

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

OVER-IMPRISONMENT

Aboriginal and Torres Strait Islander peoples make up **3%** of the Australian population, and **27%** of the adult prison population¹

Aboriginal and Torres Strait Islander imprisonment rate is **12.5x HIGHER** than the general population²

Aboriginal and Torres Strait Islander women are incarcerated at more than **20x** the rate of non-Indigenous women.³

PATHWAYS TO IMPRISONMENT

Homelessness: Aboriginal and Torres Strait Islander people are 14 times more likely to be homeless than non-Indigenous people. One in four Aboriginal and Torres Strait Islander clients using homelessness services is a child under ten years old.⁴

Family violence and trauma: Up to 90% of imprisoned Aboriginal and Torres Strait Islander women experienced family and other violence,⁵ and 80% have linked previous experiences of abuse indirectly to their offending.⁶

Cognitive impairment and mental health: 92% of Koori women imprisoned in Victoria had a mental health condition and nearly half were suffering from post-traumatic stress disorder.⁷

- 89% or nine out of ten juvenile detainees at Banksia Hill Detention Centre in WA have at least one form of severe neurodevelopmental impairment.⁸

Interaction with child protection: Aboriginal and Torres Strait Islander young people are 16 times more likely than non-Indigenous people of the same age to be both in the child protection system and under youth justice supervision.⁹



There are laws and policies which disproportionately impact Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander people are:

- disproportionately affected by bail laws and restrictions and are less likely to be granted bail compared to non-Indigenous people.¹⁰
- disproportionately caught by a range of mandatory sentencing offences.¹¹
- over-represented as fine recipients and often have a limited capacity to pay the fine upon receipt.¹²
- disproportionately affected by certain social welfare policies. In the first 12 months of Community Development Programme, participants received more than half of all penalties applied to all job seekers nationally, even though they represented fewer than 5% of the total number.¹³

LACK OF ESSENTIAL LEGAL AND SOCIAL SERVICES

- Aboriginal legal services face declining funding despite rising demand and increased service costs.
- In some remote areas the only type of legal service provided is criminal despite critical civil and family law needs.¹⁴
- The shortage of Aboriginal language interpreters means that Aboriginal and Torres Strait Islander people may not understand questions put to them by police, or in the courtroom.
- Aboriginal and Torres Strait Islander people are less likely to receive community-based sentences than non-Indigenous offenders, and as a result, may be more likely to be imprisoned for the same offence.¹⁵ This is often due to minimal culturally competent support services in RRR areas.¹⁶



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Priorities in this area include:

- Implement Aboriginal-led solutions: Community-controlled organisations should be supported to play a leading role in improving access to justice for Aboriginal and Torres Strait Islander peoples. The Redfern Statement and the Blueprint for Change are the preferred frameworks.
- Address critical civil and criminal legal assistance service gaps by increasing funding for Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services, legal aid commissions and community legal centres. This should include, at a minimum, \$390 million per annum.
 - State and territory governments should contribute to the funding of Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services over and above existing Commonwealth funding levels.
- Implement a National Justice Interpreter Scheme which ensures that:
 - professional, appropriate and skilled interpreters are readily available and free;
 - interpreter services and courts are funded to enable the full implementation of the JCCD, *Recommended National Standards for Working with Interpreters in Courts and Tribunals*; and
 - the Productivity Commission’s recommendation regarding the development of a National Aboriginal and Torres Strait Islander Interpreter Service is implemented.
- Include Justice Targets as part of the Closing the Gap strategy to reduce rates of incarceration, family violence, and child removal.
- Introduce law reform across a range of areas:
 - Reform bail and parole laws which are contributing to high Aboriginal and Torres Strait incarceration rates.
 - Abolish mandatory sentencing regimes.
 - Abolish imprisonment arising from fine default and introduce Work and Development Orders nationally.
- Address underlying imprisonment factors by improving access to: housing and crisis accommodation, family support programs, programs for young people at-risk, drug and alcohol rehabilitation services and mental health services. Resource and expand justice reinvestment trials.
- Review police protocols and guidelines. They should, for example:
 - prioritise the appropriate recognition and provision of support to Aboriginal and Torres Strait Islander women and children subject to family violence;
 - where appropriate and community safety is not at risk, prioritise warnings and diversion over arrest.

1. Productivity Commission, 2016.

2. ALRC, 2018.

3. ABS, 2017.

4. Family Matters, 2017.

5. Wilson et al, 2017.

6. Aboriginal Justice Advisory Council, 2001.

7. Victoria Department of Justice, 2013.

8. Telethon Kids Institute, 2018.

9. Australian Institute of Health and Welfare, 2017.

10. ALRC 2018.

11. ALRC 2018.

12. Legislative Assembly of New South Wales, 2013.

13. Senate Standing Committee on Finance and Public Administration, 2017.

14. Indigenous Legal Needs Project, 2013.

15. ALRC, 2018.

16. BOSCAR, 2017.