



**Tasmanian Aboriginal Legal Service (“TALS”)
Written Submission: Inquiry into Tasmanian Adult
Imprisonment and Youth Detention Matters**

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BACKGROUND

The Tasmanian Aboriginal Legal Service (“TALS”) welcomes the opportunity to provide feedback in relation to the *Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters*.

The Tasmanian Aboriginal Legal Service (TALS) is a member-based, independent, not-for-profit community legal centre that specialises in the provision of criminal, civil and family law legal information, advice, and representation for Aboriginal and Torres Strait Islander peoples across Tasmania. We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

TALS provides culturally safe, holistic, and appropriate services that are inclusive and open to all Aboriginal Tasmanians. We understand that the most vulnerable people needing access to legal assistance are often also those who face the most difficulties asking for help, and we work hard to ensure everyone can access our services within and outside of traditional legal settings. We also are an advocate for law reform and for justice, equality, and human rights for all Aboriginal and Torres Strait Islander peoples in Tasmania. Our goal is to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade.

In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people.

Imprisonment in Tasmania – Current Situation

The prison population comes from disproportionately disadvantaged backgrounds compared to the general population. Factors such as poor health, unemployment, limited education, intergenerational incarceration, previous imprisonment, substance abuse and mental illness are considered to be risk factors correlated with imprisonment.¹ Aboriginal and Torres Strait Islander are the most incarcerated population nationally making up 29% of the prison population, despite comprising 3% of the population.² In Tasmania, Aboriginal people make up 23% of the prison population compared to 5 per cent of the wider boarder Tasmanian population.³

In 2022, the Tasmanian Aboriginal Legal Service provided a written submission into the *Draft Youth Justice Blueprint 2022*. Outlined in this submission was the alarming number of Tasmanian Aboriginal children and young people, who make up approximately 10% of Tasmanian children and young people, made up 34% of the children and young people under the supervision of the youth justice system.⁴ They made up 39% of Tasmanian children and young people in detention.⁵ Between 2010 and 2021 the rate of incarcerating young Aboriginal children and youth compared to their counterparts was 6.6% higher.

The latest data released by the Productivity Commission showed that the number of Aboriginal people in Tasmanian prisons has doubled in the past decade.⁶ The higher prevalence of risk factors among Aboriginal people stems in part from experiences of dispossession, forced removal, intergenerational trauma, and racism.⁷ Systemic underlying disadvantage create a complex intersectionality of causes that lead to Aboriginal peoples over incarceration.

¹ SCRGSP (Steering Committee for the Review of Government Service Provision) 2010, Report on Government Services 2010, Indigenous Compendium, Productivity Commission, Canberra, 2020b, Overcoming Indigenous Disadvantage: Key Indicators 2020, Productivity Commission, Canberra.

² ABS (Australian Bureau of Statistics) 2020b, Prisoners in Australia, 2020, ABS, Canberra, SCRGSP (Steering Committee for the Review of Government Service Provision) 2010, Report on Government Services 2010, Indigenous Compendium, Productivity Commission, Canberra, 2020b, Overcoming Indigenous Disadvantage: Key Indicators 2020, Productivity Commission, Canberra.

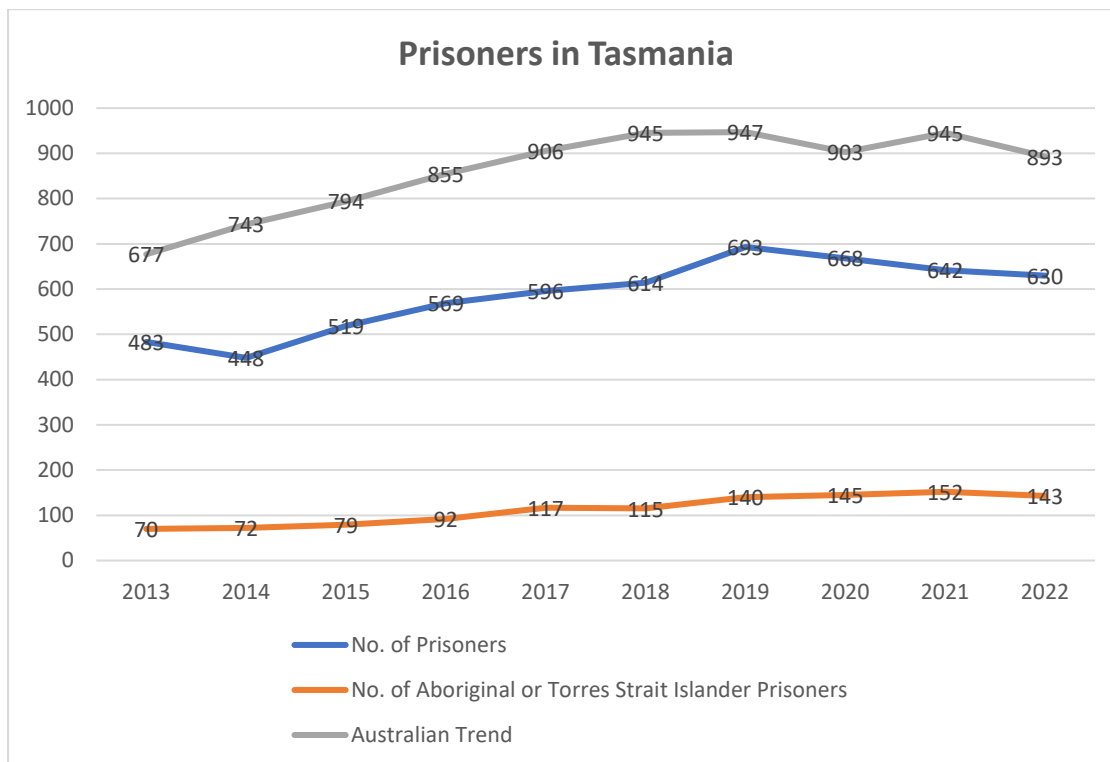
³ See, ABS (Australian Bureau of Statistics), Prisoners in Australia Table 14.

⁴ <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data>, Table S136a.

⁵ <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data>, Table S136c

⁶ Productivity Commission, Report on Government Services 2023 – Part C Justice (Australian Government: 2023), Table 8A.4 and 8A.6.

⁷ Ibid.



Source: Australian Bureau of Statistics, *Prisoners in Australia, 2022*, Table 14.

Factors influencing increases in Tasmania’s prisoner population and associated costs;

Social and economic factors are one of the most significant contributing factors that places Aboriginal people in a position of disadvantage in the wider community. There is a critical need for a holistic therapeutic approach to address the combined impacts of the underlying social, cultural, and legal factors leading to over-representation. This submission will briefly outline some of the key drivers that lead to or increase the likelihood of the incarceration of Aboriginal people in Tasmania.

Poverty – Disadvantage

There is a strong link between intergenerational disadvantage, poverty, and incarceration. Material poverty, or limited access to basic social needs and services can all lead to increased rates of incarceration. “Social exclusion post-release can impact recidivism, with remote communities having limited access to appropriate community support programs and rehabilitation services”.⁸ Aboriginal people are experiencing poverty in relation to access to basic necessities.

TALS clients have experienced difficulty in meeting their bail and corrections requirements due to their geographic location. TALS have seen the direct impact of poverty and social isolation on Aboriginal community members. This includes not having enough money to attend a doctor to get medication or a

⁸ Ibid.

mental health care plan. The limited number of medical services who bulk bill is having an impact on the mental health and social isolation of community members. Clients who do not have a license, access to a vehicle particularly where there is the lack of public transport face further complications that can create inequities within the criminal justice process, including issues related to sentencing, court attendance and bail and parole conditions.

There are no specific Aboriginal bail support programs and limited Aboriginal specific programs to address offending. Only what is offered through community organisations, and at present these are limited as Aboriginal community members are unable to access them when they require assistance. Clients who are on the Court Mandated Diversion Program for example cannot afford to get to appointments, as they live remotely and the bus costs too much even using a concession card. This is untenable particularly for those community members who are in receipt of Centrelink payments. This situation leads to further offending, or a sense of hopelessness in being able to change ones position. Often sentencing options particularly court mandated sentences are not offered in rural and remote areas. They do not consider the circumstances of the individual or provide any flexibility. For example, those having to attend drug testing are often required to travel to other locations approximately an hour away from their place of residence, despite having their local Aboriginal community organisations in close proximity who with financial support could assist with the testing/appointments.

TALS submission into the Tasmanian Government discussion paper, *'Reforming Tasmania's Youth Justice System: A pathway for improving outcomes across the youth justice support continuum'* outlined some of the children who faced court due to their financial and need for basic necessities.⁹ TALS expressed concern at the staggering number of children who face the court who advise the Magistrate that they stole something to eat, or they trespassed, so they had somewhere to sleep. These matters were not diverted away due to often an escalating number of offences.

One example provided by TALS was a client at age 15 was once prosecuted for stealing a pregnancy test. Another was charged with stealing lubricant and condoms, and it is now known due to a Supreme Court matter, that this young female was being sexually abused at the time by a much older male. Child Safety were aware at the time that she was spending time with this male, but there was a complete lack of communication leading to the young person being charged with the stealing offence.

TALS are aware and have continued to raise the issue of young people who are charged with breaching bail when they do not come to court, often they do not have a telephone, stable accommodation or transport. There are also additional pressures placed on Aboriginal young people on bail when cultural

⁹ <https://tals.net.au/uploads/general/TALS-Youth-Justice-Blueprint-Submission.pdf>

responsibilities, like sorry business and ceremony are not protected by legislation. These are situations that clearly show how the social needs of young people are not met with humanity or understanding rather they are met with a criminal justice response. These missed opportunities only heighten the risk of the young person coming into contact with the criminal justice system again. The absence of adequate support, individuals may experience social exclusion caused by stigma, limited access to education, training and employment opportunities, and limited access to substance abuse treatment programs.¹⁰

Disability

Tasmania does not make proper provision for persons who are interviewed by Tasmania Police unlike other jurisdictions. There is limited independent protection to assess a person's capacity prior to interview with police.¹¹ Aboriginal people with cognitive impairments are more likely to come into contact with police earlier and more frequently than their non-Aboriginal counterparts. The Australian Centre for Disability Law advised the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability that 95% of Aboriginal people appearing in court charged with a criminal offence have an intellectual disability, cognitive impairment, or mental illness.¹²

Many incarcerated people have both diagnosed and undiagnosed disabilities. Tasmania is no exception, which makes the provision of healthcare in prisons an urgent matter for the state. The same is generally observed in youth detention settings,¹³ though data in Australia is more limited.¹⁴ Existing evidence indicates that the health needs of incarcerated adolescents are greater than those in non-custodial settings.¹⁵ One of the most common disabilities within Aboriginal prison populations are acquired brain injuries often due to Foetal Alcohol Syndrome Disorders (FASD), which is 4 x more likely in Aboriginal children. In 2018, the Australian Institute of Health and Welfare (AIHW) found 29% of Australia's prison population has a diagnosed disability, despite being only 18% of the general population.¹⁶ Despite this data there is a lack of appropriate supports available to persons in police custody or prison.

The Tasmanian Police Manual ss2.26.1 - 2.26¹⁷ outlines how police are to engage, interview and communicate with both offenders and victims who have a disability, impairment (such as a cognitive

¹⁰ Barrow Cadbury Commission 2005. Lost in transition: a report of the Barrow Cadbury Commission on young and the criminal justice system. London: Barrow Cadbury Trust, www.t2a.org.uk/wp-content/uploads/2016/02/Lost-in-Transition.pdf. Accessed January 2017.

¹¹ The Justice Project, Final Report – Part 1, People with Disability, Law Council of Australia August 2018, page 1470.

¹² <https://disabilitylaw.org.au/law-reform-and-submissions/>.

¹³ See American Academy of Pediatrics. Policy Statement: Health Care for Youth in the Juvenile Justice System (2011), 1. Available at <http://yvpolicyportal.safestates.org/wp-content/uploads/2015/09/Health-Care-for-Youth.pdf>;

¹⁴ Australian Institute of Health and Welfare. National data on the health of justice-involved young people: A feasibility study, 2016-17 (2018), vi. Available at [https://www.aihw.gov.au/getmedia/4d24014b-dc78-4948-a9c4-6a80a91a3134/aihw-juv-125.pdf.aspx?inline=true](https://www.aihw.gov.au/getmedia/4d24014b-dc78-4948-a9c4-6a80a91a3134/aihw-juv-125.pdf.aspx?inline=true;);

¹⁵ The Royal Australasian College of Physicians. The health and Wellbeing of Adolescents (2011), 4, available at <https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf>;

¹⁶ Australian Institute of Health and Welfare. Australia's Health 2018. Canberra Australia: Australian Institute of Health and Welfare; 2018 Jun 20 [cited 2020 Apr 15]. Report No.: Australia's health series no. 16. AUS 221. Available from: <https://www.aihw.gov.au/reports/australias-health/australias-health-2018>.

¹⁷ See, <https://www.police.tas.gov.au/uploads/TPM-RTI-18-December-2018.pdf>.

impairment) and/or complex communication needs. However, these provisions do not ensure the protection of legal rights of persons with a disability during the initial stages of contact.¹⁸

The manual does not identify what supports should be sought. No two people with the same disability are alike and further it does not state what happens if a person with a disability does not have a support person or advocate. A disability can impact on an individual's capacity to engage, communicate, understand, and process information this does not mean they necessarily require an interpreter. People who experience disability are at greater risk of imprisonment due to perceived or actual difficulty in understanding interview processes and/or bail and corrections conditions. Whilst Magistrates have the power to defer sentence, there is a lack of court diversion programs to support individuals. They are required to source the support themselves. We also note there are no specific supports for Aboriginal people before the Court, other than what our service provides.

There is no independent process to ensure the legal protection of persons with disability both prior to and during the interview process with police. There should be an independent process such as Victoria's Independent Third Person Program¹⁹ implemented and legislative reform that requires Tasmanian Police to have an Independent Third Person (ITP) present when interviewing a person with a cognitive impairment or mental illness, irrespective of age.

Mental health

It has been well documented that poor mental health is associated with a greater risk of criminal justice system involvement. Poor mental health among children and young people, as well as among their parents or caregivers, is a key risk factor for Tasmanian Aboriginal children and young people's contact with the youth justice system.²⁰ In their 2017 report, PwC Indigenous Consulting (PwC) found 73 % of Aboriginal men and 86% of Aboriginal women in custody had been diagnosed with a severe mental health condition. Furthermore, 81% of Aboriginal youth in custody were found to have mental health conditions.²¹ This number has not declined. In 2020 the Productivity Commission report found the number of Aboriginal people who identified as having mental health issues ranged between 70-90%. This reported number was likely under-estimated due to the stigma within Aboriginal communities

¹⁸ Tasmania Police Manual, ss2.26.1- 2.26:

(5) If a person is identified as having a disability, appropriate assistance should be secured.

(6) Members should ask the person if they have an advocate or a support person. If so, endeavours must be made to contact that person.

(7) If the person has difficulty in communicating or comprehending speech, an interpreter should be arranged (if being interviewed as an offender, an independent interpreter should be sought).

¹⁹ OPA's Independent Third Persons (ITP) Program aims to support people with cognitive impairment and mental illness who are interviewed by Victoria Police.

²⁰ See, Addressing the unmet health needs of justice system-involved youth - The Lancet Public Health

²¹ PwC's Indigenous Consulting, Indigenous Incarceration: Unlock the Facts (2017) 23.

around mental health.²² The most recent data released from the Australian Bureau of Statistics found 13.3% of Aboriginal people nationwide have a mental health condition.²³

Housing

Substandard and inadequate housing can lead to poor health, which is an underlying cause of incarceration. Aboriginal families who struggle with stable accommodation and experience family breakdowns are more likely to have contact with the child safety system. Not having affordable, secure, and appropriate housing can further compound the social exclusion and disadvantage experienced by Aboriginal people. It is difficult for a person who has no housing and/or accommodation to apply for bail or parole.²⁴ Aboriginal children who have been involved in the child safety and/or out-of-home care systems are at greater risk of future justice system involvement. There is no Aboriginal crisis care accommodation, bail hostels and/or rehabilitation programs available for those leaving prison.

Between 2016 and 2021, in Tasmania the number of people who describe themselves as homeless jumped 44.8%. In 2018, the Australian Institute of Health and Welfare found that 33% of persons entering prison were homeless in the four weeks before entering prison, persons entering prison are 66 times more likely to be homeless than people in the general community, 28% were in short-term or emergency accommodation, and 5 per cent in unconventional housing or sleeping rough.²⁵ In 2021, Tasmania had the highest proportion of people staying temporarily with other households (25.0%).²⁶ Families are struggling to afford safe and secure accommodation which is significantly impacting in particular on young people. In 2021, 569 people aged 18 or under were homeless on census night, and 325 of those were children aged under 12 years.²⁷

There is a link between clients who struggle with substance issues and homelessness. In Tasmania in 2018-19, 13.2% of clients of homelessness services reported alcohol, tobacco and other drug use (ATOD) and one in ten people presenting to homelessness services reported having problematic ATOD-use issues. Clients with both ATOD and homelessness present at support services more frequently and for longer durations.²⁸

²² Productivity Commission, 2020, p.1017, Mental Health, Report no. 95, Canberra

²³ Australian Bureau of Statistics, Australia: Aboriginal and Torres Strait Islander population summary (9 April 2023), accessed at Australia: Aboriginal and Torres Strait Islander population summary | Australian Bureau of Statistics (abs.gov.au)

²⁴ <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>

²⁵ Particularly high rates of prior homelessness were recorded for persons entering prison who identified as Indigenous (43 per cent) and young adults (aged 18–24 years) (39 per cent): Ibid at 22. Commonwealth of Australia, The health of Australia's prisoners 2018 (Australian Institute of Health and Welfare: 2019).

²⁶ Australian Bureau of Statistics. (2021). Estimating Homelessness: Census. ABS. Substandard and inadequate housing can lead to poor health, which is also an underlying cause of incarceration, PwC's Indigenous Consulting, Indigenous Incarceration: Unlock the Facts (2017) 23.

<https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/2021>.

²⁷ Ibid.

²⁸ See, AIHW 2019, The health of Australia's prisoners 2018.

Substance abuse

High levels of substance use are reported among Aboriginal offenders. There is a greater complexity of issues facing Aboriginal people when they come into custody. Aboriginal peoples are more likely to have contact with police and are 1.5-3.8 times more likely to be under the influence of drugs and alcohol as non-Aboriginal counterparts. The PWC in their 2017 report found that 90% of all Aboriginal Prison entrants link their offending to their substance abuse.²⁹

In feedback into Tasmania's Draft Drug Strategy TALS stated that Aboriginal people were considered within the draft as an identified vulnerable cohort in community. The draft further acknowledged "cultural dislocation, personal trauma and ongoing stresses of disadvantage, racism, alienation, and exclusion can all contribute to heightened risk of ATOD use, as well as mental health problems and suicide. Aboriginal and Torres Strait Islander Peoples experience disproportionate harms from ATOD use, which can play a significant role in the disparities in health and life outcomes between Aboriginal and Torres Strait Islander Peoples and non-Indigenous people".³⁰ Tasmania's Draft Drug Strategy further noted prisoners are four times more likely than people in the general population to report illicit drug use (including use of illegal drugs and non-medical prescription medication and volatile substances). Despite the Tasmania Prison Service Director's Standing Order, (DSO) 2.12 relating to Aboriginal and Torres Strait Islander Prisoners section 13.6 states "TPS programs that reflect or take into account ATSI culture should be provided." Despite this there are a lack of cultural supports within the Tasmanian Prison System.

Child Safety

Children in the child safety system, particularly those in out-of-home care are at significantly higher risk of contact with the youth justice system.³¹ The rates of children in care for both Aboriginal and non-Aboriginal children have continued to increase since 2017.³² On an average day in 2020-2021, there were a daily average of 1080.9 children in out of home care in Tasmania. Thirty-nine per cent of these children were Aboriginal. Tasmania had the highest rate of children in care (as of June 2021) with a rate of 9.6/1000 children compared with the national average of 8.1/1000. The rate of Aboriginal children in care during this period was 5 times higher than their non-Aboriginal counterparts, with 3.4/1000 compared to 6.5/1000.³³

²⁹ PwC's Indigenous Consulting, Indigenous Incarceration: Unlock the Facts (2017) 23. <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>.

³⁰ Tasmanian Government, Department of Health, Draft Tasmanian Drug Strategy 2022-2027 (2022), p.13.

³¹ Australia's children, Children under youth justice supervision - Australian Institute of Health and Welfare (aihw.gov.au);

³² Commissioner for Children and Young People Tasmania, Monitoring Report No. 2: Key data on Tasmania's out-of-home care system, 2020-2021. <https://childcomm.tas.gov.au/resource/ccyp-data-monitoring-report-2020-2021/>

³³ Ibid.

Education

Disengaging from school and lack of educational attainment increase the risk of an individual committing an offence and becoming involved in the justice system. Target 9 for Closing the Gap looks at increasing the proportion of youth (aged 15-24) who are in employment, education, or training to 67% by 2031. TALS submission to the Youth Justice Blueprint Submission noted that whilst the outcomes for this Closing the Gap target arguably will sit outside of the reforms, the creation of appropriate employment, education and training pathways for young people involved in Youth Justice System must be considered. The intervention framework can be used to redirect young people into education and training.

Closing the Gap targets must be at the forefront of the reforms in respect of Aboriginal children. It is not one reason alone that has led to the over-representation of Aboriginal children in the youth justice system, and many, if not all the targets intersect. If you improve educational standards, you increase employment rates and levels of health. If a family have somewhere safe to live, a child is more likely to attend school and their parents engage in employment. If an outcome for one person in one or two areas is improved, for example housing and family violence support, it has the potential to impact life outcomes. The intersectionality of a person's Aboriginality is interwoven in every aspect of their lives.

Employment

Unemployment increases the risk of justice system involvement. Aboriginal prisoners who have been unemployed are more likely to be incarcerated than their non-Aboriginal employed counterparts. The PwC's 2017 report found Aboriginal people who are employed were 20 times less likely to be imprisoned than their counterparts.³⁴ Fifty per cent of Aboriginal first-time offenders were unemployed at the time of the arrest and 66% of Aboriginal peoples who reoffended were unemployed at the time of recidivism.

Racism

Institutional racism and systemic discrimination perpetuate the marginalisation of Aboriginal people. Endemic and entrenched forms of racism can result in Aboriginal people being excluded from full participation in society. Racism is increasingly recognised as a significant health determinant that contributes to health inequalities.³⁵

³⁴ PwC's Indigenous Consulting, Indigenous Incarceration: Unlock the Facts (2017) 23. <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>.

³⁵ Kairuz, C.A., Casanelia, L.M., Bennett-Brook, K. et al. Impact of racism and discrimination on physical and mental health among Aboriginal and Torres Strait islander peoples living in Australia: a systematic scoping review. BMC Public Health 21, 1302 (2021). 46% of Aboriginal peoples reported experiencing racial prejudice within the prior 6 months of being surveyed. Department of Police, Fire and Emergency Management (2018). 2017-18 Crime Statistics Supplement. Available at www.police.tas.gov.au/uploads/DPFEM-Crime-Statistics-Supplement-2017-18.pdf; Australia's National Research Organisation for Women's Safety. (2019). Intimate partner sexual violence:

Family violence and sexual abuse

Being a witness or victim of family violence early in life increases the risk of future justice system involvement as an offender. The Department of Communities and Women Tasmania reported in 2017 that 1 in 20 (4.7%) of Tasmanian women have experienced violence, and/or emotional abuse from a current or previous partner.

- In 2017-18 there were 5,630 family violence orders made and 184 sexual assaults reported.³⁶
- In 2017-18 Aboriginal females were 27 times more likely to be hospitalised for assault as their non-Aboriginal counterparts.³⁷
- Fatal domestic violence is 30 times more likely for Aboriginal women than non-Aboriginal women.³⁸
- Tasmania has the highest percentage of men as victim-survivors of sexual assault, with men accounting for 24% of victim survivors and women accounting for 76%.³⁹

Lack of Cultural Support Programs

TALS have significant concerns regarding the unmet need for holistic and targeted culturally safe and responsive pre- and post-release programs for Aboriginal people in prison. One of the most important factors in avoiding reoffending is supporting people released from prison to have a successful transition back into the community.

There is a deafening absence of culturally appropriate programs for incarcerated Aboriginal people in Tasmania. This is more apparent when prisoners are required to address offending behaviours to meet such conditions as parole. There must be a focus on programs having a practical application, particularly for prisoners on remand or short sentence who need the skills on release to reintegrate. The highest risk period for a person is when they are leaving custody. It is this period that prisoners will face insurmountable barriers to accessing the basic human necessities (a right to safety and security, housing, health, and support services). In the absence of strong support through the post release period, there is a high risk that people released from prison will be drawn back into offending because of the return of health or social problems they were struggling to deal with before being imprisoned, or because they are forced into crimes of poverty.

Research synthesis (ANROWS Insights, 05/2019). Sydney, NSW: ANROWS. Available at www.anrows.org.au/publication/intimate-partner-sexual-violence-research-synthesis/

³⁶ Department of Police, Fire and Emergency Management (2018). 2017-18 Crime Statistics Supplement. Available at www.police.tas.gov.au/uploads/DPFEM-Crime-Statistics-Supplement-2017-18.pdf; Australia's National Research Organisation for Women's Safety. (2019). Intimate partner sexual violence: Research synthesis (ANROWS Insights, 05/2019). Sydney, NSW: ANROWS. Available at www.anrows.org.au/publication/intimate-partner-sexual-violence-research-synthesis/.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Australian Bureau of Statistics (2018). Victims of Crime. Cat. no. 4510.0. Canberra, ACT: ABS.

There must be a genuine investment in pre, and post release supports for Aboriginal prisoners. Pre- and post-release programs must be sufficiently flexible, recognising the complexity of individual needs and the barriers that exist in access to vital community services such as stable, safe, and appropriate housing. They must also ensure continuity of culturally safe mental health care and take an early intervention approach to addressing barriers to opportunities for meaningful employment. Pre- and post-release programs must be designed, developed, and implemented in consultation with the Aboriginal community and in partnership with ACCOs. They need to be accessible at all prisons and at all stages of the custodial process. These programs must provide a safe environment that provides practical and personal support. Rehabilitation is more likely to be effective if it matches treatment with the needs of an individuals.

Bail Act and Aboriginality

Tasmania's *Bail Act* (1994) does not include standalone provisions⁴⁰ that require bail authorities to consider any issues that arise due to a person's Aboriginality, including cultural background, ties to family and place, and cultural obligations.⁴¹ Such conditions would provide effective conditions to facilitate the release of Aboriginal persons on bail accused of low-level offending.

Raise the Age

TALS supports Raising the Age of criminal responsibility to 14 and this must occur as a priority and as an introductory part of reforms. If this does not occur, it will lead to lifelong damage as children get stuck in the quicksand of the legal system. TALS is also supportive of a minimal age of detention being 16. The focus prior to 14 must be on addressing the risks and underlying issues of why young people are getting in trouble, not punishment. Young people do not belong in prisons, they belong in schools and with family and community.

Cost of keeping prisoners in jail

The cost of operating Tasmania's prisons and community corrections system in the past decade has significantly increased. The latest Department of Justice, Budget Estimates Brief (Tasmania Prison Service)⁴² stated that Tasmania's total recurrent expenditure per prisoner per day, comprising net operating expenditure and capital costs, was \$474 in 2020-21. Also stated within this brief was that during the 2020-21 period the rate of prisoners returning to prison within two years of release increased from 47.1% to 50.%. The average daily cost of keeping an offender in prison is about ten times the cost of a place in a community corrections program.⁴³

⁴⁰ The Bail Act 1977 (Vic)

⁴¹ Cf: Victoria Bail Act 1977 (s3A).

⁴² Budget-Estimates-Briefings-2022.PDF (justice.tas.gov.au).

⁴³ <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>.

The use of evidence-based strategies to reduce contact with the justice system and recidivism.

Holistic specialised therapeutic and early intervention programs are necessary to divert Aboriginal children and youth at risk of detention. Programs need to address these multi-faceted and inter-related considerations to overcome disadvantage, marginalisation and the structural impediments and barriers in justice systems that all impact on the high involvement of Aboriginal children and youth in detention and custody.

Improved access to through-care models have shown to be significantly effective in reducing recidivism. Through-care models must be culturally appropriate and acknowledge the broad range of support systems/kinship systems which exist for Aboriginal Peoples.

Diverting young people away from the criminal justice system can be effective in reducing their reoffending. This can be done through non-custodial, community-based, rehabilitation programs and improved community supervision to provide greater support and access to services. Prison should be the last resort.

Diversion and intervention programs should be designed and led by Aboriginal communities. They must provide a continuity of care in their design and designed around Aboriginal understandings of health, which includes 'mental health, physical, cultural and spiritual health', and understands that land is central to wellbeing. They must provide children and youth with opportunities to build their social and emotional wellbeing, increase their confidence, resilience and self-esteem whilst providing connections to family, culture and community. These programs should be holistic, trauma informed, therapeutic and provide an opportunity for healing.

Access to strategies must be evaluated, particularly in youth justice systems. Access needs to be broad and available to the most disadvantaged by isolation. Dedicated resources must ensure the practical availability of diversionary options, including culturally appropriate diversion options, in all areas (including remote and rural locations). Socially, detaining young people, even for short periods, harms their mental health, interrupts educational pursuits, and exacerbates existing trauma. There must be a genuine investment in community led and driven programs.

Recommendation. The Tasmanian Government should increase investment in evidence-based prevention and early intervention services, such as housing and mental health support services, to prevent offending and reoffending.

The provision of, and participation in, services for people in prison and leaving prison (health housing and legal services).

Despite the Tasmanian Government's commitment to spend \$1.5 billion to build 10,000 new 'affordable' homes by 2032 this does little to current address the homelessness crisis for people exiting prison. Tasmania does not have a disability-specific criminal justice support and accommodation program, and state-provided supported accommodation for people with disability was wholly transferred to the NDIS.⁴⁴ As discussed above homelessness is a complex and ongoing issue that must be addressed. The provision of housing cannot be met with extraordinary conditions, housing should be coupled with support and rehabilitation services as one model, so as to best support people in their transition from prison. Support services must be accessible within a close proximity to housing so as to ensure early recidivism does not occur; the first 48 hours of release are the most integral to ensuring a person stays out of the justice system.⁴⁵

At present prisoners who are on remand cannot access case management services⁴⁶ to engage with support programs upon their release. This does not matter if the prisoner is on a short-term remand period or a lengthy period. They are excluded from accessing case planning to assist with such matters of arranging emergency housing upon their release. The Custodial Inspectorate in their 2018 Custody Inspection Report recommended that "TPS implements measures, and assigns resources, to ensure all prisoners including those on remand – except those in custody for a very short period – are case managed and assigned a planning officer".⁴⁷ If implemented this may assist with some referrals been made on the prisoners behalf but the post release support and aftercare programs must exist for the referral to take place.

Housing clients with complex needs and risks require additional resources and proper funding.⁴⁸ There are a few models that exist in other jurisdictions that should be considered when examining the service gaps of Aboriginal specific programs within Tasmania. These include such programs as.

- Wulunggo Ngalu Learning Place⁴⁹
- Baggarook⁵⁰

⁴⁴ https://www.ahuri.edu.au/sites/default/files/documents/2021-09/AHURI-Final-Report-361-Exiting-prison-with-complex-support-needs-the-role-of-housing-assistance_0.pdf

⁴⁵ <https://www.aic.gov.au/sites/default/files/2020-05/interventions-for-prisoners-returning-to-the-community.pdf>

⁴⁶ This is only available to a sentenced prisoner with a period of less than six months to be serviced are assigned a planning officer and case managed.

⁴⁷ https://www.custodialinspector.tas.gov.au/__data/assets/pdf_file/0008/547199/Inspection-of-Adult-Custodial-Services-in-Tasmania,-2018-Custody-Inspection-Report.pdf p.24.

⁴⁸ https://www.ahuri.edu.au/sites/default/files/documents/2021-09/AHURI-Final-Report-361-Exiting-prison-with-complex-support-needs-the-role-of-housing-assistance_0.pdf

⁴⁹ <https://www.corrections.vic.gov.au/wulunggo-ngalu-learning-place>

⁵⁰ <https://www.vals.org.au/baggarook/>

- Bunjilwarra⁵¹
- Court Integrated Services Program⁵²

The provision of programs for Aboriginal people must be holistic and inclusive. Programs should be culturally responsive and focused on community engagement and participation, reintegration, and healing. They should be community driven and led. Enabling stakeholders such as Elders, ACCO's and prisoners to immerse in their culture it is more likely the program will be successful in preventing reoffending and providing effective reintegration into society. The service and communities who provide support to prisoners must be properly resourced and funded.

Youth Services should wherever possible be conducted in a way which incorporates a young person's pre-existing support network. To foster positive accountability and mentor ship by members of one's own community, particularly for Aboriginal youths.⁵³

Recommendation. The Government should provide long-term and stable funding to ACCOs to deliver pre- and post-release programs, including transitional housing programs run by ACCOs to support youth, men and Aboriginal women leaving prison.

Recommendation. The Tasmanian Government must work with Aboriginal organisations to develop and provide culturally appropriate transitional housing and support for Aboriginal people exiting prison.

Training and support initiatives for corrective service staff related to increasing individual well-being, professionalism, resilience and reduced absenteeism.

The Tasmania Prison Service Director's Standing Order, (DSO) 2.12 relating to Aboriginal and Torres Strait Islander Prisoners states.

8.1. TPS staff are encouraged to develop an understanding of ATSI culture. This will assist in managing these prisoners in a culturally relevant and responsive manner.

8.2. The Staff Development and Recruitment team is responsible for providing Cultural Awareness training, which incorporates information relating to ATSI culture, to all Correctional and State Service corrections employees upon their commencement of employment, as well as at regular intervals thereafter. Any refresher training is to be

⁵¹ <http://bunjilwarra.org.au/>

⁵² <https://www.countycourt.vic.gov.au/going-court/criminal-division/court-integrated-services-program>

⁵³ Ibid.

undertaken in accordance with the TPS Learning and Development Policy. Relevant Managers and Supervisors are responsible for ensuring staff complete the Cultural Awareness training.

This does not provide an understanding of how regular this training is provided or undertaken by staff. The content of this training should be created by the Aboriginal communities across Tasmania in which the prisoners come from so it is culturally relevant to all prisoners who identify as Aboriginal.

Training should be ongoing and regular up skilling should be a mandatory part of corrective service staff employment.

Staff should be working towards, if not already having achieved a tertiary certificate in relevant justice/correctional operations. For example, a Certificate in Justice Studies or a certificate in Correctional Practice. This is imperative to ensuring staff hold a high level of understanding towards justice practices/models. This should be supported and enabled by prison management.

Staff should have to undergo mandatory randomised evaluation and offenders being held in custodial facilities should have safe and secure pathways to report inappropriate behaviour knowing that real and meaningful consequences will be enforced on staff.

Staff cohorts also must be increased in size, it is impossible to effectively run a correctional facility with such low staffing levels. A culture of support and up-skilling must be rolled out in order to ensure staff retention increases and stress induced absences/resignations reduce.

There must be proper staff organisation and cross facility communication to ensure that staff absenteeism do not negatively affect facility functioning on a large scale.

Scheduled ongoing wellness support should be mandatory and/or highly promoted for staff. Fostering a positive and supportive workplace is essential to retaining employees.

Fostering cross-sector communication and developing avenues for program development through external sectors is essential to easing the pressure on correctional staff. For example, embracing the assistance of the education department, jobs/skills/trade training experts, non-for-profit organisations and the Aboriginal community.

Innovations and improvements to the management and delivery of corrective services that may be applied in Tasmania, including to future prison/detention centre design.

The Tasmanian Government and its agencies must ensure that loss of liberty through imprisonment, custody or detention is a last resort. In keeping with all Australian governments' commitments to Closing the Gap, a complete range of properly resourced, effective, and culturally appropriate alternatives to custody must be available to Aboriginal persons. These must be available at all stages of the justice system, through prevention, early intervention, diversion, and alternatives to custody. Any future prison/detention centre design should be done in consultation with relevant stakeholders and Tasmanian Aboriginal communities.

There must be proactive recruitment of specialised Aboriginal staff and programs implemented and monitored within each of the prison sites. The Tasmanian Government and its agencies must ensure that, in every custodial setting (including youth justice, police custody and prison), the physical, mental, and emotional safety and wellbeing of every Aboriginal person is safeguarded and protected at all times. Standards and delivery of custodial safety and wellbeing must include cultural safety and wellbeing.

Specific Aboriginal housing and accommodation such as bail centres should be included in any future or present design. The Department of Justice should expand their correctional orders to include more culturally appropriate options for clients on orders. This includes working more closely with Aboriginal communities to ensure that a collaborative approach to reducing recidivism and supporting community is the focus.

Within juvenile facilities are stronger focus on education programs which are tailored to their context is imperative. It is a waste of resources, time, and energy to rollout traditional/existing schooling programs to offenders. These programs do very little to improve the educational outcomes of youth offenders as they rely greatly on staffing oversight which at the level required are not available.

Management reporting and oversight needs to be stronger and more consistent, an effort which is only possible with an increase to sustainable staffing. For example, the Custodial Inspector in the 2021-2022 report noted the "inspection standards for Tasmania are in need of review to keep abreast of national and international changes to reflect best practice".⁵⁴ This starts at internal reporting and recording policies.

⁵⁴ https://www.custodialinspector.tas.gov.au/__data/assets/pdf_file/0004/682096/2021-22-Custodial-Inspector-Annual-Report.PDF

Daily staff oversight should have mandatory internal reviews which exist and operate under a lens of truth telling.

Offenders/inmates should not be interviewed/questioned within the presence of corrections staff members and all recorder truth-telling should remain anonymous to protect the safety of inmates. Similarly, Aboriginal and Torres Strait Islander Community members of cultural significance should have a permanent voice to management; assisting in the building of foundational programs and ensuring inmates have a safe voice advocating for their best interests. Representation is important, and inmates may be more likely to confide/report maltreatment if they feel their concerns will actually be heard and acted upon.

Future detention centre designs must focus on improving the outdoor spaces & the access to secure outdoor spaces for inmates. Programs which support being outside, are proven to improve inmate wellness and overall mental health. This does not mean access to concrete basketball courts/courtyards – inmates should have access to green spaces and be a part of the maintenance and care of such green spaces.

Researchers in England and Wales have found that green spaces have imported recover from hospital operations, increased learning, lower the risk of mental disorders and lower the levels of violence and self-harm in prisons. Similarly in prisons where green spaces exist and are accessible regularly to inmates, assaults on staff significantly decreases – which could be imperative to improving staff retention. Similarly, programs which focused on the benefits of gardening and vegetable growing in prisons showed positive benefits due to the teamwork and physical exertion they demand of inmates. New facilities should also include culturally safe and welcoming spaces, which would allow Aboriginal inmates to meet and spend time with their families, importantly under the supervision of staff who have strong culture and trauma training. Ideally these should be staffed by Aboriginal staff.

Any other incidental matters

Medicare

There is a need for people in prison to have access to funding from Medicare and the Pharmaceutical Benefits Scheme, to ensure that resources are available to provide all the care needed to the same standard enjoyed in the community. This is particularly important for Aboriginal people, as there are a number of specific items in the Medicare Benefits Schedule which support enhanced screenings, assessments and health promotion activities for Aboriginal people. These streams of Medicare funding are critical to the operation of Aboriginal health services.⁵⁵ Access to Medicare funding for people in

⁵⁵ Ibid, p. 83.

prison would enable the expansion of in-reach care in prisons by Aboriginal health services. It would also bring funding arrangements in line with those for people in the community. ACCHOs receive direct state and federal funding, as well as being eligible for Medicare funding streams. Similar funding arrangements should be available in relation to custodial settings to ensure the same quality of care can be provided.⁵⁶

Lack of services for Remand Prisoners:

There is an ongoing lack of services for remanded prisoners. Due to their status, remanded prisoners are not able to access all pharmacotherapy and/or education and training programs. As we understand it, in order to access these programs, you must be a sentenced prisoner. Prisoners have reported being on remand for lengthy periods of time and unable to access medication to assist in the treatment of opioid addiction. The ongoing justification for this position is made on the unknown length of period the prisoner may stay in custody and if they will be sentenced.

Parole Board:

There are no dedicated positions for Aboriginal community members on Tasmanian parole boards. Aboriginal community representation is important at all stages of the justice system. Tasmania would benefit from having Aboriginal communities represented on each of the parole boards. It should also consider how it can work with communities to ensure they are culturally supported through such processes as parole board hearings. Examining how other jurisdictions would further assist in increasing the likelihood of Aboriginal people successfully completing their parole by setting order conditions more culturally appropriate and suitable to meet the specific needs of Aboriginal people.⁵⁷

Conclusion

The cluster of underlying issues, such as extreme social and economic disadvantage, dispossession, and alienation from traditional land and culture has led to the ongoing trauma, disconnection, poor health, and poverty experienced by Aboriginal people today. It has been shown that diversion programs do not adequately cater for the needs and experiences of Aboriginal people. Significant changes are required in order to ensure that diversion is available and effective in diverting Aboriginal people away from the criminal legal system. Evidence-based approaches to reducing reoffending has shown the need for

⁵⁶ ABC News, 19 October 2020, 'Greg Hunt rejects Danila Dilba's request for Medicare-funded health services in Don Dale'. Available at <https://www.abc.net.au/news/2020-10-19/don-dale-medicare-health-services-rejected-by-greg-hunt/12776808>.

⁵⁷ QLD, Culturally Engaged Release for Indigenous Parolees (CERIP), <https://www.pbq.qld.gov.au/wp-content/uploads/2021/10/PBQ-Annual-Report-2020-2021-1.pdf>.

justice, prisons and corrections to change the way they operate and the way they respond to people convicted of offences and/or in custody.

Racism and poverty are the key drivers of mass incarceration, thereby perpetuating a cycle of incarceration and poverty. The overrepresentation of Aboriginal people with low incomes in the criminal justice system is no accident. It is a direct result of racist “law-and-order” policies and the criminalization of poverty. In addition, contact with the criminal justice system is one of the greatest barriers to economic mobility. Poverty is a root cause of justice system involvement, creating a cycle of poverty and incarceration.

The Tasmanian Parliament and the Government must ensure that properly resourced, effective, and objective mechanisms are in place to ensure the scrutiny, transparency, and accountability of all justice agencies, and to protect the rights of persons in the Justice system, particularly within custodial and institutional settings. Recognising Indigenous over-representation and vulnerability, these must include culturally appropriate and community-delivered supervision and scrutiny of the safety and wellbeing of all Aboriginal persons and the protection of their rights, and of the performance of the Tasmanian Government and its agencies in delivering the commitments of Closing the Gap.

Please do not hesitate to contact me should you require any additional information or clarification.

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