

Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System

FINAL REPORT – EXECUTIVE SUMMARY



Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System



Jumbunna
Institute for Indigenous
Education and Research

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CONTENT WARNING:

This report may include names of deceased persons and contains content that is confronting and distressing. Please take care when reading.

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ACKNOWLEDGEMENT OF COUNTRY

Always was, always will be Aboriginal land.

Most of the writing for our Report was undertaken across the various Countries where our research team is honored to live and work, including Dharawal, Gadigal, Gundungurra, Wiradjuri, Widjabul/Wia-bal, Boonwurrung and Yirrganydji; however, we have been privileged to focus our work and spend considerable time on the lands of the Ngunnawal and Ngambri (Kamberri) peoples.

To all these lands, we recognise their sovereignty has never been ceded. We would like to acknowledge the Traditional Owners whose lands and waters we have journeyed, respecting their unique values, and their continuing care of Country. We pay our respects to Elders past and present, and to all First Nations people reading this report.

ACKNOWLEDGEMENT TO COMMUNITY

We acknowledge and pay deep respect to the First Nations peoples whose knowledges, stories, and lived experiences have shaped and informed this report. We honour the Elders past and present, and extend that respect to all First Nations peoples who have generously shared their time, insight, and truths throughout this process.

We specifically acknowledge the strength and resilience of communities and ACCOs, who continue to lead, speak, and act for justice. This report would not have been possible without the guidance, voices, and leadership of community members who entrusted us with their perspectives. We particularly acknowledge the Aboriginal organisations and individuals who assisted us with community dialogues, participated in interviews and attended the workshops we organised. This report would not have been possible without you.

We remain committed to listening, learning, and walking alongside First Nations communities in ways that uphold cultural authority, self-determination, and truth-telling.

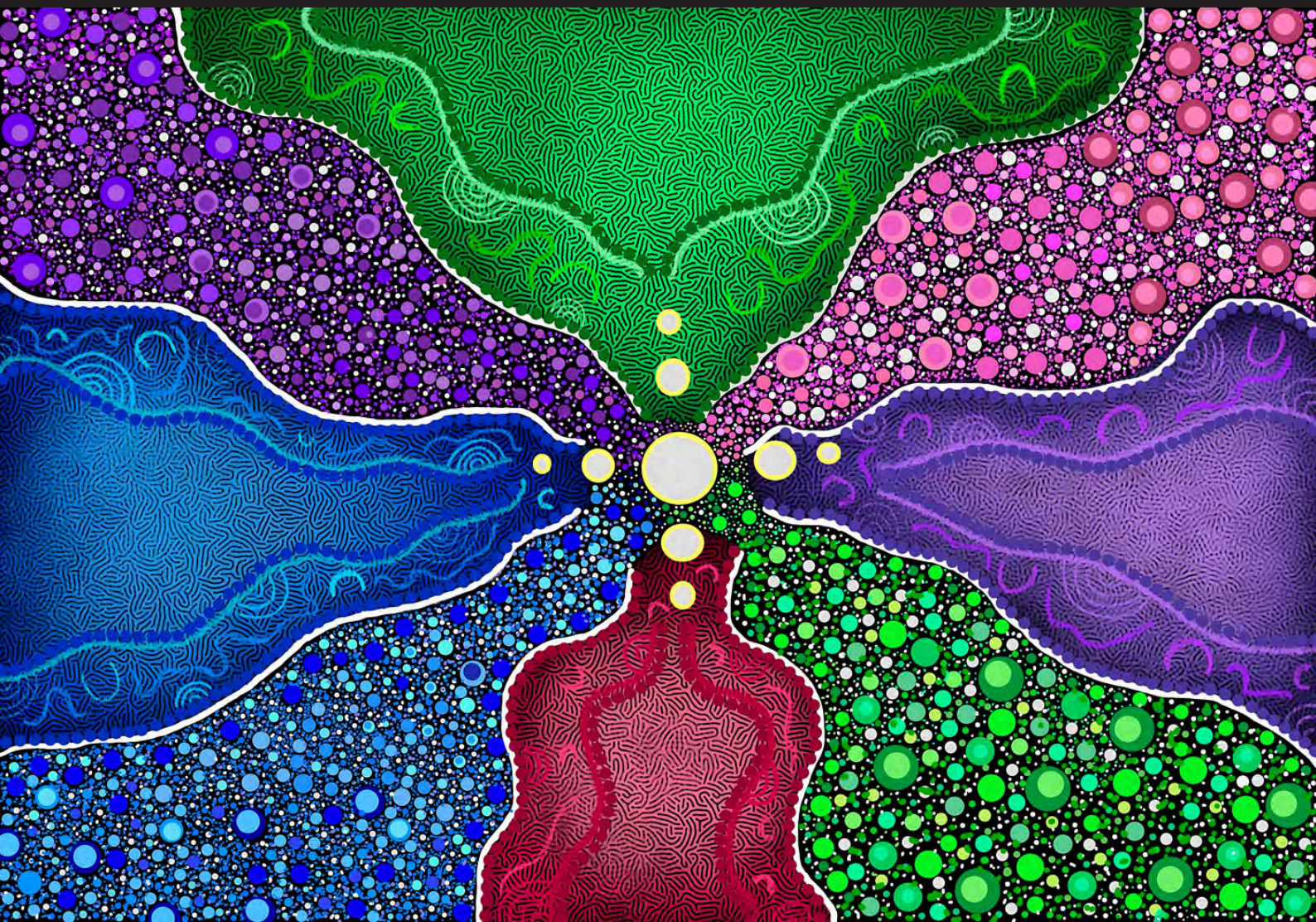
We also acknowledge the participation and assistance from government, statutory authorities and non-government agencies who contributed to this project. We particularly acknowledge the several staff in the Justice and Community Safety Directorate who help facilitate the project with government.

Jumbunna Research Team
July 2025.

ACKNOWLEDGEMENT OF USE OF ORIGINAL ARTWORKS

We want to thank the artists for their permission to use the original artworks shown in this report. Below is the description and explanation of the significance.

Title: "Journey To Justice"



by Erica-Jade Church (18), Jayde Mitchell (15), Damon Brown (15).

THE ARTWORK

ARTWORK CREDIT

Jayde Mitchell: My name is Jayde Mitchell and I'm a proud young Barkindji women from Lake Cargelligo, Central West NSW. I am the second eldest of five siblings being the eldest daughter. I'm a musician who plays guitar and sings and an artist who does Aboriginal paintings which I learn from my Mum, Dad, Pop and Aunties. I have a passion for music and arts and am proud to share that passion and hope to inspire others to follow what makes them happy.

Erica-Jade Church: My name is Erica-Jade Church, I am the Executive Assistant at Sisters in Spirit Aboriginal Corporation. I am a proud Wiradjuri and Barkindji Women from Tumut & Wilcannia, NSW. I am one of nine siblings, and I love and cherish spending time with my family. I enjoy playing basketball and learning more about my culture. Art is special to me because it allows me to express feelings and tell stories.

Damon Brown: My name is Damon Brown, I am a proud Barkindji, Bundjalung and Yuin Man from Wilcannia NSW on my mum's side and Wreck Bay NSW and Baryulgil NSW on my dad's side. I enjoy playing Rugby League and Rugby Union and basketball. I love learning about my culture and doing Aboriginal artwork, I also like cutting coolamons and learning the didge.

Aboriginal Artwork Use Notice: This artwork is an expression of Aboriginal culture and is protected by Indigenous Cultural and Intellectual Property (ICIP) rights. It has been created for a specific, approved purpose and must not be copied, reproduced, altered, or used in any other context without the free, prior, and informed consent of the artist(s).

All rights remain with the artist(s), and any use beyond the original agreed purpose is strictly prohibited unless formal permission is obtained. Respect for the cultural significance and custodianship of this work is essential.

To request permission please contact: Rachelle Kelly-Church (OBO the artists) at rachelle.kelly-church@sisters.org.au

Special thanks to Sisters in Spirit Aboriginal Corporation for the art commission.



Artwork Title: 'Journey To Justice'

Artwork Description:

As proud, Aboriginal young people, we recognise the significant challenges we face within the justice system. We have grown up knowing about deaths in custody, police brutality and racism. Something that we shouldn't be worrying about but unfortunately is our reality.

Our artwork shows the journey of Aboriginal people in the justice system. We used lots of colourful dots to tell the story because we want our people to have bright futures despite the barriers. Each dot represents a person and their own journey. There are also symbols that represent the community surrounding our people. All the people are moving toward a big, bright star in the middle. We wanted the star to be the light at the end of the tunnel. It represents hope, fairness, and equality.

This painting is about not giving up, even when systems are working against us. We want to believe change is possible.



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OUR REVIEW

Our **Final Report** covers the Second Stage of the Jumbunna Institute for Indigenous Education and Research (Jumbunna Research) *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System* (our Review), commissioned by the ACT Government.

The Second Stage of our Review relates primarily to the development of strategies and recommendations for reducing Aboriginal and Torres Strait Islander over-representation in the ACT criminal justice system (in addition to the ALRC recommendations) through consultation with First Nations community members and organisations, as well as other non-government and government stakeholders.

Our findings from the First Stage of our Review are set out in our **First Report**¹ and accompanying Community Guide,² and were discussed at an online Webinar event hosted by Jumbunna on 18 September 2024.³ A summary of these findings are provided at Section 1.3 of this Report.

Our Review is based on a wide range of discussions with First Nations community members and organisations, non-Indigenous community-based organisations, public bodies and statutory authorities. We conducted a total of 68 recorded dialogues/interviews with 175 individual participants and 71 different community organisations, legal services and government agencies, plus several workshops.

A key part of our approach and overall argument is that both specific and systemic (or structural) issues need attention in order to reduce over-representation. Some matters sit neatly inside the criminal legal system. However, there are many others outside the criminal legal system which are deeply connected to the problem of over-representation. As we were repeatedly told in interviews, ‘there isn’t just one solution’. Over-representation can reflect the cumulative impact of decisions made across multiple areas of government activity. It can also reflect a cumulative effect over time through inter-generational impacts. The causal factors of over-representation are complex.

In line with community expectations, we have prioritised community-led and self-determined approaches; and in line with ACT government commitments to Closing the Gap, we have prioritised the need for the transformation of government in how it works with First Nations people.

¹ Jumbunna (2024) First Report is available here: <<https://www.uts.edu.au/sites/default/files/2024-10/Jumbunna-Research-Independent-Review-First-Report.pdf>>.

² Jumbunna (2024) First Report Community Guide is available here: <https://www.uts.edu.au/sites/default/files/2024-10/Jumbunna_Community%20Guide-ACTREVIEW-First-Report.pdf>.

³ A recording of the Webinar event is available here: <<https://www.youtube.com/watch?v=rMn-w-jlGcw>>.



THE RECOMMENDATIONS

Our Report makes a series of recommendations which broadly follow the structure of the Report outlined below. The recommendations and their rationale appear in the Executive Summary, in the body of the relevant sections of the Report, and as a list in Appendix 3.

We have categorised the recommendations into two groups.

The first group are those that require most immediate implementation either because the implementation of other recommendations is dependent or partially dependent on their introduction or because they will have the most immediate impact on reducing Aboriginal and Torres Strait Islander imprisonment and over-representation.

The second group of recommendations are no less important and indeed are likely to have in the longer term more sustained and greater impact on over-representation. However, they involve initial reviews, improved data collection or the prior implementation of other recommendations.

These two groups of recommendations are colour coded as follows.

The first group of recommendations are coded in bright orange.

The second group of recommendations are coded in light orange.

One of the greatest dangers facing our Review is that government agencies will continue to reproduce a siloed effect by only reading the sections of the Report they think applies to them, without seeing the totality and interconnectedness for change that is required. This is unfortunately, a mindset that is profoundly embedded. A further danger is that there will be inadequate attention paid to the *intent* of the particular recommendations.

As we (and others⁴) have frequently observed, government agencies can tend to take a minimalist approach to implementation which allows for ‘business as usual’ and undermines achieving real change.

⁴ Productivity Commission (2024) Review of the National Agreement on Closing the Gap, <<https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>>.

2. DECISION-MAKING, ACCOUNTABILITY & COORDINATION

Our Review identifies what may be seen as *structural drivers* significantly impacting First Nations justice outcomes in the ACT. The issues in question centre around limitations in terms of both First Nations-decision-making and government accountability and a lack of coordination in responses to the complexity of drivers feeding over-representation.

To address these drivers, First Nations-led and government structures and those with a justice specific and cross-issue focus (where relevant to over-representation) need review and reform. Concerns raised include those related to the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and Aboriginal and Torres Strait Islander Justice Caucus identify their lack independence, limitations in their capacity to oversee government activity and insufficient representation from and connection with community and inadequate investment by government (financially and in ways that share power).

There was consensus, for the most part, that coordination across the ACT Government around issues connected with over-representation needs improvement in order to shift First Nations justice outcomes. While it may be appropriate that justice reinvestment in the ACT, for instance, focuses on drivers that sit closer to the criminal legal system (such as housing issues for those at higher risk of re-contact with this system) increased ‘joined up’ activity across Directorates is essential to reducing over-representation.

Lack of coordination was seen as impacting government accountability too, including as it makes it difficult to track and measure the effectiveness of implementation of commitments directed towards addressing over-representation, with the latter having implications for accountability as well. This encompasses accountability to commitments made under the ACT Agreements and the National Agreement and broader responsibility to respond to First Nations priorities in the justice space.

Related to this last point are concerns raised about current approaches to outcomes measurement across government and within JACS, including specifically around the development and application of meaningful, clear and aligned outcomes, targets and indicators. Problems in this respect impact on coordination of and otherwise effective responses to over-representation. Accountability is also seen as limited because there is little consequence for non-action or poor performance in activity likely to contribute to reduced over-representation, including for senior ACT Government staff (in JACS and elsewhere).

Given the range of issues raised with respect to existing structures and the necessity for First Nations-led decision-making, we have highlighted problems, strengths and potential pathways forward for such structures but have stopped short of making firm recommendations. Establishment as a high priority of an interim First Nations-led justice oversight body has been recommended, however, which will then establish and lead a

First Nations-led process for re-design of these structures, as well as providing oversight of our recommendations.

For consideration within the latter process, potential options for more permanent First Nations-led justice mechanisms with oversight and decision-making functions include an ACT Aboriginal and Torres Strait Islander Social Justice Commissioner, re-establishment of an Aboriginal-led justice group, as well as a strengthened ATSIEB and potentially an ACT ACCO Peak Body (if established) (both requiring a sufficiently elevated focus on justice issues).

Reforms to government structures to be considered as part of the above process (such as the Executive Coordination Group) may change how they work individually and in combination with a view to ensuring they effectively support and progress community-identified priorities, including via increased accountability and coordination. A newly established ACT Justice Policy Partnership is one option for consideration.

Government responses to over-representation may also be improved through Key Performance Indicators (KPIs) introduced for senior JACS staff, establishment of (three) senior-level First Nations roles within JACS, which should also increase First Nations decision-making, and reforms to JACS outcomes measurement.

RECOMMENDATION	RATIONALE
<p>2.1</p> <p>We recommend that JACS establish as a high priority an interim First Nations-led justice body to oversee implementation of recommendations of this Review. This interim body should, as minimum requirements:</p> <ul style="list-style-type: none"> a. Be focused on providing First Nations-led oversight of implementation of recommendations of this Review, including advising how best to sequence and prioritise implementation. b. Include First Nations representation nominated from ATSIEB (1), UNEC (1) and ACCOs working in the justice space (2-3), who may then appoint First Nations community members with direct experience of the justice system (1-2) (via an EOI or similar process). The group may also consider appointment of additional First Nations representation (for example, Aboriginal and Torres Strait Islander Children’s Commissioner) 	<p>Recommendations 2.1-2.3</p> <p>The Review identifies that addressing over-representation requires that its structural drivers are addressed.</p> <p>In an ACT context, these include inadequate levels of First Nations participation in decision-making and lack of government accountability and coordination in responses to over-representation.</p> <p>First Nations people did not feel that the ACT Government was engaging them sufficiently or if they were, they were not responding adequately or transparently.</p> <p>Government indicated it was taking action in response to over-representation, but the First Nations community did not see this or see it as having positive impacts.</p>

RECOMMENDATION	RATIONALE
<p>and determine optimal total numbers of members (perhaps limited to 8).</p> <p>c. Be adequately remunerated for their time and expertise across the entire body's membership (for consideration, at an appropriate rate for Office Holders in the ACT as determined by the ACT Remuneration Tribunal).</p> <p>d. Be adequately resourced to enable its members to carry out its functions, including to engage and seek input from the First Nations community, as required (including young people, First Nations and other organisations).</p> <p>e. Be supported by a team of 2-3 staff established as a priority within JACS and other senior staff in JACS, in particular the three senior First Nations roles established as part of this Review (Recommendation 2.3.a). Support from the JACS team should include ensuring the interim body has access to ACT Government information required to ensure its effective oversight of implementation, as well as secretariat support. Support from First Nations roles should aim to establish authorising environment within the ACT Government required to ensure the interim group can effectively oversee implementation.</p>	<p>Lack of coordination and current approaches to outcomes measurement made it hard for government and community to progress and track strategies that might address over-representation, which impacts accountability.</p> <p>There are also only ineffectual consequences for poor responses within the ACT Government to this issue.</p> <p>Current ACT structures that might go some way to addressing these drivers are not entirely fit for this purpose and require revision.</p> <p>Putting in place an interim First-Nations-led oversight body up front to ensure independent, representative First Nations-led decision-making around implementation of all Review recommendations (including those focused on self-determination, accountability and coordination) is an effective immediate response to these drivers. Longer-term solutions are also required (to be developed in Recommendation 2.2).</p> <p>Recommendations 2.1-2.3 make clear that the responsibility of government is to support implementation of First Nations-identified solutions to poor First Nations justice outcomes. First Nations people understand best what is required to solve problems impacting them.</p> <p>Strengthening self-determination in this and all other respects is a key response to over-representation, alongside</p>
<p>2.2</p> <p>We recommend that JACS support the interim First Nations-led justice body (Recommendation 2.1) to lead a process to identify and guide future development of mechanisms connected with First Nations justice issues.</p> <p>a. This process:</p> <p>i. Should be supported by the JACS team established under Recommendation 2.1 and senior</p>	<p>Strengthening self-determination in this and all other respects is a key response to over-representation, alongside</p>

RECOMMENDATION	RATIONALE
<p>JACS roles established under Recommendation 2.3.a.</p> <p>ii. May involve other First Nations and government representatives, at the invitation of the interim body.</p> <p>iii. Should focus on mechanisms that will strengthen First Nations self-determination, increase ACT Government accountability and improve coordination with respect to issues related to over-representation.</p> <p>b. First Nations-led mechanisms ought to be established <i>on an ongoing basis</i> as part of this process. These mechanisms should provide for Aboriginal-led decision-making and oversight in the justice space. For consideration, a permanent First Nations-led justice mechanism may be established that retains and expands on the interim body's role in overseeing Review recommendations to provide oversight over all justice related activity.</p> <p>c. The interim body should work with government to determine the future direction of and potential reforms to other government mechanisms identified as having impacts on over-representation. These include (but are not limited to) the Aboriginal and Torres Strait Islander Justice Caucus, the Justice Advisory Group, the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee (IDC), and the Executive Coordination Group (ECG).</p> <p>This recommendation is dependent on implementation of Recommendation 2.1.</p>	<p>reforms to government ways of working.</p> <p>This aligns with the approach of the National and ACT Agreements and to existing commitments made by the ACT Government under both these Agreements.</p> <p>Under the National Agreement Priority Reform Areas 1, 3, for example:</p> <ul style="list-style-type: none"> shared decision-making is essential to addressing disproportionality in First Nations justice and other outcomes in the National Agreement. Though shared decision-making may not go far enough - and First Nations people in the ACT should be able to lead decision-making, with input as required from government. transformation of government is also essential to ensuring government support for and accountability to the First Nations community and their priorities. <p>Introduction under Recommendation 2.3.a of First Nations leadership roles within JACS will also help address lack of coordination, accountability and limitations in First Nations participation in decision-making.</p> <p>Transformation elements under Priority Reform Area 3 include <i>Identify and eliminate racism</i>, which is in part achieved by increasing appointments of Aboriginal and Torres Strait Islander people in senior positions in mainstream organisations.</p>
<p>2.3 To improve coordination, increase government accountability and enhance First Nations self-determination, we make the following recommendations.</p>	<p>The same intention sits behind Recommendations 2.3.b-d. These aim to lift the accountability of government to deliver on commitments, including by improving quality of ACT</p>

RECOMMENDATION	RATIONALE
<p>a. The ACT Government should establish the following positions:</p> <ul style="list-style-type: none"> i. Assistant Commissioner (Aboriginal and Torres Strait Islander) for Correctional Services ii. Deputy Director-General (Aboriginal and Torres Strait Islander) of JACS iii. Assistant Commissioner (Aboriginal and Torres Strait Islander) of Police. <p>Given current arrangements between the ACT Government and the Commonwealth around policing services in the ACT, consideration needs to be given to how they will work together to establish the Assistant Commissioner (Aboriginal and Torres Strait Islander) role (Police) (see Section 2.7.3).</p> <p>Each of these roles must be at senior executive level, with the Assistant Commissioner roles reporting to the relevant Commissioner in ACT Corrective Services (ACTCS) and ACT Police and the JACS role reporting to the Director-General, JACS.</p> <p>The functions attached to these roles should encompass those set out in Section 2.7.3 of the Report, centred around:</p> <ul style="list-style-type: none"> • First Nations decision-making and oversight to increase government accountability to the First Nations community in the ACT • increasing coordination within their respective Directorate/agencies and across the ACT Government around First Nations justice related matters and activities. 	<p>Government outcomes measurement—identified as currently compromised in terms of capacity to deliver genuine change (because of inadequacy and misalignment of outcomes, indicators and targets); and through KPIs for senior JACS staff to ensure consequences for inaction or poor performance.</p> <p>Recommendations 2.3.b-d ensure First Nations input into decision-making and processes related to tracking and evaluating government performance and outcomes being delivered in a justice context, important for self-determination and increased accountability.</p>

RECOMMENDATION	RATIONALE
<ul style="list-style-type: none"> b. Legislative measures should be established by the ACT Government for incorporation within performance agreements and KPIs for more senior JACS staff that demonstrate: <ul style="list-style-type: none"> i. How these staff have sought to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people and eliminate systemic racism across the Directorate ii. Any other measures identified with First Nations input as likely to contribute to reduced First Nations over-representation. c. JACS should ensure that outcomes measurement within the Directorate incorporates measures related to its progress against Priority Reform and Core Focus Areas under the National and ACT Agreements. With respect to these particular measures, JACS should: <ul style="list-style-type: none"> i. consider whether they could be used to inform KPIs for senior JACS staff (Recommendation 2.3.b). ii. ensure they are effectively progressed, monitored and evaluated. This may require their incorporation within R25by25 or in a separate JACS strategy (potentially aligned to RR25by25). Reporting against these measures should also be made public. d. JACS should incorporate on a consistent basis First Nations input in its Wellbeing Impact Assessment process (where relevant to First Nations people). This input may inform its assessment of impacts and be used to identify measures of success within this process. e. JACS should use First Nations input to inform the Directorate's outcomes measurement, including to identify, monitor and evaluate outcomes, 	

RECOMMENDATION	RATIONALE
<div></div> <p>targets and indicators (in addition to doing so in implementing Recommendations 2.3.a-c).</p> <p>Recommendations requiring First Nations input (2.3.b.ii, d, e) are partially dependent on implementation of Recommendations 2.1, 2.2.</p>	

3. SYSTEMIC RACISM & OTHER ISSUES

Section 3 explores structural issues of systemic racism and cultural safety, as well as funding and data related issues. Systemic racism and lack of cultural safety in government are identified as significant drivers of over-representation (for example, as racial profiling by police). Lack of understanding of systemic racism within the ACT Government can lead to unconscious bias and makes it hard to challenge this issue.

A whole of government response to systemic racism is essential, and we have recommended that independent systemic racism reviews be conducted across justice *and related* directorates (those with impacts on First Nations justice outcomes). Via this and other mechanisms, First Nations accounts of racism and cultural safety ought to be collected to increase government accountability but also to ensure strategies are developed that can effectively address these issues.

The need for more strategic thinking about use of existing resourcing, with increased First Nations input, was also a focus within Review processes. Multiple problems raised in relation to current funding approaches are detailed (for example, government setting agendas through funding, reliance on short-term and programmatic resourcing and under-resourcing of both ACCOs and early intervention/prevention approaches).

Questions or concerns were raised too about justice reinvestment and reinvestment in particular. Expectations are that the ACT's focus on justice reinvestment would lead to funding reform - shifting resources away from incarceration to support community-led and determined, early intervention and prevention approaches to improving First Nations justice and other outcomes. First Nations input into funding decisions more broadly, and at a substantive level (beyond input into JACS commissioning processes, for instance), is identified as key to shifting outcomes as First Nations people know what solutions are needed

There was interest in establishment of a First Nations-governed fund that provides sustained resourcing for community-led solutions to over-representation, with flexibility about activities to be funded. Funds could be drawn from justice and other areas of

government. Also required is greater support for ACCO development in the justice space, with proportional funding a key pathway forward in this respect.

Issues needing attention in relation to data include gaps in, quality of and access to data for both First Nations people and government. We have made recommendations for further progress to be made on data linkages (including to improve coordinated responses to over-representation across directorates) and to strengthen support for Indigenous Data Sovereignty and Governance in a justice context (via establishment of a First Nations-Led Data Working Group and First Nations Data Strategy and identification and implementation of actions that, for example, provide for First Nations input into justice related outcomes measurement). Establishment of both a public-facing (government-controlled) and community-controlled dashboard is also recommended.

A further significant issue raised across consultations was the under and over-identification of First Nations people in the ACT, including for example where government systems identify on behalf of First Nations people, without sufficient evidence or information, and where non-First Nations people self-identify in order to access a benefit available to First Nations people (such as access to a program). Inconsistent or no application of relevant standards in this area, historical context (removals) and points in time where First Nations people may choose not to identify (in contact with police) are all discussed.

RECOMMENDATION	RATIONALE
	<p>Recommendations 3.1-3.4</p> <p>Systemic racism and lack of cultural safety are identified in the Review as additional structural drivers with significant impact on outcomes connected with justice outcomes (e.g. in education) and on justice outcomes themselves.</p> <p>As is the case for other structural drivers identified above (Recommendations 2.1-2.3), these issues need attention in order to reduce over-representation.</p> <p>The ACT Government has existing commitments to addressing these issues, recognising they exist and need attention.</p> <p>Priority Reform Area 3 transformation elements under the National Agreement include <i>Identify and eliminate</i> racism, which refers to undertaking ‘systems-focused efforts to address</p>

RECOMMENDATION	RATIONALE
<p>3.1</p> <p>We recommend that JACS and CSD embed cultural capability measures (KPIs) into funding agreements for non-First Nations organisations it funds to work with First Nations people in the ACT (where this is not already being done).</p>	<p>disproportionate outcomes and over-representation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism.’ (Cl. 59) (See also the Cultural Integrity Focus Area of the ACT Agreement).</p> <p>Disproportionately negative First Nations justice outcomes in the ACT also evidence the presence and the consequences of these issues. There was also significant level of concerns and comments raised about these issues during the Review.</p> <p>Recommendation 3.1</p> <p>Lack of cultural safety or cultural capability within mainstream non-government service provision connected with First Nations justice outcomes and their drivers impacts on First Nations access to and engagement with mainstream services.</p> <p>This reduces the quality of outcomes achievable by mainstream services in their work with First Nations people, including to address over-representation.</p> <p>Priority Reform Area 3 of the National Agreement identifies that government must improve mainstream institutions, which includes ensuring cultural safety and responsiveness to the needs of Aboriginal and Torres Strait Islander people – <i>including through the services they fund</i>.</p> <p>Mainstream services cannot service the First Nations community in the ACT in the same way as First Nations-led organisations, but the community <i>will</i> need to access them.</p>

RECOMMENDATION	RATIONALE
	<p>KPIs designed to lift their cultural capability should help to ensure more effective mainstream service provision to the First Nations community – and therefore delivery of better First Nations justice and related outcomes.</p>
<p>3.2</p> <p>We recommend that the ACT Government conduct independent, targeted systemic racism reviews of JACs and its agencies (police, ACTCS as a priority: see Recommendations 7.3, 10.7) and other Directorates likely to influence or impact First Nations justice outcomes, including Education, Health, Housing, and CSD.</p> <p>These reviews ought to identify current best practice and make recommendations for areas for improvement in addressing systemic racism, including across Directorates.</p> <ul style="list-style-type: none"> a. The approach to conducting these reviews should be developed with First Nations input and implementation of their recommendations requires robust First Nations and government oversight. b. The reviews and government responses to their recommendations must be published. c. Consideration should be given by the ACT Government to how First Nations experiences of (and other data about) systemic racism are shared publicly and with First Nations people specifically (alongside publication of the systemic racism reviews), including potentially via implementation of Recommendations 3.13-3.15. <p>Recommendation 3.2.a is dependent on implementation of Recommendation 2.1</p>	<p>As discussed in the Rationale for 3.1, systemic racism (and lack of cultural safety as an associated issue) is a significant issue because of the level of concern it raised for First Nations people during the Review and due to its entrenched and widespread presence.</p> <p>It is a major structural driver of negative First Nations justice and related outcomes that sits in justice <i>and other</i> areas of government activity and takes many different forms: for example, in education, health, as racial profiling by police, as legislation guiding decision-making about bail that fails to account for the particular circumstances of First Nations people.</p> <p>Understanding within the ACT Government of these different forms of racism and their impacts on over-representation is presently inadequate. As part of this, First Nations people identify poor government responses to their accounts of racism in interactions with government institutions and services. Failure to adequately address this issue reduces trust and a feeling of safety for First Nations people in their interactions with government.</p> <p>Improved government responses to this issue are required.</p> <p>Conducting independent systemic racism reviews under Recommendation 3.1 provides one such effective response. These reviews apply a structured approach to understanding how this issue manifests in organisations and its</p>

RECOMMENDATION	RATIONALE
<p>and partially dependent on 2.2 (for First Nations input and oversight).</p>	<p>impacts, which can then inform appropriately targeted responses.</p> <p>Systemic racism reviews are identified as a priority because of the significance of concerns raised and of its impacts on justice and related outcomes.</p> <p>While reviews across different areas of government activity are recommended prioritisation of policing and the AMC is necessary because these are especially high areas of concern for the community.</p> <p>Reviewing these two agencies/institutions as early as possible will indicate to the community that their concerns are being taken seriously and appropriately responded to.</p> <p>Further, having data from systemic racism reviews early will support implementation of other recommendations (including Recommendation 2.3b, 3.3).</p>
<p>3.3</p> <p>We recommend that JACS, CSD and their relevant agencies establish Cultural Safety Plans as a priority. The development, monitoring and evaluation of these Plans require First Nations Input (see also Recommendation 3.4).</p> <p>This recommendation is dependent on implementation of Recommendation 2.1 and partially dependent on 2.2 (for First Nations input).</p>	<p>The ACT Government has made commitments to development of an ACTPS Cultural Integrity Framework to support each Directorate to create their own Cultural Integrity Plan (Cultural Integrity Focus Area, ACT Agreement, Action Plan Two).</p> <p>Development of a Cultural Integrity Plan within JACS, CSD and their agencies specifically addresses justice-related concerns about cultural safety and establishes clear actions against which progress can be made and measured.</p> <p>First Nations people should be informing the development, monitoring and evaluation of all government strategies related to racism and cultural safety, given their direct experiences of these issues. This includes as decision-makers (to also</p>

RECOMMENDATION		RATIONALE
		strengthen self-determination) and by way of First Nations data on these experiences.
3.4	<p>We recommend that as part of the systemic reviews (Recommendation 3.2) or via other mechanisms (for example, First Nations consumer surveys), the ACT Government should gather data from the First Nations community on their experiences of cultural safety and racism occurring within their interactions with government.</p> <p>This recommendation is dependent on Recommendation 3.2 (if gathering data via systemic racism reviews).</p>	<p>Data on racism and cultural safety <i>must</i> be gathered from First Nations peoples based on their direct experiences of these issues.</p> <p>This data must inform government efforts to address these issues. Their incidence and nature cannot be adequately or appropriately measured without this data. Nor will strategies in response be effective without it.</p> <p>This is especially important given First Nations reports provided during this Review about how their accounts of racism are currently being (poorly) responded to (see Recommendation 3.2).</p> <p>That this is the right approach was made clear throughout the Review process and is also embedded, for instance, in definitions of Cultural Safety under the National Agreement (Cl. 12).</p> <p>It also aligns with definitions of Indigenous Data Sovereignty, as a right to exercise of ownership of Indigenous Data through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of data.⁵</p>
3.5	<p>We recommend that JACs and CSD resource and otherwise support the establishment and operation of a mechanism designed to increase First Nations input into decision-making around funding priorities in the justice space.</p>	<p>Recommendations 3.5-3.9</p> <p><i>Self-determination and community-controlled orgs</i></p> <p>Recommendations 3.5, 3.8 and 3.9 in particular aim to increase First Nations</p>

⁵ Maiam nayri Wingara definition, available at <<https://www.maiamnayriwingara.org/definitions>> (accessed 26 June 2025).

RECOMMENDATION	RATIONALE
<p>First Nations input into the design of this mechanism is required. For consideration, the mechanism may input into decision-making related to WIA processes connected to JACS and CSD business cases (Recommendation. 2.4.d) and the First Nations-governed fund in Recommendation 3.8.</p> <p>Resources provided to support this mechanism incorporate data, including:</p> <ul style="list-style-type: none"> a. annual data on Indigenous expenditure on justice related programs and service provision and on implementation of Priority Reform Areas and Core Focus Areas under the National and ACT Agreement b. justice and other data relevant to over-representation. <p>This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).</p>	<p>participation in funding decisions to improve First Nations justice outcomes in the ACT.</p> <p>This will practically occur through First Nations governance of a fund - to be established to resource First Nations-led interventions aimed at addressing over-representation and improving justice outcomes – and via increased brokerage in funding provided to First Nations organisations. This should support the work they are already doing to flexibly respond to community need.</p> <p>Importantly too, the above fund may apply resources to whatever interventions First Nations people (via fund governance) identify as making a difference – which could include a community-led program, First Nations-led advocacy for justice related reform or building of First Nations-led governance relevant to over-representation, as examples.</p>
<p>3.6</p> <p>We recommend that JACs and CSD improve accessibility across the First Nations community to data on First Nations justice related expenditure (see also Recommendation 3.5).</p> <p>The aim is to ensure transparency in funding decisions and to help improve community awareness of and access to services and programs.</p> <p>This data may be shared in implementation of Recommendations 3.13-3.15, amongst other methods.</p>	<p>These approaches strengthen self-determination as they put decision-making back in the hands of First Nations people - identified above as a key response to over-representation.</p> <p>Additionally, the First Nations community knows what is needed in terms of services, programs and other initiatives likely to improve justice outcomes.</p> <p>Increasing their input into decisions about what is funded in a justice context will therefore have positive impacts on the latter outcomes.</p>
<p>3.7</p> <p>We recommend that JACS and CSD implement proportional and needs-based funding under Cl. 55a and 55b of the National Agreement to address current gaps in resourcing in program and service delivery of Aboriginal legal services and</p>	<p>As a further point, bringing First Nations people together via governance of the above fund and a mechanism for First Nations decisions about funding</p>

RECOMMENDATION		RATIONALE
	other ACCOs contributing to reduced over-representation.	(Recommendation 3.1) may increase collective, coordinated First Nations community decision-making about priorities in funding.
3.8	<p>We recommend that the ACT Government establish a fund to resource First Nations-led interventions aimed at improving First Nations justice outcomes and addressing over-representation. The fund must be designed with First Nations input and be governed by First Nations people.</p> <p>Subject to outcomes of First Nations design of the fund, we recommend that it:</p> <ol style="list-style-type: none"> should provide funding for operations, governance and other non-programmatic priorities should provide sustained funding, avoiding short term funding cycles as far as is possible could draw in resources from the proportional funding (Recommendation 3.7) and/or from the ACT Government (including funds allocated to Directorates outside JACs and CSD) to promote coordinated, collaborative approaches to addressing over-representation. should be expended on justice-focussed program/service delivery, along with any other priorities identified as likely to reduce over-representation. This should include a focus on young people at risk of or already in contact with the justice system and other early intervention/prevention approaches. Other possible funding priorities include systemic reform and advocacy, strengthening community leadership and self-determination. should be linked to support made available to those seeking to apply for resources under the fund should be supported in its operations via provision of data by the ACT 	<p>The Review identified that the way government currently funds ACCOs and other First Nations-led organisations is siloed, leads to competition between service and can duplicate and lead to gaps in service provision (as well as being driven by government not community priorities).</p> <p>Self-determination and culture, again as effective responses to over-representation, are also supported where ACCOs are better funded by government.</p> <p>ACCOs are best placed to respond to over-representation and its drivers, given their strong connection to culture and community. This was very much emphasised during Review processes.</p> <p>ACCOs may be supported via Recommendations 3.7 and 3.8 – through proportional funding and funding for operations, governance and non-programmatic purposes under the First Nations-governed fund (3.8 and 3.8.a).</p> <p>Support to be provided under the First Nations-governed fund is aimed at addressing issues of inequity in access to funding for smaller organisations raised during the Review.</p> <p>Introducing proportional funding in the justice space and aspects of Recommendation 3.8 that build the community-controlled sector aligns with existing government commitments under Priority Reform 2 of the National Agreement (and the Core Focus Area of Connecting Community under the ACT Agreement).</p>

RECOMMENDATION		RATIONALE
	<p>Government to inform fund decision-making (see also Recommendation 3.5).</p> <p>This recommendation is dependent on implementation of Recommendation 2.1 (for First Nations input).</p>	<p><i>Access to data</i></p> <p>Recommendations 3.5, 3.6 and 3.8 aim to increase First Nations access to data.</p> <p>This is important to ensure that decisions First Nations people make about funding are informed by evidence (data) (for instance, on current expenditure or that helps identify issues to be prioritised in order to reduce First Nations contact with the criminal legal system).</p> <p>It also aligns with Indigenous Data Sovereignty Principles and Priority Reform Area 4 of the National Agreement.</p> <p>Further intended outcomes of sharing of First Nations data with First Nations people are increased accountability of government (including, for example, where it provides transparency about funding decisions). Additionally, it should increase awareness at a First Nations community level of ACT services and programs, identified as currently fairly limited. This increased awareness will enhance access to support, information and advocacy to services and programs with capacity to prevent and avert contact with the criminal legal system.</p> <p><i>More effective resourcing</i></p> <p>Funding reforms in Recommendations 3.5-3.9 should also address significant concerns raised during the Review process about poor models of resourcing identified as unlikely to help improve First Nations justice outcomes.</p> <p>The constant focus on programmatic and short-term funding is, for instance, identified as not based on evidence of ‘what works’ in this context.</p> <p>The fund in Recommendation 3.8 provides for sustained, targeted, prevention-</p>
3.9	<p>We recommend that JACS and CSD increase access to brokerage funding for First Nations organisations working in the justice space to ensure a level of flexibility and control over funded activities undertaken.</p>	

RECOMMENDATION	RATIONALE
	<p>focused and otherwise strategic resourcing that should make positive inroads into over-representation.</p> <p>Importantly too, the fund may draw in resources from across the ACT Government. This responds to lack of coordination as a structural driver of over-representation.</p> <p>The fund in some respects aligns with understandings of how reinvestment might work, particularly in a First Nations context. This responds to community expectations of what justice reinvestment would deliver in the ACT.</p>
<p>3.10 We recommend that JACS, CSD and other relevant Directorates come together with the First Nations-led Data Working Group (Recommendation 3.11) to consider and potentially progress additional data sharing and linkage projects. The focus is on projects that share and link:</p> <ul style="list-style-type: none"> a. justice and other types of data (for example, health, child protection, education related data) b. that have capacity to provide insights into interventions likely to positively impact justice outcomes for First Nations people at both an individual and population level. <p>At the initial phase of this process the various directorates, in consultation with the First Nations-led Data Working Group, should agree on a minimum data set that would set some parameters around what data would be shared across agencies.</p> <p>Consideration should be given to legal, privacy and other concerns arising with respect to such projects and whether and how these might be balanced with their potential benefits, the processes required</p>	<p>Recommendations 3.10-3.15</p> <p>Data is a focus in Recommendations 3.10-3.15 as it is used to make decisions about strategies for tackling over-representation and whether those strategies are effective in this respect.</p> <p>Data needs to be accurate and otherwise useful for these purposes. There are currently a range of issues in these respects (including data gaps, consistency etc.) that need attention.</p> <p>More broadly, ensuring access to data for First Nations people and other mechanisms that increase their control over their own data and its use (including in data informed and related decision-making) is one aspect of strengthened self-determination – as above, a key response to over-representation. This also needs attention.</p> <p>The establishment of a First Nations-led Data Group, ensuring government support for recognition of Indigenous Data Sovereignty and Governance Principles,</p>

RECOMMENDATION		RATIONALE
	<p>to establish these projects and any other relevant matters.</p> <p>This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).</p>	<p>development of a First Nations Data Strategy within JACS and CSD and increased First Nations access to data set out in Recommendations 3.11-3.15 in particular aim to address the above data related issues.</p>
3.11	<p>We recommend that JACS and CSD establish as a priority a First Nations-led Data Working Group. This group could be drawn from and should connect with other First Nations-led mechanisms established as part of this Review. It may also incorporate representation from JACS, CSD and other ACT Government representatives, as required.</p> <ol style="list-style-type: none"> First Nations members of this Working Group should be supported to develop their data capabilities, as required. As an early priority, this group may develop JACS and CSD First Nations Data Strategies to coordinate and guide First Nations related data work in the justice space, including under RR25by25. The focus of both the Data Group and Data Strategies should incorporate improvements to the quality of data collected by JACS and CSD, including to ensure consistency and to address gaps in data identified in this report. 	<p>Establishment of a First Nations-Led Data Working is a priority as implementation of a range of recommendations are at least partially dependent on this group being in place.</p> <p>Our data-related recommendations align with existing government commitments in the data space.</p> <p>The National Agreement identifies data reform as relevant to Priority Reforms 1-3 and centres Priority Reform 4 around data reform. This Priority Area has a focus on quality and accessibility of data and building data capability of First Nations communities and organisations – all captured in our recommendations.</p> <p>Implementation of all Priority Reform Areas is aimed at addressing structural drivers of disproportionately negative First Nations justice and other outcomes, as are our recommendations.</p> <p>Indigenous Data and Sovereignty and Governance principles are also relevant to our data recommendations.</p>
3.12	<p>We recommend that JACS and CSD develop clear policies and procedures outlining their approaches to IDS-G, with First Nations input from the First Nations-led Data Working Group.</p> <p>Specific actions outlining how JACS and CSD will support implementation of IDS-G principles are to be identified and implemented within this process.</p>	<p>Indigenous Data Governance refers to the right of Indigenous peoples to autonomously decide what, how and why</p>

RECOMMENDATION	RATIONALE
<p>These actions may incorporate, for example, establishing mechanisms that provide for First Nations people to input into KPIs for senior JACS staff (Recommendation 2.3.b; justice related outcomes measurement (including under RR25by25) (Recommendations 2.4.c, e; and how First Nations data is to be used in the justice space.</p> <p>The above policies, procedures and actions may be incorporated within or aligned with JACS and CSD First Nations Data Strategies (Recommendation 3.11).</p> <p>This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).</p>	<p>Indigenous data are collected, accessed and used.⁶</p> <p>Feedback was received that more coordinated or joined up interventions across government and in a range of areas would improve First Nations justice outcomes.</p> <p>These interventions may be identified through enhanced data sharing and linkage, an approach that also responds to lack of coordination being a structural driver of over-representation.</p> <p>Recommendation 3.10 should help to increase targeted collaboration and coordination around issues impacting First Nations justice outcomes.</p>
<p>3.13 We recommend that JACS establish a public-facing dashboard providing the First Nations community with access to de-identified First Nations data. This includes data reporting on RR25by25 implementation and other First Nations related justice data collected as a result of improved data linkage, and the specific data areas for data collection identified in our Review.</p> <p>First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released.</p> <p>This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).</p>	

⁶ Maiam nayri Wingara definition, available at <https://www.maiamnayriwingara.org/definitions> (accessed 26 June 2025)

RECOMMENDATION		RATIONALE
3.14	<p>We recommend that JACS develop and disseminate a publication on justice-related data that is easily accessible to the First Nations community, similar in style to the Aboriginal and Torres Strait Islander Health and Demographic Profile for the ACT.</p> <p>First Nations input, including from the First Nations-led Data Working Group, should inform the development of this dashboard, including decisions about what data is publicly released.</p> <p>This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).</p>	
3.15	<p>We recommend that the ACT Government support First Nations-led development of a First Nations-governed data dashboard. First Nations input on design of the platform and its governance should include input from the First Nations-led Data Working Group.</p> <p>This platform should hold and share First Nations data as determined by its First Nations governance. This may include data on First Nations experiences of racism and cultural safety (see Recommendation 3.2).</p> <p>This recommendation is partially dependent on implementation of Recommendation 3.11 (for First Nations input).</p>	
3.16	<p>We recommend the development and implementation of a consistent and culturally informed approach to the identification First Nations peoples across justice-related agencies and funded service providers. A clear and consistent</p>	<p>The identification of First Nations people is not clearly understood, and standards are not upheld. This is a prevalent issue across various justice-related systems, including child protection, youth justice, policing, courts and prisons.</p>

RECOMMENDATION		RATIONALE
	<p>standard for verifying First Nations identity should be developed in partnership with First Nations-led structures established as part of the Review. This will ensure equitable access to services and protect the integrity of funding and data collection. Where changes to a person's Aboriginality status occur, agencies should engage with relevant community partners and seek culturally appropriate guidance to determine whether recognition is appropriate within program and service delivery contexts.</p>	<p>There was a consistent concern of lax standards of identifying across government agencies and community organisations. This was seen in employment, within service providers (speaking about clients) and within justice systems. There was the consensus that institutions are accepting one or none of the three 'working criteria' for providing confirmation of Aboriginal or Torres Strait Islander heritage.</p> <p>The implementation of this recommendation is a priority because it impacts multiple other recommendations.</p>
3.17	<p>We recommend justice system databases should be updated to reflect only verified identifications, and protocols should be introduced to prevent retrospective changes without appropriate cultural or community verification—particularly in cases where individuals have had prior engagement with the system without identification as Aboriginal and/or Torres Strait Islander.</p>	<p>Rationale for this recommendation is the same as above in recommendation 3.16.</p>
3.18	<p>We recommend that First Nations organisations, for example Elders and/or ACCOs (and where possible AIATSIS), assist by undertaking family history and genealogy research when required by First Nations individuals in the ACT. This may require funding for staff to undertake and assist with family reunion, with travel of clients to their country and in obtaining understanding of descent from the Indigenous peoples of Australia and acceptance as Indigenous by an Indigenous community.</p>	<p>Due to the disconnection through previous government removal policies, our community dialogues emphasised the need for agencies to assist people, families and communities with genealogy. A practical example of how this might be done in the prison system is through individual cultural support plans (see recommendation 10.6).</p>
3.19	<p>We recommend that ACT government undertake a review of First Nations employment across the justice and related</p>	<p>A key rationale for this recommendation is the lack of knowledge in the community of existing identified positions, who were</p>

RECOMMENDATION	RATIONALE
<p>portfolios, with a specific focus on the number, level, and function of identified positions and broader First Nations workforce representation.</p> <p>Arising from the above review, we further recommend that ACT justice and related agencies maintain an internal and community-facing registry of identified positions and their roles, supported by transparent criteria and culturally appropriate engagement practices. This registry should support workforce planning, succession strategies, and improved community trust. In addition, ongoing capability development and appropriate cultural governance structures must be in place to support the recruitment, retention, and progression of Aboriginal and Torres Strait Islander staff.</p>	<p>filling these positions and what their functions were within the organisation. It is also necessary to ensure effective strategies for community engagement are transparent. The need to value of lived experience, cultural knowledge, and community connections was also emphasised. Improvements in the operation of identified positions enhances services delivery, and as a consequence increases the likelihood of improved outcomes including reintegration and rehabilitation.</p>

4. EDUCATION

Section 4 looks at education, identifying lack of cultural safety/racism and poor responses to disability as contributing to disproportionately higher rates of First Nations suspensions, exclusions and disengagement. The links between these issues and over-representation are also discussed.

The Education Directorate is seeking to respond to the above issues, with acknowledgement too that student needs are more complex in current times and that the education system is only one (important) piece of the puzzle required to address this complexity. Community-led and based solutions are also crucial.

Directorate responses include for example, attendance of police at school-based student incidents, some ACCO supports, cultural integrity initiatives, programs for re-engaging First Nations students and alternative education and learning options both outside and within Bimberi Youth Justice Centre (Bimberi) – though there are barriers to accessing the latter, including because of limited availability of options. Positive outcomes delivered via these responses are identified as including re-engagement with education via Murrumbidgee (Bimberi school) and reduced recidivism for those connected to Muliyen school.

Difficulties re-entering school on release from Bimberi and lack of coordination across educational, youth justice and child protection issues and systems to address needs of First Nations children and young people with more complex needs are issues highlighted. The lack of policy and procedure identifying how the Education Directorate best supports these young people, including in a coordinated way with other Directorates and agencies, is explored.

Further ACCO support should be made available for students at critical times and the re-instatement of a First Nations group to provide advice on First Nations issues is required asap, including to progress education-related recommendations of our Review (for example, to provide First Nations input into and oversight of suspension/exclusion decision-making and into the development, use and dissemination of First Nations data, including around experiences of racism in a school setting). Increased support from flexed staff in the Education Directorate for those transitioning out of Bimberi, increasing alternative learning options (including to create First Nations-led and operated programs), and publication of data (with First Nations input) on suspensions and exclusions are further recommendations discussed in this section.

RECOMMENDATION	RATIONALE
<p>4.1</p> <p>We recommend that the Education Directorate work with ACT Policing and First Nations people in the ACT to determine best responses to school-based student incidents, prioritising First Nations community-led responses where possible (for instance, mediating student conflict, linking students to relevant supports) and avoiding unnecessary reliance on police responses to such incidents.</p> <p>The agreed approach should be incorporated into Education Directorate policy, including the Education Directorate/Police MOU and additional Directorate policy, as necessary. Processes for First Nations community oversight of compliance with this policy should be established and implemented.</p> <p>A First Nations Education Advisory Group (to be established by the Education Directorate) should be involved in developing the above policy and in</p>	<p>Evidence indicates that unnecessary reliance on police responses in a school setting increases the likelihood of further contact with the criminal legal system of the students in question. This was a concern raised in our Review too.</p> <p>Better responses to school-based incidents, conversely, involve linking First Nations students with relevant supports (particularly ACCO and community-based support: Recommendation 4.2).</p> <p>This is a more preventative approach that is also likely to be more holistic in its focus - with real potential to address causal factors leading to incidents at school and potentially those that might also increase the likelihood of (re-)contact with the legal system (for instance, issues arising for the family unit).</p> <p>Throughout rationales for Recommendations 4.1-4.12 we note the contribution of positive experiences in education to reduced First Nations</p>

RECOMMENDATION		RATIONALE
	<p>oversight (or advising on best approach to oversight) of its implementation (see Recommendation 4.11).</p> <p>This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input and oversight).</p>	<p>contact with the legal system and negative implications in this context for more negative experiences in an educational setting.</p> <p>Also important is working preventatively on issues affecting children and young people that might lead to their contact with the justice system as adults.</p>
4.2	<p>We recommend that further resourcing be provided to expand current levels of support provided by First Nations organisations to First Nations students and families/carers.</p> <p>This support should be offered and made available to students and/or to their families/carers that self-identify or are identified as having a need for it.</p> <p>At a minimum, support should be available during suspension/exclusion processes, when a student has been referred to alternative education and when a young person is transitioning out of youth justice incarceration, but it may also be used more preventatively (for instance, when issues first emerge).</p> <p>First Nations community input is required to determine how support for First Nations students and their families/carers should be expanded.</p> <p>This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input).</p>	<p>School represents an (almost) universal point of connection through which support may be provided as a response to issues impacting on schooling and that may also contribute to (re-)contact with the criminal legal system.</p> <p>Accessing support at the right times (preventatively, at certain crucial points) may help decrease student disengagement from school and avert other negative education-related outcomes for First Nations children and young people.</p> <p>Engaging with school and positive education related outcomes are important protective factors against (re-)contact with the criminal legal system for younger people and adults, including in the First Nations community.</p> <p>The supports currently available to First Nations students, including from ACCOs working more preventatively in ACT public schools, are identified as already helping to reduce recidivism and avert other negative justice outcomes, as well as increasing school engagement. These supports should be expanded (note, too, the alignment with building the ACCO sector (see for instance, Recommendation 3.7)).</p>
4.3	<p>We recommend that processes and mechanisms be established to ensure</p>	<p>Evidence indicates that suspensions and exclusions have the potential to increase</p>

RECOMMENDATION	RATIONALE
<p>First Nations input into, oversight and/or review of Education Directorate decisions related to the suspension or exclusion of First Nations students. This approach should be incorporated into Directorate policy.</p> <p>First Nations input is required to develop the processes, mechanisms and related policy necessary to implement Recommendation 4.3.</p> <p>This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input and potentially oversight/review).</p>	<p>contact with the criminal legal system, including as they impact on student connections with protective factors at school likely to avert or reduce such contact.</p> <p>As well as impacting educational outcomes for students, for instance, suspension may impact a First Nations' sense of belonging and worth in ways that may increase likelihood of justice system contact.</p> <p>First Nations community participants expressed significant concern about suspensions and exclusions and their impacts on their children.</p> <p>There were perceptions that First Nations students are more likely to be suspended or excluded than other students. This was seen as being race-based or as poor responses to disability related behaviour.</p> <p>We note that Education Directorate data on suspensions and exclusions was not available.</p> <p>This form of discipline should be used for First Nations students as infrequently as possible.</p> <p>Having First Nations input into decisions about suspensions and exclusions is likely to address any unreasonable use of this form of discipline. It should also reduce community concerns about their disproportionate use.</p> <p>First Nations input into decision-making around suspensions and exclusions may also increase opportunity for connection with ACCO and community support – with potential to address a range of issues impacting education and/or justice outcomes (Recommendation 4.2)</p>

RECOMMENDATION		RATIONALE
		(See also Recommendations 4.4-4.6 for discussion of further responses to disability-related discrimination, racism and cultural safety issues in schools).
4.4	<p>We recommend that First Nations students and their families/carers have increased access to information, support and advocacy around rights in an educational setting (including related to disability/race discrimination, cultural rights and school disciplinary action) (see also Recommendation 4.3).</p> <p>This should be provided by a source external to but funded by the Education Directorate, potentially as an expansion of the current partnership with Legal Aid ACT or via another external program or service.</p>	<p>See above rationales for Recommendations 4.1-4.3 that speak to the importance of ensuring that appropriate supports and community-led advocacy are available for First Nations students, including in situations where their rights are potentially to be breached.</p> <p>Recommendation 4.4 responds, in particular, to concerns at a community level that support and advocacy are not easily accessed at present where rights are potentially breached.</p> <p>Increasing support and advocacy for First Nations students contribute to positive education outcomes and avert negative outcomes in this context that might increase the likelihood of contact with the criminal legal system.</p>
4.5	<p>We recommend that Education Directorate statistics on suspensions and exclusions of First Nations students are made publicly available, including data that is disaggregated by disability, reason for suspension, length of suspension and other variables, so far as is possible.</p> <p>Decisions about what data should be collated and can be shared publicly should be determined with First Nations input.</p> <p>This recommendation is partially dependent on implementation of Recommendation 4.11 (for First Nations input).</p>	<p>See rationales above for Recommendations 3.4, 3.5, 3.11 (around access to data, Data Sovereignty and Governance) and for Recommendation 4.3 (on perceptions about unreasonable use of suspensions and exclusions).</p> <p>Data on suspensions and exclusions may be provided for First Nations people involved in justice-related decision-making as part of this Review (see for instance Recommendation 3.8).</p>
4.6	We recommend that the Education Directorate engage the First Nations	Systemic racism and cultural safety issues were identified as having significant

RECOMMENDATION		RATIONALE
	<p>community in the ACT to participate in development and implementation of processes and mechanisms for collecting data from First Nations students and their families/carers on experiences of cultural safety and racism in an educational setting.</p> <p>For consideration, the processes and mechanisms developed may collect data on First Nations perspectives of the effectiveness of current Education Directorate initiatives aimed at addressing racism and improving cultural integrity, to inform review of the same.</p> <p>This recommendation is partially dependent on implementation of Recommendation 11 (for First Nations input into processes and mechanisms).</p>	<p>impacts in a school setting (for example, leading to higher rates of school disengagement and disproportionate use of suspensions or exclusions for First Nations students, as above).</p> <p>Addressing these issues as they impact First Nations students will help avert negative education related outcomes, including those that may contribute to (re-)contact with the criminal legal system.</p> <p>See in addition rationales for Recommendations 3.1-3.4 above, which speak to the importance of addressing systemic racism and cultural safety issues across government in order to improve First Nations justice outcomes. A systemic racism review may be conducted for the Education Directorate under Recommendation 3.2.</p> <p>See rationales for Recommendation 3.2 and 3.4 that discuss First Nations data collection and systemic racism.</p>
4.7	<p>We recommend that CSD increase day release for young people incarcerated in Bimberi to attend work or school (for example, to attend Muliyan, PCYC programs, TAFE).</p> <p>Additional mechanisms for increasing access for this group to vocational training/employment opportunities to help with their re-entry and improve their longer-term outcomes people should also be considered. Consideration should be given too to whether a trade skill centre can be set up at Bimberi.</p>	<p>Recommendations 4.7-4.8</p> <p>Increased engagement or re-engagement in educational and employment opportunities for young people who are incarcerated was identified within the Review process as likely to make important contributions to reduced First Nations (re-)contact with the criminal legal system – in youth and into adulthood.</p> <p>These opportunities give a young person hope, direction and break negative cycles that feed interactions with the justice system. Improving education related and employment outcomes for young people acts as a protective factor against re-contact.</p>
4.8	<p>We recommend that the ACT Government allocate further resourcing to support First Nations children and young people disengaged from education and/or</p>	

RECOMMENDATION		RATIONALE
	<p>transitioning out of Bimberi into a school setting.</p> <p>This includes providing additional resourcing for the purchase of (a) vehicle(s) and additional staffing (1-2 youth workers) within Flexible Education (to enhance support available under Waruga Yardhur and Muliyan programs).</p>	<p>Current opportunities in this regard are identified as somewhat limited, but as effective in reducing the above re-contact for young First Nations people. Expansion is required.</p>
4.9	<p>We recommend that the ACT Government allocate further resourcing to increase availability of flexible learning options for First Nations students.</p> <p>This resourcing might be used to expand existing Education Directorate initiatives (including Muliyan) and/or for First Nations-led design, implementation and evaluation of a program or other alternative learning option specifically for First Nations students.</p>	
4.10	<p>We recommend that the Education Directorate develop policy and procedures providing clear guidelines for how it will support First Nations children and young people involved in the youth justice system. It could incorporate, for example, detail guiding how to best support the transition of young people from Bimberi into school.</p> <p>The policy should incorporate detail of how the Education Directorate and other relevant directorate/agencies will work together to support First Nations students interacting with different systems (education, youth justice and/or child protection systems). As such, this process is likely to require input from other Directorates.</p> <p>This process also needs to be informed by First Nations input (including from First</p>	<p>There is insufficient clarity at present about how Education Directorate staff work with First Nations students in contact with the youth justice system.</p> <p>Schools have real potential to avert (further) negative justice outcomes for these students, as above -who are also likely to have complex needs.</p> <p>To ensure positive school responses to these students, clear guidelines written into policy and procedure are required (for example, trauma, culturally and otherwise informed).</p> <p>Supporting these students is likely to require a coordinated approach across Directorates, including because of their complexity of need (for example, a student may exit youth justice incarceration but still be interacting with CSD).</p>

RECOMMENDATION		RATIONALE
	<p>Nations-led mechanisms established under Recommendations 2.1, 2.2).</p> <p>This recommendation is partially dependent on implementation of Recommendations 2.1, 2.2 and 4.11 (for First Nations input).</p>	<p>Improving coordinated responses via implementation of Recommendation 4.10 responds to lack of coordination as a structural driver (see Recommendations 2.1-2.3).</p>
4.11	<p>Subject to the outcomes of current consultations being conducted by the Education Directorate on establishment of such a body, we recommend that the Education Directorate support the establishment as a priority of a First Nations Education Advisory Body. This body is to work alongside the Education Directorate to enhance First Nations outcomes in an educational setting.</p> <p>As part of their role, the body may provide First Nations input and oversight as identified across education-related recommendations of this Review (see Recs 4.1, 4.2, 4.3, 4.5, 4.6, 4.10). They may do this in collaboration with First Nations justice mechanisms established under Recommendations 4.1, 4.2.</p> <p>The First Nations Education Advisory Body, at a minimum:</p> <ol style="list-style-type: none"> should have sufficient capacity, including resourcing, to ensure it can provide independent oversight over and to participate on equal terms in decision-making related to policy and other Education Directorate activity impacting the First Nations school community. may have ATSIEB, ACCO and other First Nations representation (including from First Nations families currently engaged with the educational system). It could draw membership from and/or build on the Community Reference Group overseeing the Education 	<p>See rationale for Recommendations 2.1-2.3 on First Nations decision-making and other aspects of self-determination as key responses to negative First Nations justice and other outcomes.</p>

RECOMMENDATION		RATIONALE
	<p>Directorate's Waruga Yardhur program.</p> <p>c. may also incorporate youth representation or alternatively, work alongside a First Nations Youth Education Advisory Group established with a similar purpose to that of the First Nations Education Advisory Body as part of this Review.</p>	
4.12	<p>We recommend that the Education Directorate and CSD work together to ensure Education Directorate staff have sufficient understanding of thresholds for mandatory reporting. Where there are concerns about students and their families, Education Directorate staff could connect them with the above ACCO supports as an alternative to reporting to CSD (see Recommendation 4.4).</p>	<p>Concerns raised during the Review process identified Education Directorate staff as over-reporting First Nations students and families to CSD (as child protection reports). This points to a need for greater understanding by Education Directorate staff of thresholds for reporting. Avoiding contact with the child protection system and linking students and families with supports as an alternative, will help avert contact with the criminal legal system for First Nations children and young people, given their rates of contact with both systems.</p>

5. CHILD PROTECTION

There has been substantial work to address the over-representation of First Nations children in the ACT child protection and out-of-home care (OOHC) system in recent years, particularly with the introduction of the First Nations Family Response and Engagement Teams, the inaugural r Aboriginal and Torres Strait Islander Children and Young People Commissioner, and embedding the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP) in the *Children and Young People Act 2008*. These initiatives have been broadly welcomed by community.

Addressing the over-representation of First Nations children in child protection and out-of-home care (OOHC) systems requires a systemic approach that acknowledges the drivers of over-representation are embedded within racists systems that continue to position First Nations families as 'risky'. This work will have both immediate and longer-term impacts on the over-representation of First Nations people in the criminal legal system. There is a well-established and robust body of evidence – nationally and

international – demonstrating that contact with child protection and OOHC systems is increased with an increased risk of contact with juvenile and adult criminal legal systems. This link is particularly strong for First Nations children.

We heard from community members of a lack of investment in prevention and early intervention services that can work in a culturally appropriate and holistic way with families to *prevent* child protection intervention. While the First Nations Family Response and Engagement Team is capable of undertaking this work, community members argued for the need for a model that sits outside of existing child protection structures. That is, there is a need for more genuinely self-determined approaches that can exist alongside statutory child protection systems.

Having the ATSICPP embedded within legislation was viewed as a positive step, but too much focus remains on where First Nations children are placed following removal, with insufficient attention – and resourcing – to prevention and early intervention services and supports. Ensuring that all elements of the ATSICPP are implemented will more effectively address the cultural *disconnection* that is caused by child protection and OOHC interventions.

The issue of care-criminalisation – whereby children in residential care are more likely to come to the attention of police and be subjected to criminalising processes *by virtue of being in residential care* is also discussed. The absence of data on the proportion of First Nations children who are dual clients of child protection and youth justice makes it difficult to determine the true prevalence of care-criminalisation in the ACT. Nevertheless, community members spoke at length about a well-established ‘residential care to youth justice to adult incarceration pipeline’ and the need to better support and protect First Nations children in the care system.

RECOMMENDATION		RATIONALE
5.1	We recommend the ACT government provide increase funding for the further expansion of the First Nations Family Response and Engagement Team. This is to ensure that all First Nations families who are at-risk of child protection involvement, or are already impacted by the child protection system, are referred to the team as a priority.	Recommendations 5.1-5.2 Research has established a clear and strong link between child protection involvement and contact with juvenile and adult justice systems. This link is particularly pronounced for First Nations children. Ensuring that all First Nations families are referred to the Family Engagement and Support team may limit removals, but where these are necessary, may support faster and more sustainable reunification, thereby reducing the
5.2	We recommend that the ACT government consider further legislative and policy reform to give the First Nations Response and Engagement and Support team greater autonomy in decision-making, including	

RECOMMENDATION		RATIONALE
	decisions on whether a child is at significant risk and therefore removal is necessary.	<p>risk of OOHC placement and subsequent criminalisation.</p> <p>Further, research has shown that remaining with family and community is a protective factor for First Nations children at risk of child protection intervention.</p>
5.3	<p>We recommend that the ACT Government work with the Office of the Commissioner for Aboriginal and Torres Strait Islander Children to better understand and resolve unnecessary legislative constraints impacting on the Commissioner's capacity to hold child protection services accountable.</p>	<p>First Nations children are significantly over-represented in child protection and OOHC systems in the ACT, which increases their risk of criminalisation in adolescence and into adulthood.</p> <p>The Commissioner for Aboriginal and Torres Strait Islander children plays an important role in identifying systemic, policy and practice issues that negatively impact on First Nations families and communities at-risk of involvement with the child protection and youth justice systems. As such, removing current legislative constraints that limit the scope of the Commissioner's role is likely to improve their capacity to hold government accountable, and consequently reduce unnecessary statutory intervention into First Nations families and communities.</p>
5.4	<p>We recommend that the OBOW Implementation Oversight Committee (IOC), in collaboration with Aboriginal and Torres Strait Islander Children and Young People Commissioner:</p> <ol style="list-style-type: none"> Undertake a comprehensive review of the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSCIPP) Develop specific targets that focus on the principle of prevention, including for example, the number of children diverted from formal child protection 	<p>Recommendations 5.4-5.5</p> <p>Research has established a clear and strong link between child protection involvement and contact with juvenile and adult justice systems. This link is particularly pronounced for First Nations children. Further, research has shown that remaining with family and community is a protective factor for First Nations children at risk of child protection intervention.</p>

RECOMMENDATION		RATIONALE
	intervention, and the number of families who are provided with support through intensive family support services.	
5.5	<p>We recommend that the ACT Government, in conjunction with community leaders and ACCOs, explore the development and implementation of community models of care to support First Nations children to remain in community even when child protection intervention is needed. First Nations input should be sought from First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review.</p> <p>This recommendation is dependent on Recommendations 2.1 and 2.2.</p>	
5.6	<p>We recommend increased transparency in the collection, access and interpretation of child protection data in the ACT. Notwithstanding that the ACT is a small jurisdiction, data suppression due to ‘privacy’ concerns means that over-representation of First Nations children in key metrics cannot be accurately calculated. Data released to the OBOW IOC should be made publicly available.</p>	<p>This recommendation does not have a direct link to reducing over-representation of First Nations children in child protection and youth justice, or First Nations people in the adult criminal legal system.</p> <p>However, the availability of data on key child protection metrics is important to understand trends in the over-representation in child protection and OOHC systems, which increases the risk of contact with juvenile and adult criminal legal systems.</p>
5.7	<p>We recommend that the ACT Government commit to ensuring that every First Nations child in OOHC has a cultural support plan that:</p> <p>a. is developed in consultation with the First Nations Family Engagement and Support Team</p>	<p>Recommendations 5.7-5.9</p> <p>These recommendations do not have a direct link to reducing over-representation of First Nations children in child protection and youth</p>

RECOMMENDATION		RATIONALE
	<ul style="list-style-type: none"> b. includes input from a child's family and community c. is regularly updated to ensure they remain accurate and reflect the needs of a child as they develop d. provides meaningful opportunities for a child to engage with culture, beyond simply participating in NAIDOC week events e. is easily accessible to a child while they are in care f. is provided to a child when they leave the care system – either through restoration, permanency care, or if they 'age out' when they turn 18 years old. 	<p>justice, or First Nations people in the adult criminal legal system.</p> <p>However, research has shown that cultural connection is a protective factor for First Nations children.</p> <p>Ensuring that First Nations children know about and have strong linkages to their mobs and their Countries may reduce the risk of criminalisation while they are in the OOHC system.</p>
5.8	<p>We recommend that the ACT Government develops a mechanism to ensure that:</p> <ul style="list-style-type: none"> a. every child is aware of, and has access to their cultural support plan, specifically their genealogy and community knowledge while in care. These plans need to follow a child if they enter the youth justice system b. cultural support plans can be independently audited by the Commissioner for Aboriginal and Torres Strait Islander children on a regular basis to ensure that they are sufficiently high quality to support cultural connection and identity. 	
5.9	<p>We recommend that the ACT Government works with the OBOW IOC and the Aboriginal and Torres Strait Islander Children and Young People Commissioner to identify additional ACCOs with strong community connections that can provide culturally appropriate services in child protection and OOHC.</p>	
5.10	<p>We recommend that the ACT Government provide regular (yearly) data linkages on children that are 'dual clients' of child</p>	<p>Research has established a clear and strong link between child protection involvement and contact with juvenile</p>

RECOMMENDATION		RATIONALE
	<p>protection and youth justice (see also Recommendations 3.13 to 3.15). This data should be disaggregated by Indigenous status, with input from the First Nations Data Working Group established via Recommendation 3.11 of this Review.</p> <p>This recommendation is dependent on Recommendation 3.11.</p>	<p>and adult justice systems. This link is particularly pronounced for First Nations children.</p> <p>The availability of data ‘dual-system’ contact (child protection and youth justice, both concurrently and at separate times) is important to understand, and therefore address, trends in the over-representation of First Nations children in both child protection and youth justice systems.</p>
5.11	<p>We recommend greater coordination between child protection and youth justice to ensure that if a child in care enters the youth justice system, cultural support officers have access to and can update a child’s cultural support plan.</p>	<p>Research has shown that cultural connection is a protective factor for First Nations children. Ensuring that First Nations children know about and have strong linkages to their mobs and their Countries may reduce the risk of criminalisation while they are in the OOHC system, and be protective within the youth justice system.</p>
5.12	<p>We recommend the development of a formal protocol between CYF, ACT Policing and residential care service providers, co-designed with community, to stop the criminalisation of children in residential care. This would necessitate, at a minimum:</p> <ol style="list-style-type: none"> Engagement with community stakeholders Built in mechanisms of accountability for CYF, ACT Policing and residential care providers to ensure that the protocol is implemented and adhered to Cross-sector training in trauma, trauma-awareness and therapeutic care Working with ACT Policing to develop a stronger understanding of the impacts of trauma, including intergenerational trauma, structural/systemic racism, colonialism, and dispossession on children’s development, and the links 	<p>Research has established a clear and strong link between child protection involvement and contact with juvenile and adult justice systems. This link is particularly pronounced for First Nations children.</p> <p>Formal protocols to reduce the criminalisation of children in residential already exist in New South Wales and Victoria. These protocols focus on the reduction of police call outs, and on increased use of police discretion for non-violent behaviours that occur within residential care placements. There is an emerging body of research showing that when these protocols are implemented the lead to reduced police contacts for children in residential care.</p>

RECOMMENDATION		RATIONALE
	between trauma, OOHC placement and behaviours that may be perceived as 'criminal' or 'antisocial'.	
5.13	<p>In relation to the Care and Protection Intensive List (CPIL) we recommend that:</p> <ul style="list-style-type: none"> a. The ACT Government undertake a review into the functioning of the current eligibility criteria, with a focus on whether it is functionally excluding First Nations Families b. Data on the number of parents/families who have gone through the CPIL, including the number who have successfully completed and the length of time to completion, should be made publicly available. This data needs to be disaggregated by Aboriginality. It also needs to include information about children's outcomes, including whether restoration has been sustained. 	<p>This recommendation does not have a direct link to reducing over-representation of First Nations children in child protection and youth justice, or First Nations people in the adult criminal legal system.</p> <p>However, the intention of the CPIL is to provide families with additional supports to achieve restoration. Supporting First Nations children to stay with family and within community is a protective factor, which can limit their exposure to the OOHC system, thereby reducing their risk of criminalisation.</p> <p>Having information about the number of First Nations families who go through CPIL and the outcomes for these families is an important mechanism for accountability.</p>
5.14	<p>We recommend that the ACT Government, in collaboration with the OBOW IOC Committee, the Aboriginal Legal Service (ALS) NSW/ACT, and the Children's Court give full consideration to the design and implementation of a Koori Family Hearing Day to support First Nations families in the child protection system.</p>	<p>This model has been shown to be more culturally appropriate, with increased levels of cultural safety, that enable greater participation by First Nations families.</p> <p>Reducing the number of children entering the OOHC system will also reduce the number of First Nations children in contact with youth justice agencies.</p>

6. YOUTH JUSTICE

Youth justice continues to represent a significant site of over-representation for First Nations children. The legislated increase to the minimum age of criminal responsibility to 12 years old in 2024 moving to 14 years old in mid-2025 represents an important reform that should help to address some of this over-representation. Given that the legislation has only recently changed, it is too soon to determine what, if any impact, this reform will have. However, data indicates that First Nations children continue to be under community-based supervision and in detention at nine times and 14 times the rate of non-Indigenous children (respectively).

We identified a number of significant issues related to the absence of appropriate diversion options and the use of remand. The lack of data on the use of remand and the length of time that children spend on remand was raised as a concern by multiple stakeholders. Repeated periods of detention and/or long periods held in remand is highly criminogenic, particularly in the absence of culturally appropriate supports and programs for First Nations children. Community members emphasised the need for greater investment in early intervention focussed specifically on diversion options that can address the drivers of youth justice contact for First Nations children.

The absence of culturally appropriate supports in detention and post-released were similarly raised as significant issues impacting First Nations children. Community members spoke at length about the pervasive and long-term impacts of the cultural disconnection that occurs within youth justice systems that are unable to provide opportunities for meaningful cultural connection and engagement. In this context, there was broad support for the development of First Nations-led models of youth justice that can work holistically with children, young people and families to support cultural connection, thereby assisting with diversion and/or reducing the risk of recidivism.

RECOMMENDATION		RATIONALE
6.1	<p>In relation to the Therapeutic Support Panel, we recommend:</p> <ul style="list-style-type: none"> a. Investment in the social service infrastructure to support the work of the Therapeutic Support Panel, including investment in ACCOs that can work intensively with children and families to ensure children do not enter the youth justice system at later stages of adolescence b. Ongoing monitoring and evaluation. This should include, at a minimum, the regular provision of data on the number 	<p>The Therapeutic Support Panel has been established as the key mechanism to support raising the minimum age of criminal responsibility.</p> <p>Investing in the social service infrastructure that can work with children and families to prevent further contact with the youth justice system will have a demonstrable impact on over-representation.</p>

RECOMMENDATION	RATIONALE
<p>of referrals, children's characteristics and type of support offered as well as data necessary for evaluation</p> <p>c. An independent evaluation on the impact and efficacy of this model. Such an evaluation should include:</p> <ul style="list-style-type: none"> i. Input from First nations community leaders and ACCOs, with further input from the First Nations-led bodies established under Recommendations 2.1 and 2.2 of this Review ii. A longitudinal component that tracks children to determine whether the Therapeutic Support Panel can effectively divert children from formal youth justice involvement at later stages of adolescence. <p>This recommendation is dependent on Recommendations 2.1 and 2.2.</p>	<p>Evaluating the impact and efficacy of the Therapeutic Support Panel will provide evidence of the elements that are working/ have worked, and the areas that may need to be improved to better support children and families, thereby increasing the efficacy of this model to divert children from the youth justice system.</p>
<p>6.2</p> <p>We recommend that the ACT Government provide greater investment, on a recurrent basis to ACCOs that can work with children and families to address the factors that contribute to children's contact with police and youth justice system, and assist with diversionary options. These services should:</p> <ul style="list-style-type: none"> a. Work collaboratively with First Nations communities to identify the areas of need, via the mechanisms established in Recommendations 2.1, 2.2, 3.5 and 3.8 of this Review b. Be funded to work intensively and over longer periods of time (greater than 6 months) with children and families c. Be funded on a recurrent basis at a level that is proportional with the needs within the community (see Recommendation 3.7). <p>This recommendation is dependent on Recommendations 2.1, 2.2 and partially</p>	<p>Early intervention that is culturally appropriate, holistic, intensive and that can work with children and families over longer periods of time to support multiple and intersecting needs can help to diver children from contact with the youth justice system, thereby reducing over-representation.</p>

RECOMMENDATION		RATIONALE
	dependent on Recommendations 3.5 and 3.8.	
6.3	We recommend that the ACT Government increase funding for the Restorative Justice Unit to help address delays, and to support greater awareness amongst relevant stakeholders of the eligibility criteria and referral pathways for restorative justice conferences.	Restorative justice conferences can be effective diversionary options and/or can support reduced risk of recidivism. Increasing the number of First Nations children who have access to restorative justice conferencing can have a direct impact on addressing over-representation.
6.4	In relation to police of diversion we recommend that: <ul style="list-style-type: none"> a. The ACT Government provide additional funding, on a recurrent basis, to support the extension of the community diversion programs b. Diversion data in the ACT be made publicly available, including the use of cautions and the number of referrals to restorative justice conferences, disaggregated by Indigenous status. This data should be published as a dashboard, with regular updates to ensure transparency and greater accountability c. ACT Policing establish a clear process to review all decisions that are made not to utilise diversionary options for young people. Reviews should be undertaken by a suitably trained senior officer and the reasons for not referring an eligible person should be made publicly available through annual reporting. 	
6.5	We recommend that the ACT Government provide funding, on a recurrent basis, for the employment of a specialist children's solicitor to sit within ALS NSW/ACT.	Access to legal representation is not only a basic tenet of justice but may also have a direct link with addressing over-representation by ensuring that youth justice outcomes are fair and proportional.
6.6	We recommend that the ACT Government undertake an independent review of the use	Time spent in detention has been shown to be criminogenic, particularly

RECOMMENDATION		RATIONALE
	of remand for children, particularly First Nations children. This review should focus on the factors that are contributing to the high proportion of children on remand, and how these children can be better supported. The review should also be informed by priorities or standards developed on bail and remand by the National Justice Policy Partnership.	for children on remand where access to services/supports may be more limited. Reducing the number of children and the length of time spent on remand will directly contributing to reducing over-representation.
6.7	<p>We recommend that the ACT Government in collaboration with First Nations communities and ACCOs (via the mechanisms established under Recommendations 2.1 and 2.2), design a culturally safe youth justice model for First Nations children with a focus on holistic cultural supports to promote rehabilitation and greater cultural connections. This should include investment in ACCOs to design and deliver cultural engagement programs for First Nations children at Bimberi.</p> <p>This recommendation is dependent on Recommendations 2.1 and 2.2.</p>	First Nations-led justice models that draw on First Nations knowledge, provide cultural safety and enhance opportunities for genuine and meaningful cultural connection have been trialled in criminal legal systems throughout Australia. These models are grounded in an understanding that First Nations ways of doing and being are protective for First Nations children including in carceral settings. These models have the potential to reduce over-representation by supporting rehabilitation.
6.8	We recommend that the ACT Government expands the existing ‘cultural development program’ and makes it mandatory for all staff at Bimberi. This training should be offered on a recurrent basis so that staff have opportunities to refresh their knowledge and practice.	This recommendation does not have a direct link to reducing over-representation. However, ensuring that all staff at Bimberi are working in ways that are culturally sensitive and respectful may improve some of the experiences that children have reported throughout this Review.
6.9	We recommend that as part of the current CSD review into the development of a post-release model, specific consideration must be given to the unique needs of First Nations children. The review must continue to incorporate significant consultation with First Nations input from the First Nations bodies established under	Post-release models can assist with reducing recidivism if they provide intensive supports that are linked to the unique needs of children transitioning from Bimberi.

RECOMMENDATION	RATIONALE
<div></div> <p>Recommendations 2.1 and 2.2, and from children and young people who have experienced criminalisation to ensure that the needs of First Nations children are adequately understood and appropriately addressed.</p> <p>This recommendation is dependent on Recommendations 2.1 and 2.2.</p>	

7. POLICING

ACT Policing has undertaken a significant body of work to address challenges in their engagement with First Nations peoples and communities. This has included the expansion of the First Nations Liaison team and a five-year strategy to improve ACT Policing’s relationship with First Nations communities. Despite this work, systemic racism and policing culture remain significant issues for community members. The results of our consultations show that from the perspective of people we interviewed, including non-Indigenous people working for various government departments and ACT Policing, First Nations people continue to be targeted, and continue to experience excessive use of force. This finding has been reinforced by the recent *Reasonable Force?* series published in The Canberra Times, which identified ‘...egregious instances in which ACT police have exceeded the limits of their authority and, in some cases, apparently flagrantly abused their power’.⁷ It has also been reiterated in the Ombudsman’s use of force investigation, which found that despite examples ‘excellent community policing which was sensitive to de-escalating heated situations... we also saw examples of policing that unnecessarily inflamed situations, resulting in poor outcomes for the people involved and the community’.⁸

There was significant concern about a lack of accountability and transparency within ACT Policing, particularly in relation to the complaints process. The unique arrangement in the ACT – whereby ‘community policing’ is contracted out to the Australian Federal Police – was perceived to be a significant contributor to the problems of accountability. The issues identified in relation to systemic racism and policing culture contribute to a

⁷ Canberra Times (15 May 2025) Editorial: Our police force can’t be above the law.

⁸ ACT Ombudsman (2025) *Use of force by ACT Policing: More to do to lessen harm. An investigation into ACT Policing’s use of force 2019-2024* <https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0023/318560/Use-of-force-by-ACT-Policing.pdf>.

widespread perception that complaints against police will either not be addressed and/or may potentially lead to retaliatory actions. As such, community members are unlikely to lodge official complaints against ACT Policing.

Reforms to the way the ACT Government responds to family and domestic violence have been ongoing, exemplified by the development of the ACT Domestic, Family and Sexual Violence Strategy and the introduction of the Family and Domestic Violence Investigation Unit. While these are positive initiatives, there did not appear to be much community awareness of the strategy or of the Family and Domestic Violence Investigation Unit. Further, there are ongoing concerns about the misidentification of First Nations victim-survivors as perpetrators, and the absence of First Nations-led and run family and domestic violence shelters. Policing responses to family and domestic violence were also viewed as problematic. Two key issues raised by community that require urgent attention relate to the way child protection services are perceived to be working closely with ACT Policing to punish victim-survivors for ‘failing to protect’ their children, and with ACT Policing placing the onus on victim-survivors to leave violent relationships and environments. These issues are compounded by an absence of publicly available data on the prevalence of family and domestic violence, including recorded offences and victimisation rates which can be disaggregated by Indigenous status.

RECOMMENDATION		RATIONALE
7.1	<p>We recommend that the Justice Linked Data Asset Pilot:</p> <ul style="list-style-type: none"> a. should have input from the First Nations-led Data Working Group established via Recommendation 3.11 of this Review (see also Recommendation 3.10 to 3.15) b. should be used to identify gaps and strategies to address these, and to develop strategies to improve data quality across all justice organisations, including ACT Policing. <p>This recommendation is dependent on Recommendations 3.10, 3.11, 3.12, 3.13, 3.14 and 3.15.</p>	<p>This recommendation does not have a direct link to reducing over-representation. However, good quality data that is collected consistently, and which is publicly available increases transparency, and enables a better understanding of trends in over-representation.</p>
7.2	<p>We recommend that ACT Policing commission an independent evaluation of the implementation and outcomes of the Strategy for Engagement with First Nations People and Communities. The terms of reference for the independent evaluation</p>	<p>As identified throughout our Review, First Nations communities throughout the ACT continue to report negative experiences with ACT Policing. Ensuring that the Strategy for Engagement with First Nations People</p>

RECOMMENDATION		RATIONALE
	should be designed in collaboration with First Nations representation (as per Recommendation 2.1 and 2.2 of this Review).	and Communities is achieving its intended outcomes, requires an independent evaluation that addresses the needs and experiences of First Nations people and communities in the ACT.
7.3	<p>We recommend that ACT Policing should be a priority area for a systemic racism review, as discussed in Recommendation 3.2. This should include, but not be limited to:</p> <ul style="list-style-type: none"> a. the adverse use of police discretion in matters such as the use of diversion, use of arrest over summons, access to police bail, the use of minor offences, police stops and use of force b. differential responses to family and domestic violence involving First Nations people, particularly victim-survivors c. differential responses to First Nations requests for assistance d. training and police culture. <p>This recommendation is dependent on Recommendation 3.2.</p>	Over-representation is fundamentally grounded in systemic racism across multiple systems. Police play a key role in the over-representation of First Nations people by virtue of their function within the criminal legal system.
7.4	We recommend that ACT Policing ensure that First Nations officers – including all liaison officers – have access to professional cultural supervision. This supervision needs to be offered as a remunerated service (not as an additional expectation placed on First Nations community members) and should be external to ACT Policing.	This recommendation does not have a direct link to reducing over-representation. Instead the focus is on providing First Nations police officers and liaison officers with cultural supports to manage the significant challenges they experience both within the culture of the police, but also in light of possible tensions within community by virtue of their status as police/liaison officers.
7.5	In relation to cultural awareness training, we recommend that:	Recommendations 7.5-7.7

RECOMMENDATION		RATIONALE
	<ul style="list-style-type: none"> a. Training be provided on a continual basis to all ACT Policing members. This could include a ‘refresher’ course that is provided yearly to support embedding cultural awareness throughout the organisation b. ACT Policing implement a continuous monitoring and evaluation framework to assess the impact of cultural awareness training on policing culture and interactions with First Nations people, and to identify opportunities for training to be further adapted or refined as needed. 	<p>These recommendations do not have a direct link to reducing over-representation. However, ensuring greater cultural awareness and sensitivity within ACT Policing is an important element of addressing systemic racism.</p>
7.6	<p>We recommend that ACT Policing continue to explore ways to support a review of the training continuum to:</p> <ul style="list-style-type: none"> a. identify gaps in training, particularly in relation to trauma-informed practices b. develop training packages that focus on understanding, identifying and appropriately responding to trauma-based behaviours among different cohorts, including First Nations people c. ensure that all ACT Policing members have access to training on trauma-informed policing practices. 	
7.7	<p>We recommend that ACT Policing invest in communication strategies to improve First Nations’ communities understanding of:</p> <ul style="list-style-type: none"> a. the role of First Nations Liaison Officers b. First Nations peoples’ rights to access support from First Nations Liaison Officers, and the ways that they can access this support. 	
7.8	<p>In relation to the use of body-worn cameras:</p> <ul style="list-style-type: none"> a. We recommend that ACT Policing develop stronger guidelines that are 	<p>Recommendations 7.8-7.9</p> <p>The intention of these recommendations is to increase</p>

RECOMMENDATION	RATIONALE
<p>easily accessible by the public and that clearly explain how body worn camera footage can be accessed and the circumstances under which body worn camera cameras do not need to be activated</p> <p>b. Consistent with the recommendations by the ACT Ombudsman and the NSW Law Enforcement Conduct Commission, we recommend that body worn cameras must be activated when exercising police powers, or, when it is likely that an interaction may lead to the exercise of police powers</p> <p>c. That all other relevant comments and recommendations from ACT Ombudsman's own motion investigation into ACT Policing's use of force, and the NSW Law Enforcement Conduct Commission Inquiry into policies on body worn cameras, should be considered.</p>	<p>transparency and accountability, particularly for interactions involving First Nations children.</p> <p>There are direct and indirect links to over-representation: indirectly, these recommendations may increase First Nations people's access to justice. A more direct link to over-representation is through the identification of situations where First Nations people are inappropriate targeted and/or where use of force is used inappropriately.</p>
<p>7.9</p> <p>We recommend the establishment of an independent oversight body with the statutory authority to investigate complaints against ACT Policing, and to compel action in response to its investigations. The composition of this body could be considered by the First Nations-led justice body established as part of this Review (see Recommendation 2.1 and 2.2).</p> <p>This recommendation is dependent on Recommendation 2.1 and 2.2.</p>	
<p>7.10</p> <p>We recommend that as part of the Domestic, Family and Sexual Violence strategy the ACT Government in partnership with ACT Policing and First Nations-led bodies established under Recommendations 2.1 and 2.2 commit to:</p> <p>a. the regular collection and dissemination of data on the</p>	<p>There is a significant body of research showing that First Nations women are more likely to be misidentified as the perpetrator in FDV incidents which increases their risk of incarceration.</p> <p>Data on the prevalence and type of FDV disaggregated by Indigenous status will enable a better</p>

RECOMMENDATION		RATIONALE
	<p>prevalence of family and domestic violence in the ACT, including but not limited to, recorded instances of FDV (recorded crime), victimisation rates, and hospitalisations. Where possible, this information should be disaggregated by Indigenous status</p> <p>b. exploring how cultural awareness training can mitigate the misidentification of victim-survivors as perpetrators.</p>	understanding of trends in over-representation, particularly for First Nations women who are misidentified as perpetrators or primary aggressors.

8. BAIL

Our Review finds that the absence of comprehensive bail data limits our understanding of the impact of bail on the over-representation of First Nations people (including by gender) in the criminal legal system, particularly in relation to bail decisions, bail conditions, outcomes of bail breaches and breach types. However, we do know that First Nations men and women are more likely to be in prison as remandees than they are as sentenced prisoners in the ACT.

There was widespread support for a standalone provision in the *Bail Act* which requires consideration of factors related to a person's Indigenous status when determining bail as a mechanism for ensuring that systemic, cultural and other issues are taken into account for both adults and children.

The abolition of the Law Reform and Sentencing Advisory Council means that a planned review of the ACT's bail laws has also been cancelled, including the current scheme relating to presumptions for and against bail. We note that a number of organisations have called for the abolition of the presumptions scheme because it is contrary to the presumption of innocence, specifically impacts on children and young people, and can lead to unnecessary use of custody. The ACT government has acknowledged the disproportionate effect of bail laws on Aboriginal and Torres Strait Islander people. There is no evidence as to whether the current scheme has contributed to community safety.

We found widespread support for the extension of the weekend bail court to include Sunday to reduce unnecessary custodies. There was also major support for the Aboriginal Legal Service (ALS) NSW/ACT bail (and warrants) support programs Front-Up and Ngurrumbai which have shown positive support for increasing access to bail and reducing custody. However, these programs are not available to First Nations children and young people, which is a major gap. Expansion of the external reporting sites to include bail is also a significant outcome.

We also note that there have been previous key recommendations relating to bail made by the Standing Committee on Justice and Community Safety (2024) *Inquiry into the administration of bail* that require decisive action from government.

RECOMMENDATION	RATIONALE
<p>8.1</p> <p>We recommend that relevant ACT agencies improve their data collection on bail to include information on bail outcomes, offence types, bail conditions, outcomes of bail breaches and breach types, and that this data be disaggregated by age group, gender and Indigenous status.</p> <p>This Recommendation is partially dependent on the implementation of Recommendation 3.16.</p>	<p>Being remanded in prison for bail refusal or breaches of bail is one reason for the over-representation of Aboriginal and Torres Strait Islander people in prison. Further, economic disadvantage impacts on bail and that disproportionately affects First Nations people.</p> <p>It is difficult to see how longer-term reductions in imprisonment can be made in this area without improved data as a basis for policy formulation and evaluation of law, policy and program reform. The data problem applies to adults and children and young people.</p>
<p>8.2</p> <p>We recommend that the ACT government:</p> <ul style="list-style-type: none"> a. Amend bail laws to include standalone provisions that require bail authorities to consider any issues that arise due to a person's Aboriginal and Torres Strait Islander status, including cultural background, ties to family and place, and cultural obligations. The Victorian <i>Bail Act 1977</i>, S3A provides a relevant example b. Amend bail laws to include standalone provisions that require bail authorities to consider any issues that arise due a person's disability, mental health and other health conditions c. Introduce Sunday sittings of the Magistrates Court for the purposes of bail. 	<p>There is no standalone requirement in the <i>Bail Act 1992</i> (ACT) for consideration when determining bail of issues arising from a person's Aboriginal and Torres Strait Islander status. It is widely recognised within the ACT and nationally that a separate provision is required compelling consideration of issues rising from a person's Indigenous status. Disability and other health issues also negatively impact Indigenous peoples. The expansion of the bail court to include Sunday is also required to avoid unnecessary custodies.</p>

RECOMMENDATION		RATIONALE
8.3	We recommend that the ACT government review the current presumptions scheme in relation to bail specifically for their effect on Aboriginal and Torres Strait Islander people's access to bail and whether the scheme has contributed to community safety. We note that key legal service providers have called for the abolition of the current presumptions scheme.	A presumption against bail can lead to the risk of unnecessary custodies, is contrary to the National Agreement on Closing the Gap and incompatible the presumption of innocence, and the rights of children. The ACT government has acknowledged the disproportionate effect of bail laws on Aboriginal and Torres Strait Islander people.
8.4	We recommend that the ACT government expand the Ngurrumbai Bail Support Program to provide services to children and young people. We recommend collaboration between relevant ACT Directorates to facilitate this expansion.	A significant gap in current initiatives is that the Ngurrumbai Bail Support Program is only available for adults. This gap has been acknowledged by the ACT government and there is 'in principle' support to co-designing a bail support program for young Indigenous Australians.
8.5	Noting the ACT government's response to the Report of the Standing Committee on Justice and Community Safety (2024) <i>Inquiry into the administration of bail</i> , we recommend that the ACT government implement recommendations 9, 10, 11, 12 and 13 of the Standing Committee's Report.	Earlier recommendations from Standing Committee on Justice and Community Safety (2024) <i>Inquiry into the administration of bail</i> are particularly relevant to First Nations people's access to bail including 'wraparound' bail support programs; early intervention programs for people who are at risk of not complying with bail orders; increasing the number of bail officers; a single case manager in the courts to assist people with access and referrals to necessary legal, mental health, AOD dependency and disability support programs; and increased availability of the Justice Housing Program.

9. COURTS & SENTENCING

Court and sentencing play an important role in understanding the over-representation of First Nations people in the criminal legal system. First Nations defendants were 13% of all finalised criminal matters in the ACT Supreme Court, 9% in the adult magistrates' court and 28% in the children's court – at a time when the estimated First Nations population was 2.1%. Improved sentencing data is necessary especially relating to prior record, and sentencing outcomes by principal offence by Indigenous status.

Four in every ten First Nations people sentenced in the ACT criminal courts receive a custodial sentence, compared to around two in ten non-Indigenous defendants found guilty. The reasons for this disparity require further research and explanation which is beyond the scope of our Inquiry given current data limitations.

A key innovation in the ACT has been the development of circle sentencing courts (Warrumbul, Galambany and Supreme Court Pilot). The majority of the people we spoke with in the community and government were very supportive of the courts. Expanding the capacity of the Galambany bail court is one area in need of attention. It was acknowledged by stakeholders that the circle sentencing courts needed to engage the community more to enhance its credibility.

Ensuring that the Supreme Court Pilot Circle Sentencing List as an ongoing sentencing list is necessary. There was widespread support for the use of Aboriginal and Torres Strait Islander Experience Reports, although there was some discussion on who should auspice the reports. We take no position on this except to note that the issue should be further considered if the pilot program is to be placed on a long-term footing, and that whoever has responsibility for the Court Experience Reports will require recurrent funding.

We also address the issue of whether people plead guilty to access the circle sentencing courts. We note that where there was a guilty outcome across all criminal courts in the ACT, more than nine in ten defendants had pleaded guilty to the offence (92%), with only a slightly higher proportion of First Nations people than non-Indigenous defendants.

As noted in our First Report, for many First Nations defendants in the ACT the only way that background factors *may* be considered is through section 33(1)(m) of the *Crimes (Sentencing) Act 2005* (the cultural background of an offender as a factor relevant to sentencing). In addition, there was some dissatisfaction expressed with the quality of information in Pre-sentence Reports. There was widespread support for the introduction of legislative provisions that require sentencing courts to take into account the unique systemic/background factors for First Nations people.

There is an absence of First Nations' specific information on access to and outcomes from the Drug and Alcohol Sentencing List, so it is difficult to determine the extent to

which Aboriginal and Torres Strait Islander people benefit from the process. We recommend improved data collection and a review of the List which examines First Nations participation at all levels.

Concerns were raised about First Nation women's access to Family Violence Orders through the court process because of the absence of Indigenous-specific support in applying for protection orders and during the court appearance. We make a recommendation to remedy this.

The final consideration in relation to sentencing concerns a number of distinct matters that were raised by stakeholders in association with community-based orders, diversion, committal processes and sentencing procedures. Each of these suggested reforms has some merit and potential to better utilise community-based alternatives to imprisonment or reduce length of imprisonment.

RECOMMENDATION		RATIONALE
9.1	<p>We recommend that relevant ACT agencies improve the collection and publication of more comprehensive criminal court data in relation to First Nations people in the ACT. This might include for example, traffic and vehicle regulatory offences, prior record, and sentencing outcomes by principal offence by Indigenous status.</p> <p>This Recommendation is partially dependent on the implementation of Recommendation 3.16.</p>	<p>Limitations on available court data, particularly in relation to prior record and sentencing outcomes by principal offence and by Indigenous status, limit our ability to understand the reasons for what appears to be a disproportionate use of sentences of imprisonment for First Nations people appearing in the criminal courts.</p>
9.2	<p>We recommend, on the basis of improved data collection, further specific research into the sentencing of First Nations defendants, the reasons for the comparatively more frequent use of sentences of imprisonment, and further law and policy interventions that may reduce any identified disparities.</p> <p>This Recommendation is dependent on the implementation of Recommendation 9.1.</p>	<p>Four in every ten First Nations people sentenced in the ACT criminal courts receive a custodial sentence, compared to around two in ten non-Indigenous defendants found guilty. The reasons for this disparity require further research and explanation which is beyond the scope of our Inquiry given current data limitations.</p>
9.3	<p>We recommend that the ACT government properly resource the Galambany Court to resume hearing bail applications.</p>	<p>Building the capacity for the Galambany Court to resume bail hearings within a specialist, more</p>

RECOMMENDATION		RATIONALE
	Consideration also needs to be given to increasing funding to the Ngurrumbai Bail Support Program to meet further service demands.	therapeutic and culturally responsive process is likely to increase access to bail and provide the support and interventions which may reduce the likelihood of further offending at this early stage.
9.4	We recommend that the ACT government establish the current pilot Supreme Court Circle Sentencing List as an ongoing sentencing list in the Supreme Court. In establishing the List as a permanent feature of the Court, it would be beneficial to consult with (at a minimum) court members, the DPP and ALS NSW/ACT as to any current issues and potential improvements to the operation of the List.	There was widespread support for the pilot Supreme Court Circle Sentencing List and the use of Aboriginal and Torres Strait Islander Experience Reports as an effective process for sentencing First Nations defendants. Establishing the List on a more permanent footing was also strongly supported among the stakeholders we interviewed.
9.5	We recommend that the ACT government amend the <i>Crimes (Sentencing) Act 2005</i> to provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.	There was widespread support for the introduction of legislative provisions that require sentencing courts to take into account the unique systemic/background factors for First Nations people given that for many First Nations defendants in the ACT the only way that background factors <i>may</i> be considered is through section 33(1)(m) of the <i>Crimes (Sentencing) Act 2005</i> .
9.6	<p>We recommend the ACT government undertake a broad Review of the Drug and Alcohol Sentencing List (DASL) given it has been in operation for five years. In particular, the Review should consider how to ensure maximum participation of First Nations clients and their successful completion of the program. The Review should include at a minimum:</p> <ul style="list-style-type: none"> a. The systematic identification of First Nations status at the point of referral to the DASL b. Whether the various decision-making points throughout the process from referral to graduation might 	There is a need for a review of the Drug and Alcohol Sentencing List (DASL) to identify potential barriers to access and successful completion by First Nations people. Increasing access and completion for First Nations people is likely to positively impact on reducing recidivism and provide social and economic benefits.

RECOMMENDATION	RATIONALE
<p>systematically disadvantage First Nations participants, whether there are associated barriers affecting First Nations people's successful participation, and how these might be remedied</p> <p>c. Whether there is participation of relevant First Nations people and organisations in all assessments and decision-making processes that are undertaken, and in the Treatment Order Team, when DASL is working with First Nations clients.</p> <p>This Recommendation is partially dependent on the implementation of Recommendation 3.16.</p>	
<p>9.7</p> <p>We recommend the availability of support for Aboriginal women in applying for protection orders and appearing in court be reviewed and assessed by JACS for improved accessibility and outcomes, in addition to the current funding commitments to the work of the Women's Legal Centre Mulleun Mura service.</p>	<p>The absence of Indigenous-specific support in applying for Family Violence Orders and during the court process was raised as an issue and was seen as relevant to First Nations over-representation in the criminal legal system. If family violence was 'nipped in the bud' a little earlier through the use of family violence protection orders then it may prevent further violence by the perpetrator and/or retaliation on the part of the affected person.</p>
<p>9.8</p> <p>We recommend that the ACT government consider the merits of potential reforms to legislation raised in section 9.7 of the Report in relation community-based orders, diversion, committal processes and sentencing procedures. Each of these reforms has potential to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment.</p>	<p>Stakeholders raised specific concerns in relation to Section 46D of the <i>Crimes (Sentencing) Act 2005</i>; greater flexibility in court sentencing options; and reform to Section 35(4) of the <i>Crimes (Sentencing) Act 2005</i>.</p> <p>Each of these recommended reforms has potential to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment.</p>

10. IMPRISONMENT & THE AMC

The ACT First Nations imprisonment in 2024 is the highest it has been at any time in the ACT during the last 11 years. The ACT over-representation of First Nations imprisonment is higher than the national rate of over-representation and the ACT has the highest rate of any state or territory in Australia. However, this is partly driven by the low rate of non-Indigenous male and female imprisonment in the ACT which is half the national rate and the lowest rate of non-Indigenous imprisonment in Australia.

There have been reductions in sentenced prisoners which is driven largely by fewer sentenced non-Indigenous men. There has been an increase in the average remand population which is being partly driven by an increase in First Nations male remandees. There is a high proportion of Indigenous women on remand (80% on average during 2023-24).

In terms of policy implications, an increase in community-based sentencing options, reductions in rates of return to prison and alternatives to custodial remands are all important in reducing the imprisonment of First Nations men and women. Significant reductions might be achieved particularly through improved access to bail and appropriate alternatives to custody.

The subject of human rights is prevalent throughout the discussion on the AMC. It is of particular relevance given the commitments underpinning the establishment of the Centre and in the many interviews we did with community, detainees, government and other stakeholders. Some of the human rights issues identified in our Review include the failure to separate remand and sentenced detainees, the absence of a structured day with purposeful activities, and a number of other concerns that especially impact on First Nations male and female detainees including segregation, use of force, strip searches, security classifications, having men and women housed in the same facility and systemic and individual racism.

While there are oversight bodies that do their best within the context of resources, a core problem has been the failure of government to implement multiple recommendations which are often repeated from one inquiry to the next over many years.

We discuss the widely reported problems of illicit drug use in the AMC. While interdiction efforts are important, we focus on the need to reduce demand through actively engaging people with meaningful activities. We also recommend site specific wastewater testing at AMC to accurately gauge the prevalence and type of drug use with the Centre.

Various concerns were raised in relation to recognition of Aboriginal and Torres Strait Islander cultural matters. First Nations male and female detainees in the AMC strongly value cultural programs and we were disturbed to see many popular programs had been discontinued or had limited access. The problem particularly impacted on First Nations

women. Other matters related to cultural awareness and cultural safety were raised (including for example, access to funerals). We recommend the introduction of cultural support plans. While there is extensive discussion of cultural safety in the ACT Corrective Services (ACTCS) *Be the Change We Seek – Aboriginal and Torres Strait Islander Framework*, there is minimal evidence provided of how this is achieved within the custodial setting. We recommend the introduction of a Cultural Safety Action Plan.

It is difficult to see the AMC facilitating rehabilitative outcomes for Aboriginal and Torres Strait Islander people. The difficulties in accessing programs due to restrictions (for example, protection inmates) or not being offered, the lack of relevance of and suitability of programs, and the absence of literacy programs were all matters raised by people we spoke with both inside and outside the AMC. The lack of employment opportunities and employment-related training in the AMC was another problem inhibiting rehabilitation. The reality is that work is centred around maintaining the prison. In some cases, it can be as little as a few hours per week. The Transitional Release Program (TRP) and Transitional Release Centre (TRC) were spoken of highly but have low numbers and eligibility criteria that makes it hard to enter. Women are excluded from the TRC and the ACT Human Rights Commission has in the past received multiple complaints about the different treatment afforded to women seeking to access TRP.

The situation for women, and particularly First Nations women, in the AMC is more difficult than men. The ACTCS has a *Walking with Women on the Pathway to Change Framework* (2020) and Action Plan 2020-22. *Walking with Women* acknowledges some of the specific issues impacting on First Nations women. However, it is difficult to reconcile these concerns with the comments made by First Nations women in prison throughout our Report or with active policies and programs in place which address them. As a case in point, we discuss trauma-compounding effects for women placed in the Crisis Support Unit and in the use of strip searches.

Other matters dealt with in our Report relate to improving access to the health services provided by Winnunga and addressing unresolved civil law problems for people held in the AMC which – as we noted in Section 3 – can diminish the likelihood of rehabilitation.

Finally, we refer to the increase in deaths in custody over the last two years and make recommendations related expedited coronial inquiries, preliminary assessments by the Office of the Inspector of Custodial Services (OICS) and the establishment of an Independent Inquiry into the deaths of seven men in adult correctional custody between February 2023 and February 2025 with particular attention to systemic issues.

RECOMMENDATION		RATIONALE
10.1	<p>We recommend ACTCS introduce a structured day and purposeful activities in the Alexander Maconochie Centre (AMC) as a matter of high priority. It is an important end in itself to respond to detainee needs, but it also has a range of positive impacts on other areas such as reducing drug use, improving motivation and increasing the likelihood of rehabilitation. Purposeful activities for First Nations detainees must meet cultural needs.</p>	<p>Many detainees and ex-detainees we spoke with reflected the long recognition of boredom and the lack of a structured day in the AMC. The effects of boredom are multifaceted, potentially increasing the likelihood of conflict among detainees and with staff, negatively impacting on self-worth and motivation, increased drug use and diminishing the likelihood of rehabilitation and preparedness for release.</p> <p>The rationale for Recommendation 10.1 is to provide for a rehabilitative environment, reduce the likelihood of re-offending and reduce Aboriginal and Torres Strait Islander over-representation in the criminal legal system.</p>
10.2	<p>In line with Recommendation 3.1, we recommend that the operation of the AMC should be a priority area for a systemic racism review including, but not limited to, such matters as the use of segregation, the use of force, security classifications, recognition of cultural rights and the interaction of staff with First Nations detainees. The review should consider the intersections between systemic racism, gender and disability.</p>	<p>Issues of racism and discrimination were raised in our discussions with detainees and ex-detainees, and the lack of cultural safety more broadly. Other reviews have also raised this issue. Particular matters also included segregation, use of force, and security classifications. Systemic racism negatively impacts on the likelihood of rehabilitation through, for example, lack of engagement and lack of social and emotional wellbeing.</p>
10.3	<p>We recommend that the ACT government make funding available for the appointment of an identified Aboriginal and Torres Strait Islander position in the Office of the Inspector of Custodial Services (OICS).</p>	<p>The Office of the Inspector of Custodial Services is a key external accountability mechanism which does not have an identified First Nations staffing position (unlike other accountability mechanisms such as the Ombudsman or the Human Rights Commission). Given the importance of the role that it plays in conducting various reviews and investigations this needs to be remedied</p>

RECOMMENDATION		RATIONALE
		to enable a First Nations engagement and perspective in the work of OICS.
10.4	<p>While attempts to control the supply of drugs into the AMC should be maintained, we recommend urgent attention by the ACTCS to focus on the demand side of drug use through improvements to programs, training, education and a structured day to alleviate the boredom in the AMC and to provide for daily routines and meaningful activities, including work (and in line with Recommendations 10.1, 10.5, 10.8 and 10.11).</p> <p>We further recommend site specific wastewater testing at AMC to accurately gauge the prevalence and type of drug use within the AMC. Periodic testing over time would also provide the ability to assess the effectiveness of drug interdiction.</p>	<p>Responding to the issue of drug use in the AMC is directly related to reducing the likelihood of re-offending on release from prison and re-imprisonment for both First Nations and non-Indigenous prisoners, This effect may be direct through the reduction of drug debts on release from prison and reducing active addictions and through multiple ancillary contributions to health and wellbeing, education and engagement in programs.</p> <p>As noted in Recommendation 10.4, wastewater drug testing also has the benefit of testing for prevalence and determining the extent to which drug use is an issue in the AMC.</p>
10.5	We recommend the ACT government provide increased funding for Aboriginal and Torres Strait Islander specific cultural programs and that these programs be considered specifically as protective factors contributing to rehabilitation and reducing the likelihood of re-offending.	Cultural-based programs and particularly those run by First Nations services are favoured by First Nations prisoners. The availability of these programs is directly related to prospects for rehabilitation and reductions in re-offending: connection to culture is a 'protective factor' is reducing re-offending. 'Factors that reduce the rate or protect against Aboriginal and Torres Strait Islander adult incarceration include access to culturally safe resources and services' (Productivity Commission 2024).
10.6	We recommend introducing cultural support plans for all First nations people in custody (remand and sentenced), developed by ACTCS in partnership with an appropriate First Nations organisation (such as Yeddung	Cultural support plans have been a feature of child protection systems and some juvenile justice systems for First Nations children and young people for some time. Cultural support plans recognise that cultural connection is a protective factor

RECOMMENDATION		RATIONALE
	Mura and Winnunga), and their families and communities (where appropriate).	from contact with the criminal legal system.
10.7	<p>In line with Recommendation 3.3, we recommend ACTCS develop an AMC Cultural Safety Action Plan to implement specific programs and procedures including cultural programs, cultural plans and staff training, in line with the commitments to cultural safety within the ACTCS <i>Be the Change We Seek. Aboriginal and Torres Strait Islander Framework</i>.</p> <p>This Recommendation is partially dependent on the implementation of Recommendation 3.3.</p>	<p>In both our interviews and other reports it was noted that the cultural needs of First Nations people in the AMC are not being met. While there is extensive discussion of cultural safety in the <i>Be the Change We Seek. Aboriginal and Torres Strait Islander Framework</i>, there is minimal evidence provided of how this is achieved within the custodial setting. We also note the ACT <i>Human Rights Act 2004</i>, s27(2) that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right to maintain, control, protect and develop their (i) cultural heritage and distinctive spiritual practices, observances, beliefs and teachings; (ii) languages and knowledge; and (iii) kinship ties.</p>
10.8	We recommend ACT government provide funding to increase programs within the AMC. These include literacy and numeracy programs, offence specific and offence related programs suitable for First Nations people, and relevant employment-related training and certifications.	<p>Our focus and rationale in recommendation 10.8 is to increase the likelihood of First Nations rehabilitation and reduce re-offending through access to meaningful programs: educational, therapeutic and employment related. Various problems associated with current access are outlined in report and have been identified in other reports.</p>
10.9	To overcome the identified problems with accessing First Nations health services within the AMC, we recommend the development of a First Nations model of care for the AMC. The development of a First Nations model of care should be initially undertaken by Winnunga and negotiated with the ACT Health Directorate to be incorporated into the Winnunga contract to provide	<p>Our Report outlines some of systemic barriers to accessing First Nations health services within AMC. We recommend a First Nations model of care for the AMC which prioritises a holistic approach to healthcare and addresses not only physical health but also the social, emotional, and cultural wellbeing of individuals. As noted nationally, ‘investment in culturally safe and holistic healthcare programs for First Nations people... can enhance the chances of</p>

RECOMMENDATION		RATIONALE
	services to the AMC. This may require additional funding for Winnunga.	successful reintegration into society, leading to lower recidivism rates and safer communities' (Nous, 2024, National Review of First Nations Health Care in Prisons).
10.10	<p>We recommend urgent action in providing:</p> <ul style="list-style-type: none"> a. suitable cultural, therapeutic and training programs and activities for women and specifically First Nations women b. expansion and flexibility in accommodation options that can meet the various needs of women, including First Nations women. 	<p>Our Report identifies some of the systemic barriers facing women, and particularly First Nations women, in the AMC. Some of the problems relate to all detainees in the AMC but felt more acutely by women and especially First Nations women. The <i>ACTCS Walking with Women on the Pathway to Change</i> Framework (2020) acknowledges some specific issues impacting on First Nations women in prison including higher rates of having experienced physical, emotional and sexual abuse; a greater likelihood than non-Indigenous women of being a parent; inter-generational trauma arising from race-based colonial practices (for example, stolen generations); and the need for a holistic concept of social and emotional wellbeing that includes 'connection to land, culture, spirituality, family and community'. However, there is a significant gap between the reality of life for First Nations women in the AMC and the aspirational ideals presented in <i>Walking with Women</i>.</p>
10.11	We recommend that ACT Legal Aid in cooperation with ALS NSW/ACT and Mulleun Mura, establish a regular civil law clinic in the AMC. Implementation may require additional ACT Government funding for the respective services.	<p>Previous research has shown that unaddressed civil law matters can contribute to further criminalisation. Civil law issues were described by one stakeholder as the 'sleeper issue' in prison that need to be addressed. The type of civil law issues indicated in our Report included matters such as tenancy, housing debt, high purchase agreements (including cars), child support, social security, family law, discrimination and</p>

RECOMMENDATION		RATIONALE
		children's services. We note previous ACTCS use of a financial counselling service for women detainees.
10.12	<p>We recommend in relation to recent AMC deaths in custody that:</p> <ul style="list-style-type: none"> a. The ACT government and the ACT Coroner work together to expedite coronial investigations into deaths in custody b. The Office of the Inspector of Custodial Services undertake preliminary assessments of the recent deaths in custody, which might be provided to the Coroner. Sufficient resources would need to be made available to the OICS to undertake preliminary assessments (see Recommendation 10.3) c. The Minister of Corrections consider the establishment of an Independent Inquiry into the deaths of seven men in adult correctional custody between February 2023 and February 2025 with particular attention to systemic issues. 	<p>It is difficult to imagine an issue of more concern to the First Nations community in the ACT than Aboriginal deaths in custody, particularly when three deaths occurred within the space of seven months. The relationship to the terms of reference for our Report and recommendation for an independent inquiry relates to whether these Aboriginal deaths are connected to systemic issues affecting First Nations prisoners. Investigating deaths in custody speaks directly to First Nations community concern about the AMC and its treatment of and potential to ensure the safety and rehabilitation for incarcerated First Nations people. At a broader level, First Nations community concern over deaths in custody goes to the heart of questions about the <i>legitimacy</i> of the criminal legal system and affects a range of institutions including police, the courts, prisons and detention centres.</p>

11. PAROLE, REINTEGRATION, POST RELEASE SUPERVISION & SUPPORT

Published data on *completion* of community corrections orders is similar for First Nations and non-Indigenous individuals and is high by national comparisons. The reporting on breaches of orders is limited and generally not reported by Indigenous status. In relation to those exiting prison, three in every four Aboriginal and Torres Strait Islander people will be back under some form of custodial or community correctional order within two years from their release.

Research suggests that people who receive parole have significantly lower rates of recidivism or commit less serious offences than those released unsupervised, and that parole is most effective when it involves active supervision that is rehabilitation focused. There are significant gaps in our knowledge concerning how well (or not) parole is operating for First Nations people in the ACT. We do not know whether First Nations

people are applying for parole when they become eligible, there is no consistently reliable data on whether the parole applicant identifies as First Nations and, as a result, no comparative data with non-Indigenous parolees on matters like successful and unsuccessful applications, official warnings, revocations or successful completions.

Various issues were raised with us regarding applying for parole including whether Indigenous detainees are receiving the support they need within the AMC, and access problems with programs including programs not being offered or only offered intermittently and limited access for certain groups of prisoners, particularly those on protection and women. Legal assistance for Indigenous applicants was seen as important, as well as First Nations members of the Sentence Administration Board being present when a First Nations person is appearing before the Board. We also refer to the problem of people being released on parole in the ACT and have outstanding criminal charges in NSW. Matters relating to increased discretion for both the Board and Community Corrections Officers (CCOs) are also raised.

We note the various throughcare/reintegration and post-release programs being offered and draw attention to the important work of Yeddung Mura, Winnunga and other First Nations organisations/groups like Yurwhun Bullan and the Nannies Group. We also note the recently developed Indigenous Case Management Program (I-Can) and some positive responses from participants (although pilot funding arrangement concludes 30 June 2025). In particular, we draw attention to comments from Aboriginal and Torres Strait Islander men and women with lived experience of throughcare/post-release that the programs and services most frequently seen in a positive light were almost all Indigenous-specific (some of which have been discontinued).

Our Report identifies that a number of particular areas remain problematic, including access to housing, residential rehabilitation and AOD services generally, and access to assistance with employment, and literacy programs. Opportunities for reintegration and support should be contextualised by the principles of wraparound and holistic support. Developing a role for dedicated caseworkers as a type of ‘cultural capability’ worker in the community (not a CCO) was highlighted as a need.

The introduction of External Reporting Sites began in 2021 and have developed as an important and beneficial part of the post-release landscape. Their extension to bail reporting is a positive. Conducting urinalysis testing at the External Reporting Sites would further enhance their effectiveness. As far as we are aware, External Reporting Sites are unique to the ACT.

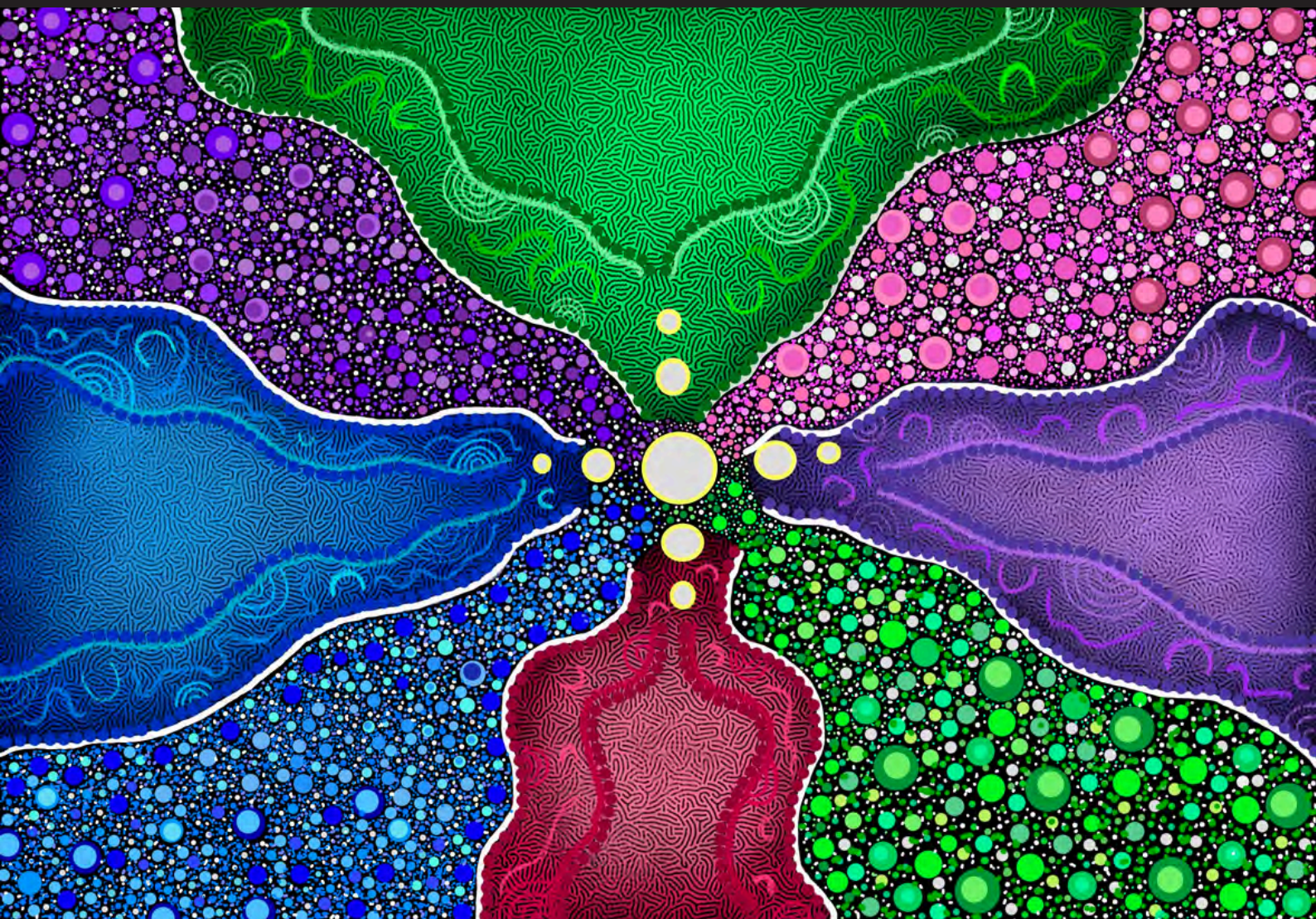
We make a recommendation on increasing access to services and note that the prioritising and implementation of increases in services must be undertaken through a First Nations decision-making process.

RECOMMENDATION		RATIONALE
11.1	<p>We recommend ACTCS improve the timely availability of data, including:</p> <ul style="list-style-type: none"> a. Community supervision disaggregated by Indigenous status and type of supervision order b. Data on breaches of supervision orders disaggregated by Indigenous status, type of supervision order and outcome of breaches (while acknowledging that recording of breach outcomes may require liaison with other agencies) c. The data should be utilised to inform policies to reduce return to prison and return to community corrections for First Nations people. <p>This Recommendation is partially dependent on the implementation of Recommendation 3.16.</p>	<p>Understanding the reasons for, and reducing, both return to prison rates and return to community corrections is important for reducing First Nations over-representation in the criminal legal system in the ACT. The timely availability and analysis of data can inform effective policy development.</p>
11.2	<p>We recommend the Sentence Administration Board (SAB) and ACTCS work together to improve:</p> <ul style="list-style-type: none"> a. the consistent identification of Aboriginality among people from prison applying for parole, in line with the outcomes of Recommendation 3.16 b. systematic data collection on parole applications (successful and unsuccessful), official warnings, revocations and successful completion. The data should be capable of disaggregation by gender and Indigenous status c. the data should be utilised to inform policies to increase First Nations access to and successful completion of parole d. timely information on other matters useful to the SAB, such as program availability in the AMC and earlier prior notification of Indigenous matters coming before the Board. 	<p>There is no overview available on how the parole system is working for First Nations people and no systematic data available on where there might be potential for improvements within the parole process. Improving First Nations access to parole and successful completion of parole will reduce re-imprisonment.</p>

RECOMMENDATION		RATIONALE
	Recommendations 11.2.a-b are partially dependent on the implementation of Recommendation 3.16.	
11.3	We recommend that the ACT government pursue an agreement with NSW to facilitate the concurrent serving of sentences across both jurisdictions.	A cross-border issue is the non-concurrent serving of sentences between ACT and NSW. A person might be released on parole in the ACT and have outstanding criminal charges in NSW. We understand that the solution requires cooperation between ACT and NSW authorities.
11.4	<p>To further improve First Nations access to and compliance with parole, we recommend the following:</p> <ul style="list-style-type: none"> a. The SAB needs to ensure that when a First Nations person is appearing before SAB there should be at least one First Nations SAB member present b. There needs to be ongoing review by ACTCS and informed by the SAB as to whether Indigenous detainees are receiving the support they need within the AMC to apply for parole c. The ACTCS expand the number of identified positions for Indigenous Community Correction Officers to at least two positions d. The ACT government commit to providing legal assistance for Indigenous applicants for parole. A process also needs to be established to facilitate the participation of relevant ACCOs in providing support to Indigenous applicants during parole hearings e. The ACT government reform the <i>Crimes (Sentence Administration) Act 2005</i> to allow the SAB to suspend a parole order by returning the offender to custody for a brief period as an alternative to revocation. 	There are various reforms that can be made to the parole process which will increase the likelihood of successful parole applications for First Nations people, improve the compliance with parole requirements and reduce the amount of time spent in prison.

RECOMMENDATION		RATIONALE
11.5	We support the previous recommendation of the ACTCS evaluation on external reporting sites to explore alternative options to the ACTCS city office for conducting urinalysis and whether this might include a voluntary option for conducting testing at the external reporting sites rather than the ACTCS city office.	A previous recommendation was made to ACTCS to enable urinalysis testing at the external reporting sites because of the difficulties and stigma attached to testing at the ACTCS city office. We support this recommendation. However, suggest that whether the testing occurs at the ACTCS city office or at the external reporting sites should be voluntary.
11.6	It is recommended that the ACT government reform legislation to enable CCOs the discretion to give a verbal warning, or a written warning for lower level breaches in relation to intensive corrections orders and parole orders, whereby the CCO can continue to case manage the person through the order.	In the ACT previous COVID provisions in the legislation enabled CCOs to apply discretion for lower level breaches – not everything had to go back to court or to the SAB. After the COVID provisions ended, the CCO discretion was only retained for good behaviour orders and removed for intensive corrections orders and parole orders. Reinstating this discretion for CCOs for <i>lower level breaches</i> be applied to intensive corrections orders and parole orders, would enable the CCO to give a verbal warning, or a written warning and continue to case manage the person through the order, and potentially put in other interventions to ensure compliance. It is anticipated this would ensure greater continuity and likelihood of compliance with the order.
11.7	<p>Increasing opportunities for reintegration and support post release should be contextualised by the principles of wraparound and holistic support.</p> <p>a. We recommend the ACT government provide funding for increased access to:</p> <p>i. crisis and transitional housing for Aboriginal and Torres Strait Islander people exiting custody, with</p>	Reducing Aboriginal and Torres Strait Islander imprisonment rates and reoffending requires commitments to post release supports in the community. Our report establishes that there are gaps in crisis and transitional accommodation available that is accessible to Aboriginal and Torres Strait Islander people bailed and post-release, and access to crisis and

RECOMMENDATION	RATIONALE
<div></div> <p>recognition/prioritisation of the particular needs of First Nations women and children</p> <ul style="list-style-type: none"> ii. culturally appropriate drug and alcohol counselling iii. greater support in the community for employment pathways and training programs iv. accessible and First Nations-led support, wellbeing and mentorship programs v. accessible and First Nations-led driver licensing programs and literacy and numeracy programs <p>b. The prioritisation of increases in services above should be undertaken through a First Nations decision-making process involving the body established under Recommendations 2.1, 2.2</p> <p>c. Priority should be given to the role of ACCOs in providing additional reintegration and support services.</p> <p>We also recommend that ACTCS improve the information provided pre-release and post release on obtaining Working with Vulnerable People clearance.</p> <p>Recommendations 11.7.b is partially dependent on the implementation of Recommendations 2.1, 2.2.</p>	<p>transitional housing for Indigenous women and children is particularly critical. There is a lack of culturally appropriate drug and alcohol counselling that can be consistently accessed by First Nations people in contact with the criminal legal system. Throughcare support like that provided by Yeddung Mura needs expansion. First Nations-led driver licensing supports and programs can reduce contact with the criminal legal system and have other social and employment benefits. First Nations-led and delivered literacy programs have benefits for employment, social integration generally and directly contribute to reducing reoffending.</p> <p>Expansion of these services need to be prioritised by a First Nations decision-making process.</p>



‘Journey To Justice’

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