

2017

**Access to the ACT Law Courts for Aboriginal
and Torres Strait Islander People in the ACT**

Consultation Report

Summary of the Access to Courts Workshop held on 9 May 2017

**Professor Kerry Arabena and Karen Milward
8 June 2017**



Workshop Participants

**Aboriginal and Torres Strait Islander Cultural Centre
Yarramundi Reach, Canberra**

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Introduction

The ACT Law Courts Cultural Diversity Committee (CCDC), comprising representatives of the Judiciary and Registrars of the ACT Law Courts, was established in 2016 in response to a National Framework developed by the *Judicial Council on Cultural Diversity* to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women, and oversee the implementation of initiatives.

The committee recognised the need to engage and consult with key agencies and NGO's to identify practical measures that would improve accessibility to the Courts for Aboriginal and Torres Strait Islander people in the ACT.

A consultation workshop was hosted by the ACT Law Courts Cultural Diversity Committee on 9 May 2017, and was informed by a literature review (Appendix A) that identified key themes arising from relevant research and reports undertaken over the last 10 years. A copy of the workshop agenda is at [Attachment A](#).

The CCDC would like to thank Aunty Violet for her warm 'Welcome to Country' and informative reflections on the importance of providing culturally safe and responsive services at the ACT Law Courts for Aboriginal people and communities.



55 key stakeholders participated in the Workshop on the 9 May 2017 representing Aboriginal and Torres Strait Islander community controlled organisations, legal services, youth services, family violence services, key justice agencies and the ACT Law Courts.

To open the workshop, Facilitator Karen Milward asked participants to introduce themselves and outline their expectations for the day. A list of participant expectations are outlined in [Attachment B](#).

Karen Milward provided a summary of the findings from the literature review that Professor Kerry Arabena prepared in advance of the workshop and attached as an appendix to this report. It was noted that the literature highlighted a range of topics and themes, some being outside of the parameters of the Courts, because of their legislative basis or the policy or funding framework provided by governments.

In summary, the literature raises key themes outlined below and shown as collective arrows in the attached diagram:

- The need for wrap around service delivery models;
- Partnership approaches to provide cultural competent diversion options;
- The need to break the cycle of poverty, violence and crime;
- Trauma saturation and how it has become inter-generational;
- Community safety, underlying factors of criminality and tailored sentencing;
- The need for commitment, governance and reporting by agencies;
- The need for cultural supports, an appreciation for 'ways of knowing', the role of family advocates and strength based approaches;
- Understanding the effects of cognitive impairment and disability;



- The importance of healing and reintegration support to reduce recidivism; and
- The answers and solutions lie with community, not governments.

In relation to the Courts, the literature discussed:

- Addressing the underlying causes of criminality when sentencing;
- The benefit of alternative dispute resolution (ADR) for family disputes;
- Identifying and promoting support programs;
- The role of community engagement officers;
- The importance of designing information for the needs of community, the profession and the judiciary;
- The need for Judicial education; and
- Cultural competency and culturally safe and appropriate services.

The literature provided a pathway that provided key considerations for the Workshop being:

- Identifying pathways for victims;
- Overcoming barriers for people accessing the courts;
- Identifying risk factors for persons involved with the courts;
- Empowering families to be heard and participate in processes;
- The development of targeted interventions at transition points;
- The need for integrated and specific services;
- The funding of services for people with complex needs;
- Service providers to be cultural competent in delivering services
- The need for culturally safe and inclusive services and spaces;
- Data collection to inform evidence based policy;
- Planning and Implementation; and
- The need for specific Court strategies.

The workshop participants then broke into three groups to discuss the following three themes:

1. How can we improve access to Courts for defendants in criminal matters?
2. How can we improve access to Courts for victims of crime or those seeking protection orders
3. How can we improve access to Courts for child protection matters, civil litigants or others accessing the courts?

The following material provides an overview of the workshop discussions and key recommendations to bring about improved access to ACT Law Courts for Aboriginal and Torres Strait Islander people in the ACT.

Improving access to courts for defendants in criminal matters

The workshop discussed the need for Courts to be **culturally safe spaces**, responsive to the experiences of victims of crime and their family's needs for safety. This theme required Courts to assess the cultural safety of their physical spaces, their accessibility and comfort; the design elements that allow for people to engage in mediation and reduce waiting times.

The need to support a **culturally competent workforce** is vital so that the ACT Law Courts can effectively and efficiently deal with issues of institutional racism and discrimination. Discussions focussed on the need for training on issues related to disability, cognitive impairment and trans-generational trauma, particularly in sentencing and diversionary programs.

The quality of cultural competency training, staff mentoring and staff supports were identified as having a major impact on access issues, as was the need to address early intervention and prevention approaches to positively impact on the lives of people who present to Court. Also identified was the need to have in place a complaints process for both Indigenous staff and clients of court related services; the capacity for Elders and respected community people to volunteer in Courts and the capacity for Courts to take on a case management approach to support people accessing their services.

The workshop suggested, that given the workloads, the ACT Law Courts would need to **employ at least one male and one female Aboriginal Court Liaison Officers** to provide support to Aboriginal people accessing the ACT Law Courts so that Aboriginal people feel culturally safe and supported and the broader ACT Courts system builds their cultural competency and changes current approaches to working with Aboriginal people in the future.



Discussions also focussed on the **collection of appropriate and useable data** to support and improve Aboriginal and Torres Strait Islander peoples' engagement with the Justice System. There was a general statement that Courts need to be responsible for the activities and tasks allocated to them as part of the ACT Justice Agreements including the collection of information on Indigenous status to support Indigenous programs and assist Aboriginal and Torres Strait Islander people achieve better justice outcomes.

There was a need for community driven research to make a positive impact on the Courts ability to respond to the needs of the younger (majority) population of Indigenous people in the ACT and surrounding region. There was also a need to identify the quality and impact of the referral systems surrounding Court activities and a call to translate the knowledge generated from research back to communities, into policies, and reform agendas of government.

The workshop prioritised the following opportunities for the Courts to consider:

1. The employment of at least two identified Court Liaison Officers (male and female) at the ACT Law Courts.
2. The ACT Law Courts to improve its knowledge of Aboriginal people and the historic impact on contemporary people and circumstances. This would include:
 - a. Cultural Competency Training
 - b. Workforce/education and awareness
 - c. Aboriginal Mental Health Training (including training for remand detainees that is supported by a programs allowance)
3. The drug and alcohol court working committee to include more than one representative from the Aboriginal and Torres Strait Islander community.
4. Exploring informal opportunities to build relationships between the community and the judiciary.

Improving access to courts for victims of crime and persons seeking protection orders

This workshop discussed the need for greater education and awareness for Aboriginal victims seeking protection, eg a protection order can be issued with 'exceptions'. For example, the defendant can contact the protected person 100 metres from the said address or the defendant can have contact with protected children via access through an identified agency.

This could assist Aboriginal victims who are seeking protection, but do not feel that complete isolation from the defendant is warranted and unrealistic to a family or individual's needs. This would prevent persons not taking a Protection Order and the situation escalating without support and boundaries.

The use of Community Legal Services was raised in relation to needing greater uptake and having access to more Legal Aid Services based at Community Centres such as Winnunga or Gungahlin.



There were also issues relating to the accessibility of information in language that was appropriate (gender appropriate, age appropriate and appropriate for people's geographic location and experience). There was also consideration given to whether the needs of specific clients could be better met through teleconferencing facilities, and if Aboriginal people could have assistance in filling

out paperwork to support their engagement with the Courts.

The workshop discussed the need for ACT Law Courts to be responsible for their **contribution to and responsiveness to, the holistic models of care** in the ACT including the Competent Adult Model adopted by Gungahlin Youth Aboriginal Corporation, the Prisoner Health Model developed by Winnunga Nimmityjah Aboriginal Health Service and the Alcohol and Drug Rehabilitation model developed to underpin the Ngannawal Bush Healing Farm.

In the ACT context, Courts are not only referral agencies to these services, but have a responsibility to be engaged in the community safety components of these models.

The workshop prioritised the following opportunities for the Courts to consider:

1. Establish an Aboriginal HUB within the ACT Courts precinct that is supported by the employment of two identified Court Liaison officers (male and female). The HUB will:
 - guide people and families through the complex processes of the court system;
 - interpret the legal system for Aboriginal people accessing the courts;
 - provide a sense of cultural safety at the courts to those experiencing accumulative inter-generational trauma;
 - liaise with a range of support providers such as Victim Support, Legal Aid, DVCS, Rape Crisis, Winnunga Nimmityjah Aboriginal Health Service, mental Health, etc to ensure that Aboriginal people are able to be linked up with services;
 - provide a liaison point for the Judiciary for information and relevant service providers when making orders;
 - identify key services available to support persons and families before the courts;

- follow up with agencies in relation to relevant reports that are required by the Judiciary to make informed decisions.
 - Assist to ensure culturally appropriate support is provided to Aboriginal victims of crime by key agencies.
2. Provide a map of ACT Aboriginal service providers to ACT Judiciary.
 3. Case tracking of matters offered outside the court system and backing of the court process.
 4. Improved data collection methods and processes to ensure Aboriginal people involvement with court processes are understood.

Improving access to courts for child protection matters, civil litigants or others accessing the courts

This workshop discussed the need for greater awareness and education of what could potentially be a civil suit and clear explanation of the process in undertaking it. This includes a need for wrap around holistic services for a family in child protection matters to provide a more supported approach to assist the family access better continuity of care and trust for the future. The engagement of CYPs alone does not constitute the needs of the child or the families if it is acting on its own, and not automatically engaging Aboriginal services for consultation and support.

A review of the Child Protection legislation in ACT was suggested as a step forward given the extreme rate of Aboriginal children in foster care, in particular, the restraints on becoming a foster parent and the need for cultural consideration and kinship arrangements.

A need for improved cultural competency (knowledge and understanding) by people working in the child protection area, with an emphasis on ensuring system processes are already available and expected, such as cultural care plans are undertaken with all Aboriginal children and families, including Aboriginal support people and their input.

The need to build the capacity and resilience for the mother and father was discussed where intensive support was needed for the mother and father including skill development and reprogramming. This would help the mother and the father understand real expectations, and the situation they are currently in with child protection matters. Helping the father to identify his role in the situation was key critical to building capacity and resilience and the importance of a lessened Police presence around child protection issues.



One issue discussed was the need for transitional housing and support for family and offenders post release following a domestic violence conviction and contravention of a protection order. This could encourage victims to be more inclined to seek a protection order, knowing there is a period of time for the defendant to be in the community where they can receive the support they need to prevent domestic violence recidivism.

Discussions sought to facilitate Courts playing their part in supporting the positive impact of culture, and minimise the negative impact of poor cultural connections, particularly with young Aboriginal

people. This requires ACT Law Courts to map out how they could respect and value the contribution of Aboriginal and Torres Strait Islander people to the journey of creating a just society for all.

The workshop prioritised the following opportunities for the Courts to consider:

1. Aboriginal people and organisations are involved in the discussions with the courts and justice agencies about child protection matters, civil litigants and other Aboriginal people accessing the ACT Law Courts.
2. CYPS to make contact with Aboriginal services for consultation and support in Aboriginal child protection matters.
3. Improve the cultural competency, knowledge and understanding of Aboriginal and Torres Strait islander people's history, cultures, issues and aspirations by ACT Law Courts.

Summary of Key Recommendations

The workshop recommended that to improve access to the Courts for Aboriginal and Torres Strait Islander people in the ACT, the ACT Law Courts should consider:

1. Improving the cultural competency of the judiciary, registrars and staff through training programs that seek to build the understanding and knowledge about the history of Aboriginal and Torres Strait Islander people and the traumatic and accumulative impact of government policies on the lives of Aboriginal and Torres Strait Islander people in today's contemporary society.
2. Establishing an Aboriginal HUB within the ACT Law Courts precinct that is supported by the employment of at least two identified Court Liaison Officers (male and female). The HUB will:
 - guide people and families through the complex processes of the court system;
 - interpret the legal system for Aboriginal people accessing the courts;
 - provide a sense of cultural safety at the courts to those experiencing accumulative inter-generational trauma;
 - liaise with a range of support providers such as Victim Support, Legal Aid, DVCS, Rape Crisis, Winnunga Nimmityjah Aboriginal Health Service, mental Health, etc to ensure that Aboriginal people are able to be linked up with services;
 - provide a liaison point for the Judiciary for information and relevant service providers when making orders;
 - identify key services available to support persons and families before the courts;
 - follow up with agencies in relation to relevant reports that are required by the Judiciary to make informed decisions;
 - Assist to ensure culturally appropriate support is provided to Aboriginal victims of crime by key agencies.
3. Improved data collection for the development of evidence based policy; and
4. Building ongoing relationships and improve the Courts engagement with key representatives of the Aboriginal and Torres Strait Islander community to ensure the community perspectives are considered.



Attachment A – Workshop Agenda

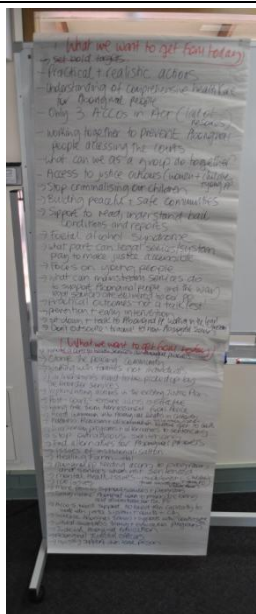
“Access to Courts for Aboriginal and Torres Strait Islander People in the ACT”

Agenda

8.30 am – 9:00 am	Registration - Coffee and Tea available
9:00 am – 9.10 am	Introduction by the Facilitator Housekeeping and overview of the day
9.10 am – 9:20 am	Official Welcome Welcome to Country Welcome by Judiciary and Acknowledgment of Country
9:20 am – 10:00 am	Presentation on key themes arising from the literature review
10:00am – 10:30am	Break into Groups – Overview of sessions
10:30 am – 11:00 am	Morning Tea
11:00 am – 12:30 am	Workshop Session 1 – Groups will rotate through the following questions. <ul style="list-style-type: none">➤ <i>How can we improve access to justice for defendants in criminal matters?</i>➤ <i>How can we improve access to justice for victims of crime or those seeking protection orders?</i>➤ <i>How can we improve access to justice for care and protection matters, civil litigants or others accessing the courts?</i>
12:30 pm – 1:00 pm	Lunch
1:00 pm – 2.30 pm	Workshop Session continued
2:30 pm – 3:00 pm	Report back from the three workshop topics
3:00 pm – 3:30 pm	Afternoon Tea
3:30 pm – 4:00 pm	Report Back continued
4:30 pm – 5:00 pm	Overview of the day – Rapporteur
5:00 pm	Close

Attachment B – Participant Expectations

- Set bold targets!
- Practical and realistic actions.
- Understanding of comprehensive healthcare for Aboriginal people.
- Only three ACCOs in ACT (lack of resources).
- Working together to prevent Aboriginal accessing the courts.
- What can we as a group do together?
- Access to Justice Outcomes for Women, children and young people.
- Stop criminalising our children.
- Building peaceful and safe communities.
- Support to read and understand bail conditions and reports.
- Foetal alcohol syndrome.
- What part can legal services /system play to make justice accessible?
- Focus on young Aboriginal people.
- What can mainstream services do to support Aboriginal people and the way legal services are delivered to our people?
- Practical outcomes – not a talk fest!
- Prevention and early intervention.
- Sit down and talk to Aboriginal people working in the legal system.
- Don't outsource 'trauma' to non-Aboriginal services.
- Improve access to health services for Aboriginal prisoners.
- Change the 'policing' community.



- Implementing actions in the existing Justice Plan.
- Post-court – ensure access is effective.
- Living free from harassment from Police.
- Royal commission into Aboriginal Deaths in Custody – recommendations.
- Address racism and discrimination before get to courts.
- Diversionary programs and alternatives to sentencing.
- Stop outrageous sentencing - find alternatives for Aboriginal prisoners.
- Issues of institutionalisation.
- The Healing Farm is vital!
- Aboriginal people need access to programs and services when not sentenced.
- Mental health issues (need a psychologist for Aboriginal children and young people) and give greater consideration to mental health services.
- ICE Issues.
- More family support services and programs.
- Family violence – Aboriginal women in prison because they are being held accountable for the family violence incidents.
- ACCOs need support to build their capacity to work on justice system and courts and community.
- Increase Aboriginal services and supports within courts and justice system.
- Cultural awareness training and education programs.
- Judicial Aboriginal education.
- Aboriginal judicial officers.
- Housing support when leave prison.
- Working with Families not individuals.
- Partnership/s need to be picked up by the broader services.

Summary of Butchers Paper – Workshop 1.

<ul style="list-style-type: none"> No street time: <ul style="list-style-type: none"> parole sentencing guidelines and restrictions for Magistrates and Justices 	<ul style="list-style-type: none"> Choice for victims/defendants re. ALO – some may choose to work with the same liaison officer and others would choose a different support worker re. whole of family, safety considerations – case by case.
<ul style="list-style-type: none"> Pre-Sentence Report – cultural identity and knowledge 	<ul style="list-style-type: none"> Improve usage of Indigenous workforce.
<ul style="list-style-type: none"> Community legal education. 	<ul style="list-style-type: none"> Acknowledgement of resource deprivation.
<ul style="list-style-type: none"> Client education – circumstantial. 	<ul style="list-style-type: none"> Indigenous workforce in service accessing.
<ul style="list-style-type: none"> Time effectiveness opportunities. 	<ul style="list-style-type: none"> Work with young Aboriginal people.
<ul style="list-style-type: none"> Use restorative justice process – greater awareness 	<ul style="list-style-type: none"> Cultural safety in the court environment.
<ul style="list-style-type: none"> Improve relationship with Police – eg. community policing and diversionary programs. 	<ul style="list-style-type: none"> Comprehensive case management in youth justice services/schools and inclusiveness of community services.
<ul style="list-style-type: none"> Cultural competence across the system needs to become a major focus – over and above cultural awareness. 	<ul style="list-style-type: none"> Recognising and honouring the importance of <u>relationship</u>.
<ul style="list-style-type: none"> Challenge of disconnected services – clients navigating multiple services that don't interact well – a need for coordinated service-delivery. 	<ul style="list-style-type: none"> Cultural barriers to communicating needs/situation which are interpreted as 'non-compliance'.
<ul style="list-style-type: none"> Moving past consultation to action. 	<ul style="list-style-type: none"> Complexity of presenting issues – multi-layered.
<ul style="list-style-type: none"> Cultural diversity is at the core = a need to respect others – diversity within cultures and interest and care in other cultures. 	<ul style="list-style-type: none"> Culturally appropriate support services critical for everyone moving through the court process (family members included).
<ul style="list-style-type: none"> Barriers to learning and self-reflective practice. 	<ul style="list-style-type: none"> The consumer voice is often absent – lawyer's egos!
<ul style="list-style-type: none"> Community Correction Officer engagement needs to occur prior to release from AMC. 	<ul style="list-style-type: none"> Learning environment – creating the conditions to challenge racial bias/the environment to self-reflect.
<ul style="list-style-type: none"> Breaking down the good/bad thinking. 	<ul style="list-style-type: none"> Through-care restrictions.
<ul style="list-style-type: none"> Greater awareness of ICO. 	<ul style="list-style-type: none"> Indigenous identity verification.
<ul style="list-style-type: none"> Cultural report tools. 	<ul style="list-style-type: none"> Elders volunteer program – identify area.
<ul style="list-style-type: none"> Communication issues – mainstream agencies still unable to engage sensitively. 	<ul style="list-style-type: none"> Indigenous appropriate rehabilitation programs in AMC/Bimberi and community.
	<ul style="list-style-type: none"> Identified positions in the legal sector.

Summary of Butchers Paper – Workshop 2.

<ul style="list-style-type: none"> • Lack of justice. 	<ul style="list-style-type: none"> • Generational recurrence.
<ul style="list-style-type: none"> • Victims becoming perpetrators – lack of prevention. 	<ul style="list-style-type: none"> • We are not just defendants.
<ul style="list-style-type: none"> • Two elements <ul style="list-style-type: none"> ○ political – most time spent on this ○ social – this needs more 	<ul style="list-style-type: none"> • Rather than adding more services adequately fund existing services that ARE working. Increase the capacities of these organisations with reasonable recurrent funding.
<ul style="list-style-type: none"> • What makes situations better for offenders makes things worse for victims. 	<ul style="list-style-type: none"> • Most kid's first interaction is to be witnesses in regards to their mum and dad.
<ul style="list-style-type: none"> • Must have identified positions in Victims of Crime services. 	<ul style="list-style-type: none"> • Highest cohort/victims of crime are Aboriginal women and children.
<ul style="list-style-type: none"> • ACT government needs to make the shift to adequately fund community organisations. 	<ul style="list-style-type: none"> • Responsibility for violence against women needs to shift. Currently women and children are burdened with responsibility for being victims.
<ul style="list-style-type: none"> • Aboriginal victims multiple layers of institutional burden. 	<ul style="list-style-type: none"> • Simplify the protection order.
<ul style="list-style-type: none"> • Services accessible and provision of education and awareness. 	<ul style="list-style-type: none"> • Transitional housing/diversionary housing.
<ul style="list-style-type: none"> • Men's shelters. 	<ul style="list-style-type: none"> • Accommodation needs to be purpose related.
<ul style="list-style-type: none"> • Community localised services – Winnunga Nimmityjah Aboriginal Health Service Reporting. 	<ul style="list-style-type: none"> • Solutions begin with trust and trust begins with Aboriginal staff with community connections.
<ul style="list-style-type: none"> • Services also need to be ready to have Aboriginal staff as worker burn out is huge and not enough of us. 	<ul style="list-style-type: none"> • Aboriginal women's resource for access to justice.
<ul style="list-style-type: none"> • Lack of consistent data for Aboriginal and for Torres Strait Islander people in the justice system. 	<ul style="list-style-type: none"> • Courts to give parents legal aid contacts and women's legal contacts because the best represented people get the best outcomes. Access to legal services is vital and is a right.
<ul style="list-style-type: none"> • Currently no system responses to child protection issues because more and more are being removed. 	<ul style="list-style-type: none"> • Victims of crime become victims of the system because it is not set up to support them.
<ul style="list-style-type: none"> • More supports for offenders. 	<ul style="list-style-type: none"> • Gap in service for victims – navigating the just process.
<ul style="list-style-type: none"> • Failure of courts system/particularly child protection so that victims are unable to access due processes. 	<ul style="list-style-type: none"> • Community awareness of their rights and rights of children and knowing where to turn – having somewhere to turn to with people they can TRUST.
<ul style="list-style-type: none"> • A culturally safe space/place in ACT Courts for Aboriginal people to engage in the processes that is supported with adequate staff. 	<ul style="list-style-type: none"> • Victims unable to attend court hearing (trauma, fear, disadvantage and no support) and if they don't turn up they might have warrant issued.
<ul style="list-style-type: none"> • Victims of violence then become victims of institutions – child protection then investigates the victim and children. 	<ul style="list-style-type: none"> • No justice when victims not supported and provided with a fair process.

Summary of Butchers Paper – Workshop 3.

• Need to listen to us.	• Continuity of care and trust.
• Funding division – need consistency with support.	• Transport issues
• Recognise the history and historical factors.	• Services work with everybody.
• Coordinated (Lead).	• Services (Indigenous exhausted).
• Breaches.	• Resourcing services appropriately.
• Interventions.	• Assessment process takes 10 weeks.
• Information sharing (over-representation of services where nothing gets done).	• How do I prepare for Court (as a family member supporter) for my family?
• Families accessing justice before court.	• Where are the cultural advisors positions?
• Ignorance towards “professional Aboriginal support” –need to be more than just a meet and greet person.	• Carer restraints on becoming a foster parent (leniency/cultural considerations for kinship arrangement).
• Juvenile offences and Court Hierarchy	• Aboriginal information needs to be valued in court.
• Court only listens to child protection worker and not the family.	• Is the Magistrates court the right place to hear child protection matters?
• How robust is the ‘worker’ for the child? (Parents can review order every year).	• Child protection policies and practice - awareness and education in community.
• Wrap around support services.	• Review of child protection legislation.
• 18 year order taken after two years in CYPS.	• Access opportunities/system processes that are already available.
• Accountability of cultural care plans.	• CYPS cultural identification within service.
• Building capacity and resilience for the mother by providing: <ul style="list-style-type: none"> ○ intensive support, skill development, re-programming, unreal expectations and that males do have a role 	





2017

Access to the ACT Law Courts for Aboriginal
and Torres Strait Islander People in the ACT

Literature Review

Prepared for the ACT Law Courts as a background paper for a
workshop being held on 9 May 2017

Professor Kerry Arabena
2 May 2017



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Glossary of Terms

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACTCOSS	Australian Capital Territory Council of Social Services
AJAC	Aboriginal Justice Advisory Committees
AJC	Aboriginal Justice Centre
AMC	Alexander Maconochie Centre
ATOD	Alcohol Tobacco and Other Drug
ATODA	Alcohol Tobacco and other Drug Association
(C)CDC	(Courts) Cultural Diversity Committee
COAG	Council of Australian Governments
CTRC	Change the Record Coalition
DVCS	Domestic Violence Crisis Service
DVO's	Domestic Violence Orders
ILNP	Indigenous Legal Needs Project
JCCD	Judicial Council of Cultural Diversity
JP's	Justice of the Peace
NBHF	Ngunnawal Bush Healing Farm
NGO	Non Government Organisation
NSW	New South Wales
ODPP	Office of the Director of Public Prosecutions
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SNAICC	Secretariat National Aboriginal and Islander Childcare Centres

Purpose of the Literature Review

The ACT Law Courts Cultural Diversity Committee, comprising representatives of the Judiciary and Registrars of the ACT Law Courts, was established in 2016 in response to a National Framework developed by the *Judicial Council on Cultural Diversity* to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women, and oversee the implementation of initiatives.

The committee recognises the need to engage and consult with key agencies and NGO's to identify practical measures that would improve accessibility to the Courts for Aboriginal and Torres Strait Islander people in the ACT.

A consultation workshop is being hosted by the ACT Law Courts Cultural Diversity Committee on 9 May 2017, and to build on previous reviews and initiatives, the workshop is being informed by this literature review that identifies key themes arising from relevant research and reports undertaken over the last 10 years.

The outcome of the consultation workshop on the 9 May 2017 will be the identification of practical measures that might improve the accessibility of the Courts for Aboriginal and Torres Strait Islander people in the ACT.

The following literature review assists to identify:

- a) practical measures the Courts Cultural Diversity Committee might consider to improve the accessibility of the Courts for Aboriginal and Torres Strait Islander people in the ACT in the next 12 months; and
- b) other themes that arise that the wider justice system might need to consider to improve access to justice for persons in contact with the ACT Law Courts.

For those persons and families in contact with statutory systems, or persons experiencing barriers accessing courts services, the Literature Review maps out a range of initiatives that have been identified as being beneficial to improving accessibility to the courts. Likewise, it expect that the consultation process might identify issues surrounding the Courts interaction with the key partners which might also be improved.

This literature review identifies a range of key themes that will assist workshop participants to further consider improving access courts and court services for Aboriginal and Torres Strait Islander people in the ACT.

Introduction

Over the past decade, various organisations in the ACT have been involved in the conduct of consultations and research to address the level of over representation of Aboriginal and Torres Strait Islander people in the justice system, and to support Aboriginal and Torres Strait Islander people access effective justice services and supports. Whilst the recommendations are not always specific to the Courts, the reports tell a consistent story about the needs of Aboriginal and Torres Strait Islander people during their interaction with statutory systems, and issues regarding accessibility and provision of services. In addition to publically available reports, there are number of internal unpublished reviews which inform government practice.

These reports explain the cause of Aboriginal and Torres Strait Islander over-representation in the justice system, as both victims and offenders, and often relates specifically to the social, cultural and ecological determinants of health not being met within family groupings, particularly those impacted on by the historical impact of successive government policies. These reports refer to families that are exhibiting dysfunctional behaviours, such as family violence, drug and alcohol abuse, offending behaviour and general dysfunction and that these behaviours, bring people into contact with a justice system that is not able to cater to their needs (National Indigenous Drug and Alcohol Committee, 2013). Behavioural traits passed between different generations within families and among community members have become trans-generational in nature and therefore difficult to resolve through simple, linear policy and programs. Intergenerational experiences of dysfunctional behaviours have brought generations of families into contact with statutory systems in which the Courts play an important role, such as care and protection systems, juvenile justice systems, criminal justice systems and protection order systems (Grace J, 2013).

To break the cycle of dysfunctional behaviours and strengthen families, the ACT Government is investing in programs to 'Close the Gap' and seeking to better support people from having a negative experience of participating in statutory systems. This aspiration is not simple to achieve because the experience of incarceration is recurrent and intensifying for Aboriginal and Torres Strait Islander families (National Indigenous Drug and Alcohol Committee, 2013). Although less than five per cent of young Australians are Indigenous, they account for almost half of the youths in detention (Yi, 2014/15). The Australian Institute of Health and Welfare found that between 2009 and 2013 the level of Indigenous over-representation among detained youths increased from 26 to 31 times the non-Indigenous rate (Grace J, 2013). The latest Indigenous disadvantage report corroborates this trend, finding that the daily average detention rate for Aboriginal and Torres Strait Islander youth increased sharply between 2000-01 and 2007-08 and remained high in 2012-13 at 365 per 100 000 10-17 year olds, around 24 times the rate for non-Indigenous youth (The Productivity Commission, 2016). Similarly, the Courts are faced with increasing numbers of Aboriginal and Torres Strait Islander peoples in civil suits, in family matters and in child protection cases; all with significant implications for First Peoples and their families (Kelly, 2015).

National Campaigns 2016 - 17

Even though the focus of this literature review is to identify key themes and strategies that the ACT Law Courts might consider to improve the accessibility of the ACT Law Courts for Aboriginal and Torres Strait Islander people in the ACT, several recent national initiatives provide the context and background for this work.

A range of campaigns, strategies and alliances are forming to redress the engagement of Indigenous Australians with the justice system. For example, the [Family Matters Campaign](#) is focusing on the over representation of Aboriginal and Torres Strait Islander children in out of home care arrangements, noting that despite numerous policy and legal frameworks protecting the rights of Indigenous children, the representation of children in out of home care is almost ten times that of other children, and continues to grow (SNAICC, 2016). Key recommendations target the development of strategies to

redress the causes of Aboriginal and Torres Strait Islander children child removal and improve child safety and wellbeing, invest in prevention and early intervention services, invest in ending poverty and homelessness and effective culturally safe reunification programs at the same time as seeking to strengthen the representation of Aboriginal and Torres Strait Islander organisations communities, families and children in decisions about child safety and removal. This would include compliance with the five elements of the Child Placement Principle and strong models of Aboriginal family led decision making (SNAICC, 2016).

National campaigns have also asked governments to set targets and develop evidence-based, prevention and early intervention oriented national strategies to drive activity and outcomes addressing family violence (with a focus on women and children), incarceration and access to justice and disability services (Daly, 2016). This is particularly important as the *Royal Commission into the Protection and Detention of Children in Northern Territory* identified [hearing loss and cognitive impairment](#) as having a significant impact on families and their experience of justice services. Significant attention has also been given to the need for governments to be accountable to Aboriginal and Torres Strait Islander peoples and that there be a genuine commitment to working with Aboriginal and Torres Strait Islander leaders to bring together policy and service delivery through an Indigenous workforce that can address and implement recommendations and promote reforms in consultation with Aboriginal and Torres Strait Islander peoples and communities.

*Understanding
the effects of
cognitive
impairment and
disability*

These initiatives have also been a key feature of the [Redfern Statement](#), delivered at the beginning of the federal election in June 2016. Aboriginal and Torres Strait Islander peak bodies unified their voices on a policy and engagement platform that highlighted Indigenous Australians continue to experience unacceptable disadvantage; that the challenges confronting Aboriginal and Torres Strait Islander people continue to be isolated to the margins of national debate; that policies continue to be made for and to, rather than with Aboriginal and Torres Strait Islander people and the transformative opportunities for Government action are yet to be grasped (National Congress of Australia's First Peoples, June 2016). The opening statements in the Redfern Statement spoke to the lack of engagement with the over 400 recommendations in numerous government, social justice and children's commissioner reports and consultant reports or Inquires recommendations all of which have been either partially implemented for short periods or ignored altogether (National Congress of Australia's First Peoples, June 2016).

In relation to justice targets, the Redfern Statement calls for the inclusion of justice targets in the Close the Gap Framework and that adequate funding of Aboriginal and Torres Strait Islander community controlled front line services be arranged. The Redfern Statement also calls for the adoption of the

*Wrap around
service delivery
models....*

recommendations of the *Change the Record Blueprint for Change*. Signatories to the Redfern Statement call on all governments to implement wrap around service delivery models that focus on addressing and preventing issues that underlie the legal problems facing women, children and families. In addition to implementing reforms to the Indigenous Advancement Strategy, there is also a call to prioritise the implementation of recommendations from the Royal Commission into Deaths in Custody Report and to urgently reform laws

that have a disproportionate impact on Aboriginal and Torres Strait Islander communities. Harsher sentences and laws that strip judges of their ability to make the 'sentence fit the crime' such as mandatory sentencing and strict bail/parole laws need to be changed, noting that evidence-based sentencing and justice policy will contribute to reducing over-representation (National Congress of Australia's First Peoples, June 2016).

The Redfern Statement also calls on the development of effective partnerships with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies a truly cooperative intergovernmental framework inclusive of short, medium and long term objectives and engagement with Aboriginal and Torres Strait Islander communities. These partnerships are recognised as critical to achieve participation in and equal access to alternatives to imprisonment, including for example, developing culturally appropriate diversion options instead of custodial sentences, except where the offender is a risk to the community. Governments have also been called to ratify the optional protocol to the convention against torture and implement the UN Declaration on the Rights of Indigenous Peoples at the same time as implementing a national justice data set for collection by all States and Territories under the guidance of Aboriginal and Torres Strait Islander people.

Partnerships to provide culturally competent diversion options

Breaking the cycle of poverty, violence and crime

The need to invest in comprehensive, rights based strategies was also highlighted during a recent visit by UN Officials. In a [Press Release](#) from the Special Rapporteur on the rights of Indigenous Peoples, Victoria Tauli-Corpuz, the United Nations human rights expert said it was ‘alarming that, while the country has adopted numerous policies to address the socio-economic disadvantage of Aboriginal peoples and those from the Torres Strait islands, it had failed to respect their rights to self-determination and to full and effective participation in society.’

She went on to refer to the high rates of incarceration were a tsunami and a ‘major human rights concern’ with most young people engaging with the prison system for being poor and in most cases prison will only aggravate the cycle of violence, poverty and crime’ and a demonstrated lack of commitment to the [UN Declaration on the Rights of Indigenous Peoples](#). (Evans, 2017).

These views were highlighted in a #JustJustice Campaign, a crowd funded initiative sponsored through Croakey.org. The campaign produced a [free e-book](#) containing a series of articles that highlight the wide ranging health impacts of over-incarceration upon Aboriginal and Torres Strait Islander peoples. By taking a strength based approach multiple solutions were developed and shared. Andrew Jackomos, Australia’s only Aboriginal Children’s Commissioner through his work on Taskforce 1000 focused his article on cultural strength and having a right to culture embodied in legislation saying, ‘culture is not a ‘perk’ for Aboriginal children – it’s a lifeline.’ (Finlay, 2016) Other cultural foci promoted diversionary programs that see Aboriginal and Torres Strait Islander people working on Country programs instead of going to prison for ‘petty crimes’; about involving men in breaking the trauma of family violence and focusing on healing, social and emotional wellbeing and [cultural epistemologies and ontologies](#), or ways of knowing and being. Articles also highlighted the importance of [healing programs](#) that tackle head on, the culmination of rejection, including neglect, disregard, disrespect and constant identity conflict or confusion that see Aboriginal and Torres Strait Islander people at risk of engaging with the justice system. These and other strategies all aim to reduce contact with Courts and break the intergenerational cycles of poverty and incarceration.

An article focusing on the youth detention centre at the heart of recent rioting (Parkville, Melbourne) have for many years run a Koori Cultural Program to ‘turn back the tide on the highly vulnerable second stolen generation’ of young Aboriginal children in remand at the facility while waiting for ‘their day in court’ (Finlay, 2016). Jesuit Social Services recently released a [report showing a 57 percent rise in the number of children in remand](#), in breach of the

Trauma saturation is inter-generational

recommendations from the Royal Commission into Aboriginal Deaths in Custody that prison should be a last resort. What this and other reports identified, was that children, and their families, engaged with the judicial system were ‘trauma saturated’ – that the children’s brain functioning was severely

compromised by the chronic and systemic experience of trauma, and this trauma had intergenerational and across generational impacts in families. Strategies to mitigate against this experience is to work in the [First 1000 Days](#) – from (pre) conception to age two to ensure parents and children have the best supports available to them at a time when their children’s brains are growing and they are supported to develop long term healthy relationships that ensure children are able to mitigate against the experience of intergenerational trauma. In situations where youth are already engaged with the justice system, strategies need to be in place that increase access to education, develop a capacity for service delivery agencies to work with trauma saturated families through cultural and healing strategies and ensure Elder led and community informed options are available for families (McInerney, 2016).

A partnership between [Amnesty International and Vice Magazine](#) highlighted the voices and experiences of Aboriginal and Torres Strait Islander people engaged with the justice system in a series called *OverRepresented*. Whilst the series identified the ‘potential’ of the young people engaged with the justice system, there was also an acknowledgement of the difficulty of realising it at an individual level and in a systemic

*Community Safety...
Underlying factors...
Tailored Sentencing...*

way; unless justice services were delivered through and by Aboriginal people and organisations. One of these strategies has been Justice reinvestment a way of serving the community through a range of programs that engage culture and community people to set the standards by which victims are supported and perpetrators are judged, often through customary law practices. Other justice reinvestment strategies include removing the paperless arrest system and ensuring ‘responsible persons’ were available to have children released out of remand were essential.

To participate in a ‘just and fair’ justice system, cultural supports and ways of knowing was found to have a greater impact if culture - knowledge, practices, understanding of communication and kinship relationships - was embedded all the way through the system. (Adams, 2016). Undertaking this work requires agencies to provide access to local cultural competency training by staff, create the opportunity for legal and other court services to learn from Aboriginal and Torres Strait Islander people about their knowledge systems and cultural practices; and where possible and appropriate, to employ Aboriginal and Torres Strait Islander *Family*

*Cultural Supports...
Ways of Knowing...
Family Advocates...
Strength Based Approaches...*

Advocates to assist offenders and families. Reports have also stated the importance of sourcing culturally appropriate alternatives to locking people up when it is not needed for ‘community safety’. Aboriginal and Torres Strait Islander people have stated community safety initiatives have become too punitive requesting that policing and justice systems work with families of offenders to best support their family member through rehabilitation and to rebuild their lives post release (Adams, 2016). There are also calls to be an end the problematising of Aboriginal and Torres Strait Islander people in discourses and systems that only focus on the deficits of families, and not their strengths. These strategies can be best supported through a racism free justice system, with many respondents in the reports asking for racism to be addressed within the justice system. This was again highlighted in the UN Rapporteur’s report on Australia and the incarceration of children.

The [Blueprint for Change](#), developed by a coalition of Aboriginal and Torres Strait Islander leaders handed local, state and national governments a detailed guide for developing whole-of-government approaches for reducing the disproportionate rates of violence against Aboriginal and Torres Strait Islander people (Change the Record Coalition, 2015). The recommendations include a

*Healing and
reintegration
support to reduce
recidivism*

The [Blueprint for Change](#), developed by a coalition of Aboriginal and Torres Strait Islander leaders handed local, state and national governments a detailed guide for developing whole-of-government approaches for reducing the disproportionate rates of violence against Aboriginal and Torres Strait Islander people (Change the Record Coalition, 2015). The recommendations include a

whole of government approach through COAG to promote community safety and reduce the rates at which the Aboriginal and Torres Strait Islander people come into contact with the criminal justice system. Highlighting the importance of health services, disability supports, access to drug treatments and affordable housing to help meet justice targets, the recommendations are guided by a set of principles including the need to invest in community not prisons; recognition be given to the driving factors of imprisonment and violence; focus on safety through successful early intervention and prevention strategies; services not sentences; smarter, not harsher sentencing inclusive of a range of sentencing alternatives encompassing non-custodial options enable judges to ensure that sentences are tailored, fair and appropriate.

Change the Record Snapshot:

1. Invest in Communities, not prisons – requires government reinvestment in strong, healthy communities to prevent crime and make communities safe.
2. Local Communities have the answers – Directly affected people are best placed to identify local solutions, and community controlled organisations have the unique capacity to provide culturally appropriate services.
3. Recognise the driving factors of imprisonment and violence – Involvement in the child protection system and family violence are two of the clearest indicators of people who are likely to end up in the criminal justice system
4. Focus on Safety – The impacts of crime are most felt strongly by women in the community.
5. Services, not sentences – The criminal justice system is often an ineffective way to respond to people with disability or who are experiencing poverty, mental illness, drug or alcohol addiction, homelessness or unemployment.
6. Community – Orientated Policing – Police have an important and often difficult role to play in dealing with offending behaviour, responding to family violence and keeping us all safe. There are issues relating to under or over policing, harassment or racism which can sometimes exacerbate the situation for already marginalised and disadvantaged communities. Changes to the way police interact with and enforce law can play a vital role in reducing crime and building stronger communities.
7. Smarter sentencing – The hallmark of a justice system is fairness. Harsher sentences and laws that strip judges of their ability to make the sentence fit the crime, such as mandatory sentencing, need to be changed and a wider range of sentencing alternatives encompassing non-custodial options enabling judges to ensure that sentences are tailored, fair and appropriate.
8. Eliminate unnecessary imprisonment – In many instances sending a person to prison is unnecessary (fines) and can contribute to further involvement in the criminal justice system. We need to find more effective community options.
9. Adopt community justice options – Evidence tells us that therapeutic and restorative processes are ways in which the criminal justice system can help build relationships and deliver positive outcomes for the entire community. Investing in early intervention and prevention activities, such as community legal education, is more cost effective and prevents offending occurring in the first place.
10. Young people don't belong in prison – punitive 'tough on crime' approaches to youth offending fail to recognise that young people are still developing and that far more appropriate opportunities for support and positive reinforcement exist than putting children behind bars. Young people must be supported to maximise their chances of achieving their full potential.
11. Rehabilitation is in all our interests – A prison sentence should not be a sentence for life. It is in all our interests to ensure that people in prison receive effective rehabilitation that includes education and programs that support services to increase their capacity to reintegrate into the community following release.
12. Reintegration not recidivism – Too many people fall back into the prison system after being released from prison. This tells us not enough support is being provided to people while in prison and during their transition back to the community. Better supports need to be provided to assist people lead productive lives and fulfil their potential including the provision of affordable housing, health care and training and employment.

The Blueprint also proposes that elimination of unnecessary imprisonment could be achieved through reconsidering how fines are dealt with; as could the implementation of community justice approaches. The Coalition noted therapeutic and restorative processes including Koori Courts, drug courts and

healing circles are ways in which the criminal justice system can help to rebuild relationships and deliver positive outcomes for the entire community. In this document – there is also a strong stance on punitive ‘tough on crime’ approaches to youth offending and misbehaviour and promotion of rehabilitation including education and programs and support services to increase people’s capacity to reintegrate into the community following release. In the post –release process, there is the principle of reintegration not recidivism, which speaks to a lack of support for people during and after prison, and better support during their transitions back into the community. This is an acknowledgement of Aboriginal and Torres Strait Islander people’s requirements to lead productive lives usually include access to affordable housing, healthcare, training and employment.

In a scathing article focusing on Australia’s failure to address the high incarceration rates of Aboriginal and Torres Strait Islander people published in [British Medical Journal](#), researchers from the George Institute for Global Health analysed the Australian Government’s response to criticisms made as part of the UN-led Periodical Review (UNP) process, which scrutinises countries’ records on human rights. The article completed in 2015 showed Australia had made little progress toward addressing concerns about Aboriginal and Torres Strait Islander peoples’ incarceration rates that were raised in 2011 (Muhunthan, 2016). Focusing on social determinants of health and wellbeing, accessing appropriate legal assistance, addressing use of force by police and investing in justice targets, evidence generation and providing sustainable funding for Indigenous programs and prioritising investments in early intervention and prevention strategies are needed to reduce Indigenous incarceration rates.

This view was confirmed in a [report undertaken by Amnesty international](#) to mark the 25-year anniversary of the presentation of the Royal Commission into Deaths in Custody Report to Australian governments. Commissioned by Amnesty International and drafted by Clayton Utz, the report sets out the extent to which, if any, the recommendations of the *National Report of the Royal Commission into Aboriginal Deaths in Custody* have been implemented by State, Territory and Federal governments. In an overview of whether the recommendations had been implemented, the ACT government was found to be ‘lacking’. This Report suggests that annual reporting on the implementation of the RCIADIC Recommendations in the ACT to date has been lacking. Even though in 2010, the ACT Government published the *ACT Aboriginal and Torres Strait Islander Agreement*, findings suggest that the last government report on the implementation of the RCIADIC Recommendations was released in 2001 (Clayton Utz, 2015, p. 12). There had been adequate responses on the issues related to deaths in custody and giving sympathetic consideration to families of those who died in custody, recognising the Victims of Crime Act, and the ACT Coronial Support Service to provide counselling to persons affected by coronial proceedings (Clayton Utz, 2015, p. 24). Even though Aboriginal Justice Advisory Committees (AJACs) were established in each of the states and territories, many of the AJACs were either abolished or allowed to collapse by governments (Sweet, 2016).

**Commitment,
Governance and
Reporting**

These unsustainable structures have had a devastating impact on communities, and on those who require support and direction. Unsustainable strategies assist ‘widen the gap, not close it’. In a report conducted by the [Commissioner for Children and Young People in Western Australia](#), there is a shift toward being able to focus on young people’s aspirations than deal with their criminality (Commissioner for Children and Young People WA, 2015). To do this, a series of recommendations were made that support the role and capacity of parents to care for their children in culturally appropriate early childhood services, recognising culture as the protective factor for families, the need to address racism and support reconciliation, well integrated across agency initiatives to better identify and remove barriers to effective school engagement; access to mentoring and support programs; access to positive and safe community spaces and access to age appropriate, low cost recreation, sport and cultural activities to support children’s active engagement and social participation.

Summary of Highlights from National Campaigns

The ways in which Aboriginal and Torres Strait Islander people engaged with the justice system is always in the deficit, backed up by horrendous statistics of disadvantage and despair. Governments have often referred to the ‘failed experiments’, the high expenditure and the burden of Aboriginal and Torres Strait Islander people on society – which generally portrays a negative and deficit viewpoint of all Aboriginal and Torres Strait Islander people. This is not the case with many Ministers and senior bureaucrats recognising or accepting their role, as numerous independent reports have highlighted that they are often key contributors to the state of Indigenous affairs. Imposed policies and programs that have not been developed in consultation or collaboration with affected persons, their regular restructuring of programs, short sighted funding arrangements and lack of engagement with Indigenous people’s peak bodies have significantly contributed to the state of affairs. Professor Tom Calma refers to this as ‘the blame game’ which must stop. The first step, he says, is to ‘respect and value the contribution of Aboriginal and Torres Strait Islander people to the journey; the second is to develop long term generational plans and strategies and fund them appropriately. Thirdly, solutions need multi-party support and finally all initiatives must be underpinned by research and best practice, both nationally and internationally (Calma, 2016).

*‘The answers lie with
community, not
governments’*

Key points from the national campaigns highlight strategies that support and protect Aboriginal and Torres Strait Islander people in their engagement with the justice system include:

1. Early prevention, early childhood and family based support from pre-to-post engagement with the justice system are critical investments to break cycles of trauma, and to assist families disengage with the justice system.
2. Local community voices are needed to be heard in decisions about sentencing and rehabilitation, issues of child protection and family matters and in decisions about community safety.
3. Culture is the protective factor for young people. Courts need to employ and engage with cultural agents as a critical support for families in crisis, and due recognition and resources be directed to appropriately support and resource community controlled organisations to undertake work that reduces engagement with the justice system and improves outcomes of rehabilitation.
4. That there be due consideration and investments in alternative strategies for dealing with offending – community and health solutions, not prison solutions, particularly for those experiencing disabilities, trauma and for youth.
5. Development of and a commitment to adequate engagement with Justice Targets within a COAG framework.
6. Principles founded in rights frameworks and UN commitments to Aboriginal people and children in Australia be embedded in any justice system response – requiring justice systems to address issues of racism and discrimination.
7. Families are supported by well resourced, sustainable and engaged community organisations
8. Evidence based and evidence generative work informs non-custodial sentencing arrangements that guarantee community safety and
9. A culturally competent workforce is mobilised in systems to engage with families and communities and assists other workers deal with and eradicate racism.

Indigenous Specific Court Initiatives

To make Australian court processes more responsive to the needs of Indigenous participants, a review of Indigenous specific court initiatives to support defendants, victims and witnesses was conducted in 2015. The review highlighted innovations that had been designed to assist Indigenous defendants, victims and witnesses. Some initiatives showed a level of flexibility in the Courts system to put in place strategies for dealing with Indigenous Australians in ways that were helpful. Assessments of their innovation included the capacity for court procedures to address cultural and linguistic barriers, engage communities effectively, facilitate access to support services, ensuring the court processes were fair and resulted in reducing Indigenous peoples with the mainstream court processes. (Bartels, April 2015).

Indigenous Sentencing Courts

Specialist court processes based on Indigenous sentencing courts have been widespread, with the Queensland Murri List now offering heightened levels of support to Aboriginal and Torres Strait Islander people by referring them to address underlying causes of a 'defendants' criminality' as 'offenders can be referred to services as part of their bail undertaking, including drug or alcohol rehabilitation, work readiness courses or enduring offending programs' (Bartels, April 2015). Also in Queensland, the Remote Justice of the Peace program empowers Queensland's JP Magistrates, most of whom are Indigenous, to deal with offences against local laws and summary offences as well as bail applications and granting adjournments. This program had trained and sworn in over 200 JPs and has high acceptability with a great many service providers stating that this program built capacity for communities to own their sentencing solutions – sharing the same cultural identity, language and background as the people who appeared before them. To support this initiative well, extra care was needed to recruit and retain Indigenous JPs, support them with consistent and clear criteria about which matter to refer to the JPs. Inhibitors to the program was a lack of services to refer people to, a lack of legal assistance and over-reliance of fines as a sentencing option as well as some disproportionately harsh sentencing outcomes when compared to the Magistrates Courts. In Western Australia, [Pre-Sentencing Courts](#) hear family and domestic violence matters, providing offenders with the opportunity to complete programs that address their violent behaviour before the final sentence is delivered. These pre-sentencing courts are also available to young or early offenders. Another example of promising practice from Western Australia is the [Aboriginal Alternative Dispute Resolution](#)

*Addressing the
underlying causes of
criminality*

*Alternative
Dispute
Resolution (ADR)
for family feuds*

[Service](#) which recognises the complex and sometimes chronic inter and intra family feuding that facilitates peoples engagement with the criminal justice system. (Ralph, 2010) These services ensure each party has: ownership over the process, opportunity to prepare prior to implementation of the process, work with parties to design processes to meet their procedural, substantive and emotional needs, ensure the sustainability of agreements and ensure that practitioners have skills to be effective in working in the Indigenous context. The [Solid Work Report](#) completed by Attorney General's Department in 2009 also presented a

set of strategies for implementing effective practice for those with the responsibility for the development and delivery of dispute resolution services including whole of community approaches to the issues at hand.

Community Justice Groups

Community Justice Groups have operated across various states and territories, adding value to different parts of the criminal justice system to improve its effectiveness for Indigenous peoples. In

Queensland, Community Justice Groups members are mostly Elders, respected persons, traditional owners and members of the Indigenous community. Most CJGs promote diversionary processes and develop networks with other government agencies to ensure issues can be addressed. They also make cultural submissions to Magistrates Courts and identify and promote supporting programs that assist Magistrates in their decision making. Although widely supported, the programs also were recognised as being severely constrained by poor program resourcing and governance arrangements. In addition, the efficiency of the system could be reliable provided because of available financial and performance data. Poor quality data is often identified as a weakness of the program.

Identifying and promoting support programs

Procedural and Social Support for Court Participants

NSW runs the Aboriginal Client Service Specialists Program to provide support and advice to Indigenous defendants to minimise breaches of court orders. In Victoria, the Koori Liaison Officers Program is available to support any court proceeding. In addition to this service, there are also Koori Community Engagement Officers at two Magistrates Courts who can assist Koori participants with court processes and liaise with Koori communities. The Koori Victims of Crime Assistance Tribunal specifically supports Koori Victims for Crime and the Intensive Support program works specifically with young people to help them comply with the conditions of their bail or deferred services. In South Australia the Administration Authority for the Courts employs 10 Aboriginal Justice Officers to support court participants, judicial officers and the community. 5 of these officers are permanently based at five courts, including the Youth Court as well as servicing 15 other metropolitan, regional and remote courts. The co-location of Aboriginal Justice Officers is also a feature of Western Australian courts system which is considered highly acceptable to a range of stakeholders. In addition to this program, another highly acceptable programs are the Aboriginal Visitors Scheme, which provides support and counselling for Aboriginal detainees and prisoners (Bartels, April 2015). The important feature of this work is they engage with families during and after court appearances. In this way, they provide sustained support for people during their entry into and exit from the court system.

The role of Community Engagement Officers

Social supports are provided through Koori Youth Justice Workers to provide access for young offenders to appropriate role models and culturally sensitive support and role models that targets young people at risk of offending as well as offenders on community based and custodial orders. Aboriginal Legal Services, despite governance and funding insecurity; could provide a range of services including legal advice and representation, prisoner support, community education and liaison, research, law reform and advocacy. Legal Aid in Queensland has developed a [brochure](#) that sets out 10 principles for working with Indigenous families accessing courts and provides free seminars for lawyers on communication skills and cultural considerations when representing Indigenous clients and an Indigenous legal services hotline. Public Prosecution agencies have specific assistance to Indigenous witnesses and victims. Officers who assist in this work have professional qualifications, training and experience in counselling to assist victims and witnesses and their families going through the prosecution process. These services are in addition to a range of victim support services. SA has produced a document called [‘Speaking up as a Victim of Crime’](#) presenting information on talking to police, the court and support services.

Developing Information for the needs of community, the profession and the judiciary

Judicial Education

In some jurisdictions, the Judicial colleges can undertake (and conduct) professional development programs for judicial officers on Indigenous justice issues. Consisting of guided walks, seminars, workshops, community visits, presentations and conferences – themes have focus on the need for innovation to assist both Indigenous and mainstream courts work better with Indigenous peoples, comparisons in sentence severity, learning about community needs and Aboriginal young people and justice. Some jurisdictions hold ongoing cultural awareness training and in South Australia a two-day cultural awareness program for all new staff is mandatory, including for new Magistrates. Judicial benchmarks are reference materials to assist judicial officers as well as other textbooks that have been compiled with a view to address a range of issues relevant to Indigenous defendants. Whilst this is effective training, it is not consistently accessed because it is voluntary in nature. Calls to make several components of the training compulsory have been raised as well as the development of a specific Aboriginal bench book. Another suggestion has been to ensure all judicial officers detailing with Aboriginal people have access to a checklist of issues particular to the jurisdiction, that permit consideration of the context in which the individual offender comes before the court. These needs to be inclusive of language and communication issues particular to that region and might need to accommodate the need for interpreter services, disability supports and communication issues, and a guide to all relevant stakeholders in the court process – police, court and judicial officers as well as legal representatives for the prosecution and defence are adequately informed so that miscommunication is minimised.

Judicial Education

Cultural Competency

To provide advice on court processes to Indigenous defendants, witnesses, victims and their families, help them access relevant services, liaise with relevant agencies to coordinate service delivery and educate and provide advice to judicial officers, court staff, prosecutors, defence counsel., police, corrections officers and other key stakeholders, people need to understand, and appreciate Aboriginal and Torres Strait Islander people and culture. This training must raise awareness and move participants toward changes in attitude and behaviour that are required for better service provision.

Cultural Competency and Culturally Safe and Appropriate Services

Understanding Aboriginal culture and worldview are found to be critical in the facilitation of culturally safe and accessible court related services.

The development of [Reconciliation Action Plans](#) that embed cultural competency within organisational in some part guarantees a commitment to cultural competence and culturally appropriate service delivery and a safe workplace environment. These actions need to be supported by a policy environment that supports organisations become culturally competent and support the full implementation of training and induction programs. All organisations have called for genuine

partnerships to co-create solutions to issues in the community, including the design, implementation and evaluation of programs. Advisory committees, needs assessments and tailored competency based training can be effective tools and resources as can cross cultural communication training and anti-racism and discrimination strategies. These courses could have both generic and specific information and facilitators can be external or internal to the justice system. Mentoring and follow up activities are also important for Indigenous and non-Indigenous staff.

Summary

This section of the report identified several key initiatives that may make the court system less harmful for Aboriginal and Torres Strait Islander people when they are defendants, victims or witnesses. Critical measures need to be developed in partnership with local community people and work in tandem with strategies designed to tackle the social determinants of health and wellbeing that impact on engagement with the judicial system. The key points from this section are focused on:

- the need for a strong, culturally robust and engaged workforce to support Aboriginal and Torres Strait Islander people pre, during and post their court appearance.
- the need to deliver relevant services and support people's access to them.
- the need to coordinate and integrate service delivery – particularly in instances where we need a service response, not a prison solution;
- the need to educate and provide advice to judicial officers and maintain appropriate records of referrals and services provided, as well as assisting in the development and implementation of policies and procedures relating to Indigenous peoples.

ACT Specific Justice Reforms

Supporting the role of Indigenous Victims in Courts.

In 2009, an [ACT Victims of Crime Coordinator Report](#) investigating the circumstances of Indigenous victims of crime seeking assistance from the criminal justice system provided an overview of evidence of strategies that had been adopted to support Aboriginal and Torres Strait Islander people who had been victims of family and domestic violence.

Over a two-year period between 2002-03 and 2004-05 there were 49 cases held by the Australian Federal Police and the Office of Director of Public Prosecutions (ODPP) and of these, 25 cases were prosecuted by the ODPP relating to an Indigenous victim and/or offender (ACT Victims of Crime Coordinator, March 2009, p. 9). All but one of these clients were female and presented to the Domestic Violence Crisis Service with a range of health issues including mental health, drug and/ or alcohol dependence, and compounded by poverty, homelessness and long histories of abuse. These experiences of violence were deeply entrenched with many respondents citing their first experience of violence occurred in childhood. Thirteen of the clients had contact with the DVCS for over seven years, with case notes referring to physical violence, injury, threats and emotional abuse commonly described. At the time of writing, there existed in the ACT a pro-arrest, pro-prosecution policy for residents experiencing domestic violence, paralleling the rise in the number of prosecutions; requiring the ACT to employ 3 full time specialised family violence prosecutors during 2007-08. During this time in 25 matters over 44 charges were laid. Half of these charges accounted for common assault, with 6 relating to assault occasioning actual bodily harm (ACT Victims of Crime Coordinator, March 2009, p. 10). Indigenous people's contact was understood to have arisen from complex interplay of factors including social, cultural, historical and economic factors and intergenerational and trans-generational post-traumatic stress caused by family removal and child abuse, and that these factors impinged on a person's capacity to live full, productive, culturally meaningful lives (ibid). There was also a recognition of the need for responses to include programs that target social and cultural determinants of health and wellbeing, recognising the need for greater flexibility, tailored family solutions with restorative and rehabilitative benefits as core; and an explicit recognition of the importance of local community solutions. Of those that presented to the court systems, there was also recognition that this pathway does not meet everyone's needs and that victims of crime might be engaging with friends or family members and be seeking services from hospitals, support services and refuges.

Pathways for Victims

Aboriginal and Torres Strait Islander victims of violence were also understood to face additional barriers when coming forward: isolation due to a perceived fracturing of kinship and family ties; geographic location, language barriers, a desire to keep Indigenous offenders out of prison or an aversion to involving police, and in some family's experiences, violence has been 'normalised'.

Overcoming barriers

Indigenous women appear more likely than non-Indigenous women to seek refuge from family violence, but while they stay in refuges more frequently than their non-Indigenous counterparts, they do so for shorter periods. Despite being over-represented in recorded police data as victims of violent crime, it has been noted that Indigenous women are less likely to report violent crimes to the police than non-Indigenous victims, again suggesting that police data under- estimate levels of violent victimisation against Indigenous women. The implications from these findings are that agencies outside the criminal justice system, such as hospitals, community health services and refuges, need to be sufficiently staffed and resourced to deal with the demand from, and the needs facing Indigenous victims.

The criminal justice system, civil justice avenues and community crisis and counselling support services face a considerable challenge in encouraging victims in general to engage with them. While this

challenge relates to non-Indigenous as well as Indigenous victims, there are likely additional challenges in engaging Indigenous victims. Building trust is key, as are issues of access and approachability (including physical location, times of operation, customer service attitude of staff); intensity of case management (resources, time); cultural appropriateness of services (including language, Indigenous staff, cultural training etc.) (ACT Victims of Crime Coordinator, March 2009, p. 40). In addition to these issues, this report found that Indigenous status of victims is often poorly or inconsistently recorded in police, courts and prosecutions data, or not at all. This deficiently tends to place the emphasis in the public eye squarely on the over representation of Indigenous offenders who are incarcerated while the voices of victims are silenced. The inability to properly identify Indigenous people who have experienced violence means that the degree to which Indigenous victims of crime contact and utilise the services of the criminal justice system is largely unknown. Local and national data sets are not able to provide data on numbers and proportions of recorded victims of crime who identify as Indigenous, with implications for funding, policy and services.

*Inadequate data
has implications
on funding
levels, policy and
services*

The report also found victims will report to police only when there is an alignment between their expectations and beliefs about the consequences of reporting and whether reporting satisfies their needs. Factors influencing these decisions include relationship to the offender, nature and severity of the offence, concerns about personal safety or safety of others, social norms about violence and reporting and perceived consequences of reporting. Where a victim fears retaliation, does not want

*Integrated
Services*

the offender to be arrested, needs to ensure continued financial support or wants to avoid shame and stigmatisation within the community, reporting is less likely to occur. Alternatively, some victims of violence may report the incident to police to remove the offender from the premises until the immediate risk of violence has subsided—the aim of reporting here is not to have the offender arrested or prosecuted but is

an instrumental means of removing the immediate risk of violence.

Reporting violence to police (and involving the criminal justice system) may not meet the needs of many victims at all. Some choose to seek help from sexual assault or domestic violence services and access the civil justice pathway of protection orders rather than involve the criminal justice system. Others do not disclose violence to anyone other than family or friends. The ABS Crime and Safety Survey (ABS 2006d) found that while two thirds of female victims of assault sought help from family or friends only 15 percent sought help from a counsellor and only four percent sought crisis help. It is necessary to ensure that justice processes and community services are accessible for Indigenous victims but flexible enough to allow choice in how they respond and whom they seek help from. At present, it is unknown who Indigenous victims might seek help from if they choose to disclose an offence, or what type of help they are seeking. This could be alleviated by investing in functional integration of the activities of the police, prosecution, courts and corrections as comprising the *criminal justice system*; and coordinating externally with other key agencies such as domestic violence advocacy services and community controlled organisations.

This 2009 report also found that Indigenous persons were more likely to have frequent contact with the courts prior to appearing. In 2001, 27 percent of males and 17 percent of females had appeared in court more than five times in the five years prior to their 2001 appearance. The rate of contact with the court system was almost four and a half times higher for Indigenous people than for the entire NSW population and they were 16 times more likely to be imprisoned in 2001 than the wider population (ACT Victims of Crime Coordinator, March 2009). This was particularly the case for mediation in the conference rooms at the courts for child protection orders and Domestic violence orders which was referred to as ‘a nightmare’ by the Indigenous women identified as victims of crime who made comments for the report.

Recommendations from this report highlight the need for:

1. Supports to be offered to meet the needs of a person who has been subjected to violence and abuse are met and the safety of their family and community are prioritised.
2. The aims of the court allow Aboriginal and Torres Strait Islanders greater involvement in the sentencing process, to reduce barriers between Courts and Indigenous people and to increase the confidence of Indigenous people in the sentencing process.
3. That the conference rooms and mediation services are accessible and appropriate for Indigenous peoples and that individuals and families have support while engaging with child protection agencies and police, particularly in circumstances where families who have had their children formally removed are seeking children reinstated back in their care and in the instances where DVOs are required.
4. Staff and community are aware of, and support the role of Indigenous victims of crime in the criminal justice system, and that social determinants of health and wellbeing are understood by all staff.
5. Resources and supports are put in place to support staff and interested community members to better explain the English legal system terminology and develop competencies in giving Aboriginal and Torres Strait Islander victims of crime moral support and culturally therapeutic care. Staff need to be sympathetic to the problems experienced by people who come in through the door. This would be improved by having an Indigenous service or person or room available for support where a person can get more information and relay this to the client.
6. More is done (research, advocacy) to understand the frequency of contact with the courts by Aboriginal and Torres Strait Islander people, leading to better identification of Indigenous status and to understand where to make preventative investments in supporting people use court services.

*Specific Services
to support
Aboriginal and
Torres Strait
Islander Clients*

Circles of Support

The ACTCoSS and Aboriginal Justice Centre in 2008 undertook a review of the overrepresentation of Indigenous people in incarceration with a focus on Indigenous Justice programs and prevention, diversion and rehabilitation. The resultant report, [Circles of Support](#) aimed to stimulate a shift in thinking within government and the broader community about crime prevention and diversion. By reconceptualising crime prevention as social support with an emphasis on early intervention, the report was quick to recognise the number and range of community people and organisations that are currently engaged in providing social support services with a crime prevention function. There was a recognition that many of these people and organisations do not define their work in this way, nor measure success in terms of crime prevention, nor do these agencies receive funding from crime prevention grants funding for their work in community development, advocacy and family centred supports.

*Identifying
underlying risk
factors that lead
to offending
behaviour*

Community people engaged in the development of this report highlighted that the experiences of racial discrimination in accessing services, sexual assault, lack of a strong cultural identity (lack of connection or lack of cultural identity was seen as a clear risk factor in offending whereas strong cultural ties was seen as a protective factor), issues of housing affordability and homelessness, lack of supports for Indigenous prisoners, lack of knowledge in community about criminal law

and legal rights; the need for coordinated service delivery and service systems and lack of appropriate services by mainstream organisations were seen as contributing to over representation of Indigenous people in the justice system (ACTCoss and the Aboriginal Justice Centre, 2008, pp. 16-18).

To improve outcomes for people involved in the court system, access to Indigenous people's specific legal advice and support workers during the charge and court processes was identified as a way of reducing over representation in the justice system. Participants also observed that the rate of conviction in court was far greater where a young person had no legal representative in Court. A case management approach was advocated for in the court process, as clients seeking the advice of community legal centres frequently have complex, multi-faceted issues that cannot be addressed by one service or government department. The need for case managers emphasised as a critical strategy to be employed through courts, until concerns that community and Indigenous legal services (understaffed and under-resourced, and the lack of funding) could be addressed. In addition, Indigenous staff in mainstream organisations are few in number. The report highlighted the significance of having an Indigenous 'face' within mainstream services, to improve accessibility by Aboriginal and Torres Strait Islander clients and enhance their capacity to build trusting relationships.

People with complex needs require services to provide higher levels of support

The need for advice in circle sentencing was also raised, with concerns expressed about the adequacy of legal advice and representation received by some participants in the circle sentencing process. Some comments relating to circle sentencing were concerned that existing systems are insufficient to provide support to the process of circular sentencing, compromising its

outcomes. Indigenous people going through circle sentencing need to be supported to fulfill undertakings made during the process.

In a diversionary program, the goal for courts was identified as reducing the likelihood of conviction and/or the severity of sentencing outcomes for Indigenous people who have been charged with an offence. An example of this was that bail support programs could be established with relevant service linkages including alternatives to sentencing and community led initiatives. Also identified was the need for gender specific strategies in courts that were aligned to the gender patterns of offending, the young age of the Indigenous population in Canberra and the need to both collaborate and evaluate crime prevention and diversionary programs.

The report urged service providers and court affiliated agencies to identify risk and protective factors as possible as 'it has been demonstrated that targeted interventions that introduce protective factors and remove risk factors from key transition points are able to produce better outcomes for children and families.' (ACTCoss and the Aboriginal Justice Centre, 2008, p. 36) Identifiable risk factors for Indigenous young people/people include: individual, family, school and peer factors, neighbourhood and community factors, the intergenerational impacts of forced separation and the experience of racism and discrimination. These, when combined with higher rates of major life stressors including trauma and loss need to be addressed by suitably qualified staff. Protective factors, being individual, family and cultural controls on behaviour, include having strong bonds with family, friends and teachers; Adequate parental monitoring; belief in a positive future; participation in family, school and community activities; recognition and praise for positive behaviour; and cultural resilience (ACTCoss and the Aboriginal Justice Centre, 2008, p. 37). Targeted interventions should be designed to introduce protective factors and remove risk factors from key transition points suggesting here are three different types of transitions that need to be considered:

Targeted interventions to produce protective factors and address known risks at key transition points

1. Life stage transitions, for example, birth, preschool years, primary to secondary school; and school to work or higher education;

2. Developmental pathways, for example, late childhood and early adolescence; and
3. Life transitions triggered by crises or events, for example, death of a relative, family breakdown, first contact with police.

This report highlighted the importance of social competency and mentoring programs – particularly for those who are yet to engage with the Courts. Three key points were identified as important times to engage diversionary programs:

1. A decision to issue caution or warning rather than charge;
2. Upon arresting and charging, an officer could decide to use court summons rather than detaining the offender in police cells until the preliminary hearing; or
3. The officer could refer the offender to community-based services, for example drug and alcohol rehabilitation services, housing, mental health (Weatherburn & Baker, 2001).

The report also highlighted the need to invest in programs to support different outcomes for people with disabilities (hearing) or cognitive impairments, and the importance of investing in appropriate training and evaluation of these styled programs.

Court specific strategies and recommendations were identified in the report, with particular reference to the work Magistrates can do to reduce the likelihood or severity of conviction for Indigenous peoples who have been charged by adapting court processes, offering culturally appropriate programs that offer prevention-type activities with a combination of community support for offenders so courts can bail rather than remand offenders and impose community rather than custodial sentences with examples such as indigenous focused residential based alternatives, intensive bail supervision and post-sentence supervision, monitoring and family support by case managers or mentors. If Indigenous people are convicted, further progression into the system could be minimised through penalties, restitution orders or good behaviour bonds as alternatives to community based supervision; noncustodial sentences, suspended sentences or combined custody and treatment orders, judicial discretion to impose shorter sentences and Indigenous specific courts such as in the circle sentencing model. Court alcohol and drug related assessment services were a powerful pre-sentencing options as was the Magistrate being able to complete an early referral into Treatment program, with evidence suggesting that voluntary options were more successful than compulsory orders.

*Court specific
strategies to address
offending
behaviours, build
protective factors
and reduce risk*

Court staff needed more information on how to appropriately identify and support people with intellectual and cognitive impairments and the employment of forensic mental health court liaison officers saw offenders with mental health issues more aware of their options. The legislation allowing people with mental health issues to be discharged into the care of responsible persons was underutilised, due to a failure to detect disability and a concern that it will encourage recidivism. This could be trialled in ACT.

Restorative justice conferencing was understood to make the offender aware of and accept their responsibility for their actions and discuss with the victim what may be done to repair the harm. In the ACT, this work has been done by the [Galambany Court](#) which has continued to enhance the relationships between Aboriginal and Torres Strait Islander people and the ACT Criminal Justice System. Even though a court is not obliged to reduce a sentence because the offender has participated in restorative justice conferencing before sentencing, the courts can take efforts made into account. These strategies, combined with better engagement of Elders and respected people as well as the offender and their family in the process of justice, was having success in reducing arrests and breaking the cycle of Indigenous re-imprisonment.

Specific recommendations that are appropriate from this report include:

1. Increase the number of Indigenous staff at the courts and provide cultural awareness training for staff.
2. Research and evaluate the feasibility of establishing a drug and alcohol court in the ACT.
3. Expand the range of community dispute resolution options for Indigenous people in the ACT, and
4. Invest in pre and post sentencing support programs.

“We’re Struggling in Here!” Winnunga Nimmityjah Aboriginal Health Service Report

In 2011, Winnunga Nimmityjah Aboriginal Health Service undertook a Phase 2 study aiming to understand the specific needs of Aboriginal people in the Alexander Maconochie Centre (AMC) in the ACT and the needs of their families (Poroch, et al., 2011). It determined the best practice Winnunga Model 1 for the delivery of a holistic prison health care service (developed in the Phase 1 2007 Winnunga Study) is relevant to these needs. The study takes into consideration the findings of the ACT Government commissioned Knowledge Consulting and the Burnet Institute reports and follows the rationale of the Phase 1 Study. It presents the findings of the interviews with Aboriginal people related to AMC and people working in AMC supporting organisations to address the three research questions: 1. What are the specific health and social and emotional wellbeing needs of the Aboriginal people in the AMC and are they being met?; 2. What are the specific health and social and emotional wellbeing needs required by the family when a family members in the AMC and on release, and are they being met? and 3. How can the health and social and emotional wellbeing needs of Aboriginal people in the AMC and their families be accommodated? Court specific recommendations include advocacy and outreach for families and Aboriginal and Torres Strait islander people if taken into custody and assistance needed with court appearances. A focus on at-risk youth or youth who have been recommended through court orders who are supported to carry out course work in one or a combination of activities, in their own time at the same time as their families are provided social and emotional and family wellbeing supports. These programs are benefiting people by enhancing self-esteem and confidence while maintaining a good family infrastructure. This emphasis on skills and family empowerment was found to have success. Winnunga’s report highlighted the importance of access to forensic mental health services (including a mental health assessment within 24 hours of admission, ongoing psychological assessment, monitoring and management of remandees presenting with mental health issues, case management of remandees with diagnosed mental health conditions, interventions, referral and consultations, Court liaison, Court assessment and community outreach services); after hours mental health crisis intervention and a clinical pharmacy service critical in reducing engagement with the justice system and supporting people live without being in contact with the justice system. Also critical is the need to fully implement the [Holistic Model of Prisoner Health and Wellbeing](#) (page xix), as contained in the Phase 1 Study (Poroch, et al., 2007).

*Empowering families
to reduce offending
behaviours*

The Path to Justice

Additional commitments made in the report [The Path to Justice: Aboriginal and Torres Strait Islander Women’s Experience of the Courts](#) echoed the importance of [recognition of Aboriginal and Torres Strait Islander people as the First Australians](#) and to ensure the needs of Aboriginal and Torres Strait Islander women are met at the outset and their importance is truly acknowledged (Judicial Council on Cultural Diversity, 2016). Secondly, there was a strong theme of recognising and valuing the complexity of Aboriginal and Torres Strait Islander communities and cultures. One size strategies will not fit all women, and need to be tailored to accommodate location, age, language and community factors, cognisant of issues that Aboriginal and Torres Strait Islander women may experience more

acutely: trauma, racism, adversity and disadvantage, language barriers, cultural differences and social exclusion (Judicial Council on Cultural Diversity, 2016, p. 7).

Courts were recognised as having a role to play in rectifying barriers during pre-court including fear that reporting violence will mean authorities will remove children; geographical barriers, impact of poor police responses, family and community pressure on women seeking to protect themselves and their children; the complexity of legal problems experienced by Indigenous women, lack of access to legal assistance and advice and lack of legal knowledge and understanding of rights under the law (Judicial Council on Cultural Diversity, 2016, p. 8). Communication barriers were also identified. The role the courts could play is rewriting or reframing forms, sentences and orders into plain English, further plain English resources and visual aids; better education about staff needing to communicate effectively in Aboriginal English, greater use of interpreters and translators and employment of Indigenous Court Officers. Findings from consultations found that Aboriginal and Torres Strait islander

Aboriginal and Torres Strait Islander women experience more trauma, racism, adversity and disadvantage, language barriers, cultural differences and social exclusion

women found the courts themselves were culturally unsafe – the intimidating process of arriving at court and safety while waiting at court, unpredictable waiting times, difficulty with understanding forms, judgements and courtroom dynamics. Difficulties in these areas triggered and amplified some women’s existing fear and distrust of courts, causing women to ask for greater inclusion of their voices in assessing the performance of the justice system. Additional elements that could build a successful framework to address the needs of women included the need to work with Aboriginal and Torres Strait Islander organisations and researchers to develop indicators and evaluation approaches that include First Peoples values and priorities; the need for courts to show they are responsive and knowledgeable about its impact on the lives of Aboriginal and Torres Strait Islander people; the need for improved identification of Indigenous status, language and literacy; the need for improved case coordination and having a more holistic set of criteria to assess court performance and justice outcomes.

Creating culturally safe spaces for Aboriginal and Torres Strait Islander people

Recommendations included in this report state that courts should work with Aboriginal and Torres Strait Islander communities, their community-controlled services and Reconciliation Australia to develop accredited Reconciliation Action Plans, strengthen relationships and understanding of court processes at the local level. Magistrates Courts should introduce education sessions for women applying for intervention orders to provide them with information about the process and access to court support services; and Family Courts should re-establish court information sessions for court users about their processes. Cultural competency training was also highlighted, with recommendations

Cultural competency at all levels

stating courts (including all Judicial Officers) should invest in comprehensive cultural competency and family violence training for all court staff, including trauma support. Judicial officers who work in family violence matters should receive additional training in cultural competency within the context of family violence. Aboriginal and Torres Strait Islander employees are considered essential. All courts should employ more Aboriginal and Torres Strait Islander peoples and should ensure that Indigenous Court Liaison Officers are available at each court. To effectively deal with issues of safety, all courts should give priority to establishing separate waiting areas for women attending court for family violence and sexual assault matters, and should permit women to participate in the hearing via video-link. If this is not available, courts should take other measures to help women feel

Data collection to inform practice

safe in the court environment and when giving evidence. To enhance communication and build trust, all courts should have court interpreter policies that are publicly available and easily accessible matched with training and guidance about how to work with interpreters. Courts should improve data collection about the cultural, linguistic and gender diversity of their court users and involve the voices of community people in the establishment of key performance indicators against which to measure progress.

The ACT Aboriginal and Torres Strait Islander Justice Agreement 2015 – 2018

Built on principles including empowerment and community inclusion, culturally competent service delivery, partnerships and collaboration and accountability to the community, the ACT Aboriginal and Torres Strait Islander Justice Agreement advocates for improvements to the justice system to better meet the needs of Aboriginal and Torres Strait Islander people residing in the ACT and surrounding region. Advocating for a case based solutions approach to working with families and partnering agencies, the Justice Agreement focuses on prevention, social determinants and cultural strengthening as important initiatives to break intergenerational engagement with the Justice system (ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body, 2010 - 2013). Community consultations highlighted the need to focus on access to services (most services are in south side of town making it difficult for people living in the north to access). Transport was highlighted as a major issue as was a need for improved legal services, skills development and training, more Indigenous mediators being available and trained to assist with dispute resolution, resolve community conflicts and family law mediators. The employment of Court Liaison Officers and specialist staff was critical to providing links between offenders, victims and rehabilitation services and support programs. Staff ratios was also seen as critical and more able to engage with complex family issues. Data collection was seen to be a significant area of improvement to create data that could be translated into practice and policy.

*Building a plan to
move forward*

Major activities under the agreement include integration of service delivery, improved engagement and policing activities, the ability to deal with drug and alcohol issues, improve victim support and support better access to legal services, legal information and appropriately resourced and focused corrective services that emphasis through care, aftercare, cultural brokerage services, access to culturally safe places, restorative justice, mental health services and alternatives to sentencing and imprisonment. Specific emphasis is needed to address the issues of child protection and family violence and to recognise the special needs of children and young people. To reduce the numbers of people presenting to the justice system, more focus is needed on the social determinants of health, and family strengthening activities. A whole of government approach was advocated for to address issues of homelessness and housing affordability, education and training (particularly of those involved in circular sentencing) and data collection. The Agreement also has in place a reporting framework that includes annual reporting (Parliamentary and Close the Gap Report Cards), the development and monitoring of performance measures and requires a sustainable funding and resourcing strategy to underpin the goals and strategies. The action plan has over 105 tasks and actions, and has nominated actions, resources, timeframes, key agencies and the performance indicators needed to deliver on the agreement (ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body, 2010 - 2013, pp. 29-52).

Promising Practice

Ngunnawal Bush Healing Farm (NBHF)

The [Ngunnawal Bush Healing Farm](#) (NBHF) initiative involves the establishment of an Aboriginal and Torres Strait Islander alcohol and other drug residential rehabilitation service implementing culturally appropriate programs. The service will be founded on reconnecting Aboriginal and Torres Strait Islander peoples to land and culture, using participation in land management activities and programs, with the aim of assisting residents to better respond to life's challenges. NBHF acknowledges the significant work, by many stakeholders over many years, that has gone into advocating for its establishment and to its development so far. The United Ngunnawal Elders Council has been promoting the NBHF for over a decade and that many people's hard work will come to fruition with the opening of the service. Strong, culturally secure services that are both community controlled and delivered as partnerships with other specialist drug treatment and support services will be a key feature of the farm, as will the supports that will be in place to provide specialist drug services to strengthen cultural practices. In acknowledgement of the need for further development in the sector, the ACT ATOD Executive Directors Group committed to investing in a sector specific Reconciliation Working Group which focuses on both strengthening culturally secure ATOD specific practices and broader organisational developments. ATODA is committed to, and stands ready to work with, and in support of the NBHF in both its establishment, service delivery, research and evaluation, on-going development.

Cultural Competency Training by Legal Aid NSW

Cultural competency aims to prepare a workforce that can begin to address the disparities on the access to services that continue to negatively impact on Aboriginal clients (Kelly, Barac, Hawkins, & Barlo, 2013, pp. 3-7). Acknowledging that attitude, skills and knowledge are integral to cultural competence, a training model was developed with local people's input into program design and delivery. Challenging issues that were addressed through the cultural training saw people challenge their stereotypes – particularly on issues pertaining to domestic violence, their offensive language and their body language; people were also able to contextualise people's drug and alcohol use and the differences that Aboriginal and Torres Strait islander people have in their approaches to time. Legal practitioners were taken on exercises that got them to reflect on 'privilege and power' and to adopt critical self-reflection and awareness in cross cultural situations. This is an on-going process for the legal services in NSW, a key investment in ensuring their Aboriginal and Torres Strait Islander clients will experience culturally safe outcomes - not just in the legal profession but also working toward the broader goal of reducing barriers to accessing legal system services.

Gugan Gulwan Youth Aboriginal Corporation: Competent Adult Statement

The summary of good practice in working with prevention and early intervention programs highlights that promising practice includes programs that are designed for the right participants and addresses identified risk factors and behaviours; are adequately resourced and based on clear program logic, are family based and inclusive of behavioural parent training; involve the community and are culturally appropriate and cultural competence is evident at all levels of program design and delivery; work best for Indigenous youths and their families. This will also require organisations to work in partnerships across mainstream and community organisations; and programs need to address multiple and complex needs by adopting a holistic and comprehensive approach (Higgins & Davis, 2014). The Gugan Gulwan Youth Aboriginal Corporation has these core components embedded in their [Competent Adult Statement](#) (2009). The principle of adult competency in this organisation is 'to have power to create a quality of life, develop and use the ability to act with integrity in any moment of choice – whether that choice is planning the week, handling a crisis, responding to our conscience, building a relationship or taking some time out for ourselves'.

Gugan Gulwan Board and staff work with young people so they develop self confidence in all aspects of their lives and encourage young people to develop a desire to be involved with things that represent the deepest and best within them. Gugan Gulwan supports young people to understand each other and from a shared understanding, become willing and able to help one another. Competent Adults develop capacity for flexibility, capacity to change and learn from negative past experiences. Competent Adults, in the Gugan Gulwan context, are empowered to live, love and learn with greater meaning in their lives, and can participate in happy, healthy relationships, in loving families and are able to communicate emotions and feelings. The work Gugan Gulwan Youth Aboriginal Corporation does with young people now has an intergenerational impact for individuals, families and communities; breaking the cycle of disadvantage now and for future generations.

Indigenous Legal Needs Project

The [Indigenous Legal Needs Project](#) identified and analysed the legal needs of Indigenous communities in non-criminal legal areas such as discrimination, consumer matters, credit and debt, child protection, education, employment, health, housing and wills and estates. The research is directed towards identifying priority areas of legal need and is intended to inform successful models of legal service delivery. Improved responses will deliver better access to justice, enhanced compliance with human rights norms and improved social justice outcomes for Indigenous people across the country. Research highlighted that civil/family law issues impact upon many Aboriginal and Torres Strait Islander peoples daily and that most these issues are left unaddressed through legal avenues or otherwise. The consequences felt across Indigenous communities of *not* having these issues addressed are often critical, including placement of children into state care, eviction and homelessness, loss of income (through social security or employment), as well as increased offending. There is little doubt that improving Indigenous access to civil/family law justice will increase the capacity of Aboriginal and Torres Strait Islander peoples to avoid and/or to more adequately respond to these types of legal problems. Research *also* indicated that unmet Indigenous civil/family law need is directly linked with the continuing marginalisation of Indigenous Australians, evident in poorer educational outcomes, unemployment and poverty. Whilst being able to better resolve civil and family law issues is an essential goal in and of itself, the clear connection between not doing so and broader Indigenous social disadvantage provides added impetus for ensuring that Aboriginal and Torres Strait Islander access to justice in these areas is enhanced (http://www.snaicc.org.au/wp-content/uploads/2016/01/ILNP_Report_5.pdf).

*Addressing unmet
legal need builds
community capacity*

Conclusion

This section of the report reviewed a range of historic documents that have guided the development and delivery of services and strategies that have meant to respectfully engage Community people and workers; to address the cycles of disadvantage and trauma through holistic and courts based interventions and to review what can occur through strengthening culture, families and the workforce. Summaries of the themes arising from this section of the report include:

1. The importance of the role of Indigenous Victims of Crime in the Justice system. This role needs to be better understood, respectfully responded to and catered for through cultural safety practices including physical safety of the victim and their family at the Court and in the community.
2. Court rooms and mediation services are accessible and appropriate.
3. Communication of complex legal terms is available for all literacy levels and types. Not understanding court processes, dynamics and legal terms is negatively impacting on people during their participation in the justice system, and contribute significant barriers to people accessing justice related services. In addition, courts might consider alternative to face to face

communications via conference link or other telecommunications devices. This is particularly useful in addressing issues relating to victims of crime or family violence matters.

4. The ACT Court needs to understand their role and responsibility in 'bringing to life' the holistic models of care that exist within the community including the Winnunga Nimmityjah Aboriginal Health Service Justice model; the Bush Healing Farm Model and the Gugan Gulwan Competent Adult Model for example. These discussions need to form sustainable, systemic responses to the models, underpinned by evidence and data.
5. Early intervention and prevention efforts remain outside the scope of the ACT Courts; however, thought and consideration during cultural competency training needs to identify where and when are the best opportunities for courts to positively impact on a person's life; the opportunity for court staff to support parenting and other family strengthening activities and referrals to diversionary programs that can support people rather than have them imprisoned.
6. ACT Courts need to engage with and build a culturally competent workforce that can engage with court processes, diversionary programs, and provide confidential, 'warm' support to individuals and families all the way through a court related process. Staff need to be cognisant of issues that are specific to families and communities, and can tailor specific strategies to meet the needs of clients and their families.
7. The Court needs to develop a system of data collection and research to understand the frequency of contact by Aboriginal and Torres Strait Islander people with the justice system and promote Indigenous identification.
8. Courts need to understand and act on the intersections between civil/family law issues, and how these impact on the lives of Aboriginal and Torres Strait Islander peoples, and find some way to address these issues through legal or other avenues to reduce the impact on individuals, and their engagement with the criminal justice system.

Key Themes for ACT Workshop (May 2017)

This literature review has identified a range of themes for the workshop in May 2017 that focus on supporting Aboriginal and Torres Strait Islander people access courts and court services in the ACT. The literature has highlighted a range of topics and strategies, some that are outside of the parameters of the Courts, because of legislative constraints or the current policies and funding provided by governments.

Some of these suggestions might rely on working in partnership with key organisations that focus specifically on social determinants of health and wellbeing.

In any case, there are a range of issues that can be discussed on the day, to provide guidance to the Courts on how to practically engage with and positively transform the experience of Aboriginal and Torres Strait Islander people in their engagement with the Courts.

Bibliography

- ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body. (2010 - 2013). *Aboriginal and Torres Strait Islander Justice Agreement*. ACT Department of Justice Planning and Programs, Justice and Community Safety. Canberra, ACT: ACT Government.
- ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body. (2010 - 2013). *ACT Aboriginal and Torres Strait Islander Justice Agreement*. ACT Department of Justice and Community Safety. Canberra : Justice Planning and Programs .
- ACT Victims of Crime Coordinator. (March 2009). *We Dont Shoot Our Wounded*. ACT Attorney General's Department, ACT Government . Canberra: Victim of Crime Coordinator.
- ACTCoss and the Aboriginal Justice Centre. (2008). *Circles of Support: Toward Indigenous Justice: Prevention, Diversion and Rehabilitation*. ACTCOSS.
- Adams, L. R. (2016, November 22). *#Just Justice - Tackling the Problem of Over Representation of Aboriginal and Torres Strait Islander people*. Retrieved April 11, 2017, from Sharing Solutions: JustJustice_eVersion_2ndEdition_2.0.pdf
- Bartels, L. (April 2015). *Indigenous-specific court initiatives to support Indigenous defendants, victims and witnesses*. Indigenous Justice Clearinghouse, Australian Institute of Criminology, Australian Government Law, Crime and Community Saefy Committee. Indigenous Justice Clearinghouse.
- Calma, T. (2016). *Foreword, #Just Justice Campaign*. Canberra, ACT, Australia: Croakey.org.
- Carlson, T. F. (June 2011). *Towards Cultural Competence in the Justice Sector*. Centre for Cultural Competence Australia, Australian Institute of Criminology. Standing Committee of Attorneys-General.
- Change the Record Coalition. (2015, November). *Change the Record: Smarter Justice. Safer Communities*. Retrieved April 11, 2017, from Blueprint for Change: <https://drive.google.com/file/d/0B3OI0caEOuaFU3BNc3Zrbl9wa0U/view>
- Clayton Utz. (2015). *Review of the Implementaton of the RCIADIC*. Canberra: Change the Record Coalition.
- Commissioner for Children and Young People WA. (2015). *Listen To Us": Using the views of WA Aboriginal and Torres Strait Islander children and young people to improve policy and service delivery.*. Commissioner for Children and Young People WA. Perth: Commissioner for Children and Young People WA.
- Daly, L. M. (2016, October 15). *Hearing Loss among Indigenous children in NT detention 'widespread': royal commission submission*. Retrieved April 10, 2017, from ABC News: <http://www.abc.net.au/news/2016-10-15/indgenous-hearing-loss-scathing-review-juvenile-detention/7935186>
- Evans, C. (2017, April). *United Nations Information Centre, Canberra*. Retrieved April 10, 2017, from Press Release: End of Mission Statement: <http://un.org.au/2017/04/03/end-of-mission-press-conference-and-end-of-mission-statement-by-the-un-special-rapporteur-on-the-rights-of-indigenous-peoples-victoria-tauli-corpuz-on-her-visit-to-australia/>
- Finlay, S. W. (Ed.). (2016). *#JustJustice: Tackling the over-incarceration of Aboriginal and Torres Strait Islander Peoples*. NSW: Croakey.org.
- Grace J, K. I. (2013, June). Review of Indigenous offender health. 12. WA, Australia.
- Higgins, D., & Davis, K. (2014, July). *Law and justice: prevention and early intervention programs for Indigenous youth: Resource sheet no. 34 produced by the Closing the Gap Clearinghouse*. Retrieved April 20, 2017, from http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Our_publications/2014/ctg-rs34.pdf
- Judicial Council on Cultural Diversity. (2016). *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts Report prepared for Judicial Council on Cultural Diversity*. Canberra, ACT: Judicial Council on Cultural Diversity.
- Karen Gelb, G. F. (June 2013). *Reoffending Following Sentencing in the Magistrates Court of Victoria*. Paper, Sentencing Advisory Council, Victoria, Melbourne.
- Kelly, L., Barac, A., Hawkins, S., & Barlo, S. (2013, March). Legal Practitioners working more effectively with Aboriginal Clients: Promising new Cultural Competency Training by Legal AID NSW. *Indigenous Law Bulletin*, 8(5).
- Kelly, M. a. (2015). *Stemming the Tide of Aboriginal Incarceration* (<http://researchonline.nd.edu.au/undalr/vol17/iss1/2> ed., Vol. 17). WA, Australia: e University of Notre Dame Australia Law Review.

- McInerney, M. (2016, March 11). *#JustJustice - Tackling the Over Incarceration of Aboriginal and Torres Strait Islander People*. Retrieved April 11, 2021, from Putting Culture and Community at the Heart of #JustJustice for Aboriginal and Torres Strait Islander Youth: <https://croakey.org/justjustice-tackling-the-over-incarceration-of-aboriginal-and-torres-strait-islander-peoples/>
- Muhunthan, J. E. (2016, 1). UN-led Universal Periodic Review highly critical of Australia's record on human rights and health for Indigenous Australians. *BMJ Global Health*, 1(e000018).
- National Congress of Australia's First Peoples. (June 2016). *The Redfern Statement*. Aboriginal and Torres Strait Islander Peak Organisations United. Sydney: National Congress of Australia's First Peoples.
- National Indigenous Drug and Alcohol Committee. (2013). *Bridges and Barriers: Addressing Indigenous Incarceration and Health. Revised Edition*. Canberra, Australia: Australian National Council on Drugs 2009.
- Poroch, N. (2007). *You do the Crime, You do the Time: Best Practice Model of Holistic health Service Delivery for Aboriginal and Torres Strait Islander inmates of the ACT Prison*. Winnunga Nimmitjatyjah Aboriginal Health Service. Canberra: Winnunga Nimmityjah Aboriginal Health Service.
- Poroch, N. (2011). • *We're struggling in here! The phase 2 study into the needs of Aboriginal and Torres Strait Islander people in the ACT Alexander Machonochie Centre and the needs of their families*. . Canberra: Winnunga Nimmityjah Aboriginal Health Service.
- Poroch, N., Boyd, K., Tongs, J., Sharp, P., Longford, E., & Keed, S. (2011). *We're struggling in here! The phase 2 study into the needs of Aboriginal and Torres Strait Islander people in the ACT Alexander Maconochie Centre and the needs of their families*. Canberra, ACT: Winnunga Nimmityjah Aboriginal Health Service.
- Poroch, N., Tongs, J., Sharp, P., Dodson, M., Larkin, S., Mikhailovich, K., . . . Henderson, G. (2007). *You Do the Crime, You do the Time: Best Practice Model of Holistic health Service Delivery for Aboriginal and Torres Strait Islander Inmates of the ACT Prison*. Winnunga Nimmityjah Aboriginal Health Service. Canberra, ACT: Winnunga Nimmityjah Aboriginal Health Service.
- Ralph, S. (2010, September). Family Dispute Resolution Services for Aboriginal and Torres Strait Islander families: Closing the Gap? *Family Relationships Quarterly* No. 17. Canberra, ACT, Australia.
- SNAICC. (2016). *The Family Matters Report: Measuring Trend to turn the tide on Aboriginal and Torres Strait Islander child safety and removal*. Melbourne: SNAICC A National Voice for Children.
- Susan Spratley, N. D. (December 2013). *Health and Wellbeing outcomes for defendants entering the Alcohol MERIT program*. Issue Paper No. 92, NSW Bureau of Crime Statistics and Research.
- Sweet, M. (2016). Litany of failures by governments in response to Royal Commission into Aboriginal Deaths in Custody. In S. Finlay, *#Just Justice - tackling over representation of Aboriginal and Torres Strait Islander people*. Canberra: Croakey.org.
- The Productivity Commission. (2016). *Overcoming Indigenous Disadvantage Key Indicators 2016/17*. Steering Committee for the Review of Government Service Provision. Commonwealth of Australia.
- Weatherburn, & Baker. (2001). What Works in Reducing Young People's Involvement in Crime? *Australian Institute of Criminology*. Canberra, ACT, Australia.
- Yi, S. X. (2014/15). Implementing restorative justice to address indigenous youth recidivism and over-incarceration in the act: Navigating law reform dynamics. 18, 138-152.