

**Submission
No 22**

ASSAULTS ON MEMBERS OF THE NSW POLICE FORCE

Organisation: Aboriginal Legal Service (NSW/ACT)

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ALS

Aboriginal Legal Service (NSW/ACT) Limited

**Submission Inquiry into Assaults on Members of the NSW
Police Force**

4 September 2020

About Us

The Aboriginal Legal Service (NSW/ACT) Limited ('ALS') welcomes the opportunity to provide a brief submission to the Law and Safety Committee's Inquiry into Assaults on Members of the NSW Police Force.

The ALS is a proud Aboriginal Community Controlled Organisation and the peak legal services provider to Aboriginal and Torres Strait Islander men, women and children in NSW and the ACT. The ALS currently undertakes legal work in criminal law, children's care and protection law and family law. We have 24 offices across NSW and the ACT, and we assist Aboriginal and Torres Strait Islander people through representation in court, advice and information, as well as providing broader support programs and undertaking policy and law reform work.

We provide this submission based on our direct experience interacting with, and representing, Aboriginal and Torres Strait Islander people who have too often been forced into the quicksand of the criminal legal system.

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Contents

Introduction..... 4

Review and enhance police training and engagement..... 5

End police targeting of Aboriginal people and people of colour 8

Abolish offensive language provisions 13

Increase access to therapeutic responses, including mental health, accommodation and social supports..... 16

Appendix 1 – Terms of Reference..... 19

Introduction

Everybody deserves to have a safe working environment and to be able to move around the community without fear of harm. Due to the nature of work, some workplaces present more risks than others and hence the respect for emergency workers on the frontline helping those in need. However, in our view, harsher penalties and more punitive approaches will fail to address underlying issues that lead to violence. Instead, increased emphasis must be placed on developing therapeutic responses which are aimed at improving community relations and reducing incidents of harm against all members of the community, including our frontline emergency service workers.

Time and again, we have seen Aboriginal people routinely harassed, stopped, questioned and searched in the street by police for no reason. Just a few months ago we saw horrible footage of a 16-year-old Aboriginal boy being assaulted by police in Surry Hills, another 16-year-old Aboriginal boy being unlawfully strip-searched by police in a NSW regional town, an Aboriginal man being repeatedly tasered by police in inner Sydney, and peaceful demonstrators at a Black Lives Matter event being pepper-sprayed by police.¹ In our view, this inquiry's terms of reference, must therefore be considered against the broader background of systemic racism and police brutality that Aboriginal communities are continually subjected to.²

Throughout history, police and the courts have played a devastating role in executing laws aimed at controlling and oppressing Aboriginal and Torres Strait Islander people and communities. In 1991 the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) observed that 'far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent'.³ Consequently, there is an understandable distrust and fear of the police by Aboriginal and Torres Strait Islander people. And the discriminatory policing of Aboriginal and Torres Strait Islander people and communities is not just an issue of the past, it continues today.

¹ Guardian Australia (2 June 2020), "Australian police officer slams Indigenous teen to pavement during arrest in Sydney", <https://www.theguardian.com/australia-news/video/2020/jun/02/australian-police-officer-slams-indigenous-teen-to-pavement-during-arrest-in-sydney-video>; Noble, F. (4 June 2020), "Video shows unlawful strip-search of teenage boy by three adult police", *Nine News*, <https://www.9news.com.au/national/teenage-aboriginal-boy-strip-searched-nsw-video/ca6fe667-8495-4f5d-950f-009003cc6829>; NITV (23 June 2020), "Aboriginal man repeatedly tasered during arrest in Sydney", *NITV News*, <https://www.sbs.com.au/nitv/article/2020/06/23/aboriginal-man-repeatedly-tasered-during-arrest-sydney>; Sky News (7 June 2022), "Sydney Police pepper spray Black Lives Matter protestors", http://www.skynews.com.au/details/_6162143005001

² See *Appendix 1 – Terms of Reference*

³ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991) vol 4, [13.2.3]. P.195.

It is important to recognise the cumulative impact that proactive and targeted policing and police brutality has on Aboriginal people – including more Aboriginal people coming into contact with police, the courts, at risk of imprisonment and even killed. Recent data from the Bureau of Crime Statistics and Research shows that in the past 10 years the number of Aboriginal people charged by police in NSW has increased by more than 67 per cent.⁴ In the same period the increase for non-Indigenous people has been just 8 per cent.⁵ And since the RCIADIC more than 439 Aboriginal people have died in police or prison custody across Australia. In this context significant distrust and fear of any interaction with police can be considered both warranted and proportionate.

It is the experience of the ALS that almost all interactions between Aboriginal people and police, that result in a charge of ‘assault police’, could and should have been avoided. In our view, increased sentencing and punitive approaches are not the answer to decreasing incidents of assaults against police officers.⁶ Instead, increased emphasis must be placed on improving police and community relations, ending police brutality, addressing systemic racism, ending the targeted policing of Aboriginal communities and people of colour and developing therapeutic responses which more appropriately respond to, and address, individual needs and community wellbeing.

Below we outline a number of key issues and recommendations for reform.

Review and enhance police training and engagement

Given the negative context, both historical and ongoing, of the relationship between the police and Aboriginal people and communities, it is important to acknowledge that improvements should not be confined to new or additional training for police and broader cultural change is required.⁷ However, it is still important to review existing police training and community engagement processes and consider opportunities for enhancement and strengthening.

⁴ Cormack, L. (2020), “Criminal justice system ‘inherently racist’ towards Aboriginal people’, *Sydney Morning Herald*, accessed online via: <https://www.smh.com.au/national/nsw/criminal-justice-system-inherently-racist-towards-aboriginal-people-20200605-p5500l.html>

⁵ *Ibid.*

⁶ ALS will be providing a submission the Sentencing Council’s review of penalties for assaults against Emergency Workers later this month.

⁷ Systemic racism continues to be a significant issue within the police force. See for example – <https://www.watoday.com.au/national/western-australia/former-perth-police-officer-claims-wa-s-force-was-rife-with-racism-full-of-hatred-20200605-p54zwx.html>.

In 2017, the ALS convened a series of state-wide community justice forums attended by community leaders and stakeholders to seek their input into Australian Law Reform Commission's *Inquiry into the incarceration rates of Aboriginal and Torres Strait Islander peoples*. Participants at these forums suggested two strategies to ensure police better understand and respond to Aboriginal communities – improved cultural awareness training and increased community engagement.

Forum participants were of the view that cultural awareness training should include information specific to the community in which police are working, such as language training, local historical context and descriptions of different cultural groups. They also suggested that it is important for police to demonstrate to the community that this training is being or has been conducted, through promotion of the training, as well as some form of assessment of learning. Finally, participants suggested that rather than training being a one-off; training should be mandatory and ongoing with refresher courses.

These views strongly align with Recommendation 228 of the Royal Commission into Aboriginal Deaths in Custody⁸, which noted that;

[P]olice training courses [should] be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions.

Furthermore, such training should incorporate information as to:

- a. The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;
- b. The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and
- c. The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation.

The ALS recommends that the NSW Government review the current training that NSW Police officers receive in relation to working with Aboriginal and Torres Strait Islander communities, with a view to enhancing and extending that training – including by ensuring that training is mandatory, ongoing and involves an assessment of learning .

In addition, the ALS recommends broader training programs for police focused on working with vulnerable groups, including people with disability, cognitive impairment or mental illness.

⁸ Commonwealth, 'Royal Commission into Aboriginal Deaths in Custody, National Report' (1991).

These training programs should include a focus on a care-based and de-escalation centered responses. Furthermore, police officers should also be provided with training which is aimed at enhancement of emotional intelligence, empathy, resilience and stress management among police officers.

In respect to broader community engagement by police, forum participants strongly emphasised the importance of increasing community policing approaches, which aim to build trust between the community members and the police. This includes, among other things, frontline police attending cultural events and programs in their communities. Forum participants highlighted the importance of these interactions, in order to combat perceptions of police in the community as only responding to 'bad' situations.

There are some examples in NSW of efforts being made towards increasing positive engagement between police and Aboriginal community members. For instance, the Maranguka Justice Reinvestment initiative in Bourke has seen a range of initiatives introduced under the community governance of Bourke Tribal Council - including justice "circuit breakers" aimed at reducing negative contact between community and police. As part of these initiatives, every morning local police officers meet at Maranguka Community Hug with service providers to talk about what has happened in the community in the last 24 hours and identify young people who might need additional supports. This is leading to a gradual shift in policing, with a move towards policing practices that work with the whole community and focus on early intervention and prevention. In a similar way, the Redfern Police Area Command (PAC) currently holds regular Aboriginal Community meetings, which bring together community members and service providers, to discuss issues in the community.

The ALS strongly recommends that NSW Police explore additional opportunities for a shift towards more local and place-based engagement with communities across the State. These types of forums and initiatives help to prevent police from initiating negative action in the first place and place an emphasis on police listening and responding to community needs.

Recommendations:

- *NSW Police should undertake regular training, facilitated by Aboriginal and Torres Strait Islander people, which focused on the history and ongoing impacts of colonisation, dispossession and forced removal of children, and the role of the police. Such training should be mandatory, ongoing and location-specific and involved an assessment of learning.*

- *NSW Police should undertake regular training focused on working with vulnerable groups, including people with disability, cognitive impairment and mental illness, with a focus on de-escalation strategies. This training should be mandatory, ongoing and involve an assessment of learning.*
- *NSW Police should be provided with regular training which is aimed at enhancement of emotional intelligence, empathy, resilience and stress management among police officers. This training should be mandatory, ongoing and involve an assessment of learning.*
- *NSW Police should implement local and place-based engagement with communities across the State.*

End police targeting of Aboriginal people and people of colour

Within NSW there is an increasing reliance on policing strategies, which disproportionately target Aboriginal people, people of colour, and lower socio-economic communities, and have a particularly detrimental impact on young people. In our experience, ‘proactive’ policing strategies – including the use of move-on orders, routine personal searches, strip searches, excessive bail and curfew enforcement checks - often draw Aboriginal into unnecessary, and ultimately harmful and detrimental, interactions with police.

One particularly stark example in NSW is that of the Suspect Target Management Plan (STMP) . The STMP is a deeply invasive policy which has a significant adverse impact on the lives of people who are subject to it, including Aboriginal young people and their families. Data from NSW Police demonstrates that the STMP disproportionately targets Aboriginal people and has been used against children as young as ten, as well as children who have no previous history of contact with the criminal legal system.

Case Study – Jeremy*

Jeremy is a 15-year-old Aboriginal boy who lives in a regional town.

Jeremy described getting constantly stopped by police almost every day when walking to school or walking down the street.

It was causing so much distress that his mother moved him to another town. Jeremy wanted to return home to his mum and siblings but felt that he couldn’t because of the harassment.

The ALS made inquiries with the local Sergeant who confirmed that the young person was on an STMP, despite having no criminal record. They said his father had been to jail and needed to be watched and so he did as well.

About 6 months later and after much agitation from the ALS and the young person's family we were advised by the Sergeant that the young person was no longer on the STMP.

This heavy-handed approach to policing, only serves to corrode the relationship between young people and police. It also undermines efforts to support kids through therapeutic responses, diversion and rehabilitation, and often targets young people with mental and cognitive disabilities. As a result, the ALS recommends that the STMP be immediately repealed for all children and young people under the age of 18.

In addition, earlier this year it was revealed that NSW Police are required to meet targets and quotas for a range of police powers, including move-on orders, personal searches and strip-searches.⁹ Official data highlights that in last few years the number of strip searches conducted by NSW Police has increased by 47%.¹⁰ And Aboriginal and Torres Strait Islander people are disproportionately represented in these figures, accounting for 10% of all recorded strip searches in the field and 22% of all recorded strip searches in custody.¹¹ Policing practices should be focused on community safety and wellbeing. In our view, any system of 'quotas' or 'targets' creates a concerning incentive for Police to excessively conduct searches and will ultimately erode the relationship between the public and law enforcement.

In order to better understand and eliminate racial profiling by police, international practice has been focused on comprehensive data collection which accurately tracks officer perceptions of a person's race or Aboriginality based on observation only. In Ottawa, a Traffic Stop Race Data Collection Project ('the Ottawa Project') allowed for York University researchers to examine

⁹ ABC News (2020). *NSW Police Set Quota for 241,000 personal searches and strip searches in 12 months, documents reveals* (13 February 2020). Accessed online via: <https://www.abc.net.au/news/2020-02-13/nsw-police-strip-search-quota-revealed-in-foi-documents/11960682>

¹⁰ Grewcock, M. & Sentas, V. (2019) "Unlawful strip searches are on the rise in NSW and police aren't being held accountable" *UNSW Newsroom*. Accessed via: <https://newsroom.unsw.edu.au/news/business-law/unlawful-strip-searches-are-rise-nsw-and-police-aren%E2%80%99t-being-held-accountable#:~:text=Earlier%20this%20year%2C%20questions%20on,nothing%2064%25%20of%20the%20ti me>

¹¹ Grewcock, M. & Sentas, V. (2019) *Rethinking Strip Searches by NSW Police* (Report, August 2019). Accessed via: https://rlc.org.au/sites/default/files/attachments/Rethinking-strip-searches-by-NSW-Police-web_0.pdf

81,902 traffic stops where officers recorded their perception of the driver's race.¹² In the USA and Canada it is quite common for police to undertake what they term 'traffic stops' – which effectively refers to anytime that a person is pulled over in their car by police, with the reasoning that police are 'investigating a possible crime or minor violation of the law'. Numerous studies have shown that traffic stops are highly racialised.¹³ The Ottawa project provided extensive evidence where meaningful conclusions were drawn concerning the frequency by which people of particular ethnicities were stopped. For instance, the Ottawa project found that racialised minority groups were more likely to be suspected by police officers of doing something "problematic or criminal".¹⁴ Similarly, the *Stop and Think Again* Report (2013) of the UK Equality and Human Rights Commission showed that police in England and Wales conducted about a million stops and searches of members of the public every year. The Report highlighted disproportionate treatment based on race and found that "Asian people were stopped and searched about twice as often as white people, and black people about six times as often".¹⁵

In 2015, Victorian Police ran the first Australian trial of 'stop and search' receipting, whereby police and protective services officers issued paper receipts to people who were stopped and/or searched, even where no law enforcement outcome was recorded. This receipt recorded the date, time and location of the police contact, as well as the member number and police station, and the reason for contact as one of four highly generic categories: 'welfare', 'road safety', 'community safety' or 'receipt requested'. Crucially, however, the receipt used in this trial did not record the officer's perception of the race or ethnicity of the person stopped and/or searched and thus did not have any relevant data pertaining to issues of racial profiling by police. Through its Police Accountability Project, the Flemington & Kensington Community Legal Centre in Victoria noted the ineffectiveness of the Victorian trial of 'stop & search' receipting because it could not even provide "basic data or numbers of receipts [during the trial] and why people issued them were stopped".¹⁶

¹² Lorne Foster and Les Jacobs, 'Traffic Stop Race Data Collection Project II: Progressing Towards Bias-Free Policing: Five Years of Race Data on Traffic Stops in Ottawa' (2019) <https://www.ottawapolice.ca/en/news-and-community/resources/EDI/Ottawa-Police-Service-TSRDCP-II-Report-November-20-2019.pdf>

¹³ See for example, Pierson *et. al.* (2020), "A large-scale analysis of racial disparities in police stops across the United States", *Nature Human Behaviour*, Vol. 4 (736-745).

¹⁴ Lorne Foster and Les Jacobs, 'Traffic Stop Race Data Collection Project II: Progressing Towards Bias-Free Policing: Five Years of Race Data on Traffic Stops in Ottawa' (2019) <https://www.ottawapolice.ca/en/news-and-community/resources/EDI/Ottawa-Police-Service-TSRDCP-II-Report-November-20-2019.pdf>

¹⁵ Equality and Human Rights Commission, *Stop and think again, towards equality in police PACE stop and search*, (1 May 2013), 4. <https://www.equalityhumanrights.com/en/publication-download/stop-and-think-again-towards-equality-police-pace-stop-and-search>

¹⁶ Police Accountability Project, 'Slow progress towards a racial profiling data-monitoring scheme' (December 21, 2016), <https://www.policeaccountability.org.au/racial-profiling/one-step-back-many-steps-forward-vicpol-release-the-equality-is-not-the-same-3rd-year-report/>.

The benefits of an appropriately implemented receipting trial are clear. It ensures that people who are stopped and/or searched are provided with clear reasons for this action, thereby increasing trust in the lawfulness of police conduct and simultaneously ensuring that police turn their mind to the reasonable grounds which justify a stop and/or search. Further, the collection of comprehensive data about race and the reason for stops and searches is critical in order to identify whether disparities exist in the treatment of people from particular ethnic backgrounds.

Recommendations:

- *NSW Police should immediately discontinue the STMP for all children and young people under the age of 18.*
- *NSW Police should remove targets/quotas for 'proactive' policing strategies.*
- *NSW Police should conduct a trial of 'stop & search' receipting where accurate disaggregated data, including data which records the reason for a particular stop and/or search and the perceived ethnicity and/or Aboriginality of those people, is collected and made publicly available.*

Case Study – Dion*

Dion is 14 years old and likes talking to his lawyer about the nature documentaries he watches. He seems to know everything about the weather.

Dion also has a diagnosis of Autism Spectrum Disorder with intellectual impairment. He has a history of trauma and of being sexually exploited.

Dion was charged with damaging property. When he didn't attend court because he thought it was on a later date a warrant was issued for his arrest. Police arrested Dion on the warrant and put him in a police cell.

Dion also told police he had some coins in his undies and that he wouldn't give them to police because he wanted to buy something when he went into juvenile detention. Police told him they were going to strip search him. A support person was called who Dion had never met. Dion became very distressed. He lay down on the floor. Police tried to remove him from the cell and held his arms while pulling down his pants. Dion bit the arm of one of the police officers holding him.

Dion's pants were pulled down and a single coin removed from his underwear. Dion was subsequently charged with assaulting police. Within days Dion had a psychotic breakdown and remains in hospital.

Case Study – Jacob*

Jacob is a 13-year-old boy who has been assessed as having a global cognitive deficit and moderate intellectual delay at a level lower than 99.9% of his age peers.

His receptive communication skills are at a functional age equivalent to less than 3 years old and his interpersonal relationship skills at less than 4 years old. Jacob also has Tourette's syndrome and a rare kidney disease. He was removed by FACS from the care of his family at 3 ½ months. Jacob has a strict behaviour management plan for his carers to help manage his behaviour.

One day, Jacob calls police and tells them he has a knife. Police arrive and see that Jacob doesn't have a knife, he has a stick.

Jacob's carers tell police they do not need police assistance. At this point, Jacob who is behind a fence spits at an officer.

Jacob is then arrested for "assault police" and taken into police custody. In custody Jacob becomes very distressed and refuses to take his medications. Jacob then spat again at police.

He is charged with two counts of assault police. Jacob cannot state what his charges were or what the word 'guilty' means. He says, "my heart is constantly sad and sore".

Jacob's lawyer subsequently successfully advocates with police for the charges against Jacob to be withdrawn.

Case Study – Luke*

Luke is a 19-year-old Aboriginal man with no prior record.

Police attend his house to do a bail check on his younger brother. He and his mum say that he's not here and would not let them in.

The police hang around for 15-30 minutes continuing to question and ask to come in. Luke says that police are intimidating his mother and being aggressive.

Luke asks police to leave multiple times, but they do not. He then says to police, "you wouldn't be so tough without your badge on."

Police instantly grab him and arrest him for intimidation.

An allegation of 'assault police' occurs as he is being pulled from the house.

He is then charged with offensive language as he is getting put in the paddy wagon.

Abolish offensive language provisions

The offence of offensive language, and its discretionary application by NSW Police, has been shown to have a disproportionate impact on Aboriginal and Torres Strait Islander people and contributes to the escalation of situations.

It is the ALS' view that Police should not be making arrests for offensive language, particularly in instances where that language is only directed at police. At the ALS, we often see examples where our clients might swear at a police officer, in response to a wholly unnecessary interaction originally initiated by police. For instance, a client might swear out of frustration in a situation where they have been stopped and searched by police, but where there does not appear to be any lawful basis for this invasive and overt exercise of police powers. In our experience, it is also often the case that it is the initial charge and arrest for offensive language which triggers a situation to escalate. For example, an unnecessary arrest for offensive language might lead to further, more serious trifecta of charges - offensive language, assault police officer and resist arrest.

Case Study: Douglas Shillingsworth

Douglas Shillingsworth was seen on the street to be acting erratically and was seen to be involved in an affray with a member of the public. Another member of the public told a police officer. The police officer came over to speak to Douglas. He told him to "f*** off c***". The officer attempted to arrest Mr Shillingsworth. Mr Shillingsworth threw a punch and a can of

food at the officer, but missed. Mr Shillingsworth continued to assault the officer.

He was eventually arrested and pleaded guilty to affray, assault police and resist arrest. Due to his record the Office of the Director of Public Prosecutions refused to finalise the matter in the summary jurisdiction and elected to have the matter dealt with in the District Court.

Mr Shillingsworth remained on remand for almost 11 months awaiting sentence. He was held in the psychiatric unit for the first few months of custody due to his mental illness. Tragically, Mr Shillingsworth developed an ear infection that led to an abscess on his brain and he passed away in custody.

Mr Shillingsworth was a 44 year old Aboriginal man who had a history of chronic ear infections and mental illness.

The offence of using offensive language under s 4A of the *Summary Offences Act 1988* (NSW) has consistently been recognised as having a disproportionate impact upon Aboriginal and Torres Strait Islander people and communities. In 1991, the Royal Commission into Aboriginal Deaths in Custody recommended that "the use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge", with Commissioner Wootten noting;

In this day and age many words that were once considered bad language have become commonplace and are in general use amongst police no less than amongst other people. Maintaining the pretence that they are sensitive persons offended by such language... does nothing for respect for the police...Charges about language just become part of an oppressive mechanism of control of Aboriginal [people]. Too often the attempt to arrest or charge an Aboriginal [person] for offensive language sets in train a sequence of offences by that person and others---resisting arrest, assaulting police, hindering police and so on, none of which would have occurred if police were not so easily 'offended'.¹⁷

In 2009, the NSW Ombudsman published a report indicating that the number of Aboriginal people proceeded against for offensive language offences from 2002 to 2008 was much higher than would be expected for a group that makes up just 2% of the population in NSW. Indeed, in 2007, Aboriginal people were "the subject of 20% of all proceedings relating to offensive language incidents."¹⁸ These findings were supported by the NSW Law Reform Commission in

¹⁷ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) Vol 3 [21.1.7]; Commissioner JH Wootten, *Report of the Inquiry into the Death of David John Gundy* (1991).

¹⁸ New South Wales Ombudsman. (2009). Review of the impact of criminal infringement notices on Aboriginal communities. Sydney: NSW Ombudsman, 58–59.

2012, which also recognised that the offence of offensive language has a disproportionate impact upon Aboriginal people.¹⁹ More recently, in 2017, it was reported that 17% of criminal infringement notices for offensive language were issued to Aboriginal and Torres Strait Islander people.²⁰

In describing the impact of offensive language offences in rural areas with large Aboriginal populations, BOCSAR found that:

*In circumstances where police are called to an incident, charges of offensive behaviour and/or offensive language appear most likely to ensue when police find themselves unable to calm a situation or when they themselves become the subject of abuse.*²¹

The Australian Law Reform Commission also found in its Pathways to Justice Report that most offensive language criminal infringement notices (CINs) are issued for language directed at police and, if tested in court, may not meet the legal definition of 'offensive'.²² Indeed, a recent study of offensive language offences in the Kings Cross Local Area Command (LAC), Sydney City LAC and Surry Hills LAC found that in 77 of 82 cases in the dataset (94%), the language assessed (by the police) as constituting criminal offensive language was directed at police officers.²³ In the majority of cases they were the sole targets of the offensive language.²⁴ Accordingly, through the mechanism of criminal infringement notices, police are the 'victim, enforcer and judge' of the law, which provides strong foundation for conflict and misuse.²⁵

Recommendation:

- *The ALS recommends that Section 4(A) of the Summary Offences Act 1998 (NSW) be repealed.*

¹⁹ New South Wales Law Reform Commission. (2012). Penalty notice (NSWLRC Report No. 132). Sydney, 301.

²⁰ Elyse Methven, 'Dirty Talk: A Critical Discourse Analysis of Offensive Language Crimes' (PhD Thesis, Faculty of Law, University of Technology Sydney, 2017) 5. See also Australian Law Reform Commission. (2017). Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report (ALRC Report No. 133) 424.

²¹ R Jochelson, 'Aborigines and Public Order Legislation in New South Wales' (1997), *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research 34, 1, 15.

²² Australian Law Reform Commission. (2017). Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report (ALRC Report No. 133) 424.

²³ Hannah Trollip, Luke McNamara & Helen Gibbon (2019) The factors associated with the policing of offensive language: a qualitative study of three Sydney Local Area Commands, *Current Issues in Criminal Justice*, 31:4, 493-512, 506.

²⁴ *Ibid*

²⁵ Australian Law Reform Commission. (2017). Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report (ALRC Report No. 133) 424.

Increase access to therapeutic responses, including mental health, accommodation and social supports

Experiences of Aboriginal people with mental ill health and disabilities including cognitive and psychiatric impairments who come into contact with the criminal legal system are overwhelming negative.

However, interactions between police and people who appear to have a mental illness are remarkably frequent. For instance, in 2019, NSW Police responded to 54,571 incidents which involved a person perceived to be experiencing mental illness.²⁶ This is because police are often the first responders to incidents involving a mental health crisis in the community. For instance, section 22 of the Mental Health Act 2 (NSW) grants police the power to detain and transport a person experiencing a mental health crisis to declared mental health facility.

While there is some lack of evidence showing the nexus between the high numbers of Aboriginal and Torres Strait Islander living with a disability and the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal legal system, there are a number of important studies which have begun to provide linkages between the two. In NSW, a 2011 report found that the majority (87%) of young people in custody were found to have a psychological disorder.²⁷ Possible intellectual disability was also common, with 20% of Aboriginal and Torres Strait Islander young people in custody assessed as having a possible intellectual disability compared with 7% of the non-Indigenous cohort.²⁸

Since 2007, the NSW Police Force has had a Mental Health Intervention Team (MHIT) embedded within it. And it is encouraging to see that the NSW Government has recently committed to a trial program which will see mental health nurses based at some Sydney police stations to act as co-responders for mental health emergencies.

However, in the ALS' view, as much as possible, police should not be involved in frontline mental health crisis responses because too often their interactions escalate and result in further distress, trauma, physical harm, and even death for the person in crisis. For instance, in a five-year period (2014-2019) NSW Police recorded drawing their tasers 3000 times in the course of duty, according to internal police records and, in more than 1000 of these cases,

²⁶ Gladstone, N. (September 24, 2019_ 'NSW Police database unlocked: the where, when and why officers used force', *Sydney Morning Herald*, <https://www.smh.com.au/national/nsw/nsw-police-database-unlocked-the-where-when-and-why-officers-used-force-20190917-p52s1p.html>

²⁷ D Indig et al, (2009) NSW Young People in Custody Health Survey: Full Report, Justice Health and Juvenile Justice, 2011.

²⁸ *Ibid.*

officers logged a mental-health issue.²⁹ In addition, the NSW Police Association have themselves acknowledged that;

“over-reliance on police to respond to mental health related incidents results in...persons with mental illness having avoidable interactions with police...[and] stigma around mental health develop[ing] and the perception mental illness requires police intervention or leads to anti-social behaviour; effectively criminalising mental illness.”³⁰

The trauma of this interaction is often amplified for Aboriginal people, given the historical context of their relationship with police.

Case Study – Adam*

Police were called because Adam was threatening to commit suicide.

Adam’s brother had recently attempted suicide and his dad was in hospital in the intensive care unit. When being pulled off the ledge, Adam bit the Police Officer on their gloved hand.

Adam was distressed and taken to hospital. Adam was later arrested for “assault police officer.” Police refused bail, and bail was also later refused in the Local Court.

Adam’s record is limited. He is a father of three, and a full-time painter who works 6 days per week.

Now he is in prison on remand with no mental health support.

Case Study – David*

David was homeless, in a public park and suffering from mental health issues.

Members of the public in the park were concerned about him and called police to check on him. He was distressed and resisted being taken to the hospital. He was then arrested,

²⁹ Gladstone, N. (September 24, 2019_ ‘NSW Police database unlocked: the where, when and why officers used force’, *Sydney Morning Herald*, <https://www.smh.com.au/national/nsw/nsw-police-database-unlocked-the-where-when-and-why-officers-used-force-20190917-p52s1p.html>

³⁰ Police Association of New South Wales (2017), Submission to the NSW Legislative Assembly Committee on Law and Safety’s *Inquiry into Violence Against Emergency Services Personnel*, p.16 Accessed online via: <https://www.parliament.nsw.gov.au/ladocs/submissions/55607/Submission%20No.%2021%20-%20NSW%20Police%20Association.pdf>

and whilst being arrested spat on police. On the way to hospital he spat on a police officer and was subsequently charged with 'assault police'.

David received a 7-month prison sentence.

David instructed the ALS to withdraw the appeal for his sentence, because he had a bed and food in custody so wanted to stay.

These case studies demonstrate how Aboriginal people end up in restrictive custodial settings due to a lack of an appropriate first response, adequate facilities and support.³¹

Case Study – Zoe*

Zoe is a 14-year-old girl in an out of home care placement.

Removed from her family and community, Zoe is self-harming in the placement. Police are called and respond by charging her with 'armed with intent'.

There must be a shift away from a punitive and police-based response to therapeutic responses, including mental health and social supports. Responses need also to be care-based and focus on de-escalation. Mental health call-outs need to be led by health professionals

Recommendation:

- *Increase funding for NSW Health to provide a care-based and de-escalation focused response to mental health call-outs, that is led by health professionals and does not involve police (unless only in support roles).*

³¹ NSW spends least on community mental health care – \$65 per capita across the population, versus a national average of \$74. Additionally, most of what is defined as community mental health care in NSW operates from a hospital campus rather than a base in the community.

Appendix 1 – Terms of Reference

That the Legislative Assembly Committee on Law and Safety inquire into and report on assaults on members of the NSW Police Force, with particular reference to:

- a) the current incidence of assaults against police officers and recent trends in such assaults;*
- b) current strategies that the NSW Police Force has in place to engage with the community, including current or past community and school-based programs; and*
- c) any other related matters.*