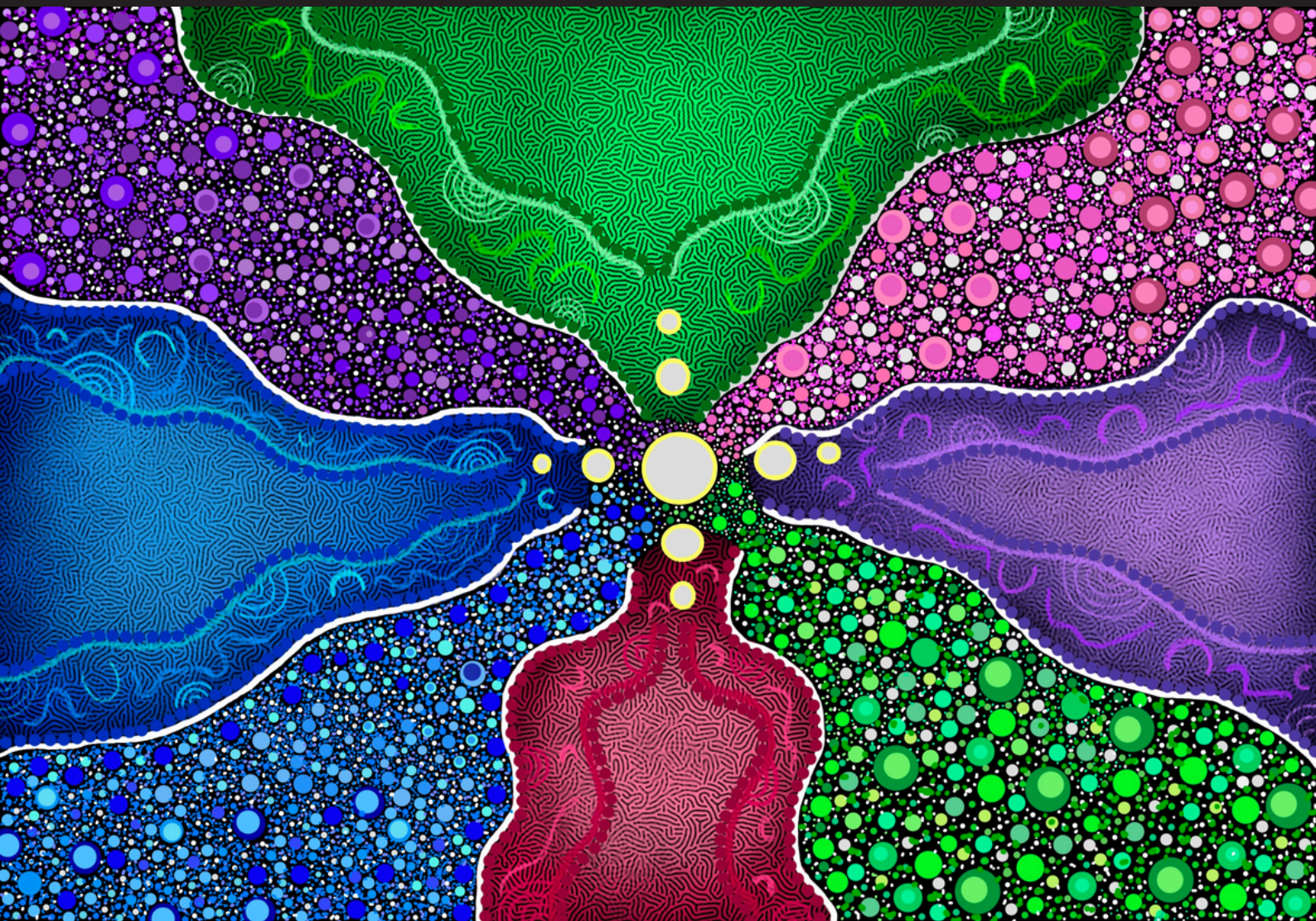


Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System

FINAL REPORT



Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System



Jumbunna
Institute for Indigenous
Education and Research

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CONTENT WARNING:

This report may include names of deceased persons and contains content that is confronting and distressing. Please take care when reading.

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ACKNOWLEDGEMENT OF COUNTRY

Always was, always will be Aboriginal land.

Most of the writing for our Report was undertaken across the various Countries where our research team is honored to live and work, including Dharawal, Gadigal, Gundungurra, Wiradjuri, Widjabul/Wia-bal, Boonwurrung and Yirrganydji; however, we have been privileged to focus our work and spend considerable time on the lands of the Ngunnawal and Ngambri (Kamberri) peoples.

To all these lands, we recognise their sovereignty has never been ceded. We would like to acknowledge the Traditional Owners whose lands and waters we have journeyed, respecting their unique values, and their continuing care of Country. We pay our respects to Elders past and present, and to all First Nations people reading this report.

ACKNOWLEDGEMENT TO COMMUNITY

We acknowledge and pay deep respect to the First Nations peoples whose knowledges, stories, and lived experiences have shaped and informed this report. We honour the Elders past and present, and extend that respect to all First Nations peoples who have generously shared their time, insight, and truths throughout this process.

We specifically acknowledge the strength and resilience of communities and ACCOs, who continue to lead, speak, and act for justice. This report would not have been possible without the guidance, voices, and leadership of community members who entrusted us with their perspectives. We particularly acknowledge the Aboriginal organisations and individuals who assisted us with community dialogues, participated in interviews and attended the workshops we organised. This report would not have been possible without you.

We remain committed to listening, learning, and walking alongside First Nations communities in ways that uphold cultural authority, self-determination, and truth-telling.

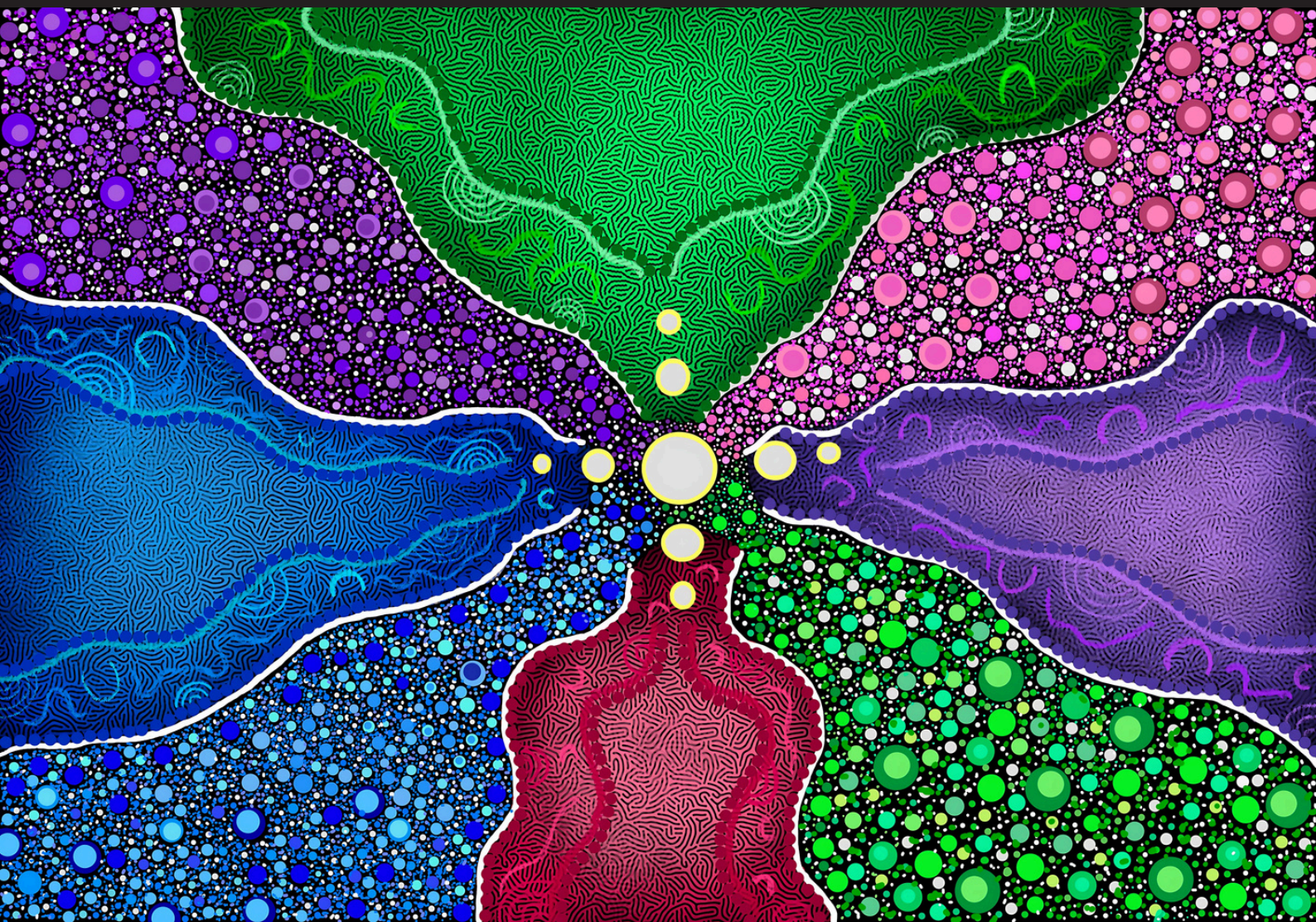
We also acknowledge the participation and assistance from government, statutory authorities and non-government agencies who contributed to this project. We particularly acknowledge the several staff in the Justice and Community Safety Directorate who help facilitate the project with government.

Jumbunna Research Team
July 2025.

ACKNOWLEDGEMENT OF USE OF ORIGINAL ARTWORKS

We want to thank the artists for their permission to use the original artworks shown in this report. Below is the description and explanation of the significance.

Title: "Journey To Justice"



by Erica-Jade Church (18), Jayde Mitchell (15), Damon Brown (15).

THE ARTWORK

ARTWORK CREDIT

Jayde Mitchell: My name is Jayde Mitchell and I'm a proud young Barkindji women from Lake Cargelligo, Central West NSW. I am the second eldest of five siblings being the eldest daughter. I'm a musician who plays guitar and sings and an artist who does Aboriginal paintings which I learn from my Mum, Dad, Pop and Aunties. I have a passion for music and arts and am proud to share that passion and hope to inspire others to follow what makes them happy.

Erica-Jade Church: My name is Erica-Jade Church, I am the Executive Assistant at Sisters in Spirit Aboriginal Corporation. I am a proud Wiradjuri and Barkindji Women from Tumut & Wilcannia, NSW. I am one of nine siblings, and I love and cherish spending time with my family. I enjoy playing basketball and learning more about my culture. Art is special to me because it allows me to express feelings and tell stories.

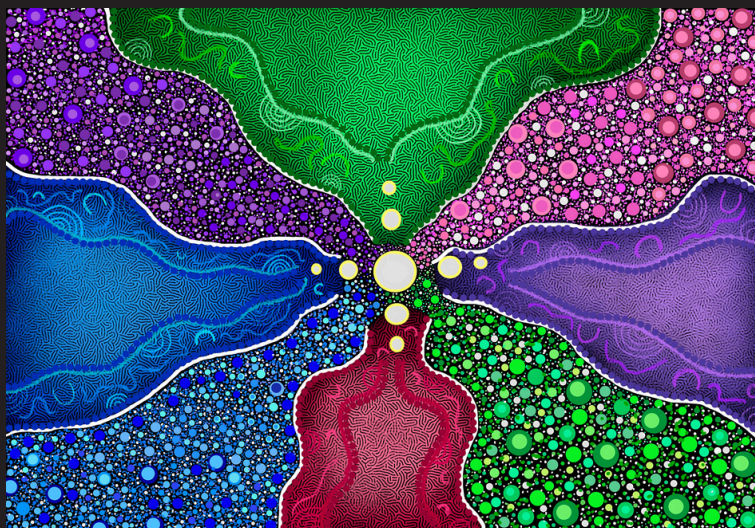
Damon Brown: My name is Damon Brown, I am a proud Barkindji, Bundjalung and Yuin Man from Wilcannia NSW on my mum's side and Wreck Bay NSW and Baryulgil NSW on my dad's side. I enjoy playing Rugby League and Rugby Union and basketball. I love learning about my culture and doing Aboriginal artwork, I also like cutting coolamons and learning the didge.

Aboriginal Artwork Use Notice: This artwork is an expression of Aboriginal culture and is protected by Indigenous Cultural and Intellectual Property (ICIP) rights. It has been created for a specific, approved purpose and must not be copied, reproduced, altered, or used in any other context without the free, prior, and informed consent of the artist(s).

All rights remain with the artist(s), and any use beyond the original agreed purpose is strictly prohibited unless formal permission is obtained. Respect for the cultural significance and custodianship of this work is essential.

To request permission please contact: Rachelle Kelly Church (OBO the artists) at rachelle.kellychurch@sisters.org.au

Special thanks to Sisters in Spirit Aboriginal Corporation for the art commission.



Artwork Title: 'Journey To Justice'

Artwork Description:

As proud, Aboriginal young people, we recognise the significant challenges we face within the justice system. We have grown up knowing about deaths in custody, police brutality and racism. Something that we shouldn't be worrying about but unfortunately is our reality.

Our artwork shows the journey of Aboriginal people in the justice system. We used lots of colourful dots to tell the story because we want our people to have bright futures despite the barriers. Each dot represents a person and their own journey. There are also symbols that represent the community surrounding our people. All the people are moving toward a big, bright star in the middle. We wanted the star to be the light at the end of the tunnel. It represents hope, fairness, and equality.

This painting is about not giving up, even when systems are working against us. We want to believe change is possible.

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ACRONYMS & ABBREVIATIONS

ABS	Australian Bureau of Statistics
ACAT	ACT Civil and Administrative Tribunal
ACCHO	Aboriginal Community-Controlled Health Organisation
ACCO	Aboriginal Community-Controlled Organisation
ACTCOSS	ACT Council of Social Services
ACTCS	ACT Corrective Services
ACTCT	ACT Courts and Tribunal
ACTHD	ACT Health Directorate
ACTPS	ACT Public Service
AEC	Aboriginal Executive Council
AECG	Aboriginal Education Consultative Group
AEEF	Aboriginal Community-Controlled Organisation Establishment and Expansion Fund
AFP	Australian Federal Police
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AIHW	Australian Institute of Health and Welfare
AJAC	Aboriginal Justice Advisory Committee
ALO/ILO	Aboriginal Liaison Officer/Indigenous Liaison Officer
ALRC	Australian Law Reform Commission
ALS	Aboriginal Legal Service
AMC	Alexander Maconochie Centre
ANU	Australian National University
AOD	Alcohol and other drugs
ASD	Aboriginal Service Development Branch
ATSICPP	Aboriginal and Torres Strait Islander Child Placement Principles
ATSIEB	Aboriginal and Torres Strait Islander Elected Body
BIP	Brief Intervention Program
BWC	Body worn cameras
Bimberi	Bimberi Youth Justice Centre
CAHMA	Canberra Alliance for Harm Minimisation and Advocacy
CAHMS	Child and Adolescent Mental Health Services
CBA	Cost benefit analysis
CCO	Community Corrections Officer

CDP	Cultural Development Program
CIT	Canberra Institute of Technology
CPLAS	Care and Protection Legal Advocacy Service
CSD	Community Services Directorate
CSU	Crisis Support Unit (AMC)
CTU	Court Transport Unit
CYF	Children, Youth and Families (previously Child and Youth Protection Services)
CYPS	Child and Youth Protection Services
DASL	Drug and Alcohol Sentencing List
DATO	Drug and Alcohol Treatment Orders
DG	Director General
Disability Royal Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
ECG	Executive Coordination Group
EQUIPS	Explore, Question, Understand, Investigate & Plan to Succeed Programs
FFT	Functional Family Therapy
FGC	Family Group Conferencing
Flex-ed	Flexible education
FNJB	First Nations Justice Branch
FV/DV	Family violence/Domestic violence
FVRAT	Family Violence Risk Assessment Tool
FV Unit	ACT Policing Family Violence Unit
FVO	Family Violence Order
GBO	Good Behaviour Orders
Gugan Gulwan	Gugan Gulwan Youth Aboriginal Corporation
I-Can	Indigenous Case Management Program
ICO	Intensive Corrections Orders
ICS	Inspector of Custodial Services
IDC	Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee
IDS-G	Indigenous Data Sovereignty and Governance
IEO	Indigenous Education Officer

IEP	Incentives and Earned Privileges Scheme
IFVPLS	Indigenous Family Violence Prevention Legal Service
IOC	Implementation Oversight Committee
IOM	Integrated Offender Management
JACS	Justice and Community Safety Directorate
JBT	Jervis Bay Territory
JFF	Justice Future Fund
JHP	Justice Housing Program
JIP	Jurisdictional Implementation Plan
JPP	Justice Policy Partnership
JR	Justice Reinvestment
JRU	Justice Reinvestment Unit
KPI	Key Performance Indicator
LO	Liaison Officer
LOP	Loss of privileges
MACR	Minimum Age of Criminal Responsibility
MARAM	Multi-Agency Risk Assessment and Management
MOU	Memorandum of understanding
NAIDOC	National Aborigines and Islanders Day Observance Committee
NACC	National Anti-Corruption Commission
National Agreement	National Agreement on Closing the Gap
NGO	Non-Government Organisation
NIAA	National Indigenous Australians Agency
OBOW	Our Booris, Our Way
OICS	Office of the Inspector of Custodial Services
OOHC	Out-of-home care
PCYC	Police and Community Youth Clubs
RAP	Reconciliation Action Plan
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RJ	Restorative Justice Unit
RR25by25	Reducing Recidivism in the ACT by 25% by 2025 (Phase 1)
RR25by25 and Beyond Plan	RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT (Phase 2)
RRRAC	Reducing Recidivism Research Advisory Committee
SAB	Sentence Administration Board

SBC	ACTPS Strategic Board
Sisters in Spirit	Sisters in Spirit Aboriginal Corporation
SNAICC	Secretariat of National Aboriginal and Islander Child Care
TAP	Transitional Accommodation Program
TC	Solaris Therapeutic Community AMC
TCCS	Transport Canberra and City Services
TOT	Treatment Order Team
TRC	Transitional Release Centre
TRP	Transitional Release Program
UNEC	United Ngunnawal Elders Council
UTS	University of Technology Sydney
WIA	Wellbeing Impact Assessment
Winnunga	Winnunga Nimmityjah Aboriginal Health and Community Services
Yeddung Mura	Yeddung Mura (Good Pathways) Aboriginal Corporation
Yerrabi Yurwang	Yerrabi Yurwang Child and Family Aboriginal Corporation

EXECUTIVE SUMMARY

Our Review

Our **Final Report** covers the Second 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* (our Review), commissioned by the ACT Government.

The Second Stage of our Review relates primarily to the development of strategies and recommendations for reducing Aboriginal and Torres Strait Islander over-representation in the ACT criminal justice system (in addition to the ALRC recommendations) through consultation with First Nations community members and organisations, as well as other non-government and government stakeholders.

Our findings from the First Stage of our Review are set out in our **First Report**¹ and accompanying Community Guide,² and were discussed at an online Webinar event hosted by Jumbunna on 18 September 2024.³ A summary of these findings are provided at Section 1.3 of this Report.

Our Review is based on a wide range of discussions with First Nations community members and organisations, non-Indigenous community-based organisations, public bodies and statutory authorities. We conducted a total of 68 recorded dialogues/interviews with 175 individual participants and 71 different community organisations, legal services and government agencies, plus several workshops.

A key part of our approach and overall argument is that both specific and systemic (or structural) issues need attention in order to reduce over-representation. Some matters sit neatly inside the criminal legal system. However, there are many others outside the criminal legal system which are deeply connected to the problem of over-representation. As we were repeatedly told in interviews, ‘there isn’t just one solution’. Over-representation can reflect the cumulative impact of decisions made across multiple areas of government activity. It can also reflect a cumulative effect over time through inter-generational impacts. The causal factors of over-representation are complex.

In line with community expectations, we have prioritised community-led and self-determined approaches; and in line with ACT government commitments to Closing the

¹ Jumbunna (2024) First Report is available here: <<https://www.uts.edu.au/sites/default/files/2024-10/Jumbunna-Research-Independent-Review-First-Report.pdf>>.

² Jumbunna (2024) First Report Community Guide is available here: <https://www.uts.edu.au/sites/default/files/2024-10/Jumbunna_Community%20Guide-ACTREVIEW-First-Report.pdf>.

³ A recording of the Webinar event is available here: <<https://www.youtube.com/watch?v=rMn-w-jlGcw>>.

Gap, we have prioritised the need for the transformation of government in how it works with First Nations people.

The Recommendations

Our Report makes a series of recommendations which broadly follow the structure of the Report outlined below. The recommendations and their rationale appear in the Executive Summary, in the body of the relevant sections of the Report, and as a list in Appendix 3.

We have categorised the recommendations into two groups.

The first group are those that require most immediate implementation either because the implementation of other recommendations is dependent or partially dependent on their introduction or because they will have the most immediate impact on reducing Aboriginal and Torres Strait Islander imprisonment and over-representation.

The second group of recommendations are no less important and indeed are likely to have in the longer term more sustained and greater impact on over-representation. However, they involve initial reviews, improved data collection or the prior implementation of other recommendations.

These two groups of recommendations are colour coded as follows.

The first group of recommendations are coded in bright orange.

The second group of recommendations are coded in light orange.

One of the greatest dangers facing our Review is that government agencies will continue to reproduce a siloed effect by only reading the sections of the Report they think applies to them, without seeing the totality and interconnectedness for change that is required. This is unfortunately, a mindset that is profoundly embedded. A further danger is that there will be inadequate attention paid to the *intent* of the particular recommendations.

As we (and others⁴) have frequently observed, government agencies can tend to take a minimalist approach to implementation which allows for ‘business as usual’ and undermines achieving real change.

⁴ Productivity Commission (2024) Review of the National Agreement on Closing the Gap, <<https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>>.

2. DECISION-MAKING, ACCOUNTABILITY & COORDINATION

Our Review identifies what may be seen as *structural drivers* significantly impacting First Nations justice outcomes in the ACT. The issues in question centre around limitations in terms of both First Nations-decision-making and government accountability and a lack of coordination in responses to the complexity of drivers feeding over-representation.

To address these drivers, First Nations-led and government structures and those with a justice specific and cross-issue focus (where relevant to over-representation) need review and reform. Concerns raised include those related to the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and Aboriginal and Torres Strait Islander Justice Caucus identify their lack independence, limitations in their capacity to oversee government activity and insufficient representation from and connection with community and inadequate investment by government (financially and in ways that share power).

There was consensus, for the most part, that coordination across the ACT Government around issues connected with over-representation needs improvement in order to shift First Nations justice outcomes. While it may be appropriate that justice reinvestment in the ACT, for instance, focuses on drivers that sit closer to the criminal legal system (such as housing issues for those at higher risk of re-contact with this system) increased ‘joined up’ activity across Directorates is essential to reducing over-representation.

Lack of coordination was seen as impacting government accountability too, including as it makes it difficult to track and measure the effectiveness of implementation of commitments directed towards addressing over-representation, with the latter having implications for accountability as well. This encompasses accountability to commitments made under the ACT Agreements and the National Agreement and broader responsibility to respond to First Nations priorities in the justice space.

Related to this last point are concerns raised about current approaches to outcomes measurement across government and within JACS, including specifically around the development and application of meaningful, clear and aligned outcomes, targets and indicators. Problems in this respect impact on coordination of and otherwise effective responses to over-representation. Accountability is also seen as limited because there is little consequence for non-action or poor performance in activity likely to contribute to reduced over-representation, including for senior ACT Government staff (in JACS and elsewhere).

Given the range of issues raised with respect to existing structures and the necessity for First Nations-led decision-making, we have highlighted problems, strengths and potential pathways forward for such structures but have stopped short of making firm recommendations. Establishment as a high priority of an interim First Nations-led justice oversight body has been recommended, however, which will then establish and lead a

First Nations-led process for re-design of these structures, as well as providing oversight of our recommendations.

For consideration within the latter process, potential options for more permanent First Nations-led justice mechanisms with oversight and decision-making functions include an ACT Aboriginal and Torres Strait Islander Social Justice Commissioner, re-establishment of an Aboriginal-led justice group, as well as a strengthened ATSIEB and potentially an ACT ACCO Peak Body (if established) (both requiring a sufficiently elevated focus on justice issues).

Reforms to government structures to be considered as part of the above process (such as the Executive Coordination Group) may change how they work individually and in combination with a view to ensuring they effectively support and progress community-identified priorities, including via increased accountability and coordination. A newly established ACT Justice Policy Partnership is one option for consideration.

Government responses to over-representation may also be improved through Key Performance Indicators (KPIs) introduced for senior JACS staff, establishment of (three) senior-level First Nations roles within JACS, which should also increase First Nations decision-making, and reforms to JACS outcomes measurement.

RECOMMENDATION	RATIONALE
2.1 We recommend that JACS establish as a high priority an interim First Nations-led justice body to oversee implementation of recommendations of this Review. This interim body should, as minimum requirements: a. Be focused on providing First Nations-led oversight of implementation of recommendations of this Review, including advising how best to sequence and prioritise implementation. b. Include First Nations representation nominated from ATSIEB (1), UNEC (1) and ACCOs working in the justice space (2-3), who may then appoint First Nations community members with direct experience of the justice system (1-2) (via an EOI or similar process). The group may also consider appointment of additional First Nations representation (for example, Aboriginal and Torres Strait Islander Children’s Commissioner)	Recommendations 2.1-2.3 The Review identifies that addressing over-representation requires that its structural drivers are addressed. In an ACT context, these include inadequate levels of First Nations participation in decision-making and lack of government accountability and coordination in responses to over-representation. First Nations people did not feel that the ACT Government was engaging them sufficiently or if they were, they were not responding adequately or transparently. Government indicated it was taking action in response to over-representation, but the First Nations community did not see this or see it as having positive impacts.

RECOMMENDATION	RATIONALE
and determine optimal total numbers of members (perhaps limited to 8). c. Be adequately remunerated for their time and expertise across the entire body's membership (for consideration, at an appropriate rate for Office Holders in the ACT as determined by the ACT Remuneration Tribunal). d. Be adequately resourced to enable its members to carry out its functions, including to engage and seek input from the First Nations community, as required (including young people, First Nations and other organisations). e. Be supported by a team of 2-3 staff established as a priority within JACS and other senior staff in JACS, in particular the three senior First Nations roles established as part of this Review (Recommendation 2.3.a). Support from the JACS team should include ensuring the interim body has access to ACT Government information required to ensure its effective oversight of implementation, as well as secretariat support. Support from First Nations roles should aim to establish authorising environment within the ACT Government required to ensure the interim group can effectively oversee implementation.	Lack of coordination and current approaches to outcomes measurement made it hard for government and community to progress and track strategies that might address over-representation, which impacts accountability. There are also only ineffectual consequences for poor responses within the ACT Government to this issue. Current ACT structures that might go some way to addressing these drivers are not entirely fit for this purpose and require revision. Putting in place an interim First-Nations-led oversight body up front to ensure independent, representative First Nations-led decision-making around implementation of all Review recommendations (including those focused on self-determination, accountability and coordination) is an effective immediate response to these drivers. Longer-term solutions are also required (to be developed in Recommendation 2.2). Recommendations 2.1-2.3 make clear that the responsibility of government is to support implementation of First Nations-identified solutions to poor First Nations justice outcomes. First Nations people understand best what is required to solve problems impacting them. Strengthening self-determination in this and all other respects is a key response to over-representation, alongside
2.2 We recommend that JACS support the interim First Nations-led justice body (Recommendation 2.1) to lead a process to identify and guide future development of mechanisms connected with First Nations justice issues. a. This process: i. Should be supported by the JACS team established under Recommendation 2.1 and senior	Strengthening self-determination in this and all other respects is a key response to over-representation, alongside

RECOMMENDATION	RATIONALE
JACS roles established under Recommendation 2.3.a. ii. May involve other First Nations and government representatives, at the invitation of the interim body. iii. Should focus on mechanisms that will strengthen First Nations self-determination, increase ACT Government accountability and improve coordination with respect to issues related to over-representation. b. First Nations-led mechanisms ought to be established <i>on an ongoing basis</i> as part of this process. These mechanisms should provide for Aboriginal-led decision-making and oversight in the justice space. For consideration, a permanent First Nations-led justice mechanism may be established that retains and expands on the interim body's role in overseeing Review recommendations to provide oversight over all justice related activity. c. The interim body should work with government to determine the future direction of and potential reforms to other government mechanisms identified as having impacts on over-representation. These include (but are not limited to) the Aboriginal and Torres Strait Islander Justice Caucus, the Justice Advisory Group, the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee (IDC), and the Executive Coordination Group (ECG). This recommendation is dependent on implementation of Recommendation 2.1.	reforms to government ways of working. This aligns with the approach of the National and ACT Agreements and to existing commitments made by the ACT Government under both these Agreements. Under the National Agreement Priority Reform Areas 1, 3, for example: - shared decision-making is essential to addressing disproportionality in First Nations justice and other outcomes in the National Agreement. Though shared decision-making may not go far enough - and First Nations people in the ACT should be able to lead decision-making, with input as required from government. - transformation of government is also essential to ensuring government support for and accountability to the First Nations community and their priorities. Introduction under Recommendation 2.3.a of First Nations leadership roles within JACS will also help address lack of coordination, accountability and limitations in First Nations participation in decision-making. Transformation elements under Priority Reform Area 3 include <i>Identify and eliminate racism</i>, which is in part achieved by increasing appointments of Aboriginal and Torres Strait Islander people in senior positions in mainstream organisations.
2.3 To improve coordination, increase government accountability and enhance First Nations self-determination, we make the following recommendations.	The same intention sits behind Recommendations 2.3.b-d. These aim to lift the accountability of government to deliver on commitments, including by improving quality of ACT

RECOMMENDATION	RATIONALE
a. The ACT Government should establish the following positions: i. Assistant Commissioner (Aboriginal and Torres Strait Islander) for Correctional Services ii. Deputy Director-General (Aboriginal and Torres Strait Islander) of JACS iii. Assistant Commissioner (Aboriginal and Torres Strait Islander) of Police. Given current arrangements between the ACT Government and the Commonwealth around policing services in the ACT, consideration needs to be given to how they will work together to establish the Assistant Commissioner (Aboriginal and Torres Strait Islander) role (Police) (see Section 2.7.3). Each of these roles must be at senior executive level, with the Assistant Commissioner roles reporting to the relevant Commissioner in ACT Corrective Services (ACTCS) and ACT Police and the JACS role reporting to the Director-General, JACS. The functions attached to these roles should encompass those set out in Section 2.7.3 of the Report, centred around: i. First Nations decision-making and oversight to increase government accountability to the First Nations community in the ACT ii. increasing coordination within their respective Directorate/agencies and across the ACT Government around First Nations justice related matters and activities. b. Legislative measures should be established by the ACT Government for incorporation within performance	Government outcomes measurement—identified as currently compromised in terms of capacity to deliver genuine change (because of inadequacy and misalignment of outcomes, indicators and targets); and through KPIs for senior JACS staff to ensure consequences for inaction or poor performance. Recommendations 2.3.b-d ensure First Nations input into decision-making and processes related to tracking and evaluating government performance and outcomes being delivered in a justice context, important for self-determination and increased accountability.

RECOMMENDATION	RATIONALE
agreements and KPIs for more senior JACS staff that demonstrate: i. How these staff have sought to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people and eliminate systemic racism across the Directorate ii. Any other measures identified with First Nations input as likely to contribute to reduced First Nations over-representation. c. JACS should ensure that outcomes measurement within the Directorate incorporates measures related to its progress against Priority Reform and Core Focus Areas under the National and ACT Agreements. With respect to these particular measures, JACS should: i. consider whether they could be used to inform KPIs for senior JACS staff (Recommendation 2.3.b). ii. ensure they are effectively progressed, monitored and evaluated. This may require their incorporation within R25by25 or in a separate JACS strategy (potentially aligned to RR25by25). Reporting against these measures should also be made public. d. JACS should incorporate on a consistent basis First Nations input in its Wellbeing Impact Assessment process (where relevant to First Nations people). This input may inform its assessment of impacts and be used to identify measures of success within this process. e. JACS should use First Nations input to inform the Directorate's outcomes measurement, including to identify, monitor and evaluate outcomes, targets and indicators (in addition to doing so in implementing Recommendations 2.3.a-c).	

RECOMMENDATION	RATIONALE
Recommendations requiring First Nations input (2.3.b.ii, d, e) are partially dependent on implementation of Recommendations 2.1, 2.2.	

3. SYSTEMIC RACISM & OTHER ISSUES

Section 3 explores structural issues of systemic racism and cultural safety, as well as funding and data related issues. Systemic racism and lack of cultural safety in government are identified as significant drivers of over-representation (for example, as racial profiling by police). Lack of understanding of systemic racism within the ACT Government can lead to unconscious bias and makes it hard to challenge this issue.

A whole of government response to systemic racism is essential, and we have recommended that independent systemic racism reviews be conducted across justice *and related* directorates (those with impacts on First Nations justice outcomes). Via this and other mechanisms, First Nations accounts of racism and cultural safety ought to be collected to increase government accountability but also to ensure strategies are developed that can effectively address these issues.

The need for more strategic thinking about use of existing resourcing, with increased First Nations input, was also a focus within Review processes. Multiple problems raised in relation to current funding approaches are detailed (for example, government setting agendas through funding, reliance on short-term and programmatic resourcing and under-resourcing of both ACCOs and early intervention/prevention approaches).

Questions or concerns were raised too about justice reinvestment and reinvestment in particular. Expectations are that the ACT's focus on justice reinvestment would lead to funding reform - shifting resources away from incarceration to support community-led and determined, early intervention and prevention approaches to improving First Nations justice and other outcomes. First Nations input into funding decisions more broadly, and at a substantive level (beyond input into JACS commissioning processes, for instance), is identified as key to shifting outcomes as First Nations people know what solutions are needed

There was interest in establishment of a First Nations-governed fund that provides sustained resourcing for community-led solutions to over-representation, with flexibility about activities to be funded. Funds could be drawn from justice and other areas of government. Also required is greater support for ACCO development in the justice space, with proportional funding a key pathway forward in this respect.

Issues needing attention in relation to data include gaps in, quality of and access to data for both First Nations people and government. We have made recommendations for further progress to be made on data linkages (including to improve coordinated responses to over-representation across directorates) and to strengthen support for Indigenous Data Sovereignty and Governance in a justice context (via establishment of a First Nations-Led Data Working Group and First Nations Data Strategy and identification and implementation of actions that, for example, provide for First Nations input into justice related outcomes measurement). Establishment of both a public-facing (government-controlled) and community-controlled dashboard is also recommended.

A further significant issue raised across consultations was the under and over-identification of First Nations people in the ACT, including for example where government systems identify on behalf of First Nations people, without sufficient evidence or information, and where non-First Nations people self-identify in order to access a benefit available to First Nations people (such as access to a program). Inconsistent or no application of relevant standards in this area, historical context (removals) and points in time where First Nations people may choose not to identify (in contact with police) are all discussed.

RECOMMENDATION	RATIONALE
	Recommendations 3.1-3.4 Systemic racism and lack of cultural safety are identified in the Review as additional structural drivers with significant impact on outcomes connected with justice outcomes (e.g. in education) and on justice outcomes themselves. As is the case for other structural drivers identified above (Recommendations 2.1-2.3), these issues need attention in order to reduce over-representation. The ACT Government has existing commitments to addressing these issues, recognising they exist and need attention. Priority Reform Area 3 transformation elements under the National Agreement include <i>Identify and eliminate</i> racism, which refers to undertaking ‘systems-focused efforts to address disproportionate outcomes and over-representation of Aboriginal and Torres

RECOMMENDATION	RATIONALE
3.1 We recommend that JACS and CSD embed cultural capability measures (KPIs) into funding agreements for non-First Nations organisations it funds to work with First Nations people in the ACT (where this is not already being done).	Strait Islander people by addressing features of systems that cultivate institutionalised racism.’ (Cl. 59) (See also the Cultural Integrity Focus Area of the ACT Agreement). Disproportionately negative First Nations justice outcomes in the ACT also evidence the presence and the consequences of these issues. There was also significant level of concerns and comments raised about these issues during the Review. Recommendation 3.1 Lack of cultural safety or cultural capability within mainstream non-government service provision connected with First Nations justice outcomes and their drivers impacts on First Nations access to and engagement with mainstream services. This reduces the quality of outcomes achievable by mainstream services in their work with First Nations people, including to address over-representation. Priority Reform Area 3 of the National Agreement identifies that government must improve mainstream institutions, which includes ensuring cultural safety and responsiveness to the needs of Aboriginal and Torres Strait Islander people – <i>including through the services they fund</i>. Mainstream services cannot service the First Nations community in the ACT in the same way as First Nations-led organisations, but the community <i>will</i> need to access them. KPIs designed to lift their cultural capability should help to ensure more effective mainstream service provision to the First Nations community – and

RECOMMENDATION	RATIONALE
	therefore delivery of better First Nations justice and related outcomes.
3.2 We recommend that the ACT Government conduct independent, targeted systemic racism reviews of JACs and its agencies (police, ACTCS as a priority: see Recommendations 7.3, 10.7) and other Directorates likely to influence or impact First Nations justice outcomes, including Education, Health, Housing, and CSD. These reviews ought to identify current best practice and make recommendations for areas for improvement in addressing systemic racism, including across Directorates. a. The approach to conducting these reviews should be developed with First Nations input and implementation of their recommendations requires robust First Nations and government oversight. b. The reviews and government responses to their recommendations must be published. c. Consideration should be given by the ACT Government to how First Nations experiences of (and other data about) systemic racism are shared publicly and with First Nations people specifically (alongside publication of the systemic racism reviews), including potentially via implementation of Recommendations 3.13-3.15. Recommendation 3.2.a is dependent on implementation of Recommendation 2.1 and partially dependent on 2.2 (for First Nations input and oversight).	As discussed in the Rationale for 3.1, systemic racism (and lack of cultural safety as an associated issue) is a significant issue because of the level of concern it raised for First Nations people during the Review and due to its entrenched and widespread presence. It is a major structural driver of negative First Nations justice and related outcomes that sits in justice <i>and other</i> areas of government activity and takes many different forms: for example, in education, health, as racial profiling by police, as legislation guiding decision-making about bail that fails to account for the particular circumstances of First Nations people. Understanding within the ACT Government of these different forms of racism and their impacts on over-representation is presently inadequate. As part of this, First Nations people identify poor government responses to their accounts of racism in interactions with government institutions and services. Failure to adequately address this issue reduces trust and a feeling of safety for First Nations people in their interactions with government. Improved government responses to this issue are required. Conducting independent systemic racism reviews under Recommendation 3.1 provides one such effective response. These reviews apply a structured approach to understanding how this issue manifests in organisations and its impacts, which can then inform appropriately targeted responses.

RECOMMENDATION	RATIONALE
	Systemic racism reviews are identified as a priority because of the significance of concerns raised and of its impacts on justice and related outcomes. While reviews across different areas of government activity are recommended prioritisation of policing and the AMC is necessary because these are especially high areas of concern for the community. Reviewing these two agencies/institutions as early as possible will indicate to the community that their concerns are being taken seriously and appropriately responded to. Further, having data from systemic racism reviews early will support implementation of other recommendations (including Recommendation 2.3b, 3.3).
3.3 We recommend that JACS, CSD and their relevant agencies establish Cultural Safety Plans as a priority. The development, monitoring and evaluation of these Plans require First Nations Input (see also Recommendation 3.4). This recommendation is dependent on implementation of Recommendation 2.1 and partially dependent on 2.2 (for First Nations input).	The ACT Government has made commitments to development of an ACTPS Cultural Integrity Framework to support each Directorate to create their own Cultural Integrity Plan (Cultural Integrity Focus Area, ACT Agreement, Action Plan Two). Development of a Cultural Integrity Plan within JACS, CSD and their agencies specifically addresses justice-related concerns about cultural safety and establishes clear actions against which progress can be made and measured. First Nations people should be informing the development, monitoring and evaluation of all government strategies related to racism and cultural safety, given their direct experiences of these issues. This includes as decision-makers (to also strengthen self-determination) and by way of First Nations data on these experiences.

RECOMMENDATION		RATIONALE
3.4	We recommend that as part of the systemic reviews (Recommendation 3.2) or via other mechanisms (for example, First Nations consumer surveys), the ACT Government should gather data from the First Nations community on their experiences of cultural safety and racism occurring within their interactions with government. This recommendation is dependent on Recommendation 3.2 (if gathering data via systemic racism reviews).	Data on racism and cultural safety <i>must</i> be gathered from First Nations peoples based on their direct experiences of these issues. This data must inform government efforts to address these issues. Their incidence and nature cannot be adequately or appropriately measured without this data. Nor will strategies in response be effective without it. This is especially important given First Nations reports provided during this Review about how their accounts of racism are currently being (poorly) responded to (see Recommendation 3.2). That this is the right approach was made clear throughout the Review process and is also embedded, for instance, in definitions of Cultural Safety under the National Agreement (Cl. 12). It also aligns with definitions of Indigenous Data Sovereignty, as a right to exercise of ownership of Indigenous Data through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of data.⁵
3.5	We recommend that JACs and CSD resource and otherwise support the establishment and operation of a mechanism designed to increase First Nations input into decision-making around funding priorities in the justice space. First Nations input into the design of this mechanism is required. For consideration, the mechanism may input into decision-	Recommendations 3.5-3.9 <i>Self-determination and community-controlled orgs</i> Recommendations 3.5, 3.8 and 3.9 in particular aim to increase First Nations participation in funding decisions to improve First Nations justice outcomes in the ACT.

⁵ Maïam nayri Wingara definition, available at <<https://www.maïamnayriwingara.org/definitions>> (accessed 26 June 2025).

RECOMMENDATION	RATIONALE
making related to WIA processes connected to JACS and CSD business cases (Recommendation. 2.4.d) and the First Nations-governed fund in Recommendation 3.8. Resources provided to support this mechanism incorporate data, including: a. annual data on Indigenous expenditure on justice related programs and service provision and on implementation of Priority Reform Areas and Core Focus Areas under the National and ACT Agreement b. justice and other data relevant to over-representation. This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).	This will practically occur through First Nations governance of a fund - to be established to resource First Nations-led interventions aimed at addressing over-representation and improving justice outcomes – and via increased brokerage in funding provided to First Nations organisations. This should support the work they are already doing to flexibly respond to community need. Importantly too, the above fund may apply resources to whatever interventions First Nations people (via fund governance) identify as making a difference – which could include a community-led program, First Nations-led advocacy for justice related reform or building of First Nations-led governance relevant to over-representation, as examples.
3.6 We recommend that JACs and CSD improve accessibility across the First Nations community to data on First Nations justice related expenditure (see also Recommendation 3.5). The aim is to ensure transparency in funding decisions and to help improve community awareness of and access to services and programs. This data may be shared in implementation of Recommendations 3.13-3.15, amongst other methods.	These approaches strengthen self-determination as they put decision-making back in the hands of First Nations people - identified above as a key response to over-representation. Additionally, the First Nations community knows what is needed in terms of services, programs and other initiatives likely to improve justice outcomes. Increasing their input into decisions about what is funded in a justice context will therefore have positive impacts on the latter outcomes.
3.7 We recommend that JACS and CSD implement proportional and needs-based funding under Cl. 55a and 55b of the National Agreement to address current gaps in resourcing in program and service delivery of Aboriginal legal services and other ACCOs contributing to reduced over-representation.	As a further point, bringing First Nations people together via governance of the above fund and a mechanism for First Nations decisions about funding (Recommendation 3.1) may increase collective, coordinated First Nations

RECOMMENDATION	RATIONALE
3.8 We recommend that the ACT Government establish a fund to resource First Nations-led interventions aimed at improving First Nations justice outcomes and addressing over-representation. The fund must be designed with First Nations input and be governed by First Nations people. Subject to outcomes of First Nations design of the fund, we recommend that it: a. should provide funding for operations, governance and other non-programmatic priorities b. should provide sustained funding, avoiding short term funding cycles as far as is possible c. could draw in resources from the proportional funding (Recommendation 3.7) and/or from the ACT Government (including funds allocated to Directorates outside JACs and CSD) to promote coordinated, collaborative approaches to addressing over-representation. d. should be expended on justice-focussed program/service delivery, along with any other priorities identified as likely to reduce over-representation. This should include a focus on young people at risk of or already in contact with the justice system and other early intervention/prevention approaches. Other possible funding priorities include systemic reform and advocacy, strengthening community leadership and self-determination. e. should be linked to support made available to those seeking to apply for resources under the fund f. should be supported in its operations via provision of data by the ACT Government to inform fund decision-	community decision-making about priorities in funding. The Review identified that the way government currently funds ACCOs and other First Nations-led organisations is siloed, leads to competition between service and can duplicate and lead to gaps in service provision (as well as being driven by government not community priorities). Self-determination and culture, again as effective responses to over-representation, are also supported where ACCOs are better funded by government. ACCOs are best placed to respond to over-representation and its drivers, given their strong connection to culture and community. This was very much emphasised during Review processes. ACCOs may be supported via Recommendations 3.7 and 3.8 – through proportional funding and funding for operations, governance and non-programmatic purposes under the First Nations-governed fund (3.8 and 3.8.a). Support to be provided under the First Nations-governed fund is aimed at addressing issues of inequity in access to funding for smaller organisations raised during the Review. Introducing proportional funding in the justice space and aspects of Recommendation 3.8 that build the community-controlled sector aligns with existing government commitments under Priority Reform 2 of the National Agreement (and the Core Focus Area of Connecting Community under the ACT Agreement).

RECOMMENDATION		RATIONALE
	making (see also Recommendation 3.5). This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).	<i>Access to data</i> Recommendations 3.5, 3.6 and 3.8 aim to increase First Nations access to data. This is important to ensure that decisions First Nations people make about funding are informed by evidence (data) (for instance, on current expenditure or that helps identify issues to be prioritised in order to reduce First Nations contact with the criminal legal system). It also aligns with Indigenous Data Sovereignty Principles and Priority Reform Area 4 of the National Agreement. Further intended outcomes of sharing of First Nations data with First Nations people are increased accountability of government (including, for example, where it provides transparency about funding decisions). Additionally, it should increase awareness at a First Nations community level of ACT services and programs, identified as currently fairly limited. This increased awareness will enhance access to support, information and advocacy to services and programs with capacity to prevent and avert contact with the criminal legal system. <i>More effective resourcing</i> Funding reforms in Recommendations 3.5-3.9 should also address significant concerns raised during the Review process about poor models of resourcing identified as unlikely to help improve First Nations justice outcomes. The constant focus on programmatic and short-term funding is, for instance, identified as not based on evidence of ‘what works’ in this context. The fund in Recommendation 3.8 provides for sustained, targeted, prevention-
3.9	We recommend that JACS and CSD increase access to brokerage funding for First Nations organisations working in the justice space to ensure a level of flexibility and control over funded activities undertaken.	

RECOMMENDATION	RATIONALE
	focused and otherwise strategic resourcing that should make positive inroads into over-representation. Importantly too, the fund may draw in resources from across the ACT Government. This responds to lack of coordination as a structural driver of over-representation. The fund in some respects aligns with understandings of how reinvestment might work, particularly in a First Nations context. This responds to community expectations of what justice reinvestment would deliver in the ACT.
3.10 We recommend that JACS, CSD and other relevant Directorates come together with the First Nations-led Data Working Group (Recommendation 3.11) to consider and potentially progress additional data sharing and linkage projects. The focus is on projects that share and link: a. justice and other types of data (for example, health, child protection, education related data) b. that have capacity to provide insights into interventions likely to positively impact justice outcomes for First Nations people at both an individual and population level. At the initial phase of this process the various directorates, in consultation with the First Nations-led Data Working Group, should agree on a minimum data set that would set some parameters around what data would be shared across agencies. Consideration should be given to legal, privacy and other concerns arising with respect to such projects and whether and how these might be balanced with their potential benefits, the processes required	Recommendations 3.10-3.15 Data is a focus in Recommendations 3.10-3.15 as it is used to make decisions about strategies for tackling over-representation and whether those strategies are effective in this respect. Data needs to be accurate and otherwise useful for these purposes. There are currently a range of issues in these respects (including data gaps, consistency etc.) that need attention. More broadly, ensuring access to data for First Nations people and other mechanisms that increase their control over their own data and its use (including in data informed and related decision-making) is one aspect of strengthened self-determination – as above, a key response to over-representation. This also needs attention. The establishment of a First Nations-led Data Group, ensuring government support for recognition of Indigenous Data Sovereignty and Governance Principles,

RECOMMENDATION		RATIONALE
	to establish these projects and any other relevant matters. This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).	development of a First Nations Data Strategy within JACS and CSD and increased First Nations access to data set out in Recommendations 3.11-3.15 in particular aim to address the above data related issues.
3.11	We recommend that JACS and CSD establish as a priority a First Nations-led Data Working Group. This group could be drawn from and should connect with other First Nations-led mechanisms established as part of this Review. It may also incorporate representation from JACS, CSD and other ACT Government representatives, as required. - First Nations members of this Working Group should be supported to develop their data capabilities, as required. - As an early priority, this group may develop JACS and CSD First Nations Data Strategies to coordinate and guide First Nations related data work in the justice space, including under RR25by25. - The focus of both the Data Group and Data Strategies should incorporate improvements to the quality of data collected by JACS and CSD, including to ensure consistency and to address gaps in data identified in this report.	Establishment of a First Nations-Led Data Working is a priority as implementation of a range of recommendations are at least partially dependent on this group being in place. Our data-related recommendations align with existing government commitments in the data space. The National Agreement identifies data reform as relevant to Priority Reforms 1-3 and centres Priority Reform 4 around data reform. This Priority Area has a focus on quality and accessibility of data and building data capability of First Nations communities and organisations – all captured in our recommendations. Implementation of all Priority Reform Areas is aimed at addressing structural drivers of disproportionately negative First Nations justice and other outcomes, as are our recommendations. Indigenous Data and Sovereignty and Governance principles are also relevant to our data recommendations.
3.12	We recommend that JACS and CSD develop clear policies and procedures outlining their approaches to IDS-G, with First Nations input from the First Nations-led Data Working Group. Specific actions outlining how JACS and CSD will support implementation of IDS-G principles are to be identified and implemented within this process.	Indigenous Data Governance refers to the right of Indigenous peoples to autonomously decide what, how and why

RECOMMENDATION	RATIONALE
These actions may incorporate, for example, establishing mechanisms that provide for First Nations people to input into KPIs for senior JACS staff (Recommendation 2.3.b; justice related outcomes measurement (including under RR25by25) (Recommendations 2.4.c, e; and how First Nations data is to be used in the justice space. The above policies, procedures and actions may be incorporated within or aligned with JACS and CSD First Nations Data Strategies (Recommendation 3.11). This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).	Indigenous data are collected, accessed and used.⁶ Feedback was received that more coordinated or joined up interventions across government and in a range of areas would improve First Nations justice outcomes. These interventions may be identified through enhanced data sharing and linkage, an approach that also responds to lack of coordination being a structural driver of over-representation. Recommendation 3.10 should help to increase targeted collaboration and coordination around issues impacting First Nations justice outcomes.
3.13 We recommend that JACS establish a public-facing dashboard providing the First Nations community with access to de-identified First Nations data. This includes data reporting on RR25by25 implementation and other First Nations related justice data collected as a result of improved data linkage, and the specific data areas for data collection identified in our Review. First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released. This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).	

⁶ Maiam nayri Wingara definition, available at <https://www.maiamnayriwingara.org/definitions> (accessed 26 June 2025)

RECOMMENDATION		RATIONALE
3.14	We recommend that JACS develop and disseminate a publication on justice-related data that is easily accessible to the First Nations community, similar in style to the Aboriginal and Torres Strait Islander Health and Demographic Profile for the ACT. First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released. This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).	
3.15	We recommend that the ACT Government support First Nations-led development of a First Nations-governed data dashboard. First Nations input on design of the platform and its governance should include input from the First Nations-led Data Working Group. This platform should hold and share First Nations data as determined by its First Nations governance. This may include data on First Nations experiences of racism and cultural safety (see Recommendation 3.2). This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).	
3.16	We recommend the development and implementation of a consistent and culturally informed approach to the identification First Nations peoples across justice-related agencies and funded service providers. A clear and consistent	The identification of First Nations people is not clearly understood, and standards are not upheld. This is a prevalent issue across various justice-related systems, including child protection, youth justice, policing, courts and prisons.

RECOMMENDATION		RATIONALE
	standard for verifying First Nations identity should be developed in partnership with First Nations-led structures established as part of the Review. This will ensure equitable access to services and protect the integrity of funding and data collection. Where changes to a person's Aboriginality status occur, agencies should engage with relevant community partners and seek culturally appropriate guidance to determine whether recognition is appropriate within program and service delivery contexts.	There was a consistent concern of lax standards of identifying across government agencies and community organisations. This was seen in employment, within service providers (speaking about clients) and within justice systems. There was the consensus that institutions are accepting one or none of the three 'working criteria' for providing confirmation of Aboriginal or Torres Strait Islander heritage. The implementation of this recommendation is a priority because it impacts multiple other recommendations.
3.17	We recommend justice system databases should be updated to reflect only verified identifications, and protocols should be introduced to prevent retrospective changes without appropriate cultural or community verification—particularly in cases where individuals have had prior engagement with the system without identification as Aboriginal and/or Torres Strait Islander.	Rationale for this recommendation is the same as above in recommendation 3.16.
3.18	We recommend that First Nations organisations, for example Elders and/or ACCOs (and where possible AIATSIS), assist by undertaking family history and genealogy research when required by First Nations individuals in the ACT. This may require funding for staff to undertake and assist with family reunion, with travel of clients to their country and in obtaining understanding of descent from the Indigenous peoples of Australia and acceptance as Indigenous by an Indigenous community.	Due to the disconnection through previous government removal policies, our community dialogues emphasised the need for agencies to assist people, families and communities with genealogy. A practical example of how this might be done in the prison system is through individual cultural support plans (see recommendation 10.6).
3.19	We recommend that ACT government undertake a review of First Nations employment across the justice and related	A key rationale for this recommendation is the lack of knowledge in the community of existing identified positions, who were

RECOMMENDATION	RATIONALE
portfolios, with a specific focus on the number, level, and function of identified positions and broader First Nations workforce representation. Arising from the above review, we further recommend that ACT justice and related agencies maintain an internal and community-facing registry of identified positions and their roles, supported by transparent criteria and culturally appropriate engagement practices. This registry should support workforce planning, succession strategies, and improved community trust. In addition, ongoing capability development and appropriate cultural governance structures must be in place to support the recruitment, retention, and progression of Aboriginal and Torres Strait Islander staff.	filling these positions and what their functions were within the organisation. It is also necessary to ensure effective strategies for community engagement are transparent. The need to value of lived experience, cultural knowledge, and community connections was also emphasised. Improvements in the operation of identified positions enhances services delivery, and as a consequence increases the likelihood of improved outcomes including reintegration and rehabilitation.

4. EDUCATION

Section 4 looks at education, identifying lack of cultural safety/racism and poor responses to disability as contributing to disproportionately higher rates of First Nations suspensions, exclusions and disengagement. The links between these issues and over-representation are also discussed.

The Education Directorate is seeking to respond to the above issues, with acknowledgement too that student needs are more complex in current times and that the education system is only one (important) piece of the puzzle required to address this complexity. Community-led and based solutions are also crucial.

Directorate responses include for example, attendance of police at school-based student incidents, some ACCO supports, cultural integrity initiatives, programs for re-engaging First Nations students and alternative education and learning options both outside and within Bimberi Youth Justice Centre (Bimberi) – though there are barriers to accessing the latter, including because of limited availability of options. Positive outcomes delivered via these responses are identified as including re-engagement with education via Murrumbidgee (Bimberi school) and reduced recidivism for those connected to Muliyen school.

Difficulties re-entering school on release from Bimberi and lack of coordination across educational, youth justice and child protection issues and systems to address needs of First Nations children and young people with more complex needs are issues highlighted. The lack of policy and procedure identifying how the Education Directorate best supports these young people, including in a coordinated way with other Directorates and agencies, is explored.

Further ACCO support should be made available for students at critical times and the re-instatement of a First Nations group to provide advice on First Nations issues is required asap, including to progress education-related recommendations of our Review (for example, to provide First Nations input into and oversight of suspension/exclusion decision-making and into the development, use and dissemination of First Nations data, including around experiences of racism in a school setting). Increased support from flexed staff in the Education Directorate for those transitioning out of Bimberi, increasing alternative learning options (including to create First Nations-led and operated programs), and publication of data (with First Nations input) on suspensions and exclusions are further recommendations discussed in this section.

RECOMMENDATION	RATIONALE
4.1 We recommend that the Education Directorate work with ACT Policing and First Nations people in the ACT to determine best responses to school-based student incidents, prioritising First Nations community-led responses where possible (for instance, mediating student conflict, linking students to relevant supports) and avoiding unnecessary reliance on police responses to such incidents. The agreed approach should be incorporated into Education Directorate policy, including the Education Directorate/Police MOU and additional Directorate policy, as necessary. Processes for First Nations community oversight of compliance with this policy should be established and implemented. A First Nations Education Advisory Group (to be established by the Education Directorate) should be involved in developing the above policy and in	Evidence indicates that unnecessary reliance on police responses in a school setting increases the likelihood of further contact with the criminal legal system of the students in question. This was a concern raised in our Review too. Better responses to school-based incidents, conversely, involve linking First Nations students with relevant supports (particularly ACCO and community-based support: Recommendation 4.2). This is a more preventative approach that is also likely to be more holistic in its focus - with real potential to address causal factors leading to incidents at school and potentially those that might also increase the likelihood of (re-)contact with the legal system (for instance, issues arising for the family unit). Throughout rationales for Recommendations 4.1-4.12 we note the contribution of positive experiences in education to reduced First Nations

RECOMMENDATION		RATIONALE
	oversight (or advising on best approach to oversight) of its implementation (see Recommendation 4.11). This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input and oversight).	contact with the legal system and negative implications in this context for more negative experiences in an educational setting. Also important is working preventatively on issues affecting children and young people that might lead to their contact with the justice system as adults.
4.2	We recommend that further resourcing be provided to expand current levels of support provided by First Nations organisations to First Nations students and families/carers. This support should be offered and made available to students and/or to their families/carers that self-identify or are identified as having a need for it. At a minimum, support should be available during suspension/exclusion processes, when a student has been referred to alternative education and when a young person is transitioning out of youth justice incarceration, but it may also be used more preventatively (for instance, when issues first emerge). First Nations community input is required to determine how support for First Nations students and their families/carers should be expanded. This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input).	School represents an (almost) universal point of connection through which support may be provided as a response to issues impacting on schooling and that may also contribute to (re-)contact with the criminal legal system. Accessing support at the right times (preventatively, at certain crucial points) may help decrease student disengagement from school and avert other negative education-related outcomes for First Nations children and young people. Engaging with school and positive education related outcomes are important protective factors against (re-)contact with the criminal legal system for younger people and adults, including in the First Nations community. The supports currently available to First Nations students, including from ACCOs working more preventatively in ACT public schools, are identified as already helping to reduce recidivism and avert other negative justice outcomes, as well as increasing school engagement. These supports should be expanded (note, too, the alignment with building the ACCO sector (see for instance, Recommendation 3.7)).
4.3	We recommend that processes and mechanisms be established to ensure	Evidence indicates that suspensions and exclusions have the potential to increase

RECOMMENDATION	RATIONALE
First Nations input into, oversight and/or review of Education Directorate decisions related to the suspension or exclusion of First Nations students. This approach should be incorporated into Directorate policy. First Nations input is required to develop the processes, mechanisms and related policy necessary to implement Recommendation 4.3. This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input and potentially oversight/review).	contact with the criminal legal system, including as they impact on student connections with protective factors at school likely to avert or reduce such contact. As well as impacting educational outcomes for students, for instance, suspension may impact a First Nations' sense of belonging and worth in ways that may increase likelihood of justice system contact. First Nations community participants expressed significant concern about suspensions and exclusions and their impacts on their children. There were perceptions that First Nations students are more likely to be suspended or excluded than other students. This was seen as being race-based or as poor responses to disability related behaviour. We note that Education Directorate data on suspensions and exclusions was not available. This form of discipline should be used for First Nations students as infrequently as possible. Having First Nations input into decisions about suspensions and exclusions is likely to address any unreasonable use of this form of discipline. It should also reduce community concerns about their disproportionate use. First Nations input into decision-making around suspensions and exclusions may also increase opportunity for connection with ACCO and community support – with potential to address a range of issues impacting education and/or justice outcomes (Recommendation 4.2)

RECOMMENDATION		RATIONALE
		(See also Recommendations 4.4-4.6 for discussion of further responses to disability-related discrimination, racism and cultural safety issues in schools).
4.4	We recommend that First Nations students and their families/carers have increased access to information, support and advocacy around rights in an educational setting (including related to disability/race discrimination, cultural rights and school disciplinary action) (see also Recommendation 4.3). This should be provided by a source external to but funded by the Education Directorate, potentially as an expansion of the current partnership with Legal Aid ACT or via another external program or service.	See above rationales for Recommendations 4.1-4.3 that speak to the importance of ensuring that appropriate supports and community-led advocacy are available for First Nations students, including in situations where their rights are potentially to be breached. Recommendation 4.4 responds, in particular, to concerns at a community level that support and advocacy are not easily accessed at present where rights are potentially breached. Increasing support and advocacy for First Nations students contribute to positive education outcomes and avert negative outcomes in this context that might increase the likelihood of contact with the criminal legal system.
4.5	We recommend that Education Directorate statistics on suspensions and exclusions of First Nations students are made publicly available, including data that is disaggregated by disability, reason for suspension, length of suspension and other variables, so far as is possible. Decisions about what data should be collated and can be shared publicly should be determined with First Nations input. This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input).	See rationales above for Recommendations 3.4, 3.5, 3.11 (around access to data, Data Sovereignty and Governance) and for Recommendation 4.3 (on perceptions about unreasonable use of suspensions and exclusions). Data on suspensions and exclusions may be provided for First Nations people involved in justice-related decision-making as part of this Review (see for instance Recommendation 3.8).
4.6	We recommend that the Education Directorate engage the First Nations	Systemic racism and cultural safety issues were identified as having significant

RECOMMENDATION		RATIONALE
	community in the ACT to participate in development and implementation of processes and mechanisms for collecting data from First Nations students and their families/carers on experiences of cultural safety and racism in an educational setting. For consideration, the processes and mechanisms developed may collect data on First Nations perspectives of the effectiveness of current Education Directorate initiatives aimed at addressing racism and improving cultural integrity, to inform review of the same. This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input into processes and mechanisms).	impacts in a school setting (for example, leading to higher rates of school disengagement and disproportionate use of suspensions or exclusions for First Nations students, as above). Addressing these issues as they impact First Nations students will help avert negative education related outcomes, including those that may contribute to (re-)contact with the criminal legal system. See in addition rationales for Recommendations 3.1-3.4 above, which speak to the importance of addressing systemic racism and cultural safety issues across government in order to improve First Nations justice outcomes. A systemic racism review may be conducted for the Education Directorate under Recommendation 3.2. See rationales for Recommendation 3.2 and 3.4 that discuss First Nations data collection and systemic racism.
4.7	We recommend that CSD increase day release for young people incarcerated in Bimberi to attend work or school (for example, to attend Muliyan, PCYC programs, TAFE). Additional mechanisms for increasing access for this group to vocational training/employment opportunities to help with their re-entry and improve their longer-term outcomes people should also be considered. Consideration should be given too to whether a trade skill centre can be set up at Bimberi.	Recommendations 4.7-4.8 Increased engagement or re-engagement in educational and employment opportunities for young people who are incarcerated was identified within the Review process as likely to make important contributions to reduced First Nations (re-)contact with the criminal legal system – in youth and into adulthood. These opportunities give a young person hope, direction and break negative cycles that feed interactions with the justice system. Improving education related and employment outcomes for young people acts as a protective factor against re-contact.
4.8	We recommend that the ACT Government allocate further resourcing to support First Nations children and young people disengaged from education and/or	

RECOMMENDATION		RATIONALE
	transitioning out of Bimberi into a school setting. This includes providing additional resourcing for the purchase of (a) vehicle(s) and additional staffing (1-2 youth workers) within Flexible Education (to enhance support available under Waruga Yardhur and Muliyan programs).	Current opportunities in this regard are identified as somewhat limited, but as effective in reducing the above re-contact for young First Nations people. Expansion is required.
4.9	We recommend that the ACT Government allocate further resourcing to increase availability of flexible learning options for First Nations students. This resourcing might be used to expand existing Education Directorate initiatives (including Muliyan) and/or for First Nations-led design, implementation and evaluation of a program or other alternative learning option specifically for First Nations students.	
4.10	We recommend that the Education Directorate develop policy and procedures providing clear guidelines for how it will support First Nations children and young people involved in the youth justice system. It could incorporate, for example, detail guiding how to best support the transition of young people from Bimberi into school. The policy should incorporate detail of how the Education Directorate and other relevant directorate/agencies will work together to support First Nations students interacting with different systems (education, youth justice and/or child protection systems). As such, this process is likely to require input from other Directorates. This process also needs to be informed by First Nations input (including from First	There is insufficient clarity at present about how Education Directorate staff work with First Nations students in contact with the youth justice system. Schools have real potential to avert (further) negative justice outcomes for these students, as above -who are also likely to have complex needs. To ensure positive school responses to these students, clear guidelines written into policy and procedure are required (for example, trauma, culturally and otherwise informed). Supporting these students is likely to require a coordinated approach across Directorates, including because of their complexity of need (for example, a student may exit youth justice incarceration but still be interacting with CSD).

RECOMMENDATION		RATIONALE
	Nations-led mechanisms established under Recommendations 2.1, 2.2). This recommendation is partially dependent on implementation of Recommendations 2.1, 2.2 and 4.11 (for First Nations input).	Improving coordinated responses via implementation of Recommendation 4.10 responds to lack of coordination as a structural driver (see Recommendations 2.1-2.3).
4.11	Subject to the outcomes of current consultations being conducted by the Education Directorate on establishment of such a body, we recommend that the Education Directorate support the establishment as a priority of a First Nations Education Advisory Body. This body is to work alongside the Education Directorate to enhance First Nations outcomes in an educational setting. As part of their role, the body may provide First Nations input and oversight as identified across education-related recommendations of this Review (see Recs 4.1, 4.2, 4.3, 4.5, 4.6, 4.10). They may do this in collaboration with First Nations justice mechanisms established under Recommendations 4.1, 4.2. The First Nations Education Advisory Body, at a minimum: - should have sufficient capacity, including resourcing, to ensure it can provide independent oversight over and to participate on equal terms in decision-making related to policy and other Education Directorate activity impacting the First Nations school community. - may have ATSIEB, ACCO and other First Nations representation (including from First Nations families currently engaged with the educational system). It could draw membership from and/or build on the Community Reference Group overseeing the Education	See rationale for Recommendations 2.1-2.3 on First Nations decision-making and other aspects of self-determination as key responses to negative First Nations justice and other outcomes.

RECOMMENDATION		RATIONALE
	Directorate's Waruga Yardhur program. c. may also incorporate youth representation or alternatively, work alongside a First Nations Youth Education Advisory Group established with a similar purpose to that of the First Nations Education Advisory Body as part of this Review.	
4.12	We recommend that the Education Directorate and CSD work together to ensure Education Directorate staff have sufficient understanding of thresholds for mandatory reporting. Where there are concerns about students and their families, Education Directorate staff could connect them with the above ACCO supports as an alternative to reporting to CSD (see Recommendation 4.4).	Concerns raised during the Review process identified Education Directorate staff as over-reporting First Nations students and families to CSD (as child protection reports). This points to a need for greater understanding by Education Directorate staff of thresholds for reporting. Avoiding contact with the child protection system and linking students and families with supports as an alternative, will help avert contact with the criminal legal system for First Nations children and young people, given their rates of contact with both systems.

5. CHILD PROTECTION

There has been substantial work to address the over-representation of First Nations children in the ACT child protection and out-of-home care (OOHC) system in recent years, particularly with the introduction of the First Nations Family Response and Engagement Teams, the inaugural r Aboriginal and Torres Strait Islander Children and Young People Commissioner, and embedding the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP) in the *Children and Young People Act 2008*. These initiatives have been broadly welcomed by community.

Addressing the over-representation of First Nations children in child protection and out-of-home care (OOHC) systems requires a systemic approach that acknowledges the drivers of over-representation are embedded within racists systems that continue to position First Nations families as 'risky'. This work will have both immediate and longer-term impacts on the over-representation of First Nations people in the criminal legal system. There is a well-established and robust body of evidence – nationally and

international – demonstrating that contact with child protection and OOHC systems is increased with an increased risk of contact with juvenile and adult criminal legal systems. This link is particularly strong for First Nations children.

We heard from community members of a lack of investment in prevention and early intervention services that can work in a culturally appropriate and holistic way with families to *prevent* child protection intervention. While the First Nations Family Response and Engagement Team is capable of undertaking this work, community members argued for the need for a model that sits outside of existing child protection structures. That is, there is a need for more genuinely self-determined approaches that can exist alongside statutory child protection systems.

Having the ATSICPP embedded within legislation was viewed as a positive step, but too much focus remains on where First Nations children are placed following removal, with insufficient attention – and resourcing – to prevention and early intervention services and supports. Ensuring that all elements of the ATSICPP are implemented will more effectively address the cultural *disconnection* that is caused by child protection and OOHC interventions.

The issue of care-criminalisation – whereby children in residential care are more likely to come to the attention of police and be subjected to criminalising processes *by virtue of being in residential care* is also discussed. The absence of data on the proportion of First Nations children who are dual clients of child protection and youth justice makes it difficult to determine the true prevalence of care-criminalisation in the ACT. Nevertheless, community members spoke at length about a well-established ‘residential care to youth justice to adult incarceration pipeline’ and the need to better support and protect First Nations children in the care system.

RECOMMENDATION		RATIONALE
5.1	We recommend the ACT government provide increase funding for the further expansion of the First Nations Family Response and Engagement Team. This is to ensure that all First Nations families who are at-risk of child protection involvement, or are already impacted by the child protection system, are referred to the team as a priority.	Recommendations 5.1-5.2 Research has established a clear and strong link between child protection involvement and contact with juvenile and adult justice systems. This link is particularly pronounced for First Nations children. Ensuring that all First Nations families are referred to the Family Engagement and Support team may limit removals, but where these are necessary, may support faster and more sustainable reunification, thereby reducing the
5.2	We recommend that the ACT government consider further legislative and policy reform to give the First Nations Response and Engagement and Support team greater autonomy in decision-making, including	

RECOMMENDATION		RATIONALE
	decisions on whether a child is at significant risk and therefore removal is necessary.	risk of OOHC placement and subsequent criminalisation. Further, research has shown that remaining with family and community is a protective factor for First Nations children at risk of child protection intervention.
5.3	We recommend that the ACT Government work with the Office of the Commissioner for Aboriginal and Torres Strait Islander Children to better understand and resolve unnecessary legislative constraints impacting on the Commissioner's capacity to hold child protection services accountable.	First Nations children are significantly over-represented in child protection and OOHC systems in the ACT, which increases their risk of criminalisation in adolescence and into adulthood. The Commissioner for Aboriginal and Torres Strait Islander children plays an important role in identifying systemic, policy and practice issues that negatively impact on First Nations families and communities at-risk of involvement with the child protection and youth justice systems. As such, removing current legislative constraints that limit the scope of the Commissioner's role is likely to improve their capacity to hold government accountable, and consequently reduce unnecessary statutory intervention into First Nations families and communities.
5.4	We recommend that the OBOW Implementation Oversight Committee (IOC), in collaboration with Aboriginal and Torres Strait Islander Children and Young People Commissioner: - Undertake a comprehensive review of the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSCIPP) - Develop specific targets that focus on the principle of prevention, including for example, the number of children diverted from formal child protection	Recommendations 5.4-5.5 Research has established a clear and strong link between child protection involvement and contact with juvenile and adult justice systems. This link is particularly pronounced for First Nations children. Further, research has shown that remaining with family and community is a protective factor for First Nations children at risk of child protection intervention.

RECOMMENDATION		RATIONALE
	intervention, and the number of families who are provided with support through intensive family support services.	
5.5	We recommend that the ACT Government, in conjunction with community leaders and ACCOs, explore the development and implementation of community models of care to support First Nations children to remain in community even when child protection intervention is needed. First Nations input should be sought from First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review. This recommendation is dependent on Recommendations 2.1 and 2.2.	
5.6	We recommend increased transparency in the collection, access and interpretation of child protection data in the ACT. Notwithstanding that the ACT is a small jurisdiction, data suppression due to ‘privacy’ concerns means that over-representation of First Nations children in key metrics cannot be accurately calculated. Data released to the OBOW IOC should be made publicly available.	This recommendation does not have a direct link to reducing over-representation of First Nations children in child protection and youth justice, or First Nations people in the adult criminal legal system. However, the availability of data on key child protection metrics is important to understand trends in the over-representation in child protection and OOHC systems, which increases the risk of contact with juvenile and adult criminal legal systems.
5.7	We recommend that the ACT Government commit to ensuring that every First Nations child in OOHC has a cultural support plan that: Is developed in consultation with the First Nations Family Engagement and Support Team	Recommendations 5.7-5.9 These recommendations do not have a direct link to reducing over-representation of First Nations children in child protection and youth

RECOMMENDATION		RATIONALE
	b. Includes input from a child's family and community c. Is regularly updated to ensure they remain accurate and reflect the needs of a child as they develop d. Provides meaningful opportunities for a child to engage with culture, beyond simply participating in NAIDOC week events e. Is easily accessible to a child while they are in care f. Is provided to a child when they leave the care system – either through restoration, permanency care, or if they 'age out' when they turn 18 years old	justice, or First Nations people in the adult criminal legal system. However, research has shown that cultural connection is a protective factor for First Nations children. Ensuring that First Nations children know about and have strong linkages to their mobs and their Countries may reduce the risk of criminalisation while they are in the OOHC system.
5.8	We recommend that the ACT Government develops a mechanism to ensure that: a. Every child is aware of, and has access to their cultural support plan, specifically their genealogy and community knowledge while in care. These plans need to follow a child if they enter the youth justice system. b. Cultural support plans can be independently audited by the Commissioner for Aboriginal and Torres Strait Islander children on a regular basis to ensure that they are sufficiently high quality to support cultural connection and identity.	
5.9	We recommend that the ACT Government works with the OBOW IOC and the Aboriginal and Torres Strait Islander Children and Young People Commissioner to identify additional ACCOs with strong community connections that can provide culturally appropriate services in child protection and OOHC.	
5.10	We recommend that the ACT Government provide regular (yearly) data linkages on children that are 'dual clients' of child	Research has established a clear and strong link between child protection involvement and contact with juvenile

RECOMMENDATION		RATIONALE
	protection and youth justice (see also Recommendations 3.13 to 3.15). This data should be disaggregated by Indigenous status, with input from the First Nations Data Working Group established via Recommendation 3.11 of this Review. This recommendation is dependent on Recommendation 3.11.	and adult justice systems. This link is particularly pronounced for First Nations children. The availability of data ‘dual-system’ contact (child protection and youth justice, both concurrently and at separate times) is important to understand, and therefore address, trends in the over-representation of First Nations children in both child protection and youth justice systems.
5.11	We recommend greater coordination between child protection and youth justice to ensure that if a child in care enters the youth justice system, cultural support officers have access to and can update a child’s cultural support plan.	Research has shown that cultural connection is a protective factor for First Nations children. Ensuring that First Nations children know about and have strong linkages to their mobs and their Countries may reduce the risk of criminalisation while they are in the OOHC system, and be protective within the youth justice system.
5.12	We recommend the development of a formal protocol between CYF, ACT Policing and residential care service providers, co-designed with community, to stop the criminalisation of children in residential care. This would necessitate, at a minimum: - Engagement with community stakeholders - Built in mechanisms of accountability for CYF, ACT Policing and residential care providers to ensure that the protocol is implemented and adhered to - Cross-sector training in trauma, trauma-awareness and therapeutic care - Working with ACT Policing to develop a stronger understanding of the impacts of trauma, including intergenerational trauma, structural/systemic racism, colonialism, and dispossession on children’s development, and the links	Research has established a clear and strong link between child protection involvement and contact with juvenile and adult justice systems. This link is particularly pronounced for First Nations children. Formal protocols to reduce the criminalisation of children in residential already exist in New South Wales and Victoria. These protocols focus on the reduction of police call outs, and on increased use of police discretion for non-violent behaviours that occur within residential care placements. There is an emerging body of research showing that when these protocols are implemented the lead to reduced police contacts for children in residential care.

RECOMMENDATION		RATIONALE
	between trauma, OOHC placement and behaviours that may be perceived as 'criminal' or 'antisocial'.	
5.13	In relation to the Care and Protection Intensive List (CPIL) we recommend that: a. The ACT Government undertake a review into the functioning of the current eligibility criteria, with a focus on whether it is functionally excluding First Nations Families b. Data on the number of parents/families who have gone through the CPIL, including the number who have successfully completed and the length of time to completion, should be made publicly available. This data needs to be disaggregated by Aboriginality. It also needs to include information about children's outcomes, including whether restoration has been sustained.	This recommendation does not have a direct link to reducing over-representation of First Nations children in child protection and youth justice, or First Nations people in the adult criminal legal system. However, the intention of the CPIL is to provide families with additional supports to achieve restoration. Supporting First Nations children to stay with family and within community is a protective factor, which can limit their exposure to the OOHC system, thereby reducing their risk of criminalisation. Having information about the number of First Nations families who go through CPIL and the outcomes for these families is an important mechanism for accountability.
5.14	We recommend that the ACT Government, in collaboration with the OBOW IOC Committee, the Aboriginal Legal Service (ALS) NSW/ACT, and the Children's Court give full consideration to the design and implementation of a Koori Family Hearing Day to support First Nations families in the child protection system.	This model has been shown to be more culturally appropriate, with increased levels of cultural safety, that enable greater participation by First Nations families. Reducing the number of children entering the OOHC system will also reduce the number of First Nations children in contact with youth justice agencies.

6. YOUTH JUSTICE

Youth justice continues to represent a significant site of over-representation for First Nations children. The legislated increase to the minimum age of criminal responsibility to 12 years old in 2024 moving to 14 years old in mid-2025 represents an important reform that should help to address some of this over-representation. Given that the legislation has only recently changed, it is too soon to determine what, if any impact, this reform will have. However, data indicates that First Nations children continue to be under community-based supervision and in detention at nine times and 14 times the rate of non-Indigenous children (respectively).

We identified a number of significant issues related to the absence of appropriate diversion options and the use of remand. The lack of data on the use of remand and the length of time that children spend on remand was raised as a concern by multiple stakeholders. Repeated periods of detention and/or long periods held in remand is highly criminogenic, particularly in the absence of culturally appropriate supports and programs for First Nations children. Community members emphasised the need for greater investment in early intervention focussed specifically on diversion options that can address the drivers of youth justice contact for First Nations children.

The absence of culturally appropriate supports in detention and post-released were similarly raised as significant issues impacting First Nations children. Community members spoke at length about the pervasive and long-term impacts of the cultural disconnection that occurs within youth justice systems that are unable to provide opportunities for meaningful cultural connection and engagement. In this context, there was broad support for the development of First Nations-led models of youth justice that can work holistically with children, young people and families to support cultural connection, thereby assisting with diversion and/or reducing the risk of recidivism.

RECOMMENDATION	RATIONALE
6.1 In relation to the Therapeutic Support Panel, we recommend: a. Investment in the social service infrastructure to support the work of the Therapeutic Support Panel, including investment in ACCOs that can work intensively with children and families to ensure children do not enter the youth justice system at later stages of adolescence b. Ongoing monitoring and evaluation. This should include, at a minimum, the regular provision of data on the number of referrals, children's characteristics and type of support offered as well as data necessary for evaluation c. An independent evaluation on the impact and efficacy of this model. Such an evaluation should include: i. input from First nations community leaders and ACCOs, with further input from the First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review, ii. a longitudinal component that tracks children to determine whether the Therapeutic Support Panel can effectively divert children from formal youth justice involvement at later stages of adolescence. This recommendation is dependent on Recommendations 2.1 and 2.2.	The Therapeutic Support Panel has been established as the key mechanism to support raising the minimum age of criminal responsibility. Investing in the social service infrastructure that can work with children and families to prevent further contact with the youth justice system will have a demonstrable impact on over-representation. Evaluating the impact and efficacy of the Therapeutic Support Panel will provide evidence of the elements that are working/ have worked, and the areas that may need to be improved to better support children and families, thereby increasing the efficacy of this model to divert children from the youth justice system.

6.2	We recommend that the ACT Government provide greater investment, on a recurrent basis to ACCOs that can work with children and families to address the factors that contribute to children's contact with police and youth justice system, and assist with diversionary options. These services should: a. Work collaboratively with First Nations communities to identify the areas of need, via the mechanisms established in Recommendations 2.1, 2.2, 3.5 and 3.8 of this Review b. Be funded to work intensively and over longer periods of time (greater than 6 months) with children and families c. Be funded on a recurrent basis at a level that is proportional with the needs within the community (see Recommendation 3.7) This recommendation is dependent on Recommendations 2.1, 2.2 and partially dependent on Recommendations 3.5 and 3.8.	Early intervention that is culturally appropriate, holistic, intensive and that can work with children and families over longer periods of time to support multiple and intersecting needs can help to diver children from contact with the youth justice system, thereby reducing over-representation.
6.3	We recommend that the ACT Government increase funding for the Restorative Justice Unit to help address delays, and to support greater awareness amongst relevant stakeholders of the eligibility criteria and referral pathways for restorative justice conferences.	Restorative justice conferences can be effective diversionary options and/or can support reduced risk of recidivism. Increasing the number of First Nations children who have access to restorative justice conferencing can

6.4	In relation to police of diversion we recommend that: a. The ACT Government provide additional funding, on a recurrent basis, to support the extension of the community diversion programs b. Diversion data in the ACT be made publicly available, including the use of cautions and the number of referrals to restorative justice conferences, disaggregated by Indigenous status. This data should be published as a dashboard, with regular updates to ensure transparency and greater accountability c. ACT Policing establish a clear process to review all decisions that are made not to utilise diversionary options for young people. Reviews should be undertaken by a suitably trained senior officer and the reasons for not referring an eligible person should be made publicly available through annual reporting.	have a direct impact on addressing over-representation.
6.4	We recommend that the ACT Government provide funding, on a recurrent basis, for the employment of a specialist children's solicitor to sit within ALS NSW/ACT.	Access to legal representation is not only a basic tenet of justice but may also have a direct link with addressing over-representation by ensuring that youth justice outcomes are fair and proportional.
6.6	e recommend that the ACT Government undertake an independent review of the use of remand for children, particularly First Nations children. This review should focus on the factors that are contributing to the high proportion of children on remand, and how these children can be better supported. The review should also be informed by priorities or standards developed on bail and remand by the National Justice Policy Partnership.	Time spent in detention has been shown to be criminogenic, particularly for children on remand where access to services/supports may be more limited. Reducing the number of children and the length of time spent on remand will directly contributing to reducing over-representation.

6.7	We recommend that the ACT Government in collaboration with First Nations communities and ACCOs (via the mechanisms established under Recommendations 2.1 and 2.2), design a culturally safe youth justice model for First Nations children with a focus on holistic cultural supports to promote rehabilitation and greater cultural connections. This should include investment in ACCOs to design and deliver cultural engagement programs for First Nations children at Bimberi. This recommendation is dependent on Recommendations 2.1 and 2.2.	First Nations-led justice models that draw on First Nations knowledge, provide cultural safety and enhance opportunities for genuine and meaningful cultural connection have been trialled in criminal legal systems throughout Australia. These models are grounded in an understanding that First Nations ways of doing and being are protective for First Nations children including in carceral settings. These models have the potential to reduce over-representation by supporting rehabilitation.
6.8	We recommend that the ACT Government expands the existing ‘cultural development program’ and makes it mandatory for all staff at Bimberi. This training should be offered on a recurrent basis so that staff have opportunities to refresh their knowledge and practice.	This recommendation does not have a direct link to reducing over-representation. However, ensuring that all staff at Bimberi are working in ways that are culturally sensitive and respectful may improve some of the experiences that children have reported throughout this Review.
6.9	We recommend that as part of the current CSD review into the development of a post-release model, specific consideration must be given to the unique needs of First Nations children. The review must continue to incorporate significant consultation with First Nations input from the First Nations bodies established under Recommendations 2.1 and 2.2, and from children and young people who have experienced criminalisation to ensure that the needs of First Nations children are adequately understood and appropriately addressed. This recommendation is dependent on Recommendations 2.1 and 2.2.	Post-release models can assist with reducing recidivism if they provide intensive supports that are linked to the unique needs of children transitioning from Bimberi.

7. POLICING

ACT Policing has undertaken a significant body of work to address challenges in their engagement with First Nations peoples and communities. This has included the expansion of the First Nations Liaison team and a five-year strategy to improve ACT Policing's relationship with First Nations communities. Despite this work, systemic racism and policing culture remain significant issues for community members. The results of our consultations show that from the perspective of people we interviewed, including non-Indigenous people working for various government departments and ACT Policing, First Nations people continue to be targeted, and continue to experience excessive use of force. This finding has been reinforced by the recent *Reasonable Force?* series published in The Canberra Times, which identified '...egregious instances in which ACT police have exceeded the limits of their authority and, in some cases, apparently flagrantly abused their power'.⁷ It has also been reiterated in the Ombudsman's use of force investigation, which found that despite examples 'excellent community policing which was sensitive to de-escalating heated situations... we also saw examples of policing that unnecessarily inflamed situations, resulting in poor outcomes for the people involved and the community'.⁸

There was significant concern about a lack of accountability and transparency within ACT Policing, particularly in relation to the complaints process. The unique arrangement in the ACT – whereby 'community policing' is contracted out to the Australian Federal Police – was perceived to be a significant contributor to the problems of accountability. The issues identified in relation to systemic racism and policing culture contribute to a widespread perception that complaints against police will either not be addressed and/or may potentially lead to retaliatory actions. As such, community members are unlikely to lodge official complaints against ACT Policing.

Reforms to the way the ACT Government responds to family and domestic violence have been ongoing, exemplified by the development of the ACT Domestic, Family and Sexual Violence Strategy and the introduction of the Family and Domestic Violence Investigation Unit. While these are positive initiatives, there did not appear to be much community awareness of the strategy or of the Family and Domestic Violence Investigation Unit. Further, there are ongoing concerns about the misidentification of First Nations victim-survivors as perpetrators, and the absence of First Nations-led and run family and domestic violence shelters. Policing responses to family and domestic violence were

⁷ Canberra Times (15 May 2025) Editorial: Our police force can't be above the law.

⁸ ACT Ombudsman (2025) *Use of force by ACT Policing: More to do to lessen harm. An investigation into ACT Policing's use of force 2019-2024* <https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0023/318560/Use-of-force-by-ACT-Policing.pdf>.

also viewed as problematic. Two key issues raised by community that require urgent attention relate to the way child protection services are perceived to be working closely with ACT Policing to punish victim-survivors for ‘failing to protect’ their children, and with ACT Policing placing the onus on victim-survivors to leave violent relationships and environments. These issues are compounded by an absence of publicly available data on the prevalence of family and domestic violence, including recorded offences and victimisation rates which can be disaggregated by Indigenous status.

RECOMMENDATION	RATIONALE
7.1 We recommend that the Justice Linked Data Asset Pilot: a. should have input from the First Nations-led Data Working Group established via Recommendation 3.11 of this Review (see also Recommendation 3.10 to 3.15) b. should be used to identify gaps and strategies to address these, and to develop strategies to improve data quality across all justice organisations, including ACT Policing. This recommendation is dependent on Recommendations 3.10, 3.11, 3.12, 3.13, 3.14 and 3.15.	This recommendation does not have a direct link to reducing over-representation. However, good quality data that is collected consistently, and which is publicly available increases transparency, and enables a better understanding of trends in over-representation.
7.2 We recommend that ACT Policing commission an independent evaluation of the implementation and outcomes of the Strategy for Engagement with First Nations People and Communities. The terms of reference for the independent evaluation should be designed in collaboration with First Nations representation (as per Recommendation 2.1 and 2.2 of this Review).	As identified throughout our Review, First Nations communities throughout the ACT continue to report negative experiences with ACT Policing. Ensuring that the Strategy for Engagement with First Nations People and Communities is achieving its intended outcomes, requires an independent evaluation that addresses the needs and experiences of First Nations people and communities in the ACT.
7.3 We recommend that ACT Policing should be a priority area for a systemic racism review, as discussed in Recommendation 3.2. This should include, but not be limited to:	Over-representation is fundamentally grounded in systemic racism across multiple systems. Police play a key role in the over-representation of First Nations people by virtue of their

RECOMMENDATION		RATIONALE
	a. the adverse use of police discretion in matters such as the use of diversion, use of arrest over summons, access to police bail, the use of minor offences, police stops and use of force b. differential responses to family and domestic violence involving First Nations people, particularly victim-survivors c. differential responses to First Nations requests for assistance d. training and police culture This recommendation is dependent on Recommendation 3.2.	function within the criminal legal system.
7.4	We recommend that ACT Policing ensure that First Nations officers – including all liaison officers – have access to professional cultural supervision. This supervision needs to be offered as a remunerated service (not as an additional expectation placed on First Nations community members) and should be external to ACT Policing.	This recommendation does not have a direct link to reducing over-representation. Instead the focus is on providing First Nations police officers and liaison officers with cultural supports to manage the significant challenges they experience both within the culture of the police, but also in light of possible tensions within community by virtue of their status as police/liaison officers.
7.5	In relation to cultural awareness training, we recommend that: a. training be provided on a continual basis to all ACT Policing members. This could include a ‘refresher’ course that is provided yearly to support embedding cultural awareness throughout the organisation b. ACT Policing implement a continuous monitoring and evaluation framework to assess the impact of cultural awareness training on policing culture and interactions with First Nations people, and to identify opportunities	Recommendations 7.5-7.7 These recommendations do not have a direct link to reducing over-representation. However, ensuring greater cultural awareness and sensitivity within ACT Policing is an important element of addressing systemic racism.

RECOMMENDATION		RATIONALE
	for training to be further adapted or refined as needed.	
7.6	We recommend that ACT Policing continue to explore ways to support a review of the training continuum to: a. Identify gaps in training, particularly in relation to trauma-informed practices b. Develop training packages that focus on understanding, identifying and appropriately responding to trauma-based behaviours among different cohorts, including First Nations people c. Ensuring that all ACT Policing members have access to training on trauma-informed policing practices.	
7.7	We recommend that ACT Policing invest in communication strategies to improve First Nations' communities understanding of: a. The role of First Nations Liaison Officers b. First Nations peoples' rights to access support from First Nations Liaison Officers, and the ways that they can access this support.	
7.8	In relation to the use of body-worn cameras: a. We recommend that ACT Policing develop stronger guidelines that are easily accessible by the public and that clearly explain how body worn camera footage can be accessed and the circumstances under which body worn camera cameras do not need to be activated b. Consistent with the recommendations by the ACT Ombudsman and the NSW Law Enforcement Conduct Commission, we recommend that body worn cameras must be activated when	Recommendations 7.8-7.9 The intention of these recommendations is to increase transparency and accountability, particularly for interactions involving First Nations children. There are direct and indirect links to over-representation: indirectly, these recommendations may increase First Nations people's access to justice. A more direct link to over-representation is through the identification of situations where First Nations people are inappropriate

RECOMMENDATION		RATIONALE
	exercising police powers, or, when it is likely that an interaction may lead to the exercise of police powers c. That all other relevant comments and recommendations from ACT Ombudsman's own motion investigation into ACT Policing's use of force, and the NSW Law Enforcement Conduct Commission Inquiry into policies on body worn cameras, should be considered.	targeted and/or where use of force is used inappropriately.
7.9	We recommend the establishment of an independent oversight body with the statutory authority to investigate complaints against ACT Policing, and to compel action in response to its investigations. The composition of this body could be considered by the First Nations-led justice body established as part of this Review (see Recommendation 2.1 and 2.2). This recommendation is dependent on Recommendation 2.1 and 2.2.	
7.10	We recommend that as part of the Domestic, Family and Sexual Violence strategy the ACT Government in partnership with ACT Policing and First Nations-led bodies established under Recommendations 2.1 and 2.2 commit to: a. the regular collection and dissemination of data on the prevalence of family and domestic violence in the ACT, including but not limited to, recorded instances of FDV (recorded crime), victimisation rates, and hospitalisations. Where possible, this information should be disaggregated by Indigenous status b. exploring how cultural awareness training can mitigate the misidentification of victim-survivors as perpetrators	There is a significant body of research showing that First Nations women are more likely to be misidentified as the perpetrator in FDV incidents which increases their risk of incarceration. Data on the prevalence and type of FDV disaggregated by Indigenous status will enable a better understanding of trends in over-representation, particularly for First Nations women who are misidentified as perpetrators or primary aggressors.

8. BAIL

Our Review finds that the absence of comprehensive bail data limits our understanding of the impact of bail on the over-representation of First Nations people (including by gender) in the criminal legal system, particularly in relation to bail decisions, bail conditions, outcomes of bail breaches and breach types. However, we do know that First Nations men and women are more likely to be in prison as remandees than they are as sentenced prisoners in the ACT.

There was widespread support for a standalone provision in the *Bail Act* which requires consideration of factors related to a person's Indigenous status when determining bail as a mechanism for ensuring that systemic, cultural and other issues are taken into account for both adults and children.

The abolition of the Law Reform and Sentencing Advisory Council means that a planned review of the ACT's bail laws has also been cancelled, including the current scheme relating to presumptions for and against bail. We note that a number of organisations have called for the abolition of the presumptions scheme because it is contrary to the presumption of innocence, specifically impacts on children and young people, and can lead to unnecessary use of custody. The ACT government has acknowledged the disproportionate effect of bail laws on Aboriginal and Torres Strait Islander people. There is no evidence as to whether the current scheme has contributed to community safety.

We found widespread support for the extension of the weekend bail court to include Sunday to reduce unnecessary custodies. There was also major support for the Aboriginal Legal Service (ALS) NSW/ACT bail (and warrants) support programs Front-Up and Ngurrambai which have shown positive support for increasing access to bail and reducing custody. However, these programs are not available to First Nations children and young people, which is a major gap. Expansion of the external reporting sites to include bail is also a significant outcome.

We also note that there have been previous key recommendations relating to bail made by the Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail* that require decisive action from government.

RECOMMENDATION		RATIONALE
8.1	We recommend that relevant ACT agencies improve their data collection on bail to include information on bail outcomes, offence types, bail conditions, outcomes of bail breaches and breach types, and that this data be disaggregated	Being remanded in prison for bail refusal or breaches of bail is one reason for the over-representation of Aboriginal and Torres Strait Islander people in prison. Further, economic disadvantage impacts on bail and that

RECOMMENDATION		RATIONALE
	by age group, gender and Indigenous status. This Recommendation is partially dependent on the implementation of Recommendation 3.16.	disproportionately affects First Nations people. It is difficult to see how longer-term reductions in imprisonment can be made in this area without improved data as a basis for policy formulation and evaluation of law, policy and program reform. The data problem applies to adults and children and young people.
8.2	We recommend that the ACT government: - Amend bail laws 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. The Victorian <i>Bail Act 1977</i>, S3A provides a relevant example - Amend bail laws to include standalone provisions that require bail authorities to consider any issues that arise due a person's disability, mental health and other health conditions. - Introduce Sunday sittings of the Magistrates Court for the purposes of bail.	There is no standalone requirement in the <i>Bail Act 1992</i> (ACT) for consideration when determining bail of issues arising from a person's Aboriginal and Torres Strait Islander status. It is widely recognised within the ACT and nationally that a separate provision is required compelling consideration of issues rising from a person's Indigenous status. Disability and other health issues also negatively impact Indigenous peoples. The expansion of the bail court to include Sunday is also required to avoid unnecessary custodies.
8.3	We recommend that the ACT government review the current presumptions scheme in relation to bail specifically for their effect on Aboriginal and Torres Strait Islander people's access to bail and whether the scheme has contributed to community safety. We note that key legal service providers have called for the abolition of the current presumptions scheme.	A presumption against bail can lead to the risk of unnecessary custodies, is contrary to the National Agreement on Closing the Gap and incompatible the presumption of innocence, and the rights of children. The ACT government has acknowledged the disproportionate effect of bail laws on Aboriginal and Torres Strait Islander people.

RECOMMENDATION		RATIONALE
8.4	We recommend that the ACT government expand the Ngurrumbai Bail Support Program to provide services to children and young people. We recommend collaboration between relevant ACT Directorates to facilitate this expansion.	A significant gap in current initiatives is that the Ngurrumbai Bail Support Program is only available for adults. This gap has been acknowledged by the ACT government and there is ‘in principle’ support to co-designing a bail support program for young Indigenous Australians.
8.5	Noting the ACT government’s response to the Report of the Standing Committee on Justice and Community Safety (2024) <i>Inquiry into the administration of bail</i> , we recommend that the ACT government implement recommendations 9, 10, 11, 12 and 13 of the Standing Committee’s Report.	Earlier recommendations from Standing Committee on Justice and Community Safety (2024) <i>Inquiry into the administration of bail</i> are particularly relevant to First Nations people’s access to bail including ‘wraparound’ bail support programs; early intervention programs for people who are at risk of not complying with bail orders; increasing the number of bail officers; a single case manager in the courts to assist people with access and referrals to necessary legal, mental health, AOD dependency and disability support programs; and increased availability of the Justice Housing Program.

9. COURTS & SENTENCING

Court and sentencing play an important role in understanding the over-representation of First Nations people in the criminal legal system. First Nations defendants were 13% of all finalised criminal matters in the ACT Supreme Court, 9% in the adult magistrates’ court and 28% in the children’s court – at a time when the estimated First Nations population was 2.1%. Improved sentencing data is necessary especially relating to prior record, and sentencing outcomes by principal offence by Indigenous status.

Four in every ten First Nations people sentenced in the ACT criminal courts receive a custodial sentence, compared to around two in ten non-Indigenous defendants found guilty. The reasons for this disparity require further research and explanation which is beyond the scope of our Inquiry given current data limitations.

A key innovation in the ACT has been the development of circle sentencing courts (Warrumbul, Galambany and Supreme Court Pilot). The majority of the people we spoke with in the community and government were very supportive of the courts. Expanding the capacity of the Galambany bail court is one area in need of attention. It was acknowledged by stakeholders that the circle sentencing courts needed to engage the community more to enhance its credibility.

Ensuring that the Supreme Court Pilot Circle Sentencing List as an ongoing sentencing list is necessary. There was widespread support for the use of Aboriginal and Torres Strait Islander Experience Reports, although there was some discussion on who should auspice the reports. We take no position on this except to note that the issue should be further considered if the pilot program is to be placed on a long-term footing, and that whoever has responsibility for the Court Experience Reports will require recurrent funding.

We also address the issue of whether people plead guilty to access the circle sentencing courts. We note that where there was a guilty outcome across all criminal courts in the ACT, more than nine in ten defendants had pleaded guilty to the offence (92%), with only a slightly higher proportion of First Nations people than non-Indigenous defendants.

As noted in our First Report, for many First Nations 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). In addition, there was some dissatisfaction expressed with the quality of information in Pre-sentence Reports. There was widespread support for the introduction of legislative provisions that require sentencing courts to take into account the unique systemic/background factors for First Nations people.

There is an absence of First Nations' specific information on access to and outcomes from the Drug and Alcohol Sentencing List, so it is difficult to determine the extent to which Aboriginal and Torres Strait Islander people benefit from the process. We recommend improved data collection and a review of the List which examines First Nations participation at all levels.

Concerns were raised about First Nation women's access to Family Violence Orders through the court process because of the absence of Indigenous-specific support in applying for protection orders and during the court appearance. We make a recommendation to remedy this.

The final consideration in relation to sentencing concerns a number of distinct matters that were raised by stakeholders in association with community-based orders, diversion, committal processes and sentencing procedures. Each of these suggested reforms has some merit and potential to better utilise community-based alternatives to imprisonment or reduce length of imprisonment.

RECOMMENDATION		RATIONALE
9.1	We recommend that relevant ACT agencies improve the collection and publication of more comprehensive criminal court data in relation to First Nations people in the ACT. This might include for example, traffic and vehicle regulatory offences, prior record, and sentencing outcomes by principal offence by Indigenous status. This Recommendation is partially dependent on the implementation of Recommendation 3.16.	Limitations on available court data, particularly in relation to prior record and sentencing outcomes by principal offence and by Indigenous status, limit our ability to understand the reasons for what appears to be a disproportionate use of sentences of imprisonment for First Nations people appearing in the criminal courts.
9.2	We recommend, on the basis of improved data collection, further specific research into the sentencing of First Nations defendants, the reasons for the comparatively more frequent use of sentences of imprisonment, and further law and policy interventions that may reduce any identified disparities. This Recommendation is dependent on the implementation of Recommendation 9.1.	Four in every ten First Nations people sentenced in the ACT criminal courts receive a custodial sentence, compared to around two in ten non-Indigenous defendants found guilty. The reasons for this disparity require further research and explanation which is beyond the scope of our Inquiry given current data limitations.
9.3	We recommend that the ACT government properly resource the Galambany Court to resume hearing bail applications. Consideration also needs to be given to increasing funding to the Ngurrumbai Bail Support Program to meet further service demands.	Building the capacity for the Galambany Court to resume bail hearings within a specialist, more therapeutic and culturally responsive process is likely to increase access to bail and provide the support and interventions which may reduce the likelihood of further offending at this early stage.
9.4	We recommend that the ACT government establish the current pilot Supreme Court Circle Sentencing List as an ongoing sentencing list in the Supreme Court. In establishing the List as a permanent feature of the Court, it would be beneficial to consult with (at a minimum) court members, the DPP and ALS NSW/ACT as	There was widespread support for the pilot Supreme Court Circle Sentencing List and the use of Aboriginal and Torres Strait Islander Experience Reports as an effective process for sentencing First Nations defendants. Establishing the List on a more permanent footing was

RECOMMENDATION		RATIONALE
	to any current issues and potential improvements to the operation of the List.	also strongly supported among the stakeholders we interviewed.
9.5	We recommend that the ACT government amend the <i>Crimes (Sentencing) Act 2005</i> to provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.	There was widespread support for the introduction of legislative provisions that require sentencing courts to take into account the unique systemic/background factors for First Nations people given that for many First Nations defendants in the ACT the only way that background factors <i>may</i> be considered is through section 33(1)(m) of the <i>Crimes (Sentencing) Act 2005</i> .
9.6	We recommend the ACT government undertake a broad Review of the Drug and Alcohol Sentencing List (DASL) given it has been in operation for five years. In particular, the Review should consider how to ensure maximum participation of First Nations clients and their successful completion of the program. The Review should include at a minimum: a. The systematic identification of First Nations status at the point of referral to the DASL b. Whether the various decision-making points throughout the process from referral to graduation might systematically disadvantage First Nations participants, whether there are associated barriers affecting First Nations people's successful participation, and how these might be remedied c. Whether there is participation of relevant First Nations people and organisations in all assessments and decision-making processes that are undertaken, and in the Treatment Order Team, when DASL is working with First Nations clients.	There is a need for a review of the Drug and Alcohol Sentencing List (DASL) to identify potential barriers to access and successful completion by First Nations people. Increasing access and completion for First Nations people is likely to positively impact on reducing recidivism and provide social and economic benefits.

RECOMMENDATION		RATIONALE
	This Recommendation is partially dependent on the implementation of Recommendation 3.16.	
9.7	We recommend the availability of support for Aboriginal women in applying for protection orders and appearing in court be reviewed and assessed by JACS for improved accessibility and outcomes, in addition to the current funding commitments to the work of the Women's Legal Centre Mulleun Mura service.	The absence of Indigenous-specific support in applying for Family Violence Orders and during the court process was raised as an issue and was seen as relevant to First Nations over-representation in the criminal legal system. If family violence was 'nipped in the bud' a little earlier through the use of family violence protection orders then it may prevent further violence by the perpetrator and/or retaliation on the part of the affected person.
9.8	We recommend that the ACT government consider the merits of potential reforms to legislation raised in section 9.7 of the Report in relation community-based orders, diversion, committal processes and sentencing procedures. Each of these reforms has potential to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment.	Stakeholders raised specific concerns in relation to Section 46D of the <i>Crimes (Sentencing) Act 2005</i> ; greater flexibility in court sentencing options; and reform to Section 35(4) of the <i>Crimes (Sentencing) Act 2005</i> . Each of these recommended reforms has potential to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment.

10. IMPRISONMENT & THE AMC

The ACT First Nations imprisonment in 2024 is the highest it has been at any time in the ACT during the last 11 years. The ACT over-representation of First Nations imprisonment is higher than the national rate of over-representation and the ACT has the highest rate of any state or territory in Australia. However, this is partly driven by the low rate of non-Indigenous male and female imprisonment in the ACT which is half the national rate and the lowest rate of non-Indigenous imprisonment in Australia.

There have been reductions in sentenced prisoners which is driven largely by fewer sentenced non-Indigenous men. There has been an increase in the average remand population which is being partly driven by an increase in First Nations male remandees.

There is a high proportion of Indigenous women on remand (80% on average during 2023-24).

In terms of policy implications, an increase in community-based sentencing options, reductions in rates of return to prison and alternatives to custodial remands are all important in reducing the imprisonment of First Nations men and women. Significant reductions might be achieved particularly through improved access to bail and appropriate alternatives to custody.

The subject of human rights is prevalent throughout the discussion on the AMC. It is of particular relevance given the commitments underpinning the establishment of the Centre and in the many interviews we did with community, detainees, government and other stakeholders. Some of the human rights issues identified in our Review include the failure to separate remand and sentenced detainees, the absence of a structured day with purposeful activities, and a number of other concerns that especially impact on First Nations male and female detainees including segregation, use of force, strip searches, security classifications, having men and women housed in the same facility and systemic and individual racism.

While there are oversight bodies that do their best within the context of resources, a core problem has been the failure of government to implement multiple recommendations which are often repeated from one inquiry to the next over many years.

We discuss the widely reported problems of illicit drug use in the AMC. While interdiction efforts are important, we focus on the need to reduce demand through actively engaging people with meaningful activities. We also recommend site specific wastewater testing at AMC to accurately gauge the prevalence and type of drug use with the Centre.

Various concerns were raised in relation to recognition of Aboriginal and Torres Strait Islander cultural matters. First Nations male and female detainees in the AMC strongly value cultural programs and we were disturbed to see many popular programs had been discontinued or had limited access. The problem particularly impacted on First Nations women. Other matters related to cultural awareness and cultural safety were raised (including for example, access to funerals). We recommend the introduction of cultural support plans. While there is extensive discussion of cultural safety in the ACT Corrective Services (ACTCS) *Be the Change We Seek – Aboriginal and Torres Strait Islander Framework*, there is minimal evidence provided of how this is achieved within the custodial setting. We recommend the introduction of a Cultural Safety Action Plan.

It is difficult to see the AMC facilitating rehabilitative outcomes for Aboriginal and Torres Strait Islander people. The difficulties in accessing programs due to restrictions (for example, protection inmates) or not being offered, the lack of relevance of and suitability of programs, and the absence of literacy programs were all matters raised by people we spoke with both inside and outside the AMC. The lack of employment opportunities and employment-related training in the AMC was another problem inhibiting rehabilitation.

The reality is that work is centred around maintaining the prison. In some cases, it can be as little as a few hours per week. The Transitional Release Program (TRP) and Transitional Release Centre (TRC) were spoken of highly but have low numbers and eligibility criteria that makes it hard to enter. Women are excluded from the TRC and the ACT Human Rights Commission has in the past received multiple complaints about the different treatment afforded to women seeking to access TRP.

The situation for women, and particularly First nations women, in the AMC is more difficult than men. The ACTCS has a *Walking with Women on the Pathway to Change* Framework (2020) and Action Plan 2020-22. *Walking with Women* acknowledges some of the specific issues impacting on First Nations women. However, it is difficult to reconcile these concerns with the comments made by First Nations women in prison throughout our Report or with active policies and programs in place which address them. As a case in point, we discuss trauma-compounding effects for women placed in the Crisis Support Unit and in the use of strip searches.

Other matters dealt with in our Report relate to improving access to the health services provided by Winnunga and addressing unresolved civil law problems for people held in the AMC which – as we noted in Section 3 – can diminish the likelihood of rehabilitation.

Finally, we refer to the increase in deaths in custody over the last two years and make recommendations related expedited coronial inquiries, preliminary assessments by the Office of the Inspector of Custodial Services (OICS) and the establishment of an Independent Inquiry into the deaths of seven men in adult correctional custody between February 2023 and February 2025 with particular attention to systemic issues.

RECOMMENDATION		RATIONALE
10.1	We recommend ACTCS introduce a structured day and purposeful activities in the Alexander Maconochie Centre (AMC) as a matter of high priority. It is an important end in itself to respond to detainee needs, but it also has a range of positive impacts on other areas such as reducing drug use, improving motivation and increasing the likelihood of rehabilitation. Purposeful activities for First Nations detainees must meet cultural needs.	Many detainees and ex-detainees we spoke with reflected the long recognition of boredom and the lack of a structured day in the AMC. The effects of boredom are multifaceted, potentially increasing the likelihood of conflict among detainees and with staff, negatively impacting on self-worth and motivation, increased drug use and diminishing the likelihood of rehabilitation and preparedness for release. The rationale for Recommendation 10.1 is to provide for a rehabilitative environment, reduce the likelihood of re-offending and reduce Aboriginal and Torres Strait

RECOMMENDATION		RATIONALE
		Islander over-representation in the criminal legal system.
10.2	In line with Recommendation 3.1, we recommend that the operation of the AMC should be a priority area for a systemic racism review including, but not limited to, such matters as the use of segregation, the use of force, security classifications, recognition of cultural rights and the interaction of staff with First Nations detainees. The review should consider the intersections between systemic racism, gender and disability.	Issues of racism and discrimination were raised in our discussions with detainees and ex-detainees, and the lack of cultural safety more broadly. Other reviews have also raised this issue. Particular matters also included segregation, use of force, and security classifications. Systemic racism negatively impacts on the likelihood of rehabilitation through, for example, lack of engagement and lack of social and emotional well being.
10.3	We recommend that the ACT government make funding available for the appointment of an identified Aboriginal and Torres Strait Islander position in the Office of the Inspector of Custodial Services.	The Office of the Inspector of Custodial Services is a key external accountability mechanism which does not have an identified First Nations staffing position (unlike other accountability mechanisms such as the Ombudsman or the Human Rights Commission). Given the importance of the role that it plays in conducting various reviews and investigations this needs to be remedied to enable a First Nations engagement and perspective in the work of OICS.
10.4	While attempts to control the supply of drugs into the AMC should be maintained, we recommend urgent attention by the ACTCS to focus on the demand side of drug use through improvements to programs, training, education and a structured day to alleviate the boredom in the AMC and to provide for daily routines and meaningful activities, including work (and in line with Recommendations 10.1, 10.5, 10.8 and 10.11). We further recommend site specific wastewater testing at AMC to	Responding to the issue of drug use in the AMC is directly related to reducing the likelihood of re-offending on release from prison and re-imprisonment for both First Nations and non-Indigenous prisoners, This effect may be direct through the reduction of drug debts on release from prison and reducing active addictions and through multiple ancillary contributions to health and well-being, education and engagement in programs. As noted in Recommendation 10.4, wastewater drug testing also has the benefit of testing for prevalence and

RECOMMENDATION		RATIONALE
	accurately gauge the prevalence and type of drug use within the AMC. Periodic testing over time would also provide the ability to assess the effectiveness of drug interdiction.	determining the extent to which drug use is an issue in the AMC.
10.5	We recommend the ACT government provide increased funding for Aboriginal and Torres Strait Islander specific cultural programs and that these programs be considered specifically as protective factors contributing to rehabilitation and reducing the likelihood of re-offending.	Cultural-based programs and particularly those run by First Nations services are favoured by First Nations prisoners. The availability of these programs is directly related to prospects for rehabilitation and reductions in re-offending: connection to culture is a 'protective factor' is reducing re-offending. 'Factors that reduce the rate or protect against Aboriginal and Torres Strait Islander adult incarceration include access to culturally safe resources and services' (Productivity Commission 2024).
10.6	We recommend introducing cultural support plans for all First nations people in custody (remand and sentenced), developed by ACTCS in partnership with an appropriate First Nations organisation (such as Yeddung Mura and Winnunga), and their families and communities (where appropriate).	Cultural support plans have been a feature of child protection systems and some juvenile justice systems for First Nations children and young people for some time. Cultural support plans recognise that cultural connection is a protective factor from contact with the criminal legal system.
10.7	In line with Recommendation 3.3, we recommend ACTCS develop an AMC Cultural Safety Action Plan to implement specific programs and procedures including cultural programs, cultural plans and staff training, in line with the commitments to cultural safety within the ACTCS <i>Be the Change We Seek. Aboriginal and Torres Strait Islander Framework</i>. This Recommendation is partially dependent on the implementation of Recommendation 3.3.	In both our interviews and other reports it was noted that the cultural needs of First Nations people in the AMC are not being met. While there is extensive discussion of cultural safety in the <i>Be the Change We Seek. Aboriginal and Torres Strait Islander Framework</i> , there is minimal evidence provided of how this is achieved within the custodial setting. We also note the ACT <i>Human Rights Act 2004</i> , s27(2) that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right to maintain, control, protect and develop their (i) cultural heritage and distinctive spiritual practices, observances, beliefs and

RECOMMENDATION		RATIONALE
		teachings; (ii) languages and knowledge; and (iii) kinship ties.
10.8	We recommend ACT government provide funding to increase programs within the AMC. These include literacy and numeracy programs, offence specific and offence related programs suitable for First Nations people, and relevant employment-related training and certifications.	Our focus and rationale in recommendation 10.8 is to increase the likelihood of First Nations rehabilitation and reduce re-offending through access to meaningful programs: educational, therapeutic and employment related. Various problems associated with current access are outlined in report and have been identified in other reports.
10.9	To overcome the identified problems with accessing First Nations health services within the AMC, we recommend the development of a First Nations model of care for the AMC. The development of a First Nations model of care should be initially undertaken by Winnunga and negotiated with the ACT Health Directorate to be incorporated into the Winnunga contract to provide services to the AMC. This may require additional funding for Winnunga.	Our Report outlines some of systemic barriers to accessing First Nations health services within AMC. We recommend a First Nations model of care for the AMC which prioritises a holistic approach to healthcare and addresses not only physical health but also the social, emotional, and cultural wellbeing of individuals. As noted nationally, ‘investment in culturally safe and holistic healthcare programs for First Nations people... can enhance the chances of successful reintegration into society, leading to lower recidivism rates and safer communities’ (Nous, 2024, National Review of First Nations Health Care in Prisons).
10.10	We recommend urgent action in providing: a. suitable cultural, therapeutic and training programs and activities for women and specifically First Nations women b. expansion and flexibility in accommodation options that can meet the various needs of women, including First Nations women.	Our Report identifies some of the systemic barriers facing women, and particularly First Nations women, in the AMC. Some of the problems relate to all detainees in the AMC but felt more acutely by women and especially First Nations women. . The <i>ACTCS Walking with Women on the Pathway to Change Framework</i> (2020) acknowledges some specific issues impacting on First Nations women in prison including higher rates of having experienced physical, emotional and sexual abuse; a greater likelihood than

RECOMMENDATION	RATIONALE
	non-Indigenous women of being a parent; inter-generational trauma arising from race-based colonial practices (for example, stolen generations); and the need for a holistic concept of social and emotional well-being that includes ‘connection to land, culture, spirituality, family and community’ . However, there is a significant gap between the reality of life for First Nations women in the AMC and the aspirational ideals presented in <i>Walking with Women</i>.
10.11 We recommend that ACT Legal Aid in cooperation with ALS NSW/ACT and Mulleun Mura, establish a regular civil law clinic in the AMC. Implementation may require additional ACT Government funding for the respective services.	Previous research has shown that unaddressed civil law matters can contribute to further criminalisation. Civil law issues were described by one stakeholder as the ‘sleeping issue’ in prison that need to be addressed. The type of civil law issues indicated in our Report included matters such as tenancy, housing debt, high purchase agreements (including cars), child support, social security, family law, discrimination and children’s services. We note previous ACTCS use of a financial counselling service for women detainees.
10.12 We recommend in relation to recent AMC deaths in custody that: a. The ACT government and the ACT Coroner work together to expedite coronial investigations into deaths in custody b. The Office of the Inspector of Custodial Services undertake preliminary assessments of the recent deaths in custody, which might be provided to the Coroner. Sufficient resources would need to be made available to the OICS to undertake preliminary assessments (see Recommendation 10.3)	It is difficult to imagine an issue of more concern to the First Nations community in the ACT than Aboriginal deaths in custody, particularly when three deaths occurred within the space of seven months. The relationship to the terms of reference for our Report and recommendation for an independent inquiry relates to whether these Aboriginal deaths are connected to systemic issues affecting First Nations prisoners. Investigating deaths in custody speaks directly to First Nations community concern about the AMC and its treatment of and potential to ensure the safety and rehabilitation for incarcerated First

RECOMMENDATION		RATIONALE
	c. The Minister of Corrections consider the establishment of an Independent Inquiry into the deaths of seven men in adult correctional custody between February 2023 and February 2025 with particular attention to systemic issues.	Nations people. At a broader level, First Nations community concern over deaths in custody goes to the heart of questions about the <i>legitimacy</i> of the criminal legal system and affects a range of institutions including police, the courts, prisons and detention centres.

11. PAROLE, REINTEGRATION, POST RELEASE SUPERVISION & SUPPORT

Published data on *completion* of community corrections orders is similar for First Nations and non-Indigenous individuals and is high by national comparisons. The reporting on breaches of orders is limited and generally not reported by Indigenous status. In relation to those exiting prison, three in every four Aboriginal and Torres Strait Islander people will be back under some form of custodial or community correctional order within two years from their release.

Research suggests that people who receive parole have significantly lower rates of recidivism or commit less serious offences than those released unsupervised, and that parole is most effective when it involves active supervision that is rehabilitation focused. There are significant gaps in our knowledge concerning how well (or not) parole is operating for First Nations people in the ACT. We do not know whether First Nations people are applying for parole when they become eligible, there is no consistently reliable data on whether the parole applicant identifies as First Nations and, as a result, no comparative data with non-Indigenous parolees on matters like successful and unsuccessful applications, official warnings, revocations or successful completions.

Various issues were raised with us regarding applying for parole including whether Indigenous detainees are receiving the support they need within the AMC, and access problems with programs including programs not being offered or only offered intermittently and limited access for certain groups of prisoners, particularly those on protection and women. Legal assistance for Indigenous applicants was seen as important, as well as First Nations members of the Sentence Administration Board being present when a First Nations person is appearing before the Board. We also refer to the problem of people being released on parole in the ACT and have outstanding criminal charges in NSW. Matters relating to increased discretion for both the Board and Community Corrections Officers (CCOs) are also raised.

We note the various throughcare/reintegration and post-release programs being offered and draw attention to the important work of Yeddung Mura, Winnunga and other First

Nations organisations/groups like Yurwhun Bullan and the Nannies Group. We also note the recently developed Indigenous Case Management Program (I-Can) and some positive responses from participants (although pilot funding arrangement concludes 30 June 2025). In particular, we draw attention to comments from Aboriginal and Torres Strait Islander men and women with lived experience of throughcare/post-release that the programs and services most frequently seen in a positive light were almost all Indigenous-specific (some of which have been discontinued).

Our Report identifies that a number of particular areas remain problematic, including access to housing, residential rehabilitation and AOD services generally, and access to assistance with employment, and literacy programs. Opportunities for reintegration and support should be contextualised by the principles of wraparound and holistic support. Developing a role for dedicated caseworkers as a type of ‘cultural capability’ worker in the community (not a CCO) was highlighted as a need.

The introduction of External Reporting Sites began in 2021 and have developed as an important and beneficial part of the post-release landscape. Their extension to bail reporting is a positive. Conducting urinalysis testing at the External Reporting Sites would further enhance their effectiveness. As far as we are aware, External Reporting Sites are unique to the ACT.

We make a recommendation on increasing access to services and note that the prioritising and implementation of increases in services must be undertaken through a First Nations decision-making process.

RECOMMENDATION	RATIONALE
11.1 We recommend ACTCS improve the timely availability of data, including: a. Community supervision disaggregated by Indigenous status and type of supervision order b. Data on breaches of supervision orders disaggregated by Indigenous status, type of supervision order and outcome of breaches (while acknowledging that recording of breach outcomes may require liaison with other agencies) c. The data should be utilised to inform policies to reduce return to prison and return to community corrections for First Nations people. This Recommendation is partially dependent on the implementation of Recommendation 3.16.	Understanding the reasons for, and reducing, both return to prison rates and return to community corrections is important for reducing First Nations over-representation in the criminal legal system in the ACT. The timely availability and analysis of data can inform effective policy development.

RECOMMENDATION		RATIONALE
11.2	We recommend the Sentence Administration Board (SAB) and ACTCS work together to improve: a. The consistent identification of Aboriginality among people from prison applying for parole, in line with the outcomes of Recommendation 3.16 b. Systematic data collection on parole applications (successful and unsuccessful), official warnings, revocations and successful completion. The data should be capable of disaggregation by gender and Indigenous status c. The data should be utilised to inform policies to increase First Nations access to and successful completion of parole d. Timely information on other matters useful to the SAB, such as program availability in the AMC and earlier prior notification of Indigenous matters coming before the Board. Recommendations 11.2(a) and (b) are partially dependent on the implementation of Recommendation 3.16.	There is no overview available on how the parole system is working for First Nations people and no systematic data available on where there might be potential for improvements within the parole process. Improving First Nations access to parole and successful completion of parole will reduce re-imprisonment.
11.3	We recommend that the ACT government pursue an agreement with NSW to facilitate the concurrent serving of sentences across both jurisdictions.	A cross-border issue is the non-concurrent serving of sentences between ACT and NSW. A person might be released on parole in the ACT and have outstanding criminal charges in NSW. We understand that the solution requires cooperation between ACT and NSW authorities.
11.4	To further improve First Nations access to and compliance with parole, we recommend the following: a. The SAB needs to ensure that when a First Nations person is appearing before SAB there should be at least one First Nations SAB member present	There are various reforms that can be made to the parole process which will increase the likelihood of successful parole applications for First Nations people, improve the compliance with parole requirements and reduce the amount of time spent in prison.

RECOMMENDATION	RATIONALE
b. There needs to be ongoing review by ACTCS and informed by the SAB as to whether Indigenous detainees are receiving the support they need within the AMC to apply for parole c. The ACTCS expand the number of identified positions for Indigenous Community Correction Officers to at least two positions d. The ACT government commit to providing legal assistance for Indigenous applicants for parole. A process also needs to be established to facilitate the participation of relevant ACCOs in providing support to Indigenous applicants during parole hearings e. The ACT government reform the <i>Crimes (Sentence Administration) Act 2005</i> to allow the SAB to suspend a parole order by returning the offender to custody for a brief period as an alternative to revocation.	
11.5 We support the previous recommendation of the ACTCS evaluation on external reporting sites to explore alternative options to the ACTCS city office for conducting urinalysis and whether this might include a voluntary option for conducting testing at the external reporting sites rather than the ACTCS city office.	A previous recommendation was made to ACTCS to enable urinalysis testing at the external reporting sites because of the difficulties and stigma attached to testing at the ACTCS city office. We support this recommendation. However, suggest that whether the testing occurs at the ACTCS city office or at the external reporting sites should be voluntary.
11.6 It is recommended that the ACT government reform legislation to enable CCOs the discretion to give a verbal warning, or a written warning for lower level breaches in relation to intensive corrections orders and parole orders, whereby the CCO can continue to case manage the person through the order.	In the ACT previous COVID provisions in the legislation enabled CCOs to apply discretion for lower level breaches – not everything had to go back to court or to the SAB. After the COVID provisions ended, the CCO discretion was only retained for good behaviour orders and removed for intensive corrections orders and parole orders. Reinstating this discretion for CCOs for <i>lower level</i>

RECOMMENDATION	RATIONALE
	<i>breaches</i> be applied to intensive corrections orders and parole orders, would enable the CCO to give a verbal warning, or a written warning and continue to case manage the person through the order, and potentially put in other interventions to ensure compliance. It is anticipated this would ensure greater continuity and likelihood of compliance with the order.
11.7 Increasing opportunities for reintegration and support post release should be contextualised by the principles of wraparound and holistic support. a. We recommend the ACT government provide funding for increased access to: i. crisis and transitional housing for Aboriginal and Torres Strait Islander people exiting custody, with recognition/ prioritisation of the particular needs of First Nations women and children ii. culturally appropriate drug and alcohol counselling iii. greater support in the community for employment pathways and training programs iv. accessible and First Nations-led support, well-being and mentorship programs v. accessible and First Nations-led driver licensing programs and literacy and numeracy programs b. The prioritisation of increases in services above should be undertaken through a First Nations decision-making process involving the body established under Recommendations 2.1, 2.2.	Reducing Aboriginal and Torres Strait Islander imprisonment rates and reoffending requires commitments to post release supports in the community. Our report establishes that there are gaps in crisis and transitional accommodation available that is accessible to Aboriginal and Torres Strait Islander people bailed and post-release, and access to crisis and transitional housing for Indigenous women and children is particularly critical. There is a lack of culturally appropriate drug and alcohol counselling that can be consistently accessed by First Nations people in contact with the criminal legal system. Throughcare support like that provided by Yeddung Mura needs expansion. First Nations-led driver licensing supports and programs can reduce contact with the criminal legal system and have other social and employment benefits. First Nations-led and delivered literacy programs have benefits for employment, social integration generally and directly contribute to reducing reoffending.

RECOMMENDATION		RATIONALE
	c. Priority should be given to the role of ACCOs in providing additional reintegration and support services. We also recommend that ACTCS improve the information provided pre-release and post release on obtaining Working with Vulnerable People clearance. Recommendations 11.7.b is partially dependent on the implementation of Recommendations 2.1, 2.2.	Expansion of these services need to be prioritised by a First Nations decision-making process.

1. INTRODUCTION

1.1. Our 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) was chosen by the ACT Government to undertake the *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System* (our 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*, and to provide recommendations for measures (in addition to the ALRC recommendations) to address the overrepresentation of First Nations people in the ACT.

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

The Second Stage of our Review, through community dialogues and co-design work with community organisations, focuses 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 was delivered to the ACT Government in mid-2025.

This document completes the second stage and is the Final Report of our Review.

1.2. Research Plan for our Review

1.2.1. Stage 1

The First Stage of our Review involved a stocktake of the ACT Government's progress in implementing the 35 recommendations made in the Australian Law Reform Commission's (ALRC) 2017 *Pathways to Justice Report*.⁹

There was no comprehensive government response to the ALRC report and our assessment was made on the basis of information derived from the following sources:

- ACT Government responses supplied to the evaluation team
- Interviews (10) and written submissions (3) with First Nations and non-Indigenous community-based organisations/legal service providers, and
- ACT criminal justice system data for the period 2017-2023 where available.

Our findings from the First Stage of our Review are summarised below at [1.3] and set out in detail in our First Report¹⁰ and accompanying Community Guide.¹¹ Stage 1 findings were presented and discussed at an online Webinar event hosted by Jumbunna on 18 September 2024.¹² A summary of our assessment of the ACT government's progress in implementing each of the 35 ALRC Recommendations is included in Appendix 1 of this Report. For a detailed account, please refer to Parts 3 and 4 of our First Report.

⁹ Australian Law Reform Commission (ALRC) (2017) *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133 <<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>>.

¹⁰ Jumbunna (2024) First Report is available here: <<https://www.uts.edu.au/sites/default/files/2024-10/Jumbunna-Research-Independent-Review-First-Report.pdf>>.

¹¹ Jumbunna (2024) First Report Community Guide is available here: <https://www.uts.edu.au/sites/default/files/2024-10/Jumbunna_Community_Guide-ACTREVIEW-First-Report.pdf>.

¹² A recording of the Webinar event is available here: <<https://www.youtube.com/watch?v=rMn-w-jlGcw>>.

1.2.2. Stage 2

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 within the ACT Government. JACS also provided some assistance with facilitating consultation with Aboriginal organisations and other community-based service providers, including 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).

Consultation for the second stage of our Review was conducted using a phased approach, starting with Aboriginal and Torres Strait Islander community members and organisations and non-Aboriginal organisations with First Nations programs and staff (where possible/as a priority), followed by ACT Government/judiciary and the legal services sector.

In respect of **Community Dialogues**, we invited participation from Aboriginal and Torres Strait Islander people in the community with experience of the ACT criminal legal system. These were facilitated with assistance from Aboriginal organisation stakeholders.

In relation to interviews and yarning circles in the **Alexander Maconochie Centre** (AMC) adult correctional centre and the **Bimberi Youth Justice Centre** (Bimberi), we invited participation from Aboriginal and Torres Strait Islander adults in the AMC and Aboriginal and Torres Strait Islander young people in Bimberi (sentenced, remanded, or both). These were facilitated with assistance from JACS, AMC and Bimberi staff.

In respect of **stakeholder interviews**, we invited participation from Aboriginal organisations and non-Aboriginal organisations with First Nations programs and staff, and relevant stakeholders from public bodies and statutory authorities, as well as relevant academics and relevant stakeholders within the ACT Government and judiciary. Additional stakeholder interviews were also conducted on request and/or recommendation.

We invited participation from the following **Aboriginal and Torres Strait Islander organisations and programs**:

- Burbirra
- Clybucca Dreaming
- Culture on the Move
- Curiyo
- Gugan Gulwan Youth Aboriginal Corporation (Gugan Gulwan)

- More Cultural Rehabs Less Jails program
- Our Booris, Our Way Implementation Oversight Committee (OBOW IOC)
- Sisters in Spirit Aboriginal Corporation (Sisters in Spirit)
- The Connected Purpose
- Tjillari Justice Aboriginal Corporation
- United Ngunnawal Elders Council (UNEC)
- Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga)
- Worldview Foundation
- Yeddung Mura (Good Pathways) Aboriginal Corporation (Yeddung Mura)
- Yerrabi Yurwang Child and Family Aboriginal Corporation (Yerrabi Yurwang)
- Yurwan Ghuda On Country program for young people.

In respect of **non-Indigenous community-based organisations, public bodies and statutory authorities** with Aboriginal and/or Torres Strait Islander staff and/or who provide services to Aboriginal and Torres Strait Islander people we invited participation from:

- Aboriginal and Torres Strait Islander Children and Young People Commissioner
- Aboriginal and Torres Strait Islander Elected Body (ATSIEB) (both current and former members)
- Aboriginal and Torres Strait Islander Official Visitor for Corrections and Children and Young People
- ACT Inspector of Custodial Services (ICS)
- ACT Human Rights Commission (Aboriginal Complaints Officers)
- ACT Human Rights Commissioner and staff (Discrimination, Health Services, Disability and Community Services)
- ACT Ombudsman
- Beryl (Women's Refuge)
- Canberra Institute of Technology (CIT)
- Justice Reform Initiative.

In respect of relevant First Nations and non-Indigenous **academics**, we invited participation from:

- Australian National University (ANU)
- University of Canberra.

In respect of **legal service providers**, we invited participation from:

- Aboriginal Legal Service (ALS) NSW/ACT
- Dhurrawang Aboriginal Human Rights Program, Canberra Community Law
- Legal Aid ACT
- Mulleun Mura, Women's Legal Centre.

The **broader legal profession** from the ACT Law Society and ACT Bar Association were also invited to respond via written submission.

In respect of **ACT government directorates, agencies, statutory bodies and the judiciary**, we invited participation from:

- Aboriginal Service Development
- ACCO sector development and support
- ACT Corrective Services – Commissioner
- ACT Corrective Services Alexander Maconochie Centre (AMC) – Various program staff
- ACT Corrective Services Community Corrections
- ACT Corrective Services Data and Research
- ACT Corrective Services Offender Reintegration
- ACT Corrective Services Operational Support
- ACT Corrective Services Policy and Risk Management
- ACT Courts and Tribunal – Circle Sentencing,
- ACT Courts and Tribunal – Corporate and Strategic Services
- ACT Courts and Tribunal – Therapeutic and Client Services
- ACT Education – Flexible Education
- ACT Education – Policy and Community Engagement
- ACT Education – Programs and Services, Aboriginal and Torres Strait Islander Education
- ACT Education – Governance
- ACT Health Justice – Health Services
- ACT Health Justice – Policy, Partnerships and Programs Division
- ACT Police – Chief Police Officer
- ACT Police – Deputy Commissioner

- ACT Police – Family Violence and Vulnerable Persons/Cultural Support
- ACT Police – First Nations Liaison
- ACT Policy and Cabinet – Social Policy Branch
- ACT Supreme Court
- Bimberi Youth Justice Centre – Centre Manager and program staff
- ACT Magistrates and Chief Magistrate
- Children, Youth and Families
- Children, Youth and Families – Youth Justice and Adolescent Services
- Community Services Directorate – Deputy Director-General
- Deputy Director of Public Prosecutions
- Drug and Alcohol Court – Operational
- First Nations Family Response and Engagement Team – Family Group Conferencing
- First Nations Justice Branch
- Forensic Mental Health Services
- Housing – Executive Branch
- JACS Civil and Regulatory Law Branch
- JACS Crime Prevention and Policing
- JACS Criminal Law Branch
- JACS Justice Policy Futures Taskforce
- JACS Justice Reform Branch
- JACS Restorative Justice Unit
- JACS Strategic Policy and Programs
- JACS Deputy Director General
- Mental Health and Suicide Prevention
- Office for Aboriginal and Torres Strait Islander Affairs
- Sentence Administration Board
- Strategic Policy and Programs, Road Transport Policy
- Targeted Support – Complex Behaviour and Support Branch
- Therapeutic Support Panel.

Consultation summary

Consultations were conducted both in person in Canberra and online as needed. Written submissions were also accepted. We provided participants with a set of General Questions (Appendix 2), including community and stakeholder specific questions where relevant/needed.

In the end we were able to conduct a total of 68 recorded dialogues/interviews with 175 individual participants and 71 different community organisations, legal services and government agencies, including:

- 55 Aboriginal and Torres Strait Islander community member participants, including:
 - four community dialogues with 33 Aboriginal and Torres Strait Islander people living in community. (18 males, 15 females).
 - five interviews/yarning circles with 22 Aboriginal and Torres Strait Islander adults and young people in AMC (16) and Bimberi (6). (17 males, five females).
- 16 participants from 12 different Aboriginal organisations, including two written submissions.
- 18 participants (both First Nations and non-Indigenous) from 12 different other/non-Indigenous organisations, including relevant community organisation and legal services, peak bodies and statutory authorities.
- 88 participants (both First Nations and non-Indigenous) from 47 different ACT government agencies and courts and tribunals.

The content of these community dialogues, interviews and written submissions have been analysed and are included in the Final Report analysis, findings and recommendations.

Coding of Interviews

Participants in the community and stakeholder consultations have been guaranteed anonymity, except those submissions where the contributor chose to be identified, in line with our ethical requirements. Given the sensitive nature of comments and the small size of the jurisdiction, we have decided not to name the specific organisations that have contributed to the research. Where direct quotations have been used, we will refer generically as to whether they have come from a First Nations organisation, Education Provider, Legal Service Provider, Statutory Authority/Public Body, Courts and Tribunals or Government Agency. These interviews involved both First Nations and non-Indigenous participants. We also engaged directly with First Nations people as members of the community. We received support from First Nations organisations to organise these meetings, however the participants were not there as members of any organisation. We

have coded these community dialogues by their locations and, where relevant, the gender of the participants: Boomanulla Community Dialogue Men; Sisters in Spirit Community Dialogue Women; Yeddung Mura Community Dialogue; and Winnunga Community Dialogue Men. We spoke with male and female adult and young people detained in the AMC prison and Bimberi. We have coded these interviews as AMC Mens Group, AMC Womens Group and Bimberi Young People. We received two public submissions: one from ALS NSW/ACT and the other from Michaela Bangard at the University of Canberra.

CODE	PARTICIPANTS
<i>Community Dialogues</i>	
Boomanulla Community Dialogue Men	First Nations men as members of the community, not representing an organisation – coded by location and gender
Sisters in Spirit Community Dialogue Women	First Nations women as members of the community, not representing an organisation – coded by location and gender
Yeddung Mura Community Dialogue, Woman/Man	First Nations men and women as members of the community, not representing an organisation – coded by location and gender
Winnunga Community Dialogue Men	First Nations men as members of the community, not representing an organisation – coded by location and gender
<i>AMC and Bimberi Interviews</i>	
AMC Mens Group	First Nations men in the AMC (protected and general populations) – coded by location and gender
AMC Womens Group	First Nations women in the AMC – coded by location and gender
Bimberi Young People	First Nations young people in Bimberi – coded by location only
<i>Stakeholder Interviews</i>	
First Nations organisation	First Nations organisations and their staff (both First Nations and non-Indigenous)
Education Provider	University and TAFE education professionals (both First Nations and non-Indigenous)
Legal Service Provider	Legal service providers/ professionals (both First Nations and non-Indigenous)

Courts and Tribunals	Judicial officers and operational staff (both First Nations and non-Indigenous)
Statutory Authority/Public Body	Staff in statutory authority or public body roles which have been established as an Act of Parliament or similar legislation (both First Nations and non-Indigenous)
Government Agency	ACT government directorate/agency staff – proximate and distal to over-representation (both First Nations and non-Indigenous)

Final Community Consultation Workshop and Government Information Session

On 27 March 2025, we shared our draft recommendations with community and government stakeholders prior to finalising and submitting this Report to JACS. Both the Community Workshop and the Government Information Session were held in person in Canberra.

The purpose of the Recommendations Workshop with community was to ensure that the breadth of community knowledge, perspectives and priorities shared with our team during the consultation processes are reflected accurately in the Final Report and Recommendations. This Workshop was open to Aboriginal community members, Aboriginal organisations and their staff only. A total of 14 community representatives participated in this workshop.

The purpose of the Government Information Session was to present an overview of our preliminary report and recommendations and provide the opportunity for ACT Government stakeholders to raise any ‘red line’ issues with the recommendations. This Information Session was open to Stage 2 government participants and other relevant ACT Government staff and representatives. A total of 54 government stakeholders were in attendance.

1.3. Our First Report Summary Findings: Assessing Implementation of the ALRC Recommendations

1.3.1. Key Findings Summary¹³

We note that there has been important progress to date in the ACT,¹⁴ although not in reducing over-representation.

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 and the highest in Australia. 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 Ngurrumbai Bail Support, Front Up, Galambany Court and Empowerment Yarning Circles. Although these are hampered by lack of sufficient support and much still needs to be done, including significant investment in community-based early intervention/prevention responses and addressing the multiple gaps in community-led and controlled programs/services which continue to be significantly under-resourced, despite their essential contribution to reducing over-representation. Stakeholders queried whether this is fully understood by the ACT Government and noted the disproportionate resources for government and government responses – despite JR being such a significant policy platform in the ACT.

1.3.2. Barriers and limitations to implementation

While the ACT government has satisfied the intent the of many of the ALRC Recommendations, there were multiple **barriers and limitations** to effective

¹³ For details see section 2.2 of Jumbunna (2024) First Report.

¹⁴ For instance: a) 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%; and b) 82.5% of Aboriginal and Torres Strait Islander people complete community-based orders – well above the national average of 70%. There is also little difference between Aboriginal and Torres Strait Islander and non-Indigenous completion rates in the ACT.

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 (including monitoring and evaluation) 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. Stakeholders also identified that the reform agenda to reduce over-representation has stalled in recent years and needs reinvigoration.

Lack of coordination and accountability

Some stakeholders felt the ACT Government doesn't have an adequately integrated policy response to over-representation in the ACT. For instance, good programs come and go, including due to changing government priorities. As a result, it is hard to keep track of implementation of justice related strategies and initiatives or recommendations. This points to limited coordination across government responses, but also to insufficient transparency and accountability to both stakeholders and the broader community.

First Nations stakeholders and community members are not engaged enough *in general* around implementation of measures to address over-representation, including, for example, informing best measures to establish. These issues make it hard to build levels of shared understanding and direction, as well as buy-in, which ultimately affects outcomes.

There is a need for a more transparent systematic mechanism in the ACT that engages stakeholders and community in, and ensures their oversight of, implementation. They should be involved in the development of responses to over-representation and in the evaluation of their effectiveness. Without this, any recommendations will be inadequately implemented or remain unimplemented.

Racism

Racism occurs at an individual and systemic level, within specific agencies and across broader government approaches: for example, not trusting Aboriginal people to lead solutions to over-representation.

Recommendation 14-1, for instance, requires a review of all police procedures and practices to ensure that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander people. This recommendation was assessed as partially implemented given that some efforts have been made to address this issue (for example, ACT Policing Strategy for Engagement with First Nations People and Communities (2024)). However, much more needs to be done.

Generic issues also arising from Recommendation 14-1, with broader application, include:

- Ensuring that the data can map systemic racism and its impacts and provide a check against it. For example, demonstrating increased police use of diversionary options for Aboriginal and Torres Strait Islander people young people.
- Improving the effectiveness of current complaints mechanism against racism/breaches of cultural rights to Aboriginal and Torres Strait Islander people in the ACT.

Access to data

Assessment of various recommendations was impacted by a lack of data, including, for example:

- Recommendation 14-3 (Custody Notification Service). This is, however, a more substantial issue impacting on *evaluation* of any measures directed to reducing over-representation.
- Recommendation 5-2 (Bail support/diversion options), where data might help inform what type of bail support/diversion options are required.

Aboriginal and Torres Strait Islander participation

Aboriginal and Torres Strait Islander participation in all stages of implementation of measures designed to reduce over-representation was identified as needing attention, including in terms of representative structures in the ACT enabling Aboriginal and Torres Strait Islander participation and decision-making. For instance, an independent First Nations-led body to oversee implementation of ALRC Recommendations and other measures designed to reduce over-representation may increase coordination, accountability and all-important Aboriginal and Torres Strait Islander participation and leadership required to deliver better justice outcomes.

1.4. Justice Reinvestment Approach

The ACT Government's initial justice reinvestment commitment was previously articulated through the *Justice Reinvestment Strategy* and subsequently via the *Building Communities Not Prisons* program. In 2020, this program was expanded into the plan for *Reducing Recidivism in the ACT by 25% by 2025* which committed the ACT Government to reduce recidivism in the ACT by 25% by 2025.¹⁵ (See our First Report at section 2.1.5 for details). Phase 2, *RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT*

¹⁵ RR25by25 and Beyond Plan (2024), p.1.

(‘RR25by25 and Beyond Plan’) will continue to build on the first phase of RR25by25 (2020-2023).

The ACT Government is making progress towards meeting the target to reduce recidivism in the ACT by 25% by 2025. In this context ‘recidivism’ refers to the rate at which adult detainees return to prison within two years after their initial release. The 25% target translates to a reduction from the 2018-19 Report on Government Services (RoGS) baseline of 42.4% to 31.7% in 2025 (a reduction of 146 detainees returning to custody with a new sentence).¹⁶ The 2024 RoGS showed a 34.1% recidivism rate, which represents a decrease of 19.5% from the respective benchmark 2018-19 figure, and an overall downward trend in the recidivism rate since 2018-2019.¹⁷

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.¹⁸ 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. Legislative reforms under RR25by25 included:

- **Raising the minimum age of criminal responsibility:** The *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* raised the minimum age of criminal responsibility from 10 years to 12 years and will further raise the age to 14 years on 1 July 2025.¹⁹
- **Decriminalising small amounts of illicit drugs:** Since October 2023, individuals found with small amounts of certain drugs are no longer be subject to a potential prison sentence. Instead, they may be issued a caution, referred to a diversion program, or receive a \$100 fine. The reforms are focused on harm reduction and intended to offer a health-focused response to drug use, not a criminal one.²⁰
- **Increasing access to Drug and Alcohol Treatment Orders:** The *Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Act 2023* expanded the ACT Drug and Alcohol Court’s eligibility criteria for Drug and Alcohol Treatment Orders as an alternative to prison to include people with a sentence of under a year, if the sum of their sentence totalled 1-4 years.²¹

¹⁶ RR25by25 and Beyond Plan (2024) p.9.

¹⁷ RR25by25 and Beyond Plan (2024) p.9; Report on Government Services (2024) – Productivity Commission Justice Data – Table CA.4 <<https://www.pc.gov.au/ongoing/report-on-government-services/2024/data-downloads>>.

¹⁸ ACT Government (2019) RR25BY25, p. 1.

¹⁹ ACT Government (2024) RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT. Reducing Recidivism in the ACT by 25% by 2025 Phase 2, p.9.

²⁰ RR25by25 and Beyond Plan (2024) p.12.

²¹ RR25by25 and Beyond Plan (2024) p.12.

RR25by25 and Beyond

The RR25By25 and Beyond Plan is the second phase of the RR25by25 Plan and encompasses the years 2024-25 and beyond. The second phase will enhance the existing recidivism target by prioritising early intervention and diversion programs to meet the specific needs of four identified priority populations/groups, integrating additional data collection methods, and aligning with other key government strategies.²²

Recent funding commitments under RR25by25 and Beyond include:

- **Justice Futures Fund:** In the 2024-25 Budget the government announced more than \$340,000 for a co-design process to inform the establishment of the Justice Futures Fund – a justice reinvestment fund to prioritise investments in community-led early intervention and diversion programs. This co-design process will support Phase 2 of RR25by25 and underpins the continuing commitment to justice reinvestment in the ACT.²³
- **Aboriginal Community-Controlled Organisation Establishment and Expansion Fund (AEEF):** The AEEF is designed to support the growth and sustainability of new and existing ACT ACCOs, consistent with the ACT Government commitments under the National Agreement on Closing the Gap Priority Reform 2: Building the community-controlled sector and the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028. This grant is for new and existing ACCOs who provide culturally appropriate human services to the ACT Aboriginal and Torres Strait Islander community. The grant includes four tiers: Start Up tier, up to \$15,000; Establishment tier, up to \$150,000; Development tier, up to \$100,000; Growth tier, up to \$50,000. The fund is \$3.86 million over 4 years. Grant applications opened 3 March 2025.²⁴

RR25By25 and Beyond has four focus areas.

A. A new approach to funding – justice reinvestment through co-design²⁵

Investing in a co-design process, working collaboratively with community members and government stakeholders to identify areas requiring attention, to ensure that existing and future programs meet real needs without unnecessary service duplication. This co-design work will help the Government establish a new resource to support justice

²² RR25by25 and Beyond Plan (2024) p.16.

²³ Justice and Community Safety Directorate (JACS) (2024) Annual Report 2023–24, ACT Government, p.41
<https://www.act.gov.au/__data/assets/pdf_file/0005/2617718/JACS-2023-24-Annual-Report.pdf>.

²⁴ See details at <<https://www.act.gov.au/money-and-tax/grants-funding-and-incentives/funding-to-support-aboriginal-community-controlled-organisations>>.

²⁵ RR25by25 and Beyond Plan (2024) p.16.

reinvestment in the ACT – the Justice Futures Fund. This will not only inform future policy decisions, but also serve as a framework guiding our investments moving forward.

B. Outcomes focused strategic framework²⁶

This framework will build on the seven pillars of Phase 1 to improve and more precisely target service supports tailored to the unique needs of four identified priority groups:

- **First Nations people:** Preventing First Nations peoples from having contact with the criminal justice system is a crucial step in addressing the over-representation of First Nations individuals in the justice system.
- **Women:** Supporting women to break cycles of offending has positive flow-on effects throughout their whole families, particularly if they are the primary carers of either children or parents.
- **Youth and young adults:** By preventing youth (under 18 years) and young adults (18-24 years) from entering the criminal justice system, there are likely to be follow on benefits over time, in respect of offending and recidivism.
- **People living with cognitive and mental health impairments:** Ensuring that the criminal justice system is able to identify, respond to and offer adjustments to offenders that improve their wellbeing and access to support services.

This framework also incorporates additional indicators alongside the existing recidivism target to help track progress and provide a more accurate picture of the functioning and health of the criminal justice system in the ACT (see table below).

C. Improved data collection and evaluation tools²⁷

A key element of justice reinvestment is ‘justice mapping’ – analysing criminal justice data and cross-referencing this against indicators of disadvantage and available program support services.

Those delivering justice reinvestment programs will be required to adopt new data collection and evaluation tools as a condition of funding and payment of funding will also be contingent on an organisation’s ability to fulfil reporting milestones.

- **The Outcome Measures Project** will link administrative data sets from ACT Policing, ACT Courts and ACT Corrective Services provided via the Australian Bureau of Statistics (ABS), to examine the impact of the ACT Government’s *RR25by25 Plan* measures. It will also bolster the evidence base by aligning with a

²⁶ RR25by25 and Beyond Plan (2024), pp.17-24.

²⁷ RR25by25 and Beyond Plan (2024) pp.25-26.

wider array of criminal justice system indicators and performance measures (see below).

This work will inform and enable ongoing monitoring and reporting against program outcomes, which can be integrated into future justice program design and support the outcomes identified in the strategic framework reporting indicators.

- **The Data Capacity Project** will develop a new suite of data collection and program evaluation tools to address data and evaluation capabilities across the justice system. By leveraging existing agency resources, this project will ensure the tools are strategically aligned to standardised criminal justice data collection, improve internal evaluation capabilities, management/progress, reporting/evaluations and measure need and impact.
- **The Qualitative Desistance Project** will provide insight on several critical aspects related to criminal behaviour in the AC. It will: investigate the prevalence of criminal offending and reoffending; identify factors associated with desistance (process of ceasing or significantly reducing offending behaviour), including a reduction in severity and frequency of offending; examine continued contact with the criminal justice system, considering the various programs/interventions provided; offer insights on how to enhance existing services and programs to better address individual needs.

D. Aligning with other strategies²⁸

To achieve identified targets set out in the table below, alignment with 16 established frameworks and whole-community strategies are also identified in RR25by25 and Beyond Plan.

The primary mechanism for measuring the ongoing success of the Plan will be through annual progress reports on the indicators outlined in the Strategic Focus section against the performance measures outlined below.²⁹

²⁸ RR25by25 and Beyond Plan (2024) pp.27, 29.

²⁹ ACT Disability Justice Strategy 2019–2029, ACT Disability Health Strategy 2024–2033, Corrections Disability Framework, Integrated Offender Management Framework, Community Corrections Offender Management Framework, Corrective Services Model of Care, Women’s Plan 2016–2026, Walking with Women on the Pathway to Change Framework (Women Offender’s Framework), Corrective Services Aboriginal and Torres Strait Islander Framework, National Plan to End Violence against Women and Children 2022–2032, National Agreement on Closing the Gap, ACT Aboriginal and Torres Strait Islander Agreement 2019–2028, Housing Strategy, Wellbeing Framework, Legal Assistance Strategy, ACT Drug Strategy Action Plan 2022–2026 and Commissioning for outcomes.

Indicators to measure health of criminal justice system	Performance measure
Recidivism rate – return to incarceration	Decrease by 25% by 2025. From end 2025, in line with, or below, national average Source: Annual ROGS data
Recidivism rate – return to community corrections	In line with, or below, national average Source: Annual ROGS data
Rate of reoffending (without incarceration) eg frequency, seriousness of reoffending	Rate and frequency: In line with, or below, national average Source: Proportion of offenders proceeded against by police more than once within the previous 12 months (ABS Recorded Crime – Offenders data) Seriousness of reoffending: In line with, or below, national average Source: ABS Recorded Crime – Offenders data
Rate of incarceration of First Nations population vs non-Indigenous population	Parity with the rate of non-Indigenous people by 2031 ³⁷ Source: ABS Prisoners in Australia; ROGS data
Rate of incarceration of women	In line with, or below, national average Source: ABS Prisoners in Australia; ROGS data
Percentage of individuals referred to specific non-criminal justice supports/diversions	Year on year increases measured across a sample of early intervention and diversionary programs Source: SupportLink
Remand rate	Year on year decrease in rate of prisoners held on remand Source: ABS Prisoners in Australia
Youth and young adults related indicators - Detention rate of young people aged 10-17 (by sex, Indigenous status) - Imprisonment rate of young adults aged 18-24 (by sex, Indigenous status)	In line with, or below, national average Source: ROGS; ABS Recorded Crime – Offenders
Perceptions of community safety ie, Proportion of people who felt ‘safe’ or ‘very safe’: - at home by themselves during the night; and - walking by themselves in their neighbourhood during the night	Upward trend year on year Source: National Survey of Community Satisfaction with Policing

1.5. Approaches, Principles and Conceptual Matters Underpinning Our Report

1.5.1. Approaches and Principles

In part this Review focuses on the matters particular to the criminal legal system including youth justice, policing, bail, sentencing, imprisonment and post-release reintegration. We also consider ancillary systems of education and child protection as key precursors to criminalisation. Housing, employment and to lesser extent health³⁰ are also discussed when they arise in relation to specific areas like, for example, bail, imprisonment and successful post-release. However, a key part of our approach and overall argument is that structural issues need attention in order to reduce over-representation. These include coordinated responses, decision-making, accountability

³⁰ We note here the limited participation from Health as part of our Review.

and Aboriginal and Torres Strait Islander self-determination. Key questions we tackle include how to increase capacity for the First Nations community in the ACT to develop and implement solutions to over-representation and what reforms at a government level are required to support community priorities and ensure that the community is not over-burdened.

It was clear during our Review interviews and discussions that there is in general both limited community awareness of and misalignment between community and government perspectives on current ACT Government efforts aimed at addressing over-representation in the ACT, including those related to structural change. While the ACT Government states that it is progressing actions that will make a difference to First Nations outcomes, First Nations people do not see these as being progressed effectively or at all, nor as aligned with their priorities.

Coordinated responses to over-representation

As the terms of reference for our Review indicate, we are tasked with identifying issues that are driving First Nations over-representation within the ACT justice system and how to respond to these issues. We have grappled with how far our Review ought to extend. Some issues sit inside or are more directly connected with the justice system and so more clearly fit within the parameters of our Review. We discuss in this context reforms related to bail, sentencing and the AMC and increased access to post-release housing, for instance.

However, it is also essential to try to tackle issues positioned further outside of this system. As one participant stated, ‘It’s never just one solution. We need to tackle the front and the back ends as well’ (Legal Service Provider). For example, women in the community dialogue sessions pointed to inter-generational issues and the need for prevention and early intervention, particularly for young people – rather than relying on the justice system to resolve issues causing First Nations people over-representation, which it has limited capacity to do.

Some key non-justice issues sit across different Directorates. Participants spoke, for instance, of over-representation as the cumulative impact of decisions made across multiple areas of government activity. We discuss the need to increase access to alternative learning options for First Nations students to help avert justice system contact, as an example. This is an action for the Education Directorate. And while the terms of reference for this review do not centre on whole of government transformation in the ACT, we understand the importance of this to reducing over-representation and raise it where necessary.

In short, the causal factors of over-representation are complex. As such, delivering better justice outcomes to Aboriginal and Torres Strait Islander people in the ACT requires multiple interventions and strategies that come together effectively to produce real change. Coordination is a focus in various parts of this Report, but additionally, to

address over-representation action is required in all of the areas covered in this Report. As such, its various sections and each of our recommendations must be read as interconnected parts of a way forward for the ACT towards reduced over-representation. **One of the greatest dangers facing our Review is that government agencies will reproduce a siloed affect by only reading the sections they think applies to them, without seeing the totality and interconnectedness for change that is required.**

Community-led, self-determined approaches

Though it has some responsibility for reducing over-representation, the ACT Government does not and cannot have all the solutions to this issue. These are also situated at a community level. Solutions include community-embedded and led interventions, such as ACCO-run post-release programs. Those we spoke to in AMC and Bimberi, for instance, identified First Nations run AOD rehabilitation services, mentorship programs and on Country programs, including for diversion, as likely to help address over-representation.

But they also identified the importance of self-determination at a governance level: ensuring that the First Nations community in the ACT, including those with lived experience of the justice system, is seated in the driver's seat; determining what needs to change, what success looks like, implementing solutions and keeping track of whether or not these are working.

An essential element of the transformation of government centres around prioritising self-determination and Aboriginal and Torres Strait Islander ways of being, knowing and doing. The absence of this is a key driver of over-representation and government strategies to address this issue will not work effectively without it. This is not news to anyone. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) documents and recommendations spoke to the importance of self-determination to reducing over-representation more than three decades ago. In particular, recommendation 188 states:

That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.³¹

³¹ Elliott Johnston (1991) *National Report of the Royal Commission into Aboriginal Deaths in Custody*, Canberra: Royal Commission into Aboriginal Deaths in Custody, vol 5, 111. See discussion Behrendt, L., Porter, A. and Vivian, A. (2017) Indigenous self-determination within the justice context: Literature review. Jumbunna UTS.

While increased authority and self-determination of First Nations people in the ACT in decision-making is essential, this does not absolve the ACT Government of its responsibilities. They too have crucial contributions to make to deliver better justice and other outcomes for First Nations people, including recognising and supporting the existing capability of the First Nations community to lead solutions and reforming internal processes and mechanisms to change government approaches that contribute to over-representation.

Transforming government

While solutions to over-representation do not all sit with government in the ACT, a significant focus of our Report is on more substantive change needed within government systems. Both government action and inaction are seen as contributing to over-representation.³² The transformation of government is a significant government commitment under the National Agreement on Closing the Gap (National Agreement) and the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028. We refer to these commitments where appropriate. We understand that these commitments may not always align completely with First Nations aspirations for change. For instance, commitments to shared decision-making have been identified by the Productivity Commissioner as not going far enough to realise self-determination.³³ It is important to highlight these commitments, however, both as a starting point and as they provide clear indication that the ACT Government itself understands its responsibilities to work differently and has said it will do so. Barriers to achieving transformation include knowing in practical terms how to operationalise these commitments, though there are some positive examples of innovation within government demonstrating that change is possible. High levels of risk aversion and entrenched ways of working within government (for example, silos) are also identified as problematic in our Review.³⁴

Compliance with Indigenous rights (including cultural rights and self-determination) and human rights more generally (particularly those relating to the criminal legal system) are also important principles underpinning our Review. The ACT was the first state or territory in Australia to introduce a Human Rights Act and the AMC was the first Australian prison

³² 'We have failed as a government consistently. It's not just the ACT, it's nationally as well. We have failed to... put in place that systemic and enduring change required to make a difference in matters such as this' (Government Agency).

³³ Productivity Commission (2024) *Review of the National Agreement on Closing the Gap, Study Report, Volume 1* ('Review of Closing the Gap'). Available at: <<https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>>.

³⁴ For example, 'government is a big ship and it's really hard to affect that change and think differently. There's acknowledgement in theory that that's what government's supposed to be working on. That's something that has to be taken seriously and that things have to change. Recognising it at least it's a start – but actually doing something is harder' (Statutory Authority/Public Body). 'There isn't much in the way of deep reflection on whether we are optimally structured to do what we need to do' (Government Agency).

said to be based on human rights principles. A theme running through our Review is whether human rights standards are being met.

1.5.2. Disability

There are few areas, if any, where addressing disability justice is not relevant to reducing Aboriginal and Torres Strait Islander incarceration and contact with the criminal legal system. We do not have a separate section in the Final Report on disability but refer to it where it is relevant to specific issues. Here we show why fundamental change to reduce Aboriginal and Torres Strait Islander over-representation in the ACT criminal justice system requires addressing disability justice.³⁵

First Nations people are almost twice as likely to have a disability as non-Indigenous Australians³⁶ and people with disability are over-represented in all stages of the criminal legal and child protection systems.³⁷ Rates of Indigenous people in custody with disability are higher than for non-Indigenous people with disability, and are particularly high for Indigenous women.³⁸ Although the data related to child protection and disability remains inconsistent because of problems related to data collection, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) accepted that ‘First Nations parents and children with disability are likely to be over- represented in child protections systems’.³⁹

People with disability have increased risks of criminalisation and are more likely to be arrested, questioned and detained for minor infringements of public order. Both the Royal Commission into Mental Health Services in Victoria and the Disability Royal Commission found that people with disability were particularly criminalised for minor offences relating to homelessness, begging, vagrancy, drug/alcohol use, public transport fare evasion, offensive behaviour and unpaid fines.⁴⁰

³⁵ We use the term ‘disability’ to include mental ill-health, and cognitive and other physical disabilities, although these conditions can be distinguished as necessary. We assume a political and sociological model of disability which emphasises that people are disabled by attitudinal, social, political, economic and environmental barriers that prevent participation and thus actively disable individuals. In other words, it is not the condition itself but the social responses and disabling processes to the condition that are deeply problematic.

³⁶ AIHW and NIAA, Aboriginal and Torres Strait Islander Health Performance Framework: Disability, Available at <<https://www.indigenoushpf.gov.au/measures/1-14-disability#datafindings>>.

³⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) (2023) Final Report, Vols 8 & 9, Commonwealth of Australia, Canberra.

³⁸ Disability Royal Commission (2023), vol 8, pp.34-38.

³⁹ Disability Royal Commission (2023), vol 9, p.117. For example, the Director General of the Community Services Directorate in the ACT informed the Royal Commission that of the 35 children placed in residential care in the ACT as of 1 March 2021, 12 were First Nations Children, of which nine had a disability and for three the disability status was unknown; of the non-Indigenous children, three were identified as having a disability and the remaining children either did not have a disability or their disability status was unknown (STAT.0328.0001.0001, p.4).

⁴⁰ Royal Commission into Victoria’s Mental Health System (2021) Final Report. Vol 3, State of Victoria, Melbourne, pp.360-6; and Disability Royal Commission (2023).

Early police decisions affecting people with disabilities can compound through the legal system. People with disability are more often refused bail and are more likely to receive a custodial sentence due to a lack of suitable community-based options. They are thus exposed to extended and repeat incarceration, building up a long criminal record for minor offences. The nature of their impairment may cause trouble with memory, attention, impulse control and communication. Their behaviour may be misinterpreted as non-compliance, rudeness, defiance or indifference. The ability to conform with the legal requirements of, for example, bail, probation and parole may be impaired – thus furthering ongoing intervention and imprisonment. People become caught within the net of criminal justice with cycles of arrest, court and imprisonment from which they are unable to extricate themselves. Being caught in cycles of criminalisation is itself harmful to recovery and to maintaining social support.⁴¹

The Disability Royal Commission concluded that, despite the ‘limitations to determining the true number of people with disability in contact with criminal justice systems... What is clear is the hidden national crisis that is the proportion of First Nations people with cognitive disability in custody, particularly youth detention.’⁴² Throughout our Report, we return to the issue of disability where it is relevant to particular areas under discussion. Disability intersects with gender, age and First Nations’ status. It also intersects with other social determinants including health, housing, employment and income. People living with disability are significantly more likely to be unemployed, to be poor, on low incomes, to have inadequate access to health services, and to be homeless.⁴³ Disability can also be an outcome of and exacerbated by the material conditions of poverty (for example, lack of access to medical care, affordable healthy food, unsafe working conditions, various environmental factors) combined with marginalisation and structural racism. These intersectional issues of disability correlate closely with the social determinants of criminalisation.⁴⁴

⁴¹ See Law Council of Australia (2018) *People with Disability. Final Report*, pp.18-25. Available at <www.lawcouncil.asn.au/justice-project/final-report>; Dowse L., Rowe, S., Baldry, E. and Baker, M. (2021) *Police Responses to People with Disability*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Sydney. Cunneen C. (2023) *Defund the Police: an international insurrection*. Policy Press, Bristol, pp.134-137.

⁴² Disability Royal Commission (2023) p.139.

⁴³ For examples, see AHRC (2014) *Statistics about Disability rights* here <<https://humanrights.gov.au/our-work/education/statistics-and-factsheets-disability-rights>>.

⁴⁴ McCausland, R. & Baldry, E. (2023) ‘Who Does Australia Lock Up? The Social Determinants of Justice’, *International Journal for Crime, Justice and Social Democracy* 12(3) <<https://doi.org/10.5204/ijcsd.2504>>.

1.5.3. Women

Addressing the over-representation of Aboriginal and Torres Strait Islander people in the criminal legal system requires an understanding of the differential needs of Aboriginal and Torres Strait Islander women, and the unique impacts of over-policing and over-incarceration on women. Addressing the needs of First Nations women is fundamental to reducing Aboriginal and Torres Strait Islander over-representation within the criminal legal system. While we do not have a separate section in the Final Report on First Nations women, we refer to their particular experiences and needs where it is relevant to specific issues (for example, housing, programs, strip searches).

Most First Nations women will never enter the criminal legal system as offenders or be incarcerated.⁴⁵ However, First Nations women are vastly overrepresented in the criminal legal system and have been recognised as the fastest growing demographic in Australian prisons nationally.⁴⁶ Despite the harmful impacts of disconnecting women from family, in cases where suitable accommodation is limited or unavailable, First Nations women nationally are increasingly being placed on remand, which further exacerbates the cycle of trauma, injustice and disadvantage for First Nations women, their families and communities.⁴⁷

In the ACT, Aboriginal and Torres Strait Islander women make up around 2% of the total female population.⁴⁸ Their imprisonment rate is 76.5 times greater than the rate for non-Indigenous women.⁴⁹ The imprisonment rate for Indigenous women in the ACT is lower than the national average, however the level of over-representation is the highest in

⁴⁵ ALRC (2017) Pathways to Justice Report [11.6].

⁴⁶ Howard-Wagner, D. and Brown, C. 'Increased incarceration of First Nations women is interwoven with the experience of violence and trauma, The Conversation (online, 6 August 2021) <<https://theconversation.com/increased-incarceration-of-first-nations-women-is-interwoven-with-the-experience-of-violence-and-trauma-164773>>; MC, Ali, 'Crisis of Aboriginal women in prison in Australia', Aljazeera, (online, 2 December 2019) <<https://www.aljazeera.com/features/2019/12/2/crisis-of-aboriginal-women-in-prison-in-australia>>; Australian Bureau of Statistics (ABS) (2022) Corrective Services, Australia, March Quarter 2022 (catalogue no. 45120) <<https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release-data-download>>.

⁴⁷ Jumbunna Institute of Indigenous Education and Research, Research Unit, (2020) Submission No 115 to Select Committee, Inquiry into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody, p.54. Available at <<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=266#tab-submissions>>.

⁴⁸ Note: First Nations people are undercounted in census data and actual numbers may be higher. ABS (2023) Estimates of Aboriginal and Torres Strait Islander Australians 2021. <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release#states-and-territories>>.

⁴⁹ ABS (2024) Prisoners in Australia 2024, Table 17 Imprisonment rate, Selected characteristics by state/territory <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2024/2.%20Prisoner%20characteristics%2C%20States%20and%20territories%20%28Tables%2014%20to%2035%29.xlsx>>.

Australia.⁵⁰ There is no data on the likelihood of bail refusal or periods on remand for Indigenous women. However, as we discuss in Section 10, First Nations women are more likely to be on remand than sentenced in the ACT. Data on sentence length is not available by Indigenous status and gender. For women even short periods of incarceration can often trigger interventions by the child protection system, and this can have devastating and lasting impacts on First Nations women and their children, families and communities.

The rising and disproportionate incarceration rates of First Nations women is interwoven with experiences of violence and trauma, as well as the pervasive and systemic racism and discrimination in law enforcement, justice, child protection and health systems. First Nations women's interactions with these systems and the inadequate, inequitable and culturally unsafe treatment they receive further compounds existing traumas and perpetuates long lasting disparities in health, mental health, poverty, homelessness, domestic, family and sexual violence, as well as a range of other social and economic indicators.⁵¹

First Nations women in the criminal legal system experience discrimination on the basis of race and gender (and other social categories such as mental illness and disability). Intersectional discrimination may arise because their needs are considered as being met either through services designed for Indigenous men, or through non-culturally specific services designed for women. This type of discrimination may arise in relation to law enforcement practices, pre-court and court diversionary options, sentencing, and pre- and post-release support programs.⁵² Intersectional discrimination can also occur through the use of apparently objective tools such as risk assessments, which fail to consider how they negatively assess characteristics common to Indigenous people, women, and First Nations women in particular.⁵³

Pathways into the criminal legal system for First Nations women are different from those of First Nations men and their non-Indigenous counterparts. The intersectional issues of race and gender directly correlate with the criminalisation and over-representation of First Nations women and children in the criminal legal system, with significant negative and lasting impacts on individuals, families and communities. Distrust between First Nations women and the police and court systems leads to a situation where they are

⁵⁰ This is mostly driven by the fact that the non-Indigenous imprisonment rate in the ACT is the lowest in Australia – less than one third the national average. ABS (2024) Prisoners in Australia 2024, Table 17.

⁵¹ Kendall, S., Lighton, S., Sherwood, J., Baldry, E., and Sullivan, E.A. (2020) 'Incarcerated Aboriginal women's experiences of accessing healthcare and the limitations of the 'equal treatment' principle' 19(1) International Journal for Equity in Health, p.48.

⁵² Behrendt, L., Cunneen, C., and Libesman, T. (2019) Aboriginal and Torres Strait Islander Legal Relations. Oxford University Press Australia & New Zealand. 2nd Ed., pp.148-149.

⁵³ Law Council of Australia (2017) Aboriginal and Torres Strait Islander People Consultation Paper, The Justice Project, Law Council of Australia, pp.36–37.

simultaneously over-policed and under-protected. The criminalisation of First Nations women is deeply entwined with experiences of domestic, family, sexual and other forms of violence against women.⁵⁴ First Nations women who seek assistance from police can be misidentified by police (and the courts) as the perpetrator.⁵⁵ Misidentification of First Nations victim-survivors as perpetrators leads to criminalisation and over-incarceration and is a significant contributor to the disproportionate removal of First Nations children from their mothers, families and communities.⁵⁶ The systematic and discriminatory mistreatment of First Nations victim-survivors by the criminal legal system often results in First Nations women fearing the system as much as, if not more than, their abuser. These historical and contemporary issues are significant contributors to under-reporting and avoidance of mainstream services/supports by First Nations women and their families.⁵⁷

At the national level, First Nations women in prison have specific characteristics compared to other imprisoned women: they are likely to have been the victim of violence and they tend to be younger than non-Indigenous women. Various studies show that First Nations women in prison report poorer mental and physical health (including serious psychiatric conditions) than other people in prison, and are over-represented in prison among those classified as at risk. Once in prison, First Nations women are proportionately more likely to be classified with a maximum-security rating than non-Indigenous women.⁵⁸

Other matters that impact First Nations women and contribute to their criminalisation and over-representation in the criminal legal system include:

- Lack of housing, including appropriate housing for First Nations women and their children fleeing family and domestic violence
- Lack of appropriate, holistic supports to keep children safely at home with family
- Criminalisation of homelessness, disability, mental health, substance use or dependence and poverty

⁵⁴ Committee on the Elimination of Discrimination against Women (2017) General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (26 July 2017) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en>.

⁵⁵ Nancarrow, H., Thomas, K., Ringland, V. and Modini, T. (2020) Accurately Identifying the 'Person Most in Need of Protection' in Domestic and Family Violence Law, Research Report, Issue 23, Sydney: ANROWS. Available at: <<https://www.anrows.org.au/publication/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/>>.

⁵⁶ Collard, S. "His life mattered": Family of murdered baby calling for parliamentary committee inquiry', NITV (online, 2 November 2020) <<https://www.sbs.com.au/nitv/article/2020/10/30/his-life-mattered-family-murdered-baby-calling-parliamentary-committee-inquiry>>.

⁵⁷ Behrendt et al (2019) pp.132-152.

⁵⁸ Behrendt et al (2019) p.144.

- Lack of investment by government in community-owned solutions
- Lack of understanding of the culturally appropriate support needs of First Nations women by government and mainstream non-government service providers.

First Nations women's specific issues in their contact with the criminal legal system have often been ignored, and there is often an assumption that their specific needs can be met through policies and programs that are developed for First Nations men or for women in general. Therefore, building fundamental change to reduce Aboriginal and Torres Strait Islander over-representation in the ACT criminal legal system requires addressing gendered justice.

1.5.4. A Note on Over-Representation Measures

Reducing Aboriginal and Torres Strait Islander over-representation in the criminal legal system is a key component of the TOR for this Report. It is important to consider both the conceptual limitations and advantages of using over-representation as a measure for successful interventions and a signifier of equality and/or 'just' outcomes. It is also important to identify other potential measures we might wish to apply (for example, Closing the Gap Priority Areas of Reform and compliance with human rights standards).

Over-representation is inevitably a measure of one rate against a standard. In our case, most often this comparator will be the non-Indigenous rate, either within the criminal legal system or with broader socio-economic, health and educational indicators. Within the criminal and civil legal systems, for example, the removal of children from families, the use of police or court diversion, the use of arrests, the use of imprisonment as a sentencing outcome, or the completion of community-based orders are frequently used as a basis to consider over-representation.

Assuming that lower rates of over-representation are a desirable outcome, it can, for example, disguise progress in reducing imprisonment if the Indigenous rate is simultaneously falling with the non-Indigenous rate or conversely hide a deteriorating situation where both the Indigenous and non-Indigenous imprisonment rates are rising in tandem, but the degree of difference (over-representation) stays the same. One danger is the assumption that the standard is itself at a desirable level to be measured against. For example, you may have a jurisdiction with very high rates of imprisonment for both Indigenous and non-Indigenous people, and simultaneously a low rate of over-representation. For example, the NT has an Indigenous imprisonment rate more than 50% higher than the ACT. However, it also has a non-Indigenous imprisonment rate more than double the ACT. As a result, the rate of First Nations over-representation in prison in the NT is significantly lower (17.7) compared to the ACT (27.4) – not because they lock-up fewer Aboriginal people in the NT (they incarcerate at a far higher rate than the ACT), but because they also imprison many non-Indigenous people. Western Australia is a similar

case to the NT, where the First Nations imprisonment rate is more than double the ACT, but the rate of over-representation is lower.⁵⁹

Over-representation is a measure of difference between two groups, and that measure can be useful within particular contexts. For example, significant levels of difference (over-representation) between First Nations people and non-Indigenous people over time can be indicative of potential systemic racism. Or, for example, if the rate of imprisonment is falling for non-Indigenous people but not for First Nations people (which has been the case in the ACT) and the rate of over-representation is increasing, then questions are raised as to whether there are systemic problems with laws, policies, programs or discretionary decision-making which systematically lead to different and poorer outcomes for First Nations people as a group. Further, an increasing rate of over-representation may also be occurring because systemic discrimination in the socio-economic drivers of incarceration continue to propel First Nations people in the criminal legal system at higher rates. Over-representation can be a useful tool in directing our attention towards systemic racism.

1.5.5. A note on methodology and our methodological approach

One of the overarching aims of the consultation process was to centre the experiences of First Nations communities. Qualitative approaches that rely on capturing peoples *lived experiences* are the most appropriate methodologies for achieving this aim and are steeped in rich theoretical traditions⁶⁰. To this end, and as discussed above, we undertook extensive consultations with a broad range of stakeholders, including community members, ACCOs, government stakeholders from across multiple Directorates, the judicial system, and ACT Policing, to enable us to capture rich and detailed information about the contexts of over-representations.

These data were analysed via established methodologies for qualitative research. This included all members of the research team undertaking coding of interviews, meeting to discuss emergent issues or themes, and cross-validation between members of the research team to ensure consistency and accuracy in coding. The themes – or issues – raised throughout this Report therefore reflect generalised experiences across multiple interviews and interview groups. To further ensure accuracy in the conclusions and recommendations derived from our analyses, we drew on publicly available reports and

⁵⁹ ABS (2024) Prisoners in Australia 2024, Table 18 <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2024/2.%20Prisoner%20characteristics%2C%20States%20and%20territories%20%28Tables%2014%20to%2035%29.xlsx>>.

⁶⁰ Braun V. and Clarke V. (2022) Thematic Analysis: A practical guide. Sage Publications; Agius (2013) Qualitative research: Its value and applicability, *The Psychiatrist* 37:204-206. <https://doi.org/10.1192/pb.bp.113.042770>; Prasad P (2017) Crafting qualitative research: Beyond positivist traditions. Routledge. <https://doi.org/10.4324/9781315715070>.

data sources. This included, where publicly available, policies and procedures followed by ACT Directorates, ACT Policing and the courts. As noted throughout our Report, we also drew on prior independent inquiries to ‘fact-check’ our conclusions and recommendations. The conclusions and recommendations included throughout this Report therefore reflect not only the lived experiences of First Nations peoples in the ACT, but also, a broad range of perspectives on the factors that contribute to over-representation of First Nations people in the ACT criminal legal system.

Our methodological approach is also grounded in the principles of the ethical conduct of research, particularly ensuring that all interview participants were given opportunities to provide free and informed consent. As part of this process, every participant was provided with explanatory statements, which were reviewed with participants prior to interviews commencing. Participants were explicitly notified that the information they provided would be used in our Report, including direct quotations to ensure that we accurately captured their experiences and perspectives. Participants were assured that no identifying information would be included in any part of our Review, including when their direct quotations were utilised. All participants were provided with, and signed, consent forms.

1.6. Inequality, Imprisonment and First Nations People

The ACT has the highest level of Indigenous over-representation in prison in Australia. However, being a comparative measure, this is partly driven by the low rate of non-Indigenous imprisonment in the ACT (half the national rate and the lowest rate of non-Indigenous imprisonment in any state or territory in Australia). As we noted in our First Report, this begs the question of why such a strong differential exists in the ACT. As we argue in this Report, it is the cumulative effect of disadvantage generally (particularly in a relative wealthy ACT society) and through a range of specific points of contact with the criminal legal system. The broader consideration relates to how these cumulative effects can be understood within the context of systemic racism.

Criminological literature has considered for some time that it is not the absolute level of poverty that is related to contact with the criminal legal system but rather the social and economic distribution of wealth.⁶¹ In short, the greater the level of inequality in a society, the more contact there is with the criminal legal system. Thus, unequal societies generate ‘crime problems’. As we have argued elsewhere in relation to First Nations people, poverty and disadvantage did not ‘fall from the sky’.⁶² It is the result of colonial

⁶¹ See Wilkinson, R. and Pickett, K. (2009) *The Spirit Level: Why Greater Equality Makes Societies Stronger*, Bloomsbury Press: New York.

⁶² Cunneen, C. and Tauri, J. (2016) *Indigenous Criminology*, Policy Press: Bristol, pp.5-6.

processes over centuries which have targeted and continue to keep Aboriginal and Torres Strait Islander people in a particular unequal social and economic position. Understanding the link between the outcomes of colonialism and contemporary systemic racism is imperative.

1.7. The ACT Context

The ACT context includes numerous socio-demographic factors. It is the second smallest state or territory in Australia by population size (after the NT) and with the smallest geographical area. However, it is the jurisdiction with the highest population density. Some measures indicate a relatively wealthy society with the highest *median* weekly incomes and levels of educational attainment of any state or territory in Australia.⁶³ As we were informed during our Review, this can mean that those who are less socio-economically advantaged ‘pass under the radar’ in relation to necessary services but are very much ‘on the radar’ in terms of law and order visibility. Many people spoke of the ‘fishbowl’ effect referring to the fact that First Nations people in contact with the justice system are well known, have a higher profile in a smaller population and are easily targeted by police.

Another relevant demographic factor is that the ACT has a comparatively large proportion of Aboriginal and Torres Strait Islander people aged over 50 who are members of the Stolen Generations – the second highest proportion in Australia, following WA.⁶⁴ Evidence of poorer outcomes for this group compared to similarly aged Aboriginal and Torres Strait Islander people over 50 who were not removed, showed statistically significant poorer outcomes across a number of indicators.⁶⁵

The size of the ACT jurisdiction can also impact on range of other factors from data collection, the absence of economies of scale, the ability to offer a broader range or number of services, and the levels of ACT Government funding to address various issues.

⁶³ Income as at August 2024, educational attainment as at May 2024. See: ABS (2024) Employee Earnings, Median weekly earnings in main job, by state and territory table at <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings/latest-release-states-and-territories>>; and ABS (2024) Education and Work, Australia, Tables 21-23 Highest educational attainment at <https://www.abs.gov.au/statistics/people/education/education-and-work-australia/may-2024/SEW24DC11_T21_T23.xlsx>.

⁶⁴ Australian Institute of Health and Welfare [AIHW] (2021) Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: updated analyses for 2018–19. Cat. no. IHW 257. Canberra: AIHW, p.5.

⁶⁵ These included that those removed were: less likely to be the owner of a home; more likely to have government payments as their main income source; more likely to have days without money for basic living expenses (last 12 months); more likely to live in a household that could not raise \$2,000 in an emergency; more likely to have experienced discrimination due to being Indigenous; more likely to have experienced actual or threatened physical harm; more likely to have a severe or profound disability; more likely to have poor mental health; more likely to have been diagnosed with a mental health condition. The AIHW research did not include criminalisation or imprisonment in their measured outcomes. Australian Institute of Health and Welfare [AIHW] (2021) Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: updated analyses for 2018–19. Cat. no. IHW 257. Canberra: AIHW, p.8.

The geographic size of the ACT means there are various cross-border issues in relation to the criminal legal system, particularly in relation to bail, parole, other community supervision and the absence of an agreement with NSW around concurrent serving of prison sentences.

The ACT was also identified as a jurisdiction with a high proportion of federal and ACT Government employees and the centre of national politics. 'It's incredibly top down here. Government run, government control' (Government Agency). It was suggested that this may impact on capacity for transformation within government, including around self-determination. It was also suggested that there's a very narrow band of acceptable behaviour in the ACT, possibly because it's a 'guy-y town'.

There are also aspects of the relationship between Aboriginal and Torres Strait Islander people and the ACT government that are noteworthy. The ACT has the only First Nations elected body in Australia: the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and one of the few jurisdictions in Australia with an Aboriginal and Torres Strait Islander Agreement. Also, both the complexity and relative transience of the local First Nations population was noted, including in relation to traditional owners of Country and the number of First Nations people from outside of the ACT. For example, when we spoke with First Nations males and female detainees in the AMC and Bimberi the vast majority identified from NSW nations like Wiradjuri, Gamilaroi, Bandjalung or Yuin, or from other parts of Australia, rather than as Ngannawal or Ngambri.

1.7.1. The ACT in the National Context

The ACT is a signatory to and has commitments under the **National Agreement on Closing the Gap**. Sections of our Report (particularly in Sections 2 and 3) set out in some detail current commitments under the National Agreement which are relevant to supporting improved justice outcomes, including reducing over-representation. We highlight that recommendations in our Review in many instances align with these commitments under the National Agreement and, in effect, identify pathways for their implementation (where this alignment is present).

For example, we note that formal policy and place-based partnerships the ACT government might establish with the First Nations community are aligned with Priority Reform One of the National Agreement: Formal partnerships and shared decision-making between governments and Aboriginal and Torres Strait Islander people. Funding First Nations-led organisations is aligned with Priority Reform Two under the National Agreement: Building the Community Controlled Sector. Priority Reform Area 3 requires that governments, their organisations and their institutions are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. The 'transformational elements' of this include to embed and practice meaningful cultural safety, identify and eliminate racism and improve engagement with Aboriginal and Torres

Strait Islander people. Priority Reform Area 4 of the National Agreement is that First Nations people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development. Many of our recommendations focus on First Nations improved access to and greater control over more meaningful justice-related data.

We note further that guidance on implementation in the relevant areas may be sought from work currently planned under the National *Justice Policy Partnership Strategic Framework*⁶⁶ as follows:

- **Sector Strengthening Plans:** The JPP will lead a national plan to grow the Aboriginal and Torres Strait Islander community-controlled law and justice sector, including coordinating jurisdictional plans. (See, for example, our Recommendation 3.7 on proportional funding).
- **Justice Partnerships:** The JPP will guide the development of a project to ensure all levels of government strengthen formal and enduring partnerships with Aboriginal and Torres Strait Islander organisations and communities on justice, aligned with the JPP Strategic Plan and National Agreement. This will include the development of specific data sharing partnerships to guide the improved collection, access, management and use of justice data to inform shared decision-making. (See our Recommendation 2.2).
- **Cultural Capability Frameworks:** The JPP will coordinate jurisdictional actions to design and deliver frameworks to strengthen cultural capabilities across all government justice agencies, developed through a genuine co-design process involving Aboriginal and Torres Strait Islander organisations and communities. (See, for example, our Recommendation 3.1, on the introduction of cultural capability KPIs for government funded NGOs; and Recommendation 3.3, 10.7 on the introduction of Cultural Safety Plans).
- **Anti-Racism Strategies:** The JPP will guide and coordinate jurisdictional actions to deliver strategies and actions, supported by measurement and accountability mechanisms, to address racism and bias across all government justice agencies, informed by best practice examples, and developed through a genuine co-design process involving Aboriginal and Torres Strait Islander organisations and communities. (See for example, our Recommendation 3.2 on Systemic racism reviews).

⁶⁶ Justice Policy Partnership Strategic Plan (2024) Available at <<https://www.ag.gov.au/legal-system/publications/justice-policy-partnership-strategic-framework>>.

1.8. Responding to Intergenerational Trauma and Community Cohesion

The issue of intergenerational trauma was raised by many of the people we spoke with during the research. They noted that the need to address intergenerational trauma was fundamental to resolving problems related to over-representation in the ACT criminal justice system. As one person stated, 'I think a broader truth and justice process is what needs to happen more broadly for people be reminded about what it is that brought Aboriginal people to the situation they are in today. I would urge contextualizing the recommendations in that broader intergenerational context' (Legal Service Provider).

A second question is how do we address the issue of First Nations community cohesion within the ACT? The need to build greater cohesion across various First Nations groups is often acknowledged as an important contextual concern for the ACT but also appears to be frequently left in the too hard basket. Is it possible to respond to both intergenerational trauma and community healing together through the same process? Some people we spoke with discussed the need for a process to explain and tell of people's pain and 'getting that out on the table' so that progress can be made. Overcoming this trauma might also provide a pathway through which healing can occur among Aboriginal and Torres Strait Islander people within the ACT.

The ACT Healing and Reconciliation Fund (\$20 million) was meant to support programs and services led by the Aboriginal and Torres Strait Islander community, with priorities to include developing sustainable community-controlled organizations and *a healing and reconciliation process*. However, it is unclear whether any progress was made with the latter priority. It is unclear what funds are left in the Fund (see also Section 3 of this Report).

It is not our place to make a direct recommendation on this issue. All we can do in terms of this Report is suggest possible pathways forward: that perhaps some type of 'truth telling' or other process specific to the ACT is a way to address intergenerational trauma and heal the community. This obviously must be supported and lead by Aboriginal and Torres Strait Islander people. Government has a role in providing support.

1.9. Structure of the Final Report

Section 1 – Introduction outlines our Review requirements and the approach taken by the evaluation team for Stage 2 of our Review and provides an overview of new or updated policy and program since our First Report was published. It also provides a summary of the research plan and key findings from our First Report (Stage 1) of our Review assessing implementation of the ALRC Recommendations. Section 1 outlines some of the key approaches, principles and other contextual matters relevant to our Review.

Section 2 – Decision-making, accountability and coordination outlines how First Nations-led and government structures, those focussed on multiple issues relevant to

over-representation and justice alone might be revised or renewed to increase government accountability, coordination and First Nations decision-making. Also discussed are reforms to government that ensure more effective collective action is taken by all directorates to avert and respond to over-representation.

Section 3 – Systemic racism and other issues explores structural issues of systemic racism and cultural safety, as well as funding and data related issues. A whole of government response to systemic racism is identified as essential and mechanisms to progress this are explored. The need for more strategic thinking related to resourcing of responses to and prevention of over-representation, including via reinvestment, is then discussed. More effective approaches to data in a justice context are explored, including to address existing data gaps and lack of access to data, and to strengthen support for Indigenous Data Sovereignty and Governance. Further issues canvassed are under and over-identification of First Nations people in the ACT and uncertainty around identified positions in an employment setting and non-recognition by the community of those appointed to such positions and their lack of connection with community. Various recommendations are made to respond to the above issues.

Section 4 – Education looks at education and issues such as racism and poor responses to disability and other complex needs of First Nations students as linked with over-representation. Responses to such issues at a Directorate level (with some ACCO input) are outlined, as are the positive responses some of these responses are delivering (including reduced recidivism), but improvements are required to ensure the education system is able to make the important contributions it has to offer reducing First Nations over-representation, particularly as early intervention and prevention.

Section 5 – Child Protection focusses on the ongoing over-representation of First Nations children across all points in the child protection system and all forms of out-of-home care (OOHC). We note that despite substantive reforms in the child protection space, there remains an absence of appropriately funded, culturally appropriate prevention and early intervention supports. We highlight the lack of action to address care-criminalisation particularly for First Nations children in residential care and the need to ensure that all elements of the Aboriginal and Torres Strait Islander Child Placement Principles are implemented to support efforts to reduce over-representation.

Section 6 – Youth Justice covers some of the key factors that are contributing to the over-representation of First Nations children and young people in youth justice, despite the legislative changes to raising the minimum age of criminal responsibility and the introduction of the Therapeutic Support Panel to support this reform. We note ongoing issues with the absence of appropriate diversionary options resulting in a significant number of children being held on remand. We also note the absence of culturally appropriate models to support First Nations children in youth justice, including while they are in detention, in their transition out of Bimberi and post-release. A key theme across many of the issues discussed in this section is the absence of recurrent, proportional

funding to support ACCOs in the implementation and delivery of services that may more effectively divert First Nations children from contact with the youth justice system.

Section 7 – Policing explores the role of systemic racism on policing culture in the ACT, and the impact this has on community trust in, and engagement with police. We note that despite recent work undertaken by ACT Policing to address their engagement with First Nations communities, issues about police use of force, lack of transparency and accountability remain significant concerns for community and government stakeholders. We also examine police responses to family and domestic violence, highlighting the absence of culturally appropriate responses, the absence of First Nations-led refuges, and the misidentification of First Nations victim-survivors as perpetrators.

Section 8 – Bail identifies the lack of comprehensive bail data. We note the widespread support for a standalone provision in the *Bail Act* which requires consideration of factors related to a person's Indigenous status when determining bail. We also assess the current presumptions scheme in relation bail. The widespread support for the introduction of a weekend bail court to reduce unnecessary custodies is examined. We also discuss the ALS NSW/ACT programs related to Front-Up and the Ngurrumbai Bail support programs, as well as other forms of bail support.

Section 9 – Courts and Sentencing discusses Aboriginal circle courts including the Supreme Court Pilot Circle Sentencing List, and options for the presentation of unique factors in the courts including Indigenous Experience Reports. There is also examination of the Drug and Alcohol Sentencing List, and Aboriginal women's access to Family Violence Orders. The section also considers other matters which were raised in consultations and submissions related to sentencing, diversion and procedural reforms.

Section 10 – Imprisonment and the AMC examines levels of Aboriginal and Torres Strait Islander imprisonment in the ACT. It discusses a range of human rights issues, including the lack of separation of remand and sentenced detainees, the absence of a structured day, individual and systemic racism and other matters such as strip searches and drugs in prison. The section also focuses on cultural programs, cultural awareness and cultural safety. Education and programs in prison and employment opportunities and employment-related training in the AMC is also considered in the context of rehabilitation. Issues in relation to women detainees are examined, as are health issues, civil law matters and deaths in custody.

Section 11 – Parole, Reintegration, Post Release Supervision and Support considers various issues which arise in relation to release from prison, reintegration, parole and post release supervision and support. We examine the parole system and the difficulties associated with access to parole for First Nations people and the absence of specific information their engagement with the parole process. We argue that reducing Aboriginal and Torres Strait Islander imprisonment rates and reoffending requires holistic and

wraparound approaches and commitments to various practical support in the community.

1.10. A note on the Recommendations

Our Report makes a series of recommendations which broadly follow the structure of our Report outlined above. The recommendations and their rationale appear in the Executive Summary, in the body of the relevant sections of the Report, and as a list in Appendix 3.

We have categorised the recommendations into two groups.

The first group of recommendations are those that require most immediate implementation either because the implementation of other recommendations is dependent or partially dependent on their introduction or because they will have the most immediate impact on reducing Aboriginal and Torres Strait Islander imprisonment and over-representation.

The second group of recommendations are no less important and indeed are likely to have in the longer term more sustained and greater impact on over-representation. However, they involve initial reviews, improved data collection or the prior implementation of other recommendations.

These two groups of recommendations are colour coded as follows.

The first group of recommendations are coded in bright orange.

The second group of recommendations are coded in light orange.

One of the greatest dangers facing our Review is that government agencies will continue to reproduce a siloed effect by only reading the sections of the Report they think applies to them, without seeing the totality and interconnectedness for change that is required. This is unfortunately, a mindset that is profoundly embedded. A further danger is that there will be inadequate attention paid to the *intent* of the particular recommendations.

As we (and others⁶⁷) have frequently observed, government agencies can tend to take a minimalist approach to implementation which allows for ‘business as usual’ and undermines achieving real change.

⁶⁷ Productivity Commission (2024) Review of the National Agreement on Closing the Gap, <<https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>>.

2. DECISION-MAKING, ACCOUNTABILITY AND COORDINATION

2.1. Introduction

Later sections of this Report primarily focus on reforms to specific areas of the justice system. Sections 2 and 3 centre on more structural issues requiring attention in order to reduce over-representation. These issues speak to *how* First Nations people and the ACT Government are currently developing, implementing, monitoring and evaluating responses to First Nations contact with the justice system, what's working in this context and what requires revision and reform and in what ways.

Attending to these structural issues is essential if First Nations justice outcomes are to be improved. The recommendations we have put forward for more structural change, including in decision-making, accountability, funding and data, must be implemented to support effective implementation of many of our other recommendations, as well as being important in their own right. As one government participant stated, 'We already know what the answers are' to over-representation. What is less clear or needs to be addressed is why identified solutions are not being implemented (Government Agency).

The ACT Government has identified actions it is taking to make a difference to First Nations justice outcomes in annual and other reporting and during the course of this Review. Often, however, First Nations people do not see these actions as being progressed effectively or as described by government, nor as aligned with their priorities for change. This was made clear to us during the consultations for our Review and frustration in this regard had previously led the community to call for a Royal Commission into over-representation. As one participant said, 'Can you educate me about how... what's happening now is working. Can somebody please tell me?' (First Nations Organisation).

At the centre of community priorities is a call for a genuine shift in power from government to the First Nations community in the ACT. 'I'm sick of seeing the authorities have that power... It's that oppressive hold that these systems still have over our people... And they just get away with it', stated one participant (First Nations Organisation). This is evident in much of the discussion in Sections 2 and 3 and in other sections of this Report. It is also reflected in many of our recommendations.

In taking our draft recommendations out to the community for feedback prior to finalising this Report, we heard that changing how things are done to address over-representation, including to increase First Nations control over solutions, must be achieved without overburdening the community or absolving the ACT Government of its specific responsibilities, including for its own transformation. This involves government both doing more to recognise and support the existing capability of First Nations people to lead solutions *and* reform to government processes and mechanisms that hinder rather than help efforts to improve First Nations justice outcomes. As one government participant

states, ‘Is it our problem to solve *or* is our responsibility to listen, to fund and to enable and support community to work towards solutions? And the answer is it’s always going to be both’ (Government Agency).

That this dual focus is appropriate was reflected in multiple conversations we had during our Review process. It is also embedded in ACT Government commitments under the Priority Reform Areas of the National Agreement and Core Focus Areas under the ACT Agreement that centre both self-determination and reforms in government ways of working with First Nations people. We refer to these commitments below, as essential starting points for government reform. But we also acknowledge that these may not always fully align with local (ACT) First Nations aspirations for change. For instance, commitments to shared decision-making under Priority Reform Area 1 of the National Agreement may be seen as not going far enough to realise self-determination.

2.2. Decision-making, accountability and coordination – identifying recommendations

In Section 2 we discuss structural changes required in the areas of decision-making, accountability and coordination. Existing ACT Government commitments are discussed, as well as current ACT structures for decision-making and accountability that have potential impacts on justice outcomes. The effectiveness of these bodies and ways in which they might be strengthened are considered. We look at both government and First Nations-led structures, and those that sit across multiple issues feeding into over-representation and that have a tighter focus on justice.

We then move on to consider necessary improvements to coordination across government relevant to over-representation, highlighted as important both to ensure adequate responses to the multiple causal factors of this issue and as poor coordination decreases accountability on the part of government for delivering better First Nations justice outcomes. Existing structures are again a focus, as are ACT Government outcomes measurement and the accountability of more senior staff in JACS.

Recommendations emerging from Section 2 encompass government-facing reforms that build accountability and coordination via senior appointments of First Nations staff in JACS and reforms to outcomes measurement. Strengthening of First Nations community input into outcomes measurement and Wellbeing Impact Assessment processes and the appointment of senior First Nations staff should also increase First Nations decision-making within government (Recommendation 2.3).

We have also recommended as a high priority establishment by JACS of an *interim* First Nations-led justice group to oversee implementation of recommendations of our Review, to be supported by JACS staff. Recommendation 2.1 details key aspects required for this body’s effective establishment and operation and is intended to increase accountability and self-determination

Further, through Recommendation 2.2, the interim group established under Recommendation 2.1 should lead a process to identify and guide future development of ACT mechanisms connected with First Nations justice issues. This process should consider what new or revised structures are necessary to ensure First Nations decision-making, oversight and other aspects of self-determination and increase government accountability and coordination so as to reduce over-representation *on an ongoing basis*.

2.3. ACT Government commitments: decision-making and accountability

The ACT Government has made commitments under Priority Reform and Core Focus Areas of the National and ACT Agreements related to partnerships, decision-making and accountability – identified as necessary to address current disparities in First Nations justice and other outcomes.

Firstly, the ACT Government has committed to partnering with the First Nations community in the ACT under **Priority Reform Area 1 – Formal Partnerships and Shared Decision Making**: *Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.*

Formal partnerships are defined under the National Agreement as ‘agreed arrangements (policy and place-based) between governments and Aboriginal and Torres Strait Islander people that set out who makes decisions, how decisions are made and what decisions will be about’ (Cl. 12). Policy partnerships are identified in the National Agreement as ‘partnerships created for the purpose of working on discrete policy areas, such as education, health or housing.’ ‘Place-based partnerships’ are identified as ‘partnerships based on a specific region, between government and Aboriginal and Torres Strait Islander representatives, and others by agreement, from those specific areas’ (Cl. 30).

Box 2.1 Policy and place-based partnerships: purpose – National Agreement (Cl. 31)

- To drive Aboriginal and Torres Strait Islander community-led outcomes on Closing the Gap
- To enable Aboriginal and Torres Strait Islander representatives, communities and organisations to negotiate and implement agreements with governments to implement all Priority Reforms and policy specific and place-based strategies to support Closing the Gap
- To support additional community-led development initiatives

- To bring together all government parties, together with Aboriginal and Torres Strait Islander people, organisations and communities to the collective task of Closing the Gap.

Strong partnership elements incorporate having formal agreements in place between First Nations people and government and partnerships that are accountable and representative (which includes adequate accountability of First Nations partners to their respective communities). Governments have committed to reporting annually on policy and place-based partnerships, including what partnership elements are met and unmet (Cl. 34-37). Shared decision-making is a further partnership element, described below.

Box 2.2 Shared decision-making – National Agreement (Cl. 32c)

- Equal weight is given to voices of government and Aboriginal and Torres Strait Islander people
- Transparency (for example, all parties have equal access to relevant information/data)
- Aboriginal and Torres Strait Islander people can speak without fear of reprisals or repercussions
- A wide variety of Aboriginal and Torres Strait Islander voices are heard (incl. women, Elders, persons with disability and young people)
- Funding decisions on programs/services by government align with jointly agreed community priorities, noting governments retain responsibility for funding decisions.

An important point referred to throughout Sections 2 and 3 of our Report, and also recognised in the National Agreement, is that *funding is required to support Aboriginal and Torres Strait Islander people to work in partnership with government*. Governments have committed to resourcing Aboriginal and Torres Strait Islander peoples to meet independently to determine their shared policy positions, to engage with and seek advice from Aboriginal and Torres Strait Islander people from different groups, and to support strengthened governance between and across Aboriginal and Torres Strait Islander organisations and parties (Cl. 33).

We note too that the Productivity Commission in its 2024 review of the National Agreement identified government responsibilities to ensure ‘resources they devote to the implementation of the Agreement are commensurate’ with its ‘ambition’. This requires additional resourcing (at a minimum) for:

... Aboriginal and Torres Strait Islander organisations to enable them to apply their knowledges and expertise to the implementation of the Agreement. This includes funding for design and delivery of programs and services but also funding for participation in government processes to ensure that Aboriginal and Torres Strait Islander knowledges and expertise are central in these processes.⁶⁸

Also important to note, the Productivity Commission has proposed ‘that the Agreement be amended to clarify the purpose of and broaden the scope of Priority Reform 1. This amendment should recognise that power must be shared with Aboriginal and Torres Strait Islander people in order for decisions to be made jointly and to achieve the ultimate goal of self-determination’.⁶⁹ This is a relevant point to raise in response to definitions of shared decision-making elements that still position responsibility for funding decisions with governments (see Box 2.2).

Priority Reform Area 1 is identified by the ACT Government as aligned with the ACT Agreement’s Core Focus Area of **Community Leadership**: *Aboriginal and Torres Strait Islander people have a strong voice, are decision-makers on issues that impact them and lead in the achievement positive life outcomes*. This Core Focus Area seeks to ensure that Aboriginal and Torres Strait Islander people have a ‘strong voice within government decision-making at the highest level’ through representative bodies and their direct involvement in ‘developing community-led solutions, providing advice to government, and contributing to government processes’.⁷⁰ In its 2023-24 reporting on implementation of the National Agreement, the ACT Government confirms its commitment to self-determination and to shared decision-making, as follows.

Aboriginal and Torres Strait Islander people being genuine partners with shared decision making is critical in government decision making on matters which affect the community, and in holding government to account against our commitments.⁷¹

Current implementation of the above commitments is identified in this Reporting as work undertaken by the ACT Government with ATSIEB, the Our Booris, Our Way (OBOW) Implementation Oversight Committee (IOC), the Justice Advisory Group and Aboriginal and Torres Strait Islander Justice Caucus.⁷²

⁶⁸ Productivity Commission (2024) *Review of Closing the Gap*, Essential Action 3.1, p.13.

⁶⁹ Productivity Commission (2024) *Review of Closing the Gap*, p.45.

⁷⁰ ACT Government (2022) ACT Aboriginal and Torres Strait Islander Agreement, Phase Two Action Plan – Community Leadership, p.1.

⁷¹ ACT Government (2023) ACT Annual Report for National Closing the Gap Agreement 2023, p.3.

⁷² ACT Government (2023) *Closing the Gap Report*, pp.8-10. Other implementation activities include Wellbeing Impact Assessments (WIAs) that require consideration of the impacts on First Nations people of proposals developed as Cabinet submissions and budget business cases, discussed below and ACT Government work alongside UNEC.

Secondly, under the National Agreement the ACT Government has committed to its own transformation via **Priority Reform Area 3 – Transforming Government Organisations:** *Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.*

Box 2.3 Transformation elements – National Agreement (Cl. 59a)

- Identify and eliminate racism
- Embed and practice meaningful cultural safety
- Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people
- Increase accountability through transparent funding decisions
- Support Aboriginal and Torres Strait Islander cultures
- Improve engagement with Aboriginal and Torres Strait Islander people.

Priority Reform Area 3 is aligned with the Core Focus Area of **Cultural Integrity** under the ACT Agreement: A society that supports the aspirations of all Aboriginal and Torres Strait Islander peoples and contributes to the building of respectful, fair and sustainable communities.

This Core Focus Area centres on ‘authentic engagement leading to self-determination’, ‘delivering culturally specific and accessible services’, ‘listening to the voices of Aboriginal and Torres Strait Islander people in the design of ACT Government policy and reform’ and ‘embedding cultural integrity into policy and practice of the ACT Government’, for example.⁷³ In 2023-24 reporting under the National Agreement the ACT Government identifies as current implementation of these commitments the government funding of ACCOs to deliver justice related programs and services, its commissioning process and again, its work with the OBOW IOC.⁷⁴

Also relevant, Cl. 67 of the National Agreement refers to establishment of **Independent Mechanisms** to support mainstream agencies/institutions to embed transformation elements and to monitor their progress. These mechanisms ought to be recognisable for Aboriginal and Torres Strait Islander people and culturally safe. They are to engage with

⁷³ ACT Government (2022) ACT Aboriginal and Torres Strait Islander Agreement, Phase Two Action Plan – Cultural Integrity, p.1.

⁷⁴ See other implementation activities in ACT Government (2023) *Closing the Gap Report*, pp.13-21.

Aboriginal and Torres Strait Islander people to listen and respond to concerns about mainstream agencies/institutions and to report publicly on transformation of agencies/institutions (identifying progress, barriers, solutions).

The Productivity Commission in its 2024 review of the National Agreement has described such bodies as essential, ‘Recognising that government organisations cannot be relied on to transform without external scrutiny’.⁷⁵

As it currently stands, governments do not face timely or appropriate consequences for failure to meet the commitments they made in the Agreement. Decision-makers have not faced negative repercussions (timely or otherwise) for poor decisions, or for the continuation of similar practices that exacerbate, rather than remedy, disadvantage and discrimination.⁷⁶

The Commission also notes the slow progress on establishment of Independent Mechanisms and the significant impacts this has on accountability and capacity of the National Agreement to achieve genuine change. It has recommended their immediate establishment in all jurisdictions – setting out details of the key elements of such a body as described below. The Commission has also suggested that independent mechanisms might oversee implementation of the entirety of the National Agreement, without a singular focus on Priority Reform Area 3 and that they need to be designed with First Nations input, including elected bodies.⁷⁷

Box 2.4 Independent Mechanism – Productivity Commissioner

- Governed and led by Aboriginal and Torres Strait Islander people
- Have a legislative basis
- Have sufficient guaranteed funding
- Have a broad remit covering all aspects of governments’ relationship with Aboriginal and Torres Strait Islander people
- Have full control of its work program
- Able to compel government agencies to provide information

⁷⁵ Productivity Commission (2024) *Review of Closing the Gap*, p.61.

⁷⁶ Productivity Commission (2024) *Review of Closing the Gap*, p.70.

⁷⁷ Productivity Commission (2024) *Review of Closing the Gap*, pp.22-23, 85-86.

- Intervene in real time to support Aboriginal and Torres Strait Islander people who have complaints about government agencies
- Operate with transparency
- Do not engage in program delivery or administer funding or programs.

2.4. Decision-making and accountability: initial points

As noted above, there is often misalignment between community and government perspectives on activities aimed at reducing First Nations over-representation. There are significant levels of community dissatisfaction with ACT Government approaches to accountability and decision-making, in particular – despite the above government commitments and what it has said about progressing their implementation.

Participants identified that currently, the First Nations community in the ACT does not have sufficient say about solutions to over-representation, including via existing First Nations-led and government structures (discussed below). Comments were shared about the significant ‘distance’ between the ACT Government as decision-makers and First Nations people. ‘It’s really a reflection of how little opportunity there is’ to inform government. ‘There’s no government action that is bringing people together, [no] opportunity to say this is what’s happening in our communities’ (Courts and Tribunals).

Issue-specific examples that emerged during our Review include (but are not limited to) a lack of consistent First Nations input in decision-making about First Nations people appearing before the Sentence Administration Board (see Section 11) and having no (grassroots) First Nations input on a multidisciplinary panel that triages social housing applications.

There’s no one there. You know like if people are getting eviction notices regarding neighbourhood disturbances there’s no one there to go hey, you mob, pump the brakes for the housing manager or even the neighbourhood to say, these mob are going through sorry business. They’ve just had mob roll in the town because Aunty’s palliative in the hospital – be understanding. Like yes there is overcrowding, but these mob are going through Sorry Business, like get off their case. That’s one scenario. There’s no advocacy or understanding at that level. (Government Agency)

At another level, other examples cited policy decisions being made by government with little or no consultation with First Nations people and organisations: for example, in the area of post-release housing.

There’s a big separation again between the policy and the decision making, and the implementation and [First Nations] people who are working [with the First

Nations community] ... You'd think you'd be consulted or asked to feed in. That doesn't happen very often at all... And we don't ever have anyone knocking on our door saying, 'Oh we're thinking about doing this. What are your thoughts?' Or 'Have you got any thoughts or feedback from the community?' Or 'What have you seen in your work as to what works and what doesn't?' (Legal Service Provider)

This same issue was raised by First Nations staff in the ACT Government asked to provide input at a Directorate level.

Our Elected Body rep [has said if] you want co design, you come to me with a blank sheet of paper, don't come to me with a document that's in draft form, thank you very much ...Quite often, you know, I've got a half a day turn-around and I get a document that's nearly finished. (Government Agency)

We note too that some participants identified as inappropriate an over-reliance on consultation with certain community members only, including First Nations staff or a limited number of First Nations organisations. While acknowledging that First Nations staff may also be members of the First Nations communities in which they live and work and have important perspectives to share in this capacity, broader representation (drawn from those not employed by government) is required for effective engagement and decision-making, discussed further below.⁷⁸

Most people here in Canberra don't mix with grassroots community... And the problem is... when you've got [First Nations] bureaucrats advising bureaucrats none of whom are talking to those that are actually most at risk, there's the disconnection in terms of the policy settings [which] are never going to be right. (Government Agency)

Participants also identified that where First Nations people *are* able to provide input intended to influence ACT Government decisions there are inadequate mechanisms in place to ensure this is directly translated into effective government action. As ATSIEB has previously noted, this leads to frustration, distrust, disengagement by community members and to what some government participants identified as 'consultation fatigue' at a community level.⁷⁹

At the end of the day, if community is telling them there's a problem with ABC and government's coming back with, you know, other areas and trying to divert the attention from what the community are actually trying to put in place it makes it

⁷⁸ The Auditor-General's report in implementation of the ACT Agreement identified ACT Government engagement with the community as 'small scale' and otherwise ineffective (only centred on certain First Nations stakeholders, not enough information sharing). ACT Auditor-General (2023) *ACT Auditor-General's Performance Audit Report: Implementation of the ACT Aboriginal and Torres Strait Islander Agreement*, p.2.

⁷⁹ ATSIEB (2023) Report from Hearings 14-16 August 2023, p.11.

much harder to... have that trust. The trust between community and government is... broken and there's still a lot of work to be done in that space. (First Nations Organisation)

Concerns were raised in this context about the *continual failure* to implement existing recommendations aimed at improving First Nations justice outcomes. This is discussed in other parts of this Report, including in relation to the multiple inquiries and recommendations relating to the AMC (see Section 10).

They have all these Commission reports... RCIADIC 30 years ago is a prime example. What did they run with? Reconciliation Australia. They've done nothing for grassroots people... All these things are already... written down. It's historically there. And yet they don't want to go in and do the right thing by people. They just want to keep us at a deficit all the time. (Sisters in Spirit Community Dialogue Women)

Participants queried why the same questions were being asked, including during our Review, when answers have been provided but not actioned. 'I mean like they're doing this report. As I said rewind, repeat. ACT government just go ahead and sit in their offices and make decisions. How about listening to what's needed!' (Legal Service Provider).

2.5. First Nations-led structures: cross-issue

In Sections 2.5 and 2.6 we predominantly focus on First Nations-led bodies with some capacity to input into decision-making and to increase government accountability and coordinated responses around justice issues. We discuss issue specific bodies and roles, particularly those centred on justice issues but also the OBOWs OIC, which is a good example of a self-determined issue specific body. We also focus on First Nations-led structures that consider and respond to multiple concerns likely to impact over-representation. A key strength of ATSIEB, for instance, is its coverage of various matters likely to influence criminal justice outcomes, evident in its participation on whole-of-government bodies and its various representatives that respond to different areas of government activity.⁸⁰

It's important that ATSIEB work across all the portfolios... because everything's intertwined, everything links in, especially for justice, you know, making sure that education [for instance] is across what's happening in the justice space and vice versa. (First Nations Organisation)

⁸⁰ See also objects in s. 3, *Aboriginal and Torres Strait Islander Elected Body Act* (2008) (ATSIEB ACT), which specifically refer as above to ATSIEB contributing to coordinated policy responses.

2.5.1. *The role of ATSIEB*

ATSIEB is currently the principal representative body for First Nations peoples in the ACT, established in recognition of self-determination of the First Nations community in the ACT and to participate in and influence government policy and other decision-making across multiple issues impacting the community. ATSIEB is intended to ensure First Nations voices reach decision-makers and that First Nations people are able to participate in policy decisions and to ensure coordination in government policy.⁸¹ The body's functions related to both decision-making and accountability are described as follows.

- Engaging and consulting with the Aboriginal and Torres Strait Islander community on a regular basis, reporting on consultation outcomes to the Minister responsible and when asked by the Minister, sharing information or advice about community views on specific matters
- Advocating for systemic or whole-of-government issues affecting the community's interests
- Monitoring and reporting on the effectiveness and accessibility of programs/services for Aboriginal and Torres Strait Islander people living in the ACT.⁸²

As further detail, ATSIEB is to develop a community consultation plan within 6 months of commencement of each term, with reasonable steps taken to share this with the community. A report on consultations conducted, with recommendations, should be published on the ATSIEB website and also provided to the Minister responsible within 2 months of the completion of consultations, who must then provide ATSIEB with a response within 2 months of receipt of the report. This response should also be published on the ATSIEB website. Consultation should be open and transparent and should lead to sustainable decisions through effective community engagement. Detail is set out in sections 11-13A of the ATSIEB Act.

The body must also hold public hearings twice during each ATSIEB term, which the executive officer of a government agency must attend if requested to do so by ATSIEB to

⁸¹ Section 3 of the ATSIEB ACT states as follows: 'The objects of this Act are, in recognition of the rights of Aboriginal and Torres Strait Islander peoples to freely determine their political status and to freely pursue their economic, social and cultural development in line with the right to self-determination— (a) to ensure maximum opportunity for the voice of Aboriginal and Torres Strait Islander people living in the ACT to reach decision-makers in the government and its agencies; and (b) to ensure maximum participation of Aboriginal and Torres Strait Islander people living in the ACT in developing and implementing government policies affecting them; and (c) to ensure coordination by government agencies in developing policies affecting Aboriginal and Torres Strait Islander people living in the ACT without detracting from, or diminishing, the responsibilities of those agencies to provide services for the broader community'. See also s. 8 of the ATSIEB Act.

⁸² See ATSIEB website: <<https://atsieb.com.au/our-work/functions/>>.

provide information and answer questions. ATSIEB recommendations are issued post-hearing and these require a response from the ACT Government.⁸³

[ATSIEB will] demand answers from ACT Government as to what they're doing for our people – what programs and funding do they have in place, [accountability] in terms of meeting commitments under Closing the Gap Priority Reform areas, specifically for their agencies, making sure they provide an update on their targets and where they are at. To make sure as community reps and ATSIEB they are delivering on what they are responsible for... that they are either on target or putting mechanisms in place to change the way that they're doing business and... operating and supporting community-controlled organisations. (First Nations Organisation)

ATSIEB representation on ACT Government whole-of-government bodies is a further mechanism for Aboriginal and Torres Strait Islander participation in decision-making and accountability. ATSIEB is an 'active participant' on the Aboriginal and Torres Strait Islander Affairs Committee of the ACTPS Strategic Board (SBC). This group is responsible for driving National and ACT Agreement implementation, including around Priority Reform Areas; 'leading strategic responses and purposeful collaboration' to impact the First Nations community; and 'providing leadership to and collaborating with other groups in government' around First Nations priorities 'to inform Cabinet decision making'.⁸⁴ ATSIEB also co-chairs the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee (IDC), which is responsible for implementation and monitoring of the ACT Agreement, assisting the SBC with input and advice and seeking First Nations policy advice on systemic and whole of government issues for the SBC.⁸⁵

⁸³ Section 10A of the ATSIEB Act identifies hearings as focused on such things the accessibility and effectiveness of government programs/services for Aboriginal and Torres Strait Islander people in the ACT and their access to other government programs/services. Section 10B states that within four months after this hearing ATSIEB must report to the Minister in writing and with recommendations about changes to programs/services for Aboriginal and Torres Strait Islander people in ACT. The Minister must present this report to the ACT Legislative Assembly within 6 days after receipt and provide a response not later than the first sitting week after the end of 4 months after receipt of the ATSIEB report.

⁸⁴ Specifically, the SBC is tasked with driving the ACT Government's contribution to the Closing the Gap Partnership to achieve the Priority Reform Areas in the National Agreement and to the ACT Agreement; leading strategic responses and purposeful collaboration to realise emerging opportunities and risks with potential to impact Aboriginal and Torres Strait Islander communities; providing leadership to, and collaborating with, other Strategic Board committees and working groups on Aboriginal and Torres Strait Islander priorities and ACT Agreement commitments to inform Cabinet decision making'. See the Auditor-General (ACT) (2023) *Auditor-General Report 6 of 2023 – Implementation of the ACT Aboriginal and Torres Strait Islander Agreement – Government Response*, p.2.

⁸⁵ Specifically, the IDC is responsible for implementing and monitoring of the ACT Agreement, including the development of the reporting framework; providing six-monthly progress reports to SBC on the progress made against the ACT Agreement; assisting the SBC with other matters that require Cross-Directorate input and advice; and seeking Aboriginal and Torres Strait Islander policy advice on systemic and whole of government issues for the SBC. ACT Government (2023) *Response to Auditor-General's Audit Report*, p.2.

Turning to discussion of ATSIEB functions during consultations, these were identified as holding the ACT Government to account to deliver on community priorities and on commitments made under the National and the ACT Agreements.

[ATSIEB's role is to ensure that the] community feel that they have champions and representatives that are pushing forward, that their needs are met, their wants, their agendas... [They] have that platform, have a right to participate in conversations, have a seat at the table when it comes to the policy design and development, implementation of programs or funding for our people. (First Nations Organisation)

When the policymakers are considering developing programs and policies and funding and grants ...they're taking on board that information from... ATSIEB. So [ATSIEB] can funnel that up for community or [provide] an opportunity for community... to have direct inputs. (First Nations Organisation)

In terms of the body's specific focus on justice, a single ATSIEB representative is connected with both Justice and Community Services. The role of this representative was described during consultations as encompassing community engagement (including visits to detainees in AMC and Bimberi), ensuring community understands the role of ATSIEB, liaising with Ngunnawal Elders for guidance and direction, stakeholder engagement (for example, around service and program delivery), and identifying and monitoring compliance with ACT justice system protocols and processes relevant to First Nations people, amongst other things.

Perspectives on ATSIEB

The ACT Government relies very heavily on ATSIEB to input into decision-making and ensure government accountability. The body was held up by some during consultations, particularly by government, as an exceptional model nationally in terms of representative First Nations structures and it has also been identified in ACT Government reporting as the only Independent Mechanism to be established in Australia under Cl. 67 of the National Agreement.⁸⁶ Arguably, ATSIEB does not have all of the required elements of an Independent Mechanism as described by the Productivity Commission (above) – and as the following comment suggests, there is currently no effective oversight mechanism in the justice space specifically (discussed further below).

One of the reasons why the ACT does so poorly, where it could do so well, is that there is no overarching mechanism for scrutiny or accountability or driving the agenda. And ATSIEB is not it. Once upon a time the ACT had an AJAC (Aboriginal

⁸⁶ Community Services Directorate (2024) *Annual Report 2023-24*, p.63.

Justice Advisory Committee) that was abolished, then we had the Justice Centre. That was abolished. It's become the can they kick down the road. Government has benefited from that lack of overarching scrutiny and have for many years pointed to the ATSIEB as providing that kind of governance. But the reality is it does not. (Courts and Tribunals)

Various issues were raised about ATSIEB during this review around its capacity to carry out its functions effectively and to some extent what those functions are. We note that some of the issues raised in relation to ATSIEB align with those highlighted previously in the ACT Auditor-General's report on implementation of the ACT Agreement (2023). For instance, the Auditor General reported that the overall view and understanding of the ATSIEB role amongst the First Nation community in the ACT is 'unclear and cynical'.⁸⁷ We heard during consultations that the community need to feel more confident about ATSIEB as an 'elected body that can advocate, influence' (Government Agency).

We briefly discuss below recent changes to ATSIEB following the Auditor General's report. Also noted is that ATSIEB is currently subject to independent review commissioned by the ACT Government, the outcomes of which are as yet unclear.⁸⁸ The ACT Government has advised that part of the funds allocated to additional resources for ATSIEB was used to engage an independent consultant to work with the ACT Aboriginal and Torres Strait Islander community to develop a 'Listening Report' which can be presented to the ACT Government for consideration. Its recommendations and findings will help to guide next steps for government, with further work on the Elected Body model undertaken in partnership with the ACT Aboriginal and Torres Strait Islander community.

Shared decision-making with government is identified above (in Section 2.2) as requiring that equal weight be given to the voices of government and First Nations people, that First Nations people should be able to speak without fear of reprisals or repercussions and that a wide variety of Aboriginal and Torres Strait Islander voices must be heard. There were questions raised about ATSIEB in all these contexts, including how well it is connected with and representative of the broader First Nations community. Lower than

⁸⁷ Auditor-General (ACT) (2023) *Auditor-General Report*, p.25.

⁸⁸ The ATSIEB review has a survey for community input, which includes questions, for instance, about which of ATSIEB's functions are the most important; how well it balances its roles (e.g. advocacy, oversight and representation) and if it needs additional functions; how it might improve its community engagement, accountability to and representation of the community; its membership; whether it ought to be part of an existing Aboriginal and Torres Strait Islander organisation, a non-profit organisation or other entity and so on. Input is sought on specific options for change such as improved communication about ATSIEB activities via an online presence, potential for sub-committees and youth shadow committee and an annual performance review of ATSIEB with community input. The survey is available here: <<https://atsieb.com.au/news/take-the-atsieb-community-survey/>>.

expected voter turnout at the last ATSIEB election and problems of community accessibility to the body were some issues highlighted.⁸⁹

They have to accept that the Elected Body is not that [participatory] mechanism because it's not [representative] ... It cannot claim any kind of mandate remit... It's not truly reflective of what Blakfellas in the ACT want because they've only got a hundred people voting, or whatever the most recent numbers were, and they have consistently dwindled. (Courts and Tribunals)

... it's not satisfactory and it's not really performing its function, maybe only as far as the government might be ticking a box. But the community is not happy and I don't know that anyone would say that it's functioning as it's intended because for instance I phoned, emailed them at the start of the year and I'm yet to even hear back... really on an important matter that I thought the Elected Body should be representing the community on. It wasn't. There was nothing political about it. It was just an important thing for the community for them to hold the government accountable. (Legal Service Provider)

We note that the ATSIEB website publishes *some* material related to its activities, but there are a number of gaps which leave the First Nations community under-informed about their work.⁹⁰ Greater transparency by ATSIEB, at a minimum on the ATSIEB website and via annual reporting made accessible to the community, will increase community confidence in ATSIEB and understanding of its functions and help to hold government to account to deliver on promised actions and outcomes.⁹¹

ATSIEB is also seen as being positioned too closely to government, including when its representation is drawn primarily from First Nations ACT Government employees. This is seen as leading to actual or perceived conflicts of interest and to the over-centring of ATSIEB's work around government priorities. One participant pinpointed ATSIEB's oversight, for instance, of Action Plans under the ACT Agreement, which are seen as largely government rather than community developed and driven. This apparent closeness with government is seen to impact on ATSIEB's capacity to hold government to account and to progress community-specific priorities.

Being bound by codes of conduct and stuff like that – it doesn't really give them that independence to speak freely to criticise the government which is what's

⁸⁹ There were suggestions too by government participants that this was in part due to apathy and distrust post the 2024 Voice to Parliament Referendum and/or issues within the Electoral Commission (not announcing polling places in a timely way).

⁹⁰ For example, there are missing consultation plans, Listening Reports and government responses to ATSIEB's recommendations post-hearings.

⁹¹ While some material must be published (according to the ATSIEB Act), ATSIEB ought to give consideration to publication of more detailed, comprehensive and up to date information outside of any requirements under the latter legislation.

needed. I think we're beyond the let's sit there and talk nicely and try to find solutions. It's really, no, government. You're failing and this is where you need to do better. (Legal Service Provider)

Some suggested that lack of community confidence in ATSIEB is due to the way it has been established by the ACT Government. Limited ATSIEB resourcing is one relevant matter which negatively impacts the body's ability to carry out its functions. 'We ask a lot of them. We have individual Elected Body members who own as their portfolio a whole directorate [or multiple directorates] and they're supposed to be across everything, and I don't know if that's viable' (Government Agency).

One of the fundamental failings is the design of that body. The remit of that work is enormous. And effectively people are asked to do it as a hobby. The setup of it in that way was designed to make sure that government aren't held to account to the full extent that such a body could ensure... The remit to be across all areas of government that influence the lives of First Nations people in circumstances where they're part time roles. I think it's one of the many reasons why it is a bit of a white elephant in this community because it is seen as ineffective. I don't think that's necessarily a reflection of the people over the years who've been involved. I think it's a reflection of the way that it's set up. (Courts and Tribunals)

In 2024, ATSIEB received a \$1.19 million funding boost to strengthen its independence and functions, including around engagement with community and working in partnership with government. An independent secretariat was introduced, alongside increased policy support. The capacity of ATSIEB chairs has been increased (now 2.5 days per week, compared with one day per week previously).⁹² We note that this funding is due to cease in December 2025. Further resourcing is required, both beyond 2025 and in terms of scope – including potentially, as one participant suggested, to resource the setting up of an ATSIEB hub to lift community engagement and to create full time roles for each representative.

One day a week – it's really not sufficient to be able to get through all the work that you need to do. It should be a full time roll for each rep... just having more days to do the work. And a lot more resources in terms of a location where ATSIEB can actually work out of would be beneficial... ATSIEB can conduct meetings and people in community then have a central point where they can come and speak to ATSIEB... [which] would make the body more accessible. (First Nations Organisation)

⁹² Community Services Directorate (2024) *Annual Report*, p.63.

ATSIEB's capacity to hold government to account was also questioned: '[For example] as an Elected Body member I can go to the Minister or to the DG (Director General) and I can say I want you to do this and they can go, 'No'. What's the point?' (Government Agency). Government identifies ATSIEB hearings as an 'important accountability mechanism', including for Ministers and officials – keeping them 'focused on delivering the intent and measuring the impact of actions committed to' under the ACT Agreement.⁹³ Questions were asked by participants, however, about the extent to which ATSIEB hearings are able to ensure accountability. While ATSIEB may make government attendees uncomfortable in these hearings, this is identified as not going far enough to push government to do better. 'I don't think people are actually particularly scared of them like they would be in Senate Estimates, which I think is the idea. They need the accountability mechanism and the pressure' (Government Agency).

Those Elected Body hearings do put people in the awkward situation where they need to answer really hard questions. The follow through is we need better answers next time round. There are no real consequences for a fluffed answer on the day about what we're doing ultimately. So, it's embarrassing for a period of time. But the real problem here is that it's of interest to a very small section of society. So, you ride the problem out. The people that are interested in it know that it wasn't a great performance, but there's no impetus to do it any, like, significantly better at the macro level. (Government Agency)

Enhancing ATSIEB's capacity

Noting that as the review of ATSIEB is not yet complete, we have not made recommendations about reforms to this body. Key issues raised above related to resourcing, transparency, and ATSIEB's connection to the First Nations community, independence and capacity to hold government to account need attention, given the significant potential positive impacts ATSIEB may have on First Nations justice outcomes.

In thinking about additional resourcing for ATSIEB, we suggest that this directly aligns with Cl. 33 of the National Agreement, which commits governments to *fund* First Nations people to work in partnership with them (as above) – though as noted earlier, who in the ACT are 'formal partners' with government under the National Agreement is not clear (see further discussion, for example, in Section 2.5.3).

I do think there is a need to think about how we resource the community to participate in these pieces of work and discussions and not expecting that it can

⁹³ ACT Government (2022) *Closing the Gap: Jurisdictional Implementation Plan*, p.27
<https://www.act.gov.au/__data/assets/pdf_file/0005/2385986/Closing-the-Gap-Jurisdictional-Implementation-Plan-2021.pdf>.

be done for a minimal fee or for free a lot of the time. I think we're going to do shared decision making seriously that there has to be some kind of capacity that's provided to participate in that fully. (Government Agency)

ACT Government investment in ATSIEB – or any First Nations bodies, including those established as part of this Review (via Recommendations 2.1, 2.2 and 3.11) should extend *beyond financial resourcing*, however. It requires implementation of existing ACT Government commitments and other expectations held by First Nations people in the ACT to work differently with them.

I think we put aside all of those conversations and just ask a really core question. We have a legislated mechanism in place for First Nations representation... If that body was implemented in an effective way, could it do the job that we needed it to do in the space? Yeah, absolutely, absolutely, absolutely it could. But that would require the investment in that longitudinally and also require multiple areas of government to come together to effectively do that... And government's really good at funding programs and projects... [but what's needed is] systemic and enduring change. (Government Agency)

Government invests in First Nations people and their solutions for positive change by working in ways that truly recognise and strengthen self-determination of a body like ATSIEB. This might mean that an independent body like ATSIEB has greater control of its work program and real power to hold government to account. We heard that an *effective* oversight body, for instance, would need to have 'authority, it has teeth and has levers to pull on to ensure that the right things happen.' (Government Agency) Another participant stated that 'there has to be some mechanism [in the ACT] for accountability that is not beholden to government' (Courts and Tribunals). ATSIEB is arguably not currently set up or functioning with the required level of independence and power.

ATSIEB's current limitations led participants to think about alternative or additional First Nations-led bodies in the ACT that would have decision-making and oversight functions – both in a justice space but also across multiple issues, including an ACT Peak body, discussed below. On this point, one participant stated that ATSIEB needs 'to be part of the process. They are a critical part of but they are not the only process' for delivering change that leads to better First Nations justice and other outcomes (Government Agency).

It has to be broader than just the Elected Body. You know, in our old decision-making ways... nobody made a decision in isolation for the whole community. People came together. People had the conversations. Then it was those with legitimacy in that area – whether it be based on gender, whether it be based on kinship, whether it be based on function within community law as in lore – decisions were made and then they actually executed them for the good of the community. That's what needs to happen right now. We've got too many public

officials who are trying to [provide the voice of community] – and again, not that they're bad people but... their views may not be right. (Government Agency)

Discussion of this issue covered *who* gets to have a voice in an expanded and more inclusive representative body. Noting that there is not consensus on this issue, one possibility raised was that the ATSIEB model be retained but that it have mandated representation from particular groups, including ACCOs and those with lived experience. To further elevate justice issues specifically (beyond the existing justice representative within ATSIEB), these additional representatives could have a justice focus/lived experience of the justice system. Optimal ways in which cross-issue First Nations-led bodies like ATSIEB and/or a peak body in the ACT might respond to justice issues specifically and align with justice specific bodies need further consideration, which may be considered as part of the process established under Recommendation 2.2.

It needs to have community organisation representation plus community members because we have some strong voices in the community that aren't connected to organisations but have that 'I know what's going on and people come to me because I'm a trusted person in the community'... That body is the body that goes to government. Which is sort of what we had when we had the leadership group... put together to rally to have a Royal Commission [into over-representation]. (Legal Service Provider)

The Elected Body [is] going through its own period of change... It doesn't really represent the community I don't think. But I mean community organisations sometimes don't represent the community, but they will represent and deal with the issues that they see, which is what the government needs to be aware of. So, I think it has to be sort of maybe a joint... Maybe have an election part but have dedicated seats that are for community orgs, the nominated people. (Legal Service Provider)

On a further note, issues of transience and tension within the First Nations community in the ACT (including around traditional ownership) were discussed too in thinking about First Nations-led structures – identified as in part a manifestation of intergenerational trauma (see Section 1.8) and as sometimes impacting on who is able to speak on First Nations issues and who is not.⁹⁴

We all know this is an incredibly complex community and in fact in a lot of our work we don't use the word community, we use the word communities. We have to pluralise because there are multiple sub-communities in the ACT. Obviously, the tensions between traditional custodians and... traditional custodianship is

⁹⁴ One participant highlighted that there is no traditional owner representation on ATSIEB at present.

contested... And then the fact that we like most eastern seaboard major cities have mob from all over the country here. (Government Agency)

Many of the Aboriginal and Torres Strait Islander people that come here are from other places. So, there's a bit of disconnect. And then people that have been here for a long time are having their views... heard and [others are] thinking, okay, well, I'm not from here, but I'm still an Aboriginal person... there's some discourse about who was here first... So, I think there's different factions... (Legal Service Provider)

Fragmentation within the community was seen by some as a barrier to establishing Aboriginal and Torres Strait Islander-led governance structures, with current complexities within the community meaning that existing and new bodies cannot be brought together effectively, but others disagreed. 'Well, so it's a really complex social setting. We get that. In some ways though, it's also an excuse for not doing the right thing' (Government Agency). We highlight too that fragmentation is a major issue for the ACT Government, discussed in detail as lack of coordination across directorates (see Section 2.7).

2.5.2. A human services (ACCO) peak body

In terms of an alternative expanded and inclusive representative body, we were advised that the ACT Government has committed funding to conduct an arm's length consultation in relation to establishment of an ACT peak body. It is not clear how this process is currently being progressed, including alongside the review of ATSIEB.

Discussion during the Review covered how a peak body established through this co-design process might bring ACCOs working across sectors together, with some participants identifying that an appropriately resourced 'human services peak' is needed in the ACT. The importance of raising a collective ACCO voice to advocate around the range of issues impacting the Aboriginal and Torres Strait Islander community, including justice issues, was highlighted. One ACCO has much less influence than a collective of ACCOs, it was stated by one government participant.

An ACCO-centred peak body might also provide more coordination around service provision to the Aboriginal and Torres Strait Islander community in the ACT (see also Section 3, Funding). One participant stated 'there's no body that you can go to, to say who in the ACT does what. There's no overarching coordination such that anybody has an eye on what is being done across the board' (Courts and Tribunals).

In discussion of a human services (ACCO-centred) peak, participants cited the Aboriginal Executive Council (AEC) in Victoria as a useful example.⁹⁵ The AEC was established to

⁹⁵ Aboriginal Executive Council (AEC) (2020) *Aboriginal Executive Council: Background Information and Terms of Reference* <<https://aal.org.au/wp-content/uploads/AEC-Background-Terms-of-Reference-April-2020.pdf>>.

provide ‘an independent self-determining coordination, collaboration, policy development and advocacy mechanism for Victoria’s peak, lead and state-wide’ ACCOs, with its functions set out below. Its membership includes (but is not limited to) the Aborigines Advancement League, Aboriginal Community Elders Service, Koorie Youth Council and other ACCOs working in health, legal education, family violence, housing and child protection areas. Also represented is the Federation of Victorian Traditional Owner Corporations. Following this example, a peak body in an ACT context might also potentially incorporate representation from young people, Elder groups and UNEC.

Also noted, the AEC group works with the Victorian Government via both the Secretaries Leadership Group on Aboriginal Affairs (SLG) and Senior Officers Group (SOG) on Aboriginal Affairs. AEC sits between the broader community and government, and thus its roles and responsibilities include, for instance, conducting community engagement to inform its work and collaboration with SLG and SOG (for example, so as to provide community-informed policy advice to government).⁹⁶

Box 2.5 Aboriginal Executive Council (peak body) in Victoria: Functions

1. Promoting and pursuing the rights and interests of Aboriginal people in Victoria including the right to self-determination
2. Acknowledging and extending the legacy of Aboriginal community members who established and developed the Victorian Aboriginal Community Controlled Sector
3. Providing strategic leadership to further develop and sustain the Aboriginal Community Controlled Sector
4. Coordinating public policy and advocacy from across its membership
5. Working collaboratively with other Aboriginal Community Controlled bodies including the First Peoples Assembly of Victoria
6. Engaging with the Victorian Government and Parliament to provide expert advice and set the direction for government commitments to Aboriginal self-determination

⁹⁶ Specifically, AEC is to provide strategic advocacy and policy advice to set and guide the direction for government to implement its commitment to self-determination; to collaborate with government to develop agreed priorities for self-determination and agreed implementation governance, protocols and practices; to establish and maintain systems and processes for the transparent management of its resources and secretariat functions. (AEC) (2020) *Aboriginal Executive Council: Background Information and Terms of Reference*.

7. Monitoring and providing publicly available reports on government policy frameworks and commitments including the Victorian Aboriginal Affairs and Closing the Gap frameworks
8. Working with the Victorian Secretaries' Leadership Group on Aboriginal Affairs (SLG) and Senior Officers' Group on Aboriginal Affairs (SOG) to achieve measurable outcomes in support of self-determination and implementation of the Victorian Aboriginal Affairs Framework
9. Encouraging mutual support and collaboration across the AEC's members
10. Communicating and engaging with the Aboriginal community through AEC members
11. Participating on behalf of the Victorian Aboriginal Community Controlled Sector in processes relating to the Closing the Gap framework
12. Influencing other stakeholders with an interest in issues impacting Aboriginal people including the broader community services sector, public entities and authorities and Commonwealth Government Ministers, Departments and agencies.

2.5.3. *First Nations cross-sector structures/government*

The above discussion raises questions about how to amplify justice issues within cross-sector structures like ATSIEB or an ACCO Peak, but also, as evident in the operation of the AEC (above), it is important to consider how such bodies might best interface with cross-sector and other government structures to progress community-identified priorities, support self-determination and ensure accountability and improved coordination at a government level to contribute to reduced over-representation.

Current relevant cross-sector government mechanisms that interface with ATSIEB include the IDC and SBC. As noted in Section 2.5.1, ATSIEB currently actively participates in the SBC and co-chairs the IDC. Discussion in later sections discusses ATSIEB participation in justice-specific government mechanisms (Justice Advisory Group, the Aboriginal and Torres Strait Islander Justice Caucus).

Also relevant, we heard that the ACT Government is considering what type of formal policy and place-based partnerships it might establish with the First Nations community, aligned with Priority Reform 1 of the National Agreement (see Box 2.1, Section 2.3). Government participants identified that there was discussion underway about ATSIEB's role as formal partner (see further 2.6.1). On this point, one government participant suggested that ATSIEB may be conflicted if it holds the role of formal partner with the ACT Government under the National Agreement alongside that of an independent

mechanism, identified as a much more ‘adversarial’ role than a partner sharing decision-making.

There's a degree of adversarial-ness around [ATSIEB processes] ... They continue to be our only representative with the [National] Coalition of Peaks and they're elected by the community, they fit all the requirements that we would have to have really to partner with them... [But] is it an oversight mechanism or is it a partnership mechanism or can it be both? And if it's not the partnership mechanism, how do you come back to a partnership mechanism that potentially the community buys into? (Government Agency)

There was some discussion too by government participants about how an ACT peak body, if established, might be part of a formal partnership. We note that it was not always clear whether this and other discussion about formal partnerships related to policy or place-based partnerships or both. Justice Policy Partnerships, incorporating ATSIEB and Justice Caucus representation, are discussed further below.

As this discussion suggests, the roles of an ACT peak body and ATSIEB are likely to be relevant to consideration under Recommendation 2.2. of ACT structures best placed to increase self-determination, accountability and coordination to contribute to. reduced over-representation. Whether existing groups like the Justice Advisory Group, the Aboriginal and Torres Strait Islander Justice Caucus, the IDC and ATSIEB are effectively bringing together government (firstly) and (secondly) government and the First Nations community as key points of connection around First Nations justice-related issues will also need examination within this process. For consideration too will be how formal partnerships might be established to build coordination, accountability and self-determination in this context.

2.6. First Nations-led justice bodies

There are currently some mechanisms in place for First Nations input into justice related policy decision-making and its implementation and some level of oversight of JACS activity pertaining to First Nations people. In terms of structures, this includes the Justice Caucus and ATSIEB representation (via its justice representative) on the Justice Advisory Group. Processes for community input include JACS commissioning and the expected co-design of the Justice Futures Fund under the *RR25by25 and Beyond Strategy* (2024) (RR25by25) to ‘set its justice reinvestment agenda at both a policy and funding level’ (discussed further in Section 3, Funding).⁹⁷

⁹⁷ JACS (2024) *RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT: Reducing Recidivism in the ACT by 25% by 2025 Phase 2* <https://www.act.gov.au/_data/assets/pdf_file/0010/2563831/RR25by25-and-Beyond-A-Justice-Reinvestment-Strategy-for-the-ACT.pdf>. JACS also refers under the latter strategy to working with ATSIEB and

Section 2.6 considers the effectiveness and current scope of the above mechanisms and discusses other possibilities for First Nations-led justice mechanisms: a newly configured Aboriginal-led justice body and a Social Justice Commissioner role for the ACT. The need for a First Nations-led structure or mechanism that has strong independence, appropriate resourcing and other capacity to effectively input into decisions and to hold government to account around reduction of over-representation is emphasised throughout.

2.6.1. *Aboriginal and Torres Strait Islander Justice Caucus*

As discussed in our First Report, Justice Caucus is an Aboriginal and Torres Strait Islander forum with representation from ACT Government staff, service providers delivering justice programs and ATSIEB.

The Justice Caucus Chair(s) attend(s) the ACT Government's Justice Advisory Group (JAG), informing JAG about what has occurred at a Caucus level and seeking further information from JAG about implementation of the ACT's Justice Implementation Plan (JIP) (under the ACT Agreement). JAG is constituted by senior executives with responsibility for action items under the JIP and involves all nine JACS business units. JAG is co-chaired by the Deputy-Director General of Community Safety and ATSIEB's justice representative. JAG then connects with the IDC, providing advice on justice related priorities and progress to this Body.

Points raised about Justice Caucus during this Review include that government places too much reliance on it for First Nations input related to justice matters and that 'it's being asked to wear too many hats and not doing any of those things particularly well' (Government Agency). It is also seen as being too close to the ACT Government or in fact as an ACT Government entity – in part because until recently it has been chaired by government representatives alone, identified as giving Justice Caucus too strong a focus on 'government priorities' (Government Agency). This too-close connection with government is said to explain why Justice Caucus has insufficient levels of engagement with community representatives.⁹⁸ The latter closeness with government is also seen as causing actual or perceived conflicts of interest for Caucus, making it hard for the group to call government out. 'It's a JACS initiative. They're never going to want to uncover

the 'broader First Nations community', p.25. We note that RR25by25 is not First Nations specific but is identified by JACS as having greater focus in its current iteration on addressing First Nations over-representation. It is not clear how RR25by25 (2024) was informed by the First Nations community in the ACT. Though see discussion below about First Nations representation on research advisory and implementation groups attached to the ECG.

⁹⁸ Attendees are often a majority of government representatives and the body's lack of engagement with those with lived experience was also noted.

government inaction. They speak from the same speaking notes that ministers speak from' (Courts and Tribunals).

Recent changes have been made to Justice Caucus, including bringing in a First Nations community member to co-chair the group alongside a First Nations ACT Government representative.

[Caucus now] is going to be more community driven. Community, one, have a seat at the table and two, [have] an opportunity to share on the ground information that needs to be sent up to the policymakers – and also provide an opportunity for the ATSIEB rep and the community chair to then pass information, distribute that information out to community around programs or funding. (First Nations Organisation)

The ACT Government has also indicated that discussions are currently underway with ATSIEB to pursue a different model for the work carried out by Caucus and JAG. The intent of such changes is identified as being to establish a new structure bringing together ATSIEB and Caucus as a formal partnership, aligned with Priority Reform 1 (see also Section 2.5.3). Clearly, the ACT Government is already thinking through how to improve current mechanisms.

As the above discussion indicates, similar issues arise for Justice Caucus as for ATSIEB (for example, around levels of independence and community engagement etc.). It is also not clear to what extent Caucus has any effective oversight role to hold government to account. There was discussion during consultations of disbanding Justice Caucus and establishing new Aboriginal-led governance in the justice space – perhaps without government representation but needing to interface with government via new or (potentially revised) existing mechanisms.

We have recommended that this be considered during the process established under Recommendation 2.2. A new body with stronger independence and capacity to input into decision-making than Caucus presently has would enable First Nations people in the ACT to come together to set their *own* justice agenda and to agree on and collectively advocate for policy, funding and other First Nations priorities in the justice space. It could provide input into decisions related to and oversight of government responsibilities related to justice on an ongoing basis (beyond point-in-time engagement opportunities such as co-design of the Justice Futures Fund, as above). One suggestion is for the interim First Nations-led justice body established under Recommendation 2.1 to oversee recommendations of our Review to become a permanent body retaining and expanding on this oversight role across all First Nations justice matters.

There was discussion of a new Aboriginal-led justice body being required to drive justice reinvestment in particular. Participants spoke of the need for an independent justice reinvestment 'community-based working party' or 'committee' – necessary for achieving 'structural reform around justice reinvestment led by community' (Government Agency).

The lack of First Nations community leadership of justice reinvestment in the ACT to set its direction as it applies to First Nations people was highlighted in our First Report as a significant issue that needs urgent attention.

While ever you have the unequal balance of public officials [steering this work] you're never going to get what you need... What we do here with justice reinvestment is top down, let's run a program... A Justice Reinvestment Community committee would make formal recommendations to government, not the bureaucrats saying this is what we need. (Government Agency)

A newly configured body may align with previous iterations or intentions for ACT First Nations governance in a justice space. Participants identified Justice Caucus as having been originally modelled on but ultimately not mirroring the functions and purpose of the Aboriginal Justice Caucus (AJC) in Victoria. One government participant stated that 'Caucus has been in the ACT since 2012. It's tired. It's run its race. It's no longer getting the voices to the table that it needs to. [It] did not get the legislation [it needed], [it] did not get the money' needed to replicate the AJAC/AJC model.

As noted before, previously the ACT had an Aboriginal Justice Advisory Committee (AJAC) and an Aboriginal Justice Centre (AJC). Reasons for disbanding previous Aboriginal justice bodies in the ACT were not discussed in any detail, but the following comment points to potential limitations in government capability to work alongside this group as one issue. This again highlights the importance of government reform (as investment in community-led solutions, as above) alongside approaches that strengthen First Nations-led community efforts to reduce over-representation.

I mean we used to have the [AJAC] and that was quite a powerful group, but I think when it couldn't be as controlled it wasn't used as much. And I think it's partly about acknowledging and having the cultural competence and ability to understand how to be culturally responsive as a non-Indigenous person. It's having skilled people work with the Aboriginal and Torres Strait Islander leaders that need to be in that space and giving their views and sharing those outcomes. And I just don't know if JACS has that. It got very hard for the community itself to nominate a chair and nominate a way of working but they did a lot of good stuff. (Government Agency)

One possibility for modelling of a new Aboriginal-led body is to return to the example of the Victorian AJC, described below; for consideration within the process established under Recommendation 2.2. We note that the Victorian AJC has membership drawn from peak bodies, ACCOs and Justice Advisory Committees (layered at regional and local levels in Victoria with the aim of establishing strong mechanisms for community engagement around justice issues). There may also be learnings to inform this modelling to be drawn from the previous ACT AJAC and AJC.

Box 2.6 Aboriginal Justice Caucus and Aboriginal Justice Forum (Victoria)

The Aboriginal Justice Caucus (AJC) is a self-determining, independent body with Aboriginal community representation drawn from peak bodies, ACCOs and chairs of 9 Regional Justice Advisory Committees. It focuses on reducing incarceration and deaths in custody through a strengths-based approach, acting as a conduit between the Aboriginal community and justice system. It advocates for systems change within and seeks to address drivers of contact with the justice system in Victoria. It comes together to problem solve, partner with stakeholders, make decisions and negotiate change, amongst other things.

The Aboriginal Justice Forum (AJF) is the mechanism through which leaders in the Aboriginal community (drawn from the AJC) and the most senior representatives of Victorian Government departments of Justice, Health, Human Services and Education Departments and Aboriginal Victoria (in the Department of Premier and Cabinet) come together to:

- progress, monitor and evaluate Victoria's Aboriginal Justice Agreement (AJA), including by working with relevant data
- identify solutions to improve justice outcomes
- promote Aboriginal community participation in the justice system and AJA
- promote greater transparency and accountability within the justice system
- promote cross-sectoral linkages and partnerships with other Aboriginal-based structures in government and community to tackle Aboriginal disadvantage and over-representation.

2.6.2. First Nations-led justice body and Government

As the above description indicates, the Victorian AJC interfaces with the Victorian Government (including to ensure government accountability) via an Aboriginal Justice Forum (AJF). As noted in discussion of cross-sector bodies in Section 2.5.3, effective mechanisms for Aboriginal-led justice bodies (new or existing) to interface with government *at a sufficiently senior level* are also required too. This enables these groups to guide and oversee government activity related to over-representation in line with First Nations priorities and to build trust and collaboration with government.

Potential mechanisms for connecting senior level staff with First Nations people around justice issues include, for instance, newly appointed senior First Nations ACT Government staff (see Section 2.7.3). Their representation and role for these staff on justice-related structures needs consideration within the process established under

Recommendation 2.2. In terms of structures, the Executive Coordination Group (ECG) is relevant in this context. The ECG is discussed in more detail below and in our First Report. In short, its Terms of Reference state that the group is to provide strategic oversight and advice on implementation of RR25by25 and to monitor progress and report on this implementation. It has representation from multiple directorates, Legal Aid ACT and the Director of Public Prosecutions (DPP), meets quarterly and reports to the Minister.

Various criticisms were raised about the ECG, including its capacity for coordination and transparency (see Section 2.7.2). Additionally, the ECG Terms of Reference identify a Reducing Recidivism Research Advisory Group and an Implementation Group, which includes some First Nations community and organisational membership. We received no feedback from any participants about whether and how these groups are working alongside the ECG. The current status and effectiveness of these groups and of the ECG more generally should be considered within the process established under Recommendation 2.2.

Furthermore, as discussed, there is some thinking underway (within the ACT Government at least) about establishment of an ACT Justice Policy Partnership (JPP), which might improve shared decision-making, coordination and government accountability in the justice space, where working effectively. An ACT JPP, if established, could bring members of Aboriginal-led justice groups established as part of this Review and ACT government representatives together, with other First Nations community representation as appropriate. One government participant identified an ACT JPP as having membership drawn from the ECG, IDC, ATSIEB and the Justice Caucus.

If a JPP is established (also for consideration under the process established under Recommendation 2.2) thought would be required as to how it would respond to drivers of over-representation sitting outside the justice system, including via whole of government mechanisms (for example, via representation on the JPP by the IDC, ECG) and/or any additional ACT policy partnerships and via connections with other First Nations-led bodies (including through representation on the JPP by ATSIEB or the above ACT peak body). It will be important to think about streamlined, strategically linked mechanisms in reviewing existing structures.

As an example of JPPs, the national JPP, with its 10 Aboriginal and Torres Strait Islander members (including peak, ACCO and independent representation) and 9 government members, focuses on achieving justice targets under the National Agreement, as an example.⁹⁹ Its strategic focus is on transforming justice systems, building a strong community-controlled law and justice sector and delivering holistic, integrated and

⁹⁹ Detail about this JPP is here: <<https://www.ag.gov.au/legal-system/closing-the-gap/justice-policy-partnership>>.

inclusive systems to meet the needs of all Aboriginal and Torres Strait Islander people and communities.¹⁰⁰

2.6.3. *Aboriginal and Torres Strait Islander Social Justice Commissioner role*

Consultations also canvassed whether an Aboriginal and Torres Strait Islander Social Justice Commissioner role should be established in the ACT. This would be First Nations controlled, providing an independent oversight function via monitoring, reviewing and own-motion inquiry functions around justice issues.

For comparison, the Aboriginal and Torres Strait Islander Social Justice Commissioner was established at a federal level in 1992 as a response to the recommendations of the RCIADIC. In Victoria, the AJC has been working with the Department of Justice and Community Safety to introduce an independent Aboriginal Social Justice Commissioner to increase independent oversight and accountability across the justice system.¹⁰¹

Box 2.7 Aboriginal and Torres Strait Islander Commissioner (Federal)

The Social Justice Commissioner has a role to advocate for the rights of Indigenous peoples; promote an Indigenous perspective on different issues; build support and understanding for an Indigenous perspective; and empower Indigenous peoples. The Commissioner also has a responsibility to review laws and policies and provide advice to the federal, state and territory governments; consult with Indigenous and non-Indigenous organisations and Indigenous communities to get their views and expertise on different issues; respond to requests for media interviews and speeches to raise Indigenous issues with the Australian community. The Commissioner reports annually to federal Parliament on significant social justice and native title issues facing First Nations people in Australia.

There were mixed views about the benefits of such a role – some positive, including that a Social Justice Commissioner with a broad remit could build coordinated responses to a broad range of social issues linked with over-representation. ‘I like the concept of a social justice commissioner because they sit across government as a whole. And social justice is broader than justice... Because we don't really have anyone looking at that

¹⁰⁰ JPP initiatives include developing anti-racism strategies, driving a justice reform agenda, sector strengthening and strengthening or establishing cross-sector partnerships under the National Agreement (e.g. policy partnerships focused on housing, health, education etc.). See Justice Policy Partnership, *Justice Policy Partnership Strategic Framework* <<https://www.ag.gov.au/legal-system/publications/justice-policy-partnership-strategic-framework>>.

¹⁰¹ See details at <<https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-41-greater-accountability-for-justice-3>>.

whole thing of how the justice system interacts with' other issues and areas (Government Agency). The role might address current power imbalances that hinder progression of government reform and accountability and providing for Aboriginal leadership and direction-setting in the justice space. Participants identified too, however, that deciding whether to spend limited ACT funding on a new Commissioner role would require careful thought – but that if it is *not* well resourced it will not be effective.

I was just gonna say, back to the Commissioner and training people up, it all links together. Those commissioners get paid, what over like 320, 350k a year? That's more than [X organisation's] operating budget from government. (Sisters in Spirit Community Dialogue Women)

Current resourcing of the Aboriginal and Torres Strait Islander Children and Young People Commissioner and other independent oversight roles was discussed in this context. '[It] is a tiny office that community wanted separate... But it does mean that they don't have the infrastructure, I guess, in the same way that some other parts of government do' (Statutory Authority/Public Body). In theory it's good to have community leading this, stated one participant, but 'I do worry that we have a lot of statutory offices, often with not sufficient funding. I mean the [Office of Inspector of Custodial Services] is probably another good example of that and trying to do lots with very, very little' (Statutory Authority/Public Body).

Also noted is that the role may not be given the powers it needs to work effectively. The requirement for absolute independence of the role, especially when funded by government, was also highlighted. 'I'm not a huge fan of commissioner roles. I think in the ACT [they have been] generally ineffective at being catalysts for change because ultimately, they want to work to government' (Courts and Tribunals). 'It depends on what you're going to arm them with. Are they allowed to do their job? Are you going to hold them back?' (First Nations Organisation).

JACS is the one who sets the legislation for the statutory authority positions, and they don't necessarily reflect what the community will be able to utilise them best for. Because government wants to see them all tucked and tidy and then you've got to go through this process of translation to community. So, you get the person in there... It'd just be another highly paid person in a statutory authority. (Sisters in Spirit Community Dialogue Women)

Important questions were also raised, as highlighted above, about whether reform of government needs to be pushed from outside or within government, with suggestions that another independent body might dilute rather than progress accountability, contrary to its intended purpose. 'We need another independent officer role like we need a hole in the head to be honest. It'll be just another cog'. JACS' problem, for instance, is identified as an absence of coordination. 'Just adding another thing on top to go "we'll oversee to make sure it works better" doesn't deal' with this issue (Government Agency).

And I just think lightning rod models, in my experience here, don't necessarily work because it gives government a chance to fragment... We've already got seven people working on this... in seven different roles. [X role] should have fixed that by now. Or [Y role] you should have fixed it... sometimes that gives [government] a chance to hide because, well, that person's responsible for it and... that's the answer sort of thing. (Statutory Authority/Public Body)

Some thought ATSIIEB already provide sufficient oversight, alongside other bodies like the Office of Inspector of Custodial Services – though we note discussion above and in Section 10 on the AMC the limitations in terms of current oversight mechanisms.

Office of Inspector of Custodial Services do really great reports. It's just that there's a lack of impact, there's a lack of follow up on the things that they raised in the reports. I mean things like the programs. They've been on that for years. So that's a real problem, I think. (Statutory Authority/Public Body)

One participant suggested it is more about 'how to better utilise what's already' in place to ensure accountability, or at least to think about avoiding duplication in creating any new roles. A Social Justice Commissioner would need to align and strengthen existing oversight mechanisms, it was stated.

I can see the potential merit of that kind of model, in terms of actually having the capacity to request information, to maybe undertake their own investigations or whatever, but actually crafting the role of that entity alongside all the other oversight bodies will be tricky. (Government Agency)

This led to questions about bringing oversight bodies together, including a Social Justice Commissioner and the Aboriginal and Torres Strait Islander Children and Young People Commissioner, at least in terms of shared resources. This was not seen as a good way forward by some participants, however.

I absolutely would not support trying to expand [the Aboriginal Children's Commissioner] role to take on broader issues because I think there's enough in that children and young people space. We were very particular about the legislation for that role as well. We're the only jurisdiction that has that power to intervene in individual matters. So, most other Aboriginal Children's Commissioners have systemic powers, not individual powers. So that was a really important thing to get through that she could actually drill down into individual matters and intervene where necessary. (First Nations Organisation)

Whether or not a Social Justice Commissioner role is be established should be considered as part of the process established under Recommendation 2.2. If it is established, thinking would be needed about the role's alignment with other oversight mechanisms (for example, whether it works with or supersedes the interim body established under Recommendation 2.1), justice-specific and other First Nations led

bodies like ATSIEB, as well as how it will interface with government, including via structures like the SBC and IDC and senior Indigenous roles to be established under Recommendation 2.3.a.

2.6.4. *Our Booris, Our Way Implementation Oversight Committee*

Another issue-specific body it is important to highlight is the Aboriginal-led Our Booris, Our Way (OBOW) Implementation Oversight Committee (IOC), specifically set up to oversee implementation of recommendations under the Our Booris, Our Way Report (2019).¹⁰² The OBOW IOC was established in line with Recommendation 15 of the OBOW Report, which identified the need for an oversight body to effectively implement all other Report recommendations. It provides a useful example of a First Nations body providing oversight of specific issues (in this case related to child protection).

Box 2.8 OBOW Report – Recommendation 15: Implementation Oversight Committee

An Implementation Oversight Committee of five members be established to meet at least on a quarterly basis to receive updates from the Directorate and other relevant parties to address progress and ascertain whether the implementation has stayed true to the original intent of the recommendations. The members of this Committee should be Aboriginal and/or Torres Strait Islander people, with an initial two year appointment, and include:

- One representative from Winnunga Nimmityjah
- One representative from Gudan Gulwan
- One representative of the Aboriginal and Torres Strait Islander Elected Body
- Two members of the Our Booris, Our Way Steering Committee to ensure continuity with the intent of the Steering Committee, to be nominated by the Steering Committee.

The Implementation Oversight Committee must:

- Be able to communicate and engage directly with the Aboriginal and Torres Strait Islander Community and have appropriate time and resource to be able

¹⁰² Our Booris, Our Way Steering Committee (OBOW) (2019) *Our Booris, Our Way: Final Report*, <https://www.act.gov.au/__data/assets/pdf_file/0004/2380936/Our-Booris-Our-Way-final-report-December-2019.pdf>.

to do so, for example to run information sessions and consultation opportunities

- Engage directly with the Minister
- Be able to involve other Aboriginal and/or Torres Strait Islander members of the community to ensure the voice of the community is heard and understood, including the voice of Elders, young people and carers
- Be able to invite external, independent, expert voices on contemporary child protection practice in the context of the Aboriginal and Torres Strait Islander Child Placement Principles as necessary
- Be able to engage and access child protection and allied sections within the ACT Government
- Be presented with quarterly reports and other information as required
- Be remunerated for services as per the current remuneration agreement, and
- Be afforded appropriate secretariat support and a key contact/liaison point with the Community Services Directorate.

As the summary above indicates, Recommendation 15 of the OBOW Report identifies the Committee as receiving information from the Community Services Directorate (CSD) to monitor progress of implementation of recommendations and as ascertaining ‘whether implementation has stayed true to the original intent of recommendations’ in question.¹⁰³ It sets out Committee membership, also identifying the need for additional strong connection with the broader community (via information sessions, consultation and community involvement in the Committee).

Other things covered include access to resources for the Committee (including financial resourcing for operations, community engagement and for remuneration of Committee members), direct engagement with the Minister, secretariat support and contact points within CSD, as well as capacity to engage and access ‘allied sections’ within the ACT Government.¹⁰⁴ The OBOW Report also recommended establishment of a dedicated implementation team (with First Nations representation) within the CSD to ‘plan, engage community and implement’ recommendations.¹⁰⁵ This team was eventually stood up within CSD in 2022 and we heard this has been important to supporting the work of the OBOW IOC.

¹⁰³ OBOW (2019) Our Booris, Our Way: Final Report, Rec. 15, p.98.

¹⁰⁴ OBOW (2019) Our Booris, Our Way: Final Report, p.98.

¹⁰⁵ OBOW (2019) Our Booris, Our Way: Final Report, Rec. 24, p.100.

The OBOW IOC has had some success in ensuring implementation of the 2019 recommendations, though challenges too have meant some recommendations are still not sufficiently implemented. Participants spoke in this context about the journey CSD has had to go on to effectively work with the Committee, including to ensure full recognition of the group's self-determination. This self-determination is identified as empowering the Committee to ensure genuine accountability of government, including to implement the recommendations according to their original intentions. 'So, you write something, a recommendation and then all of a sudden, 12 months later they're interpreting it into something completely different' (First Nations Organisation).

So, OBOWs have been very strong and robust leaders in that space so that's been really important. They've had terms of reference and a code of conduct that they've been able to [set up] [as a] self-determined committee – deciding who should be on their committee and developing their own governance principles. And that strong advocacy has come about because of the strong leaders that we have on the committee and because of the robust way they work with the Minister, with the senior executive and CSD. (Government Agency)

That Aboriginal-led group, which was initially appointed by government, but then in the context of the government's Closing the Gap commitments when it became the Implementation Oversight Committee, it moved to a self-determining committee. So, the committee was given the capacity to determine membership, terms of reference, etc. So, I think that mechanism has worked. (Government Agency)

Particular OBOW IOC mechanisms have been highlighted in this context, including its meetings with most senior government representatives and representatives from across directorates (including JACS).

Ministers have come along to [Committee meetings] around particular recommendations and action items and sat with the public servants and then heard from the Committee directly the hard questions and had to answer... and then that's provided an authorising environment based on those commitments for the public service to take things forward in some cases... You get asked pretty hard questions about what you're doing – there's a dual layer of authorising environment plus a sort of personal connection – like you have to go and account for [actions taken or not taken]. (Government Agency)

Importantly too, the Committee's self-determination has positively shifted the Committee's relationship with CSD, more broadly.

There's a lot more joint decision making than there was previously and [the Committee is] about to sign off on a partnership agreement with CSD that is very much about joint decision making and ties in Closing the Gap and Safe and

Supported and their commitments with the Elected Body. (First Nations Organisation)

2.6.5. *A justice-specific oversight body*

The establishment and operation of the OBOW IOC provides important precedent for establishment of First Nations-led accountability structures focused on justice in the ACT. The need for a group structure to provide independent oversight around First Nations justice issues was identified as especially beneficial – including to avoid positioning important oversight responsibilities with a single ATSIEB justice representative. ‘I think you need a committee [like OBOW IOC], you need a group. You don't need one person who's trying to manage a hell of a lot of things, including a full time job in their own life, to be trying to be a one- person system of advocacy for change in a justice system’ (Government Agency).¹⁰⁶

As above, under Recommendation 2.1 JACS is to establish as a high priority *interim First Nations-led justice body* to oversee implementation of recommendations of our Review, with certain minimum requirements for its establishment set out in the recommendation. We note that some aspects of the interim body have been drawn from Recommendation 15 of the OBOW Report, which were viewed positively in our discussions.

The other key activity we proposed for the interim body is to design and establish, with input from others as required, *permanent* First Nations-led justice structures that will increase First Nations input into decisions related to and oversight of justice issues more broadly (including those required to implement other recommendations in our Review; for example, a mechanism for First Nations decision-making around funding (Recommendation 3.5)) (see discussion immediately below in Section 2.6.6).¹⁰⁷

Recommendation 2.1

We recommend that JACS establish as a high priority an interim First Nations-led justice body to oversee implementation of recommendations of this Review. This interim body should, as minimum requirements:

¹⁰⁶ We note the discussion above too about perhaps not positioning oversight into a single role like a Social Justice Commissioner.

¹⁰⁷ We note that we have seen a similar approach utilised in the OBOWs context – where Recommendation 15 was developed by the initial First Nations-led OBOW Steering Committee responsible for the OBOW Report and this led to establishment of the OBOWs IOC. Our view is that the same level of First Nations input that occurred within the OBOW process is required to design the parameters, membership, remuneration and other key components of an Aboriginal-led justice body or bodies in the ACT.

- a. Be focussed on providing First Nations-led oversight of implementation of recommendations of this Review, including advising how best to sequence and prioritise implementation.
- b. Include First Nations representation nominated from ATSIEB (1), UNEC (1) and ACCOs working in the justice space (2-3), who may then appoint First Nations community members with direct experience of the justice system (1-2) (via an EOI or similar process). The group may also consider appointment of additional First Nations representation (for example, Aboriginal and Torres Strait Islander Children and Young People's Commissioner) and determine optimal total numbers of members (perhaps limited to 8).
- c. Be adequately remunerated for their time and expertise across the entire body's membership (for consideration, at an appropriate rate for Office Holders in the ACT as determined by the ACT Remuneration Tribunal).
- d. Be adequately resourced to enable its members to carry out its functions, including to engage and seek input from the First Nations community, as required (including young people, First Nations and other organisations).
- e. Be supported by a team of 2-3 staff established as a priority within JACS and other senior staff in JACS, in particular the three senior First Nations roles established as part of this Review (Recommendation 2.3.a). Support from the JACS team should include ensuring the interim body has access to ACT Government information required to ensure its effective oversight of implementation, as well as secretariat support. Support from First Nations roles should aim to establish the authorising environment within the ACT Government required to ensure the interim group can effectively oversee implementation.

2.6.6. *Ongoing First Nations-led and government mechanisms*

As noted, we have made a recommendation for the interim First Nations-led justice body (Recommendation 2.1) to lead a process to identify and guide future development of mechanisms connected with First Nations justice issues (Recommendation 2.2). This includes both First Nations-led and government mechanisms connected with First Nations justice issues. Government mechanisms are discussed in further detail in Section 2.7, with earlier sections focused on First Nations-led mechanisms in the ACT.

The focus here is on making decisions about what existing or new mechanisms need to be established, revised and/or work (potentially differently) together to strengthen First Nations self-determination, increase ACT Government accountability and improve coordination with respect to issues related to over-representation. Key aspects of such

mechanisms to be determined may include (but are not limited) to their functions, powers, representation, remuneration, and coordination and collaboration cross-mechanism.

Recommendation 2.2

We recommend that JACS support the interim First Nations-led justice body (Recommendation 2.1) to lead a process to identify and guide future development of mechanisms connected with First Nations justice issues.

a. This process:

- i. Should be supported by the JACS team established under Recommendation 2.1 and senior JACS roles established under Recommendation 2.3.a.
- ii. May involve other First Nations and government representatives, at the invitation of the interim body.
- iii. Should focus on mechanisms that will strengthen First Nations self-determination, increase ACT Government accountability and improve coordination with respect to issues related to over-representation.

b. First Nations-led mechanisms ought to be established *on an ongoing basis* as part of this process. These mechanisms should provide for Aboriginal-led decision-making and oversight in the justice space. For consideration, a permanent First Nations-led justice mechanism may be established that retains and expands on the interim body's role in overseeing Review recommendations to provide oversight over all justice related activity.

c. The interim body should work with government to determine the future direction of and potential reforms to other government mechanisms identified as having impacts on over-representation. These include (but are not limited to) the Aboriginal and Torres Strait Islander Justice Caucus, the Justice Advisory Group, the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee (IDC), and the Executive Coordination Group (ECG).

This recommendation is dependent on implementation of Recommendation 2.1.

Our approach to development of mechanisms

We have provided some direction on establishment and revision of mechanisms throughout our Report (particularly in Sections 2 and 3) and there is some discussion of

this immediately below. Otherwise, we have not been too prescriptive as to options for optimal structures.

There are a number of reasons for this approach - firstly, and *most importantly*, we recognise that First Nations people in the ACT must make decisions on First Nations justice related matters. They understand the local First Nations context and know what will work for their community. This approach is also, of course, aligned with principles of self-determination and respect for culture.

Secondly, we have reviewed existing mechanisms to the extent possible within the significant breadth of this Review. We note that detailed information about how ACT Government structures and processes work to reduce over-representation is not especially transparent, including to the First Nations community and at times, within government. It was difficult for First Nations participants at a community level to make comments on or suggest revisions to current approaches (particularly within and across government) because they were not sufficiently understood. This is in part why we have set out some detail about structures in this Report, particularly in Section 2. A careful and comprehensive process of review under Recommendation 2.2 should include provision to the First Nations people involved all material needed to make informed decisions about optimal mechanisms.

On this same note, outcomes of the current ATSIEB review are likely to have relevance to determinations about justice-related mechanisms. These outcomes are not yet clear. Also somewhat unclear is detail about a co-design process related to establishment of an ACT Peak body and progress in thinking related to establishment of formal partnerships under the National Agreement in the ACT– also very relevant information that needs to be brought into the process established under Recommendation 2.2.

Thirdly, we also heard (and agree with views shared) that consideration of the ACT-specific context is important in developing approaches to addressing over-representation (for example, context related to how the ACT Government works, dynamics within the First Nations community). A detailed review of mechanisms ought to be conducted in the ACT by those with local knowledge of this context.

We also note that one key First Nations stakeholder participant in this Review has recommended that the interim body should explicitly contemplate as part of the process established under Recommendation 2.2 the Priority Reforms in the National Agreement and the blueprint this Agreement more broadly provides for improving Aboriginal and Torres Strait Islander life outcomes through shared decision-making with Aboriginal people on the design, implementation, monitoring and evaluation of policies that impact their lives. The ACT Agreement will also be relevant in this regard.

Options for mechanisms

Here we present some *high-level* thinking about options, for consideration within the above process.

A] A wholly First Nations-led permanent justice focussed body could be established that goes further than the Aboriginal Justice Caucus in terms of Aboriginal leadership and independence (and potentially replaces it). This body would be funded by the ACT Government (sufficiently - to ensure genuine capacity and independence) and enable First Nations people in the ACT to come together to set their own agenda to agree on and advocate for policy, funding and other priorities aimed at addressing over-representation.

In terms of the body's role with respect to this Review, it may be directly involved in implementation of recommendations related to First Nations participation, decision-making and oversight. Recommendations referencing First Nations input into justice-related matters include 2.3.b,ii, 2.3.d, 2.3.e, 3.2.a, 3.3, 3.5, 3.8, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 5.5, 5.12, 6.2, 6.7, 6.9, 7.10 and 11.7. The body could, where necessary, work alongside other mechanisms established through this Review in taking on this role (for example, First Nations-led Data Working Group (Recommendation 3.11)).

The body could also retain and expand, as noted above, on the oversight role of the interim body established under Recommendation 2.1 by providing oversight of all *other* government responsibilities related to justice (for example, through mechanisms that might include representation on a JPP in the ACT).

B] Alternatively, or in addition, a **Social Justice Commissioner role** might have an oversight function with respect to a range of issues related to First Nations over-representation (including but not limited to criminal legal system issues). The role might involve community/stakeholder engagement and the review of policy/laws and it would need genuine independence and sufficient power to hold government to account (for example, to initiate inquiries, investigations). The role would need to align and strengthen, not duplicate, existing oversight mechanisms. On this same note, the preference may be for a more collective community-led oversight mechanism like the above justice body, but the Commissioner role might be introduced in addition to this body.

C] Current ATSIEB mechanisms for First Nations-led decision-making and oversight and coordination of issues relevant to justice outcomes (potentially revised, following completion of the ATSIEB review) could further elevate justice issues (for example, through greater investment in ATSIEB's justice representative role (creating a full/time position)).

Alignment between representation and the work of the above Aboriginal-led justice body and **ATSIEB** (and potentially an **ACT Peak body**, if established) would need consideration. This occurs, in part, via representation of ACCOs and ATSIEB on the above body, but further approaches may be required.

D] Government mechanisms (including the ECG, IDC, JAG, Justice Caucus) need review to ensure they are working effectively with each other and with First Nations people to strengthen self-determination and increase accountability and coordination with respect to justice issues. Options to consider include but are certainly not limited the following:

- Incorporating representation from First Nations-led justice mechanisms and senior First Nations roles in JACS established as part of this Review within ECG, JAG, IDC, Justice Caucus (if retained) – including in decision-making roles. Other structure-related reforms specific to each group may be required.
- Establishing an ACT Justice Policy Partnership (JPP) to bring members of the above justice group, government (for example, ECG, IDC, Justice Caucus (if retained)) and other First Nations representatives. Consideration could be given to how the JPP responds to drivers of over-representation sitting outside the justice system, including via whole-of-government mechanisms and any other ACT policy partnerships.
- Ensuring more effective links and coordination across justice and whole-of-government structures likely to impact over-representation to ensure coordinated responses to this issue (via changes to membership, for instance).

2.7. Government reforms: coordination and accountability

As identified earlier, solutions to improve First Nations justice outcomes will sit both outside *and within* government. In speaking about government transformation under the National Agreement, the Productivity Commission has stated, for instance, that it is not ‘reasonable or appropriate’ to put the entire ‘burden for fundamentally rethinking government systems on newly created bodies that sit outside of government – governments must be held accountable for making changes from within’.¹⁰⁸

Section 2.7 considers government transformation in the key areas of coordination, accountability and decision-making (also a focus of earlier sections above). It looks at structures and other relevant mechanisms currently in place and how these might be strengthened to deliver better justice outcomes to First Nations people.

2.7.1. Importance of coordination

One key reform required within government is increased coordination of responses to over-representation. As discussed earlier, reducing First Nations over-representation is

¹⁰⁸ Productivity Commission (2024) *Review of Closing the Gap*, p.86.

complex work given its multiple, entrenched and inter-related causal factors. As such, it requires multiple inputs and interventions. As one participant stated, ‘we need to tackle’ government barriers to reducing over-representation ‘not just in the justice system’ but also in ‘education, in early childhood, in the health system. We’ve got to actually ensure that we’re dealing with it everywhere’ (Government Agency).

Different directorates impact each other, including in ways that feed into over-representation, but silos in government make it difficult to think and act collectively to address this issue.

They do not coordinate well and that puts in place a range of systemic barriers that are problematic in a whole range of areas for First Nations peoples... if you’re [looking for] a holistic response, particularly for those socioeconomic and cultural drivers behind this particular issue, that siloed work of government is incredibly problematic. (Government Agency)

We note too that siloes can also exist *within* directorates – but wherever siloes arise they can negatively impact outcomes *within or across systems*. ‘So even within JACs there are so many different pieces of the puzzle that are doing bits and pieces with overlaps’. Some of these will ‘move in the same direction’ and some are ‘necessarily going to pull in different directions’ (Government Agency).

In terms of cross-directorate siloes, key examples shared during our Review include that if somewhere in the ACT Government there is a push to ‘get tougher’ around family or domestic violence offending, this will likely increase rates of remand. Understandably too, the criminal legal system is not ‘core business’ of the Education and Health Directorates. However, government decision-making in these areas affects justice outcomes (both positively and negatively). This includes for those at higher risk of or already in contact with the youth or adult justice systems. But taking a life-course approach to determinants of contact with the justice system, this decision-making may also increase risk of *first-time* contact with the system: for example, where ineffective responses to school disengagement for First Nations students can contribute to offending (see Section 4, Education).

Participants also talked about whether and to what degree JACS should attempt to influence or otherwise ‘step into’ activity undertaken by other directorates that is likely to impact First Nations justice outcomes. The interconnection between CSD and JACS was seen as especially relevant in this context, given trajectories that may pull First Nations young people over-represented in the child protection into the youth and then the adult justice system.

Those early life issues, disadvantage around education and health are not JACS’ problem as such. And JACS doesn’t have a lot of influence about how those interventions happen ultimately. I mean, even the youth justice stuff, JACS has limited ability to impact that. It was a push to get even some reference to youth

into the second phase of Reducing Recidivism. It was almost a deliberate omission because the Community Services Directorate weren't all that keen on JACS playing in their space effectively. (Government Agency)

Participants spoke about these two Directorates building processes and structures for better cross-collaboration to address over-representation.

But there might well be some stuff that [JACS and CSD] need to do together and [they should be] identifying what that is and how JACS can add value to the youth justice journey. Maybe that's the way to put it rather than suggest that [young people should be in the JACS] portfolio because... that separates them from other parts of the youth pathways, which are education and those really important areas like health and housing and so forth... I don't think the solution would be a realignment [of youth justice into JACS] ... [but] there may be opportunities for better coordinating. (Government Agency)

Also discussed is that better coordinated responses are required to achieve whole-of-government *structural transformation* necessary for reducing over-representation, including to increase government accountability. Where there is insufficient coordination in this respect there is less clarity about who is responsible for bringing government activity together to achieve positive outcomes and what shared outcomes everyone is working towards. This was initially discussed above in participant comments on the Social Justice Commissioner role and it is explored in further detail below.

The accountability problem is that there are too many people involved. Like fragmentation is the problem around our accountability. Lots of people doing lots of different things simultaneously without it being coordinated... it's not being brought together in any way. (Government Agency)

Coordination is one thing and accountability is another thing. And there's probably some accountability gaps because for us, we can control more readily things that happen in the justice space, but it's hard to, for us as JACS, to influence beyond the justice space. (Government Agency)

2.7.2. Improving government coordination: structures and policy

As noted in Section 1, we are not conducting a comprehensive whole-of-government review. In this section we do consider briefly, however, the ACT Government's approach to coordination at a cross-sector level as relevant to over-representation (as we did with respect to First Nations-led bodies above), as well as in the justice space specifically (in more detail).

Participants discussed current efforts to build coordination at a whole-of-government level via policy frameworks, particularly the ACT and National Agreements. These

frameworks have potential to bring government together around a range of issues connected to over-representation, including specific issues like education or health but also the transformation required within government to improve a range of First Nations outcomes.

One participant stated that across the ACT Government the current commitment to implementation of the National Agreement was a '1 or 2 out of 10'. Others felt that reasonable attempts were being made, with leadership from ATSIEB and ACT Office for Aboriginal and Torres Strait Islander Affairs (OATSIA), to align Directorate activities under these two agreements. One example discussed was the embedding of National Agreement commitments within the ACT Agreement¹⁰⁹ and educating staff about the National Agreement so that they understand its relevance to their work with First Nations people. As detailed above, the IDC and SBC (both with ATSIEB representation) are providing a whole-of-government response to First Nations issues, including to implement the above agreements (encompassing implementation of commitments to structural reform).¹¹⁰

In the justice space, the ECG is intended to coordinate implementation of RR25by25 via its representation from different directorates (including Health, Education, CSD). It is not clear how the ECG connects with Justice Caucus, the JAG, ATSIEB or whole-of-government structures like IDC or SBC, however.¹¹¹ Those Directorates represented on ECG other than JACS also pointed to limited transparency around its activities and outcomes, its dependency on individual representatives for consistency of action and other issues hindering its capacity to provide effectively coordinated responses.

[ECG is] quite sporadic. I think there are times there's some really great outcomes from it. There are other times where it goes under the radar for a great deal of time and it becomes disconnected. You have high mobility in staff across ACT government which means corporate knowledge leaves with individuals as well, which is highly problematic and also often means you don't have that enduring and consistent practice – that the system changes to the individual rather than the other way around. (Government Agency)

¹⁰⁹ This is seen to be aligned with Recommendation 4 (Essential Action 4.2) set out in the Productivity Commission (2024) *Review of Closing the Gap*.

¹¹⁰ One participant spoke of the IDC's role in progressing whole-of-government reform that prioritises funding for ACCO service delivery (see Section 3, Funding). The comment provided discussed insourcing policy of the ACT government. The IDC membership provided input into consultations on this policy and identified that it would hinder government commitments around increasing ACCO capability and partnerships with government. 'You can't then disenfranchise them by immediately putting them behind the eight ball by saying our preference would be insource the thing that we might get from an ACCO. So that policy was updated to exempt ACCOs' (Government Agency).

¹¹¹ Although as we understand it JAG connects with the IDC and the ECG reports to the Minister.

That the ECG does not work as well as it could as a coordinating mechanism was raised by others, including because of its focus on directorate-specific programs rather than on a more strategic, joined-up approach.

The ECG was established on this idea that we have a number of crossovers... the governance there was, I suppose, reflective of the fact that you had a range of different types of interventions, programs that were trying to kind of do different things. The ECG was going to oversee that in some way, but those programs are all established separately from each other. They weren't strategically rolled up they were more kind of just listed as a thing. It was trying to force coordination... the sort of coordination challenges, particularly where we are now, is that justice reinvestment isn't conceptualised as dealing with the broad suite of needs. It's been pigeonholed. (Government Agency)

The ECG is likely to need improvements to increase First Nations input into its decision-making, in addition (see Section 2.6.2). Beneficial too, noting the above, might be reviewing ECG's connection with relevant whole-of-government structures and ACT Government activity likely to impact over-representation. Determining how to respond to these and any other issues impacting on ECG effectiveness should form part of the process established under Recommendation 2.2.

Outside of the ECG, other ways that JACS seeks to work in a coordinated way include mapping everything it does against the National Agreement (all policies, programs, committees etc.). This was referred to as JACS 'running their own race' in response to perceptions that others in the ACT Government were slow to align directorate and National Agreement work. JACS also works on achieving justice targets under the National Agreement through implementation of the ACT Agreement via RR25by25.

In the last quote (above), the RR25by25 strategy is identified as 'pigeonholed' rather than 'dealing with the broad suite' of relevant issues impacting over-representation. There was some discussion about this strategy and ACT justice reinvestment more broadly and the extent to which both should address a broader range of issues connected with over-representation, a point discussed above in Section 2.7.1 (see also Section 3.2, Funding).

Justice reinvestment is in general intended to provide a *holistic* approach to reducing contact with the justice system, meaning it can and does in some jurisdictions/instances identify and respond to issues at a place-based level in and outside the justice system and as these issues impact individuals across their lifetime (including at a younger age). The RR25by25 strategy and justice reinvestment in the ACT do attempt to address some broader issues but more-so where they have a more direct impact on rates of re-incarceration or re-offending. For example, as we noted in our First Report, the Justice Housing Program (JHP) established as part of the earlier *Building Communities, Not Prisons* initiative is identified as supporting efforts to reduce reoffending and overcrowding at the AMC, with the aim of providing accommodation for those who

otherwise would be incarcerated due to a lack of suitable community-based accommodation options. The JHP provides housing for both non-Indigenous and First Nations men and women (see Section 11.3).

[It's a] fundamental question too about whether justice reinvestment is as a concept something that should guide the whole life journey or whether it should guide sort of the pointy end. And you know, in terms of unpacking those causes – ... [there are] things earlier in the system before people reach the pointy end. And yet there are still causes in the justice system itself that are leading to over-representation and still scope and a need to address issues at that point in the system. (Government Agency)

Some have suggested that RR25by25 and justice reinvestment in the ACT (and therefore JACS) ought to maintain this focus on issues sitting closer to the justice system alongside enhanced whole-of-government coordination that (a) better connects justice related issues with the range of drivers impacting over-representation and (b) effectively implements government transformation, including improved coordination.

Government is hamstrung by the fact that it is a sort of series of silos effectively. So, if justice is focusing on justice reinvestment, inevitably it focuses on solutions in the justice space... If you had a good whole-of-government mechanism it would be able to stop that [siloing]. That's the fundamental challenge of government in the 21st century, but also in relation to trying to change the way it does business [around] say Closing the Gap commitments. Government is not a homogenous whole. It is made up of different departments being driven by different portfolios. Ultimately, you've got different ministers responsible for delivery of different bits. And so, it makes it very difficult for JACS to take responsibility for the whole... The question is who was accountable for delivering that sort of change [around ways of doing business]. I don't think we see that as JACS are necessarily. (Government Agency)

As this last comment indicates too, though JACS is not responsible for transformation across the entire ACT Government, it *does* need to consider whether its own transformation is progressing as required (aligned with existing commitments and so as to contribute to reduced over-representation). This is discussed further below in Section 2.7.4, with a note here that RR25by25 does not currently speak directly to this transformation.

RR25by25 identifies the necessity for coordinated approaches initiated by JACS. The Strategy refers to achieving its objectives by supporting 'strategic initiatives and programs underway which align with the ACT Government's broader commitment to the Closing the Gap targets, justice reinvestment, minimising contact with the criminal justice

system and reducing recidivism in the ACT by 25% by 2025'.¹¹² Also identified is the need for 'alignment with various established frameworks and whole-community strategies to achieve' RR25by25 targets (for example, those related to corrections, family violence, housing, wellbeing etc.).¹¹³ It is not stated, however, *how* this alignment is to occur. Is it via the ECG, the IDC?

In terms of a life-course approach to reducing recidivism, RR25by25 in 2024 has some focus on young people, including First Nations young people. It identifies that to achieve its objectives it needs to 'promote early preventative and diversionary pathways targeting crucial 'touchpoints' along the criminal justice trajectory where a change to that part of the justice system could reduce a person's initial/future contact with the justice system'.¹¹⁴ Again, however, the focus here is largely on programs for younger people who are at risk of or are already offending/in contact with the criminal legal system – identified as providing essential support for mental health, substance use/dependency, education and often employment issues.¹¹⁵

This need for a central coordinating point within the ACT Government to bring work related to over-representation together was highlighted by a number of participants. They saw this as achievable in different ways, including through group structures and/or individual roles (see Section 2.7.3).

[There's] the dragon with five heads. If a dragon has one head, it's probably more likely to be strategically able to deliver what it needs to deliver, rather than being disparate across a whole bunch of areas where everyone has responsibility but no one's really accountable. When you shrink that down to a smaller group of people that are accountable, perhaps even down to one accountability point, then you do start to have a much more coordinated response... And whether that sits at a DG responsibility or sits at another point, a very deliberate and obvious point of responsibility... would help drive the work to be done in a much more strategic way. (Government Agency)

One government participant thought that the IDC is the best existing structure for increasing whole-of-government coordination (including around structural reforms), but with some improvements to its current functions and operations (see discussion of outcomes measurement, for instance, below). Identifying these improvements (with a focus on over-representation) may form part of the process established under Recommendation 2.2. See also discussion of the ACT JPP in Section 2.6.2, which could

¹¹² JACS (2024) *RR25by25 Strategy*, p.4.

¹¹³ JACS (2024) *RR25by25 Strategy*, p.27.

¹¹⁴ JACS (2024) *RR25by25 Strategy*, p.4.

¹¹⁵ Relevant programs are set out in Appendix of the strategy, not all of which are First Nations specific. See JACS (2024) *RR25by25 Strategy*, p.19.

also contribute to a better coordinated approach around over-representation. Coordination and connection between the role of the ECG and a JPP, if established, may need consideration too.

2.7.3 Individual roles – coordination and accountability

Also considered was how reform related to individual roles within government might increase coordination and accountability. On this point, it was noted that different directorates have varied levels of commitment to reform and that this is sometimes (or according to some, often) dependent on directorate leadership. There was discussion about senior government staff sometimes hindering, sometimes facilitating progress, including around structural reform.

In terms of accountability, we have a particular sphere of influence and a particular authorising environment and that's derived from our elected representatives, our relevant portfolio minister and ultimately, we take direction from them and from Cabinet as to what to do around any given matter. So, we're also a bit hamstrung about how transformative some of these systems can actually be within current parameters... in terms of trying to shift systems. (Government Agency)

This issue inevitably impacts on a whole-of-government agenda focussed on improving outcomes for Aboriginal people. Staff are dependent on what level of support they receive from within their directorate, particularly at more senior levels, around transforming government approaches. If support is absent, 'that determines how the rest of us go along with the whole-of-government approach'. And then if the 'whole-of-government approach is being driven from one area, it kind of fetters us a little bit' (Government Agency).

Participants identified that 'there have been no negative repercussions for any government officials to fail to deliver on government commitments' (Government Agency) and that stronger accountability mechanisms were required for individuals to ensure they meet their responsibilities.

Maybe it sits with directorate heads. So, you know, the thing that's going to change JACS' approach is if somebody comes along and gives our DG a kick in the arse and says this is part of the performance agreement or there's some mechanism that actually puts an onus on [them] to engage with the problem. Because at the moment it's a niggle. Like you deal with people complaining about it and you make some changes around the edges. But no one's being forced to confront that fundamental question, what are you doing to fix it? (Government Agency)

KPIs and Senior First Nations Roles

Stronger accountability might be achieved via introduction of Key Performance Indicators (KPIs) or similar for senior staff – ‘either you don't get your bonus or you don't get your contract if you don't meet those targets’ (Government Agency). We have recommended that this approach be developed within JACS, with First Nations input in Recommendation 2.3.b.¹¹⁶ The relevant KPIs might focus, for instance, on demonstrating how senior staff have sought to improve cultural capability and to eliminate institutional racism across the Directorate or agency rather than, for example, whether rates of recidivism are decreasing.¹¹⁷

And so, we have for example... IDC [as a] mechanism to try and coordinate these responses across government. We have the ACT Agreement... which is also lined up very closely in terms of reporting and accountability with Closing the Gap. We have all these mechanisms and yet we still fail to be accountable for delivering the outcomes, let alone for delivering the outcomes in a way that's actually coordinated and breaks down those silos. And so, the answer in part I think is really quite simple. Until we make people accountable at the highest level for bringing this together and making this work in a coordinated way and being a shared expectation... it will always be uncoordinated and we are not going to make any progress. (Government Agency)

We have recommended establishment of a number of First Nations roles in the justice space in Recommendation 2.3.a, in part to build Aboriginal and Torres Strait Islander leadership within the ACT Government (see also Section 3.5, First Nations Employment). As one participant stated, ‘you can't invoke systemic change without more Aboriginal people in leadership positions, more Aboriginal people higher up in the government’ (Legal Service Provider).

JACs portfolio is responsible for Indigenous justice. At the moment you've got a Director General and two Deputies. If the government gave consideration to the creation of a third Deputy who was only responsible for Indigenous justice... If that's their only responsibility, then one wonders how they can avoid scrutiny and accountability. Where that is the remit of their role, potentially that could see increasing coordination and priority for government where there was a senior executive charged with the responsibility only for that aspect? (Courts and Tribunals)

¹¹⁶ Productivity Commission (2024) *Review of Closing the Gap*, p.21.

¹¹⁷ This type of outcome is more dependent on a whole range of inputs and multiple factors out of the control of a single individual. There were somewhat mixed views about this approach across our conversations, but generally it was supported – to be bolstered via external accountability mechanisms.

As this last comment suggests, these roles are required to address the siloed approaches within government – increasing both coordination and government accountability to improve and transform Aboriginal outcomes within their respective agencies and the JACS Directorate. The objective of establishing these roles is also to increase First Nations decision-making within government, including by their positioning as more senior level roles. As one community participant noted, the roles must have ‘real power to make decisions and not just tick a box for governments employment statistics’.

The roles we have identified are as follows:

- Assistant Commissioner (Aboriginal and Torres Strait Islander) for ACT Corrective Services (ACTCS)
- Deputy Director General (Aboriginal and Torres Strait Islander) of JACS
- Assistant Commissioner (Aboriginal and Torres Strait Islander) of ACT Police.

As suggested, it is important that these roles are *senior executive level* (this is crucial). The Assistant Commissioner roles should report to the relevant Commissioner in ACTCS and ACT Police. The JACS role should report to the Director-General, JACS. The functions for each of these roles should include:

- Oversight of policy/programs within their respective areas to ensure they are delivering positive outcomes for Aboriginal and Torres Strait Islander people and can benchmark performance in meeting outcomes
- Ensure that all policies and programs within their respective areas benefit Aboriginal and Torres Strait Islander people, and review of all relevant laws, policies and documents with this objective in mind
- Assess and ensure compliance with and increased coordination around the National Agreement and ACT Agreement measures and outcomes, including those related to structural transformation and via representation on government structures, and support for and/or connection with First Nations-led structures (including those established as part of this Review)
- Ensure agencies within the relevant area provide (public facing) information and data on outcomes relevant to Aboriginal and Torres Strait Islander people
- Support funding bids relevant to Aboriginal and Torres Strait Islander organisations within their respective agencies/the Directorate
- Review agency/Directorate interactions and relationships with Aboriginal and Torres Strait Islander ACCOs
- Promote and build support for an Aboriginal and Torres Strait Islander perspective on relevant issues within their area, and advocate for the rights of Aboriginal and Torres Strait Islander people

- Consult with Indigenous and non-Indigenous organisations and Indigenous communities to obtain their views and expertise on different issues
- Other functions required to effectively implement the recommendations of this Review.

We note that the recommendation pertaining to creation of an Assistant Commissioner (Aboriginal and Torres Strait Islander) role within ACT Police cannot be implemented unilaterally by the ACT Government due to Commonwealth legislative requirements (see the *Australian Capital Territory (Self-Government) Act 1988 s 23(1)(d)*). As such, the Commonwealth Government and AFP would have to agree to create an Assistant Commissioner role for policing and to the specific terms of such a role.

One potential approach to addressing this is for the Minister (Police, Fire, Emergency Services) to set further policy priorities for the ACT Chief Police Officer to achieve the purpose of Recommendation 2.3.a as it pertains to policing roles – for example through a Ministerial Direction to ACT Policing under the purchase agreement between the ACT Government and ACT Policing/the AFP.

2.7.4 Outcomes measurement: ‘reaching for nothing’

Bodies like the IDC, JACS and the ECG were identified as working to a ‘laundry list of activities’ and reporting only on outputs, without time taken to identify or align activity to more substantive outcomes or clarify targets, including those related to achieving structural change (for example, better coordination across government). As such, groups simply engage in ‘compliance exercises’, with members ‘just reporting in’ – ‘being able to tick things off as opposed to a really dedicated sustained focus on a smaller number of things that are going to make the bigger difference. We have a lot of activity and we report on a lot of activity rather than actual change in outcomes’ (Government Agency).¹¹⁸

[Speaking of work under the ACT Agreement] ...the risk of the IDC... is getting to a transactional discussion around the shopping list of things we're all going to do. What's implicit in that original Agreement is all the things we were going to do was actually going to make a difference. How do we make a clearer connection between what we're trying to achieve and all the actions that we're trying to push? You can spend a lot of time measuring things that may not necessarily make a difference to the outcome we're aiming to achieve and some better discussions

¹¹⁸ Similar issues were identified in the Auditor-General’s report (2023) on implementation of the ACT Agreement. A lack of neutrality and transparency in and incomplete or unstructured reporting (irregularly produced, lacking targets) was seen as reducing the community’s capacity to hold government to account. Auditor-General ACT (2023) *Auditor-General Report*.

around what's the nature of transforming government, building partnerships, you know, those sorts of things [is needed]. (Government Agency)

I think there has to be goals that are set – so these are the targets for this work – that requires people to work together. So, we've set a goal on this and that requires three different directorates to actually come together to contribute. At some point in New Zealand, they had a set of national government priorities that were very carefully constructed to require collaboration, so that education couldn't go off and achieve something by itself, it had to work with health or whoever. So, finding the right goals that force that kind of integration and collaboration I think is kind of part of it, rather than a whole lot of things that individual directorates could just go and do. (Government Agency)

One community member participant identified, for instance, that government in general is 'not looking at the long-term outcomes for people. They're just [using] numbers [as measures]' (Legal Service Provider). The lack of unbiased and transparent reporting on outcomes was also raised.

I mean, part of the struggle of course, is that the targets are highly aspirational... the aspirations are great, but we need practical targets that we can then benchmark the progress against. The other thing... is that there's a fudging around the data and the statistics because there's an important imperative for government to demonstrate that they are progressing. It always gets massaged... if you could put anything into your recommendations about proper evaluation, proper data collection, I think that would be very valuable in the long run. (Legal Service Provider)

Comments on these points in the justice space specifically are as follows.

Within JACS, there are layers of accountability to deliver outcomes under the ACT Agreement that include the work of Caucus right up to the IDC. So, what's happening effectively is that everybody's going off and saying what they are doing to drive down over-representation. And you come back with a list of things that to be entirely frank we were probably already doing. They end up on that list and because they're identified as things that should deliver a beneficial outcome it gets agreed to. It isn't particularly transformative in the sense that we're not being pushed to go beyond listing [activities] ... There's not a lot of latitude to push the bounds elsewhere. (Government Agency)

We haven't had a strong Justice Implementation Plan for some time. So, we're not asking anybody to do any more. We're just asking people to work... better and smarter. And to me, the targets that are in it haven't compelled their business units... We'd already signed up to do that. So, to me that's reaching for nothing. (Government Agency)

To respond to these issues, revision of outcomes, targets and indicators is required, with input from First Nations people (Recommendation 2.3.c). We understand that some work is already underway to address the above ‘laundry list’ approach and other issues in this area at a whole-of-government and JACS level.¹¹⁹ JACS has indicated that they are developing a theory of change against each of the Priority Reform Areas ‘so that it has got an action plan going into the future’ (Government Agency). We have recommended that this work might lead to development of measures, for instance, that gauge the extent to which self-determination is embedded in processes and outcomes of JACS policy development, levels of cultural competency within JACS and the effectiveness of coordinated responses to issues feeding over-representation (note alignment with the above potential KPIs).

It is not clear whether this work will be developed into a separate strategy for JACS or align with the RR25by25, but regardless, it needs to lead to coordinated, coherent implementation alongside all other JACS commitments intended to deliver better First Nations justice outcomes. First Nations community input is essential to this particular piece of work. First Nations people ought also to be involved in monitoring and evaluating progress against the strategy or plan of action for structural transformation being developed by JACS. To be determined in implementing Recommendations 2.1 and 2.2, input may be provided in this context via First Nations-led justice mechanisms established as part of this Review. First Nations representatives of the First Nations-led Data Working Group can also provide input (Recommendation 3.11).

2.7.3. Wellbeing Impact Assessments

Wellbeing Impact Assessments (WIAs) are identified in ACT Government reporting as implementation of Priority Reform Area 1, referred to as decision-making based on First Nations input. These WIAs are designed to inform government priorities, policies and investment decisions. As such, WIAs are to be used for Cabinet Submissions and Budget business cases proposals (see also Section 3.2, Funding).

WIAs are required to consider impacts on First Nations people specifically, both positive and negative. This includes impacts on implementation of National Agreement commitments (for example, to transforming government) and targets (including justice

¹¹⁹ We heard that the ACT Government is seeking to implement Recommendation 3.1, Essential Action 1.5 of the Productivity Commission’s Review of Closing the Gap. Recommendation 3.1 identified that strategies for achieving structural transformation are required within government, including at a departmental level. This involves setting up a clear theory of change, an evidence-base as to how actions (both individually and collectively) will give effect to change and an underpinning based on Aboriginal and Torres Strait Islander-led assessment (e.g. of institutional racism and current approaches to engagement within the relevant department). Once developed, the transformation strategy needs implementation in a coordinated, coherent and comprehensive manner. Productivity Commission (2024) *Review of Closing the Gap*, p.14.

targets). Questions are asked as part of the assessment about measures of success demonstrating impact; what consultation has taken place with ATSIEB and other Aboriginal and Torres Strait Islander representative bodies about impacts; and what engagement was completed with ACTPS and/or externally with the community at large and the results of this engagement (for example, was there support for the proposal). On this note:

The ACT Government will seek to ensure decision-making processes, including through Budget and Cabinet, are informed by the impact of policies, projects, and programs on the wellbeing of Aboriginal and Torres Strait Islander Canberrans including *through seeking input from partners and the community* (emphasis added).¹²⁰

It is not clear whether input into these assessments is currently being sought as expected from the First Nations community in a justice context. We have recommended more consistent First Nations input into development of WIAs completed by JACS, including around impacts and measures of success in Recommendation 2.3.d. Again, to be determined in implementing Recommendations 2.1, 2.2, input may be provided from First Nations-led justice mechanisms established as part of this Review.

Also unclear is how impacts identified within WIAs are applied to government decision-making and how these impacts are ultimately tracked (to potentially feed into strengthened outcomes measurement as above, for instance). Consideration ought to be given to how this might occur, as a potential mechanism for improved coordination (across different but connected government activity) and accountability.

We're supposed to do assessments about how any particular thing, particularly for a budget bid, will improve movement towards Closing the Gap. It's basically what can you make up to show that this might help? It doesn't appear to have any real rigor behind it and it's not clear that there's any significance – like, you know, does a financially impractical solution where it will make significant progress towards closing the gap have greater weight than a cheap option that's not going to have a lot of impact. So, in terms of opportunity for actually demonstrating or being pushed to implement anything that will close the gap? (Government Agency)

Recommendation 2.3

To improve coordination, increase government accountability and enhance First Nations self-determination, we make the following recommendations.

¹²⁰ ACT Government (2022) Jurisdictional Implementation Plan, p.10.

a. The ACT Government should establish the following positions:

- i. Assistant Commissioner (Aboriginal and Torres Strait Islander) for Correctional Services
- ii. Deputy Director-General (Aboriginal and Torres Strait Islander) of JACS
- iii. Assistant Commissioner (Aboriginal and Torres Strait Islander) of Police.

Given current arrangements between the ACT Government and the Commonwealth around policing services in the ACT, consideration needs to be given to how they will work together to establish the Assistant Commissioner (Aboriginal and Torres Strait Islander) role (Police) (see Section 2.7.3 for discussion of options).

Each of these roles must be at senior executive level, with the Assistant Commissioner roles reporting to the relevant Commissioner in ACT Corrective Services (ACTCS) and ACT Police and the JACS role reporting to the Director-General, JACS.

The functions attached to these roles should encompass those set out in Section 2.7.3 of the Report, centred around:

- i. First Nations decision-making and oversight to increase government accountability to the First Nations community in the ACT
 - ii. increasing coordination within their respective Directorate/agencies and across the ACT Government around First Nations justice related matters and activities.
- b. Legislative measures should be established by the ACT Government for incorporation within performance agreements and KPIs for more senior JACS staff that demonstrate:
- i. How these staff have sought to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people and eliminate systemic racism across the Directorate
 - ii. Any other measures identified with First Nations input as likely to contribute to reduced First Nations over-representation.
- c. JACS should ensure that outcomes measurement within the Directorate incorporates measures related to its progress against Priority Reform and Core Focus Areas under the National and ACT Agreements. With respect to these particular measures, JACS should:

- i. consider whether they could be used to inform KPIs for senior JACS staff (Recommendation 2.3.b).
 - ii. ensure they are effectively progressed, monitored and evaluated. This may require their incorporation within R25by25 or in a separate JACS strategy (potentially aligned to RR25by25). Reporting against these measures should also be made public.
- d. JACS should incorporate on a consistent basis First Nations input in its Wellbeing Impact Assessment process (where relevant to First Nations people). This input may inform its assessment of impacts and be used to identify measures of success within this process.
- e. JACS should use First Nations input to inform the Directorate's outcomes measurement, including to identify, monitor and evaluate outcomes, targets and indicators (in addition to doing so in implementing Recommendations 2.3.a-c).

Recommendations requiring First Nations input (2.3.b.ii, d, e) are partially dependent on implementation of Recommendations 2.1, 2.2.

3. SYSTEMIC RACISM AND OTHER ISSUES

Section 3 explores issues of systemic racism and cultural safety, as well as funding and data related issues. These are further structural issues that require attention.

In Section 3.1, we identify systemic racism and lack of cultural safety across different parts of government as significant drivers of over-representation. These sit alongside other similar drivers impacting over-representation discussed in Section 2: a lack of coordination, accountability and limited recognition of self-determination.

There are various definitions of systemic racism, including that used by the Australian Human Rights Commission (AHRC) in its *National Anti-Racism Framework*. See also elements of systemic racism in discussion of systemic racism frameworks used to identify and respond to this issue (Section 3.1.3).

[Systemic racism is] the way [an] institution's cultural norms, laws, ... policies, and practices result in inequitable treatment and outcomes. Systemic racism involves entire systems, for example, legal, healthcare, and criminal justice systems, and the various institutions and structures that support their operation. Systemic racism can also happen without specific laws, policies, or practices that keep it in place, where the legacy of those norms, laws, policies, and practices persists in systems long after they have ended.¹²¹

We discuss both whole-of-government and justice-specific approaches to these issues in Section 3.1, setting out recommendations that include conducting of independent systemic racism reviews across JACS (and its individual agencies) and other parts of government impacting over-representation. We also emphasise throughout that government responses to these issues must be informed by the First Nations community itself.

Our discussion of funding in Section 3.2 and data in Section 3.3 pinpoints ways in which government can better support the priorities of and shift its relationship (of power, control and trust) with the First Nations community in the ACT. Reform in these areas will underpin important structural change in these and other respects that will contribute to reduced over-representation.

Issues discussed in relation to resourcing include under-funding of ACCOs, the need for longitudinal funding and for further First Nations input into funding related decisions. We

¹²¹ The AHRC identifies institutional and structural racism as forms of systemic racism. Institutional racism 'exists when racism is normalised within an organisation or institution. It includes the policies and practices that guide how organisations and institutions run.' Structural racism 'describes the inequalities and barriers that prevent equal access to opportunities. It refers to racism that is deep within the structures of society. This includes in laws, policies, and cultural norms'. AHRC (2024), *National Anti-Racism Framework. A roadmap to eliminating racism in Australia*, NSW, p. 36.

return in this part of Section 3 to discussion of justice reinvestment and reinvestment in particular as funding reform focused on community-led, early intervention and prevention approaches in a justice setting. Improvements to the way government funds responses to justice and related issues should directly impact justice outcomes, other than via more structural changes these deliver (for example, by resourcing prevention, ACCOs to respond to First Nations community needs linked with contact with the criminal legal system etc.).

Data issues raised in Section 3.3 include the lack of access to data (for both First Nations people and government), quality of government data, data linkage (including to improve coordinated responses to over-representation) and mechanisms for Indigenous Data Sovereignty and Governance in a justice context.

Data is a focus primarily because it is used to make decisions about strategies for tackling over-representation and to assess whether those strategies are effective. Data needs to be accurate, consistent and otherwise useful for these purposes to ensure effectiveness of the latter strategies. First Nations people need to input into data and have access to the same data as government used to make decisions in this context. More broadly, First Nations control over data and participation in data related processes needs to be significantly increased.

Recommendations set out in Section 3.3 respond to these issues (including establishment of a First Nations-led Data Group and First Nations Data Strategy within both JACS and CSD and increased dissemination of First Nations data). Again, these are likely to have more structural impacts as above, but also to lead directly to better decisions made about and therefore more effective strategies for addressing over-representation.

3.1. Systemic and individual racism

3.1.1. *Identifying the problem of racism*

As noted above, race-based discrimination and racism more broadly were identified as major drivers of First Nations over-representation in the ACT at both systemic levels (for example, in law, policy and practice) and when more directly targeted at individuals.

With that whole of government role around Aboriginal and Torres Strait Islander affairs and closing the gap... the key driver is systemic racism... embedded in all of our systems – of which the criminal justice system is the end point. For a lot of people, when... they didn't get the right experience in education, maybe not a great experience in child protection or with a public or social housing system, when those systems don't work for people, they end up at the criminal justice system. (Government Agency)

Racial profiling by police was frequently identified as pulling more people into the justice system and targeted assaults of First Nations individuals were also called out. There's 'corruption... Like getting bashed by cops for no reason and just getting called a 'Black dog' all the time when you get arrested. It's fucked up' (Bimberi Young People).

Racism and racial profiling play a major part in the incarceration rate for Aboriginal and Torres Strait Islander people... A lot of people being picked up unnecessarily where there could have been other options chosen by the police but they've opted directly straight up for arrest. (First Nations Organisation)

Criminal law related legislation and sentencing and bail decision-making were highlighted too as having potentially disproportionately negative impacts on First Nations people – including where these appear to be unbiased.

Often some of that's quite invisible though. You know you don't necessarily see it unless you dive in and think about it more deeply – sometimes it is about what impact it's going to have. Doesn't take much of a shift in a bail setting to make a difference in terms of incarceration rates. (Government Agency)

When they first come into contact with the system at you know, 14 to 15, they'll get a harsher result. They'll get three months in Bimberi. Whereas a White kid who's attending school and whose parents went up at the court case and paid for a lawyer might get a different outcome. They get, you know, 'don't do it again' and they'll have to do it two or three times more to get locked up. I don't know whether that's their Aboriginality... I do think the system treats poorer people when they first get into the system more harshly. And that follows all the way through then of course. Once you've had a few short sentences, the next time you're going to get a big one. (Statutory Authority/Public Body)

Criminal record related discrimination was discussed, in addition; identified as much more likely to impact First Nations people given their rates of over-representation. This is seen as leading to negative outcomes in employment (see Section 11.3), housing and other areas that then can increase the likelihood of contact with the justice system. This point also illustrates how civil and criminal law issues interconnect in both directions. For instance, having a criminal record affects access to housing (civil law issues of discrimination, housing), which then leads to re-incarceration (criminal law issue).

Racism occurring in other areas also potentially gives rise to further civil law issues, including in the areas of education (also intersecting with disability discrimination: see Section 4, Education) and health. Again, issues in these areas were identified as feeding into over-representation: for example, via unaddressed health issues or school exclusions. Issues in the child protection space are further relevant examples – with clear evidence that First Nations over-representation in the child protection system

(underpinned by institutional racism) contributes to First Nations over-representation in the justice system (see Section 5.3).

This all indicates that addressing racism and discrimination as it impacts First Nations people in multiple areas, not only justice, is important to addressing over-representation. Doing so from a rights-based perspective, requiring use of human rights law related and other legal mechanisms, was discussed by participants. A number of people detained in the AMC who we spoke to had raised human rights related and other legal complaints. Complaint mechanisms are crucial for accountability (discussed in Section 2, as is being able to access advice and information to support rights-based claims in a range of civil law areas (for example, see Section 10 on the AMC).

As one participant stated in discussion about complaints by prisoners, however, ‘it's a big call when you're incarcerated to keep lodging complaints against the people who have incarcerated you’ and complaints raised may or may not be successful (Statutory Authority/Public Body). Also discussed was the restricted accountability for police in the ACT, in particular, because they are not ACT-based (see also Section 7.11). As such, a complaint cannot be lodged against police with the ACT Human Rights Commission.

I mean, you know, it's about racism... It's a small jurisdiction and once you're on the radar, you can't get off it. And so, when you've got a police force that basically isn't accountable to our government because it's the feds, the Commonwealth police – I think that's a fundamental problem which is not easily fixed by a report or legislation or anything else. (Statutory Authority/Public Body)

We heard that more responsibility needs to be taken by those perpetrating racism in any form to avert its occurrence and to respond effectively to it when it emerges, including so as to tackle the range of socio-economic issues likely to contribute to over-representation. We note in this context current mechanisms for internal government review to ensure compliance with human and cultural rights, but with more work to be done to educate ACT Government staff on their legal obligations in this space.

... [T]here's no one single lever that fixes these things. We have a pre-legislative review process so that all the legislation is reviewed prior to Cabinet processes so that we can make sure it is compliant with human rights. So, things like cultural rights and other rights. Equally we've got the positive duty under the *Discrimination Act* that's driving a lot of discussion. We know that particularly in ACT government they don't understand what that's going to mean for them. (Statutory Authority/Public Body)

Some participants we spoke to in government did have some understanding of the nature of systemic racism, identifying the role of government to ‘ensure that we don't build in unintended structural deficits as a result of the things that we do’, for example (Government Agency). But also identified was that a lack of understanding in this regard

is quite common and that this can lead to unconscious racism. One example provided related to ACCO stakeholders not being invited to participate in ACT Government stakeholder discussions about policy that had direct implications for First Nations people in the ACT.

And we went 'stop, [X] needs to be at the table. From the very first meeting. They are the key stakeholder in this'. And for me that was a really clear marker of how far up the chain those issues around systemic racism actually extend. Now to their credit the people who are in charge and who were listening [said] ... 'Oh no, yeah, you're absolutely right'. And the process was okay from there on out. Whether or not that's implemented in a strategic way is a whole other conversation, but certainly there was an appetite for that to move forward in that way [in that instance] ... The fact that it wasn't considered in the first place just for me is still an ongoing concern. (Government Agency)

Overall, in our conversations with government participants there was generally no or limited discussion about systemic racism within the ACT Government and sometimes there was a stated preference to *not* comment on this issue. Participants confirmed that this occurs within government outside of our Review processes. 'The thing that I was struck by is that we use strengths-based language, we talk about cultural integrity, cultural capability, cultural responsiveness, whatever it is, but we don't talk about systemic racism' (Government Agency).

A lack of understanding or in some cases, of openness to consider First Nations experiences of racism was identified as a barrier to addressing this issue. This is seen as due to 'risk aversion', 'a kind of inertia' (Statutory Authority/Public Body). It was suggested that when one participant called out racism in the AMC, ACTCS staff couldn't see the racism in question, for instance. There was 'complete... blindness to being able to frame those... experiences on the basis of race' (Statutory Authority/Public Body). In terms of denial of racism in the justice system – 'if it's not obvious from the data' on over-representation 'then like how else do you get acceptance' that there's an issue 'in that space? I mean if the agencies are unwilling to even consider that that might be a problem, then it's really hard for people to get traction in that space' (Statutory Authority/Public Body).

We note too that positive duties are imposed on institutions in the *Human Rights Act* to better understand and respond specifically to *cultural rights*, poor recognition of which is connected to systemic racism.¹²² It was identified that further work is required in this area within the ACT Government.

¹²² Section 27(1) of the *Human Rights Act* 2004 (ACT) refers to a right to enjoy culture and use language. Section 27(2) refers to Aboriginal and Torres Strait Islander peoples holding distinct cultural rights that must not be denied: to (a)

In terms of pushing that narrative around cultural rights, don't start at the Acknowledgement... And we had this discussion with someone a few weeks ago in one of the institutions about when somebody is saying to you, they're an Aboriginal woman with a history of domestic violence and [that institution says] ... what am I supposed to do with that? That says to me, you don't understand your role and responsibilities. (Statutory Authority/Public Body)

There is some discussion below of efforts within the ACT Government to increase its cultural capability or cultural integrity. One participant identified a clear obligation for government to eliminate or avoid perpetrating racism within its systems but that also there are lines in the sand in terms of its capacity to ever fully demonstrate 'cultural competency' (for example, in the child protection space).

And disconnection is a really important thing that often the idea of CYPS (Child and Youth Protection Services) can never properly fulfil. And it's not their job to fulfil connection because they aren't an Aboriginal space, they are not a cultural space. It's not their job to be culturally competent but they do need to be anti-racist, and they do need to have anti-racism embedded in their work and their practice. Because Australia's deep and dark history that we know is (still) here. (Statutory Authority/Public Body)

It is important to make clear too that racism (and poor understanding of it) is not just a problem for government institutions. It is embedded at a community level and in non-government services, which can lack cultural capability or safety in similar ways to government. The following comment describes community-level issues in this context.

Well, I think we know health is recognised as being a problem. We know that people don't want to access health services because of their experiences with racism. We had a matter a few weeks ago where the Canberra Health Service set up a lounge for Aboriginal and Torres Strait Islander people in their new wing and we were inundated with complaints [from the public] about special treatment. They need special treatment because you're also in the foyer and guess what? (Statutory Authority/Public Body)

This is identified as needing attention and we have recommended, as one response, that KPIs be applied to non-First Nations, government-funded services in Recommendation 3.1.

maintain, control and protect their cultural heritage and distinctive spiritual practices, observances, beliefs and teachings, their languages and knowledge and their kinship ties and (b) 'have their material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs recognised and valued'.

I get frustrated with the continual focus on ACCOs, as if that's the only solution. It is not the only solution. That is a solution, but ...we're forgetting that most Aboriginal people go to mainstream service providers and we need them – legal aid, health, education, AMC – to be held accountable ...I'm not talking about taking money away from [ACCOs] but we should [all] be held accountable [around] numbers of Aboriginal and Torres Strait Islander people we assist and the way we assist them. (Legal Service Provider)

On this point, the ACT Government has indicated that in preparation for the implementation of the *Next Steps for Our Kids Strategy 2022-2030*, CSD worked in partnership with the OBOW Implementation Oversight Committee to develop contract clauses which reflect the ACT's expectations for the delivery of culturally safe services to Aboriginal and Torres Strait Islander children, young people, families and carers. The clauses have been embedded in the relevant contracts and delivery will be monitored as part of the Next Steps Performance Management Framework.

Recommendation 3.1

We recommend that JACS and CSD embed cultural capability measures (KPIs) into funding agreements for non-First Nations organisations it funds to work with First Nations people in the ACT (where this is not already being done).

3.1.2. Government commitment to addressing racism

As noted earlier, **Priority Reform Area 3** requires that governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund. As noted in Section 1, transformation elements which governments must progress include identifying and eliminating racism, embedding and practicing meaningful cultural safety and supporting Aboriginal and Torres Strait Islander cultures.¹²³

The ACT Government has indicated that the Office for Aboriginal and Torres Strait Islander Affairs (OATSIA) is working with the Cultural Transformation Branch within the Chief Minister Treasury Economic Development Directorate (CMTEDD) to identify government

¹²³ ATSIEB, for one, has identified that much more work is required across the ACT Government to address racism. 'The responsibility for action and change in Priority Reform 3 is held by governments. At the ACT level, we see effort in some elements of transformation, however, there are some, particularly in the 'Identification and elimination of racism' (Clause 59a) where both the understanding and action is not aligned'. ATSIEB (2023) Hearing Report, p.12.

responses under Priority Reform Area 3, noting that this will form part of a Transformation Strategy being developed against the National Agreement's transformation elements.

As discussed in Section 2, the **Cultural Integrity Focus Area** under the ACT Agreement is aligned with **Priority Reform 3** and its target of reducing experiences of racism and discrimination for Aboriginal and Torres Strait Islander people within government systems by 2031 by at least 80% as progress towards zero (with no data available).

Targets identified for this focus area under the ACT Agreement refer to demonstrating cultural competency of ACT Government employees and embedding requirements for all services to be culturally appropriate and accessible. Priority actions in the ACT Agreement's Phase One Action Plan include developing processes/mechanisms that embed cultural integrity into government, including cultural proficiency measures within ACT Government reporting.¹²⁴

Phase Two priority actions refer to ACTPS developing and implementing general guidelines on identifying systemic racism in systems and processes, including expert input on barriers and governance to progress and developing and implementing an ACTPS Cultural Integrity Framework to support each directorate to create their own Cultural Integrity Plan and Professional Learning Plan.¹²⁵

In feedback provided on a draft of this Report it was confirmed that whole of government responses to racism sit across the ACTPS, including the Cultural Transformation Branch (internal for staff), the Human Rights Commission (for broader incidents of racism and discrimination), and OATSIA in terms of guidance under the application of the National Agreement on Closing the Gap, as above. However, *all directorates* are required to address racism, discrimination and unconscious bias consistent with ACT Government commitments under both the National Agreement and ACT Agreement.

Further, the ACT's Jurisdictional Implementation Plan (JIP) refers to an ACT Government commitment under Priority Reform 3 to reducing racism and discrimination for First Nations (government) staff and First Nations people engaging with government services. There is reference to an ACTPS Framework for Addressing Systemic Racism being in development and to identifying as part of this process a 'common measure' to identify systemic racism. The Framework will 'address behaviours, identify, and address racism

¹²⁴ ACT Government (2022) *ACT Aboriginal and Torres Strait Islander Agreement, Phase One Action Plan – Cultural Integrity*. There is also a reference to embedding the intent of s. 27(2) of the *Human Rights Act 2004* into the everyday business of the ACT Government to *support the rights of Traditional Custodians*, without reference to other First Nations people in the ACT or s. 27(1)).

¹²⁵ ACT Government (2022) *ACT Aboriginal and Torres Strait Islander Agreement, Phase Two Action Plan – Cultural Integrity*. Establishing and implementing an ACTPS Cultural Integrity Professional Learning Database to guide creation of Directorate specific Professional Learning Plans aimed at building ACTPS workforce cultural capability and workplace cultural safety and developing a Cultural Integrity 'best practice' guide including case studies that align with the ACTPS Cultural Integrity Framework to support all Directorates to develop their own Cultural Integrity Action Plans are further actions listed.

in processes and systems to ensure Aboriginal and Torres Strait Islander staff, customers and community feel safe when employed within the public service and interacting with our services'.¹²⁶

There is some crossover in actions listed in the JIP and ACT Agreement Action Plans, but the JIP has additional detail, discussing Canberra Health Services' use of yarning circles to gather perspectives on ensuring cultural safety in health.¹²⁷ Education Directorate reporting talks too about *self-assessment tools* developed in 2023 to assist staff, teams and branches to appraise their Cultural Integrity maturity, which appear to have current or potential broader application outside of this Directorate.¹²⁸ This reporting also identifies that the Education Directorate is leading development of the Addressing Systemic Racism Framework, with the involvement of a Systemic Racism Working Group drawn from other areas (including CSD, CMTEDD, Health and JACS).¹²⁹

Additionally, the ACT Agreement's **Inclusive Community** Core Focus Area is aligned with **Priority Reform Area 4** – Shared access to data and information (see Section 3.3, Data). This focus area aims for: *a self-determined and inclusive society where Aboriginal and Torres Strait Islander people are valued, respected and experience a life free of racism and systemic discrimination*.

The Phase One Action Plan for this area identifies a focus on reviewing government 'structures, systems and practices to remove institutionalised racism'. It refers to targets that include 80% reduction in First Nations experiences of racism within government systems, *feedback from the First Nations community* around meaningfulness of engagement and self-determination and demonstrating that actions have been taken to 'remove barriers to delivery of culturally responsive and respectful services'.

Relevant actions include engaging and working with the Aboriginal and Torres Strait Islander community in the design of government policy and reform. The Phase Two Action Plan adds a focus on ensuring inclusive representation in participation in decision-making and its actions focus principally on data (see Section 3.3, Data), including collecting wellbeing data for Aboriginal and Torres Strait Islander peoples in the ACT and region to help identify barriers they experience and to support self-determination in seeking solutions.¹³⁰

¹²⁶ ACT Government (2022) Jurisdictional Implementation Plan, p.14.

¹²⁷ ACT Government (2022) *Jurisdictional Implementation Plan*, p.14.

¹²⁸ Education Directorate (2024) *Annual Report 2023-24*, ACT Government, p.199.

¹²⁹ ACT Government (2022) *ACT Aboriginal and Torres Strait Islander Agreement, Phase One Action Plan – Inclusive Community*.

¹³⁰ ACT Government (2022) *ACT Aboriginal and Torres Strait Islander Agreement, Phase Two Action Plan – Inclusive Community*.

3.1.3. *Whole of government responses to racism*

As the above indicates, the ACT Government is working on addressing systemic racism and cultural safety or integrity issues. We acknowledge this work and note that the following discussion is based on information available to us at the time of completing this Review (sourced publicly or shared as part of consultations).

This material has included some more detailed descriptions shared by some government participants about relevant ACT Government strategies or activities. The Health Directorate, for instance, has sought to educate their staff about Closing the Gap and how it might apply to their work. They have found this useful for encouraging thinking about reform likely to help tackle systemic racism: for example, leading to birthing on country initiatives and more innovative approaches to funding decisions (see also Section 4, Education and Section 3.2, Funding).

[In] our mental health area... you've got money to give out. Great. Rather than saying this is what we think from the data we've got as government ...they went to community and said let's have a community design session. We've got X amount of dollars. How would that most benefit right now in this community? Okay, great. That becomes then the RFQ (Request for Quotation) that goes out... So, you've actually directly addressed that community need from community viewpoints. You're transferring that power as well. (Government Agency)

There was, however, very little detailed discussion (other than by a small number of staff) about how this work will come together *across government*. This may be due to lack of awareness and/or not wanting to talk about these issues. Perhaps current work needs greater visibility or this may indicate that more needs to be done at a whole-of-government level around these issues. Racism impacting over-representation is an ACT government-wide issue impacting over-representation and as such it needs attention across government. 'Systemic racism needs a systemic approach to its identification and resolution. However, we see only programmatic or individual responses being elevated' (First Nations Organisation).

We've got something like what 2.6 million public servants in this country and to genuinely address systemic racism and to eliminate systemic racism... we're talking about a 10 to 15 year minimum, whole of Australia, every jurisdiction, every government, every employee process which we should be doing anyway under Closing the Gap. But again, we're not, it's piecemeal and ad hoc. (Government Agency)

Systemic racism reviews

To ensure a more coordinated response to racism and cultural safety participants emphasised that significant investment on the part of government is required, both financial and non-financial.

So, there's pockets of these amazing things happening that would play into that broader systemic response that plays into recidivism and over-incarceration. But again, who's ever going to draw us together? ... And it's something to be invested in and it's something to be worked on. It's something to be brought together and coordinated... there's no other label but racism you can apply... – it is a deep racist system because it refuses just to resource and do what it needs to do to make this happen. The tools are there it's just not being done. (Government Agency)

For many participants we spoke to, rolling out cultural awareness training across government isn't a significant enough investment in strategies designed to address cultural safety and racism issues; for example, this is likely to deliver very short term benefit). And while staff may self-assess their cultural awareness or competency, as above, this also needs to translate into real action, with accountability measures in place to ensure this occurs in ways that actually reduce racism. Ideally, the above Addressing Systemic Racism and Cultural Integrity Frameworks, as a starting point, incorporate relevant accountability measures, but we also note here our discussion and the recommendation we have made about KPIs for more senior JACS staff (2.3.b).

[To] address systemic racism, we talk about things like mandatory cultural competency training. What we don't talk about is mandatory continued lifelong learning in terms of cultural responsiveness across our government and our organisations. How are we accountable month on month, year on year, decade on decade for ensuring that individuals continue to grow their understanding. A training course means absolutely nothing and what you're doing is throwing money that could be going into community. (Government Agency)

In terms of investing time and effort into responses to racism and cultural safety issues across government, Recommendation 3.2 focuses on *independent* systemic racism reviews to be conducted in key areas of the ACT Government that impact on over-representation, including but not limited to those working directly with justice issues. This includes Directorates and/or parts of Directorates – and in other recommendations we have identified two areas as a priority for review, ACT Police, and the AMC (Recommendations 7.3, 10.11).

This is where for me it's the structural review in terms of the institutional discrimination that's needed from the intersection with police right the way through to the actual incarceration system. (Government Agency)

There also needs to be robust Indigenous and government oversight of all recommendations arising from these systemic racism reviews to ensure their effective implementation (see further discussion below about First Nations data and systemic racism/cultural safety).

... [T]hat's where the rubber hits the road... I think at some point the government is going to have to come to grips with the ongoing experience of First Nations mob in the ACT who say they have experienced some kind of racism with police, with housing, with health. The idea of a review of systems in order to identify where they are either overtly or covertly operating in a racist way would [be] a first step. But the real kicker is in what the accountability mechanism is. I think that there is, particularly across policing systems, there is enormous resistance to the suggestion of racism. (Courts and Tribunals)

Systemic racism framework

Several authors of our Report have previously developed a Systemic Racism Framework for use in conducting systemic racism reviews.¹³¹ This framework seeks to contribute to elimination of systemic racism by providing a consistent approach and methodology to identifying and understanding its indications within an organisation. It was developed to support implementation of the Northern Territory Aboriginal Justice Agreement 2021-2027 (NT AJA) – specifically, aspects of Aim 3 of the NT AJA, which seeks to ‘identify and eliminate systemic racism in government agencies and contracted service providers that directly or indirectly discriminate against Aboriginal Territorians engaged in the justice system’.¹³² It has wider potential application, however, and is not justice organisation-specific (different areas of government were to be reviewed under the NT AJA (including for example the Department of Infrastructure, Planning and Logistics (with responsibility for licensing, prison and other infrastructure etc.)).

Box 3.1 Systemic Racism Framework - Methodology¹³³

- Examines core Aboriginal policy frameworks that impact on the relevant organisation and an analysis of its compliance with the goals, aims and outcomes of the various key Aboriginal policies.
- Examines and analyses the organisation’s service delivery impacting on Aboriginal people, determining key points that may lead to differential

¹³¹ Allison, F. and Cunneen, C. (2022) *A Framework Model for Investigating Systemic Racism*, Jumbunna UTS (unpublished).

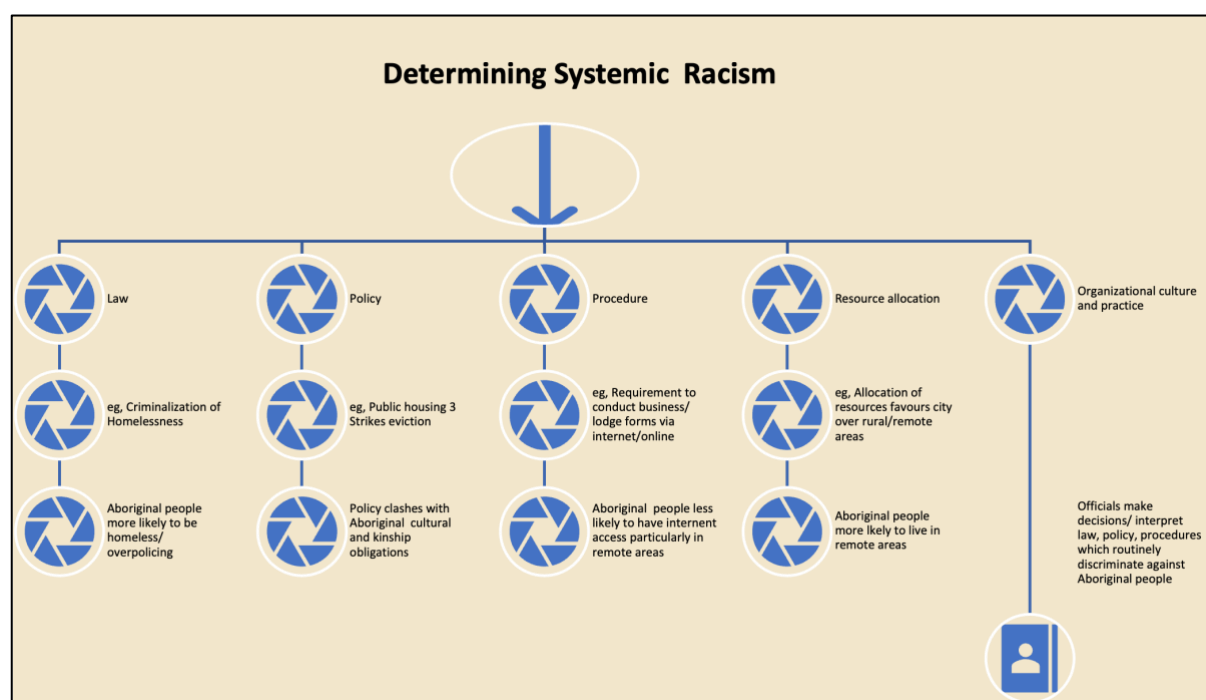
¹³² NT Government (2021) Northern Territory Aboriginal Justice Agreement 2021-2027, NT, p.33.

¹³³ Allison and Cunneen (2022) *A Framework Model for Investigating Systemic Racism*.

treatment (including though law, policies, procedures, resource allocations and practices).

- Identifies the level of involvement of Aboriginal people in decision-making processes of the organisation regarding the design, planning and delivery of services and community engagement. Questions relevant to this examination are whether the governance structure recognises in KPIs appropriate responses for meeting Aboriginal needs and whether the organisational structure values Aboriginal consultation and decision-making processes and Aboriginal clients and staff.
- Identifies relevant gaps in the organisation's accountability (for example, complaints mechanisms) that are relevant to understanding the incidence of systemic racism as it impacts on Aboriginal people.
- Examines and analyses Aboriginal workforce participation, support for Aboriginal employees, cultural competence training for non-Aboriginal employees, and the number of Aboriginal employees in contracted services and contracts awarded to Aboriginal businesses.
- Examines and analyses available data to evaluate the extent to which there are differential outcomes in key service delivery areas for the organisation, and identification of where further research/better data collection is needed.
- Examines and analyses the Aboriginal client population as part of the general client population to determine gaps in service delivery or the absence of Aboriginal people as clients. This analysis is dependent on the collection and availability of relevant organisational and other external data.
- Identifies structural and inter-departmental factors that may cause or exacerbate systemic racism.
- Develops recommendations to ensure equitable, effective and non-discriminatory service delivery for Aboriginal people, incorporating actions related to policies, practices, procedures and resource allocations that appear to have an adverse impact on Aboriginal people and strategies to reach Aboriginal client groups that are under-represented in the provision of services. As part of this, there is a need to identify data sources for the establishment of benchmarks/mechanisms to measure progress in reducing or eliminating systemic racism.

Figure 3.1: Determining Systemic Racism



Source: Determining Systemic Racism diagram in Allison and Cunneen (2022) *Framework Model for Investigating Systemic Racism*.

Recommendation 3.2

We recommend that the ACT Government conduct independent, targeted systemic racism reviews of JACs and its agencies (police, ACTCS as a priority: see Recommendations 7.3, 10.7) and other Directorates likely to influence or impact First Nations justice outcomes, including Education, Health, Housing, and CSD. The reviews ought to identify current best practice and make recommendations for areas for improvement in addressing systemic racism, including across Directorates.

- a. The approach to conducting these reviews should be developed with First Nations input and implementation of their recommendations requires robust First Nations and government oversight.
- b. The reviews and government responses to their recommendations must be published.
- c. Consideration should be given by the ACT Government to how First Nations experiences of (and other data about) systemic racism are shared publicly and with First Nations people specifically (alongside publication of the systemic racism reviews), including potentially via implementation of Recommendations 3.13-3.15.

Recommendation 3.2.a is dependent on implementation of Recommendation 2.1 and partially dependent on 2.2 (for First Nations input and oversight).

3.1.4. Cultural Safety Plans (Justice)

While confirming the importance of the above whole-of-government investment in responding to racism/cultural safety issues, we note that various recommendations of this Review seek to address these issues within specific areas of government (for example, via incorporation of consideration of Aboriginality in sentencing or bail decisions).

We have also made recommendations for introduction of Cultural Safety Plans within JACS specifically (see Recommendations 3.3, 10.7). This approach is in keeping with current commitments made by the ACT Government, as above, to development of Cultural Integrity Plans to sit under a whole-of-government Cultural Integrity Framework and the recognition that responsibility for improving cultural integrity rests with each Directorate. We note, too, the Productivity Commission's recommendations that governments must ensure that *every government department* has a clear, documented strategy for its portfolio to undertake transformation required under the National Agreement.¹³⁴

We identify that rather than introduction of Cultural Integrity Plans (as per the ACT Agreement), we see ensuring *cultural safety* for First Nations people as further along the continuum in terms of producing the level of transformation expected by First Nations people to address their experiences of systemic racism in the criminal legal system in particular. This point is discussed further in Section 10.11.3, which also points to the importance of translating Cultural Integrity/Safety Frameworks into Cultural Integrity/Safety Plans with identifiable *actions* (a point made with reference to the ACTCS' *Be the Change We Seek. Aboriginal and Torres Strait Islander Framework* safety).

The language of cultural safety is also more closely aligned with that of the National Agreement, which also identifies, notably, that levels of cultural safety can only be measured by First Nations people. This accords with discussion below on First Nations data and cultural safety. Clause 12 of the National Agreement defines cultural safety as follows.

Cultural safety is about overcoming the power imbalances of places, people and policies that occur between the majority non-Indigenous position and the minority Aboriginal and Torres Strait Islander person so that there is no assault, challenge

¹³⁴ Productivity Commission (2024), *Review of the National Agreement*, p.13.

or denial of the Aboriginal and Torres Strait Islander person's identity, of who they are and what they need. Cultural safety is met through actions from the majority position which recognise, respect and nurture the unique cultural identity of Aboriginal and Torres Strait Islander people. Only the Aboriginal and Torres Strait Islander person who is recipient of a service or interaction can determine whether it is culturally safe.¹³⁵

Recommendation 3.3

We recommend that JACS, CSD and their relevant agencies establish Cultural Safety Plans as a priority. The development, monitoring and evaluation of these Plans require First Nations Input (see also Recommendation 3.4).

This recommendation is dependent on implementation of Recommendation 2.1 and partially dependent on 2.2 (for First Nations input).

3.1.5. First Nations data and racism/cultural safety

We discuss above cultural awareness training and its limitations as a response to racism and cultural safety issues. A further issue that might be raised about such training is the reliance it can often place on self-assessment by staff undertaking training or internal government assessment to gauge its value as a strategy for increasing cultural competency.

First Nations peoples ought *always* to provide data for and otherwise participate in the design, monitoring and evaluation of strategies aimed at addressing racism and cultural safety issues. Any measurement of baseline and/or improved levels of cultural competency or safety and systemic racism within government should incorporate First Nations data on experiences of the same. First Nations people should also have input on best strategies to address these issues (likely to go beyond staff training). This data can then be used to develop and/or revise relevant strategies.

In an ACT context, these strategies incorporate those sitting under the ACT and National Agreements, including the Addressing Systemic Racism and Cultural Integrity Frameworks currently being progressed.¹³⁶ In a justice context, this includes Cultural

¹³⁵ See also examples of cultural safety (and discussion of its place on a continuum) and cultural security *frameworks* in VIC and NT, identifying key domains in which transformation might occur. Vic Health (2019) *Part 1: Aboriginal and Torres Strait Islander cultural safety framework*, VIC; Vic Health (2019) *Part 2: Aboriginal and Torres Strait Islander cultural safety framework – Cultural safety continuum reflective tool*, VIC; NT Health (2016) *Aboriginal Cultural Security Framework 2016-2026*, NT.

¹³⁶ At an ACT level, First Nations data could be gathered to address current gaps identified in relation to baseline data and identification of clear mechanisms for measuring progress against the above government commitments to

Safety Plans to be developed under Recommendation 3.3. First Nations data might also be used, for instance, in JACS outcomes and impact measurement related to WIA processes and progress under RR25by25 and the ACT and National Agreements (including development of its theories of change against Priority Reform and Core Focus Areas) and to inform work to be done on KPIs for more senior staff in JACS (see Recommendations 2.3.b-e).

This accords with recommendations made by the Productivity Commission in its 2024 review of the National Agreement, which stated that strategies for transformation under Priority Reform Area 3 developed at a department level ought to be underpinned by an Aboriginal and Torres Strait Islander-led assessment of progress on transformation elements related to institutional racism and unconscious bias within the department.¹³⁷

As a further relevant example discussed below in Section 4, we discuss the Education Directorate's collection of data from students, carers and staff via their Satisfaction and Climate Survey. We have identified this as an opportunity to gather data on First Nations experiences of racism and cultural safety in an educational setting. Gathering of First Nations data on racism and cultural safety could be gathered by JACS via surveys or other methods. Systemic racism reviews to be conducted under Recommendation 3.2 provide a further mechanism for such data collection, including at baseline level.

We note that qualitative and quantitative data gathered through such processes is not always seen by government as valid or sufficiently rigorous. This issue arose in feedback from the ACT Government to a draft of this Report and accords with what we heard from First Nations participants about responses to the sharing of their experiences of racism. They identified that these accounts are generally poorly responded to, including defensively or by way of denial.

The ACT Government must do better in this regard. As one participant states, 'If someone says their experience of this thing is racism, then take it at face value and deal with it instead of trying to find a way to say it's got nothing to do with that because you don't have the knowledge, you don't have the experience to be able to say that' (Statutory Authority/Public Body).

And you know, as I have said for many years in conversations with police, perception [of racism] is king. And if the perception is X, that's what you have to deal with. It's no answer to perception to say, 'Well we don't believe that we do

achieving an 80% reduction in experiences of racism. We note, as relevant (and as discussed above): the ACT Government identifies it is working on establishing a common measure for systemic racism, is committed to gathering feedback from the community on meaningfulness of engagement and self-determination, and work that has been progressed by the Canberra Health Services around gathering perspectives via yarning circles from First Nations people on how to ensure cultural safety in health.

¹³⁷ Productivity Commission (2024), *Review of the National Agreement*, Essential Action 3.1, p. 13.

this'. In fact, it seems to me that it has a gaslighting effect on a community that continually says, 'Well yes you do. These are our experiences of you'. And so, the reluctance to recognise the significance of perception is critical because it means you're constantly at an impasse.

In a policing context, I think that there is a real problem with the reluctance to acknowledge the existence of the perception and what that means for the relationship between the state manifesting in the cops and the Aboriginal community here. And that comes back to leadership, I think... But there is absolutely work to be done. The answer doesn't lie in making Aboriginal liaison officers responsible for the creation of the relationship. (Courts and Tribunals)

Somewhat related to this, systemic racism reviews require robust oversight, as noted above, to ensure any recommendations arising are implemented effectively. This oversight may be bolstered by use of the above reporting mechanisms under the ACT and National Agreements on progress in responding to systemic racism and KPIs for senior JACS staff (the latter for JACs related systemic racism reviews).

First Nations input in Recommendations 3.1-3.3 will in part need to come from the broader ACT community (the gathering of data on First Nations experiences of racism and cultural safety). Other input (including into the approach taken to conduct systemic racism reviews and to oversee implementation of their recommendations, into the development, monitoring and evaluation of Cultural Safety Plans) may come from First Nations-led justice mechanisms established under Recommendations 2.1, 2.2 and potentially the First Nations-led Data Working Group established under Recommendation 3.11. (Section 3.3 also raises relevant points and sets out recommendations related to First Nations people and data in the justice space).

Recommendation 3.4

We recommend that as part of the systemic reviews (Recommendation 3.2) or via other mechanisms (for example, First Nations consumer surveys), the ACT Government should gather data from the First Nations community on their experiences of cultural safety and racism occurring within their interactions with government.

This recommendation is dependent on Recommendation 3.2 (if gathering data via systemic racism reviews).

3.2. Funding and resourcing

This section considers issues related to funding with connections to First Nations over-representation and responses to these issues, including increasing First Nations informed and otherwise more strategic thinking about how resourcing can support better justice outcomes. As one government participant stated, though the ACT Government does not have as large a bucket of funding as other jurisdictions, decisions *could* be made differently about existing resourcing and how this might be re-directed to increase positive impact. ‘I think the solution is not just more spending, it's maybe better orienting what we're already doing, potentially’ (Government Agency). Suggested ways forward include better coordinated funding responses across the ACT Government to address drivers of over-representation, including with an increased focus on funding for community-led solutions, and resourcing efforts directed to more structural change.

3.2.1. Problems with current funding approaches

Numerous problems were identified with current approaches to funding of justice related programs and services (though the issues are not specific to JACS by any means). Key issues discussed below include a lack of First Nations control over funding decisions, short-term and programmatic resourcing and under-resourcing of ACCOs and early intervention/prevention approaches. Also highlighted was poor transparency around funding decisions, contributing to limited awareness by services and the community about who is providing what service, and a lack of accountability on the part of services to do what they have been funded to do.

Current approaches to funding are identified as causing tensions and fragmentation across First Nations organisations in the ACT. ‘For me, the ACT government are playing political football with services and they're pitting service against service to a degree. They know what they're doing’ (First Nations Organisation).

The ACT Government's contribution to lateral violence is disgusting. You make us fight over the one bucket of money and no wonder everyone's like, well this organization shouldn't have this, and this organisation shouldn't have this... It's like, well we're all just friggin' surviving and then you're turning us against each other because one organisation gets some money and so then the other organisation doesn't... Then you're making us think that it's an issue with community when it's actually not. (Legal Service Provider)

Having to compete for limited funds is one issue, but government decision-making about who should be funded and for what was also seen as inequitable. ‘Historically, the government funds specific orgs heavily so why would we waste our time’ applying for funds? (Sisters in Spirit Community Dialogue Women). Some organisations are seen as better placed from the get-go to apply for funding because they are more established and

have more resources. These organisations ‘have the money to buy good people to write their submissions’, while smaller ACCOs ‘are so busy providing the service they have no time to do this. So, they’re not even in the game. If they’re going to keep making them do this grant thing and they need to give them all a grant writer’ (Government Agency).

The lack of funding provided to Aboriginal and Torres Strait Islander organisations specifically was discussed in our First Report and has also been re-emphasised in our further consultations. These organisations identified feeling ‘burnt out’ because of their significant under-resourcing (Sisters in Spirit Community Dialogue Women). Negative views were shared about funding for non-Indigenous organisations, who may be in a better position to apply for funds (for example, resource-wise, already having a track record of receipt of grants) (see also Recommendation 3.1 and the need for cultural capability measures for non-Indigenous NGOs).

You know, everybody is not in tune with each other because what coexists here is the non-Indigenous services that are being funded by JACS and other entities... The big churches, mate, they’ve got the big fucking Blak dollars... (Sisters in Spirit Community Dialogue Women)

Stakeholders pointed to the findings of the 2024 Review of the National Legal Assistance Partnership (NLAP) related to funding of Aboriginal and Torres Strait Islander Legal Services (ATSILS) in particular.¹³⁸ The Review identified that the legal need of Aboriginal and Torres Strait Islander peoples is the highest of NLAP groups, while pointing out that ATSILS and Family Violence Prevention Legal Services were funded at levels ‘insufficient to service’ this need.¹³⁹ The Review identified that:

Funding levels for Aboriginal and Torres Strait Islander services must be increased, and administrative, governance and reporting arrangements made fit for purpose while supporting self-determination. Stronger accountability measures must be put in place to ensure state and territory funding administration adheres to progressing National Agreement Objectives.¹⁴⁰

A lack of transparency in funding decisions was highlighted too, with discussion of confusion or limited knowledge amongst services *and* the broader community about who is currently funded for what activities. This came up in community dialogue sessions as

¹³⁸ Mundy, W (2024), Independent Review of the National Legal Assistance Partnership: Final Report.

¹³⁹ Munday (2024), *Independent Review of NLAP*, p. 75. Despite some improvement in the overall quantum of funding provided to ATSILS by the Commonwealth, this remains the case under the forthcoming National Access to Justice Partnership (NAJP) agreement (to commence on 1 July 2025). There was stakeholder acknowledgement in this context of the contributions of the ACT Government to funding ALS NSW/ACT baseline services, which is not the case for all ATSILS across other jurisdictions, as well as funding ALS NSW/ACT justice programs like Front Up, Ngurrumbai and its Disability Liaison Officer programs.

¹⁴⁰ Munday (2024), *Independent Review of NLAP*, p.75.

a major barrier to accessing support.¹⁴¹ Community dialogue sessions for men and women raised that people might only find out about or access supports at a crisis point (see also Section 5, Child Protection).

Related to the issue of transparency, organisations are identified as not always doing what they've been funded to do, and in ways that leave community need unattended or again, cause tensions between service providers. 'Of course, you're going to flip out when you find out Auntie is doing something that you wanted to do... We all do everything, but you can stay in lanes of what your core cohort wants' (Sisters in Spirit Community Dialogue Women). There was a call for increased accountability for services. 'So, for instance, you know, if you've got your youth under your portfolio, what are you actually doing for the youth? What is your scope, if you know what I mean?' (Education Provider).

Relevant to comments about service provision at crisis points, *multiple* participants emphasised the need for increased early intervention and prevention-focussed funding. Under-resourcing by government of services and supports to meet Aboriginal and Torres Strait Islander need in *all areas* relevant to over-representation was highlighted. One participant spoke about the long-term homelessness of women incarcerated in the AMC, for instance – not in terms of access to post-release housing but as a basic need that had been unaddressed for these women across whole lifetimes. 'I mean the stories are really sad and are unheard. [There are women in the] AMC that have never had a home. Never ever. People my age. Now wouldn't you think this is a place where we could figure it... because we've got resourcing' (Legal Service Provider).

There has not been sufficient needs-based, sustainable and long-term investment in Aboriginal Community-Controlled Organisations (ACCOs) to deliver services to Aboriginal people in the ACT across health, mental health, alcohol and other drug support, family support, housing, education and employment. There are inadequate community-controlled, culturally safe services and accessible services for Aboriginal people in the ACT to ensure the needs of families and individuals are met, and to provide prevention, early intervention and treatment that is proven to prevent contact with the criminal process in the first place.¹⁴²

¹⁴¹ We note that JACS Annual Reporting has some detail of funding provided each financial year, but this is not very accessible or sufficiently detailed. See JACS (2024) *Annual Report 2023-24*, pp.157-62. Comments in question include the following: 'If you haven't got the awareness about stuff that's available, that you can access, you're not going to know how to access it. So, making people aware of things, what they're entitled to or what they can access and use. That's the big thing. Information' (Boomanulla Community Dialogue Men); 'There is no advertising on their part that they're getting money for a service to do for us and everything and they're not forthcoming and saying we're here, this is a program that we've got to help you' (Sisters in Spirit Community Dialogue Women).

¹⁴² Aboriginal Legal Service (ALS) NSW/ACT (2024) Submission to the ACT Government Review on Indigenous Overrepresentation in the Criminal Justice System (ALS NSW/ACT, Written Submission) p.5.

Funding was identified as being by default too short-term and programmatic, while longitudinal and sustained funding is needed to make genuine headway into addressing over-representation.

We've got an agenda, we've got some diversionary measures, we've got some things that are doing some good work but is the funding consistently there? Is it on a grand enough scale, as you say in your (first) report? That's what most people would say. Just needs more of that to avoid what we're doing in terms of locking people up. (Statutory Authority/Public Body)

A short-sighted funding approach to such a complex and entrenched issue is seen as highly problematic by community organisations *and* government staff, including because of the resources expended to continually source funding (for example, as renewed funding for initiatives that are clearly working). First Nations government employees spoke about having to go 'cap in hand' 'mission style' to Treasury to get ongoing resourcing for programs only funded for 6 months, for instance. They also spoke about 'constantly fighting for a few thousand dollars just to keep programs that are working going and you know jumping hurdle over hurdle... and then after the next six months you do again, it's ridiculous. Everything's a trial' (Government Agency). Moreover, government will decide to de-fund programs even if they are effective.¹⁴³

Organisations being able to access operational funding was highlighted as a priority too to enable smaller groups to establish themselves. 'Funding is never enough to actually start something... It takes a while for these things to get up off the ground' (Legal Service Provider).

This whole 'we will give you X amount of money for a program'. This is how we currently fund, we have a program we want to run. You put in grants and we'll give you the money if we think you're the better applicant. There's no core funding for you. We won't include staff training or development. We'll only include what the program is and staffing for that. We won't include travel. We won't include anything so you can deal with overheads by yourself. We'll give it to you for 12 months. After that have you have two times two year extensions but we won't tell you until a week beforehand so you leave your staff member [hanging] and because we don't know because we have to wait for budget to tell us if we're allowed to tell you that you have [funding for that] staff member... All we're asking for forever is grants. (Government Agency)

¹⁴³ A licensing program run by Gudan Gulwan, for instance, was identified as successfully getting young people on the road and stopping their re-offending (as raised in our First Report). This was de-funded by government, despite being an effective preventive response to over-representation.

Also discussed were limitations in resourcing of First Nations organisations and people to respond *as a sector* to the complexity of over-representation, including by coming together as an ACCO sector to consider collectively what optimal funding responses look like in this space. The need for greater coordination and collaboration across the service sector (around agreed priorities) was discussed as follows.¹⁴⁴

There's enough to do in our community that everyone can play a role... [Instead, they're] pitting up all the orgs against each other rather than bringing us together and paying for us [to do this]. If we had money to come together – and appropriately staffed orgs – we could do that a bit more strategically on our side. But everyone's just operating in crisis mode. (Sisters in Spirit Community Dialogue Women)

Though community participants identified knowing what the community wants, they also talked about being directed to work in ways that are contrary to or out of alignment with this via government agendas set out in funding applications and funding agreements, for instance.¹⁴⁵ Services will still respond to client needs, regardless. They just won't get paid or reimbursed for any additional work or expenditure this requires (or report it to government as funder). 'And legally we're not supposed to transport people in a car because we're not covered. But sometimes, yeah, it's an expectation that you pick up and drop them off... How can we not do that? Because that's our way' (Sisters in Spirit Community Dialogue Women). Related to this, also discussed was that service providers' performance (and their access to funding) is most often gauged using government measures of effectiveness.

Because with these funding reports... you've got a word limit, you've got criteria and you've got a box... We don't get the opportunity to sit down like we do with you guys to say this is why we need that funding... You can do a funding pitch but has to be a thousand words. Yeah, you can't put what we do on a day-to-day basis into a thousand words. (Legal Service Provider)

You get re-funded because you're performing and you're hitting numbers but that's not all we do, and we can't put that in a thousand words either. Like, give us the opportunity to sit down and say actually yeah thanks for funding us again but... can you throw us extra funding? Because we will go out to our client's home and

¹⁴⁴ A further comment is as follows. 'There are a lot of programs in Canberra, but not a lot of them collaborate. They feed off each other to help our community... Which is good they've got their own things going on and that, but everyone should be getting together and helping our people' (Boomanulla Community Dialogue Men).

¹⁴⁵ Comments included the following. 'In terms of funding, especially receiving funding from government, there are set criteria that are specifically government-centric. So, you know, making sure you meet certain KPIs and whatnot to be able to jump through the hoops to get the government funding in the first place' (First Nations Organisation); 'They change their procurement [criteria] so you've got to employ so many women or they'll put targets in the contract' (Sisters in Spirit Community Dialogue Women).

we'll sit down with them, and we'll fill out forms with them or we'll take them to housing offices, etc., that we're not funded to do. (Legal Service Provider)

Also identified is a need for increased access to brokerage funds, providing some flexibility for First Nations organisations around how they spend funding to meet community need. One participant spoke about services currently supporting young people to complete a learner driver licence course (which is free), suggesting that they then don't have the funds to help pay for licences – meaning these young people remain unlicensed. This might be addressed by way of brokerage funds, as an example.

3.2.2. *Current mechanisms: community-led funding decisions*

First Nations people want input into what gets funded by government to prevent and reduce over-representation, which is the right approach given existing government commitments to shared decision-making and transformation of government, the principle of self-determination and as First Nations people in the ACT know what's needed in their community.¹⁴⁶

We are on the ground and can see where funding is required [including] to alleviate gaps in service delivery. We know what we need as Aboriginal people to support and fix where the gaps are. Government is not understanding or listening. It's a big hindrance in terms of community programs really hitting the mark. (First Nations Organisation)

Barriers to providing input include difficulties the community has in engaging with government-led decision-making processes at all stages, including due to lack of resources.¹⁴⁷

[There's] not a great understanding of how those processes work outside of government and then it's how well placed organisations are to engage with and influence that, particularly smaller organisations that don't have resources sitting there to do policy and advocacy work. They're kind of 110% engaged in just delivering services... [They can say] what they are seeing in community or what

¹⁴⁶ Comments include: 'I think it's very important that Aboriginal voices need to be at the table' (Legal Service Provider) and that government needs to fund policies 'to adapt to community needs' (Sisters in Spirit Community Dialogue Women).

¹⁴⁷ Treasury is identified as trying to educate the community to increase its potential to influence the budget process, we were told – e.g. by highlighting the importance of working with Directorates throughout the year to help inform their funding priorities '... to make sure that everyone understands what the issues are and are well placed to write a business case when the time comes. But what we see is that it's not necessarily well understood outside of government how those processes occur. And often you'll get a budget submission provided by someone in like March of the year and by then it's kind of quite late to be developing a really robust business case' (Government Agency). 'Treasury is trying to just I guess work with Directorates but also work with the community to position them to have ongoing conversations to be prepared for that' (Government Agency).

their priorities are but to kind of go to the next level and contribute to development of options and that kind of thing. They're not funded to do that kind of work. (Government Agency)

Some existing mechanisms do provide for engagement with community to inform funding decisions. Firstly, in Budget as in Cabinet proposals there is a requirement that Directorates outline positive or negative impacts on First Nations people via WIAs, discussed in Section 2. Community input into proposals presented in WIAs should be standard practice, as identified earlier, including for JACS (Recommendation 2.3.d).¹⁴⁸ Discussed in this context, however, was that *all* budget processes eventually feed into closed decision-making processes led by Cabinet.

And once the business case is being prepared, I think one of the difficulties in all of this is that then becomes part of our Cabinet processes and Directorates are not allowed to really discuss what is going into those business cases, how they're being considered by their minister or ERC (Expenditure Review Committee) or Cabinet. So, there's kind of a switch over from what can be a collaborative discussion about what the needs are and where the funding could/should be used. [Then there's] not very much transparency, including often within government as it becomes a Cabinet process. (Government Agency)

We heard that a panel of ACT Government staff from across government are brought together to assess the quality of WIAs in a closed process. To bring First Nations community input into this part of the process would require an exemption, but this was identified as a 'not insurmountable' barrier (Government Agency). This requires consideration and potential reform to support this approach.

JACS commissioning and co-design of the Justice Future Fund

A further mechanism is the commissioning process, currently underway at JACS and in use in other directorates. The ASD has worked in partnership with the strategic commissioning teams and other government directorates including the CMTEDD, to develop a guide to ACT Government commissioning to ensure an 'Aboriginal and Torres Strait Islander human services lens' is applied to each commissioning cycle. The guide covers such things as how to increase opportunities for improved access to culturally

¹⁴⁸ One participant commented as follows. 'So essentially whether it has identified all the right impacts, whether it's well considered and then there's kind of a rating that gets provided on whether the Wellbeing Impact Assessment is kind of good, okay or poor. That then gets provided as part of the advice to the Expenditure Review Committee' (Government Agency).

safe supports and services and introduction of *proportional investment* to fund the ACCO sector (see further below).¹⁴⁹

Considerations during commissioning processes, as identified in the guide, include how decisions on funding might support self-determination and community leadership, transform government (for example, to increase partnerships with First Nations people) and, for instance, *reduce over-representation in the criminal justice system*. There is also a reference in the guide to looking for opportunities to link with other government work ‘to partner with/leverage investment to support Aboriginal and Torres Strait Islander people’.¹⁵⁰

Working in equal partnership with Aboriginal and Torres Strait Islander people around data is also a focus (see also Section 3.3, Data). This incorporates ensuring equal access to all processes and information (including locally relevant data) to support shared decision-making and collecting and retaining data about First Nations people with their involvement (in data development, stewardship, analysis and dissemination). Aboriginal and Torres Strait Islander input in the design of monitoring and evaluation processes, as well as linking commissioning outcomes with those set out in the National Agreement are both discussed.¹⁵¹

The approaches embedded within commissioning processes go some way to addressing funding and other issues raised in Sections 2 and 3 (for example, poor coordination in government responses to over-representation, how to deliver on commitments to structural change within government). We have not been able to make any comprehensive assessment of the JACS commissioning process to identify to what extent it is aligned with the above approach.¹⁵² One government participant described JACS commissioning as ‘airing issues and setting directions’ (Government Agency). Criticisms received during consultations include that the process is still ultimately government led and has a tight focus on funding for program/service delivery. ‘It is not currently shared decision-making, it kind of inputs into decisions... Yeah, there's a lot of weight and consideration that gets given to that. But ultimately the budget is a decision of government. It is not something that is jointly decided’ (Government Agency).

Also in the justice space, co-design of the Justice Future Fund (JFF) provides for community and stakeholder input into JACS funding priorities. The co-design process will

¹⁴⁹ CSD (n.d.) Guide: Empowering Commissioners – Strengthening our understanding of impacts on the Aboriginal and Torres Strait Islander community through each commissioning cycle, p.3.

¹⁵⁰ CSD (n.d.) *Commissioning Guide*, p 4. The guide also encourages thinking about the impact of commissioning processes (e.g. reliance on short-term funding cycles when ongoing funding is required); how to meet the needs of particular cohorts, *including those transitioning out of the justice system*; and potentially funding ACCOs to work together to meet community needs, for instance pp.4-5.

¹⁵¹ CSD (n.d.) *Commissioning Guide*, pp.10-11.

¹⁵² The research team attended a JACS commissioning workshop in 2024.

be centred on gathering First Nations and other input into strengths, weaknesses and gaps in criminal justice system programs and initiatives across the ACT justice sector, though it will also lead to advice to government on JFF grant guidelines and governance arrangements.¹⁵³ Limitations again include the fund's apparent focus on service/program delivery.

There's no desire to fund anything beyond individual programs. I mean, that's not entirely true. So, we've got the funding around the Justice Futures Fund, but again, I mean, the framing of that is really more around filling service gaps, but they're justice system service gaps, really. (Government Agency)

Other areas where First Nations people input into funding decisions include representation on grant or funding application panels. It is not clear if this occurs in the justice space, but ATSIEB has been represented on the assessment panel for the Aboriginal Community-Controlled Organisation Establishment and Expansion Fund (AEEF) and an OBOW IOC representative has participated in panel assessments in procurement processes under the ACT Government's *Next Steps For Our Kids* (OOHC strategy), as examples.

More substantive mechanisms for community-led decisions on funding

Though the above mechanisms all provide some opportunity for First Nations input into funding decision-making at particular points in time and/or in particular contexts, a more substantive mechanism is required. This is likely to be required at a whole-of-government level.

An enhanced ATSIEB and/or a potential ACT peak could perhaps have dedicated resources and functions to ensure First Nations participation in funding decisions at a broader level. ATSIEB does consult with the broader community on priorities that could inform funding decisions, but its capacity to directly input into funding decisions to the extent required was questioned.¹⁵⁴

In the justice space specifically, we have recommended that JACS and CSD resource and otherwise support (including by providing relevant data) establishment and operation of a mechanism designed to increase First Nations input into decision-making around funding priorities in the justice space (Recommendation 3.5). This design process must

¹⁵³ 'This co-design work will help the Government establish a new resource to support justice reinvestment in the ACT – the Justice Futures Fund. This will not only inform future policy decisions but also serve as a framework guiding our investments moving forward'. JACS (2024) *RR25by25*, p.16.

¹⁵⁴ One comment on this was as follows: ... 'they're not kind of paid to be like full time around the clock advisors as well. So that there's constraints on what they can do. But they certainly can I guess provide advice to government again on what the priorities are and what they're hearing and where they think we need to be investing. But yeah, it's not the kind of thing that they can sit down with the team of people and like you know, just work with directors day in day out on reforms' (Government Agency).

include First Nations input. The mechanism in question might be at least in part constituted by a First Nations-led justice body (or a sub-group of this body) established under Recommendations 2.1, 2.2, who may also input its design.

Aligned with this is Recommendation 3.8, which refers to ACT Government establishment of a First Nations-governed fund to resource Aboriginal and Torres Strait Islander-led interventions aimed at improving justice outcomes and addressing over-representation. The fund, again, is to be designed with First Nations-input. For consideration in the design of the fund, its governance could sit with the First Nations-led mechanism focused on funding decisions (above) (or other First Nations structures established under Recommendations 2.1, 2.2). It could also sit external to bodies established under this review but work alongside their First Nations representatives. For example, the fund might be governed by a community controlled First Nations body established for this purpose.

We note that the Justice Future Fund (JFF), as we understand it, is considering its potential governance as part of a design process for the JFF currently underway.¹⁵⁵ We suggest that this fund is not likely to be the right starting point for development of the First Nations-governed fund. However, as the JFF is still being established, further consideration will be required as to how it might inter-relate with the First Nations-governed fund under Recommendation 3.8 (including in terms of governance).

We identify at this point too alignment between Recommendations 3.5 and 3.8 and the definition of shared decision-making under the National Agreement, which includes that ‘funding decisions on programs/services by government align with jointly agreed community priorities, noting governments retain responsibility for funding decisions’. We have suggested above that First Nations people should have greater self-determination in funding decision-making (see Section 2.3, Box 2.2).

The fund itself needs to provide sustained resourcing for community-led solutions to over-representation in the ACT. There is flexibility built into the fund in terms of what is to be resourced, incorporating justice-focussed program/service delivery, along with any other priorities identified by First Nations people as likely to reduce over-representation. These priorities might, for instance, focus on the needs of young people and other early intervention/prevention approaches, systemic reform and advocacy, strengthening community leadership and so on.

Also recommended is that the fund might draw in resources from proportional funding – to be introduced for JACS via a stand-alone recommendation (see below and Recommendation 3.7) and from Directorates outside JACs (for example, CSD) to promote

¹⁵⁵ This process is potentially also raising discussion of non-programmatic funding directed towards reducing over-representation, which could support First Nations-led governance, for instance.

coordinated, collaborative approaches to addressing over-representation (also discussed below). Through these and other mechanisms, this First Nations-governed fund would address problems with existing funding approaches discussed above, including by expanding on innovations already being progressed in the ACT such as proportional funding and the co-designed AEEF (discussed further below).¹⁵⁶

An example of relevant innovation is the Self-Determination Fund (SDF) in Victoria. Following an initial grant of money from the Victorian government, a community-controlled organisation maintains functional control over funds to be distributed to the community via the SDF.¹⁵⁷

Box 3.2 Self-Determination Fund – Victoria

The Self-Determination Fund in Victoria has emerged as part of the Treaty Process and has been established under Part 6 of *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic). Its stated purpose is supporting First Peoples to have equal standing with the State in Treaty negotiations and providing a financial resource, independent from the State, that empowers First Peoples to build capacity, wealth and prosperity for present and future generations.

A *Self-Determination Fund Agreement* has been signed between the First Peoples' Assembly of Victoria and the State. The Agreement notes that establishment of the Fund does not affect the State's continuing obligation to fund and deliver services to the Victorian public, including First Peoples through universal services and government-funded services to be delivered by ACCOs. It sets out principles under which the Fund will operate (for example, fairness and equity, transparency, self-determination) and states that it is to be administered by the First Peoples' Assembly,

¹⁵⁶ For example, potentially more funding might be available through this fund to Aboriginal and Torres Strait Islander-organisations that do not meet the definition of an ACCO under Cl. 44 of the National Agreement if they are committed to becoming an ACCO. A Listening Report on the AEEF reports that funding is to be provided to ACCOs, with a small amount of funding available to Aboriginal and Torres Strait Islander organisations committed to transitioning to ACCO status. See ACT Government (n.d.) *Aboriginal Establishment and Expansion Fund, Report on what we heard: First Phase*. The guidelines published online define eligibility a bit differently: See <<https://www.act.gov.au/money-and-tax/grants-funding-and-incentives/funding-to-support-aboriginal-community-controlled-organisations#Aboriginal-Community-Controlled-Organisation-ACCO-Establishment-and-Expansion-Fund-AEEF->>>.

¹⁵⁷ Information available at <<https://www.selfdeterminationfund.org.au>>. The SDF is described in the SDF's Strategic Plan as follows. 'The Assembly has agreed with the State on a First Peoples-controlled and managed Self-Determination Fund. The SDF is a new financial resource designed by and for First Peoples and will support First Peoples economic self-determination. Consistent with what we have heard from Community, the SDF will operate independently from government. The Assembly will be responsible for administering the SDF. This means that First Peoples are making decisions about First Peoples' financial resources. The SDF will have strong cultural governance processes, high standards of good governance and financial responsibility, and it will be transparent and accountable to Community in its operations'. *Self-Determination Fund Strategic Plan 2023-26*, p.10.

as sole member of a Trustee (public company limited by guarantee) to hold fund Assets on trust.

Initial funding committed by the Victorian Government is \$65 million, with further funding to be committed as agreed. Phase 1 and 2 for of a five-phase funding process (based on the Treaty Negotiation Framework) will focus on forming Treaty aspirations and Pre-treaty preparations. What can be funded is flexible (e.g. building governance structures, cultural-strengthening activities, treaty education) and applications are accepted outside of specific funding cycles and open to Traditional Owner groups (defined using a flexible and inclusive approach).

On this note, there was some limited discussion during consultations of the ACT Healing and Reconciliation Fund (see Section 1). This fund was drawn on in setting up the AEEF (see below). There may be learnings from establishment and operation of this fund that could inform a justice specific First Nations-governed fund in the ACT. This includes the way the funds were allocated and work done on governance of the fund. We heard that there was discussion of shared decision-making with First Nations people about fund distribution. We have no information on how questions of governance have progressed in this context.

It was kind of set aside as almost a provision with the idea being that that bucket of money is sitting there and already allocated by government. So, there's opportunity for decision making about how that money then gets used. Whereas the other way of doing it, the normal way is the government is deciding at the time where the money goes. [There's been] maybe some challenges setting up the governance around how that shared decision making occurs. [This is an] alternative model where you could set aside a bucket of money and when that money is already sitting there and available and allocated, then you can have conversations about actual shared decision making around how it gets used. That's new for us. (Government Agency)

Access to data (related to funding)

As a further point, to input into decision-making First Nations people need access to data and in the form that they identify as most useful, including on expenditure. For example, to measure spending on Aboriginal women:

They just need to abide by their own code of conduct and track their investment in an intersectional framework... If you ask them how much money they have invested in Aboriginal women in the last five years they could not tell you the answer... We track the money but they can't and it's hard to have an argument with someone when you know more about their own jobs than they do. (Sisters in Spirit Community Dialogue Women)

On this note, the Social Policy Branch within Policy and Cabinet Division in CMTEDD coordinate publication of Aboriginal and Torres Strait Islander Expenditure Reviews (under the National Agreement) to help facilitate discussion about where funding ought to be directed (particularly to increase resourcing for the ACCO sector) and to increase government transparency.¹⁵⁸ This may not be widely known in the community and certainly wasn't discussed during our consultations outside of specific areas of government.

These Expenditure Reviews gather information from across government 'around expenditure on any Aboriginal and Torres Strait Islander program or service, including funding to ACCOs', but also 'through procurements and grants'. The intent is to publish this data in as 'useful a way as [possible]', including with reference to how expenditure lines up with different Priority or Focus Areas under the ACT and National Agreements. (Government Agency) Detail is provided, for instance, on justice related expenditure and expenditure on implementing commitments to government transformation, which is positive. Better data collection by government to feed into these reviews, however, is identified as required (including in justice) (see also Section 3.3, Data).¹⁵⁹

[We] don't necessarily capture how much of the justice portfolio spend is delivering services to Aboriginal and Torres Strait Islander people. We can only tell if there's a program that is for Aboriginal and Torres Strait Islander people specifically within the justice portfolio. So, there's a lot of gaps in there, particularly around that issue of over- representation and whether the services that need to be there are there. (Government Agency)

We recommend that data be provided to First Nations people involved in justice funding decision-making, including via the First Nations-governed fund (Recommendations 3.5, 3.8). This might encompass data on expenditure associated with more structural change in the justice space, as above, as well as justice and other data. Feedback is required from First Nations people on what data they want to access (for example, data related to

¹⁵⁸ This work aligns with CL 113 of the National Agreement; in short, to review and identify current spending on Aboriginal and Torres Strait Islander programs and services to identify reprioritisation opportunities to Aboriginal and Torres Strait Islander organisations, particularly to ACCOs. It is also identified as aligned with Priority Reform Area 3 and Targets 11 and 16 of the ACT Agreement: *Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations and Increase the proportion of high value contracts awarded to Aboriginal and Torres Strait Islander businesses (respectively)*. See ACT Government (2024) *Aboriginal and Torres Strait Islander Expenditure Report 2021-22, 2022-23*, pp.3-4. Available at <<https://www.act.gov.au/open/act-aboriginal-and-torres-strait-islander-expenditure-review>>.

¹⁵⁹ A further comment is as follows. '[J]ust because of the way that it is recorded or not recorded. Like we don't currently classify in our financial systems which dollars were for [Aboriginal and Torres Strait Islander] programs. So, it requires a lot of cross matching against whether funding was going to certain organizations or was known to be a specific service for Aboriginal or Torres Strait Islander children or so there's a lot of kind of manual interpretation of things. But its attempting to provide a kind of high level of view of how much is going into justice investment or health care and how much of that is going to ACCOs versus mainstream service delivery' (Government Agency).

school suspensions and exclusions, given the flexibility of the fund in terms of issues it might address).

As a further related point, we have also recommended that information is needed by *the wider community* about where JACS funding is directed, in more accessible formats than those currently used by JACS or Treasury (including Expenditure Reviews, as above). This should help address issues of transparency, accountability and lack of awareness around services and who is being paid by the ACT Government to do what, discussed in Section 3.2.1. Suggestions about how this information might be distributed or shared during the men's community dialogue (including to increase access to services and programs) encompass communal areas, community centres (for example, Boomanulla), on release from prison/youth detention, parole sites (for example, Yeddung Mura, Winnunga, CAHMA), and online/social media. Other options are set out in Recommendations 3.13-3.15.

3.2.3. *Reinvestment and other funding reforms in government*

Participants discussed other funding related reforms required within government to help reduce over-representation, including reinvestment. Some community participants felt that their understanding of reinvestment in the context of the ACT's commitment to justice reinvestment was different to that of government. They did not see, for instance, that there had been a diversion of expenditure away from the AMC in the way they had expected.

And who got money? More institutions to lock our people up. That's recidivism to them. Recidivism to us is about getting them out of the fucking jail. Abolish the fucking jail. We don't want a jail but we got one and now we need to add on to it [to] make more room for Aboriginal women to be locked up. (Sisters in Spirit Community Dialogue Women)

This type of funding diversion is discussed in R25by25, which refers to the importance of ensuring cost-effective approaches to increasing community safety and identifies the broader socio-economic benefits of reducing (re-)offending by 'investing in communities'. This speaks to the economic underpinnings common to justice reinvestment strategies – that expenditure on early intervention and prevention to address causal factors of offending at a place-based level will deliver a better return on investment than spending on prisons.¹⁶⁰

¹⁶⁰ This approach is also referenced in earlier conceptualisations of justice reinvestment in the ACT Initiative '*Building Communities, Not Prisons*'.

The above redirection of funds might occur via increased upfront funding to address drivers and as the strategy notes, through savings generated or costs averted around incarceration through justice reinvestment. The funds in question are ‘reinvested in communities, and at an earlier stage, to prevent incarceration and the underlying causes of crime’ – potentially being used to ‘fund and rebuild human resources and physical infrastructure’ to tackle relevant causal factors (identified as including housing instability, lack of employment or access to education and intergenerational trauma).¹⁶¹

RR25by25 emphasises that justice reinvestment as a concept is ‘applied to a variety of approaches to criminal justice policy reform’ aimed at reducing incarceration. It refers to the ACT Government’s approach to justice reinvestment as ‘preventative financing’¹⁶² or an upfront investment in ‘early intervention and diversion initiatives *to prevent the onset of criminal behaviour*, with an eye towards future savings’ and ‘cost savings realised ‘downstream’’. This is identified as delivering potential savings outside of a justice context – via ‘long term whole-of-community benefits across health, education and homelessness supports’ and as tackling in a preventative way inter-generational cycles of contact with the justice system. There is also specific reference to future savings being ‘reinvested in delivering further improvements in social and justice outcomes’ in the strategy.¹⁶³

In these and other parts of RR25by25, the language of justice reinvestment and reinvestment in particular is used but without enough detail provided to fully understand and assess the intended direction of this work. In terms of preventing the onset of criminal behaviour (via funding decisions) the strategy still appears relatively tightly focused on programmatic approaches that address justice related needs and causal factors for those *already at some risk of contact* with the justice system (even if at a younger age – see further below and discussed in Section 2). Similarly, there is no detail of any direct commitment to economic modelling that might be used to divert savings generated via justice reinvestment away from tertiary level spending and into community-led solutions. Government participants spoke about the current approach as follows.

There was a kind of understanding that individual programs would deliver benefits. But the sort of more fundamental approach where we’re looking to have data driven decisions and ability to evaluate cost impact, the ACT couldn’t get traction for that. So effectively things morphed into a focus on recidivism. So, you have this

¹⁶¹ JACS (2024) *RR25by25*, p.14.

¹⁶² One government participant commented on this as follows. ‘The way that we’ve approached JR in the ACT is not necessarily [how] it might be conceptualised or applied in other domains or in other contexts. The thing that we focused on... is more around the preventative financing element of JR. So, investment in programs in order to develop or have impact that saves money because you’re avoiding costs longer term. And so, in that sense it’s relatively contained to a set of justice programs effectively... [Initially] five or six specific programs that were developed in those first five to eight years’. (Government Agency)

¹⁶³ JACS (2024) *RR25by25*, pp.19.

linkage from justice reinvestment to reducing recidivism. Our justice reinvestment push was trying to prevent people interacting with the system because we knew that was where cost was going to be [accrued or saved]. But ultimately it got narrow and narrower. So, it was no longer about influencing health or education outcomes. It was how do we save money for the justice system by addressing particular justice needs. (Government Agency)

It is correct that there are different definitions of reinvestment.¹⁶⁴ We highlight, however that Recommendation 4-1 of the ALRC Report recommended establishment of an independent justice reinvestment body whose purpose ‘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 (as discussed in our First Report).¹⁶⁵ A diversion of funds away from the justice system to address underlying drivers at a community level and to support self-determination has also been identified by Aboriginal people as an important mechanism for systems change and government accountability. Self-determination in this context might mean, for instance, that reinvested funds are used to support community-led governance that sets the direction for justice reinvestment initiatives and/or is diverted into a First Nations-governed fund at a jurisdictional level to resource justice reinvestment as an approach.¹⁶⁶

RR25by25 does not go far enough in these and other respects. The strategy talks about funds being committed to First Nations community-led services and programs, but while strengthening partnerships is identified as important, there is no mention of progressing this outside of funding First Nations services; for example, to fund formal First Nations partnerships to progress RR25by25. This needs consideration, as does how this strategy otherwise links in with Priority Reform Areas (see also Section 2, Outcomes Measurement).

RR25by25 identifies \$177 million of expenditure on AMC in 2023-24 (98% higher than 2013-14), and points to other justice spending in police, courts, etc. (not costed).¹⁶⁷ Some participants questioned why the ACT funds the AMC and Bimberi to the extent they do when these institutions do not demonstrate good justice (or other) outcomes for First Nations people (for example, contributions to reduced recidivism) and in fact have major

¹⁶⁴ See Haggerty, T et al. (2025) Designing a Justice Reinvestment Mechanism for NSW: A Discussion Paper, forthcoming.

¹⁶⁵ ALRC (2017) Pathways to Justice Report, Recommendation 4-1.

¹⁶⁶ In NSW Aboriginal communities have identified reinvestment as key to strengthening self-determination where diverted funds, as above, support the building of justice reinvestment initiative leadership and backbone groups. Reinvestment is also seen as having the potential to incentivise government to identify and reform policy and law contributing to First Nations over-representation. See Allison, F. et al (2022) *Redefining Reinvestment. An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW*. JRNSW; Allison, F. (2023) *Design of the National Justice Reinvestment Program*, UTS, Section 6.1.

¹⁶⁷ JACS (2024) *RR25by25*, p.15. Community participants stressed that too much money is spent on government rather than community-led responses to over-representation in general, including as but beyond justice responses.

negative impacts on the First Nations community in the ACT. Government, it was said, appears to be held to different standards than community organisations, with its ongoing access to significant resources for tertiary level justice responses, regardless of the outcomes these demonstrate in a First Nations context. ‘Maybe, it’s holding expenditure in relation to Aboriginal Torres Strait Islander people to a different standard – they’re willing to throw millions of dollars at other projects that don’t deliver anything’ (Government Agency).¹⁶⁸

The current reliance on what might be perceived as harsher justice approaches is partly attributed to a broader community (non-First Nations) preference for tough on crime approaches.

Certainly, the policy focus within government is keeping people out of prison in the first instance and only sending them there a last resort. I think everyone acknowledges that prison is not something that is particularly rehabilitative. But there’s a lot of other factors that make that difficult, including sometimes community expectations – and we’re seeing a fair bit of discussion over the last couple of years around things like when people are bailed for what offenses and not particularly like specifically around Aboriginal and Torres Strait Islander people, but just generally people reoffending while on bail or community correction orders and that kind of thing. (Government Agency)

And the practical difficulty of *simultaneously* reducing funding for tertiary level responses to better resource earlier intervention/prevention approaches was also highlighted.¹⁶⁹ With accurate economic modelling, however, arguably, this simultaneous investment should be possible.

We’ve had bodies of work over the years that have been about trying to shift from the tertiary crisis intervention point to shifting out human services much more to early intervention. So again, I think there’s an understanding of the need to do that. But it also just becomes challenging when there is a fixed pot of money and it’s very difficult to stop providing the tertiary crisis interventions to move that to the early intervention. You [have] to figure out how to do both of them at the same time... it’s quite difficult to find the money to do that. (Government Agency)

A further suggestion is that it is difficult to attribute any under-achievement of positive outcomes by the justice system (for example, failure to reduce recidivism) to the action

¹⁶⁸ The JACS commissioning process, as an example, does not appear to examine outcomes delivered by the justice system (e.g. higher First Nations rates of return to prison) to more comprehensively re-align and re-direct funding outside of this system, including in a non-programmatic way.

¹⁶⁹ This has come up in First Nations-led advocacy about reinvestment in NSW – that unless a justice reinvestment initiative is able to shut down a whole prison wing, for instance, it is not generating savings at a sufficiently significant level to support reinvestment of prison spending.

or inaction on the part of individual Directorates, including JACS (in order to defund parts of this system).

You can use the budget process to fund or defund parts of the Directorate [and] you do not need to necessarily tie that automatically to achievement against [specific] indicators. But it would be a decision of government... You can do things through executive performance indicators, for instance. We have got accountability indicators that go in Directorate annual reports and that kind of thing. I think one of the challenges is that in these larger complex areas where there's a lot of factors, being able to say that like one movement in a particular indicator is because this Directorate has or hasn't done anything – like an increase in offending could be that Education has cut a bunch of school services for example and so it becomes challenging then to assign some of those big really high level societal indicators to individual people. (Government Agency)

This raises points discussed in Section 2 about government coordination and suggests that rather than *solely* relying on a diversion of justice spending from JACS to solve all problems feeding over-representation, longitudinal investment aimed at addressing this issue might be sourced *across Directorates*. Over-representation is not just a JACS issue to solve. As one government participant states, 'government wants one single solution so it's easy but we're dealing with wicked complex problems that requires a sophisticated response. Yeah, sophisticated responses require more resources and more effort' (Government Agency).

One response to this is our recommendation for a First Nations-governed fund that can draw in resourcing from other directorates and use this to address drivers of justice system contact. Similarly, there was discussion in community dialogues of a Social Justice Commissioner (if introduced) having some control over funding decisions related to housing, education and other areas relevant to over-representation. This was seen as an unlikely scenario, with an alternative possibility being that Aboriginal-led cross-issue bodies like ATSIEB or an ACT Peak have capacity to input into funding decisions across all areas of government business (a point raised earlier in Section 3.2.2).

At a government level, government funding is being provided for universal and other services accessible to First Nations people in the ACT (like schooling, public housing and Aboriginal programs within schools), though the adequacy of this funding was questioned (see comment in 3.2.1). How else might coordinated funding responses be set up in government or if in place already, improved, so as to address over-representation – perhaps working backwards from known determinants of justice system contact? RR25by25 talks about identifying social determinants of poor justice outcomes (for example, through its qualitative desistance project) but it is not specified whether or how JACS intends to access resources or influence funding decisions of other

directorates to respond to these determinants. The intention appears to be to address these where they sit closer to the justice system.¹⁷⁰

The above commissioning framework requires consideration of likely impacts of funding decisions on First Nations over-representation in the justice system. Government is encouraged via the commission process to engage with stakeholders that include the IDC and ATSIEB (see further below).¹⁷¹ It would be beneficial for the ACT Government to consider how this process, for instance, might feed into a more coordinated funding response to over-representation. Might the IDC or some other whole-of-government structure or process provide for cross-Directorate consideration of funding approaches to tackling over-representation, given it would appear to be a significant transformation element for government?¹⁷²

There were mixed views – some negative – about how different directorates currently come together to make collective decisions about funding as a holistic response to issues like over-representation.¹⁷³ One participant discussed omnibus (for example, thematic) business cases that cross directorates. Whatever is funded might need to be delivered at a directorate level, however, identified as potentially problematic.

And the way our administrative arrangements are set up often means that ministers naturally have more than one relevant portfolio. So, there's a lot of structural factors in the ACT Government that support that coordination happening. But of course, they're still then just practical challenges of who is dispersing and signing off on fundings and what their accountability indicators are and all the other usual stuff that makes it difficult in large institutions to get the perfect outcome. (Government Agency)

I think there is a reasonable degree of directorates talking to each other about where the funding is required. It is more difficult to deliver services or business cases that span multiple directorates though. So it might be that they coordinate on what a package might be but then they kind of need to get their piece of that to deliver it. It's not impossible, but it's a bit harder to then have services that are referring across different directorates and that kind of thing. So, that is definitely

¹⁷⁰ This seems to be the approach taken where JACS has directed funding towards health and housing spaces via justice reinvestment interventions (e.g. via Yarrabi Bamir).

¹⁷¹ JACS (2024) *RR25by25*, p.9.

¹⁷² Data linkage projects might be useful for this (see Section 3.3, Data).

¹⁷³ One comment is as follows. '... [I]t's like all of these issues, it's about ministerial responsibility, limits of money, the way the appropriations work. So that the Ministers of education, family and community services, the Attorney General have limited money in their basket and limited priorities. So, the working together [of the ECG] that you see on paper doesn't actually happen in practice. After the demise in ATSIC, we would continually pound up against ministerial priorities in health or wherever that blocked holistic solutions... My fundamental position is it's a holistic solution'. (Legal Service Provider)

something that we are always trying to improve just generally in ACT government. And I think we do it okay because of our relatively small size. (Government Agency)

One participant saw the conservatism of Treasury, in particular, as a major barrier to progressing innovative funding approaches, including for longitudinal investment – though stakeholders emphasised that it is actually the ACT Government not Treasury who makes funding decisions in the ACT (with Treasury providing advice to inform this decision-making). This was identified as causing issues when justice reinvestment was initially more focussed on longer-term funding to reduce recidivism.

The other real problem that we're pushing against is allocation of resources. So, we can put up budget bids to do things differently. But ultimately... it's government decision making. We don't necessarily have a Treasury that's particularly supportive of a new approach to funding, for example. They're very focused on ensuring – in one sense, rightly so – that what they're giving money to can be demonstrated to deliver results. But doing things in a significantly different way is challenging in a resource constrained environment where there's concern that you're not spending money effectively. (Government Agency)

We have on a number of occasions attempted to get funding for doing some of the justice reinvestment work longer term, trying to get funding for programs on a long term basis, and there's an unwillingness. We end up in short term funding cycles, an inability to do longer term transformative work. And it's very inefficient resource wise cause we end up focusing on the next budget bid rather than being able to direct resources to thinking about how we do things better and differently. (Government Agency)

Closer aligned to justice needs, participants advocated for very specific *increased investment or reinvestment* to support young people already in contact with the youth justice system to avert their contact with the adult justice system. RR25by25 does not go far enough in this regard, again, as it is still predominantly focused on adults. This needs consideration as a matter of urgency between relevant directorates (at least including CSD and JACS), but we have also at this stage incorporated this as a focus within our recommended First Nations-governed fund. See Section 6, Youth Justice for further discussion of where priority funding is required in this space.

We need day programs, we need bail programs, we need, you know, it's something that's going to be concrete for a long term to be able to try and fix it because it keeps happening because the kids I grew up with who were broken, who you know, were screaming out for help but didn't have the support, who were in the justice system are now sitting up in AMC or they're 10 foot under. (Education Provider)

3.2.4. Building the ACCO sector

The above longitudinal (re-)investment doesn't only require shifting of resources to address causes of over-representation across the life-course. It also involves investing in strengthening of community-led solutions to this issue – incorporating both Aboriginal and Torres Strait Islander-led governance (discussed above and incorporating bodies like ATSIEB or Aboriginal-led peak or justice bodies) and Aboriginal and Torres Strait Islander *service provision*. The role of Aboriginal and Torres Strait Islander organisations in achieving good outcomes was consistently highlighted during our Review.

Aboriginal women respond better when they can access culturally appropriate services where other Aboriginal people work... they will feel safer... You're going to get more engagement and more Aboriginal women feeling safer when they have culturally safe services. (Legal Service Provider)

Funding First Nations-led organisations is aligned with **Priority Reform Two** under the National Agreement: *Building the Community Controlled Sector*. It is also connected with the Core Focus Area of **Connecting Community** under the ACT Agreement: *Aboriginal and Torres Strait Islander community members are connected to strong families, social and support networks building upon the foundation of community leadership*.¹⁷⁴

Proportional funding

We have recommended that JACs implement proportional funding to better resource ACCO-led solutions in the justice space, in line with Cl. 55 of the National Agreement.¹⁷⁵ Proportional funding is different to reinvestment in various ways. It also involves a diversion of funding to support community (ACCO)-led solutions to over-representation but without the same economic modelling component of justice reinvestment, for instance. Reinvestment potentially leads to funding for community-led solutions that will *increase* over time as savings generated/costs averted through justice reinvestment also increase, rather than *decreasing* as a fund, which as we understand it will occur with proportional funding model if services successfully reduce the proportion (and over-

¹⁷⁴ Establishment of the ASD branch within CSD, and of ACCOs focused on housing and on children, young people and families are identified by the ACT Government as outcomes already achieved in this area. ACT Government (2023) *ACT Annual Report for National Closing the Gap Agreement 2023*.

¹⁷⁵ Cl. 55a of the National Agreement refers to implementation of funding prioritisation policies across all Closing the Gap outcomes that require decisions about service delivery to Aboriginal and Torres Strait Islander people and communities to preference ACCOs/Aboriginal and Torres Strait Islander orgs. Cl. 55b refers to a 'meaningful proportion' of new funding initiatives intended to service the broader population across socio-economic outcome areas of Closing the Gap being allocated to Aboriginal and Torres Strait Islander organisations with relevant expertise (particularly ACCOs). Meaningful proportion takes into account the number and capacity of Aboriginal and Torres Strait Islander organisations (particularly existing ACCOs) and service demands of Aboriginal and Torres Strait Islander people, including through the views of ACCOs in the relevant jurisdiction.

representation) of First Nations clients in a particular sector, including in the justice area.¹⁷⁶

The ACT Government guide to commissioning discussed above refers to proportional funding as ensuring that ACCOs are funded ‘via dedicated, reliable and consistent funding models designed to suit the types of services required by communities’. Through commissioning, government works with First Nations representative organisations to determine a meaningful proportion of funding to be allocated to ACCOs, taking into account:

- the proportion of the target cohort(s) that is expected to be Aboriginal or Torres Strait Islander
- the proportional level of need (i.e. informed by the extent of the gap in outcomes)
- differential costs of servicing and informing Aboriginal and Torres Strait Islander people (for example, overcoming barriers to access).¹⁷⁷

Through proportional funding the ACT Government has already committed \$16 million to resource ACCO service delivery. The goal has been to provide ‘proportional funding to ACCOs aligned with the over-representation of Aboriginal and Torres Strait Islander people in the statutory child protection system and support a sustainable community-controlled sector’. Through the Next Steps Strategy, CSD is:

- is aiming for up to 30% of child protection, OOHC, and support services to be delivered by ACCOs, and
- has a goal to transfer up to 100% of Aboriginal and Torres Strait Islander children, young people and families (based on individual preferences and willingness to transfer) to ACCOs.

This is seen as providing precedent for other parts of the ACT Government working in the human services area to introduce proportional funding, which ASD has emphasised does

¹⁷⁶ ATSIEB has previously talked about proportional funding and sector strengthening to support what should be a transition of existing funding by government to ACCOs (accompanied by other improvements to government ways of working). ‘All ACT directorates need to review their funding arrangements to ensure that funding is proportional to the percentage of Aboriginal and Torres Strait Islander people using the services. We understand that this is planned for child protection, however this needs to be considered for other critical areas of service delivery such as *justice*, housing and health. This needs to be done in a *systematic not programmatic way* and requires *improved data, procurement and commissioning policy and processes as well as sector strengthening support to accommodate the level of transition that is going to be required*. This is not about just new money but redirecting current spends to providers with experience with and accountability to the Aboriginal and Torres Strait Islander community of the ACT’ (emphasis added). ATSIEB (2023) *Hearing Report*, p.11.

¹⁷⁷ The guide also talks about tracking and monitoring this expenditure. This involves transparent reporting on expenditure and service outcomes/indicators, milestones and progress to improve outcomes for Aboriginal and Torres Strait Islander people including the proportion of funding targeted to Aboriginal people against the agreed target, and how this funding is being delivered and being applied to agreed use(s) and the proportion of funding delivered by Aboriginal organisations against the agreed target(s), milestones and outcomes. CSD (n.d.) *Commissioning Guide*, p.8.

not require additional financial resources.¹⁷⁸ The National Agreement also requires that the ACT Government ‘look at shifting the base or the existing funding out as well, not just new funding’ (Government Agency). We heard that this needs more of a push in government to make it happen.

Essentially what has been committed to is that any new initiatives that come through budgets that deliver services for [Aboriginal and Torres Strait Islander] people should have a proportion of that funding set aside to be used by ACCOs... It would mean that any new justice initiatives or anything else that comes through budget process would need to think through carving off a chunk of that money that could go to ACCOs working in the justice sector. (Government Agency)

The reason for progressing this innovation within CSD in particular is attributed to this Directorate’s readiness for change.¹⁷⁹

CSD are especially close to and involved in those broader national policy conversations about proportional funding as well as owning that particular service system, where they had also then done a lot of work around things like OBOW. I think that was the coming together of a few different streams of work that really allowed them to kind of seize on an opportunity to do something a bit differently there. (Government Agency)

Those opportunities should exist in other directorates as well, but possibly the understanding in those other directorates and maybe some of the capability to make like a pretty significant change in their funding model might not be quite as advanced as it is in CSD where a few of those different issues are really coming together. (Government Agency)

¹⁷⁸ The ACT Government indicated too that during the budget process, ASD in partnership with Treasury, the Wellbeing Branch and the Office for Aboriginal and Torres Strait Islander Affairs (OATSIA) provide Whole of Government seminars as well as 1:1 business case sessions (as requested). These are designed to identify opportunities to incorporate proportional funding into business case proposals, under Cl.55 of the National Agreement and linkages with the ACT Aboriginal and Torres Strait Islander Agreement.

¹⁷⁹ A Case Study: *Building the Community-Controlled Sector*, unpublished, was provided *in confidence* to Jumbunna for this Review. This document provides detail of enablers and barriers to this funding approach, based on CSD experiences. Enablers include the current authorising environment under the ACT and National Agreements and also as established by the OBOW and the IOC (the IOC and its processes provided useful data for calculating proportional funding), supportive ministers and senior executives, and involvement of ACCOs in the process from the start. Also important was having the ASD established, which supported government engagement with ACCOs. ‘Engaging with Community was vital to understand what people were looking for and how the service system could work better. Joint work on the design of the service system provided the lead time to work with the ACT Aboriginal and Torres Strait Islander Co-design Network and build strong evidence informed by people with lived and living experience and community sector partners’.

Aboriginal Community-Controlled Organisation Establishment and Expansion Fund (AEEF)

The AEEF was designed by the ASD with input from ACCOs, with ASD also leading its implementation. Through the 2024-25 budget the ACT Government has committed \$3.86 million over four years to establish the AEEF, consistent with Priority Reform Two and ACT Agreement commitments.¹⁸⁰ Any ACCO can access the fund, whether they have a justice or other focus.

The AEEF is focused on supporting 'establishment, capacity and capability building activities' to 'improve outcomes for Aboriginal and Torres Strait Islander people across the ACT'. Activities to be funded by the AEEF include, for example, business capability, infrastructure, staff development and 'supporting new ACCOs to establish themselves with good governance and data collection to assist with measurement for ongoing success'.¹⁸¹ More specific examples of funded activities include use of the fund to apply for 'NRSCH (National Regulatory System for Community Housing) registration and 'other compliance types of things', establishment of corporate plans, rent and IT infrastructure for reporting (Government Agency).

Further, AEEF is seen as contributing to government transformation and as important for building trust and relationship with ACCOs. As part of this, measurement of outcomes achieved through the funding can have ACCO input – different to the approach of approach in RR25by25 (see below).

And if we want to invest and see success we need to be right there with the [funded ACCOs]. It can't be a punitive – you didn't meet this KPI... It's a build a relationship situation, it's not a transaction – because you know we've said as a government we can't deliver this. We need the sector to do it... We should come in with a partnership relationship measure because we're investing a large amount of money and we want, and our families want success. (Government Agency)

The ASD supports new and more established ACCOs to navigate funding relationships with the ACT Government, which can include supporting grant application writing. As well as ensuring more funding for ACCOs, this can help address issues of inequity in f access to funding discussed earlier in Section 3.2.1.

[ASD is acting] as a kind of a conduit between government and our ACCOs to navigate the system, which can be quite hard. [They can] provide support for the writing of grant applications or [otherwise] support ACCOs in building their

¹⁸⁰ Applications were expected to open from early 2025.

¹⁸¹ See: Information Fact Sheet: AEEF. Available at <<https://www.act.gov.au/open/aboriginal-community-controlled-organisation-establishment-and-expansion-fund>>.

capacity and capability, helping out with events plus... advocating for them through business cases and through their policy and program owners to make sure that they are getting sufficient funding to provide service delivery. (Government Agency)

We have recommended that JACS work with ASD to use the AEEF to support ACCO development in the justice space and aspects of the AEEF and ASD approach are also incorporated in our recommendation for a First Nations-governed fund, including support for applications for funding.

Recommendation 3.5

We recommend that JACS and CSD resource and otherwise support establishment and operation of a mechanism designed to increase First Nations input into decision-making around funding priorities in the justice space.

First Nations input into the design of this mechanism is required. For consideration, the mechanism may input into decision-making related to WIA processes connected to JACS and CSD business cases (Recommendation. 2.4.d) and the First Nations-governed fund in Recommendation 3.8.

Resources provided to support this mechanism incorporate data, including:

- a. annual data on Indigenous expenditure on justice related programs and service provision and on implementation of Priority Reform Areas and Core Focus Areas under the National and ACT Agreements
- b. justice and other data relevant to over-representation.

This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).

Recommendation 3.6

We recommend that JACs and CSD improve accessibility across the First Nations community to data on First Nations justice related expenditure (see also Recommendation 3.5).

The aim is to ensure transparency in funding decisions and to help improve community awareness of and access to services and programs.

This data may be shared in implementation of Recommendations 3.13-3.15, amongst other methods.

Recommendation 3.7

We recommend that JACS and CSD implement proportional and needs-based funding under Cl. 55a and 55b of the National Agreement to address current gaps in resourcing in program and service delivery of Aboriginal legal services and other ACCOs contributing to reduced over-representation.

Recommendation 3.8

We recommend that the ACT Government establish a fund to resource First Nations-led interventions aimed at improving First Nations justice outcomes and addressing over-representation. The fund must be designed with First Nations input and be governed by First Nations people.

Subject to outcomes of First Nations design of the fund, we recommend that it:

- a. should provide funding for operations, governance and other non-programmatic priorities
- b. should provide sustained funding, avoiding short term funding cycles as far as is possible
- c. could draw in resources from the proportional funding (Recommendation 3.7) and/or from the ACT Government (including funds allocated to Directorates outside JACs and CSD) to promote coordinated, collaborative approaches to addressing over-representation
- d. should be expended on justice-focussed program/service delivery, along with any other priorities identified as likely to reduce over-representation. This should include a focus on young people at risk of or already in contact with the justice system and other early intervention/prevention approaches. Other possible funding priorities include systemic reform and advocacy, strengthening community leadership and self-determination.
- e. should be linked to support made available to those seeking to apply for resources under the fund
- f. should be supported in its operations via provision of data by government to inform fund decision-making (see also Recommendation 3.5).

This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).

Recommendation 3.9

We recommend that JACS and CSD increase access to brokerage funding for First Nations organisations working in the justice space to ensure a level of flexibility and control over funded activities undertaken.

3.3. Data

This section considers data and its contributions to reducing over-representation. It is both a stand-alone issue considered in Section 3.3 and one that arises in various other sections of this Report – both as a structural issue, but also where data gaps are identified around specific issues (as just one example, in relation to bail). In Section 3.3 we look at current commitments and actions of the ACT Government related to data, including under RR25by25. We then focus on particular data issues requiring attention, including data linkages and First Nations Indigenous Data Sovereignty and Governance. Key recommended pathways forward to improve data use in the ACT justice space include establishment of a JACS and CSD First Nations-led Data Working Group and First Nations Data Strategy, as well as improved collection of and sharing of First Nations data to inform First Nations decision-making and to increase government transparency and accountability – points raised in earlier parts of Section 3 and Section 2.

3.3.1. Data reform across government

The ACT Government has committed to improving access to data and information under Priority Reform Area 4 of the National Agreement: ***Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.***

Elements of Data and Information Sharing are identified in the National Agreement as follows:

- Partnerships are in place to guide improved collection, access, management and use of data to inform decision-making
- Governments provide communities and organisations with the same data and information they use to make decisions
- Governments collect, handle and report data at sufficient levels of disaggregation and in an accessible and timely way

- Governments support data capability building and expertise around data for Aboriginal and Torres Strait Islander communities and organisations.¹⁸²

As noted in Section 3.1, Priority Reform Area 4 is aligned with the **Inclusive Community** Core Focus Area of the ACT Agreement. This area as it sits within the ACT Agreement does not have a strong focus on data, however.¹⁸³ The 2023-24 reporting under the National Agreement points to implementation of Priority Reform Area 4 as including an Impact Statement and dashboard on progress against ACT indicators closely aligned with the 22 Closing the Gap targets, to be updated annually. Implementation on Indigenous Data Sovereignty and Governance (IDS-G) within the ACT Health Directorate (ACTHD) and with ACT and Region First Nations communities is also highlighted. This has involved education and capability building around IDS-G within ACTHD, socialising IDS-G concepts in the community through engagement workshops, assisting ACTHD to develop IDG policies and procedures for an IDG governance structure and evaluating and monitoring systems change with the implementation of IDS principles and IDG mechanisms.¹⁸⁴

Noted in this context is that the level of understanding about IDS-G across government is seen by a number of government participants as limited. For instance, they spoke about government thinking it can implement IDG but identified that it is only First Nations people that can ‘govern’ First Nations data. Government can only ‘implement measures that *support* digital data sovereignty and data governance’ (Government Agency). The extent to which data related reforms are translating into action *across* government in general is not clear – pointing again to issues of coordination and transparency. There are ‘a few people [doing data stuff], but I don’t feel like they’re talking to each other as well, which is a problem because I can’t even get a clear picture of what they’re doing in that space or how they’re planning on meeting Priority Reform Four’ (Government Agency).

3.3.2. *Data work in JACS*

The RR25by25 Strategy has made various commitments around data. Firstly, the strategy’s outcomes will be delivered via evidence-based decision-making; basing program and funding decisions on evidence of what is effective and using data to identify

¹⁸² The target for this Priority Reform Area is to increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap and their development, with no data available.

¹⁸³ Though we note there is reference in this focus area to collecting feedback from First Nations people on the meaningfulness of engagement and self-determination, as noted above. See ACT Government (2022) *ACT Aboriginal and Torres Strait Islander Agreement, Phase One Action Plan – Inclusive Community*.

¹⁸⁴ ACT Government (2023) *ACT Annual Report for National Closing the Gap Agreement 2023*, p.22-23. See dashboard here: <<https://www.act.gov.au/open/act-aboriginal-and-torres-strait-islander-agreement>>.

touchpoints which if positively impacted will turn around trajectories funnelling people (further) into the justice system.

The Data Capacity Project within RR25by25 is to develop a new suite of data collection and program evaluation tools to address data and evaluation capabilities across the justice system. These will, for instance, embed standardised data collection across criminal justice related initiatives and ensure relevant data is collected for measurement of process/impact of justice programs into the future.¹⁸⁵ Use of JACS data collection and evaluation tools by those delivering justice reinvestment programs will be a condition of funding (with payment contingent on meeting reporting milestones).¹⁸⁶

RR25by25 also refers to an Outcomes Measures Project linking administrative data sets from ACT Policing, Courts and Corrective Services provided via the ABS to examine the impact of the strategy. There is also a stated commitment to ‘continue looking for opportunities to better use linked data’. ‘This will help us make better decisions based on evidence, develop effective policies, and allocate justice resources wisely well into the future’. Also intended is that the evidence base underpinning the strategy will be bolstered by aligning with a wider array of criminal justice system indicators and performance measures.¹⁸⁷

The Qualitative Desistance Project referred to in the strategy is to provide insight on several critical aspects related to criminal behaviour in the ACT. The project seeks to deepen government’s understanding of desistance and contribute to more effective strategies for supporting positive outcomes in the criminal justice context. Specifically, it will, for instance, identify factors associated with desistance, including a reduction in the severity and frequency of offending.

3.3.3. *Data quality and linkages*

As detailed above, there are existing commitments from the ACT Government to provide accurate and appropriate data to First Nations people so that they can effectively input into decisions, including under Priority Reform Area 4. Government also needs accurate data to inform effective decision-making. While access to data is also an issue (see below), a first problem needing attention in this context is the quality and consistency of data being collected by government. This was discussed above in the context of

¹⁸⁵ JACS (2024) *RR25by25*, p.27. Other aims of this project are to improve program management/progress reporting and outcome evaluations, enhance internal evaluation capabilities through community of practice, leverage opportunities for evidence-based policy development and targeted program intervention funding.

¹⁸⁶ JACS (2024) *RR25by25*, p.25.

¹⁸⁷ The RR25by25 states ‘By monitoring these supplementary metrics, alongside the existing recidivism rate, we establish a mechanism through which to better evaluate the overall health of the criminal justice system’, p.26.

Indigenous expenditure data, for instance, but is a broader issue raised across different parts of this Report.

As identified in our First Report, certain data are not available because of non-identification of Aboriginal and Torres Strait Islander status as individuals travel through the justice system. One government participant identified this as ‘empowering’ for First Nations people, as they can then choose to identify or not at different points in this system. However, greater consistency in identification by individuals as they move through these points would help to resolve a number of issues raised in this Report. Inconsistency of identification was raised by First Nations participants themselves as problematic. We discuss in Section 3.4 that identification of First Nations status is important, for instance, where First Nations people are accessing cultural programs, but it is also essential for measuring how well interventions or initiatives designed to reduce First Nations over-representation are working. Not having this data will impact on implementation and evaluation of RR25by25, for example.

We’re being asked to identify at different points – police will have them as Aboriginal, Courts Transfer unit could have them down as something else, Corrections as non-Aboriginal. When you go to court, they won’t know if you’re Aboriginal... [Preferably] they’re only having to be asked possibly, you know, once for those really basic details and they’re coming along with them. (Government Agency)

Increased linkage of data was also seen as having potential to focus efforts that will turn around trajectories funnelling people into the justice system, including as return to prison. Linkages might identify, for instance, what is working to positively shift or alternatively, to negatively impact these trajectories.

One participant suggested that at present, ‘we can’t say this person when they went to our program, they offended 10 times before that. After our program, they offended twice. There’s a reduction in recidivism.’ This was attributed to an absence of linking of data across justice agencies (Government Agency). Government participants indicated, however, that there are a number of data linkage projects under way in the justice space, including under RR25by25 (as above).¹⁸⁸ The Justice Reform Branch (JACS) is working in collaboration with the Australian National University (ANU) to link administrative data sets from ACT Policing, ACT Courts and ACT Corrective Services, for instance. JACS has

¹⁸⁸ JACS is identified as having in principle agreement to ‘establish a technical working group and a pilot as it’ll be the first ACT justice linked data asset... this is... a project that will add value to JACS but also that they will be able to use to better communicate outcomes and be more accountable and transparent with how they’re progressing with either meeting or not meeting targets across the justice system’ (Government Agency).

provided the relevant administrative data to ABS, which has then provided access to data to ANU. ANU is using the datasets to examine the impact of R25by25.¹⁸⁹

Participants identified utility in data sharing and linkages between justice *and other areas* such as health, education and child protection (see also Recommendation 5.10). This would be directed towards better understanding and responding to the needs of those interacting with the criminal legal system.

The other one would be – and I don't know how we do this because there's a lot of privacy [issues]... but in terms of identifying both at risk people – when we're talking about youth potentially – and then also disabilities or stuff like that, how do we link with the health system or the education system? Cluing us into what these kids or these people are going to be needing in terms of support... We do have a lot of people going into our system that don't have the capacity to understand... they're completely non-verbal... So, linkage in between systems as well. (Government Agency)

A specific example cited by participants was that access to health data about an individual appearing before court might positively and constructively inform decision-making. This includes data identifying whether an individual has an acquired brain injury (ABI), for instance. If this information was available *prior to* court appearances, the individual with the ABI might be diverted away from court *at the outset* (see also Section 9).

[They don't have] capacity to actually understand what they've done or why they are where they are... People come to court who are completely nonverbal [and] their only response is to just cry. And I'm just sitting there going why has this person been arrested? They would end up just giving them a non-conviction... but they've still had to go through the whole court process and not understanding why that's occurred. So, the linkage in between systems is important as well. (Government Agency)

Increasing data linkages at both the individual and population levels could have operational applications, as above, to enable the identification of intervention points at the individual/client level. It could also have broader population-level applications to enable the identification of system-wide trends that contribute to over-representation. Insights gained could be used to develop more coordinated funding responses to over-representation targeting social determinants of negative First Nations justice outcomes (see Section 3.2, Funding), for instance, as well as other interventions.

¹⁸⁹ Analysis is underway and the final report is expected in September 2025.

There is a lot of complexity arising with respect to this type of data sharing and linkages, and in setting up systems to enable these to occur. As an important starting point, one government participant correctly identifies that potential legal, health and privacy concerns might be prohibitive in this context. In terms of processes, there would need to be agreements or MOUs signed between relevant data holders to share identifiable data, which could then be de-identified. A centralised data custodian would need to coordinate linkages at the individual level, and to ensure de-identification of all data to support population level analyses.

We have recommended that increased data sharing and linkages across justice and other areas be considered and progressed where possible - with a first step being a process to consider all concerns and requirements (including to determine feasibility). First Nations input would be required within this process.

In implementing Recommendation 3.10 (and to be determined in implementing Recommendations 2.1, 2.2), First Nations input may be provided by First Nations-led justice mechanisms established as part of this Review, including by First Nations representatives of the First Nations-led Data Working Group (Recommendation 3.11).

Recommendation 3.10

We recommend that JACS, CSD and other relevant Directorates come together with the First Nations-led Data Working Group (Recommendation 3.11) to consider and potentially progress additional data sharing and linkage projects. The focus is on projects that share and link:

- a. justice and other types of data (for example, health, child protection, education related data)
- b. that have capacity to provide insights into interventions likely to positively impact justice outcomes for First Nations people at both an individual and population level.

At the initial phase of this process the various directorates, in consultation with the First Nations-led Data Working Group, should agree on a minimum data set that would set some parameters around what data would be shared across agencies.

Consideration should be given to legal, privacy and other concerns arising with respect to such projects and whether and how these might be balanced with their potential benefits, the processes required to establish these projects and any other relevant matters.

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

3.3.4. First Nations Data Group and Strategy

Also discussed by participants was the need for a more coordinated focus within JACS and CSD on data pertaining to First Nations people (including as relevant to RR25by25) through a First Nations-led Data Working Group and First Nations Data Strategy.¹⁹⁰

We can all get warm and fuzzy about data and data sovereignty and sharing data and that. But unless it has a purpose, how are we going to use it? I think justice needs a data working group that says, ok what data do we want? What answers are we seeking? We need a data strategy in our space so that our data collection is more deliberate. (Government Agency)

We have made a recommendation for establishment of a First Nations-led Data Working Group that could sit across JACS and CSD work, with membership potentially drawn from the interim First Nations justice oversight body established under Recommendation 2.1 and other invited members (Recommendation 3.11). This group could work alongside government representatives in JACs and CSD (and potentially representatives from other Directorates as required). First Nations representatives would not need to be ‘data experts’ in a Western sense (that is, familiar with Western uses of data (including in a research/policy space). They should, however, be provided with any training and information around use of data as required to ensure their effective participation in the group.

An early priority for this group would be development of a First Nations Data Strategy. This would, in part, focus on addressing data inconsistency, gaps and other issues related to data quality discussed throughout this Report (see for example Recommendations 8.1, 9.1, 9.2, 11.1).

Separate to or as part of this, we have recommended that JACS and CSD need policies and procedures outlining their approach to IDS-G. The latter Data Strategy might set out how IDS-G will be supported by JACS, with specific actions identified (Recommendation 3.12). These actions might incorporate, for instance, having mechanisms in place that provide for First Nations people to input into KPIs for senior JACS staff (see Recommendation 2.4.b); more effective outcomes measurement under RR25by25 (for example, increasing the focus on community-generated qualitative data, to measure government transformation etc.) (Recommendation 2.3.c and e); and how First Nations data is to be used (for example, data gathered about First Nations people as part of the above Qualitative Desistance Project).

¹⁹⁰ JACS has indicated that it currently brings together data-related working groups for a specific purpose (e.g., to guide development of the pilot ACT Justice linked data asset discussed above).

Further, JACS is imposing standardised data collection across criminal justice related initiatives under the RR25by25, as above. This is to some extent understandable, as some have commented on the need for more structured and consistent data collection around JACS programs.¹⁹¹

That was the purpose of the Yarrabi Bamir programs. You know, it's meant to be working with those with complex needs within the justice system. And yeah look, it gets a lot of money and there is something like 23 families being supported. But the way it was set up originally and the way the data is extracted from that I cannot tell you whether it's [effective or not]. That's the problem with all of our programs. I can't say is this contributing to over-representation or not, I mean in terms of making it better because you can't actually follow through. The data's just not there. (Government Agency)

Incorporating First Nations input into these standardised measures is also important, however. This might occur at an overarching level in consultation with the First Nations-led Data Working Group.¹⁹² Ensuring First Nations input into development of outcomes and monitoring/evaluating of their progress is not just important for IDS-G, it is also essential to ensure that government is accountable to the First Nations community in the ACT in ways that meet their expectations.

We really do have limited data about our communities to start with let alone on program, policy or intervention effectiveness. We have insufficient or inappropriate mechanisms to remain accountable and to measure the *right* things – and when we look at the right things, the right things for government often are not the right things for community. (Government Agency)

Recommendation 3.11

We recommend that JACS and CSD establish as a priority a First Nations-led Data Working Group. This group could be drawn from and should connect with any other First Nations-led mechanisms established as part of this Review. It may also

¹⁹¹ See discussion in Section 2, Outcomes Measurement, for instance, about establishing clearer targets and indicators that link meaningfully to outcomes.

¹⁹² This is particularly important if there is not going to be a lot of flexibility for ACCOs to work with JACS around reporting/KPIs linked with JACS programmatic/service funding – and on this point, note the approach taken with the AEEF (Section 3.2, Funding). We heard about one example of how ACCOS might inform KPIs, as follows. 'We put into practice community control and at the centre we have an intensive family support contract with a community-controlled organisation which works with our families in that early, early diversionary process. And instead of those key performance indicators being underpinned by government, all the key performance indicators, all their reporting indicators are dictated to by the organisation and the KPIs are the organisation's program logics. So, they've got a five-year plan – it all ticks off on here. Off we go. It's led by community for community and done'. (Government Agency)

incorporate representation from JACS, CSD and other ACT Government representatives, as required.

- a. First Nations members of this Working Group should be supported to develop their data capabilities, as required.
- b. As an early priority, this group may develop JACS and CSD First Nations Data Strategies to coordinate and guide First Nations related data work in the justice space, including under RR25by25.
- c. The focus of both the Data Group and Data Strategies should incorporate improvements to the quality of data collected by JACS and CSD, including to ensure consistency and to address gaps in data identified in this Report.

Recommendation 3.12

We recommend that JACS and CSD develop clear policies and procedures outlining their approaches to IDS-G, with First Nations input from the First Nations-led Data Working Group.

Specific actions outlining how JACS and CSD will support implementation of IDS-G principles are to be identified and implemented within this process.

These actions may incorporate, for example, establishing mechanisms that provide for First Nations people to input into KPIs for senior JACS staff (Recommendation 2.3.b; justice related outcomes measurement (including under RR25by25) (Recommendations 2.4.c, e; and how First Nations data is to be used in the justice space.

The above policies, procedures and actions may be incorporated within or aligned with JACS and CSD First Nations Data Strategies (Recommendation 3.11).

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

3.3.5. *First Nations access to data*

There is limited accessibility to data for First Nations people in the ACT to use in their participation in funding and policy decisions and assessments they may make about government effectiveness. As our Report shows repeatedly, and ATSIEB has previously identified, data may not be available, or not accessible publicly. Accessible data is also an issue for government, as identified above.

We're not getting holistic responses to our request for information within ACT Health let alone across government for a range of matters relating to First Nations

health and also for things like reporting around Closing the Gap and reporting for the ACT Agreement and also reporting against OBOWs... [an] absolutely critical piece of work. (Government Agency)

The data exists. It's in RoGS (the Commonwealth Productivity Commission's Report on Government Services) or... you would have to go into the actual excel sheet. You would have to find the page and you'd have to figure out how to read the stats and it's not really accessible... We need a place where it's accessible as an image of a graph or something like that. (Government Agency)

We heard from government participants in particular that concerns about release of First Nations data include the small population size of the First Nations community in the ACT. Unit-record data specific to First Nations individuals would, it was suggested, produce a high risk of attribute disclosure and compromise data confidentiality of justice clients. This would also be in contradiction, it was stated, of the ACT Government's Data Management Framework (including provisions related to confidentiality and safe handling).

Noting these concerns, we have made recommendations (Recommendations 3.13-3.15) for increased sharing of data, which as an important starting point is in keeping with IDS-G principles, as well as aligning with commitments under Priority Reform 4. We highlight here the need to carefully balance decisions not to disclose to First Nations people data about them with privacy and related concerns. First Nations people need to be involved in decision-making about sharing of data to ensure this balance.¹⁹³

Dashboards and other publication of data

We also note the importance of a public-facing dashboard to share justice related data. First Nations data to be shared publicly on such a dashboard could be initially 'triaged' by the above First Nations-led Data Working Group, who might consider whether and how it ought to be disseminated (as above, balancing privacy issues with a need for transparency).

¹⁹³ ATSIEB have called on *all* directorates to do better in building, revising, using *and sharing* data to ensure progress can be tracked. 'Data in this context is the ability for the Aboriginal and Torres Strait Islander community to access relevant data to support their decision making and establishment and operation of the Aboriginal Community-Controlled Organisations. It should be noted here that the seeking of data for the ACT Agreement is very difficult and places the Aboriginal and Torres Strait Islander Elected Body at a significant disadvantage in not being able to understand or assess change or progress against the Agreement. All directorates as a matter of urgency need to build, adjust or utilise data that provides the ability to track progress against the agreement. The Elected Body also seeks from the ACT Government a data exercise to illustrate our current trajectory against all indicators, as well as modelling on what would be required against each to actually meet the 2030 targets'. ATSIEB (2024) *Report from Hearings 14–16 August 2023: Eleventh Report to the ACT Government*, p.14 <https://atsieb.com.au/wp-content/uploads/2024/03/CSD_ATSIEBH23_WCAG_alt.pdf>.

... [O]ne of the core issues in this for our jurisdiction as well is... we're a small jurisdiction with small numbers. So, often when we talk about accountability we also have to talk about data, and we're talking about data and small sample sizes that are highly variable, statistically not valid in the number of cases or can be highly identifiable. They're all things that are not grappled with. (Government Agency)

We heard that ACTCS are releasing a self-service, automated dashboard to JACS. The dashboard will only include ACTCS data. We have recommended that there should be a publicly available dashboard that incorporates (de-identified) justice data sets. Discussion will be necessary about what First Nations data should be made public via this dashboard, with First Nations input into decision-making in this context. Data that is not publicly released may perhaps still be shared to First Nations people via the First Nations-governed dashboard referred to in Recommendation 3.15 (depending on the criteria used to determine why data is not suitable for broader public dissemination).

[Losing the previous data reports¹⁹⁴] left a big gap in terms of us communicating proactively with the community and reporting on how we're measuring gaps or opportunities... [The pilot is] looking at our prison and community corrections population and just anything about them – family violence orders, domestic and family offences... and it develops a whole bunch of performance measures around that... But it also looks at a lot of person-centred population activity... (Government Agency)

Besides an online dashboard, the development and dissemination of an easily accessible publication may also be considered by JACS, particularly to make data accessible to those who do not have access to computers or computer skills (Recommendation 3.14). For example, ACT Health in conjunction with ATSIEB has published a useful Aboriginal and Torres Strait Islander Health and Demographic Profile for the ACT.¹⁹⁵ Something similar for justice would be helpful. Similar considerations related to publication of data as set out above will be relevant to development of this publication.

In Recommendations 3.13 and 3.14, we have identified that First Nations input is required in the development of the above dashboard and publication, including to inform decisions about what data is publicly released. This input should (at least in part) be

¹⁹⁴ The ACT Criminal Justice Statistical Profile stopped publication in 2019. It a historical series of regular criminal justice system data that compiled by the Legislation, Policy and Programs Branch of the ACT Justice and Community Safety Directorate. The Profile was released after the close of the June and December quarters each year. See https://www.data.act.gov.au/Justice-Safety-and-Emergency/Criminal-Justice-Statistical-Profiles/ni3q-as6y/about_data.

¹⁹⁵ ACT Health & ATSIEB (2024) Aboriginal and Torres Strait Islander Health and Demographic Profile: ACT and Surrounds 2023, Canberra.

provided by First Nations Justice mechanisms established as part of this Review, including First Nations representatives of the First Nations-led Data Working Group – to be further considered in implementing Recommendations 2.1, 2.2.

A further recommendation relates to establishment of a First Nations-governed dashboard holding and disseminating First Nations data (Recommendation 3.15). A priority ‘audience’ for this data dashboard is the First Nations community itself, who should also determine how the dashboard is set up, what data it holds and how it is used. For instance, this dashboard could be used in First Nations-led community information and feedback sessions that gather community input to inform collective First Nations decision-making on government policy.¹⁹⁶

To implement Recommendation 3.15, design of the platform, including its governance, should be considered in implementing Recommendations 2.1, 2.2. For consideration, governance could sit with First Nations-led justice mechanisms established as part of this Review or external to but working alongside representatives from these mechanisms.

Recommendation 3.13

We recommend that JACS establish a public-facing dashboard providing the First Nations community with access to de-identified First Nations data. This includes data reporting on RR25by25 implementation and other First Nations related justice data collected as a result of improved data linkage, and the specific data areas for data collection identified in our Review.

First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released.

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

Recommendation 3.14

We recommend that JACS develop and disseminate a publication on justice-related data that is easily accessible to the First Nations community, similar in style to the Aboriginal and Torres Strait Islander Health and Demographic Profile for the ACT.

¹⁹⁶ While the latter could potentially be achieved through an extension of the existing ACT Government Impact Dashboard, dashboards holding First Nations data ought to be developed and managed in alignment with IDS-G.

First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released.

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

Recommendation 3.15

We recommend that the ACT Government support First Nations-led development of a First Nations-governed data dashboard. First Nations input on design of the platform and its governance should include input from the First Nations-led Data Working Group.

This platform should hold and share First Nations data as determined by its First Nations governance. This may include data on First Nations experiences of racism and cultural safety (see Recommendation 3.2).

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

3.4. Identifying Aboriginal and Torres Strait Islander people

The identification of First Nations people is not clearly understood, and standards are not upheld. This is a prevalent issue across various justice-related systems, including child protection, youth justice, policing, courts and prisons. Section 3.4 focuses on the issue of identifying or not as First Nations people across the ACT justice system. It highlights links – both direct and indirect – between disempowering of community around identification as First Nations, the self-identifying by individuals, being identified by a system or service provider and First Nations identified employment. Redressing of over-identifying across justice is imperative and must reflect the advice and understanding of community members and Elders. Until this is achieved First Nations communities will continue to be overwhelmed with fluctuating increases of identified First Nations numbers in ACT.

3.4.1. *Over-identifying in employment, service provision and within systems*

Across the dialogues with community members, there was numerous discussions of the rapidly increasing numbers of First Nations people in census data and government outputs. However, there was uncertainty in the community as to who these people are and where are they across the ACT. ‘We’ve got so many people here identifying... According to statistics we have 9,500 Aboriginal and Torres Strait Islander people in the ACT. You tell me where they are’ (Sisters in Spirit Community Dialogue Women).

There was a consistent voice indicating the lax standards of identifying across government agencies and community organisations. This was seen in employment, within service providers (speaking about clients) and within justice systems. There was the consensus that institutions are accepting one or none of the three ‘working criteria’ for providing confirmation of Aboriginal or Torres Strait Islander heritage.¹⁹⁷

A lot of them bypass too because they're not getting their confirmations and they're just getting stat decs off people, so they're getting the jobs that way as well. Confirmation of Aboriginality needs to be readdressed right across Australia. (Sisters in Spirit Community Dialogue Women)

3.4.2. *Self-identifying and identifying across systems*

Besides individuals self-identifying, there was also a consistent theme around people being identified within a service or government system.

This is the thing about the prison system – they themselves are just ticking the box to self-identify and being identified in systems, so like child protection, they're self-identifying and identifying (as First Nations) for these kids... when they are taken. (Sisters in Spirit Community Dialogue Women)

In doing so, there is an additional level of trauma applied to these young people and communities with systems ‘ticking a box’, as there is a physical separation but also a dissolution of cultural knowledge or fabrications of Indigeneity.

Regarding adult custody, the over representation was stated to be driven possibly by over identifying people and people changing their status. We were told that community know of people who are going into custody six or seven times with them and then on the seventh time they're now choosing to identify as First Nations. In doing so, there was no process to redress the change of information to support the change of status. When asked about the change or identifying by departmental staff and about a process, verification and/or systems used in this context, the staff response was ‘we speak to family and if they identify then we accept that’ (Government Agency).

Across child protection, there were similar discussions around the process of identifying, where ‘people have got mixed views around that as well. So, we then just follow our current process which is to ask family and if they identify then we record it as such and we don't do anything to change that unless the family ask for change’ (Government Agency).

¹⁹⁷ See detail at <<https://aiatsis.gov.au/proof-aboriginality>>.

In some cases, identification is missed or not supported, as provided in examples relating to child protection.

There have been a number of cases in the past six months... there was one matter where we probably noted way back in the file that Granddad had identified but that hadn't followed through into the file for the young person, so it wasn't identified. [Another] example, was one whereby somebody came and said yes, they were Aboriginal, and we had no information whatsoever to suggest that they were. So, for that young person we then, because it wasn't a family member that had raised it, we then tested with our Aboriginal staff and with others in terms of 'is this family known?' and again could not get any indication that they were known to community or that the family were known to community. So, at this point we haven't done anything until we do get any further information to suggest otherwise. (Government Agency)

However, in systems like policing it was suggested that First Nations people were not openly identifying at the point of police engagement.

But people *are* identifying post referral from police. A lot of people don't identify with [police] because of the 'joys' of intergenerational trauma and the engagements of those before them. So, people don't identify with [police] because of that history and identify with JACS at a later point. I've had this yarn for a long time. I don't like the numerator. [First Nations people] are over-represented in comparison to other demographics. But those other demographics don't have 236 years of colonisation compounding their issues. (Government Agency)

When discussing why people are identifying now and not before, or there being more self-identification, there was a common response indicating a desire to access support and services.

[As] you went through the system at various points in the criminal justice system, whether that's at courts or corrections, people would be identifying as First Nations, dependent on whether that provided a certain access to a certain service or benefit in that criminal justice system. The data between us and them, the data between corrections and the courts was vastly different. It was significantly different. (Government Agency)

You only have to look at our circle sentencing, a lot of them bypass too because they're not getting their confirmations and they're just getting stat decs [statutory declarations] ... They're getting their jobs that way as well. (Sisters in Spirit Community Dialogue Women)

3.4.3. *Disempowering communities*

With all this variation and difference with people being able to self-identify, there was a feeling of people getting away with ‘committing fraud’. There was discussion around the oppression of rights for the First Nations community by denying their input into identification processes of First Nations people in the ACT. Further, government departments or services are seen as disregarding cultural authority when seeking further information or understanding relationality.

In addition, some First Nations people in the community were adamant that the understanding and acceptance by community around Aboriginality is being guarded by colonial wording and constructs of ‘lateral violence’. ‘They’re disempowering the community to be able to challenge people’s identity by threatening legal proceedings if you dare challenge someone’s identity’ (Sisters in Spirit Community Dialogue Women).

But it’s not lateral violence. It’s not. I’m calling it out. There’s no violence in it whatsoever... its understanding and knowing, I feel that... people have actually stopped doing this work and blame others. (Sisters in Spirit Community Dialogue Women)

3.4.4. *NSW Report on Identification*

In 2015, NSW Aboriginal Affairs undertook a study that sought to understand what affected the decision to identify as Aboriginal, and how more Aboriginal people might be encouraged to identify as Aboriginal.¹⁹⁸ A total of 499 Aboriginal people aged 15 years or older took part in the study.¹⁹⁹ Just over 70% of participants always identified as Aboriginal (the ‘always-identify group’), a further 21% sometimes identified (the ‘sometimes-identify group’) and 8% never identified (the ‘never-identify group’).²⁰⁰

The barriers nominated by the never-identify group were mostly to do with the difficulty of tracing identity (41.9%); concerns about the question and how it was asked (22.6%); and concerns about racism, discrimination and stereotyping (16.1%).²⁰¹

The Standard Indigenous Question (SIQ) was introduced in 1996 and is expressed as:

Is the person of Aboriginal or Torres Strait Islander origin?

- No

¹⁹⁸ NSW Aboriginal Affairs (2015) *Aboriginal identification in NSW: the way forward. An Aboriginal peoples’ perspective*. Sydney, Australia. Available at <<https://www.nsw.gov.au/departments-and-agencies/aboriginal-affairs-nsw/resources/identification>>.

¹⁹⁹ NSW Aboriginal Affairs (2015) *Aboriginal identification in NSW: the way forward*, p.15.

²⁰⁰ NSW Aboriginal Affairs (2015) *Aboriginal identification in NSW: the way forward*, p.19.

²⁰¹ NSW Aboriginal Affairs (2015) *Aboriginal identification in NSW: the way forward*, pp.20-21.

- Yes, Aboriginal
- Yes, Torres Strait Islander

For persons of both Aboriginal and Torres Strait Islander origin, mark both 'Yes' boxes.²⁰²

The SIQ is based on the Commonwealth Government definition but does not include the third element of *community recognition*. NSW Aboriginal Affairs notes that 'The suitability of the Commonwealth Government definition as an all-purpose means of determining Aboriginal identity in contemporary Australia has been questioned since the 1990s by both Aboriginal and non-Aboriginal communities... [and] has led to questions about the genuineness of the assertion, particularly when an individual has not identified as Aboriginal in the past'.²⁰³ The Report goes on to note that although there is recognition of problems with the SIQ, government agencies have been reluctant to change it. Many of the Aboriginal participants in the NSW Aboriginal Affairs study indicated that they were not given the information they needed to make an informed choice. The missing information included the purpose of identifying, the benefits of doing so, and the privacy and security of their data.²⁰⁴

The solutions proposed to reduce barriers to identification in the NSW Aboriginal Affairs report included:

- Addressing cultural safety and competence
- Tackling or stopping racism, discrimination and stereotyping
- Ensuring information is kept private, and used only by those collecting it
- Increasing community cultural awareness and education
- Asking about Aboriginal identity
- Empowering Aboriginal people, and pride in culture.²⁰⁵

The Report found that any solution must be 'localised and informed by the local Aboriginal community. Such a localised response may have many facets, but as a minimum it will include specific changes to the way agencies' policies and procedures are implemented, and to the values and beliefs of individual staff and of each service centre as a whole'.²⁰⁶

²⁰² NSW Aboriginal Affairs (2015) Aboriginal identification in NSW: the way forward, p.11.

²⁰³ NSW Aboriginal Affairs (2015) Aboriginal identification in NSW: the way forward, p.11.

²⁰⁴ NSW Aboriginal Affairs (2015) Aboriginal identification in NSW: the way forward, p.33.

²⁰⁵ NSW Aboriginal Affairs (2015) Aboriginal identification in NSW: the way forward, p.7.

²⁰⁶ NSW Aboriginal Affairs (2015) Aboriginal identification in NSW: the way forward, p.8.

Recommendation 3.16

We recommend the development and implementation of a consistent and culturally informed approach to the identification First Nations peoples across justice-related agencies and funded service providers. A clear and consistent standard for verifying First Nations identity should be developed in partnership with First Nations-led structures established as part of the Review. This will ensure equitable access to services and protect the integrity of funding and data collection. Where changes to a person's Aboriginality status occur, agencies should engage with relevant community partners and seek culturally appropriate guidance to determine whether recognition is appropriate within program and service delivery contexts.

Recommendation 3.17

We recommend justice system databases should be updated to reflect only verified identifications, and protocols should be introduced to prevent retrospective changes without appropriate cultural or community verification—particularly in cases where individuals have had prior engagement with the system without identification as Aboriginal and/or Torres Strait Islander.

3.5. First Nations employment and identified positions

The issues and concerns around identifying as First Nations were not limited to clients in the justice system, there was also uncertainty on identified positions in an employment setting and recognition in community.

3.5.1. *Identified positions*

Community members raised concerns around qualifications or criminal histories preventing employment and limiting the potential for First Nations employment in identified positions. This was thought to affect capacity of services and institutions to adequately meet the needs of the communities they are servicing – without having extensive understandings and connections to those communities. This was a prevalent issue across many community consultations, and particularly in relation to the provisions of the Australian Public Service (APS) recognising the value of lived experience, cultural knowledge, and community connections that enhance service

delivery and cultural responsiveness.²⁰⁷ Additionally, the under-servicing and -staffing within community is related to the current employment policies and qualification levels. Several areas continue to require significant attention, and changes are needed if over-representation is going to be meaningfully addressed.

Concerns raised centred primarily on the qualifications needed for employment and the lack of community connection and engagement of individuals employed as First Nations staff. While acknowledging past atrocities with removals and loss of connection, those identifying in an employment capacity were seen to be taking opportunities away from community members and influencing services. One First Nations staff member observed:

All my time... since 1990 and being in the workforce [I've been concerned] about identified positions being taken by people who just happen to be Aboriginal at that certain time. I don't like questioning Aboriginality. But I will if it's affecting Aboriginal families. And I understand about people being taken, I understand about people not knowing that they're Aboriginal, didn't grow up Aboriginal but they found out they're Aboriginal. If those people are going back to source where their roots are, that's good for them. But if other people are there just so they can get that job because they've got the uni degrees, that's something else. Because they're playing with our families, they're playing with our young people. They have our families lives at risk. And they are manipulated. A lot of people are manipulated when they're in that role. Our Aboriginal workers within that role, they are manipulated how to think and work under a system. They're not armed with [and] don't have autonomy or understanding. They don't have trust. They have to work under that system. (First Nations Organisation)

Due to the disconnection through previous government removal policies, during our community dialogues it was also expressed that departments continue to have obligations to assist people, families and communities with genealogy and 'family finding services to know who they are before getting into these roles' (Sisters in Spirit Community Dialogue Women).

Recommendation 3.18

We recommend that First Nations organisations, for example Elders and/or ACCOs (and where possible AIATSIS), assist by undertaking family history and genealogy research when required by First Nations individuals in the ACT. This may require

²⁰⁷ Australian Public Service Commission (2021) *Aboriginal and Torres Strait Islander recruitment information*. Accessed 25 February 2025. Available at <<https://www.apsc.gov.au/working-aps/diversity-and-inclusion/aboriginal-and-torres-strait-islander-workforce/aboriginal-and-torres-strait-islander-recruitment-information>>.

funding for staff to undertake and assist with family reunion, with travel of clients to their country and in obtaining understanding of descent from the Indigenous peoples of Australia and acceptance as Indigenous by an Indigenous community.

A common theme across many of our interviews with First Nations community members, detainees and stakeholders was the perception that one of the reasons for identified roles in the ACT was *relationality* to the community. However, the positions are being filled by individuals who don't identify or are not known and/or accepted in community (in ACT and/or by Kinship or MOB in community more generally), and further to this, they have no or limited cultural and community connections and lived experience. This disconnect between policy and practice was seen as a significant barrier to improving the efficacy of many agencies and their programs and services targeting First Nations communities. This lack of close connection, identifying, acceptance and experience created additional pressures for community, as those staff were perceived to be unable to connect or engage with community, if they themselves were not connected, recognised or had the relevant life experience.

This is the problem... we've got people who can't engage [with community] and these are sensitive issues. We've got people dying in jails, we've got kids being removed... This affects people's lives. They want to feel valued. It affects their lives personally. And when the system has constantly failed them, they don't care who it is there [in front of them], they're actually going after the system. But what happens in the ACT government [is] we quite often wheel out our Aboriginal staff who aren't connected with community... And so, everyone locks down and we stop talking. (Sisters in Spirit Community Dialogue Women)

Further to this was the sense that community members do not know who are filling the identified positions. 'In the justice system there's specifically identified jobs that are to do with [community] engagement. We don't even know who these people are' (Sisters in Spirit Community Dialogue Women).

I met [named ACT Senior Indigenous position]. Yeah, I met [named person], once or twice. I don't know them. I had asked who they were and they said I'm [Identified position]. I believe they have been in the position for a little bit. But you know, without the professional aspect of our roles, I would not know these people in the community because, I don't see them in the community. (First Nations Organisation)

This lack of engagement and outreach into community spaces means that staff are seen as not openly accessible.

People [departmental staff] getting off their backsides and going out into community has ceased. Now that used to be pretty much full on back in the day.

People used to get out and actually do the outreach to go out to community, go out to all the ACCO services just be out there. But that's ceased so people don't know who's who in the zoo at the moment. That really is very frustrating for community and for a lot of the services because we don't get to find out who's actually in those positions anymore, only by word of mouth. Back in the day we used to have gatherings where we had a lot of the services come together and share resources. That ceased. (Sisters in Spirit Community Dialogue Women)

The reasons for the lack of community outreach were constantly stated to be due to 'high staff turnover' and not having enough First Nations staff, which then affects the services and information being passed on. 'So, it doesn't get out there. People tend to not share that information, and to say it's not part of our job to get out there' (Sisters in Spirit Community Dialogue Women). In addition to the identified staff not being known by the community, it was felt that the positions in the First Nations teams and units were largely filled and/or led by non-Indigenous peoples.

The only way we find out about First Nations teams is when they turn up for on one of our mutual clients. So, we just go, hey, how did this person get involved? She's not Aboriginal, he's not Aboriginal. We thought [because] it was the First Nation team it was meant to be Aboriginal or at least have some understanding. But then again, they may be struggling with workers as well. We can't fill jobs because of the skills [required]. There's not the skill market out there anymore. They may have the same issues trying to fill those roles. (First Nations Organisation)

There was also seen to be a need to increase First Nations staff numbers across ACT justice and related agencies, as specific services severely lacked First Nations staff. This was seen specifically in youth justice as stated below:

We don't have the Aboriginal workers working with these kids. Yeah, well in my experience I've never seen any. I've never seen any Aboriginal workers in YJ [youth justice]. You can be a non-Aboriginal person, but you've got to have that cultural understanding and lived experience, especially when you're working with very, very vulnerable families like that and especially our young people. So, what they do is, and I've seen this, what they may do is line somebody up as an officer with brown skin [in the service]. That happens. (First Nations Organisation)

This uncertainty and lack of outreach and staff had led to differing community experiences with department staff.

We've got not so pleasant people working in some of these positions and as Aboriginal community members, we know that. So, we choose not to access some of these services [where certain] people sit in these spaces because we know what they're like, so we don't trust them. So, when you've got people in those positions that you don't trust, it makes our jobs a whole lot harder because then

we've got to go and try and make contact with people that we do trust. (Sisters in Spirit Community Dialogue Women)

This mixed community experience of identified positions also affected non-government service providers, including by way of new services from outside ACT being established locally and through their collaboration with government and access to funding. Providers were thought to have been losing sight of the key stakeholders and service objectives (see also Section 3.2, Funding).

We need more services (ACCOs). But we need to make sure the services... know who our number one stakeholders are and that's our community and that's our kids. With [Identified First Nations Youth Service] our community is our number one stakeholder. Don't lose sight of that... For me, for me it's like government, the ACT government are playing political football with services all right and they're pitting service against service to a degree. They know what they're doing, government... Because the previous CEO fought hard for our model of service and to make sure if government do come in here, they work on the service model the community developed at [identified First Nations Youth Service]. It's not that you're going to come in here and impose this and do that. If you want to come to our table, you sit and listen to us first and if you don't like what we've got to say you just take your money somewhere else or take your model of service somewhere else... But that's what they're doing. They're playing political football. (First Nations Organisation)

Finally, there were discussions with community and staff as to what remedying some of these issues would look like.

To be honest with you, there's a lot of Aboriginal staff that will feel threatened by a redressing of identification, because they're disconnected, completely disconnected from the community they're purporting to serve. They don't have the level of knowledge they actually need. (Government Agency)

This redressing was seen to need to sit in a larger truth telling process with recognised people, community members and specifically recognised Elders, as stated below:

Truth telling is actually having a conversation about what has been the historical impact of policies that have set up the systems that we've got now. And let's have a real conversation about what that means for us and our people. And I keep saying to people, we have a problem, too many Aboriginal staff think 'I'm Aboriginal or identify as Aboriginal', so therefore I have the right to speak on these issues. You have the right to have an opinion [but that] doesn't mean that your opinion is legitimate. (Government Agency)

As noted above, the APS recognises the critical importance of increasing and sustaining employment outcomes for Aboriginal and Torres Strait Islander peoples and the value of

lived experience, cultural knowledge, and community connections that enhance service delivery and cultural responsiveness. In line with this, we make the following recommendation.

Recommendation 3.19

We recommend that ACT government undertake a review of First Nations employment across the justice and related portfolios, with a specific focus on the number, level, and function of identified positions and broader First Nations workforce representation.

Arising from the above review, we further recommend that ACT justice and related agencies maintain an internal and community-facing registry of identified positions and their roles, supported by transparent criteria and culturally appropriate engagement practices. This registry should support workforce planning, succession strategies, and improved community trust. In addition, ongoing capability development and appropriate cultural governance structures must be in place to support the recruitment, retention, and progression of Aboriginal and Torres Strait Islander staff.

4. EDUCATION

Section 4 looks at education and its links with over-representation, with some focus on schooling (and predominantly as a government system). Education is identified as having potential to contribute to First Nations over-representation but also as a space where effective early intervention/prevention approaches are likely to make a positive difference to First Nations justice (and other) outcomes.

Lack of cultural safety and racism, poor responses to disability, and disproportionate First Nations school suspension and exclusion rates were amongst issues identified as having links with over-representation. Responses to these issues discussed below include increased alternative First Nations-led and other learning and engagement options, developing a mechanism for First Nations input into Education Directorate decisions, and better coordination to support children and young people in educational, youth justice and child protection systems.

4.1. Education and over-representation

School can be a protective factor against negative justice outcomes – averting first time contact with the justice system where it is a point of positive engagement and connection for First Nations students, families/carers, the First Nations community and First Nations organisations. This engagement and connection can also prevent re-entry into the youth justice system, as discussion below on flexible learning options post-release highlights. Conversely, disengagement or exclusion from education and lower educational outcomes are seen as increasing the likelihood of contact with the justice system.²⁰⁸

You've got kids [in Bimberi] ... They've got so much trauma it's not being dealt with. They've got the lack of education. They've got the lack of support systems. You know it's that generational trauma for all our kids. A lot of the kids that are in there have no support whatsoever. But it also stems back to if you don't have that education going in there or coming out, how do you know which pathway or what your life is gonna lead to? (Education Provider)

In terms of that connectedness to and a sense of belonging and when there are ruptures... that makes a young person quite vulnerable to influence from other areas, and they'll seek their own through anti-social means. Poor literacy and numeracy... can also increase the vulnerability and I think a lack of educational

²⁰⁸ This is identified in literature related to the school-to-prison pipeline. See for instance, National Indigenous Youth Education Council (NIYEC) (2024) *The School Exclusion Project: Research Report*. NIYEC. Hemphill, S., Broderick, D. and Heerde, H. (2017) *Positive assumptions between school suspensions and student problem behaviour: Recent Australian Findings*, Trends and Issues Brief No. 531, Australian Institute of Criminology.

engagement, so attendance again – all of those vulnerabilities can impact and lead to disengagement and engagement with other areas which more than likely result in anti-social behaviours [and being] ... influenced by less pro-social or helpful people. (Government Agency)

The young people we spoke to in Bimberi all had had interrupted school experiences via multiple suspensions, schools reducing their attendance and/or disengagement.²⁰⁹

Kept on getting suspended. School suspensions... I got sat down by my uncle. He's like 'Brah, I've been to jail. Look at me, you don't wanna go there'... So, I was good for a while then kept on getting more shit at school to the point that they would let me go for 45 minutes. Go to school, first recess they'll send me home. (Bimberi Young People)

I used to go to school but I would sit in class and I would actually try to do like things in class and then again, I put my hand up and the fucking teacher doesn't even like, you know... So yeah, I just. I just started not going to school and just having a sesh with the boys and then just fell off. [Did they kick you out?] No. (Bimberi Young People)

Mental health issues were also raised, which the young people in question did not access support for from school or elsewhere at the time. As one of the young people we talked to stated, 'I just didn't want to go to school... Because of my anxiety and that. Just couldn't connect with other people'. 'Once I started getting anxiety and that [it was] harder to communicate with people and it was like hard to try to focus and that'. For this young person, 'school was not much help' (Bimberi Young People).

We note that education also links directly with justice; for example, where police attend school incidents (discussed below) and via representation on the Therapeutic Support Panel²¹⁰ and the Education Directorate's representation on the ECG.

4.2. Cultural safety and racism

Positive initiatives related to cultural competency in education in the ACT include that schools are teaching aspects of Ngunnawal culture, language and history with content developed with Ngunnawal input.²¹¹ There is a focus on embedding Aboriginal and Torres

²⁰⁹ For example, 'I used to just disappear and then I would come back after a few months and everyone's like oh we've you been?' 'It's pretty hard to focus in school', 'just stopped going', 'I just left. Just didn't keep going' (Bimberi Young People). Also identified no follow-up by school staff for non-attendance (Bimberi Young People).

²¹⁰ Therapeutic Support Panel in its Annual Report for 2023-24 has identified disengagement from education, barriers to engagement with supports, mental health and disability as some of the issues clients of the panel are more likely to present with; e.g. 70% of panel clients were disengaged from education. Barker, J, (2024) *Therapeutic Support Panel for Children and Young People 2024 Report*, pp.28-29.

²¹¹ See Education Directorate (2024) *Annual Report 2023-24*, ACT Government, p.200.

Strait Islander perspectives more broadly across all year levels and subject areas. Also discussed was an on-country program (10 week/one day per week) for Year 5/6 First Nations students and Gugan Gulwan and Winnunga case management support for First Nations students that also involves educating teachers about how best to work with these students.

Teachers at the school, teachers teach... [Gugan] educates the teachers, with consent, about the young person... who is in their duty of care at that time and the school and the principals and whoever's involved with these young people. [Gugan comes in with] a case management model and wraparound service so the teachers then can have an understanding of why this young person is behaving like they are and why this young person isn't attending school at certain days. And then that arms the teacher with having some background information and then they contact [Gugan] if they can't contact the [student/family]. (First Nations Organisation)

The Directorate reports that it is working with the CMTEDD on implementation of a Cultural Integrity Framework and First Nations staff in the Directorate have also led work on a whole-of-government Addressing Systemic Racism Framework (see Section 3.1, Systemic Racism).²¹² A Statement of Commitment to Cultural Integrity was signed by the Education Directorate in June 2024 and this is seen as the basis for embedding cultural integrity across policy, finance, staff recruitment and all other Directorate areas.²¹³ The Directorate is to report against cultural integrity outcomes, with some commenting that achieving outcomes will take time.

[You're] already hearing from big bosses oh it's not working and well... [It's not going] to work overnight or within this amount of time. It's taken centuries to get into this pickle. It's going to take quite a while to get people in the right space. (Government Agency)

As one example of the direction in which the Directorate is moving to advance cultural integrity, school staff are to be upskilled around engagement with First Nations students/families rather than relying on First Nations staff for this engagement. Prior to 2017, Indigenous Education Officers (IEO) were seen as 'a bit of a dumping ground for naughty Black kids... the principal or whoever [has] had the option to not deal with it and just sort of dump' First Nations students with these officers (Government Agency).

²¹² This Cultural Integrity Framework was to be presented to the IDC in the second half of 2024 and to the whole of the ACTPS by end of 2024. Education Directorate (2024) *Annual Report 2023-24*, p.198.

²¹³ To implement this Statement, each branch is to embed local actions in their annual branch plans, aligned with Directorate commitments under the ACT Agreement. The Directorate's implementation roadmap will also be shared across government to support other directorates around embedding cultural integrity. Education Directorate (2024) *Annual Report 2023-24*, pp.198.

Through the Cultural Integrity approach, Aboriginal students and their learning are a whole-of-school/Directorate responsibility. Schools have cultural integrity budgets not allocated to individual student support but to 'raising the capability of the schools and the system' to move beyond 'just putting out fires' (Government Agency).

Aboriginality was never the issue that needed to be addressed. Aboriginality was actually the strength and so flipping it... For example, engagement with school isn't just an Aboriginal and Torres Strait Islander issue. It's an issue for a lot of kids and we already have supports in place to support that. So, let's put a focus on upskilling teachers and school staff and Education Directorate staff in their knowledge around Aboriginal and Torres Strait Islander histories and cultures so that the system can move away from the deficit discourse, and it becomes a more welcoming environment for Aboriginal and Torres Strait Islander families. (Government Agency)

IEOs support this capacity building as follows.

[Previously] IEOs would have to deal with the angry parents or whatever. So now [the IEO is] going to help that teacher and the school build that relationship with the family. And then the idea is that it gets to a point where they're able to walk away and that relationship doesn't just fall over because you don't have an Aboriginal worker... [It's] getting other people to take responsibility for supporting Aboriginal and Torres Strait Islander kids and families. And then some of them, depending on their skills, will also help run professional learning for teachers, in conjunction with the central office staff... (Government Agency)

Poor school responses to cultural needs and low levels of cultural safety in schools are seen as currently leading to First Nations student non-attendance, disengagement and other negative educational outcomes for this group, with potential links to justice system contact. In consultations we heard that a lack of cultural safety might mean staff misinterpret student 'behaviours' (with negative consequences) and that staff turnover can lead to *inconsistently* positive engagement with First Nations families and students.

[S]ometimes there's not a high level of confidence [or there's] a huge level of misunderstanding [in schools] around some of those interactions that they perceive as being aggressive... it's a cultural lens that they're applying. [Most of our] teachers are White, middle-class people that have had very few touch points with Indigenous communities or don't understand really the differences that they may face and the requirements especially around certain culturally significant things. (Government Agency)

It can be very personality dependent. So, if you've got good leaders in the school then it's going to be pretty good. They're going to be able to talk to parents... doesn't matter if they're Black or White [and they will] ... engage with their

community. But then they might move on, and you get a newbie in who [isn't] ... as confident or... [doesn't] put the same priority on engaging with mob. Unless that school has a really good culture where it's not easy to be broken, I think it can just fall down pretty, pretty easily. (Government Agency)

Community member participants identified racism in schools as a significant issue. This encompasses where educational expectations for Aboriginal students are lower and/or where schools don't seem to care about disengaged students. 'The education system, they don't want to teach them' (Sisters in Spirit Community Dialogue Women). One Aboriginal mother discussed how her son's disability impacted his learning, which wasn't picked up by the school as an issue despite him being at a kindergarten level of learning in Year 5.

No. My son was that far behind and no teacher or anything ever said to me, 'Have you thought about getting him assessed?' Because I ended up ringing *them*... [and asked about repeating him] and she was just like, 'Oh proof shows that it's detrimental to their learning if you repeat them' and that was it. And I was just like why haven't you said anything? And then I ended up getting him [tested] ... So, he had an intellectual disability, ADHD. And primary school was fine for him because they knew what he needed, and they made sure he had the same teacher every year and everything was the same. And we all knew high school was going to be hard... you get a different teacher every hour and there's different classes and all that. (Sisters in Spirit Community Dialogue Women)

Other comments on this point include the following. 'There is also a pattern in the act of attendance rather than learning – so providing the kids are turning up nobody really cares what's happening' (Statutory Authority/Public Body).

In education there's a huge focus and a huge effort on cultural integrity and you go to any school and it's really visible. There's art and other signals of culture and people take that really seriously and are very enthusiastic. But it hasn't made a difference to the outcomes for kids. And I think that partly it's because maybe there's an implicit bias built into our schools in some form, maybe not every school, but maybe we don't have high enough expectations for Aboriginal kids. And so, when they disengage, because maybe the teaching isn't working well for them and attendance drops off, maybe we're not proactive enough about actually saying we have to do better. (Government Agency)

The education system is seen, overall, as not a good fit for Aboriginal students, contributing to disengagement and poor educational outcomes. Significant transformation is needed, according to some participants (including prioritising First Nations-led learning options: see below).

One of the things I think is kids will choose what they perceive to be of most benefit for them at any particular time. So, if there is some sort of social benefit or capital to be gained or support [accessed] by turning up to school, even if they don't engage in classes, they will do it. It's when they don't see any benefit. (Government Agency)

This ties up with western institutions, it ties up with dispossession, it ties up with marginalisation, it ties up with poverty, it ties up with that whole stuff about education being an institution which serves probably middle class, for want of a better term, not White even but you know what I mean, more of that ilk. And that's been one of the big issues. And when we go back to the Closing the Gap stuff, it's about transforming government and transforming its institutions and breaking down essentially what is, for all intents and purposes, institutional racism or discrimination, which is not necessarily intentional, implicit rather than overt and explicit. (Government Agency)

More explicit manifestations of racism were identified as both over-surveillance of and higher levels of exclusion for Aboriginal students. 'Because the teachers are fucking racist'. 'All this stuff that happens within the education system, with our kids, they're set up to fail. And then they get expelled. Where is the duty of care?' (Sisters in Spirit Community Dialogue Women)

As a kid I used to do a lot of counselling. Told [the counsellor] something. It wasn't even bad. And there was a lot of drug use in my family, so just mentioned that to him... And then after that... It was that and a few other things that was happening at school. And then they started looking in on us and shit... At school I'd have them come take me out of class and that, asking me if I was on drugs... They'd get the teachers at school to come ask me if I was on drugs. (AMC Mens Group)

Racism is seen as contributing to disengagement of both students and families through distrust, fear, trauma. 'There also is a high level of intergenerational trauma and that's to do with education as well, the education system. So, there's a lot of mistrust, there's a lot of concern, there's a lot of apprehension' (Government Agency). Where Aboriginal students are subjected to racism this is seen as leading to detachment of whole families from school and from 'the educational process and the eventual spiralling of those children into a state where they end up in the criminal justice system' (Government Agency).

For Aboriginal students with a disability, school can be an especially difficult environment. Poor responses to disability can feed into school exclusion, including where disciplinary action is used to respond to disability related 'behavioural issues'. 'I mean you can poke the bear, poke the bear, poke the bear and when the bear bites you, it's the bear that gets into trouble' (Government Agency).

[Education] is a disaster for a kid with disability alone but for an Aboriginal kid. There was a well reported matter in the media a couple of months ago which then has the chilling effect on community of I'm terrified to send my kids to school... because once they've passed that threshold, I haven't got eyes on them. (Statutory Authority/Public Body)

One Aboriginal mother talked about this issue during community dialogues.

[This] whole system of the high school is to push their buttons more than anything. Because all the support you get around children that have got a disability or stuff like that in primary school is there. But the minute they get to high school that just gets wiped... There is stuff that's in the system that should be utilised but because they're too lazy to do their job our kids are then put in that basket of ah too hard, too naughty. (Sisters in Spirit Community Dialogue Women)

This mother describes her child as having a hearing related disability but not being put up the front of the class, causing the student to act out – ‘that is setting that child up and when we put it back on them, they say, “Oh, what can we do? We are underfunded”’ (Sisters in Spirit Community Dialogue Women).²¹⁴

Some participants identified a higher likelihood of disciplinary action being taken against Aboriginal students in general when compared to non-Aboriginal students.

[The Aboriginal student sees] the White kid is doing the exact same thing, and he questions it – ‘go to the office’. So, then they get [labelled as] being a troublemaker. And because the kid will say to the teacher, ‘I've had it’, the kid will say, ‘You can't talk to me like that. This is my right’ or da da da da da. They call the police to say this child is being verbally abusive to me. (Sisters in Spirit Community Dialogue Women)

As this comment suggests, police may also be called to schools to respond to incidents involving students. This has the potential to draw children and young people into the justice system unnecessarily. The National Indigenous Youth Education Council (NIYEC) in their report on First Nations student school exclusions in Australia identifies a direct link ‘between the racial profiling, surveillance, and over-policing of Aboriginal and Torres Strait Islander students in schools, and their overrepresentation in processes of school exclusion’.²¹⁵ The Directorate reports that it has signed a memorandum of understanding

²¹⁴ We note that the Directorate has a Disability Inclusion Policy, with some focus on engaging with Aboriginal and Torres Strait Islander families/students. The Disability Education Reference Group does not appear to include ACCO or other First Nations representation. See detail at <<https://www.act.gov.au/open/inclusive-education-strategy>>.

²¹⁵ NIYEC (2024) *School Exclusion Report*, p.15.

(MOU) with the Australian Federal Police (AFP) to ‘continually improve safety outcomes for ACT Public schools, students and staff’.²¹⁶

A lack of culturally safe supports at school for First Nations students in trouble or needing assistance was also a focus for some. There was discussion in community dialogues of ‘Aboriginal Liaison Officers’ (ALOs) no longer being advocates for families and their children, as being there for the school instead. It was not always clear if comments provided refer to the changed role of IEOs, discussed above.

They held the staff accountable... (Sisters in Spirit Community Dialogue Women)

They’re not ALOs [anymore], they’re ‘Contact Workers’. And they’re not there for community, they are there for the school... And they’re not there for the children, they are there for the staff. (Sisters in Spirit Community Dialogue Women)

... [They’re] for White people. (Sisters in Spirit Community Dialogue Women)

Once upon a time we had the ALOs in the schools and those ALOs in the schools were beneficial to our kids, to our communities... The ALOs were people that we felt we could trust because we knew a lot of them and the kids would be able to have someone to go to. So, they are not now answerable to community, they’re answerable to the principals. So, we’ve lost a really important link to our kids. They were the people that our kids went to. They were the ones that kids looked up to. They were the ones that could talk to families, or advocate for our families that come in there when there were any problems with the school... and we’re left with nothing. (Sisters in Spirit Community Dialogue Women)

A further comment about this shift in student support is as follows and this does appear to relate to the changed IEO role. In this context, community member participants called for more education about rights for students and their families/carers and more support for Aboriginal students in a school setting.

We had an Indigenous Education Unit down here and they had a heavy presence in all these schools and colleges, but then their focus was with the kids, with our youth. Then somebody came in and had a brilliant idea about let’s refocus from the kids to the teachers. So now their focus is with the teachers and the cultural integrity with the teachers. So, who looks after our kids? What happened to Our Booris? How does that work?... And there’s not too many of these Indigenous

²¹⁶ This MOU sets out a ‘framework for effective and efficient collaboration and includes formalised information sharing processes and an enhanced ability to respond to incidents’ in schools. Training materials, guidelines, factsheets and internal procedures are also being developed. Education Directorate (2024) *Annual Report 2023-24*, p.97.

Education Workers... and they've only concentrated them in so many schools... which is alarming really. (First Nations Organisation)

To address these issues, we have recommended that the Education Directorate work with police and First Nations people in the ACT to determine best responses to school-based student incidents, prioritising First Nations community-led responses where possible (for instance, mediating conflict giving rise to such incidents, linking students to relevant community and other supports) and avoiding unnecessary reliance on police responses to such incidents (see Recommendation 4.1).²¹⁷

Further resourcing should be provided for the above community-based response to school-based incidents and to expand current levels of support provided by ACCOs to First Nations students more broadly (to be available, for example, during suspension and exclusion related processes) (Recommendation 4.2). First Nations input into and/or oversight or review of decisions leading to suspension/exclusion of First Nations students is also necessary (Recommendation 4.3). As to how First Nations input may be provided where required by our Review's education-related recommendations, see discussion below about establishment of a First Nations Education Advisory Group (and Recommendation 4.11).

Further, the Directorate reports that it partners with Legal Aid ACT on a Legal Services in Colleges program to provide students with access to confidential legal advice and referrals to legal and other services. Legal Liaison Officers make referrals for students to community agencies and conduct community legal education sessions via this program.²¹⁸ This initiative or an alternative initiative might be (further) developed to increase awareness of rights for students and their families/carers (Recommendation 4.4).

Recommendation 4.1

We recommend that the Education Directorate work with ACT Policing and First Nations people in the ACT to determine best responses to school-based student incidents, prioritising First Nations community-led responses where possible (for instance, mediating student conflict, linking students to relevant supports) and avoiding unnecessary reliance on police responses to such incidents.

²¹⁷ One government participant suggested NT's School-Based Constable program might provide useful precedent. NT Government (2019) *Report. School-Based Police Program Review*, NT, <<https://apo.org.au/sites/default/files/resource-files/2019-07/apo-nid260281.pdf>>.

²¹⁸ Education Directorate (2024) *Annual Report 2023-24*, p.96. The matters listed for which assistance is provided via this program do not refer to support around rights related to culture, discrimination or school disciplinary action, though assistance in these areas may in fact be available.

The agreed approach should be incorporated into Education Directorate policy, including the Education Directorate/Police MOU and additional Directorate policy, as necessary. Processes for First Nations community oversight of compliance with this policy should be established and implemented.

A First Nations Education Advisory Group (to be established by the Education Directorate) should be involved in developing the above policy and in oversight (or advising on best approach to oversight) of its implementation (see Recommendation 4.11).

This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input and oversight).

Recommendation 4.2

We recommend that further resourcing be provided to expand current levels of support provided by First Nations organisations to First Nations students and families/carers.

This support should be offered and made available to students and/or to their families/carers that self-identify or are identified as having a need for it.

At a minimum, support should be available during suspension/exclusion processes, when a student has been referred to alternative education and when a young person is transitioning out of youth justice incarceration, but it may also be used more preventatively (for instance, when issues first emerge).

First Nations community input is required to determine how support for First Nations students and their families/carers should be expanded.

This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input).

Recommendation 4.3

We recommend that processes and mechanisms be established to ensure First Nations input into, oversight and/or review of Education Directorate decisions related to the suspension or exclusion of First Nations students. This approach should be incorporated into Directorate policy.

First Nations input is required to develop the processes, mechanisms and related policy necessary to implement Recommendation 4.3.

This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input and potentially oversight/review).

Recommendation 4.4

We recommend that First Nations students and their families/carers have increased access to information, support and advocacy around rights in an educational setting (including related to disability/race discrimination, cultural rights and school disciplinary action) (see also Recommendation 4.3).

This should be provided by a source external to but funded by the Education Directorate, potentially as an expansion of the current partnership with Legal Aid ACT or via another external program or service.

4.3. First Nations data

Lack of cultural safety, not meeting student cultural and other needs and racism are arguably evidenced in education related statistics, described in conversations held for this Review as indicating an over-representation of Aboriginal and Torres Strait Islander students in long and shorter suspensions and exclusions²¹⁹ and as students of alternative education programs (see below), as well as lower First Nations attendance and poorer educational outcomes ‘because our mainstream education offerings are just not meeting the mark for these young people’ (Government Agency).²²⁰

Identified too is that because families do not always disclose Indigenous status on enrolment, Directorate statistics on First Nations students, including the above, are not 100% accurate (for example, leading to an undercount of numbers of Aboriginal students excluded) (see also Section 3.4, Identification). Also likely to impact on data, parents spoke about different ways Aboriginal students are (effectively) excluded from mainstream education other than via formal (recorded) suspensions or exclusions.

They used to suspend my son like every week. And when they didn’t have a reason to actually suspend him, when they weren’t allowed to suspend him because it wasn’t bad enough, they’d make him sign a mutually agreed leave form and send him home for two days. Because they didn’t have grounds to suspend him. (Sisters in Spirit Community Dialogue Women)

²¹⁹ The Education Directorate publishes statistics on suspensions but they are not disaggregated by Aboriginality. See <https://www.education.act.gov.au/__data/assets/pdf_file/0006/2311269/Suspension-Data-and-Reducing-Suspension.pdf>.

²²⁰ We note that the ACT Government identifies that since 2016 there has been a reduction in the gap between First Nations and other students in terms of attainment of Year 12 or equivalent qualifications in the ACT and increasing numbers of First Nations young people in employment, education or training. ACT Government (2023) *ACT Annual Report for National Closing the Gap Agreement 2023, Appendix A – ACT Annual Impact Statement 2023*, p.9 <https://www.pc.gov.au/__data/assets/pdf_file/0008/368279/sub044-closing-the-gap-review-attachment.pdf>.

I don't think they're expelling kids anymore. But they wait for it to get really bad like my son was and then they'll put in a referral to Muliyan or them flex-ed schools and that's how they get rid of them like they just wait until it gets that bad until they can get rid of them. (Sisters in Spirit Community Dialogue Women)

Noting these issues, we do recommend that statistics on suspensions and exclusions be made publicly available, disaggregated by disability, gender, age, reason for suspension and other factors, to be determined by the First Nations community. See again discussion below of a First Nations-led Education Advisory Group. Determinations on the public release of this data ought also to have input from this group. This recommendation is important for increasing transparency and accountability (Recommendation 4.5).

As a further point about data, the Directorate collects data annually from students, staff, parents and carers via a School Satisfaction and Climate Survey. This data informs policy and is used to evaluate programs and it can be aggregated based on Aboriginality.²²¹ The extent to which Aboriginal and Torres Strait Islander people respond to this survey is not clear (there is no information on responses they have provided to date). The survey might provide a platform through which to collect data from Aboriginal and Torres Strait Islander students and their families/carers and from Aboriginal and Torres Strait Islander teachers on experiences of racism and cultural safety in an educational setting. Aboriginal and Torres Strait Islander community input into the effectiveness of the Directorate's work around cultural integrity and its outcomes and systemic racism (the detail of which is less clear to us) is also important in this context, including to inform review and revision of its Cultural Integrity Framework Recommendation 4.6). See also discussion in Section 3.3, Data and Section 3.1.5 on First Nations data and cultural safety/racism.

Recommendation 4.5

We recommend that Education Directorate statistics on suspensions and exclusions of First Nations students are made publicly available, including data that is disaggregated by disability, reason for suspension, length of suspension and other variables, so far as is possible.

Decisions about what data should be collated and can be shared publicly should be determined with First Nations input.

This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input).

²²¹ Education Directorate (2024) Annual Report, p.203. Core domains are school identification (sense of belonging/connection), academic outcomes, relationships (feeling valued and respected) and shared values/approach (shared mission, rules, processes). Wellbeing domains are collected for staff/students.

Recommendation 4.6

We recommend that the Education Directorate engage the First Nations community in the ACT to participate in development and implementation of processes and mechanisms for collecting data from First Nations students and their families/carers on experiences of cultural safety and racism in an educational setting.

For consideration, the processes and mechanisms developed may collect data on First Nations perspectives of the effectiveness of current Education Directorate initiatives aimed at addressing racism and improving cultural integrity, to inform review of the same.

This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input into processes and mechanisms).

4.4. Responses to disengagement, cultural and other needs

As an initial point, there was discussion about the increasing complexity of student need and questions raised about who has responsibility for addressing this need. Schools are identified as having to take more and more on in this respect, but without the required level of resourcing and potentially beyond (what they understand to be) their remit.

And schools are our only village left, so they are getting completely inundated and overloaded with more and more requirements and expectations from society around how they best wrap around these really vulnerable young people. While it takes a village, school is first and foremost an education provider and that's their core business. So, our teachers do feel like they are well and truly outside of their scope and their expertise and comfort zone at most times, and they're just not geared [up] or trained or specialised for the levels of complexity some of these young people present. (Government Agency)

So, for instance, you've got a teacher who's just finished university coming to a class of 30 kids who doesn't have any lived experience or understand the trauma that these kids have to go through... But it's like setting them up to fail because like, how can any one person cope with 30 kids in a classroom? ... [And] you work with one family, and you might be working with four kids. So, then you've got four different trauma kids. How are you meant to deal with that? And that's what's feeding it in. Because you've got a whole group of kids that are disengaged from school, have drug and alcohol issues and they end up in the system. (Education Provider)

Though schools do need to take action to address education-based issues that are directly or indirectly contributing to over-representation, the limits to what they are able to achieve as one government system is noted. This in part relates to earlier discussion

about the need for coordination across government to better respond to complex issues. But additionally, interventions and approaches are required outside schools and government systems altogether.

Issues contributing to disengagement and other problems for First Nations students in a school setting can sometimes sit at a community level – and so too do solutions to these problems. One participant described how parents can have low expectations for their children in terms of educational outcomes (rather than this just being an issue for schools), including because of their own learning experiences as children. They also described community members holding First Nations students back from achieving academically and peer pressure as a driver of disengagement.

But there's also that other component which comes from community and it's the crabs in the bucket. I don't know if you've heard of that concept, the crabs in the bucket, where sometimes when a kid is trying to come good, trying to get out of the poverty or the circumstances they're in and they try to find a way to navigate through the system and they've got mob pulling them back in... 'Who are you? You think you're so special. You think you're better than us?' And so, the kids are almost peer pressured into coming back to be with the rest of the mob. (First Nations Organisation)

[There are] a lot of particularly young males, teenagers who had absolutely disengaged from school from 12, 13 years of age and for a number of different reasons. And it might have been bullying at school, it might have been a shame job, that they didn't have the money, the family support, the nice designer clothes, you know, that they all get caught up in when they're of that age. And so, they form their own little... crew, their own little mob who dodge school. (First Nations Organisation)

As such, it is important to consider how any strategies focused on improving justice and other outcomes for First Nations students are interacting with and involving families and the broader First Nations community. A number of our education related recommendations highlight this approach. Connecting students to culture *outside of a school setting* was identified as one important positive response to disengagement, for instance. One participant spoke of work done previously by staff in the Education Directorate to connect disengaged students to culture.

And sometimes it was about identity, sometimes it was about connecting them to Gugan... Sometimes it was just connecting them to somewhere to find out what their cultural ties were because they didn't know, particularly if they're with non-Aboriginal mum and dad's not in the picture. They know they're Aboriginal, but they don't know where they fit in the world... And so often it was about trying to reconnect these kids with something that gave them meaning and purpose. (First Nations Organisation)

4.4.1. *Alternative learning options and supports*

We heard that the Education Directorate aims to address non-attendance and disengagement, including via Aboriginal specific programs and alternative education.²²²

Waruga Yardhura is an Aboriginal and Torres Strait Islander youth engagement program providing case management support for up to 30 students in Years 1-12 who have not been attending or have disengaged from school.²²³ The objective of the program is to reconnect them with mainstream education or engage them in an alternative pathway. The program team within the Directorate consists of Indigenous Student Engagement Officers and a school leader who work with students on personalised learning and transition plans.²²⁴

A Community Reference Group with ACCO membership (including ATSIEB, Yeddung Mura and Gugan Gulwan) 'and the community and education sectors' provides what has been described as ongoing feedback and review of the program.²²⁵ Students are linked into ACCO support through this program, as they may be in other school-based contexts (for example, Gugan Gulwan).

The program identifies barriers to engagement with a student's family and develops strategies in response; for instance, it can be something more straight forward such as staff meeting primary school students to walk them to school. It is identified as very cost and otherwise effective, proactively addressing disengagement (increasing attendance in some cases from 'single digits to 80%, 90%') (Government Agency) and as having potential to avert contact with the justice system for children and young people. 'Like it's quite extraordinary the simple strategies they can use to increase attendance. Especially with a primary school. I'd say it's a pivotal service' (Government Agency).

Once they have got that connection to the learning and community, that's a return on investment that's just going to be ongoing. And I would say, if you look at most of our young people that are in Murrumbidgee (Bimberi based school) they would have significant gaps in their primary education. I think that's sort of where [disengagement] starts. (Government Agency)

Waruga Yardhura is identified as working beyond its funded capacity (45 students currently engaged, four staff but only three funded). Further expansion and adequate

²²² See also <<https://www.act.gov.au/education-and-training/find-a-school-and-enrol/alternative-school-settings>>.

²²³ There is some discrepancy in the annual report as to school year brackets for engagement (1-10, 1-12). See Education Directorate (2024) *Annual Report*, p.60, 81.

²²⁴ 62 students were supported through the program in 2023-24. See detail in Education Directorate (2024) *Annual Report*, p.81.

²²⁵ In its Annual Report 2024, the Education Directorate identifies this group as leading the strategic direction of 'quality service delivery for disengaged Aboriginal and Torres Strait Islander students across all ACT schools'. Education Directorate (2024) *Annual Report*, p.197. The Directorate has indicated during consultations, however, that the group only oversees the Waruga Yardhura program.

resourcing of programs within the Directorate that work more preventatively to engage Aboriginal and Torres Strait Islander students with education is required. This might include a program wholly designed and led by an ACCO like Gugan Gulwan, but operated in partnership with the Directorate, and/or providing additional resourcing to an existing program like Waruga Yardhura. Additional resourcing for Waruga Yardhura be used for transport (purchase of a vehicle) and additional staffing (to recruit for at least one if not two youth workers or similar positions).

In terms of alternative learning, the Education Directorate operates the **Murrumbidgee School** at Bimberi. This is seen as providing young people in the justice system with a positive educational experience and young people we talked with in Bimberi spoke of the school in this way. That it is situated inside the centre may be, in part, why it engages young people effectively. As one participant stated, however, it is also 'reactive to young people coming into Bimberi' (Government Agency).

There are some protective factors that don't exist in the community that they access... they get fed every day, they've got exercise, there's a pool, there's a gym. They've got the consistency and predictability of regulated adults in front of them. The young people tend to have an opportunity to be the best versions of themselves because they're not worried where they're sleeping and those type of things and... when you're there, you know, education is an option that keeps them engaged and stimulated. I would say, it's probably the only educational facility where kids would like it to go. (Statutory Authority/Public Body)

One limitation is that young people can be locked up for short periods of time, making it hard to plan or map out learning pathways. There was also discussion of challenges young people face in transitioning back into the education system. This includes both not re-entering school outside Bimberi, despite having engaged with Murrumbidgee well, or if they do want to re-engage, not doing well in that transition.

The really interesting thing I found when our kids are in Bimberi, education is their favourite thing. Attending the Murrumbidgee school at Bimberi is almost always top of the list of things they like about Bimberi, yet then they get released they don't go back to school. They don't re-engage in education. While they're in there they say I'm gonna get my Year 10 [certificate]. I'm gonna do this, I'm really keen. And then five minutes later they're released – because most of our kids are on remand – and they don't go back to school. (First Nations Organisation)

We have recommended better responses to the needs of young people exiting Bimberi. At present, perhaps one or two of this cohort (at any one time) will be linked in with Muliyan (a flex-ed option discussed below) / Flexible Education for support. With further resourcing (as above, transport and resourcing for youth workers or similar positions), this support could be made available for all young people exiting Bimberi to assist with

their transition back into education. There is currently one transition officer only, which is insufficient (Recommendation 4.8).

A young person that's incarcerated being released and sent back to a mainstream school of a thousand that may not have the capability or capacity or simple understanding or skill set to work with that young person... I would look at a transitional program and therefore you could get consistency with staff that they have connection with from Murrumbidgee to support that environment. Because ultimately when a young person is remanded for months on end and then the next day they go back to one of the mainstream schools, you are, I believe, setting them up for failure. (Government Agency)

We are not aware of any Education Directorate policy setting out procedures for working with young people interacting with both education and youth justice systems, and those we spoke to in the Directorate were also not aware of such a policy. Education Directorate policy ought to be developed in this area, as a priority, providing clear guidelines for trauma and culturally informed support by the Directorate for these young people (including around transitions, as above). This is important for guiding and holding the Directorate to account to respond appropriately to the needs of this group. The policy ought to be designed with First Nations input (see also Coordination in an education context discussed below) (Recommendation 4.10).

Furthermore, not every young person in Bimberi wants to attend school. We have recommended day release for those in Bimberi to attend work and alternative vocational and other learning options (for example, Muliyan, PCYC programs, TAFE), as well as school. There was discussion of establishment of a trade skill centre at Bimberi too, though the need to manage risk in this context was acknowledged (see Recommendation 4.7). We heard that young people aged 16 and above in Bimberi may be engaging with Canberra Institute of Technology (CIT), but that when they transition out of Bimberi they can't access CIT as they need to be 17 years of age. Additional mechanisms for increasing access for young people in Bimberi to vocational training/employment opportunities to help with their re-entry and improve their longer-term outcomes people should be considered. As one government participant stated, 'realistically I think rehabilitation [means giving them] the correct skill set they can walk into a job with' (Government Agency). An education provider also stated, 'They want to do things that are going to empower them to be able to make that change when they get released' via trade-based training (Education Provider).

Access to pathways into vocational education was also discussed for First Nations students disengaging from education and not in Bimberi. Younger students in this cohort are not able to engage with the Yurauna Centre (CIT), according to participants. Setting up a new program targeting disengaged students as an alternative to high school was one

suggestion, whether that be attached to CIT or potentially to mainstream schools and specifically for younger Aboriginal students ineligible for attendance at CIT.

We need those specific flex ed components for our Aboriginal kids because if they could go into Muliyan, they could go into mainstream school... With CIT you're only allowed to be 16 on campus.²²⁶ I wanted to open up a school for those 12, 13, 14, 15 year olds... there's just so many hurdles. But what I don't understand is that this is what's needed. It's been talked about for so long, but you've got money being given to other little pockets, places that don't have the education. And then they come back to ask and say, hey, can you help us run a program, come out one day a week? (Education Provider)

Another alternative learning option is **Muliyan** school, which works with students with more complex needs, including those who have transitioned out of the justice system. Muliyan is identified as having greater capacity to address recidivism for these young people than mainstream schools, including because of the high level of skills and staff and staff/student ratios at this school.

They know the staff, they get breakfast. The connections have got a lot greater and hopefully – that might not prevent them from going back to Murrumbidgee, but I think the lengths of time staying in the community are greater... I really do struggle to see how a young person can transition straight back into mainstream school. You do get unique scenarios, but I would say on the whole it's not a strategy that you're going to help them through. (Government Agency)

You will see a higher occurrence of young people bouncing in and out of Murrumbidgee that aren't positively attached to an educational program and so the young people that attached to Muliyan – I would say it's a protective factor that won't solve everything, but it will actually reduce the likelihood of them making some poor decisions in the community. Because if... we've got young people that are with us and attending 80, 90%, but prior to that they weren't attending. That's when they've gotten into strife and ended up in Murrumbidgee. So, you can see that positive connection and engagement is definitely a mitigation factor for those young people as well. (Government Agency)

I just like the sound of Muliyan because it's more one on one. I don't like going to school and having like 20 kids and like, you know, I'm putting my hand up and the fucking teachers are not even like looking at me, you know what I mean? (Bimberi Young People)

²²⁶ We note the discrepancy in age of eligibility for access to TAFE provided in comments by different participants.

One mother was positive about Muliyan but identified that her son was only ever offered short periods of enrolment and not early enough in high school. What he needed was full time attendance in a setting like Muliyan from Year 7.

[My] son is in in the Muliyan school, but he needed that from the start of high school to year 10. [But] it's only for a semester at a time because they think it's 'early intervention'... This is how he needs to be schooled. He's got an intellectual disability. He's got ADHD. He needs this kind of youth worker instead of teachers. He can't sit in a class all day. And they're good, like they can have more freedom when they do one-on-one with youth workers and stuff like that. But they need it as a full-time school, not early intervention. Every time he applies there's like 40 applicants for 10 spots. If he had gone to a school like that from year 7, he would be all right. (Sisters in Spirit Community Dialogue Women)

It can be difficult to access flexible learning options in the ACT, including because of limitations options and capacity (for example, 30 students at Muliyan, lack of options for those ineligible/unable to attend Muliyan).

We're the most under resourced state or jurisdiction in Australia in terms of alternative pathways for young people when we should be leading. We've got the capacity, economies of scale but when you're talking about Tasmania it's streets ahead of us. I really do struggle at times that the service provision is capped at 30 for the whole of the Directorate... You've got a population of over 500,000 so even statistically speaking like that percentage is just not even touching the sides of the need... For some reason the ACT thinks you can navigate it differently from New South Wales, Victoria, Western Australia, Queensland... (Government Agency)

There also needs to be multiple service provisions like Muliyan can't solve everything because you get young people in that simply won't fit or there's known associates. But what alternative pathways are there? There's PCYC which is limited... the only special assistance school is Galilee but that's a selective school so... they can target semi disengaged non-confrontational young people. (Government Agency)

We heard that schools like Muliyan and other alternative learning options can be resource intensive because of the high needs of students attending them and the skill level required by staff. More funding for expanding and developing additional alternative learning options is required, including to meet high demand arising because of the complexity of students needs discussed above (Recommendation 4.9). Flexi-schooling

is identified as 'essential' and as needing to be funded as such. Given its capacity to reduce recidivism, it would seem to make good economic sense too.²²⁷

You can't just put anyone in these programs to support these young people. You need to be so strategic and the amount of quals and additional training that these people have undergone makes them quite specialist and subject matter experts and that's what makes it so challenging as well to resource because of the investment in time and people and yeah, because it is. It's the staff and the way that they support these young people that makes it successful because these kids can sniff out authenticity straight off the bat. So, if they know that you're the real deal and you get them and you're there for them and you have that unconditional positive regard for them and you live and breathe that philosophy, then you'll have success. But if you don't, then you won't. Yeah, you won't get the outcomes. (Government Agency)

I think people in the room are generally agreeing [about needing more funding] but always comes back to there's money but the allocation will go somewhere else not to this. Like literacy and numeracy. School breakfast – for the highest socio-economic area in Australia. I don't think we need to actually throw tens of millions of dollars at that. I would say it's not essential whereas flexi schooling is an essential. (Government Agency)

It is noted too that 35% of students at Muliyan are Indigenous but that it is not an Indigenous learning program as such. Participants described 'a lack of opportunity, particularly culturally appropriate, culturally safe opportunity to reengage our young minds in education' (First Nations Organisation). There was discussion of the need for a wholly First Nations focussed and operated alternative learning option in ACT.

But would I love to see an Aboriginal education college. Oh yes that'd be unreal. I'd go back and do it... Education, food and a place to live. Get back to basics but with also putting that cultural element in there as well. (First Nations Organisation)

Teachers need to be more understanding about our people. They don't get that through college or university or whatever. They came out and they also need to follow their own principles... But I would like to know more about what Aboriginal education systems are out there as in the colleges... So, I know there's one down Victoria... but [to send them there, that's] also displacing our community, our kids on other people's country as well... We used to have an alternate setting here. So maybe we need some more alternative settings or a Koori education setting here

²²⁷ One particular model that was discussed with us was the Ignatius Learning Centre in Victoria, which works with young people disengaged and in contact with the justice system: see detail at <<https://jss.org.au/programs/ignatius-learning-centre/>>.

that's resourced appropriately that's got our Koori teachers... How many Koori teachers are there? There are heaps of them, there's heaps of our Koori teachers. But will government allow it? I don't think so. That's that distrust. (First Nations Organisation)

It was also noted that though flexible education options like Muliyan are seen as a good alternative they are just that – an alternative to mainstream education that should ideally be available to and working well for all students who wish to attend it.

I think there's possible a gap in us actually having alternative education offerings for kids who need it. But there's probably a much earlier gap in enabling each school to respond to the needs of kids. (Government Agency)

This is the last option. We've got to make sure the schools [are] ... accountable – that they've tried every level of intervention or support structure around that young person. Because when a young person is referred to an alternative program, it's generally, they'll be with us for two years, but we still, no matter what we do, we can't offer all the things that a wonderful mainstream school does. And so, keeping a young person engaged in mainstream is definitely the priority. (Government Agency)

And so, there's an inclusion strategy here that's being kind of progressively rolled out with a view that we should be making schools work for children rather than having children needing to be in separate kinds of settings. But some kids will need a separate setting, for some kids where there's trauma and other things it may be difficult for them to be in the mainstream setting. So, I think we need more flexibility in our offerings but we need more differentiation within our schools to actually meet the needs of children. (Government Agency)

Recommendation 4.7

We recommend that CSD increase day release for young people incarcerated in Bimberi to attend work or school (for example, to attend Muliyan, PCYC programs, TAFE).

Additional mechanisms for increasing access for this group to vocational training/employment opportunities to help with their re-entry and improve their longer-term outcomes people should also be considered. Consideration should be given too to whether a trade skill centre can be set up at Bimberi.

Recommendation 4.8

We recommend that the ACT Government allocate further resourcing to support First Nations children and young people disengaged from education and/or transitioning out of Bimberi into a school setting.

This includes providing additional resourcing for the purchase of (a) vehicle(s) and additional staffing (1-2 youth workers) within Flexible Education (to enhance support available under Waruga Yardhur and Muliyan programs).

Recommendation 4.9

We recommend that the ACT Government allocate further resourcing to increase availability of flexible learning options for First Nations students.

This resourcing might be used to expand existing Education Directorate initiatives (including Muliyan) and/or for First Nations-led design, implementation and evaluation of a program or other alternative learning option specifically for First Nations students.

Recommendation 4.10

We recommend that the Education Directorate develop policy and procedures providing clear guidelines for how it will support First Nations children and young people involved in the youth justice system. It could incorporate, for example, detail guiding how to best support the transition of young people from Bimberi into school.

The policy should incorporate detail of how the Education Directorate and other relevant directorate/agencies will work together to support First Nations students interacting with different systems (education, youth justice and/or child protection systems). As such, this process is likely to require input from other Directorates.

This process also needs to be informed by First Nations input (including from First Nations-led mechanisms established under Recommendations 2.1, 2.2).

This recommendation is partially dependent on implementation of Recommendations 2.1, 2.2 and 4.11 (for First Nations input).

4.5. First Nations decision-making

The Directorate is making efforts to ensure First Nations people are participating in decisions related to policy – though it is not clear in Directorate reporting on these efforts what these approaches currently or will look like, including *how* the Directorate will engage the broader community in decisions. Increased First Nations community

participation in Directorate policy and other decision-making impacting Aboriginal and Torres Strait Islander students is necessary.²²⁸

There is currently some reliance on First Nations staff within the Directorate (and in schools) for input. There is also ACCO input on the above Community Reference Group and engagement with ATSIEB. There was previously an Aboriginal and Torres Strait Islander advisory body in place in the education space, but as it was reliant on federal funding and ACT Government administration it was seen as not fully independent.²²⁹ We heard that past attempts to reinvigorate this body (without funding) had been hard, including because there were only volunteer roles on offer. The Directorate has engaged an independent Aboriginal business to conduct a co-design process, which is now consulting with community about what such a body should look like, with one initial comment provided that if this body is to be independent ‘it will have to run on the small of an oily rag’. Or if consultations indicate that the body needs adequate funding, ‘it’s really up to government’ who have wanted to ‘co design this process. Are they going to take those kinds of suggestions on board? It’s really sort of, yeah, put your money where your mouth is kind of thing’ (Government Agency).

Participants identified that having a body to provide a ‘voice to government’ would be valuable and confirmed gaps in this regard at present.²³⁰ The NSW Aboriginal Education Consultative Group (AECG) was discussed as one model for community participation into education related decisions. NSW AECG has local, regional and state-level mechanisms for participation, providing advice on education and training matters at a state and national level. AECG ‘advocates for cultural affirmation, integrity and the pursuit of equality to ensure that the unique and diverse identity of Aboriginal students is recognised and valued’.²³¹

The AECG runs the Place of Learning program. This program involves a Coalition of Aboriginal Peaks establishing (with the support of the NSW Department of Education), governing and leading education programs in particular communities designed to meet the needs of local Aboriginal students. The Department and AECG have been working on collaboratively supporting establishment of one new Place of Learning program each

²²⁸ The Directorate reports that its Policy Framework resources have been reviewed and are being updated to promote the embedding of Aboriginal and Torres Strait Islander service and product design capability and co-design and early engagement with Aboriginal and Torres Strait Islander communities. See Education Directorate (2024) *Annual Report 2023-24*, p.202.

²²⁹ Representatives were previously employed as casual staff by the ACT Government.

²³⁰ This also aligns with the Directorate’s commitments, including ‘to ensuring improved cultural outcomes through our engagement and development of policy’. The Directorate wants ‘to promote codesign... [and] to ensure that [its] policies are reflective of the community’ (Government Agency). Additionally, though the Directorate has a working relationship with ATSIEB, it ‘wouldn’t send one of [their] policies off to them to consult them’ (Government Agency). Also noted was that the Directorate currently consults with other representative bodies around policy (e.g. ACT Principals Association, ACT Parents and Citizens Association) (Government Agency).

²³¹ See detail at <<https://www.aecg.nsw.edu.au/about>>.

year.²³² AECG also provides cultural awareness and other training to educators and runs programs aimed at building cultural identity and confidence to support school completion.²³³

Establishment of an independent Aboriginal and Torres Strait Islander advisory body or *similar* (for example, with sufficient power to hold government to account, see Section 2 discussion above) should be prioritised, with the objective of increasing Aboriginal and Torres Strait Islander input into all decisions related to education that impact First Nations students. The group's purpose and functions, and the way it interfaces with the Directorate and other parts of government (for example, CSD) needs to be developed by the First Nations people involved but we suggest that some possible functions might support implementation of our recommendations related to education.

For instance, the group could determine how to triage or triage responses to students' needs at particular points (for example, during suspension/exclusion processes), identify data to be collected on Aboriginal and Torres Strait Islander experiences of education in the ACT and what data ought to be disseminated publicly (for example, on suspensions/exclusions) and determining what alternative and other education options should be made available to Aboriginal and Torres Strait Islander students.

Recommendation 4.11

Subject to the outcomes of current consultations being conducted by the Education Directorate on establishment of such a body, we recommend that the Education Directorate support the establishment as a priority of a First Nations Education Advisory Body. This body is to work alongside the Education Directorate to enhance First Nations outcomes in an educational setting.

As part of their role, the body may provide First Nations input and oversight as identified across education-related recommendations of this Review (see Recs 4.1, 4.2, 4.3, 4.5, 4.6, 4.10). They may do this in collaboration with First Nations justice mechanisms established under Recommendations 4.1, 4.2.

The First Nations Education Advisory Body, at a minimum:

- a. should have sufficient capacity, including resourcing, to ensure it can provide independent oversight over and to participate on equal terms in decision-

²³² See detail at <<https://www.aecg.nsw.edu.au/place-of-learning-program>>. Ngurang-gu Yalbilinya (NgY) has been established by the local CAPO in Orange to re-engage young Aboriginal males under this initiative, for example.

²³³ For example, Pirru Thankuray is a Cultural Engagement and Goal Setting Program designed to increase the number of Aboriginal students completing their HSC, whilst maintaining their cultural identity. See detail at <<https://www.aecg.nsw.edu.au/pirru-thangkuray>>.

making related to policy and other Education Directorate activity impacting the First Nations school community.

- b. may have ATSIEB, ACCO and other First Nations representation (including from First Nations families currently engaged with the educational system). It could draw membership from and/or build on the Community Reference Group overseeing the Education Directorate's Waruga Yardhur program.
- c. may also incorporate youth representation or alternatively, work alongside a First Nations Youth Education Advisory Group established with a similar purpose to that of the First Nations Education Advisory Body as part of this Review.

4.6. Coordination across ACT Government

The need to appropriately and effectively coordinate Education, JACS (ACT Police in particular) and CSD responses to reduce young peoples' contact with the justice system was raised in interviews. This is evident in the above discussion about day release for those in Bimberi and ACT Police attendance at schools, for instance. Problems of coordination in the child protection space were also identified, with examples shared of Children, Youth and Families (CYF) not notifying a school that they are collecting a child at the end of the school day (identified as publicly shaming for the child in question) and that when staff report matters to CYF there is not the expected intervention. Schools need further information about thresholds for reporting to CYF.

I'm not sure what's currently in place as far as what might trigger some kind of notification, but I would think there's some kind of safety threshold but I think there would be an educative process required in those agencies for kind of what to look at, what are the things to look out for and what's the kind of information that would alert them to the need for additional support? (Government Agency)

Some mechanisms for coordination are already in place. The Directorate has appointed a new Director Targeted Support-Liaison with responsibility for providing subject matter expertise and support to schools on engagement and wellbeing of students in OOHC and the youth justice systems and to collaborate with staff in the Education Support Office and external agencies (for example, residential care services, AFP, Child and Adolescent Mental Health Services (CAHMS), Police and Community Youth Clubs (PCYC), CYPS etc.). The role seeks to build capability of schools working with students in OOHC, ensuring that education is at the centre of decisions made about their care, placement and future, according to government participants.

Quite often the students that we are supporting within targeted support will have multi agency involvement. So, there'll be either declared or informal care teams... therapeutic supports and interventions... [and] various engagements with

previous therapists... Then there will also be, with predominantly the older students, youth justice involvement as well. So, navigating and supporting schools with whether there's PPOs (Personal Protection Orders), whether there's reasonable directions, whether there's requirements under what that child has based on what the magistrates recommended. (Government Agency)

Education, ACT Policing, Bimberi, Therapeutic Support Team and Youth Justice also meet fortnightly as ROMART (Recidivist Offender Multi-Agency Round Table) to share information about young people about whom they have concerns (for example, those disengaged from education and offending). The intention is to support these young people, including by preventing their contact with the youth justice system or more punitive justice responses (for example, by advising police on alternative responses to offending). This group may need First Nations community representation, though difficulties raised by government participants of our Review in this context include privacy concerns for the young people being discussed. This question might be considered by the above First Nations-led group.

We spoke above about the need for policy and procedures within the Education Directorate stepping out how they will work with children and young people involved in the youth justice system. This policy is likely to need to identify how this Directorate and CSD will work together for this group of students, so will require cross-sector input. This same policy approach is required for children and young people interacting with the child protection system – with a high likelihood that these students may also be interacting with the justice system. The intent of this policy approach is to build coordinated support and other positive responses to student need and to provide clear direction for how to work with these students.²³⁴

Recommendation 4.12

We recommend that the Education Directorate and CSD work together to ensure Education Directorate staff have sufficient understanding of thresholds for mandatory reporting. Where there are concerns about students and their families, Education Directorate staff could connect them with the above ACCO supports as an alternative to reporting to CSD (see Recommendation 4.4).

²³⁴ The Directorate also reports that meetings commenced in 2024 between Education and Community Services Directorates to discuss intersections and collaborations between Community Schools, the Minimum Age of Criminal Responsibility, and the Child and Family Network, with no further detail provided. Education Directorate (2024) *Annual Report 2023-24*, p.197. The Network is a cross government and community service partner group designed to improve connection across a range of issues (health, education, etc.).

5. CHILD PROTECTION

They go to the hospital. That's where we were, in the hospital, standing guard as program managers at the Women's Legal Centre. We would want to be in the room with the baby and the mother, and then we'd want to be outside with the solicitor, fucking keeping the CYPS workers out. Because they'd then be ringing the mother on their internal phone of the room where she's just given birth to the baby – no word of a lie – 12 hours after that baby was out. And these CYPS workers were like, 'Well, can we come up and have a conversation with you on your own?'... And that baby's 12 hours old... Imagine the fucking trauma on the baby going down through his body from the mother, from us. It's all coming on this day that that child's come to life. Nobody ever, ever factors in that [trauma] is going to set the framework for the rest of his life. (Sisters in Spirit Community Dialogue Women)

The over-representation of First Nations people in correctional systems cannot be understood in isolation of the systemic racism that has been endemic across other statutory systems, including child protection. The quote above highlights the pervasive impact that child protection practices continue to exert on First Nations communities, 'imprinting trauma at birth' (Sisters in Spirit Community Dialogue Women). This section focusses on the over-representation of First Nations children in the ACT child protection system and highlights the links – both direct and indirect – between child protection, youth and adult justice systems. Despite a suite of reforms that reflect an understanding by the ACT government that First Nations communities continue to be overwhelmingly impacted by child protection policies, a number of areas continue to require significant investment and change if over-representation is going to be meaningfully addressed.

5.1. The data

First Nations children are significantly over-represented at all stages of child protection system and in all forms of OOHC.²³⁵ This over-representation reflects both historical and contemporary policies and practices that treat First Nations parents and parenting practices as neglectful and 'risky'.²³⁶ Despite efforts by the ACT government to address this over-representation, recent data indicates that First Nations children continue to be

²³⁵ SNAICC (2024) *Family Matters Report 2024*. Available at <<https://www.snaicc.org.au/our-work/child-and-family-wellbeing/family-matters/>>.

²³⁶ McCallum, D. (2017) *Criminalizing children: Welfare and the State in Victoria*. United Kingdom: Cambridge University Press; Krakouer, J., Corrales, T., Gray, P. and Beaufils, J. (2021) Infant removals, criminalisation and incarceration: A problem underpinned by carceral logic for Aboriginal and Torres Strait Islander peoples, In SNAICC (2022) *Family Matters Report 2022* pp.100-105. Available at <<https://www.snaicc.org.au/resources/family-matters-report-2022/>>; Davis, M. (2019) *Family is culture: Independent review into Aboriginal out-of-home care in NSW. Final Report* <<https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>>.

impacted by the ACT child protection system at rates that far exceed their non-Indigenous peers (see Table 5.1, below).

Table 5.1 Rates and Over-representation for First Nations and non-Indigenous children in the ACT child protection system, 2017-18 to 2023-24

	Year	Aboriginal and Torres Strait Islander children	Non-Indigenous children	First Nations Over-Representation
		Rate (per 1000)	Rate (per 1000)	Rate ratio
Notifications	2017-18	253.2	46.3	5.5
	2018-19	271.0	49.1	5.5
	2019-20	271.5	42.6	6.4
	2020-21	328.2	47.1	7.0
	2021-22	310.1	51.3	6.0
	2022-23	318.3	50.6	6.3
	2023-24	343.6	48	7.2
Substantiations	2017-18	16.4	2.4	6.8
	2018-19	16.4	2.1	7.8
	2019-20	12.1	2.3	5.3
	2020-21	29.0	2.4	12.1
	2021-22	29.5	2.7	10.9
	2022-23	18.7	2.5	7.5
	2023-24	29.7	1.5	19.8
Care and protection orders	2017-18	80.0	6.9	11.6
	2018-19	76.4	6.8	11.2
	2019-20	82.4	6.6	12.5
	2020-21	79.6	6.8	11.7
	2021-22	81.9	6.7	12.2
	2022-23	77.7	6.6	11.8
	2023-24	82.9	6.3	13.2

Children in OOHC ²³⁷	2018-19	56.9	5.4	10.5
	2019-20	61.8	5.1	12.1
	2020-21	59.2	5.2	11.4
	2021-22	63.4	5.0	12.7
	2022-23	57.3	5.5	10.4
	2023-24	55.3	4.4	12.6

Source: Australian Productivity Commission (2025) Report on Government Services, Chapter 16 – Child protection services, Table 16A.1.

Between 2018-19 and 2023-24 there have been some slight improvements on the number of First Nations children subject to substantiated investigations and placed on care and protection orders. Similarly, the Our Booris, Our Way (OBOW) implementation data shows that between 2017-18 and 2023-24 the number of Aboriginal children in care has decreased by almost 7%.²³⁸ These gains, however, have been offset by the increased over-representation of First Nations children notified to child protection in the ACT, the number of Aboriginal children who are on Enduring Parental Responsibility Orders, and the number of children in residential care.²³⁹ These trends point to the need for ongoing work by the ACT government to address the underlying factors that contribute to First Nations families being differentially targeted by the child protection system.

5.2. Reforms

Attempting to address the systemic racism embedded within child protection has required a range of ‘foundational’ reforms to the way child protection functions in the ACT. This has included:²⁴⁰

²³⁷ Note: Data for 2017-18 included OOHC and ‘other supported placements’ in a single category and therefore has been excluded as it is not comparable to subsequent years’ data. OOHC also excludes children on third-party parental responsibility orders, and therefore the rates and rate ratios included here may be an underestimate.

²³⁸ Our Booris, Our Way (2024) Six-monthly implementation update – July to December 2023.

²³⁹ Our Booris, Our Way (2024) Six-monthly implementation update – July to December 2023.

²⁴⁰ Children, Youth and Families (CYF) indicate that additional reforms have been implemented, including the introduction of the Aboriginal and Torres Strait Islander Care Pathway Panel, which provides endorsement for decisions on the types and length of Court Orders, assessments that may be relevant for case management direction, and whether to become a party to Family Law Court Proceedings; the Aboriginal and Torres Strait Islander Case Discussion Group, which is the primary method of Aboriginal and Torres Strait Islander cultural consultation with CYF, and which has similar functions to the Care Pathway Panel, but does not have the ability to endorse court related decisions. The main function of this panel appears to be to provide cultural advice and guidance, particularly in relation to the application of the ATSICPP. Finally, the Aboriginal and Torres Strait Islander Emergency Action Panel has been introduced as a mechanism to endorse decisions to place Aboriginal and Torres Strait Islander children in OOHC. The focus of this panel is on understanding the circumstance that led to the decision to place a child in OOHC, including what support was offered to family, determining whether safety and risk can be mitigated via kinship placements, and where kinship is not an option identifying the safest placement option for a First Nations child.

- Legislative reform of the *Children and Young People Act* to embed the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP)
- On-going implementation of the OBOW recommendations, including via the establishment of the First Nations Family Response and Engagement Team
- Greater investment in the ACCO sector, with a view to transitioning authority to ACCOs while supporting mainstream services to be ‘trauma-aware’ and ‘culturally informed’²⁴¹
- The development of the *Next Steps for our Kids 2022-2030* reform agenda which aims to overhaul the child protection and OOHC system.²⁴²

These reforms have been underpinned by the understanding that to achieve a meaningful and sustained shift in the over-representation of First Nations children in child protection necessitates accountability structures, based on the expectation that ‘the advice from Aboriginal practitioners, the expertise of Aboriginal practitioners... would be acted on by caseworkers... and the executives were enforcing that accountability’ (Government Agency). This in turn requires a commitment to addressing systemic racism.

We did create the space for people to design a different way of working, both in the child protection space through the First Nations team, but also in the Aboriginal Service Development Branch, which was dedicated to working with the ACCO sector, and they designed the way that they worked with that sector as well, and in partnership with that sector. So I think in a way, we gave people the space to create a way of working that didn’t have systemic racism built into it. (Government Agency)

At the centre of these reforms have been the recommendations from the OBOW inquiry, which has pushed for a shift in focus to an ‘early support frame’ (Government Agency). This appears to have been achieved predominantly through the introduction of the First Nations Family Response and Engagement Team.

We’re now using more of a family services model which looks at how do we maintain and sustain children and young people with family, and how do you build the supports that are needed to keep them connected to family and not drive them into other systems. We’ve totally changed our operating models around doing that. We’ve been under trial for about six months now and we’ll continue to build on that. We also have a First Nations [Family Support] Team that do our family response and engagement services with all Aboriginal families as they’re coming

²⁴¹ Community Services Directorate (2024) Community Services Directorate Annual Report 2023-24, p.91.

²⁴² ACT Government (n.d.) *Next Steps for Our Kids*. Available at <<https://www.act.gov.au/open/next-steps-for-our-kids>>.

through. So we're not putting them through the child protection pathway unless the risk is high and warrants it. (Government Agency)

We did a whole lot of work on just the foundations of good reflective practice to get people ready for change, creating the space for an Aboriginal-led team to come in and reshape the way that we worked, and establishing a dedicated capability to work with the Aboriginal Community Controlled Sector, and support that sector to grow. Those two new teams will probably be the key things that made the shift for us. (Government Agency)

Additional processes have been implemented at the 'front end' of the child protection process, as well as for ongoing matters, particularly where permanency objectives for a First Nations child are focussed on long-term OOHC. All decisions involving First Nations children are now reviewed by a panel of senior Aboriginal staff to 'test whether or not they've done everything possible in order to take that action [of removal]' (Government Agency).

Despite these reforms, the number of First Nations children impacted by the child protection system has **increased**. As shown in Table 5.1, the rate of First Nations children on care and protection orders has increased from 80 per 1000 in 2017-18 to 82.9 per 1000 in 2023-24. During this same period, the rate of non-Indigenous children placed on care and protection orders **decreased** from 6.9 to 6.3 per 1000.

5.2.1. First Nations Family Response and Engagement Team

The introduction of the First Nations Family Response and Engagement Team was in response to Recommendation 1 of the OBOW Steering Committee Report (2019) which called for the allocation of First Nations children's cases to experienced and culturally intelligent case workers.²⁴³ The current model has been designed so that the First Nations Family Response and Engagement Team is able to work with First Nations families outside of the normal processes that typically apply to child protection work.

We proposed [the] First Nations Team... So we then recruited into a number of roles... and said to them you design how this is going to work. You don't need to follow the current processes or systems that we have for child protection responses. You do, and set up, what you know is going to work for your team and families that you are working with. And that's what they've done. (Government Agency)

²⁴³ Our Booris, Our Way (OBOW) Steering Committee (2019). *Our Booris, Our Way Final Report*, p.73
<https://www.act.gov.au/__data/assets/pdf_file/0004/2380936/Our-Booris-Our-Way-final-report-December-2019.pdf>.

This structure should, theoretically, enable greater self-determination in the context of child protection, as the First Nations Family Response and Engagement Team is a 'standalone' team.

They don't sit in the actual structure with all of our other family response and engagement areas. They are standalone. So the senior manager reports directly to the branch manager and doesn't have to go through a non-Aboriginal senior manager. (Government Agency)

While the First Nations Family Response and Engagement Team is still bound by the requirements of the *Children and Young People Act* there is additional flexibility in the way risk assessments and investigations are undertaken²⁴⁴ including through the use of culturally appropriate assessment tools.

They'll have a bit more flexibility to not necessarily do a kind of 'by the numbers' investigation of everything. They are using some different tools, they're using the Winangay tools.²⁴⁵ So they are [used] in the work that they do, including investigations – if it ends up in a child protection investigation – they are using some different tools which means they can approach it more from a strength basis of what strengths a family has. (Government Agency)

Multiple stakeholders confirmed that the First Nations Family Response and Engagement Team appears to be working very well. The team is now comprised of 10 staff, and in the July-December 2023 quarter, the team worked with 53 children across 34 families.²⁴⁶ According to stakeholders, the team has also 'been able to divert about 120 families from coming into what effectively would have been a child protection response' (Government Agency). Where cases are deemed to be high risk and a more formal child protection intervention is necessary, 'we're working with the First Nations Team alongside other staff to be able to then add the cultural lens' (Government Agency).

However, concerns remain within community that not all First Nations families are being referred to the First Nations Family Response and Engagement Team.

²⁴⁴ CSD advises that autonomy exists within the First Nations Family Response and Engagement Team as they complete the final approval status of newly received Child Concern Reports to CYF. The First Nations Family Response and Engagement Team undertakes a second risk assessment (following the initial assessment at intake) which 'incorporates a First Nations cultural lens' which guides decision making on what further actions should be taken in relation to the Child Concern Report. As stated by CSD in response to a draft of this Review, 'this allows First Nations leaders to be the ones to determine whether Aboriginal and Torres Strait Islander children and young people are deemed at risk of significant harm'.

²⁴⁵ Winangay have developed assessment resources and tools which enable organisations and workers to work in stronger, trauma informed and culturally safe ways with Aboriginal kids, families and communities. See details at <<https://www.winangay.com/>>.

²⁴⁶ ACT Government (2024). Our Borris, Our Way: Six-monthly update, July-December 2023.

According to them, they are seeing lots of families and supporting lots of families. I hear some stories from families that they are seeing a greater level of support but it's a bit hit and miss. It's whereas some families are like, I never see an Aboriginal worker, they're just seen by a non-Aboriginal child protection caseworker who makes decisions about [their case]. So it's not yet at the point where it's a consistent approach for all Aboriginal families. (First Nations Organisation)

Recommendation 5.1

We recommend that the ACT Government increase funding for further expansion of the First Nations Family Response and Engagement Team. This is to ensure that all First Nations families who are at-risk of child protection involvement, or are already impacted by the child protection system, are referred to the team as a priority.

There are also concerns that family support, including family group conferencing, is less effective when it is offered through the child protection system. As community stakeholders noted, there remains a deep level of mistrust within First Nations communities about child protection, leading to a reluctance to engage with supports.

I don't actually believe that that help is best placed coming from the child protection system, because people don't want to be engaged with that system and are more likely to refuse support if it's coming out of a system that they're scared of and that they're worried about... they're less likely to engage. For example, family group conferencing is run out of the child protection system now – in my mind, it shouldn't be. It should be an Aboriginal organisation and it should be independent of child protection. (First Nations Organisation)

The lack of trust in Children, Youth and Families (CYF)²⁴⁷ was prominent throughout community interviews, and impacts how community members perceive the First Nations Family Response and Engagement Team.

There is a lot of elements of distrust with our families and with our own experiences as well. But over the last 4-6 months it's getting a bit better. But the First Nations [Family Support] Team, look, they're still, they're an arm of child protection, that's what they are. And until the child protection [system] gets that we have a strong history with child protection and the only way we can have full support is through that systems reform. And we need that systems reform. And

²⁴⁷ Previously Child and Youth Protection Services (CYPS).

there needs to be culture and attitude changes in that space as well, especially with some of the workers. (First Nations Organisation)

While there have been some important reforms that promote greater autonomy for First Nations practitioners to inform child protection decision-making, these do not appear to have translated to how community perceives the way child protection, and the First Nations Family Engagement and Support Team, are responding when a Child Concern Report is received. A genuine shift towards a self-determined child protection system for First Nations communities necessitates legislative reform that ensures genuine First Nations self-determination outside of colonial child protection structures. As some stakeholders noted, ‘the child protection model as a concept still has some significant issues in the way those investigations and risks get managed. So I think that, hopefully, we’ll get to more legislative reform and more flexibility’ (Government Agency).

Recommendation 5.2

We recommend that the ACT government consider further legislative and policy reform to give the First Nations Family Response and Engagement Team greater autonomy in decision-making, including decisions on whether a child is at significant risk and therefore removal is necessary.

5.2.2. *The ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner*

One of the key OBOW report recommendations was the establishment of an ‘Aboriginal and Torres Strait Islander Children’s Commissioner’, to provide an additional layer of oversight and accountability.²⁴⁸ This role was filled in early 2024 with Vanessa Turnbull-Roberts as the inaugural ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner.²⁴⁹ The impact of this new role is yet to be determined, however, some government stakeholders have queried the effectiveness of the role in light of the limited funding available to support it. ‘[The] Aboriginal and Torres Strait Islander Children’s Commissioner is not very well resourced. The resourcing for that [role] is pretty thin’ (Government Agency).

The potential impact of the Commissioner, particularly on government accountability, appears to be further compromised by legislative constraints that limit the scope of work the Commissioner can undertake. This in turn has negative implications for the way the

²⁴⁸ OBOW Steering Committee (2019) *Our Booris, Our Way Final Report*, Rec 7, p.79.

²⁴⁹ See details at <<https://www.atsichildrenyoungpeople.act.gov.au/about-us>>.

ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner's Office can hold government accountable.

I did raise a couple of issues with the Head of the CSD about some of the issues that the Commissioner had raised with me. And they indicated that there were some matters that were outside of the scope of that role under the legislation. From where I'm sitting, that role has been kind of pigeonholed to have a very limited scope on what the Commissioner can and can't do or say, in what [CSD] are going to take on board or not take on board. Often, these issues with young people, it's not just that they're feral and they're playing up, or they're not getting on with family or whatever. There's a whole lot of wraparound support that needs to be put in place. The Commissioner's role is crucial in making those connections across service industries, communities and government on how to provide those wraparound supports. I don't think we are advocating strongly enough to make sure that that role is elevated to a point where it has more scope. (First Nations Organisation)

These concerns were also echoed in community dialogues, where participants questioned the value of an Aboriginal and Torres Strait Islander Children and Young People Commissioner for community in light of the statutory constraints imposed on the role.

Because the legislation and law section here in JACS is the one who sets the legislation for the statutory authority positions. And [they] don't necessarily reflect what the community will be able to utilise them best for because, you know, government wants to see them all tucked and tidy, and then you've got to go through this process of translation to community. So we do have the Aboriginal and Torres Strait Islander Children's Commissioner, but the translation in what does she do? Where is she? (Sisters in Spirit Community Dialogue Women).

Inadequate communication by government with community, combined with ongoing mistrust about the adequacy of resourcing and genuine community engagement is contributing to a perception amongst some community members that the establishment of this role is simply a tokenistic gesture.

What supports are in place for her? What's been put in place for her, or are we just setting her up to fail? But the community actually don't know what she's doing, what her role is, how they can contact her or what they can and can't contact her for, and so on. I think a lot of it comes back down to the communication from the ACT government. (First Nations Organisation)

This is further complicated by the fact that the Commissioner role, while independent from the ACT government, is still a statutory body that is viewed as sitting within government. The perceived lack of separation from government, the lack of transparency

and a ‘siloeing’ of First Nations supports increases distrust and limits the impact of the Commissioner role.

She’s still under the ACT government, but she’s in her own section. But it’s no different to the Aboriginal and Torres Strait Islander team. It’s all within [government] and no one knows, no one in community knows or maybe understands each of their roles and who they can go to and who they can’t... We’ve got all these Aboriginal teams but they’re all siloeed. [No one knows] how they fit in with each other. (First Nations Organisation)

The result of this is that while community sees value in having a dedicated Commissioner for Aboriginal and Torres Strait Islander children and young people, the expectations for this role, and the impact that it is currently having, are not being realised.

The ACT had been fighting for a long time to have that [role] put in place. So of course, the expectation is going to be that once that person arrives, they’re gonna have to hit the road running. Because all these mothers here, these aunties, the grandmothers, the sisters of the mothers of the aunties of the grandmothers have all lost children to these institutions and are trying to bring them home. (Sisters in Spirit Community Dialogue Women)

Recommendation 5.3

We recommend that the ACT Government work with the ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner’s Office to better understand and resolve unnecessary legislative constraints impacting on the Commissioner’s capacity to hold child protection services accountable.

The remainder of this section examines the concerns that community members and government stakeholders view as significant issues that require further attention if the over-representation of First Nations children and families in child protection is going to be effectively addressed, including:

- a. Adherence to the Aboriginal and Torres Strait Islander Child Placement Principles, focussing specifically on the issues of prevention, early intervention, reunification, cultural support plans, and placement with non-Indigenous family and carers
- b. Care-criminalisation, including the factors that contribute to Aboriginal children in care being subjected to criminalisation processes
- c. The Care and Protection Intensive List (CPIL) in the Children’s Court.

It is important to note that stakeholders across community and government spoke at length about various elements of the child protection and OOHC systems. While a

broader examination of the child protection system is clearly important, the focus of this chapter is on the factors that are contributing – directly and indirectly – to First Nations over-representation in criminal legal systems.

5.2.3. *The Aboriginal and Torres Strait Islander Child Placement Principles*

The Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP) are an important element of ‘best interests’ considerations for all First Nations children in the child protection and OOHC system. Adherence to these principles requires that all five elements of the ATSICPP are implemented.

Box 5.1 The five elements of the Child Placement Principles²⁵⁰

1. Prevention: Aboriginal and Torres Strait Islander children’s rights to grow up in family, community and culture are upheld and protected through **redressing** the causes of child protection intervention. This includes ensuring that families and communities are adequately supported to care for their children safely via intensive, culturally safe and holistic supports.

2. Partnership: Aboriginal and Torres Strait Islander community representatives have opportunities for genuine inclusion in decisions about children at all stages of child and family welfare decision-making

3. Placement: The placement principle establishes a hierarchy of preferred placement options, designed to ensure cultural continuity and connection for Aboriginal and Torres Strait Islander children in care. The hierarchy stipulates that the first preference should always be to place a child with kin, followed by other Aboriginal and Torres Strait Islander members of the child’s community, and then with other Aboriginal and Torres Strait Islander family-based carers. The last resort should always be placement with non-Indigenous cares, including residential care.

4. Participation: As with the partnership principle, the participation element emphasises the need to ensure that children, parents and family members are given genuine opportunities to input into decisions about children’s safety, belonging and wellbeing.

²⁵⁰ Source: SNAICC (n.d) *Aboriginal and Torres Strait Islander Child Placement Principle*. Available at <<https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/>>.

5. Connection: When Aboriginal and Torres Strait Islander children are placed in OOHC, all efforts are made to ensure that they are supported to maintain or re-establish connections to their family, community, culture and Country.

Work to implement all five principles of the ATSICPP is ongoing and has included attempts at systemic reform to ensure that the intent of the principles is adhered to. This has involved drawing on First Nations staff within Children Youth and Families to assist with key decision-making. It has also included a move towards ‘collective decision-making processes’ as an attempt to mitigate for conscious and unconscious bias in decision-making.

They've embedded the principles in the legislation at a ‘principle’ level. There's now a whole lot more work we need to do to genuinely embed it in all the decision making. So the next phase of legislative reform will – and it's based on advice from SNAICC – is how do you thread the [ATSICPP] through all the other provisions of the [Children and Young People] Act. So there's still more legislative change to come. (Government Agency)

I think there's one thing that was added which is the Aboriginal Placement Principles, so that's a start. But then do they apply it? That's the question. It's different having it there and the application. (First Nations Organisation)

Stakeholders raised concerns about the continued high rates of removal of First Nations children, noting that racism and discriminatory practices are still impacting on a range of child protection processes: ‘We need these children to be culturally safe. And are they socially, emotionally... how is their wellbeing up against this racism? And so how can we beat racism if we're not culturally safe?’ (Sisters in Spirit Community Dialogue Women).

There are also concerns that the focus within child protection remains on the *placement principle* rather than on the ATSICPP in their entirety.²⁵¹ While a focus on ensuring that children remain connected to family, community and culture when they are removed by child protection is imperative, the ATSICPP elements need to be viewed as a whole.

I think it's great that we've got it into legislation. That was a really important thing to achieve. But is it making a difference? One of the elements [is] around participation... involving community [and] ACCOs in decision making. And if you asked our ACCOs about whether they are now being consulted around cases, I reckon they would say no... So I think again the intent is good and I'm really

²⁵¹ SNAICC (n.d.) *Aboriginal and Torres Strait Islander Child Placement Principle*. Available at <<https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/>>.

pleased it's been embedded in legislation, but we've got to translate that now into practice. (First Nations Organisation)

Translating the *intention* behind the ATCIPP in a way that embeds the five principles into practice remains a challenge.

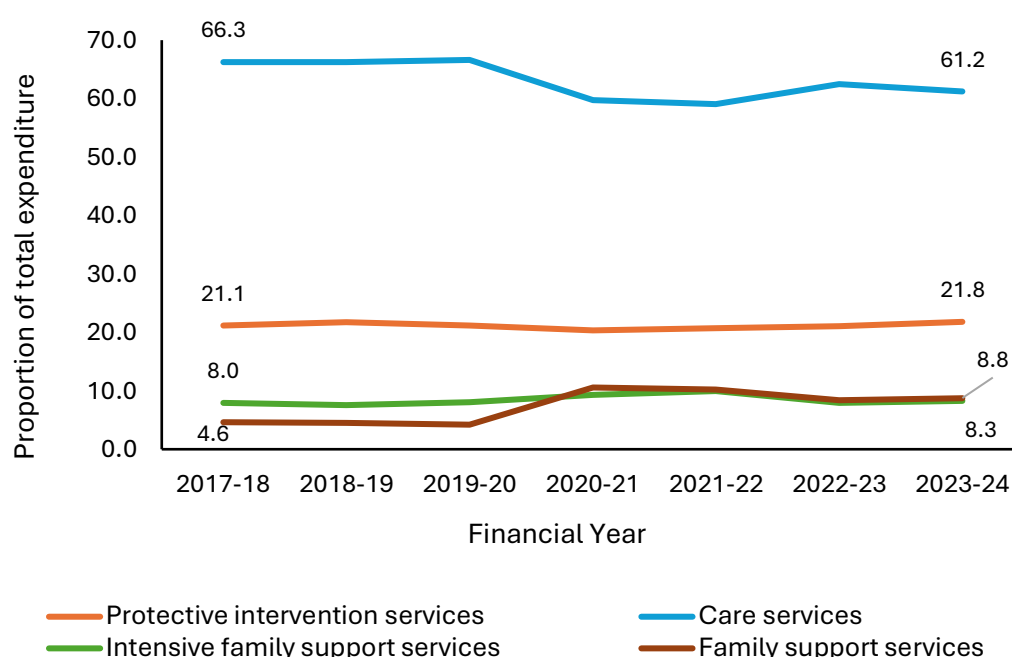
I mean, they're absolutely committed to doing that... But what they haven't kind of got their heads around is how they will demonstrate that they are doing that. It's all very well to have it in legislation and say we've updated the practice guides and we're training staff on the elements, and SNAICC have come over and trained child protection workers here in the ACT around the child placement principle. But are we seeing it play out strongly in practice? Not yet. (First Nations Organisation)

A key pillar of the ATCIPP is the **prevention** of First Nations children entering the child protection system. Community stakeholders continue to raise concerns about what specific efforts are being undertaken by the ACT Government in this area. At the centre of these concerns are two interrelated issues: a lack of sufficient and recurrent funding dedicated specifically towards prevention and early intervention, and insufficient ACCOs that are trusted by community to undertake this work. '[They're] quick enough to take people's kids but like they're not quick enough to help you' (AMC Womens Group).

There is limited funding for [outreach programs] to be able to provide those proper wraparound supports. And it's not always family and domestic violence, it's not always drugs and alcohol. Sometimes it's just the families are overwhelmed with the load that they're carrying just because, you know, they've got 18 people living in a house that should only house three people maybe. Or mum and dad lost their jobs and they can't support all the kids. (First Nations Organisation)

This is supported by data on government expenditure on child protection and OOHC systems. Data released by the Productivity Commission shows a consistent trend of under-spending on family support services, including intensive family support, relative to care and protection services. This is shown in Figure 5.1, where real recurrent expenditure on intensive family support services (shown in the green line) has remained at approximately 8% of all expenditure in the ACT, while expenditure on family support services (shown in the maroon line) has increased from 4.6% of all expenditure in 2017-18 to just under 9% in 2023-24.

Figure 5.1: Real recurrent expenditure on child protection and OOHC services in the ACT 2017-18 to 2023-24



Source: Australian Productivity Commission (2025) Report on Government Services, Chapter 16: Child protection services, Table 16A.8.

Data on the real recurrent expenditure, and the number of children commencing or receiving Intensive Family Support Services (IFSS) in the ACT is difficult to interpret. While real recurrent expenditure on IFSS has almost doubled from 2017-18 to 2023-24, it still only represents 8.3% of the ACT government's expenditure on child protection services.²⁵² However, during this same period, First Nations children were between 9.6 and 11.1 times more likely to be receiving IFSS, compared to non-Indigenous children. While the overall number of children commencing or receiving IFSS has remained low in the ACT, it appears that on a per capita basis, First Nations children are more likely to receive these services.²⁵³ The Secretariat of National Aboriginal and Islander Child Care's (SNAICC) review on the ACT government's implementation of the ATSICPP similarly found that in 2021-22 'most of the funding for preventative and early support services is provided to non-Indigenous service providers... In total, only 2% (\$1,893,824) of the CYPS

²⁵² Australian Productivity Commission (2025) Report on Government Services: Chapter 16, Child Protection Services, Data Table 16A.8.

²⁵³ Australian Productivity Commission (2025) Report on Government Services: Chapter 16, Child protection services. Data Table 16A.35.

recurrent expenditure was on ACCOs'.²⁵⁴ More recent data shows that investment in ACCOs providing IFSS services in the ACT has increased by a factor of 10, from 2% in 2021-22 to 20.1% in 2022-23.²⁵⁵

Despite these shifts, community stakeholders spoke at length about the perceived absence of community-based supports with a preventative focus.

A lack of early intervention and prevention is a big one... Quite often, even in the context of talking about 'emergency action' which is used here in the ACT where often there [are] appraisals made, or there [are] reports made to the Department, there is a lack of that being a really key component to prevention or early intervention. And in the name of them calling it 'emergency action', I guess our office, from what we've seen that's come to our attention is we'd be questioning the validity of whether it actually is an emergency. Who defines an emergency, and what could have been used as prevention or early intervention mechanisms? (Statutory Authority/Public Body)

There is a need for more wraparound supports that First Nations families can access before situations reach crisis point and child protection becomes involved. This necessitates greater investment and infrastructure to help support families when they become overwhelmed. As discussed in Section 3, appropriate funding for First Nations-led early intervention service should be a priority for the ACT Government to address the over-representation of First Nations people in statutory systems, including child protection and the criminal legal system.

Restoration was also raised as a concern by multiple stakeholders. Under the ATSI CPP restoration should be the primary goal once a child enters OOHC. However, families report ongoing barriers in achieving timely restoration: 'I just got mine home and it took me over three years. I was jumping through hoops, like insane hoops' (Sisters in Spirit Community Dialogue Women).

The establishment of the Aboriginal-led Restoration Taskforce was meant to 'holistically consider individual circumstances of parents, children, and young people and where able, restore children back to the care of a parent, family member or strengthen family connection opportunities'.²⁵⁶ The absence of data on the restoration rates for First Nations children in the ACT makes the effectiveness of this taskforce difficult to evaluate. AIHW data for 2021-22 shows that there were 12 First Nations children who exited OOHC

²⁵⁴ SNAICC (2025) Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Australian Capital Territory 2021-23, p.13. Available at: <<https://www.snaicc.org.au/resources/reviewing-implementation-of-the-aboriginal-and-torres-strait-islander-child-placement-principle-act-2021-23/>>.

²⁵⁵ SNAICC (2024) *Family Matters 2024*, p.52.

²⁵⁶ Our Booris, Our Way (2024) Six-monthly implementation update – July to December 2023, p.44.

to reunification.²⁵⁷ In contrast, 38 non-Indigenous children were reunified during the same period.²⁵⁸ Table 5.2 (below) provides information on children who returned to OOHC within 12 months of achieving reunification. As can be seen, regardless of a child's Aboriginal status, most children who were reunified did not return to OOHC within 12 months. However, Table 5.2 also shows that a higher proportion of First Nations children did return to OOHC within the first 12 months following reunification.

Table 5.2 Number and percentage of Aboriginal and Torres Strait Islander and non-Indigenous children who returned to OOHC within 12 months following a restoration episode

	Returned to OOHC within 12 months N (%)	Did not return to OOHC within 12 months N (%)
Aboriginal and Torres Strait Islander children	7 (23.3%)	23 (76.7%)
Non-Indigenous children	5 (19.2%)	21 (80.8%)

Source: AIHW (2024) Aboriginal and Torres Strait Islander children 2021-22, Table 10.19.

Community stakeholders emphasised that there remain inadequate efforts to work towards restoration, in part due to the view that 'permanency' through stable placements in OOHC is the preferred outcome for children. This can cause significant problems when children are placed with non-Indigenous carers, including with non-Indigenous family members who are unable to ensure cultural continuity and connection.²⁵⁹

You know we say don't give our kids away permanently but then we get data that shows they're still giving EPRs which is Enduring Parental Responsibility which means they took our eyes off our kids. It means no one's monitoring those kids' connection to their Aboriginal family, you know? And they still do them. It's like we said six years ago, stop doing them. (First Nations Organisation)

I grew up with a White family. I was in a White foster care family. So I didn't really know anything about... until I was like older, until I actually got in contact with my dad. And then he told me. He's like, 'This is where you're from'. But he didn't tell

²⁵⁷ AIHW (2024) *Aboriginal and Torres Strait Islander children 2021-22*, Table 10.13. Available at <<https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/data>>.

²⁵⁸ CSD advises that this represents 33.3% and 35.8% of all First Nations and non-Indigenous children (respectively) who exited OOHC in 2021-22.

²⁵⁹ Beaufils et al (2025) "We all grow up with our mob because it takes all of us": First Nations collective kinship in Australia. *Children and Youth Services Review*, advanced online print; Beaufils (2023) 'That's the bloodline': Does Kinship and care translate to kinship care? *Australian Journal of Social Issues* 58(2) pp.296-317; Krakouer et al (2023) Resistance to assimilation' Expanding understandings of First Nations cultural connection in child protection and out-of-home care. *Australian Social Work* 76(3) pp.343-357.

me much... [I didn't know I was Aboriginal until age] 14. I grew up with a White family and they never told us. They just held it back from us. I don't know why. (Bimberi Young People)

Almost 30 years ago, the *Bringing Them Home Report*²⁶⁰ showed the pervasive and ongoing impacts of the forcible removal of First Nations children from their families and communities. Since that time, First Nations Elders, community leaders and advocates, and researchers have continued to show that contemporary statutory systems, including child protection, are inherently disconnecting, causing further harm to First Nations families and communities.²⁶¹ Box 5.2 below provides a more detailed exploration of the impacts of statutory decisions to prioritise 'permanency' through permanent care away from family over cultural connection.

Embedding the ATSICPP in the *Children and Young People Act* is a positive move for the ACT government. However, in light of the issues discussed above, it is imperative that much greater resourcing and support is directed towards community-based models that ensure First Nations families and communities are adequately supported to care for their children. This requires a number of changes, including better data collection, greater transparency of data and funding decisions, a greater focus on funding prevention and early intervention services, and greater investment in ACCOs that are trusted by community.

Recommendation 5.4

We recommend that the Our Booris, Our Way (OBOW) Implementation Oversight Committee (IOC), in collaboration with the ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner's Office:

- a. Undertake a comprehensive review of the implementation of the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP)
- b. Develop specific targets that focus on the principle of prevention, including for example, the number of children diverted from formal child protection intervention, and the number of families who are provided with support through intensive family support services.

²⁶⁰ Australian Human Rights Commission (AHRC) (1997) *Bringing them Home Report*. Available at <<https://humanrights.gov.au/our-work/projects/bringing-them-home-report-1997>>.

²⁶¹ AHRC (1997) *Bringing them Home Report*, p.13; Yoorrook Justice Commission (2023) *Yoorrook for Justice: Report into Victoria's child protection and criminal justice systems* <<https://yoorrookforjustice.org.au/wp-content/uploads/2023/08/Yoorrook-for-justice-report.pdf>>; Swan and Swan (2023) Demanding change of colonial child protection systems through good trouble: A community-based commentary of resistance and advocacy. *First Peoples Child & Family Review*, 18(1) pp.28-33.

Recommendation 5.5

We recommend that the ACT Government, in conjunction with community leaders and ACCOs, explore the development and implementation of community models of care to support First Nations children to remain in community even when child protection intervention is needed. First Nations input should be sought from First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review.

This recommendation is dependent on Recommendations 2.1 and 2.2.

Recommendation 5.6

We recommend increased transparency in the collection, access to and interpretation of child protection data in the ACT. Notwithstanding that the ACT is a small jurisdiction, data suppression due to ‘privacy’ concerns means that over-representation of First Nations children in key metrics is not calculated. Data released to the OBOW IOC should be made publicly available.

Box 5.2 The impacts of EPRs for First Nations children

Enduring Parental Responsibility Orders – also referred to as third party parental responsibility orders – have been introduced across most Australian states and territories in an effort to provide children and families with certainty when restoration is no longer considered a viable option. These orders typically shift full parental responsibility to a ‘third-party’ that is not the state or the child’s parents. These orders last until a child is 18 years old and may include limits on the frequency of family contact. SNAICC’s Family Matters Report shows that First Nations children are more likely to be placed on long-term guardianship orders, including ‘permanent care’ orders, than non-Indigenous children. AIHW data shows that in 2023 in the ACT, 42 First Nations children were placed on Enduring Parental Responsibility Orders (EPRs), of which 19% were with Aboriginal and Torres Strait Islander relatives or kin, 16.7% were with non-Indigenous relatives or kin, and 64.3% were in ‘other care arrangements’ including non-Indigenous carers who were not relatives or kin.²⁶² Based on these data, it appears that the majority of First Nations children on EPRs were placed into long-term care arrangements outside of their relative/kinship network. This is highly concerning and points to the need for much greater efforts by

²⁶² AIHW (2025) Child Protection Australia 2022-23, Aboriginal and Torres Strait Islander children 2022-23, Table 10.3.

child protection services to actively support Aboriginal children's cultural connection. These concerns were also raised by various stakeholders who participated in this evaluation, as highlighted in the extended excerpt below.

Placing our kids with non-Aboriginal carers instead of with Aboriginal carers has been a huge issue for us. We see that it's improving a bit. But what we were seeing throughout the (OBOWs) review is if you've got an Aboriginal parent and a non-Aboriginal parent and the children were removed from those parents, it was the non-Aboriginal parent's family that was approached to take on the children. And they kind of had first go at it, quite often without any consultation with the Aboriginal side of the family. Particularly if, you know, dad might be incarcerated or not on the scene, then that wasn't even a consideration. In so many cases we see a push from the contracted organisation that does a lot of the child protection work for the Department, they have really pushed families into permanency. They've promoted these EPR agreements... because basically it gets [the children] off their books for casework... They don't do anything. They don't do any monitoring. They don't visit the child. So there's some benefit to them to get them off their books. You know, let's arrange permanency for you – you can't adopt obviously in the ACT, we're pretty firm about that, but you can have the next best thing, which is an EPR. And those kids invariably come back [into OOHC]. I was just talking to a family the other day whose niece is on an EPR to the non-Aboriginal grandparents. It's all falling apart. She's now 14 [years old]. She's not connected to her Aboriginal side of the family. We shouldn't do it. We should be making sure their connection is as strong as it possibly can be. Even if, you know, sometimes that means supervised contact. The idea that you just don't have any [contact] is just... we never see a good outcome for the kids out of that process. (First Nations Organisation)

5.2.4. Cultural disconnection

The issue of cultural connection and disconnection extends beyond the push towards permanency through EPR Orders. Community stakeholders spoke at length about cultural disconnection being fundamental to the ethos of child protection practices that are still grounded in principles of assimilation.

But my daughter was in my family's care and they sent police and all that out there and they put emergency removal on her... So she's been in the system ever since. Before my five years was up, there was a two-year restoration order, but they kept pushing it on [my family] to sign an 18 year order... and then they give up on it all and signed it. (AMC Mens Group)

As a result, child protection practices continue to be viewed as inappropriate, coercive, lacking transparency or accountability, and as fundamentally racist. 'CYPS are just another branch of the police' (Sisters in Spirit Community Dialogue Women).²⁶³

There's no onus on the Department, and when 18 year orders are made and the case management of it goes to an organisation like Act Together, care and protection aren't putting any pressure on Act Together to be following the rules. But sure as shit if mum doesn't turn up for something, or mum does one thing wrong, or slips a little bit or something like that... And most of these kids are in care because of poverty. Poverty is not neglect. Neglect is neglect, and poverty is poverty. (Legal Service Provider)

The system is just so rigid in its view that the best thing for a child is to be in a stable placement. And once you place them there and they're stable, you leave them there, [but] that's not true for our kids, if they haven't learned that over history. It's not true for our kids that you remove them and put them in a stable place and then they're set for life. No, it's not true that our kids are better off with a family that can give them an overseas holiday than with a family that's got five kids in the three-bedroom house. But that's the way the system sees it through such a Western lens. It's really hard to influence that perspective. (First Nations Organisation)

One of the main mechanisms to support cultural connection in the ATSI CPP is through the development of cultural support plans when children enter OOH. These plans are intended as living documents, regularly updated and accessible to a child in care to support their identity through connection to and engagement with culture and community. However, community stakeholders raised concerns that cultural support plans are largely tokenistic. This is reflected in the poor quality of these plans – which includes superficial and incorrect information – and in the lack of understanding of what is needed to support genuine cultural connection for First Nations peoples.

We saw some appalling cultural plans. I can remember one where the child's totem was not even an Australian animal. And their activity was, as it is in many cultural plans, they'll watch NITV and they'll attend a NAIDOC event and that's the extent of their cultural planning for these kids. Most of our kids on long-term orders are set at three to four visits to their family a year – like one visit in a school holiday, quite often supervised, quite often in a sterile environment like a Barnardo's centre. Not going home, not going back to Country if they're not from here, not re-engaging

²⁶³ See also: 'But why would you want child protection in your service when you're fighting against child protection? Because they're not only removing our children but they're adding trauma to our families. Their system is nothing. It's flawed. They don't act on... like the malicious notifications, wouldn't you look at that person that's making malicious notifications? They don't do that. They just go notification, bang. We've had notifications of children wearing odd socks. We've had notifications of children going to school with dirty clothes. (First Nations Organisation)

with their culture. It's this sterile visit with mum or dad or siblings at a centre that is supervised by someone walking around with a laptop or a clipboard... We're pushing to make them meaningful. We're on about quality cultural plans that provide for meaningful connection for our kids... And ideally you want and should have the Aboriginal family involved in developing them... what's meaningful *for them*. (First Nations Organisation)

While there are ongoing efforts to improve the quality of cultural support plans so that they 'provide for meaningful connection for our kids' (First Nations Organisation) more work needs to be done. This includes ensuring that cultural support plans are accurate, regularly updated, accessible to children in care and their families, and developed with input from a child's family and community.

Recommendation 5.7

We recommend that the ACT government commit to ensuring that every First Nations child in out-of-home care (OOHC) has a cultural support plan that:

- a. is developed in consultation with the First Nations Family Response and Engagement Team
- b. includes input from a child's family and community
- c. is regularly updated to ensure they remain accurate and reflect the needs of a child as they develop
- d. provides meaningful opportunities for a child to engage with culture, beyond simply participating in NAIDOC week events
- e. is easily accessible to a child while they are in care
- f. is provided to a child when they leave the care system – either through restoration, permanent care, or if they 'age out' when they turn 18 years old.

Recommendation 5.8

We recommend that the ACT government develops a mechanism to ensure that:

- a. every child is aware of, and has access to their cultural support plan, specifically their genealogy and community knowledge while in care. These plans need to follow a child if they enter the youth justice system
- b. cultural support plans can be independently audited by the Commissioner for Aboriginal and Torres Strait Islander children on a regular basis to ensure that they are sufficiently high quality to support cultural connection and identity.

5.2.5. Kinship care

Kinship care refers to a child's placement – either formally or informally – with extended family members. It is the preferred placement option for all children who enter the OOHC system. This is evidenced by national data showing that between 2018 and 2024, the use of relative/kinship care increased by 6.2% for all children, but by 18.6% for First Nations children.²⁶⁴ In the ACT, 54% of First Nations children in OOHC on 31 December 2023 were in a relative/kinship care placement.²⁶⁵ Consistent with the ATSICPP, close to 65% of Aboriginal children were living with an Aboriginal relative, with a member of their Aboriginal community, or with another Aboriginal person. However, OBOWs data also shows that overall, there has been a 6.5% drop in the number of Aboriginal children being placed with relatives or kin.²⁶⁶ Government stakeholders and community members raised concerns about the process of becoming an 'authorised' carer. 'There's a whole lot of things you have to do to take the barriers out of the way for kinship carers to actually be able to kind of step in there' (Government Agency).

The authorisation process is viewed as overly intrusive, and from the community's perspective, the chances of being authorised are limited.²⁶⁷ Currently, the assessment to become a kinship carer is not undertaken by the First Nations Family Response and Engagement Team but rather sits within the CYF section. Government stakeholders, however, noted that the implementation of the ATSICPP prioritises interim placements with First Nations relatives/kin while formal assessments for kinship are undertaken. 'Sometimes children went into foster care while they waited for the kinship care assessment to happen and that could take a while. Now they have a model which allows for an interim placement with kin while there's a more formal assessment' (Government Agency).

Stakeholders also spoke about the challenges that kinship carers face, particularly in the absence of adequate supports for themselves and the children in their care.

The next layer of it, which probably needs more work, is actually then how do you support those kinship carers, particularly for children who come with a lot of trauma? Because they can have really challenging behaviours and people really want to be the carer but actually find – and particularly when they have other children in their family – sometimes it has a really negative impact on those other children. So again, how do we bring the right supports around addressing that

²⁶⁴ Australian Productivity Commission (2025) Report on Government Services, Chapter 16, Child Protection Services, Data Table 16A.21.

²⁶⁵ OBOW six-monthly implementation update (2024).

²⁶⁶ OBOW six-monthly implementation update (2024).

²⁶⁷ CYF advises that kinship assessments also include the use of the Winangay tool, the First Nations Kinship Support worker, expedited 'suitability' timeframes and improved resourcing.

trauma, dealing with those behaviours, getting kids the mental health support they need? (Government Agency)

Kinship care is an important element of the OOHC system. For First Nations children, it should be the paramount consideration when a child is removed from their parents.

5.2.6. Availability and acceptability of ACCOs in child protection and OOHC

While the ACT Government has committed to the transfer of case management for First Nations children to ACCOs, only Yerrabi Yurwang is a registered care and protection organisation under the *Children and Young People Act*. Given the over-representation of First Nations families and children impacted by child protection and OOHC, there is a need for more registered ACCOs that will enable families some choice in which provider they want to engage with. Services need to be culturally sensitive and have strong connections to local Aboriginal communities. This may necessitate the ACT government providing increased funding to local organisations who have established relationships with community. It is also imperative that information is made widely available to community, in accessible formats and language:

People [in community] don't know about it [available services] until there's a problem... There's just not enough information out there... CYPS [are dealing with clients] getting cultural plans and having cultural teams. Why do they find out about these people after they've taken their children, after they've stepped in? Why didn't they know about these people before, where they could speak to them, maybe fix some of these problems before they take children or get arrested? (Winnunga Community Dialogue Men)

Recommendation 5.9

We recommend that the ACT government works with the OBOWs IOC and the Aboriginal and Torres Islander Children and Young People Commissioner's Office to identify additional ACCOs with strong community connections that can provide culturally appropriate services in child protection and OOHC.

5.3. The criminalisation of children in care

More than half of the First Nations children, young people who are incarcerated sit on what they call care and protection orders. But they're not being cared for, no are they being protected. And that includes what supports are provided – when they were not incarcerated – by care and protection, or the Director General who holds parental responsibility of these children and young people. (Statutory Authority/Public Body)

Care-criminalisation is a well-established phenomenon in Australia and internationally, and refers to the way that child protection, OOHC and policing practices intersect in ways that increase the risk that children in residential care, in particular, are over-policed and over-represented in youth justice systems.²⁶⁸ Australian research has thus far failed to examine the care-criminalisation of First Nations children specifically. However, given the over-representation of Aboriginal children in OOHC and youth justice systems (discussed below in Section 6), it is reasonable to suspect that a significant number of First Nations children in care in the ACT are also involved with the youth justice system. ‘CYPS holds basically 90% of our kids... And if they’re not under CYPS [when they go into Bimberi], then they surely are when they come out’ (Education Provider).

I’ve had a lot to do with the youth justice system in the ACT. And you know, what we know from that is that 50% of our young ones who end up in Bimberi are on child protection orders. And there must be a flow through to the adult system. I think there’s a real correlation between childhood experiences, particularly in statutory systems like child protection, and where they end up later in life. (First Nations Organisation)

There is limited data that enables a meaningful understanding of the prevalence of the ‘cross-over’ between child protection, OOHC and youth justice. The Inspector of Custodial Services found that of the 89 children detained at Bimberi from 1 January to 30 June 2024, 36% were subject to care and protection orders. During the same period, approximately 50% of children *admitted* to Bimberi who identified as First Nations were also subject to care and protection orders²⁶⁹

AIHW data shows that among First Nations children who were under youth justice supervision in 2022-23, 67.6% had also had contact with child protection services at some point in the preceding 10 years. This figure dropped to 54.3% for non-Indigenous children²⁷⁰. Further, First Nations children were 14.7 times more likely than non-Indigenous children to be under youth justice supervision while also having child

²⁶⁸ Paterson-Young, C., Corrales, T., Warren, I. and McNamara, P. (2024) Impact of trauma and placement in residential or congregate care on the criminalisation of children in England/Wales and Australia. *Children and Youth Services Review*. Advance online print, <<https://doi.org/10.1016/j.childyouth.2024.107947>>; Baidawi, S., and Ball, R. (2023) Multi-system factors impacting youth justice involvement of children in residential out-of-home care. *Child & Family Social Work* 28(1) pp.53-64; McFarlane, K. (2018) Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian & New Zealand Journal of Criminology* 51(3) pp.412-433.

²⁶⁹ ACT Inspector of Custodial Services (2024) A review of a detention place by the ACT Custodial Inspector: Healthy Centre Review of Bimberi Youth Justice Centre 2024 <https://www.ics.act.gov.au/__data/assets/pdf_file/0007/2623741/ACT-OICS-Healthy-Centre-Review-of-Bimberi-2024_FA_TAGGED.pdf>.

²⁷⁰ AIHW (2024) Young people under youth justice supervision and their interaction with the child protection system 2022-23, Table S2 <<https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/data>>.

protection contact in the preceding 10 years²⁷¹. While this data is important, it does not provide information about changes to the over-representation of First Nations children who are dually involved in youth justice and child protection, nor the number of children per annum that are impacted by both systems. This is a significant gap that needs to be addressed to ensure that these children can be adequately supported.

Recommendation 5.10

We recommend that the ACT government provide regular (yearly) data on children that are ‘dual clients’ of child protection and youth justice (see also Recommendations 3.13 to 3.15). This data should be disaggregated by Indigenous status, with input from the First Nations-led Data Working Group established via Recommendation 3.11 of this Review.

This recommendation is dependent on Recommendation 3.11.

Stakeholders raised a number of issues that may be directly contributing to the criminalisation of First Nations children in care, including:

- Problems with the residential care system
- An over-reliance on police to manage children’s behaviour
- An abrogation of responsibility by the Director General as the ‘parent’ of children in care
- Lack of coordination between statutory systems, resulting in no one taking responsibility for the care and protection of dual system impacted children
- Lack of support for dual system impacted children.

In general, residential care across Australia is associated with the poorest outcomes for children and young people, with some arguing that it is inherently criminogenic.²⁷² As such, it is often viewed as the option of last resort, reserved for children with high and complex needs, and for whom family-based placement options have repeatedly ‘failed’.²⁷³ While many of the criticisms levelled against residential care are valid, it is also important to acknowledge the broader context against which residential care operates, including funding challenges, increased demand, the absence of therapeutic programs

²⁷¹ AIWH (2024). Young people under youth justice supervision and their interaction with the child protection system, 2022-23. Table S3.

²⁷² Paterson-Young et al (2024).

²⁷³ Holmes L, Connolly M, Mortimer E and Hevesi R (2018) Residential group care as a last resort: Challenging the rhetoric. *Residential Treatment for Children & Youth* 35(3) pp.209-224
<<https://doi.org/10.1080/0886571X.2018.1455562>>.

and systems, and an under-qualified workforce that is inadequately supported to work with children with multiple, intersecting and complex mental health needs.

So many of our young ones that start at Bimberi and end up in AMC have been in residential care. And I just think as soon as we get rid of residential care the better. I saw a very strong correlation between residential care and recidivism. They were just cycling in and out. Out to a residential care setting, doing exactly the same offence, back into Bimberi, back out, back in, back out. (First Nations Organisation)

The whole of residential care is very alienating and a lot of young people talk to us about that, that they feel really unsupported and isolated. And so often, they will kind of leave [the residential care placement] and associate with peers who maybe get them into things. Whereas if there were really strong placements with kin and more attention to the kind of placement in the first place the maybe we'd see less of that. (Statutory Authority/Public Body)

Data provided to the OBOWs for the July-December 2023 quarter indicates that of the 244 First Nations children in OOHC, 5% (n=13) were in a residential care placement, which represents an 85% increase from 2017-18 (n=7).²⁷⁴ This, however, does not capture the *over-representation* of First Nations children in residential care. According to AIHW, in 2021-22 First Nations children made up 22% of the residential care population in the ACT.²⁷⁵ There is also no publicly available data on the age breakdown of First Nations children in residential care. This is a significant concern given that residential care is generally considered inappropriate for young children. 'We have lots of kids under 12 [years old] in residential care. There are four different providers for children under 12 for residential care. They call them 'bespoke' placements' (Statutory Authority/Public Body).

There are broader problems with the residential care system in the ACT, including a workforce that is perceived to be ill-equipped to manage the complex needs of the cohort of children in residential care.

We had a few of our young people that went into resi (residential) care, and again it's the workers. The workers aren't armed to deal with the support that these kids are needing. The families, the grandparents and the parents are trying to engage and trying to have that care actioned on and it doesn't happen because maybe one of the kids has played up, so there's that disengagement. And they say, there's

²⁷⁴ OBOWs six-monthly implementation update – July to December 2023.

²⁷⁵ Residential care utilisation data by Indigenous status is not published as part of the annual AIHW Child protection series. Instead, this information is published in a supplementary publication on Aboriginal and Torres Strait Islander children. The latest release of this publication is for the 2021-22 financial year, and therefore these data may not accurately reflect the rate of First Nations over-representation in 2024. AIHW (2024) *Child protection Australia, Aboriginal and Torres Strait Islander children 2021-22*. Table 10.4.

no contact today because A, B and C. This is what happened. And the workers aren't armed to deliver that aspect of care. They're fresh workers, some are straight out of college and they have no experience when working with most of our youth. And then it's just a disaster, really, waiting to happen. (First Nations Organisation)

The issue of workforce capability is common across jurisdictions, but the specific problems in the ACT are also linked to the broader concern about a lack of accountability and genuine engagement with community. 'You need Blak workers. Kids are only going to be honest with people they know and trust. They don't trust any of them in CYPS' (Sisters in Spirit Community Dialogue Women).

The over-reliance on police by residential care service providers is also a well-established phenomenon across Australian jurisdictions, and internationally.²⁷⁶ It is also evident in the ACT, where stakeholders noted that

the main reason why especially our young people come into contact with police is through child protection. Once child protection are involved and they're in that system, they're part of that system, it's very, very difficult for them to get out of that system. Then child protection and youth justice build the case. They build it, build it, build it, build it until there's police involvement and police engagement and then police can notify anybody. (First Nations Organisation)

[The] pipeline from child protection into youth justice is probably the numbers of Aboriginal young people who end up in residential care, and once they're in residential care the higher level of scrutiny, but also, the kind of reporting things as criminal matters or getting police and justice system involved where if you're in a family context, you know, property damage or things that kind of go on wouldn't necessarily end up [in the justice system]. (Statutory Authority/Public Body)

For community stakeholders, there is a perceived abrogation of responsibility by CYF and the Director General when children who are in care enter the youth justice system.

I think there's an awareness. I think it's been a problem for a long time, but I don't know if there's enough really being done. My perception is that – even though the Director General is the 'parent' – once the child goes into Bimberi, (CYPS) caseworkers tend to back off a bit. And they (the children) are just in a bit of a

²⁷⁶ Beaufils et al (2025) "We all grow up with our mob because it takes all of us": First Nations collective kinship in Australia. *Children and Youth Services Review*, advanced online print; Beaufils (2023) 'That's the bloodline': Does Kinship and care translate to kinship care? *Australian Journal of Social Issues* 58(2) pp.296-317; Krakouer et al (2023) Resistance to assimilation: Expanding understandings of First Nations cultural connection in child protection and out-of-home care. *Australian Social Work* 76(3) pp.343-357.

holding pattern at Bimberi until they're about to be released and then the CYPS caseworker has to step back up. (Statutory Authority/Public Body)

This view is supported by research that shows dual system impacted children are treated as 'hot potatoes' with statutory bodies, including child protection and youth justice, shifting responsibility for their care and protection.²⁷⁷ Community members with lived experience of dual system involvement spoke of the way that child protection failed to support them when they were at risk of youth justice system involvement, pointing to the support they had received by community members instead.

I pretty much kept running off from everyone and that, because there was no point staying over there you know, so I was basically living on the street. A couple of the Elders and stuff like that from Cooma they learned who my family was and that sort of stuff and they sort of took it up to their end to look after me up there. So DOCs ended up just giving me I think it was 50 or 60 bucks on Monday, 60 bucks on Friday. They went 'Well fuck you, go fend for yourself'. And I did. I had a couple instances where pretty much out of pure luck that I didn't get sent to juvie sort of thing. There was a couple things that they sort of brushed off to my upbringing as to why I was carrying on like an idiot. I was always running, doing stupid shit and that and DOCs pretty much just left me high and dry which then led to me doing what I was doing. Like you never had stable accommodation. Never had no connection to no one. Nothing. (AMC Mens Group)

Like just having money in my pocket. So like I said, if CYPS were actually listening to me... For the things I'm asking... I probably wouldn't be ending up in these places... Because I'm asking for everything to support me on the outs. But they don't do that. And then they wonder why we end up in here. Because on the outs, even in here, in my care meetings like last time I was out and I asked for everything and didn't get anything, within a week I was back. The only good thing I was doing when I was out was working. But then everything I asked for I didn't get... They didn't help with my housing, payments to do things. They just talk themselves up. They don't do anything for the kids, straight up. (Bimberi Young People)

The criminalisation of Aboriginal children who are care-experienced continues once they have left the youth justice system. As discussed in Section 11 of this Report, there is a need for wraparound supports for people exiting custody, including children. Currently, community stakeholders noted that not only is there an absence of appropriate supports for children exiting Bimberi, but also a lack of coordination between statutory systems that leaves these children vulnerable to further criminalisation.

²⁷⁷ Paterson-Young et al (2024).

And no one seemed to consider change where they were coming out to, what they were coming out to. Let's just bide our time until they turn 18 (years old), then they're not our problem and they can go to AMC. Because we have that complete separation between justice and children's issues in the ACT, including youth justice. So no one's really looking at the linkage in terms of [the] government perspective. (First Nations Organisation)

The lack of coordination between youth justice and CYF was also evident in the way that children's cultural support plans – developed when they first enter OOHC – are not accessible to youth justice workers.

And then when our kids on child protection orders go into Bimberi they don't even have access to their cultural plan. I was just part of the Bimberi review with the Office of the Inspector of Custodial Services, and so [the staff at Bimberi] were taking that up and they were trying to push CSD because they're all part of CSD. But the workers at Bimberi, like even the Family Engagement Officer who is Aboriginal, did not have access to [the children's] cultural plans to try and keep them or build on connections while they're in custody. So yeah, cultural plans are a real problem. (First Nations Organisation)

As discussed previously, cultural disconnection is a significant issue impacting children in care. This issue is compounded for dual system impacted children who experience cultural disconnection across both statutory systems (child protection and youth justice). While there are significant issues with cultural support plans in OOHC, it is nevertheless imperative that children and workers have access to these plans if they enter Bimberi.

Recommendation 5.11

We recommend greater coordination between child protection and youth justice to ensure that if a child in care enters the youth justice system, cultural support officers have access to, and can update, a child's cultural support plan.

Addressing the criminalisation of children in care requires a systemic approach that recognises the increased surveillance that children in care are exposed to, the non-normative living conditions of many residential care facilities, and the over-policing of First Nations children and young people more generally. To mitigate some of these issues several states and territories have introduced formal protocols between child protection, policing and residential care agencies that focus on minimising the criminalisation of non-violent behaviour. The NSW *Joint Protocol to Reduce the Contact of Young People in Residential Care with the Criminal Justice System* is a collaborative approach between the NSW Police Force, the Association of Children's Welfare Agencies, NSW Department

of Communities and Justice and AbSec. The aim of the protocol is to ensure that police and residential care providers respond in a trauma-informed way to children's non-violent behaviours in residential care.²⁷⁸ The impact of these protocols is yet to be established, although some have argued that broader systemic reform is needed to address the carceral nature of the child protection and residential care systems.²⁷⁹ These criticisms notwithstanding, formal protocols such as this can raise awareness across systems of the heightened risk of criminalisation for children in care, and promote greater trauma-informed responses.

Recommendation 5.12

We recommend the development of a formal protocol between Children, Youth and Families (CYF), ACT Policing and residential care service providers, co-designed with community, to stop the criminalisation of children in residential care. This would necessitate, at a minimum:

- a. Engagement with community stakeholders
- b. Built in mechanisms of accountability for CYF, ACT Policing and residential care providers to ensure that the protocol is implemented and adhered to
- c. Cross-sector training in trauma, trauma-awareness and therapeutic care
- d. Working with the ACT Policing to develop a stronger understanding of the impacts of trauma, including intergenerational trauma, structural/systemic racism, colonialism, and dispossession on children's development, and the links between trauma, OOHC placement and behaviours that may be perceived as 'criminal' or 'antisocial'.

5.4. Children's Court

The Children's Court operates the Care and Protection Intensive List (CPIL) which was introduced in 2021 to promote a greater emphasis on reunification. While the CPIL is not focussed specifically on First Nations children and families, there may be opportunities for this list to address the issues of cultural disconnection discussed throughout this

²⁷⁸ NSW Government (2019) *Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system*. <<https://dcj.nsw.gov.au/children-and-families/joint-protocol.html>>.

²⁷⁹ McFarlane K, Colvin E, McGrath A and Gerard A (2019) 'Just another policy document?' Can a protocol end the criminalisation of kids in care? *Alternative Law Journal* 44(1): 37-42. <https://doi.org/10.1177/1037969X18795498>.

section. This would necessitate some changes to the way the CPIL functions, as currently it is limited to cases where:

- the original reason or removal involves parental substance use/dependency, family violence or parenting incapacity
- children are in OOHC, regardless of placement type
- children are at-risk of being placed on long-term care orders
- parents are not engaged with Warrumbul, Galambany or the Drug and Alcohol Court
- parents do not have any active criminal matters before the courts
- parents agree to a range of conditions, including access to their mental health records, their children being placed on interim orders, and where there is an assessment that any parental mental health conditions will not interfere with participation in, or compliance with, the obligations set out by the Court.²⁸⁰

As one stakeholder noted, the separation of child protection and criminal matters can make it challenging to deal with cases ‘holistically’, particularly as the trigger for removal may be due to parental incarceration:

Being able to bring different sorts of matters together would be really helpful because where you’ve got families that have had children removed, often the precursor to their removal is the arrest of a parent. So there are criminal matters pending as well or even if it’s not that there might be other kids in the family that have got criminal processes ongoing and it is possible in some instances to deal with those holistically. So you bring in the criminal matter, you put it all in front of one magistrate, you bring the parties together and that can be quite useful. (Courts and Tribunals).

Some of the eligibility/exclusion criteria may therefore differentially impact First Nations families, particularly in light of the over-representation of First Nations women in the ACT prison system.

The CPIL also includes referrals for families to undertake independent assessments with recommendations on the interventions and support services that will assist with restoration. However, given the lack of community supports identified by stakeholders,

²⁸⁰ ACT Magistrates Court (n.d.) *Care and Protection Intensive List*. See details at <<https://www.courts.act.gov.au/magistrates/about-the-courts/areas-in-the-act-magistrates-court/childrens-court/care-and-protection-intensive-list> - :~:text=The CPIL provides court supervised,to parent their children safely>. Cases where parents are engaged with Warrumbul, Galambany or the Drug and Alcohol Court, and cases where there are active criminal matters before the courts will be reviewed for eligibility in the CPIL on a case-by-case basis.

and ongoing concerns about shortage of ACCOs, there is a concern that First Nations families are further disadvantaged through this process.

This is a significant problem given that the CPIL is intended to support reunification during a relatively short period, namely, a maximum of 18 months from the date of the first progress review.²⁸¹ Victorian research has identified that reduced timeframes for restoration, often enshrined in legislation and associated with limits on judicial discretion, are almost impossible to achieve given the shortage of services that can support families with complex needs.²⁸² This situation is again exacerbated for First Nations families, where there is not only the absence of culturally appropriate supports, but a systemic failure to understand the impacts of intergenerational trauma. It also reflects broader challenges associated with securing appropriate, safe and stable housing for families that will enable work towards restoration.

Recommendation 5.13

In relation to the Care and Protection Intensive List (CPIL) we recommend that:

- a. The ACT Government undertake a review into the functioning of the current eligibility criteria, with a focus on whether it is functionally excluding First Nations families
- b. Data on the number of parents/families who have gone through the CPIL, including the number who have successfully completed and the length of time to completion, should be made publicly available. This data needs to be disaggregated by Aboriginality. It also needs to include information about children's outcomes, including whether restoration has been sustained.

An alternative model that could be adapted for use in the ACT in conjunction with the CPIL is the Marram-Ngala Ganbu (Koori Family Hearing Days) Court that operates in Victoria. These hearings are more culturally aware, less formal, include Koori family support officers, and actively promote collaborative decision-making between families and child protection.²⁸³

²⁸¹ Children's Court (2021). *Practice Direction Children's Court No. 1 of 2021. Care and Protection Intensive* <www.courts.act.gov.au/__data/assets/pdf_file/0009/1718460/Practice-Direction-Childrens-Court-No.-1-of-2021.pdf>.

²⁸² Wise S., Cashmore, J., Katz, I., Brewster, G., and Corrales, T. (n.d.) *Certainty for children, fairness for families? Appendix 5: Focus group discussions and key information interviews*. <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/05/DFFH.0006.0009.0324-PALS-Appendix-5.pdf>>.

²⁸³ Children's Court of Victoria (n.d) *Marram-Ngala Ganbu (Koori Family Hearing Day)*. See details at <<https://www.childrenscourt.vic.gov.au/family-division/marram-ngala-ganbu-koori-family-hearing->

I spoke to you before about the Marram-Ngala Ganbu Court (in Victoria). I think that would be amazing for our children's court jurisdiction because in the pilot they've run in Shepperton, I think the restoration rates of children to their families are extremely high. I think like 80%. And they're also running a drug court for families. And people are obviously achieving a lot when their motivation is their children and they've got that pilot support. I think those things would be good things for our jurisdiction. (Courts and Tribunals).

An Independent evaluation of the Marram-Ngala Ganbu Court in Victoria, for example, found that it contributed to improved satisfaction amongst children and parents, and to improved compliance with child protection orders/conditions by parents and families. The pilot project had also resulted in magistrates more explicitly recognising and incorporating considerations of cultural connection into decision-making, and an increase in the use of therapeutic approaches even amongst mainstream Children's Court hearings.²⁸⁴ The success of the model has been attributed to it being First Nations-led, the inclusion of case management support, the less formal court arrangement, and a focus on culturally safe child and family-focussed practice.

Recommendation 5.14

We recommend that the ACT Government, in collaboration with OBOW IOC, the Aboriginal Legal Service (ALS) NSW/ACT, and the Children's Court gives full consideration to the design and implementation of a Koori Family Hearing Day to support First Nations families in the child protection system.

day#:~:text=Marram%2DNgala%20Ganbu%20(meaning%20%E2%80%9C,Shepparton%20Children's%20Court%20in%202021>.

²⁸⁴ Araben, K., Bunston, W., Campbell, D., Eccles, K., Hume, D. and King, S. (2019) *Evaluation of the Marram-Ngala Ganbu*. Available at: <<https://www.socialventures.org.au/our-impact/evaluation-of-marram-ngala-ganbu/>>.

6. YOUTH JUSTICE

It starts with cops really. It starts with poverty. And then you've got kids dropping out of school, ending up in child protection, from child protection to juvenile detention, from juvenile detention into adult prisons. (First Nations Organisation)

First Nations children continue to be grossly over-represented in youth justice systems in all Australian states and territories. As the quote above indicates, this over-representation reflects systemic failings grounded in colonial structures and systems that continue to criminalise First Nations peoples.

This Section focusses on some of the on-going challenges in the ACT youth justice system. While there have been some significant reforms – particularly raising the minimum age of criminal responsibility – government and community stakeholders highlighted several areas that require further investment and reform, including:

- Low diversion rates and the absence of appropriate diversion options
- The need for greater investment in prevention and early intervention supports
- The lack of legal representation for children
- Challenges with restorative justice processes
- The high proportion of First Nations children on remand
- The criminogenic impacts of detention at Bimberi, particularly in relation to cultural disconnection
- The absence of culturally appropriate post-release supports.

6.1. Data on the Over-presentation of First Nations children in youth justice

I've been coming here since I was like 11 years old. I know this place off by heart. (Bimberi Young People)

There is a significant body of research showing that First Nations children are more likely to have contact with youth justice systems at an earlier age than their non-Indigenous peers, to be subjected to more punitive criminal legal system responses, to be convicted of more serious offences, and to spend longer periods in detention.²⁸⁵ This is supported by

²⁸⁵ Cunneen, C. (2008) Changing the neo-colonial impacts of juvenile justice. *Current Issues in Criminal Justice* 20:1, pp.43-58. <<https://doi.org/10.1080/10345329.2008.12056186>>; O'Brien, G. (2021) Racial profiling, surveillance and over-policing: The over-incarceration of young First Nations males in Australia. *Social Sciences*, 10:68. <<https://doi.org/10.3390/socsci10020068>>; White, R. (2015) Indigenous young people and hyperincarceration in Australia. *Youth Justice* 15:3, pp.256-270. <<https://doi.org/10.1177/1473225414562293>>.

data published by the AIHW and the Australian Productivity Commission that shows significant over-representation across time, across age groups, and across different types of youth justice interventions (i.e., community-based supervision vs detention). As shown in Table 6.1 and 6.2 (below), First Nations young people in the ACT were 9 times more likely to be under youth justice supervision in 2023-24 than non-Indigenous children. This trend has fluctuated over time, with the lowest rate of over-representation recorded in 2021-22.

Table 6.1 ACT Trends in children under community-based supervision by Indigenous status (Rates and rate ratios)

	First Nations children (rate per 10,000)	Non-Indigenous children (rate per 10,000)	Rate ratio
2017-18	141	15.2	9.3
2018-19	90.5	11.2	8.1
2019-20	71.6	10.3	7
2020-21	45.1	10.6	4.3
2021-22	32.7	8.4	3.9
2022-23	46.9	8.2	5.7
2023-24	120	13.4	9

Source: Australian Productivity Commission (2025) Report on Government Services, Chapter 17, Table 17A.6

A similar, albeit more pronounced trend can be seen in the rates at which First Nations children are detained in the ACT. Table 6.2 (below) shows that in 2023-24, First Nations children were 14 times more likely to be in youth detention relative to non-Indigenous children. While this trend has also fluctuated over time, the rate of over-representation was the highest in 2023-24, despite the introduction of significant reforms across the ACT.

Table 6.2 ACT Trends in children in detention by Indigenous status (Rates and rate ratios)

	First Nations children (rate per 10,000)	Non-Indigenous children (rate per 10,000)	Rate ratio
2017-18	27.6	2.3	12
2018-19	11.9	1.6	7.4
2019-20	33.6	2.5	13.4
2020-21	18	1.4	12.9
2021-22	19.7	1.7	11.6
2022-23	28.4	2.3	12.3

2023-24	38.9	2.7	14.4

Source: Australian Productivity Commission (2025) Report on Government Services, Chapter 17, Table 17A.5. Please note that the rate ratios presented here differ from the rate ratios in Tables 17A.7, although the rates (per 1000) are the same.²⁸⁶

The over-representation of First Nations children is also significantly pronounced when disaggregated by age. Table 6.3 shows that in 2023-24, First Nations children were under community-based supervision at significantly higher rates than non-Indigenous children across all age groups. Over-representation was most pronounced for 13-year-old First Nations children, who were **32 times more likely to be under community-based supervision than their non-Indigenous peers.**²⁸⁷

Table 6.3 ACT Children under community-based supervision and in detention by Indigenous status and age in 2023-24 (rates and rate ratio)

COMMUNITY-BASED SUPERVISION			
Age	First Nations children (rate per 10,000)	Non-Indigenous children (rate per 10,000)	Rate ratio
12	12.6	1.1	11.5
13	61.6	1.9	32.4
14	124.9	11.4	11
15	212	17.9	11.8
16	132	26.4	5
17	175	24.7	7.1
DETENTION			
Age	First Nations children (rate per 10,000)	Non-Indigenous children (rate per 10,000)	Rate ratio
12	10	n.p	-
13	14.9	0.3	49.7
14	28.5	1.2	23.8
15	35.7	5.7	6.3
16	59.6	4.9	12.2
17	81.6	4.5	18.1

²⁸⁶ It is not clear why the rate ratios presented in Table 17A.7 of the ROGS report differ from those presented here. Rate ratios have been calculated on the rates per 1000 included in the ROGS data. Some, but not all of the discrepancies can be accounted for by rounding.

²⁸⁷ Rates and rate ratios should be interpreted with a degree of caution given the relatively small number of children who are under youth justice supervision – whether in the community or in detention - in the ACT.

Source: AIHW (2025) Youth Justice in Australia 2023-24, Supplementary tables – State and Territory summary, Tables S139b and S139c.

A similar pattern can be seen for children in detention. Data for non-Indigenous children aged 12 years old was not published, presumably due to the low number and concerns about children's privacy. The same issue did not apply to First Nations children, who were detained at a rate of 10 per 10,000 children. The largest discrepancy is again in the 13-year-old age group, where First Nations children were close to **50 times more likely to be in detention than non-Indigenous children**. This suggests that changes to the minimum age of criminal responsibility may have simply shifted the focus of punitive youth justice policies towards the youngest age-bracket that can now be incarcerated – that is, 12-year-old children. Given that the minimum age of criminal responsibility was only increased in 2023, there has not been sufficient time to evaluate its impact on First Nations children. Evaluation of the increase to the minimum age of criminal responsibility should be considered following the second stage of implementation when the age is raised to 14 years old.

There are some caveats to these data. ACT is a small jurisdiction, and the total number of children in custody is comparatively small. As such, even small changes in the population of children under supervision or in detention can have large impacts on the data. This was also noted by community members.

On any given day it might be 80% [First Nations children] at Bimberi, but 80% for like a capacity of 22. People think it fits 400 [kids]! But I'm like we've only got five young people there out of 4,500 children and young people in this community. And 3.5% out there identify as Aboriginal and Torres Strait Islander, which out of 14 total residence is five. So just five kids out there. So percentage wise it looks terrible comparatively to our percentage of people [in the community]. But when you break it down, you say, oh, there's only five kids out there. And if we did some intensive case management work, we might be able to actually stop them from going back into Bimberi. (Government Agency)

This is an important point, not just because of the challenges with the data. Given that only a comparatively small number of First Nations children are in detention, intensive case management should be the primary focus, with the aim of, first, avoiding entry into detention, and second, addressing the risk of recidivism. Given the small number of children, intensive case management would represent a better return on investment for the ACT Government in immediate and long-term avoided costs.

6.2. Reforms

The over-representation of First Nations children in the ACT youth justice system continues despite a number of important reforms. The most significant reform has been

the increase in the minimum age of criminal responsibility which initially increased to 12 years old and was due to increase to 14 years in mid-2025.²⁸⁸

Additional reforms to youth justice include:

- Ongoing reforms in the Community Services Directorate (CSD), including the introduction of ‘active efforts’ tests when children are charged and/or held on remand
- The introduction of Intensive Adolescent Support Services, which does not require statutory authority and enables children on remand to receive some support services. This service works with children on a voluntary basis, but only if a child is not on a community-based order. There are currently two youth justice teams and the Intensive Adolescent team, but none of these are specifically designed to work with First Nations children.

The ‘active efforts tests’ is to be applied by the Children’s Court to mitigate the impact of conscious or unconscious bias on decision-making prior to a child entering youth detention. It is part of efforts to divert children from youth justice, and to ensure that all efforts are actively pursued to limit the extent to which First Nations people become entrenched in the criminal legal system.

We’ve already built into our legislation going forward the ‘active efforts principle’ so that it can be tested that we did everything possible before going down that path and we’re certainly internally looking at every other way that we... can address for conscious and unconscious bias through a more reflective case discussion, collective decision-making and also making sure that for all Aboriginal and Torres Strait Islander matters we’ve got an Aboriginal and Torres Strait Islander voice in there challenging our thinking from our perspective and ensuring [a] cultural lens. (Government Agency)

However, the most significant reform has been the increase in the minimum age of criminal responsibility. While this reform applies to all children in the ACT, it is expected to have a significant impact on the over-representation of First Nations children.

I’m a big supporter of raising the minimum age of criminal responsibility. I think it’s a really positive step and I think that it will benefit First Nations young people probably in a larger way than it will benefit other groups. (Government Agency)

²⁸⁸ Government and community stakeholders spoke at length about the increase in the minimum age of criminal responsibility being lifted to 14 years old in July 2024, but this did not occur. Instead, it appears that the increase in the minimum age of criminal responsibility to 14 years old will occur by mid-year 2025. See details at <<https://www.abc.net.au/news/2023-11-01/act-age-of-criminal-responsibility-raised-to-14/103051038>>.

6.2.1. *Raising the minimum age of criminal responsibility (MACR) and the Therapeutic Support Panel*

The ACT is the first state or territory to raise the minimum age of criminal responsibility to 14 years using a two-staged approach. The first stage involved raising the minimum age of criminal responsibility to 12 years old to allow the service system to ready itself for the subsequent stage of raising the age to 14 years old in July 2025 (with limited exceptions).²⁸⁹ The *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023* also includes the establishment of a therapeutic support panel that will ‘bring together people in a restorative way to agree to a path forward with the child or young person and, where necessary, provide a mechanism to hold people to account’.²⁹⁰ The therapeutic support panel is comprised of an independent multi-disciplinary team that includes representatives of the ACT Aboriginal and Torres Strait Islander community, ACCOs, and Aboriginal-led government services, that aims to identify and address the ‘unmet needs’ of children aged 10-12 years old, and to provide support – directly or through referrals to other community-based organisations – that can work with children and their families to address the issues contributing to their contact with police.

Currently, the Therapeutic Support Panel can also work with older children (over 12 years old), particularly those from vulnerable cohorts, including children in care and First Nations children. This can involve ‘collaborative care’ (Statutory Authority/Public Body) where the therapeutic panel works in partnership with other directorates. In the context of child protection, for example, the Therapeutic Support Panel can work with CYF to more therapeutically address the needs of dual system impacted children (see Section 5 for a detailed discussion of this topic).

As of October 2024, the Therapeutic Support Panel had received 45 referrals, mostly from CYF and the police. Of the 45 referrals:

- 4 (9%) children were under 12 years old
- 22 (49%) were under 14 years old
- 14 (31%) were First Nations children and young people.

²⁸⁹ The minimum age of criminal responsibility will remain at 12 years old for ‘exceptionally serious and violent offences’ including murder, intentionally inflicting grievous bodily harm, sexual assault in the first degree and act of indecency in the first degree. In a speech to the Legislative Assembly on 9 May 2023, the ACT Attorney General elaborated on these provisions, stating ‘Section 25 of the Criminal Code will reflect an increase to the minimum age of 14 years and provide that a child under 14 is not criminally responsible for an offence unless they are at least 12 years old, engage in conduct constituting one of the four exceptionally serious and intentionally violent offences, the schedule 1 offences, and also know that their conduct is wrong’ (Legislative Assembly for the ACT, Weekly Hansard, 9 May 2023) pp.1073-1074.

²⁹⁰ Legislative Assembly for the ACT, Weekly Hansard (9 May 2023) p.1074.

At the time of stakeholder consultations, the Therapeutic Support Panel was working with 24 children and young people. Of these:

- 10 (42%) were First Nations children and young people; and of the First Nations children and young people, seven (70%) were girls; none were under 12 years old at the time of referral
- 14 (58%) had involvement with CYF; six were under investigation with child protection, six were on care and protection orders, one child was in the process of restoration, and one child had a 'child concern report' that had not met the threshold for intervention.

The children and young people being referred to the Therapeutic Support Panel have overlapping high and complex needs. As part of the multi-disciplinary assessment, the panel assesses the presence of eight risk factors including trauma, housing status, diagnosed disability, diagnosed mental health issue, care and protection involvement, police contact, alcohol and drug use, educational disengagement. On average, children and young people exhibit six of the eight risk factors.

For the most part they've all experienced trauma, family violence. They have suspected developmental delay due to complex developmental trauma and it's what we're seeing in their behaviour. Impulse control, consequential thinking... unstructured and fractured attachment, and if anything, [they] are attracted to other young people and adults who are unsafe, who they know how to bond with and they know what to expect. So this is what we're dealing with and having to think about... most of them live in quite chaotic circumstances where their behaviours [are] survival strategies that have worked for them and while they're still in those environments I don't know if we realistically can think about how much can we expect their behaviours to change when they're only 13 or 14 [years old]? (Statutory Authority/Public Body)

Further, only a small proportion of children referred to the therapeutic panel didn't have ongoing police contact. At the time of data collection, therefore, this was not operating as an effective diversionary option.

Two of the ten that we're working with, don't have ongoing police involvement... If we can get them when we're worried about their behaviour and they haven't been involved with the police that's awesome. Because then let's try and stop that. But the rest of them have constant, very frequent involvement with the police, and they're in and out of Bimberi quite a lot. (Statutory Authority/Public Body)

Government stakeholders acknowledged that a reform of this nature will take time to mature.

It's fair to say that at the moment those processes continue to mature in terms of the frameworks that are in place and I would say certainly with the Therapeutic

Support Panel we're using it at the moment in terms of sort of high risk children and young persons [sic] even where we are also looking at people on the caseload that are above 12 [years old]... we're actually using it as a case management framework where we can. (Government Agency)

The low number of referrals was seen as partly due to a lack of understanding or processes to guide referrals, particularly from ACT Policing. As discussed in Section 7, there may also be issues within the culture of ACT Policing that may be acting as barriers to full engagement with the processes to support raising the age of criminal responsibility.

We'll go and meet with them [ACT Policing] fortnightly, and they'll talk about the kids they're worried about and I'll look on my list and go yep, we know those kids. And if there's a kid that I don't know, we'll say can you send me a referral and we can see if there's something we can do that for that kid... so I've made referrals for them as easy as possible. (Statutory Authority/Public Body)

However, community stakeholders raised concerns with the way the panel works, noting the absence of information on outcomes.

Well, obviously they're doing nothing with the kids [who are] on orders except for this therapeutic panel that we have, but I have no sense of how well that is delivering outcomes and I think we've asked about that a number of times, even from our [organisation] perspective, because I don't know how well resourced they are. (First Nations Organisation)

The voluntary nature of the panel was also queried, particularly given the age of the children who are eligible. 'And of course it's all voluntary, so not many 13-year-olds are going to put their hand up and say, "Yeah, I want to go to the panel and I want you to refer me"' (First Nations Organisation).

Concerns about the capacity of the ACCO sector, and the broader service system, to adequately meet the needs of children with extensive histories of trauma were prevalent across many community consultations, and particularly in relation to the provision of 'therapeutic supports' for children and young people in the youth justice system. These concerns centred primarily on a lack of adequate resourcing.

I'm just wondering whether it's going to put a whole lot of pressure on part of the system that's already under-resourced in terms of Aboriginal organisations' ability to work with children by having that kind of additional group. Not that we want them to go into the youth justice system, but an expectation that their needs are going to be picked up in a sector that's already not resourced enough. (First Nations Organisation)

While raising the age of criminal responsibility, and the implementation of the Therapeutic Support Panel are important reforms to divert children and young people away from the youth justice system, it remains unclear whether the necessary infrastructure exists within the ACT to support these children and young people outside of statutory systems. This is a significant concern, as efforts to divert children and young people from further criminalisation require a systemic approach that is adequately funded so that children and young people with complex needs do not fall through the gaps.

What makes us think that their needs are going to be picked up by that sector? Because they're not going to get charged, so they're not going to necessarily come to the attention of a [specialist service provider]. (First Nations Organisation)

The concern remains that there has been insufficient investment into alternative pathways for diversion, including community programs that can work holistically with children, young people and families during the critical period of 10-14 years old. Without this additional support, the risk remains that children who are diverted via the Therapeutic Support Panel will inevitably return to the justice system as older young offenders, and be subjected to more punitive responses that will only entrench criminalisation.

We're going to 14 (years old) next year and that's just four years less of opportunity [to work with these children]. We've got to find proper diversion... And what's happened between the time they were 10 to 14 years old is they've already sort of been getting into trouble... and they then are almost hardened by the time they're 14. And it's then just a waiting game until they're 18 and they're out of the youth system and into the adult system. (First Nations Organisation)

Recommendation 6.1

In relation to the Therapeutic Support Panel, we recommend:

- a. Investment in the social service infrastructure to support the work of the Therapeutic Support Panel including investment in ACCOs that can work intensively with children and families to ensure children do not enter the youth justice system at later stages of adolescence
- b. Ongoing monitoring and evaluation. This should include at a minimum the regular provision of data on the number of referrals, children's characteristics and type of support offered as well as data necessary for evaluation
- c. An independent evaluation of the impact and efficacy of this model. Such an evaluation should include:

- i. Input from First Nations community leaders and ACCOs, with further input from the First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review
- ii. A longitudinal component to determine whether the Therapeutic Support Panel can effectively divert children from formal youth justice involvement at later stages of adolescence.

This recommendation is dependent on Recommendations 2.1 and 2.2.

Stakeholders also referred to additional initiatives that are being trialled to further support the Minimum Age of Criminal Responsibility (MACR) reform. This includes work by ACT Policing to increase knowledge and understanding within the organisation on the role and function of the Therapeutic Support Panel.

There's a couple of additional components around our practices within ACT Policing. So at the moment as we're looking at our policing model and the guidance for our people around for example the minimum age of criminal responsibility, we are capturing some of those learnings and looking at the training we need to put in place to give greater guidance to our people around MACR. Obviously not only MACR at 12 but also as it moves to MACR 14. (Government Agency)

Further, the Safer Youth Response Service Pilot has been operational since April 2024 to address the need for an after-hours crisis response for children and young people affected by the increase to the MACR, who come to the attention of ACT Policing and who cannot return home for safety or other reasons. The program provides after-hours crisis youth work, emergency accommodation services and case management as needed. Additionally, when an after-hours crisis response is needed for children and young people subject to care and protection orders, support and practical arrangements can be provided by the CYF After Hours Support team.

The other service that's been piloted at the moment is the Safer Youth Response Pilot which is about providing emergency accommodation to youth under the minimum age of criminal responsibility. Because the work we were doing with CSD in the lead up to the introduction of [the minimum age of criminal responsibility at] 12 was that often we're left with kids in care of police because – again that out of hour emergency accommodation – we can't find a responsible parent or guardian and the CYF, without this pilot, didn't have the sort of service there. So that's one that is being trialled at the moment as well. (Government Agency)

This appears to be an important program, but unfortunately there is no publicly available information that can be used to assess its scope and potential effectiveness. We note,

however, that an evaluation of the program is expected to be completed by the end of 2025. The results of this evaluation should be made publicly available.

6.3. The need for greater investment in prevention and early intervention

Here a huge gap is mostly boys with disabilities who are neurodiverse, who are becoming violent in the family home. And the police go 'it's a disability issue, a mental health issue'. Care and protection go 'this isn't abuse or neglect'. And everyone's like, well what are we going to do? Wait for it to become a criminal issue or a care and protection issue? In short, the answer is yes. (Statutory Authority/Public Body)

A key theme across all consultations was the need for more and better resourced prevention and early intervention programs that operate *across* systems, including CYF and JACS.

A lack of early intervention and prevention is a big one. And that means as much as ACT is leading the conversation in a positive light around raising the age of criminal responsibility and talking about a lot of really great positive things, it's one thing to talk, it's another thing to see what actually exists as an early intervention support network. (Statutory Authority/Public Body)

But JACS were talking about early intervention, early intervention early intervention. Wouldn't you refocus what JACS do and target the young people, instead of working with adults? That's the early intervention there... We got to make sure our youth are being supported through our families... But for me, early intervention is with youth and if we can break one or two cycles there the stats may alter in our favour. (First Nations Organisation)

Stakeholders spoke of the need for well-resourced services and supports to address the underlying issues that contribute to cycles of disadvantage and contact with statutory systems, including child protection and youth justice.

And I think my number one thing about preventing young people ending up in the justice system is those trauma and mental health supports so that kids actually are getting the right kind of supports and are able to stay with family, and to stay engaged with education, like those underpinnings that are going to prevent the cycle for young people. And if we're ever going to turn around over-representation then we have to prevent that cycle for young people. (Government Agency)

Currently, there are no ACCOs that are specifically funded to work with children and young people at-risk of youth justice system involvement. While Gudan Gulwan does provide court support to First Nation children this work is unfunded. The absence of

targeted funding that can be directed to prevention and early intervention means that First Nations children in the ACT remain at an increased risk of criminalisation.

I think there really needs to be a pocket of funding to be able to help that because it's so preventative. A lot of the kids that are locked up... whilst they need to have some consequences for the actions, do they really need to be locked up in a facility? (Education Provider).

Unless we have more one on one support and intensive support ...But we need to have people armed with the skills as well to deliver that, that support and agencies. (First Nations Organisation)

To be effective, community needs to know what programs/services are available that can provide support *before* a child has contact with the youth justice system. For some community stakeholders, the lack of accessible information about the services and supports that are available means that critical opportunities for early intervention are being missed.

With the kids like there's no early intervention. When they want to start offering things like programs and all that [the kids are] already in the justice system and then when they're in the justice system they're not engaging with anyone so they're not going to the programs. They need to be reaching out earlier. (Sisters in Spirit Community Dialogue Women)

They don't offer [any supports] until they've already been arrested and are in the system (Sisters in Spirit Community Dialogue Women)

The expanded First Nations Liaison Officer team within ACT Policing (see also Section 7) appears to be the primary source of 'early intervention' for First Nations children.

For me, one of my focus areas is working with our young people and trying to prevent them from entering the justice system. But if they are already in there, how can we work with them to either get them out and stop them reoffending. (Government Agency)

We have youth liaison officers who engage with different kids a lot of them through the PCYC which is one of the only referral mechanisms that we have for vulnerable youth in the ACT. There isn't many, it's probably one of our issues as well, is that one of the reasons that kids don't get diverted is because there is no other option. (Government Agency)

As discussed in Section 7 Policing, these roles have been introduced in recognition that ACT Policing needs to address their poor track record of positively engaging with First Nations communities in the ACT. While there may be scope for the First Nations Liaison Officers to assist in supporting and diverting First Nations children from the youth justice

system, it is unlikely that much will be achieved in the absence of greater investment into ACCOs that can work holistically and intensively with children and their families.

Recommendation 6.2

We recommend that the ACT Government increases investment, on a recurrent basis, to expand the ACCO sector, focussing specifically on ACCOs that will work with First Nations children and families to address the factors that contribute to children's contact with police and the youth justice system and assist with diversionary options. These services should:

- a. Work collaboratively with First Nations communities to identify the areas of need via the mechanisms established under Recommendations 3.5 and 3.8 of our Review
- b. Be funded to work intensively and over longer service periods (greater than 6 months) with children and families, and
- c. Funded on a recurrent basis at a level that is proportional with the needs within the community (see Recommendation 3.7).

This recommendation is dependent on Recommendations 2.1, 2.2 and partially dependent on Recommendations 3.5 and 3.8.

6.4. Lack of diversion options

The low use of cautions and other diversion options for First Nations children in the ACT remains a significant concern. As noted in our First Report, the ACT has the lowest rates of diversion for First Nations children in the country, and this remains the case in the current reporting period. Specifically, in the 2023-24 financial year diversion rates for First Nations children *decreased* to just 8%,²⁹¹ representing a decrease of 27% from the previous financial year. This contrasts with diversion rates for non-Indigenous children which were at 33% in 2023-24, reflecting an increase of almost 14%.²⁹²

ACT Policing have indicated that their policy position is to refer all eligible young people for restorative justice, and that they have further undertaken to refer *a minimum* of 25% of all eligible 18–25-year-old First Nations young people for restorative justice, which

²⁹¹ Australian Productivity Commission (2025) Report on Government Services, Chapter 6 Police Services, Table 6A.12.

²⁹² Australian Productivity Commission (2025) Report on Government Services, Chapter 6 Police Services, Table 6A.12.

aligns with the ACT Government's commitment to reduce recidivism by 25% by 2025. However, the inclusion of a 'minimum diversion target' is inconsistent with the 100% referral rate (for all young people) that ACT Policing state is their policy, and which is outlined in the latest annual report.²⁹³ Data released by ACT Policing shows that between July 2023 and June 2024, of the six First Nations young people who were *eligible* for restorative justice, only three (i.e., 50%) were referred. In contrast, of the 35 non-Indigenous children eligible for restorative justice, all but two children were referred, representing a referral rate of 94.3%.²⁹⁴

Some stakeholders suggested that low referral rates for First Nations children to restorative justice may be due to the absence of established processes within ACT Policing. For example, some participants stated that **all** cases involving First Nations children should be reviewed to ensure that 'active efforts' have been undertaken to support diversion.

So when a brief gets written it goes to a reviewing sergeant. And my question is why [isn't there] one sergeant who reviews all First Nations briefs? And they would be reviewing it not just from the usual evidentiary perspective, but actually having a look at why did [the police] start speaking to that person? Why weren't they cautioned? Why weren't they put through restorative justice? What are other diversionary options that are here that [weren't] explored before the brief [went] up to the court? I definitely think that some review, asking some harder questions is needed, some scrutiny. Whether [the ACT police] can be mature enough to do that or whether they need some external help to do it is something that need to be looked at. It comes back to that training, continuous learning, continuous engagement with ACCOs around their expectations of [the ACT police]. (Government Agency)

These issues are magnified by a perceived lack of resourcing for the restorative justice unit, and a lack of awareness or training within ACT Policing to support restorative justice referrals.

But that area is massively under resourced. That's why the time frames are so long. I think it takes 16 weeks for the referral to be addressed and then it's like 15 months for a conference. So, if you're a victim I wouldn't want to be re-traumatised 16 weeks, let alone 15 months later. I'd be like, 'I've moved on, just let me move on with my life'. But also from a perpetrator standpoint we're not guiding and supporting Mob to break those behaviours. (Government Agency)

²⁹³ ACT Policing (2024) *Annual Report 2023-24*.

<https://police.act.gov.au/_data/assets/pdf_file/0006/273228/20241010_Annual-report-accessible.pdf>.

²⁹⁴ ACT Policing (2024) *Annual Report 2023-24*.

Also just making sure that [police] members are actually getting it into the system and making sure that they're aware of the process as well. That's part of it, but that's a training aspect. Just make a continual, ongoing training aspect to make sure that all the cases that can go into [restorative justice] go into that as well. (Government Agency)

Recommendation 6.3

We recommend that the ACT Government increase funding for the Restorative Justice Unit to limit delays, and to support greater awareness amongst relevant stakeholders of the eligibility criteria and referral pathways into restorative justice conferences.

Another key issue raised by stakeholders is the absence of diversion options that are culturally appropriate. Project 180 run by the Canberra Police and Community Youth Club (PCYC) has recently received additional funding to increase the intake of participants.²⁹⁵ The only First Nations program referred to by stakeholders was Street Beat run by Gulan Gulan.

We do have a program called Street Beat actually that we operate Friday and Saturday from 7pm to 11pm and in that program we had a formal agreement with the police that if anybody comes into contact whilst we're on shift, depending on the situation, we have the capacity to intervene, not be lawyers or any of that, but explain our role and we can escort that young person depending on the circumstances. So we've had that rapport with the police through that space and I've done that on a number of occasions... I've never been knocked back about taking one of those young people home. So we take them to a safe place. That's probably the only arrangement that we've had with my time here. (First Nations Organisation)

While this is clearly a valuable initiative, it cannot address the systemic factors that contribute to First Nations' children's contact with police and youth justice. It is also limited in its ability to divert children, given that it only operates on weekends.

Recommendation 6.4

In relation to police use of diversion we recommend that:

- a. The ACT Government provide additional funding, on a recurrent basis, to support the extension of the community diversion programs

²⁹⁵ ACT Policing (2024) *Annual Report 2023-24*.

- b. Diversion data in the ACT is made publicly available, including the use of cautions and the number of referrals to restorative justice processes by Aboriginal status. This data should be published as a dashboard, with regular updates to ensure transparency and greater accountability
- c. ACT Policing establish a clear process to review all decisions that are made not to utilise diversionary options for young people. Reviews should be undertaken by a single suitably trained senior officer and the reasons for not referring an eligible person should be made publicly available through annual reporting.

Stakeholders pointed to a range of factors that contribute to the lack of diversion options. For some, the ‘human rights focus’ can, paradoxically, act as an impediment to diversion because of the emphasis on only engaging with children with their consent.

The fact that we are so heavy in our human rights actually holds us back a little bit as well. The reason I say that is because everything is consent based, even for a young person. Although that's great and we want them to be leading it, it actually stops [us]. So when that child refuses to take up a diversionary option or take up some kind of therapeutic support, it means that we're left with nothing other than ‘we can make you do this through the court’. So I definitely wonder whether if we had the ability to – and I don't want to say that coppers should be able to kind of send someone off to do something – but at the same time there needs to be a way of diverting them, that is ‘you have to do that’ otherwise you're going to go to court.
(Government Agency)

This is partly a legislative issue grounded in the absence of a clear legal basis for the structure and use of diversionary options for children. For example, while the *Crimes (Restorative Justice) Act 2004* sets out the eligibility criteria for restorative justice conferencing, and the conditions under which ‘suitability’ is to be assessed, there is no positive requirement within the Act that restorative justice should be used as a mechanism to promote diversion, nor that consideration should be given to a person’s First Nations status as part of the ‘suitability’ matrix set out in s36.

In addition, the presence of a strong human rights focus should lead to greater resourcing for early intervention services and programs to better support children, families and communities. As has been noted in research, ‘while there are various limitations to human rights discourses, they provide both an important strategic political tool and set of standards through which arguments can be mounted to change the operation of

juvenile justice institutions'.²⁹⁶ Put simply, the presence of a human rights framework should enhance the provision of diversionary options, not limit them. Indeed, diversion of children in contact with the criminal legal system is one of the key principles underpinning the UN Convention on the Rights of the Child.

Another factor that may be contributing to the low diversion rates is the application of police discretion in the use of cautions which are not officially recorded or not easily accessible.

Obviously you've got police discretion. Now the reality is that our police members may actually be implementing that police discretion and saying, 'Hey, we're aware of what you're doing, don't do this again, just be on your way'. But it won't be recorded. Like it's a highly unstructured thing, it's not linked back to a specific power. So in terms of being able to actually pull out the data, I don't think it's going to be structured in our system. (Government Agency)

The absence of data that disaggregates cautions from other diversionary measures makes it difficult to assess what – if any – impact the 'unstructured' use of cautions is having. It also makes it difficult to understand what is driving the large disparity in diversion rates for First Nations compared to non-Indigenous children. Given the data on over-representation presented in Tables 6.1 to 6.3, however, it seems unlikely that a significant number of children, particularly First Nations children, are being diverted from formal youth justice interventions via 'unrecorded' cautions. Nevertheless, both government and community stakeholders acknowledge the importance of diversion options that are First Nations-led.

Having alternatives to detention, having alternative programs and supports that can engage young people and start to meet the needs that are causing them to engage in the behaviours that are bringing them into the justice system. And if you're setting that kind of capability up that you're allowing the people with the expertise to design what it looks like and giving them flexibility not to fit within the standard box that we might have for what is a justice system function. (Government Agency)

One way that we can reduce recidivism or engagement with police is we need our own unit, our own youth justice Aboriginal unit that's not tied with the youth justice system or the child protection system. We need a system that's operational and that empathises with our people and is also culturally appropriate and knowledgeable. (First Nations Organisation)

²⁹⁶ Cunneen, C., Goldson, B., and Russell, S. (2016) Juvenile justice, young people and human rights in Australia. *Current Issues in Criminal Justice*, 28:2, pp.173-189. <<https://doi.org/10.1080/10345329.2016.12036067>>.

6.5. The Warrumbul Children's Court and legal representation for children

The main issue raised by stakeholders in relation to the Warrumbul Children's Court reflected concerns about inadequate legal representation and support for children. Additional issues pertaining to Warrumbul are also discussed in Section 9.

The absence of a specialist children's solicitor within ALS NSW/ACT was raised by multiple government and community stakeholders as creating challenges for children's access to justice.

I understand that the staff who work for the Public Advocate are quite concerned about the kids in there engaging with their cases, engaging with their lawyers, finding out what's going on and that then impacting on the length of time they stay on remand in there. But that's perhaps kind of anecdotal... it is a shock when you've got a young person who has a court date but they're not really aware what's going on. They haven't talked to their lawyer. That's concerning and might well be having an impact on how long they're staying in there. (Statutory Authority/Public Body)

I think [a specialist children's solicitor] is a great idea... It's hit and miss. So we get some legal representatives for these young people who just still [have] got no fucking idea... so I think it would be fantastic and especially for those Aboriginal kids because some of them are so jaded by their involvement in systems that they really need someone who's adept at showing that they're listening and understanding their circumstances. (Statutory Authority/Public Body)

Community members similarly recounted instances of children either not being provided with legal support or being poorly represented.

He has an intellectual disability, he's 14 but he's like an 8-year-old. Like he filled out his own medical form, like do you have any disabilities, no. Do you have this and that, no. But yes, he does. He has disabilities, he's on medication, but he ticked 'no' for everything because he can't [fill out those forms] by himself. He needs someone there. (Sisters in Spirit Community Dialogue Women)

Young people who, you know, they've read out their (bail) conditions or they've read out what they're getting charged for, they can't understand it. It's about looking at who is reading this out. A lot of the kids don't even know what they're locked up for or how long they're locked up for or what that even means because their literacy is so low. (Education Provider)

And we've had a young person who was on remand for eight to nine months. Remand. We went to court, the final court date and the magistrate threw out most

of those charges. So they're being ill represented too with their lawyers. (First Nations Organisation)

The inconsistent presence of CYF case workers/managers – as delegates of the Minister who has legal guardianship of children in care – is particularly problematic for dual system impacted children, who attend court without their families, and for whom CYF is seen to not always act in their best interests.

[In court] they were rattling off all these charges, about six or eight charges. And they were just saying guilty or not guilty. They [CYPS workers] weren't giving him any advice. They weren't giving him anything. And they kept pressuring him until he just pleaded guilty to all of them. And his CYPS worker's standing to him like, yep guilty. He needed an advocate. I would rather someone, anyone on the street, like a mother to go and stand there at appointments with them so they're not getting manipulated... They knew that that CYPS worker wasn't going to say anything... his friends are just in and out non-stop because there's no advocate. They don't even [refer them to] services like Gudan and stuff like that. They don't put them in because they don't want them to have an advocate. (Sisters in Spirit Community Dialogue Women)

This can lead to unjust outcomes, particularly where children are not provided with information – in accessible formats – about their rights and the consequences of pleading guilty/not guilty.

Our young people often plead guilty because they think they'll get into [Warrumbul] court, they'll get out, you know, they'll be released, et cetera, but they don't get that that sits on their record. They don't get that that follows them for their whole lives. We really need to do more to educate all our mob about legal issues. (First Nations Organisation)

Discussions with children at Bimberi highlights the 'hit and miss' nature of legal representation, with many children reporting not having much contact with their solicitors: 'they send me letters [saying] it got adjourned to this date, court on this date... but I just get them to appear for me. Waste of my time' (Bimberi Young People); and 'They're meant to be a lawyer... Not really helping you... Over the years I just worked it out myself' (Bimberi Young People).

Recommendation 6.5

We recommend that the ACT Government provide funding, on a recurrent basis for the employment of a specialist children's solicitor to sit within ALS NSW/ACT.

6.6. Remand

So that young person spent eight to nine months in there. They should have only spent one month max. Can you imagine the trauma that put on that young person? And the family – because the nan travelled down the auntie travelled down from interstate – and so the trauma that was put on... and his partner had a baby while he was in Bimberi. (First Nations Organisation)

Available data on remand is referred to in section 8.1.2. There is limited publicly available data on the average length of time spent on remand. For example, the OICS Healthy Centre Review found that during the 6-month review period (January to June 2024), of the 87 children detained at Bimberi only nine (10%) had been sentenced. In addition, nearly 63% of children only spent two days or less on remand. Additional data provided by the OICS to Jumbunna shows that children spent an average of 29 days on remand, with a median of one day. As such, a high proportion of children are cycling through Bimberi for very short periods of time.

All of the children who were interviewed for this project were on remand at the time of interviews. Further, stakeholders noted that ‘most of the children in detention in the ACT are on remand’ (Government Agency). In contrast to the data obtained by the OICS, information obtained from the children at Bimberi indicates that the length of time on remand ranged from two weeks to 18 months. It is unclear what is contributing to the over-reliance on remand for children in the ACT, but stakeholders pointed to a small cohort of children who are serious repeat offenders, backlogs in the court system and challenges accessing solicitors for children.

The amount of time children spend on remand has wide ranging implications, including lack of access to supports that may help address their offending behaviours.

The difficulty we have is that we’ve got them in custody, they don’t enter any pleas so we can’t talk to them or support them around their offending behaviour. Then they’re in for an extended period of time, they go to court, they’re either found guilty or plead guilty and then they’re out on time served. So we haven’t been able to do any planning or effectively put in place any transition planning. A lot of the time some of them leave with no ongoing community orders so we have no grounds to provide additional support. (Government Agency)

The lack of support for children on remand raises significant concerns, particularly in light of the high proportion of children that spend time unsentenced in custody, and the length of time that these children are detained. There is an urgent need for the ACT Government to address the factors that contribute to such a high proportion of children being remanded and the absence of support that is available to these children.

The impacts of lengthy periods of remand can also limit children's capacity to participate in culturally significant events, negatively impact on their mental health and wellbeing, and limit opportunities for and access to education.

Can't be there for funerals. Can't be there for birthdays... I'd rather be sentenced so I know when I get out... like I'm in the unknown. And they don't need to take so long in between adjournments. Three months, you're adjourned. Go back. Oh yep, adjourned for another six months. I get they're busy, but fuck, like it's not good for us in here. (Bimberi Young People)

They don't know when they're on remand for so long, they don't know when they're going to get out. So what does that look like? But it also makes it hard for the education as well though. So if you don't know how long that you've got that student for, how are you meant to plan for them? (Education Provider)

Recommendation 6.6

We recommend that the ACT Government urgently undertake an independent review of the use of remand for children – particularly First Nations children. This review should focus on the factors that are contributing to the high proportion of children on remand and how these children can be better supported. The Review should also be informed by any priorities or standards developed on bail and remand by the National Justice Policy Partnership.

6.7. Ongoing issues with Bimberi Youth Justice Centre

Our kids do not belong in that facility. (First Nations Organisation)

Community stakeholders spoke at length about the harmful impacts of detention at Bimberi for First Nations children. Four interrelated issues were identified: the criminogenic nature of youth detention particularly for younger children, compounded by an absence of culturally appropriate supports that contribute to cultural disconnection, and are exacerbated by the absence of First Nations staff that can support children's connection to culture. Community stakeholders also noted challenges with access to education for children in detention, which is covered in Section 4.

There was a consensus from community members that youth detention is criminogenic, in part due to the absence of appropriate rehabilitative supports.

They talk about rehabilitation, rehabilitation, rehabilitation. But there's no rehabilitation within that facility. The only rehabilitation they have is the drug and alcohol rehabilitation where they wean them off the drugs and alcohol. But as for recidivism no, there's no rehabilitation about recidivism. They leave healthier, they come in very unhealthy and they leave healthier, then they're back in about

another week or two. There's only the very rare occasions that the young person does not come back once they're in that system. (First Nations Organisation)

The absence of culturally appropriate rehabilitative options was compounded by a perceived lack of power to be able to provide proper case management to detained children.

They can close down, they can say no you can't go in there, you can't do this. Then Bimberi itself can close down and then we have no contact with that young person. And it's very restricted what we can do. Our young people don't belong there. Our young people are rehabilitated by community and that's places like the Healing Farm if it was allowed to run properly. It was set up to be a residential healing place, but it's not. (First Nations Organisation)

The punitive ethos of youth detention, in combination with a lack of culturally appropriate services and supports was perceived to be contributing to further cultural disconnection for First Nations children.

A lot of them are Canberra based kids. A lot of them have been born and raised here. But also some kids that I've dealt with in there have come from regional communities. Obviously no people here or family here, mob here and obviously being caught doing the crimes within Canberra. (Education Provider)

For our young people at Bimberi they are not allowed to hug their visitor, so mum or dad comes out to see them and they are not allowed to physically touch their child. Now for our kids, what that feels like for them when their mum comes in, their younger sibling comes in to visit them and they're separated by this huge table or they're in what they call a box visit sort of thing where there's no contact? Like why do we do that? Why don't we put more value, more importance on making sure people are connected and build up the connections while they're in custody so they've got something to come out? For many of them they don't have a connection, they don't have family ties. (First Nations Organisation)

While the practice of restricting physical contact during visits appears to have been reversed, this issue was also raised by the ACT Inspector of Custodial Services' (ICS) review of the Bimberi Youth Justice Centre.²⁹⁷ Based on the reflections of community members with significant experience working in Bimberi, concerns remain that the reversal may not be being implemented consistently.

²⁹⁷ ACT Inspector of Custodial Services (2024) A review of a detention place by the ACT Custodial Inspector: Healthy Centre Review of Bimberi Youth Justice Centre 2024, p.10.

The theme of cultural disconnection was prevalent across multiple interviews and across systems, including youth justice and child protection (see Section 5). For some community stakeholders, cultural disconnection was a key contributor to the ‘pipeline’ from child protection to youth justice to adult incarceration.

[But] a mother can't hug her son even though he's done something wrong and he's locked up, he's been removed for whatever (reason). For a mother not to be able to hug as someone who sees them, I mean, that's just devastating for the child, makes a child even more angry. So we have to think about it from a humane point of view of, you know, basic human right to be able to connect with your people. (First Nations Organisation)

I wish our kids could grow up with some cultural knowledge. Because a lot of our kids – especially in the urban environment – they don't know much about that. That's that identity business. But if we could practice more cultural practices that's delivered by a cultural knowledge person that would mean a lot less kids in those environments. I really would love if we undertook ceremony, if there were people out there that can undertake ceremony and show what respect is like and show what consideration is, what love is really like. And we won't have any of those kids in there because they'll have that higher pride with who they are and what they're about... But then it's also about going back to where they come from. How are they going to go back to where they come from if they don't know who they are right now? (First Nations Organisation)

Recommendation 6.7

We recommend that the ACT government in collaboration with First Nations communities and ACCOs (via the mechanisms established under Recommendations 2.1 and 2.2), design a culturally safe youth justice model for First Nations children with a focus on holistic cultural supports to promote rehabilitation and greater cultural connections. This should include investment in ACCOs to design and deliver cultural engagement programs for First Nations children at Bimberi.

This recommendation is dependent on Recommendations 2.1 and 2.2.

Community stakeholders also raised concerns about the staffing at Bimberi, particularly in relation to the training staff receive.

So they're meant to have a Cert IV in Youth Work, which is what they might be working towards. But it's also about what other pre-employment programs do they have to go through to get these positions? And it's also the cultural side of it as well. Because there's been numerous times where I've been in there and [youth

workers] are actually sharing stories about criminal activity with the youth and I think that's not what should be happening. (Education Provider)

In contrast, there was a positive perception of the external providers that undertake cultural engagement work with detained children, with one stakeholder noting 'there's probably four or five Aboriginal people that they engage with to go in there [Bimberi], which is really good' (Education Provider).

The children that we spoke to at Bimberi had mixed views about the staff. For example, one child stated 'It's alright. They just sit you down and you go through it all... Everything you need to know' (Bimberi Young People). Another child, however, indicated that there was not much engagement between staff and children in detention 'they're meant to take you out and do stuff... but they don't even do that. They just sit in their office' (Bimberi Young People).

Recommendation 6.8

We recommend that the ACT Government, expands the existing 'cultural development program' and makes it mandatory for all staff at Bimberi. This training should be offered on a recurrent basis so that staff have opportunities to refresh their knowledge and practice.

6.8. Transition and post-release supports

While our kids are incarcerated we've got all these support people who put their hand up and say we're going to do this and we're going to do that and blah, blah, blah, but then when they get out they're nowhere to be seen. They don't contact them. But when that kid gets out, that support needs to be put in place within that first hour and I've seen it time and time again that if that support is not put [in place] within that first hour of that kid being released, you've got no hope. (Education Provider)

There are recognised gaps in the provision of post-release services for First Nations children. The ACT Government had committed to investing in a throughcare model but progress on the development and implementation of this model is unclear. Nevertheless, some stakeholders within government advocated for a 'hybrid' model run by Youth Justice but with connections into community to support greater engagement with families. However, community members remain sceptical about the applicability and utility of a throughcare model that is not First Nations-led and run.

The throughcare model is just another (thing) that looks good in theory but it's just another tick the box thing. You need Black workers, I don't care if they don't have the qualifications or training, kids are only going to be honest with people they

know and trust, and they don't trust any of them in CYPS. And then who's that throughcare mob going to answer to? CYPS? Because we don't need that either. (Sisters in Spirit Community Dialogue Women)

Community members also noted that there is an absence of culturally appropriate supports for First Nation children transitioning out of Bimberi.

It needs to be a culturally safe place for our mob. We had Narrabundah House, which was community run by mob for mob. And it's the only way because a lot of these kids that are coming out don't have the right role models, mob connections within their close knit community. But if they go into a place... the prime thing would be to take them back onto country, you know, outside of Canberra and say, hey sit out here for a couple of months and you know, introduce you back into society. Because if you've been locked up for so long and which a lot of these kids have, it's the same cycle. (Education Provider)

A number of issues were identified with Narrabundah House. For example, children experienced it as overly restrictive and not providing adequate supports, particularly upon release. 'Obviously they have their rules like no drugs and that in the house. But then they have an 8:30 curfew like we have to be home by 8:30' (Bimberi Young People); and 'They just give us Kmart vouchers. The only thing I buy from Kmart is socks and undies' (Bimberi Young People).

There were also concerns about the staffing at Narrabundah House. Of the four residential centres – two of which are used for children transitioning from youth justice detention – none are specifically for First Nations children. Moreover, community stakeholders noted that even if they were utilised only for First Nations children, there are no First Nations staff working in these units, resulting in a potentially culturally unsafe environment.

The absence of a culturally safe transition model is compounded by the perceived absence of people who can support children in culturally safe ways.

They're not the right people, though, right? They're not the culturally safe people that these people need to be around. All they want is love and care. How hard is that? It's not rocket science. So, you know it's about finding the right fit people for our kids. There might not be people out there, but who's doing the work to try and find these people that can. But who's to say we can't run something or have a place for them to go to that is like that? (Education Provider)

For children at Bimberi, a key concern was the lack of consideration given to their preference to live with kin upon release, with one child stating 'nah, they would rather put them in resi care' (Bimberi Young People). As discussed in Section 5, residential care is often perceived by children as an unsafe environment, which can contribute to 'absconding' or running away from their placements and potentially being in breach of

bail or parole conditions. This was highlighted by another child, who indicated that being released into a residential care unit was a direct contributor to his return to Bimberi.

Before I got out I had a case conference, or whatever you call them with CYPS and I raised everything that I didn't want because, you know, obviously I know what's gonna help me on the outs and I know what's gonna fuck me up. I was like to 'em, I don't want to live in residential care, right? Because I'm bailed there and I can't leave anyways because I'm bailed and I'm with a bunch of strangers I don't fucking know. And then I was like if youse could possibly get me my own house. Because I've been asking for my own house since I was 15 and nine months when I'm eligible for my own house... And then I told him everything I wanted and I didn't want and as soon as I got out they put me into resi care... They didn't do a single thing for me when I was out. The only thing they did for me was my supervision, which is what they have to do. And then, again, I come back in here and the first question is 'oh, why'd you come back?' (Bimberi Young People)

When children are on care and protection orders, decisions on where they will live post-release are determined by CYF or the organisation with care responsibility for the child. These decisions are meant to reflect children's best interests, including their safety. What the above narratives highlight is that for some children, being released to residential care facilities is experienced as an inherently unsafe option that contributes to cycles of reoffending and detention.

In this context, mentoring was also raised by multiple community stakeholders, including criminalised children and adults, as an important component of post-release support that is currently missing in the ACT.

The younger generation need more mentoring to stay on the right track... Especially with the younger kids that are going into juvie (Bimberi), they need more mentoring, to be helped, to set small goals... realistic goals... say getting a job or whatever, helping them get their license and making it easier for them to get these things. These little things will change their life, it'll stop them from wanting to go out and stealing cars, doing this joy riding, when they've got their own car at home, got their license. They're all legit. They're all sweet. (Boomanulla Community Dialogue Men)

When you first get in trouble like there's got to be mentors that can take you under their wing, they can take you back to do stuff. If you get sent to a boys' home straight away all you're thinking is yeah I'm a fucking gangster... But if you get mentored by positive people that are taking you out of that, and showing you what's right, 100% it's gonna change your life. (AMC Mens Group)

So that mentoring, the connection to country, the programs to be able to, you know, instil in them that they can change but also giving them life skills. (Education Provider)

A lack of funding and appropriate resourcing – for staffing, physical infrastructure and the provision of tangible and intangible supports – is a significant factor in the absence of post-release supports.

You've got two green transition officers. How are two transition officers meant to cope with all the kids that are going in and out? You might have 20 kids in, you've got to deal with them, but then you've got 30 that are coming out that you've got to deal with. It's just not possible. (Education Provider)

Recommendation 6.9

We recommend that as part of the current CSD review into the development of a post-release model, specific consideration must be given to the unique needs of First Nations children. The review must continue to incorporate significant consultation with First Nations people, with input from the First Nations bodies established under Recommendations 2.1 and 2.2, and from children and young people who have experienced criminalisation, to ensure that the needs of First Nations children are adequately understood and appropriately addressed.

This recommendation is dependent on Recommendations 2.1 and 2.2.

7. POLICING

At the end of the day it's our community that is suffering so we're trying to build stuff and change things up because the organisation has been around for decades and we're still dealing with the same community. So, like what you've done for 25 years in this role hasn't worked. So let's revisit it, let's reset, let's change our engagement strategy because the community hasn't changed. It's the same mob and we're nowhere near where we need to be. (Government Agency)

This section focusses on the way that community stakeholders have experienced their relationship with ACT Policing, and the factors that community and government stakeholders perceive are contributing to the over-representation of First Nations people in the criminal legal system, specifically via the role of policing. ACT Policing has noted that there have been a range of reviews with multiple recommendations, and that attempting to address all of the concerns that have been raised across these reviews necessitates 'additional funding and resourcing, which is subject to negotiations with ACT Government'. Where appropriate and relevant we have highlighted the need for greater investment by the ACT Government across multiple areas, including policing, to support broader and more meaningful systemic reform.

Policing plays a significant role in the over-representation of First Nations peoples in the criminal legal system, but the situation is particularly unique in the ACT where the Australian Federal Police (AFP) are engaged to deliver 'community policing' through negotiated purchase agreements with the ACT Government. This structure creates a number of complexities, particularly around governance and accountability, and it consequently has implications for the way policing is undertaken, and importantly, for the way community *experiences* policing in the ACT.

They're part of the AFP, which is a different organisation nationally and internationally completely to community policing. And every few years we think, can we have our own community police force? We can't afford it, we don't have the infrastructure, blah, blah, blah. Meanwhile, we have a little offshoot of the AFP that sucks any experience out of ACT policing anyway and a lot of people join knowing that that's really where they want to go. (Courts and Tribunals)

It's about racism. It's a small jurisdiction and once you're on the radar, you can't get off it. And so, when you've got a police force that basically isn't accountable to our government because it's the Feds, the commonwealth police, I think that's a fundamental problem which is not easily fixed (Statutory Authority/Public Body)

Building on the findings from our First Report, this section focusses on community members' views of policing, specifically issues associated with systemic racism and policing culture that influence a range of policing responses. We begin this section with an overview of recent reviews, reports and reforms that have sought to address previously

identified challenges within ACT Policing, before describing data on arrests and diversion rates. The remainder of the section considers the main issues identified by government and community stakeholders, which centre on the following:

- Systemic racism within ACT Policing, including community perceptions of being subjected to over-surveillance, over-policing and targeting based on Aboriginality; a lack of genuine community engagement by ACT Policing, and the culture within ACT Policing that contributes to these perceptions
- Challenges with existing complaints mechanisms, including a perceived lack of accountability within ACT Policing
- Policing family and domestic violence within First Nations communities.

7.1. Response to the Ombudsman's Own Motion Investigation²⁹⁸

The ACT Ombudsman's Own Motion Investigation into ACT Policing's engagement with Aboriginal and Torres Strait Islander communities has been a major catalyst for a range of initiatives that aim to improve ACT Policing's relationship with First Nations communities.²⁹⁹ Among the key issues identified in the Own Motion Investigation was:

- A pervasive lack of trust among community towards police
- A lack of accountability within ACT Policing in relation to systemic racism and a perceived targeting of First Nations peoples
- Ongoing issues with access to complaints processes and lack of transparency in relation to the outcomes of internal investigations when police are accused of improper conduct, and
- Poor record keeping practices, particularly in relation to a person's First Nations status.

²⁹⁸ It is important to note that there have been a range of other reforms and initiatives introduced in the ACT that focus on, or impact, policing. These include the introduction of the *Sexual, Family and Personal Violence Legislation Amendment Bill* (2023), the review into ACT Policing's response to sexual assault, and the introduction of the Family and Domestic Violence Investigations Unit within ACT Policing. While none of these initiatives focus specifically on First Nations people, they are likely to have an impact on First Nations communities. Some of these will be discussed in more detail throughout this section.

²⁹⁹ See: Commonwealth and ACT Ombudsman (2021) *ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community: Volume 1*, Report No. 1 <https://www.ombudsman.gov.au/__data/assets/pdf_file/0016/112408/Attachment-A- FINAL-Report-Vol-1-ACT-Policing-OMI-accessible-A2147380.pdf>; and Commonwealth and ACT Ombudsman (2021) *ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community: Volume 2 Analysis and findings in relation to specific community policing programs and engagement activities*, Report No. 1 <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>.

In response to the Own Motion Investigation ACT Policing have developed the Strategy for Engagement with First Nations People and Communities.³⁰⁰ This strategy sets out six principles that will guide engagement with First Nations communities, with the aim of increasing trust, collaboration and reducing recidivism. These six principles were developed in consultation with First Nations community representatives and ACCOs and are intended to reflect a commitment to ‘enabling reconciliation’, ‘enhancing engagement’ and addressing concerns about a lack of cultural awareness that results in unsafe and harmful interactions with police. In addition, the strategy includes several outcomes that will be measured to track progress towards improved engagement with First Nations communities.

A range of mechanisms have been built into this strategy that have been informed by the recommendations of the Own Motion Investigation. A key initiative has been the expansion of the First Nation Liaison team, from two to four individuals, including a senior liaison officer whose main role is to focus on governance and strengthening relationships across the government and non-government sectors. The aim of this senior role is to ‘embed change’ to promote greater inclusion of First Nations perspectives, and to promote engagement strategies at a systemic level.

The expansion of the First Nations Liaison Officers team has resulted in increased capacity to ‘get more embedded across the agency... and support our members more than previously’ (Government Agency). It also enables greater scope for engaging with community to support diversion.

Our roles, they’re quite unique... mob do have interactions with a whole range of social barriers and challenges. [The First Nations Liaison Officer role is] a conduit between policing and the community to help build and strengthen those relationships, and to support officers or caseworkers with their engagement. We have men and women that can both cater to men’s and women’s business. That was the reason why we’ve got two male and two female (liaison officers) to try and accommodate as best as possible while being culturally sensitive (Government Agency)

Further, the intention of the expanded First Nations Liaison Officers team is to promote genuine engagement with community in ways that may not traditionally be associated with policing. This can include, for example, being able to

... support people that they were seeing out on the road who need support. So, whether that be making trips to the watchhouse when people were arrested, or I

³⁰⁰ ACT Policing (2024) *ACT Policing Strategy for Engagement with First Nations People and Communities 2023-2028*. <https://police.act.gov.au/__data/assets/pdf_file/0007/273949/Signed-ACT_Policing_Strategy_for_Engagement_with_First_Nations_People_and_Communities.pdf>.

know in the last couple of months there's been a number of child removals, and so doing that I guess after removal support and just checking up on clients to see how that's going. If the family or if the young person in particular needs additional supports, like [the liaison officer] role is to kind of connect those dots to what services are best suited to cater to their needs. (Government Agency)

While the expansion of the First Nations Liaison Officer team is a positive step, concerns remain about the function and effectiveness of this role, particularly as it is embedded *within* ACT Policing. Community members, for example, noted that liaison roles are not trusted by community. 'Because they see them as police informants or, you know, they don't see them as one of our mob. They see them as working for the other side' (First Nations Organisation).

There's no doubt that they can create cooperation and trust in both the agency and the community. But then also, there are issues about them being young and not from Canberra, and then also the shifts in their thinking fit into the agency (ACT Policing) rather than influencing the agency. So, we just need to work out ways to empower them and to make them feel comfortable to be able to speak their mind. (Government Agency)

There were mixed views on the impact of the Own Motion Investigation, and the initiatives that have been introduced to address the Ombudsman's recommendations. Some stakeholders reflected a positive view of the cultural change that is underway within ACT Policing, particularly the expansion of the First Nations Liaison team, the addition of a governance role, and the introduction and roll-out of cultural literacy training.

The Ombudsman's Own Motion investigation obviously was the catalyst for a few shifts and changes within ACT policing, one of them being the creation of the senior liaison role, but also the development of a cultural literacy training package which was a big body of work that ran over nine months that police did with (unclear) which saw 750 staff within ACT Policing go through a two day intensive cultural literacy training which [the First Nations team were a] part of... it gave [them] an opportunity to walk that journey with them, but also provide some of [their] own personal and lived experiences, whether that's dealing with police or just, you know, living as a Blakfella. (Government Agency)

These perceived changes to the culture of policing in the ACT extend to the relationship between police and First Nations Liaison Officers, with some stakeholders noting:

Having the workforce engage and participate in that cultural literacy training helps strengthen those relationships. Since then, referrals have been tenfold. People are leaning in more to the [First Nations] team... [The team] being able to share [their] own lived and professional experiences has helped fuel that relationship, people are coming to [the team] instead of [the team] having to lean in as much

with some of the challenges [police are] having with community... But the relationship with the uniform police... from the general duties and up, the relationship is a lot better than people perceive (Government Agency).

Also having more Aboriginal liaison officers working with the AFP... One, it's changing the culture and environment and the mentality internal to AFP and providing cultural training and for them to understand culturally appropriate ways of engaging and dealing with First Nations people... I believe there needs to be a lot more positive community presence. Police wanting to put forward staff or police officers to go out and participate in community events. Show up, be present, wanting to have genuine partnership and genuine engagement with the local community. I believe AFP, Corrections, the watchhouse is given that opportunity. I think that's going to be a really positive... for them to better understand our people and the local community. (First Nations Organisation)

For some community members, however, there is a risk of ongoing stigma associated with the First Nations liaison roles, which can negatively impact on community's willingness to engage.

When you're in that space as well you do lose confidence [from] the community because you're seen as what they call a copper dobber, you're seen as one of those people. It's that stigma attached, you know when you're wearing that little badge. And you're hanging around the coppers. (First Nations Organisation)

This can also contribute to perceptions that First Nations Liaison Officers are not there to support community. 'You don't hear from them unless you've been locked up' (Yeddung Mura Community Dialogue, Male). 'They're useless... In the watch house they won't fucking do anything. They just say, "Do you want a lawyer? We're just here [to] see if you want a lawyer or not". And that's it' (Winnunga Community Dialogue Men).

Another key mechanism introduced by ACT Policing to address ongoing challenges with engagement with First Nations communities has been the establishment of the Chief Police Officer (CPO) Advisory Board and the First Nations Advisory Group. Membership of the Advisory Board consists of ACT Policing Executive members, First Nations Liaison Officers and local Elders. The Advisory board meets bi-monthly and assists with practical information regarding matters such as the use of language and the importance of culture to First Nations communities.

The Advisory Board comprises a number of Elders from the community and we've also got some private sector partnership on the [Board] as well. Basically it's a Board that sits over where we want some community ownership and some community buy-in around a lot of the work. (Government Agency)

The First Nations Advisory Group is described as an 'enterprise-wide, multi-officer level and FNLO working group' that is chaired by the Deputy Chief Police Officer. It sits

underneath the CPO Advisory Board, and its main function appears to be to increase transparency for, and accountability to, First Nations communities.

The First Nations Advisory [Group] comes in to make sure that [the community] has got visibility of what [ACT Policing is] looking at and then how those recommendations are being implemented. It's also about the transparency piece as well, around what police are actually doing and being accountable for that. [ACT Policing] not only reports on the recommendations [of the Ombudsman's investigation], but [they] also make sure that the community is aware of the work that's actually happening more broadly across ACT Policing. (Government Agency)

In February 2025, the ACT Ombudsman published a review of the implementation of the recommendations laid out in the Own Motion Investigation. To date, four recommendations had been fully implemented. These include:

- The development of a strategic plan to support improved engagement with First Nations communities
- Consultation with First Nations communities on when/how it is appropriate to collect identifying information
- A strategy to strengthen cultural awareness training, and
- Amendments to records management policies and procedures to ensure consistency and transparency in recording engagement with members of First Nations communities by ACT Policing.³⁰¹

In reviewing ACT Policing's response to the Own Motion Investigation recommendations, the Ombudsman noted that ACT Policing had undertaken extensive consultation with First Nations communities, particularly in relation to the collection of identifiable data and the development of the strategy for community engagement.³⁰² These initiatives represent a recognition by ACT Policing of the need for cultural change, particularly in engaging with First Nations peoples and communities. We support the Ombudsman's call for ongoing monitoring and evaluation of the strategy to ensure that it is meeting its stated objectives. We also support the call for data collected as part of the monitoring and evaluation framework to be made publicly available to ensure accountability and transparency.

³⁰¹ ACT Ombudsman (2025) Actions Speak – ACT Policing: Implementation of recommendations from our March 2021 report *ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community*. <https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0024/317076/Actions-Speak-9-ACT-Policing-recommendation-implementation-assessment.pdf>.

³⁰² ACT Ombudsman (2025) Actions Speak – ACT Policing.

While ACT Policing has undertaken extensive community consultations in the development of their strategy to improve engagement with First Nations communities, there remain concerns about systemic racism, racial targeting, lack of accountability and transparency within ACT Policing (see also Section 3.1). As we discuss in detail below, the pervasive lack of trust in police – grounded in both historical and contemporary harms perpetrated against First Nations people and communities – requires a whole of system cultural shift that is not just about being ‘culturally aware’ but explicitly anti-racist.

Police target your name because of the history that's involved with, maybe not incarceration, but with contact with police. It's that history. If you've got a name, they target you and they profile you. And that's a systems issue (First Nations Organisation)

7.2. Data

There is very limited publicly available data on policing in the ACT, particularly data disaggregated by Indigenous status. As discussed in Section 3.4, there are ongoing challenges with the identification of people as First Nations. While the Ombudsman’s Own Motion Investigation called for more transparency and accuracy in identifying Aboriginality in police data, the more recent Actions Speak report recognises that First Nations communities are wary of police collecting identifying information due to concerns that the information will be used to further target First Nations people. These concerns were echoed by participants in our stakeholder consultations who noted that often community members are not comfortable identifying to police, or with police recording identifying information.

The key point for us is around the feedback from community. With the Own Motion recommendations, we've certainly looked at that in the context of what we can do with community around people identifying, and at the moment that's certainly one area where we're responding to feedback that we've got from community around really the ability for us to do that effectively, knowing generally from that feedback they don't want to identify. So, I think that's the key point from our perspective around it will be challenging for us. (Government Agency)

As part of that we engaged with community and asked about identifying questions and we were told that it would be a preference not to ask identifying questions and that is because of, unfortunately, that mistrust as to exactly what we would do with that information and how that would lead that interaction, which is obviously incredibly heartbreaking... And so at the moment we don't ask those questions. That includes through the complaints process. (Government Agency)

Issues around identification are fraught and require sensitive and culturally informed responses. For this reason, we have recommended the immediate implementation of a First Nations-led justice body (Recommendation 2.1) that, amongst other things, can provide guidance on how best to address First Nations people's reluctance to identify to police and other elements of the criminal legal system. While issues around identification are a concern across multiple areas in the ACT, there is also a need to ensure that criminal legal system statistics – including those by ACT Policing – enable identification of trends in over-representation. To try to mitigate some of the issues associated with poor data quality, including gaps, inconsistencies and 'not knowing who is where in the system' (Government Agency), JACS has launched the ACT Justice Linked Data Asset Pilot, which is a collaboration between JACS, ACT Policing and Corrections (see also Section 3.3).

I think JACS have recently employed or they're about to employ a data analyst so we can actually provide that data to JACS, and we can actually start to develop ourselves a jurisdictional single point of truth as we move forward. Noting that Corrections data will be more accurate than ours. At least that way we will understand the difference between our data holdings, start to get a better sense of the gap in our data holdings. (Government Agency)

Despite these issues, the available data points to a continuing disparity in the proportion of First Nations people who are proceeded against by police multiple times. As Table 7.1 shows, in 2022-23 First Nations people were proceeded against by police an average of 1.9 times, compared to non-Indigenous people who were proceeded against an average of 1.4 times. This disparity increased in 2023-24, with First Nations people proceeded against an average of 2.1 times compared to an average of 1.3 times for non-Indigenous people. Table 7.1 also shows that while the majority of non-Indigenous offenders were only proceeded against once, a much higher proportion of Aboriginal and Torres Strait Islander offenders were proceeded against multiple times. Data provided by ACT Policing in response to our draft report indicates that in 2024 ACT Policing conducted 3,043 arrests, of which 21% (n=638)³⁰³ were for a person/s who identified as First Nations.

³⁰³ ACT Policing states that these figures do not include persons lodged in custody for intoxication, and that a person may be counted multiple times if arrested more than once.

Table 7.1 Number of times proceeded against by police by Indigenous status

	2022-23		2023-24	
	Aboriginal and Torres Strait Islander people Number (%)	Non-Indigenous people Number (%)	Aboriginal and Torres Strait Islander people Number (%)	Non-Indigenous people Number (%)
1	223 (54.1)	1,740 (82.3)	195 (50.8)	1,767 (83.3)
2	98 (23.8)	256 (12.1)	77 (20.1)	228 (10.8)
3	40 (9.7)	75 (3.5)	53(13.8)	72 (3.4)
4	21 (5.1)	27 (1.3)	23 (6.0)	26 (1.2)
5 or more	28 (6.8)	23 (1.1)	32 (8.3)	33 (1.6)
Mean number of times proceeded against	1.9	1.4	2.1	1.3

* Data sourced from ABS (2025) *Recorded Crime – Offenders, 2023-24, Table 29*.

We note that the work that is underway with the linked data project is a positive initiative which should enable ACT Policing to better identify data gaps and opportunities to improve the quality of data.

Recommendation 7.1

We recommend that the Justice Linked Data Asset Pilot:

- a. Should have input from First Nations-led Data Working Group established via Recommendation 3.11 of this Review (see also Recommendations 3.10 to 3.15)
- b. Should be used to identify data gaps and strategies to address these, and to develop strategies to improve data quality across all justice organisations, including ACT Policing.

This recommendation is dependent on Recommendations 3.10, 3.11, 3.12, 3.13, 3.14 and 3.15.

7.3. Systemic racism within ACT Policing

It doesn't matter what you're standing is in the community, if you're a Blakfella you've got no hope. (First Nations Organisation)

By far the most common issue raised by stakeholders in relation to ACT Policing was systemic racism. As detailed in Section 3, systemic racism is defined as:

the way a society or institution's cultural norms, laws, ideologies, policies, and practices result in inequitable treatment and outcomes. Systemic racism involves entire systems, for example, legal, healthcare, and criminal justice systems, and the various institutions and structures that support their operation. Systemic racism can also happen without specific laws, policies, or practices that keep it in place, where the legacy of those norms, laws, policies, and practices persists in systems long after they have ended.³⁰⁴

Furthermore, as Allison and Cunneen have argued 'systemic racism... may occur regardless of whether individuals hold racist views or whether laws, policies and procedures are intentionally racist.'³⁰⁵ While some stakeholders discussed *individual* instances of racism perpetrated by members of ACT Policing, this section focusses on the ways that First Nations people in particular report experiencing differential and negative treatment by ACT Policing by virtue of their Indigeneity.

The reforms discussed in the previous section had not been introduced at the time of community consultations and stakeholder interviews. However, some stakeholders perceived that the 'Ombudsman report... was a tick and flick. I don't know what's going to come out of those action items' (Government Agency). This speaks to a pervasive feeling amongst community members that systemic racism within policing remains a significant issue.

The biggest and most fundamental one would be racism and racism that exists within the structural systems of policing. Really horrific barriers between I guess those in higher policing such as AFP and then those doing front line work. I'm going to speak in the context of children and young people and there is a real lack of understanding where a young person may be disassociating in the eyes of policing. It's often considered resisting arrest. Where a lot of these children, young people who are impacted by criminalisation do have pretty complex needs in their world. (Statutory Authority/Public Body)

You know, we try to hold ourselves to be a reflection of society. Australian society is somewhat racist and so therefore you are going to have racism within the police force. I would probably say that it's amplified, and the reason I say that is because we predominantly recruit White men. And so therefore I would suggest that you probably get a slight skewing in that direction. I would also suggest that our interactions with First Nations people... sometimes you get a person who's in a heightened state. And so therefore the police officers actually get used to – when

³⁰⁴ AHRC (2024) National Anti-Racism Framework. A roadmap to eliminating racism in Australia, NSW, p.36.

³⁰⁵ Allison, F. and Cunneen, C. (2022) *A framework model for investigating systemic racism*. Law and Justice Hub, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney.

they're dealing with a First Nations person – they start in a heightened state. So, I think that there is a not just a bit of a skewing in our racism – whether it's conscious or unconscious bias – but I think that it probably grows over time as police spend time within the force and dealing with First Nations people. So yes, I do think it's out there. And I do think we need training, and I think that we need to identify it, I think we need to put it on the table. (Government Agency)

Community stakeholders, particularly those who had extensive contact with the police, also reported instances of overt racism. As one participant noted 'They just like to target Black people (Boomanulla Community Dialogue Men). This experience was echoed by other participants.

Like half the cops I've dealt with they're just smart arses. Take the piss out of us all the time... when we're sitting there down in cuffs, like we can't do anything. Like they don't say anything to us when they're arresting us but as soon as we're sitting there in cuffs, because they know that we can't do anything, they sit there, take the piss out of us... Call us like 'Black dogs' and shit and that's fucked up. (Bimberi Young People)

This leads, almost inevitably, to interactions between First Nations people and police marked by hostility and lack of trust, which can result in instances of police use of excessive force.

When my partner committed suicide in custody the police come to my door and knocked on it and said 'Oh just to let you know your partner in crime has necked himself'... It's just putrid... The coppers here, they're corrupt as... For instance, they will bash you in front of a family member if they've got it out for you. They don't care. My little sisters and that was 15, 16 but they've severely bashed us in front of them. The police are no good here. (AMC Womens Group)

I've been bashed by them. I've been assaulted by them. And then they say I assaulted them, for which I received [a term of imprisonment]. But they actually were the ones that assaulted me. Pepper sprayed me, left me in the back of the van for an hour without water. And I was struggling to breathe. I thought I was gonna die. They're pretty heavy handed around here. (Boomanulla Community Dialogue Men)

I've dealt with ACT policing. They broke my ribs last year. So just knowing that they have access to children, to me, they're sick people. These officers... they pad up and they say, 'why are you quiet?' and they rush ya. They're no good. (Sisters in Spirit Community Dialogue Women)

Another common issue raised by community stakeholders is the differential treatment experienced by First nations people.

In the ACT, that mentality of *just lock them up* is what we're seeing. There's also not been a lot of opportunities for the police to really engage with the community here in ACT, to have a better understanding as to why that is, or to find out what systems they have in place, what are their protocols and practices in regards to approaching and arresting Aboriginal and Torres Strait Islander people in the ACT. But based on conversations I've had with the community a lot of people feel that it's racial profiling. That's playing a major part.³⁰⁶ (First Nations Organisation)

This was reinforced by a written submission from ALS NSW/ACT which stated that:

Adverse discretionary decision-making by police is directly linked to the over-representation of Aboriginal people at every stage of the criminal legal process. While we do not hold relevant ACT Policing data, the experiences of our clients in the ACT mirror the experiences of our clients in NSW, where police are more likely to conduct strip searches of Aboriginal people,³⁰⁷ use force against Aboriginal people, and more likely to charge Aboriginal people with criminal offences than to utilise diversionary options, leading to a higher likelihood of imprisonment.³⁰⁸

Overall, community members reflected on a pervasive targeting of First Nations people, including children, by ACT Policing.³⁰⁹ Examples provided by community members included:

- Being pulled over when driving
- Being picked up for 'hanging out' or sleeping rough
- Being stopped, questioned, searched and/or arrested without cause
- Police intentionally provoking a reaction by using racist and derogatory language either directly at the individual or towards family, friends or community
- Use of excessive force
- Police following, chasing and hassling people, including immediately upon release from custody

³⁰⁶ See also 'I think in the ACT the police force are [sic] very much of the idea that push to the courts and let them decide... It's like if we're not sure, put it in front of the court' (Courts and Tribunals).

³⁰⁷ ACT Policing disputes this claim, stating that 'ACT Policing members do not regularly conduct strip searches in the course of their duties. Strip searches are undertaken in certain, necessary circumstances in line with the requirements under the *Crimes Act 1990* and must be approved by a Superintendent level or above prior to taking place'. We note, however, that the issue being raised in the ALS submission is not that police are *regularly* undertaking strip searches, but rather that when these occur it is First Nations people who are more likely to be targeted.

³⁰⁸ ALS NSW/ACT, Written Submission, p.2.

³⁰⁹ In their response ACT Policing disputed the presentation of findings related to systemic racism and stated that the 'Australian Federal Police (AFP) Reconciliation Action Plan includes strategies to promote positive race relations and address discrimination'. ACT Policing further stated that where there are individual instances of racism by its officers, 'this will be managed swiftly through robust reporting frameworks'.

- Police failing to de-escalate situations, including with people known to have mental health challenges or disabilities
- Police overcharging, and/or revoking bail/parole for minor infringements (i.e., missing curfew with a good reason, not having paperwork)
- Police showing up unannounced at people's homes and schools.

In their response to the draft of this Review, ACT Policing stated that:

Use of force is an accepted, governed, trained and controlled police action that is used as a last resort to ensure the safety of the community. While the use of force for police may be necessary at times, ACT Policing members recognise that de-escalation, without the need for force, should always be our first option when responding to an incident. In the vast majority of incidents responded to each day by ACT Policing members, use of force is not required or used.

The ACT Ombudsman's recent Own Motion Investigation into police use of force reviewed 6,255 use of force reports, 201 files of body-worn camera or CCTV footage across 54 separate use of force incidents that had occurred over a five-year period (2019-2024). While the Ombudsman found examples of good practice in community policing and the use of de-escalation, there was also evidence of unprofessionalism, and use of force that was not consistent with ACT Policing policies. Use of force was most likely to be used on people who were intoxicated, experiencing mental health challenges and young people. This is contrary to ACT Policing practice guidance, which specifies that use of force should not be used on young people unless a police officer believes 'on reasonable grounds it is essential to safely transport the child to protect the welfare and/or security of the child or any other person'.³¹⁰ Where use of force was utilised with young people, police interactions were often – but not always – characterised by police antagonism which escalated situations where a young person was already handcuffed and/or complying with police requests.

One of the key findings from the Ombudsman's Own Motion Investigation was the absence of quality data, which included inconsistencies in the way that use of force was reported. Furthermore, ACT Policing did not provide data to the Ombudsman that would have enabled an assessment of whether use of force is more likely to be used against First Nations people.

Use of excessive force was also highlighted in a series published in The Canberra times, which also reported multiple examples of police officers in the ACT using racist, abusive and degrading language towards First Nations people in their custody. While we acknowledge ACT Policing's statement that most interactions between police officers

³¹⁰ CO3 cited in ACT Ombudsman (2025) p.52.

and the community do not entail use of force, it is nevertheless an issue that continues to impact certain segments of the community. As participants in our consultations highlighted, First Nations peoples *experience* use of force in their interactions with ACT Policing.³¹¹

The impacts of this targeting can be pernicious, including entrenchment in the criminal legal system, re-traumatisation, and a lack of support for people to reintegrate and desist from crime. It also directly contributes to the criminalisation of children in care³¹² and what many stakeholders referred to as the CYF to Bimberi to AMC pipeline.

Like I seriously think that is a real problem that there's just nowhere to hide in the ACT. And if you're in CYPS, you know, if you're part of that sector in the ACT, the coppers know where the houses are, they know where to police, you know what I mean? (Statutory Authority/Public Body)

Box 7.1 provides examples from community members of perceived racial targeting by ACT Policing.

Box 7.1 Examples of racial targeting by ACT Policing

All the way back to Primary School they labelled us straight away... Once you get recognised that just stays with you forever. (AMC Mens Group)

...[T]hey're terrible with the kids. They target them. They watch them on camera and see what bus stop they get off and go and meet them there and just get in their faces and provoke them until they snap. (Sisters in Spirit Community Dialogue Women)

And if you're doing all right, they won't give you a pat on the back for it. They'll just keep looking for another way to fucking get you... And when they do that to you, you just build a hatred towards them. (Winnunga Community Dialogue Men)

Once you're on their radar, you cannot get off their radar. Canberra's only a small territory. They know where you live, they know who you associate with. They know everything about you once you're on their radar. (Boomanulla Community Dialogue Men)

³¹¹ In their response to a draft of this Review, ACT Policing stated that sworn members complete mandatory Operational Safety Accreditation on a yearly basis which requires members to demonstrate compliant use of force techniques, as well as conflict de-escalation and negotiation tactics in scenario-based assessments. The Ombudsman's Own Motion Investigation into use of force however, identified the need for more regular training on operational safety obligations and how to enact these in practice.

³¹² See Section 5 of this Report for a detailed examination of care-criminalisation in the ACT.

Ruthless. They're still out there doing it, you know. Still out there picking us up... they'll pick you out of home just to bring you back into that fucking system. And it's sad you know. Because you work so hard to change that way on your own but they keep targeting you. So just, that's all they know how to do. (AMC Mens Group)

It's all the fucking same. If your Black you're a fucking criminal whether you are or you're not. Even if you're not doing crime you still get pulled up. (AMC Mens Group)

Like if they get out, they target them people, cause they put them on a list and they're like oh yep. Then people who have been locked up, they're gonna get locked up again, they're gonna slip up, they're gonna do something so they just target them... (Bimberi Young People)

ACT Policing have indicated that there are 'multi-faceted measures in place to address racism and the perception of racism'. This includes the cultural awareness training delivered to all new appointees, including police recruits, and anti-racism and unconscious bias training delivered by AFP College during police recruit courses. The First Nations Cultural Literacy Training Program that forms part of the *Strategy for Engagement with First Nations Peoples and Communities*³¹³ also covers anti-racism and unconscious bias. Finally, the AFP has introduced a self-paced Inclusion Program consisting of eight modules designed to promote a culture of safety, where people feel connected, respected and engaged. Part of this program is dedicated to First Nations people and encourages AFP personnel to recognise 'unconscious bias, promote social cohesion and inclusion through fostering understanding and partnerships'.³¹⁴

The availability of these 'multi-faceted measures' is important to acknowledge. We also note that the *Strategy for Engagement with First Nations Peoples and Communities* had not been released at the time of our community consultations and as such, there has not been sufficient time for any change to filter through to the way community perceives and interacts with police. These caveats notwithstanding, systemic racism was identified by almost all stakeholders across government and community, highlighting the need for ongoing work to address the culture within policing.

Recommendation 7.2

We recommend that ACT Policing commission an independent evaluation of the implementation and outcomes of the *Strategy for Engagement with First Nations*

³¹³ ACT Policing (2024) *ACT Policing Strategy for Engagement with First Nations People and Communities 2023-2028*. <https://police.act.gov.au/_data/assets/pdf_file/0007/273949/Signed-ACT_Policing_Strategy_for_Engagement_with_First_Nations_People_and_Communities.pdf>.

³¹⁴ ACT Policing response to Jumbunna draft final report. Not publicly available.

People and Communities. The terms of reference for the independent evaluation should be designed in collaboration with First Nations representation (as per Recommendation 2.1 and 2.2 of this Review).

Recommendation 7.3

We recommend that ACT Policing should be a priority area for a systemic racism review as discussed in Recommendation 3.2. This should include, but not be limited to:

- a. the adverse use of police discretion in matters such as use of diversion, use of arrest over summons, access to police bail, the use of minor offences, police stops and use of force
- b. differential responses to family and domestic violence involving First Nations people, particularly victim-survivors
- c. differential responses to First Nations requests for assistance
- d. training and police culture.

This recommendation is dependent on Recommendation 3.2.

We recognise that the legislative framework governing ACT Policing makes the implementation of Recommendation 7.3 challenging. While we are not in a position to dictate how the intent of these recommendations can best be achieved within the unique context of the ACT, we do note that there is scope for the Minister to set policy priorities for the ACT Chief Police Officer, through avenues like Ministerial Directions included within the purchase agreement between the ACT Government and the AFP. Additionally, the ACT Government may negotiate with the Federal Government to introduce oversight mechanisms through Commonwealth regulations. Ultimately, however, the ACT Government is best positioned to determine the most appropriate course of action to achieve the intended outcomes of these recommendations.

7.4. Policing culture

While various stakeholders commented that there have been improvements in the culture of ACT Policing, there is still a widespread view across community and other stakeholders around the need for cultural change: 'Cultural change within my own organisation takes a lot. It is possible but at the same time I definitely think that continuous training needs to occur' (Government Agency).

There are a number of factors that appear to be contributing to this view, including the systemic racism identified in the previous section which feeds into a culture that enables

inappropriate treatment of First Nations peoples, particularly those who are already known to the system.

They call us sluts. I could be walking along the street: 'What are you doing, X? Where you been you slut?'... [These are] uniformed officers... Some of them could be White, some of them could be even our own and they just stand there... you expect them to say something, but nah, they just stand back and let them do what they're gonna do. (AMC Womens Group)

The lack of cultural awareness and cultural safety impacts not just community members, but also First Nations people within the police force.

So, it's an issue even for First Nations staff welfare in police. So, if [someone] is experiencing racism or anything like that, we don't necessarily have the skill set to cater to that need. There's no one in our workforce that can comprehend some of the challenges of experiencing living and working in communities. So, if First Nations staff want to go debrief about that they lean on each other and some other members for cultural supervision because there's no process. But then at what detriment to each other and to our other brothers and sisters across the agency? You know, [this is] just adding to their load as well. So, we're trying to build a process so that cultural supervision and clinical supervision can be incorporated into our remit. (Government Agency)

Recommendation 7.4

We recommend that ACT Policing ensure that First Nations officers – including liaison officers – have access to professional cultural supervision. This supervision needs to be offered as a remunerated service (not as an additional expectation placed on First Nations community members) and should be external to ACT Policing.

These experiences are compounded by a cultural ethos that prioritises law enforcement and community safety, and which lacks the necessary skills to engage with First Nations officers, and with other vulnerable community members in a trauma-informed way.

Often with the children and young people impacted by policing there is that immediate trigger and that fear of 1) am I going to die, 2) where am I going to end up? And then children and young people with complex needs – the policing and corrections they do not hold the adequate qualifications or formal training to be able to respond to the high needs of our children and young people. And so ultimately, we have people who historically have disempowered and harmed First Nations people responding to children and young people with a lack of trauma informed awareness. (Statutory Authority/Public Body)

First Nations people attract a higher level of police attention, leading to more frequent traffic stop searches and arrest. So just that really basic level policing that seems to be overdone. Lack of cultural competency within the police force leading to misunderstandings and escalations during interactions with First Nations people. By that I mean our police force isn't currently trauma informed. We don't have any training regarding trauma informed policing methodologies and therefore they are unable to recognise when someone is giving them a trauma response to an interaction. And I think that that results in a misunderstanding of why someone is presenting in a certain way. (Government Agency.)

In contrast, some stakeholders suggested that community has unrealistic expectations of policing, particularly within the broader social and systemic context that drives the over-representation of First Nations people in statutory systems.

So, The First Nations team is struggling with behavioural management because a lot of their referrals are about families and individuals not being supported through particular community services and programs and [so they're coming to] them to help resolve basic parenting issues, like the kids won't go to school and they're truanting, and then they're doing (unclear) at the local liquor shop, you know. Whereas if other services could support that young person at school, hopefully police don't need to intervene. You know, it's an education issue. The kids are not going to school. It's a parenting issue. Not like because police have to enforce the law. They think that team are miracle workers where there's not enough support. (Government Agency)

From a policing perspective we'll always be sitting there saying there needs to be the big picture view around health, housing, employment, education and when you see disadvantage in those areas that's like you end up with policing in particular being the actual treatment of a symptom... it's a big picture issue that needs to be addressed and if you address those parts a lot of the time the things fall in place where our First Nations kids and First Nations people won't actually come to police attention. They don't end up with us trying to treat a symptom of those issues. (Government Agency)

Some of the negative perceptions of the culture of ACT Policing were associated with the hierarchical nature of policing, combined with an inexperienced workforce³¹⁵ with weak

³¹⁵ ACT Policing have stated that it acknowledges that there is a relatively inexperienced general-duties workforce, and has partnered with the Australian Institute of Police Management to deliver a leadership program specifically for the Inspector/ Senior Team Leader level within ACT Policing. It also offers a Frontline Leadership Program that aims to strengthen members' skills in better assessing and responding to complex operational, procedural and cultural change issues.

ties to local communities operating in an environment where there is deep distrust and fear among First Nations communities.

I love First Nations Liaison Officers, don't get me wrong, but they are very young. They often come through the Directions or the IPROWD³¹⁶ Program, so we're talking about 20-year-olds joining the job. They often don't come from Canberra, they are not known by our community. It takes a long time for them to work up and get respect by the community. (Government Agency)

A few years ago they had a recruitment drive on the basis that if you join you must stay in community policing for two years but at the end of that a lot went. At the moment it's difficult to get many officers beyond two years' experience. I'm fairly scathing about some police conduct but you can see that a lot of it comes from inexperience. (Courts and Tribunals)

These issues can also have a negative impact on First Nations people within the police force, either as uniformed officers, or in liaison roles. As some stakeholders noted, the culture of the police can overwhelm First Nations people, resulting in a form of assimilation into that culture.

I think that for as strong as First Nations culture is, we've been disassembling it for the last 220 years and yet this blue culture that you join is really, really strong. You join a family. And I feel as though I watch First Nations Liaison Officers and sometimes I can see the cultural load sitting on top of their shoulders. They actually feel a pull between their brethren and their community and it's massive. (Government Agency)

Those police come from the college and they come in and they say look we really want to work with the Aboriginal people and we really want to understand more about that, but then the hierarchy from the police say you're police, you're here to serve the pillars of what the police go on: serve the public, protect the public. So they come in with a mindset but then the hierarchy they say no, this is what you're going to do. That's why so many of them leave as well, and that's why so many get burnt out because they come under a different value system and their value systems are then smashed or quashed or whatever once they get in that police mentality. (First Nations Organisation)

My [relative], he's a copper... and he has turned into the biggest White fella. Like he doesn't care anymore about racism in the police force, and that's disgusting...

³¹⁶ The IPROWD (Indigenous Police Recruitment Our Way Delivery) program is a TAFE-run engagement and training program for First Nations police to prepare them for a career in policing.

You'd think that he'd be more understanding to mob but he doesn't care he just sees you as a criminal. (Yeddung Mura Community Dialogue, Female)

The roll out of mandatory cultural competency training for all ACT Policing members and staff was a key recommendation from the Own Motion Investigation and aims to address some of these cultural issues. The *First Nations Cultural Literacy Training Program* was originally developed by an ACCO contracted by ACT Policing, with input from ATSIEB and 'the broader First Nations community'³¹⁷ but has subsequently been adapted in consultation with the First Nations Liaison Officers and other community members.

One of the things that we found was the members really wanted to actually have more interaction. So, we had local Elders come in and do yarning circles with the members. That was really, really valuable. But again, it can't stop there, it needs to be continuous. (Government Agency)

To date, 750 members have participated in the program, including

members from our professional recording and standards... making sure that there is a level of cultural literacy within that complaints handling section so that it's looked through from a First Nations lens, not just like your normal stock standard complaint. (Government Agency)

While this is an important initiative, at the time that community consultations were undertaken there was little knowledge amongst community members of whether the training had been implemented, highlighting the need for greater engagement and communication from ACT Policing.

Historically they haven't done anything like that and the Ombudsman did raise it in the report that they did and I know JACS have been trying to follow up to see where they're at with that recommendation around training and cultural appropriateness. (Sisters in Spirit Community Dialogue Women)

Recommendation 7.5

We recommend in relation to cultural awareness training that

- a. training be provided on a continual basis to all ACT Policing members. This could include a 'refresher' course that is provided yearly to support embedding cultural awareness throughout the organisation.

³¹⁷ ACT Policing Annual Report (2024) p.60.

- b. ACT Policing implement a continuous monitoring framework to assess the impact of the cultural awareness training on policing culture and interactions with First Nations people, and to identify opportunities for training to be further adapted or refined as needed.

The absence of trauma-informed training is another important issue for ACT Policing to consider. ACT Policing have indicated that a research project has been commissioned to “highlight the importance of trauma-informed policing and undertake a survey to capture and assess ACT Policing members’ current understanding and application of trauma-informed policing principles’. The project will also assess ‘organisational culture, current training, policy gaps and attitudes towards trauma-informed practices, with the findings expected to inform the development of a tailored trauma-informed policing framework to guide future training, policies and practices within the AFP. Trauma-informed practice can play a role in minimising the harm that First Nations communities experience when they have contact with policing. While there is a growing recognition of the importance and value of trauma-informed policing,³¹⁸ there nevertheless remains a tension between the requirement to enforce the law and protect the community, and the increasing need for police officers to respond in ways that recognise the potentially harmful and traumatising impacts of police interactions, particularly with cohorts that are already experiencing trauma and mental health distress.³¹⁹ These issues need to be addressed through intensive, and evidence-informed training.

Recommendation 7.6

We recommend that ACT Policing continue to explore ways to support a review of the training continuum to:

- a. Identify gaps in training, particularly in relation to trauma-informed practices
- b. Develop training packages that focus on understanding, identifying and appropriately responding to trauma-based behaviours among different cohorts, including First Nations people

³¹⁸ Burk A (2024) Care ethics and trauma-informed methods: Transforming the institution of policing. *Administrative Theory & Praxis*. <https://doi.org/10.1080/10841806.2024.2420580>; McLachlan K (2024) *Trauma-informed criminal justice: Towards a more compassionate criminal justice system*. Palgrave MacMillan.

³¹⁹ See for example, Morgan M (2024) “The response hasn’t been a human-to-human response, but a system-to-human response”: Health care perspectives of police responses to persons with mental illness in crisis. *Journal of Police and Criminal Psychology* 39, 706-719. <https://doi.org/10.1007/s11896-024-09649-y>.

- c. Ensure that all ACT Policing members have access to training on trauma-informed policing practices.

7.5. Community engagement

Improving the relationship between First Nations communities and ACT Policing is a central aim of the *Strategy for Engagement with First Nations Peoples and Communities*. The strategy emphasises the importance of building trust with community and working collaboratively with ACCOs to better understand the needs of local First Nations communities.

I think a lot of the comms at the moment is word of mouth and so that's for the First Nations Liaison team building their relationships up with other ACCOs and working closely with them so that if there's particular services that we offer or giving advice through to the ACCO who then pass that on to community members because they interact with their client base every day... And it's the nature of police, we come in at the pointy end of the stick, when the shit's hit the fan, for want of a better phrase. Whereas they're dealing with people on a daily basis with all sorts of situations and stuff. So, as things arrive a bit more naturally, we feed them the information so that they can then help with the prevention side so that they don't come to our attention. (Government Agency)

It's engagement, training, speaking with First Nations people and having ACCOs come and spend time with actual frontline areas of policing. Often, we have people come in and they spend time with the people who are already doing the right thing. The people who are sitting in areas that already have great soft skills and things along those lines. (Government Agency)

There remain ongoing challenges, however, in large part due to community distrust of police, which feeds into a perception that ACT Policing is disinterested and/or unwilling to genuinely engage with community and 'not just turn up to make an arrest' (Yeddung Mura Community Dialogue, Female).

I think the police should come into the community a lot more than they do to engage with the community. My mum and that – they have a nanny's group. The police used to come to that group and discuss what the problems were in the community. But that's all stopped. (Yeddung Mura Community Dialogue, Male)

Further, despite the expansion of the First Nations Liaison team, and a clear emphasis within ACT Policing on improving relationships and engagement with First Nations communities, community members still perceive that access to liaison officers is limited.

If coppers know full well that they're going into an Indigenous home, they should be taking an Indigenous officer or worker... There was one bloke years ago... he was a Blakfella who used to work at PCYC as well... When some of our family had problems he would come around and it would de-escalate the situation so much more because you'd sit and he'd have a yarn with you and wouldn't make you feel as though you're being interrogated. But now they don't do that, even if you do identify... They wouldn't offer and say, 'Would you feel more comfortable if we had an Indigenous officer present?'... Even if they did offer it, it wouldn't happen anyways. They'd have you in the van and taken back to the station before an ALO is even available. (Boomanulla Community Dialogue Men)

This may reflect, in part, poor communication from ACT Policing to community not just about the engagement strategy, but importantly, how First Nations community members can access First Nations Liaison Officers.

Recommendation 7.7

We recommend that ACT Policing invest in communication strategies to improve First Nations communities understanding of:

- a. The role of First Nations Liaison Officers
- b. First Nations peoples' rights to access support from First Nations Liaison Officers, and the ways that they can access this support.

7.6. Police accountability

The absence of transparent and readily accessible mechanisms for police accountability was another concern raised by multiple stakeholders. As a government stakeholder noted 'we need more transparency in the police force' (Government Agency). Accountability mechanisms are complicated in the ACT given that policing is 'contracted' to the ACT Government via the AFP through a purchase agreement. ACT Policing is not a branch of the ACT Government and therefore appears to only be accountable to the Minister for Police, Fire and Emergency Services. The extent of this accountability is unclear, with government stakeholders indicating that any changes to the way ACT Policing provides services is subject to existing constitutional provisions that underpin the purchase agreement.

In their response to a draft of this Review, ACT Policing state that they are 'subject to multiple internal and external oversight bodies and actively engages with these agencies'. These include the AFP Complaint Framework, which addresses workplace issues and complaints, and that includes a Resolution Team to manage external complaints. This team also engages with external agencies and organisations, including victim support

services, the Australian Human Rights Commission and the Commonwealth Ombudsman. Information on the ACT Policing website on how to make complaints focusses on the rights of victims of crime to make a complaint about how their case has been managed. There is no mention of how people who are subject to police actions as perpetrators can complain about police actions, including use of excessive force.

External accountability mechanisms referred to by ACT Policing include the Commonwealth and ACT Ombudsman, the National Anti-Corruption Commission (NACC), the ACT Human Rights Commission and the Australian Human Rights Commissions. While all of these mechanisms are available to the general public, accessibility is a recognised issue, particularly for more marginalised and vulnerable groups. Further, while the NACC can theoretically investigate ACT Policing members, its jurisdiction is on corrupt conduct and systemically corrupt conduct. As set out in s8 of *National Anti-Corruption Commission Act 2022* corrupt conduct is defined as any conduct that adversely affects – directly or indirectly – the honest and impartial exercise of performance of any functions or duties, conduct that involves a breach of public trust, conduct that represents an abuse of office, and the misuse of information or documents acquired through public duties. Based on publicly available information, the NACC has not investigated AFP officers for conduct undertaken in the course of their duties, including use of excessive force. It is unclear whether the NACC represents a viable avenue for community members to have complaints against ACT Policing independently investigated.

The primary, and arguably most ‘accessible’ mechanisms for independent oversight of ACT Policing is the Ombudsman who is empowered to investigate complaints against police, including through own motion investigations into how ACT Policing performs its functions. The Ombudsman has significant powers to access information, including through the review of body-worn camera footage, and any other records held by ACT Policing or the AFP. It also has the statutory power to compel people to appear before it to determine whether the actions or conduct of police officers is unlawful, unreasonable, unjust, oppressive, improperly discriminatory or otherwise wrong. The Ombudsman’s Office also has a First Nations hotline, and in recognition of the barriers that First Nations people experience in making complaints about police conduct, has undertaken outreach at AMC and Bimberi to take complaints from people detained at those facilities specifically about ACT Policing. Under the *Ombudsman Act 1979* (Cth) the Ombudsman can transfer a complaint to the AFP on behalf of individuals or can investigate that matter directly.

While the role of the Ombudsman is important, it does not appear to mitigate community perceptions of a lack of transparency, especially in the context of use of excessive force. As the following highlights, while there is some recognition within ACT Policing of the need for more transparency, there remains an unwillingness to allow public scrutiny of policing practices.

We've just set up a panel to review all of our use of force and it's not specifically focused on First Nations, but I would suggest that that will be one of the areas that gets viewed probably more regularly than others due to the vulnerable nature of the people. And ultimately, I did suggest that we actually have a member of the public sit and view that with us, like the body worn camera and things along those lines... we didn't quite get there [at] that stage but we will have independent members viewing those interactions, that body worn camera footage and seeing how our police are interacting with people... Not only whether the use of force was appropriate but whether they were able to speak in a way and interact in a way that is trauma informed. (Government Agency)

The CPO is required to make guidelines for the use of body worn cameras under the Crime (Surveillance Devices) Act 2010, s43C, including a statement about how human rights have been considered in making the guidelines. The ACT Ombudsman's Own Motion Investigation, however, has recommended an immediate review and update to the practice guidelines for body worn cameras (BWC), including clearer guidance on when BWC must have full audio and visual activated and how to properly document reasons for not using BWC in compliance with the *Crimes (Surveillance Devices) Act 2010*. The Ombudsman has also recommended that the updated guidelines should be easily accessible and communicated to all ACT Policing officers. In addition, a recent review by the NSW Law Enforcement Conduct Commission found that strengthened policies on body worn cameras would enhance public trust and recommended that officers *must* activate body-worn cameras, at a minimum, when exercising police powers, or, when it is likely that an interaction may lead to the exercise of police powers.³²⁰

Recommendation 7.8

In relation to the use of body-worn cameras:

- a. We recommend that ACT Policing develop stronger guidelines that are easily accessible by the public and that clearly explain how body worn camera footage can be accessed and the circumstances under which body worn camera cameras do not need to be activated
- b. Consistent with the recommendations by the ACT Ombudsman and the NSW Law Enforcement Conduct Commission, we recommend that body worn

³²⁰ Law Enforcement Conduct Commission (2025) *Review of NSW Police Force body-worn video policy and practice*, Recommendation 4, p.6. Available at: <<https://www.lecc.nsw.gov.au/publications/publications/review-of-nsw-police-force-body-worn-video-policy-and-practice-march-2025.pdf>>. See also <<https://www.lecc.nsw.gov.au/media-hub/media-release-police-watchdog-urges-strengthening-of-body-worn-camera-policy-to-enhance-public-trust>>.

cameras must be activated when exercising police powers, or, when it is likely that an interaction may lead to the exercise of police powers

- c. That all other relevant comments and recommendations from ACT Ombudsman's own motion investigation into ACT Policing's use of force, and the NSW Law Enforcement Conduct Commission Inquiry into policies on body worn cameras, should be considered.

This lack of transparency contributes to community perceptions that police harassment and police use of excessive force against First Nations people is not addressed.

It's the harassment. They turn up unannounced. When they turn up un-announced they enter the premises... they've got no warrants... there's no accountability there... What sort of accountability is there?... Police look after police and it doesn't matter what happens, they look after themselves. (First Nations Organisation)

Furthermore, community members can sometimes be actively discouraged from lodging complaints against police, due to a perceived risk of retaliation and the view that 'most of the time police stick together' (AMC Womens Group).

We do raise complaints with them (ALS) but then they say, 'you know which path you're down if you go to the police station, there's no point'. Because if you're on bail, you're bound to be breached the next day. It's not worth being harassed by them because we're already harassed enough. (AMC Womens Group)

When I told my lawyer what happened at my arrest he was like 'Well let's just get through the court case and then we can discuss it' and then after I still wanted to get into it and he goes, 'It's just not a fight you want to fight'. (Yeddung Mura Community Dialogue, Female)

But not having the police investigate the police... It's just the perceptions even from the community, even if they're above board, it doesn't look good, does it? And you know, you can't have true transparency when you got the police investigate their own people. (First Nations Organisation)

The issues raised in the quotes above raise serious concerns about the mechanisms that are available to hold police accountable in the ACT. As noted at the start of this section, some stakeholders argue that the lack of accountability stems from the fact that policing is not community-based but rather purchased from the Federal Government by way of contract.

The complaints process is viewed by community members as difficult to access and navigate, with investigations lacking transparency. Some community members felt that having to make a complaint at the police station was a deterrent, further limiting First

Nations peoples' access to justice. Other stakeholders noted the need for a clearly articulated, culturally safe process that is shared with community to increase trust and transparency.

Like if there was an incident and a community member wanted to go and discuss that with the officer's superiors – there should be a process or a protocol that if communities feel that the police were inappropriate or could have done things a different way that the police themselves have some kind of program or mechanism... in place so that community felt comfortable and safe enough to go and say, 'Hey, this incident happened, I don't feel it was appropriate or this was mishandled or this was culturally inappropriate'. I think that would make that relationship a lot stronger and for them to feel validated that they can actually go and get an issue raised and be addressed appropriately and quickly. (First Nations Organisation)

Government stakeholders pointed to the expansion of the First Nations Liaison team as one mechanism that aims to increase police accountability in relation to complaints.

We're trying to work with our project lead area about incorporating like an easy English or a guideline that's at a [more basic] reading level so that all walks of life can interpret and navigate the complaint process... whether it's just a basic [complaint] or a sexual assault or what have you to help mob be able to navigate it better. So that's an ongoing thing that will be incorporated and then reviewed and amended as needed. (Government Agency)

There are risks, however, with placing so much of the responsibility on improving police accountability on First Nations Liaison Officers (see also Section 2, Decision-making, accountability and coordination). As noted throughout this section, there are mixed views within community about the value of these roles, and their ability to provide meaningful support particularly in the context of police misconduct: 'With the liaison officers... what weight do they carry within that police mentality?' (First Nations Organisation).

There are also concerns associated with the cultural load placed on First Nations Liaison Officers, and the lack of cultural support that is currently available within ACT Policing. Ultimately, the responsibility for improving accountability and transparency rests with the entire organisation.

Stakeholders also spoke about additional processes that have been trialled to better support community in the complaints process. These include having 'support mechanisms for community members who are putting in complaints in relation to their interactions with police' (Government Agency), and a 'massive online reporting launch... to encourage people to do things more online' (Government Agency). However, the 'support mechanisms for community' have not been clearly articulated, and it is unclear

whether the option of lodging complaints online is going to substantively shift the power dynamics that currently limit First Nations people's access to accountability mechanisms.

In our First Report we noted that an internal review of ACT Police complaint management process, informed by a review and recommendations from the Ombudsman's investigation was being undertaken. 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. We also again note that AFP officers *operating as ACT police* are not subject to complaints of unlawful discrimination under the ACT *Human Rights Commission Act 2005*.

Recommendation 7.9

We recommend the establishment of an independent oversight body with the statutory authority to investigate complaints against ACT Policing and to compel action in response to its investigations. The composition of this body could be considered by the First Nations-led justice body established as part of this Review (see Recommendation 2.1 and 2.2).

This recommendation is dependent on Recommendation 2.1 and 2.2.

7.7. Factors influencing police responses to family and domestic violence

Police responses to family and domestic violence in the ACT remains an area of significant concern. However, it is difficult to access data on the prevalence of family and domestic violence in the ACT. There is a need for the ACT Government to coordinate data collection across services, including policing, child protection and the community-services sector to ensure greater transparency and accuracy about the prevalence of family and domestic violence. As noted by the Domestic and Family Violence Prevention Council Aboriginal and Torres Strait Islander Expert Reference Group:

Data collection should be improved to show a true picture of family and domestic violence affecting the ACT Aboriginal and Torres Strait Islander community... and must demonstrate *not all domestic and family violence experienced by Aboriginal*

*and Torres Strait Islander people is perpetrated by Aboriginal and Torres Strait Islander men.*³²¹

The Australian Institute of Health and Welfare (AIHW) publishes extensive data against the National Plan to End Gender Based Violence, which includes data on recorded crime by state and territory, and for a small number of indicators, is also disaggregated by Indigenous status. However, the latest data release that includes information on First Nations victim-survivors does not include data for the ACT.³²² The data that is available, however, shows that in 2022-23, First Nations women were hospitalised due to family violence assault at a rate of 430.3 per 100,000 which is an increase of 27.4% from the previous year.³²³ Beyond this information, there is little other data that can shed light on the prevalence of family and domestic violence among First Nations women in the ACT.

The Jumbunna First Review noted a range of issues that require ongoing attention, including:

- The importance of integrated responses to family and domestic violence and the need for an integrated case management system accessible to multiple agencies including police, prosecution, legal services, care and protection services, and the community sector
- Issues in relation to the way police respond to family and domestic violence incidents, particularly misidentification of First Nations victim-survivors as perpetrators
- The need for input from First Nations communities and ACCOs regarding best practice responses to family and domestic violence, and the need for First Nations participation at all stages of the design and implementation of measures to address police responses to family and domestic violence
- Gaps in the cultural literacy training program in relation to policing family and domestic violence in First Nations communities.

Many of these issues were also raised in community consultations for this Review. A key concern raised by stakeholders is the large proportion of victim-survivors that do not seek assistance from police or service providers, which can have fatal consequences.

³²¹ Domestic Violence Prevention Council (2024) *The Long Yarn: Findings of the Domestic Violence Prevention Council Aboriginal and Torres Strait Islander Expert Reference Group to update the findings of the We Don't Shoot Our Wounded Report*, p.4 (emphasis added) <https://www.act.gov.au/__data/assets/pdf_file/0004/2622496/The-Long-Yarn-a-report-from-the-DVPC-Aboriginal-and-Torres-Strait-Islander-Expert-Reference-Group-2024.pdf>.

³²² See AIHW (2024) *Family, domestic and sexual violence, National Plan outcomes, Data tables: Recorded Crime – Victims*. Available at <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/data-downloads>>.

³²³ AIHW (2024) *Hospitalisations of First Nations Women*. Available at <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/national-plan-outcomes/national-targets/hospitalisations-of-first-nations-women>>.

There was a death review of domestic and family violence homicides over a 20 year period within the ACT. And what that found was that 75% of those [cases] had never had any police interactions at all. But 100% had coercive control present. So, we're talking about coercive control resulting in homicide. We're not talking about someone who has slapped someone a couple of times, then punched them and then he strangled them and then the homicide occurred. We're talking no police interactions, quite often not even any NGOs being involved. So exactly how we're going to influence and effect change there is questionable, but we're going to have a crack it. (Government Agency)

These issues can be compounded for First Nations communities, where police engagement remains problematic. For example, the Australian National Research Organisation for Women's Safety (ANROWS) found that in Queensland nearly half the women killed by an intimate partner in 2017 had been previously misidentified by police as the perpetrator of violence. ANROWS found that 'racism, poor relationships with local communities, misogyny, and the patriarchal culture of the police service' negatively impacted the responses towards women, including police 'not acting on women's allegations and a lack of compassion or respect in their interactions'.³²⁴

Concerns about misidentification of First Nations victim-survivors as perpetrators were also raised by community members. Not only can victim-survivors be misidentified as perpetrators, but police may also actively advocate for victim-survivors to leave their house without informing them of their rights to remain in the home with their children.

A couple of years ago I had an argument with my partner. I might be the assailant in that particular situation. But I might call [the police] a couple weeks later and *he* might be the assailant. I might be the victim. But because they've already come there and I was the person who was the assailant to begin with, they don't listen to anything I say. They'll remove me from the house. I'm the bad person. Doesn't matter. You just call once and you're not the victim, [then] every single time you call them you're the person that's in the wrong. They don't listen so you don't end up calling. I don't bother to call police at all anymore if I need help. (AMC Womens Group)

[They'd rather remove you] than actually assess the situation and see what's going on. They just remove you to calm the situation pretty much. To de-escalate... And then I realised that my rights were actually, you know, like after six months half is yours, half is theirs. So, I found out that they actually had no right to remove me... And then I actually rang the police and I was like, 'Is this true? I don't actually have

³²⁴ Nancarrow H., Thomas K., Ringland V. and Modini T. (2020) Accurately identifying the 'person most in need of protection' in domestic and family violence law. Sydney: ANROWS, p.79.

to leave?’ And he's like, ‘Well yeah. We just tell you to leave so it de-escalates the situation. Just to calm it down. But really you don't have to leave’. And then after that I was like, I’m not going anywhere. If he’s got a problem, he can leave. The police actually turn around, they’re like ‘Oh, we're sorry mate. She knows her rights now. Either get over it or take a walk’. So yeah, it's just things like that. They don't tell you what they're allowed to do, what they're not allowed to do. If they’ve got the badge, that's it. They'll just tell you what to do, and you're expected just to do what they say and figure out your rights [for yourself]. (AMC Womens Group)

Community members highlighted that policing responses to family and domestic violence contribute to an unwillingness by First Nations victim-survivors to report and engage with police and other service providers due to fear of punitive responses including threats of child removal for ‘failure to protect’.

It comes into a circle. So, if you’re on the CYPS radar you’re meant to seek help and demonstrate that you’re protecting your kids. So you do that. You call the police and they come out and they terrorise you to do a statement then and there. And you're freaking out. You just want the person to leave, you know? And you're scared yourself. They make you feel bad, they blame the victim. They send off an email to CYPS and then you get an appraisal open. You have to have it for 30 days, but you're continuing to try get help. But these people all go have an intervention, like child protection, ACT policing, Legal Aid... You're like, whose side is anyone on? They're saying ‘We just want the best for you. We just want your kids to be safe’. But then when you try to do what they're telling you to do, they use it against you. Next minute the kids are getting taken, you're in the courts and you're traumatised from the removal of your children, that you can't even look at the paper because the paper is written in a not Blakfella way. It's just all these big words that I don't understand (Sisters in Spirit Community Dialogue Women)

I don't understand what's happening there in that space at the moment. So the family's broken down and then [police] come in and they bring DOCS³²⁵ in. And then DOCs turns around and says, ‘Well, you need to relocate’. Now why do I need to relocate and uproot my kids when my family’s just broken? Why do I want to move to another house and start them at another school? Why can’t you just take *him* away from me? I don't understand why they're taking the kids away from the mother. (Sisters in Spirit Community Dialogue Women)

ACT Policing are mandated reporters under s356 of the *Children and Young People Act 2008*, and therefore have a legal obligation to report any suspected sexual abuse and/or

³²⁵ DOCS is the former Department of Child Safety in NSW, but the term is used colloquially to refer to child protection systems.

non-accidental injury to a child. Additionally, ACT Policing have indicated that officers are encouraged to make a voluntary report to CYF in **all** incidents of family and domestic violence where children are present. This approach is consistent with police responses to family and domestic violence in other jurisdictions and reflects a conceptualisation of children's best interests endorsed by various child protection departments in Australia, whereby exposure to family and domestic violence is defined as 'emotional abuse'.³²⁶ Recent data shows that of 1,405 investigations undertaken by child protection in the ACT in 2023-24, 18.1% were for notifications received from police (second only to school personnel at 26.5%).³²⁷

While ACT Policing is not responsible for decisions on whether to progress notifications to an investigation stage, they nevertheless play a significant role in exposing First Nations families to CYF processes that continue to differentially target these families and communities. In 2023-24, First Nations children were more likely than non-Indigenous children to be subjects of a substantiated notification for physical abuse (14.7% vs 6.8%), emotional abuse (31.4% vs 19.9%) and neglect (29.4% vs 26%).³²⁸ Moreover, there is a significant body of research showing that mothers are routinely and systemically punished – via child protection interventions – for 'failure to protect' when their children are exposed to family and domestic violence³²⁹. A broad policy that encourages reporting to CYF in all instances of family and domestic violence where children are present fails to account not only for the multiple ways that mothers attempt to protect their children,³³⁰ but also directly contributes to the further punishment of First Nations victim-survivors.

... [T]he consequences of reporting involve a range of outsiders flooding in to families and communities who have a history of judging Indigenous people harshly. This has included child protection workers exerting a policy and practice on mothers, who are victims of family violence, by removing their children from their care on the basis that they failed to protect their children from witnessing abuse. A major basis for this claim, particularly if this is not the first time the violence has taken place, is that she had prior knowledge of the tendencies of the

³²⁶ AIHW (2024) *Family, domestic and sexual violence: Child protection* <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/child-protection>>.

³²⁷ AIHW (2025) *Child protection Australia 2023-24* Table S3.2. <<https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data>>.

³²⁸ AIHW (2025) *Child protection Australia 2023-24* Table S3.10. <<https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data>>.

³²⁹ Kelton, K., Elrod, N., Kaylor, L., Copeland, M. and Weaver, T. (2020) 'She's just a bad mother': Perceptions of failure to protect children in relationships with intimate partner violence. *Journal of Family Trauma, Child Custody and Child Development*, 17(4): 295-316. <https://doi.org/10.1080/26904586.2020.1826025>.

³³⁰ Jenney, A. (2022) When theoretical frameworks are not good enough: Deconstructing maternal discourses in child protection responses to mothers experiencing intimate partner violence. In B Richardson (Ed), *Mothering on the Edge: A critical examination of mothering within child protection systems*, pp.129-152. Demeter Press.

perpetrator and therefore had a responsibility to take appropriate actions to minimise the risk of harm to herself and the children.³³¹

The risk of child protection intervention in the context of family and domestic violence can also impact on the support that is available to perpetrators.

But it's massive the whole women and children thing... You know, the nephew might be coming out [of AMC] and nan or the sister say but you can't come back here because I'll have CYPS knocking on the door. You are not coming here because I'll have the other booris taken away. And then like brother boy's homeless because there's no safe sleeping shelter. Because they can't go back home because of the fear that DCJ or CYF might intervene. The whole range of stuff, and housing is a cornerstone. So, if we don't have representation at that front line for our mob, people like us, like our team, what's the point of having us? Because we can't do anything because 95% of it is relating to housing issues. We can't do family violence perpetrator support if we can't help people break the barrier, if they've got nowhere to go. It's all intertwined. (Government Agency)

The issues identified by community members are not new, or unknown to the ACT Government and ACT Policing. Similar issues were discussed in the '*We don't shoot our wounded*' report, commissioned by the ACT Government to examine First Nations victim-survivor access to justice and support services.³³² In August 2024, the Domestic Violence Prevention Council Aboriginal and Torres Strait Islander Expert Reference Group released the findings of extensive community consultations into the original recommendations, which have been updated to reflect ongoing community concerns. The updated recommendations emphasise the importance of recognising men as both victims and perpetrators of family and domestic violence, the need for First Nations wrap-around services to support victim-survivors and perpetrators, and the need for First Nations-led research and evaluation to support First Nations people who live with family and domestic violence to access justice.³³³

We note that some of this work may be captured via the ACT Domestic, Family and Sexual Violence Strategy, which is still under development. The ACT Government states that it is already undertaking work to enable 'Aboriginal and Torres Strait Islander focussed early intervention through funding Aboriginal and Torres Strait Islander-led family-centred

³³¹ Cripps K. (2014) Who's failing who? New failure to protect laws in Victoria and the impact on Indigenous mothers and their children. *Indigenous Law Bulletin*, 8(13), p.15.

³³² ACT Victims of Crime Coordinator (2009) '*We don't shoot our wounded...*' Aboriginal and Torres Strait Islander victims of family violence access to justice and access to services in the ACT
<https://www.hrc.act.gov.au/__data/assets/pdf_file/0010/2395216/We-Dont-Shoot-Our-Wounded-2009.pdf>.

³³³ Domestic Violence Prevention Council (2024) The Long Yarn.

healing activities and yarning programs, which provide early intervention support'³³⁴. It further states that work is underway to empower 'Aboriginal and Torres Strait Islander people by supporting initiatives which assist in the process to heal trauma and will improve access of [sic] programs and safety to Aboriginal and Torres Strait Islander women and children'³³⁵. However, this work does not appear to be influencing community perceptions of responses to family and domestic violence, or the availability of culturally appropriate services for First Nations victim-survivors, including children. This is reinforced by the recommendations of the Sexual Assault (Police) Review which found 'little evidence of culturally appropriate practices for engaging with Aboriginal and Torres Strait Islander victim-survivors'.³³⁶

Indeed, one of the key issues identified across all interviews is the continued absence of culturally appropriate support for First Nations victims-survivors. This includes the absence of a First Nations-run refuge or shelter for women and children fleeing violence, but also, the lack of support for women who want to apply for intervention orders against perpetrators.

So usually, the women will take those orders out at the court... we did have a court support officer there, an ALO there. However, that role has since ceased. So yeah... for Aboriginal and Torres Strait Islander women to have someone there at the courts to help them guide them through the process would be amazing. (Government Agency)

We have made a recommendation (Rec 9.7) for First Nations court support for First Nations women in family violence applications. Also to address some of these issues, ACT Policing has introduced a new Family and Domestic Violence Investigations Unit. While it is not focussed specifically on First Nations people, it works with high risk domestic and family violence cases.

It's different to anything we've ever done before in that generally, to come into an investigational area it will be based on a crime – so like grievous bodily harm or attempted murder or something along those lines. What we're going to take is high risk jobs. So, we're going to actually get general duties to do a risk assessment. There may actually not even be an offence disclosed at the house, but the risk assessment for coercive control, lethality, that kind of thing, is through the roof.

³³⁴ Community Services Directorate (2024) ACT Domestic, Family and Sexual Violence Strategy. Consultation Draft, p.13.

³³⁵ ACT Domestic, Family and Sexual Violence Strategy (2024) p.14.

³³⁶ ACT Government (2024) Responding to recommendation 15 of the Listen. Take Action to Prevent, Believe and Heal Report (2021): Sexual assault (Police) review, p.28
<https://www.act.gov.au/__data/assets/pdf_file/0003/2440164/The-Sexual-Assault-Police-Review-Report.pdf>.

So, they'll refer that to us and then we can take a bigger picture look at what's going on in that household. (Government Agency)

Frontline officers in the ACT currently use the Family Violence Risk Assessment Tool (FVRAT)³³⁷ which has been found to be 'moderately effective' at predicting repeated police calls for family and domestic violence incidents in cases that have been assessed as 'high risk'.³³⁸ It should be noted, however, that the existing evidence base for this tool has not tested its validity with First Nations people. In fact, the original research on which the current version of the FVRAT is based included 350 incidents of family and domestic violence, of which only 6% represented First Nations perpetrators and 5% represented First Nations victims. Further, none of the 10 items included in the FVRAT enables an assessment of coercive control.³³⁹ Coercive control represents a *pattern of behaviour* which makes it difficult to identify in one-off interactions.³⁴⁰ It is still a poorly understood concept and subject to a range of misconceptions, including by police. ***The potential for 'coercive control' risk assessments to become simply another instrument for the surveillance and over-policing of First Nations communities is therefore something that requires ongoing consideration by the ACT Government and ACT Policing.***³⁴¹

We note that the ACT Government is currently reviewing the feasibility of introducing a Multi-Agency Risk Assessment and Management Framework (MARAM) similar to what is used in Victoria. This is a positive step, particularly as one of the key principles embedded within the MARAM framework is 'Aboriginal ways of knowing and self-determination' that focusses on a recognition of First Nations peoples' experiences of colonialism, systemic violence and discrimination as drivers of family and domestic violence.³⁴²

The new Family and Domestic Violence Investigations Unit will also work to address the misidentification of First Nations women as perpetrators.

³³⁷ See details at <<https://www.act.gov.au/open/act-domestic-and-family-violence-risk-assessment-framework>>.

³³⁸ Dowling C and Morgan A (2019) Predicting repeat domestic violence: Improving police risk assessment. *Trends & Issues in Crime and Criminal Justice*, No. 581. <https://www.aic.gov.au/sites/default/files/2020-05/ti581_predicting_repeat_domestic_violence.pdf>.

³³⁹ In response to a draft of this Review, ACT Policing have stated that the FVRAT is based on victim responses and does not involve the exercise of professional judgement in determining the risk score, although some professional judgement can be recorded on the form once the risk score has been calculated. ACT Policing have further indicated that the tool considers coercive control behaviours and indicators but is not intended to be used as a comprehensive measure of coercive control.

³⁴⁰ Barlow C, Walklate S, Johnson K and Humphries L (2019) Putting coercive control into practice: Problems and possibilities. *British Journal of Criminology* 60(1): 160-179 <<https://doi.org/10.1093/bjc/azz041>>; Kassing K and Collins A (2025) "Slowly, over time, you completely lose yourself": Conceptualizing coercive control trauma in intimate partner relationships. *Journal of Interpersonal Violence* <<https://doi.org/10.1177/08862605251320998>>.

³⁴¹ See for example, Barlow C (2023) 'How can you capture what is hidden?' Police body-worn cameras and coercive control. *Journal of Gender-Based Violence* 7(1): 163-177 <<https://doi.org/10.1332/239868021X16436467287647>>.

³⁴² No To Violence (nd) *Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework*. <<https://ntv.org.au/wp-content/uploads/2024/10/MARAM-quick-guide-FINAL.pdf>>.

So general duties will still attend at all domestic and family violence incidents, but [the] new unit will take all female offenders, and definitely all First Nations female offenders so that [the unit] can have a look at the job and make sure that the misidentification hasn't occurred. And so that new unit will hopefully be up and running by the end of the year. (Government Agency)

Consistent with the strategy to improve engagement with First Nations communities, the Family and Domestic Violence Unit also includes a First Nations Liaison Officer to provide community input.

[ACT Policing] also put out a domestic and family violence strategy [which was] sent out to the sector, which includes a very large cohort of First Nations people and was able to get that feedback. (Government Agency)

While the introduction of the Family and Domestic Violence Unit is a positive step, it is important that ACT Policing continue to undertake work to address the way that uniformed officers interact with First Nations victim-survivors.

Recommendation 7.10

We recommend that as part of the Domestic, Family and Sexual Violence Strategy, the ACT government commit to

- a. the regular collection and dissemination of data on the prevalence of family and domestic violence in the ACT, including but not limited to, recorded instances of FDV (recorded crime), victimisation rates, and hospitalisations. Where possible, this information should be disaggregated by Indigenous status
- b. exploring how cultural awareness training can mitigate the misidentification of victim-survivors as perpetrators.

8. BAIL

Bail is an important time for people and can provide an opportunity either for change or potentially greater entrenchment within the criminal legal system.

I feel that there's a lot of room for growth in terms of the way that services are connected and the community is connected with the court, especially in terms of things like bail support. Because I really think if there's an aim of reducing recidivism, that bail is a very important time for people... I think ideally the court should be able to harness that motivation for change and then assist people to meaningfully change. (Courts and Tribunals)

In this section of our Report we consider problems with the lack comprehensive bail data. We note the widespread support for a standalone provision in the *Bail Act* which requires consideration of factors related to a person's Indigenous status when determining bail. We also assess the current presumptions scheme in relation bail, particularly in the context of the abolition of the Law Reform and Sentencing Advisory Council and consequentially its Review of the *Bail Act*. We note the widespread support for the expansion of the weekend bail court to Sunday to reduce unnecessary custodies. We discuss the ALS NSW/ACT programs related to Front-Up and the Ngurrumbai Bail support programs, as well as other forms of bail support.

8.1. The Data

8.1.1. Bail

It was widely acknowledged in our community and government consultations that access to relevant data on bail is a problem in the ACT and that better collection of bail statistics would enable evaluation and informed policy decision-making in relation to bail decisions, bail conditions and compliance, and bail support services. Most recently the Standing Committee on Justice and Community Safety recommended that 'the ACT Government better resource data collection that will enable comparable and ongoing information on bail decisions, breaches and the outcomes of such breaches to be made available for the ACT'.³⁴³

³⁴³ Recommendation 15, Legislative Assembly for the Australian Capital Territory Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, Report 30, 10th Assembly, August 2024, p.32. See also submissions to the above inquiry by the ACT Law Society (para 5) and the Justice Reform Initiative (recommendation 6, p.17) available at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-2id>>. See also Jumbunna First Report. ACT Government responses to the Australian Law Reform Commission's Pathways to Justice Report recommendations, pp.35, 50-51.

The limited data available shows fluctuations in the number of Aboriginal and Torres Strait Islander people on supervised bail between 2023 and 2024. Nevertheless, there was a 6.7% increase in the number of Aboriginal and Torres Strait Islander people on supervised bail orders between the 2023 and 2024 September quarters.³⁴⁴ The absence of longitudinal data disaggregated by Indigenous status makes it difficult to determine any trends.

We note, by way of comparison, that NSW data on bail is accessible *online* and includes bail outcomes, offence types, bail conditions, outcomes of bail breaches and breach types. These categories can also be disaggregated by age group, gender and Indigenous status.³⁴⁵ In addition, we also note that data on bail compliance checks by NSW police is also available online and can be disaggregated by age group, gender and Aboriginal and Torres Strait Islander status.³⁴⁶

8.1.2. Remand

As a rate per 100,000 of the relevant population, imprisoned Aboriginal and Torres Strait Islander people in the ACT are 30 times more likely to be unsentenced than their non-Indigenous peers.³⁴⁷ Being in prison on remand is clearly a major issue. More specifically, Aboriginal and Torres Strait Islander men in the ACT are more likely to be in prison remanded in custody than sentenced to a term of imprisonment.³⁴⁸ The smaller number (compared to men) of Aboriginal and Torres Strait Islander women in prison makes definitive comparisons between remand and sentenced more difficult. At the time of the 2024 National Prison Census there were more sentenced Indigenous women than remanded.³⁴⁹ However, other data regularly shows a greater proportion of First Nations women on remand compared to sentenced. For example, the data provided by Corrective Services to the Standing Committee on Justice and Community Safety showed that on 11 June 2024 some 82% of First Nations women in AMC were there on remand.³⁵⁰ Published data on young people held on remand in juvenile detention in the ACT is limited.³⁵¹ The average number of Indigenous children held on remand on any one night in the June Quarter 2024 was 4.6, for sentenced the average was 0.0. The comparable figure for non-

³⁴⁴ ABS (2024) Corrective Services, Australia – September quarter 2024, Table 18.

³⁴⁵ See Bail <<https://bocsar.nsw.gov.au/topic-areas/bail.html>>.

³⁴⁶ See NSW Policing Activity Dashboard <<https://policingactivitytool.bocsar.nsw.gov.au/>>.

³⁴⁷ See Table 8.1 in Appendix 4.

³⁴⁸ The rate per 100,000 for Indigenous men remanded in prison in 2024 was 1,806 compared to Indigenous men sentenced to prison at 1,685. See Table 8.1 in Appendix 4.

³⁴⁹ See Table 8.1 in Appendix 4.

³⁵⁰ Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.8. Similarly, when the Jumbunna research team visited the AMC on 17 Nov 2024 there were more Indigenous women on remand than sentenced. Similarly ACT Inspector of Custodial Services (2019) Healthy Prison Review of the Alexander Maconochie Centre 2019, ACT Government, Canberra, p.151.

³⁵¹ AIHW (2024) Youth Detention Population in Australia 2024, AIHW, Canberra.

Indigenous children on remand was 6.4. There is no rate of remand for Indigenous children available in the data.³⁵²

8.1.3. *Improved bail data*

Being remanded in prison for bail refusal or breaches of bail is one reason for the over-representation of Aboriginal and Torres Strait Islander people in prison. In short, it is difficult to see how longer-term reductions in imprisonment can be made in this area without improved data as a basis for policy formulation and evaluation of law, policy and program reform. The data problem applies to adults and children and young people.

Recommendation 8.1

We recommend that relevant ACT agencies improve their data collection on bail to include information on bail outcomes, offence types, bail conditions, outcomes of bail breaches and breach types, and that this data be disaggregated by age group, gender and Indigenous status.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

8.2. Considerations when determining bail

We noted in our First Report the importance of standalone provisions in bail legislation which specifically require consideration when determining bail of issues arising from a person's Aboriginal and Torres Strait Islander status. The introduction of these provisions is an important recommendation in the ALRC's report (recommendation 5-1). The ALRC referred to the *Bail Act 1977* (VIC) as an example. We found that ALRC recommendation 5-1 for standalone provisions had not been implemented in the ACT.³⁵³

In 2023, the ACT Government referred the *Bail Act 1992* (ACT) for comprehensive review to a then newly established ACT Law Reform and Sentencing Advisory Council. Terms of reference directed 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 was due to report on this referral at the end of November 2024. The Law Reform and Sentencing Advisory Council has now been disbanded and the planned review of the ACT's bail laws cancelled.

³⁵² AIHW (2024) Youth Detention Population in Australia 2024, Tables s22, s27, s36, s40 and s45.

³⁵³ Jumbunna (2024) First Report, pp.46-51.

As it currently stands, Section 22 (criteria for granting bail to adults) and section 23 of the Bail Act (criteria for granting bail to children) of the *Bail Act 1992* (ACT) allow the courts to consider ‘any relevant matter’ when determining bail conditions, including the nature of the offence, a person’s background, the likely effects of refusal, previous bail grants and the strength of evidence against a person. Section 23 of the *Bail Act* also requires consideration of the Youth Justice principles at section 94 of the *Children and Young People Act 2008* (ACT). Section 94(1)(d) requires that ‘if practicable and appropriate, decisions about an Aboriginal or Torres Strait Islander child or young person should be made in a way that involves their community’. There is no standalone requirement in the *Bail Act 1992* (ACT) for consideration when determining bail of issues arising from a person’s Aboriginal and Torres Strait Islander status.

In April 2024 the ACT Legislative Assembly Standing Committee on Justice and Community Safety resolved to conduct an inquiry into the administration of bail. The Committee released its report in August 2024.³⁵⁴ The terms of reference for the inquiry were to report on matters related to support service interaction for people on bail; young people on bail; mental health and bail; supervision of people on bail; prevention of re-offending on bail; dangerous driving offending on bail; presumption of bail; bail support programs; and any other related matter. The Committee made 17 recommendations. The Committee recommended that the *Bail Act* be reformed so as to

- include a hierarchy of objectives for the bail system
- align with the *Human Rights Act 2004* and legislated Charter for Victims, and
- explicitly require the decision to consider Aboriginality, including cultural background, ties to family and place, and cultural obligations, disability, mental health, homelessness.³⁵⁵

The government was due to respond to the Bail Inquiry by 3 December 2024. The Government Response to the Inquiry Report was tabled on 4 February 2025.³⁵⁶ The government response notes that:

Eight recommendations are marked as ‘agreed-in-principle’. This reflects the Government’s broad agreement with the concerns of the Committee but that different ways of meeting the underlying intent of the recommendations are being adopted. This includes where resources may be required and would be subject to

³⁵⁴ Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, Report 30. Available at: <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-4id>>..

³⁵⁵ Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, Recommendation 2, p.vi.

³⁵⁶ ACT Government (2025) Inquiry into the administration of bail – Government Response. Available at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-6id>>.

budget processes. Nine recommendations, and the dissenting recommendation, are marked as ‘noted’. This signifies that the Government is not in a position to agree, for example because outcomes are awaited from current work that may impact future policy direction.³⁵⁷

We noted in our First Report that, ‘Stakeholders in general (and particularly various 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*’.³⁵⁸ This position has been further reinforced in the broader consultation process undertaken during the Second Report, both among legal professionals and the community.

I was interested to see the provision in the Bail Act in Victoria that you extracted [in your First Report]. I've always wondered why we don't have something like that in the Bail Act here if we're serious about trying to reduce over-representation. To have it in the legislation... means you have to touch on it. You can't miss it. So having something like that to be front of mind about taking into account this person's background. (Statutory Authority/Public Body)

It was also suggested that it would be necessary to have the person’s Indigenous background identified in the Bail Consideration Form. At present when the Bail Consideration Form is sent from the police to the DPP there is no indication as to whether the person is First Nations or not.

8.2.1. Disability and Bail

We also draw attention to the ACT Human Rights Commission submission to the Standing Committee on Justice and Community Safety inquiry which noted the *Bail Act* 1992 contains ‘no clear reference to disability’ and that section 22 ‘does not *require* consideration of the disability, mental health or other health needs and circumstances of an accused person’.³⁵⁹ Other submissions to the Standing Committee also drew attention to the importance of recognising disabilities and mental illness when considering bail and imposing bail conditions.³⁶⁰

³⁵⁷ ACT Government (2025) Inquiry into the administration of bail – Government Response, pp.1-2.

³⁵⁸ Jumbunna First Report, p.47.

³⁵⁹ ACT Human Rights Commission submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.3. Available at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-2id>>.

³⁶⁰ Justice Reform Initiative submission to Inquiry into the administration of bail; and Advocacy for Inclusion submission to Inquiry into the administration of bail. Available at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-2id>>.

As noted in section 1.5.2 of this Report, addressing disability justice relates directly to Aboriginal and Torres Strait Islander contact and potential incarceration in the ACT criminal justice system. We support the inclusion of a requirement to consider disability, mental health and other health conditions when making bail decisions.³⁶¹ The ACT Government response has ‘agreed in principle’ to the relevant recommendation in the Standing Committee on Justice and Community Safety Report.

In summary, the ALS NSW/ACT submission to our review noted that:

In our experience, many of our clients who are imprisoned on remand are experiencing homelessness, living with disability and/or experiencing mental health challenges, and are remanded because they are under-served by the human services system, and inadequately supported to meet bail conditions.³⁶²

Recommendation 8.2

We recommend that the ACT government:

- a. amend bail laws 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. The Victorian *Bail Act 1977*, S3A provides a relevant example.
- b. amend bail laws to include standalone provisions that require bail authorities to consider any issues that arise due a person’s disability, mental health and other health conditions.
- c. introduce Sunday sittings of the Magistrates Court for the purposes of bail.

³⁶¹ ‘We recommend that the accused person’s health needs and circumstances be included as a mandatory consideration in the Bail Act, to help guide both the assessment of bail and the provision of appropriate supports, reasonable adjustments and referrals to relevant services’. ACT Human Rights Commission submission to Inquiry into the administration of bail, p.4. We also note that coroner observed the inquest into the death of Ms Brontë Haskins, resources of the bail officers ‘probably did not allow the Court to be provided with the full picture of Brontë’s drug use in the months prior to being granted bail’ and that the bail provisions in the ACT are not ‘designed to have a therapeutic purpose’. See Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.17.

³⁶² ALS NSW/ACT, Written Submission, p.3.

8.3. Bail Presumptions

The *Bail Act 1992* sets out the circumstances and offences for which there is a presumption in favour of bail (Division 2.2), where there is no presumption either for or against (Division 2.3), and where there is presumption against bail (Division 2.4).

The ACT Inspector of Custodial Services has highlighted the issue that a presumption against bail can lead to the risk of unnecessary detention, and that a presumption against bail is also contrary to the National Agreement on Closing the Gap which commits Australian Governments, including the ACT, to reducing the rate of incarceration of both adults and children. The Inspector of Custodial Services states that presumptions against bail

risk a person needlessly being exposed to the initial period of incarceration, which is the period of highest risk of ill treatment, self-harm, as well as causing or exacerbating trauma... Admission and induction are also the most resource intensive periods for places of detention, and wherever possible these resources should be diverted to community-based supports.³⁶³

The ALS NSW/ACT³⁶⁴ has raised issues in relation to the impact on children and young people of the presumption against bail. The ALS NSW/ACT recommended that young people and children who are charged with criminal offences have a presumption in favour of bail, or at a minimum, a neutral presumption toward bail.³⁶⁵ The Legal Aid Commission ACT considers that the current presumptions scheme should be abolished.³⁶⁶

Several submissions also noted the incompatibility between the presumptions scheme and human rights including the presumption of innocence, and the rights of children.³⁶⁷

³⁶³ ACT Inspector of Custodial Services submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail. Available at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-2id>>.

³⁶⁴ ALS NSW/ACT submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail. Available at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-2id>>.

³⁶⁵ ALS NSW/ACT submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.4. The same point was reiterated in the submission to our review. See ALS NSW/ACT, Written Submission, p.3.

³⁶⁶ Legal Aid Commission ACT submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.3. Available at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail#tab2438268-2id>>.

³⁶⁷ Legal Aid Commission ACT submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, pp.3, 4, 6; ACT ICS submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.5; the ACT Human Rights Commission submission to Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail.

The ACT government has acknowledged the disproportionate effect of bail laws on Aboriginal and Torres Strait Islander people, as has the UN Subcommittee on the Prevention of Torture in its report on Australia.³⁶⁸ Given the high remand rates for Aboriginal and Torres Strait Islander people in the ACT it is imperative to know whether the current presumptions scheme is having a detrimental effect on Aboriginal and Torres Strait Islander people accessing bail. It also imperative to know whether making access to bail more difficult combined with the greater use of remand increases community safety. There is some evidence which suggests that remand even for short periods actually contributes to further offending.³⁶⁹

The Law Reform and Sentencing Advisory Council *Review of the Bail Act* had included in its terms of reference a review and consideration of the functioning and appropriateness of presumptions in the Bail Act.³⁷⁰ However, given that the Law Reform and Sentencing Advisory Council has been abolished,³⁷¹ we recommend the following.

Recommendation 8.3

We recommend that the ACT government review the current presumptions scheme in relation to bail specifically for their effect on Aboriginal and Torres Strait Islander people's access to bail and whether the scheme has contributed to community safety. We note that key legal service providers have called for the abolition of the current presumptions scheme.

8.4. Weekend Bail Court

Currently, an accused person taken into police custody and not processed by the Watchhouse by 9am on a Saturday morning must wait until Monday morning at the earliest, even if they were taken into custody on the Friday evening. There was widespread support in our consultations (and particularly from the legal profession broadly) for a bail court to operate on a Sunday.

In my view it's just unacceptable in this day and age that we don't provide a bail service over the weekend beyond Saturday morning. Everyone's on board from the pilot, but the government is not prepared to fund it... treasury couldn't see the value in it. (Courts and Tribunals)

³⁶⁸ Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.9.

³⁶⁹ Justice Reform Initiative submission to Inquiry into the administration of bail, p.17.

³⁷⁰ See details at <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-tenth-assembly/jcs/inquiry-into-administration-bail>>.

³⁷¹ See details at <<https://www.lrsac.act.gov.au/current-projects/bail>>.

They go to the AMC or Bimberi after a certain number of hours. I mean, I was persuaded how important this was by a corrections officer who explained just how awful it is for that person coming into custody and what they have to go through... How they had one person who was mentally unwell, a woman, and they actually secreted her in a room so she didn't have to go through the whole thing. There are people who have been [in prison] before, but for people who enter the first time and who are not going to be remanded in custody – many of those come in. We did figures: a very large percentage of people were never going to be remanded in custody by the court. So, it's not like they were going there anyway. (Courts and Tribunals)

Submissions by Legal Aid ACT and the Inspector of Custodial Services to the Standing Committee on Justice and Community Safety *Inquiry into the administration of bail* also supported the Magistrates Court permanently sitting on Sundays for the purposes of bail.³⁷² The Inspector of Custodial Services noted that:

During the course of our Healthy Centre Review, we also heard from stakeholders positive reports of the pilot program for Sunday bail hearings and how it resulted in many being released on bail who otherwise would have been detained until Monday morning.³⁷³

Legal Aid ACT has warned that holding a person in detention longer than the 48 hours contravened section 17 of the Bail Act, as well as sections 18 and 21 of the ACT *Human Rights Act* 2004. The Standing Committee on Justice and Community Safety recommended that the ACT Government put in place arrangements for the Magistrates Court to permanently sit on Sundays for the purposes of bail (Recommendation 14).³⁷⁴ As we have noted, there is substantial support for weekend court for the purposes of bail.

In recommendation 8.2 we propose that the ACT government introduce Sunday sittings of the Magistrates Court for the purposes of bail.

³⁷² Legal Aid Commission ACT submission to Inquiry into the administration of bail, p.6; ACT ICS submission to Inquiry into the administration of bail.

³⁷³ ACT Inspector of Custodial Services submission to Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail*, p.6. In addition, the OIC (2024) *Healthy Centre Review of Bimberi Youth Justice Centre* found that 'more investment in the broader youth legal system is needed to reduce the numbers of young people on remand. It is likely more bail support programs for young people and the permanent introduction of Sunday bail court would assist, as well as changes to bail laws'. Finding 38, p102. Available at: <<https://www.ics.act.gov.au/reports-and-publications/healthy-prison-reviews/healthy-centre-review-of-bimberi-youth-justice-centre-2024>>.

³⁷⁴ Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail*, p.30.

8.5. Major Bail Support Programs for First Nations People

As a general point we note that economic disadvantage impacts on bail and that this disproportionately affects First Nations people. As was expressed to us: ‘the more resourced applicants for bail are, the better proposal they can put forward to the court about either preventing risk or rehabilitation, and thus the more likely they are to get bailed’ (Statutory Authority/Public Body).

8.5.1. *The Ngurrumbai Bail Support Program*

The Ngurrumbai Bail Support Program, operated by ALS NSW/ACT and funded by the ACT government, provides support to First Nations adults applying for bail, supports people to comply with their bail conditions and provides referrals to other services. It provides a culturally safe support service to First Nations people. As we noted in our First Report, an interim evaluation of the Ngurrumbai program found that when a bail support plan was put in place through the program, the client was ‘highly likely’ to be granted bail, which contributed to a reduction of First Nations people held on remand.³⁷⁵ The Ngurrumbai program helps to avoid problems like the one identified below:

They're signing off on bail that said that they couldn't be in the city. But also one of the other conditions was to report to corrections, which was in the city... Or they just give any address. Like they just say whatever came to their head and then the court go, right, you have to reside there. But like the place didn't even exist. So they would literally just sign anything to get out. (Government Agency)

More recent data from ALS NSW/ACT reported to the ACT government shows that in 2022–2023, the Ngurrumbai service developed 271 bail plans for their clients, and 229 of them were granted bail, a success rate of 85%. In our First Report we noted that stakeholders provided positive feedback about the Ngurrumbai Bail Support program in increasing access to bail and appropriate bail conditions. This was echoed in the further consultations undertaken for the Second report. As ALS NSW/ACT has noted,

The value of the support program is routinely recognised by the judiciary and the broader legal sector. The ACT Chief Magistrate has publicly recognised the Bail Support program... This recognition has been echoed by other magistrates who have called upon program staff during proceedings to assist in their respective decisions to grant bail. We have received increased referrals for Bail Support from Legal Aid Canberra and private law firms. Our staff have also participated in

³⁷⁵ Bartels, et al. (2022) Interim Evaluation of the Ngurrumbai Bail Support Program, Centre for Social Research & Methods, ANU, p.v.

regular meetings with ACT Policing, who are genuinely supportive of the program.³⁷⁶

8.5.2. *Front Up*

There was also widespread support for the Front Up program operated by ALS NSW/ACT. For example,

I just think as an organisation, the ALS, it's doing a much better job... in conjunction with the bail support program and then in conjunction with Front Up... I mean when Front Up first started about eight years ago, it was a really novel idea that a person could come to court instead of presenting to the police station, going through the whole custody process and then having any breach or failure to appear dealt with. Now, in fact it's standard. [During] the bail list you'll have two or three walk ins a day... it means that there's a whole lot of administration that's being saved. People know that they come in and it'll be considered [that] they've turned up is well regarded. So that I think has become an institutionalised positive. (Courts and Tribunals)

Similarly, in the ACT Police submission to the *Inquiry into the administration of bail* it was noted that:

The Front-Up Program is a long-established and mature partnership between ALS and ACT Policing to support First Nations peoples who have outstanding arrests warrants or who have breached bail conditions. Each fortnight, ACT Policing provides a list of people for whom a first instance warrant is in existence. Thereafter, ALS contacts and attempts to negotiate with the person subject of the warrant to co-attend court to resolve the outstanding matter, thereby diverting the person from police custody.³⁷⁷

We are also aware that the Front Up program has moved to include breach of bail so that breach of bail issues can be worked through via Front Up rather than with police. 'It's only just started but it will be interesting to see how that changes the number of interactions that police have with First Nations people around breach of bail if that work is successful' (Government Agency).

³⁷⁶ ALS NSW/ACT submission to Inquiry into the administration of bail, p.3.

³⁷⁷ ACT Policing submission to Inquiry into the administration of bail.

8.5.3. *Issues to be addressed: Children and young people*

We noted in our First Report that a significant gap in current initiatives is that the Ngurrumbai bail support program is only available for adults. The same point was reiterated strongly in further consultations. ‘They’re non-existent for young people... there’s no bail support program for young people which just blows my mind’ (Courts and Tribunals)

Numerous submissions to the *Inquiry into the administration of bail* recommended expanding the Ngurrumbai program to children and young people.³⁷⁸ The Committee recommended in its Report that the ACT Government work with Aboriginal and Torres Strait Islander people to co-design a bail support program for young Indigenous Australians.³⁷⁹

A problem identified in our consultations is that the existing program is funded by JACS. Under the current funding agreement with JACS, the Ngurrumbai Bail Support Program is not available for children and young people. A separate Directorate, CSD has responsibility for youth justice. We note there is an opportunity here for inter-directorate collaboration between the two Directorates to ensure First Nations young people in the justice system can access initiatives.

The absence of bail support for First Nations young people is particularly problematic.³⁸⁰ It is recognised that criminal legal systems can themselves be potentially criminogenic, with early contact being one of the key predictors of future offending.³⁸¹ Bail support not only has the more immediate effect of reducing the potential remand population, it can also have a longer term effect of decreasing the likelihood of entrenchment and over-representation in youth and adult prison systems. The ACT Government response has agreed ‘in principle’ to the relevant recommendation in the Standing Committee on Justice and Community Safety Report on co-designing a bail support program for young Indigenous Australians.

³⁷⁸ For example, the JRI, ALS and Inspector of Custodial Services submissions to Inquiry into the administration of bail.

³⁷⁹ Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, Recommendation 8, p.vi. The Committee also recommended that the ACT Government introduce an early intervention program for people who are at risk of not complying with bail orders with a focus on young people (Recommendation 10).

³⁸⁰ For example, it has been noted that 17.3% of all police apprehensions for breach of bail involved young people under the age of 18 years (there was no specific data for First Nations young people). Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, p.25.

³⁸¹ See, for example, Chen, S., et al, (2005) ‘The Transition from Juvenile to Adult Criminal Careers’, Crime and Justice Bulletin No 86, BOCSAR, Sydney; Payne, J. (2007) Recidivism in Australia: Findings and Future Research, Research and Public Policy Series No. 80, Canberra: Australian Institute of Criminology.

Recommendation 8.4

We recommend that the ACT government expand the Ngurrumbai Bail Support Program to provide services to children and young people. We recommend collaboration between relevant ACT Directorates to facilitate this expansion.

8.5.4. ACTCS bail officers and bail support plans

There are three bail officer positions who aim to provide a greater degree of case management and support for accused persons through the introduction of individualised, person-centric bail support plans for those subject to a supervised Bail Order for a period of greater than four weeks.³⁸² Bail support plans are developed collaboratively with the accused person to realise an individualised plan that identifies their immediate, basic welfare and social needs, and sets goals to assist successful completion of their bail period.³⁸³ Nine additional courses³⁸⁴ were introduced during 2023-24 as mandatory training for all bail officers to provide a greater degree of case management and support.

8.5.5. Issues to be addressed: Improved support and case management with bail support programs

One of the issues raised by several people we spoke with during our consultations was the need to develop and improve the case management elements of bail support programs. For example:

There is bail support going on and is something that is of assistance in deciding whether to grant someone bail or not... So [it is] fulfilling those functions... [and] also fulfilling the function of connecting people and referring people. [However] I would really prefer if there a more structured program in terms of bail support... a bail support program that's actually very deliberate and sits down with people in a sophisticated way and has them identify goals that are meaningful in their own lives so that they have a set number of goals and then provides referral pathways and support in terms of accessing culturally specific services. (Courts and Tribunals)

³⁸² JACS (2024) Annual Report 2023-24, ACT Government, p.82.

³⁸³ JACS (2024) Annual Report 2023-24, p.65.

³⁸⁴ Mental health first aid training, family and domestic violence training, situational awareness training, drug awareness and testing, managing people who sexually offend training, managing non-compliance and case management and motivational interviewing. JACS (2024) Annual Report 2023-24, p.82.

We make no particular recommendation in relation to this point other than to note its importance for all bail support programs. We suggest that programs may wish to take on-board these views within the context of their funding and resources, and consider how a more case-management focussed approach and improved reporting back to the courts might be achieved.

8.6. Other First Nations bail support

8.6.1. External reporting sites

We cover the importance of external reporting sites more fully later in this Report. Here we note that in 2024 the scheme was expanded to allow supervision reporting for First Nations people on bail to Yeddung Mura, Winnunga and CAHMA (Canberra Alliance for Harm Minimisation and Advocacy). This also provides the opportunity to access other programs available at these centres.

8.6.2. Indigenous specific programs

Other programs which can include Aboriginal and Torres Strait Islander people on bail include Yarrabi Bamirr, Empowerment Yarning Circles and (intermittently) the Ngunnawal Bush Healing Farm.

As was noted in our consultations ‘the real gap is the availability of actual programs’.

So what I'm trying to say is, yes, we have the bail support program through the ALS but really the extent of that program is giving people a lift to and from court and connecting them with existing services. Now if those services don't exist, they can't be connected with them if that makes sense. (Courts and Tribunals)

8.6.3. Accommodation

Homelessness and lack of access to appropriate housing is a well-known barrier to accessing bail and was identified as such in our consultation processes. The Justice Housing Program (JHP) introduced in 2020 provides 10 transitional shared accommodation houses for people both leaving the AMC and for people who would have otherwise been denied bail. Accommodation is provided for up to three months and assists people to find more permanent accommodation and access community services. The ACT government advised that in 2023 the JHP supported 89 participants of which 33 were on bail. It is unknown how many of these people were First Nations. It also appears that most of the 33 on bail were released from AMC under bail orders (i.e. they were already remanded in prison). An evaluation of the JHP showed that 31% of former

residents over a period between 2020 and 2023 were First Nations. The evaluation also recommended further investment in housing options for people exiting prison.³⁸⁵

The Transitional Housing Program operated by Yeddung Mura also provides housing for Aboriginal and Torres Strait Islander people exiting the AMC, although it is not clear whether this includes people released on bail. The *Inquiry into the administration of bail* recommended that the ACT Government increase the availability of the Justice Housing Program to address the shortfall in bail accommodation, particularly noting the priority cohorts (which includes Aboriginal and Torres Strait Islander people).³⁸⁶

We return to the relative absence of accommodation options specifically for women later in this Report.

8.6.4. Other non-Indigenous bail support

Improvements in other non-Indigenous bail support services might also have a positive impact for Aboriginal and Torres Strait Islander people. These have been extensively canvassed by the Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail*. These improvements included, for example, further investment into ‘wraparound’ bail support programs for all people on bail in the ACT and an increase in the number of bail officers.

In summary, earlier recommendations from Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail*, although not specific to First Nations people, are still relevant and would have a positive impact for Aboriginal and Torres Strait Islander people. In particular, we note recommendations 9, 10, 11, 12 and 13.³⁸⁷

Recommendation 8.5

Noting the ACT government’s response to the Report of the Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail*, we

³⁸⁵ Taylor, H., et al., (2023) Process Evaluation of the Justice Housing Program, ANU, p.21.

³⁸⁶ Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail*, Recommendation 13, p.vii.

³⁸⁷ Recommendation 9: the ACT Government implement a ‘wraparound’ bail support program for all people on bail in the ACT. Recommendation 10: the ACT Government introduce an early intervention program for people who are at risk of not complying with bail orders with a focus on young people. Recommendation 11: the ACT Government increase the number of bail officers. Recommendation 12: the ACT government shift towards establishing a system that allows each person in the justice system to have a single case manager in the courts, to assist people with access and referrals to necessary legal, mental health, addiction and disability support programs. Recommendation 13: the ACT Government increase the availability of the Justice Housing Program to address the shortfall in bail accommodation, particularly noting the priority cohorts.

recommend that the ACT government implement recommendations 9, 10, 11, 12 and 13 of the Standing Committee's Report.

The ACT Government response has either agreed 'in principle' or 'noted' the relevant recommendations in the Standing Committee on Justice and Community Safety Report.

9. COURTS AND SENTENCING

This section on courts and sentencing begins by discussing the available data and limitations in relation to First Nations defendants. Following sections deal with Aboriginal circle courts including the Supreme Court Pilot Circle Sentencing List, and options for the presentation of unique factors in the courts including Indigenous Experience Reports. There is also discussion on the Drug and Alcohol Sentencing List, and Aboriginal women's access to Family Violence Orders. The final section considers other matters which were raised in consultations and submissions related to sentencing, diversion and procedural reforms. We have included relevant recommendations aimed at reducing Aboriginal and Torres Strait Islander over-representation in the criminal legal system.

9.1. The Data

Data on bail and remand was discussed in section 8. Further data on imprisonment, return to prison, community corrections supervision, completion of orders are discussed in sections 10 and 11 respectively. Here we focus more specifically on the courts and sentencing. Criminal courts in the ACT frequently hear and determine matters involving Aboriginal and Torres Strait Islander defendants and they are overrepresented relative to their representation in the community. Productivity Commission data shows that finalised criminal matters involving **First Nations defendants during 2023-24 were 13.4% of all matters in the ACT Supreme Court, 9.0% in the adult magistrates' court and 27.8% in the children's court** – at a time when the estimated Aboriginal and Torres Strait Islander population in the ACT was 2.1%.³⁸⁸

The most recent ABS data on ACT criminal courts relates to the 2022-23 period.³⁸⁹ We acknowledge the limitations of this data in relation to Aboriginal and Torres Strait Islander people appearing in the criminal courts. The only ABS data which identifies First Nations status³⁹⁰ excludes traffic and vehicle regulatory offences, which were more than half of the principal offences determined in the ACT criminal courts during 2022-23.³⁹¹ The data below specifically relating First Nations therefore does not include traffic and vehicle regulatory offences.

During 2022-23, based on the principal offence, Aboriginal and Torres Strait Islander defendants were slightly more likely to be female than the non-Indigenous cohort (26.4%

³⁸⁸ Productivity Commission (2025) Report on Government Services, Part C, p.63.

³⁸⁹ ABS (2024) Criminal Courts Australia 2022-23 <<https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/latest-release>>.

³⁹⁰ ABS (2024) Criminal Courts Australia 2022-23, Tables 12, 13, 14 & 15.

³⁹¹ ABS (2024) Criminal Courts Australia 2022-23, Table 51.

compared to 22.0%) and slightly younger (average age 32.2 years compared to 34.6 years).³⁹²

Table 9.1 shows the five most frequent principal offences in the ACT criminal courts for both Aboriginal and Torres Strait Islander and non-Indigenous defendants. The ‘Top 5’ together account for just on 80% of all principal offences for both groups. For both groups ‘acts intended to cause injury’, was the top principal offence, although the proportion was higher for the non-Indigenous cohort (38.1% offences compared to 32.5% of all principal offences for First Nations people). The proportion of theft offences was higher for the First Nations cohort (19.9% compared to 11.8%). The proportion of offences involving offences against justice and property damage were similar for both groups. Offences involving unlawful entry were the fifth most common principal offence for First Nations people.

Table 9.1 Top 5 Principal Offences in the ACT Criminal Courts 2022-23 for First Nations Defendants compared to Non-Indigenous Defendants*

Principal Offence	Aboriginal and Torres Strait Islander		Non-Indigenous	
	%	Ranking	%	Ranking
Acts intended to cause injury	32.5	1	38.1	1
Theft	19.9	2	11.8	3
Offences against justice	10.1	3	12.2	2
Property damage	9.4	4	9.8	4
Unlawful entry	8.0	5	<3.0	N/A
Public order offences	<4.0	N/A	5.7	5

* As % of all principal offences. Traffic and vehicle regulatory offences excluded.

Source: ABS (2024) Criminal Courts 2022-23. Adapted from Table 13.

In relation to *adjudicated* outcomes by the criminal courts³⁹³, similar proportions of First Nations defendants and non-Indigenous defendants received a guilty outcome – between 77% and 78% for both groups, with the remainder being acquitted.³⁹⁴ Where there was a guilty outcome, the vast majority of defendants had pleaded guilty to the offence (91.7%). First Nations defendants were slightly more likely to plead guilty (94.5%) compared to the non-Indigenous cohort (90.8%).

Table 9.2 shows the principal sentence for Aboriginal and Torres Strait Islander and non-Indigenous defendants in the ACT criminal courts. The most common outcome for

³⁹² ABS (2024) Criminal Courts Australia 2022-23, Table 13.

³⁹³ Matters classified as not adjudicated are those transferred to a different court level or withdrawn by police – there was little difference between First Nations matters and non-Indigenous matters in this regard. For example, between 15% to 16% of matters were withdrawn by police for both groups, with the remainder (between around 6-8%) transferred to another court level.

³⁹⁴ ABS (2024) Criminal Courts 2022-23. Adapted from Table 13.

Aboriginal and Torres Strait Islander defendants found guilty of an offence was a custodial sentence (39.7%) which was imposed almost twice as frequently compared to non-Indigenous defendants (21.4%). The most common sentencing outcome for non-Indigenous defendants was a good behaviour order (33.1%). First Nations defendants were less likely to receive sentencing outcomes at the lower end of the sentencing hierarchy than non-Indigenous defendants, including for fines (11.2% compared to 19.5% for non-Indigenous defendants), good behaviour orders (23.5% compared to 33.1% for non-Indigenous defendants) and other nominal penalties (4.7% compared to 10.8%).

Table 9.2 Principal Sentence in the ACT Criminal Courts 2022-23 for First Nations and Non-Indigenous Defendants found Guilty.

Principal Sentence*	Aboriginal and Torres Strait Islander		Non-Indigenous	
	No	%	No	%
Custody in a correctional institution	71	39.7	239	21.4
Intensive penalty in the community	7	3.9	30	2.7
Fully suspended sentence of imprisonment	24	13.4	125	12.2
Community service / work	0	-	8	0.7
Moderate penalty in the community	0	-	3	0.3
Monetary penalties (including fines)	20	11.2	218	19.5
Good behaviour (incl. bonds)	42	23.5	369	33.1
Nominal and other penalties	8	4.7	121	10.8
Total guilty outcome**	179	96.4	1116	100

* As defined by ABS. Traffic and vehicle regulatory offences excluded.

** Total includes some defendants whose principal offence and/or outcome could not be determined.

Source: ABS (2024) Criminal Courts 2022-23. Adapted from Table 13.

9.1.1. *The Implications of the Data*

The fact that four in every ten First Nations people sentenced in the ACT criminal courts receive a custodial must be seen as a key driver of over-representation.³⁹⁵ The reasons for these disparities require further research and explanation which is beyond the scope of our Inquiry. However, we can raise some pertinent issues for consideration.

³⁹⁵ The figure seems high and may be driven partly by the exclusion of traffic and vehicle regulatory offences. For example, NSW court data (which includes traffic and vehicle regulatory offences) shows a relatively stable 15% of court penalties for First Nations people were sentences of imprisonment, although this is also almost double the figure for all defendants. BOCSAR, NSW Criminal Courts Statistics July 2019 to Jun 2024, Table 11 & Table 1.

‘Acts intended to cause injury’ are common principal offences for both First Nations and non-Indigenous people, and 95% of these ‘acts’ in the ACT criminal courts are assaults.³⁹⁶ However, the ABS data does not offer insight into the relative seriousness of the offence by Indigenous status (for example, common assault, assault causing bodily harm or assault causing grievous bodily harm). A partial explanation might be the case that assaults by First Nations people are more serious. However, we do not have adequate publicly available data to investigate this further. **One of the key data limitations is the absence of sentencing data for offences by outcomes and Indigenous status. We do not know whether First Nations people are more likely to be sentenced to imprisonment compared to non-Indigenous people for the same offence type.**

Although the courts are more likely to send Aboriginal people to prison than non-Indigenous people, it would also appear that First Nations people were sentenced on average to shorter terms of imprisonment. As at 30 June 2024, the aggregate sentence length for First Nations prisoners was on average 5.7 years (median 2.9 years) compared to 7.5 years (median 4.7 years) for non-Indigenous prisoners in the ACT. The expected time to serve was also relatively shorter for sentenced First Nations people compared to non-Indigenous prisoners.³⁹⁷ Although the sentences of imprisonment for First Nations people appear shorter on average, we are unable to determine, for example, whether First Nations people are more likely to be sentenced to prison as first offenders or earlier in their criminal history.³⁹⁸

Bail status can also affect sentencing. Research has shown that defendants who were detained prior to court received longer sentences than defendants who were released on bail.³⁹⁹ It may be the case that judicial perceptions are that defendants who are refused bail are more dangerous and pose a more serious threat to the community. While we do not have good data in the ACT on bail decision-making by the courts in relation to Aboriginality, we do know that Aboriginal and Torres Strait Islander people in the ACT are more likely to be in prison remanded in custody than sentenced (see sections 8 and 10).

Taking responsibility for the offence and remorse are relevant sentencing considerations. In relation to taking responsibility, there was little difference in the proportion of First Nations and non-Indigenous people pleading guilty, and in fact Indigenous people were

³⁹⁶ ABS (2024) Criminal Courts 2022-23. Table 51.

³⁹⁷ ABS (2024) Prisoners in Australia 2024, Tables 26 & 28. ‘Expected time to serve’ is based on earliest possible release date, for example, the beginning of the non-parole period. This may not be a relevant measure for First Nations people in the ACT if they are less likely to apply for parole.

³⁹⁸ For example, in a study we conducted in the Northern Territory, Aboriginal people received on average shorter prison sentences. However, Aboriginal people were sentenced to imprisonment more frequently and at an earlier stage in their offending histories than non-Aboriginal people. Luke, G. and Cunneen, C. (1998) Sentencing Aboriginal People in the Northern Territory, NAALAS, Darwin.

³⁹⁹ Sacks, M. and Ackerman, A. (2014) ‘Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?’, Criminal Justice Policy Review, 25(1) p.71. Williams, M. (2003). ‘The effect of pretrial detention on imprisonment decisions’, Criminal Justice Review, 28, pp.299-316.

slightly more likely to plead guilty. The plea of guilty does not seem to offer any explanation for the sentencing disparity between First Nations and non-Indigenous defendants.

Prior criminal convictions influence both bail decisions and sentencing. In short, people with histories of prior crimes are sent to prison more often than those who do not have prior convictions.⁴⁰⁰ **Prior criminal record data in the ACT courts is not publicly available.** However, we know from prison data that First Nations prisoners are more likely to have prior imprisonment records (58.2%) than non-Indigenous prisoners (45.8%) and are more likely than non-Indigenous prisoners to return to prison within two years of release (44.3% compared to the non-Indigenous rate of 30.8%).⁴⁰¹

Accumulating a prior criminal history is not simply a function of criminal offending and a number of factors are important in understanding the accumulation of an offending history. Criminal legal intervention occurs earlier with First Nations young people and as a result, they receive a criminal record at an earlier age. The adverse use of police discretion in decisions like the use of diversion, the failure to use court attendance notices and bail determinations have a compounding effect through the system and over a person's life history.⁴⁰² Even apparently equitable treatment at the point of sentencing may mask earlier systemic biases. In addition, the current sentencing trend to treat 'repeat offenders' more harshly, for example by way of restrictions on eligibility to bail, will have the greatest negative impact on Indigenous people. They are precisely the group more likely to have longer criminal histories.

The purposes and principles of sentencing are often recognised as conflicting⁴⁰³ – for example rehabilitation vs community protection; consistency vs individualised justice. Undue weight placed on prior criminal record and inadequate attention to factors that arise from a person's Aboriginality may create systemic bias against First Nations defendants. We return to this issue further below when we consider sentencing reform and a legislative requirement to take into account the unique systemic and background factors for Aboriginal and Torres Strait Islander people.

⁴⁰⁰ For example, see Bond, et.al. (2011) 'How much time? Indigenous status and the sentenced imprisonment term decision in NSW', ANZ Journal of Criminology, 44(2) pp.272-290.

⁴⁰¹ ABS (2024) Prisoners in Australia 2024, Table 29; Report on Government Services (2025) Part C, Table CA.4.

⁴⁰² Behrendt, L., Cunneen, C., Libesman, T. and Watson, N. (2019) Aboriginal and Torres Strait Islander Legal Relations, pp.76-81; 92-96; 110.

⁴⁰³ 'Sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions'. *Veen v The Queen* [No 2] (1988) 164 CLR 465 [476].

Recommendation 9.1

We recommend that relevant ACT agencies improve the collection and publication of more comprehensive criminal court data in relation to First Nations people in the ACT. This might include for example, traffic and vehicle regulatory offences, prior record, and sentencing outcomes by principal offence by Indigenous status.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

Recommendation 9.2

We recommend, on the basis of improved data collection, further specific research into the sentencing of First Nations defendants, the reasons for the comparatively more frequent use of sentences of imprisonment, and further law and policy interventions that may reduce any identified disparities.

This Recommendation is dependent on the implementation of Recommendation 9.1.

9.2. Aboriginal circle courts

One of the key innovations in the ACT has been the development of circle sentencing courts for First Nations defendants. Circle sentencing is available in Children's Court (Warrumbul), Magistrates Court (Galambany) and in the Supreme Court (Pilot Circle Sentencing List, from March 2024).

In our First Report we outlined the background to the Galambany and Warrumbul courts, their aims and eligibility criteria. We referred to the cost benefit analysis of the Galambany court in 2020 which found that the court reduced overall expenditure on courts, policing and prison. Galambany also helped increase employment retention, education opportunities and the health of offenders and their family members, and reduced risks of homelessness, helped to reduce violence against women and the number of children in care and protection.⁴⁰⁴ In our First Report we also noted the recently established Pilot Circle Sentencing List and its aims and procedures.⁴⁰⁵

During 2023-24, JACS noted that a focus was to strengthen partnerships between the courts and support services and ACCOs to improve therapeutic supports to defendants. A funded court support program for defendants was introduced to assist participants

⁴⁰⁴ Jumbunna First Report, pp.13-14.

⁴⁰⁵ Jumbunna First Report, p.53.

with the court process and early engagement with programs. The program is delivered by Yeddung Mura.⁴⁰⁶

9.2.1. Galambany Circle Sentencing Court

The Galambany court sits twice weekly for sentencing, and weekly as a bail court (although the Galambany bail court has been discontinued). In 2023-24 the Galambany circle sentencing court heard 224 matters involving 164 defendants. This number was similar to the previous year.⁴⁰⁷ The bail court was available for any First Nation's defendant who had their bail application refused in the first instance. Its primary aim is to reduce the number of First Nations people remanded in custody. In 2023-24 there were 893 matters heard in the bail court. The bail court works with the Ngurrumbai Bail Support program.⁴⁰⁸ We noted previously the success of the program in securing bail and offering support services. However, we have been informed that the Galambany court is 'not presently hearing bail applications' and further that the figure provided in the JACS Annual Report is not accurate – the court heard 216 bail applications in 2023-24 (Courts and Tribunals).

The ALS NSW/ACT has recommended that resourcing to the Galambany Court being increased to build capacity for bail proceedings to be heard within the specialist, more therapeutic and culturally responsive process of the circle sentencing court.

Allowing defendants access to cultural input and support from earlier in the criminal process, as opposed to at the stage of sentencing, would support earlier appropriate support and intervention to reduce risk of contact with the system.⁴⁰⁹

We support this recommendation from ALS NSW/ACT as *a means of reducing over-representation of the First Nations remand population*. It is important to increase access to bail and provide the support and interventions which may reduce the likelihood of further offending at this early stage.

Recommendation 9.3

We recommend that the ACT government properly resource the Galambany Court to resume hearing bail applications. Consideration also needs to be given to increasing funding to the Ngurrumbai Bail Support program to meet further service demands.

⁴⁰⁶ JACS (2024) Annual Report 2023-24, ACT Government, p.90.

⁴⁰⁷ JACS (2024) Annual Report 2023-24, ACT Government, p.90.

⁴⁰⁸ JACS (2024) Annual Report 2023-24, ACT Government, p.90.

⁴⁰⁹ ALS NSW/ACT, Written Submission, p.9.

9.2.2. *Warrumbul Circle Sentencing Court*

The Warrumbul circle sentencing court is an alternative model of sentencing for Aboriginal and Torres Strait Islander young people attending the ACT Children's Court. It is described as a restorative principled practice that aims to provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander young people by incorporating respected members of the First Nations community and cultural aspects into the court. Strength-based rehabilitation pathway plans are developed, and court monitored to prevent further offending and positive futures.⁴¹⁰ The Warrumbul court sits monthly. In 2023-24 it had 14 youth participants, 8 referrals, 4 matters finalised and 6 ongoing Rehabilitation Pathway Plans (see also Section 6.5).⁴¹¹

9.2.3. *Stakeholder and Participant Comments*

The majority of the people we spoke with were very supportive of the circle sentencing courts. 'The court has its greatest utility in terms of remorse and shame and of having to account to the Elders in that way' (Courts and Tribunals).

Having said that, there were also issues which were identified, often in the context of improving the court processes. These included:

- Improving the capacity of connecting people appearing in the court to services in the community and improving case management and wrap around services.⁴¹²
- Improving the capacity for the court to facilitate cultural connection.⁴¹³
- Improving lawyers knowledge of the purpose and processes of the courts, particularly its non-adversarial approach.⁴¹⁴

It was acknowledged by stakeholders that the circle sentencing courts needed to engage the community more to enhance its credibility. One way of achieving this is through improved recruitment. It was noted that there is a very small panel of Elders and those members are being drawn upon significantly – which can be emotionally and

⁴¹⁰ JACS (2024) Annual Report 2023-24, p.91.

⁴¹¹ JACS (2024) Annual Report 2023-24, p.91.

⁴¹² For example, 'We've got to get the administration to understand what we really need which is people who can reach out to the community who can connect people in the community with the services and try and bring the services in more'. (Courts and Tribunals)

⁴¹³ For example, 'We had very few Ngunnawal / Ngambri Elders. And so when you're looking for that cultural authority, it's a very different proposition [here in the ACT]. And a lot of the people that come before Galambany have very little knowledge of their own culture. I think it's a major challenge for the Territory... But I do think the courts should ideally be able to facilitate some cultural strengthening and that's an additional challenge'. (Magistrates)

⁴¹⁴ For example, 'It can be difficult. It is obviously very magistrate driven, those courts. They're difficult in the sense in that I think prosecutors or lawyers [are] a bit conditioned to the court process, which is adversarial. Whereas those courts aren't adversarial... I think it's a difficult issue in terms of sentencing because the sentencing considerations pull in all different ways and they just don't reconcile. (Courts and Tribunals).

psychologically taxing. An effect of this is the workload for those individuals, as well as the possibility that ‘it can send a message that the work is only for a small number of people’ (Courts and Tribunals). However, we note there is now a new Panel of elders, comprising a pool of 22 Elders and Respected Persons.

Stakeholders indicated that the courts were embarking on a community wide recruitment process for Elders, which besides broadening the pool, will also have a positive effect on the standing of the program in the community. ‘The program is enhanced by a broad cross section of the community being involved from the perspective of their experience and their cultural authority and all the things that combine to make the Circle Sentencing program strong’ (Courts and Tribunals). It was noted in feedback on our draft Report that a ‘successful recruitment process has been completed, and the panel now comprises 22 Elders and Respected Persons from Community bring a depth of experience and knowledge to the process’ (Courts and Tribunals).

It was also noted that training, debriefing and the wellbeing of those community members involved in the circle sentencing courts was critical to ensuring that members can participate effectively.⁴¹⁵

I mean at the moment we're asking panel members to be involved on a Monday assessment day, Warrumbul on a Tuesday, circle sentencing in the magistrate's court on a Wednesday and a Friday potentially a bail list and then Supreme Court on the Thursday. (Courts and Tribunals)

One possible solution was the creation of full time roles for community members. However, the ‘optics’ of panel members being employed by the court may not be appropriate.

The submission from ALS NSW/ACT supported the increase in alternative court processes which include Elders and community members more directly in court processes, such as circle sentencing in multiple court jurisdictions and welcomed the expansion of circle sentencing to the Supreme Court.

However, to the note [is] that the role of Elders in these proceedings [Supreme Court] is more limited than the role they play in the Magistrates Court and Children's Court in determining appropriate outcomes. Although the ultimate sentencing discretion lies with the judicial officer, and a defendant must ultimately be sentenced according to law, we support enhancement of the

⁴¹⁵ It was noted in feedback on our draft Report that ‘extensive and ongoing training is provided to new Panel Members by the Chief Executive Officer of the courts’.

Supreme Court model to facilitate a more central role for Elders in the lead up to this final decision.⁴¹⁶

9.2.4. *Issues raised by participants in circle sentencing courts*

Generally, the people we spoke with who had been through the circle sentencing courts were quite positive about the experience. ‘It gives you bit of hope’ (Yeddung Mura Community Dialogue, Male).

I find too with the normal court you plead guilty and that's it. You don't really get to say anything... But at Galambany they actually want to know where you are, why it happened, what was going on with you and really look into you and what's going to help you. And in the normal court I just find that they put it all on you. (Yeddung Mura Group, Aboriginal female)

Well, I'd say that Galambany is better for us because it [does] not force you into treatment, but opens the doors for you. Rather than magistrates court, they just go ‘Yep. Done. Done. Done. Get out’. (Yeddung Mura Community Dialogue, Male)

However, there were some issues raised as well. One related to the community members of the court.

I don't think they [Elders] speak up enough in the chambers to be honest. It's up to them in the chambers to speak for us. But I don't think they're doing that as well as they should be... And the Elders that I see as Elders are the ones that are over 50... where I'm from you've got to be over 50 to have that experience, to have that acknowledgement. They have girls sitting on the court younger than us. (AMC Womens Group)

It was suggested in feedback on our draft Report that ‘the “girls” referred to here are court staff, not panel members. In the new panel (which, at the time of writing is yet to sit in court) only two of the 22 members are under the age of 50’.

While there is frequent mention of ‘Elders’ in relation to the Galambany Court and the Supreme Court Pilot Circle Sentencing List, the practice directions for panel members for both courts refer to Elders or Respected Persons. Perhaps this is an area where greater information to community needs to be available, especially if the Court is looking to expand panel membership and increase legitimacy in the community.

There were also concerns that non-Indigenous people were using the circle sentencing courts.

⁴¹⁶ ALS NSW/ACT, Written Submission, p.7.

There needs to be something put in place because it's getting misused and blocked up by non-Indigenous people and it's taken away from the actual Aboriginal people... There's no follow up. You just say you're Aboriginal. (Winnunga Community Dialogue Men)

You only have to look at our circle sentencing, a lot of them, they're not getting their confirmations [of identity] and they're just getting stat decs [statutory declarations]. (Sisters in Spirit Community Dialogue Women)

The relevant Practice Direction gives the Panel the authority to assess whether a person's Indigenous status is established.⁴¹⁷ However, it is difficult to gauge the extent to which non-Indigenous people might be using the Galambany Court. This question goes back to the basic problem we have previously acknowledged in relation to how and when in the criminal legal process the identity of a person's Indigenous status is established.

9.2.5. *Pleading Guilty*

Some people we spoke with stated that they pleaded guilty to offences which they could have challenged but didn't because they would prefer to go through the Galambany court rather than through the mainstream courts. More commonly, the guilty plea was 'just to get it over and done with' (Winnunga Community Dialogue Men) or to avoid extended periods on remand, 'The reason why most of us are pleading guilty is because we don't want to sit in remand... where we have to be sitting here for 3 to 4 years' (AMC women). Or, 'Just to get it over and done with, rather than being on remand and risk being found guilty or not guilty in the Magies (Magistrates court). You know what, I can plead guilty right in Galambany and I'll be out in two months (Yeddung Mura Community Dialogue, Female).

Stakeholders also noted that there are 'legitimate concerns about pleas of guilty being entered to be able to access the court [for offences] that they may either have a defence to or they're not guilty of. It's something that defence lawyers have to consider when they're advising their client' (Courts and Tribunals).

It is difficult to determine how much guilty pleas solely affect the Galambany Court and how much of it is a more general problem of pleading guilty to offences to get through the legal process more speedily. 'What's happening is people are pleading guilty for things because they can get through Galambany *or they can get through the justice system* a little bit quicker' (Government Agency). It may be the view that 'you get a better deal' in the Galambany Court (Yeddung Mura Community Dialogue, Male). However, as we noted

⁴¹⁷ ACT Magistrates Court (2024) Practice Direction - Galambany Court (Practice Direction 2/2024) [27] p.4
<https://www.courts.act.gov.au/__data/assets/pdf_file/0004/2554627/Practice-Direction-Galambany-Court.pdf>.

previously, by far most people plead guilty in the criminal courts and guilty pleas are only marginally higher for First Nations people (94.5% compared to 90.8%).

A related and important issue is that pleading guilty builds an extensive criminal record which then impacts on sentencing.

What happens when you plead guilty once then something else happens again. Suddenly on the police radar, you get picked up on something else, you plead guilty again, then you plead guilty again. Suddenly, 'Now we're going to come down hard'. And this is where for me it's the structural review of the institutional discrimination that's needed, from the intersection with police right the way through to the actual to the incarceration system. (Government Agency)

A question often raised with us was why there was a necessity to plead guilty to appear before the Galambany Court. It is a common element in Indigenous sentencing courts in Australia that the person needs to plead guilty to appear before an Indigenous sentencing court and there may be policy reasons as to why acceptance of responsibility is essential given that sentencing courts are not there to determine findings of guilt or innocence.⁴¹⁸

However, it was noted that 'there could be appropriate cases where a person contests the matter and is found guilty and then seeks to be sentenced by virtue of the [circle sentencing] process' (Courts and Tribunals).

One difficulty with such an approach is that the judicial officer who finds the person guilty is normally the person in most cases who sentences the offender. 'Not all judicial officers want to participate in circle sentencing... You have to have judicial officers who want to be part of the process. So logistically, there are a number of problems with broadening the pathway to circle courts' (Courts and Tribunals). However, we note that it is worth exploring further the possibility that, although circle sentencing courts are not courts for determining guilt or innocence, there may be avenues for their role in sentencing after a finding of guilt.

9.3. Supreme Court Pilot Circle Sentencing List and Indigenous Experience Reports

In our First Report we noted the use of Aboriginal and Torres Strait Islander Experience Reports in the Pilot Circle Sentencing List operating in the Supreme Court. As we noted in our First Report, 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)),

⁴¹⁸ Marchetti, E. (2017) Nothing Works? A Meta-Review of Indigenous Sentencing Court Evaluations, *Current Issues in Criminal Justice*, 28(3) p.261.

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.⁴¹⁹

There has been discussion on who should commission the Experience Reports and who should write the report. Currently the Experience Report is commissioned by the court and prepared by an Indigenous psychologist. There were differing views among stakeholders as to whether the court should be the auspicer of the report, or whether ALS NSW/ACT should have responsibility. We take no position on this except to note that the issue should be further considered if the pilot program is to be placed on a long-term footing, and that whoever has responsibility for the Court Experience Reports will require recurrent funding if the pilot is to proceed in its current form. At present the Supreme Court pays for the reports.

In general, the stakeholders we spoke with thought the Experience Reports were excellent. For example, we quote at length the comments of a legal service provider who articulates the importance of the Experience Reports.

I think they're excellent and comprehensive. They often go beyond the quite narrow and limited scope of the corrective services presentence reports that we typically get. [With] corrective services... there's often a cultural divide and sometimes a gender divide. My experience with them is that offenders are often reluctant in the half hour or hour that they have with those people to become too personal or to reveal too much of themselves.

In a matter recently where the corrective services officer had concluded that an offender wasn't remorseful because they didn't sort of articulate that remorse, the Aboriginal Experience Report was able to really tease out in fact that this was a remorseful offender and he did have some insight into his offending. So, I think that the reports have the capacity to paint the picture of a person in a way that a pre-sentence report just doesn't. Those reports also speak to a person's cultural connectivity as a strength or a potential strength if that's something that they need support and assistance with. So, I think they're excellent. (Courts and Tribunals)

It is noted that the Experience Reports take time to prepare. However, it was the view that adequate time is 'just what is required for a more comprehensive report. And for many offenders, at least in the Supreme Court, it's not wasted time because it's time on remand that's then credited to them in their sentence' (Courts and Tribunals).

We were advised that there is no definitive date for completion or extension of the pilot program. However, at the time of writing, there was one more placement left for the pilot

⁴¹⁹ Jumbunna First Report, p.53.

program and once that is filled, there is no further capacity to take any more participants. When all 10 participants have been through the program, there will be an assessment of the pilot and a decision will be made as to whether ongoing funding will be available for the List to continue.

Recommendation 9.4

We recommend that the ACT government establish the current pilot Supreme Court Circle Sentencing List as an ongoing sentencing list in the Supreme Court. In establishing the List as a permanent feature of the Court, it would be beneficial to consult with (at a minimum) court members, the DPP and ALS NSW/ACT as to any current issues and potential improvements to the operation of the List.

9.4. Options for the presentation of unique factors in summary courts

The Practice Directions for the Supreme Court Pilot Circle Sentencing List and the Galambany Court provide for the consideration of factors affecting First Nations people in Experience Reports and Pre-Sentence Reports, respectively.⁴²⁰

However, as we noted in our First Report, 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). There was dissatisfaction with the quality of information in Pre-sentence Reports.

What we have wanted for years and still don't have is the more detailed pre-sentence reports for example that properly address issues that are relevant to a person's Aboriginality. [For example,] we're still sometimes not finding out great information about people's childhoods, which you would think would be really 101 from Corrective Services perspective. (Courts and Tribunals)

We were also informed of a case where a person with an acquired brain injury which was not picked up in a pre-sentence report, despite evidence from another state. Eventually a statement of disability was located.

He was regarded as intellectually disabled and he's been sentenced 10 times in this jurisdiction (ACT) without it. With no regard to the fact that he is intellectually

⁴²⁰ Practice Direction 1 /2024, Supreme Court Pilot Circle Sentencing List Procedure, Section 34; Practice Direction 2 /2024, Galambany Court, Section 16.

disabled. And he received a seven year sentence in this jurisdiction without any recognition of the intellectual disability. (Courts and Tribunals)

More comprehensive pre-sentence reports, despite being resource intensive, were seen as a necessary investment for sentencing.

In addition, while the court *may* consider information on the cultural background of a defendant, there is no *requirement* for a court to take into account unique systemic or background factors in sentencing decisions for Aboriginal and Torres Strait Islander people.

In our interviews for our First Report, it was noted that reliance on the High Court cases of *Bugmy* and other case law as a mechanism through which to consider relevant factors to a person's Aboriginal background was not always taken up by the courts. For stakeholders, this highlighted the importance of the introduction of legislative provisions aligned with the Australian Law Reform Commission's recommendation.⁴²¹ Since our First Report we have undertaken broader consultation across the spectrum of legal service providers and legal professionals. There is widespread support for the introduction of legislative provisions that require sentencing courts to first take into account the unique systemic/background factors for Aboriginal people and to then proceed to review evidence as to their effect on the individual offender.

Recommendation 9.5

We recommend that the ACT government amend the *Crimes (Sentencing) Act 2005* to provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

We also note the importance of education on First Nations issues for judicial officers, lawyers and other court staff. The submission from ALS NSW/ACT observed that courts sometimes devalue or disbelieve the extent of disadvantage faced by many First Nations people and display a lack of awareness of historical and political factors that continue to entrench systemic disadvantage in Aboriginal communities. The ALS NSW/ACT affirmed that 'ongoing judicial education about Aboriginal history and culture and the unique dispossession and disadvantage inflicted on Aboriginal and Torres Strait Islander peoples over many generations would support more culturally safe experiences in court for our clients'.⁴²²

⁴²¹ ALRC (2017) Pathways to Justice Report, Recommendation 6-1.

⁴²² ALS NSW/ACT, Written Submission, p.7.

We were informed that some education among legal staff has taken place, at least at the managerial level. In response, one participant informed us of its positive effect. ‘I think it is a great thing. I think it's going to be helpful for our managers and staff who can then impart it across the rest of the office. Those sort of training workshops I think are good for everybody. If it was me, I wouldn't limit it to managers’ (Statutory Authority/Public Body). We encourage the continuation of ongoing education on First Nations issues for court staff, lawyers and judicial officers.

We also recognise that ACT Courts and Tribunals have recently established two positions for First Nations Community Engagement Officers to work across all of their jurisdictions to increase access to the courts through enhance First Nations engagement with the legal system, and providing culturally appropriate support and information. These officers will work in the Therapeutic and Client Services team.⁴²³ However, at the time of writing, but both positions remain vacant after two rounds and no successful recruitment has occurred.

9.5. Drug and Alcohol Sentencing List (DASL)

The Drug and Alcohol Sentencing List, or DASL as it is commonly known, was established in late 2019 as part of the ACT government commitment to reducing recidivism. In the ACT the DASL sits with the Supreme Court (unlike other jurisdictions). As we noted in our First Report there have been two evaluations undertaken of DASL: a process and outcome evaluation by a team at ANU and a cost benefit analysis (CBA) by KPMG.⁴²⁴ There was also a statutory review undertaken by JACS in August 2013 which gave rise to some amendments to the legislation.⁴²⁵

The ANU report found that the Court ‘does not appear to be working for Indigenous participants’. Of the 17 Indigenous participants to date (2022), only one has graduated (6%), compared with seven out of 39 non-Indigenous participants (18%). Conversely, eight Indigenous participants have had their order cancelled (47%), compared with 18% of non-Indigenous participants.⁴²⁶ The report recommended that the Court consult with

⁴²³ JACS (2024) Annual Report 2023-24.

⁴²⁴ Rossner, M., et. al., (2022) ACT Drug and Alcohol Sentencing List: Process and Outcome Evaluation Final Report, Centre for Social Research & Methods, ANU; KPMG (2024) Cost-Benefit Analysis of the Drug and Alcohol Sentencing List, Final Report, KPMG <https://www.act.gov.au/__data/assets/pdf_file/0012/2568378/Cost-Benefit-Analysis-Report-of-the-Drug-and-Alcohol-Sentencing-List.pdf>.

⁴²⁵ JACS (2023) Statutory Review Report. Drug and Alcohol Sentencing List Provisions, ACT Government, Canberra. One of the changes arising from the statutory review was clarification of certain criteria for eligibility. A part of the eligibility for participation in DASL is the requirement that a person is likely to be imprisoned between one and four years. This was clarified to allow participation for a person if they had cumulative sentences that would fall within the one to four year bracket, as a way of providing access to the DASL for people likely to receive shorter sentences (e.g. women and First Nations people). See ACT Government (2024) RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT, p.12.

⁴²⁶ Rossner, et. al., (2022) ACT Drug and Alcohol Sentencing List Evaluation, p.109.

representatives from key Indigenous organisations, including Winnunga, Yeddung Mura, Tjillari, the Gulanga Program at the ACT Council of Social Services (ACTCOSS) and ALS NSW/ACT, as well as the Elders in the Galambany Court on how to better support Aboriginal and Torres Strait Islander participants.⁴²⁷

The KPMG report found that the quantified benefits were not yet outweighing the costs after four years of operation (2019-2023), although this was not surprising given the short duration of the program and the higher establishment costs. However, the report found that ‘when considering the year-on-year benefits... the program benefits are consistently increasing, with annual benefits outweighing costs from 2021’.⁴²⁸ The KPMG report also noted there were additional benefits that were not incorporated into the CBA, including social and community engagement, health and well-being outcomes and education and employment outcomes.⁴²⁹ The KPMG report has only limited information of Indigenous participants, noting that 27% of participants in DASL between 2019 and 2023 identified as First Nations.⁴³⁰ There was, for example, no information on the proportion of Indigenous participants who graduated from the court, or had their orders cancelled compared to non-Indigenous participants.

Entry into DASL requires progressing through a number of stages. These include referral to the DASL, an Eligibility Assessment (including a report by Canberra Health Service), and a Brief Mental Health Report ordered by the Judge. At the first appearance of the applicant, the Judge determines whether a more comprehensive Suitability Assessment is to be undertaken, or the person is not suitable and the matter is to be sent back for sentencing. The Suitability Assessment undertakes a comprehensive review and determines treatment and engagement recommendations and options. The Court then determines whether the Drug and Alcohol Treatment Order (DATO) is appropriate.

The DASL focusses on individually tailored programs that uses a Treatment Order Team (TOT) comprised of health and justice personnel who support individuals through intensive case management, which may involve residential treatment, access to housing support and various therapeutic models, and regular reporting to the TOT and the judge (who can use a system of incentives and sanctions). There are four phases through which the participant passes as part of the DATO: stabilisation, consolidation, reintegration, and (following graduation and post-DATO) a good behaviour order.

DASL has been in operation for 5 years – it would seem an appropriate time to review the court in relation to how well the List is working for Aboriginal and Torres Strait Islander people, and how it might improve First Nations access, successful completion and

⁴²⁷ Rossner, et. al., (2022) ACT Drug and Alcohol Sentencing List Evaluation, pp.118, 200.

⁴²⁸ KPMG (2024) Cost Benefit Analysis of the Drug and Alcohol Sentencing List, p.9.

⁴²⁹ KPMG (2024) Cost Benefit Analysis of the Drug and Alcohol Sentencing List, p.10.

⁴³⁰ KPMG (2024) Cost Benefit Analysis of the Drug and Alcohol Sentencing List, p.27.

graduation. Such a review must address the systematic identification of Indigenous status for DASL participants. Individuals are coming to the List through various agencies (for example, Health, Corrections, Legal Aid ACT, DPP and the courts) where they may have been identified as being Aboriginal or Torres Strait Islander. However, this does appear to be comprehensively captured by the time they are referred to DASL.

We know that it is only a subset of those people who are actually eligible and suitable for the DASL who move onto a DATO and a smaller subset who successfully graduate. However, there is no available current information on the proportion of Indigenous participants who were not accepted into the program, who fail to graduate from the court, or had their orders cancelled compared to non-Indigenous participants. We do not know whether these points in multiple decision-making process might be limiting potential First Nations participation. There is a need for a review based on the data of potential barriers that might arise for First Nations people across the whole process from the point of referral through to the completion (or not) of the DATO. There is also a need to consider whether other benefits such as social and community engagement, health and well-being, education and employment outcomes are being achieved for Aboriginal and Torres Strait Islander participants.

There is also little information available on *systematic* participation of Aboriginal people from various government agencies or of ACCOs in the various assessment processes and decision-making that lead-ups to acceptance of a DATO for First Nations people,⁴³¹ or in particular, what First Nations participation there is in the ongoing multidisciplinary team that comprises the TOT.

Such a review would also provide an opportunity to address the opportunities identified by KPMG for improving DASL, through ‘enhancing the DASL monitoring and measurement capability by building an ongoing evidence base’ and ‘exploring the options to expand DASL participant number’.⁴³²

Recommendation 9.6

We recommend the ACT government undertake a broad Review of the Drug and Alcohol Sentencing List (DASL) given it has been in operation for five years. In particular, the Review should consider how to ensure maximum participation of First Nations clients and their successful completion of the program. The Review should include at a minimum:

⁴³¹ Although we are aware that Canberra Health Services may involve their Aboriginal and Torres Islander Liaison Officers at some points and that, as services providers, Winnunga and other ACCOs may be involved.

⁴³² KPMG (2024) Cost Benefit Analysis of the Drug and Alcohol Sentencing List, p.11.

- a. the systematic identification of First Nations status at the point of referral to the DASL
- b. whether the various decision-making points throughout the process from referral to graduation might systematically disadvantage First Nations participants, whether there are associated barriers affecting First Nations people's successful participation, and how these might be remedied
- c. whether there is participation of relevant First Nations people and organisations in all assessments and decision-making processes that are undertaken, and in the Treatment Order Team, when DASL is working with First Nations clients.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

9.6. Aboriginal Women's Access to Family Violence Orders (FVO)

We are aware of the Court Navigator Program which is a mainstream program that supports court users seeking to apply for FVOs at the ACT Magistrates Court. The Court Navigator Program is delivered through a partnership between Legal Aid ACT and the Domestic Violence Crisis Service (DVCS). Applicants seeking FVOs are advised by court counter staff upon attendance that they have the option of engaging with a paralegal from Legal Aid ACT. The paralegal, who utilises a private room near the court counter, assists court users by offering support and information about the services available to the applicant from Legal Aid ACT and DVCS.⁴³³ The DVCS are also notified by ACT police in every family violence event that they attend, and the affected person is given the DVCS contact details. We also acknowledge the work of Women's Legal Centre's Mulleun Mura program in providing legal assistance to First Nations women affected by domestic and family violence. However, Mulleun Mura is a two member team which provides support across a wide range of areas including family law, child protection, victims of crime and all forms of discrimination.

Part of the specific context of the ACT legal response to domestic violence is relevant to the issue of support. In most jurisdictions the police take out domestic applications on behalf of the person seeking protection (the affected or protected person in the ACT). In the ACT the person seeking protection takes out their own order. 'In our jurisdiction you've got to apply yourself. You've got to bring yourself into the courthouse. So that's a huge

⁴³³ JACS (2024) Annual Report 2023-24, p.92.

barrier. You've got to fill the form in. I think there is some support available, but it doesn't seem to be uniform across the process' (Courts and Tribunals).

The affected person completing the application without assistance can impact on the quality of the information provided to the court.

I think a court could do it or someone else could assist them to provide all the relevant information. Because they've done it themselves in their own fashion, they have to end up giving evidence which I think is quite confronting for people and so I don't think they're ultimately well protected. (Courts and Tribunals)

There were questions raised by stakeholders on the extent of support provided to Aboriginal women.

I think there's a gap in terms of the way that [Aboriginal] women are responded to at the court when they're applying for family violence orders. I think there should be Aboriginal support workers who work with women that have come through to the court to seek protection. I think that it is a particularly difficult thing to do sometimes in Aboriginal communities. I know that Indigenous women are reluctant to come to court. (Courts and Tribunals)

I find that a lot of the time women are here without anyone else to support them at all. I think the process is quite can be quite traumatic. I think having someone beside them [is important] because in the court process they often will have to give evidence or describe for themselves what occurred in terms of the family violence. Someone whose function is to support Aboriginal women when they going through the process to apply for protection. (Courts and Tribunals)

The issue was seen as relevant to First Nations over-representation in the criminal legal system. If family violence was 'nipped in the bud' a little earlier through the use of family violence protection orders then it may prevent further violence by the perpetrator and/or retaliation on the part of the affected person.

Recommendation 9.7

We recommend the availability of support for Aboriginal women in applying for protection orders and appearing in court needs to be reviewed and assessed by JACS for improved accessibility and outcomes, in addition to the current funding commitments to the work of the Women's Legal Centre Mulleun Mura service.

9.7. Sentencing Law Reform (Other matters)

There were several matters raised in relation to potential reforms to legislation in relation community-based orders, diversion, committal processes and sentencing procedures.

Each of these reforms has some potential to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment. We believe that these require further investigation and serious consideration by the government.

9.7.1. Community-based sentencing reforms

In relation to community-based sentencing orders, a particular issue raised was some of the restrictions placed on accessing ICOs. Assessment for suitability for a ICO is set out in the legislation at Section 46D of the *Crimes (Sentencing) Act 2005*. The legislation notes seven matters which may be indication of unsuitability. These are taken into account when an assessment of suitability for an ICO is being conducted by CCOs. Based on these, a CCO may find the person not suitable for an ICO.

The types of factors which may indicate unsuitability include living arrangements, drug and alcohol issues, psychiatric or psychological disorders, medical conditions, serious criminal record or previous non-compliance with court orders.

The issue which was raised with us is the need for much greater flexibility with community-based sentences, and especially with ICOs. There were two major concerns identified. First, some matters which might lead to exclusion reflected social disadvantage and this particularly impacted on First Nations people. 'For example, you'd like to have someone on an intensive corrections order but you've got a person who doesn't have a stable home, where there's disadvantage... then that option goes out the window' (Courts and Tribunals).

The second concern related more broadly to whether, rather than excluding someone, the option might be to use an ICO to address and manage problems. 'If there is a substance abuse issue that option [ICO] is not available. So, some of those key features that might be in the sentences that are designed to assist a person, might actually be excluding them' (Courts and Tribunals). Another stakeholder noted that, 'There might be a substance issue but it is something that can be addressed. If they took that [indication of unsuitability] out, then it suddenly opens up that option to a whole range of people and the people who need it' (Courts and Tribunals).

9.7.2. Court diversion options

The issue which was raised with us by stakeholders was the lack of diversionary options available within the court – specifically that there was no legislative option for diversion whereby the court can do more than record a non-conviction, but not record a sentence at court at all.

The court can't deal with someone by way of diversion. I also get the impression that police don't divert anyone so there's no discretion really... The court can't

strike out the charges. The court can deal with it by way of a non-conviction, but you've still got a record on your history [which comes up] on Police Checks. (Courts and Tribunals)

We were provided with examples of Aboriginal first time offenders who were employed, drug free, etc where diversion out of the criminal legal system might be an appropriate resolution to the matter.

9.7.3. Reform of the Committal Process

The submission from ALS NSW/ACT identified that for matters proceeding on indictment to the Supreme Court, there is no incentive for police and prosecutors to consider the merits of their case until the proceedings have reached the Supreme Court. As a result, it is not uncommon for offers to resolve or negotiate to not be considered by the prosecution until close to trial, in circumstances where there were easily identifiable weaknesses in the prosecution from early in the court process. Some ALS NSW/ACT clients are remanded in prison for months, or years, before their charges are dropped or significantly reduced. This can be in circumstances where the evidence always showed that a conviction was not possible, but these matters were not closely examined until close to trial. However, we have been informed that this issue is presently being dealt with earlier in the court process through the Arraignments List and also the criminal case conference. Arraignments are listed 8 weeks after committal and case conferences occur generally before the trial date is allocated.

The ALS NSW/ACT submission has referred to the NSW 'Early Appropriate Guilty Plea' scheme for indictable matters which requires prosecutors to meet with defendants prior to committal and discuss prospects for resolution (*Criminal Procedure Act 1986* (NSW), s 70). The ALS NSW/ACT is 'supportive of the introduction of legislative levers which would require prosecutors to consider the merits of a matter prior to committing it for trial'.⁴³⁴

9.7.4. Removal of Section 35(4) of the Crimes (Sentencing) Act 2005

The submission from ALS NSW/ACT indicates that it is opposed to Section 35(4) of the *Crimes (Sentencing) Act 2005* which directs the court to refrain from significantly reducing an offender's sentence for a plea of guilty if the Court considers the prosecution case was overwhelmingly strong. The reasons put forward by ALS NSW/ACT for removing the relevant include the following:

⁴³⁴ ALS NSW/ACT, Written Submission, p.11.

- Even if a prosecution case is strong, a guilty plea results in time and resource savings to the court that would otherwise be directed to the running of a costly trial
- A guilty plea also reduces the impact of defended proceedings on vulnerable witnesses and complainants
- The provision prevents a defendant who has, in a timely and appropriate way, taken responsibility for their conduct from the having the full weight of that responsibility acknowledged on sentence
- Sentencing courts are prevented from exercising the full scope of their discretion to ensure appropriate sentencing outcomes which give effect to all of the purposes of sentencing, and
- The provision contributes to the length of time spent in custody at the hands of a system that leans towards incarceration as the appropriate outcome in a disproportionate number of cases.⁴³⁵

We also note that given the high proportion of matters that proceed by way of a guilty plea, particularly for First Nations defendants, the proposed amendment may have a significant impact on reducing time spent in prison.

Recommendation 9.8

We recommend that the ACT government consider the merits of potential reforms to legislation raised in section 9.7 of our Report in relation community-based orders, diversion, committal processes and sentencing procedures. Each of these reforms has potential to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment.

⁴³⁵ ALS NSW/ACT, Written Submission, p.11.

10. IMPRISONMENT AND THE AMC

10.1. Introduction

This section of our Report focusses on the AMC. It is a difficult part of our Review when there have been many previous reports, recommendations and so much public discussion of the prison since it was opened in late 2008 as Australia's first 'human rights' prison. There is no doubt at the time there was genuine commitment to making the AMC a prison where human rights, rehabilitation and employment were paramount and that the prison would be compliant with the ACT *Human Rights Act 2004*.

The new prison invoked the name of the nineteenth century prison reformer Alexander Maconochie who changed NSW penal colony's most brutal prison on Norfolk Island to one centred on enlightenment ideas of reform based on a recognition of prisoner humanity, trust, incentive systems and graduated release.⁴³⁶ In opening the AMC prison, then Chief Minister, Jon Stanhope, referred to Maconochie's vision and spoke of 'the responsibility to treat those who have been punished, by being deprived of their liberty, with humanity and with respect for their dignity'.⁴³⁷ Between 2004 and early 2009 when the AMC received its first prisoners, ACT government statements consistently emphasised the importance of rehabilitation as the philosophy for operating the AMC.⁴³⁸ The operating philosophy was described in 2005 as follows:

The AMC is to be a secure and safe place that will have a positive effect on the lives of prisoners held there and on staff who work there. Its management and operations will give substance to the dictum... that offenders are sent to prison as punishment, not for punishment. The AMC will reflect the "Healthy Prison" concept... one in which:

- everyone is and feels safe;
- everyone is treated with respect as a fellow human being;
- everyone is encouraged to improve himself or herself and is given the opportunity to do so through the provision of purposeful activity;

⁴³⁶ Cunneen et al (2016) *Penal Culture and Hyperincarceration. The Revival of the Prison*, Routledge, London.

⁴³⁷ Stanhope, J. (2008) *Speaking Notes, Official Opening of the Alexander Maconochie Centre*, 11 September.

⁴³⁸ 'From 2004 to 2009, ACT Government statements and documents, which presented the philosophy for operating the AMC, consistently emphasised the importance of rehabilitation. A range of rehabilitation objectives were presented: reducing offending behaviour; and encouraging detainees to seek self-improvement, fulfil their potential and lead successful lives in the community'. Auditor-General (2015) *The Rehabilitation of Male Detainees at the Alexander Maconochie Centre*, Report 2/2015, ACT Audit Office, Canberra, p.1.

- and everyone is enabled to maintain contact with their families and is prepared for release.⁴³⁹

More specifically, ‘particular attention will be paid to the needs of Indigenous and female prisoners, which must be met objectively and not simply by striving for parity with male, non-Indigenous prisoners’.⁴⁴⁰ Furthermore,

The new AMC will provide an opportunity for ACT Corrective Services to collaborate with other government agencies in responding to issues arising from the relationship between Indigenous offending and imprisonment. In addition, the staff of the Centre will seek to expand the engagement with Indigenous groups and Indigenous leadership in the management of Indigenous people placed in the care and custody of ACT Corrective Services.⁴⁴¹

Although the ACT prison bears the name of a great penal reformer, perhaps there is a further historical lesson to be learnt. After Maconochie’s penal experiment on Norfolk Island, the prison returned to the brutal regime it had been previously. Perhaps this leaves us with the broader question as to whether a prison can ever fulfill more than its basic function of isolation and containment, the loss of individual autonomy, and upholding a deeply embedded principle of less eligibility.⁴⁴²

We note here the new Commissioner of the ACT Corrective Services, Ms Leanne Close, has been appointed to the role since mid-January 2025.

10.2. Imprisonment Data for the ACT

Table 10.1 ACT and National Rates 2014-2024

Year	ACT First Nations Rate	ACT Non-Indigenous Rate	ACT O/R Rate	AUS First Nations Rate	AUS Non-Indigenous Rate	AUS O/R Rate
2014	1213.7	103.5	11.7	1,753.9	144.4	12.1
2015	1470.8	99.9	14.7	1,848.4	152.9	12.1
2016	1872.3	105.0	17.8	1,935.5	162.4	11.9
2017	1679.5	108.6	15.5	2,037.9	169.4	12.0
2018	1924.3	111.8	17.2	2,104.9	173.7	12.1

⁴³⁹ JACS (2005) ACT Correctional Centre, Alexander Maconochie Centre, Functional Brief, March 2005, p.5 <https://www.ics.act.gov.au/__data/assets/pdf_file/0014/1304015/37.pdf>.

⁴⁴⁰ JACS (2005) ACT Correctional Centre, Functional Brief, p.11.

⁴⁴¹ JACS (2005) ACT Correctional Centre, Functional Brief, p.8.

⁴⁴² The principle of ‘less eligibility’ in penal theory refers to the view that for the prison to act as a deterrent then the conditions of imprisonment must be worse than the conditions of the poorest social classes. It thus reinforces notions of punishment and retribution over rehabilitation and reintegration.

2019	1703.9	109.1	15.6	2,142.9	171.4	12.5
2020	1893.0	101.3	18.7	2,087.0	158.6	13.2
2021	1641.8	84.0	19.5	2,222.7	164.2	13.5
2022	1543.8	78.8	19.6	2,151.1	150.7	14.3
2023	1593.2	74.9	21.3	2,265.8	149.0	15.2
2024	2022.3	73.8	27.4	2,559.4	146.0	17.5

Source: ABS (2024) *Prisoners in Australia 2024*, Table18, Rate per 100,000 of the relevant population.

ABS census data shows a jump in the rate of First Nations imprisonment from 2023 to 2024 by around 21%, and with a rate of 2022.3 it is the highest it has been at any time in the ACT during the last 11 years. The non-Indigenous imprisonment rate continued its longer term decline from a high in 2018. Consequently, the over-representation of First Nations imprisonment in the ACT has continued to increase.

Comparatively, the over-representation of First Nations imprisonment is much higher than the national rate of over-representation and the ACT has the highest rate of any state or territory in Australia.⁴⁴³ However, being a comparative measure, this is partly driven by the low rate of non-Indigenous imprisonment in the ACT which is half the national rate and the lowest rate of non-Indigenous imprisonment of any state or territory in Australia. As we noted in our First Report, this begs the question of why such a strong differential exists in the ACT. As we argue in this Report, it is the cumulative effect of disadvantage generally (particularly in a relative wealthy ACT society) and through a range of specific points of contact with the criminal legal system. The broader consideration relates to how these cumulative effects can be understood within the context of systemic racism.

ABS prison census data for 30 June 2024 shows that the majority of male First Nations prisoners are detained on remand rather than sentenced. The situation for non-Indigenous men is the reverse – most are sentenced.⁴⁴⁴ As discussed previously, this raises issues about access to bail. The situation for women is less clear in that the small numbers of women are subject to fluctuation. However, as shown below, there is a relatively consistent greater likelihood that the majority of First Nations women will be remandees rather than sentenced.⁴⁴⁵

⁴⁴³ See ABS (2024) *Prisoners in Australia 2024*, Table18. It is not the highest rate of First Nations imprisonment in Australia. The NT, South Australia, Queensland and NSW have higher rates of First Nations imprisonment than the ACT.

⁴⁴⁴ See ABS (2024) *Prisoners in Australia 2024*, Table 30.

⁴⁴⁵ See the previous discussion on bail data in the section on Bail.

10.2.1. ACTCS Custodial Data: Daily Averages

The ACTCS provides some public facing data in the JACS Annual Report.⁴⁴⁶ In 2023-24, the average daily detainee population in the AMC was 389. In 2019-20 the average daily detainee population in the AMC was 444. This represents a drop in the average daily number of detainees of 12.4% over the five year period.

Sentenced

The average daily **sentenced** detainee population was 205.8 detainees of whom on average 57.4 were Aboriginal and Torres Strait Islander men and two were Aboriginal and Torres Strait Islander women. This represents an overall drop from 2019-20 when the average daily total sentenced detainee population in the AMC was 269.8. This a 23.7% drop in the daily average over the five year period.

This decline was largely driven **by a reduction in the average daily number of sentenced non-Indigenous men which declined by 28.4% over the period**. There were also significant declines in the daily average sentenced population of both Aboriginal and Torres Strait Islander women and non-Indigenous women (both by over 50%). However, because of the relatively small numbers of women, this had less influence on the overall sentenced population. **The average daily sentenced population of Aboriginal and Torres Strait Islander men saw an increase of 4% over the 2019-20 daily average.**⁴⁴⁷

Unsentenced

The average daily **unsentenced** detainee population was 183 of whom on average 45.5 were Aboriginal and Torres Strait Islander men and 8 were Aboriginal and Torres Strait Islander women. The average daily number of unsentenced inmates has **increased** since 2019-20 when the daily average was 173.9. This represents an increase in the daily average unsentenced population of 5.2% over the five year period. The daily averages for non-Indigenous men and women and Aboriginal and Torres Strait Islander women have remained relatively steady over the period. However, **the average daily for unsentenced Indigenous men saw a 17.6% increase** over the five year period, from 38.7 to 45.5.⁴⁴⁸

In summary, the ACTCS data above shows that there have been reductions in the average daily number of sentenced prisoners which is driven largely by fewer sentenced non-Indigenous men. There has been some increase in the average daily remand population which is being driven by an increase in First Nations male remandees.

⁴⁴⁶ JACS (2024) Annual Report 2023-24, pp.66-68.

⁴⁴⁷ JACS (2024) Annual Report 2023-24, p.67.

⁴⁴⁸ JACS (2024) Annual Report 2023-24, p.68.

Prior imprisonment

In 2024, 58.2% of First Nations people in ACT prison had experienced prior imprisonment, compared to 45.8% of non-Indigenous people in prison. Compared to 2017, the proportion of both First Nations and non-Indigenous prisoners with a prior imprisonment record has dropped. In other words, the percentages of both groups coming into the AMC without a previous record of imprisonment has been increasing. In section 11.1.3 of this Report we discuss the data on return to prison within 2 years.

Comment

In terms of policy implications an increase in community-based sentencing options, reductions in rates of return to prison and alternatives to custodial remands are all important in reducing the imprisonment of First Nations men.

I've been on remand for two and a half years. (AMC Womens Group)

It took them 15 months for me to get sentenced. (AMC Womens Group)

In relation to Aboriginal and Torres Strait Islander women we note that their daily average number in prison (in round figures) is 10. Of these 10 First nations women, on average eight are on remand.⁴⁴⁹ **Significant reductions Indigenous women's incarceration might be achieved through improved and appropriate alternatives to custodial remand.**

10.3. Policy Framework: Be the Change We Seek. Aboriginal and Torres Strait Islander Framework (2023)

The *Be the Change We Seek* framework states that the 'ACTCS recognises and supports the distinct cultural and other rights of Aboriginal and Torres Strait Islander Peoples to maintain, protect, and develop their cultural heritage, language, knowledge, and kinship ties under the *Human Rights Act 2004*'.⁴⁵⁰ The Framework's four focus areas are:

- A culturally capable and accountable workforce
- Culturally safe and responsive services and supports
- Rehabilitation and community reintegration

⁴⁴⁹ JACS (2024) Annual Report 2023-24, p.68.

⁴⁵⁰ JACS (2023) *Be the Change We Seek. Aboriginal and Torres Strait Islander Framework*, Act Government, Canberra, p.33 <https://www.act.gov.au/__data/assets/pdf_file/0020/2605232/Be-the-Change-We-Seek-Aboriginal-Framework.pdf>.

- Partnerships and collaborations.

In relation to building a culturally capable and accountable workforce, the Framework notes, *inter alia*, that there is mandatory entry level cultural awareness training for all ACTCS staff and that there are 10 identified positions within the ACTCS.⁴⁵¹

In relation, to culturally safe and responsive services and supports in the custodial setting, the Framework indicates as an achievement, ‘Respect and dignity through access to same-gender Aboriginal and Torres Strait Islander officers/staff’.⁴⁵²

In relation to rehabilitation and community reintegration, the Framework specifies as achievements, Rehabilitative programs; Extended throughcare by Yeddung Mura; and Development of the Integrated Offender Management Model.⁴⁵³

In relation to partnerships and collaborations, the Framework notes as achievements collaborations, partnerships and engagement with Yeddung Mura, Winnunga, ATSIEB, Ngunnawal Elders, Culture on the Move, Clybucca Dreaming, Johnny Huckle and Dhunlung Yarra (Relationships Australia).⁴⁵⁴

We have reason to question throughout this section of our Report whether the *Be the Change We Seek* framework is achieving significant outcomes in its four focus areas.

We note that the *Disability Framework* is also relevant to First Nations people⁴⁵⁵ as is the *Walking with Women on the Pathway to Change* Framework.⁴⁵⁶ The latter we consider below in the section on First Nations women detainees in the AMC.

10.4. Human Rights

The subject of human rights is prevalent throughout this discussion on the AMC and is of particular relevance given the philosophy and commitments underpinning the establishment of the Centre. It is also of relevance because it was a significant matter raised in many interviews we did with community, detainees, government and other stakeholders.

⁴⁵¹ JACS (2023) *Be the Change We Seek*, p.14. Identified positions: Senior Director, Cultural Services; Aboriginal and Torres Strait Islander Services Unit Team Leader; Aboriginal and Torres Strait Islander Liaison Officer x 2; Aboriginal and Torres Strait Islander Services Officer; AMC Case Manager; Community Corrections Officer; Throughcare Coordinator; Community Corrections Cultural Engagement Officer; and Aboriginal Services and Cultural Diversity Policy and Program Officer.

⁴⁵² JACS (2023) *Be the Change We Seek*, p.20.

⁴⁵³ JACS (2023) *Be the Change We Seek*, p.25.

⁴⁵⁴ JACS (2023) *Be the Change We Seek*, p.28.

⁴⁵⁵ ACT Corrective Services Disability Framework (2023, p.7) and the associated ACT Corrective Services Disability and Inclusion Plan (2024-2026).

⁴⁵⁶ ACT *Walking with Women on the Pathway to Change* Framework and the associated ACT Second Women’s Action Plan 2020-22.

[The AMC] is so disappointing... It was a human rights jail. It was put out there so it could be close to a huge industrial area so that people could transition. They could do work during the day, come back in at night, you know, that they could build a life that set them up for release. But none of that happens out there. It's so disappointing that jail is not what it was designed to be. (First Nations Organisation)

That's a good one, eh? There're gaols in New South that aren't human rights that are run better than the one here. There're no human rights here. (AMC Mens Group)

We identify more substantive human rights matters further below. However, we begin by noting the number of inquiries which have been held in relation to the AMC which raised various human rights issues, including the mixing of remand and sentenced detainees and the absence of a structured day and purposeful activities.

Box 10.1 Reports Drawing Attention to Human Rights Matters at the AMC since 2014

- ACT Human Rights Commission (2014) *Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre*
- Auditor-General (2015) *The Rehabilitation of Male Detainees at the Alexander Maconochie Centre*, Report 2/2015
- Standing Committee on Justice and Community Safety (2016) *Inquiry into the Auditor-General's Report on The Rehabilitation of Male Detainees at the AMC*. Report 7
- Moss, P. et al (2016) 'So Much Sadness in our Lives'. *Independent Inquiry into the Treatment in Custody of Steven Freeman*. Report to the Minister for Corrections
- ACT Coroner's Court (2018) *An Inquest into the death of Steven Claude Freeman* [2018] ACTCD 7
- ACT Inspector of Custodial Services (2018) *Review of the Care and Management of Remandees at the AMC*
- ACT Inspector of Custodial Services (2019) *Healthy Prison Review of the Alexander Maconochie Centre 2019*
- ACT Inspector of Custodial Services (2021) *Report of a Review of Critical Incident. Use of Force to Conduct a Strip Search at the Alexander Maconochie Centre on 11 January 2021*

- ACT Inspector of Custodial Services (2021) *Critical Incident Review of a Fire at the AMC in May 2021*
- ACT Inspector of Custodial Services (2022) *Healthy Prison Review of the Alexander Maconochie Centre 2022*
- Deadly Connections Community and Justice Services (2022) *Alexander Maconochie Centre Healthy Prison Review 2022*.⁴⁵⁷

We are aware that the original design of the AMC was based on assumptions in relation to the projected prison population that have not been reflected in the actual detainee population. Numerous reports have identified the problems: for example, the Auditor-General in 2015 found that the human rights planning and design ‘has been compromised due to its [AMC] relatively small size, multiple classifications, detainee association issues, mixed genders and the unexpected adverse effects of the interaction of these factors with the AMC’s design’.⁴⁵⁸

One of our interviewees suggested that,

The AMC struggles just to keep the doors open, let alone reform processes. And there are good people in there who would do better. There are people who want to make a difference, but the system is very difficult to work in and it's highly unionised as well. So, there are real limits about staffing and people they have to manage, and what they're prepared to do. It's a tough place to manage. As far as I can see, the recommendations often fall in the too hard basket and get shelved. (Legal Service Provider)

10.4.1. Lack of Separation Remand / Sentenced

‘I mean how is the AMC human rights compliant when you have men and women and remand and sentenced?’ (Government Agency)

The Moss Inquiry (2016) indicated nine years ago that the reason given for ‘why the remanded detainees are not segregated from sentenced detainees is that AMC management has both a shortage of accommodation options and 16 categories of

⁴⁵⁷ Deadly Connections (a First Nations organisation) was commissioned by the OICS to provide a report on the AMC to inform the broader OICS 2022 *Healthy Prison Review*. In addition to forming part of the OICS 2022 Review, the Deadly Connections report has been published separately and where appropriate we have directly drawn from both Reports.

⁴⁵⁸ Auditor-General (2015) *The Rehabilitation of Male Detainees*, p.1.

detainee to accommodate'.⁴⁵⁹ Moss concluded that it was inappropriate for the AMC to rely on 'exceptional circumstances' to breach the human right of a remanded detainee to be segregated and recommended that ACTS establish a separate remand prison *within the AMC* to ensure remanded detainees are segregated from sentenced detainees.⁴⁶⁰

Our interviewees commented that ACTCS were relying on the exception around safety and not trying to follow the general rule of separating remand and sentenced. In addition, there has been the introduction of a broader category than safety, following a number of cases including where the courts had found that an individual's human rights had been breached as remandees were being held with sentenced prisoners. The ACT Human Rights Commission has argued that the amendments

weaken the rule that people who are held in custody while awaiting trial (remandees) must be detained separately from convicted prisoners... The rules on treatment of people remanded in custody while awaiting trial reflect the presumption of innocence — a principle that is fundamental to a fair criminal justice system. Only if a person has been convicted, following a fair trial, can they be deprived of liberty as a punishment... To dispense with these rights and treat remandees in the same way as convicted prisoners is tantamount to depriving a person of their liberty as punishment without first holding a trial.⁴⁶¹

The human rights of remandees are critical for First Nations people given they are more likely to be remanded in custody than sentenced. **However, it has been indicated that, since the intervention of the ACT Human Rights Commission, the ACTCS has made a concerted effort to achieve separate accommodation for remandees and sentenced prisoners.** The OICS *Healthy Prison Review 2025* scheduled for release later in 2025 will likely provide more recent consideration of this matter.

10.4.2. Boredom and the Lack of a Structured Day and Purposeful Activities

Boredom and inactivity in the correctional setting encourages drug use, undermines rehabilitation objectives and threatens security and safety. It is therefore important that the prisoner's day be marked by the prisoner's continuous engagement in purposeful activity. Over time, the prisoner will, through incentive-based regimes, exercise increasing levels of decision-making,

⁴⁵⁹ Moss, P., Costello, S., Brown, N. and Sparke, M. (2016) 'So Much Sadness in our Lives'. Independent Inquiry into the Treatment in Custody of Steven Freeman. Report to the Minister for Corrections, ACT Government, November 2016, p.68 <https://www.ics.act.gov.au/__data/assets/pdf_file/0019/1304353/Moss-report.pdf>.

⁴⁶⁰ Moss, P. et al (2016) Recommendation 6, p.61.

⁴⁶¹ ACT Human Rights Commission (2024) 'Amendments to corrections management act risk the ACT's human rights record', 6 September 2024 <<https://www.hrc.act.gov.au/news-and-events/news/amendments-to-corrections-management-act-risk-the-acts-human-rights-record>>.

assume greater levels of responsibility and will be placed in accommodation which reflects this. (AMC Functional Brief 2005)⁴⁶²

There's no structured day here... There's no actual learning of new skill sets or anything like that... Because some fellas they don't know how to read and write. We don't offer any support for that. It's like there's nothing to do so we just go, okay cool, no worries, I'll help you with a form. But that's not addressing an underlying issue. (Government Agency)

Despite the rehabilitative promises of the AMC when it was established, the problems with the absence of a structured day with purposeful activities has been identified consistently, at least from 2014 onwards. A significant part of the *raison d'être* for the introduction of the AMC was that it would replace the 'warehousing' of the former Belconnen remand centre with a prison focused on rehabilitation. Ten of the eleven reports referred to in Box 10.1 above noted boredom and the lack of a 'Structured Day' and purposeful activities at the AMC between 2014 and 2022. In 2015 the Auditor-General noted that 'a "structured day" with "purposeful activity" is not being achieved for many detainees. It is therefore likely that some detainees are bored, and this can compromise their rehabilitation'.⁴⁶³

In August 2018, nearly seven years ago, the ACT Government's response to the Coroner's Court *Inquest into the death of Steven Freeman* stated that, 'As part of the AMC's operating philosophy, ACTCS is embedding a structured day for all detainees. The structured day will improve the delivery of programs, employment and constructive activity at the AMC. The structured day will include dedicated time for physical activity and recreation'.⁴⁶⁴

However, in the *Healthy Prison Review 2022* the OICS found that 'the lack of a structured day at the AMC and the consequential boredom experienced by detainees is an ongoing concern for OICS and has been raised in a number of our reviews'.⁴⁶⁵ These included the earlier *Review of the Care and Management of Remandees at the AMC* (2018), the *Healthy Prison Review* (2019) and a Critical Incident Review of a Fire at the AMC in May 2021.

Results from the *Healthy Prison Review 2022* detainee survey showed that 79% of respondents indicated that 'most of the time they are bored because there are not

⁴⁶² JACS (2005) ACT Correctional Centre, Functional Brief, p.11.

⁴⁶³ Auditor-General (2015) The Rehabilitation of Male Detainees at the Alexander Maconochie Centre, Report 2/2015, ACT Audit Office, Canberra, p.2.

⁴⁶⁴ Legislative Assembly for the ACT, (2018) Government Response to the Coroner's Report – Findings of Death of Steven Freeman, p.3.

⁴⁶⁵ ACT Inspector of Custodial Services [ICS] (2022) Healthy Prison Review of the Alexander Maconochie Centre 2022, ACT Government, Canberra, p.185.

enough productive things to do'. This was an increase of 15 percentage points from the *Healthy Prison Review 2019*. Results from the OICS surveys and focus group discussions indicated 'a strong desire from detainees to be engaged in meaningful activities during their time at the AMC'.⁴⁶⁶

It is OICS' view [in 2022] that in the years since first raising the issue of a lack of structured day in the AMC, the situation has become worse. While we appreciate the difficulty of providing education, programs, employment and activities to suit the diverse needs and interests of detainees, more could be done to expand the variety of available activities.⁴⁶⁷

Many of the comments from detainees about boredom in the AMC referenced in the *Healthy Prison Reviews* mirrored the comments that we received from Aboriginal and Torres Strait Islander people we spoke with in the AMC during the later part of 2024, as well as those who had previously spent time there. In short, 'there's nothing to do here. That's why we get bored' (AMC Mens Group); 'I'd rather do my time in New South... at least you're busy. You're sitting here picking fights and running each other down. In New South we were always on the go' (AMC Womens Group).

The effects of boredom are multifaceted, potentially increasing the likelihood of conflict among detainees and with staff, negatively impacting on self-worth and motivation and diminishing the likelihood of rehabilitation and preparedness for release.⁴⁶⁸ Yet the same comments from current detainees and those recently released from the AMC show that there has been little change. Many people we spoke with, including both detainees and government staff, also drew the direct link between boredom and the demand for drugs.⁴⁶⁹ Multiple reports on the AMC have drawn similar conclusions.⁴⁷⁰ Indeed, the Functional Brief for the AMC before it was built observed the link between boredom and drug use.

It was also made clear in our interviews that the absence of a structured day gives rise to uncertainty and inconsistency in the applications of rules, broad staff discretion and a lack of accountability.

⁴⁶⁶ ICS (2022) *Healthy Prison Review 2022*, p.185.

⁴⁶⁷ ICS (2022) *Healthy Prison Review 2022*, p.186.

⁴⁶⁸ See also ICS (2022) *Healthy Prison Review 2022*, p.185.

⁴⁶⁹ For example, 'If people are bored obviously that's an attractive option [drugs]... if they've got nothing else to do, that's what they want. (Statutory Authority/Public Body); 'People are too bored... There is no structured days. So, what are you going to do?' (Government Agency).

⁴⁷⁰ For example, 'Rather than the originally intended 30 hours per week, detainees told the Inquiry that they would have up to 1 to 2 hours of programs, education or employment a week. The Inquiry notes that the lack of a structured day inevitably leads to boredom, which invites the possibility and added risk of detainees using illegal drugs'. Moss, P. et al (2016) p.12.

[In NSW] you knew where you stood, you know what I mean? (AMC Mens Group)

Officers don't even make people stand at their door for muster. In NSW you line up and you get counted off. Here... they will accept someone shaking their leg to show that they are alive. (AMC Staff Female)

That's why we all get frustrated is that they change all these rules. They won't stick to the one thing they just keep changing and changing. How are we meant to get into a routine and do these things they want us to do if they keep changing and that's what stresses us out, that's what frustrates us. So we just don't worry about doing it. (AMC Mens Group)

10.4.3. Human Rights as an Obstacle to a Structured Day?

The human right is that they're allowed to say no to anything they don't feel like, that's sort of what it's interpreted as here: 'I don't feel like it, I can say no and you can't make me do it. And you can't punish me for that'. (Government Agency)

From our interviews, there seems to be a prevalent view in the AMC that 'human rights' means that it is not possible to place requirements on detainees to have a set routine and structured day of activities. More than a decade ago, the ACT Human Rights Commission addressed this concern specifically in its report on women. However, the comment has more general applicability:

Some corrections staff and service providers suggested that human rights requirements meant that no real routine could be established for women, as it would breach their human rights to impose rules regarding getting out of bed or getting dressed at a set time, or to place any limits on television viewing. Women detainees also appear to have the same understanding of their human rights.⁴⁷¹

The Human Rights Commission went on to state that this is a misunderstanding of human rights principles. Those principles require that detainees be treated humanely and that remandees not be forced to work. However, those principles 'respect the need for prisons to have structure, rules and routine for the benefit of detainees'.⁴⁷² Andrew Coyle wrote in *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, 'prisoners

⁴⁷¹ ACT Human Rights Commission (2014) Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre, p.164 <https://www.ics.act.gov.au/__data/assets/pdf_file/0013/1304131/13.pdf>.

⁴⁷² ACT Human Rights Commission (2014) Human Rights Audit, p.164. For example, relevant international instruments include the International Covenant on Civil and Political Rights, Article 10(3) Standard Minimum Rules for the Treatment of Prisoners, Rules 65-66; for work and skills training, the International Covenant on Civil and Political Rights, Article 8, Standard Minimum Rules for the Treatment of Prisoners, Rule 71; for education and cultural activities Standard Minimum Rules for the Treatment of Prisoners, Rules 77, 78.

should not have to spend their days in idleness or boredom. This is important for their own personal wellbeing and also for the smooth management of the prison: prisoners who are not kept occupied are more likely to become depressed and disruptive'.⁴⁷³ We also note that the ACT Human Rights Act contains both the right to work and the right to education (see s27A and s27 B). Detained persons retain all their human rights, except to the extent that incarceration necessarily interferes with them (for example, their liberty).

More prosaically, one service provider told the ACT Human Rights Commission, 'we don't want a militaristic regime, but a compassionate structured day'.⁴⁷⁴ We also note further below that a purposeful, structured day for First Nations detainees would necessarily involve programs and activities that meet their cultural needs. The ultimate goal of Recommendation 10.1 is to provide for a rehabilitative environment, reduce the likelihood of re-offending and reduce Aboriginal and Torres Strait Islander over-representation in the criminal legal system.

Recommendation 10.1

We recommend ACTCS introduce a structured day and purposeful activities in the AMC as a matter of high priority. It is an important end in itself to respond to detainee needs, but it also has a range of positive impacts on other areas such as reducing drug use, improving motivation and increasing the likelihood of rehabilitation. Purposeful activities for First Nations detainees must meet cultural needs.

⁴⁷³ Coyle, A. (2009) A Human Rights Approach to Prison Management: Handbook for Prison Staff, International Centre for Prison Studies, p.91.

⁴⁷⁴ ACT Human Rights Commission (2014) Human Rights Audit, p.166.

10.5. Reform and Accountability

Box 10.2 shows the mechanisms for external oversight and the internal concerns in relation to human rights issues which were raised by Aboriginal and Torres Strait Islander detainees.

Box 10.2 Reform and Accountability

External	Avenues	Internal Concerns for Aboriginal and Torres Strait Islander Detainees
• OICS • Auditor General • Ombudsman Office • Human Rights Commission • Coronial Inquests • Integrity Commission • Official Visitors • Civil litigation		• Racism • Segregation • Use of Force • Security Classifications • Strip Searches • Punishment and Systemic Racism

10.6. External Oversight

The interviews with First Nations detainees and those recently imprisoned expressed a sense of powerless with the ability of external oversight agencies and legal processes to bring about change. For example,

Human Rights, Ombudsman, Official Visitors. They have no pull in this prison. At the end of day, they have nothing. So, they'll talk to like the screws and whatever else about what our problems are and they won't get fucking anywhere. They will start where they finish. They don't get anywhere with these screws. (AMC Mens Group)

But they try. I know they try, and they do their best, but they get sucked down. They need more help. They need more say. There's a couple of them that walk around every weekend and through the week and they're constantly talking to people. But they need more pull. They need more... resources. (AMC Mens Group)

There was also a sense of frustration:

I've been in custody twice and missed both my kid's births being in custody and I've always been refused for an escort and that stuff you know what I mean? There are no avenues for me to follow that stuff up with. I've done with the ALOs. I've done with Official Visitors, with the Crown Officers and all that stuff. And you just get nowhere. They build your hopes up and then you shut down. (AMC Mens Group)

However, we do not suggest that external agency oversight and legal mechanisms for redress are unimportant. Indeed, these bodies have consistently raised important problems that need to be addressed. Civil litigation has also been used successfully, for example, by Paul Palmer after injuries sustained in a 'hard extraction' from his cell. The ACT Supreme Court found that 'unnecessary and unreasonable force' had been used.⁴⁷⁵

The treatment at the AMC of First Nations woman, Julianne Williams has also shown the potential combination for a number of avenues of oversight and redress to work together. We deal with some of the specific aspects Ms Williams' treatment further below. Here we note that Ms Williams, who was on remand at the time, was critical of the lack of support from the Aboriginal Liaison Officers (ALOs, previously called Indigenous Liaison Officers (ILOs)) in the AMC.⁴⁷⁶ The Indigenous Official Visitor was instrumental in bringing complaints by Ms Williams to light through notifying the ACT Human Rights Commission. Ms Williams also received support from Winnunga Health Services. She stated, 'The other solid thing we have is Winnunga Medical Services. When Julie Tongs heard of the conduct she sent someone from the social health team to check on my welfare'. She went on to state that 'If it wasn't for [name deleted, Winnunga], [name deleted, Official Visitor] and [name deleted, [Human Rights Commission], I would be purely alone... These three Indigenous women who work outside the prison are the only reason I am still alive today'.⁴⁷⁷

The OICS became involved when the events surrounding Ms Williams strip search was declared a critical incident. The OICS report recommended, among other things, that mandatory strip searches of detainees being placed into the Crisis Support Unit (CSU)

⁴⁷⁵ McKnight, A. (2023) 'Prisoner wins \$160,000 after corrections officers "went to town" on him in his cell', Riotact, 26 November 2023.

⁴⁷⁶ We make no finding in regard to the support offered by the ALOs, however we also note some criticisms of the ALOs (previously ILOs) in the Deadly Connections Community and Justice Services (2022) Alexander Maconochie Centre Healthy Prison Review 2022 Report where some First Nations detainees were not aware of their ALO and others saw it as a 'box ticking' exercise. Deadly Connections noted that 'There appears to be a significant disjuncture between the experience of Aboriginal people in custody with designated ILOs at AMC and the intended purpose of the role as stated in the Position Description'. However, Deadly Connections also noted that it **'was unable to determine during our review whether the ILO roles are constrained by operational limitations or other pressures placed on the role'** (pp.8-9).

⁴⁷⁷ Statement of Julianne Williams, on file with Jumbunna.

cease immediately and the introduction of body scanner technology should be expedited.⁴⁷⁸ Ms Williams launched proceedings in the ACT Supreme Court claiming her human rights were breached while she was detained at the AMC. The ACT Human Rights Commissioner received leave to intervene in these proceedings. In early March 2023 a five-day hearing was held in the case. A further hearing for closing submissions was then held on 30 May 2023. The case is now awaiting a decision.⁴⁷⁹

However, a core problem in many of the independent reports has been the lack of a follow-up reform process by government. For example, this was demonstrated above with the lack of meaningful developments over many years around the introduction of a structured day and purposeful activities. The frustration was shown when *Neil McAllister*, the inaugural ACT *Inspector* of Custodial Services, completed his term of office in 2023. While there had been some important changes after OICS reports, there were many issues which needed addressing urgently, including inmate boredom, poor educational opportunities and the lack of meaningful work and training.⁴⁸⁰

10.7. Internal Concerns for Aboriginal and Torres Strait Islander Detainees

10.7.1. Racism

There were numerous complaints by Aboriginal male and female detainees we spoke with about racism in the AMC.⁴⁸¹ As an example, we reproduce the following from a detainee.

One morning they had the sniffer dogs there [gym]... Everyone that come down with me that day were Indigenous or Islander. We all had the dogs put on us. So White fellas come, they go 'How you going?', 'Morning'... they got walked in. Some Africans come down, they got dogs put on them. Some White fellas come up, they got waved through. So, if you were Indigenous, Islander or African you got stopped and the dog put over

⁴⁷⁸ ICS (2021) Report of a Review of Critical Incident. Use of Force to Conduct a Strip Search at the Alexander Maconochie Centre on 11 January 2021, p.5.

⁴⁷⁹ *Williams v Director-General of the Justice Community Safety Directorate & Ors*. See ACT Human Rights Commission (2023) Annual Report, 2022-23, p.31.

⁴⁸⁰ Brewer, P. (2023) 'How to fix Canberra's troubled jail: The person most qualified delivers his candid view', The Canberra Times, 15 March 2023. Also: 'On her departure from the ACT Magistrates Court last year (2023) after a quarter-century on the Bench, Beth Campbell lamented the "distressing" state of the prison, wondering how it was "beyond our capacities" to educate inmates, rid the jail of drugs and stop sexual abuse'. 'Prison shame passes unnoticed on the campaign trail', City News, 12 October 2024.

⁴⁸¹ Some other examples included: 'Officers are picking and choose who to make examples out of it and it's always us Black ones. (AMC Womens Group); [In Management/Segro cells] [28 days of] 'nothing. They don't bring us our books, nothing. Other detainees that aren't Indigenous they get everything taken up to them'. (AMC Womens Group).

you. If you were White, you got a 'Good morning mate' and welcomed into the gym. I put it to them myself. I said, 'Why are you only searching Blakfellas?'. They said 'No', and I said, 'Sorry you're just searching coloured people'.

And then they tried to throw it off and I said, 'Listen, I'm putting in a complaint because there's a camera right there'... I did [an internal] complaint... So you do a complaint online through the email and then two weeks later they send you back an email saying we've received your complaint, if you want to further your complaint send it to this email which is the same email. So, it takes six weeks for anything to happen. But then after I did that I've been targeted non-stop. Been sent to segro for shit I haven't done. They said police were going to target me for other incidents that I had no part in doing. I've lost my Enhanced [IEP]... As soon as you find something that they're doing wrong and you make a complaint, you're in the shit. (AMC Mens Group)

Ms Julianne Williams also raised questions about institutional and individual racism in the AMC.

The racism is also very evident... I approached the CO3 and CO4 via Blue Request Form regarding these [racist] statements. Only to have the letter attached returned on its own and the Bluey lost. I also brought this to the attention of the ILOs with the response to 'just leave it'... The only person to raise the issue was the Indigenous official [visitor] Vickie Quinn because she doesn't have to answer to Corrective Services.⁴⁸²

Although the OICS investigated the incident of the strip search of Ms Williams, it was unable to investigate other complaints of Ms Williams including systemic racism because it was not included in the 'critical incident' declared by the Minister.⁴⁸³

However, the detainee survey conducted by OICS as a part of the *Healthy Prison Report 2022* asked First Nations detainees whether they had been discriminated against by staff because they were an Aboriginal and/or Torres Strait Islander person. Some 72% of First Nations stated they had been, and 55% stated they had been discriminated against by other detainees because they were an Aboriginal and/or Torres Strait Islander person.⁴⁸⁴

In addition, one of the key findings from the report commissioned by the OICS and undertaken by Deadly Connections through focus groups in the AMC was that 'multiple

⁴⁸² Statement of Julianne Williams, on file with Jumbunna.

⁴⁸³ ICS (2021) Use of Force to Conduct a Strip Search at the Alexander Maconochie Centre, p.7.

⁴⁸⁴ ICS (2022) Healthy Prison Review 2022, p.43. The types of critical incidents which are automatically referred to the OICS are set out in the *Custodial Inspector Act 2017*. The Minister can also refer 'any other incident identified as a critical incident'. It is also noteworthy that it is not the role of the OICS to handle individual complaints.

Aboriginal people in custody expressed that the staff and systems at AMC contribute to it being experienced as “racist jail” for First Nations people’.⁴⁸⁵

These OICS figures, the Deadly Connections research and the anecdotal stories we received would strongly suggest that racism is a significant problem in the AMC.

10.7.2. Segregation

There was also a sense of arbitrariness and inappropriateness in the use of segregation raised by the detainees. For example,

One of the female screws in the yard, she was going around doing cot checks and there was a fellow still asleep and he was sleeping naked, and she walked in on him naked. He told her to get out and then they put him in segro for a week for it. There are no guidelines, no rules’. (AMC Mens Group)

Others referred to the use of segregation as punishment for putting in complaints, as noted previously in relation to racism. Ms Williams also detailed how segregation exacerbated pre-existing mental health problems.

I was placed on segrogation [sic] for 23 hours a day with no contact with anyone, not even during the hour out. ILOs have done nothing to support me during this time. Corrective Services are continuing to segrogate [sic]... My mental health has deteriorated to a large degree without the support needed from my other peers in here.⁴⁸⁶

Others noted actions in response to segregation: ‘There's been a case going on for fucking years about the segregation unit and how they mistreated everybody in there’ (AMC Mens Group).

Segregation data shows that First Nations people are significantly over-represented for those put on segregation orders for the safety of others, or the security and good order of the Centre under s.90 of the *Corrections Management Act 2007*.

In 2020-21, Aboriginal and Torres Strait Islander detainees accounted for nearly half (47%) of all orders under s.90, although Indigenous detainees comprised approximately 27% of the AMC detainee population at the time.⁴⁸⁷

⁴⁸⁵ Deadly Connections (2022) Healthy Prison Review 2022, p.5.

⁴⁸⁶ Statement of Julianne Williams, on file with Jumbunna.

⁴⁸⁷ ICS (2022) Healthy Prison Review 2022, p.43.

10.7.3. Use of Force

We received several comments from detainees and stakeholders about the use of force in the AMC. For example:

There's a bunch of us doing civil cases... and there's one Indigenous fella... two screws that went a bit OT [over the top] you know?... And pretty much they got stood down. But they stand [them] down until it's swept under the rug and then they're on paid leave and now back at work. (AMC Mens Group)

In AMC there is an element in there of the old school. They give them a hiding, put them in their place... (Statutory Authority/Public Body)

The AMC data indicates that both First Nations men and women are significantly over-represented in recorded use of force incidents.

In 2020–21, Aboriginal and Torres Strait *males* accounted for 23% of the male detainee cohort and 53% of Use of Force (UoF) incidents.

Aboriginal and Torres Strait *females* accounted for 49% of the female detainee cohort and 67% of UoF incidents.⁴⁸⁸

As we noted above, Paul Palmer successfully sued the ACT Government after claiming the incident in September 2017 left him suffering from extreme pain, with a significant injury to his right shoulder and ongoing mental harm. He had been serving a lengthy sentence at the AMC when he became angry because he had been kept in an overflow area for several days with no exercise area or shower facilities.

10.7.4. Security Classifications

It has been argued that the security ratings at AMC indicate a likely cultural bias in the policy and its application. As at July 2021, Aboriginal and Torres Strait Islander peoples represented 27.5% of the AMC population. Deadly Connections in their work for the OICS found that First Nations detainees were 41% of all maximum security and only 15% of minimum security persons.

Deadly Connections suggested that, 'this unnecessarily contributes to Aboriginal people in custody not being afforded optimal opportunity for rehabilitation and reintegration through access to the TRC, classification-limited programs and services and pre-release

⁴⁸⁸ ICS (2022) Healthy Prison Review 2022, p.42.

normalisation processes'.⁴⁸⁹ The OICS has recommended that the ACTCS engage an independent Aboriginal and Torres Strait Islander expert(s) to review the security rating system to ensure that it is free of any cultural bias that could result in Aboriginal and Torres Strait Islander detainees being over-classified.⁴⁹⁰ As far as we are aware such a review has not been undertaken.⁴⁹¹

10.7.5. Strip Searches

The use of strip searches was raised by both men and women detainees we spoke with in the AMC. The AMC data indicates that both First Nations men and women are over-represented in recorded use of strip searches.

In 2020–21, Aboriginal and Torres Strait *males* accounted for 23% of the male detainees and 30% of strip searches.

Aboriginal and Torres Strait *females* accounted for 49% of the female detainees and 58% of strip searches.⁴⁹²

Information was provided to Jumbunna from previous FOI requests in relation to strip searches at the AMC. We have utilised this information in our Review.⁴⁹³ During the 7 month period between 1 October 2020 and 30 April 2021, there were 208 strip searches conducted on women in the AMC, of which 58% were conducted on First Nations women. Only three of those searches resulted in finding contraband (one relating to medication and two relating to drug paraphernalia and drugs). The most common reasons for the strip searches were women going to court (38) or returning from court (57) or admission to prison (49). No reason was provided for 49 cases.

During the same period between October 2020 and April 2021, there were 2144 strip searches conducted on men in the AMC, 30% were conducted on First Nations men. Nineteen of those searches resulted in finding contraband including drugs (7), cigarette lighter (2), medication (2), syringe (1) and 'other' (7). The largest single reason for strip searches on men was *before* going to court (785), followed by returning from court (621) or on admission to prison (265).

⁴⁸⁹ Deadly Connections Healthy Prison Review 2022, cited in ICS (2022) Healthy Prison Review 2022, p.43.

⁴⁹⁰ ICS (2022) Healthy Prison Review 2022, Recommendation 3, p.8.

⁴⁹¹ However, we were informed by ACTCS that our discussion 'does not reflect recent work on reviewing and refining the classification tools'. No further information was provided.

⁴⁹² ICS (2022) Healthy Prison Review 2022, p.42.

⁴⁹³ The information is held on file in Jumbunna.

We understand that the introduction of two body scanners has likely reduced the number of strip searches during and since 2022.⁴⁹⁴ Recent data provided by CSNSW⁴⁹⁵ for the calendar year 2024 does show a dramatic decline in the number strip searches. There was a total of 146 strip searches in the AMC and 415 by the Court Transport Unit (CTU). Some 32% of strip searches in the AMC involved First Nations detainees; 26% of strip searches by the CTU involved First Nations detainees.

It is also noteworthy that in 2024, 85% of all strip searches in the AMC and 97% of strip searches by the CTU were negative (no contraband was found). Of the 51 strip searches of women (both AMC and CTU), two searches were positive. This suggests a need for improvements in targeting and the potential for further reductions in the use of searches.

The reduction in the use of strip searches in the ACT is an important positive change. However, we still need to stress that strip searching is a humiliating experience. For women the experience can be particularly traumatising because of the association that many (First Nations) women in prison have with prior experiences of violence and in some cases sexual assault. For example, a recent Queensland Human Rights Commission report on strip searches found that

most women in prison have experienced psychological, physical or sexual violence in some form. Many prisoners we spoke with told us that strip searches triggered past trauma, especially for women who had experienced rape, sexual abuse during childhood, or sexual violence in domestic relationships. Being subjected to repeated strip searches was retraumatising and echoed and exacerbated the existing trauma that many incarcerated women experienced on the outside.⁴⁹⁶

Similar experiences have been related in the ACT. For example, Michaella Bangard in her submission to our Review stated on the basis of her in-depth interviews with First Nations women who had been imprisoned in the ACT:

The women shared powerful testimonies about their experiences within the AMC... Strip search practices emerged as particularly traumatic, especially for women with histories of sexual abuse. Multiple participants described male guards being involved in forcibly removing clothing, creating new layers of institutional trauma.⁴⁹⁷

⁴⁹⁴ ICS (2022) Healthy Prison Review 2022, p.42.

⁴⁹⁵ Provided 12/6/25, held on file in Jumbunna.

⁴⁹⁶ Queensland Human Rights Commission (2023) Stripped of Our Dignity. Report Summary, Brisbane, p.4.

⁴⁹⁷ Bangard, M. (2024) Submission to the ACT Government Review on Indigenous Overrepresentation in the Criminal Justice System, University of Canberra (Bangard, M., Written Submission) p.2.

There was also a sense of arbitrariness associated with the use of strip searches. ‘Like when I come back [from] court the officers can be just complete assholes. They can put you through a scanner and strip search if they feel that you have something on you. They can put you in segro for the night if they’re disliking you’ (AMC Womens Group). Certainly, inconsistency was found by the OICS in the use strip searches, even when they were supposedly mandatory prior to being placed in the CSU.⁴⁹⁸

Although it occurred prior to the current reduction in the use of strip searches, the testimony of Julianne Williams’ experience of a forced strip search provides compelling testimony to the trauma associated with the practice. The context for Ms Williams is important. She is an Indigenous woman with a heart condition, pulmonary embolism on her right lung and a collapsed lung. She also has a Borderline Personality Disorder. Ms Williams was in custody on remand. At the time she was 37 year old. Ms Williams had previously been placed in segregation. She had recently been informed of her grandmother’s death and her request to attend the funeral had been denied.

I was placed in a [Crisis Support Unit] cell where everything can be seen. There are also 5 to 7 men housed in the same unit, who can also see everything that occurs. Whilst laying on the bed a total of 4 female officers, 2 male officers, 2 male nurses and 5 male detainees with full view.

All officers and nurses enter my cell to strip me naked to check I had nothing on me for my safety I’m told. The female officers were in full squad gear, while the rest were there to watch. There [sic] intention was to forcefully remove all of my clothing by cutting my clothes clean off. At this time, I was menstruating heavily due to all the blood thinning medication I take on a daily basis. Here I ask you to remember that I am a rape victim. So you can only imagine the horror, the screams, the degrading feeling, the absolute fear and shame [I] was experiencing.⁴⁹⁹

After a physical struggle lasting several minutes, the detainee agreed to accompany officers to a bathroom in the unit where a closed-door strip search was conducted by two female officers.⁵⁰⁰

In Ms Williams case, the OICS found that, while the decision to conduct a strip search was lawful under the *Corrections Management Act 2007*, ‘there had been no consideration of human rights in making the decision to attempt to forcibly remove her

⁴⁹⁸ ICS (2021) Use of Force to Conduct a Strip Search at the Alexander Maconochie Centre, p.17.

⁴⁹⁹ Statement of Julianne Williams, on file with Jumbunna. Some aspects of Ms Williams account were corrected. According to the ICS (2021) Use of Force to Conduct a Strip Search at the Alexander Maconochie Centre, the male detainees in the CSU could not see into Ms Williams’ cell, although they could hear what was occurring.

⁵⁰⁰ ICS (2021) Use of Force to Conduct a Strip Search at the Alexander Maconochie Centre.

clothes, contrary to the *Human Rights Act 2004* which requires human rights to be considered in all decision making by a public authority'.⁵⁰¹

We note that the Queensland Human Rights Commission recently advised that:

a forced strip search should never occur due to non-compliance with the strip search process or for any other reason, unless there is a real and present risk to the prisoner. If a prisoner becomes non-compliant during a strip search, corrective services officers should withdraw.⁵⁰²

We also note that there is a developing national movement to ban strip searches in prison. In a joint submission by the Human Rights Law Centre and others to the Australian Law Reform Commission's *Justice Responses to Sexual Violence Inquiry*, it is recommended that state and territory governments urgently enact law reform to cease and prohibit the practice of strip searching of people in prisons, and further that state and territory governments urgently implement safer and less invasive alternatives such as body scanners.⁵⁰³ The OICS Inspection Standards for the Adult Correctional Services in the ACT state that, 'policies, procedures and practices require alternatives to strip searching as the standard, such as through the use of body scanners or direct observations'.⁵⁰⁴

The reduction in the use of strip searches in the AMC is positive, and we would hope that, as a principle, the ACTCS is moving their policies towards the total elimination of strip searching. Given that nearly three quarters (74%) of strip searches are now conducted by the CTU, we expect that attention should be focused on how reductions in their use in the context of court transport can be strengthened. Also given that a significant majority of strip searches are negative for both the AMC and CTU further reductions in use appear achievable.

10.7.6. Punishment and systemic racism

Aboriginal and Torres Strait Islander detainees we interviewed spoke of the sense of arbitrariness around the experience of punishment. For example, 'Your punishment is being taken away your family and being put in here. And then you get your rights stripped away from you because you have to ask these officers for everything. We are all adults and we have to ask for everything' (AMC Womens Group).

⁵⁰¹ ICS (2022) Healthy Prison Review 2022, p.84.

⁵⁰² Queensland Human Rights Commission (2023) Stripped of Our Dignity. Report Summary, Brisbane, p.7.

⁵⁰³ Human Rights Law Centre, et al, (2024) Ending State Perpetrated Sexual Violence in Prisons. Submission to the Australian Law Reform Commission's Justice Responses to Sexual Violence: Issues Paper <https://www.hrlc.org.au/s/SUB_ALRC-Inquiry_HRLC_Flat-Out_FIGJAM.pdf>.

⁵⁰⁴ ICS (2022) ACT Inspection Standards for Adult Correctional Services, p.29.

The nature of unequal power relations within the prison setting means there is a strong feeling of the absence of any repercussions for staff misbehaviour. In some cases, this lack of accountability was also tied to the arbitrariness of the Incentives and Earned Privileges (IEP) scheme (which we return to later). For example,

I came out of my cell one day a bit grumpy. He's like 'oy, what's going on with you?' Like 'family issues, none of your business. Something happened with my 11 year old daughter'... [He said] 'Oh what's your daughter's name? I'll go look her up on Facebook'. In the middle of the fucking yard in front of everyone... 'If my 11 year old daughter is your business, something is fucking wrong with you'. I'm not going to sit down and cop that crap... There's not one fucking thing against him. Nothing. I copped all the fucking case notes, lost my Enhanced [IEP], lost my visits with my kids, fucking all sorts of fucking shit because I lost my shit at him because *he* fucked up. (AMC Mens Group)

When we consider both the interview material and the empirical data on racism, the use of segregation, the use of force, security classifications and the use of strip searches identified above, it is very clear that prison life is harder for Aboriginal and Torres Strait Islander detainees.⁵⁰⁵ These concerns also impact across both gender and disability – as, for example, the situation of Ms Julianne Williams attests.⁵⁰⁶ The evidence above raises distinct problems of the extent to which systemic racism permeates the operation of the AMC. In a similar light, the submission to our Review by ALS NSW/ACT stated that:

The recent death of ACT prisoner TJ Denniss in Silverwater prison in NSW brought to light a number of concerning allegations about his treatment in AMC before being transferred to Silverwater, including prolonged periods of time in solitary confinement, lack of mental health support and exposure to racism and bullying at the hands of correctional officers at AMC.⁵⁰⁷

Closely connected to systemic racism is what the submission by ALS NSW/ACT refers to as 'serious cultural safety issues' in the AMC. We return to cultural safety matters and the importance of developing a cultural safety framework further below.

⁵⁰⁵ This is not to say that prison life for non-Indigenous people in prison is somehow acceptable. Problems with conditions generally (including for example, boredom, visits, access to phone calls, time in cells) have been recently documented publicly with the imprisonment of David McBride (see "Inhumane" treatment of imprisoned David McBride', City News, 18 September 2024; also City News, 22 September 2024; City News, 24 October 2024.

⁵⁰⁶ ACTCS commented on the draft Report that 'while ACTCS was aware Ms Williams had a heart condition, none of the rest of this information was available to officers when making the decision to undertake the strip search or use of force. Health information is protected information and not shared with ACTCS. ACTCS staff must make such decisions in the absence of this kind of information'.

⁵⁰⁷ ALS Submission to our Review, p.7.

We have recommended above that the ACT Government conduct independent, targeted systemic racism reviews of Directorates likely to influence or impact First Nations justice outcomes.

Recommendation 10.2

In line with Recommendation 3.2, we recommend that the operation of the AMC should be a priority area for a systemic racism review including, but not limited to, such matters as the use of segregation, the use of force, security classifications, recognition of cultural rights and the interaction of staff with First Nations detainees. The review should consider the intersections between systemic racism, gender and disability.

Some detainees we spoke with thought there were not enough First Nations staff in AMC and ACTCS generally. It was noted that those who were in the AMC, and especially those who advocated on behalf of First Nations detainees lacked power and authority, whereby their recommendations were ignored, decisions were overturned, or their contracts not renewed. For example, ‘he actually like goes in hard for us you know but they always try to shut him down’ (AMC Mens Group).

When I got sent to segro for shit, he was up there every day checking up on me. He’s seen the targeting that I received... They refused to extend his contract. But he was the only one that helped out with whatever you needed... he’s the only that follows through... follows up... he actually cared about us. (AMC Mens Group)

While increasing staff numbers is important it is also dependent on their position of authority within the organisation and their ability to bring about change. Recommendation 2.3 requires the appointment of an Assistant Commissioner (Aboriginal and Torres Strait Islander) for Correctional Services. We also note that some of the external accountability mechanisms lack identified First Nations staffing positions.

Recommendation 10.3

We recommend that the ACT government make funding available for the appointment of an identified Aboriginal and Torres Strait Islander position in the Office of the Inspector of Custodial Services (OICS).

10.8. Drugs in Prison

The availability and use of illicit drugs in the AMC has been identified as an ongoing problem. We acknowledge that it is not possible to completely eliminate drugs in

prison,⁵⁰⁸ and we also acknowledge that there are physical security design flaws that are difficult to address, particularly regarding the perimeter fence and male cottages.⁵⁰⁹ Further we acknowledge that while there are many reports of widespread use, it is impossible to accurately gauge the prevalence and type of drug use.

We were told that many people experiencing drug dependence are coming into the AMC. 'Whether it's heroin, methamphetamine or a combination of both. Those are the two main ones that I see. And I think, you know, as far as people coming through, it's a very, very, very high percentage of people that come through with those' (Government Agency). And further that drugs were readily available.

You've got people with basically mental health problems, their own traumas and probably prior addictions all put together with easy access to drugs. It's easier to get drugs in the AMC than it is in Civic. (First Nations Organisation)

You can get on drugs more in AMC than you will outside... From when I come in 2021 to now it's still sort of the same. (AMC Mens Group)

'It's a pretty fucked up prison [in relation to drugs]. It's still pretty bad'. (AMC Mens Group)

Various recent media reports have raised the same concern.⁵¹⁰

As we noted previously, many people we spoke with, including both detainees and government staff, also drew the direct link between boredom and the demand for drugs and various reports on the AMC have drawn similar conclusions.⁵¹¹ While there is a demand for drugs in prison, then trying to control the supply side will always be difficult.

It makes gaol go quicker is what they're telling us in group. It makes it go a lot faster and you know their life is unmanageable in addiction out in the community and in other prisons they've said that they go in there and it's like they get to clean themselves up. They get into this routine and they start working and then they start

⁵⁰⁸ As one detainee told us 'you can always get drugs in prisons' (AMC Mens Group).

⁵⁰⁹ 'People literally drive up to the back of the jail here and talk to the bloke on the phone and they go "no not that unit", and he points to the next one, throw it there and then they throw it straight over the fence' (Government Agency). See also ICS (2022) Healthy Prison Review 2022, p.79.

⁵¹⁰ The ACT's prison is run by a clique, with detainee bashings covered up, staff bullied into silence and the library better labelled "a supermarket" where any drug desired was freely available. 'Revealed: Prison library is a drugs "supermarket"' City News, 20 October 2024. 'Drugs are still rife in the AMC', City News, 12 October 2024.

⁵¹¹ For example, 'Rather than the originally intended 30 hours per week, detainees told the Inquiry that they would have up to 1 to 2 hours of programs, education or employment a week. The Inquiry notes that the lack of a structured day inevitably leads to boredom, which invites the possibility and added risk of detainees using illegal drugs'. Moss, P. et al (2016) p.12; Also Deadly Connections (2022) Healthy Prison Review 2022, p.18; ICS (2022) Healthy Prison Review 2022, p.17.

feeling better about stuff. They go out and they're able to start to maintain that [in community]. (Government Agency).⁵¹²

Some detainees told us they started using drugs in the AMC. For example, 'There's nothing else in the gaol to do. You know I'm not a drug user I never have been. But I'm not gonna lie, these last couple of times I come into custody I've used drugs. I've never done that in 25 years' (AMC Mens Group).

Not all detainees we spoke with were involved in drug use.⁵¹³ However, there were those that had a sense of despair.

You try to escape it... And there's no end to it. And because there's no end to it, that's why a lot of us are stuck here, because we don't know any better. You know all the positive mob that are Indigenous that are out there [that] we never knew about. By the time we knew that there were positive role models that were just like us and doing this good stuff, by the time [we] knew about it was too late... we were caught in the system already... nothing better for us to do. So basically, it's down the toilet for us. (AMC Mens Group)

10.8.1. Hepatitis C

Despite plans for a needle exchange program in the AMC dating back to at least 2012, it has not progressed.⁵¹⁴ AMC correctional staff voted against the proposed model for a supervised injecting room for illicit drugs in September 2016.

The peak professional body for infectious diseases professionals in Australia and New Zealand, the Australasian Society for Infectious Diseases (ASID) recently recommended the introduction of needle and syringe programs in Australian prisons to prevent morbidity and mortality from unsafe injecting practices. It noted that injecting drug use is much higher amongst people in custody compared to the general community, with around 1 in 7 persons reporting injecting whilst they are in prison, in some instances for the first time. Young people, men and First Nations people are more likely to be affected. ASID joins other bodies like the Australian Medical Association in recommending needle and syringe programs in custodial settings.⁵¹⁵

⁵¹² Also, 'I think [the reason for drug use in the AMC] is multifaceted. The reason why people don't engage with these services because they come here, they've been in this routine of the same vicious cycle... They come here and they're still doing the exact same thing. They're still just in the unit chasing drugs and don't get that reset like you might get other institutions where they need that reset and then they're more inclined to engage in through care programs and stuff like that because they're dry'. (Government Agency)

⁵¹³ 'It depends on the person. Like if you want to stay away from the stuff and train, you'll train... If you want to dive into that you'll dive into that... It depends on you' (AMC Mens Group).

⁵¹⁴ Even prior to the AMC, the Human Rights Commission had recommended a needle exchange for the Belconnen Remand Centre.

⁵¹⁵ See: <<https://asid.net.au/news/needle-and-syringe-programs>>.

Some staff we spoke with noted the limits on managing Hepatitis C within the AMC. However, ACTCS noted that ‘detainees who test positive for Hepatitis C are given treatment at the Hume Health Centre and remain housed in their regular accommodation area. Hepatitis C is screened for, managed and treated in line with the national eradication program’.

10.8.2. Drugs and Debt

A further issue in relation to drugs is the relationship between drug use and the accumulation of debts. The perhaps obvious question is: if people are using drugs in jail, how will they pay for them?

Well, the answer is not that their family outside is paying for it. No, the answer is that when they get out, they owe the money and they do crime to pay the money back. And that's a big part of why we need to stop drugs in jail... that's a big part of it, you know, that they're paying it off by crime. That's the only way you can pay. (Statutory Authority/Public Body)

They're racking up pretty big debts in here to be able to pay for these substances. So, they leave and they've got ties with people, they owe people money, they owe people favours. That creates a whole other thing with this recidivism too... You also wonder if sometimes they come back in deliberately to bring stuff in to help pay off their debts. (Government Agency)

The matter of people accruing drug-related debts in prison was also raised by former detainees from the AMC that we interviewed.

Responding to the issue of drug use in the AMC is directly related to reducing the likelihood of re-offending on release from prison and re-imprisonment for both First Nations and non-Indigenous prisoners. This effect may be direct through the reduction of drug debts on release from prison and reducing active dependencies and through multiple ancillary contributions to health and well-being, education and engagement in programs. As noted in Recommendation 10.4, wastewater drug testing also has the benefit of testing for prevalence and determining the extent to which drug use is an issue in the AMC.⁵¹⁶

⁵¹⁶ For example, research led by University of Queensland and Queensland Corrective Services estimated the use of a range of licit and illicit drugs by the population of the correctional facilities. Wastewater samples were collected from correctional facilities across Queensland every quarter (2021-2024) and analysed to determine the prevalence of specific prescription medications and illicit drugs. In comparison to national data, the consumption of illicit drugs in **most** of the correctional facilities was lower than that among general populations. See <<https://qaehs.centre.uq.edu.au/project/wastewater-analysis-drug-monitoring-correctional-facilities>>.

Recommendation 10.4

While attempts to control the supply of drugs into the AMC should be maintained, we recommend urgent attention by the ACTCS to focus on the **demand side** of drug use through improvements to programs, training, education and a structured day to alleviate the boredom in the AMC and to provide for daily routines and meaningful activities, including work (and in line with Recommendations 10.1, 10.5, 10.8 and 10.11). We further recommend site specific wastewater testing at AMC to accurately gauge the prevalence and type of drug use within the AMC. Periodic testing over time would also provide the ability to assess the effectiveness of drug interdiction.

10.9. The Incentives and Earned Privileges (IEP) scheme

The IEP scheme was initiated in September 2022 to encourage positive and pro-social behaviours amongst detainees by recognising and rewarding behaviour in line with the behavioural expectations established within the policy.⁵¹⁷ We are aware that the IEP scheme is being reviewed.

There were many complaints by detainees, both male and female, and others we spoke with about the IEP scheme. Many of these related to the use of IEP as a system or punishment.⁵¹⁸ Others related to the absence of transparency in the use of case notes with detainees complaining that there are reports or cases notes made about them which they are not informed of: 'They're meant to [tell you] but they don't' (AMC Mens Group).

They let it build up to four or five. So they come down and they're like, 'All right, you've got more than three. You're going in [segro] for three weeks'. Where [as] if they come and tell you when you've got three... And then you get that one case officer that comes in that doesn't like you, bam you're going in [segro] for three weeks. (AMC Womens Group)

Obtaining positive cases notes was seen as difficult or demeaning:

To get positive ones, to get Enhanced and stay Enhanced, is an absolute headache to do. So they're dangling something in front of you... You have to suck their toes

⁵¹⁷ JACS (2024) Annual Report 2023-24, p. 76.

⁵¹⁸ For example: 'If you talk down to an officer or you do something wrong, they put in a bad case note' (AMC Womens Group); 'You don't have any rights. You don't have the right to speak here... They talk to you however they want... If you talk back to them, it's 'don't fucking speak like that': Bad case note' (AMC Womens Group); '[X] was giving me negative case notes because I wasn't interacting with the screws... I have to ask them how their day was going and everything' (AMC Womens Group); 'You can get a negative case note for not being at your door for muster. You can get a negative case note for going 'ugh' when you walk past an officer' (AMC Mens Group).

to get a fucking good case note. But you can't look at them the wrong way or else you'll get a negative case note. (AMC Mens Group).⁵¹⁹

One of the key findings of the OICS commissioned Deadly Connections report arising from their focus groups in the AMC was that 'officers deliberately incite responses from them [Aboriginal detainees] and subsequently use this as justification for further restrictive treatment'.⁵²⁰

Other detainees noted the lack of transparency in terms of reviewing cases notes and understanding how the system works: 'I'm the delegate in my yard. So how am I supposed to explain to them what to expect when I can't tell them? Or when they don't even know' (AMC Mens Group).

They're using a case note system that has no structure. You can't review the case notes system... I've sent an email to heaps of people about the IEP system, case note system, and why we can't read up on the policies and procedures for a system that now means fucking everything to anybody. (AMC Mens Group)

We were informed that there is an appeal process but it is not 'ideal'. 'People just give up... if I have to send an email to someone to get an email back to send an email again. Which is why the [the Human Rights Commission] and the Ombudsman will often end up with matters because at least [they] are just an email or a phone call (Statutory Authority/Public Body).

Besides the possibility of segregation, the IEP scheme has other impacts including for parole and for access to activities within the AMC. Other impacts include:

Now that they've brought the IEP thing out, so to get a job in like the Bakery, the kitchen and whatnot you will get a job a lot faster if you're Enhanced compared to someone that stays in their room all day because they don't want to associate with the officers. (AMC Mens Group)

It comes down to your visits as well. So, if you're Enhanced, you get this extra two and a half [hour] visit on the weekend with your family. They use it to make you behave. Because for a lot of people, their kids can't come out through the week because they're going to school. So they put the Enhanced ones on the weekend. And you've got to behave so then you get your kids visits on the weekend. (AMC Mens Group)

⁵¹⁹ Other examples included: 'For positive case notes, you [have to] feed their ego, feed their ego, feed their ego... it's fucked' (AMC Womens Group); 'To get a positive case note, though, you basically have to sit there and be like "oi, please, please, can I get a case note for this", "Can I kiss up your arse to get a case note"... [you have to beg] to get somewhere'. (AMC Mens Group).

⁵²⁰ Deadly Connections (2022) Healthy Prison Review 2022, p.5.

Women detainees also had specific comments about not receiving the apparent benefits from being on enhanced privileges: ‘you’re meant to get extra-long, two-and-half-hour visits. But we don't get that. But the boys get it’ (AMC Womens Group).

Basically, us girls mainly just get Enhanced so it looks good [at court]. We know that we're not going to get anything... But you’re meant to have longer visits. You're meant to have longer slots in what you want to do. Extra money on the monthly buy up. You get none of that. (AMC Womens Group)

We do not make a particular recommendation regarding the IEP scheme given that it is being reviewed. However, we encourage close consideration of the concerns that have been raised in our Review following discussions with detainees.

10.10. Cultural Programs and Services

The JACS Annual Report notes that the AMC Cultural Services team is committed to providing cultural supports to detainees. Staff members aim to meet with all detainees who identify as Aboriginal and Torres Strait Islander at least twice per month and provide support through:

- referral to First Nations specific rehabilitation programs
- liaising with other AMC units as required
- referral to culturally specific programs
- support during sorry business, which includes supporting detainees with applications to attend funerals
- cultural assessments for the Ngunnawal Bush Healing Farm.⁵²¹

The cultural programs in the AMC are listed as: cultural art and artefacts programs, yarnning circles (Yeddung Mura), women’s art program, Elders and community leaders’ visitors program.⁵²² A review of the Aboriginal and Torres Strait Islander programs and services was initiated as part of the Integrated Offender Management (IOM) review.⁵²³ It was not available at the time of our Report.

Our stakeholders noted that many First Nations detainees wanted some basic understanding of their culture and they would like to know the culture of where they are from: for example, language, song lines and land management. ‘The type of thing they wanted to bring into the jail which we had before. So apart from the big ones that they're

⁵²¹ JACS (2024) Annual Report 2023-24, p.77.

⁵²² JACS (2024) Annual Report 2023-24, p.78.

⁵²³ JACS (2024) Annual Report 2023-24, p.78.

doing now, art and so forth, just bring back the basics of who they are as a people, how they belong in the community and so forth' (Government Agency).

The Art program is very popular among both First Nations men and women. Classes are led by detainees experienced in art and mentors from Gugan Gulwan. Artwork is available for purchase at exhibitions such as annual NAIDOC Community Art Exhibition, with proceeds going directly to the artists' trust accounts.⁵²⁴ The Yeddung Mura yarnning circles and the Elders and Respected persons visiting program were also popular.⁵²⁵ We also note that the Deadly Connections Report mentioned that men and women spoke very favourably about the visits to AMC by Auntie Tanya Keed (Clybucca Dreaming).⁵²⁶

Programs and activities involving children, including Kids Day and Bringing Up Great Kids were also favourably identified. 'I don't have much contact with my daughter at home. But like learning about how my daughter would have coped with me not being around... or courses like Bringing Up Great Kids is good' (AMC Mens Group); 'There was supposed to be another one for Bringing Up Teenagers as well, and Young Adults... Yeah that would be good, eh?' (AMC Mens Group).⁵²⁷

However, there were many programs that were highlighted by First Nations men and women detainees **that have been discontinued**. These included the Weaving program provided by Culture on the Move, an Indigenous organisation. In addition:

- **The Culture and Land Management (CALM)** was frequently identified by detainees as an important program which has been discontinued [men only]. 'We worked at the back with Andre. It was probably the best thing that happened to us' (AMC Mens Group); 'Andre had that respect from all us boys. He done bush walks and that for the fellas that had access from the front. You go there and identifying plants and [unclear]... It was good. A lot of us learned a lot from that' (AMC Mens Group); 'Well, they used to have CALM. They stopped CALM. CALM was like a cultural thing and all the boys used to do that' (AMC Mens Group).

⁵²⁴ See details at

<https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/davidson/2024/naidoc-exhibition-showcases-artists-in-amc>.

⁵²⁵ We also provide a further discussion of First Nations preferred programs in the section on community supervision.

⁵²⁶ 'We received numerous extremely positive reports of Auntie Tanya and the supportive role she plays in the cultural support and wellbeing of people. AMC is also failing to adequately recognise and remunerate Auntie Tanya for her expertise and knowledge. It was clear during our focus group sessions that Aboriginal people in custody felt significant benefit from external cultural community connections and guidance and this should be an area of priority to extend cultural safety at AMC'. Deadly Connections (2022) Healthy Prison Review 2022, p.7.

⁵²⁷ Other comments included: 'They got this Kids Day so every school holidays they bring some kids out... And I have to put in a good word in for Jen and Nathan, they really go out of their way to help us in here. They're AMC Family Workers. They actually care' (AMC Mens Group).

- **The Young Offenders Program** was also spoken of favourably, which was a pilot program [men only].⁵²⁸ ‘So these fellas done the young offenders program. It’s probably the best program because every single young fella have to attend that class because there are people in there that they respect, they tell them come to class so they come there and then they do other things there’ (AMC Mens Group); ‘We waited for the next one and umm nah we can’t do that anymore... Why can’t we do it? They didn’t give us a reason. Are you serious? That’s one of the best programs you can have for the young fellas’ (AMC Mens Group); ‘The Minister for Justice or whatever come into that Young Offenders thing to see how it was going and everything... But then they did nothing’ (AMC Mens Group); ‘The only good program... was the Young Offenders Pilot Program. X has done a lot of programs and even he said this is one of the best programs’ (AMC Mens Group).
- **The Personal Trainer (PT) Program** [discontinued] was also popular [men only]. The PT program appears to have been a pilot program for men when the IEP was first established and was associated with the gym and more broadly in the prison. ‘The PTs used to come into the yard and run through exercises for people that couldn’t go to the gym. And that was really good’ (AMC Mens Group); ‘That was good. They’d go around and do a whole a bunch of stuff... it was good for the boys that did want to get into it’ (AMC Mens Group); ‘And then out of nowhere it just stopped. Boom. They’ve stopped a lot of the contracts... This has been a while now... Two years ago’ (AMC Mens Group).

There were many comments about the need for more culturally focussed programs, including ones that had been discontinued: ‘I need more cultural things. Our cultural needs are not being met’ (AMC Mens Group); ‘We should be able to have more canvases and paints, because it kills the time for us, painting and stuff like that. (AMC Mens Group)

Yeah, for us, like, we’ve got to get back on Country. We need those things that we are interested in learning. We don’t read textbooks. I’m not that good at reading and writing. I’m more hands on learning, more culturally based things’. (AMC Mens Group)

We were informed that the Cultural Services Unit is funded \$30,000 for everything relating to cultural activities/programs (Government Agency).

⁵²⁸ The Young Offenders Pilot program (which was not Indigenous-specific) was ‘A targeted intervention package was developed for young offenders aged between 18 and 25 with the objective of providing detainees with psychosocial supports and skills ahead of their release through an innovative structured day intervention. This pilot featured a significant step towards the provision of evidence-based, integrated and responsive service delivery to promote pro-social skills and strength-based approaches to reintegrating priority cohorts. The pilot was delivered to 2 separate cohorts of young offenders, and reviews demonstrated its notable strengths, particularly in its influential impact and resonance of content with participants, as well as the tangibility of acquired new skills and learning outcomes’. JACS (2024) Annual Report 2023-24, p.79.

Cultural-based programs and particularly those run by First Nations services are favoured by First Nations prisoners. The availability of these programs is directly related to prospects for rehabilitation and reductions in re-offending: connection to culture is a ‘protective factor’ is reducing re-offending. The Productivity Commission has noted that

The overrepresentation reflects a system of justice and laws that fail to understand and value culture, Lore and Law... the practice of Lore and Law remain protective factors for Aboriginal and Torres Strait Islander people... Factors that reduce the rate or protect against Aboriginal and Torres Strait Islander adult incarceration include access to culturally safe resources and services’.⁵²⁹

Recommendation 10.5

We recommend the ACT government provide increased funding for Aboriginal and Torres Strait Islander specific cultural programs and that these programs be considered specifically as protective factors contributing to rehabilitation and reducing the likelihood of re-offending.

10.11. Cultural Awareness, Cultural Care and Cultural Safety

The submission to our Review by Michaella Bangard, noted that the women she interviewed reported ‘systematic barriers to maintaining cultural practices and significant difficulties maintaining family connections’ in the AMC.⁵³⁰

10.11.1. *Sorry Business*

One of the major concerns raised by detainees and others we interviewed related to *Sorry Business*. In particular, there was a problem identified with the lack of understanding of the importance of sorry business for First Nations people in prison. The combination of cultural importance, the lack of non-Indigenous understanding of kinship structures, the over-representation of Aboriginal and Torres Strait Islander people in prison and the higher mortality rates for First Nations people mean that sorry business is a unique matter affecting Aboriginal and Torres Strait Islander people who are incarcerated.

Some do, some don't [understand sorry business]. Some like even if you just lost someone on the outside... They won't help you to get to that funeral, or paperwork to get to that funeral, or see someone or... If the funeral's way back out bush, you

⁵²⁹ Productivity Commission (2024) Closing the Gap. Annual Data Compilation Report, p.61.

⁵³⁰ Bangard, M., Written Submission, p.2.

ain't getting there. Even if you got kids out of gaol or whatever... I've seen them do it in New South. (AMC Mens Group)

The experiences of Julianne Williams suggests that there can be a lack of urgency around dealing with applications to attend a funeral:

I was informed that my grandmother had passed away. With her funeral being the 13th Jan 21. I completed the paperwork to be escorted. However, the ILOs failed to do what was required. For the ILOs to return on the 12th Jan to tell me I wasn't allowed to attend due to logistics. And because the paperwork was left on a desk it was too late.⁵³¹

The OICS commissioned Deadly Connections report also raised similar concerns to our interviewees in relation to attending funerals.⁵³² However, in response to our draft Report it was noted that 'the concerns raised about attending funerals is questioned. FNJB suggest that ACTCS, through its Cultural Services team, may be a national leader in this area'.

We were told that many First Nations people in AMC for various reasons do not go home to bury to family members (First Nations Organisation). Even where First Nations people are unable to attend a funeral, they should be still given the respect and the right to be able to participate. It was noted that 'sorry business you know is out everyone's control. However, there should avenues available for live streaming and 'a counsellor on site on the day of the service... for their own mental health and their own wellbeing' (First Nations Organisation). It was suggested that there be a specific fund available to provide support within the AMC where a person cannot attend a funeral to cover the cost, for example, of live streaming.

10.11.2. Cultural Support Plans

We urge the introduction of cultural support plans for First Nations people in custody. These have been a feature of child protection systems for Aboriginal and Torres Strait Islander children for some time.⁵³³ There is no reason why they are not equally

⁵³¹ Statement of Julianne Williams, on file with Jumbunna.

⁵³² 'The cultural needs of Aboriginal people in custody around illness and death are not being met. One person told us that they were not permitted to go to their mother's funeral because their cellmate was found with a phone and another person was not permitted to visit their mother who had 6 months left to live, even with an escort. Not being able to see family, attend Sorry Business, or practice cultural responsibilities causes significant harm for Aboriginal people and compounds the dislocation from community. Disconnection from culture/family also increases the difficulty in re-engaging upon release'. Deadly Connections (2022) Healthy Prison Review 2022, p.7.

⁵³³ It was noted in feedback to our draft Report that the Cultural Support Plan concept was first presented to ACTCS in 2018 and never adopted.

appropriate for adults, and particularly so in the ACT context when there is a large proportion of detainees with cultural ties outside of the area.

Anybody who identifies should be subject to a cultural care plan... We were looking at introducing that when I left there two years ago. You know it still hasn't happened. So, you start doing that and then part of that you know could be hooking someone in with ACCOs to do the family research. (Government Agency)

As one example, assistance might be offered where people know they are First Nations but do not know much about their background or ties. It was suggested that the Family History Unit from AIATSIS, which aims to assist Aboriginal and Torres Strait Islander Stolen Generations survivors by providing family history research assistance and access to information about families, might assist by visiting the AMC. It was also suggested in interviews that developing cultural support plans might also assist in 'weeding out' individuals who claim to be Aboriginal when they are not.

Recommendation 10.6

We recommend introducing cultural support plans for all First nations people in custody (remand and sentenced), developed by ACTCS in partnership with an appropriate First Nations organisation (such as Yeddung Mura and Winnunga), and their families and communities (where appropriate).

10.11.3. *Embedding cultural safety for Aboriginal and Torres Strait Islander detainees*

There are various related phrases used in the policy literature which can include cultural safety including cultural integrity and cultural security. Cultural safety is also closely related to addressing systemic racism. The National Agreement on Closing the Gap acknowledges that 'government agencies and institutions need to address systemic, daily racism and promote cultural safety and transfer power and resources to communities.'⁵³⁴

As we noted in Section 2, under the National Agreement, the ACT government has committed to the implementation of Priority Reform Area Three, Transforming Government Organisations. The 'transformational elements' of this include to embed and practice meaningful cultural safety. The ACT Aboriginal and Torres Strait Islander

⁵³⁴ National Agreement on Closing the Gap, 2020, Clause 19c, p.4. One of the jurisdictional actions required under Priority Reform Area Three of the National Agreement is 'Addressing institutional racism and promoting cultural safety are essential requirements that are the responsibility of governments'.

Agreement uses the language of cultural integrity.⁵³⁵ We are of the view that cultural safety takes on a particular importance within a custodial setting where the personal liberty of First Nations people is actively restrained. Unlike in most other areas of government, they are not a ‘customer’ of service delivery in any meaningful sense. Custodial staff (both non-Indigenous and First Nations) also have a fundamentally different role in maintaining and enforcing security compared to the work of most other government employees.

While there is extensive discussion of cultural safety in the *Be the Change We Seek. Aboriginal and Torres Strait Islander Framework*, there is minimal evidence provided of how this is achieved within the custodial setting. An AMC Cultural Safety Action Plan to implement mechanisms to ensure cultural safety is required. Of further relevance is the requirement to take into account the ACT *Human Rights Act 2004*, s27(2) that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right to maintain, control, protect and develop their (i) cultural heritage and distinctive spiritual practices, observances, beliefs and teachings; (ii) languages and knowledge; and (iii) kinship ties.

The cultural needs of Aboriginal and Torres Strait Islander detainees have been detailed extensively above including in relation to programs and services. We also note the Deadly Connections report on the AMC which concluded that the concept of safety in the prison must include cultural safety. For Aboriginal and Torres Strait Islander peoples, this concept of safety is centrally connected to wellbeing, rehabilitation and healing.⁵³⁶ Drawing on their focus group discussions Deadly Connections stated:

The care and treatment of Aboriginal people in custody and their specific and distinct cultural needs is reported as being highly inadequate and unmet. Aboriginal people in custody do not generally feel safe or respected as First Nations people and have highly limited access to programs or purposeful activity which support their connection to culture and community.⁵³⁷

This is consistent with the survey data from the OICS Healthy Prison Review noted previously.

We also recognise that cultural safety applies to Aboriginal and Torres Strait Islander staff working within the prison setting and for the training of non-Indigenous staff. As indicated previously, there is mandatory entry level cultural awareness training for all non-Indigenous ACTCS staff. However, we need to ensure that it has a focus that includes

⁵³⁵ For example, ‘embedding cultural integrity into policy and practice of the ACT Government’.

⁵³⁶ Deadly Connections (2022) Healthy Prison Review 2022, pp.3,5.

⁵³⁷ Deadly Connections (2022) Healthy Prison Review 2022, pp.6-7.

cultural safety training to address unconscious biases and increase understanding of systemic and other forms of racism against Aboriginal people.

Recommendation 10.7

In line with Recommendation 3.3, we recommend ACTCS develop an AMC Cultural Safety Action Plan to implement specific programs and procedures including cultural programs, cultural plans and staff training, in line with the commitments to cultural safety within the ACTCS *Be the Change We Seek. Aboriginal and Torres Strait Islander Framework*.

This Recommendation is partially dependent on the implementation of Recommendation 3.3.

10.12. Rehabilitation

There's no rehabilitation in that prison. How much you can do that in a prison? I don't know... I wouldn't put rehabilitation and incarceration in the same sentence (Government Agency).

Many of the matters we have raised thus far in this section on the AMC point to the problem of facilitating rehabilitative outcomes for Aboriginal and Torres Strait Islander detainees. We note there have been factors that contribute to this issue including prolonged periods on remand; accommodation pressures; limited space for programs and education; a greater proportion of higher security risk detainees, a larger number of detainees needing to be segregated because of protection, and fewer low risk detainees than originally planned.

However, these issues have been noted in many reports over the last decade and longer, and there have been increases in the maximum prisoner capacity over recent years.⁵³⁸ More recently the Deadly Connections report to the OICS *Healthy Prisons Report 2022* observed in relation to First Nations detainees:

Significant issues were raised with the absence of a 'structured day' and 'purposeful activity' and the real and detrimental impact that this has on rehabilitation and wellbeing. This included very limited information about education, training and employment opportunities, and when those opportunities

⁵³⁸ See for example: 'AMC planning for rehabilitation is ineffective as there is no rehabilitation planning framework, no evaluation framework and no finalised case management policy framework', Auditor-General (2015) *The Rehabilitation of Male Detainees at the AMC*, pp.2,62-63; Moss, P. et al (2016) p.60; Justice Reform Initiative (2023) *State of Incarceration. Insights into Imprisonment in the Australian Capital Territory*, p.10.

were accessed, they were very highly constrained, intermittent, and lacked relevance to rehabilitation and life outside of AMC.⁵³⁹

More generally, the OICS *Healthy Prisons Report 2022* concluded that ‘in the years since first raising this issue, the **situation has only become worse**. Detainees are critical of their time at the AMC being a lost opportunity for meaningful rehabilitation and preparation for release’ [emphasis added].⁵⁴⁰

Counterbalanced against that has been the introduction in 2021 of Integrated Offender Management (IOM) as ‘a whole of ACTCS reform aimed at operationalising an efficient, effective, and integrated model for delivering rehabilitative programs and services for offenders in custody and community’ which has been progressively implemented over the last few years.⁵⁴¹ In phase one the focus was on induction and screening; programs and interventions; the custodial role in case management and the case management continuum.⁵⁴² The second phase expanding program and service provision; the Young Offender Reintegration pilot and increasing the capability of Offender Reintegration staff.⁵⁴³

In fairness, it is possibly too early to tell whether the recent changes in the AMC is having a positive effect on improving rehabilitation outcomes and reducing recidivism. However, we note that many of the problems of the lack of meaningful education, training and support programs were identified by those we interviewed in prison, in the community and other stakeholders. We turn to these issues below.

10.12.1. Education and Programs in Prison

Different parts of ACTCS have responsibility for different types of programs. The Art programs and similar sit within Detainee Services (Custodial Operations). Education is also under Detainee Services. Offender Reintegration is a separate branch. It has responsibility for some in-prison programs. The Offender Reintegration programs are divided between offence specific programs and offence related programs. Offence specific programs are only for sentenced detainees. The EQUIPS suite of five programs (from NSW) and the Sex Offender Program (from Queensland Corrections) are the primary offence specific programs. Offence related programs include the Solaris Therapeutic Community (16 weeks residential), which is delivered in conjunction with the organisation Karralika. Priority is given to sentenced male detainees who have a release date within the next 6-24 months. However, detainees on remand are also considered.

⁵³⁹ Deadly Connections (2022) *Healthy Prison Review 2022*, p.16.

⁵⁴⁰ ICS (2022) *Healthy Prison Review 2022*, p.17.

⁵⁴¹ JACS (2024) *Annual Report 2023-24*, p.78.

⁵⁴² JACS (2023) *Annual Report 2022-23*, p.70.

⁵⁴³ JACS (2024) *Annual Report 2023-24*, pp.78-79.

Solaris is not available to women detainees, although an AOD program is being offered for women by Karralika. Brief intervention programs (BIPs) are also offered (for example, Healthy Relationships, AOD, Thrive).⁵⁴⁴

The Offender Reintegration Programs Compendium notes that remandees are not *eligible* for the offence specific, or offence related programs connected to their remand charge(s), however, may be eligible for other programs in respect of unrelated offences for which they are sentenced.⁵⁴⁵ Remandees retain a presumption of innocence for their alleged offences; it follows they would not be *required* to attend programs that expects them to be accountable for their alleged offence type.

The ACTCS Annual Report notes ‘detainees access to educational programs to acquire skills to support their transition to the community and employment outcomes is important. Table 8 [reproduced below] shows the number of short courses completed by detainees in 2023-24’.⁵⁴⁶

Table 8 Courses at the AMC in 2023-24

Course Name	Completions
Use Hygienic Practices for Food Safety	55
Practice in Safe Food Handling Practices	4
Practice in Safe Work Practices	39
Course in Crystalline Silica Exposure Prevention	41
Course in Asbestos Awareness	18
Provide Responsible Service of Alcohol	52
Prepare to Work Safely in the Construction Industry (White Card)	34
Infection Control	23
Foundation Skills	125
Provide First Aid	43
Prepare and Serve Espresso Coffee	33

According to the Annual Report the ‘ACTCS continued to support distance education for detainees wishing to study at the tertiary level. During 2023-24, six detainees were enrolled in various studies across two Australian universities. To further support detainee education, there are six laptops dedicated for distance education use’.⁵⁴⁷ This was fewer students than the previous year and we note the adverse comments about support for tertiary student by the OICS in 2022.⁵⁴⁸

⁵⁴⁴ See generally, JACS (n.d.) Offender Reintegration Programs Compendium.

⁵⁴⁵ JACS (n.d.) Offender Reintegration Programs Compendium, para 3.3.

⁵⁴⁶ JACS (2024) Annual Report 2023-24, p.73.

⁵⁴⁷ JACS (2024) Annual Report 2023-24, p.73.

⁵⁴⁸ ‘OICS is concerned about the obstacles faced by many of the detainees currently enrolled in tertiary university courses in accessing course material, conducting essential research for studies and participating in course requirements (e.g. tutorials etc.)’. ICS (2022) Healthy Prison Review 2022, p.18.

There was a long period of time from August 2021 until November 2022 when there was no education provided at AMC. There were many complaints from the First Nations detainees we interviewed about the current lack of education and other programs.

I've been here for 11 months and in the first two, three months I've done every course possible. [I'm] bored and requesting to do leadership management courses, update degrees and stuff like that and I've had no interaction... (AMC Mens Group)

I've applied for heaps but I've only been given the opportunity to do one: the Young Offenders Course. And that's it and I can't do any more of it. (AMC Mens Group)

There were also adverse comments by various stakeholders.⁵⁴⁹ The absence of literacy programs was a major issue and one that particularly impacts on First Nations people in prison given generally lower school completion rates.⁵⁵⁰

[Literacy Programs] We asked for that. There was going to be books in this library that were colour coded for people who have trouble reading and blah blah blah. That was the talk two years ago and that got nowhere. (AMC Mens Group)

Our real [need is for] programs inside, particularly in literacy and to give a Year 12 qualification or thereabouts, you know to give the kids a leaving certificate or whatever, and those life skills. (Statutory Authority/Public Body)

I think in my time at the bar, I reckon half of the people that I've represented learnt to read in jail. And the AMC does not offer reading and writing courses anymore. So that means that one advantage that they could get out of jail, they've lost now... I think when we used to run literacy courses that was pretty positive. (Statutory Authority/Public Body)

It was noted by staff that the lack of a structured day can make it 'very hard to run educational programs... it takes a lot to set up education systems just like with programs and if they just don't turn up... I'd love to see a teacher and an assistant here, employed in the gaol, and then be on board and then be here all the time' (Government Agency). It was also noted in feedback on the draft Report that these problems with providing

⁵⁴⁹ For example, 'One of the shocking issues about AMC is lack of programs for everyone, whether they are on remand or they're sentenced prisoners... that [was] partly impacted by COVID. But it's been going on for a very, very long time and it's just so detrimental to people's well-being and their ability to reintegrate' (Statutory Authority/Public Body); and 'I've had many, many clients who said they'd wish they were back in NSW because they were doing programs' (Statutory Authority/Public Body).

⁵⁵⁰Productivity Commission (2024) Closing the Gap Annual Data Compilation Report, pp.40-50.

educational support were ‘a good argument for a 1:1 tutoring program for First Nations detainees, so they can be supported with the basics of numeracy and literacy. Of course, such a service does not need to be race based as this deficit is not race based’.

However, we note that Indigenous developed literacy programs may be more effective for Indigenous learning styles.⁵⁵¹

10.12.2. *EQUIPS*

We noted in our First Report that 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 an individualised cognitive behavioural therapy (CBT) approach and the lack of attention to the specific needs of groups, including Aboriginal and Torres Strait Islander people and women.⁵⁵²

There were comments from detainees about EQUIPS, particularly in the context of other Aboriginal cultural programs. ‘EQUIPS has heaps of funding. There was another one that they’ve stopped funding’ (AMC Mens Group); ‘Yeah, they give funding to EQUIPS and none of the other programs. What’s EQUIPS got that the other programs don’t have, that other people might benefit more from?’ (AMC Mens Group).

Some staff questioned whether EQUIPS was culturally appropriate or safe:

Some of the language that [EQUIPS] uses doesn't translate. We're talking about shame and guilt, and shame to mob is not shame in an EQUIPS book, it's not. (Government Agency)

I think straight away environmentally it's a very classroom [focussed] and a bit clinically looking... We need movement... The classrooms that we've got at the moment, it's not good for anyone... Something where we're able to acknowledge the culture in here, provide relevantly cultural spaces for education purposes that we do different to what you guys do, that are run by Indigenous people, that does have an Indigenous resources attached to them. (Government Agency)

I think with mob extra time also needs to be spent to support [them] because there is a lot of trauma responses that come out in that room and without the time to be able to go and revisit that, I think you're creating even a bigger problem. It can be

⁵⁵¹ Beetson, et al. (2022) ‘A life changing experience: how adult literacy programs can keep First Nations people out of the criminal justice system’, *The Conversation*, 7 December 2022 <<https://theconversation.com/a-life-changing-experience-how-adult-literacy-programs-can-keep-first-nations-people-out-of-the-criminal-justice-system-195715>>.

⁵⁵² Stubbs, J. et al, (2023) *Rethinking Community Sanctions*, Emerald Publishing, pp.27-29, 137-139.

dangerous. You know they're going to get locked in after we have this conversation and I'm making you write a full offence map of what you're thinking and feeling and doing. Also, we work with predominantly males and being female, saying tell us about your feelings. Massive trigger. Especially in a domestic and family violence space when you've got women delivering how to overcome this stuff. Super triggering. (Government Agency)

Culturally specific understanding of concepts like 'shame' may be glossed over in mainstream programs. In addition, there can be ignorance of or lack of attention to fundamentally socio-historical rather than individual processes like inter-generational trauma. It has been noted in other research⁵⁵³ that this can lead to individual First Nations participants within a mainstream group setting dropping out of programs – which then has further ramifications, for example, when applying for parole. There are no offence-specific programs which are specialised for First Nations detainees.

10.13. Employment opportunities and employment-related training in the AMC

Ten years ago, the ACT Auditor-General noted that:

The range of employment opportunities at the AMC is limited and has mainly been in work that contributes to the running of the prison. Employment as a means of developing detainees' skills ready for employment post-release has been very limited.⁵⁵⁴

The following year the Standing Committee on Justice and Community Safety considered 'that employment, including prison industries, must form a key part of the structured day and the rehabilitation effort overall... it imperative that Corrective Services establish prison industries'.⁵⁵⁵

⁵⁵³ Beaufils, Cunneen and Russell (2021) Exploratory Research into Post-Release Community Integration and Supervision: The Experiences of Aboriginal people with Post-Release Parole Supervision and Reintegration in NSW, Corrective Services NSW, Research Publication No 63.

⁵⁵⁴ Auditor-General (2015) The Rehabilitation of Male Detainees at the Alexander Maconochie Centre, Report 2/2015, ACT Audit Office, Canberra, p.15.

⁵⁵⁵ Standing Committee on Justice and Community Safety (2016) Inquiry into the Auditor-General's Report on The Rehabilitation of Male Detainees at the AMC. Report 7, pp.100-101: The Standing Committee recommended that ACT Corrective Services implement prison industries which cater to demand external to that generated by the AMC, as a matter of urgency, with a view to creating the 'structured day' envisaged for detainees in early planning documents for the AMC (recommendation 7); and ACT Corrective Services engages the local ACT business community regarding planning and implementation of more extensive prison industries, and that it find ways to draw on existing business acumen within the ACT business community in order to develop and deliver successful prison industries.

How much has changed since the Auditor-General's comments? From a detainee's perspective, in the interviews we conducted, it was still commonly seen as the same problem.

There are no industries, there's none of that. Like New South, you got industries, you got work, things to do. (AMC Mens Group)

You're lucky to get a job here. (AMC Mens Group).

You don't want to be sitting around... there's industry there [NSW], for instance... We don't have that here, like we've got no headsets. We've got no workshop here or anything. (AMC Womens Group).

Got something to do. I was a clerk there [NSW]. It was good then and I'd rather go back. (AMC Womens Group).

We might contrast these observations with comments by the ACTCS in 2024: 'ACTCS continues to provide detainees with opportunities to gain valuable employment skills that will assist in successful reintegration'.⁵⁵⁶

The ACTCS identifies work in the kitchen (up to 14 males); the bakery (24 detainees including 8 women); horticulture (up to 18 detainees, including some women); the laundry (6 males); accommodation based work (duties such as waste removal, floor cleaning, maintenance, window washing, unit laundry, meal distribution, empty cell cleaning, and other tasks as directed by unit custodial staff (14 per unit). Grounds maintenance and general maintenance are also mentioned. The ACTCS claims that over 2023-24 between 84% and 92% of eligible detainees 'participated in employment opportunities' in service industries. Service industries are defined as occupations required to maintain the self-sufficiency of the correctional system (for example, kitchen, laundry, bakery).⁵⁵⁷

The comments made by the OICS in their Healthy Prison Review 2022 still seems appropriate:

OICS has reviewed the list of available job opportunities for both men and women detainees, and while on paper there appear to be a considerable number of available positions, and the proportion of people who are employed looks

⁵⁵⁶ JACS (2024) Annual Report 2023-24, p.74.

⁵⁵⁷ JACS (2024) Annual Report 2023-24, pp.73-74.

impressive, the reality is that the majority of these are menial positions such as sweepers and unit cleaners.⁵⁵⁸

Stakeholders also drew attention to the fact that many of these jobs may be as little as a couple of hours per week, for some of these jobs detainees are 'rarely required to leave their accommodation areas' and the employment opportunities are not transferable or of assistance with securing employment post-release.⁵⁵⁹

One stakeholder noted 'you only have to fill up the washing machine and put the clothes in the dryer for half an hour and you count it as being employed' (First Nations Organisation). **The OICS has indicated that it would be instructive if ACTCS could convert detainee job numbers (86.7% or 350 employed) to FTE numbers.**⁵⁶⁰ **We agree with the OICS comment.**

10.13.1. *Certificates for Future Employment*

There were multiple comments related to the failure to provide certificates relevant to future employment.

[Re Forklift, excavator certificates] They won't let you do them in gaol. I was a delegate there the last four months and I tried getting them to do it, you know because they've got a big arse forklift there. And they said 'oh, can't do it because it's a security risk'. That was their excuse anyway. And it's just a bullshit excuse. I won't get nothing there. They make you do certificates that you don't even fucking need. (Winnunga Community Dialogue Men)

It was also noted that intensive wrap-around support was needed to for people to become job-ready which starts in the prison and extends into the community after release.

You need wrap around support to try and help people overcome disadvantage... [We] did get some federal government funding for a prison to work project. But the problem was it was one year of funding and they notified us literally on a Sunday and said we need your bank account by tomorrow and you've got a year. So it wasn't a lot of time to recruit and run it. They also made it that we had to have only people with LSIR scores of medium high and high. So, a lot of the people that

⁵⁵⁸ ICS (2022) Healthy Prison Review 2022, p.190.

⁵⁵⁹ ICS (2022) Healthy Prison Review 2022, p.190. Also 'There was a strong belief amongst Aboriginal people in custody that the AMC is a "backwards jail" where the 'inmates do everything' in terms of prison day-to-day basic operations and that there are no employment opportunities that are transferable or are of assistance with securing employment post-release. Many people expressed motivation and commitment to engage in employment pathways however had no opportunity to do so, which is disempowering and contributes to recidivism rates'. Deadly Connections (2022) Healthy Prison Review 2022, p.18.

⁵⁶⁰ ICS (2022) Healthy Prison Review 2022, p.190.

potentially we could have had more traction with we weren't able to work with. There's no way we can get people to fund what needs to happen for people who need, you know, that level of support. (First Nations Organisation)

Overall, it is clear that there needs to be an expansion of the range of programs, and those that are specifically relevant to First Nations detainees. We also discuss the problems and impacts associated with lack of access to programs later in this Report in the context of accessing parole. Here we note the need for

more funding or programs outside of the therapeutic thing. And it's great they have the art classes and they do run circles. But there's an opportunity that there could be more additional programs in there, access to more education, get more licenses and certificates and accreditation while they're in there.. on education so that when they get out they get access more employment. (First Nations Organisation)

It was noted in the feedback to our draft Report that employability (job readiness courses) and pathway opportunities from the AMC to meaningful employment in the community are the key missing elements in the current approach to meeting employment needs in the AMC.

Recommendation 10.8

We recommend ACT government provide funding to increase programs within the AMC. These include literacy and numeracy programs, offence specific and offence related programs suitable for First Nations people, and relevant employment-related training and certifications.

10.13.2. *The Transitional Release Centre and Transitional Release Program*

Transitional release is intended to support rehabilitation, prepare detainees for their return to the community, and improve prospects for employment following release. The centre's Transitional Release Program (TRP) is open to both sentenced men and women; however, the minimum-security Transitional Release Centre (TRC) is only available to male detainees.

Throughout the 2023-24 financial year, 25 male detainees were accommodated in the TRC. A total of 15 have since exited on parole or a good behaviour order.⁵⁶¹ Originally the TRC was planned for 20 and we were informed that the current available bed count was

⁵⁶¹ JACS (2024) Annual Report 2023-24, p.79.

20, but there are usually around 13 or 14 participants of whom about two were First Nations detainees at any given time. The success rates are said to be very high for detainees who exit that program (Government Agency), although it would be useful to know the criteria applied for determining success.

The TRP and TRC is an eligibility required program. It requires a minimum classification, standard or above on the IEP, active engagement in programs and interventions identified in their Case Management Plan, and depending on their head sentence, 24 months or 12 months or less left on their non-parole period.⁵⁶² We were informed that it is a three staged approach. Stage three enables the detainee to go out and work.

While some detainees spoke highly of the TRC, the common complaint was the difficulty in getting into to the program. '[A] program we've got that is really good is the transitional release program. Yeah, I mean that is just a great program. They go in there for six months... and they have to go to work five days a week... But also, it is highly difficult to get in' (AMC Mens Group).

The limited number of places and the difficulties associated with the eligibility criteria, including for First Nations detainees to meet the criteria, were also raised by stakeholders.⁵⁶³ Previously there also had been more discretion available to consider applications outside of the current period of eligibility.⁵⁶⁴

There were significant complaints in relation to women's access to the TRP and the TRC. The ACT Human Rights Commission in its submission to the OICS Healthy Prison Review 2022 specified that:

The Commission has received multiple complaints about the different treatment afforded to women seeking to access Transitional Release Program (TRP). Access to the Transitional Release Centre (TRC) is limited to male detainees on the basis [of] its design and infrastructure... Considerations of infrastructure and resourcing cannot alone provide sufficient justification for limitation of human rights, including equality and non-discrimination... We have also received a series of complaints from women regarding delays in approval to access the TRP, which is only accessible in the year preceding a detainee's earliest release date.⁵⁶⁵

⁵⁶² Transitional Release Policy, Policy No. D26, p.5.

⁵⁶³ For example, there is no Aboriginal offence specific programming (Government Agency).

⁵⁶⁴ ICS (2022) Healthy Prison Review 2022, p.20.

⁵⁶⁵ HRC Submission Healthy Prison Review 2022, p.9

<https://www.hrc.act.gov.au/__data/assets/pdf_file/0006/2298129/Submission-ACT-Inspector-of-Correctional-Services-Healthy-Prison-Review-2022.pdf>.

We did not have access to the master plan on the development of the Reintegration Precinct and TRC. However, we were informed that the reintegration precinct would have some key reintegration/rehabilitation programs, buildings and industry,

where both men and women at various points in their journey could access and engage in more structured day activities and a higher level of learning and access to programs, education. That would create more of a staged transition from entering the AMC, working through your case plan goals and your classification, your IEP standards to [then] moving through to those new buildings and then obviously out to TRC... So for the next couple of years [we'll be] staging that out to ensure we are offering a more thorough service from entry to exit. (Government Agency)

It is difficult for us to determine the impact of the Reintegration Precinct in the longer term and whether it will address the multiple issues which have been raised in our Report.

10.14. Health Services

Winnunga is the major health provider for First Nations people in the AMC. It was introduced after systemic failures by corrections and justice health contributed to the death in custody of Indigenous prisoner Steven Freeman. Winnunga provides both primary health care and some therapeutic programs (such as RUSH). As far as we are aware, it is the only ACCHO providing the primary health care for First Nations detainees in an adult custodial setting in Australia, although Victoria is looking to introduce a similar model based on the ACT experience and there have been similar recommendations at the national level.⁵⁶⁶

The detainees we interviewed were much more positive in relation to Winnunga compared to Justice Health which was seen as providing only very basic services; having long wait times (particularly for preventative care such as scans, dentistry); as not being culturally safe or trauma informed; and with inadequate access to mental health services.⁵⁶⁷ Deadly Connections described the introduction of Winnunga as 'a positive and welcome development' and 'the majority of people interviewed wanted to access

⁵⁶⁶ See: <<https://thejusticemap.substack.com/p/victoria-looks-to-trial-aboriginal>>; Also Nous (2024) National Review of First Nations Health Care in Prisons: Final Report.

⁵⁶⁷ For example, 'justice health they don't really do much you know they're just stock standard you know. Winnunga's more helpful. If you need something they get it for you straight away. They do the health assessment and that. Psychologists... psychiatrists... you see them. You don't get to do that when you're with Justice Health. So that's what's good about them. When you ask for mental health, they [Winnunga] give it to you straight away, boom three days later' (AMC Mens Group); 'More health services... more staff at Winnunga. Because I've been waiting to get put back with Winnunga because Justice Health is useless. I asked for my ADHD meds and they go unless you've got schizophrenia, you're at the bottom of the list. Like unless I'm at risk of hurting myself or other people I'm just gonna get thrown somewhere on the list. I've seen people swallow razors and batteries because they want help with something' (AMC Mens Group).

Winnunga while in custody'.⁵⁶⁸ Problems in accessing Winnunga raised by the stakeholders and detainees we interviewed including the following.

A major delay in accessing Winnunga was that Justice Health had to refer the patient on and transfer records, this process appears to cause significant delays. For example, 'I've been stuck with Justice Health and that and you know I've been like asking them every time I've seen them if I can go on the [Winnunga] caseload and start seeing them doctors' (AMC Mens Group).⁵⁶⁹

The waiting list for Winnunga was also mentioned. 'It's the waiting list... It works from top to bottom. People go, people move up. At this stage [Winnunga] only signs up long term prisoners because you can put in health plans' (Government Agency). Similarly, one stakeholder stated that:

We are told Indigenous people [in AMC] can't make contact with Winnunga because they have a cap on the number of people they can deal with. Now this is really I think a serious situation... This is a vital point of intervention where people can plug into culturally attuned medical service inside the prison and we think that is something you should look at in terms of the funding. (Statutory Authority/Public Body)

There were also questions of inefficiencies through correctional staff practices:

There's some really simple problems of practice that have not been addressed despite them being asked for multiple times. So for one they don't have enough rovers able to transport clients to Winnunga. So you've got potentially doctors sit there twiddling their thumbs because there's not enough rovers to get the clients there in time. (Government Agency)

More generally identified by stakeholders were some of the systemic barriers to Winnunga working effectively in the AMC. 'They have experienced years of problematic practice in that setting. Things like MOUs, for example that were highly or completely ineffectual. Systemic racism and barriers, lack of funding, lack of ongoing support. There's a whole range of things' (Government Agency). 'Justice Health has always been antagonistic to the entry of Winnunga into the prison and that has to be dealt with' (Statutory Authority/Public Body).

We recommend below the development of a First Nations model of care for the AMC. The ACT Health Directorate has the contract with Winnunga to provide health services for First Nations people in the AMC. The development of a First Nations model of care should

⁵⁶⁸ Deadly Connections (2022) Healthy Prison Review 2022, p.9.

⁵⁶⁹ Also Deadly Connections (2022) Healthy Prison Review 2022, p.11.

be initially undertaken by Winnunga and negotiated with the ACT Health Directorate to be incorporated into the Winnunga contract to provide services to the AMC.

We note that a First Nations model of care prioritises a holistic approach to healthcare and addresses not only physical health but also the social, emotional, and cultural wellbeing of individuals.⁵⁷⁰ The focus on physical health alongside social, emotional, and cultural wellbeing has the potential to improve the health and wellbeing of First Nations people when they return to the community. As has been noted at the national level, ‘investment in culturally safe and holistic healthcare programs for First Nations people including counselling, substance abuse programs, and transitional support, can enhance the chances of successful reintegration into society, leading to lower recidivism rates and safer communities’.⁵⁷¹

Recommendation 10.9

To overcome the identified problems with accessing First Nations health services within the AMC, we recommend the development of a First Nations model of care for the AMC. The development of a First Nations model of care should be initially undertaken by Winnunga and negotiated with the ACT Health Directorate to be incorporated into the Winnunga contract to provide services to the AMC. This may require additional funding for Winnunga.

10.15. Women Detainee programs and services⁵⁷²

The situation for women has been a big problem for many years. I mean, they just miss out on things even more than the blokes, It’s that prison within a prison. It is just not ideal. And everybody complains about it... I visited the women... you know they were very dispirited people and the only moment their eyes kind of lit up was when they talked about a parenting program that they’d actually engaged with. And it was about the future, it was about getting out, it was about being with kids again and that was a positive. (Statutory Authority/Public Body)

The ACTCS has a *Walking with Women on the Pathway to Change* Framework (2020) and associated ACT Second Women’s Action Plan 2020-22. An organisational framework for addressing issues facing women in the criminal legal system and those in prison is important. However, the contrast between the *Walking with Women* framework and the information we were provided by First Nations women in prison, those who had been

⁵⁷⁰ See for example, <<https://www.naccho.org.au/aboriginal-community-controlled-health/>>.

⁵⁷¹ Nous (2024) National Review of First Nations Health Care in Prisons: Literature Summary Report, p.48.

⁵⁷² See ACTCS summary of women detainee programs and services at JACS (2024) Annual Report 2023-24, pp.76-77.

imprisoned recently and stakeholders was profound. **There is a significant amount of work that is required to close the gap between the reality of life for First Nations women in the AMC and the aspirational ideals presented in *Walking with Women*.**

The Framework acknowledges some of the specific issues impacting on First Nations women in prison including higher rates of having experienced physical, emotional and sexual abuse; a greater likelihood than non-Indigenous women of being a parent; inter-generational trauma arising from race-based colonial practices (for example, stolen generations); and the need for a holistic concept of social and emotional well-being that includes ‘connection to land, culture, spirituality, family and community’.⁵⁷³ It is difficult to reconcile these concerns with the comments made by First Nations women in prison throughout our Report or with active policies and programs in place which address them.

Walking with Women acknowledges that while incarcerated, women should be engaged in rehabilitative activities that align with their needs and desires. According to the Framework, prosocial⁵⁷⁴ connections can be strengthened through:

- A structured day which incorporates meaningful and engaging activities, including employment, exercise and hobbies of interest to participants within prosocial groups
- Engagement in activities that have tangible and relevant benefits relating to the goals of women offenders and provide markers of progress to indicate achievement
- Development of life skills, that address criminogenic needs, such as financial literacy and management, resume writing and cooking.⁵⁷⁵

As we discussed previously, the relative absence of a structured day and purposeful activities is one of the most trenchant, ongoing criticisms of the AMC, and is one that particularly impacts women including Aboriginal and Torres Strait Islander women.

Finally, in relation to the *Walking with Women*, it is important to understand that the framework is focused on women *offenders* (i.e. sentenced). Consistently, most First Nations women in the AMC are on remand. The Framework notes only ‘that the characteristics and best practice advice contained in the Framework may also be

⁵⁷³ ACT Corrective Services [ACTCS] (2020) *Walking with Women on the Pathway to Change*, ACT Government, Canberra, p.15.

⁵⁷⁴ There is a growing body of evidence to show that dominant definitions of ‘prosocial’ in correctional policy and programming discriminate against Aboriginal and Torres Strait Islander families and kinship networks. See for example Beaufils, et al (2021) *The Experiences of Aboriginal people with Post-Release Parole Supervision and Reintegration in NSW*.

⁵⁷⁵ ACTCS (2020) *Walking with Women on the Pathway to Change*, ACT Government, Canberra, p.17.

applicable to women on remand and, whilst not convicted of an offence, these women may benefit from this approach where appropriate'.⁵⁷⁶

Separation from newly born children was also an issue that was raised in our discussions. The work of ACTCS with Create in transporting detainees' babies to enable detained mothers to continue breast feeding while at the AMC was seen as a positive. However, there is no mother and babies facility unlike in many other Australian jurisdictions that allow for young children to live with their mothers in prison, although there were plans for this in the original AMC design brief.⁵⁷⁷

In addition to the direct quotes from First Nations women detainees and stakeholders already used in our Report, the OICS heard from women detainees' allegations of sexual violence and harassment within the women's cohort. Some women reported feeling harassed and unsafe and that their concerns have not been taken seriously when reported to AMC staff.⁵⁷⁸ Stakeholders we interviewed noted that 'We have in the jail here, we have women who have to walk past their perpetrators' (Government Agency).

The Deadly Connections report affirmed that 'the female Aboriginal people in custody we met reported that the female area is regarded as 'the worst part of the whole jail' due to a lack of programs and services available which meant women were left with little to no structure or routine to their day'.⁵⁷⁹ Other stakeholders told us that:

For the women there [is] a lack of programs. When I got talking to a lot of the women out there – they don't have the same opportunities to access programs as men. Just given the ratio of women to men as the ANC that shouldn't be a deterrent for them to consider providing more program. So funding is a major issue obviously – but access to similar programs for the women. (First Nations Organisation)

Or as a First Nations woman detainee told us:

I'll even show you the art room that we've got in here. It's paints that you have for fucking preschool, no paintbrushes, no nothing. We're using a dotter because there's no paintbrushes. And they've taken that away from us now, [as a form of punishment by] one of the officers'. (AMC Womens Group)

The prison environment which is designed and built with a culture of power and control can exacerbate trauma for women. 'This is a males' prison' (AMC Womens Group); '[It

⁵⁷⁶ ACTCS (2020) Walking with Women on the Pathway to Change, ACT Government, Canberra, p.7.

⁵⁷⁷ 'The larger female cottages will also be used to accommodate a mother and her child if necessary (this will necessitate child height design consideration e.g. door knob heights, bench heights, child proof locks)'. JACS (2005) ACT Correctional Centre, AMC Functional Brief, p.68.

⁵⁷⁸ ICS (2022) Healthy Prison Review 2022, p.88.

⁵⁷⁹ Deadly Connections (2022) Healthy Prison Review 2022, p.9.

Impacts] our mental health and everything. We've literally got nothing' (AMC Womens Group).

We get the arse end of the funding... we get basically the scraps that are left. That's why we even have to have our case managers do courses for us, because they don't have the money and they allocate it to the boys. (AMC Womens Group)

The OICS noted, 'It is of great importance that ACTCS adopt a trauma-informed approach in the management and treatment of women in the AMC to ensure their safety, and to prevent further victimisation or re-traumatisation whilst in custody'.⁵⁸⁰

We noted previously the issues with the CSU raised in the case of Ms Julianne Williams. Here we refer to other reports which identify its trauma-compounding effects. The Deadly Connections Report to the OICS found that female participants were particularly critical of the CSU and regarded the CSU as not the 'right place to put a woman who is unwell'. Women reported that 'the CSU is not culturally safe or gender sensitive, as it places women and men in the same area'. Women avoided the CSU even when they are very unwell. 'One woman explained that she was taken to AMC while in a psychosis and was "handcuffed and dragged to CSU" in distress, undeniably compounding trauma. Many of the women will not report experiencing a mental health crisis as they do not want to be taken to the CSU'.⁵⁸¹

The OICS has described the CSU as a 'highly sterile, inhospitable environment... intended to be used as an observation area where people who are considered at risk can be continuously monitored and are easily accessible to health staff'.⁵⁸² However, the OICS found that in reality the CSU is used for numerous purposes. The OICS drew similar conclusions to the Deadly Connections report:

- Women find the environment is not conducive to getting well
- The environment is traumatising, particularly being around men who can see and interact with them
- It is an entirely inappropriate environment for women, particularly those who are experiencing mental health crises
- Women will often not seek support when they are experiencing a mental health crisis as they don't want to be moved to the CSU.⁵⁸³

⁵⁸⁰ ICS (2022) Healthy Prison Review 2022, p.88. See also 'Leaked footage from Canberra's prison has shown a high-ranking ACT public servant appearing to throw a female inmate into a cell while he worked at the jail in 2015', 'Leaked video shows top prison official 'throwing' inmate', The Canberra Times, 24 January 2025.

⁵⁸¹ Deadly Connections (2022) Healthy Prison Review 2022, p.9.

⁵⁸² ICS (2022) Healthy Prison Review 2022, p.133.

⁵⁸³ ICS (2022) Healthy Prison Review 2022, p.133.

The recommendation below aims to improve First Nations women's access to various programs, activities and accommodation options⁵⁸⁴ to provide greater likelihood that reoffending will be reduced.

Recommendation 10.10

We recommend urgent action in providing:

- a. suitable cultural, therapeutic and training programs and activities for women and specifically First Nations women
- b. expansion and flexibility in accommodation options that can meet the various needs of women, including First Nations women.

10.16. Civil Law Issues in Prison

A relatively neglected area is the civil law issues which many detainees may be experiencing while in prison. The type of civil law issues that people need assistance with and were indicated to us by both detainees and stakeholders, included matters such as tenancy, housing debt, high purchase agreements (including cars), child support, social security, family law, discrimination and children's services.

A lot of people coming in there are having to deal with CYPS as well... There's not enough access to fight for your kids. (Winnunga Community Dialogue Men)

After doing so many years [inside]... When I got out I had a \$42,000 child support debt... I didn't know I had to ring up within six months. For me it was an automatic setback, for a bloke who's coming off the drugs – heroin, ice, and that – trying to turn his life around... They were still charging me the same rate. And you've got six months to appeal it. But I knew nothing about it. (Boomanulla Community Dialogue Men)

We note a positive initiative in 2023-24 by ACTCS was a partnership with Care Financial (a financial counselling service) for women detainees. According to ACTCS the partnership led to 137 face-to-face counselling appointments and a large amount of property, utility, and credit debts was recovered'.⁵⁸⁵

⁵⁸⁴ Particularly to allow contact with young children and given that women's desistance is more likely to be influenced by key relationships with their family and children.

⁵⁸⁵ JACS (2024) Annual Report 2023-24, p.77.

Civil law issues were described by one stakeholder as the ‘sleepers issue’ in prison that need to be addressed. ‘I one hundred percent agree that there's an issue there. The other link of course is care and protection, particularly with the women, occasionally the men, but more the women around accessing their children’ (Legal Service Provider). Legal Aid ACT will provide assistance when they are contacted. However, in our view there needs to be a regular civil law clinic provided in the AMC for both men and women. Previous research has shown that unaddressed civil law matters can contribute to further criminalisation.⁵⁸⁶

Recommendation 10.11

We recommend that Legal Aid ACT in cooperation with ALS NSW/ACT and Mulleung Mura, establish a regular civil law clinic in the AMC. Implementation may require additional ACT Government funding for the respective services.

10.17. Recent Deaths in ACTCS Custody

As far as we are aware, there have been **seven deaths** in ACTCS custody in the last two years (February 2023 to February 2025). According to Australian Institute of Criminology figures, in 2023-24 the ACT had the second highest prison death rate per 100 prisoners in Australia.⁵⁸⁷

Table 10.2 Deaths in ACTCS Custody. Two Years March 2023 – Feb 2025⁵⁸⁸

Date	Gender	Indigenous	Age	Status
26/02/23	Male		34	Remand
15/12/23	Male		51	Remand
12/07/24	Male		94	Sentenced
31/07/24	Male		35	Remand
29/08/24	Male	Y	34	Remand
13/2/25	Male	Y	73	Remand

⁵⁸⁶ Allison, F., Cunneen, C. and Schwartz, M. (2017) ‘The Civil and Family Law Needs of Indigenous People Forty Years After Sackville: The Findings of the Indigenous Legal Needs Project’, Durbach, A., Edgeworth, B. & Sentas, V. (eds), *Law and Poverty: 40 years after the Commission of Inquiry into Poverty*, Federation Press: Sydney, pp231-248.
 Schwartz, M. and Cunneen, C. (2009) ‘From Crisis to Crime: The Escalation of Civil and Family Law Issues into Criminal Matters in Aboriginal Communities in NSW’ *Indigenous Law Bulletin*, vol 7, no 15, pp.18-21.

⁵⁸⁷ Miles, McAlister and Bricknell (2024) Deaths in Custody in Australia 2023-24, AIC Statistical Report 49, p.7.

⁵⁸⁸ Source: OICS, Deaths in custody (prison, youth detention) since 1996 in the ACT
 <<https://www.ics.act.gov.au/deaths-in-custody>>; and various media reports.

17/2/25	Male	Y	38	Sentenced and Remand

In contrast, to the recent seven deaths, there were **six deaths** in ACT prison custody in the **ten years** inclusive between 2012-13 and 2021-22.⁵⁸⁹

It is our understanding that three of the most recent deaths in the AMC involved First Nations men. There are no coronial reports available for the deaths since February 2023. Given the length of time for completion of coronial inquiries in past deaths in custody in the ACT, we might expect to be waiting approximately two years from the time of death until the completion of the inquiry. Given the public and, in particular, the First Nations community concern with the current number of deaths in custody the coronial investigations need to be expedited.

There is complexity in the relationship with the OICS undertaking a critical incident review of a death in custody and a coronial investigation.⁵⁹⁰ However, the OICS maybe be able to undertake an immediate preliminary assessment of a death through a desk-top review and with a focus on prevention which might assist with the coronial process. Sufficient resources would need to be made available to the OICS on an ad hoc basis when a death occurs.

However, our concern remains that both coronial inquiries and OICS assessment will essentially focus on the deaths of individuals and will not consider potentially more systemic issues that have arisen in the AMC and which have impacted on the frequency of deaths in recent years. We recommend an independent inquiry into the deaths of seven men in adult correctional custody between February 2023 and February 2025 with particular attention to systemic issues.

Recommendation 10.12

We recommend in relation to recent deaths in custody that:

- a. The ACT government and the ACT Coroner work together to expedite coronial investigations into deaths in custody
- b. The OICS undertake preliminary assessments of the recent deaths in custody, which might be provided to the Coroner. Sufficient resources would need to be

⁵⁸⁹ Miles, et al (2024) Deaths in Custody, Table B4.

⁵⁹⁰ ACT Supreme Court ruling that Parliamentary Privilege attaches to OICS reports so they cannot be referred to in legal proceedings, including the Coroner. See JACS (2024) Statutory Review Report, Inspector of Custodial Services Act 2017, p.32.

made available to the OICS to undertake preliminary assessments (see Recommendation 10.3)

- c. The Minister of Corrections consider the establishment of an Independent Inquiry into the deaths of seven men in adult correctional custody between February 2023 and February 2025 with particular attention to systemic issues.

Feedback from the ACTCS on the draft Report suggested that the ‘discussion and the recommendation appear to be outside the scope of the TOR, including the fact that it relates to non-Aboriginal deaths in custody. The recommendation appears to draw inferences that the number of deaths warrants concern. Coronial processes are ongoing, however a number of the deaths are understood to be from natural causes’.

It is difficult to imagine an issue of more concern to the First Nations community in the ACT than Aboriginal deaths in custody, particularly when three deaths occurred within the space of seven months. The relationship to the TOR of this Report and the call for an independent inquiry relates to whether these Aboriginal deaths are connected to systemic issues affecting First Nations prisoners. Investigating deaths in custody speaks directly to First Nations community concerns about the AMC and its treatment of and potential to ensure the safety and rehabilitation for incarcerated First Nations people. At a broader level, First Nations community concern over deaths in custody goes to the heart of community questions about the legitimacy of criminal legal system and affects a range of institutions including police, the courts and prisons and detention centres.

Given that there was also a higher than usual number of non-Indigenous deaths over the two year period of February 2023 to February 2025 it may be the case that systemic matters surrounding the deaths affect all prisoners in the AMC. An independent inquiry could investigate whether this is the case. Irrespective of the findings of an independent inquiry there is also a need to provide for more timely coronial inquiries.

10.18. The AMC Compared to NSW prisons

Given the location of the ACT within NSW, and that the majority of First Nations people in the AMC have previously been imprisoned, it is not surprising that comparisons are made by people currently detained in the AMC with their experiences in other prisons and that the comparison is most often with NSW.

Obviously, there are significant differences between ACT with one prison and NSW with 36 prisons. These differences might offer both opportunities and limitations for both jurisdictions. Many people we spoke with both inside prison, people who were formerly incarcerated, and various service providers and stakeholders shared the view that the NSW system was preferable for a range of reasons.

Canberra has one jail. New South Wales has a lot more... they've got so many different jails they can group people together to have less friction. We've got one and how we group people together to avoid friction is we let them out of their cell at different times of the day. So that's a big problem with getting to programs or courses. (Statutory Authority/Public Body)

Economies of scale can also assist in both program offerings and industries. However, there is a limit to which this and other explanations in relation to the composition of the prison population can be used as a reason for the failure to improve a widespread range of long running issues identified with the AMC including boredom, drug use, health issues, poor education and other programs, lack of skills training, prison unemployment, racism and the lack of cultural safety, and gendered inequalities. These problems speak to the difficulties of reducing recidivism and portraying the AMC as a 'human rights' gaol. Given the proportional size of the Aboriginal and Torres Strait Islander population in the prison, the problems impact specifically on First Nations people, as well as the general prison population.

11. PAROLE, REINTEGRATION, POST RELEASE SUPERVISION AND SUPPORT

The following section of our Report considers various issues which arise in relation to release from prison, reintegration, parole and post release supervision and support. While acknowledging that community supervision may involve people who have not been imprisoned (i.e. released from court on a community supervision order), the main focus of this section is on those released from prison into the community.

11.1. Community Corrections Current Data

11.1.1. Supervision

The average daily number of people supervised by ACTCS Community Operations (Community Corrections) in 2023-24 was 805. Of these, the average daily number of First Nations men was 128 and First Nations women was 31. Thus 20% of people under supervision were First Nations people.⁵⁹¹

The Report on Government Services notes that First Nations people in the ACT are 11.2 times more likely to be on community corrections orders relative to non-Indigenous people.⁵⁹² The over-representation has increased over recent years both in the ACT and nationally. Leaving aside bail supervision, which we discussed previously, most First Nations people are on some type of sentenced supervision order (which ABS refers to as sentenced probation). According to ABS, as at the September Quarter 2024, and not counting those under bail supervision, 96 Aboriginal and Torres Strait Islander people were on sentenced probation, 22 on parole and 3 on community service orders.⁵⁹³

These figures were similar to when we visited Community Operations in mid-October 2024. At that time there were **846 under people under supervision which included 151 Aboriginal and Torres Strait Islander people. Of the 151 First Nations people, 71 on bail, 67 on good behaviour orders, 16 on ISOs and 19 on parole.**⁵⁹⁴

We note that Community Operations have two Aboriginal cultural engagement officers to assist the CCOs in their role, to engage with the Indigenous people under supervision and to assist in referring to culturally specific services. There is one identified Aboriginal CCO position in Community Operations.

⁵⁹¹ JACS (2024) Annual Report 2023-24, p.82.

⁵⁹² Report on Government Services (2025) Part C, Table 8A.8.

⁵⁹³ ABS (2024) Corrective Services, Australia – September quarter 2024, Table 18.

⁵⁹⁴ The figures do not total to 151 because an individual may be on multiple orders at the same time.

11.1.2. Completion of orders and breaches

Published data on completion of community corrections orders in the ACT is relatively limited. The Report on Government Services notes that for 2023-24, the completion rate was 87.6% for Aboriginal and Torres Strait Islander people and 87.5% for non-Indigenous people. The completion rates in the ACT show a steady improvement from 2019-20 and are the highest recorded in Australia for both First Nations and non-Indigenous people.⁵⁹⁵

The reporting on breaches of orders is limited and generally not reported by Indigenous status. The Sentence Administration Board provides some data on the breaches of parole and intensive corrections orders in its annual report (see below). More comprehensive data is potentially available, for example, the *Yeddung Mura External Reporting Site Pilot— Evaluation Report* noted for 2021-22 that Community Operations supervised a total of 1,707 clients of whom 284 (or 16%) of clients identified as First Nations people. During that year, 465 clients (27%) were subject to breach action. Of these 465 people, 131 (or 28%) identified as First Nations Peoples – indicating a significant over-representation in breach actions (16% of overall clients, but 28% of breaches).⁵⁹⁶ However this type of information – which is useful for determining the most effective ways of improving completion rates – is neither routinely nor publicly reported.

11.1.3. Return to prison within two years

In 2023-24, 34.2% of people released from prison in the ACT returned to prison within two years. This was a similar percentage to the previous year. It is lower than the Australian average of 43%.⁵⁹⁷ The ACT government has noted in the context of reducing the recidivism rate by 25% by 2025, that ‘recent data indicates we are making positive progress towards meeting this target’ citing a 19% decline in return to prison rates since 2018-19.⁵⁹⁸ However, the picture for Aboriginal and Torres Strait Islander people in the ACT is less promising.

In the ACT the return to prison rate for First Nations people was 44.3% compared to the non-Indigenous rate of 30.8% in 2023-24 – nearly one third higher. The return to prison rates for First Nations people in 2023-24 was an improvement on the previous year (47.1% 2022-23) and was lower than the national average for First Nations people which was 54.8% in 2023-24.⁵⁹⁹ While the improvement in return to prison rates for First Nations people is positive, the gap between the rate at which First Nations people return to prison

⁵⁹⁵ Report on Government Services (2025) Part C, Table 8A.21.

⁵⁹⁶ ACT Corrective Services (2023) *Yeddung Mura External Reporting Site Pilot— Evaluation Report*. ACT Government, p.10.

⁵⁹⁷ Report on Government Services (2025) Part C, Table CA.4.

⁵⁹⁸ ACT Government (2024) *RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT*, Phase 2, p.1.

⁵⁹⁹ Report on Government Services (2025) Part C, Table CA.4.

within two years compared to non-Indigenous people is significant (nearly 14 percentage points). In practical terms, this means that **more than four in ten Aboriginal and Torres Strait Islander people in prison will be back in prison within two years of their release**, compared to less than three in ten non-Indigenous people.

In 2023-24, the rates of people who returned to corrective services with a new prison or community-based sanction within two years of release from prison in the ACT was 62.4%. This was ten percentage points higher than the national average. For First Nations people, those who return to ACTCS with a new prison or community-based sanction within two years of release in the ACT was 73.9% compared to the non-Indigenous rate of 58.5%.⁶⁰⁰ This means that **three in every four Aboriginal and Torres Strait Islander people in prison will be back under some form of custodial or community correctional order within two years from their release**.

There is also data on the rates of people discharged from a community corrections order and returned to either prison or another community corrections order within two years. However, this data was not disaggregated by Indigenous status. The data shows, positively, that the ACT has lower rates of return to either community corrections or corrective services than the national average, and that there has been a steady improvement in the ACT figures over the last five years.⁶⁰¹ However, we were unable to determine the extent to which these improvements have flowed through to Aboriginal and Torres Strait Islander people. We have been informed that disaggregated data for this indicator will be published in the Report on Government Services 2026.

Understanding the reasons for, and reducing, both return to prison rates and return to community corrections is important for reducing Aboriginal and Torres Strait Islander over-representation in the criminal legal system in the ACT.

Recommendation 11.1

We recommend ACTCS improve the timely availability of data, including

- a. community supervision disaggregated by Indigenous status and type of supervision order
- b. data on breaches of supervision orders disaggregated by Indigenous status, type of supervision order and outcome of breaches (while acknowledging that recording of breach outcomes may require liaison with other agencies)

⁶⁰⁰ Report on Government Services (2025) Part C, Table CA.4.

⁶⁰¹ Report on Government Services (2025) Part C, Table CA.5.

- c. The data should be utilised to inform policies to reduce return to prison and return to community corrections for First Nations people.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

11.2. Parole

Successfully applying for, being granted and successfully completing a period of parole is an important way to reduce re-offending and return to prison, thus lowering the rates of Aboriginal and Torres Strait Islander imprisonment. With proper support during the period on parole, a person can be provided the opportunity to turn their lives around. Research also suggests that ‘prisoners who receive parole have significantly lower rates of recidivism or commit less serious offences than those released unsupervised; and that parole is most effective when it involves active supervision that is rehabilitation focused’.⁶⁰² Unfortunately, there are significant gaps in our knowledge concerning how well (or not) parole is operating for First Nations people in the ACT.

On the face of it, the process for First Nations people in prison to apply for parole looks straightforward. The Sentence Administration Board (SAB) secretariat sends a notice to the detainee seven months before their earliest release date notifying their eligibility to apply for parole. At that stage the secretariat also informs the case management unit at the AMC the person is now eligible for parole. Every detainee has a case manager. SAB notification to the case management unit will trigger the case manager to meet with the detainee to see whether they wish to apply for parole or not.

If the person wishes to apply for parole, then the Cultural Services Unit will also be made aware, so that the detainee also has the assistance of the Aboriginal Liaison Officer (ALO). The roles of the case manager and ALO are slightly different. The ALO may take carriage of sitting down with the person and filling out the form. Whereas a case manager's focus will be developing post release plans: where are you going to live? What are you going to do? What referrals to which services need to occur? Once the person submits the parole application, the Secretariat will inform Community Operations of the application and the inquiry date which will require a pre-release report. At that stage the CCO will become involved and undertake various checks (for example, accommodation, programs, support). The person now has three people working with them in different capacities. At the initial inquiry, SAB will consider the paperwork to determine whether there is sufficient information to proceed. The SAB will then set down a hearing and typically all relevant parties will be invited to make submissions at that hearing. When an

⁶⁰² ALRC (2017) Pathways to Justice Report, p.302.

Aboriginal person is appearing for a hearing, it is an expectation (at least from Community Operations perspective) that a First Nations SAB member must be sitting that day.

As we detail further below, there appear to be multiple disruptions and divergences to the process outlined above. We also note that at least some of the issues identified in our discussion on parole in this section of our Report were also referred to in the report on parole by the ACT Ombudsman in 2020.⁶⁰³ That report:

Identified inadequate policies and procedures governing the parole processes at the AMC. In addition, it found inconsistent record-keeping and poor planning were leading to detained people being insufficiently prepared to participate in the parole process and consequently unable to access parole at their earliest release date.⁶⁰⁴

The Ombudsman made 15 recommendations relating to policy and procedures and which it subsequently found to have been implemented by ACTCS. However, the Ombudsman also noted that they have not assessed how effectively the new framework is operating in practice.⁶⁰⁵

11.2.1. Parole Data

As we noted above, return to prison and recidivism data indicates a significant problem for First Nations people in the ACT. The Sentence Administration Board (SAB) has acknowledged this problem.

Recidivism rates continue to be high and... their intractability highlights the ongoing challenges faced by the criminal justice system and relevant social services, as well as the complex challenges faced by offenders and their families. The Board recognises the complex needs of Indigenous citizens in the correctional system and will continue to work with other agencies and services to achieve better outcomes.⁶⁰⁶

The problem, however, is that it is difficult to develop law, policy and practice reform to achieve better outcomes without an evidence-base. At present there is no Indigenous-

⁶⁰³ ACT Ombudsman (2020) Parole processes at the Alexander Maconochie Centre – Investigation into the administration of parole by ACT Corrective Services, Report 05/2020
<https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0026/296072/ACT-corrective-services-pay-processes-at-AMC-investigation.pdf>.

⁶⁰⁴ ACT Ombudsman (2024) Actions Speak - ACT Corrective Services Implementation of recommendations in the investigation into the administration of parole by ACT Corrective Services, p.3
<https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0028/314848/Actions-Speak-7-ACT-Corrective-Services-parole-processes-recommendations.pdf>.

⁶⁰⁵ ACT Ombudsman (2024) Actions Speak, p.4.

⁶⁰⁶ Sentence Administration Board (SAB) *Annual Report 2022-23*, p.420
<https://www.justice.act.gov.au/__data/assets/pdf_file/0010/2318572/SAB-Annual-Report-2023-published.pdf>.

specific data available in relation to parole. There is no data on whether Aboriginal and Torres Strait Islander people are applying for parole when they become eligible (or whether they are more likely to serve their whole term), no consistently reliable data on whether the parole applicant identifies as First Nations and, as a result, no comparative data with non-Indigenous parolees on matters like successful and unsuccessful applications, official warnings, revocations or successful completions.⁶⁰⁷ These gaps mean there is simply no overview available on how the parole system is working for First Nations people and where there might be potential for improvements within the parole process. Improving First Nations access to parole and successful completion of parole will reduce re-imprisonment.

Recommendation 11.2

We recommend the Sentence Administration Board (SAB) and ACTCS work together to improve

- a. the consistent identification of Aboriginality among people from prison applying for parole, in line with the outcomes of Recommendation 3.16
- b. systematic data collection on parole applications (successful and unsuccessful), official warnings, revocations and successful completion. The data should be capable of disaggregation by gender and Indigenous status
- c. the data should be utilised to inform policies to increase First Nations access to and successful completion of parole
- d. timely information on other matters useful to the SAB, such as program availability in the AMC and earlier prior notification of Indigenous matters coming before the Board.

Recommendation parts 11.2.a and b are partially dependent on the implementation of Recommendation 3.16.

11.2.2. The Sentence Administration Board (SAB) membership

There are currently 11 members of the Board. Three are judicial members (the Chair and two Deputy Chairs) and the remainder are non-judicial members. There are three Indigenous members (who are non-judicial members) of the SAB. For each Board

⁶⁰⁷ We were informed by ACTCS in their comments on the draft Report that ‘we have data on parole orders and completion reason’. There may be some data that is available. However, it is not publicly accessible or consistently available, and the SAB is certainly not aware of it.

meeting there is one judicial member and two other members. We note that a number of Board positions expire in May 2025 and this may impact the composition of the SAB, including the number of Indigenous members on the SAB.

Stakeholder interviews noted the difference an Indigenous member of the Board made when there was First Nations person appearing before the Board: ‘the difference is extraordinary’ (Statutory Authority/Public Body). There is no guarantee that an Indigenous Board member will be sitting when the Board meets. This was seen as problematic because Indigenous members were more likely to ‘pick up problems... know the families, know the background data, know what's going on’. (Statutory Authority/Public Body) There was also ‘a better ability to communicate... on a more deeper level’. (Statutory Authority/Public Body).

Non-judicial members of SAB are part-time and have other obligations. We recognise there are logistical problems in having a First Nations member present when Board hearings involve an Indigenous person. However, the problems are not insurmountable and unresolvable. It may be necessary to have improved prior notification of Aboriginal matters coming before the Board, a different approach to scheduling, or an expansion of the number of non-judicial members with Indigenous identified positions. **We recommend as a principle when a First Nations person is appearing before SAB there should be at least one First Nations member present.**

11.2.3. Parole applications

It is widely recognised that First Nations people in prison may choose *not* to apply for parole when eligible and instead serve out either their entire sentence or a longer period of their sentence in prison. The reasons for this may include a belief that they are unlikely to be granted parole by the parole authority, due to living arrangements, previous offending, or lack of attendance in prison programs.⁶⁰⁸ For whatever the reasons, the result is that First Nations people are spending longer in prison than is required under law and First Nations imprisonment rates are higher as a result. Also importantly, First Nations people who serve their full term are then released from prison into the community at the end of their sentence without supervision and the potential assistance associated with it – which then increases the likelihood of re-offending.

Although we do not have data for the ACT on the extent to which eligible First Nations people choose not to apply for parole, we do have anecdotal evidence from people working in the correctional system. For example:

⁶⁰⁸ ALRC (2017) Pathways to Justice Report, p.302.

One person in particular that was on parole and he breached parole. He's back in the AMC. He was offered the opportunity to reapply for parole and he declined because he thought he would just stay in there serving his sentence out in case he breached it again. (Government Agency)

We do see Aboriginal people more likely than non-Aboriginal people to say, “forget it, I'll just do my head sentence. I don't want to keep reporting to parole, I don't have a car. They're too strict, they want to do drug testing. They interfere in my life to much”. Or “I just don't feel safe. I go and talk to some White fella who doesn't understand me”. For some of these reasons they do prefer to just do their head sentence. (Government Agency)

Another stated, ‘my experiences and observations have been that Aboriginal people are more likely to leave their parole application a lot longer before they apply’ (Government Agency).

There may be other more basic issues, for example, in ensuring that completed parole applications are properly submitted. For instance, we were told that:

Sometimes detainees will say, I filled in my parole application, Chief, can you scan this and send this? And they might ask a custodial officer to do that, they might ask an education officer to do that, they might ask the librarian to do that or the chaplain. (Government Agency)

We were informed that one of the requirements for parole was a clear plan for when the person was back in the community. Aboriginal people applying for parole can be disadvantaged by the lack of literacy.

There's two different types of people who apply for parole... [those] who've been in for a while but have a bit of money in the outside world... So they'll be represented by lawyers and they'll be well prepared and they'll have a plan. One of the things you need to get parole really is a plan that shows that your risk is low. (Statutory Authority/Public Body)

In contrast, one of the reasons why the parole applications are not well written is lack of literacy.

When you've got that sort of causation of lack of education, lack of literacy, lack of numeracy that impacts directly on the applications for parole because if you don't understand the system, you don't have [the ability] to communicate, it's very difficult for a parolee. (Statutory Authority/Public Body)

Problems with literacy are further compounded when the SAB responds to an application in writing requesting further information: ‘their response obviously depends on their ability to read what [SAB is] sending’ (Statutory Authority/Public Body).

A specific condition for parole is that an offender must live at approved premises. Leaving aside the problem of finding accommodation, it was also noted that First Nations parolees will often stay between the extended family's houses rather than stay in one house. As a result, a core condition of parole can be difficult to comply with.

11.2.4. Access to in-prison programs prior to parole

The non-completion of programs in prison can impact on timely access to parole. We recognise there are various reasons for not being able to access programs. The most obvious reason is that the programs are not being offered or only offered intermittently. Another major reason is limitations on access to programs for certain groups of prisoners, including women. Previously, the ACT Ombudsman (2020) report on parole in the AMC had noted that 'it was evident that a number of detainees have not completed programs due to administrative circumstances beyond their control'.⁶⁰⁹ The Ombudsman noted in December 2024 that 'while ACTCS has taken positive steps to develop its suite of programs, we are aware from our oversight activities and complaints to our office that detained people continue to experience challenges in accessing these programs'.⁶¹⁰

We were told that the programs which are particularly important for parole are those that are offence-specific or offence-related and address drug and alcohol problems, violence, and family violence. In relation to drug and alcohol issues, the AMC has the Solaris Therapeutic Community (TC) which is a closed entry residential program for male detainees⁶¹¹ who have alcohol and other drug dependencies. However, Solaris 'is only available to people in mainstream because that's the group that have enough people who want to do it and who are qualified to do it together... people in protection can't do the course' (Statutory Authority/Public Body).

Which means you're in jail for two years and you're not eligible for the therapeutic community [Solaris]. And you went in because you've done 20 burgs to fund your drug habit. And when the parole board gets that person's application, [before the application is considered], [there is] a report from Corrective Services who will [inform SAB] that the individual didn't do TC... [Not that] we didn't offer it to them. No. Or why they didn't do one of the shorter courses is we just didn't offer it to them. (Statutory Authority/Public Body)

However, we were informed by ACTCS that 'Protection Detainees are eligible and regularly actively engage with the Solaris TC Program. Protection Status is not a barrier to engaging with the Solaris TC Program'.

⁶⁰⁹ ACT Ombudsman (2020) Parole Processes at the Alexander Maconochie Centre, p.23.

⁶¹⁰ ACT Ombudsman (2024) Actions Speak, p.15.

⁶¹¹ Women are also excluded from the program.

The other major group of programs is the EQUIPS programs. We were informed by several stakeholders that programs are not always available and people are unable to access the programs. For example, 'Right now I understand the EQUIPS isn't running. It's going to restart in January or February' (Statutory Authority/Public Body) – which was around 3 months after the time of our interview.

We were also informed that the type of programs First Nations people prefer doing (i.e. Indigenous programs) may not be as well as considered in the parole process because they are not addressing 'criminogenic' factors.

They have the Elders group that comes in and offer counselling. They have their own yarning circles. They have their arts related programs which isn't always strictly about art. There's that great sense of support and camaraderie and working closely with the ALOs and the ones that they can have with Elders. So, some of our Aboriginal detainees prefer to access those programs as opposed to EQUIPS programs... They'd rather talk to an Elder and get one on one kind of regular counselling or mentoring or post release prep from that Elder. This then doesn't always translate as a program when the person is sitting before the SAB. It doesn't translate as a criminogenic program and perhaps isn't always recognised as well. (Government Agency)

As we noted previously in this Report, CBT-based criminogenic programs based in Western understandings of criminology are less effective for First Nations people because the importance of culture as a protective factor is not well understood. It was noted by several stakeholders that despite the requirement for SAB to have a list of programs currently being offered, 'the list is never up to date' (Statutory Authority/Public Body). 'The Board's not kept up to date with programs when they can't run for whatever reason. The Board's not aware of that at the time [of the application] and may often find out afterwards when an offender comes before it' (Statutory Authority/Public Body).

People come seeking a parole order [and] they haven't done the requisite courses to address their offending and they say the courses aren't available and [SAB] have this confirmed. The availability of programs is not meeting the need. If you look at things in terms of what are your points of intervention for higher incarceration rates of Indigenous people? This is where you should be focussing. You've got to break the cycle and you have an opportunity with people in full time detention to do just that. (Statutory Authority/Public Body)

We were also informed of the importance of having life skills, literacy and numeracy courses available in the AMC to assist people both through the parole process and successfully navigating post-release reintegration.

In relation to addressing Aboriginal and Torres Strait Islander over-representation, two issues here are important: timely access to parole through the completion of required

programs reduces the number of people incarcerated and the successful completion of relevant programs is more likely to result in reduced re-offending.

11.2.5. The Case Manager and Community Correction Officers (CCOs)

We heard from numerous First Nations detainees in prison and various stakeholders that access to a case manager can be problematic, although it is part of the case manager's work to assist in applying for parole and to provide referrals. Some detainees told us they did not know their case manager.

[The] last time I went for parole... and I give them two addresses and my case manager didn't submit my addresses to the parole board and to my corrections officer and I was refused parole... I had to reapply for parole and now I've been stuck in here for another six months. (AMC Mens Group)

Put my paper enquiry in. I get the paperwork back. They've put the completely wrong rehab. They've put no approved accommodation, yet the house was approved twice and rehab is technically an approved address. (AMC Mens Group)

These issues were also raised by stakeholders.

It's certainly my experience over [many] years... Applicants for parole may say I don't know who they [case manager] are, or I've asked but I just can't get a time to see them. And this is essential for a proper preparation of a parole application. The Board [SAB] then becomes like the initiator of proper contact between the case manager and the applicant by adjourning the hearing [and by requesting community corrections officer to liaise with the case manager to help the applicant improve their application]. There needs to be a greater support at that point of interacting with the Board. The Board finds itself as having to undertake a role which reflects the deficiencies of the corrective services system inside the AMC. So, it's got a direct link with the over-representation of Indigenous people. (Statutory Authority/Public Body)

However, we also note that there may have been improvements with the use of Reintegration Case Managers.

I seen my other case manager in two years, four times. But this one now, part of reintegration, she comes through two, three times a week to ask me if I've got anything, if I need anything, how I'm doing, just sort of check-ins... I've never had this much support put in place before exiting a gaol before. (AMC Mens Group)

Several stakeholders informed us of the need for Indigenous CCOs – there is currently one identified CCO position.

This is very important because they're the ones who provide the SAB with pre-release reports... it is a significant deficiency, not only in terms of understanding the needs of people applying for parole but also as a source of information for other CCOs as well. (Statutory Authority/Public Body)

You need a correction officer who is Aboriginal and who has contacts in community and community organizations that will look after a person and be like a sponsor. (Statutory Authority/Public Body)

As noted above, ACTCS has two identified 'Cultural Engagement Officers'. These positions do not carry a caseload and provide cultural support.

11.2.6. Legal and other assistance in the parole process

The other related issue is the need for Indigenous applicants for parole having both legal assistance and assistance from Aboriginal community organisations. We were informed that, while some people appearing before the SAB 'have the best legal representation in town' (Statutory Authority/Public Body), routinely Indigenous people do not have anyone in the hearing except themselves.

The issue of legal representation was previously raised in the Ombudsman's (2020) report on parole processes at the AMC: 'It certainly appears very few detainees do have legal representation, despite the fact this may assist them to achieve improved parole outcomes. From the sample of cases we reviewed, no detainees had legal representation'.⁶¹²

We were also informed that there have been ACCOs interested in preparing and supporting First Nations detainees who are attending the SAB. However, they have not been able to determine a clear process with ACTCS/SAB on flagging upcoming parole dates with the relevant ACCOs. The establishment of a clear process to enable this support would be beneficial for First nations parole applicants and provide the potential for ongoing support during the parole period.

11.2.7. Compliance and revocation

It appears that around 35% of breach hearings by the SAB result in a revocation of parole.⁶¹³ As noted previously, we are unable to determine how many of those revocations involve First Nations people and the reasons for revocation.

⁶¹² ACT Ombudsman (2020) Parole Processes at the Alexander Maconochie Centre, p.26.

⁶¹³ 'The majority [of breach hearings] (65.4%) resulted in formal warnings or other non-custodial decisions', Sentence Administration Board (SAB) *Annual Report 2022-23*, p.425
<https://www.justice.act.gov.au/__data/assets/pdf_file/0010/2318572/SAB-Annual-Report-2023-published.pdf>.

Stakeholders we interviewed raised various reasons for breaches of parole by First Nations people. One reason included that they were known and easily identified by police if they were outside curfew, or associating with people they were not meant to be as part of their parole conditions. Other reasons related to ongoing drug and alcohol or mental health issues, literacy, loss of accommodation and the stress associated with release from prison.

They're on their 10th breach of parole and it's because they haven't got to 10 meetings... And this is not uncommon, they don't get to a meeting because they don't have a diary, because they can't read or because they've never had a routine, so they just forget it's on. They might have drug and alcohol or mental health issues, but more likely [they] did not get to an appointment because they forgot it or because they had no credit for their phone or because they had no money for the bus... it's not unusual for people to be going back to jail because they're not going to appointments, in particular therapeutic appointments, because they just don't have that organisational skill. (Statutory Authority/Public Body)

Also raised in this context was the need for establishing Indigenous CCOs who have a better understanding of the community and can provide the necessary support. The establishment of the external reporting sites (see below) was also seen as a positive for their potential to reduce breaches. We were told that there had been a significant reduction in breaches in the last few months leading up to November 2024, but the absence of data meant that it was not possible to tell how much of the reduction involved Indigenous parolees, or why the reduction had occurred. We were also informed of the importance of the support provided by organisations like Yeddung Mura in helping people get to appointments and reducing the risk of people being returned to prison for failing to attend appointments. We return to the importance of support in the section on reintegration and post-release support below.

In relation to cross border issues, it was noted that there are difficulties with people on parole leaving the jurisdiction depending on the conditions of the order. For example, if there is a condition for a curfew, police need to be able to go to the place and conduct a check. The other cross border issue is the non-concurrent serving of sentences between ACT and NSW. A person might be released on parole in the ACT and have outstanding criminal charges in NSW. 'It would be far better obviously if people would be serving the New South Wales sentence at the same time as serving an ACT sentence' (Statutory Authority/Public Body). We understand that the solution requires cooperation between ACT and NSW authorities. However, the principle of concurrent serving of sentences needs to be maintained: that the total time served does not exceed the longest individual sentence. This issue particularly impacts the ACT given its location within the broader jurisdiction of NSW.

Recommendation 11.3

We recommend that the ACT government pursue an agreement with NSW to facilitate the concurrent serving of sentences across both jurisdictions.

11.2.8. Reforms

We have been alerted to the positive potential for law reform in relation to parole. There is no legislative provision which allows SAB to suspend a parole order by returning the offender to custody for a brief period, similar to that which exists for an ICO and allows the SAB to place a person in full-time detention for three or seven days.⁶¹⁴ The reform to the legislation would be useful in circumstances where, for example, the Board is reluctant to cancel a parole order, but considers a suspension would address immediate community safety concerns and/or motivate the offender to put in place additional community supports and comply with their parole conditions.⁶¹⁵

If an offender needs [a] that circuit breaker to get them out of a bad situation and set up something new, they can go into custody for a little while without actually being revoked and be released again... it's something that could really help in [the] reduction of revocations. (Statutory Authority/Public Body)

The period of suspension for the parole order would be set down in legislation. For example, in the alternative of one week or two weeks. Currently with the revocation of parole, a person must go through the process of re-applying for parole with the various challenges for First Nations people noted above. The process itself takes months. Suspension of parole would provide an intermediate step between official warnings and revocation. There is a need for such an amendment to be monitored to ensure that it is used as an appropriate *alternative* to revocation of parole. Otherwise, it may have the unintended consequence of increasing full-time detention, rather than reducing it.

Also relevant to the above, is the potential to increase the discretion of CCOs to deal with minor breaches by way of a verbal or written warning – we return to discuss this further below.

Relevant to access to parole, we have made recommendations in an earlier section of this Report on increasing access to programs within the AMC. It is clear from the discussions we have undertaken that there needs to be better mechanisms in place to

⁶¹⁴ Crimes (Sentence Administration) Act 2005, Section 64.

⁶¹⁵ SAB *Annual Report 2022-23*, p.425 <https://www.justice.act.gov.au/__data/assets/pdf_file/0010/2318572/SAB-Annual-Report-2023-published.pdf>.

provide support for First Nations people prior to applying for parole, during parole hearings and in relation to revocation. There is also potential for law reform.

Recommendation 11.4

To further improve First Nations access to and compliance with parole, we recommend the following

- a. The SAB needs to ensure that when a First Nations person is appearing before SAB there should be at least one First Nations SAB member present
- b. There needs to be ongoing review by ACTCS and informed by the SAB as to whether Indigenous detainees are receiving the support they need within the AMC to apply for parole
- c. The ACTCS expand the number of identified positions for Indigenous Community Correction Officers to at least two positions
- d. The ACT government commit to providing legal assistance for Indigenous applicants for parole. A process also needs to be established to facilitate the participation of relevant ACCOs in providing support to Indigenous applicants during parole hearings
- e. The ACT government reform the *Crimes (Sentence Administration) Act 2005* to allow the SAB to suspend a parole order by returning the offender to custody for a brief period as an alternative to revocation.

11.3. Throughcare (Reintegration) and Post-Release

Recidivism is just such a wicked problem for our mob in the ACT – there has really got to be much better planning for people's release whether it's from youth detention or adult detention. So that they are supported. I know we've got throughcare in the adult space and looking at getting throughcare in the youth space but even that's quite limited. They get some clothes and shower packs and you know... But do they get that intensive sort of casework support? I don't know. (First Nations Organisation)

In our First Report⁶¹⁶ we described the various throughcare and post-release programs including Extended Throughcare Support, Yeddung Mura's Empowerment Yarning Circles

⁶¹⁶ Jumbunna (2024) First Report, see generally, pp.11-19, 62-63, 74.

(offered both in custody and community), Winnunga's justice reinvestment programs, the Transitional Accommodation Program (TAP) and the Justice Housing Program (JHP). The more recent ACT government's (2024) *RR25by25 and Beyond* report also provides a summary of existing ACT Justice Reinvestment Initiatives (as of April 2024).⁶¹⁷ We also note the more recent introduction of the I-Can program, which we return to below.

We also note the throughcare and post-release programs run specifically for First Nations women inside prison, on release and/or on community-based orders (Winnunga and Yhurwan Bullan) and for women more generally including First Nations women (Toora Women, which also includes accommodation). Other programs may provide assistance to Aboriginal women which also help with post-release support (for example, Dhurrawang Aboriginal Human Rights Program at Canberra Community Legal Centre and Mulleun Mura at the Women's Legal Centre). Other programs discussed below include the Yallan Ballan Support Group and ACT Nannies group.

Some of the major issues identified in regard to reintegration and post release in our First Report were:

- The limited scope of transitional accommodation provided by Toora, Yeddung Mara, and JHP requires both expansion and a variety of types of housing (as recommended in the evaluation of the JHP⁶¹⁸ and our earlier recommendation in relation to bail)
- The capacity of Yeddung Mura and other ACCOs to meet pre- and post-release program/service needs was highlighted
- Consensus that further programs and services are required for Aboriginal and Torres Strait Islander women addressing particular needs including, for example, suitable accommodation when they have children in their care, and assistance with matters such as debt.

Many of these issues have re-emerged in the more extensive consultations for the Final Report, particularly by people incarcerated in AMC and Bimberi.

11.3.1. Programs

In the earlier section on the AMC, we discussed the various programs offered including those conducted by Detainees Services and Offender Reintegration of ACTCS. Many of those programs are either directly or indirectly related to reintegration and post-release. The main ACTCS contract for throughcare (reintegration) for Aboriginal and Torres Strait

⁶¹⁷ ACT Government (2024) *RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT*, Phase 2, Appendix A, pp.31-35.

⁶¹⁸ Taylor, et al, (2023) *Process Evaluation of the Justice Housing Program*, ANU, Recommendation 8, p.xii.

Islander people when they leave custody is with Yeddung Mura. We have consistently indicated throughout our Report the need for appropriate support for Aboriginal and Torres Strait Islander people leaving custody – whether on bail, parole or other community-based orders. It is impossible overstate the importance of this support to reducing re-offending.

Relatively recently developed is the Indigenous Case Management Program (I-Can). The program provides for psychological assessment to determine what supports a person requires prior to developing a case management plan. During interviews, the program was described as a ‘game changer’:

What we're trying to do in that I-Can space especially is really look at the individual person, get them psychologically assessed, so that we have a really clear plan about what these people need to support them to be successful when they reintegrate into the community... I've heard really good stuff about what those assessments bring to the table and how clear it is then for Yeddung Mura to put support in place. (Government Agency)

We heard positive comments about I-Can from both outside of ACTCS and from participants.

I got signed up to this I-Can program and they come and visit me... I've built a relationship with them before I get out. So that way I feel comfortable talking to them when I get out. Feel comfortable calling them up saying ‘I’m having a bad day’. Feel comfortable asking them for a lift somewhere. (AMC Mens Group)

From the information we have received I-Can provides for a positive partnership between ACTCS and Yeddung Mura which is beneficial to the participants.

Yeddung Mura and others ACCOs offer programs both inside prison and after release. Below we note what Aboriginal and Torres Strait Islander people with lived experience of imprisonment told us, either through the interviews inside the AMC or in the community consultations we conducted. **The programs and services most frequently mentioned in a positive light were almost all Indigenous-specific. As we noted previously several of these offered in AMC have been discontinued.**

- The **Yeddung Mura yarning circles** offered both inside prison and in the community. Both men and women referenced this. ‘Yeddung Mura told me that when I get out if I need just to talk, or even a lift, or just someone to talk to... just to give them a call... I’ve seen them on the outs... They actually did what they said [they would do]’ (AMC Mens Group).
- **Winnunga’s services** was seen positively by men and women in the AMC for their health services. They were seen as significantly better than Justice Health,

including in access to psychiatrists/mental health. However, problems with access /staffing /resourcing was also noted as an issue.

- The **Weaving program** (now discontinued). Both men and women positively referenced this program and the fact that it was no longer offered.
- The **Elders and community leaders** visiting program in the AMC. Both men and women positively referenced this program.
- **Culture and land management** (now discontinued). Many of the men particularly referenced this program positively.⁶¹⁹
- **Gardening, cooking, nutrition** was referenced positively by some of the women.
- **Worldview** (now discontinued in prison). Mentioned by numerous men. 'Worldview offers to train you up to be mentor for young offenders for when they get out... They give you work, they do programs, group activities... they have a BBQ once week just so men can come around and talk' (AMC Mens Group).
- **Yindamara** with male young offenders in the AMC run by Jeff Amatto. 'He [Jeff Amatto] come down and did the course... I remember hearing stories about him when I was a young fella... And now he's turned his whole life around. More people like that who have come from where we are to something we want to be. That inspires me' (AMC Mens Group).
- **Sister's Inside** was referenced positively by the women in AMC. Some women had missed out because they were working in the bakery at the time (i.e. access issues).
- The importance of **NAIDOC Week** activities was also mentioned by both men and women.
- **CAHMA** was also mentioned positively for their 'hands on' programs.
- The **Yurauna Centre** at the CIT was also mentioned positively. 'They get your license and then you can do community courses that can cater to your needs, really. If there's something in particular that you want to study, or something you

⁶¹⁹ The program is particularly referenced in the ALRC (2017) Pathways to Justice Report. 'The Culture and Land Management Program (CALM) allows for Aboriginal and Torres Strait Islander prisoners to engage in gardening and horticulture, build literacy and numeracy skills, engage in arts and crafts, and develop skills in land management. The program is run by ACT Corrective Services. Former prisoners can remain within CALM following release through optional participation in seed collecting, tree planting, and bush regeneration activities' (p.286).

want, they will try their hardest... They've got Head Strong out there at the moment' (Boomanulla Community Dialogue Men).

11.3.2. First Nations community-led support

The written submission to our Review from Michaela Bangard, based on her PhD research and interviews with 32 Aboriginal women formerly incarcerated in the AMC, highlighted the importance of the 'vital support' provided by ACCOs. For example, the women spoke of how:

Yeddung Mura's Drop-in Centre provided essential wrap-around services, including culturally appropriate counselling and peer support programs. Several participants highlighted the importance of the Centre's Circuit Breaker and Smart Recovery programs, sharing how these helped them address trauma and addiction through approaches that acknowledged their intergenerational trauma. The Centre's extended hours and crisis support proved vital, with many staff members' lived experience of incarceration creating deeper understanding and trust.⁶²⁰

The Yallan Ballan Support Group was also identified as a powerful example of effective community-led healing.

This program has achieved remarkable outcomes – none of the women who regularly attended have returned to the AMC. The program's success lies in its unique two-stage model. Initially, women receive intensive support when most vulnerable after release. As they progress, many transition into mentoring roles, with several securing employment as program leaders, jewellers, artists and digital creators.⁶²¹

Other supports the women frequently mentioned were the effectiveness of Winnunga's holistic care provided through their justice reinvestment program and the ACT Nannies Group's support for women transitioning from prison.

These respected community Elders offered essential mentoring and cultural guidance, attending court hearings, writing support letters, and providing emergency accommodation. Some Elders took in children to prevent them entering the care system while their mothers were imprisoned. Women

⁶²⁰ Bangard, M., Written Submission, p.3.

⁶²¹ Bangard, M., Written Submission, pp.3-4.

consistently highlighted how Elder mentorship helped them rebuild cultural connections and understand their community responsibilities.⁶²²

First Nations people we talked with as well as non-Indigenous stakeholders recognised the importance of the support provided by organisations like Yeddung Mura and other ACCOs. For example, Yeddung Mura offers various programs which aim to motivate clients to change their behaviours and seek employment opportunities. These services include:

- Circuit Breaker, a program which aims to support the prevention of family, domestic and sexual violence,
- SMART Recovery, a program to address harmful addictive behaviour/s,
- Circles of Security, a program for parents and caregivers,
- Yarning Circles, and
- Mental health and wellbeing programs, including a 10-week anxiety program.⁶²³

As a former prisoner in AMC and now an attendee at Yeddung Mura explained:

They're a great help. They'll Uber you there, you do the program, they'll give you lunch, they'll give you a voucher to leave so you can get some groceries for the house. They try to make sure you're doing the right thing. And, it's not always the same course, you're doing different things all the time. And they get Centrelink to come out. They got Relationships Australia to come out. They got me in touch with them for the redress scheme. You can go out there to see parole instead of going into the parole office because parole realised that a lot of Blakfellas can't turn up to the parole office... So I think that's one of the great things... I've been going to the Yeddung Mura for the last few years. I was going there, I got arrested, got locked up. When I got out, I went back out there, you know, to seek help again. But when I went out there this time, I got a caseworker and he helped me. You know, I was having problems at home and he got me into housing... [They] help get you to court and make sure you're there, they sit in court with you for support. They're a great help. (Boomanulla Community Dialogue Men)

The submission from ALS NSW/ACT commented:

We are supportive of the Yeddung Mura Aboriginal throughcare program for people leaving custody. ALS clients who have been able to access this service have reported positive results. We would encourage further funding to that program, to

⁶²² Bangard, M., Written Submission, p.4.

⁶²³ Yeddung Mura External Reporting Site Pilot, p.17.

ensure throughcare support is available to all Aboriginal and Torres Strait Islander people in the ACT.⁶²⁴

Non-Indigenous stakeholders in the justice sector also referred to the important practical assistance which is provided by ACCOs.

They are a connection point for people... they'll remind people of appointments and they'll transport them. That actually takes some of the difficulties away... those sorts of organisations reduce the risk of going back to custody for stupid reasons like just not getting to an appointment. (Statutory Authority/Public Body)

While we have focussed on some of the positive work that has been done in relation to post-release support, certainly not all experiences related to us were positive.

They make it all sound nice and pretty on the inside and they get your expectations up... But as soon as you get out those gates, all those things that you initially thought were set in place for you, and all the support you thought you were going to receive upon release... When you step out into the real world, it's like, 'Here you go', they dump it all on you and it's like 'Well, now you need to do it'. And it's like, we just had a discussion, for months, about how much youse are going to help us, and that when we get out we have all these expectations and all these hurdles that we need to jump over. (Boomanulla Community Dialogue Men)

A number of areas in particular remain problematic, including housing, residential rehabilitation and AOD services generally, employment, literacy which we discuss further below.

11.3.3. Accommodation

Accommodation is a critical issue for Aboriginal and Torres Strait Islander people exiting prison in achieving successful re-integration and reducing re-offending and re-incarceration. Many of the incarcerated First Nations men, women and young people we spoke with in AMC and Bimberi emphasised it's importance, as well formerly detained people we spoke in the community consultations.⁶²⁵

If I had my own house, I'm 37 now you know... I want to have my own place where I can just call my own, build my foundation. I want to be with my kids. I haven't even met my oldest daughter. (AMC Mens Group)

⁶²⁴ ALS NSW/ACT, Written Submission, p.7.

⁶²⁵ Also, for example, 'I think that's one of the biggest factors of people reoffending'. (Winnunga Community Dialogue Men). 'There's a young girl here, now she's always in and out. If she had her own stable place I know personally for a fact... she would be out of the system. (AMC Womens Group). See also Section 6.8 for young people's experiences.

We can go to a refuge, but we can't take our kids. So what? Do we got to give our kids up to get out? No, that's not happening. (AMC Womens Group)

There are two temporary accommodation options supported through ACTCS – the Justice Housing Program (JHP) and the Transitional Accommodation Program (TAP) operated by Yeddung Mura. In 2023-24, the JHP housed 89 people exiting custody in their 10 houses. Some 65 people were new entries, of whom 62 were male (including 24 who identified as Aboriginal), and 3 were female (all 3 identified as Aboriginal). Some 74 people exited from the accommodation over the period and the majority (42) of these exits were planned. The remainder were unplanned, mostly due to returning to custody or disengaging with the JHP services.

Yeddung Mura has 2 houses under the TAP for Aboriginal men exiting custody on bail or parole. Yeddung Mura houses four men, with a cap of two participants in each house. In terms of the differences between the two programs, we were informed that JHP has a focus on case management, advocacy, and referral to other agencies. For Yeddung Mura the program focusses more on inclusion, participation and engagement in the programs offered by Yeddung Mura or agreed by other ACCOs.

For women there is the JHP (noted above) and the TOORA home program which is funded by CSD and provides services to all women. Like Yeddung Mura, TOORA work with the women in the AMC pre-release and can transition women to their properties. There is no Aboriginal-specific housing for First Nations women.

[There's nothing for] girls that need houses on release for parole... [Yeddung Mura] give the males' houses and don't give us women with children houses... Where's us women to come out to a house? That's most of our problem. (AMC Womens Group)

Given the limited capacity of Yeddung Mura, the majority of Aboriginal men, women and young people exiting custody or on bail who manage to receive temporary accommodation do so through mainstream services. ACT Housing also indicated that they have two justice liaison officers and who work with AMC to support people exiting custody back into their public housing properties or to be finding new public housing properties. It is also noteworthy that when people go into the justice system, they do not automatically relinquish their property with public housing. None of the people we spoke with who were in prison or had exited mentioned assistance from the housing liaison officers.

11.3.4. Residential Rehabilitation Services and AOD services

One of the greatest gaps in services which was frequently mentioned was the absence of a residential rehabilitation service.

Residential rehab services. People have to go down to Nowra or to Wagga or to Sydney or whatever. We don't have one in Canberra that allows them to stay still connected to their community or family. Mental health services. I'm not convinced that there's enough Aboriginal workers in health services. Generally, there's not enough Aboriginal workers in AOD services. (Government Agency)

The unfulfilled possibilities of Ngunnawal Bush Healing Farm were also often highlighted by many First Nations and non-Indigenous people in this regard. It was originally envisioned by Elders as a residential facility offering comprehensive cultural healing programs yet remains only available for day use, and with eligibility requirements that limits its use by First Nations people.⁶²⁶ We are aware that planning is underway to open the Winnunga residential rehabilitation service and we see this as an important development.

More generally there is a lack of culturally appropriate drug and alcohol counselling services that can be regularly accessed by First Nations people in the criminal legal system.⁶²⁷

11.3.5. Employment after Release

It is widely recognised that people released from prison who obtain sustainable and meaningful employment are less likely to return to prison – employment is a major factor in desistance. Generally, in Australia ‘ex-prisoners’ have the highest unemployment rates of any marginalised groups. Stigma and discrimination are recognised as among key challenges to finding employment.⁶²⁸

A consistent theme raised in our interviews with First Nations people in prison or now released in the community was the need for assistance with and the difficulties in finding employment after release from prison.

Some of these problems appear to be related to criminal records in general and others related more specifically to obtaining Working with Vulnerable People clearance, particularly in relation to government work in the ACT.⁶²⁹

Some of the really high thresholds that people have to meet to get any job is, you know, a significant disadvantage for people. And so we're trying to... encourage our colleagues to take a less arbitrary approach to criminal records... there's really

⁶²⁶ ALS NSW/ACT, Written Submission, p.9.

⁶²⁷ ALS NSW/ACT, Written Submission, p.6.

⁶²⁸ See Baldry et al (2025) “Where’s the second chance?”. Compounded stigma and other factors impacting ex-prisoner employment’, Howard Journal of Crime and Justice <<https://doi.org/10.1111/hojo.12619>>.

⁶²⁹ ‘One guy was told he needed a police check for a window installation job’. ‘A lot of the work – it’s all government so everyone needs government clearance’ (Winnunga Community Dialogue Men).

high thresholds just to get a cleaning job because at some point you might end up working on a government property... With some of those matters that we see, we have resolved a few of them, they're never going to make headlines because nobody wants to say we've got a record and nobody wants to say we've given this person a conditional [clearance]. (Statutory Authority/Public Body)

Part of the issue as well is the shame and lack of knowledge and assistance in obtaining a Working with Vulnerable People registration.

I was going to TAFE. I was learning something. I was looking towards helping other people at the time. It was just that when it came time for me to get my work with vulnerable people ticket, because I had such an extensive criminal history, I was too embarrassed to put in for it when everyone else [did]. So I didn't do it, but I found out I could have done it because I had didn't really have any violent crimes. (Boomanulla Community Dialogue Men)

It was noted that Aboriginal people feel they cannot volunteer as a way of finding future employment because they cannot access Working with Vulnerable People clearance as a result of their criminal record. However, we are also aware that some First Nations people working in ACCOs have been able to gain conditional Working with Vulnerable People registration which enables them to work under specific conditions. **There clearly needs to be greater information provided to detainees pre-release and post release, as well as by ACCOs on obtaining Working with Vulnerable People clearances.**

There was also the issue of appropriate training prior to release and driver's licences. While Yeddung Mura offers support and assistance with gaining driver's licence and other licences (for example, forklift), not everyone on release will be a client of Yeddung Mura. Between December 2017 and December 2019, ALS NSW/ACT had received funding for a road safety program (the Aboriginal and Torres Strait Islander Driver Licensing pilot) and included funding for an Aboriginal driving instructor to deliver driving lessons to clients charged with traffic offences involving driving without a licence.⁶³⁰ While one rationale for the program was to prevent future criminalisation for driving related offences, the benefits also relate to the ability to obtain employment.

It was also acknowledged that 'people in an awful cycle is [with] driving offences where they have a disqualification and then they drive again because there's a need or a want and then they get further disqualification and it just becomes the point where they just end up going to jail' (Statutory Authority/Public Body). The length of suspensions was also seen as 'just ridiculously long like 12 months, six months... because it's just setting them

⁶³⁰ ALS NSW/ACT, Written Submission, pp.8-9.

up to fail' (Statutory Authority/Public Body), which also negatively impacts whether people can obtain work or get to work.

Another issue raised was the limited understanding of throughcare and the absence of planning in relation to employment from the beginning of the sentence as we noted in the previous section the AMC. The view that, combined with boredom and access to drugs, people come out worse than they went in.

One of the problems we had is their programs for pre-release. If you've got a guy coming in, he's going to do four years here, maybe he's only got two years to parole or whatever, wouldn't it make sense that we meet him right at the start and then give him some hope? Like if we can talk to him then and go, well, do some work experience, complete these programs, you know, get this ticket, then at the end we have this job for you. He's got hope and then he's positioned himself well so that when he comes out it's walk in the park to get him employment. (First Nations Organisation)

As one former detainee of the AMC explained:

People need to be helped, to set small goals... realistic goals... say getting a job or helping them get their license and making it easier for them to get these things... These little things will change their life... It'll stop them from wanting to go out and stealing cars, doing this joy riding, when they've got their own car at home, got their license. They're all legit. They're all sweet. (Community Dialogues)

And some people were able to find their way to useful training courses: 'I just finished doing a construction program through [X]. That really helps put stuff in place, to actually see a future doing something else' (Boomanulla Community Dialogue Men).

Community people we talked with also described the problem of the stigma attached to being an 'ex-prisoner' which they described variously as a 'nightmare'; 'I can't even get job dropping garbage off'; 'I applied for a job at [X], probably a week ago, for the night shift working a forklift. They wanted a police check and I've done that. And now nothing'; 'The only job you get is if you know someone that's willing to give you a start' (Winnunga Community Dialogue Men).

As a First Nations provider of training and employment told us, 'Stigma? You can't say there's no impact, especially this day and age. Like most people, you can google their name. They're usually maybe not front page of the newspaper, but they'll be somewhere on a newspaper somewhere. It's pretty hard to hide things' (First Nations Organisation).

There is also little doubt that problems with literacy and numeracy may compound some of the problems in finding employment on release from prison. We were informed that as part of reintegration there is brokerage funding available to provide financial assistance to any detainee exiting custody if it fits into the reintegration pillars, which includes education. We do not know how often this might include literacy education for people

leaving prison in the ACT. We know from NSW research that adult literacy education for First Nations people, besides helping people to read and write, reduces the likelihood of reoffending when offered by a First Nations organisation.⁶³¹

We have already noted in the section on the AMC issues relating to industry and education programs. These problems compound the difficulties of reintegration after release. As others have noted the limited availability of industry and education programs ‘exacerbate the high rates of homelessness and unemployment among those newly released... The current system is failing to make the most of the opportunity to improve the health, education and employability of people before they return to the community.’⁶³²

As a former non-government service provider informed us:

There's a lot of talk about case management and throughcare, but it seems to be the reality is pretty different from what they say they're doing around that. I mean all the prisons pay lip service to the ideas around throughcare from when you get in until when you get out, kind of thing. But you don't actually see much of it in reality. (First Nations Organisation)

11.4. External Reporting Sites

External reporting sites began in July 2021 with Yedding Mura becoming the first site where First Nations people on community service orders could report to an Aboriginal organisation rather than attending the city office of ACTCS. The sites have since expanded locations to include Winnunga and CAHMA and in 2024 expanded eligibility to include bail reporting. We noted in the section on parole that the establishment of the external reporting sites was also seen as a positive for their potential to reduce breaches. External reporting sites have developed as an important part of the post-release landscape. As far as we are aware, they are unique to the ACT.

The external reporting sites have a primary aim of contributing to reducing over-representation of First Nations peoples in the ACT justice system. They seek to achieve this by:

- Providing eligible First Nations clients with a familiar and culturally supportive site
- Increasing access for First Nations people to access co-located services

⁶³¹ Participation in the Literacy for Life Foundation adult literacy campaign. Beetson, J., Schwartz, M. and Anderson, P. (2022) ‘A life changing experience: how adult literacy programs can keep First Nations people out of the criminal justice system’, *The Conversation*, 7 December 2022 <<https://theconversation.com/a-life-changing-experience-how-adult-literacy-programs-can-keep-first-nations-people-out-of-the-criminal-justice-system-195715>>.

⁶³² Justice Reform Initiative (2023) State of Incarceration. Insights into Imprisonment in the Australian Capital Territory, p.10.

- Increase cultural awareness and culturally supportive management of case plans and supervision of community corrections orders for First Nations clients, and
- Assessing the longer-term viability of alternative reporting sites for First Nations people and other populations.⁶³³

An evaluation by ACTCS of the initial Yeddung Mura site found that ‘clients, stakeholders, and Yeddung Mura staff were overwhelmingly supportive of the External Reporting Site. It provided a culturally supportive approach to case management and supervision by working with the clients on building positive relationships and reporting outcomes’.⁶³⁴ The work included:

- Referring and linking clients with a range of supports and services which enabled individuals to complete the objectives outlined in their case management plans
- Clients actively engaging with supervision and reporting requirements
- ACTCS and Yeddung Mura working together at the External Reporting Site to address issues of non-compliance and developing strategies to support clients to achieve their case management objectives, and
- Supporting clients with complex mental health issues, and those with experiences of trauma, by providing an alternative model of care.⁶³⁵

We were also informed that First Nations people on bail who are required to report to police multiple times a week can report to the external reporting sites

to reduce the need for them to go to a police station, but more importantly to try and have access to the person while they're there so that we can link them up with supports. We can actually touch base and have a conversation, ask them, you know, how you going? housing? do you need anything? Whereas with police, it's a measure of ‘Chief, I'm here checking in’, ‘Yep. See, I ticked your name off’, whereas if they come to us, we can have those conversations. (Government Agency)

Involving Yeddung Mura and Winnunga as Aboriginal community-controlled organisations is essential to the success of the program.

I think it's because it's a lot safer for them. Some people need that cultural safety around them, just in the physical building, just the physical setup of that building. Then there are people there, there are other personnel there, like Winnunga

⁶³³ ACT Corrective Services (2023) Yeddung Mura External Reporting Site Pilot— Evaluation Report. ACT Government, p.4.

⁶³⁴ Yeddung Mura External Reporting Site Pilot— Evaluation Report, p.4.

⁶³⁵ Yeddung Mura External Reporting Site Pilot, pp.4-5.

personnel that they're familiar with, that they might have relationships with. (Government Agency)

ACCO and a Cultural Engagement Officer are present for the reporting and they are able to offer referrals and other assistance. 'They're able to then be linked in and have some immediate needs met. They can have access to bus tickets or food vouchers or whatever else that they need that the Cultural Engagement Officer and the CCO can provide them' (Government Agency).

[This] particular woman coming into Yeddung Mura was the example of bringing her kids. Now not only did you turn up and meet a bail reporting or a parole reporting responsibilities, the kids got health services... You had a community event and so there was all of it extra outcomes from the fact that that's where the reporting arrangement was. So medical services and services to kids and whatever else happens. I think that was one of the real strengths of it. I think that's really made a difference, if nothing else to the experience for Aboriginal people to be interacting with the system. I think for us the next level of complexity to that is probably something more mobile and going to where people are. (Government Agency)

Support for the external reporting sites has been evident in the community meetings and consultations we have undertaken for this Final Report. However, one disadvantage for the external reporting sites is that individuals who can otherwise utilise these sites may be also required to conduct urinalysis at the ACTCS reporting site in Canberra city. We were told of the shame and humiliation associated with these tests. **We note the recommendation made by the ACTCS evaluation to explore alternative options to the ACTCS city office for conducting urinalysis and whether this might include testing at the external reporting sites.** We recommend that this should be an additional voluntary option.⁶³⁶

A further issue that was raised is that the CCO makes a decision on eligibility to reporting via the external reporting sites. The criteria for eligibility appear broad (for example, identify as Aboriginal and Torres Strait Islander person, subject to supervised bail order or community-based order with supervision, may benefit from a more culturally appropriate setting to demonstrate compliance). However, child sex offenders are

⁶³⁶ ACT Corrective Services (2023) *Yeddung Mura External Reporting Site Pilot – Evaluation Report*. Canberra City: Australian Capital Territory Government, pp.5-6. We also note that one stakeholder we interviewed thought 'this could be a counter-productive effort. It is possible that having people subject to testing at external reporting sites will deter them from reporting, thereby not gaining access to all the services offered' (Government Agency).

excluded, as are a person showing previous ‘level of aggression (particularly physical violence) towards ACTCS staff’.⁶³⁷

Recommendation 11.5

We support the previous recommendation of the ACTCS evaluation on external reporting sites to explore alternative options to the ACTCS city office for conducting urinalysis and whether this might include a voluntary option for conducting testing at the external reporting sites rather than the ACTCS city office.

11.5. Successful Community Supervision and Post Release Support

Notwithstanding the limited data on breaches and the apparent over-representation of First Nations people among that cohort, we were interested to know the possible reasons behind the high completion rates of supervised orders. As we noted previously, completion rates were high (87%) for both First Nations and non-Indigenous people.

Interviews with government stakeholder identified several reasons why they thought there was a relatively high completion rate for community-based orders:

- Over the last couple of years there has been a much greater emphasis on case management practices and more robust assessments to courts.
- Improved the mandatory and primary training that are offered CCOs.
- Assessments are made that are more person centric rather than referring just to legislation and what the legislation says about eligibility requirements.
- Improved engagement and involvement with the judicial officers/courts so that they understand community corrections perspectives and why we assess people a certain way.
- The different types of order types introduced in the ACT such as DATOs and ICOs and how the orders are managed and monitored has led to better supervision outcomes.
- An increase in the availability of justice supports which are available such as the external reporting sites and bail support programs.

⁶³⁷ ACT Corrective Services (2024) External Reporting Site for Aboriginal and Torres Strait Islander Clients Operating Procedure 2024, pp.1-2.

- The increased role of the Galambany Court.
- The introduction of cultural engagement officers, and the increase of cultural awareness training that is now offered and mandatory across justice agencies.

As one interviewee stated:

We can make an assessment that says, for example, this person is not suitable for community service work, don't give them community service work hours, they're just not going to be able to do it, their lives are chaotic or they've got a physical health issue or they've got child care responsibilities or whatever, the court can override any assessment that we make. But in more recent years they have been far more receptive to upholding our recommendations. But we have also gotten better at setting out *why* and giving a little bit more of a person centric assessment. (Government Agency)

Another potential factor was the impact of the COVID-19 pandemic which affected community supervision regimes nationally, and primarily in a way that decreased face-to-face supervision and increased the discretion available to community corrections officers. In the ACT the COVID provisions in the legislation enabled CCOs to apply discretion for lower level breaches – not everything had to go back to court or to the SAB.

After the COVID provisions ended, the CCO discretion was only retained for good behaviour orders and removed for intensive corrections orders and parole orders. However, it has been proposed for the next round of legislation amendments that the discretion for CCOs for lower level breaches be applied to intensive corrections orders and parole orders, whereby the CCO can give a verbal warning, or a written warning and continue to case manage the person through the order and potentially put in other interventions to ensure compliance. We support these proposed legislative amendments.⁶³⁸

Recommendation 11.6

It is recommended that the ACT government reform legislation to enable CCOs the discretion to give a verbal warning, or a written warning for lower level breaches in

⁶³⁸ Stakeholders expressed to us that it was currently a punitive system of supervision and that some level of discretion improved the potential for effective case management. However, we note that ACTCS considers implementation of this recommendation would leave potential for conflicts of interest by CCOs, who work very closely with offenders in the community; inconsistency in approach across CCOs; and a greater level of responsibility placed on a CCO than what is expected of their designated level (ASO 6) to make these decisions. We do not consider these objections sufficiently valid when CCOs already exercise some discretion and the proposal is only for lower level breaches. The benefits of not needing to return to courts or the SAB for minor breaches outweigh the potential consequences of potential return to prison.

relation to intensive corrections orders and parole orders, whereby the CCO can continue to case manage the person through the order.

11.6. Wraparound Services and Case Workers

A consistent issue raised in our discussions was the need for wraparound services when people are exiting custody, on bail supervision or other community-based order including parole. It widely acknowledged that both Yeddung Mura and Winnunga provide some wraparound supports to their best of their capabilities. ‘Are government departments are actually providing supports or funding to ACCOs to provide the supports in a wrap-around holistic sense to be able to address those issues?’ (Government Agency)

Closely connected to the concept of wraparound services and holistic approaches is breaking down siloed approaches within government. For example, it was noted one focus was potentially on families.

How do we bring together all the parts of the puzzle together in a family sense? In the ACT, it's not lots of families... They touch with education, they touch with community services, they'll touch with housing, they'll touch with [JACS]. How do we all make sure that all the things that government's doing with partnership with community are all more joined up. (Government Agency)

Although it has not been an emphasis in this section of our Report, there is also a need for a focus on those who are on community corrections orders who haven't been in prison, particularly to be less compliance driven and more concentrated on better outcomes. To be successful in that first round of supervision contact would prevent people ‘finding themselves back a second time – because that's where you might make the best difference’ (Government Agency).

I don't know exactly what that looks like – it's a joint co design exercise with the community but it feels like there's an opportunity there. Police would have a role, corrections would have a role. Families and communities would have a role. The community itself would have a role. ACCOs would have a role in providing some of the services. That feels like something that might be worth doing. (Government Agency)

Associated with the need for wraparound and holistic services was the need for dedicated caseworkers. We were told that different services were often ‘referral agencies to somewhere else but people need a caseworker that can then actually work [with them]. Like Yeddung Mura do a great job. But they're not case workers. They've got programs to run and they've got all these big ideas that they can't do because they don't get the funding’ (Legal Service Provider).

People coming out of the AMC they all need a caseworker that's checking in on them. Where are you living? What are you doing? Not a corrections officer. Someone removed from corrections, someone in the community connected to community... [Who can] form connections with them and you know that makes a really big difference. You think somebody actually cares about me to move through that path of healing. (Legal Service Provider)

This type of case worker was described by others as a dedicated 'cultural capability' worker to work with people on the pathway out of the justice system. Such a pathway requires everything to work. We were told 'that people need housing, they need employment, they need good health support, mental health support' (Government Agency). Some of these models like throughcare already exist. 'Do we resource them well enough is a question? And do we specifically invest in having a culturally capable workforce doing that work on the scale [necessary]? (Government Agency).

Despite reducing recidivism being a government priority, not surprisingly we were told by stakeholders that funding to enable wraparound services to provide better outcomes and diminish government silos was an issue.

We still haven't got funding for them be able to do that important work of wrapping around those individuals [and] to be able to break silos to [reduce] recidivism. There is no way to drive that top down leadership response across government in a way that's highly effective in this space because the end of the day you're talking about resourcing and we keep on saying this [recidivism] is a priority – yet we refuse to prioritise it – and if you've only got a certain amount of dollars in the bucket then what do you stop doing to make this happen? (Government Agency)

11.7. Drawing the Threads Together on Throughcare and Post-Release

Part of the problem with throughcare and reintegration starts in the AMC. For example, the absence of planning in relation to employment from the beginning of the sentence and limited availability of industry and education programs compound and exacerbate high rates of homelessness and unemployment among those newly released. Reducing Aboriginal and Torres Strait Islander imprisonment rates and reoffending requires commitments to throughcare in prison and various practical support in the community. We make recommendations in relation to the AMC in the earlier part of this Report.

The importance of First Nations throughcare and post-release programs with ACCOs, other First Nations organisations, and First Nations staff was widely acknowledged by both First Nations and non-Indigenous people, by government, by NGOs and the community sector. This importance related to the nature and relevance of the assistance provided, as well less tangible factors like trust and relationships.

Notwithstanding JHP and TAP, we note that there is limited crisis and transitional accommodation available that is accessible to Aboriginal and Torres Strait Islander people bailed and post-release. The majority of First Nations men, women and young people exiting custody or on bail who manage to receive temporary accommodation do so through mainstream services. Access to crisis and transitional housing for Indigenous women and children is particularly critical.

We recognise that there is a lack of culturally appropriate drug and alcohol counselling that can be consistently accessed by First Nations people in contact with the criminal legal system. The Winnunga residential rehabilitation service is an important development in this area. However, more needs to be done in service provision. We recognise the role of Yeddung Mura in throughcare support and the potential for further funding to that program to expand availability of their service.⁶³⁹

Accessible and First Nations-led licensing supports and programs play a role in reducing the number of Aboriginal people coming into contact with the criminal legal system, and assist in finding employment and have other social benefits. Accessible and First Nations-led and delivered literacy programs have benefits for employment, social integration generally and directly contribute to reducing reoffending.

We provide a recommendation below on increasing access to services. We acknowledge that the Commissioning process has been initiated to provide opportunity for First Nations input into government decision-making with the view ‘to review and redesign the First Nations justice space’.⁶⁴⁰ The Commissioning process seeks to address prioritisation of issues and funding adequacy – not only to meet service needs but to strengthen ACCOs.⁶⁴¹

We would see the role of ACCOs as fundamental to prioritising and implementing the various components of the recommendation below. We also note the important role of the Justice Futures Fund and the AEEF in strengthening the ACCO sector.

Recommendation 11.7

Increasing opportunities for reintegration and support post release should be contextualised by the principles of wraparound and holistic support.

- a. We recommend the ACT government provide funding for increased access to:

⁶³⁹ ALS NSW/ACT, Written Submission, p.7.

⁶⁴⁰ ACT Government (2024) *RR25by25 and Beyond*, p.28.

⁶⁴¹ ACT Government (2024) *RR25by25 and Beyond*, pp.36, 39.

- i. crisis and transitional housing for Aboriginal and Torres Strait Islander people exiting custody, with recognition/ prioritisation of the particular needs of First Nations women and children
 - ii. culturally appropriate drug and alcohol counselling
 - iii. greater support in the community for employment pathways and training programs
 - iv. accessible and First Nations-led support, well-being and mentorship programs
 - v. accessible and First Nations-led driver licensing programs and literacy and numeracy programs
- b. The prioritisation of increases in services above should be undertaken through a First Nations decision-making process involving the body established under Recommendations 2.1, 2.2.
- c. Priority should be given to the role of ACCOs in providing additional reintegration and support services.

We also recommend that ACTCS improve the information provided pre-release and post release on obtaining Working with Vulnerable People clearance.

Recommendations 11.7.b is partially dependent on the implementation of Recommendations 2.1, 2.2.

12. APPENDICES

12.1. Appendix 1: Assessment of 35 ALRC Recommendations – Summary

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

12.2. Appendix 2: Review Stage 2 Consultation Questions

- What key factors are driving Aboriginal and Torres Strait Islander over-representation in the ACT? How can these best be addressed?
- Do you have any comments on why imprisonment rates in the ACT are falling for non-Indigenous people, but not for Aboriginal and Torres Strait Islander people?
- What's working well at the moment to prevent or limit Aboriginal and Torres Strait Islander contact with the criminal justice system and/or prevent recontact and re-offending? How can this be built on or strengthened?
- What are the main gaps in service provisions and programs?
- What new initiatives or innovations are likely to contribute to reducing over-representation and how might they be progressed?
- What specific law, policy and practice reforms are needed to address over-representation, including around child protection, women and youth justice, policing, courts, prisons, post release support?
- Are there any other comments that you would like to make?

12.3. Appendix 3: Recommendations

2. DECISION-MAKING, ACCOUNTABILITY & COORDINATION

Recommendation 2.1

We recommend that the Justice and Community Safety Directorate (JACS) establish as a high priority an interim First Nations-led justice body to oversee implementation of recommendations of this Review. This interim body should, as minimum requirements:

- a. Be focussed on providing First Nations-led oversight of implementation of recommendations of this Review, including advising how best to sequence and prioritise this implementation.
- b. Include First Nations representation nominated from ATSIEB (1), UNEC (1) and ACCOs working in the justice space (2-3), who then appoint First Nations community members with direct experience of the justice system (1-2) (via an EOI or similar process). The group may also consider appointment of additional First Nations representation (for example, Aboriginal and Torres Strait Islander Children's Commissioner) and determine optimal total numbers of members (perhaps limited to 8).
- c. Be adequately remunerated for their time and expertise across the entire body's membership (for consideration, at an appropriate rate for Office Holders in the ACT as determined by the ACT Remuneration Tribunal).
- d. Be adequately resourced to enable its members to carry out its functions, including to engage and seek input from the First Nations community, as required (including young people, First Nations and other organisations).
- e. Be supported by a team of 2-3 staff established as a priority within JACS and other senior staff in JACS, in particular the three senior First Nations roles established as part of this Review (Recommendation 2.3.a). Support from the JACS team should include ensuring the interim body has access to ACT Government information required to ensure its effective oversight of implementation, as well as secretariat support. Support from First Nations roles should aim to establish authorising environment within the ACT Government required to ensure the interim group can effectively oversee implementation.

Recommendation 2.2

We recommend that JACS support the interim First Nations-led justice body (Recommendation 2.1) to lead a process to identify and guide future development of mechanisms connected with First Nations justice issues.

- d. This process:

- iv. Should be supported by the JACS team established under Recommendation 2.1 and senior JACS roles established under Recommendation 2.3.a.
 - v. May involve other First Nations and government representatives, at the invitation of the interim body.
 - vi. Should focus on mechanisms that will strengthen First Nations self-determination, increase ACT Government accountability and improve coordination with respect to issues related to over-representation.
- e. The First Nations-led mechanisms ought to be established *on an ongoing basis* as part of this process. These mechanisms should provide for Aboriginal-led decision-making and oversight in the justice space. For consideration, a permanent First Nations-led justice mechanism may be established that retains and expands on the interim body's role in overseeing Review recommendations to provide oversight over all justice related activity.
 - f. The interim body should work with government to determine the future direction of and potential reforms to other government mechanisms identified as having impacts on over-representation. These include (but are not limited to) the Aboriginal and Torres Strait Islander Justice Caucus, the Justice Advisory Group, the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee (IDC), and the Executive Coordination Group (ECG).

This recommendation is dependent on implementation of Recommendation 2.1.

Recommendation 2.3

To improve coordination, increase government accountability and enhance First Nations self-determination, we make the following recommendations.

- a. The ACT Government should establish the following positions:
 - i. Assistant Commissioner (Aboriginal and Torres Strait Islander) for Correctional Services
 - ii. Deputy Director-General (Aboriginal and Torres Strait Islander) of JACS
 - iii. Assistant Commissioner (Aboriginal and Torres Strait Islander) of Police.

Given current arrangements between the ACT Government and the Commonwealth around policing services in the ACT, consideration needs to be given to how they will work together to establish the Assistant Commissioner (Aboriginal and Torres Strait Islander) role (Police) (see Section 2.7.3 for discussion of options).

Each of these roles must be at senior executive level, with the Assistant Commissioner roles reporting to the relevant Commissioner in ACT Corrective Services (ACTCS) and ACT Police and the JACS role reporting to the Director-General, JACS.

The functions attached to these roles should encompass those set out in s. 2.7.3 of the Report, centred around:

- i. First Nations decision-making and oversight to increase government accountability to the First Nations community in the ACT
 - ii. increasing coordination within their respective Directorate/agencies and across the ACT Government of First Nations justice related matters and activities.
- b. Legislative measures should be established by the ACT Government for incorporation within performance agreements and KPIs for more senior JACS staff that demonstrate:
 - i. How these staff have sought to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people and eliminate systemic racism across the Directorate
 - ii. Any other measures identified by First Nations people as likely to contribute to reduced First Nations over-representation.
- c. JACS should ensure that outcomes measurement within the Directorate incorporates measures related to its progress against Priority Reform and Core Focus Areas under the National and ACT Agreements. With respect to these particular measures, JACS should:
 - i. consider whether they could be used to inform KPIs for senior JACS staff (Recommendation 2.3.b).
 - ii. ensure they are effectively progressed, monitored and evaluated. This may require their incorporation within R25by25 or in a separate JACS strategy (potentially aligned to RR25by25). Reporting against these measures should also be made public.
- d. JACS should incorporate on a consistent basis First Nations input in its Wellbeing Impact Assessment process (where relevant to First Nations people). This input might inform its assessment of impacts and be used to identify measures of success within this process.
- e. JACS should use First Nations input to inform the Directorate's outcomes measurement, including to identify, monitor and evaluate outcomes, targets and indicators (in addition to doing so in implementing Recommendations 2.4.a-c).

Recommendations requiring First Nations input (2.3.b.ii, d, e) are partially dependent on implementation of Recommendations 2.1, 2.2.

3. SYSTEMIC RACISM & OTHER ISSUES

SYSTEMIC RACISM

Recommendation 3.1

We recommend that JACS and Community Services Directorate (CSD) embed cultural capability measures (KPIs) into funding agreements for non-First Nations organisations it funds to work with First Nations people in the ACT (where this is has not already been done).

Recommendation 3.2

We recommend that the ACT Government conduct independent, targeted systemic racism reviews of JACs and its agencies (police, ACTCS as a priority: Recommendations 7.3, 10.7) and other Directorates likely to influence or impact First Nations justice outcomes, including Education, Health, Housing, and CSD. The reviews ought to identify current best practice and make recommendations for areas for improvement in addressing systemic racism, including across Directorates.

- a. The approach to conducting these reviews should be developed with First Nations input and implementation of their recommendations requires robust First Nations and government oversight.
- b. The reviews and government responses to their recommendations must be published.
- c. Consideration should be given by the ACT Government to how First Nations experiences of (and other data about) systemic racism are shared publicly and with First Nations people (alongside publication of the systemic racism reviews), including potentially via implementation of Recommendations 3.13-3.15.

Recommendation 3.2.a is dependent on implementation of Recommendation 2.1 and partially dependent on 2.2 (for First Nations input and oversight).

Recommendation 3.3

We recommend that JACS, CSD and their relevant agencies establish Cultural Safety Plans as a priority. The development, monitoring and evaluation of these Plans require First Nations Input (see also Recommendation 3.4).

This recommendation is dependent on implementation of Recommendation 2.1 and partially dependent on 2.2 (for First Nations input).

Recommendation 3.4

We recommend that as part of the systemic reviews (Recommendation 3.2) or via other mechanisms (for example, First Nations consumer surveys), the ACT Government should

gather data from the First Nations community on their experiences of cultural safety and racism occurring within their interactions with government.

This recommendation is dependent on Recommendation 3.2 (if gathering data via systemic racism reviews).

FUNDING

Recommendation 3.5

We recommend that JACS and CSD resource and otherwise support establishment and operation of a mechanism designed to increase First Nations input into decision-making around funding priorities in the justice space.

First Nations input into the design of this mechanism is required. For consideration, the mechanism may input into decision-making related to WIA processes connected to JACS and CSD business cases (Recommendation. 2.4.d) and the First Nations-governed fund in Recommendation 3.8.

Resources provided to support this mechanism incorporate data, including:

- c. annual data on Indigenous expenditure on justice related programs and service provision and on implementation of Priority Reform Areas and Core Focus Areas under the National and ACT Agreements
- d. justice and other data relevant to over-representation.

This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).

Recommendation 3.6

We recommend that JACs and CSD improve accessibility across the First Nations community to data on First Nations justice related expenditure (see also Recommendation 3.5).

The aim is to ensure transparency in funding decisions and to help improve community awareness of and access to services and programs.

This data may be shared in implementation of Recommendations 3.13-3.15, amongst other methods.

Recommendation 3.7

We recommend that JACS and CSD implement proportional and needs-based funding under Cl. 55a and 55b of the National Agreement on Closing the Gap to address current gaps in resourcing in program and service delivery of Aboriginal legal services and other ACCOs contributing to reduced over-representation.

Recommendation 3.8

We recommend that JACS and CSD establish a fund to resource Aboriginal and Torres Strait Islander-led interventions aimed at improving First Nations justice outcomes and addressing over-representation. The fund must be designed with First Nations input and be governed by First Nations people.

Subject to outcomes of First Nations design of the fund, we recommend that it:

- a. should provide funding for operations, governance and other non-programmatic priorities
- b. should provide sustained funding, avoiding short term funding cycles as far as is possible
- c. could draw in resources from the proportional funding (Recommendation 3.7) and/or from the ACT Government (including funds allocated to Directorates outside JACS and CSD) to promote coordinated, collaborative approaches to addressing over-representation
- d. should be expended on justice-focussed program/service delivery, along with any other priorities identified as likely to reduce over-representation. This should include a focus on young people at risk of or already in contact with the justice system and other early intervention/prevention approaches. Other possible funding priorities include systemic reform and advocacy, strengthening community leadership and self-determination
- e. should be linked to support made available to those seeking to apply for resources under the fund
- f. should be supported in its operations via provision of data by the ACT Government to inform fund decision-making (see also Recommendation 3.5).

This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).

Recommendation 3.9

We recommend that JACS and CSD increase access to brokerage funding for First Nations organisations working in the justice space to ensure a level of flexibility and control over funded activities undertaken.

DATA

Recommendation 3.10

We recommend that JACS, CSD and other relevant Directorates come together with the First Nations-led Data Working Group (Recommendation 3.11) to consider and

potentially progress additional data sharing and linkage projects. The focus is on projects that share and link:

- a. justice and other types of data (for example, health, child protection, education related data)
- b. that have capacity to provide insights into interventions likely to positively impact justice outcomes for First Nations people at both an individual and population level.

At the initial phase of this process the various directorates, in consultation with the First Nations-led Data Working Group, should agree on a minimum data set that would set some parameters around what data would be shared across agencies.

Consideration should be given to legal, privacy and other concerns arising with respect to such projects and whether and how these might be balanced with their potential benefits, the processes required to establish these projects and any other relevant matters.

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

Recommendation 3.11

We recommend that JACS and CSD establish as a priority a First Nations-led Data Working Group. This group could be drawn from and should connect with any other First Nations-led mechanisms established as part of this Review. It may also incorporate representation from JACS, CSD and other ACT Government representatives, as required.

- d. First Nations members of this Working Group should be supported to develop their data capabilities, as required.
- e. As an early priority, this group may develop JACS and CSD First Nations Data Strategies to coordinate and guide First Nations related data work in the justice space, including under RR25by25.
- f. The focus of both the Data Group and Data Strategies should incorporate improvements to the quality of data collected by JACS and CSD, including to ensure consistency and to address gaps in data identified in this Report.

Recommendation 3.12

We recommend that JACS and CSD develop clear policies and procedures outlining their approaches to IDS-G, with First Nations input from the First Nations-led Data Working Group.

Specific actions outlining how JACS and CSD will support implementation of IDS-G principles are to be identified and implemented within this process.

These actions may incorporate, for example, establishing mechanisms that provide for First Nations people to input into KPIs for senior JACS staff (Recommendation 2.3.b; justice related outcomes measurement (including under RR25by25) (Recommendations 2.4.c, e; and how First Nations data is to be used in the justice space.

The above policies, procedures and actions may be incorporated within or aligned with JACS and CSD First Nations Data Strategies (Recommendation 3.11).

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

Recommendation 3.13

We recommend that JACS establish a public-facing dashboard providing the First Nations community with access to de-identified First Nations data. This includes data reporting on RR25by25 implementation and other First Nations related justice data collected as a result of improved data linkage, and the specific data areas for data collection identified in our Review.

First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released.

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

Recommendation 3.14

We recommend that JACS develop and disseminate a publication on justice-related data that is easily accessible to the First Nations community, similar in style to the Aboriginal and Torres Strait Islander Health and Demographic Profile for the ACT.

First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released.

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

Recommendation 3.15

We recommend that the ACT Government support First Nations-led development of a First Nations-governed data dashboard. First Nations input on design of the platform and its governance should include input from the First Nations-led Data Working Group.

This platform should hold and share First Nations data as determined by its First Nations governance. This may include data on First Nations experiences of racism and cultural safety (see Recommendation 3.2).

This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).

IDENTIFICATION

Recommendation 3.16

We recommend the development and implementation of a consistent and culturally informed approach to the identification First Nations peoples across justice-related agencies and funded service providers. A clear and consistent standard for verifying First Nations identity should be developed in partnership with First Nations-led structures established as part of the Review. This will ensure equitable access to services and protect the integrity of funding and data collection. Where changes to a person's Aboriginality status occur, agencies should engage with relevant community partners and seek culturally appropriate guidance to determine whether recognition is appropriate within program and service delivery contexts.

Recommendation 3.17

We recommend justice system databases should be updated to reflect only verified identifications, and protocols should be introduced to prevent retrospective changes without appropriate cultural or community verification—particularly in cases where individuals have had prior engagement with the system without identification as Aboriginal and/or Torres Strait Islander.

Recommendation 3.18

We recommend that First Nations organisations, for example Elders and/or ACCOs (and where possible AIATSIS), assist by undertaking family history and genealogy research when required by First Nations individuals in the ACT. This may require funding for staff to undertake and assist with family reunion, with travel of clients to their country and in obtaining understanding of descent from the Indigenous peoples of Australia and acceptance as Indigenous by an Indigenous community.

Recommendation 3.19

We recommend that ACT government undertake a review of First Nations employment across the justice and related portfolios, with a specific focus on the number, level, and function of identified positions and broader First Nations workforce representation.

Arising from the above review, we further recommend that ACT justice and related agencies maintain an internal and community-facing registry of identified positions and their roles, supported by transparent criteria and culturally appropriate engagement practices. This registry should support workforce planning, succession strategies, and improved community trust. In addition, ongoing capability development and appropriate

cultural governance structures must be in place to support the recruitment, retention, and progression of Aboriginal and Torres Strait Islander staff.

4. EDUCATION

Recommendation 4.1

We recommend that the Education Directorate work with ACT Policing and First Nations people in the ACT to determine best responses to school-based student incidents, prioritising First Nations community-led responses where possible (for instance, mediating student conflict, linking students to relevant supports) and avoiding unnecessary reliance on police responses to such incidents.

The agreed approach should be incorporated into Education Directorate policy, including the Education Directorate/Police MOU and additional Directorate policy, as necessary. Processes for First Nations community oversight of compliance with this policy should be established and implemented.

A First Nations Education Advisory Group (to be established by the Education Directorate) should be involved in developing the above policy and in oversight (or advising on best approach to oversight) of its implementation (see Recommendation 4.11).

This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input and oversight).

Recommendation 4.2

We recommend that further resourcing be provided to expand current levels of support provided by First Nations organisations to First Nations students and families/carers.

This support should be offered and made available to students and/or to their families/carers that self-identify or are identified as having a need for it.

At a minimum, support should be available during suspension/exclusion processes, when a student has been referred to alternative education and when a young person is transitioning out of youth justice incarceration, but it may also be used more preventatively (for instance, when issues first emerge).

First Nations community input is required to determine how support for First Nations students and their families/carers should be expanded.

This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input).

Recommendation 4.3

We recommend that processes and mechanisms be established to ensure First Nations input into, oversight and/or review of Education Directorate decisions related to the suspension or exclusion of First Nations students. This approach should be incorporated into Directorate policy.

First Nations input is required to develop the processes, mechanisms and related policy necessary to implement Recommendation 4.3.

This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input and potentially oversight/review).

Recommendation 4.4

We recommend that First Nations students and their families/carers have increased access to information, support and advocacy around rights in an educational setting (including related to disability/race discrimination, cultural rights and school disciplinary action) (see also Recommendation 4.3).

This should be provided by a source external to but funded by the Education Directorate, potentially as an expansion of the current partnership with Legal Aid ACT or via another external program or service.

Recommendation 4.5

We recommend that Education Directorate statistics on suspensions and exclusions of First Nations students are made publicly available, including data that is disaggregated by disability, reason for suspension, length of suspension and other variables, so far as is possible.

Decisions about what data should be collated and can be shared publicly should be determined with First Nations input.

This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input).

Recommendation 4.6

We recommend that the Education Directorate engage the First Nations community in the ACT to participate in development and implementation of processes and mechanisms for collecting data from First Nations students and their families/carers on experiences of cultural safety and racism in an educational setting.

For consideration, the processes and mechanisms developed may collect data on First Nations perspectives of the effectiveness of current Education Directorate initiatives aimed at addressing racism and improving cultural integrity, to inform review of the same.

This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input into processes and mechanisms).

Recommendation 4.7

We recommend that CSD increase day release for young people incarcerated in Bimberi to attend work or school (for example, to attend Muliyan, PCYC programs, TAFE).

Additional mechanisms for increasing access for this group to vocational training/employment opportunities to help with their re-entry and improve their longer-term outcomes people should also be considered. Consideration should be given too to whether a trade skill centre can be set up at Bimberi.

Recommendation 4.8

We recommend that the ACT Government allocate further resourcing to support First Nations children and young people disengaged from education and/or transitioning out of Bimberi into a school setting.

This includes providing additional resourcing for the purchase of (a) vehicle(s) and additional staffing (1-2 youth workers) within Flexible Education (to enhance support available under Waruga Yardhur and Muliyan programs).

Recommendation 4.9

We recommend that the ACT Government allocate further resourcing to increase availability of flexible learning options for First Nations students.

This resourcing might be used to expand existing Education Directorate initiatives (including Muliyan) and/or for First Nations-led design, implementation and evaluation of a program or other alternative learning option specifically for First Nations students.

Recommendation 4.10

We recommend that the Education Directorate develop policy and procedures providing clear guidelines for how it will support First Nations children and young people involved in the youth justice system. It could incorporate, for example, detail guiding how to best support the transition of young people from Bimberi into school.

The policy should incorporate detail of how the Education Directorate and other relevant directorate/agencies will work together to support First Nations students interacting with different systems (education, youth justice and/or child protection systems). As such, this process is likely to require input from other Directorates.

This process also needs to be informed by First Nations input (including from First Nations-led mechanisms established under Recommendations 2.1, 2.2).

This recommendation is partially dependent on implementation of Recommendations 2.1, 2.2 and 4.11 (for First Nations input).

Recommendation 4.11

Subject to the outcomes of current consultations being conducted by the Education Directorate on establishment of such a body, we recommend that the Education Directorate support the establishment as a priority of a First Nations Education Advisory Body. This body is to work alongside the Education Directorate to enhance First Nations outcomes in an educational setting.

As part of their role, the body may provide First Nations input and oversight as identified across education-related recommendations of this Review (see Recs 4.1, 4.2, 4.3, 4.5, 4.6, 4.10). They may do this in collaboration with First Nations justice mechanisms established under Recommendations 4.1, 4.2.

The First Nations Education Advisory Body, at a minimum:

- a. should have sufficient capacity, including resourcing, to ensure it can provide independent oversight over and to participate on equal terms in decision-making related to policy and other Education Directorate activity impacting the First Nations school community.
- b. may have ATSIEB, ACCO and other First Nations representation (including from First Nations families currently engaged with the educational system). It could draw membership from and/or build on the Community Reference Group overseeing the Education Directorate's Waruga Yardhur program.
- c. may also incorporate youth representation or alternatively, work alongside a First Nations Youth Education Advisory Group established with a similar purpose to that of the First Nations Education Advisory Body as part of this Review.

Recommendation 4.12

We recommend that the Education Directorate and CSD work together to ensure Education Directorate staff have sufficient understanding of thresholds for mandatory reporting. Where there are concerns about students and their families, Education Directorate staff could connect them with the above ACCO supports as an alternative to reporting to CSD (see Recommendation 4.4).

5. CHILD PROTECTION

Recommendation 5.1

We recommend the ACT government provide increase funding for the further expansion of the First Nations Family Response and Engagement Team. This is to ensure that all First Nations families who are at-risk of child protection involvement, or are already impacted by the child protection system, are referred to the team as a priority.

Recommendation 5.2

We recommend that the ACT government consider further legislative and policy reform to give the First Nations Family Response and Engagement Team greater autonomy in decision-making, including decisions on whether a child is at significant risk and therefore removal is necessary.

Recommendation 5.3

We recommend that the ACT Government work with the Office of the Commissioner for Aboriginal and Torres Strait Islander Children to better understand and resolve unnecessary legislative constraints impacting on the Commissioner's capacity to hold child protection services accountable.

Recommendation 5.4

We recommend that the Our Booris, Our Way (OBOW) Implementation Oversight Committee (IOC), in collaboration with the ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner:

- a. Undertake a comprehensive review of the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)
- b. Develop specific targets that focus on the principle of prevention, including for example, the number of children diverted from formal child protection intervention, and the number of families who are provided with support through intensive family support services.

Recommendation 5.5

We recommend that the ACT Government, in conjunction with community leaders and ACCOs, explore the development and implementation of community models of care to support First Nations children to remain in community even when child protection intervention is needed. First Nations input should be sought from First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review.

This recommendation is dependent on Recommendations 2.1 and 2.2.

Recommendation 5.6

We recommend increased transparency in the collection, access and interpretation of child protection data in the ACT. Notwithstanding that the ACT is a small jurisdiction, data suppression due to 'privacy' concerns means that over-representation of First Nations children in key metrics is not calculated. Data released to the OBOW IOC should be made publicly available.

Recommendation 5.7

We recommend that the ACT government commit to ensuring that every First Nations child in out-of-home care (OOHC) has a cultural support plan that:

- a. Is developed in consultation with the First Nations Family Response and Engagement Team
- b. Includes input from a child's family and community
- c. Is regularly updated to ensure they remain accurate and reflect the needs of a child as they develop
- d. Provides meaningful opportunities for a child to engage with culture, beyond simply participating in NAIDOC week events
- e. Is easily accessible to a child while they are in care
- f. Is provided to a child when they leave the care system – either through restoration, permanent care, or if they 'age out' when they turn 18 years old.

Recommendation 5.8

We recommend that the ACT government develops a mechanism to ensure that:

- a. Every child is aware of, and has access to their cultural support plan, specifically their genealogy and community knowledge while in care. These plans need to follow a child if they enter the youth justice system
- b. Cultural support plans can be independently audited by the Aboriginal and Torres Strait Islander Children and Young People Commissioner on a regular basis to ensure that they are sufficiently high quality to support cultural connection and identity.

Recommendation 5.9

We recommend that the ACT government works with the OBOW IOC and the Aboriginal and Torres Islander Children and Young People Commissioner's Office to identify additional ACCOs with strong community connections that can provide culturally appropriate services in child protection and OOHC.

Recommendation 5.10

We recommend that the ACT Government provide regular (yearly) data on children that are 'dual clients' of child protection and youth justice (see also Recommendations 3.13 and 3.15). This data should be disaggregated by Indigenous status, with input from the First Nations Data Working Group established via Recommendation 3.11 of this Review.

This recommendation is dependent on Recommendation 3.11.

Recommendation 5.11

We recommend greater coordination between child protection and youth justice to ensure that if a child in care enters the youth justice system, cultural support officers have access to, and can update, a child's cultural support plan.

Recommendation 5.12

We recommend the development of a formal protocol between Children, Youth and Families (CYF), ACT Policing and residential care service providers, co-designed with community, to stop the criminalisation of children in residential care. This would necessitate, at a minimum:

- e. Engagement with community stakeholders
- f. Built in mechanisms of accountability for CYF, ACT Policing and residential care providers to ensure that the protocol is implemented and adhered to
- g. Cross-sector training in trauma, trauma-awareness and therapeutic care
- h. Working with the ACT Policing to develop a stronger understanding of the impacts of trauma, including intergenerational trauma, structural/systemic racism, colonialism, and dispossession on children's development, and the links between trauma, OOHC placement and behaviours that may be perceived as 'criminal' or 'antisocial'.

Recommendation 5.13

In relation to the Care and Protection Intensive List (CPIL) we recommend that:

- a. The ACT Government undertake a review into the functioning of the current eligibility criteria, with a focus on whether it is functionally excluding First Nations families
- b. Data on the number of parents/families who have gone through the CPIL, including the number who have successfully completed and the length of time to completion, should be made publicly available. This data needs to be disaggregated by Aboriginality. It also needs to include information about children's outcomes, including whether restoration has been sustained.

Recommendation 5.14

We recommend that the ACT Government, in collaboration with the OBOW IOC, the Aboriginal Legal Service (ALS) NSW/ACT, and the Children's Court gives full consideration to the design and implementation of a Koori Family Hearing Day to support First Nations families in the child protection system.

6. YOUTH JUSTICE

Recommendation 6.1

In relation to the Therapeutic Support Panel, we recommend:

- a. Investment in the social service infrastructure to support the work of the Therapeutic Support Panel including investment in ACCOs that can work intensively with children and families to ensure children do not enter the youth justice system at later stages of adolescence
- b. Ongoing monitoring and evaluation. This should include at a minimum the regular provision of data on the number of referrals, children's characteristics and type of support offered as well as data necessary for evaluation
- c. An independent evaluation of the impact and efficacy of this model. Such an evaluation should include:
 - i. Input from First Nations community leaders and ACCOs with further input from the First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review
 - ii. A longitudinal component to determine whether the Therapeutic Support Panel can effectively divert children from formal youth justice involvement at later stages of adolescence.

This recommendation is dependent on Recommendations 2.1 and 2.2.

Recommendation 6.2

We recommend that the ACT Government increase investment, on a recurrent basis, to expand the ACCO sector, focussing specifically on ACCOs that will work with First Nations children and families to address the factors that contribute to children's contact with police and the youth justice system and assist with diversionary options. These services should:

- a. Work collaboratively with First Nations communities to identify the areas of need via the mechanisms established under Recommendations 3.5 and 3.8 of our Review
- b. Be funded to work intensively and over longer service periods (greater than 6 months) with children and families, and
- c. Be funded on a recurrent basis at a level that is proportional with the needs within the community (see recommendation 3.7.

This recommendation is dependent on Recommendations 2.1, 2.2 and partially dependent on Recommendations 3.5 and 3.8.

Recommendation 6.3

We recommend that the ACT Government increase funding for the Restorative Justice Unit to limit delays, and to support greater awareness amongst relevant stakeholders of the eligibility criteria and referral pathways into restorative justice conferences.

Recommendation 6.4

In relation to police use of diversion we recommend that:

- a. The ACT Government provide additional funding, on a recurrent basis, to support the extension of the community diversion programs
- b. Diversion data in the ACT is made publicly available, including the use of cautions and the number of referrals to restorative justice conferences by Aboriginal status. This data should be published as a dashboard, with regular updates to ensure transparency and greater accountability
- c. ACT Policing establish a clear process to review all decisions that are made not to utilise diversionary options for young people. Reviews should be undertaken by a single suitably trained senior officer and the reasons for not referring an eligible person should be made publicly available through annual reporting.

Recommendation 6.5

We recommend that the ACT Government provide funding, on a recurrent basis for the employment of a specialist children's solicitor to sit within ALS NSW/ACT.

Recommendation 6.6

We recommend that the ACT Government urgently undertake an independent review of the use of remand for children – particularly First Nations children. This review should focus on the factors that are contributing to the high proportion of children on remand and how these children can be better supported. The Review should also be informed by any priorities or standards developed on bail and remand by the National Justice Policy Partnership.

Recommendation 6.7

We recommend that the ACT government in collaboration with First Nations communities and ACCOs (via the mechanisms established under Recommendations 2.1 and 2.2), design a culturally safe youth justice model for First Nations children with a focus on holistic cultural supports to promote rehabilitation and greater cultural connections. This should include investment in ACCOs to design and deliver cultural engagement programs for First Nations children at Bimberi.

This recommendation is dependent on Recommendations 2.1 and 2.2.

Recommendation 6.8

We recommend that the ACT Government, expands the existing ‘cultural development program’ and makes it mandatory for all staff at Bimberi. This training should be offered on a recurrent basis so that staff have opportunities to refresh their knowledge and practice.

Recommendation 6.9

We recommend that as part of the current CSD review into the development of a post-release model, specific consideration must be given to the unique needs of First Nations children. The review must continue to incorporate significant consultation with First Nations people with input from the First Nations bodies established under Recommendations 2.1 and 2.2, and from children and young people who have experienced criminalisation to ensure that the needs of First Nations children are adequately understood and appropriately addressed.

This recommendation is dependent on Recommendations 2.1 and 2.2.

7. POLICING

Recommendation 7.1

We recommend that the Justice Linked Data Asset Pilot:

- a. Should have input from the First Nations-led Data Working Group established via Recommendation 3.11 of this Review (see also Recommendations 3.10 to 3.15)
- b. Should be used to identify data gaps and strategies to address these, and to develop strategies to improve data quality across all justice organisations, including ACT Policing.

This recommendation is dependent on Recommendations 3.10, 3.11, 3.12, 3.13, 3.14 and 3.15.

Recommendation 7.2

We recommend that ACT Policing commission an independent evaluation of the implementation and outcomes of the Strategy for Engagement with First Nations People and Communities. The terms of reference for the independent evaluation should be designed in collaboration with First Nations representation (as per Recommendation 2.1 and 2.2 of this Review).

Recommendation 7.3

We recommend that ACT Policing should be a priority area for a systemic racism review as discussed in Recommendation 3.2. This should include, but not be limited to:

- a. The adverse use of police discretion in matters such as use of diversion, use of arrest over summons, access to police bail, the use of minor offences, police stops and use of force
- b. Differential responses to family and domestic violence involving First Nations people, particularly victim-survivors
- c. Differential responses to First Nations requests for assistance
- d. Training and police culture.

This recommendation is dependent on Recommendation 3.2.

Recommendation 7.4

We recommend that ACT Policing ensure that First Nations officers – including liaison officers – have access to professional cultural supervision. This supervision needs to be offered as a remunerated service (not as an additional expectation placed on First Nations community members) and should be external to ACT Policing.

Recommendation 7.5

We recommend in relation to cultural awareness training that:

- a. Training be provided on a continual basis to all ACT Policing members. This could include a ‘refresher’ course that is provided yearly to support embedding cultural awareness throughout the organisation
- b. ACT Policing implement a continuous monitoring framework to assess the impact of the cultural awareness training on policing culture and interactions with First Nations people, and to identify opportunities for training to be further adapted or refined as needed.

Recommendation 7.6

We recommend that ACT Policing continue to explore ways to support a review of the training continuum to:

- a. Identify gaps in training, particularly in relation to trauma-informed practices
- b. Develop training packages that focus on understanding, identifying and appropriately responding to trauma-based behaviours among different cohorts, including First Nations people
- c. Ensure that all ACT Policing members have access to training on trauma-informed policing practices.

Recommendation 7.7

We recommend that ACT Policing invest in communication strategies to improve First Nations communities understanding of:

- a. The role of First Nations Liaison Officers
- b. First Nations peoples' rights to access support from First Nations Liaison Officers, and the ways that they can access this support.

Recommendation 7.8

In relation to the use of body-worn cameras:

- a. We recommend that ACT Policing develop stronger guidelines that are easily accessible by the public and that clearly explain how body worn camera footage can be accessed and the circumstances under which body worn camera cameras do not need to be activated
- b. Consistent with the recommendations by the ACT Ombudsman and the NSW Law Enforcement Conduct Commission, we recommend that body worn cameras must be activated when exercising police powers, or, when it is likely that an interaction may lead to the exercise of police powers
- c. That all other relevant comments and recommendations from the ACT Ombudsman's own motion investigation into ACT Policing's use of force, and the NSW Law Enforcement Conduct Commission inquiry into polices on body worn cameras, should be considered.

Recommendation 7.9

We recommend the establishment of an independent oversight body with the statutory authority to investigate complaints against ACT Policing and to compel action in response to its investigations. The composition of this body could be considered by the First Nations-led justice body established as part of this Review (see Recommendation 2.1 and 2.2).

This recommendation is dependent on Recommendation 2.1 and 2.2.

Recommendation 7.10

We recommend that as part of the Domestic, Family and Sexual Violence Strategy, the ACT government commit to:

- a. the regular collection and public dissemination of data on the prevalence of family and domestic violence in the ACT, including but not limited to, recorded instances of FDV (recorded crime), victimisation rates, and hospitalisations. Where possible, this information needs to be disaggregated by Indigenous status
- b. exploring how cultural awareness training can mitigate the misidentification of victim-survivors as perpetrators.

8. BAIL

Recommendation 8.1

We recommend that relevant ACT agencies improve their data collection on bail to include information on bail outcomes, offence types, bail conditions, outcomes of bail breaches and breach types, and that this data be disaggregated by age group, gender and Indigenous status.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

Recommendation 8.2

We recommend that the ACT government:

- a. Amend bail laws 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. The Victorian *Bail Act 1977*, S3A provides a relevant example.
- b. Amend bail laws to include standalone provisions that require bail authorities to consider any issues that arise due a person's disability, mental health and other health conditions.
- c. Introduce Sunday sittings of the Magistrates Court for the purposes of bail.

Recommendation 8.3

We recommend that the ACT government review the current presumptions scheme in relation to bail specifically for their effect on Aboriginal and Torres Strait Islander people's access to bail and whether the scheme has contributed to community safety. We note that key legal service providers have called for the abolition of the current presumptions scheme.

Recommendation 8.4

We recommend that the ACT government expand the Ngurrambai Bail Support Program to provide services to children and young people. We recommend collaboration between relevant ACT Directorates to facilitate this expansion.

Recommendation 8.5

Noting the ACT government's response to the Report of the Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail*, we recommend that the ACT government implement recommendations 9, 10, 11, 12 and 13 of the Standing Committee's Report.

9. COURTS & SENTENCING

Recommendation 9.1

We recommend that relevant ACT agencies improve the collection and publication of more comprehensive criminal court data in relation to First Nations people in the ACT. This might include for example, traffic and vehicle regulatory offences, prior record, and sentencing outcomes by principal offence by Indigenous status.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

Recommendation 9.2

We recommend, on the basis of improved data collection, further specific research into the sentencing of First Nations defendants, the reasons for the comparatively more frequent use of sentences of imprisonment, and further law and policy interventions that may reduce any identified disparities.

This Recommendation is dependent on the implementation of Recommendation 9.1.

Recommendation 9.3

We recommend that the ACT government properly resource the Galambany Court to resume hearing bail applications.

Consideration also needs to be given to increasing funding to the Ngurrumbai Bail Support Program to meet further service demands.

Recommendation 9.4

We recommend that the ACT government establish the current pilot Supreme Court Circle Sentencing List as an ongoing sentencing list in the Supreme Court. In establishing the List as a permanent feature of the Court, it would be beneficial to consult with (at a minimum) court members, the DPP and ALS NSW/ACT as to any current issues and potential improvements to the operation of the List.

Recommendation 9.5

We recommend that the ACT government amend the *Crimes (Sentencing) Act 2005* to provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

Recommendation 9.6

We recommend the ACT government undertake a broad Review of the Drug and Alcohol Sentencing List (DASL) given it has been in operation for five years. In particular, the Review should consider how to ensure maximum participation of First Nations clients

and their successful completion of the program. The review should include at a minimum:

- a. The systematic identification of First Nations status at the point of referral to the DASL
- b. Whether the various decision-making points throughout the process from referral to graduation might systematically disadvantage First Nations participants, whether there are associated barriers affecting First Nations people's successful participation, and how these might be remedied
- c. Whether there is participation of relevant First Nations people and organisations in all assessments and decision-making processes that are undertaken, and in the Treatment Order Team, when DASL is working with First Nations clients.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

Recommendation 9.7

We recommend the availability of support for Aboriginal women in applying for protection orders and appearing in court be reviewed and assessed by JACS for improved accessibility and outcomes, in addition to the current funding commitments to the work of the Women's Legal Centre Mulleun Mura service.

Recommendation 9.8

We recommend that the ACT government consider the merits of potential reforms to legislation raised in section 9.7 of the Report in relation community-based orders, diversion, committal processes and sentencing procedures. Each of these reforms has potential to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment.

10. IMPRISONMENT & THE AMC

Recommendation 10.1

We recommend ACTCS introduce a structured day and purposeful activities in the Alexander Maconochie Centre (AMC) as a matter of high priority. It is an important end in itself to respond to detainee needs, but it also has a range of positive impacts on other areas such as reducing drug use, improving motivation and increasing the likelihood of rehabilitation. Purposeful activities for First Nations detainees must meet cultural needs.

Recommendation 10.2

In line with Recommendation 3.2, we recommend that the operation of the AMC should be a priority area for a systemic racism review including, but not limited to, such matters

as the use of segregation, the use of force, security classifications, recognition of cultural rights and the interaction of staff with First Nations detainees. The review should consider the intersections between systemic racism, gender and disability.

Recommendation 10.3

We recommend that the ACT government make funding available for the appointment of an identified Aboriginal and Torres Strait Islander position in the Office of the Inspector of Custodial Services (OICS).

Recommendation 10.4

While attempts to control the supply of drugs into the AMC should be maintained, we recommend urgent attention by the ACTCS to focus on the **demand side** of drug use through improvements to programs, training, education and a structured day to alleviate the boredom in the AMC and to provide for daily routines and meaningful activities, including work (and in line with Recommendations 10.1, 10.5, 10.8 and 10.11). We further recommend site specific wastewater testing at AMC to accurately gauge the prevalence and type of drug use within the AMC. Periodic testing over time would also provide the ability to assess the effectiveness of drug interdiction.

Recommendation 10.5

We recommend the ACT government provide increased funding for Aboriginal and Torres Strait Islander specific cultural programs and that these programs be considered specifically as protective factors contributing to rehabilitation and reducing the likelihood of re-offending.

Recommendation 10.6

We recommend introducing cultural support plans for all First nations people in custody (remand and sentenced), developed by ACTCS in partnership with an appropriate First Nations organisation (such as Yeddung Mura and Winnunga), and their families and communities (where appropriate).

Recommendation 10.7

In line with Recommendation 3.3, we recommend ACTCS develop an AMC Cultural Safety Action Plan to implement specific programs and procedures including cultural programs, cultural plans and staff training, in line with the commitments to cultural safety within the ACTCS *Be the Change We Seek. Aboriginal and Torres Strait Islander Framework*.

This Recommendation is partially dependent on the implementation of Recommendation 3.3.

Recommendation 10.8

We recommend ACT government provide funding to increase programs within the AMC. These include literacy and numeracy programs, offence specific and offence related programs suitable for First Nations people, and relevant employment-related training and certifications.

Recommendation 10.9

To overcome the identified problems with accessing First Nations health services within the AMC, we recommend the development of a First Nations model of care for the AMC. The development of a First Nations model of care should be initially undertaken by Winnunga and negotiated with the ACT Health Directorate to be incorporated into the Winnunga contract to provide services to the AMC. This may require additional funding for Winnunga.

Recommendation 10.10

We recommend urgent action in providing:

- a. suitable cultural, therapeutic and training programs and activities for women and specifically First Nations women
- b. expansion and flexibility in accommodation options that can meet the various needs of women, including First Nations women.

Recommendation 10.11

We recommend that Legal Aid ACT in cooperation with ALS NSW/ACT and Mulleun Mura establish a regular civil law clinic in the AMC. Implementation may require additional ACT Government funding for the respective services.

Recommendation 10.12

We recommend in relation to recent AMC deaths in custody that:

- a. The ACT government and the ACT Coroner work together to expedite coronial investigations into deaths in custody
- b. The OICS undertake preliminary assessments of the recent deaths in custody, which might be provided to the Coroner. Sufficient resources would need to be made available to the OICS to undertake preliminary assessments (see Recommendation 10.3)
- c. The Minister of Corrections consider the establishment of an Independent Inquiry into the deaths of seven men in adult correctional custody between February 2023 and February 2025 with particular attention to systemic issues.

11. PAROLE, REINTEGRATION, POST RELEASE SUPERVISION & SUPPORT

Recommendation 11.1

We recommend ACTCS improve the timely availability of data, including:

- a. Community supervision disaggregated by Indigenous status and type of supervision order
- b. Data on breaches of supervision orders disaggregated by Indigenous status, type of supervision order and outcome of breaches (while acknowledging that recording of breach outcomes may require liaison with other agencies)
- c. The data should be utilised to inform policies to reduce return to prison and return to community corrections for First Nations people.

This Recommendation is partially dependent on the implementation of Recommendation 3.16.

Recommendation 11.2

We recommend the Sentence Administration Board (SAB) and ACTCS work together to improve:

- a. the consistent identification of Aboriginality among people from prison applying for parole, in line with the outcomes of Recommendation 3.16
- b. systematic data collection on parole applications (successful and unsuccessful), official warnings, revocations and successful completion. The data should be capable of disaggregation by gender and Indigenous status
- c. the data should be utilised to inform policies to increase First Nations access to and successful completion of parole
- d. timely information on other matters useful to the SAB, such as program availability in the AMC and earlier prior notification of Indigenous matters coming before the Board.

Recommendation parts 11.2.a and b are partially dependent on the implementation of Recommendation 3.16.

Recommendation 11.3

We recommend that the ACT government pursue an agreement with NSW to facilitate the concurrent serving of sentences across both jurisdictions.

Recommendation 11.4

To further improve First Nations access to and compliance with parole, we recommend the following:

- a. The SAB needs to ensure that when a First Nations person is appearing before SAB there should be at least one First Nations SAB member present
- b. There needs to be ongoing review by ACTCS and informed by the SAB as to whether Indigenous detainees are receiving the support they need within the AMC to apply for parole
- c. The ACTCS expand the number of identified positions for Indigenous Community Correction Officers (CCOs) to at least two positions
- d. The ACT government commit to providing legal assistance for Indigenous applicants for parole. A process also needs to be established to facilitate the participation of relevant ACCOs in providing support to Indigenous applicants during parole hearings
- e. The ACT government reform the *Crimes (Sentence Administration) Act 2005* to allow the SAB to suspend a parole order by returning the offender to custody for a brief period as an alternative to revocation.

Recommendation 11.5

We support the previous recommendation of the ACTCS evaluation on external reporting sites to explore alternative options to the ACTCS city office for conducting urinalysis and whether this might include a voluntary option for conducting testing at the external reporting sites rather than the ACTCS city office.

Recommendation 11.6

It is recommended that the ACT government reform legislation to enable CCOs the discretion to give a verbal warning, or a written warning for lower level breaches in relation to intensive corrections orders and parole orders, whereby the CCO can continue to case manage the person through the order.

Recommendation 11.7

Increasing opportunities for reintegration and support post release should be contextualised by the principles of wraparound and holistic support.

- a. We recommend the ACT government provide funding for increased access to:
 - i. crisis and transitional housing for Aboriginal and Torres Strait Islander people exiting custody, with recognition/ prioritisation of the particular needs of First Nations women and children
 - ii. culturally appropriate drug and alcohol counselling
 - iii. greater support in the community for employment pathways and training programs

- iv. accessible and First Nations-led support, well-being and mentorship programs
- v. accessible and First Nations-led driver licensing programs and literacy and numeracy programs
- b. The prioritisation of increases in services above should be undertaken through a First Nations decision-making process involving the body established under Recommendations 2.1, 2.2.
- c. Priority should be given to the role of ACCOs in providing additional reintegration and support services.

We also recommend that ACTCS improve the information provided pre-release and post release on obtaining Working with Vulnerable People clearance.

Recommendations 11.7.b is partially dependent on the implementation of Recommendations 2.1, 2.2.

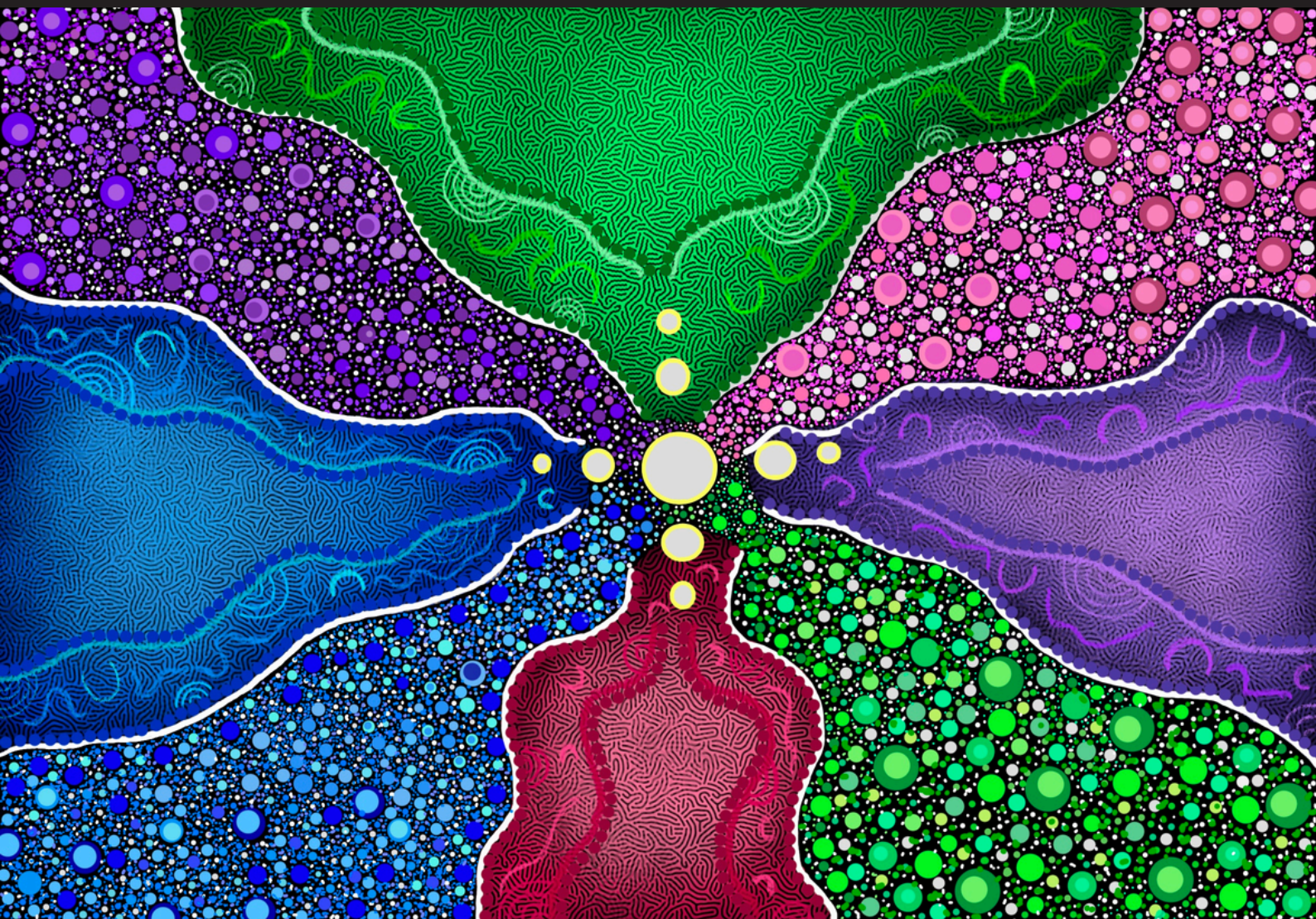
12.4. Appendix 4: Tables

Table 8.1 Imprisonment by legal status, Indigenous status and sex, ACT and Australia 2024

2024	ACT			National		
	Number	Rates (per 100,000)	Rate ratio	Number	Rates (per 100,000)	Rate ratio
ABORIGINAL AND TORRES STRAIT ISLANDER						
<i>Men</i>						
Sentenced	56	1,658.3	21.3	8,112	2,553.1	15.9
Unsentenced	61	1,806.3	27.2	6,124	1,927.4	19.5
Total	123			14,270		
<i>Women</i>						
Sentenced	5	147.8	93.1	746	229.4	25.1
Unsentenced	3	88.7	27.9	852	262.0	33.1
Total	12			1,605		
<i>Persons</i>						
Sentenced	63	932.1	23.2	8,863	1,378.6	16.5
Unsentenced	70	1,035.7	30.3	6,971	1,084.3	20.6
Total	134			15,871		
NON-INDIGENOUS						
<i>Men</i>						
Sentenced	140	78.0	-	16,348	160.1	-
Unsentenced	119	66.3	-	10,100	98.9	-
Total	266			26,494		
<i>Women</i>						
Sentenced	3	1.6	-	965	9.1	-
Unsentenced	6	3.2	-	837	7.9	-
Total	10			1,804		
<i>Persons</i>						
Sentenced	148	40.2	-	17,312	83.4	-
Unsentenced	126	34.2	-	10,936	52.7	-
Total	273			28,294		

Source: ABS (2024), *Prisoners Australia 2024*, Table 30 Prisoners, Indigenous status, sex and legal status by state/territory. Rates and rate ratios have been calculated using two data sources. For Aboriginal and Torres Strait Islander people, we have used the ABS estimated resident and projected

Aboriginal and Torres Strait Islander population aged 18 years and over (ABS, 2024). For the non-Indigenous population we have used the ABS National, state and population estimated resident population by single year of age series (2024). To arrive at an estimate of the non-Indigenous population we have subtracted the number of Aboriginal and Torres Strait Islander people from the total population. Population estimates have been disaggregated by gender. These calculations should be interpreted with caution given that the underlying Aboriginal and Torres Strait Islander population is based on a *projection*. Further, the small number of women (Aboriginal and Torres Strait Islander and non-Indigenous) who are imprisoned means that caution is warranted when interpreting any statistics disaggregated by gender.



‘Journey To Justice’

By Erica-Jade Church (18), Jayde Mitchell (15), Damon Brown (15)



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Education and Research