

# Aboriginal and Torres Strait Islander incarceration

## NGO Coalition Fact Sheet 9 (LOIPRs 17 - 19)

Aboriginal and Torres Strait Islander people are grossly overrepresented at all stages of the criminal justice process. The national imprisonment rate for Aboriginal and Torres Strait Islander adults is 13 times higher than that for non-Indigenous adults. Whilst Aboriginal and Torres Strait Islander people make up only 2 percent of the national population, they account for 27 percent of the national prison population.

### Indigenous women (page 44)

As at 30 June 2016, Indigenous women made up 34% of the female adult prison population but only 2% of Australia's female adult population. Imprisoning Indigenous women has a devastating impact on the community, as they are often responsible for the care of their own children and the children of extended family members.

**Australia should invest in Aboriginal and Torres Strait Islander-led programs designed specifically for Indigenous women, with the aim of reducing over-representation in the criminal justice system.**

### Relations with police (page 44)

Poor relations between Indigenous people and police are well-documented.

The Royal Commission into Aboriginal Deaths in Custody documented discriminatory police attitudes, including stereotyping, constant surveillance, over-policing, unnecessary use of arrest powers, rough and discourteous behaviour and failings to investigate grievances against fellow officers.

**Australia should implement the recommendation of the Royal Commission that “[police services] take all possible steps to eliminate violence or rough treatment or verbal abuse...and use of racist or offensive language” when dealing with Aboriginal and Torres Strait Islander people.**

### Access to justice (page 48)

Aboriginal and Torres Strait Islander people come into contact with the justice system at much higher rates than non-Indigenous Australians, whilst also having significant levels of unmet legal need.

The provision of quality and timely legal advice is critical in preventing the continued over-representation of Aboriginal and Torres Strait Islander people in the justice system.

### Mandatory sentencing (pages 44 - 45)

Mandatory sentencing regimes disproportionately impact Aboriginal and Torres Strait Islander people by creating cycles of criminality and due to the nature of the crimes they are associated with.

Mandatory sentences are most often used to target ‘crimes of poverty’ such as theft and robbery and consequently leave Indigenous Australians with a low socioeconomic status particularly vulnerable.

Further, these sentences are most prevalent in Western Australia and the Northern Territory, which have the highest proportion of Indigenous citizens of any other States.

**Australia should repeal mandatory sentencing regimes that adversely affect Aboriginal and Torres Strait Islander people.**

### Prison for fine defaults (page 45)

Imposing prison sentences for fine defaults has adverse economic and social consequences. Economically, the cost of keeping a fine defaulter in prison is estimated at \$345-\$770 per day, whereas the average unpaid fine was estimated at \$250.

Socially, automatic prison sentences do not address the underlying factors resulting in defendants being unable to pay fines and prevent Courts from utilising rehabilitation and diversionary programmes.

**Australia should implement the recommendation of the Royal Commission that “[police services] take all possible steps to eliminate violence or rough treatment or verbal abuse...and use of racist or offensive language” when dealing with Aboriginal and Torres Strait Islander people.**

### Access to interpreters (page 49)

For many Aboriginal and Torres Strait Islander peoples, English is not a first, second or third language. The provision of interpreters is crucial to ensure access to justice and a proper understanding of police investigations and court procedures.

**Australia should provide Aboriginal language interpreters nationally.**

## Healthcare

(page 46)

Aboriginal and Torres Strait Islander people in the criminal justice system experience high levels of mental illness and psychosocial distress, and commonly experience inadequate and culturally inappropriate health and wellbeing services.

**Australia should:**

- **greater utilisation of Aboriginal and Torres Strait Islander Community Controlled Health Organisations in prison health service delivery, and that prison medical services liaise with Aboriginal health services to ensure appropriate cultural training for non-Indigenous prison medical staff;**
- **that non-Indigenous health staff receive cultural training to ensure complex and unique needs of Aboriginal and Torres Strait Islander detainees are acknowledged; and**
- **that Aboriginal Liaison Officers and Aboriginal Wellbeing Officers be mandatory in all prison facilities.**

## Diversion from the criminal justice system

(page 46)

Article 10.3 states that the essential aim of the penitentiary system should be reformation and rehabilitation. Currently, there are not enough culturally appropriate diversionary programmes for Aboriginal and Torres Strait Islander people, particularly in rural and remote areas.

**Australia should increase investment in options to divert Aboriginal and Torres Strait Islander offenders from the formal criminal justice system to prevent incarceration.**

## Justice targets

(pages 46 - 47)

Currently the Council of Australian Governments' Closing the Gap Strategy articulates the commitment of all levels of government to address Aboriginal and Torres Strait Islander disadvantage across eight areas, including health, schooling and justice.

However, the area dedicated to justice is the only area not accompanied by any specific, measurable targets.

**Australia should adopt national justice targets to end the disproportionate rates of imprisonment and violence experienced by Aboriginal and Torres Strait Islander people.**

## Indefinite designed and led solutions

(page 47)

Numerous reports have repeatedly emphasised the importance of Aboriginal and Torres Strait Islander people having a genuine say in decisions which have a direct impact on their lives and communities.

However, there is still a lack of genuine collaboration and meaningful engagement by government with Aboriginal and Torres Strait Islander peoples and organisations.

## The Redfern Statement

(page 47)

Led by the National Congress of Australia's First Peoples, the Redfern Statement exists as a blueprint to address disadvantage and inequality faced by Aboriginal and Torres Strait Islander people in a range of areas. The statement highlights the importance of community-led solutions and self-determination in justice related issues.

**Australia should prioritise the implementation of the recommendations from the Redfern Statement.**

## Resourcing ATSILS

(page 49)

ATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander community controlled legal services (i.e. ATSILS and Aboriginal Family Violence Prevention Legal Services) are the preferred providers for Aboriginal and Torres Strait Islander peoples.

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.

**Australia should adequately and sustainably fund ATSILS and FVPLSs to meet existing demand for services, address unmet legal need regardless of geographic location and to develop models of holistic support and case management.**

## Access to appropriate welfare checks while in custody

(page 48)

The Royal Commission into Aboriginal Deaths in Custody recommended that Aboriginal Legal Services (ALS) be notified upon the arrest or detention of any Aboriginal person. Custody Notification Services ensure appropriate legal assistance and seek to prevent death and injury in custody, for which Indigenous Australians are especially vulnerable.