as opposed to sentenced? And to interrogate the need for there to be a shift, we have to recognise how many people are bail refused on particular matters that potentially they should be released for? And is being on remand driving up incarceration rates? (Legal service provider/legal professional)

We note that if relevant data is not being collected, this presents challenges for monitoring and evaluation. If data is collected but not made accessible, this has further implications for ACT Government accountability (as above), including that which arises because of its commitments made under Closing the Gap – a point raised by various stakeholders.

We note that JACS is undertaking various projects to address and improve the data it holds. These activities are directed to:

- compiling existing data in a manner accessible to First Nations communities and looking to streamline existing data held in different systems by different arms of JACS to address Closing the Gap Priority Reform Four: Shared access to data and information at a regional level⁹³
- providing an evidence base to support robust evaluation of existing programs.

3.2.5 *Aboriginal and Torres Strait Islander participation*

The ALRC Recommendations frequently require involvement of Aboriginal and Torres Strait Islander organisations and communities in various aspects of implementation, as noted in Section 3.1. This incorporates identification of support needs/gaps, development and design of initiatives and direct implementation most commonly.

Even where there is no explicit statement within recommendations about their involvement, that Aboriginal and Torres Strait Islander people must be participating at all stages of implementation should be a given. This includes Aboriginal and Torres Strait Islander people involvement in the design and implementation of frameworks and processes for monitoring and evaluation of implementation measures – a point raised above in discussion of government transparency and accountability. As an example, Recommendation 10-2 requires that specialist Aboriginal and Torres Strait Islander sentencing courts are ‘culturally safe, competent and appropriate’. Aboriginal and Torres Strait Islander people should participate in identifying whether these outcomes have been achieved. As a further example, Recommendation 11-2 states that police must be receiving instruction in best practice for handling family violence. Aboriginal and Torres Strait Islander people should be involved in developing and delivering this instruction to police.

As our assessment of implementation of the ALRC Recommendations indicates, sometimes this is occurring and in other instances it is not. First Nations participation in all stages of implementation of measures designed to reduce over-representation was identified by stakeholders as a broader issue, beyond implementation of one or other ALRC Recommendation, however. This issue arises, for instance, in relation to justice funding related decision-making in the ACT – at present, largely in the control of the ACT Government,⁹⁴ though we note that a government-led commissioning process has been initiated to provide opportunity for First Nations input into the latter decision-making including prioritisation of issues.

Both government and non-government stakeholders discussed the need to establish more representative structures through which First Nations community members and organisations in the ACT might be engaged, including to input into decision-making related to justice issues. There was a sense that consultation was currently not sufficiently genuine and did not go far enough into the wider First Nations community. ‘There might be an approach to existing Indigenous programs, but [it’s] not necessarily engaging with the community’, a legal service provider/legal professional suggested.

⁹³ See <<https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/four>>.

⁹⁴ In their response the ACT Government has referred to a Crime Prevention Fund that provides seed funding for crime prevention initiatives that are identified in consultation with the First Nations Justice Branch rather than with wider Aboriginal and Torres Strait Islander input, for instance.

There was discussion of the existing justice caucus in this context. While the group has representation of key Aboriginal organisations in the ACT (including the ALS, Yeddung Mura, ATSIEB and Winnunga) it is seen as very government top-heavy, government-led and as quite different to the Victorian Aboriginal Justice Caucus on which it was apparently modelled. Caucus meetings were identified by one stakeholder as infrequent, and attendance of (what is seen to be a long list of) members as inconsistent, at best. This is perhaps indicative of a lack of buy-in to this particular structure by First Nations people and organisations in the ACT.

ATSIEB is also seen as needing enhancement. They were seen as somewhat disconnected from the community, having limited authority and being too close to government.

The idea of the elected body and what it is trying to achieve on paper is a fantastic thing. The issue is in making it happen and ... letting it have the gravitas that it should have as the picture paints on paper. I was very excited about the idea of an elected body in the ACT years ago and attempted to ... engage with those guys. I wouldn't say there were roadblocks, but it was definitely challenging to [see how they are] being engaged with in a meaningful way by the department ... [I]t is the department supposedly supporting them to engage and come up with ideas and solutions and to give their views and opinions on pretty much everything that's going on in government. I mean, that's what it's supposed to do. (Legal service provider/legal professional)

... until it's a statutory authority it's always going to be seen as a part of the government. Because even for them to do a media release it has to go through the government. That's not a very democratic process as far as I'm concerned. (Aboriginal and Torres Strait Islander or other non-government service provider)

ATSIEB is also identified as not being specifically focussed on justice and in this and other ways compared less favourably with something like an Aboriginal Justice Advisory Committee (AJAC).

The elected body is nothing like an AJAC. I can't think of any commonality between the elected body and an AJAC. They have their very part time office holdings ... And the community can't go to the elected body the way that they would go to an AJAC for help. They just don't have the remit or the delegation that an AJAC would have. (Aboriginal and Torres Strait Islander or other non-government service provider)

There was discussion of a previous Aboriginal Justice Centre in the ACT. 'I think back then people felt like we did have a voice', stated one Aboriginal and Torres Strait Islander or other non-government service provider. There were strong calls for an independent First Nations-led body to be set up to oversee implementation of ALRC Recommendations and other measures designed to reduce over-representation. This body may increase coordination, accountability and all-important Aboriginal and Torres Strait Islander participation and leadership required to deliver better justice outcomes.

A justice related body to oversee, scrutinise and coordinate the approach to First Nations Criminal Justice with an expectation of compulsory participation from key agencies and community groups, would be an excellent first step. It is our observation that there are pockets of work being conducted across the ACT. Government and community would benefit greatly from a common understanding of the work being performed by community groups and of the programs being funded and/or driven by government. Such a body would also facilitate ongoing consultation with community by government so that issues could be addressed as they arose, and positive relationships could be fostered. (Legal service provider/legal profession)

Comments provided to our review by the First Nations Justice Branch appear to indicate satisfaction with the current arrangements. The Branch noted the following:

- Caucus and the associated Justice Advisory Group ceased functioning during COVID and recommenced regular bi-monthly meeting in February 2023. Caucus has reestablished itself as a relevant conduit between the Community and Government particularly in relation to its primary role of monitoring government action against the Justice Implementation Action Plan and maintaining the accountability of JACS to the commitments it has made to improve justice outcomes for Aboriginal and Torres Strait Islander people in the ACT.
- Of relevance to oversight, is the role of the Justice Advisory Group. Under its Terms of Reference its role is to oversee and monitor the ACT Government's Justice Implementation Plan as part of the reporting framework for the *ACT Aboriginal and Torres Strait Islander Agreement (2019-2028)*.
- Justice Advisory Group is co-chaired by the Deputy-Director General of Community Safety and the justice representative on the Aboriginal and Torres Strait Islander Elected Body.
- The ACT Justice Advisory Group comprises senior executives from agencies responsible for deliverables under the Justice Implementation Plan which forms part of the Aboriginal and Torres Strait Islander Agreement.
- The Justice Advisory Group provides advice on priorities and progress to the Aboriginal and Torres Strait Islander Inter-Departmental Committee (IDC). The IDC is the third and final level in the reporting framework and monitors all Directorate's Action/Implementation Plans under the Agreement.

3.2.6 *Community-based early intervention/prevention responses*

Current decision-making about resourcing of implementation impacts on the capacity and accessibility of community-based early intervention/prevention approaches to addressing over-representation. In Part 4 we identify areas where this has specifically impacted on effectiveness of implementation measures. We observe that government funding for a small number of organisations and programs with only so much capacity is identified by the ACT Government as implementation of multiple recommendations.

The money's not flowing through to the places that it should ... It's ridiculous how poorly funded this community is ... We've got lots of work. It's not being chewed up in fancy cars or mobile phones. We're doing the work, day in, day out and just do not have that support that we need. Transitional Accommodation Program – [read the] small print: they fund Yeddung Mura for four places. That's actually two properties where two people, unrelated parties can stay. So, it's not many. And Yeddung Mura just don't have that framework to do the amount of work that needs to be done. And they are one service that's tasked with the whole of the ACT. That's what you'll find in the ACT, I think, with everything. (Legal service provider/legal professional)

The need for well-resourced *Aboriginal-led* service and program delivery in this context was strongly emphasised, but as some stakeholders identified, did not appear to always be well understood by government.

[P]eople will engage where they feel culturally safe, and they can trust that you're not an extra limb of government, and you are truly going to protect their information and keep it safe. We have not just a legal and a moral but a cultural obligation to do so ... I know there's a lot of talk,

but when you work in the sector you don't see it reflected in the policies and the actions and the programs that are provided. You don't see it in the numbers. If you deal with any of the more mainstream organisations, even legal organisations, some of them don't even have Reconciliation Action Plans. Some of them say, what's the point, what's the relevance of this to us? So, I think it's really misguided if the government thinks that a standard approach will work. I think it needs to listen to what is being said by federal, national [governments] and at a local level, that the First Nations organisations, if properly funded, know how to direct that money and use it properly. (Legal service provider/legal professional)

There's been a real lack of trust from ACT Government in relation to our community here and in relation to community organisations. And they're in the process of changing that, but I don't know what that's going to look like in 12 months' time or two years' time. But there has been a lack of trust in services in... You've just got to look at Boomanulla Oval here. They've had ownership... It was community-run, community-led, but ACT Government have taken it back and they're hanging on. They refused... They're saying that they want to hand it back, but they're doing nothing in order for that to happen. And yes, that lack of trust is something that everyone is talking about at some point. (Aboriginal and Torres Strait Islander or other non-government service provider)

There was discussion too of the disproportionate amounts of resourcing for government and government responses, including the AMC, compared to those that might be led by community-based organisations. This is discussed in relation to implementation of Recommendation 4-2 in Part 4. We note that the Build Communities Not Prisons Matrix (see Appendix 2) provided by the ACT Government, for instance, refers to 'Community Building Capabilities', but the initiatives listed (including as 'Early Support') do not have a strong focus on community-led or community-based approaches.

... because practically, what does it mean, justice reinvestment? All the ACCOs are underfunded... there's only a few people there, there's not hundreds. That's in comparison to the government departments that are here everywhere that are littered with staff. (Legal service provider/legal profession)

The proportion of funds to the government compared to our community is disproportionate. So, when there's discussions about justice reinvestment, what does that mean? I go out to Yeddung Mura, I just don't see it. I really don't see it. And these reports and things that are made, what do they mean? Where does this money go? (Legal service provider/legal profession)

Salaries for government were identified as often quite a lot higher than they are in the community sector, as a further related point. This impacts on recruitment of Aboriginal and Torres Strait Islander staff in this sector.

Too many people have got their fingers in the pie. We fight, struggle to compete against all these [government] units being set up ... We fight, struggle to compete against all these units being set up. Because they employ Aboriginal people as ASA5s and ASA6. And here in the ACT an ASA6 is AU\$120,000 a year ... I need to be able to retain my staff. Therefore, I need to look at paying the same as what the government is paying. (Aboriginal and Torres Strait Islander or other non-government service provider)

The JACS response to the comments above were that they remain committed to strengthening the ACCO sector pursuant to [Closing the Gap] Priority Reform 2. They noted

The Commissioning process seeks to address funding adequacy – not only to meet service needs but to strengthen ACCOs. Resourcing needs, including the adequacy of community sector

salaries, are therefore being examined through this process, and through ongoing relationships with ACCOs in the ACT. Recent increases in the community legal sector award has resulted in increased funding to incorporate these changes.

3.2.7 Conclusion

There were multiple barriers and limitations to effective implementation of the ALRC Recommendations which were identified by stakeholders. These included in particular the perceived lack of coordination and accountability, ongoing issues of racism including systemic racism, the absence of data which both inhibited more targeted implementation of programs and the ability to hold government accountable.

Aboriginal and Torres Strait Islander participation in the processes of decision-making and the limited funding available to Aboriginal and Torres Strait Islander services was also raised as a barrier.

Several stakeholders also raised the point that many of the programs relied upon in the ACT Government response to the request for information on the implementation of the ALRC Recommendations have been around for years and pre-dated the 2017 ALRC report. While we have not taken this into account in deciding whether an ALRC Recommendation has been implemented or not, it is relevant to the point of whether the reform agenda in the government in relation to remedying the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system has stalled over recent years.

4. DETAILED RESPONSES TO INDIVIDUAL RECOMMENDATIONS

4.1 Justice Reinvestment (Recommendations 4-1, 4-2)

4-1	To support establishment of an independent national justice reinvestment body that will: <ul style="list-style-type: none">• promote reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration• provide justice reinvestment expertise on justice reinvestment implementation• be overseen by Aboriginal and Torres Strait Islander leadership.
4-2	To support justice reinvestment trials initiated in partnership with Aboriginal and Torres Strait Islander communities, including through: <ul style="list-style-type: none">• facilitating access to data• supporting local justice reinvestment initiatives• facilitating participation by and coordination between government depts/agencies.

4.1.1 ALRC rationale

Resources are better directed (and will deliver savings) through reinvestment of a portion of criminal justice system expenditure to address causes of offending that sit outside of that system. Justice reinvestment requires working in partnership with Aboriginal and Torres Strait Islander people to develop and implement reforms, crucial to ensuring effective policy change to address disadvantage as a causal factor of offending. Policy priorities that will address causal factors extend beyond justice to encompass social and community drivers and therefore require input across all levels of government.

4.1.2 Recommendation 4-1: National justice reinvestment Unit

The ACT Government reports being an active participant in/supporter of national justice reinvestment initiatives. It has participated in development and endorsement of Justice Reinvestment Collaboration Principles (cross-government collaboration principles) and in the Justice Policy Partnership (JPP) Justice Reinvestment working group. This group is currently co-designing a national justice reinvestment body and justice reinvestment strategic framework (for national/state/territory and local justice reinvestment initiatives).

Recommendation 4-1 is implemented (with a caveat).

Recommendation 4-1 is implemented given the ACT Government's involvement in design of the national justice reinvestment body, although it is yet to be seen whether the final design aligns with ALRC Recommendation 4-1.

4.1.3 Recommendation 4-2: Support for justice reinvestment trials

The ACT Government identifies its focus through justice reinvestment on ‘strong investment in early intervention, prevention and diversion services...to improve social outcomes’, better access to services, integrated responses to meet individual needs and a strong evidence base to inform policy/service responses. It is important to note that justice reinvestment in the ACT is not solely focussed on Aboriginal and Torres Strait Islander over-representation.

The ACT Government refers to justice reinvestment as a ‘concept, applied to a range of initiatives’ and goes on to detail various programs implemented in this space, including ACTCS Throughcare Model. This program ‘embodies the principles’ of justice reinvestment, with its focus on addressing criminogenic risk of reoffending for AMC detainees through targeted case plans and community participation in the delivery of services during incarceration (alcohol and other drugs (AOD), legal, Elders etc.).

Other earlier examples are an ACT Property Crime Reduction Strategy (2012-2015), providing collaborative, cross-agency approaches to working with high and complex needs of offenders and families, Strong Connected Neighbourhoods (from 2008) and a Crime Prevention Fund (from 2000).⁹⁵

It is reported that in 2014, JACS worked closely with government/community stakeholders to develop a justice reinvestment strategy (2014-18), and a co-design process (two workshops attended by those with lived experience and community, amongst others) led to trials of programs that included Ngurrumbai Bail Support and Yarrabi Bamirr (the Winnunga justice reinvestment program).⁹⁶

In 2019, the ACT Government made a \$70.9million investment into a ‘Build Communities, Not Prisons’ strategy, incorporating \$14.6million for new and expanded community programs. The strategy was clearly identified as alternative expenditure to expanding the prison in the AMC. Initiatives funded included:

- supported housing for better justice outcomes, especially for women and Aboriginal and Torres Strait Islander detainees
- Reintegration Centre and increased staffing at AMC
- Research Team focussed on reduced recidivism.

Introduced in 2020, RR25by25 is identified as a further investment (\$132million) to develop and implement evidence-based programs focussed on ‘rehabilitation and reintegration’.⁹⁷ Social isolation, inadequate housing, AOD and mental health issues are part of RR25by25’s focus. Phase 2 is currently being planned, with ‘final content ... still subject to decisions of Government’. The ACT Government identifies that since initial investment in RR25by25, ‘several initiatives have successfully contributed to community safety’.

Justice reinvestment in the ACT is governed by a government-established Executive Coordination Group (ECG), chaired by JACS and CSD Director-Generals. Other than Legal Aid, membership is drawn from ACT Government directorates (including health and education). The ECG provides strategic oversight of development of advice for Ministers on RR25by25 on the construction and

⁹⁵ See Part 2 of the Report for an explanation of the Strong Connected Neighbourhoods program and Crime Prevention Fund.

⁹⁶ See Part 2 of the Report for an explanation of the Ngurrumbai Bail Support and Yarrabi Bamirr programs.

⁹⁷ For discussion of the RR25by25 strategy see Part 2 of the Report.

implementation of the approach to reduce recidivism and has been involved in development of Phase 2 of this strategy.

A Reducing Recidivism Research Advisory Committee (RRRAC) oversees a research and evaluation collaboration with the Australian National University (ANU), designed to provide better data and understanding of trends, including drivers related to First Nations overrepresentation. An RR25by25 Evaluation Framework has been finalised to support evaluation of initiatives/recidivism measures (including through data linking) to potentially inform policy/program development. ANU is also currently developing tools to ensure effective evaluation of programs. There has been evaluation of Ngurrumbai and Yarrabi Bamirr programs.⁹⁸

Further, the ACT Government's Restorative Justice Conferencing (from 2005) is seen as part of justice reinvestment. In 2022-23, 38 Aboriginal and Torres Strait Islander offenders (6 young offenders, one adult) were referred to restorative justice conferencing (of a total of 135 referrals made). The scheme has been positively evaluated, including in terms of impacts on recidivism, but without a First Nations specific focus. Also noted is that the Restorative Justice Unit 'continues to focus on building relationships with Aboriginal communities and agencies' through its First Nations Convenor and a First Nations Guidance Partner.⁹⁹

Recommendation 4-2 is implemented (with caveats).

Recommendation 4-2 is implemented with the caveats referred to below in the **Discussion**. The ACT Government is supporting or leading an ACT-wide justice reinvestment initiative (no longer a 'trial') and within that, specific justice reinvestment programs, in line with Recommendation 4-2. Their approach is also facilitating participation by and coordination between government departments/agencies in justice reinvestment in line with Recommendation 4-2. The ACT Government has brought together different areas of government through programs (e.g. its Stronger Connected Neighbourhoods program) and within the ECG, which incorporates health/education/community services directorates. The ECG Terms of Reference refer to achieving reduced recidivism through 'shared responsibility across the justice and human services systems.'¹⁰⁰ Recommendation 4-2 refers to key elements of justice reinvestment trials to be implemented by governments as including facilitating access to relevant data to inform the latter approach. This is occurring at least to some extent through the RRRAC.

Discussion

Some key points about the justice reinvestment approach in the ACT Government raised by the material provided and in stakeholder interviews include that while in part there has been a shift in resources away from the justice system in keeping with the ALRC rationale for Recommendation 4-2, further investment is needed for community-based responses to drivers of justice system contact.

... we should be leading the country because we're a small jurisdiction but we're not. And why is that? Because there isn't that justice reinvestment. Maybe there is, but the money's not flowing through to the places that it should. (Legal service provider/legal profession)

⁹⁸ For further discussion of the RRRAC and evaluations of Ngurrumbai and Yarrabi Bamirr programs.

⁹⁹ See <<https://www.justice.act.gov.au/restorative-justice/links-and-resources>>.

¹⁰⁰ Reducing Recidivism Executive Coordination Group (ECG) Terms of Reference, provided within ACT Government response to the request for information.

Some community-based programs have been funded. But there has also been resourcing for reforms within the justice system (e.g. additional AMC staffing, programs, the Reintegration Centre). The Build Communities Not Prisons Matrix (see Appendix 2) provided by the ACT Government refers to ‘Community Building Capabilities’, but the initiatives listed, including ‘Early Support’ do not have a strong focus on community-led or community-based approaches.

Stakeholders spoke of ACT Government investment in a justice reinvestment context as insufficient and still disproportionately reliant on justice responses to offending. Community organisations are stepping in, without resourcing, to fill gaps. One community organisation spoke of their limited funding, while ‘Community Corrections and AMC get \$100+ million’ (Aboriginal and Torres Strait Islander or other non-government service provider). Others spoke of increasing prison capacity.

Why would you spend \$10 million on building more beds in a jail (referring to the planned *80-bed minimum security reintegration centre*), when you’ve got community sectors struggling to get money for the prevention and early intervention stuff ... Because justice reinvestment is about putting it in the community, the money that you would have spent on opening 100 new beds in the jail. If you’re a justice reinvestment community, you wouldn’t do that. You’d put that money into the community centre, not into building bigger jails. Of those 100 beds, 25 are being filled up by Aboriginal people. And if not more, given the trends. So, I’m not quite sure whether justice reinvestment in practical terms, is a reality here. I don’t think we can say hand on heart that Canberra is a justice reinvestment town or city. (Aboriginal and Torres Strait Islander or other non-government service provider)

All the ACCOs are underfunded... there's only a few people there, there are not hundreds. That's in comparison to the government departments that are here everywhere, that are littered with staff. We're so small that we can see what's happening in the government, I mean the proportion of funds to the government compared to our community is disproportionate. So, when there's discussions about justice reinvestment, what does that mean? I go out to [named Aboriginal service], I just don’t see it. Stop spending money on government services and invest in money into the community services. (Legal service provider/legal profession)

This consistent theme about under-resourcing of community-based services and programs, including those run by ACCOs and those with demonstrated success, such as the Yeddung Mura Reporting Site opened in 2021 (see below, Recommendation 7-3), ran through all interviews.¹⁰¹ There is still a lot of money going into government, rather than ACCOs and community-based organisations, according to stakeholders.

Suggestions were made for investments *outside* of the justice system. These included funding to increase access to housing for Aboriginal and Torres Strait Islander people, given its link to their contact with the child protection and justice systems. Others spoke of a redirection of funds to the work of the CSD Directorate, given that strengthening families is key to addressing over-representation (and as past government policy has fragmented families).

The ALRC has advocated for justice reinvestment trials to be initiated *in partnership with Aboriginal and Torres Strait Islander people*. Recommendation 4-1 refers to justice reinvestment as community-led, place-based initiatives. It is not always clear to what extent the ACT Government’s justice reinvestment approach centres around working in partnership with Aboriginal and Torres Strait Islander

¹⁰¹Australian Capital Territory Corrective Services (2023) *Yeddung Mura External Reporting Site Pilot— Evaluation Report*. ACT Government, Canberra, p. 4.

people. Partnership is evident in programs like Yarrabi Bamirr, in the co-design process leading to development of the 2014 justice reinvestment strategy, and ATSIEB representation on RRRAC, for instance.

Partnership is less evident in other programs and in justice reinvestment governance. The ECG appears to be government-led and largely consists of government representatives. It prepares advice for Ministers as decision-makers for RR25by25 implementation and is also responsible for monitoring/evaluation of this strategy. Decision-making about the final content of Phase 2 of RR25by25 is, as above, ‘subject to decisions of Government’. The extent to which Aboriginal people have had and will continue to have input into decisions guiding justice reinvestment in the ACT at all stages is unclear,¹⁰² though the commissioning process provides some opportunity for this to occur.

Partnership is also identified within the ALRC rationale as required for development and implementation of reforms designed to achieve policy change in priority areas addressing social/community drivers of incarceration. Justice reinvestment in the ACT appears to be implemented via a series of programs. The ACT Government in its response refers to justice reinvestment as a ‘concept that has been applied to range of initiatives’ as above. However, it is not clear how First Nations peoples are influencing policy changes in and outside of a criminal justice system context.

At a justice reinvestment conference – ‘we had a lot of people who needed to do lots of things. But we don’t have the triggers to really influence people. Other than talking to ministers.’ ‘...what we’re looking for is something that is unique and different.’ (First Nations community member)

Finally, in this section we note that there have only been modest improvements in the imprisonment rate for Aboriginal and Torres Strait Islander people in the ACT, where it is now approximately **5% lower** in 2023 than it was in 2017. However, this can also be contextualised by the **10% increase** in the national rate of Indigenous imprisonment over the same period (see Part 2 of this Report). We also note that despite the RR25by25, justice reinvestment and Building Communities Not Prisons strategies, as one albeit limited measure of recidivism, there is virtually no difference between 2017 and 2023 in the proportion of First Nations men who have been previously imprisoned (89% in 2017 compared to 88% in 2023) (see Part 2 of this Report).

¹⁰² For example, what structure is there for broader community input into the development of justice reinvestment? What Aboriginal and Torres Strait Islander representation is there on the ECG? What broader Aboriginal and Torres Strait Islander community input is there into decisions around funding to access the Crime Prevention Fund?

4.2 Bail (Recommendations 5-1, 5-2)

5-1	Bail laws to include standalone provisions that require bail authorities to consider any issues arising from a person's Aboriginal and Torres Strait Islander status (cultural background/obligations etc.) (e.g. <i>Bail Act 1977</i> (VIC)) (without superseding considerations of community safety).
5-2	Work with Aboriginal and Torres Strait Islander organisations to: <ul style="list-style-type: none">• develop guidelines for application of the above bail provisions• identify gaps in and development/implement culturally appropriate bail support programs and diversion options.

4.2.1 ALRC rationale

The ALRC identifies the need to address higher rates of remand for Aboriginal and Torres Strait Islander people. Issues such as a lack of secure accommodation and irregular employment hinder access to bail and cultural obligations which may lead to breaches of conditions, for example. Reforms are required to bail laws to respond to this situation. The judiciary/legal profession are to be guided as to effective use of the relevant provisions, and gaps in bail support must also be addressed to ensure their effectiveness.

The importance of implementing Recommendation 5 and of reducing rates of remand, including for young people, was discussed by stakeholders.

Especially with our kids on remand, in the youth detention centre... They've been on remand for nine to ten months, and finally get their court case heard, and then, I've seen this, the judge questions, well, do you have evidence about this person doing this? And then she just dismissed all those charges. The charges that he got charged with, he already did the time spent in Bimberi three times over ... So, the remand system needs to be looked at. (Aboriginal and Torres Strait Islander or other non-government service provider)

The need to use legislative provisions, in particular, to address relevant issues was also highlighted, as in the following comment (related to flexibility in conditions).

Bail conditions have got to be a little bit more flexible. You have that through conversations about where this young person's going to reside, not at one address, there's a couple of addresses, and so forth. And that can be through that flexibility or discretion, but it's got to be in the legislation as well. (Aboriginal and Torres Strait Islander or other non-government service provider)

4.2.2 Recommendation 5-1: Bail law reform

The ACT Government does not have standalone provisions that specifically require consideration of issues arising from a person's Aboriginal and Torres Strait Islander status. However, it points to section 22 of the *Bail Act 1992* (ACT), which requires a decision-maker to consider matters including the interests of the person applying for bail, and in doing so the court *may* have regard to the person's background and community ties, and the impact of refusing bail on family and dependants. It is

suggested these provisions may lead to issues relevant to Recommendation 5-1 being raised and considered by the court. However, we note that this is not a *requirement* under the relevant provisions. For young people, section 23 of the *Bail Act* requires consideration of the Youth Justice principles at section 94 of the *Children and Young People Act 2008* (ACT). Section 94(1)(d) specifically requires that ‘...decisions about an Aboriginal or Torres Strait Islander child or young person should be made in a way that involves their community’.

In 2023, the ACT Government referred the *Bail Act* for comprehensive review to a newly established ACT Law and Sentencing Advisory Council. Terms of reference direct the Council to consider, among other issues, ‘whether the Bail Act has appropriate mechanisms to consider the systemic, cultural and personal issues confronting First Nations people.’ The Council must consult with experts in First Nations justice and First Nations people directly affected by, and with lived experience relevant to the referral. The Council is due to report on this referral at the end of November 2024. The above referral requires that the Council should consider any findings and recommendations of the First Report of the Independent Review into Overrepresentation of First Nations people in the ACT criminal justice system.¹⁰³

Stakeholders highlighted that the ACT Government and therefore the Council reviewing the *Bail Act* are focussed on community safety (e.g. around driving offences) that may require a tightening of bail legislation. It is therefore unclear whether or not the Council review will lead to the above reforms. Stakeholders in general (and particularly legal service providers) supported a standalone provision requiring consideration of issues arising from a person’s Aboriginal and Torres Strait Islander status in the *Bail Act*.

Recommendation 5-1 is not implemented (with caveats).

Currently Recommendation 5-1 is not implemented. However, we note the ACT Government is taking steps towards the *possible* implementation of Recommendation 5-1 through the current review. We note that there are Aboriginal and Torres Strait Islander organisations represented on the Law and Sentencing Advisory Council, and that any proposed change to legislation and guidelines will be developed with their input.

Stakeholders have identified issues likely to arise for Aboriginal people seeking bail and that might be considered in the above review and by bail decision-makers. These include housing. ‘Some of them will just sit there [in prison] because they’ve got nowhere to go.’ (Aboriginal and Torres Strait Islander or other non-government service provider)

Aboriginal people are being held on remand ... here for long periods of time, simply because they don't have accommodation. Homelessness is something that really does need to be addressed, here in the ACT ... [O]bviously it's an issue right across the country. But certainly, here in the ACT, it's a massive problem. (Aboriginal and Torres Strait Islander or other non-government service provider)

¹⁰³ The ACT supplementary response to our draft report noted that there are two referrals to the Council, the first of which is focussed on sentencing, particularly in dangerous driving offences (<https://www.lrsac.act.gov.au/current-projects/dangerous-driving-sentencing-and-recidivism>). The second referral, the Bail referral (<https://www.lrsac.act.gov.au/current-projects/bail>), is much broader, and does not focus on any specific type of offending and is not limited to issues of community safety. It was also noted that the Council is independent of Government, and the Council has ‘a duty to act independently in performing all its functions and achieving its objectives and in undertaking its work and responsibilities’.

Aboriginal and Torres Strait Islander female rates of remand were also identified as especially high because it is difficult for courts to ensure the safety of this group whilst on bail. Having a track record of fail to appears was also highlighted in this context.

Their [women] rate of remand is probably around 70-80%. And I think, quite often, that comes down to magistrates just can't see how they can keep the person safe by having them in the community. So, I think if that was an option, that might help women get remand. (Legal service provider/legal profession)

4.2.3 Recommendation 5-2: Bail provisions guidelines, bail support/diversion options

Bail provisions guidelines

The ACT Government notes that there are currently no guidelines in place to support implementation of the above standalone bail provisions in the ACT. It also notes that the Law and Sentencing Advisory Council review of bail provisions (as above) may address issues related to effective use of any provisions.

The need to shift the way legal services utilise bail provisions was discussed by stakeholders. There was discussion of legal services in the ACT not having time to work out what conditions are realistic for clients and being instructed by the magistrates on appropriate conditions rather than making proactive suggestions/challenging magistrates' positions on bail.

Recommendation 5-2 (guidelines) is not implemented (with caveats).

Recommendation 5-2 related to guidelines is not implemented, for similar reasons set out above for Recommendation 5-1. We note the *possible* implementation of Recommendation 5-2 through the current Law and Sentencing Advisory Council review.

Stakeholders commented on problems with how those in the justice system, including lawyers, are currently using bail provisions – indicating the need for such guidance in this area. One stakeholder noted that key to reducing incarceration rates was increasing opportunities for diversion of offenders *as early as possible*, including at the start of what may be a cycle of offending. Access to bail and appropriate bail conditions are key mechanisms for early diversion. They pointed out that some legal services are less focussed than others on supporting clients with early diversion through bail.

Also discussed was that the police/DPP appear to be up-charging offences in some instances, with implications for bail where this means a defendant must show cause or special exceptional circumstances to get bail and charges of a lesser or different offence might have been more appropriate.

To give an example ... with damage to property, a minor one under the *Crimes Act*, which is a six-month maximum term of imprisonment, and then a ten-year one under the *Criminal Code* ... Relatively minor theft or minor damage is regularly charged under the *Criminal Code* ... [Hard to get] leverage in terms of getting them to apply the appropriate charge ... [T]here is that discretion ... [W]e're seeing people that have to suddenly show cause on a bail application for punching a hole in the wall when they should've been charged for it under the *Crimes Act*. And just at the whim of the police or the DPP, they're charged under the *Criminal Code*. (Legal service provider/legal profession)

Also noted was the distinctive role that the DPP play in the ACT. The ACT does not use police prosecutors for its criminal cases and relies exclusively on the DPP for all criminal prosecutions, including summary offences.

Bail support/diversion options

Here the ACT Government has highlighted the Ngurrambai Bail Support program, Galambany Circle Sentencing Court operating at the Magistrates Court and now in the Supreme Court in the ACT, the Galambany Court Support program and Galambany Bail Court.¹⁰⁴ Stakeholders provided positive feedback about the Ngurrambai Bail Support program as increasing access to bail and appropriate bail conditions.

... the bail program representatives are in court, and they're recognised by the bench, and they say okay, bail support is in the courtroom, we're going to grant bail and [X] is going to engage with the bail support program as part of a bail condition rather than be supervised. (Legal service provider/legal profession)

Stakeholders also identified Galambany initiatives as key diversion mechanisms (see further below Recommendation 10-2). Yedding Mura provides support through both the Galambany Court Support program and Galambany Bail Court. Comments identified *earlier* referrals now being made to Yedding Mura as a positive improvement to the Galambany Bail Court.¹⁰⁵ Galambany Court Support provides support with transport, likely to help reduce instances of fail to appear, as above (and therefore the likelihood of being bail refused). We also note the ACTCS partnership with Winnunga and Yedding Mura to establish alternative supervision reporting sites for those on community-based sentences or bail supervision by ACTCS.

Recommendation 5-2 (bail support/diversion) is partially implemented.

Recommendation 5-2 related to implementing bail support programs and diversion options has been partial. The ACT has clearly implemented culturally appropriate mechanisms for bail support and diversion. It is unclear, firstly, whether there has been sufficient *identification with Aboriginal and Torres Strait Islander organisation participation* of gaps in bail support/diversion followed by appropriate responses to these gaps, in alignment with Recommendation 5-2.

Secondly, there are also some important gaps in current initiatives. The above bail support program is only available for adults, with one stakeholder identifying this as likely to be because the CSD has responsibility for youth justice and JACS for the bail support program. Stakeholders called for more Aboriginal and Torres Strait Islander specific community-based and led programs through which young people in particular could be supervised.

Why can't we have a remand system where these young people spend less time in that facility, and more time being rehabilitated proper, out with community, doing community practices, cultural practices Our kids don't belong in those facilities. Our kids are traumatised enough. Our kids need to be out and about in the community, undertaking community life skills ... and under the guise of Aboriginal controlled organisations, or an organisation that actually is developed for our young people. (Aboriginal and Torres Strait Islander or other non-government service provider)

¹⁰⁴ See <<https://www.justice.act.gov.au/aboriginal-and-torres-strait-islander-justice-affairs/galambany-circle-sentencing-court>>.

¹⁰⁵ Previously not getting referrals through early enough. We also note one conflicting comment relating to Galambany Bail Court operations. 'Since the Circle Magistrate has been appointed to other roles, it's really limited now in terms of the applications [that can be made] and the circumstances in which a bail application [can be made] which is disappointing because it was going really well. It was probably only about six or 12 months and then they've sort of peeled it back and sort of disappeared into the ether in a way' (Legal service provider/legal profession).

Also identified was that ankle bracelets were being considered and this was seen as inappropriate.

At the end of the day, the ankle bracelets are just a tracking mechanism for police. It's not in any way changing anything. It's not reducing recidivism. (Aboriginal and Torres Strait Islander or other non-government service provider)

Lack of available supports in the community, including gaps in mental health and drug/alcohol services, was identified as hindering the effectiveness of the Ngurrambai Bail Support program. The current lack of Aboriginal-specific, community-based residential rehabilitation programs was seen as reducing access to bail (but see Recommendation 13 below – facility currently being constructed).

I only know of one in Nowra, and that's out of state. It's a rare bird to find a residential placement. If someone is incarcerated and they're applying for bail, and this can be the golden key to get out, it's a hard nut to crack. (Legal service provider/legal profession)

Lack of available housing was also mentioned in this context, though the ACT has implemented programs around transitional housing (see Recommendation 9-1: Transitional Accommodation Program).

Aboriginal people are being held on remand because they don't have somewhere to go, they're being held on remand here for long periods of time, simply because they don't have accommodation. Homelessness is something that really does need to be addressed, here in the ACT, but obviously it's an issue right across the country. But certainly, here in the ACT, it's a massive problem. (Aboriginal and Torres Strait Islander or other non-government service provider)

Stakeholders referred too to a 'very high proportion' of Aboriginal people who come to the ACT from interstate, are arrested and do not get bail – in part because of issues in reporting. The difficulties experienced by all jurisdictions in monitoring bail via Audio Visual Link and often being unable to determine the location of a person on bail has been acknowledged by JACS.

Further innovation is required for this cohort. Others identified as a positive that bail reporting can be done at Yeddung Mura – 'opening the door a bit wider to let people who should be on bail get out' (see below Recommendation 7-3). (Legal service provider/legal profession)

The Aboriginal Legal Service operated program 'Front Up' funded by the ACT government¹⁰⁶ was also referred to favourably.

These are folk who have warrants issued, usually for breach of bail or failure to appear... the goal is to go and bring the person in via Front Up to appear in court before a magistrate, acknowledge the breach and have that warrant lifted. It's an active way to pre-empt arrest and to reduce the use of resources to arrest them, incarcerate them... Front Up has had real buy-in from the courts, Corrective Services and the police ... Obviously, it reduces the interactions with police, the need for people to be locked up. (Legal service provider/legal profession)

A further key issue is the lack of availability of data on remanded/sentenced Aboriginal and Torres Strait Islander people for what offences – useful data to apply to a process of mapping of gaps in support/diversion, as required under Recommendation 5-2.

I know ACT is small. They can't have a BOCSAR. But where's the data, for God's sake? Where's the data? What's the data telling us? ... We have to recognise how many people are bail refused

¹⁰⁶ See Part 2 for discussion of this program.

on particular matters that potentially they should be released for? And is being on remand driving up incarceration rates? (Legal service provider/legal profession)

In relation to the data on remand we noted in Part 2 of this Report that the percentage of Aboriginal and Torres Strait Islander people on remand in the ACT in 2023 was 49%. This was higher than the national average for First Nations people on remand which was 41%. We also noted that it is not possible to determine the extent to which remand rates for Aboriginal and Torres Strait Islander people have changed since 2017 because of the absence of earlier ABS data by Aboriginal and Torres Strait Islander status.

4.3 Sentencing (Recommendations 6-1 to 6-3)

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.
6-2	In partnership with Aboriginal and Torres Strait Islander organisations, governments should develop and implement schemes that would facilitate preparation of Indigenous Experience Reports for sentencing in superior courts.
6-3	In partnership with Aboriginal and Torres Strait Islander organisations, governments should develop options for presentation of information about unique systemic and background factors impacting Aboriginal and Torres Strait Islander in the summary courts, including through Elders, community justice groups, community profiles etc.

4.3.1 ALRC rationale

The ALRC reports that sentencing courts can but are not obliged to consider the relevance/impact of systemic/background factors affecting Aboriginal and Torres Strait Islander offenders when accounting for subjective characteristics at sentencing. Provisions are needed that require sentencing courts to first take into account these unique systemic/background factors and to then proceed to review evidence as to their effect on the individual offender. Appropriate community-based options may be considered during sentencing based on the latter considerations. Indigenous Experience Courts to be used in superior courts also should ideally be prepared by independent Aboriginal and Torres Strait Islander organisations.

4.3.2 Recommendation 6-1: Aboriginal and Torres Strait Islander status and sentencing decisions

Recommendation 6-1 is not implemented.

Recommendation 6-1 is not implemented as there has been no amendment to legislation in the ACT to require courts to take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

The *Crimes (Sentencing) Act 2005* (ACT) refers to the cultural background of an offender as factor relevant to sentencing (section 33(1)(m)). While this may lead a court to seek further information, it does not *require* a court to take into account unique system or background factors in sentencing decisions. The ACT Government states in their response that the pilot of Court Experience Reports referred to below (Recommendation 6–2) may provide a practical mechanism to test whether further amendments to sentencing legislation are required.

Reliance on the High Court case of *Bugmy* was identified by stakeholders as a mechanism through which to consider the above factors, with this opportunity not taken up in the ACT as much as it might

be. For stakeholders, this highlighted the importance of introduction of legislative provisions aligned with Recommendation 6-1.

Yes, there's already that capacity. But is it up to the discretion of the magistrates and judges... I've been in courts quite a lot and with Aboriginal people, and Bugmy is not mentioned. I think [from my experience] probably once or twice, maybe, in sentencing. (First Nations community member)

I think a legislative frame for considering Bugmy principles. It's important to recognise that the legislators say in black and white that there has been persistent and ongoing injustice that Aboriginal people have faced and that there is chronic overrepresentation and there's a whole host of other things. And the only way for all participants in the justice space to understand that and accept that is if there's a subsection as a required mitigating factor that has to be taken into account in sentencing. Or it doesn't have to be a mitigating factor, but it has to be a principle that is considered. If there's an Aboriginal person before you in court, given the history of Aboriginal people in this country, they should be treated in a particular way. And that particular way should be something that everyone in the justice system is forced to consider. (Legal service provider/legal profession)

4.3.3 Recommendations 6-2: Indigenous Experience Reports in superior courts

The ACT Government is currently piloting use of Aboriginal and Torres Strait Islander Court Experience Reports in its Galambany Circle Sentencing List operating in the Supreme Court. Direction No. 1 of 2024, Pilot Circle Sentencing List Procedure refers to aims of the List as it operates in the Supreme Court as facilitating 'a better understanding of any underlying issues which may have contributed to offending' (6(e)), amongst other aims, and refers to use of Court Experience Reports. A defendant must agree to participate in the preparation of an Independent Aboriginal and Torres Strait Islander Court Experience Report to be eligible for referral to the List.

In terms of Aboriginal and Torres Strait Islander partnerships, the ACT Government states that work is being undertaken by ACT Courts and Tribunal (ACTS), in collaboration with stakeholders across government, to pilot development of an Aboriginal Court Experience Report by a First Nations psychologist.¹⁰⁷ This is identified as following on from consultation by JACS with the ALS around court experience reports and their practice in tendering evidence, including Elders giving evidence, as a mechanism to provide information to the Courts on systemic/background factors.

Recommendation 6-2 is implemented (with caveats).

We identify Recommendation 6-2 as implemented, **noting that it is currently running as a pilot.**

Stakeholders have pointed to some issues with potential to impact on effectiveness. One stakeholder suggested there was ongoing reluctance of key players in the justice system (including the DPP/courts) to draw links between Aboriginal offending and the historical and ongoing impacts of colonisation. (Legal service provider/legal profession). The stakeholder regarded this reluctance as evidenced in

¹⁰⁷ In 2017, Legal Aid ACT prepared a report for the ACT Government on how 'Gladue style' Indigenous Experience Reports could be prepared and provided for in the ACT. See report here: <https://www.justice.act.gov.au/__data/assets/pdf_file/0011/2093717/Aboriginal_and_Torres_Strait_Islander_Experience_Court_Reports_-_Legal_Aid_ACT.pdf>

practice directions which were identified as ‘tempering’ down of factors unique to Aboriginal people.¹⁰⁸ A lack of ‘bipartisan support’ around consideration of unique factors in this context is seen as likely to impact on use and outcomes of Experience Reports. (Legal service provider/legal profession)

One stakeholder suggested too that there are issues of confidentiality related to use of these reports – what can be disclosed, for example about other family members and to whom (Legal service provider/legal profession).¹⁰⁹ Others identified it as important that the Report is commissioned by the court and is tendered independently (not by the ALS on behalf of the defendant so as to avoid contestability). (Legal service provider/legal profession). Under the current pilot scheme, the Aboriginal Experience Report is commissioned by the court. Others, however, felt that an ACCO or Aboriginal group should be commissioned to write the Report. (Legal service provider/legal profession).

It was noted that these reports will not be available for certain offences (see Schedule 1 of the above Practice Direction). It was also noted that given how ‘administratively burdensome’ the reports are they are unlikely to be used outside of the Supreme Court because it would lead to delays in the courts. (First Nations community member)

4.3.4 Recommendation 6-3: Options for presentation of unique factors in summary courts

The pilot use of Aboriginal and Torres Strait Islander Court Experience Reports is in the Galambany Circle Sentencing List operating in the Supreme Court. We were not provided with any information relating to options for the presentation of information about unique systemic and background factors via the use of Experience Reports in the courts of summary jurisdiction.

We note though that Aboriginal community input can be provided by the Galambany Court process at the magistrate’s court level. However, many Aboriginal and Torres Strait Islander people appearing before criminal courts in the ACT will not appear before the Galambany Court. Thus, for many Aboriginal and Torres Strait Islander defendants in the ACT the only way that background factors *may* be considered is through section 33(1)(m) of the *Crimes (Sentencing) Act 2005* (the cultural background of an offender as a factor relevant to sentencing).

For the reasons noted above, we consider Recommendation 6-3 as partially implemented.

Recommendation 6-3 is partially implemented.

¹⁰⁸ Practice direction is available here: <https://www.courts.act.gov.au/__data/assets/pdf_file/0004/2396686/Practice-Direction-1-of-2024-Pilot-Circle-Sentencing-List.pdf>.

¹⁰⁹ The practice direction states that reports should be subject to a non-publication order unless the court determines this is not appropriate, p. 43.

4.4 Community-Based Sentences (Recommendations 7-1 to 7-5)

7-1	Working with Aboriginal and Torres Strait Islander/community organisations, improve access to community-based sentencing options for Aboriginal and Torres Strait Islander people that: <ul style="list-style-type: none"> • expand geographic (in regional/remote locations) • are culturally appropriate • are for those with complex needs.
7-2	Implementation of community-based sentencing options that allow for greatest flexibility in sentencing structure/imposition of conditions to reduce reoffending (taking the Victorian Community Correction Order regime as an example).
7-3	Work with Aboriginal and Torres Strait Islander organisations to provide necessary programs and support to facilitate successful completion of community-based sentences by Aboriginal and Torres Strait Islander offenders.
7-4	Not abolish suspended sentences in the absence of community-based sentencing options.
7-5	Not abolish short sentences, in the absence of community-based sentencing options.

4.4.1 ALRC rationale

Improving access to and compliance with community-based sentences is necessary to reduce the incarceration rates of Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander offenders are currently less likely to receive a community-based sentence than non-Aboriginal offenders for the same offence and less likely to complete such a sentence. Compliance could be improved via better support for and programs/conditions of relevance to Aboriginal and Torres Strait Islander people.

Short and suspended sentences of imprisonment can be problematic as they do not always address the purposes of sentencing and can have significant negative consequences for the offender. However, they should not be removed as a sentencing option until community-based sentences are uniformly available to avoid even higher numbers of Aboriginal and Torres Strait Islander people being incarcerated. Once community-based sentences are uniformly available, short/suspended sentences may be abolished.

4.4.2 Recommendation 7-1: Accessing community-based sentences

The ACT Government identifies Empowering Yarning Circles, run by Yeddung Mura in and outside of AMC, as implementation of Recommendation 7-1. They refer to these circles enabling ex-detainees to stay in the community and rebuild their lives and reducing recidivism through integrated case management and community support, and as able to be included in a community-based sentencing option.

We note that this is the only specific option identified by the ACT Government. Although the option is operated by an Aboriginal and Torres Strait Islander organisation, there is no specific evidence that it addresses offenders with complex needs, including disability and mental illness.

We also note the evidence presented in Part 2 of this Report (Section 2.2.4) relating to the significant difference in the use of and access to community-based sentencing options compared to imprisonment for Aboriginal and Torres Strait Islander people.

Recommendation 7-1 is partially implemented.

4.4.3 Recommendation 7-2: Flexibility in structure/conditions

The ACT Government identifies court ordered community-based orders as Good Behaviour Orders (GBO), Intensive Corrections Orders (ICO) and Drug and Alcohol Treatment Orders (DATO). The latter two are custodial sentences served in the community with intensive obligations and case management options. Suspended sentences are also available.

In terms of flexibility in sentence structure/conditions, the ACT Government identifies that:

- ACT offenders with an ICO may have to undergo regular drug testing and home visits and will need to apply for permission to leave the ACT. Conditions relating to community service work, curfews, attendance at rehabilitation programs, or reparation, may also be included in an ICO.
- A DATO requires offenders to undergo regular drug testing, drug and/or alcohol rehabilitation treatment, and regular check-ins with the DASL Treatment Team, including the Supreme Court Judge.
- If a GBO has a probation condition, the offender must accept supervision and comply with any reasonable direction from their Community Corrections Officer. Other conditions may relate to community service work or rehabilitation.

Stakeholders had some general comments about lack of flexibility in this context. For example, one stakeholder felt that their recommendations for sentencing made to the court ‘always comes back with conditions, and you can't do this, you can't do that, or we need to try something different.’ (Aboriginal and Torres Strait Islander or other non-government service provider). They noted that ‘recidivism here in the ACT is at a high rate, a massive rate. We're talking a two-week turnaround. I'm not sure really how effective all those mechanisms are with such a high rate of recidivism’ (Aboriginal and Torres Strait Islander or other non-government service provider).

In terms of the comparison between the ACT and Victoria as required by Recommendation 7-2, both have **similar** community-based sentencing options, with some subtle differences. For example, under the Victorian regime an Adjourned Undertaking and a Community Corrections Order can also include a justice plan for offenders with intellectual disability. For a comparison of the community-based sentencing options in Victoria and the ACT see Appendix 5.

Recommendation 7-2 is implemented.

4.4.5 Recommendation 7-3: Programs/supports to facilitate completion

The ACT Government identifies the above Empowerment Yarning Circles as a program/support that facilitates successful completion of community-based sentences by Aboriginal and Torres Strait Islander offenders. The ACTCS Cultural Services Team is also highlighted. The team supports detainees to refer to culturally appropriate reintegration supports, including prior to release. Supports identified by the ACT Government include AOD residential and non-residential rehabilitation programs (Oolong House, Ngunnawal Bush Healing Farm¹¹⁰) and Yeddung Mura.

The ACT Government also refers to an ACTCS partnership with Winnunga and Yeddung Mura to establish alternative supervision reporting sites for those on community-based sentences or bail supervision by ACTCS. They identify these sites as providing ‘a culturally supportive environment for Aboriginal and Torres Strait Islander people’ that ‘help establish linkages with other important support services.’ A third reporting site in Belconnen aims to address geographical and transport barriers for Aboriginal and Torres Strait Islander in North Canberra and surrounds (partnership with Canberra Alliance for Harm Minimisation and Advocacy).

The ACT Government has evaluated Yeddung Mura as an External Reporting Site, finding that the initiative enabled ACTCS and Yeddung Mura to work together to address non-compliance and provided an alternative model of care and access to community supports (Elders, Yarning Circles) and to co-located programs.¹¹¹ The range of supports enabled clients, for example, to gain employment and overall, achieve their case management objectives. The evaluation report identifies that 24 clients were subject to 37 orders during the site’s first year of operation and 24/37 orders were completed and only 5/37 were breached (16).

Stakeholders had mixed views of current supports/programs. One stakeholder suggested that while there was capacity to serve sentences in the community, ‘there isn’t the ancillary support to sustain people in the community’ or ‘to address the drivers of recidivism’ (Legal service provider/legal profession). There was positive stakeholder feedback on the Yeddung Mura run circles, however, including because they operate in the AMC and outside of it.

Look, the key to anything you do in the jail is as a pathway to something similar in the community, and it needs to be a simple and easy pathway. So, the fact that Yeddung Mura are running them in the jail and out, that’s the icing on the cake for me. And I think anything we do in the centre it needs to replicate in the community... And also, you need to give people a clear pathway because otherwise, they just get lost. Those first two weeks of anyone who’s been in jail for a while, that’s just chaotic. (First Nations community member)

But also identified is the significant reliance currently placed on Yeddung Mura and the need to further build the ACCO sector to provide culturally appropriate community-based supports/programs.¹¹² As such, the current structure for community-based sentences was seen as solid, but to ensure they are effective in reducing recidivism more needs to be available at a community level.

The government, they tend to lean on Yeddung Mura a lot. And I worry about [it] because I think they’re really stretching their resources, which can only impact their quality of their

¹¹⁰ Although we also note that there were comments from stakeholders that Ngunnawal Bush Healing Farm was living up to expectations.

¹¹¹ ACT Corrective Services (2022), *Yeddung Mura External Reporting Site Pilot – Evaluation Report*, JACS ACT Government

¹¹² For example, as one stakeholder noted, the CSD have the **Aboriginal Services Development Unit**, whose whole remit is to strengthen the ACCO sector.

service. That worries me. I'd love to see a couple more Yeddung Muras be created. But that's easier said than done. (First Nations community member)

The commissioning process the ACT Government is currently undertaking should assist with this, according to a First Nations community member.

I think the biggest challenge in the ACT is having the culturally appropriate sentencing options available. And we're working on that. CSD have got the Aboriginal Services Development Unit, which their whole remit is to strengthen our ACCO sector. And they're doing that ... The ACT are moving in the right direction in terms of that. And you've probably also heard of commissioning in terms of procuring services... so that's like a common-sense, consultative approach to procuring services for Aboriginal and Torres Strait Islander people. And I think that's got a lot of potential too ... This is where we really go to the community and say, hey, listen, what do you need? What do you see as the gaps? (First Nations community member)

Further, input was that it may be difficult for an Aboriginal organisation (like Yeddung Mura) to recommend or support ACTCS to breach Aboriginal people who are non-compliant.¹¹³ JACS is aware that ACCOs do not always feel comfortable reporting on attendance to their programs where that may be used to breach a person without the context of the person's situation being taken into account. We also note that Community Based Reporting Sites include Community Corrections Officers for the purpose of noting breaches, and perhaps a further relevant point, that some are still being put on orders they don't have capacity to complete. Transport is an issue in this context. On this note, Yeddung Mura is also seen as not accessible to many as a reporting site (we note the establishment of the new Belconnen site).

Quite often, the challenge is always to make sure that people that are on these community orders have got the capacity to complete the order. And sometimes they don't. And one of the things that we underestimate is people's ability to get to and from those commitments they have. We assume that everybody has a car. Those that have been in custody don't have a car in most cases. Or a licence, and we can talk about licencing, which is another issue. (First Nations community member)

One stakeholder referred to the absence of programs in the ACT for traffic offenders, specifically (see also Recommendation 12-3 below).

Whatever happened to the Driver Licensing program? That was a great justice reinvestment program. It was funded through the ACT Safety Directorate. And it was only piloted for a particular time. And the funding just stopped. Could we apply for it again? Yes, potentially. But it's one of those problems of a pilot that finally starts to see good results, then the funding disappears, the program stops. To start it up again, it's a significant issue to reinvigorate a program that took, what, 12-plus months to actually start to see some real impact. It just stuck out to me as an obvious program that could be put back on the agenda that I really saw that actually worked, that made a difference. And I just never understood why that went away. (Legal service provider/legal profession)

¹¹³ As one stakeholder commented, '[Yeddung Mura are] not so much supervisory in terms of the supervision of a Community-Based Order, but obviously they're heavily involved in programs. For instance, if someone's on a Community-Based Order, and they'll be referred by Community Corrections to engage with that particular service. So, they're not so much supervising, but involved in the programs that they're assigned to do. They've got programs that are specific to addressing issues with domestic violence, anger management, drug and alcohol'. (Legal service provider/legal profession).

The significant proportion of Aboriginal people going through the courts in the ACT from interstate who can't serve a community-based sentence in the ACT was also discussed. The whole of Canberra was referred to as virtually a resettlement area. 'There are people, of course, from Ngambri and Ngunnawal who grew here, but most people have come from interstate' (Legal service provider/legal profession). This was estimated to be around 30% of offenders, but it was noted how hard it is to access relevant statistics. Those in Jervis Bay were also identified as not being able to access community service orders, so gaps related to geography are still evident (Legal service provider/legal profession).

Recommendation 7-3 is partially implemented.

We identify Recommendation 7-3 as partially implemented. While there are positive programs and services in place, further consideration ought to be given to addressing existing gaps in programs and supports (geography or cohort based, and particularly community-based) likely to increase completion rates.

4.4.6 Recommendations 7-4 and 7-5: Abolition of suspended/short sentences

Not abolishing suspended (7-4) and short (7-5) sentences are the relevant recommendations. The ACT Government identifies having no intention to abolish either suspended or short sentences.

Recommendations 7-4 and 7-5 are implemented.

4.5 Mandatory Sentencing (Recommendation 8-1)

8-1	Repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction that has disproportionate impact on Aboriginal and Torres Strait Islander peoples.
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4.5.1 *ARLC rationale*

Evidence suggests that mandatory sentencing increases incarceration, is costly, and is not effective as a crime deterrent. Mandatory sentencing may also disproportionately affect Aboriginal and Torres Strait Islander people – especially those found guilty of property crime. The ALRC suggests that states and territories do further work to identify and repeal mandatory sentence provisions that in practice have a disproportionate impact on Aboriginal and Torres Strait Islander people.

4.5.2 *Recommendation 8-1: Mandatory sentencing repeal*

Recommendation 8-1 refers to repeal of mandatory/presumptive sentencing legislation that has a disproportionate impact on Aboriginal and Torres Strait Islander peoples. The ACT Government states that it does not have mandatory sentencing legislation.

Recommendation 8-1 is implemented (with a caveat).

Recommendation 8-1 is implemented. However, we also sound a **note of caution** in relation to this recommendation which also refers to **presumptive terms of imprisonment** as well as mandatory sentences.

There was discussion by stakeholders about political and perhaps community perceptions that the ACT is ‘weak’ and doesn’t lock people up enough (there was comment in this context about the progressiveness of the jurisdiction in raising the minimum age). This has led to a ‘push to ... increase penalties for people from the community’ (Legal service provider/legal profession). Another stakeholder highlighted current debate and discussion in the ACT around driving offences and domestic violence and the need for more stringent conditions and accountability on the part of offenders for these offences.¹¹⁴ They raised concerns about recent legislative changes in the ACT that would allow the DPP and defence to make sentencing submissions to the court for an offence/s. We note that the submissions do not bind the Court, nor is the Court required under the Act to consider such submissions – see s 34AA.¹¹⁵

...they've just passed legislation which overturns... a High Court case [which] basically says the DPP cannot say, this is a matter that should get 12 years. This is a matter that should get 15 years. It's been overturned in Queensland and it's just about to be¹¹⁶ overturned in the ACT so that the DPP can address on, effectively, mandatory minimum sentences for an offence. It's that

¹¹⁴ See <https://www.lrsac.act.gov.au/__data/assets/pdf_file/0017/2423150/Discussion-Paper-Final-consultation-paper-dangerous-driving.pdf>. There was previously a parliamentary inquiry in the ACT on this issue.

¹¹⁵ *Crimes (Sentencing) Act 2005* (ACT), s 34AA. The amendment seeks to override the High Court decision in *Barbaro vs. The Queen* [2014] and permit both the prosecution and defence to make submissions to the court for consideration on the sentence or range of sentences that the party considers appropriate for the court to impose. See <<https://www.legislation.act.gov.au/a/2024-23/>>.

¹¹⁶ We note that this interview was conducted shortly prior to the commencement of the Act, on 25 May 2024.

kind of move, which is moving towards minimum incarceration periods. And we think the consequences of that legislation will lead to more appeals by the DPP. (Legal service provider/legal profession)

Another stakeholder spoke of section 35 of the *Sentencing Act* which states that if there is a strong or overwhelming case there should be no discount applied for a plea of guilty.

And it seems it's always been there, but it seems to have been utilised a lot more in recent times Because across the border in NSW, as we know with the EAPG (Early Appropriate Guilty Plea) Scheme, you can have six or seven mentions in the local court, put your plea of guilty in the local court, and you're getting a 25% discount. Whereas across the border in the ACT, if there's a strong case, then they cannot. So, the wording of the provision is that they cannot afford any significant discount if there's an overwhelming case. It's not a mandatory sentence of imprisonment but a mandatory outcome. (Legal service provider/legal profession)

4.6 Prison Programs and Parole (Recommendations 9-1, 9-2)

9-1	Working with Aboriginal and Torres Strait Islander/community organisations, develop prison programs that address offending behaviours and/or prepare people for release. These should be available for those on remand, on short sentences and for female Aboriginal and Torres Strait Islander prisoners.
9-2	To maximise Aboriginal and Torres Strait Islander parolees: <ul style="list-style-type: none"> • 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.

4.6.1 ALRC rationale

The ALRC noted that most of the Aboriginal and Torres Strait Islander prison population is either being held on remand or serving sentences of less than two years. Prison programs are primarily available to those serving lengthier sentences, as well as males. Programs need to be available to those on remand/short sentences and for women, with female focussed programs also needing to be culturally safe and trauma informed. Aboriginal and Torres Strait Islander organisations and services need to be involved in program design and delivery.

Further, given the critical role of parole in reintegration, reforms are required that encourage eligible Aboriginal and Torres Strait Islander prisoners to apply for parole, as well as throughcare programs for those released.

We note that the Government response to the request for information disagreed with parts of the ALRC Recommendation, at least in relation to criminogenic programs. The response noted that ‘people on remand retain a presumption of innocence for their alleged offence so it may be both presumptuous and prejudicial to have them participate in criminogenic programs. Providing all detainees the opportunity to undertake educational and pre-release programs is supported’.

4.6.2 Recommendation 9-1: Prison programs (remand, short sentences, women)

The ACT Government identified the Yeddung Mura Throughcare Program as implementation of this recommendation. This program provides all Aboriginal and Torres Strait Islander people exiting the AMC with individualised and intensive case management (focussed on basic needs like food, housing) and access to Yeddung Mura services (e.g. programs providing peer support, domestic violence/family violence (DV/FV) programs etc.). The Transitional Accommodation Program (TAP) is also run by Yeddung Mura and supports Aboriginal men exiting the AMC with access to accommodation. However, it was also noted that:

[Yeddung Mura] predates the [ALRC] report, so there’s nothing new that the ACT Government has done, if that program’s been around for eight years. I’m not having a go, but let’s get real.

If they are implementing these things, then are they relying just on programs that have been around forever? (Legal service provider/legal profession)

Both the Yeddung Mura programs can be identified as addressing offending behaviours and preparing people for release. To the extent that they involve partnering with Yeddung Mura, they also can be seen as working with Aboriginal and Torres Strait Islander/community organisations to develop programs relevant to Recommendation 9-1. Stakeholders indicated that nothing or too little was being done, however, to improve access to prison programs for Aboriginal and Torres Strait Islander detainees, including in response to the ALRC Recommendations: 'It's nothing really. It's pure boredom in this prison' (Aboriginal and Torres Strait Islander or other non-government service provider).

The Government response to the request for information noted that a number of cultural programs, initiatives and events have run out at the AMC over the past 7 years including an art program, NAIDOC Family Days, Elders Visitation Program, Yeddung Mura being added to the AMC parents playgroup, Empowerment Yarning Circles, Throughcare. However, existing programs like the Throughcare Program were identified as very limited. The capacity of Yeddung Mura to meet pre- and post-release program/service needs was again highlighted. Yeddung Mura is described as a relatively small organisation – they 'just don't have that framework to do the amount of work that needs to be done. And they are one service that's tasked with the whole of the ACT' (Legal service provider/legal profession). TAP was also identified as providing accommodation for just four people in total (two men in two properties). Stakeholders also spoke about transitional accommodation provided for women exiting prison (via Toora, which is not an Aboriginal and Torres Strait Islander-specific program), again identifying it as limited in scope.¹¹⁷

There's a lot of talk about things but the numbers are usually fairly low. Some of the properties, for instance, where the women going through care, through Toora, so those properties might be four women. And having four women who have just been released, or not long released from prison all together is a bit of a recipe for disaster. They don't know each other, or they might have had problems inside. There's not a worker there after-hours, so all sorts of things go on. (Legal service provider/legal profession)

Access to housing is an especially significant area of need for Aboriginal and Torres Strait Islander people exiting prison, given its close links with potential re-incarceration.

Housing is a key issue post-release, preventing release on parole as well as contributing to recidivism. Not having accommodation post-release can occur because those locked up in the AMC have been evicted The lack of housing means that a person will serve more time in jail, which has really serious negative knock-on effects for that person and the likelihood that they will re-offend. (Legal service provider/legal profession)

Stakeholders discussed the need for more Aboriginal and Torres Strait Islander-specific prison programs for *all* Aboriginal and Torres Strait Islander detainees. One stakeholder stated that there had previously been push-back by senior correctional staff around the introduction of Aboriginal and Torres Strait Islander programs, with staff identifying that non-Aboriginal prisoners might identify as Aboriginal to access the programs (First Nations community member). Conversely, this same stakeholder pointed out barriers to Aboriginal and Torres Strait Islander people accessing mainstream prison programs:

¹¹⁷ See <<https://www.toora.org.au/our-services/homeless-services/coming-home-program/>>.

There was a Land Care/Land Management program¹¹⁸ that was done by a white guy. But in order to get access that they needed to be eligible for Transitional Release Center (TRC) which is outside the jail. But it was extremely hard for anybody to get accepted into TRC and it was really hard for Aboriginal people to get into TRC because that allowed them to transition from full-time custody to day release for work and then slowly get released permanently. (First Nations community member)

Gaps for women and young people were especially highlighted (see further Recommendation 11: Aboriginal and Torres Strait Islander women).

Mainstream services that are provided, whether inside or outside of the detention setting, whether they are suitable for Aboriginal and Torres Strait Islander women in particular. Our experience is... that most of our clients who are women who have engaged with government institutions are deeply traumatised by the overreach into their lives ... Because they have proof, intergenerational proof and proof in their daily lives, that those organisations are not to be trusted. (Legal service provider/legal profession)

They've got the Aboriginal unit out there [at Bimberi] that are very restricted with what they can and can't do, and I guess it's about the engagement that happens out there with the inmates. I can't talk specifically on the adults there. We can only talk on the youth. But from what we're seeing, there needs to be more of a reconnection back to community, there needs to be more life-based skills, and responsibility, accountability programs. (Aboriginal and Torres Strait Islander or other non-government service provider)

Research has indicated the high potential for inadequate services within prison.¹¹⁹

Stakeholders also confirmed difficulties in engaging those on shorter sentences in prison programs/services (where available to them).

... it's mainly the sentenced prisoners that engage. I think that when they're on remand they're in a different head space. Because they don't know whether they're getting out or staying there, and how long are they staying, and all of these other things are going through their head. Whereas, once they're sentenced, they know that this is what's going to happen and how long they're going to be there... And they get in a different head space. (Aboriginal and Torres Strait Islander or other non-government service provider)

One stakeholder stated that 'we don't really have a lot of services for Aboriginal men full stop, in or outside of prison' (Legal service provider/legal profession). Stakeholder's suggested that while female specific programs are essential, where Aboriginal men in prison miss out on programs this impacts Aboriginal women too.

I know that there are issues with prison programs being run in the prison, not just for women... If there's issues with the male population, then that has a flow-on effect to the women. And so, they're not getting access to programs within the prison setting either. That's problematic ... in relation to specific programs for Aboriginal and Torres Strait Islander people generally, I don't

¹¹⁸ We note this is in reference to the AMC Culture and Land Management (CALM) program that was conducted in the AMC from 2013 to 2017. The CALM program was conducted within the prison, and also took detainees out from time to time on day release for community land management activities.

¹¹⁹ Easteal, P., et. al., (2015) 'Females in Custody in the ACT: Gendered Issues and Solutions,' 40(1) Alternative Law Journal: 18-22., Available at SSRN: <<https://ssrn.com/abstract=2577558>>

think there is anything. (Aboriginal and Torres Strait Islander or other non-government service provider)

Stakeholders also discussed detainees at the AMC being denied access to services and/or services having difficulties accessing detainees (for health issues) – ‘though they’re identifying [needs] when they enter the AMC’ (Legal service provider/legal profession).

The availability of Aboriginal and Torres Strait Islander designed and led programs is problematic. As one stakeholder commented:

They don’t even understand that there’s a need to implement [Aboriginal-specific programs] ... or recognise that it’s an issue [to run mainstream ones only]... So, I think it’s really misguided if the government thinks that a standard approach will work. I think it needs to listen to what is being said by federal, national [governments] and at a local level, that the First Nations organisations, if properly funded, know how to direct that money and use it properly. (Legal service provider/legal profession)

The ACTCS reviewed programs within the AMC in 2021-22, and a new suite of programs was implemented as a result. Information on AMC programs conducted during 2023-24 is provided in Appendix 6. There appear to be no Aboriginal and Torres Strait Islander – specific programs in this list.

New programs included the roll out of the EQUIPS (Explore, Question, Understand, Investigate and Plan to Succeed) suite of programs across the AMC and community corrections in the first half of 2022. EQUIPS is accessible for male and female sentenced detainees in the AMC and male and female offenders supervised in the community. The suite includes a total of five stand-alone offence specific and offence related programs, each with a 40-hour duration. Examples of offence related programs are EQUIPS Foundation and EQUIPS Addiction. Equips Foundation is a general therapeutic program available to all offenders assessed as higher risk of re-offending, regardless of their offence type. Equips Addiction is designed to address the addictive behaviour of eligible offenders and to provide participants with a pathway to support services for addictive behaviours.¹²⁰

The EQUIPS programs have been operating in NSW prisons and community corrections for many years. As a ‘one size fits all’ mainstream suite of programs, they have been criticised for their focus on individualised cognitive behavioural therapy approach and lack of attention to the specific needs of groups, including Aboriginal and Torres Strait Islander people and women.¹²¹

We note that JACS has recently funded three Aboriginal and Torres Strait Islander focussed crime prevention programs from the 2023-24 Crime Prevention budget funding, including:¹²²

- **Cultural Healing Men’s Group (\$50,260):** The program aims to support First Nations participants to develop their cultural connection and confidence. The focus of the program is to assist men suffering trauma, addiction, or alcoholism to develop a strong voice of their own, to take pride in their history and culture and to work towards positive decision making and actions. The program runs weekly over three months as an initial pilot for a cohort of 10 First Nations men. It is targeted at First Nations men on parole, recently released or even those incarcerated. (While a positive, it is noted that how men can access the program while in prison and other eligibility requirements remains unclear).

¹²⁰ Productivity Commission (2024), *Report on Government Services 2024, Justice Part C*, p.113

¹²¹ Stubbs, J. et al, (2023) *Rethinking Community Sanctions*, Emerald Publishing, pp. 27-29.

¹²² ACT Government supplementary response to Draft First Report.

- **Enhancement of Culturally Appropriate Support for Toora Women’s Coming Home and Phoenix Programs (\$50,000):** Toora engaged a Wiradjuri woman qualified in Counselling, Indigenous Trauma and Recovery Practice and Indigenous Health to provide the counselling, and to work with Toora to review and co-design the Coming Home and Phoenix programs.¹²³

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The ACT Government response to the request for information notes that the Crime Prevention budget funding is largely used to provide funds for one-off initiatives, seed funding for discrete crime prevention activities or programs that align with government priorities.¹²⁴ While funding for Aboriginal and Torres Strait Islander programs is a positive, stakeholder concerns/criticisms around the lack of commitment for medium and long term funding for these programs remains to be addressed.

Recommendation 9-1 is partially implemented.

Given the above significant gaps in programs/services, including for Recommendation 9-1’s focus cohorts, and potential issues identified with access to services/programs, Recommendation 9-1 is identified as partially implemented. We also note that the extent to which the Throughcare and TAP programs are working with focus cohorts of women, those on short sentences and/or remand is not clear.

4.6.3 Recommendation 9-2: Parole (court-ordered, revocation)

There are two parts to Recommendation 9-2, automatic court-ordered parole and revocation of parole.

Automatic court-ordered parole

The ACT Government has not implemented a court-ordered parole scheme, with parole decisions currently made by the Sentence Administration Board. This part of Recommendation 9-2 is therefore not implemented.

Recommendation 9-2 (court ordered parole) is not implemented.

Revocation of parole

The importance of crediting street time was also identified by stakeholders in interviews. ‘One of the implications for that is that our guys and girls will do their full stretch rather than go out on probation or parole. Because they don’t want to have the responsibility of not reoffending and going back inside’ (First Nations community member).

In 2019 the *Sentencing (Parole Time Credit) Legislation Amendment Bill (2019)* (ACT) introduced a scheme to give certain offenders credit for the period of time served on parole complying with their parole obligations. This reduces time in custody if a person’s parole is revoked. Methods of calculation are identified as in line with those used in other jurisdictions. Given this legislative amendment, this aspect of Recommendation 9-2 is implemented.

Recommendation 9-2 (street time) is implemented (with caveats).

However, it is noted that stakeholders raised issues with implementation. Stakeholders worried about a current push for avoiding release on bail or parole and the implications of this; that is, ‘not having

¹²³ Coming Home is an individual case managed, community-based support program; Phoenix is an AOD treatment program within the AMC.

¹²⁴ ACT Government supplementary response to Draft First Report.

people on the streets who should be incarcerated' (Legal service provider/legal profession). They also felt that the above time-served reform 'if it's happening, [is] not happening much.' 'I wonder if it's been used at all' (Legal service provider/legal profession). We note there appears to be no available data on the number of applications under the legislation for street time to be taken into account, how often the applications are successful or the extent to which Aboriginal and Torres Strait Islander people are able to access the scheme.

Others identified that calculations for street time credit can be complex and that automatic court-ordered parole (Recommendation 9-1) or easier processes related to street time would be preferable to the above amendment.

It's not automatic street time. It's a complicated process in terms of that. There's limitations on when you can have street time credited to you. And, ultimately, that's all for argument before the Sentence Administration Board ... They're trying to argue the case around this complicated law, in some respects, as it stands, with street time at the moment. It's problematic that it's not automatic and that they've got to go before the board/panel to argue their case without representation, with pretty harsh consequences. (Legal service provider/legal profession)

Also identified as a related issue is discretionary decision-making about when to breach by those with no real understanding – 'they go by the book, and they'll breach in a flash.'. However, '...fortunately, with our Community Corrections, there is a balance of those people. There are the young ones, but there's also the experienced ones who do take a realistic approach' (First Nations community member).

The Sentencing (Parole Time Credit) Legislation Amendment Bill (2019) (ACT) also only applies to *certain offenders*. See **Division 7.5A.2 Parole time credit—rules for applying, and particularly Section 161D Exceptions – certain ACT offences**.

4.7 Access to Justice (Recommendations 10-1 to 10-5)

10-1	Working with Aboriginal and Torres Strait Islander organisations to establish interpreter services and monitor/evaluate their use.
10-2	Establish specialist Aboriginal and Torres Strait Islander sentencing courts incorporating individualised case management, wraparound services and that are culturally safe, competent and appropriate.
10-3	Aboriginal and Torres Strait Islander organisations should play a key role in design, implementation and evaluation of specialist Aboriginal and Torres Strait Islander sentencing courts.
10-4	Introduction of special hearing processes to make qualified determinations regarding guilt after a person is found unfit to stand trial.
10-5	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.

4.7.1 ALRC rationale

Access to justice is an essential element of the rule of law, addressing barriers to access and ensuring outcomes are just and equitable. Aboriginal and Torres Strait Islander barriers to access include, for instance, alienation and disconnection from mainstream court processes. Access to legal representation/advice is one of the cornerstones of reducing over-representation.

4.7.2 Recommendation 10-1: Interpreters

The ACT Government reports that JACS administers the Safer Families initiative – Enhancing Access to Justice for Non-English Speakers, which funds translating and interpreting services (TIS) in ACT legal matters relating to domestic and family violence. 2M are contracted to provide interpreter services, including in Aboriginal and Torres Strait Islander languages.

Though not strictly perhaps (Aboriginal/Torres Strait Islander language) interpreters, also discussed is funding provided in the 2024 budget to Legal Aid ACT to enable it to employ Aboriginal and Torres Strait Islander Liaison Officers to assist and meet the needs of Aboriginal and Torres Strait Islander clients with gaining access to services provided by Legal Aid ACT and other legal assistance providers.¹²⁵

¹²⁵ Legal Aid ACT currently employ Aboriginal Liaison Officers and the Legal Aid ACT Community Liaison Unit comprises an Aboriginal Liaison Officer, Cultural Liaison Officer, Family Violence Officer, FASS Family Advocate and Disability Justice Liaison Officer.

Stakeholder input is that it can be difficult to ascertain who is responsible for organising/paying for interpreter services (courts? legal services?). They also stated that Aboriginal and Torres Strait Islander people in the ACT are very unlikely to require interpreter services.

Recommendation 10-1 is partially implemented (with caveats).

Recommendation 10-1 is partially implemented (as it applies only to DV/FV matters). We also note that there appears to be little need for or use of Aboriginal and Torres Strait Islander interpreters in the ACT.

4.7.3 Recommendation 10-2: Specialist courts with case management/wrap around services

Recommendation 10-2 is implemented.

Recommendation 10-2 is implemented, with Galambany circle sentencing courts operating at the Magistrate's Court level, and as a bail court. The Warrumbul circle sentencing court operates at the Children's Court level.¹²⁶ Circle sentencing has also been established in the Supreme Court as a pilot program (from March 2024). The ACT Government response to the request for information refers to these courts, and to the Galambany Court Support program, as above.

Recommendation 10-2 refers to specialist courts being culturally competent, safe and appropriate.

The above courts are identified by the ACT Government as offering Aboriginal and Torres Strait Islander offenders culturally appropriate access to the justice system and to culturally relevant sentencing options. They specifically refer in this context, for instance, to the courts' physical environment (e.g. inclusion of cultural items in the courts), Aboriginal and Torres Strait Islander engagement with design/decision-making processes of the court and their Coordinator and Community Panel experienced in Aboriginal and Torres Strait Islander issues.¹²⁷

Recommendation 10-2 also refers to sentencing courts having case management/wrap around services. The ACT Government describes the Galambany Court Support program as including 'case management, transport and support in complying with any requests from the Elders panel or orders of the Circle Sentencing Court.' Yeddung Mura describes their support in this area as assisting clients with court processes (application/assessment processes, transport to court, assisting clients to tell their story). At sentencing they provide clients with ongoing support for up to 12 months to adhere to conditions imposed by the court, integrating clients into Yeddung Mura support groups/yarning circles and preparing a personalised case plan.

At Warrumbul, a young person has the opportunity to undertake a rehabilitation pathway prior to, or as an alternative to sentencing. A rehabilitation pathway will include the young person and their family, the Magistrate, Elders and specific government and community services designing an individualised plan. The plan will address issues that are contributing to the young person's offending behaviour or quality of life and may include education, health and employment. One stakeholder identified this court as 'a great concept that works well, a credit to the magistrate running it' (Legal service provider/legal profession).

¹²⁶ Galambany Circle Sentencing Court (established 2004); Warumbul Children's Circle Sentencing Court (established 2018); Galambany Bail Court (established Jan 2022); introduced as a trial in the Supreme Court (2024).

¹²⁷ See Daly, et al., (2020) *Cost Benefit Analysis of the Galambany Court*, Report commissioned by the Justice and Community Safety Directorate, ACT Government and Yeddung Mura <<https://goodpathways.org.au/galambany-court/>>

Also noted in the ACT Government response to the request for information, the Galambany Court has ‘close ties and engagement with culturally appropriate support services’ present during circle sentencing. The process encourages defendants to connect with these providers to identify programs/services that will help address drivers of their offending. The Galambany Court Practice Direction includes in circle sentencing aims the linking of defendants with support services to assist them to reduce re-offending. As noted in Part 2 of this Report, the cost benefit analysis has described positive outcomes from the Galambany Court including improving standing of Aboriginal people in the ACT justice system, improved broader Aboriginal and Torres Strait Islander community wellbeing and a range of justice, social and economic outcomes for those appearing before the court.¹²⁸

Criticisms include having to plead guilty, although this is a common requirement for Aboriginal *sentencing* courts in Australia.

For families to be able to enter circle sentencing, they have to plead guilty. So, in order to go in front of our Elders, you have to automatically assume that you're guilty. It doesn't help kids or anybody who isn't guilty, you can't go against them. I think that needs to be changed ... I don't mind the process, but this has got to change – pleading guilty – you accept guilt, and you might not even be found guilty if you went through the mainstream. But it's promoted so that ‘we'll get you off if go through this way, just plead guilty’. It's like the police say, ‘well, if you just plead guilty, it'll be a lesser charge’ – it's the White mainstream system/ideology. (Aboriginal and Torres Strait Islander or other non-government service provider)

In response to the above, the First Nations Justice Branch noted that the ‘Circle Court is a Sentencing Court, so a guilty plea is an eligibility requirement. People wishing to contest their matter and possibly “be found not guilty” can do so through the mainstream court. The effectiveness of Circle Sentencing lies with the defendant being required to take responsibility for their actions in front of their community.’

However, there are issues involved in whether perhaps informal inducements lead to a guilty plea, or conversely those that might want to participate in a circle court are excluded because of advice to plead not guilty. The requirement of acceptance of individual responsibility can be dealt with ways that do not require a guilty plea. For example, in Aotearoa New Zealand, the young person is required to ‘*not deny*’ the offence to have access to a diversionary family group conference. In New Zealand, ‘*not denied*’ may indicate that the child or young person accepts that they are guilty of some conduct, but not necessarily the charge as laid by the police.¹²⁹

Some identified too that not all in the Aboriginal and Torres Strait Islander community see circle sentencing as reflecting the broader Aboriginal and Torres Strait Islander community, or that it has insufficient community buy-in. ‘The popular position and position of government and position of the people who work in Galambany, is that it is an effective sentencing regime. Not all members of the community hold that view.’ (Legal service provider/legal profession)

¹²⁸ Daly, et al., (2020) *Cost Benefit Analysis of the Galambany Court*, Report commissioned by the Justice and Community Safety Directorate, ACT Government. See also Magistrates Court of the ACT (2024) *Practice Direction – Galambany Court* (2/22024). See also <<https://www.justice.act.gov.au/aboriginal-and-torres-strait-islander-justice-affairs/galambany-circle-sentencing-court>>

¹²⁹ See Royal Commission into the Protection and Detention of Children in the Northern Territory (2017), *Report of the Royal Commission and Board of Inquiry into the Detention and Protection of Children in the Northern Territory*, Darwin, Vol 2B, p.267.

4.7.4 Recommendation 10-3: Aboriginal organisation participation in design, implementation and evaluation

In terms of design, the ACT Government response to the request for information states that in 2011, ATSIEB and the United Ngunnawal Elders Council were engaged to name the Circle Court. The ALS is identified as having been involved in the design and then implementation of the Galambany Bail Court. Further, Aboriginal and Torres Strait Islander stakeholders and court clients have been engaged during evaluation processes.¹³⁰ A panel of Aboriginal and Torres Strait Islander Elders and Respected People have primary responsibility for determining suitability of defendants, lead culturally relevant discussions and contribute information to sentencing decisions. They provide recommendations for services, predominantly provided by Aboriginal and Torres Strait Islander organisations. Yeddung Mura is one of these services, but it is noted that this organisation is not engaged in design, implementation or evaluation.

Recommendation 10-3 is partially implemented.

Recommendation 10-3 is partially implemented as there has been some engagement of Aboriginal and Torres Strait Islander organisations in design and evaluation, but more notably in implementation. There is room for improvement in engagement around ongoing design development and evaluation.

4.7.5 Recommendation 10-4: Unfit to stand trial

The ACT Government reports that special hearing processes regarding persons who are found unfit to stand trial are in place in the ACT under Part 13 of the *Crimes Act 1900*.

Recommendation 10-4 is implemented.

Recommendation 10-4 is implemented. However, there was discussion amongst stakeholders of a case where the court wanted to use an intermediary for the defendant (to help manage questioning), while two psychiatric reports stated this person is unfit to stand trial. The court was seen to be responding to community concerns related to culpability, and to avoid any diversion to special proceedings about capacity (bypassing the *Mental Health Act*).

Another stakeholder discussed provisions under the *Crimes Act*, stating that previously the court would order a forensic mental health report as a matter of course if fitness to stand trial was raised by a defendant's lawyer. However, this does not appear to be happening as much and there also appears to be some pushback on lawyers to obtain the reports.

We note that these are reflections and potentially do not reflect the totality of court practice in relation to Part 13.

4.7.6 Recommendation 10-5: Unfit to stand trial fixed term/periodic review

The ACT Government reports that in section 180 of the *Mental Health Act (2015)* there is a requirement that if a person who is unfit to plead is detained in custody for immediate review by the ACT Civil and

¹³⁰ See: Strengthening the Ngambra Circle Sentencing Court report and options paper (2010), A Community Response to the Strengthening the Ngambra Circle Sentencing Court (2012), Cost Benefit Analysis of Galambany Court (2020).

Administrative Tribunal (ACAT), the ACAT must review the detention and consider the release of the person as soon as practicable, and not later than seven days after the day of the order.

If the ACAT does not order the release of the person, the ACAT must review their detention and consider their release at least monthly while the detention continues. If the ACAT orders that a person is released, it may do so subject to appropriate conditions (e.g. that the person must comply with a mental health order). Under section 182, the ACAT must review any such conditions at least every six months while the order is subject to condition. The limits on a person's overall detention are set out at section 183, with a limitation period ending on the day which the sentence would have expired as indicated by the Court in accordance with section 301, 302, 304 or 305 of the *Crimes Act*.

Section 180 was recently the subject of a Review by the Chief Psychiatrist. The Government has announced an ACT Government taskforce to consider and respond to the Chief Psychiatrist's Report.

Recommendation 10-5 is implemented.

4.8 Aboriginal and Torres Strait Islander Women (Recommendations 11-1, 11-2)

11-1	Programs and services for female Aboriginal and Torres Strait Islander offenders (pre, during and post incarceration) should take into account their particular needs. Aboriginal and Torres Strait Islander women should develop and deliver these programs/services, which ought also to be culturally appropriate and trauma informed.
11-2	Police engaging with Aboriginal and Torres Strait Islander people and communities should receive instruction in best practice for handling allegations/incidents of family violence (including preventative intervention and prompt response).

4.8.1 ALRC rationale

Aboriginal and Torres Strait Islander women are the fastest growing prison population but as there have been historically low numbers of Aboriginal and Torres Strait Islander female offenders (and understanding of their particular needs) there are very few justice responses designed to meet their needs. As well as being trauma informed and culturally appropriate (to respond to causal factors such as family/sexual violence, child removal, disability), justice responses need to be developed and delivered by Aboriginal and Torres Strait Islander women.

Given the link between family violence and offending of Aboriginal and Torres Strait Islander women (contributing to homelessness, mental health etc.), the way police respond to family violence incidents – both as under/over-policing – impacts on their offending and incarceration. Contemporary police responses are identified as affected by past and present police roles in deaths in custody/child removal/historically poor responses to family violence reported by Aboriginal and Torres Strait Islander women.

4.8.2 Recommendation 11-1: Programs and services for women

Stakeholders identified in interviews ‘poverty, violence’ and ‘intergenerational trauma’ as some of the key causal factors for Aboriginal and Torres Strait Islander women’s contact with the justice system (Aboriginal and Torres Strait Islander or other non-government service provider). They spoke of the victimisation of this group as a driver of contact with this system, which then fails to recognise their particular needs arising from this victimisation. ‘Women are particularly prejudiced by the justice system globally. It’s a double whammy for women. Not only are they perpetrators, but they’re previously victims. It’s a given.’ (First Nations community member).

The ACT Government has identified its funding of ALS/Legal Aid to assist in Aboriginal and Torres Strait Islander criminal law matters, including for women, and Legal Aid’s Aboriginal and Torres Strait Islander Liaison Officers (linking Aboriginal and Torres Strait Islander people with Legal Aid and other services) as relevant to this recommendation. Also highlighted is government funding for Mulleun Mura

at the Women's Legal Centre.¹³¹ This is identified as early intervention preventing escalation of the latter issues into criminal law issues for Aboriginal and Torres Strait Islander women in the ACT.

Otherwise, implementation is said to have occurred through:

- Throughcare (available to both men and women)
- Empowerment Yarning Circles (available to men and women)
- Yarrabi Bamirr (includes a Family Plan with long, medium- and short-term goals supplemented by family brokerage funding)
- First Nations Justice Branch development with ACTCS of a culturally appropriate On Country Program for men and women in the AMC (although this is still being developed).

We also note the newly funded programs for women. The Yhurwan Bullan Program for First Nations Women is for First Nations women who are subject to community service orders and those at risk of incarceration. The program is delivered by Clybucca Dreaming and offers activities designed for connection with culture and country and accessing suitable services and runs weekly for 6 months.¹³² (No further information is provided around eligibility, maximum number of participants and whether participation in the program is a condition of the community service order). The *Enhancement of Culturally Appropriate Support for Toora Women's Coming Home and Phoenix Programs* provides the Toora Women Inc (Toora) funding to deliver culturally sensitive counselling to a growing cohort of women needing support in connection with Corrections, those on community orders, and not just those reintegrating on release from the AMC.

Stakeholders referred to other relevant programs/services during interviews. As examples, Winnunga has programs and services for Aboriginal and Torres Strait Islander women in prison (e.g. Australian Nurse Family Partnership program). Canberra CLC's Street Law program is also supporting women with housing issues, and women are also being supported through the DV Crisis Service and OzChild (working with a family where there's been violence to promote healing). Previously, Beryl Women Inc ran a DV program in prison and they identify still supporting sentenced/incarcerated women. Services also identified their programs as limited by capacity to meet needs in the community.

Overall, there was consensus that further programs and services are required for Aboriginal and Torres Strait Islander women, both on remand and sentenced, and these need to meet their particular needs. In terms of these needs *prior to* and during incarceration, one stakeholder spoke about children in their care; meaning that women required legal advice early and prior to incarceration to inform choices about care arrangements during their imprisonment, for instance.

First Nations women carry significantly important roles in caring for children as the matriarch's and carers of children and family (often not only their own children but including other children through kinship relations) ... Priority should be placed on First Nations women who are facing incarceration or who are incarcerated obtaining appropriate access to justice to ensure they are able to continue to make decisions for themselves and their families to keep them safe. (Legal service provider/legal profession)

Debt and its particular impacts on Aboriginal women (e.g. in domestic violence situations) and its link to their offending were also highlighted as needing attention prior to and to avert incarceration. Mulleun

¹³¹ See Part 2 of this Report for a description of Mulleun Mura.

¹³² ACT Government supplementary response to Draft First Report.

Mura is currently supporting women in relation to both debt and the above childcare arrangements, within their current capacity.

Significant concerns were raised about women being incarcerated alongside men. Separate facilities along with female-specific programs are required.

The situation in the ACT, where the women are housed in the same facility as the men, is absurd. And for me, it just retraumatizes them, because they're coming into contact with their perpetrators while in jail. I don't know how that complies with any human rights regulation. The first thing they need is a completely different facility for women so that they can apply specific women-focused programs. (First Nations community member)

...the women are housed very close to the men, so they're held under, there's no freedom there for them as such. Even if it is a low-level offending, they're held in there like they're the worst criminal. (Legal service provider/legal profession)

Also identified was the absence of an Aboriginal and Torres Strait Islander women's shelter in the ACT. Stakeholders noted that if this was in place women would not need to be placed on remand at such high rates. In this context, given the trauma and distrust of Aboriginal and Torres Strait Islander women in mainstream institutions (see Recommendation 9-1), stakeholders emphasised the importance of Aboriginal community controlled and run services and programs for this group, ensuring cultural safety and a trauma informed approach.

Recommendation 11-1 is partially implemented.

Recommendation 11-1 is partially implemented. Recommendation 11-1 emphasises the need for culturally appropriate and trauma informed programs/services that are developed and delivered by Aboriginal and Torres Strait Islander women. There is no detail provided by the ACT Government about First Nations female staffing of most of their identified programs, though Mulleun Mura identifies its female staff as First Nations and Winnunga and Yedding Mura are ACCOs. It is also not clear to what extent Aboriginal and Torres Strait Islander women have been involved in the development of these programs or the extent of their engagement with most of them (though for Aboriginal and Torres Strait Islander female specific programs like Mulleun Mura, this is self-evident). Significant gaps remain, including no prison specifically for Aboriginal and Torres Strait Islander women and no Aboriginal and Torres Strait Islander women's shelter, as well as capacity issues for meeting community needs.

We also note that the usage data for services shown in Appendix 3 is limited in the identification of whether clients are male or female. However, for the Ngurrumbai Bail Support Program, between 30% and 40% of clients are Aboriginal and Torres Strait Islander women and for the Front Up program, between 39% and 60% of clients are Aboriginal and Torres Strait Islander women.

4.8.3 Recommendation 11-2: Police instruction on best practice for handling allegations and incidents of family violence – including preventative intervention and prompt response – in those communities.

The ACT Government identifies ACT Policing as providing culturally appropriate support during engagement with police and the justice process through dedicated First Nations Liaison Officers (First Nations LOs). First Nations LOs are seen as playing 'a critical role and assist police to engage with or

guide engagement in a culturally safe manner for people and families at risk, to identify needs, gain trust and refer to relevant culturally appropriate support and education services and providers.’¹³³

The extent to which this increases awareness across other police staff in relation to best practice responses to DV/FV is unclear.¹³⁴ However, the response also indicates that in May 2023, First Nations LOs commenced a pilot to work with the Family Violence and Victims of Crime portfolio in connection with the multi-agency Family Violence Case Tracking and Family Violence – Safety Action Planning programs. At the conclusion of the pilot, ‘members of these forums have identified the insights provided through First Nations LO participation to the extent their participation is now part of regular policing duties.’ There is no further detail provided about these insights and their incorporation into policing duties.

ATSIEB, alongside the broader Aboriginal and Torres Strait Islander community in the ACT, is also identified as having informed the development and delivery of the First Nations Cultural Literacy Training Program for ACT Policing’s members.¹³⁵ This training program is described as a ‘learning process that aims to increase the knowledge, skills and attitudes of individuals within ACT Policing to work effectively and respectfully with First Nations peoples and communities.’ It is mandatory for all police officers and those with public facing professional roles (see Recommendation 14-1, which discusses the Chief Police Officer’s First Nations Advisory Board involvement in design of this program). There is no detail on the extent to which this program focusses on best responses to DV/FV.

ACT Policing’s Family Violence Unit (FV Unit) also has a training package on FV that covers trauma informed policing practice and identification of victim/aggressor, amongst other things but does not appear to be Indigenous-specific. The ACT Police response to the Review confirmed that the ‘[FV Unit] training package does not include First Nations specific modules within the training package, however it does canvass the various barriers for victim-survivors engaging with police about [DV/FV], and this includes reference to cultural factors and distrust of police in First Nations and certain CALD communities.’ The response noted further that a new training package is being developed ‘with reference to the ANZPAA education and training guidelines for [DV/FV], which include First Nations specific considerations.’

As a broader point, ACT Policing are currently discussing how to most appropriately identify the Aboriginal and Torres Strait Islander status of victims/survivors and perpetrators in family violence situations, given Aboriginal community fears of being racially profiled.¹³⁶ ACT Policing are providing guidance to members about when to seek identifying information.

The importance of this recommendation was emphasised by stakeholders, who identified the particular issues for Aboriginal and Torres Strait Islander women experiencing violence and impacts of poor policing in this area, as follows.

¹³³ The ACT Policing First Nations LOs and the Senior First Nations LO are also involved through the Galambany and Warrambul Circle Sentencing as requested.

¹³⁴ Although the ACT Police response to the review notes that all ACTP members receive the ACTP First Nations Cultural Literacy Training Program. This includes all trainers and participants on DFV training courses.

¹³⁵ This program fulfils a recommendation of the ACT Ombudsman’s Own Motion Investigation concerning ACT Policing’s administrative framework for engagement with the First Nations community, according to the ACT Government.

¹³⁶ This follows recommendations of the Ombudsman’s Own Motion Investigation into the relationship between First Nations people and communities with ACT Policing.

I think there's always unintended consequences for women, specifically around domestic and family violence. And that is if a woman is seen to be aggressive or even if she's just upset about what's happened to her, but the police take that as aggression, she is then charged as well. There are unintended consequences for women. (Aboriginal and Torres Strait Islander or other non-government service provider)

If Aboriginal women have a first bad time experience with the police in terms of calling for assistance, they won't call again. That's been our experience. They'll just put up with the violence or deal with it in the best way that they can. And that might be leaving the family home. (Aboriginal and Torres Strait Islander or other non-government service provider)

The ACT Police response to the Review noted, 'we acknowledge and recognise the issues raised in the anecdotal examples regarding the risk of misidentification of primary aggressor, and the consequences of previous negative experiences on future reporting of [DV/FV] to police.

- These concerns are held by stakeholders and victim survivors from across the whole [DV/FV] sector, and are not unique to First Nations people.
- We acknowledge though that these issues can be aggravated in the case of First Nations victims – for example though unconscious bias and pre-existing distrust of police'.

Stakeholders identified that training and awareness is required 'around coercion and control, being able to recognise those symptoms or signs. And, also, being able to have an understanding around trauma and the way that that plays out' (Aboriginal and Torres Strait Islander or other non-government service provider).

The FV Unit, being a 'small team', is identified by stakeholders as not engaging as much as they might with relevant services and not calling on services (including relevant Aboriginal-led services) to help develop the above training package.

It almost feels like they're non-existent. They don't engage with us. When we need [to support someone with a] protection orders and things like that, we will try and make contact with them, but it's not always successful. As far as I know, they don't have any Aboriginal or Torres Strait Islander people employed in that area. (Aboriginal and Torres Strait Islander or other non-government service provider)

The ACT Police response to the Review noted that the '[FV Unit] engages daily with partner stakeholders including Domestic Violence Crisis Service, Child, Youth and Family Services, Canberra Rape Crisis Centre and the Family Violence Safety Action Program. These engagements are underpinned by formal Memoranda of Understanding and each of these stakeholders have First Nations specific programs and policies.'

However, the ACT Police response to the Review acknowledged that 'we note that engagement with ACCO/NGOs differs from the other above-mentioned partners in that they do not have a formal ACT Government mandated partnership with ACTP in the DFV/criminal justice continuum... [the FV Unit] would be happy to work more closely with such organisations where capacity allows and exploring a formal partnership agreement.'

Recommendation 11-2 is partially implemented.

Recommendation 11-2 is partially implemented. As above, the mandatory First Nations Cultural Literacy Training Program is a positive, but it is not clear how this relates to policing DV/FV specifically. The FV Unit's training is also a positive but does not appear to be Aboriginal and Torres Strait Islander specific. First Nations LOs are identified as providing insight to inform development of

Safety Action Planning programs, but it is not clear what this looks like in practice or how this and the above initiatives account for the particular needs or circumstances of Aboriginal and Torres Strait Islander women. Recruitment of First Nations LOs in general is a positive initiative, though it is not clear how these officers are providing instruction on best practice responses to DV/FV across ACT Policing.

4.9 Fines and Driver Licences (Recommendations 12-1 to 12-4)

12-1	Legislation should be abolished that provides for imprisonment in lieu or as a result of unpaid fines.
12-2	<p>Working with Aboriginal and Torres Strait Islander organisations, options should be developed that:</p> <ul style="list-style-type: none"> • Reduce imposition of fines/infringement notices • Limit penalty amounts of infringement notices • Avoid suspension of licences for fine default • Provide alternative ways to pay fines/infringement notices.
12-3	Working with Aboriginal and Torres Strait Islander organisations and communities, areas without services relevant to licensing should be identified and services provided to these areas, especially in remote/regional communities.
12-4	Review 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 them to language that is abusive or threatening.

4.9.1 ALRC rationale

The ALRC notes that incarceration is a disproportionate response to fine default with disproportionate impacts on Aboriginal and Torres Strait Islander people. Fine enforcement regimes should not directly or indirectly allow for imprisonment. Fines and their enforcement regimes, in general, impact Aboriginal and Torres Strait Islander people disproportionately. They aggravate drivers of contact with the justice system (e.g. where default/secondary offending leads to suspensions or disqualification of licences, further fines or imprisonment).

The ALRC seeks to increase the efficacy and decrease harm caused to Aboriginal and Torres Strait Islander people by imposition of fines. Fine sizes need to be decreased, use of infringement notices limited, Work Development Orders adopted nationally, and suspension of licences avoided, supported by statutory guidelines for state debt recovery agencies. Fine systems and enforcement regimes must be fairer and more responsive to the circumstances of Aboriginal and Torres Strait Islander people, particularly in remote/regional locations.

Stakeholders we interviewed identified the importance of this recommendation by discussing the disproportionate impacts of debt, including from fines, on Indigenous people and how these feed into contact with the justice system.

Aboriginal and Torres Strait Islander people are disproportionately impacted by fines and by debt and by the inability to clear that debt. It impacts them in a number of ways. One is if you've got housing debt, for example, because you're paying off your court fines you can't afford to pay your rent You are then potentially excluded from getting transferred out of the house

that you're currently living in if you're in social housing tenancy. The debt impact on Aboriginal women in particular, but on all Aboriginal or Torres Strait Islander people, and, in fact, all of our social-housing tenants, but for this group in particular is extremely debilitating. When people come out of AMC, they might have Centrelink debt waiting for them ... [It doesn't lead directly to] incarceration maybe ... But debt does impact people in all the other ways that I have explained. (Legal service provider/legal profession)

4.9.2 Recommendation 12-1: Imprisonment for fine default

The ACT Government identifies it as uncommon to refer someone for prosecution following non-payment of administrative penalties (infringement notices). Where this does occur, these prosecutions are 'not for nonpayment of fines: they are prosecutions for the conduct in respect of which an administrative penalty was issued.'¹³⁷ Stakeholders generally agreed that the focus is on community service not incarceration, but some wanted to see data that clearly demonstrates this.

The ACT Government response to the request for information does not categorically state that imprisonment is not an option, but rather relies on the fact that referral for prosecution is uncommon. Thus, referral for prosecution is discretionary and it is not clear whether imprisonment might arise as a sentence resulting from prosecution. For this reason, we classify Recommendation 12-1 as not implemented.

Further information is available from a government response on non-payment fines to the ACT Legislative Assembly (21 September 2022).¹³⁸ In 2020-2021 data shows that the majority of infringement notices were issued for parking and traffic offences (152,498), followed by failure to vote (23,845). In addition, there are 42 regulations under the *Magistrates Court Act 1930* which can attract an infringement notice (901 infringement notices issued in 2020-2021). Included in these regulations are public order offences of being intoxicated in public places and engaging in behaviour that disturbs public order. We note that these are typically the offences where Aboriginal and Torres Strait Islander people are over-represented.

Recommendation 12-1 is not implemented.

4.9.3 Recommendation 12-2: Reducing impacts of fines/notices

The ACT Government identifies that Access Canberra has various measures for community to manage infringements, including payment plans, time to pay and waiver of a fine due to financial hardship. Work Development Orders are also available. Additionally, hardship provisions and/or processes apply to each framework under which administrative penalties are issued in the ACT.¹³⁹

¹³⁷ See ACT Government's submission to the ACT Legislative Assembly Justice and Community Safety Standing Committee Inquiry into Penalties and Minor Offences and vulnerable people at <https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/2209456/Submission-008-ACT-Government.pdf>; Government response to this inquiry at <https://www.parliament.act.gov.au/__data/assets/pdf_file/0020/2404712/JCS-20-Inquiry-into-Penalties-for-Minor-Offences-and-Vulnerable-people-Government-Response-Tabled-on-27-February-2024.pdf>

¹³⁸ Legislative Assembly for the Australian Capital Territory (2022) Tenth Assembly, Non-Payment of Fines – Penalties for Minor Offences – Response to Assembly Resolution of 24 March 2022 – Government Response.

¹³⁹ This includes *Road Transport (General) Act 1999*. The *Magistrates Court (Infringement Notices) Amendment Act 2020*, which commenced in February 2024, makes the same hardship options available for parking and traffic offences to infringement notices issued under the *Magistrates Court Act*.

As part of a recent (2023) ACT Legislative Assembly Justice and Community Safety Standing Committee Inquiry into Penalties and Minor Offences and Vulnerable People, the ACT Government also agreed to review datasets to identify impacts of infringement notices on vulnerable people, including Aboriginal and Torres Strait Islander people. Data on Aboriginal and Torres Strait Islander status is not, however, usually gathered when a notice is issued.¹⁴⁰

Recommendation 12-2 is partially implemented.

We identify Recommendation 12-2 as partially implemented. The initiatives identified by the ACT Government either have no focus on Aboriginal and Torres Strait Islander people and/or there is no data available on their application to this group. Work Development Orders, for instance, are identified as very valuable by stakeholders – but it is not clear how many Aboriginal and Torres Strait Islander people are making use of and completing these orders in the ACT Government response to the request for information provided to the research team.

We tried, a few years ago, to work with ACT Government around traffic offence fines – Work Development Program for our community But I was thinking that this would be an enormous benefit to our community. I don't know the numbers of Aboriginal people that have taken advantage of that, and got their licence back, got a job, and were able to pay back under that program. Well, what I'd be saying is, give us the data on the Aboriginal people that access that program. (First Nations community member)

We note that the ACT Government inquiry into penalties¹⁴¹ does have some focus on Aboriginal and Torres Strait Islander people and issues and may lead to relevant reform. The extent to which Aboriginal and Torres Strait Islander people are involved in developing relevant initiatives, however, is unclear.

We identify the ACT Government response to the request for information to Recommendation 12-3 (below) as relevant, in parts, to 12-2. This response refers to Transport Canberra and City Services (TCCS) activities that aim to improve or promote road safety amongst the Aboriginal and Torres Strait Islander community, as identified within the ACT Road Safety Action Plan 2024-5. Action 4.3 refers to:

... continuing targeted education and awareness campaigns, including those targeting Aboriginal and Torres Strait Islander and multicultural communities, to increase awareness of rights, responsibilities and safety perceptions for all road and path users, to promote safe behaviours and improve road safety outcomes.¹⁴²

Education/awareness in this context may help reduce non-compliance with road/traffic regulations/legislation, particularly where this is behavioural (e.g. where it encourages increased vehicle registrations). ACT Government improvement of access to driver licensing services under Recommendation 12-3 is also relevant to Recommendation 12-2. As per below, Recommendation 12-3 is identified as partially implemented.

¹⁴⁰ Implementation of the *Magistrates Court (Infringement Notices) Amendment Act* will also provide a new opportunity to consider the use and impact of financial hardship options for repayment of infringement notices. The Government's response to the JACS Committee Inquiry also provides further information on the Government's commitments relevant to this recommendation. See <https://www.parliament.act.gov.au/__data/assets/pdf_file/0020/2404712/JCS-20-Inquiry-into-Penalties-for-Minor-Offences-and-Vulnerable-people-Government-Response-Tabled-on-27-February-2024.pdf>.

¹⁴¹ ACT Legislative Assembly Justice and Community Safety Standing Committee Inquiry into Penalties and Minor Offences and Vulnerable People.

¹⁴² See <https://www.cityservices.act.gov.au/__data/assets/pdf_file/0004/2356843/ACT-Road-Safety-Action-Plan-20242025.pdf>, p. 14.

4.9.4 Recommendation 12-3: Driver licencing services

The ACT Government points to the First Nations Justice Branch-led Commissioning process¹⁴³ regarding gaps in service in the justice system for First Nations peoples as relevant to Recommendation 12-3. At this point, it is not clear whether and how this process will ultimately support implementation of this recommendation.

Their response identifies current TCCS services, as above (Recommendation 12-2). It also refers to the ACT's Road Safety Action Plan, which contains data on road fatalities but no Aboriginal-specific data. The ACT Government notes that Access Canberra does not collect Aboriginal and Torres Strait Islander statistical data related to driver licensing, vehicle safety or proof of ID cards, likely to hinder its capacity to implement Recommendation 12-3. The ACT Government has committed under the National Road Safety Action Plan to contribute data to the Australian Government to assist in the establishment of a baseline of fatalities of Aboriginal and Torres Strait Islander people on public roads, however.

Access Canberra, Licensing and Registrations Branch are also identified as providing services in Jervis Bay Territory (JBT) under an agreement with the Commonwealth, including around registrations, licensing and proof of ID cards. Driver licence testing occurs four times per year in JBT and on-road vehicle compliance programs are undertaken in joint operations with ACT Policing. The ACT Government states that vehicle safety inspections are scheduled to take into consideration culturally important dates for the Aboriginal and Torres Strait Islander community. Access Canberra does not, however, have any policies and procedures specific to providing services relating to the licensing of a driver specific to Aboriginal or Torres Strait Islander people in the JBT.

The ACT Government also states that Access Canberra is working with JACS to support provision to AMC detainees of identity and other documents. This is identified as enabling timely access to further identity documents including licenses, as well as supporting reintegration into the community.

Stakeholders discussed problems of access to driver licensing programs for those caught up in the justice system (also noted above in Recommendation 7-3 Community based sentences). One stakeholder spoke of an effective 'justice reinvestment' initiative, the pilot driver licensing program funded by the ACT Safety Directorate that appeared to have been defunded.

And the funding just stopped. Could we apply for it again? Yes, potentially. But it's one of those problems of a pilot that finally starts to see good results, then the funding disappears, the program stops. To start it up again, it's a significant issue to reinvigorate a program that took, what, 12-plus months to actually start to see some real impact. It just stuck out to me as an obvious program that could be put back on the agenda that I really saw that actually worked, that made a difference. And I just never understood why that went away. (Legal service provider/legal profession)

The above inquiry related to penalties (see Recommendation 12-2) also discusses driver licensing programs, identifying that the Salvation Army from 2023 has provided Aboriginal and Torres Strait Islander young people with a mentor program through the licensing process (Learner Driver Mentor Drive for Life) and Child and Youth Protection Services (CYPS) Branch within CSD has provided funding to develop a behaviour change intervention for young driving offenders.¹⁴⁴

¹⁴³See <<https://www.communityservices.act.gov.au/commissioning>>.

¹⁴⁴ See <https://www.parliament.act.gov.au/_data/assets/pdf_file/0020/2404712/JCS-20-Inquiry-into-Penalties-for-Minor-Offences-and-Vulnerable-people-Government-Response-Tabled-on-27-February-2024.pdf> p. 13.

Recommendation 12-3 is partially implemented.

Recommendation 12-3 is partially implemented. There is a formal commitment by the ACT Government to gathering data that might help to inform mapping of current licensing services required under Recommendation 12-3. It is also attempting to address service gaps in JBT. As a related program or service, support provided to detainees to access identity documents in the AMC may increase access to licenses. Its commitment to developing driver licensing programs for young offenders and funding an Aboriginal-specific driver licensing program provided by the Salvation Army are also positive. More involvement of Aboriginal and Torres Strait Islander people and communities in identifying relevant service gaps may be addressed via the above commissioning process.

4.9.5 Recommendation 12-4: Offensive language

Section 392 of the *Crimes Act 1900* provides an offence for ‘offensive behaviour’ that prohibits behaving in a riotous, indecent, offensive or insulting manner. The issue of whether this offence could be narrowed to align more closely with Recommendation 12-4 is not under active consideration.

Recommendation 12-4 is not implemented.

4.10 Alcohol (Recommendations 13-1, 13-2)

13-1	All initiatives aimed at reducing 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.
13-2	Governments should enable and provide support to Aboriginal and Torres Strait Islander communities wishing to address alcohol misuse to develop and implement local liquor accords, develop plans to prevent the sale of full strength alcohol or reduce the availability of particular alcohol ranges or products within their communities.

4.10.1 ALRC rationale

The ALRC identifies that criminalising alcohol use is not an appropriate response to the link between alcohol use and offending. Responses intended to reduce the harmful effects of alcohol in Aboriginal and Torres Strait Islander communities need to be developed with and led by these communities to ensure they meet their particular needs. All levels of government should enable and provide support to Aboriginal and Torres Strait Islander communities wishing to address alcohol misuse through mechanisms such as liquor accords etc.

4.10.2 Recommendation 13-1: Aboriginal-led responses to alcohol use

The ACT Government has not reported on implementation of the above types of mechanisms (e.g. liquor accords) – which are perhaps irrelevant in the ACT context (see also Recommendation 13-2). It identifies a mechanism for Aboriginal and Torres Strait Islander participation in alcohol related issues in the ACT, however. The Liquor Advisory Board advises the Minister on the operation and effectiveness of the *Liquor Act 2010* and while there is provision for an Aboriginal people and Torres Strait Islander representative on the Board, under section 216, this position is currently unfilled.¹⁴⁵

The ACT Government response to the request for information also identifies working with Aboriginal and Torres Strait Islander organisations and communities to develop initiatives related to the use of alcohol and drugs (predominantly those connected with the justice system). It identifies working with Winnunga on design of the ACT's first Aboriginal and Torres Strait Islander-specific AOD Residential Rehabilitation service, with funding provided for construction for this facility (due for completion in 2025), and for development of a model of care and AOD capacity building/training etc.

The ACT Government has funded Ngunawal Bush Healing Farm (to move it from a day-service to a residential service). This is identified in the response as a place of healing, where Aboriginal and Torres Strait Islander peoples can feel safe and supported to make ongoing and meaningful changes in their lives through a therapeutic community approach, traditional healing concepts, cultural programs and life skills training in their journey of recovery from addiction. There were mixed views from

¹⁴⁵ We note that Board appointments are due to be refreshed in March 2025, following the ACT election in late 2024.

stakeholders on the efficacy of the Ngunnawal Farm¹⁴⁶, with one stakeholder identifying it as a healing centre rather than a rehabilitation facility (First Nations community member).

While stakeholders pointed to the importance of having an ACT-based Indigenous-specific rehabilitation facility (currently these are only available interstate), some also stated that clearer access or pathways to interstate rehabilitation facilities would be beneficial. This may also require attention on the part of the ACT Government. ‘Sometimes, I think it’s good for people who are trying to go through rehab to be out of the jurisdictions for that time and away from influences’ (First Nations community member).

Further, Winnunga has co-designed with the ACT Government an ACT Detainee Health and Wellbeing Strategy 2023-28, incorporating input from detainees, relevant service providers and other key stakeholders. It represents a ‘shared commitment to improving detainee health and wellbeing services to address their existing health and wellbeing needs, and to minimise negative effects of imprisonment on people’s physical and mental health.’ This strategy refers to drug and alcohol issues and treatment.¹⁴⁷

Perhaps less directly related to Recommendation 13-1, the ACT Government has invested in development by Thirrili (Indigenous suicide prevention service) ‘in genuine partnership with ACT Health and ACT and region First Nations peoples and communities’ of an Aboriginal and Torres Strait Islander integrated Suicide Prevention Intervention, Post-Intervention and Aftercare Service, to be led by First Nations peoples for First Nations peoples. It is not clear what focus this will have on alcohol.

Recommendation 13-1 is implemented.

Recommendation 13-1 is implemented. However, not as whole-of-community approaches, as is effectively the focus of Recommendation 13-1, but through co-design of the Aboriginal and Torres Strait Islander specific residential rehabilitation service and detainee health and wellbeing strategy, the funding of Winnunga health services (where related to AOD) and the Aboriginal and Torres Strait Islander designated position on the Liquor Advisory Board (currently unfilled).

4.10.3 Recommendation 13-2: Government support for community-designed alcohol management

The ACT Government identifies that regulation of alcohol in the ACT is governed by the *Liquor Act 2010*. There are no specific arrangements which restrict the sale of alcohol to First Nations people or communities in the ACT.

Recommendation 13-2 is not implemented (with a caveat).

Recommendation 13-2 is not implemented. However, we note the caveat that it could be considered that the recommendation is not particularly relevant to the ACT. The recommendation is aimed more at local communities developing alcohol management plans rather than the distinct situation of the ACT as a whole territory (jurisdiction).

¹⁴⁶ For controversy surrounding the facility see <<https://www.abc.net.au/news/2023-07-30/act-ngunnawal-bush-healing-farm-for-indigenous-canberrans/102574658>>
¹⁴⁷ See <<https://nla.gov.au/nla.obj-3229293650/view>>.

4.11 Police Accountability (Recommendations 14-1 to 14-4)

14-1	Review by government at all levels of police procedures and practices so that law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples.
14-2	To provide Aboriginal and Torres Strait Islander people and communities with greater confidence in police complaints handling processes, police complaints handling mechanisms should be reviewed to ensure greater practical independence, accountability and transparency of investigations.
14-3	There should be a statutory requirement that police contact an Aboriginal and Torres Strait Islander legal service or equivalent asap after an Aboriginal and Torres Strait Islander person is detained in custody (for any reason). A max period within which this notification should occur should be prescribed.
14-4	<p>To enhance cultural change within police initiatives to be considered include:</p> <ul style="list-style-type: none"> • increased Aboriginal and Torres Strait Islander employment • cultural awareness training • recording/sharing lessons for successful cooperation between police and Aboriginal and Torres Strait Islander peoples • careful and timely succession planning for replacement of key personnel with effective relationships with Aboriginal and Torres Strait Islander communities • improved public reporting on community engagement initiatives • entering into Reconciliation Action Plans (RAPs).

4.11.1 ALRC rationale

Many Aboriginal and Torres Strait Islander people have negative attitudes towards police, viewing the law as applied unfairly and their complaints as not being taken seriously. Data indicates that the law is indeed applied unequally (e.g. less cautioning, more charging of Aboriginal and Torres Strait Islander people). These negative attitudes impact on interactions with police, leading to disproportionate Aboriginal and Torres Strait Islander arrest, custody and incarceration rates and affecting investigations. Poor policing practices need attention to improve relationships. Mechanisms for independent assessment of complaints, for instance, might be considered. Custody notification services need strengthening (including where Aboriginal and Torres Strait Islander are detained for protective reasons), as an opportunity to provide welfare checks and culturally sensitive legal advice.

4.11.2 Recommendation 14-1: Review police practice/procedure

There is no comprehensive reference in this part of the ACT Government response to the request for information to the Commonwealth/ACT Ombudsman Own Investigation into ACT Policing programs, policies, training and procedures related to Aboriginal and Torres Strait Islander engagement, with

recommendations/findings delivered in 2021 – though it appears relevant.¹⁴⁸ Recommendations of the investigation included, for example:

- Establishing standard operating procedures to facilitate access to diversionary programs (providing guidance for decision-making).
- Developing an engagement and consultation strategy in consultation with the community.
- Developing a strategy to support development, delivery and ongoing evaluation of cultural training.
- Amending complaints process to prompt questions related to and recording of Aboriginal and Torres Strait Islander status of the complainant.

All of these recommendations may support implementation of Recommendation 14-1. Some recommendations have been implemented (see e.g. Recommendation 14-4).¹⁴⁹

The ACT Government response to the request for information also notes that the current Ministerial Direction¹⁵⁰ outlines the ACT Government’s priorities and expectations for the Australian Federal Police (AFP) and more specifically the Chief Police Officer for the ACT (CPO). The Direction is to be read in conjunction with the 2022-2026 Purchase Agreement between the ACT Minister for Police and Emergency Services, the AFP Commissioner and the CPO. The Ministerial Direction identifies reducing the overrepresentation of Aboriginal and Torres Strait Islander people as a key focus area for police through the ‘design and [implementation of] an ACT Policing engagement framework in consultation with First Nations communities. This includes implementing agreed recommendations from the Ombudsman report on ACT Policing’s administrative framework’.¹⁵¹

The ACT Government response to the request for information reports that ACT Policing has reinvigorated the Chief Police Officer’s First Nations Advisory Board and is seeking to work more closely with ATSIEB. Engagement with these bodies has informed the First Nations Cultural Literacy Training Program (see 14-4 below) and the ACT Policing Strategy for Engagement with First Nations People and Communities, for release in 2024.¹⁵² This strategy, a response to the above investigation, ‘recognises that mutual respect, trust and partnership between its members and First Nations peoples and communities’ is essential to achieving ‘its goals and outcomes’. Engagement with the above Advisory Board and ATSIEB is also identified as influencing refinement of existing ACT Policing guidelines and practices to better accommodate and support the needs of First Nations people and communities. No further detail is provided.

¹⁴⁸ Volumes 1 and 2 are available here: <https://www.ombudsman.gov.au/__data/assets/pdf_file/0016/112408/Attachment-A-FINAL-Report-Vol-1-ACT-Policing-OMI-accessible-A2147380.pdf>;

<https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0025/296071/Attachment-A.1-FINAL-Report-Vol-2-ACT-Policing-OMI-accessible-A2147381.pdf>.

¹⁴⁹ The investigation was in part a response to community concerns but did not rely on a formal process of community consultation – though it refers to actions identified in its report being taken ‘in consultation’ with the Aboriginal and Torres Strait Islander community.

¹⁵⁰ To be read in conjunction with the 2022-2026 Purchase Agreement between the ACT Minister for Police and Emergency Services, the AFP Commissioner and the CP. See <<https://www.police.act.gov.au/about-us/government-directions>>.

¹⁵¹ ACT Government supplementary response to Draft First Report.

¹⁵² The Ministerial Direction has the requirement to ‘**Design and implement an ACT Policing engagement framework in consultation with the ACT’s First Nations community**. This includes implementing agreed recommendations from the Ombudsman report on ACT Policing’s administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community that relate to Aboriginal and Torres Strait Islander peoples’.

Though not specifically referred to by the ACT Government, the Australian Federal Police (AFP) RAP (2022-2024)¹⁵³ has as an action ‘Promote positive race relations through anti-discrimination strategies’. Deliverables include an annual review of internal policies/procedures to identify existing anti-discrimination provisions and future needs; develop, implement and communicate any anti-discrimination policy for the organisation; and education of senior leaders on the effects of racism.¹⁵⁴ Further relevant deliverables in other areas include, for instance, reducing the number of First Nations arrests and maximising use of cautions by considering cultural sensitivities.¹⁵⁵ This is likely to reduce unfair or unequal application of law (by increasing First Nations access to diversionary options).

Community concerns (raised by ATSIEB, ALS and others) about racist policing were identified in the Policing Purchase Agreement Listening Report (2022).¹⁵⁶ During consultations First Nations stakeholders identified the need for a cultural shift to stop racial profiling and over policing for minor offences and more focus on diversion, amongst other issues.

One stakeholder identified as a positive that there are senior police officers dedicated to improving relations between police and the Aboriginal and Torres Strait Islander community. However, stakeholders commonly raised the issue of racism and racial profiling.¹⁵⁷

ACT is a very government-run state, and it's a very biased and racial government and services. And it trickles down into everywhere... The bias that they still have on our young men, women, and not only our youth, but the bias and the racism is huge still I think violence against our youth is huge. There's nothing for a young Aboriginal man to be thrown to the ground, and treated like a dog, and it happens on a daily basis. (Aboriginal and Torres Strait Islander or other non-government service provider)

We certainly do have incidents of that. One example that springs to mind is in relation to drunk driving charges. We're aware that there's specific profiling. I know the police will hang out, for instance, at certain flats, government flats, waiting for anyone to come out and jump in a car and will follow them. A lot of drunk driving charges we see is really targeted and profiled. (Legal service provider/legal profession)

Stakeholders also described a lack of police accountability, including in relation to increased use of cautions/diversions but also around complaints (see Recommendation 14-2). There was a call for stronger mechanisms to enforce accountability.

Police accountability. They don't have any. And [with the] Justice Agreement, two of the three things that they had to target, and they didn't care whether they met them or not, was cautions and diversions. There was a six month period where they reported zero cautions and diversions. So that tells you how important they thought it was. I don't know what the more current figures will tell you, but I don't think they would have changed very much. Part of the problem though is, if they're not doing that [under the Justice Agreement], what mechanisms do we have in place that make them accountable for not delivering? We don't have any ... And one of the things that they did say to us at the time, is it's up to police discretion. And so, it's the officer

¹⁵³ AFP Reconciliation Action Plan 2022-24 <<https://www.afp.gov.au/sites/default/files/2023-10/ReconciliationActionPlan2022-2024.pdf>>.

¹⁵⁴ AFP RAP, p. 12.

¹⁵⁵ AFP RAP, p. 13.

¹⁵⁶ ACT Policing Purchase Agreement Listening Report (2022), ACT Government. It is not clear how this input informed the Purchase Agreement for 2022-2026.

¹⁵⁷ The case of Mitchell/Wighton was discussed: <<https://amp.theguardian.com/australia-news/2023/nov/01/nrl-latrell-mitchell-jack-wighton-charges-dropped-police-admit-false-evidence-david-power>>

on the frontline that gets the power to either divert or to caution the young person. And they choose not to. But the part that worries me is the sergeant in the watch house supports them not using their discretion to caution or divert. (Aboriginal and Torres Strait Islander or other non-government service provider)

Recommendation 14-1 is partially implemented.

We identify Recommendation 14-1 as partially implemented, to the extent that ACT Policing have engaged and/or conducted reviews of practice and procedure and at least some of the Commonwealth/ACT Ombudsman recommendations (e.g. with respect to training, engagement) have been implemented. However, we note the widespread identification among stakeholders of the problems of racism and racial profiling. We also note that the ACT Policing Strategy for Engagement with First Nations People and Communities is due for release in 2024.

4.11.3 Recommendation 14-2: Review police complaints process

The ACT Government refers to the First Nations LOs and to the AFP conducting an internal review of its complaint management process, informed by an Internal Audit report and recommendations from the above Ombudsman's investigation.¹⁵⁸ The AFP is also identified as having established a new capability in March 2023, the Workplace Issues and Complaint Resolution (WICR) team, to streamline complaint reporting. No further detail is provided about the team.

The response also refers to a law passed in 2020 that establishes a Charter of Victims' Rights. The Charter gives the ACT Human Rights Commission (HRC) the power to hear complaints about victims' rights, including about justice agencies such as ACT Policing. There is no detail about Aboriginal and Torres Strait Islander use of the Charter or HRC mechanisms.

Recommendation 14-2 is not implemented.

We identify Recommendation 14-2 as not implemented, based on the material provided and the weight of the stakeholder comments. Without further detail it is not possible to identify what the above reforms to the complaint management process mean or what has been done to implement internal and Ombudsman recommendations so as to *ensure greater practical independence, accountability and transparency of investigations* as required by the ALRC Recommendation.

Stakeholders identified police complaint processes as 'torturous, elongated, and difficult ... And [they] don't lead to satisfactory outcomes. And in fact, it's almost pointless making complaints' (Legal service provider/legal profession). 'Police are investigating police', it was stated (Legal service provider/legal profession). First Nations stakeholders spoke of complaints they had lodged about incidents not being responded to.

I don't know that the ACT have the same sort of review mechanisms as they have in New South Wales with the Integrity Commission. I don't think it is as satisfactory in terms of internal review or review of those types of complaints. I think that it's something that is a bit lacking and probably something that is intentioned in terms of internal review. When I compare it to New South Wales, I think it is less satisfactory than it is in New South Wales. (Legal service provider/legal profession)

¹⁵⁸ The Policing Purchase Agreement Listening Report also identified stakeholder perceptions that reports and complaints against the police are handled by the police and therefore will result in no real change.

As a perhaps related point, race discrimination in the AMC was also discussed, and the difficulties for detainees in complaining about relevant incidents. Specific difficulties raised related to gathering evidence of incidents in the AMC.

One stakeholder suggested that in general there is nothing compelling the engagement of justice agencies in dispute resolution where complaints are made. Stakeholders also identified some defensiveness in responses to Aboriginal and Torres Strait Islander complaints about racism and other issues within justice agencies in the ACT, rather than them seeing this as an opportunity for healing and learning.

We're not looking to fight. We're looking for resolutions and to make things better. And if someone makes a mistake with their training, or they've just had training and they've never had the opportunity to work with the community, well, when something goes wrong there is that opportunity for healing and to correct the record. And that would be a better course of action for everybody. Because it wouldn't happen for anyone else then and we wouldn't be telling these same yarns then again and again. (Legal service provider/legal profession)

We note there are powers in the *Human Rights Commission Act 2005* (HRC Act) which allow the Commission to compel government agencies to engage in the Commission's complaints processes and dispute resolution processes and to provide evidence to the Commission. Where a discrimination complaint cannot be resolved by the Commission the complainant can have the matter referred to the ACT Civil and Administrative Tribunal (ACAT). There are also provisions in the *ACT Civil and Administrative Tribunal Act 2008* that empower the ACAT to compel attendance or determine matters in the absence of a respondent to a complaint/matter. We also note that Australian Federal Police officers *operating as ACT police* would not be subject to complaints of unlawful discrimination under the *ACT Human Rights Commission Act 2005*.¹⁵⁹

The extent to which the latter provisions on compulsion are utilised in justice settings is not clear. As a broader relevant point, while having legislative protections against discrimination or breaches of human or cultural rights in place in the ACT was seen as important, the extent to which they are utilised to positive effect by Aboriginal and Torres Strait Islander people was questioned by stakeholders as follows.¹⁶⁰

Very often though that process is ineffective, other than to give people the idea that, well, look, it would be good if it worked, and it's nice that we have the opportunity to tell someone what happened. We then say to our clients who come to us, you have the option of asking for the Human Rights Commission to refer this to the ACAT for a review (potentially without legal support). We love having the *Human Rights Act*, we love the *Discrimination Act*, but do we see it actually working in practice? No. (Legal service provider/legal profession)

We note in this context the considerable barriers arising for Aboriginal and Torres Strait Islander people in *all* Australian jurisdictions to initiating complaints in response to alleged breaches of rights to non-discrimination and to achieving positive justice outcomes in this context. These barriers include lack of awareness of a right to complain and of complaints processes, culturally unsafe or inappropriate

¹⁵⁹ See

<https://www.parliament.act.gov.au/_data/assets/pdf_file/0003/371865/No_15_ACT_Human_Rights_Commission.pdf>.

¹⁶⁰ The ACT Human Rights Commission reports that 61 complaints were lodged by Aboriginal and Torres Strait Islander people in 2022-23 (7% of all complaints lodged), an increase from the 42 complaints lodged by this group in the previous financial year. ACT Human Rights Commission (2023) *Annual Report 2022-23*, Canberra ACT, p. 19. Respondents to these complaints were not identified. Also relevant, for e.g., are the Commission inquiries focussed on youth justice, Bimberi Youth Justice Centre (2011, 2019).

complaints mechanisms, distrust of the law and fear of retaliation by respondents to complaints, amongst others.¹⁶¹

4.11.4 Recommendation 14-3: Custody notification service

The ACT Government reports that ACT Policing members notify the ALS whenever a First Nations person is brought to the Watch House. The ACT Policing ACT Watch House Operations Handbook outlines that ALS must be informed by telephone (24 hours a day, 7 days a week) whenever a First Nations person is brought to the Watch House. This includes lodgement for intoxication and breach of the peace. Internal processes require the recording of the time of the call to ALS and who from ALS was spoken to on every occasion. If a First Nations person requests an interview friend for an interview or forensic procedure the Watch House members are to contact ACT Legal Aid to arrange their attendance.

The response also refers to statutory requirements under section 23A(6) of the *Crimes Act 1914* (Cth) that existing provisions of Part 1C apply to the investigation of ACT offences punishable by imprisonment for more than 12 months. Section 23H of the *Crimes Act* falls within Part 1C. This provides that if an investigating official investigating a Commonwealth office believed on reasonable grounds to believe that a person under arrest/who is a protected suspect and who will be questioned about the offence is Aboriginal and Torres Strait Islander the official must before questioning this person (a) inform them that a representative of an Aboriginal legal assistance organisation will be notified that they are under arrest/are a protected suspect and (b) notify this representative that the person is under arrest/a protected suspect.

Stakeholders saw the custody notification service as working well but did not have access to data indicating how many Aboriginal and Torres Strait Islander were in custody, compared with how many notifications were made. The ALS ‘shouldn’t have to take it on trust or take it as a gut feeling that [they are] getting called every time there’s an Aboriginal person coming through’ (Legal service provider/legal profession).

Recommendation 14-3 is implemented (with a caveat).

Recommendation 14-3 is implemented. However there needs to be reporting of available data, as identified by stakeholders.

4.11.5 Recommendation 14-4: Cultural change

The ACT Government response to the request for information refers to the AFP RAP and identifies that the AFP is working towards introduction of practical initiatives that support this recommendation. The RAP lists recommendations from the Ombudsman’s investigation (see above in Recommendation 14-1) and a plan for their implementation.

¹⁶¹ See Allison, F (2014), ‘A limited right to equality: evaluating the effectiveness of racial discrimination law for Indigenous Australians through an access to justice lens’, *Australian Indigenous Law Review*, 17 (2); Allison, F (2020) *Cause for Hope or Despair? Evaluating race discrimination Law as an Access to Justice Mechanism for Aboriginal and Torres Strait Islander people*, JCU, Cairns; Nielsen, J (2008), ‘Whiteness and anti-discrimination law - it's in the design', 4(2) *Australian Critical Race and Whiteness Studies Association* 1. We note the ACT Human Rights Commission’s cultural safety charter, *Ngattai yeddung – Listen Good*. The charter is described by the Commission as designed ‘to help the Commission provide its clients, staff and colleagues with a safe, nurturing and positive environment where Aboriginal and Torres Strait Islander people are respected.’ ACT Human Rights Commission (2023) *Annual Report 2022-23*, p.12.

Also identified is that ACT Policing collaborates with JACS and the ALS to increase positive engagement and support for the Aboriginal and Torres Strait Islander community – specifically referencing the Front Up program. This was confirmed by stakeholders, who noted that because of this program police are saying to Aboriginal and Torres Strait Islander people:

.... you've got a warrant, you're in breach, we'll give you 48 hours to go and engage with ALS, to go and front up and deal with your warrant. If you don't deal within that time, you'll be arrested. (Legal service provider/legal profession)

ACT Policing is also currently seeking new members for the Chief Police Officer's First Nations Advisory Board. Also identified is that ACT Policing established a working group to progress the nine recommendations from the Ombudsman's investigation, as above – including development of an engagement and consultation strategy with the Aboriginal and Torres Strait Islander community. The First Nations Working Group has also progressed additional relevant projects that will support relationship building with the community (no further detail provided).

One recommendation progressed is the development of the First Nations Cultural Literacy Program (developed with ATSIIEB and other Aboriginal and Torres Strait Islander input). This is identified as a two-day, face-to-face program 'chaperoned' by First Nations LOs. It is mandatory for both the sworn workforce and for professional staff in public facing roles. The first round of the program was delivered across November and December 2023 to more than 200 members. The program covers such things as Aboriginal and Torres Strait Islander history at a national and local level, identifying and understanding effects of bias, cultural safety/trauma informed practices for engagement, and the role of police to mitigate over-representation through diversion etc. The training is provided by an Indigenous-owned company ETMP (Education Training Management Perspectives). The AFP RAP also refers to deliverables (for 2022) related to reviewing cultural learning needs and working with Traditional Owners on development and implementation of a cultural learning strategy for staff.

In terms of employment, a Directions Program for First Nations people is run by the AFP, according to the ACT Government. It is a 12-month program that enables First Nations people to experience various roles within the AFP/ACT Policing. Additionally, an Indigenous Police Recruitment Our Way Delivery Program supports First Nations people to join the AFP or NSW Police Force and/or other Justice and Emergency Service Agencies. Recruitment and retention for First Nations people is currently under review by the AFP First Nations Unit who have sought input from ACT Policing's First Nations Working Group. ACT Policing is also advancing a First Nations LO Community of Practice project, 'intending to move from solely a peer support program to build aligned cross-agency policy, practices and programs that consistently support First Nations communities.'

Stakeholder comments included that any police training needed to be ongoing, and that even if it is provided that it is 'put to the test in practice' and that just attending training was not sufficient. Cultural capability ought to be included in job criteria (Legal service provider/legal profession). Also identified is that the creation of a First Nations Branch (four staff only) within ACT Policing is a positive. But reliance on AFP in the ACT was seen as reducing the potential for 'community policing ... like they do in other states and territories ... We have an AFP that is a brought in ... It's not coppers that belong to our town' (Aboriginal and Torres Strait Islander or other non-government service provider).

The Chief Police Officers were consistently moved regularly because they go overseas, or they go to Border Force, or they go somewhere else. We didn't ever have somebody that was in there for three or four years. [Less rotating of junior police] because we developed relationships with some of them ... Sometimes if they get too close to the community, they move them on. (First Nations community member)

The ACT Police response to the Review confirmed that from 2000 until recently, the average length of time for a Chief Police Officer was approximately 2.5 years. After the SES level of the position was raised, the last Chief Police Officer was in the role nearly 4 years. The current Chief Police Officer was appointed in March 2024.

Stakeholders also identified it as difficult for First Nations LOs to really change policing practice as they do not have much power in their role.

The mentality in the police is, we look after our own. That was said to me ... We've got young people with a disability, and the police know that, and used the dogs on these young people. And there's no accountability with police, our Aboriginal liaison officers have very, very, very, very limited power, if that's a word I could use. They have no say about community. They are there for the police. They're under the ACT policing banner first, then they're community workers. That's got to be reversed, and they've got to have an element of authority in there ... They've got to toe the line. If they don't toe the line... And why are they held accountable, but the police and policing are not held accountable? (Aboriginal and Torres Strait Islander or other non-government service provider)

The ACT Police response to the Review noted that 'First Nations Liaison Officers have and are continuing to effect change and increase cultural competences of our workforce through participating in all 18 rounds of ACT Policing's First Nations Cultural Literacy Training Program'. First Nations Liaison Officers are also members of the ACT Policing First Nations Working Group.

Initially there was no response by ACT Police to parts of the ALRC Recommendation relating to recording/sharing lessons for successful cooperation between police and Aboriginal and Torres Strait Islander peoples; careful and timely succession planning for replacement of key personnel with effective relationships with Aboriginal and Torres Strait Islander communities; improved public reporting on community engagement initiatives. However, in a subsequent ACT Police response to the Review it was noted that the Commonwealth/ACT Ombudsman investigation into ACT Policing programs had identified that ACT Policing's record keeping practices need to be improved for First Nations Peoples. The Act Police response indicated that some measures were being undertaken to improve record keeping. 'This has been identified throughout the ACT Policing Strategy; Engagement with First Nations Communities and ACT Policing Members continue to work towards identifying First Nations Peoples during their engagements to further assist in us complimenting other stakeholders and providers to meet Closing The Gap Targets with its consumers by addressing underlying issues that contribute, impact and escalate their engagements with policing and the criminal justice system. However, ACT Policing is not currently identifying First Nations victims through these engagements.'

Recommendation 14-4 is partially implemented.

Recommendation 14-4 is partially implemented by the AFP RAP and responses to the Ombudsman investigation recommendations (including the development of the ACT Policing Strategy for Engagement with First Nations People and Communities and training). Police are also making attempts to increase Aboriginal and Torres Strait Islander employment.¹⁶²

¹⁶² The RAP has targets for employment.

4.12 Child Protection and Adult Incarceration (Recommendations 15-1, 15-2)

15-1	The Commonwealth should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children.
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4.12.1 ALRC rationale

Child removal into out-of-home care and juvenile detention are identified as key drivers of adult incarceration. The ALRC considers that a national review of the out-of-home care system might consider whether a different approach modelled on justice reinvestment approaches could make more effective use of the resources currently being expended on child removals.

4.12.2 Recommendation 15-1: Child protection inquiry

Recommendation 15-1 is not relevant to the ACT.

We note that Recommendation 15-1 is not relevant to the ACT as it is directed to the Commonwealth Government to establish a national inquiry.

However, the ACT government has been particularly active in the child protection space, and has undertaken a number of child protection initiatives relevant to Aboriginal and Torres Strait Islander people in the ACT.

These include:

- A dedicated First Nations Family Support team within CYPS and a Family Preservation response.
- Development of culturally responsive guidance for staff.
- Family Group Conferencing (FCG).
- Functional Family Therapy (FFT) that strengthens family relationships, responds to challenging behaviours etc.
- A Cultural Development Program (CDP) (mandatory training for all CYPS staff to improve cultural sensitivity).
- Establishment of the Care and Protection Legal Advocacy Service (CPLAS).

A key relevant implementation measure in the ACT has been the Our Booris Our Way (OBOW) Review and its recommendations to the ACT Government to help reduce overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system. A final report, released in December 2019, made 36 recommendations to inform systemic improvements to the ACT's child protection systems, policies and practices. An independent Aboriginal and Torres Strait Islander committee, the OBOW Implementation Oversight Committee, monitors progress

by the CSD to implement the review's recommendations – with significant progress made on implementation.¹⁶³

On 26 February 2024, the ACT's inaugural Aboriginal and Torres Strait Islander Children and Young People Commissioner commenced. This new role responds to Recommendation 7 from the OBOW Report and establishes the Commissioner as an independent statutory authority with individual and systemic advocacy functions, informed by a proposal developed through a co-design process.

In a national context, the ACT is sitting on a working group established under the *Safe and Supported: National Framework for Protecting Australia's Children 2021-2031*. The ACT's ongoing work with OBOW Report recommendations are identified as aligning with the actions under the *Safe and Supported Action Plan*. The *Safe and Supported Action Plan* was developed as part of the *National Agreement on Closing the Gap*.

One key implementation from the OBOW Report recommendations is establishment of the CPLAS, providing culturally appropriate legal support via the ALS around care and protection. The service is said to be working effectively to improve access to justice and contribute to a reduction in Aboriginal and Torres Strait Islander rates of out-of-home care. The OBOW Implementation Oversight Committee views the service as critical.

The ACT Government is also revising the *Children and Young People Act 2008* to remove operational barriers to best child protection practice and introduce an effective legal framework in this space. It recently amended legislation to enshrine the Child Placement Principle into law. Additional legislative reform is expected (informed by consultation with the OBOW Implementation Oversight Committee and other key stakeholders).

Various comments were made by stakeholders as to how the implementation of OBOW recommendations is progressing. Some stakeholders identified the Family Support Team as working effectively. 'But we need a much heavier investment, because all our people want to go through that team now' (Aboriginal and Torres Strait Islander or other non-government service provider). FCG is seen as positive, according to some stakeholders, but should be independent and ACCO-run rather than sit within the Directorate. FFT is again identified as delivering positive outcomes. However, more referrals need to be made for support, including by case workers. CPLAS was identified too as not able to support clients with restoration matters with its present funding, retaining gaps in legal support in that area. More broadly, comments include that Aboriginal and Torres Strait Islander child placements are different post OBOW, but numbers of children in placements have not reduced.

One area identified as needing further attention is the CDP, with SNAICC (Secretariat of National Aboriginal and Islander Child Care) being brought in to deliver training on the Child Placement Principle. Legislative review, as above, was also discussed – with some changes seen as 'surprising' in a positive way. This includes the shift from a practice framework that's based around 'child at risk' to 'risk of serious harm'.

So, a report about odd socks, or not having strawberries in the lunch box, isn't going to get an enquiry anymore. Because the number of the reports they get, especially about our kids that are just ridiculous. And the current legislation says they have to do an assessment of every single report that comes in ... So, the new legislation gives them a bit more movement in terms of where they concentrate their efforts. If the determination is that the child is not at risk of serious harm, they can't just not do anything. ... The new legislation is going to mean that, at intake, if

¹⁶³ The CSD Annual Report 2022-23 includes a progress update on OBOW recommendations.

a parent rings up, or if anyone rings up and says, 'I need help for this', then right at intake, that is a pathway. Instead of saying 'we'll take a note of that' and then it goes to assessment, and then the child is not at risk so the family gets nothing. (Aboriginal and Torres Strait Islander or other non-government service provider)

The second stage of legislative review was seen as significant, covering core issues such as no adoptions for Aboriginal and Torres Strait Islander children other than by/for kin. There has been some challenge in ensuring government understands the intent of each recommendation, according to one stakeholder. Further work is required around the interpretation of kin, as an example.¹⁶⁴

The thing about the ACT and the definitions of kin is very different to ours. And this is something that we have been working really hard to change, but kin in terms of the ACT government and their understanding could be anyone that the child has a relationship with. It could be a teacher at school, someone really random and not a major part of the child's life. But they're considered kin. They can be considered kin. And that's completely different to our understanding of what kin is. (Aboriginal and Torres Strait Islander or other non-government service provider)

One comment spoke to the reinvestment aspect of Recommendation 15-1, described in the ALRC rationale above. Stakeholders wanted funding from the justice system to resource community designed and led approaches to supporting families (see also responses to Recommendation 4-2).

... there's so much funding and so much money that goes into the justice system that is clearly not working. For our families, for our children, it's clearly not working. [O]rganisations have a better understanding and knowledge of our families, and how they work, we will put in programs and stuff in place ... to better our community, but it won't get funded, or you get the tiniest amount of funding. [Investing] half the money to what goes to the justice system could be a huge outcome for our children, and for our families. I think there needs to be a massive overhaul and letting mob help mob. I know that that can't be governed by our government, and I'm pretty sure that's the reason why we can't do [it now] ... And I know that it says a lot in there around organisations working with mob, but it comes with clauses. Let us run our programs our way. (Aboriginal and Torres Strait Islander or other non-government service provider)

In general, most comments from stakeholders, although identifying some issues were positive about the government's response to the OBOW Report recommendations.

¹⁶⁴ CSD notes that future stages of the legislative reform currently underway will address critical issues such as restoration processes, definitions of kin, and the amendments to permanent care orders (as opposed to adoption specifically).

4.13 Criminal Justice Targets/Agreements (Recommendations 16-1, 16-2)

16-1	The Commonwealth in consultation with state and territory governments should develop national criminal justice targets.
16-2	Where not currently operating state or territory governments should renew or develop an Aboriginal Justice Agreement in partnership with relevant Aboriginal and Torres Strait Islander organisations.

4.13.1 ALRC rationale

Reducing Aboriginal and Torres Strait Islander incarceration requires a coordinated governmental response, and effective collaboration with Aboriginal and Torres Strait Islander peoples. There should be national targets to reduce both the rate of incarceration of Aboriginal and Torres Strait Islander people, and the rate of violence against Aboriginal and Torres Strait Islander people. Both goals are interrelated and will facilitate improvements not only in the rate at which Aboriginal and Torres Strait Islander people come in contact with the criminal justice system, but also in community safety.

The ALRC also recommends that Aboriginal Justice Agreements should be in place in states and territories. The success of many of the recommendations made in this Report relies on the development of collaborative relationships between government and peak Aboriginal and Torres Strait Islander organisations. Aboriginal Justice Agreements can provide a foundation on which to facilitate, build, and solidify these relationships.

4.13.2 Recommendation 16-1: Justice targets

The ACT Government identifies that to some extent this recommendation has been superseded by the *National Agreement on Closing the Gap*.

Recommendation 16-1 is no longer relevant.

The *National Agreement on Closing the Gap* was signed in July 2020 by the Commonwealth, all States and Territories, the Australian Local Government Association and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks). The Parties to the Agreement ‘commit to mobilising all avenues and opportunities available to them’ to meet the objective of overcoming ‘the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians’.¹⁶⁵

The National Agreement sets targets including those relevant to Recommendation 16-1. The national target for Aboriginal and Torres Strait Islander imprisonment is a reduction in the incarceration rate by 2031 of at least 15%. Recent data shows improvements in the ACT.¹⁶⁶

¹⁶⁵ National Agreement on Closing the Gap, 2020, p.3.

¹⁶⁶ Productivity Commission (2023), *Closing the Gap Annual Data Compilation Report*, July 2023. p.29

The national target for Aboriginal and Torres Strait Islander young people in detention is a decrease of at least 30% in the detention rate by 2031. Recent data shows no significant change in the ACT.¹⁶⁷

The national target for Aboriginal and Torres Strait Islander children in out-of-home care is a reduction in the rate of out-of-home care by 45% by 2031. Recent data shows no significant change in the ACT.¹⁶⁸

4.13.3 Recommendation 16-2: Aboriginal Justice Agreement

The ACT Government has a joint commitment with ATSIEB to deliver improved outcomes to Aboriginal and Torres Strait Islander people in the ACT via the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028 (previous agreement was 2015-2018). Action plans are developed every two years (current plan is Phase 2 Justice Action Plan). See Part 2 of this Report for further discussion on the Agreement.

There were a range of comments in relation to the current Agreement. Some stakeholder comments included that there was perhaps not enough community understanding/engagement with the Agreement.

Lots of members of the community were invited to feed in about the ACT Aboriginal and Torres Strait Islander Agreement and no one in the room had heard of the Agreement and that was about two or three years ago. So, what the government does and what the community is aware of are very different things and we won't always know. That's a real problem. (Legal service provider/legal profession)

Some did not necessarily like the alignment now with Closing the Gap.

We'd spent time, a lot of time developing targets and making government, police and ministers accountable for measures in the Justice Agreement... So [then] we had this model of reporting [based] on Closing the Gap. So, the Justice Agreement went out the door. (First Nations community member).

The importance of the Agreement was also noted.

It's important that Justice be a standalone target for our community. We're talking about cautions and diversions, police discretion, imprisonment rates, arrest rates. But at the moment nobody drills down to that, and nobody asks the police to be accountable... [An] Agreement that's a little bit more robust than the one we had before, is really important. Because that means that at some point the police have to be accountable to the community, and the government have to be accountable to the community. The only way we can do that, I suppose is through the elected body questioning the police and government about targets in the Agreement that are specific for this community. (First Nations community member)

Recommendation 16-2 is implemented.

¹⁶⁷ Productivity Commission (2023), *Closing the Gap Annual Data Compilation Report*, July 2023. p.29. Although we also note that the ACT rate is 23.0 per 10,000, less than the Australian average of 28.3, and just above the 2031 national target of 22.3.

¹⁶⁸ Productivity Commission (2023), *Closing the Gap Annual Data Compilation Report*, July 2023. p.29

5. APPENDICES

5.1 Appendix 1: 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 [Aboriginal and Torres Strait Islander status], 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 [Aboriginal and Torres Strait Islander status] 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 [Aboriginal and Torres Strait Islander status], 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 [Aboriginal and Torres Strait Islander status]

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.

5.2 Appendix 2: BCNP Matrix of Initiatives



BUILDING COMMUNITIES NOT PRISONS

MATRIX OF INITIATIVES

	EARLY SUPPORT	WHOLE OF CRIMINAL JUSTICE SYSTEM	PRE-ARREST	POST-ARREST	PRE-SENTENCE	POST-SENTENCE
JUSTICE ACCOMMODATION OPTIONS	High Density Housing Program				More Correctional Centre Beds (Low Secure)	
	A Justice Housing Portfolio [JHP] supporting Justice Reinvestment: 160 places (Including bail hostels and probation hostels)					
RESPONDING TO THE IMPACTS OF ALCOHOL AND DRUG DEPENDENCE	More non-residential AOD interventions	Strengthen community based Alcohol and Drug Services	Conduct a review of police drug diversions	Conduct a review of CADAS services Additional resources for CADAS		ACT Drug and Alcohol Court
DIVERTING PEOPLE LIVING WITH A MENTAL ILLNESS OR DISABILITY AWAY FROM THE CRIMINAL JUSTICE SYSTEM	Pilot Mental Health (Tri-Service) PACER Initiative	Additional resources supporting Government and NGO Mental Health Services		Review of the Crimes Act ss 309 and 334 to support early MH diversion Review processes and services to support timely MH diversion Additional resources for MHJHADS	Disability Liaison Officers embedded in ACTCS Apply the HASI to detainees and assess where indicated	
PATHWAYS FOR SAFE AND SUSTAINABLE BAIL			Expand Front-Up	Bail Act Review		

				<p>Bail Support Program</p> <p>Men's and Women's Bail Hostels [part of JHP]</p> <p>Apply Behavioural Insights to Bail Orders</p>		
<p>REDUCING THE OVER-REPRESENTATION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE IN THE CRIMINAL JUSTICE SYSTEM</p>	<p>Yarrabi Bamirr</p> <p>A residential rehabilitation service for Aboriginal and Torres Strait Islander people</p>	<p>Victim Support ACT: Aboriginal Liaison Officers and CALD Community Liaison Officers</p> <p>ACT Courts and Tribunal Aboriginal Liaison Officers</p>	<p>Co-design to improve healing and supports for Aboriginal and Torres Strait Islander men who use Family violence</p> <p>Build Solid community and ACT Policing Partnership</p>		<p>Aboriginal and Torres Strait Islander Experience Court Report trial</p> <p>Warrumbul Children's Court Cultural adviser</p>	<p>On Country, Yarning and other programs</p>
<p>COMMUNITY BUILDING CAPABILITIES</p>	<p>Reducing Recidivism</p> <p>Early Support By Design: Try, Test and Learn</p> <p>Driver Licence Program</p>	<p>Informed Practice Framework (Trauma, Aboriginality, Mental Health, Disability, addiction, restorative practice)</p> <p>Therapeutic care in the Children's Court</p>	<p>Build on ACT Policing Community Engagement</p> <p>Introduce Infringement Notices for drink and drug driving</p>	<p>Process review to support bail support services</p> <p>Apply Behavioural Insights to Justice forms and process</p>	<p>Strengthen Restorative Justice</p> <p>Streamline Pre-sentence Reports</p>	<p>Rehabilitation Framework for ACTCS</p> <p>Graduated Sanctions for Community Based Orders (CBOs)</p> <p>Electronic Monitoring for CBOs</p> <p>Clean Street Time Court ordered Parole</p> <p>Expand Extended Throughcare</p>

Restorative Practices—Trauma Informed—Gender Informed—Cultural Integrity—Human Rights—Evidence informed

5.3 Appendix 3: Usage Data Tables

Table 1

Usage Data Yarrabi Bamirr

Winnunga

	Families	Families Entered	Families Exited	Families Identified/ Wait List	Surveys
Jul-Dec 22	11	4	4	8	11
Jan-Jun 23	9		2		9
Jul-Dec 23	11		2		11

Clybucca Dreaming

4 families throughout 23-24 FY

Yeddung Mura

Instances Service.

4 families

	Advocacy (instance)	Face to Face (instance)	On the Phone (instance)
Sep-22	0	6	9
Oct-22	1	2	9
Nov-22	0	2	2
Dec-22	0	7	1
Jan-23	0	1	10
Feb-23	0	5	4
Mar-23	4	21	19
Apr-23	1	14	29
May-23	2	27	27
Jun-23	5	38	27
Jul-23	1	10	11
Aug-23	6	18	12
Sep-23	5	11	15
Oct-23	2	15	8
Nov-23	2	12	3
Dec-23	4	6	6
Jan-24	0	1	6
Feb-24	4	4	8

Table 2**Usage Data Ngunnambai Bail Support Program**

Month	Bail Clients	Bail Granted	Bail denied	Bail Granted %	Male	%	Female	%
July - Dec 22	140	120	20	86	98	70	42	30
Jan-Jul 23	126	104	22	82	91	69	40	31
Jul - Dec 23	157	121	36	77	104	66	53	34
Total	423	345	78	82	293	68	135	32

Source: First Nations Justice Branch.

Table 3**Usage Data Front Up**

	New clients	Clients Fronted Up	Warrant Removed/ Breach Resolved	Male	%	Female	%	18 - 30	31 - 40	40+
Jul-Sep 22*	37	23	24	19	51	18	49	14	15	6
Oct-Dec 22	18	9	9	8	44	10	56	8	7	3
Jan-Mar 23	10	10	10	7	70	4	40	4	4	3
Apr-Jun 23	10	10	10	4	40	6	60	5	3	2
Jul-Dec 23	13	13	N/A	8	61	5	39	4	6	3

*Age unknown for 2 clients

Source: First Nations Justice Branch.

Table 4**Usage Data Throughcare Support***New Referred Clients. July 22- Feb 24*

	Clients
Jul-22	
Aug-22	12
Sep-22	1
Oct-22	7
Nov-22	0
Dec-22	0
Jan-23	0
Feb-23	2
Mar-23	5
Apr-23	5
May-23	3
Jun-23	4
Jul-23	N/A
Aug-23	4
Sep-23	3
Oct-23	0
Nov-23	5
Dec-23	1
Jan-24	9
Feb-24	12

Instances of Service:

Month	Advocacy	In Person	Phone
Jul-22	11	187	145
Sep-22	53	273	326
Nov-22	6	120	101
Jan-23	2	73	55
Mar-23	7	175	142
May-23	12	239	37
Jul-23	5	142	34

Source: First Nations Justice Branch.

Table 5

Usage Data for Empowerment Yarning Circles

Instances of Service

	Advocacy	In Person	Phone
Jul-22	11	187	145
Sep-22	53	273	326
Nov-22	6	120	101
Jan-23	2	73	55
Mar-23	7	175	142
May-23	12	239	37
Jul-23	5	142	34
Total	96	1209	840

	New Clients	Circles Held
Jul-22	7	6
Sep-22	5	19
Nov-22	14	16
Jan-23	6	7
Mar-23	13	13
May-23	10	20
Jul-23	11	17
Total	66	98

Source: First Nations Justice Branch.

Table 6**Usage Data for Galambany Court Support***Instances of Service:*

	Advocacy	Face to Face	On the Phone
Jul-22			
Aug-22	10	40	29
Sep-22	6	16	19
Oct-22	5	51	47
Nov-22	6	63	25
Dec-22	7	106	39
Jan-23	3	8	9
Feb-23	4	41	21
Mar-23	4	46	30
Apr-23	2	19	18
May-23	4	40	32
Jun-23	7	43	29
Jul-23	5	29	11
Aug-23	2	69	36
Sep-23	6	53	32
Oct-23	5	36	23
Nov-23	2	21	19
Dec-23	0	3	1
Jan-24	5	15	10
Feb-24	3	8	3

Note: referral systems were not working for periods of 2022-2023

Source: First Nations Justice Branch.

5.4 Appendix 4: Imprisonment and Diversionary Rates

Table 1

**Age Standardised Imprisonment Rate
Indigenous status ACT and Australia 2017–2023**

	ACT Rate	Australia Rate
Aboriginal and Torres Strait Islander		
2017	1,679.5	2,037.9
2018	1,924.3	2,104.9
2019	1,703.9	2,142.9
2020	1,893.0	2,087.0
2021	1,641.8	2,222.7
2022	1,543.8	2,151.1
2023	1,593.2	2,265.8
Non-Indigenous		
2017	108.6	169.4
2018	111.8	173.7
2019	109.1	171.4
2020	101.3	158.6
2021	84.0	164.2
2022	78.8	150.7
2023	74.9	149.0
Ratio of Aboriginal and Torres Strait Islander to Non-Indigenous		
2017	15.5	12.0
2018	17.2	12.1
2019	15.6	12.5
2020	18.7	13.2
2021	19.5	13.5
2022	19.6	14.3
2023	21.3	15.2

Source: Adapted from ABS Prisoners in Australia 2023, Table 18.

Table 2**Prisoners and Prior Imprisonment****Indigenous status, sex and prior imprisonment, ACT and Australia 2017 and 2023**

	ACT		Australia	
2017	No	%	No	%
Aboriginal and Torres Strait Islander				
<i>Males</i>				
Prior imprisonment	71	89	7886	77
No prior imprisonment	9	11	2314	23
Total [#]	78	100	10199	100
<i>Females</i>				
Prior imprisonment	13		733	66
No prior imprisonment	0		374	34
Total [#]	17		1106	100
Non-Indigenous				
<i>Males</i>				
Prior imprisonment	232	72	13872	50
No prior imprisonment	91	28	13812	50
Total [#]	322	100	27690	100
<i>Females</i>				
Prior imprisonment	19		762	35
No prior imprisonment	8		1422	65
Total [#]	24		2187	100
2023				
	ACT		Australia	
2023	No	%	No	%
Aboriginal and Torres Strait Islander				
<i>Males</i>				
Prior imprisonment	78	88	9906	79
No prior imprisonment	11	12	2634	21
Total [#]	94	100	12540	100
<i>Females</i>				
Prior imprisonment	5		922	70
No prior imprisonment	3		393	30
Total [#]	11		1309	100
Non-Indigenous				
<i>Males</i>				
Prior imprisonment	199	78	13978	54
No prior imprisonment	57	22	12114	46
Total [#]	255	100	26090	100
<i>Females</i>				
Prior imprisonment	10		757	41
No prior imprisonment	0		1095	59
Total [#]	13		1855	100

[#] Total may include prisoners for whom prior imprisonment status is unknown.

Source: Adapted from *ABS Prisoners in Australia 2017*, Table 30 and *ABS Prisoners in Australia 2023*, Table 29.

Table 3**Prisoners and Legal Status: Sentenced and Unsentenced
Indigenous status, ACT and Australia 2023**

2023	ACT		Australia	
	No	%	No	%
Aboriginal and Torres Strait Islander				
<i>Males</i>				
Sentenced	52	53	7473	59
Unsentenced	45	47	5034	40
Total [#]	94	100	12540	100
<i>Females</i>				
Sentenced	0		680	52
Unsentenced	9		628	48
Total [#]	11		1309	100
<i>Persons</i>				
Sentenced	52	51	8155	59
Unsentenced	49	49	5663	41
Total [#]	102	100	13852	100
Non-Indigenous				
<i>Males</i>				
Sentenced	147	57	16579	64
Unsentenced	113	43	9457	36
Total [#]	255	100	26090	100
<i>Females</i>				
Sentenced	11		1096	59
Unsentenced	3		762	41
Total [#]	13		1855	100
<i>Persons</i>				
Sentenced	155	56	17674	63
Unsentenced	122	44	10213	36
Total [#]	268	100	27942	100

[#] Includes prisoners serving post sentence detention orders.

Source: Adapted from *ABS Prisoners in Australia 2023*, Table 30.

Table 4**Completion of Community Corrections Orders 2022-2023**

	ACT	Australia
	%	%
Aboriginal and Torres Strait Islander	82.5	70.0
Non-Indigenous	84.2	78.6
All Persons	83.8	76.3

Source: Productivity Commission (2024), *Report on Government Services 2023*, Table 8A.21

Table 5**Charges Laid by ACT Policing by Clearance Type 2023-2024**

Clearance Type	Aboriginal and Torres Strait Islander		Non-Indigenous	
	No	%	No	%
Alcohol Diversion for young people under 18 yrs old	1	0.2	4	0.3
Arrest	300	65.6	543	48.0
Caution	10	2.2	153	13.5
Charged before Court	110	24.1	231	20.4
Court Attendance Notice	1	0.2	20	1.8
Diversory Conference	10	2.2	36	3.2
Offender Identified - Child under 12 yrs old	4	0.9	-	-
Drug Diversion	-	-	16	1.4
Summons	21	4.6	129	11.4
Total	457	100	1132	100

Source: PROMIS as at 2 July 2024

Table 6**Principal Sentence for Defendants Finalised 2022-2023 by Indigenous Status.****All ACT Criminal Courts**

	Aboriginal and Torres Strait Islander		Non-Indigenous or not Stated		Total
	No	%	No	%	No
Custody in a correctional institution	69	20	280	80	349
Intensive penalty in the community	4	18	45	82	53
Fully suspended sentence of imprisonment	26	16	105	84	136
Community service/work	0	0	4	100	4
Moderate penalty in the community	0	0	5	100	5
Monetary penalties	70	5	1,396	95	1,465
Fines	67	9	1,375	91	1,440
Good behaviour (incl. bonds)	59	16	303	84	365
Nominal and other penalties	15	13	99	87	118
Total Guilty Outcome	248	10	2248	90	2487

Source: Extracted from ABS (2024) Criminal Courts, Australia 2022-2023, Table 13.

5.5 Appendix 5: Comparison of ACT and Victorian Community Based Sentencing Options

	Duration	Combined order	Conditions	Managing breaches	Other notes
Good Behaviour Order (ACT)	Up to 3 years.	Yes, can be combined with imprisonment.	Be of good behaviour. Additional conditions can include probation and community service work and may include supervision by Community Corrections.	If a person breaches, they will return to court. The court may take no action, amend the GBO conditions, or cancel the order and re-sentence the person.	Can be imposed instead of sentence of imprisonment. Can be made with or without a conviction recorded.
Adjourned Undertaking (Victoria)	Up to 5 years.	Yes, combination with imprisonment is increasing but is not common. ¹⁶⁹	Be of good behaviour. Released into community unsupervised but may be subject to ‘any conditions attached by the court’, which can include rehabilitation or counselling, or to make reparation or restitution costs. The orders are therefore flexible to individuals.	Options available to the court include taking no action, varying the conditions of the order, or resentencing the person.	May also include a justice plan for people with intellectual disability. Can be made with or without a conviction recorded.

¹⁶⁹ The Victorian Sentencing Advisory Council recently noted that about 250 orders per year are combined orders or Adjourned Undertakings and imprisonment, but the *Sentencing Act* does not expressly empower courts to impose a combined order of imprisonment with an adjourned undertaking. The SAC has recommended the Victorian Government insert a new provision into the *Sentencing Act* to expressly allow courts to impose a combined order of imprisonment with an adjourned undertaking <<https://www.sentencingcouncil.vic.gov.au/publications/reforming-adjourned-undertakings-in-victoria-final-report>>

Intensive Corrections Order (ACT)	Up to 4 years in certain circumstances.	No, cannot be combined with imprisonment, suspended sentence or GBO.	Standard core conditions. Additional conditions may be imposed.	Breach of any condition is dealt with by attending a Sentence Administration Board hearing following inquiry. A breach may result in a warning; suspending the ICO; cancelling the ICO. No more than 3 warnings can be given in a 12-month period. If the offender is convicted of any offence punishable by imprisonment, the ICO will be cancelled.	
Community Corrections Orders (Victoria)	Up to 5 years.	Yes, can be combined with imprisonment (up to 1 year).	Standard core conditions. At least one additional condition must be imposed.	It is an offence to breach a CCO. May be resentenced for original offence and may face up to 3 months additional imprisonment for the breach.	Also includes justice plans for people with an intellectual disability.
Drug and Alcohol Treatment Order (ACT)	Between 1 and 4 years.	No.	Requirements to undergo regular drug testing, AOD treatment, and attend meetings with the court.	Stepped sanctions which can include shorter periods of imprisonment, imposition of additional conditions (e.g. curfew, place and non-association, increased contact with community corrections), cancellation of order.	Not available to those who have committed a serious violent or sexual offence. Participants sign a behavioural contract.
Drug and Alcohol Treatment Order (Victoria)	Up to 2 years in Magistrates court and 4 years in County Court.	Considered a combined order but the prison term is suspended.	Restrictions on freedom of movement and association. Must attend AOD treatment, attend meetings with court, AOD testing, and may include other conditions.	May have additional conditions imposed or need to serve time in prison.	Not available to those who have committed certain sexual or violent crimes.

5.6 Appendix 6: AMC Programs 2023-2024

Programs and interventions

AMC Programs

AMC Program Participation	Groups	Participants started	Participants completed	Ongoing	Sessions held in the FY	Non-attendance/ Exited
BIPs	2	16	16	0	10	0
<i>Men</i>	<i>1</i>	<i>8</i>	<i>8</i>	<i>0</i>	<i>5</i>	<i>0</i>
<i>Women</i>	<i>1</i>	<i>8</i>	<i>8</i>	<i>0</i>	<i>5</i>	<i>0</i>
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>7</i>	<i>7</i>	<i>0</i>	<i>NA</i>	<i>0</i>
SMART	48	288	288	0	48	0
<i>Men</i>	<i>24</i>	<i>146</i>	<i>146</i>	<i>0</i>	<i>24</i>	<i>0</i>
<i>Women</i>	<i>24</i>	<i>142</i>	<i>142</i>	<i>0</i>	<i>24</i>	<i>0</i>
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>112</i>	<i>112</i>	<i>0</i>	<i>NA</i>	<i>0</i>
MISOP – PREP						
Overall	2	18	10	8	17	0
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>NA</i>	<i>0</i>
MISOP – MED						
Overall	2	16	6	10	61	0
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>1</i>	<i>1</i>	<i>0</i>	<i>NA</i>	<i>0</i>
MISOP – HIGH						
Overall	0	0	0	0	0	0
EQUIPS FOUNDATION						
Overall	7	65	53	0	140	12
<i>Men</i>	<i>6</i>	<i>58</i>	<i>48</i>	<i>0</i>	<i>120</i>	<i>10</i>
<i>Women</i>	<i>1</i>	<i>7</i>	<i>5</i>	<i>0</i>	<i>20</i>	<i>2</i>
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>21</i>	<i>14</i>	<i>0</i>	<i>NA</i>	<i>7</i>

EQUIPS ADDICTION						
Overall	7	73	59	0	140	14
<i>Men</i>	7	73	59	0	140	14
<i>Women</i>	0	0	0	0	0	0
<i>Aboriginal or Torres Strait Islander</i>	NA	26	18	0	NA	8
EQUIPS AGGRESSION						
Overall	2	14	13	0	40	1
<i>Men</i>	2	14	13	0	40	1
<i>Women</i>	0	0	0	0	0	0
<i>Aboriginal or Torres Strait Islander</i>	NA	4	4	0	NA	0
EQUIPS DFV						
Overall	2	17	17	0	40	0
<i>Men</i>	2	17	17	0	40	0
<i>Women</i>	0	0	0	0	0	0
<i>Aboriginal or Torres Strait Islander</i>	NA	1	1	0	NA	0
EQUIPS Maintenance						
Overall	1	11	3	0	10	8
<i>Men</i>	1	11	5	0	10	7
<i>Women</i>	0	0	0	0	0	0
<i>Aboriginal or Torres Strait Islander</i>	NA	5	3	0	NA	2

Solaris

Statistics

SOLARIS	Enrolled	Exits	Completions
Overall (men only)	75	29	26
<i>Aboriginal or Torres Strait Islander</i>	24	7	9

Reasons for exit from Solaris	Release, bail, parole etc	Breach of rules	Voluntary exit
Overall	16	9	4
<i>Aboriginal or Torres Strait Islander</i>	<i>2</i>	<i>4</i>	<i>1</i>

Community based Programs

Community-based Program Participation	Groups	Participants started	Participants completed	Ongoing	Sessions held in the FY	Non-attendance/ Exited
MISOP – PREP						
Overall	1	6	5	0	12	1
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>NA</i>	<i>0</i>
EQUIPS ADDICTION						
Overall	1	10	3	0	20	7
<i>Men</i>	<i>1</i>	<i>10</i>	<i>3</i>	<i>0</i>	<i>20</i>	<i>7</i>
<i>Women</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>2</i>	<i>0</i>	<i>0</i>	<i>NA</i>	<i>2</i>
EQUIPS DFV						
Overall	1	9	7	0	2	2
<i>Men</i>	<i>1</i>	<i>9</i>	<i>7</i>	<i>0</i>	<i>20</i>	<i>2</i>
<i>Women</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Aboriginal or Torres Strait Islander</i>	<i>NA</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>NA</i>	<i>0</i>

New Programs

Young Offender Reintegration Pilot

The Pilot was run twice through the financial year.

Statistics

Participation and completions	Group 1	Group 2	Total	Percentage
Enrolled	12	17	29	-
Completed	8	9*	17	58.6%
<i>Aboriginal or Torres Strait Islander</i>	3	4	7	50%
Did not complete	4	8	12	41.4%
<i>Released, Bailed, DATO</i>	2	5	7	58.3%
<i>Disciplinary exit</i>	0	1	1	8.3%
<i>Self-exit or low attendance</i>	2	2	4	33.3%

* Includes 3 that were late to enrol.

Of those that completed (or partially completed) the Program:

Participant summary	Group 1	Group 2	Total	Percentage
Remand	5	5	10	59%
Sentenced	3	4	7	41%