



Smarter Justice. Safer Communities.

Submission on Closing the Gap

30 April 2018



changetherecord.org.au

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About Change the Record

Change the Record is an unprecedented coalition of leading Aboriginal and Torres Strait Islander, human rights, legal and community organisations calling for urgent and coordinated national action to close the gap in imprisonment rates of Aboriginal and Torres Strait Islander people and cut disproportionate rates of violence experienced by Aboriginal and Torres Strait Islander people, particularly women and children.

Change the Record is overseen by a Steering Committee, made up of leading Aboriginal and Torres Strait Islander, human rights and community organisations, including:

- ANTaR
- Amnesty International
- Australian Council of Social Service
- Federation of Community Legal Centres (Vic)
- First Peoples Disability Network (Australia)
- Human Rights Law Centre
- Law Council of Australia
- National Aboriginal Community Controlled Health Organisations
- National Aboriginal and Torres Strait Islander Legal Services
- National Aboriginal and Torres Strait Islander Women's Alliance
- National Association of Community Legal Centres
- National Congress of Australia's First Peoples
- National Family Violence Prevention Legal Services Forum
- Oxfam Australia
- Reconciliation Australia
- SNAICC – National Voice for Our Children
- Sisters Inside
- Victorian Commissioner for Aboriginal Children and Young People
- Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission

A Message from Change the Record's Co-Chairs

The Change the Record Coalition was established in response to the fact that the rates at which Aboriginal and Torres Strait Islander people are experiencing violence and being put in prison has reached a crisis point. These issues are some of the most pressing social justice challenges facing Australia. Failures of the justice system devastate lives and come at an enormous cost – both socially and economically – affecting not only individuals, but also their families and whole communities. It is clear that a different approach and urgent action is needed.

Change the Record is calling for an urgent policy redirection towards investment in early intervention, prevention and diversion initiatives. These are smarter solutions that increase safety, address the root causes of violence against women, cut reoffending and imprisonment rates, and build stronger and safer communities.

The current piecemeal approach is not working. We need a comprehensive, co-ordinated and holistic plan, which involves leadership and partnership from the Federal, State Territory governments to shift more investment into preventative and early intervention solutions.

We know many of the answers are already there. Now we need to make it happen, and do so in a way that empowers Aboriginal and Torres Strait Islander people, communities and their services to drive these solutions.

Change the Record's has produced the following publications to date:

Blueprint for Change: The comprehensive *Blueprint for Change* (2015) was developed by Change the Record member organisations in 2015. It is informed by substantial on-the-ground experience and expertise. The *Blueprint* has been developed by leading Aboriginal and Torres Strait Islander organisations in conjunction with legal, human rights and community organisations. The Change the Record *Blueprint for Change* contains 12 overarching principles and within each principle a number of key policy priorities. These principles and policy solutions are identified throughout this submission. A full copy of the *Blueprint for Change* is contained at Appendix 1.

Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment: The Human Rights Law Centre and Change the Record collaborated on this report, released in May 2017. The report focuses on the over-imprisonment of Aboriginal and Torres Strait Islander women. It calls for system-wide change and outlines 18 recommendations to redress racialised and gendered justice system outcomes.¹

Indigenous Incarceration: Unlock the Facts: In May 2017, PriceWaterhouseCoopers and PwC Indigenous Consulting (PIC) produced, in partnership with Change the Record, the Korin Gamadji Institute, and Richmond FC, the *Indigenous Incarceration: Unlock the Facts* report. The report contributes new economic modelling that shows the cost to the Australian economy of incarceration of Aboriginal and Torres Strait Islander people is almost \$8 billion (\$7.9 billion) per year and rising. If nothing is done to address disproportionately high rates of Indigenous incarceration, this cost will rise to \$9.7 billion per year in 2020 and \$19.8 billion per year in 2040. Closing the gap between Indigenous and non- Indigenous rates of incarceration would generate savings to the economy of \$18.9 billion per year by 2040.²

Free to be Kids – National Plan of Action: In July 2016, investigations revealed shocking abuse and mistreatment of Aboriginal and Torres Strait Islander children in Don Dale prison (Northern Territory), including restraint chairs, misuse and overuse of solitary confinement, verbal abuse, and other mistreatment constituting torture. Similar reports have been made about child prisons all around Australia. This National Plan of Action identifies the solutions needed at a national level that COAG and the Federal Government can progress to end the over-imprisonment of Aboriginal and Torres Strait Islander children, and end abuse of children in prisons.³

Executive Summary

The inequality between Aboriginal and Torres Strait Islander people and non-Aboriginal people in health and wellbeing is driven by the historical injustices of colonisation, dispossession and marginalisation, violent and forced displacement from customary lands, child removal practices and policies, and the discriminatory legal and social regulation that Aboriginal and Torres Strait Islander people have been subjected to over the past 230 years. These processes have resulted in disadvantaged circumstances that Aboriginal and Torres Strait Islander people face today, including inter-generational trauma, systemic racism and discrimination, homelessness, disproportionately high rates of child removal, and the high rates of violence and imprisonment that are devastating Aboriginal and Torres Strait Islander communities.

The Closing the Gap 'refresh' offers an opportunity to deliver meaningful change on these factors. In order to make significant progress and deliver real change, Closing the Gap must respond to all aspects of disadvantage. Most importantly, without genuine partnership and collaboration with Aboriginal and Torres Strait Islander Community Controlled Organisations, the Government risks another decade of "doing to" rather than "doing with".

The over-imprisonment and disproportionate violence rates affecting Aboriginal and Torres Strait Islander communities are both a product of, and contribute to, social factors such as lack of access to education, barriers to employment, poor health, lack of required disability supports, contact with child protection, and experiences of violence.⁴

Closing the Gap must address violence and imprisonment through the establishment of justice targets to:

- 1) Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people and non-Indigenous people by 2040, with an interim target of halving the gap by 2030
- 2) Close the gap in the rate of Aboriginal and Torres Strait Islander children and non-Indigenous children in prison by 2040, with an interim target to halve the gap by 2030
- 3) Cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040
- 4) Cut the disproportionate rates of family violence against Aboriginal and Torres Strait Islander women and children to close the gap by 2040.

These must be supported by targets addressing other areas of broader disadvantage, including:

- eliminating the disproportionate numbers of Aboriginal and Torres Strait Islander children in out-of-home care;
- access to early childhood education and care;
- housing and eliminating the disproportionate rates of homelessness experienced by Aboriginal and Torres Strait Islander people;
- mental health and wellbeing, including access to healing and addressing trauma;
- prevention of the disproportionately high rates of suicide affecting Aboriginal and Torres Strait Islander people;
- eliminating systemic racism; and
- achieving equal access to disability supports

Targets are an effective solution to addressing the over-imprisonment and disproportionate violence affecting Aboriginal and Torres Strait Islander people and communities.

Aboriginal and Torres Strait Islander communities strongly support targets to eliminate disproportionate incarceration and violence rates. To achieve success, the over-arching targets need to be supported by sub-targets and meaningful indicators negotiated with Aboriginal and Torres Strait Islander Community Controlled Organisations. Mechanisms to monitor and report on progress must also be Aboriginal and Torres Strait Islander led.

Targets under Closing the Gap will support the Strategy to effectively address the complex and inter-related disadvantages affecting Aboriginal and Torres Strait Islander communities, and holding Aboriginal and Torres Strait Islander people back from fulfilling their potential. This will support the achievement of other Closing the Gap targets, which are currently hampered by the effects of an unequal justice system towards Aboriginal and Torres Strait Islander people and communities.

Furthermore, violence and imprisonment are preventable, expensive, and often unnecessary. There are substantial potential savings that can result from addressing violence and imprisonment through the Closing the Gap Strategy.

As part of a co-ordinated framework for accountability led by Aboriginal and Torres Strait Islander Community Controlled Organisations, Closing the Gap targets will be effective to promote progress on the underlying drivers of over-imprisonment and disproportionate violence. In turn, this will promote more effective law and policy that will drive down the economic and fiscal costs of over-imprisonment and disproportionate violence rates affecting Aboriginal and Torres Strait Islander people.

Change the Record supports the position of Aboriginal and Torres Strait Islander Community Controlled Organisations that the Closing the Gap Strategy must be based on a human rights approach that centres and reinforces Aboriginal and Torres Strait Islander self-determination. Self-determination and community control have a demonstrated positive link to the social determinants of Aboriginal and Torres Strait Islander health and wellbeing. Principles of self-determination must be enacted through the arrangements to develop, oversee, implement, and monitor progress on the Strategy.

Targets to end over-imprisonment and disproportionate violence experienced by Aboriginal and Torres Strait Islander people need to be supported by shifting investment into prevention. This can be achieved by resourcing Aboriginal and Torres Strait Islander Community Controlled Organisations to address the holistic needs of their communities, as well as systemic reforms that will cut imprisonment and ensure a more responsive justice system.

Progress monitoring must reflect the priorities and aspirations of Aboriginal and Torres Strait Islander people and communities. This includes addressing a number of data gaps, and a lack of disaggregated data on the justice system, including by gender, disability, remoteness, and other significant factors. This can be achieved through a body with Aboriginal and Torres Strait Islander oversight, to measure and report against outcomes.

Recommendations

1. Establish the following targets under the Closing the Gap Strategy:
 - Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people and non-Indigenous people by 2040, with an interim target of halving the gap by 2030
 - Close the gap in the disproportionate rate of Aboriginal and Torres Strait Islander children in prison by 2040, with an interim target to halve the gap by 2030

- Cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040
 - Cut the disproportionate rates of family violence against Aboriginal and Torres Strait Islander women and children to close the gap by 2040.
2. That the Federal Government works with the Aboriginal and Torres Strait Islander Community Controlled Organisations to develop a process to negotiate accountability, ongoing governance, and resourcing mechanisms, and commits to enacting principles of Aboriginal and Torres Strait Islander self-determination throughout the process.
 3. That the Federal Government works with Aboriginal and Torres Strait Islander Community Controlled Organisations to co-design a framework for targets, and to co-design the sub-targets and indicators under each Closing the Gap justice target.
 4. That the Closing the Gap Strategy includes sub-targets and indicators that:
 - address the underlying systemic drivers of over-imprisonment and disproportionate violence against Aboriginal and Torres Strait Islander women and children
 - promote progress through interim goals, and
 - create incentives to resource prevention of incarceration and violence through effective, Aboriginal and Torres Strait Islander community controlled solutions.
 5. That the Closing the Gap Strategy includes a target to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040.
 6. That the Closing the Gap Strategy includes targets that address:
 - Housing and eliminating the disproportionate rates of homelessness experienced by Aboriginal and Torres Strait Islander people
 - Mental health and wellbeing, including access to healing and addressing trauma
 - Prevention of the disproportionately high rates of suicide affecting Aboriginal and Torres Strait Islander people
 - Eliminating systemic racism
 - Achieving equal access to disability supports.
 7. That the Closing the Gap Strategy provides dedicated resources to Aboriginal and Torres Strait Islander Community Controlled Organisations to deliver prevention, early intervention, and justice reinvestment initiatives.
 8. That measures to address systemic gaps and meet holistic needs of Aboriginal and Torres Strait Islander people affected by imprisonment and violence are included in plans to implement the Closing the Gap Strategy.
 9. That the Federal Government leads a strategy through COAG to implement:
 - Recommendations of the ALRC's *Pathways to Justice* Report
 - A national plan of action on youth justice
 - Specialised and culturally safe programs to address violence against Aboriginal and Torres Strait Islander women and their children.
 10. That the Federal Government, together with State and Territory governments, ensures sufficient and sustainable funding for Aboriginal and Torres Strait Islander Community Controlled Legal Services by:
 - permanently reversing planned funding cuts to the Aboriginal and Torres Strait Islander Legal Services

- ensuring CPI increases are included in funding for programs under the Indigenous Advancement Strategy
 - reinstating the National FVPLS Program with direct allocation of funding
 - adequately and sustainably funding ATSILS and FVPLSs to:
 - meet existing demand for services, including culturally-safe specialist prevention and early intervention programs;
 - address unmet legal need regardless of geographic location; and
 - develop models of specialist targeted support for both men and women
 - utilising long-term flexible funding models to resource Aboriginal and Torres Strait Islander Community Controlled legal services.
11. That the Federal Government establishes an independent, Aboriginal and Torres Strait Islander led agency to coordinate a national approach to data collection and policy development relating to Aboriginal and Torres Strait Islander people.
12. That the Closing the Gap Strategy monitors and evaluates progress utilising a framework that
- addresses intersectional factors
 - disaggregates data on the range of needs and circumstances of Aboriginal and Torres Strait Islander people
 - supports specific initiatives to meet these needs where required.

1. Disproportionate violence and over-imprisonment of Aboriginal and Torres Strait Islander people undermine health and wellbeing

Indigenous peoples are not merely 'disadvantaged citizens'. The poverty and inequality that they experience is a contemporary reflection of their historical treatment as peoples. The inequality in health status that they continue to experience can be linked to systemic discrimination.⁵

Multiple factors relate to the underlying causes of disadvantage affecting Aboriginal and Torres Strait Islander people. These include the processes of colonisation, dispossession and marginalisation, violent and forced displacement from customary lands, child removal practices and policies, and the discriminatory legal and social regulation that Aboriginal and Torres Strait Islander people have been subjected to over the past 230 years. This history continues to shape the circumstances of disadvantage that Aboriginal and Torres Strait Islander people face today, including inter-generational trauma, disproportionately high rates of child removal, homelessness and insecure housing, poor health and wellbeing including poor mental health. These circumstances are inextricably inter-connected with the unequal outcomes that Aboriginal and Torres Strait Islander people face in the justice system, and the high rates of violence that Aboriginal and Torres Strait Islander people are subjected to.⁶

To enable Aboriginal and Torres Strait Islander people, families and communities to thrive, the Closing the Gap Strategy must address the disadvantages and injustice affecting Aboriginal and Torres Strait Islander people. The 'refresh' of the Closing the Gap Strategy offers the opportunity for the Council of Australian Governments (COAG) to comprehensively address the range of ongoing factors that contribute to Aboriginal and Torres Strait Islander people facing disadvantaged circumstances and unequal outcomes. Creating mechanisms to promote more equitable responses from the justice system and properly resourcing Aboriginal and Torres Strait Islander community controlled solutions that will prevent incarceration and violence, should be the core priorities of Closing the Gap.

Aboriginal and Torres Strait Islander people, families and communities are being devastated by the crisis of over-imprisonment and violence

Aboriginal and Torres Strait Islander people are significantly more likely to experience violence than non-Indigenous people. In 2014-15, 22% of Aboriginal and Torres Strait Islander people had experienced physical or threatened violence in the last 12 months.⁷ Aboriginal and Torres Strait Islander people are also far more likely to be hospitalised as a result of an assault than non-Aboriginal people.⁸ Aboriginal and Torres Strait Islander people who experience other disadvantage, including low income, unemployment, housing insecurity, substance use, and living with disability or long-term health condition, were more likely to have experienced violence.⁹

Violence against Aboriginal and Torres Strait Islander women and children in particular is a national epidemic, leading to inequality and long-term disadvantage. Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised because of family violence,¹⁰ 10 times more likely to die from a violent assault,¹¹ and three times more likely to be subjected to sexual assault¹² than other women. Aboriginal and Torres Strait Islander children are also more likely than non-Indigenous children to be the subject of a substantiated report to child protection agencies due to emotional or physical abuse and sexual assault.¹³

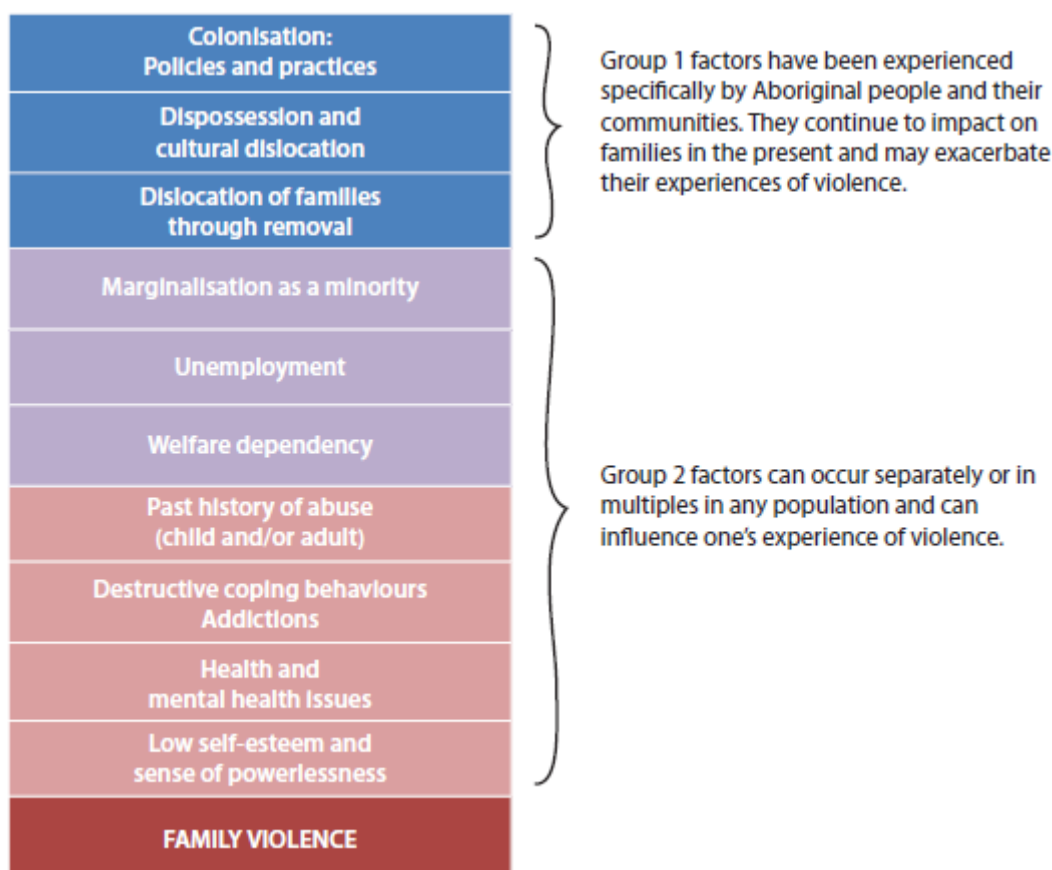
Experiencing violence, and threats of further violence, are detrimental to Aboriginal and Torres Strait Islander people's health and wellbeing.¹⁴

Family violence is interwoven with all spheres of disadvantage and inequality experienced by Aboriginal and Torres Strait Islander peoples¹⁵

The processes of colonisation, dispossession, and marginalisation that Aboriginal and Torres Strait Islander people have been subjected to continue to affect Aboriginal and Torres Strait Islander people, families and communities and to bring about the disparities between Aboriginal and Torres Strait Islander people and non-Indigenous people. "Family violence is not part of Aboriginal culture. However, the disadvantage, dispossession and attempted destruction of Aboriginal cultures since colonisation have meant that family violence has proliferated in Aboriginal communities."¹⁶

For example, family separations, child removal and sanctions on practicing traditional cultures have resulted in breakdowns of Aboriginal and Torres Strait Islander kinship systems, which contributes to family violence (noting that Aboriginal and Torres Strait Islander women experience family violence at the hands of men from a range of different cultural backgrounds¹⁷), and contact with the justice and child protection systems. In turn, the justice system has demonstrated discrimination and bias that continues to bring about unequal outcomes for Aboriginal and Torres Strait Islander peoples.¹⁸

Figure 1: Factors Contributing to Family Violence in Aboriginal Communities¹⁹



Violence against Aboriginal and Torres Strait Islander women and children leads to a number of other adverse life outcomes including homelessness, unemployment, and poor mental and physical health. Family violence is the leading contributor to the removal of Aboriginal and Torres Strait Islander children from their families, communities and culture into out-of-home care, which in turn places Aboriginal and Torres Strait Islander children at greater risk of physical and sexual violence perpetrated by adults in those systems.²⁰

Over-imprisonment is destroying Aboriginal and Torres Strait Islander people's lives and communities by contributing to long-term disadvantage, and is undermining efforts to close the gap in disadvantage between Aboriginal and Torres Strait Islander and non-Indigenous people. In the 26-years since the Royal Commission into Aboriginal Deaths in Custody handed down its final report, the proportion of Aboriginal and Torres Strait Islander people in prison has doubled.²¹ This growing rate of imprisonment is avoidable and unnecessary.²² As the Royal Commission into Aboriginal Deaths in Custody found, over 25 years ago, the underlying causes of the disproportionate rate of imprisonment of Aboriginal and Torres Strait Islander people relate to inequality and disadvantage:

...the more fundamental causes for the over-representation of Aboriginal people in custody are not to be found in the criminal justice system but in those factors which bring Aboriginal people into conflict with the criminal justice system in the first place. The view propounded by this report is that the most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society-socially, economically and culturally.²³

In turn, Aboriginal and Torres Strait Islander people's relationship to the criminal justice system has been shaped by historical injustice²⁴:

The intergenerational impacts of the imposition of the Westminster system of law, loss of country, of being punished for speaking language, attempted genocide and policies relating to the stolen generations must be central to an understanding of Aboriginal and Torres Strait Islander peoples experience and relationship with the criminal justice system.²⁵

This is demonstrated in some evidence of how crime rates in some Aboriginal and Torres Strait Islander communities continues to be affected by these historical process.²⁶

Large proportions of people in prison have experienced severe ongoing disadvantage, for instance:

- Aboriginal or Torres Strait Islander people in prison are less likely to be employed, to have completed education to Year 10;²⁷
- Aboriginal and Torres Strait Islander children who have had contact with the child protection system due to experiencing neglect or abuse are more likely to be imprisoned;²⁸
- live with intellectual disability, have drug or alcohol issues, having previously been admitted to a psychiatric institution or be homeless;²⁹
- around one in every five prisoners in Australia suffers from serious mental illness.³⁰ There is both a causal and consequential link between imprisonment and mental illness; people with mental illness are more likely to be incarcerated, particularly having regard to the lack of support provided by the poorly resourced community mental health sector, and people in prison are more likely to develop mental health problems, with prisons not being conducive to good mental health;
- people with acquired brain injury are substantially overrepresented in the prison population with a recent study finding 42% of male prisoners and 33% of female prisoners in Victoria have a brain injury;³¹
- prisoners often face major health issues including high rates of smoking, Hepatitis B, and alcohol and/or other drug issues;³²
- high proportions of Aboriginal and Torres Strait Islander women in prison have experienced sexual, physical or emotional abuse, with the majority having experienced multiple forms of abuse.³³

The combination of these factors with justice system factors are illustrated in Figure 2 below.

Figure 1: Key drivers of Indigenous incarceration³⁴

The ongoing inequality in the justice system manifests in disproportionate impacts of a range of laws and policies, as well as discrimination from justice system agencies, towards Aboriginal and Torres Strait Islander people. For example, many Aboriginal people are in prison due to fine default, punitive and restrictive bail laws, and disproportionate impact of mandatory sentencing for property offences.

Large numbers of Aboriginal and Torres Strait Islander people in prison live with un-diagnosed disability, or have mental illness and alcohol or other drug issues, for which many have never had support.³⁵

...by the time Aboriginal and Torres Strait Islander people encounter the criminal justice system, it is very likely that they have had a disability their entire lives with no real support or accommodation³⁶

Lack of access to necessary support, and numerous barriers to accessing justice are results in the criminalisation of Aboriginal and Torres Strait Islander people with disability. In many cases, a combination of a lack of effective support and inappropriate police responses leads to incarceration for Aboriginal and Torres Strait Islander people with disability.³⁷

Imprisonment and violence are key social determinants of Aboriginal and Torres Strait Islander people's health and wellbeing

The social determinants of Aboriginal and Torres Strait Islander people's health and wellbeing arise from the historical injustices of colonisation, dispossession, and exclusion:

The health and welfare of many Aboriginal and Torres Strait Islander Australians is affected by a colonial history that separated them from their land and culture, and exposed them to racism and social exclusion. A number of studies have highlighted that the everyday living conditions of Indigenous Australians are the intergenerational consequences of this history [...] They may occur through a loss of lifestyle and culture, which can result in, among other effects, marginalisation, isolation and discrimination. These in turn, influence education, employment, housing and health outcomes (Matthews 1997).³⁸

As discussed above, the underlying causes of disproportionate violence and incarceration rates affecting Aboriginal and Torres Strait Islander people are also related to these historical and contemporary processes.

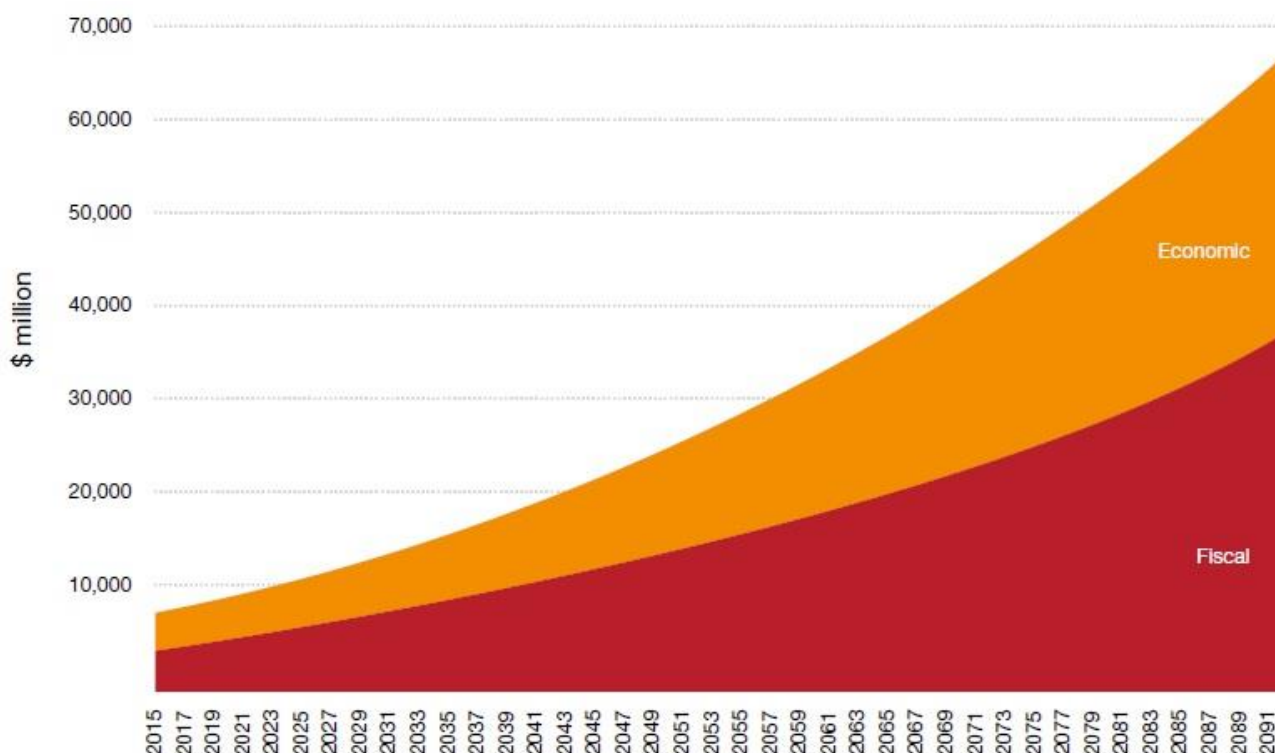
The Aboriginal and Torres Strait Islander Health Performance Framework identifies contact with the justice system, and experiencing violence as key factors affecting Aboriginal and Torres Strait Islander people's health.³⁹ The Australian Institute of Health and Welfare has also identified that action on violence and imprisonment are key drivers of change for the existing Closing the Gap targets.⁴⁰

Contact with the criminal justice system is not only influenced by a range of social determinants but also impacts on the social determinants for the individual and potentially leads to intergenerational disadvantage. The effects of intergenerational trauma resulting from the loss of connection to country and culture also adds to the over-representation of Indigenous Australians in prisons. [...] The literature shows that the main determinants of Indigenous over-representation in prison are negative early life experiences, alcohol and drug use, low educational attainment and long-term unemployment (see, for example, Weatherburn 2014).⁴¹

Economic and fiscal costs of over-imprisonment and disproportionate violence experienced by Aboriginal and Torres Strait Islander people

In addition to the devastating impact of over-imprisonment, violence and discrimination against Aboriginal and Torres Strait Islander people, there is also a significant economic impact on government and broader community. Evidence clearly indicates that without action, these issues will hamper economic growth and increase spending pressures on governments.

PricewaterhouseCoopers and PwC Indigenous Consulting, in partnership with the Korin Gamadji Institute and Change the Record, undertook economic modelling in 2017 to quantify the current and projected economic costs of Indigenous incarceration.⁴² The report concluded that the total economic and fiscal cost of disproportionate rates of incarceration of Aboriginal and Torres Strait Islander people was nearly \$7.9 billion per annum in 2016. The report concluded that if nothing is done to address the disproportionately high rates of incarceration of Aboriginal and Torres Strait Islander people, this cost will rise to \$9.7 billion per year in 2020 and \$19.8 billion per year in 2040. Further, the report concluded that, if as a nation, we could close the gap between Indigenous and non-Indigenous rates of incarceration it would generate savings to the economy of \$18.9 billion per year by 2040.

Figure 2: Economic and fiscal costs of Indigenous incarceration (\$million, 2016 dollars)⁴³

Additionally, the National Council to Reduce Violence against Women and their Children has calculated that violence against Aboriginal and Torres Strait Islander women will result in approximately \$2.2 billion in economic costs by 2021-22.⁴⁴ The economic impacts of family violence on their children are substantial, and would add to these costs.

This is an opportunity to demonstrate national leadership

The crisis of over-imprisonment and disproportionate violence devastating Aboriginal and Torres Strait Islander people demands leadership from the highest level of office to overturn the disgraceful rates at which Aboriginal and Torres Strait Islander people are subject to violence and imprisonment.

COAG rightly recognised safety and justice as priorities under the Closing the Gap Strategy. However, the Closing the Gap Strategy has never had targets or plans associated with the 'safe communities' building block area.

There is now an opportunity for the Australian Government to show national leadership and to progress the work started with the Australian Law Reform Commission (ALRC) Inquiry into the Rates of Incarceration of Aboriginal and Torres Strait Islander Peoples, initiated by the former Attorney-General, Hon George Brandis QC, who said "[t]he Turnbull Government is committed to reducing Indigenous incarceration"⁴⁵ and "[t]he Government is committed to working with Indigenous Australians, state and territory governments, the legal profession and the wider community to develop solutions for this complex issue."⁴⁶

This is an opportune time to develop criminal justice targets as part of a renewed whole-of-government commitment to address Aboriginal and Torres Strait Islander disadvantage.⁴⁷

The ALRC found that a number of underlying social factors need to be addressed alongside reforms to laws and legal mechanisms, in order to address the crisis of over-incarceration of Aboriginal and Torres Strait Islander peoples, and therefore recommended the establishment of national justice

targets to reinforce justice system reforms. The Closing the Gap Strategy is currently the only mechanism through which to establish targets and implement plans to address the underlying social factors of over-imprisonment and disproportionate violence towards Aboriginal and Torres Strait Islander people.⁴⁸

The Closing the Gap 'refresh' provides an opportunity to implement key recommendations of the ALRC report within a framework that encompasses the responsibilities of Federal, State and Territory governments. Reliance on State and Territory implementation processes for the recommendations of the Royal Commission into Aboriginal Deaths in Custody has not reversed the rates at which Aboriginal and Torres Strait Islander people are being imprisoned. A national approach needs to reinforce the mechanisms at State and Territory level to ensure long-term, sustained initiatives to bring about change.

The Federal Government has taken a national approach on violence against women through the National Plan to Reduce Violence Against Women and their Children. This national approach needs to be reinforced through the Closing the Gap Strategy at the highest level, through the establishment of a target to reduce violence against Aboriginal and Torres Strait Islander women and children, including a specific target to reduce the disproportionate family violence rates experienced by Aboriginal and Torres Strait Islander women and children.

The Federal Government must progress urgent action on these issues, particularly through the design of targets and strategies within the Closing the Gap Strategy alongside Aboriginal and Torres Strait Islander communities, and State and Territory governments.

2. Closing the Gap must include national targets to end over-imprisonment and disproportionate violence

Discussion paper question: What do you think are the key targets or commitments that should be measured in a refreshed Closing the Gap agenda?

A range of historical processes and contemporary factors have combined to cause the rates of over-incarceration and disproportionate violence being experienced by Aboriginal and Torres Strait Islander people today. In order to successfully overturn disadvantage and promote better life opportunities for Aboriginal and Torres Strait Islander people, the Closing the Gap Strategy must address justice and community safety by establishing targets to end the over-imprisonment and disproportionate violence that Aboriginal and Torres Strait Islander people are subjected to, including specific targets to close the gap in rates of children who are imprisoned and rates of family violence.

The Closing the Gap framework has never had targets or strategies associated with the 'safe communities' building block area, despite COAG's recognition of safety and justice as priorities. This has resulted in a lack of balance and co-ordination in policies, laws, and programs that relate to violence, abuse, and the criminal justice system. Policies, programs and laws in these areas continue to leave Aboriginal and Torres Strait Islander people behind, or to cause harm through driving up imprisonment, child removal, homelessness, social exclusion and disadvantage.

Targets under the Closing the Gap Strategy are an effective way to bring about real change to the disproportionately high rates of imprisonment and violence facing Aboriginal and Torres Strait Islander people and communities.

Aboriginal and Torres Strait Islander communities strongly support targets to eliminate disproportionate incarceration and violence rates. To achieve success, the over-arching targets need to be supported by sub-targets and meaningful indicators negotiated with Aboriginal and Torres Strait Islander Community Controlled Organisations. Mechanisms to monitor and report on progress must also be Aboriginal and Torres Strait Islander led.

Targets under Closing the Gap will support the Strategy to effectively address the complex and inter-related disadvantages affecting Aboriginal and Torres Strait Islander communities, and holding Aboriginal and Torres Strait Islander people back from fulfilling their potential. This will support the achievement of other Closing the Gap targets, which are currently hampered by the effects of an unequal justice system towards Aboriginal and Torres Strait Islander people and communities.

As part of a co-ordinated framework for accountability, Closing the Gap targets will be effective to promote progress on the underlying drivers of over-imprisonment and disproportionate violence. In turn, this will promote more effective law and policy that will drive down the economic and fiscal costs of over-imprisonment and disproportionate violence rates affecting Aboriginal and Torres Strait Islander people.

Recommendation

1. Establish the following targets under the Closing the Gap Strategy:
 - Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people and non-Indigenous people by 2040, with an interim target of halving the gap by 2030
 - Close the gap in the rate of Aboriginal and Torres Strait Islander children in prison by 2040, with an interim target to halve the gap by 2030

- Cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040
- Cut the disproportionate rates of family violence against Aboriginal and Torres Strait Islander women and children to close the gap by 2040.

Targets are an effective solution to over-imprisonment and disproportionate violence experienced by Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander communities support targets

The Closing the Gap Strategy should reflect the priorities of Aboriginal and Torres Strait Islander communities, as they are best placed to identify the areas where partnerships with government to address disadvantage are needed.

Justice is a major priority for Aboriginal and Torres Strait Islander communities, many of whom support introducing targets to reduce disproportionate rates of over-imprisonment and violence as part of Closing the Gap. This has been highlighted across a number of consultation processes.

Aboriginal and Torres Strait Islander Community Controlled Organisations working on the front lines in their communities affected by over-imprisonment and violence have emphasised the priority of introducing national targets to reduce disproportionate violence and imprisonment affecting Aboriginal and Torres Strait Islander people:

Disproportionate rates of imprisonment and violence experienced by Aboriginal and Torres Strait Islander peoples is a national crisis. National justice targets should be established to end the disproportionate rates of over-imprisonment and violence experienced by Aboriginal and Torres Strait Islander peoples.⁴⁹

The Redfern Statement Alliance, made up of the leading national, representative and peak bodies for Aboriginal and Torres Strait Islander communities, strongly supports the introduction of targets to reduce incarceration and violence experienced by Aboriginal and Torres Strait Islander communities. Numerous stakeholders raised the importance of justice targets during the recent consultations for the Australian Law Reform Commission Inquiry, and in the Law Council of Australia's consultation for the Justice Project.

Targets to end over-imprisonment and violence will tackle the causes of complex disadvantage

As a strategy to address the social determinants of health and wellbeing⁵⁰, Closing the Gap should have a comprehensive approach to all social determinants of Aboriginal and Torres Strait Islander health and wellbeing. Violence and incarceration have been identified as key social determinants of Aboriginal and Torres Strait Islander people's health and wellbeing.⁵¹

...the forms of disadvantage experienced by Aboriginal and Torres Strait Island peoples that are the subject of existing targets are deeply interrelated with incarceration⁵²

The Closing the Gap Strategy is being undermined by the omission of targets related to justice and violence under the 'safe communities' building block area.

Experiences of incarceration and violence prevent Aboriginal and Torres Strait Islander people from enjoying access to equal life opportunities alongside other Australians. Violence and incarceration are a direct social determinant of poor health, with the higher rates at which Aboriginal and Torres Strait Islander people experience violence and imprisonment contributing to overall poor health and wellbeing, including barriers to education and employment.⁵³ For instance, imprisonment for unpaid fines often leads to homelessness, child removal, and exacerbation of inter-generational trauma for Aboriginal and Torres Strait Islander women and their children.⁵⁴

The Closing the Gap Strategy must include targets to reduce incarceration and violence in order to effectively address these barriers. The AIHW identifies several existing Closing the Gap targets for which incarceration and violence are drivers, as well as opportunities to improve these factors through addressing the disproportionate violence and imprisonment rates affecting Aboriginal and Torres Strait Islander people and communities.⁵⁵

These links between incarceration, violence and broader disadvantage have also been recognised by the Productivity Commission in its Overcoming Indigenous Disadvantage framework⁵⁶, which specifies a range of additional headline indicators alongside the Closing the Gap targets. The framework includes indicators on violence and imprisonment experienced by Aboriginal and Torres Strait Islander people.

Targets will drive progress

Former Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda recommended introducing targets that will assist Australia to meet its international human rights obligations. As a new member to the Human Rights Council, it is incumbent on Australia to demonstrate leadership in promoting and safeguarding human rights. Setting targets for change within a specific time frame will demonstrate clear steps towards achieving Australia's human rights obligations.⁵⁷

After ten years, the majority of the Closing the Gap targets are not on track. However, there is a risk that, without the Closing the Gap Strategy, outcome indicators would worsen.

Of course, it is not the targets in and of themselves that have led to changes but the enhanced level of cooperation at the Council of Australian Governments level and targeted increases in funding. However, without the targets in place to guide this work, and a mechanism whereby the Prime Minister annually reports to Parliament against these targets, there is a real risk that our progress would stall.⁵⁸

Targets will encourage continuous reflection and improvement in the way the criminal justice system responds to Aboriginal and Torres Strait Islander people's needs and interests, and will create stronger incentives to invest in the community controlled solutions that will address these underlying causes of disadvantage, as part of a broader justice reinvestment approach.⁵⁹

Targets have demonstrated effectiveness at reducing imprisonment rates

When targets have been incorporated into State and Territory plans and strategies, they have demonstrably improved outcomes for Aboriginal and Torres Strait Islander communities.⁶⁰ Both the Queensland Aboriginal and Torres Strait Islander Justice Agreements and successive versions of the Victorian Aboriginal Justice Agreement have set targets to reduce imprisonment and violence rates affecting Aboriginal and Torres Strait Islander people.

The Victorian Aboriginal Affairs Framework 2013-2018 has a very strong commitment to close the gap in the number of people (including children) under justice supervision by 2031. There is a further commitment to close the gap in the proportion of Aboriginal people and non-Aboriginal prisoners

returning to prison within two years of release. To give effect to these commitments headline indicators and targets are included in the Victorian Aboriginal Justice Agreement in Part 3.⁶¹

Evaluation of the Victorian Justice Agreement has found that Victoria has maintained a relatively low rate of Aboriginal over-representation in the prisons of the state and although there has been some increase the level of increase has been much lower than most states over the period of measurement.

The Closing the Gap 'refresh' process also must learn from State and Territory targets to develop stronger mechanisms that will hold governments in all jurisdictions to account for their commitments. State based models of partnership with Aboriginal and Torres Strait Islander people can be built on in the Closing the Gap Strategy, with a more comprehensive governance structure that places Aboriginal and Torres Strait Islander Community Controlled Organisations at the centre.

Targets will promote evidence-based accountability & transparency

Targets create a link between government decisions and outcomes for Aboriginal and Torres Strait Islander communities based on transparent evidence. Regular reporting against national targets will strengthen the mechanisms that enable sustained change, and create incentives to focus on prevention and supports that will address underlying factors that contribute to the violence and incarceration rates currently experienced by Aboriginal and Torres Strait Islander people. These incentives will be strengthened by a shared evidence base.

As discussed above, the Overcoming Indigenous Disadvantage framework developed by the Productivity Commission regularly compiles evidence on significant factors related to Aboriginal and Torres Strait Islander peoples' experiences of disadvantage, including violence and imprisonment. Although there are gaps in some evidence, a reporting framework for justice targets is in place through many existing reporting processes. In consultation with specialist Aboriginal and Torres Strait Islander community controlled organisations, reporting progress on justice targets will align with current Closing the Gap progress reporting.

3. Key principles and measures for successful implementation

Aboriginal and Torres Strait Islander self-determination is central to any partnership with government

Discussion paper question: How can governments, Aboriginal and Torres Strait Islander Peoples, and businesses work more effectively together? What is needed to change the relationship between government and community?

The Closing the Gap Strategy must be based on, build on and contribute to Aboriginal and Torres Strait Islander self-determination. The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration),⁶² to which Australia is a signatory, sets out the basis of an approach to self-determination. Furthermore, the Redfern Statement⁶³ outlines how self-determination needs to be enacted through concrete policy commitments.

The Redfern Statement's Preventing Violence and Justice Workshop identified the following key principles as being essential to ensure better justice outcomes for Aboriginal and Torres Strait Islander men, women and children:⁶⁴

- *Aboriginal and Torres Strait Islander communities, their organisations and representative bodies must be directly involved in decision-making about matters that affect Aboriginal and Torres Strait Islander peoples.*
- *Aboriginal and Torres Strait Islander Community Controlled Organisations are the preferred provider of culturally safe services and supports that understand and are, therefore, responsive to the particular needs and requirements of Aboriginal and Torres Strait Islander peoples.*
- *Aboriginal and Torres Strait Islander Community Controlled Organisations, including legal services, must receive adequate levels of funding to have the capacity to respond to community needs and demand;*
- *More flexible funding models should be established to enable Aboriginal and Torres Strait Islander Community Controlled Organisations to deliver holistic wrap around services that are responsive to community needs and to ensure the collaboration of unique expertise across sectors;*
- *Governments must shift away from punitive and law enforcement focused approaches, and towards approaches that prioritise prevention, early intervention and diversion from the criminal justice system and other systems that harm the health of Aboriginal and Torres Strait Islander people.*

Closing the Gap must be based on the Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples⁶⁵ (the Declaration) sets out the minimum standards for the survival, dignity, well-being and rights of the world's Indigenous peoples. It addresses Indigenous peoples' collective and individual rights to a decent quality of life. Significantly, self-determination is one of the founding principles of the Declaration, which in turn

underpins Indigenous participation in decision-making; respect for and protection of culture; and equality and non-discrimination. This fundamental principle must inform approaches to justice for Aboriginal and Torres Strait Islander peoples.

Priorities for Aboriginal and Torres Strait Islander cultures must be set by Aboriginal and Torres Strait Islander people and communities

Discussion paper question: Should Aboriginal and Torres Strait Islander culture be incorporated in the Closing the Gap framework? How?

Change the Record supports the responses from a number of Aboriginal and Torres Strait Islander Community Controlled Organisations which have emphasised that the legal, health, education, child protection and other systems that Aboriginal and Torres Strait Islander people come into contact with are unsafe, alienating and paternalistic for many Aboriginal and Torres Strait Islander people, who face a multitude of barriers to accessing services, resulting in poorer outcomes. In response, Aboriginal and Torres Strait Islander people and communities have developed a wide range of initiatives drawing from cultural strengths. Aboriginal and Torres Strait Islander Community Controlled Organisations have the unique capacity to provide culturally safe and culturally appropriate services, and are able to develop localised, tailored solutions that have the support of the community.

Aboriginal and Torres Strait Islander cultures are wholly developed and owned by Aboriginal and Torres Strait Islander people and communities, while Closing the Gap is a multi-lateral strategy between governments. Change the Record supports the principle, informed by the UN Declaration on the Rights of Indigenous Peoples, that the priorities for Aboriginal and Torres Strait Islander cultures must be set by Aboriginal and Torres Strait Islander people and communities, not governments. Cultural safety and cultural appropriateness can only be validated by Aboriginal and Torres Strait Islander communities, and led by Aboriginal and Torres Strait Islander Community Controlled Organisations.

The Closing the Gap Strategy needs to recognise, support, and resource Aboriginal and Torres Strait Islander Community Controlled Organisations to deliver culturally safe and culturally appropriate programs as the key means to promote Aboriginal and Torres Strait Islander cultural strengths.

Co-design with Aboriginal and Torres Strait Islander Community Controlled Organisations

Discussion paper question: What indicators should governments focus on to best support the needs and aspirations of Aboriginal and Torres Strait Islander Peoples? Should governments focus on indicators such as prosperity, wellbeing or other areas?

It is essential that the arrangements to support the Closing the Gap Strategy are negotiated with Aboriginal and Torres Strait Islander people, particularly representative bodies. Community control has been identified as a key element of a human rights approach, as well as a driver of positive, preventative change on the social determinants of Aboriginal and Torres Strait Islander health and wellbeing.⁶⁶ Ongoing governance for the Closing the Gap Strategy needs to be representative and community controlled. This requires a body that is Aboriginal and Torres Strait Islander led to provide oversight for the Strategy.

Furthermore, Closing the Gap requires concrete funding commitments and accountability mechanisms for achieving the targets. National leadership and negotiation with Aboriginal and Torres Strait Islander Community Controlled Organisations is essential to establishing these mechanisms.

Many Aboriginal and Torres Strait Islander Community Controlled Organisations have provided feedback on the proposed 'prosperity framework' outlined in the Discussion Paper. While supporting the strengths in Aboriginal and Torres Strait Islander communities should be a priority of Closing the Gap, this needs to be negotiated with Aboriginal and Torres Strait Islander communities. As discussed above, the drivers of and solutions to the disadvantaged circumstances facing Aboriginal and Torres Strait Islander communities are holistic. A single framework is unlikely to reflect the priorities and/or aspirations of Aboriginal and Torres Strait Islander communities. Further solely focusing on prosperity or wellbeing indicators is likely to overlook the underlying drivers of disadvantage, and render the Closing the Gap Strategy ineffective at generational change.

Change the Record recommends that targets, sub-targets and indicators to end the over-imprisonment and disproportionate rates of violence that Aboriginal and Torres Strait Islander people are subjected to must be negotiated and co-designed with Aboriginal and Torres Strait Islander Community Controlled Organisations.

This approach has been recommended by the ALRC:

The ALRC has not recommended specific targets, mindful of the need to ensure Aboriginal and Torres Strait Islander leadership in developing policy relating to Aboriginal and Torres Strait Islander peoples. It considers that targets should be developed in consultation with Aboriginal and Torres Strait Islander peak organisations.⁶⁷

The overall framework for sub-targets and indicators Closing the Gap and its relationship to State and Territory level targets must be negotiated with Aboriginal and Torres Strait Islander communities and Community Controlled Organisations.

The Royal Commission into Aboriginal Deaths in Custody commented that a key imperative for Aboriginal and Torres Strait Islander Community Controlled Organisations to be involved in setting targets and indicators is to ensure what they are measuring is meaningful and relevant to the lives and wellbeing of Aboriginal and Torres Strait Islander people.⁶⁸

The specific sub-targets and indicators relating to justice, imprisonment and violence, including family violence, must be negotiated with specialised Aboriginal and Torres Strait Islander Community Controlled Organisations who work on the front lines with their communities. These include Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.

Recommendations

2. That the Federal Government works with Aboriginal and Torres Strait Islander Community Controlled Organisations to develop a process to negotiate accountability, ongoing governance, and resourcing mechanisms, and commits to enacting principles of Aboriginal and Torres Strait Islander self-determination throughout the process.
3. That the Federal Government works with Aboriginal and Torres Strait Islander Community Controlled Organisations to co-design a framework for targets, and to co-design the sub-targets and indicators under each Closing the Gap justice target.

Underpinning principles for targets to end disproportionate violence and over-imprisonment

Set targets to act on underlying drivers of over-imprisonment and disproportionate violence

Unequal justice outcomes are a key driver of broader disadvantage and are a barrier to achieving other targets under Closing the Gap. The Closing the Gap Strategy must address these barriers and create 'circuit breakers' to promote effective responses to the needs of Aboriginal and Torres Strait Islander people. To achieve this, indicators and sub-targets on reducing disproportionate imprisonment and violence rates should be based on the factors that are demonstrated to drive violence and over-imprisonment.

The underlying drivers of over-imprisonment and disproportionate violence that Aboriginal and Torres Strait Islander people are subject to are inter-related, and also related to other disparities between Aboriginal and Torres Strait Islander and non-Indigenous people, as discussed above in this submission.

Sub-targets should focus on the underlying causes of over-imprisonment and disproportionate violence against Aboriginal and Torres Strait Islander people, including the institutional inequalities that need to be transformed through system reform. Sub-targets and indicators should also focus on shifting resources into solutions that have demonstrated success, particularly shifting resources out of prisons and into Aboriginal and Torres Strait Islander community controlled programs and services as part of a broader justice reinvestment approach, and focus on early intervention and prevention.

Given the links between long-term disadvantage and imprisonment of Aboriginal and Torres Strait Islander children,⁶⁹ Change the Record recommends a specific sub-target to reduce imprisonment of Aboriginal and Torres Strait Islander children.

Targets to reduce over-imprisonment of Aboriginal and Torres Strait Islander people should address the systemic factors contributing to over-imprisonment. These factors have recently been addressed by the Australian Law Reform Commission in the *Pathways to Justice* report,⁷⁰ and include:

- unequal application of police discretion towards Aboriginal and Torres Strait Islander people;
- unnecessary imprisonment for minor offences such as unpaid fines and infringements;
- lack of responsiveness and misdiagnosis of disability in Aboriginal and Torres Strait Islander children and young people, particularly cognitive disability (including Foetal Alcohol Spectrum Disorder);
- poor understanding and responsiveness to Aboriginal and Torres Strait Islander people with disability from justice agencies including police, courts, and corrections;
- poor understanding and responsiveness among human service agencies to the effects of trauma and disability Aboriginal and Torres Strait Islander on children;
- over-utilisation of police to manage challenging behaviour demonstrated by Aboriginal and Torres Strait Islander children, particularly in school and out-of-home care contexts;
- utilisation of custodial remand in circumstances that disproportionately affect Aboriginal and Torres Strait Islander people;
- lack of diversion options;
- lack of cultural competency throughout the criminal justice system;
- lack of access to Aboriginal language interpreters;
- inadequate funding of Aboriginal community controlled legal services;

- lack of culturally safe support services including housing, disability support, health services, education, early childhood, mental health, and alcohol and other drug services;
- lack of flexibility in sentencing options including the persistence of persistence of mandatory and presumptive sentences;
- lack of community-based sentencing options; and
- imposition of custodial sentences for justice procedure offences which is disproportionate to the offence.

Systemic factors contributing to violence against Aboriginal and Torres Strait Islander women and their children include:⁷¹

- lack of understanding of legal rights and options and how to access supports when experiencing violence;
- poor police responses and discriminatory practices within police and child protection services;
- fear of child removal if disclosing family violence;
- mistrust of mainstream legal and support services to understand and respect the needs, autonomy and wishes of Aboriginal victims/survivors;
- community pressure not to go to the police in order to avoid increased criminalisation of Aboriginal men;
- pressure not to leave a violent relationship, stemming from a priority within some parts of the community of maintaining the family unit due to a misconceived fear that parental separation will threaten cultural connection (especially for children) and community cohesion;
- poverty and social isolation;
- lack of cultural competency and indirect discrimination across the support sector, including for example discriminatory practices within police and child protection agencies, lack of culturally appropriate housing options, alienating and deterrent communication and client/patient approaches by medical, legal, community services and other professionals; and
- lack of appropriate support services in some remote communities.

Set targets to promote progress and investment into effective Aboriginal and Torres Strait Islander community controlled solutions

Sub-targets should also focus on progress towards achieving the over-arching target. These need to be supported by appropriately directed investment, accountability and incentives that will continue to drive progress after the initial phase of implementation. Key drivers of progress include achievable interim goals, and shifting resources to solutions that have demonstrated effectiveness.

The ALRC has recommended addressing the social and economic drivers of over-imprisonment of Aboriginal and Torres Strait Islander people through a justice reinvestment approach. This involves shifting resources from criminal justice enforcement into addressing underlying causes of contact with the justice system.⁷² The Closing the Gap Strategy should include sub-targets that will reinforce and direct justice reinvestment approaches.

It is vital for the Closing the Gap Strategy to promote primary prevention of violence against Aboriginal and Torres Strait Islander women and children, utilising principles of successful programs, particularly that they are community-led, culturally appropriate, and holistic.⁷³

Suggested sub-targets and indicators

To operationalise the principles recommended above, Change the Record suggests that the following sub-targets and indicators may be included in the Closing the Gap Strategy:

- sufficient and sustainable funding for Aboriginal and Torres Strait Islander community controlled legal services to meet the demand for culturally safe legal support
- reduce the population of Aboriginal and Torres Strait Islander persons held in prison on remand
- increase access to culturally appropriate diversion options for Aboriginal and Torres Strait Islander people
- increase access to community-based sentencing options for Aboriginal and Torres Strait Islander people
- sufficient and sustainable funding to meet demand for culturally safe Aboriginal and Torres Strait Islander Community Controlled Organisations to deliver a broad range of holistic support services
- increase access to culturally safe legal support for victims/survivors of family violence whose children are the subject of a child protection notification

Frameworks for justice targets and sub-targets used by States and Territories, such as the ACT Aboriginal and Torres Strait Islander Justice Partnership 2015-18 and the Victorian Aboriginal Justice Agreement, would be a useful starting point to develop sub-targets and indicators that will support the headline targets on imprisonment rates.

The following indicators related to family violence, developed and reported in consultation with specialised Aboriginal and Torres Strait Islander Community Controlled Organisations, would be useful and relevant to measure change as part of the Closing the Gap Strategy:

- Hospitalisation rates from family violence
- Referrals to family violence services, including specialist Aboriginal Community Controlled Organisations
- The number of police call outs to family violence incidents
- The number of domestic violence orders
- The number of perpetrators convicted for family violence related offences
- Homicides related to family violence
- Rates of family violence related housing issues and rates of homelessness
- Rates of working days due to family violence related leave
- The number of child protection notifications where family violence is identified
- Changes in community attitudes (as measured by mechanisms such as the National Community Attitudes Survey that have included specific questions on Aboriginal and Torres Strait Islander peoples)

Change the Record is working with members to further develop sub-targets and indicators that will support justice targets to end disproportionate violence and imprisonment of Aboriginal and Torres Strait Islander people.

Recommendation

4. That the Closing the Gap Strategy includes sub-targets and indicators that:
 - address the underlying systemic drivers of over-imprisonment and disproportionate violence against Aboriginal and Torres Strait Islander women and children
 - promote progress through interim goals, and
 - create incentives to resource prevention of incarceration and violence through effective, Aboriginal and Torres Strait Islander community controlled solutions.

Address disadvantage affecting Aboriginal and Torres Strait Islander people

As a Strategy to address multiple aspects of disadvantage,⁷⁴ the Closing the Gap Strategy requires targets that promote action on a number of needs and issues relating to the broader social determinants of Aboriginal and Torres Strait Islander health and wellbeing, including:

- eliminating the disproportionate numbers of Aboriginal and Torres Strait Islander children in out-of-home care;
- access to early childhood education and care;
- housing and eliminating the disproportionate rates of homelessness experienced by Aboriginal and Torres Strait Islander people;
- mental health and wellbeing, including access to healing and addressing trauma;
- prevention of the disproportionately high rates of suicide affecting Aboriginal and Torres Strait Islander people;
- eliminating systemic racism; and
- achieving equal access to disability supports

Addressing these factors will contribute to reducing disproportionate rates of violence and imprisonment affecting Aboriginal and Torres Strait Islander people, and will reinforce the justice targets recommended above. Change the Record also supports the recommendations for additional Closing the Gap targets in the Redfern Statement towards this end.⁷⁵

Targets to eliminate the disproportionate numbers of Aboriginal and Torres Strait Islander children in out-of-home care

The disproportionate and growing rates that Aboriginal and Torres Strait Islander children are taken into out-of-home care⁷⁶ are alarming. The link between out-of-home care and involvement in the justice system has been documented clearly by the Royal Commission into Protection and Detention of Children in the Northern Territory:

The life trajectory of children and young people in care and detention was repeated over and over. The Commission was told about children born to families in crisis, struggling with addictions, mental health issues, domestic violence and the many challenges of poverty.

Instead of receiving the support those families needed to care for their children we heard of removal from the family and often from the community. Once in the child protection system we heard of inappropriate placements, dislocation from community and culture and a lack of support or follow through to address the trauma so many children had suffered in their young lives. As children absconded from places where they did not feel at home or where they felt unsafe and lonely or to be with other children who had become their family, the next step was contact with the criminal justice system and ultimately detention. That is not, of course, the story of all children in care but it was certainly the story of most children in detention.⁷⁷

Furthermore, on the basis of the strong link between child protection contact and subsequent child and adult imprisonment, the ALRC recommended a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children.⁷⁸

Aboriginal and Torres Strait Islander children deserve to grow up safely within their families and communities.

Change the Record supports the Family Matters Campaign aims to make sure that all Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture. The Family Matters Campaign supports the following target to close the gap in rates of Aboriginal and Torres Strait Islander children removed into out-of-home care:

To eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040.⁷⁹

Reducing the rates of Aboriginal and Torres Strait Islander children taken into out-of-home care needs to occur alongside measures to support Aboriginal and Torres Strait Islander parents, families and communities to ensure their children thrive. This includes access to culturally safe services, participation of Aboriginal and Torres Strait Islander people in decision-making, and accountability to Aboriginal and Torres Strait Islander people, as outlined in the *Family Matters Roadmap*.⁸⁰

Recommendations

5. That the Closing the Gap Strategy includes a target to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040.
6. That the Closing the Gap Strategy includes targets that address:
 - Housing and eliminating the disproportionate rates of homelessness experienced by Aboriginal and Torres Strait Islander people
 - Mental health and wellbeing, including access to healing and addressing trauma
 - Prevention of the disproportionately high rates of suicide affecting Aboriginal and Torres Strait Islander people
 - Eliminating systemic racism
 - Achieving equal access to disability supports

Resource Aboriginal and Torres Strait Islander Community Controlled Organisations to achieve national justice targets and monitor progress

The targets proposed by Change the Record to reduce imprisonment and violence rates are highly achievable through the Closing the Gap Strategy. A combination of investment in community-based solutions and law reform is essential to achieve these targets and deliver lasting benefits to the Australian community as a whole. The 'refresh' of the Closing the Gap Strategy offers an opportunity to pursue national, holistic, whole-of-government reforms through COAG which will address the causes of violence and over-imprisonment, and achieve change.

Shift resources to address the underlying drivers of disproportionate incarceration and violence against Aboriginal and Torres Strait Islander people

The Closing the Gap Strategy must include a resourcing plan for initiatives that address the underlying inequalities that drive the disproportionate imprisonment and violence rates that affect Aboriginal and Torres Strait Islander people. Resources need to be dedicated to initiatives to prevent violence and over-imprisonment, and the Closing the Gap Strategy should aim to shift resourcing in the long term from tertiary responses into addressing the underlying drivers.

Prisons are very costly, damaging and ultimately ineffective at reducing crime. The money spent on prisons subtracts from the funds available to invest in reducing social and economic disadvantage through education, health, disability, housing, and employment programs. The ALRC recommended

a justice reinvestment approach that shifts resources into preventative measures that address the underlying causes of over-imprisonment of Aboriginal and Torres Strait Islander people:

Justice reinvestment holds particular promise in addressing Aboriginal and Torres Strait Islander incarceration for at least two reasons. First, it has long been recognised that the key drivers of incarceration for Aboriginal and Torres Strait Islander people are external to the justice system, and justice reinvestment involves a commitment to invest in 'front-end' strategies to prevent criminalisation. Second, justice reinvestment, as a place-based approach, emphasises working in partnership with communities to develop and implement reforms, and thus accords with evidence that effective policy change to address Aboriginal and Torres Strait Islander disadvantage requires partnership with Aboriginal and Torres Strait Islander peoples.⁸¹

A primary prevention approach is needed to achieve long-term change that will prevent violence against women.⁸² However, Aboriginal and Torres Strait Islander Community Controlled Organisations are under-resourced to deliver culturally appropriate primary prevention programs within their communities. Justice reinvestment and primary prevention approaches require place-based and tailored initiatives, designed and delivered by Aboriginal and Torres Strait Islander Community Controlled Organisations.

Many of the initiatives needed are outlined in Change the Record's *Blueprint for Change*, and include:

- Provide national coverage commensurate to need for holistic, culturally strong and intensive family support services, including child support, legal and counselling services, to strengthen families before and on coming into contact with the child protection system.
- Support the development of holistic, integrated community-controlled early years' child and family services in all communities in need.
- Implement strategies that enable communities to develop and deliver their own holistic healing approaches to respond to the impacts of the intergenerational trauma experienced by many Aboriginal and Torres Strait Islander people.
- Invest in culturally safe and targeted early intervention and prevention strategies aimed at increasing safety and reducing the experience of violence, with a particular focus on supporting Aboriginal and Torres Strait Islander women and children.
- Increase access to culturally-appropriate early intervention programs including support and programs based on voluntary participation which address:
 - Family violence;
 - Voluntary drug and alcohol issues;
 - Mental health issues; and
 - Employment and training.
- Fund the development of culturally-appropriate early intervention and prevention programs targeted at women experiencing multiple needs (e.g. family violence, substance abuse and mental health issues).

It is imperative that the Closing the Gap Strategy provides Aboriginal and Torres Strait Islander Community Controlled Organisations with additional capacity to deliver justice reinvestment, primary prevention and early intervention initiatives that will transform the underlying drivers of over-imprisonment and violence affecting Aboriginal and Torres Strait Islander people. This requires specific resourcing for these initiatives.

Recommendation

7. That the Closing the Gap Strategy provides dedicated resources to Aboriginal and Torres Strait Islander Community Controlled Organisations to deliver prevention, early intervention, and justice reinvestment initiatives.

Lead systemic reforms and provide holistic support to end disproportionate violence and imprisonment

Community-led holistic support is vital to reducing the disproportionately high rates of violence and disproportionate imprisonment experienced by Aboriginal and Torres Strait Islander people. There is an opportunity under Closing the Gap for national coordination to ensure targets are achieved through a number of vital measures to address systemic gaps and meet holistic needs of Aboriginal and Torres Strait Islander people affected by imprisonment and violence, including:

- national implementation of law reforms to prevent avoidable and unnecessary imprisonment of Aboriginal and Torres Strait Islander people;
- access to culturally safe and holistic support programs during and after contact with the justice system
- availability of culturally appropriate diversion programs that address the needs of Aboriginal and Torres Strait Islander people who do not have access to these programs, including women, children and people with disability
- implementation of community-based justice approaches in each jurisdiction, such as Koori, Nunga and Murri courts, culturally competent drugs courts and healing circles
- strategies to improve police responses to Aboriginal and Torres Strait Islander people, and ensure independent police accountability processes
- access to safe housing options and specialised homelessness support for Aboriginal and Torres Strait Islander women
- availability of culturally safe and tailored men's behaviour change programs.

A national approach through COAG to implement the recommendations in ALRC's *Pathways to Justice* Report is a key first step to ensure law reforms that will reduce over-imprisonment of Aboriginal and Torres Strait Islander people. A national approach to reduce the disproportionate imprisonment of Aboriginal and Torres Strait Islander children, through implementing the recommendations of *Free to be Kids: National Plan of Action*, is also vital. Commitments on reducing violence against Aboriginal and Torres Strait Islander women and their children under the *National Plan of Action to Reduce Violence Against Women and their Children* are a useful starting point, however it is critical to ensure that Aboriginal and Torres Strait Islander communities have greater access to support.

Recommendation

8. That measures to address systemic gaps and meet holistic needs of Aboriginal and Torres Strait Islander people affected by imprisonment and violence are included in plans to implement the Closing the Gap Strategy.
9. That the Federal Government leads a strategy through COAG to implement:
 - Recommendations of the ALRC's *Pathways to Justice* Report
 - A national plan of action on youth justice
 - Specialised and culturally safe programs to address violence against Aboriginal and Torres Strait Islander women and their children.

Promote access to justice through culturally appropriate Aboriginal and Torres Strait Islander Community Controlled Legal Services

The legal system is complex, paternalistic and alienating for many Aboriginal and Torres Strait Islander people, who face a multitude of barriers to accessing justice, resulting in poorer justice outcomes. It is imperative that Aboriginal and Torres Strait Islander people are able to access culturally safe and gender-sensitive legal services to address the systemic factors that inhibit equitable justice outcomes.

Aboriginal and Torres Strait Islander people face significant unmet legal need in relation to a broad range of legal matters, which affect other social determinants of health. The lack of funding for legal support for civil and family law issues impacts on Aboriginal and Torres Strait Islander people's circumstances and often exacerbates criminogenic needs. For example, lack of legal assistance with tenancy matters can result in an Aboriginal person and their family becoming homeless, which in turn leads to breaches of bail conditions and/or minor offending.

Aboriginal and Torres Strait Islander community controlled legal services use cultural strengths and play a crucial role in building the capacity of individuals, families and communities – a key determinant in preventing violence, reducing offending, dismantling barriers to justice and reducing social isolation.

There are a number of Aboriginal and Torres Strait Islander community controlled legal services around Australia, including:

- Aboriginal and Torres Strait Islander Legal Services (ATSILS) who bring together over 40 years' experience in providing legal and wraparound services in relation to criminal law, child protection, victims of crime compensation, family law, housing, racial discrimination and other civil law services.
- Aboriginal Family Violence Prevention Legal Services (FVPLSs) who provide holistic and specialist assistance for victim/survivors of family violence and sexual assault with family violence, child protection, family law and victims of crime compensation matters.

Many services also provide wrap around support, in response to the broad and inter-related needs of Aboriginal and Torres Strait Islander communities. Aboriginal and Torres Strait Islander Community Controlled legal services provide services such as social work, financial counselling, early intervention, prevention and community legal education programs, to enable more holistic support for their clients.

These services are insufficiently funded to meet demand. Some FVPLS's report being forced to turn away 30-40 per cent of those seeking assistance nationally, most of whom are women. ATSILS deliver legal assistance over 200,000 times per year but are forced to turn many people away at a time when the need for their services is at crisis levels.

The failure of successive governments to sustainably fund Aboriginal and Torres Strait Islander community controlled legal services reflects the gross inequality in our legal system that contributes to over-imprisonment and continuing disproportionate violence experienced by Aboriginal and Torres Strait Islander people. It is critical to ensure that Aboriginal and Torres Strait Islander community controlled legal services are supported and strengthened under Closing the Gap.

Regularly threatened and actual funding cuts, such as the Federal Government's ongoing savings measure from the 2013 Mid-Year Economic and Fiscal Outlook, results in future funding uncertainty. This inhibits long term planning to meet the legal needs of Aboriginal and Torres Strait Islander people.

A 2016 Senate inquiry into Aboriginal and Torres Strait Islander people's experiences of law enforcement and justice services heard 'overwhelming evidence about the legal needs of Aboriginal and Torres Strait Islander people which are not being met' and that there is inadequate funding for legal services for Aboriginal and Torres Strait Islander people.⁸³

Despite the critical need and rising demand for ATSILS services, the amount of real funding provided to the ATSILS has been declining since 2013, while the cost of providing services has risen. ATSILS will be subject to funding cuts from 2020 as a result of the Government's 2013 ongoing savings measure despite the restoration of funding cuts to ATSILS of \$16.7 million over the 3 years of forward estimates in the 2017-18 Federal Budget. These cuts will have a major impact on highly vulnerable Aboriginal and Torres Strait Islander peoples and impact upon the ability of ATSILS to deliver services that ensure Aboriginal and Torres Strait Islander people are equal before the law and have access to a fair trial.

FVPLS funding levels are currently frozen at 2013-14 levels until 2020. The absence of CPI increases over this period results in a cumulative loss of approximately \$9.7 million dollars. The lack of CPI increases across programs funded under the Indigenous Advancement Strategy has significant implications for the operation of Aboriginal Community Controlled Organisations such as FVPLS, including challenges in meeting increasing in operational costs such as rent and preventing our organisations from being competitive with salaries for the employment and retention of staff to keep people in the sector. Reinstating the National FVPLS Program with a direct allocation of funding will demonstrate a strong commitment from the Federal Government to the value and importance of the FVPLS model and provide greater transparency and certainty of funding for the FVPLSs into the future.

Recommendation

10. That the Federal government, together with State and Territory governments, ensures sufficient and sustainable funding for Aboriginal and Torres Strait Islander Community Controlled Legal Services by:
 - permanently reversing planned funding cuts to the Aboriginal and Torres Strait Islander Legal Services
 - ensuring CPI increases are included in funding for programs under the Indigenous Advancement Strategy

- reinstating the National FVPLS Program with direct allocation of funding
- adequately and sustainably funding ATSILS and FVPLSs to:
 - meet existing demand for services, including culturally-safe specialist prevention and early intervention programs;
 - address unmet legal need regardless of geographic location; and
 - develop models of specialist targeted support for both men and women
- utilising long-term flexible funding models to resource Aboriginal and Torres Strait Islander Community Controlled legal services.

Use evidence to promote success

Discussion paper question: How could the Closing the Gap targets better measure what is working and what is not?

Establish an independent central agency to co-ordinate comprehensive national data collection and policy development

Government must establish, or task, an appropriately qualified independent, Aboriginal and Torres Strait Islander led agency to coordinate a national approach to data collection and policy development relating to Aboriginal and Torres Strait Islander people. This agency should have Aboriginal and Torres Strait Islander oversight and leadership.

This agency must support Aboriginal and Torres Strait Islander communities to define the parameters of data collection, including collection processes, data content, and measures of success, and reporting. These must reflect what is meaningful and significant to Aboriginal and Torres Strait Islander communities.

To ensure that Closing the Gap supports Aboriginal and Torres Strait Islander communities' goals, this agency should collaborate with and resource Aboriginal and Torres Strait Islander Community Controlled Organisations to conduct data collection in support of rigorous evaluation against the Closing the Gap targets. This body would be responsible for identifying and addressing gaps in the collection of standard and disaggregated data related to Aboriginal and Torres Strait Islander people's contact with the justice system. The body would also assist State and Territory governments to report against the Closing the Gap Strategy.

In developing such a coordinating body Australia should learn from the experience of bodies such as the US Council of State Government's Justice Centre,⁸⁴ the UK Justice Data Lab⁸⁵ and the Norwegian National Crime Prevention Model which have supported evidence-driven approaches to justice reinvestment.⁸⁶

Recommendation

11. That the Federal Government establishes an independent, Aboriginal and Torres Strait Islander led agency to coordinate a national approach to data collection and policy development relating to Aboriginal and Torres Strait Islander people.

Intersectional analysis of progress

As discussed below in this submission, Aboriginal and Torres Strait Islander people face multiple, compounding disadvantages, arising from systemic barriers and historical processes. There are

multiple barriers in the justice system that affect Aboriginal and Torres Strait Islander people in a range of circumstances, for example the disproportionately high numbers of Aboriginal and Torres Strait Islander people with disability involved in the justice system. A major gap in available data on the justice system is the capacity to disaggregate data by gender, age, disability, and a range of other factors. The absence of data on these intersectional factors limits the responsiveness of justice system agencies to Aboriginal and Torres Strait Islander people's broad range of needs. For example, there is no disaggregated data on perpetrators of violence against Aboriginal and Torres Strait Islander women.

The Closing the Gap Strategy must be effective across the range of needs and disadvantaged circumstances faced by Aboriginal and Torres Strait Islander people, which can be complicated by factors related to gender, disability, age, remoteness, language, and sexuality. The collection and use of data and evidence needs to support responsiveness through reporting of disaggregated data on outcomes for Aboriginal and Torres Strait Islander people in a range of circumstances, including:

- women;
- men;
- children and young people;
- people living in rural, regional and remote areas;
- people with disability;
- people who do not speak English as a first language;
- members of the Stolen Generation; and
- lesbian, gay, bisexual, transgender and intersex people.

The priorities for data collection and reporting on these multiple factors must be defined by Aboriginal and Torres Strait Islander Community Controlled Organisations, as recommended above.

Recommendation

12. That the Closing the Gap Strategy monitors and evaluates progress utilising a framework that
 - addresses intersectional factors
 - disaggregates data on the range of needs and circumstances of Aboriginal and Torres Strait Islander people
 - supports specific initiatives to meet these needs where required.

References

- ¹ Available at: <https://changetherecord.org.au/blog/news/closing-the-gap-on-indigenous-incarceration-could-save-almost-19bn-in-2040>
- ² Available at: <https://changetherecord.org.au/blog/news/new-report-launched-to-address-skyrocketing-aboriginal-and-torres-strait-islander-womens-imprisonment-rates>
- ³ Available at: <https://changetherecord.org.au/blog/news/a-plan-to-transform-the-justice-system-for-aboriginal-and-torres-strait-islander-children>
- ⁴ AIHW (2018), *Closing the Gap targets: 2017 analysis of progress and key drivers of change*, Cat. no. IHW 193, Canberra: AIHW, Op. Cit., p. 11.
- ⁵ Dick, Darren (2007) 'Social determinants and the health of Indigenous peoples in Australia – a human rights based approach', paper presented at International Symposium on the Social Determinants of Indigenous Health, Adelaide, 29-30 April 2007.
- ⁶ See Volume 2 of the National Report of the Royal Commission into Aboriginal Deaths in Custody (1991) for a discussion of the ongoing effects of historical injustice on the rates of Aboriginal and Torres Strait Islander incarceration.
See Cripps, K., and Adams, M. (2014) 'Chapter 23: Indigenous family violence: Pathways forward'. In R. Walker, P. Dudgeon and H Milroy (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, Canberra: Department of Prime Minister and Cabinet, p.405.
- ⁷ Australian Bureau of Statistics (2016) *4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2014-15*, available at: <http://abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4714.0~2014-15-Main%20Features~Safety,%20law%20and%20justice~8>
- ⁸ SCRGSP (Steering Committee for the Review of Government Service Provision) (2016) *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, Table 4A.12.17.
- ⁹ Australian Health Ministers' Advisory Council (2017) *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report*, AHMAC, Canberra.
- ¹⁰ Ibid., Table 4A.12.13.
- ¹¹ AIHW: Al-Yaman F, Van Doeland M & Wallis M (2006) *Family violence among Aboriginal and Torres Strait Islander peoples*, Cat. no. IHW 17, Canberra: AIHW, p. 66, available at: <http://www.aihw.gov.au/publication-detail/?id=6442467912>
- ¹² Mouzos J & Makkai T (2004) *Women's experiences of male violence: findings from the Australian component of the International Violence Against Women Survey (IWAWS)*, Research and public policy series No. 56, Canberra: Australian Institute of Criminology, p. 30, available at: <https://aic.gov.au/publications/rpp/rpp56>
- ¹³ Australian Institute of Health and Welfare (2018) *Family, domestic and sexual violence in Australia 2018*, Cat. no. FDV 2. Canberra: AIHW, p. 96, available at: <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/contents/table-of-contents>
- ¹⁴ Zubrick, S.R., Dudgeon, P., Gee, G., Glaskin, B., Kelly, K., Paradies, Y., Scrine, C. & Walker, R. (2010) 'Social Determinants of Aboriginal and Torres Strait Islander Social and Emotional Wellbeing' in Purdie, N., Dudgeon, P. & Walker, R., *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, Australian Government Publisher, Canberra, pp. 75-90.
- ¹⁵ National Aboriginal and Torres Strait Islander Legal Services, National Family Violence Prevention Legal Services, SNAICC-National Voice for Our Children (2017) *Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander children and families*, Policy Paper, Melbourne, September, p. 6, available at: http://www.nationalfvpls.org/images/files/SNAICC-NATSILS-NFVPLS_Strong_Families_Safe_Kids-Sep_2017.pdf
- ¹⁶ Djirra (formerly the Aboriginal Family Violence Prevention Legal Service Victoria) (2015) *Submission to the Royal Commission into Family Violence*, Melbourne, p. 23.
- ¹⁷ While data are not available on the Aboriginal and Torres Strait Islander status of perpetrators of violence against Aboriginal and Torres Strait Islander women and children, nationally, nearly 60% of Aboriginal and Torres Strait Islander women have a non-Indigenous partner:
See Biddle, N. (2013) *Indigenous and Non-Indigenous Marriage Partnerships*, CAEPR Indigenous Population Project, 2011 Census Papers, Paper 15, available at:

http://caepr.anu.edu.au/sites/default/files/cck_indigenous_outcomes/2013/11/2011CensusPaper_15.pdf

¹⁸ National Aboriginal and Torres Strait Islander Legal Services, National Family Violence Prevention Legal Services, SNAICC-National Voice for Our Children (2017) *Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander children and families*, Policy Paper, Melbourne, September, p. 6, available at: http://www.nationalfvpls.org/images/files/SNAICC-NATSILS-NFVPLS_Strong_Families_Safe_Kids-Sep_2017.pdf

Aboriginal and Torres Strait Islander Social Justice Commissioner (2009) *Social Justice Report 2008*, Australian Human Rights Commission Social Justice Unit, Sydney, pp. 155-6.

¹⁹ Cripps, K. & Adams, M. (2014) 'Chapter 23: Indigenous family violence: Pathways forward'. In R. Walker, P. Dudgeon and H Milroy (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, Canberra, Department of Prime Minister and Cabinet, p. 405.

²⁰ Australian Human Rights Commission (1997) *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Sydney, April, Part 3: Consequences of Removal.

Royal Commission into Institutional Responses to Child Sexual Abuse (2017) *Final Report*, Volume 12: Contemporary out-of-home care, Ch.4, p. 217.

²¹ Australian Law Reform Commission (2018) *Pathways to Justice-An Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples: Final Report*, No. 133, Canberra, p. 22.

²² Australian Law Reform Commission (2018) *Pathways to Justice-An Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples: Final Report*, No. 133, Canberra.

²³ Royal Commission into Aboriginal Deaths in Custody (1991) *National Report*, Volume 1, 1.7.1.

²⁴ ALRC (2018), Op. Cit., pp. 56-61.

²⁵ National Aboriginal and Torres Strait Islander Legal Services (2017) *Submission to the Australian Law Reform Commission's Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander peoples*, September, p. 78.

²⁶ Vivian, A. & Schneirer, E. (2010) *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge*, Jumbunna Indigenous House of Learning, University of Technology, Sydney, pp. 15-17.

Vivian, A. & Priest, T. (2012) *Factors affecting crime rates in Indigenous communities in NSW: Kempsey and Gunnedah*, Jumbunna Indigenous House of Learning, University of Technology, Sydney, pp. 24-26.

²⁷ AHMAC (2017), Op. Cit., 2.11.

²⁸ Ibid.

²⁹ Department of Premier and Cabinet (2006) *Growing Victoria Together Progress Report, 2005-06*, pp. 358-359.

³⁰ Ogloff, J. et al (2007) 'The Identification of Mental Disorders in the Criminal Justice System', Australian Institute of Criminology, March 2007.

³¹ Department of Justice (2011) *Acquired Brain Injury in the Victorian Prison System*, p. 6.

³² AHMAC (2017) Op. Cit., 2.11.

³³ Human Rights Law Centre & Change the Record (2017) *Over-represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Over-Imprisonment*, Melbourne, pp. 17-18.

³⁴ PwC, PIC, KGI, Richmond FC, CTR (2017), Op. Cit., p. 6.

³⁵ ALRC (2018), Op. Cit., pp. 64-70.

³⁶ Human Rights Watch (2018) *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, p. 22.

³⁷ Ibid, p. 25.

³⁸ Australian Institute of Health and Welfare (AIHW) (2018) *Closing the Gap targets: 2017 analysis of progress and key drivers of change*, Cat. no. IHW 193, Canberra: AIHW, p. 8.

³⁹ Australian Health Ministers' Advisory Council (AHMAC) (2017) *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report*, AHMAC, Canberra.

⁴⁰ AIHW (2018), *Closing the Gap targets: 2017 analysis of progress and key drivers of change*, Cat. no. IHW 193, Canberra: AIHW, Op. Cit., pp. 9-10, 58, 213.

⁴¹ AIHW (2018), *Closing the Gap targets: 2017 analysis of progress and key drivers of change*, Cat. no. IHW 193, Canberra: AIHW, Op. Cit., p. 11.

⁴² PricewaterhouseCoopers, PwC Indigenous Consulting, Korin Gamadji Institute, Richmond FC & Change the Record (2017), Op. Cit.

⁴³ Ibid., p.28.

⁴⁴ **National Council to Reduce Violence Against Women and their Children (2009) *The Cost of Violence Against Women and their Children*, Canberra, p. 9. Available at:**

https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf

⁴⁵ Brandis, George QC (2016) 'Consultation opens for Inquiry into the Incarceration Rate of Indigenous Australians', Media Release, 6 November 2016, available at:

<http://pandora.nla.gov.au/pan/21248/20170501-0114/www.attorneygeneral.gov.au/Mediareleases/Pages/2016/FourthQuarter/Consultation-opens-for-inquiry-into-the-incarceration-rate-of-indigenous-australians.html>

⁴⁶ Brandis, George QC (2017) 'Commissioner appointed and Terms of Reference released for ALRC inquiry into incarceration rate of Indigenous Australians', Media Release, 10 February 2017, available at:

<http://pandora.nla.gov.au/pan/21248/20170501-0114/www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Commissioner-appointed-and-terms-of-reference-released-for-ALRC-inquiry-into-incarceration-rate-of-indigenous-australians.html>

⁴⁷ ALRC (2018) Op. Cit., p 495.

⁴⁸ Ibid., p. 498-99.

⁴⁹ Redfern Statement Alliance, National Family Violence Prevention and Legal Services Forum, National Aboriginal and Torres Strait Islander Legal Services, National Congress of Australia's First Peoples (2017) *Redfern Statement Joint Communiqué: Preventing Violence and Justice Workshop*, 27 June.

⁵⁰ See COAG (2008) *Close the Gap Statement of Intent*, signed by the Prime Minister and all First Ministers.

⁵¹ AHMAC (2017), Op. Cit.

⁵² ALRC (2018) Op. Cit., p. 496.

⁵³ PricewaterhouseCoopers, PwC Indigenous Consulting, Korin Gamadji Institute, Richmond FC & Change the Record (2017) *Indigenous Incarceration: Unlock the Facts*, Melbourne, pp. 31-33.

⁵⁴ Human Rights Law Centre & Change the Record (2017) *Over-represented and overlooked: The crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, Melbourne.

⁵⁵ AIHW (2018), *Closing the Gap targets: 2017 analysis of progress and key drivers of change*, Cat. no. IHW 193, Canberra: AIHW, Op. Cit., pp. 9-10, 58, 213.

⁵⁶ SCRGSP (Steering Committee for the Review of Government Service Provision) (2003) *Overcoming Indigenous Disadvantage: Key Indicators 2003*, Productivity Commission, Canberra, Ch. 2.

⁵⁷ PwC, PIC, Korin Gamadji Institute, Richmond FC & Change the Record (2017) Op. Cit., pp. 117-118.

⁵⁸ Kirsten Gray, Tristan Tipps-Webster, Roxanne Moore, Emilie Priday, Andy Gargett, & Darren Dick (2014) *Social Justice and Native Title Report 2014*, Australian Human Rights Commission, Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney NSW, p. 118.

⁵⁹ ALRC (2018) Op. Cit., pp. 131-132.

⁶⁰ Ibid, p. 505.

⁶¹ https://assets.justice.vic.gov.au/justice/resources/f4b38365-f9bc-48ef-bf3e-47ac8e6149de/aja3_web.pdf

⁶² The Declaration: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁶³ Available at: <http://nationalcongress.com.au/redfern-statement/>

⁶⁴ Redfern Statement Alliance, National Family Violence Prevention and Legal Services Forum, National Aboriginal and Torres Strait Islander Legal Services, National Congress of Australia's First Peoples (2017) *Redfern Statement Joint Communiqué: Preventing Violence and Justice Workshop*, 27 June.

⁶⁵ The Declaration: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁶⁶ Dick, Darren (2007) Op. Cit.

⁶⁷ ALRC (2018), Op. Cit., p. 497.

⁶⁸ Royal Commission into Aboriginal Deaths in Custody (1991) *National Report*, Volume 2, Chapter 11

⁶⁹ ALRC (2018) Op. cit., pp. 73-77.

⁷⁰ Ibid.

⁷¹ Aboriginal Family Violence Prevention Legal Service Victoria (2015) *Submission to the Victorian Royal Commission into Family Violence*, Melbourne, June, p. 23.

- Prentice, Kathy, Blair, Barbara & O'Mullan, Cathy (2016) 'Sexual and Family Violence: Overcoming Barriers to Service Access for Aboriginal and Torres Strait Islander Clients' in *Australian Social Work*, 26 July.
- Adams, Rene & Hunter, Yasmin (2007) 'Surviving Justice: Family Violence, Sexual Assault and Child Sexual Assault in Remote Aboriginal Communities in NSW' in *Indigenous Law Bulletin*, Vol. 64, No. 7(1).
- ⁷² ALRC (2018), Op. Cit., Ch. 4: Justice Reinvestment.
- ⁷³ Closing the Gap Clearinghouse (2016) *Family violence prevention programs in Indigenous communities*, Cat. no: IHW 173, p. 15.
- Olsen, A. & Lovett R. (2016) *Existing knowledge, practice and responses to violence against women in Australian Indigenous communities: State of knowledge paper*, for Australian National Research Organisation for Women's Safety, Sydney, January, pp. 57-63.
- ⁷⁴ Australian Government (2009) *Closing the Gap on Indigenous Disadvantage: The Challenge for Australia*, Canberra.
- ⁷⁵ Redfern Statement Alliance (2016) *The Redfern Statement*, Sydney, 9 June, p. 5.
- See also Redfern Statement Alliance, National Family Violence Prevention and Legal Services Forum, National Aboriginal and Torres Strait Islander Legal Services, National Congress of Australia's First Peoples (2017) *Redfern Statement Joint Communiqué: Preventing Violence and Justice Workshop*, 27 June.
- ⁷⁶ SCRGSP (Steering Committee for the Review of Government Service Provision) 2016, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, pp. 4.92-4.93.
- ⁷⁷ (2017) *Final Report*, Volume 1, pp. 9-10.
- ⁷⁸ ALRC (2018) Op. Cit., Ch. 15, Recommendation 15-1.
- ⁷⁹ SNAICC – National Voice for Our Children (2016) *Family Matters Roadmap*, Melbourne, available at: <http://www.familymatters.org.au/wp-content/uploads/2016/11/TheFamilyMattersRoadmap.pdf>
- ⁸⁰ (2017) available at: <http://www.familymatters.org.au/the-solutions/>
- ⁸¹ Ibid, p. 126.
- ⁸² See Our Watch, VicHealth & ANROWS (2015) *Change the Story: A Shared Framework for Preventing Violence Against Women and their Children in Australia*, Melbourne.
- ⁸³ Senate Finance and Public Administration Committee, Parliament of Australia (2016) *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services*, Canberra, p. 25 [3.2].
- ⁸⁴ The Council of State Governments Justice Center provides US policy makers with 'practical nonpartisan advice to increase public safety and strengthen communities': Justice Center (2017) 'The Council of State governments: Collaborative approaches to Public safety', CSG Justice Center, available at: <http://csgjusticecenter.org/jr>
- ⁸⁵ See Ministry of Justice (2016) *Accessing the Justice Data Lab service*, United Kingdom Government, 13 June, available at: <https://www.gov.uk/government/publications/justice-data-lab>
- ⁸⁶ See National Crime Prevention Council (2017) 'National Crime Prevention Council Philosophy', at <http://www.ncpc.org/about/philosophy>