Report on the 25th Anniversary of the Royal Commission into Aboriginal Deaths in Custody Commemorative Forum

An ACT Aboriginal and Torres Strait Islander Elected Body and ACT Council of Social Service Inc. joint event

May 2017
About ACTCOSS

ACTCOSS acknowledges Canberra has been built on the land of the Ngunnawal people. We pay respects to their Elders and recognise the strength and resilience of Aboriginal and Torres Strait Islander peoples. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS’ vision is to live in a fair and equitable community that respects and values diversity, human rights and sustainability and promotes justice, equity, reconciliation and social inclusion.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the ACT Government.

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Contact Details

Phone: 02 6202 7200
Fax: 02 6288 0070
Address: Weston Community Hub, 1/6 Gritten St, Weston ACT 2611
Email: actcoss@actcoss.org.au
Web: www.actcoss.org.au
Director: Susan Helyar

This report has been produced in partnership with the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB) (http://atsieb.com.au/).

ATSIEB Chairperson: Ross Fowler

The preparation of this report was commissioned by ACTCOSS.

Author of this report: Sharon Payne, Sharon Payne & Associates

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Foreword

On 16 February 2017, the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and ACT Council of Social Service Inc. (ACTCOSS) hosted a forum to commemorate the 25th Anniversary of the final report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The forum was attended by 90 people from across the ACT Aboriginal and Torres Strait Islander community, ACT Government, and the community sector, including Aboriginal and Torres Strait Islander community-led organisations.

This report clearly captures the contributions from forum participants who identified critical actions needed to address the disproportionately high incarceration rates of Aboriginal and Torres Strait Islander people in the ACT. These actions include:

- systemic change and education to address racism and inherent bias in the justice system
- better investment in social support and health services to address underlying causes
- Aboriginal and Torres Strait Islander led initiatives be adequately resourced and supported
- leadership from government and senior management that enables all of the above.

The 339 recommendations of the final RCIADIC report were seen to continue to provide a blueprint for achieving such change. Forum participants built on this, identifying specific actions needed to address key concerns in the ACT today.

We note that there was strong support for justice reinvestment among forum participants and that the Yarrabi Bamirr justice reinvestment trial was subsequently launched on 26 April 2017. The forum report provides further encouragement for ACT Government to support and resource diverse Aboriginal and Torres Strait Islander community programs working to address the social determinants of contact with the criminal justice system and the care and protection system.

ATSIEB and ACTCOSS convened the commemorative forum to give voice to community concerns and solutions. We share the view that the Aboriginal and Torres Strait Islander community must have leadership in addressing the issues affecting them. A key message of this report is that the role for government and mainstream organisations is to respect that Aboriginal and Torres Strait Islander community organisations should access the resources to lead this vital work and determine whether and how they partner with others. Non-Indigenous leaders need to have the strength, humility and wisdom to be led by and work with the Aboriginal and Torres Strait Islander community in order to achieve the systemic change needed to arrest the spiralling rate of incarceration in the ACT.

Ross Fowler
Chairperson
ATSIEB

Susan Helyar
Director
ACTCOSS
Introduction

This report is from the Commemorative Forum conducted by the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and the ACT Council of Social Service (ACTCOSS) to mark the 25th Anniversary of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) final report. Forum guests included the ACT Minister for Aboriginal and Torres Strait Islander Affairs Ms Rachel Stephen-Smith MLA, members of the local Aboriginal and Torres Strait Islander community, staff from community organisations and government agencies, and ATSIEB members.

The forum was to assess the implementation of RCIADIC recommendations in the ACT and seek feedback about the current situation with regards to deaths in custody. More importantly it was to seek advice from participants about priorities for action including identifying what needs to be done and who needs to be involved in order to move forward.

There were a number of other reports, reviews and statements that also provided information and data for this forum, as well as endorsing the outcomes contained in this report. These included the latest findings in the Closing the Gap Prime Minister’s Report 2017, which showed that in six years only one of the targets had been met; and the targets contained in The Redfern Statement, which is backed by more than 50 national Aboriginal and mainstream organisations.

Two other reports of significance for the forum are the ACT Corrective Services 2014-15 Internal Review of the relevant Recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and the ACT Aboriginal and Torres Strait Islander Justice Partnership 2015-2018. While the Corrective Services Internal Review maintains that most of the relevant recommendations have been implemented such as the provision of education and therapeutic programs at the Alexander Maconochie Centre (AMC), there are concerns about the number and category of detainees that are

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2 Commonwealth of Australia, Department of the Prime Minister and Cabinet, Closing the Gap Prime Minister’s Report 2017, Australian Government, Canberra, 2017. Although arrest/imprisonment rates are not included, many of the targets are directly linked to the factors that lead to contact with the criminal justice system.

3 Aboriginal and Torres Strait Islander Peak Organisations, The Redfern Statement, National Congress of Australia’s First Peoples, Sydney, 2016. The statement proposes a number of initiatives across a range of areas, including health, education, justice and family violence and (in relation to incarceration rates and deaths in custody), calls for a new Closing the Gap target focused on driving down the number of Aboriginal and Torres Strait Islander Australians in jail; and support for justice reinvestment — where money is redirected to address underlying causes of crime.


able to access suitable programs. Likewise there is an issue of overcrowding, and the capacity of staff to manage as incarceration rates skyrocket and budgets are stretched.

The *ACT Aboriginal and Torres Strait Islander Justice Partnership 2016-2018* takes a targeted approach to addressing the over-representation of Aboriginal and Torres Strait Islander people in the ACT justice system through the identification of three key objectives that detail targets, measures, actions and areas of accountability. The three objectives are:

1. reducing over-representation by:
   - reducing recidivism
   - increasing access to diversionary programs
2. improving access to justice services
3. improving data collection and reporting.

Although there appears to be some attempt to address the targets, the lack of suitable diversionary programs or ongoing help for ex-prisoners to reintegrate back into the community, is seen as an impediment to reducing recidivism and offending behaviours. It should also be noted that there have been no official reviews recently of policing or the courts' performance in relation to the implementation of RCIADIC recommendations in the ACT.

In summary then, while it was acknowledged that there are individual achievements, participants at the forum overwhelmingly agreed that systemic change is the only way to address the current over-representation of Aboriginal and Torres Strait Islander adults and children in custody. This includes a focus on preventing children and young people being removed from their families, placed in foster care and (as often the case) ending up in detention. Committing resources to support families and providing 'safety-nets' to counter negative childhood experiences along with the spiralling costs of policing, courts and imprisonment, was considered a much better investment.

Three underlying concepts informed the outcomes:

- To treat unequal people as equals creates inequality
- To do the same thing over again when it is not working and expect improvement is illogical and doomed to fail
- To recognise the unconscious biases that influence decision making will ensure fairness and just outcomes for everyone.
Opening and introductions

The ATSIEB Chairperson Mr Ross Fowler formally opened the forum by acknowledging the traditional owners, participants and invited guests; and the partnering support from ACTCOSS to conduct the event. He noted the significance of the forum marking the RCIADIC anniversary and the opportunity this provided to assess the current situation regarding Aboriginal and Torres Strait Islander deaths in custody and work with the community, service providers and the ACT Government into the future.

This was followed by the Welcome to Country by Ngunnawal Elder Ms Violet Sheridan. Mr Fowler then took the opportunity to hold a minute's silence in recognition of the death in custody of Mr Steven Freeman at AMC and to acknowledge the work to date undertaken by Ms Julie Tongs, CEO of Winnunga Nimmityjah Aboriginal Health Service to support the family of the deceased. The vital work of community organisations in assisting mainstream agencies to manage and respond to the emotional and social needs of Aboriginal and Torres Strait Islander people at times of personal trauma was also acknowledged.

Presentations

Three expert speakers who had been closely involved with the RCIADIC and/or are currently involved with the ACT criminal justice system were invited to present their views on the implementation of the RCIADIC recommendations. They also spoke of the need to refocus efforts in order to address the current incarceration rates of Aboriginal and Torres Strait Islander people in the ACT, which currently stand at the highest in the country.

Professor Mick Dodson AM, Director, National Centre for Indigenous Studies & Professor of Law, ANU College of Law, the Australian National University

Professor Dodson reflected on his time working with the Royal Commission and the hopes that it would make a difference for Aboriginal people and the justice system. The 339 recommendations were so far reaching and provided a comprehensive blueprint for addressing not just custody and imprisonment but also health and social issues. But their implementation has been sketchy to say the least with those that had been implemented often ignored or overturned.

Professor Dodson said that in particular, given the increasing prison populations and number of prisons being built to house them, 'the Royal Commission's over-arching recommendation of imprisonment as the last resort, despite claims in many jurisdictions about it being implemented, had clearly not been taken seriously'. In
recent cases of deaths in custody we have seen that at least one, but more often multiple, recommendations of the Royal Commission into Aboriginal Deaths in Custody had not been adhered to.

Professor Dodson also spoke about the Justice Reinvestment three year research study that the National Centre for Indigenous Studies (NCIS) at the ANU has undertaken in the town of Cowra NSW. The study not only looked at the cost of incarcerating so many young people ($23 million per year) but the lack of positive outcomes and the ongoing cost for society. By reinvesting in prevention and intervention and taking a less punitive approach when particularly minor crimes are committed the researchers found that less crime was being committed.

The findings (while still being finalised) also demonstrated many other positive outcomes including greater cooperation and communication in the town about tackling crime and its causes. Justice reinvestment, however, requires a political decision to invest money back into the community and away from incarceration. With justice reinvestment the community reclaims the individual and the individual belongs to the community.

Ms Louise Taylor, Deputy Chief Executive Officer, Legal Aid ACT

Ms Louise Taylor shared her experiences as a prosecutor and defence lawyer at the coalface of the criminal justice system, where she sees first-hand its failings. She called for ‘an honest discussion about the purpose of a criminal justice system and where best we should be looking to task with the responsibility of turning those lives and those destinies around’. The coroner’s report on the death in police custody of a young Aboriginal woman in Western Australia ‘sent a clear message’ about ‘the racism – that insidious, toxic, deadly racism – that lies at the heart of why our people still die in custody’, she said. The lack of will by those tasked with the responsibility to provide care was a symptom of why incarceration numbers are increasing and deaths in custody are occurring.

Ms Taylor also referred to disappointment with the High Court's decision in Bugmy in 2013 where they rejected the idea that Aboriginal and Torres Strait Islander offenders brought with them a unique history of oppression and disadvantage, holding to the individualised justice system that provides little room for the collective position of a people. The High Court had been invited to consider the Canadian approach where courts are bound to consider the over-representation of First Nations people when sentencing, by way of a report about their historical and contemporary position and the impact on individual defendants. These reports are referred to as Gladue reports (after R v Gladue) and are a type of pre-sentence or bail hearing report that Canadian courts can use when considering an offender of Aboriginal background.

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6 William David Bugmy v The Queen [2013] HCA 37.
7 Gladue reports from R v Gladue [1999] 1 SCR 688 (see also R v Ipeelee [2012] SCC 13).
Ms Taylor stated that as the High Court made it clear that without legislation, everyone before the law is treated equally. The Canadian Government recognised that First Nations people warrant particular consideration when it comes to incarceration, and enacted legislation to underpin that approach. The 'Moss Inquiry' into the death in custody of Mr Steven Freeman recommends that there be similar legislation here. She also noted potential not only for better informed sentencing decision/s for one person but also the added benefit of judicial (and court) education generally.

The lack of focus by the RCIADIC on the special needs of Aboriginal and Torres Strait Islander women was another issue that was highlighted in Ms Taylor’s presentation. Her experience and current statistics reveal that ‘Aboriginal women present particular and unique challenges to the systems that deal with them’. Interaction ‘with the criminal justice and related systems [is] in a variety of ways... as victims of crime, perpetrators of crime and increasingly at the coalface of the intrusion of the child protection system. A failure to take this [into] account misses an opportunity to properly scrutinise the treatment of and solutions for Aboriginal women’, she said.

Ms Sharon Payne, Expert consultant on Aboriginal justice and community safety

Ms Sharon Payne spoke of her experiences first as the ATSIC Contact Officer for the RCIADIC, then developing the Federal Government’s response to the final report recommendations and as a researcher for the Indigenous Deaths in Custody 1989-1996 report. Since then, she also witnessed first-hand the result of not implementing the RCIADIC recommendations as the CEO of two Aboriginal legal services and working within the justice system for most of her career.

Ms Payne pointed out that while the number of ‘suspicious’ deaths in [police] custody had decreased in the years between the RCIADIC and the Indigenous Deaths in Custody report, the rate of incarceration had increased to the point there were the same number of deaths in the seven year period following RCIADIC. The high morbidity rate for Aboriginal people combined with the high incarceration rate (and lack of care as demonstrated by Ms Dhu’s police custody death in WA) provides a shocking statistic that would not be tolerated for any other group. Aboriginal people with mental or physical issues are often categorised as troublemakers or ‘faking it’, demonstrating the cognitive biases that inform these decisions and the subsequent treatment of prisoners.

Ms Payne also shared her experience as a current member of the Galambany Circle Sentencing Court and frustration at the lack of alternatives to imprisonment, as well as the number of offences that have mandatory terms of imprisonment as a minimum sentence (e.g. non-payment of fines). Further she identified the lack of understanding and knowledge by the judiciary and prosecutors (as well as those preparing pre-

8 P Moss, ‘So much sadness in our lives’: Independent Inquiry into the Treatment in Custody of Steven Freeman, ACT Government, November 2016.
sentence reports and/or mental health reports) about Aboriginal values, lived experiences and unique history of oppression as another challenge.

Research conducted over the past ten years by neuroscientist colleagues to understand the impact of adverse childhoods shows unequivocally that foster care is one of the indicators of those most likely to end up in the criminal justice system. Ms Payne contended that the incarceration in youth and adult detention over the past few years is directly linked to removal of children through government intervention. As she noted, 'it is relatively easy to prevent when no child is left behind; we know that expecting children to make good decisions and then criminalising them when they don't, is the worst thing we can do; and we know that punishment doesn't work, often having the opposite effect of embedding criminal behaviours'.

Panel discussion and Q&A

The presentations were followed by a panel discussion with a question and answer session hosted by ACTCOSS Director Ms Susan Heylar where participants shared their views and sought further observations from presenters on issues they had raised. The following is a summary of the major issues discussed by participants and presenters during the Q & A.

Aboriginal and Torres Strait Islander people are vastly over-represented in the prison and community corrections system in the ACT. The ACT has the highest ratio of crude Aboriginal and Torres Strait Islander/Non-Indigenous rate in Australia. In 2016, Aboriginal and Torres Strait Islander people comprised 24 percent (105 prisoners) of the adult prisoner population. The government needs to urgently address this looking for the underlying reasons and not just think that the system is working.

There needs to be more investment and focus on educating non-Indigenous people about their roles and attitudes as well as investment in training and education for Aboriginal and Torres Strait Islander people to understand the impact of colonisation and discrimination.

The substantial increase in the number of children being removed and placed in foster care over the past decade is extremely worrying given that the removal of children is linked to social problems which lead to antisocial behaviours, police attention and finally increased incarceration rates. 'The child protection system is fundamentally impacting the lives of Aboriginal women, mothers and families in an oppressive way'. It was also noted that 'mainstream services do not deliver appropriately for Aboriginal women nor are they focused on supporting families to stay

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10 ABS, Prisoners in Australia, 2016, cat. no. 4517.0, ABS, Canberra, 2016.
together, removing children is the first strike’. Participants expressed concern that ‘the Aboriginal Child Place Principle is being ignored in the ACT [despite the legislation] and another stolen generation is happening right now’.11

The social mobility of Aboriginal and Torres Strait Islander people in the ACT must be taken into consideration in sentencing decisions or when children are to be removed – many have families or come from interstate so added problems with family members incarcerated or have children removed. Added to the economic and travel issues, as one community worker put it, ‘cross-border complications are leaving people in the dark, as child protection is in different jurisdictions – such as families with members in the ACT and Queanbeyan’. Likewise, paroled prisoners from other areas who must remain in the ACT are more vulnerable away from the support of family, are homeless and/or more likely to re-offend.

Collective agreement making between government agencies and support organisations is not working with regards to Aboriginal and Torres Strait Islander incarceration/justice issues. Given that many inmates present with mental health and medical issues, there needs to be better communication and more education surrounding the extent of the problems in the ACT, to develop more holistic approach rather than arguing about which program works better or is more of a priority.

Programs like throughcare and offenders’ pre-release require the coordination and planning of a wide range of services including housing, mental health, drug and alcohol, behavioural management, training and employment assistance. This support is critical for Aboriginal and Torres Strait Islander detainees. Providing intensive support for the initial period after release from custody is an important component in reducing recidivism.

11 Children and Young People Act 2008 (ACT), section 10. Aboriginal and Torres Strait Islander children and young people principle. In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following: (a) for the care and protection chapters—care and protection principles (see s 350); (b) for ch 20—childcare services principles (see s 730). In addition to these general principles, the following principles also apply: (c) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child’s or young person’s Aboriginal or Torres Strait Islander community; [submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the director-general as providing ongoing support services to the child or young person or the child’s or young person’s family]; (d) the traditions and cultural values (including kinship rules) of Aboriginal and Torres Strait Islander people as identified by reference to the child’s or young person’s family and kinship relationships and the community with which the child or young person has the strongest affiliation.
Group discussions

After a short break, participants were separated into three groups to discuss the following three questions:

- What are priorities for action for the Canberra community?
- What should be the next steps towards these actions?
- Who needs to be involved from here onwards?

The group discussion session ran for 45 minutes allowing around 15 minutes per question. The groups then recorded their discussions on butcher paper, which were collected at the end of the session for this report.

Given the diversity of participants within each group, including Aboriginal and Torres Strait Islander community members and staff from 'Indigenous identified' positions within government agencies, two clear priorities emerged from the forum. They are:

1. preventative measures through justice reinvestment where funds spent on building safer communities through more laws, policing and imprisonment are instead spent on building peaceful communities
2. education/information for those involved with the criminal justice, mental health and child protection systems so that better informed decisions regarding Aboriginal and Torres Strait Islander people are made. Helping children avoid or get past early traumas so they don't become a part of the justice system.

Neither is costly but they do require recognition that the current system is inherently biased when dealing with Aboriginal and Torres Strait Islander peoples, and that early intervention by investing funds currently spent on police and prisons, into building a peaceful, equitable society is the best way to alleviate the rising social and economic costs of continuing to arrest, convict and imprison.

Many of the responses and comments by the groups are relevant to two or more of the questions, and are summarised as follows.

Participants generally believed that the increasing imprisonment and arrest rates is caused by a number of factors, including lack of understanding by those in positions of authority about the lived experiences of Aboriginal and Torres Strait Islander defendants. As a group, Aboriginal and Torres Strait Islander people have been placed at a serious disadvantage in society due to a number of factors that stem from the generational effects of colonisation. There has been extraordinary growth in prisoner numbers among Aboriginal and Torres Strait Islander peoples. This reflects the issues that Aboriginal and Torres Strait Islander people face at each step of the criminal justice system.
Concern was expressed about arrest and imprisonment rates being the only thing that is recorded to measure success of the criminal justice system, rather than how effective it is in reducing reoffending and crime rates generally. The experiences for Aboriginal and Torres Strait Islander defendants and victims within the Australian justice system are interwoven with many social, economic and political issues such as drug and alcohol abuse, poverty, unemployment and the loss of cultural identity. Any approaches to address the high incarceration rates must recognise these factors if there is to be systemic change.

Comments such as ‘they don’t know us at all’ and ‘they make decisions about us based on misinformation and assumptions’ demonstrated the community participants’ frustration and the need to make better informed decisions when dealing with people from Aboriginal and Torres Strait Islander backgrounds. It was felt that the traditional approach of providing ‘Aboriginal and Torres Strait Islander cultural awareness training’ has not worked; and understanding about how everyone’s social and cultural norms influence their decision making would lead to more equitable outcomes.

There needs to be recognition of the underlying assumptions (e.g. in applying the ‘rule of law’), and much better information for the judiciary about the issues facing Aboriginal and Torres Strait Islander defendants when convicting, sentencing and/or setting bail. Again, the use of Gladue type reports was seen as going some way to alleviate misinformation and provide much needed background material for making just decisions. The influence of prosecutors in presenting their evidence first and presenting opinions as facts was especially noted as one group that needed more education and information.

The call for more Aboriginal and Torres Strait Islander staff throughout all areas of the justice system was tempered by comments about the constraints of working within a structure developed by ‘educated wealthy white men’ whose experiences were very different. The pressure on those working within the system to uphold the appearance of objectivity and ‘fit in’ is counterproductive to any influence on decision making that Aboriginal and Torres Strait Islander staff may exert.

The enormous economic cost (apart from the social cost) of policing, prosecution and prisons was another factor participants expressed concern about, with the understanding that the cost per day in the ACT is around $700 for each prisoner, with juvenile detention costs even higher. It was noted that ‘over a five-year period substantial funds could be freed up from expenditure just on prisons and redirected to expenditure targeted on reducing crime. If the rate of incarceration was reduced by 2 percent per annum, then savings of almost $2.5 billion could be realised [nationwide] over five years, which, if invested in the social support and health services would, over time, address the underlying causes of crime’.

In line with previous comments by presenters and participants, the commitment to justice reinvestment was seen as the key vehicle for addressing reoffending and making the justice system more effective and efficient. Justice reinvestment involves

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the rebalancing of criminal justice expenditure from custody to community-based initiatives that tackle the causes of crime rather than the results of crime. A commitment to embed justice reinvestment as the guiding principle to address high incarceration rates in the ACT would require the support of all parties, in particular the government and opposition.

Participants also believed that only by supporting Aboriginal and Torres Strait Islander community initiatives through adequate resourcing and support, would there be any chance of successful system wide improvements. Many spoke of their frustration and sense of helplessness that happens when funding decisions are imposed without consultation. Too often ‘grants are given to mainstream agencies to provide programs for Aboriginal and Torres Strait Islander clients due to their ability to write submissions, rather than any experience working with Aboriginal or Torres Strait Islander people’. Under-resourced community organisations are then called upon to help deliver services in addition to their existing responsibilities.

Participants generally believed that many of the priorities and actions require leadership from government and senior management in order to demonstrate their commitment and engagement with changing the system, including:

- Deputy Chief Minister (and Minister for Education and Early Childhood, Development; Housing and Suburban Development; Prevention of Domestic and Family Violence)
- Attorney-General
- Minister for Police and Emergency Services
- Minister for Justice, Consumer Affairs and Road Safety; Corrections; Mental Health
- Minister for Community Services and Social Inclusion; Disability, Children and Youth; Aboriginal and Torres Strait Islander Affairs
- ACT Chief Magistrate and Chief Justice, ACT Supreme Court
- ACT Police Commissioner
- Directors-General and senior managers of ACT Government directorates
- Director of Public Prosecutions
- General Managers of the Alexander Maconochie Centre and Bimberi Youth Justice Centre.

Bipartisan agreement between government and opposition was also seen as necessary to implement societal changes, that is, moving away from punishment to prevention as a way of dealing with offending behaviours.

A diversity of Aboriginal and Torres Strait Islander organisations and programs including:
• Aboriginal Legal Service (ACT office)
• Galambany Circle Sentencing Court
• Gugan Gulwan Aboriginal Youth Corporation
• Winnunga Nimmityjah Aboriginal Health Service
• The Indigenous Official Prison Visitor (AMC and Bimberi)
• Aboriginal and Torres Strait Islander workers at mainstream services
• Aboriginal and Torres Strait Islander Elders’ and youth groups
• Aboriginal and Torres Strait Islander community support organisations (e.g. Tjillari Justice for families of inmates).

Group comments and recommendations

The following comments and recommendations were collated from the group discussions recorded on butcher’s paper. Not all comments are included, particularly when they were similar or the same as others already noted from other groups.

Priorities for action

• More Aboriginal and Torres Strait Islander judges and magistrates and training for others for dealing with Aboriginal defendants
• Implement the use of Gladue reports for informing judicial decisions about Aboriginal and Torres Strait Islander defendants
• Review of sentencing in the ACT with regard to human rights ‘standards’ and RCIADIC recommendations (is imprisonment really the last resort? - look at statistics, categories of crimes and sentencing reports)
• Conduct cost-benefit analysis of current approach with more beneficial approaches, using overseas models as guidance if necessary
• Review to measure outcomes of incarceration (not just rates) – to see how and to what extent is incarceration ‘working’; performance of AMC against RCIADIC recommendations (on health care services, mental health) (using international indicators to measure Aboriginal and Torres Strait Islander justice outcomes)
• Cultural self-awareness training for all staff in criminal justice system – police, judiciary, prosecutors, support agency staff, etc.
• Change thinking about how we invest taxes – in people not prisons
• Justice reinvestment to provide more resources to preventing crime including those that address reoffending (Cowra trial provides model for ACT)

• Monitor performance of government, justice agencies and service provision, e.g. Indigenous Sentence Review Board for policy development and sentencing decisions about individual matters

• Better consultation with real community engagement and involvement in decision making, seek input from start not when things go wrong; better ways to engage especially with prisoners and women

• More diversionary programs that deal with the real issues young people are facing including lack of skills and education, personal development, poverty and homelessness

• Look at links to low educational outcomes for young offenders and provide support to improve them (clothing, transport, lunch as well as help with school work)

• Look at driving offences – if offence is for lack of driver's license then government should pay for license, not punish for being too poor to pay for one

• Make sure Aboriginal Child Placement Principles are followed when child protection orders are made

• Ensure custody notification is up to date so people don't fall through the gaps

• Too many delays in court procedures – many more Aboriginal young people are remanded in custody for long periods without conviction with ongoing effects on their mental health and increased likelihood to commit more offences.

Next steps

• Lobby Minister and government to legislate for courts to use something like Gladue reports when sentencing or considering bail applications for Aboriginal and Torres Strait Islander defendants

• Establish an Aboriginal Diversionary Centre featuring culturally appropriate services and support for homeless people

• Review into the effectiveness of incarceration as a 'specific deterrence' (i.e. reoffending rates) and as a 'general deterrence' to others 'from committing the same or similar offences' (i.e. decrease in level of crime)13

• Investigate whether incarceration in the ACT meets RCIADIC and human rights standards in practice as per their objects, not just on paper14

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13 According to Section 7.1(b) of the Crimes (Sentencing) Act 2005 (ACT).

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‘Unfitness to plead’ needs clarifying as judiciary seem to be making decisions on personal opinions or unchallenged advice from prosecutors.

Revisit and re-emphasise ‘imprisonment as a last resort’ not as a first resort, which means we need the services and agencies properly resourced to provide alternatives to imprisonment.

Better communication and education about what is available to assist prevent criminal behaviours, alternatives to imprisonment (particularly for those with mental illness issues) and rehabilitation measures.

Write to Ministers to ensure that Aboriginal Child Placement Principle is priority when decisions to remove Aboriginal and Torres Strait Islander children are made (‘extended family first’).

Ensure adequate training for prison guards and police about dealing with Aboriginal and Torres Strait Islander people, including their own beliefs.

Work out ways to disengage bias, prejudice, discrimination from all justice institutions.

More identified positions within justice system – with scholarship funds to support.

**Parties to be involved**

- Aboriginal and Torres Strait Islander organisations and individuals who work with children and prisoners (including the children and families of prisoners).
- Community volunteers and elders (United Ngunnawal Elders Council to ensure cultural protocols are followed).
- Heads of relevant ACT Government directorates, e.g. Corrective Services, Justice and Community Safety Directorate.
- Mental (and other) health workers.
- The judiciary – magistrates and supreme court.
- Ministers and their advisors.
- Prosecutors and police.

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14 The main objects of the *Corrections Management Act 2007 (ACT)* are to promote public safety and the maintenance of a just society, particularly by:

(a) Ensuring the secure detention of detainees at correctional centres; and

(b) Ensuring justice, security and good order at correctional centres; and

(c) Ensuring that detainees are treated in a decent, humane and just way; and

(d) Promoting the rehabilitation of offenders and their reintegration into society.
- Religious support groups, charities and not-for-profits
- Private enterprise
- Whole of government
- Corrections
- Prisoners.