

## **COMMUNITY SAFETY IN REGIONAL AND RURAL COMMUNITIES**

**Organisation:** Aboriginal Legal Service (NSW/ACT) Limited

**Date Received:** 30 June 2024

28 June 2024

Mr Edmond Atalla MLA  
Chairperson, Legislative Assembly Committee on Law and Safety  
By email: [lawsafety@parliament.nsw.gov.au](mailto:lawsafety@parliament.nsw.gov.au)

Dear Chairperson,

**Re: Submission to the Inquiry into Community Safety in Regional and Rural Communities.**

I write on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**). Thank you for the opportunity to provide a submission to the Inquiry.

The ALS is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the peak legal services provider to Aboriginal and Torres Strait Islander people in NSW and the ACT. More than 280 ALS staff members based at 27 offices support Aboriginal and Torres Strait Islander adults and children through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law.

We also deliver a variety of wrap-around programs including bail support, mental health referrals, family violence prevention, and child and family advocacy and support. We provide a Visiting Legal Service for Aboriginal children in youth detention centres, represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, and deliver a variety of discrete civil law services including tenants' advocacy, assistance with fines and fine-related debt, and discrimination and employment law.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations and a key partner in Closing the Gap in NSW. We represent community interests in our advocacy for the reform and transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people. In partnership with the Department of Communities and Justice, we are delivering initiatives under the NSW Implementation Plan for Closing the Gap, including models for Therapeutic Pathways for Children, an Aboriginal Throughcare Strategy for Aboriginal adults and children, and leading development of an Aboriginal Justice Partnership.

This submission is informed by the experiences of the clients and communities we serve, and consultations with nearly 100 staff members who work and live in the 15 regional communities where the majority of our offices are based: Armidale, Bathurst, Bourke, Broken Hill, Coffs Harbour, Dubbo, Griffith, Kempsey, Lismore, Moree, Moruya, Nowra, Tamworth, Wagga Wagga and Walgett. Our staff at our regional offices include solicitors, field officers, administrative staff, community engagement staff and allied professionals such as disability advocates, mental health officers and youth officers.

Please contact [policy@alsnswact.org.au](mailto:policy@alsnswact.org.au) if you would like to discuss this submission.

Sincerely,



Karly Warner  
Chief Executive Officer  
**Aboriginal Legal Service (NSW/ACT) Limited**

## **Submission to Inquiry into Community Safety in Regional and Rural Communities**

28 June 2024

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## About the ALS

The Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the peak legal services provider to Aboriginal and Torres Strait Islander people in NSW and the ACT. More than 280 ALS staff members based at 27 offices support Aboriginal and Torres Strait Islander adults and children through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law. There are ALS offices in 15 regional NSW locations: Armidale, Bathurst, Bourke, Broken Hill, Coffs Harbour, Dubbo, Griffith, Kempsey, Lismore, Moree, Moruya, Nowra, Tamworth, Wagga Wagga and Walgett.

We also deliver a variety of wrap-around programs including bail support, mental health referrals, family violence prevention and child and family advocacy and support. We provide a Visiting Legal Service for Aboriginal children in youth detention centres, represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, and deliver a variety of discrete civil law services including tenants' advocacy, assistance with fines and fine-related debt, and discrimination and employment law.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations and a key partner in Closing the Gap in NSW. We represent community interests in our advocacy for the reform and transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people. In partnership with the Department of Communities and Justice, we are delivering initiatives under the NSW Implementation Plan for Closing the Gap, including models for Therapeutic Pathways for Children, an Aboriginal Throughcare Strategy for Aboriginal adults and children, and leading development of an Aboriginal Justice Partnership.

## Introduction

Disparities in crime rates between regional and metropolitan communities are longstanding and structural. As noted by the NSW Bureau of Crime Statistics and Research (**BOCSAR**) in March 2024:

*A longstanding feature of crime in NSW is that regional, rural, and remote locations tend to experience higher rates of crime than in the city ... While crime is higher in Regional NSW than in Sydney, it is not the case that crime is necessarily increasing. In Regional NSW most property crimes were considerably lower in 2023 compared to 2004.<sup>1</sup>*

Inequity in safety between 'city' and 'country' areas is a symptom of chronic neglect and lack of investment in regional communities, especially Aboriginal communities, by successive parliaments over many decades. This chronic lack of investment is most acute in relation to services and infrastructure which support safe and strong communities, such as:

- Safe, stable and affordable housing options
- Essential infrastructure including roads, water and public transport
- Retail, entertainment and sporting facilities, and after-hours activities for young people
- Educational, vocational training and employment opportunities, including educational engagement programs for young people at risk of disengaging from school
- Medical, health and mental health services, including alcohol and other drug support

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<sup>1</sup> NSW Bureau of Crime Statistics and Research, 'Recorded Crime Statistics 2023' (Media Release, 14 March 2024) [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2024/mr-NSW-Recorded-Crime-Statistics-Quarterly-Update-Dec-2023.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2024/mr-NSW-Recorded-Crime-Statistics-Quarterly-Update-Dec-2023.aspx)

- Disability support services
- Child and family support and family preservation
- Specialist domestic and family violence services, including services for users of violence
- Legal assistance services
- Access to driver licensing

The ALS supports increased investment in these areas in regional NSW and, in particular, investment in ACCOs to deliver services to Aboriginal communities in line with Government's commitments under the National Agreement on Closing the Gap.

We strongly oppose expanding carceral responses such as policing and prisons, which can never address the root causes of crime by meeting the basic needs of children, families and communities through the elimination of poverty and systemic and structural discrimination and racism.

Responses which purport to address disparities between regional and metropolitan areas and to increase community safety through increased police numbers, expanded police powers, restrictive bail laws and other punitive law enforcement measures ignore best evidence and fail to produce either outcome. Increasing policing and imprisonment makes communities more dangerous by forcing people with unmet needs into cycles of incarceration and repeat offending, which disrupt life trajectories and fracture families and communities.

Numerous Royal Commissions, inquiries and other independent and parliamentary processes have considered relevant social and environmental drivers of crime, and current systems and responses. None have recommended increased police in communities or an increased reliance on criminalisation. Among them are inquiries conducted by this Committee. A small selection is listed as follows. We recommend consideration of their findings and recommendations by the Committee:

- NSW Legislative Council Portfolio Committee No. 2 – Health, [\*Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales\*](#) (June 2024)
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [\*Final Report – Volume 8, Criminal Justice and People with Disability\*](#) (September 2023)
- [\*Special Commission of Inquiry into the Drug 'Ice'\*](#) (January 2020)
- [\*Family Is Culture: Independent review of Aboriginal children and young people in out-of-home care\*](#) (October 2019), in full but especially ch 15 ('Care criminalisation')
- NSW Legislative Assembly Committee on Law and Safety, [\*The Adequacy of Youth Diversionary Programs in New South Wales\*](#) (September 2018)
- NSW Legislative Council Portfolio Committee No. 2 – Health and Community Services, [\*Provision of Drug Rehabilitation Services in Regional, Rural and Remote New South Wales\*](#) (August 2018)
- Australian Law Reform Commission, [\*Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples\*](#) (December 2017)
- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, [\*Doing Time - Time for Doing: Indigenous youth in the criminal justice system\*](#) (2011)
- Royal Commission into Aboriginal Deaths in Custody, [\*National Report\*](#) (1991)

Collectively, these reports make hundreds of recommendations which prioritise a public health approach to key drivers of crime, diversion from criminalisation for young people, reform to child protection systems, investment in social services and essential infrastructure, and investment in Aboriginal community-led responses for Aboriginal communities.

It is notable that very few of these recommendations have been implemented to date, in a context where public and media perceptions are that crime is increasing despite long-term BOCSAR data showing that the opposite is true. It is self-evident that current, punitive approaches are failing to address either the policy or political imperatives underpinning this Inquiry.

We also commend to the Committee the following recent reports which centre the voices of Aboriginal and Torres Strait Islander young people, documenting their experiences and recommendations for improved community safety and wellbeing for Aboriginal young people in NSW:

- [JustReinvest NSW Moree Youth Forum Report](#) (2022)
- [Mounty Yarns: Lived Experiences of Aboriginal Young People in Mount Druitt](#) (2023)

## Drivers of Crime and Repeat Contact with the Criminal Process

### *Poverty, Inequality and Structural Discrimination*

Poverty is strongly correlated with significantly higher rates of crime. Children aged 10 to 17 from the lowest socioeconomic areas in Australia are approximately seven times more likely to be under youth justice supervision compared to children from the highest socioeconomic areas.<sup>2</sup> Poverty is more widespread in rural and regional NSW: 25% higher for young people aged 15-24 years in regional and rural NSW compared with Greater Sydney, which has increased to become the highest poverty rate of all age groups in rural and regional NSW.<sup>3</sup>

Recent research based on analysis of NSW Government administrative data has identified eight ‘social determinants of justice’ which significantly increase the risk of an individual experiencing incarceration:<sup>4</sup>

1. Having been in out-of-home care<sup>5</sup>
2. Receiving a poor school education
3. Being Aboriginal or Torres Strait Islander
4. Having early contact with police
5. Having unsupported mental health and cognitive disability
6. Problematic alcohol and other drug use
7. Experiencing homelessness or unstable housing
8. Coming from or living in a disadvantaged location

Experiencing a higher number of these social determinants means that individuals are more likely to be incarcerated and then re-incarcerated in future. The research also found that the following ‘causes of the causes’ of the criminalisation of specific groups underpin these social determinants:

- Entrenchment of poverty and unequal access to resources;

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<sup>2</sup> Australian Institute of Health and Welfare, ‘Youth Justice’ (2024) <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>

<sup>3</sup> NSW Council of Social Service, *Mapping Economic Disadvantage in New South Wales, 2021* (Report, 2023) <https://www.ncoss.org.au/policy-advocacy/policy-research-publications/mapping-economic-disadvantage-in-nsw/>

<sup>4</sup> Ruth McCausland and Eileen Baldry, ‘Who Does Australia Lock Up?: The Social Determinants of Justice’ (2023) 12 *International Journal for Crime, Justice and Social Democracy* 37 <https://www.crimejusticejournal.com/article/view/2504/1351>

<sup>5</sup> 45% of children in out-of-home care in NSW were Aboriginal as at June 2023: NSW Audit Office, *Safeguarding the rights of Aboriginal Children in the Child Protection System* (Report, June 2024) <https://www.audit.nsw.gov.au/our-work/reports/safeguarding-the-rights-of-aboriginal-children-in-the-child-protection-system>

- Structural racism and discrimination, particularly as experienced by Aboriginal and Torres Strait Islander communities and people with disability;
- Failure to adequately respond to the abuse, violence and trauma; and
- The operation of the criminal legal system itself in the way that it is criminogenic (i.e. increasing rather than reducing the likelihood of future incarceration).<sup>6</sup>

Evidence-based and effective crime prevention strategies must prioritise addressing these social determinants of justice, not more deeply entrench them by exacerbating and compounding existing trauma, inequity in access to resources, structural racism and discrimination, and the criminogenic effects of policing, surveillance, incarceration and associated stigma.

### *Over-Policing and Over-Imprisonment*

Increased policing does not address the burdens of systemic discrimination, poverty and inequality which drive disparities in crime rates and public safety in regional NSW. Police cannot prevent crime – they can only respond to it, and there is abundant evidence that reliance on policing responses alone serves to create more crime by driving people into cycles of incarceration. The harms of incarceration on individuals and communities, links between incarceration and future offending, and the failure of incarceration to meet the developmental needs of children have been well-documented.<sup>7</sup>

Aboriginal and Torres Strait Islander women have been the fastest-growing group incarcerated on remand across jurisdictions for many years.<sup>8</sup> The imprisonment of Aboriginal women has far-reaching and generational impacts for communities. As noted by the Commonwealth Parliament Standing Committee on Aboriginal and Torres Strait Islander Affairs in 2011:

*Indigenous women are critical to the future strength of Indigenous families and communities. They play an important role in the care of children, providing the future generation with a stable upbringing. Continued growth in the number of Indigenous women being imprisoned will have a long lasting and negative impact on the wellbeing of Indigenous families and communities.*<sup>9</sup>

At time of writing, the numbers of adults and children in NSW prisons are the highest on record, with the numbers of people on remand in NSW now out-stripping the number of people in prison serving sentences of imprisonment.<sup>10</sup> The numbers and proportion of Aboriginal children and adults in NSW

<sup>6</sup> Ibid 46–7.

<sup>7</sup> See, eg, Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (Report, 20 June 2013) 22–5; Australian Institute of Criminology, *Mortality and Morbidity in Prisoners after Release from Prison in Western Australia 1995–2003* (Trends & Issues in Crime and Criminal Justice No 320, July 2006) 2; Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 585; Productivity Commission, *Australia's Prison Dilemma* (October 2021) 26, 636–41; BOCSAR, *Reoffending Statistics for NSW* (Web Page, 15 August 2022); Joanna JJ Wang and Suzanne Poynton, *Intensive Correction Orders Versus Short Prison Sentence: A Comparison of Re-Offending* (BOCSAR, Contemporary Issues in Crime and Justice No 207, October 2017); Denis Yukhnenko et al, 'Recidivism Rates in Individuals Receiving Community Sentences: A Systematic Review' (2019) 14(9) *PLoS ONE* e0222495:1– 15, 1; Karen Gelb, Nigel Stobbs and Russell Hogg, *Community-Based Sentencing Orders and Parole: A Review of Literature and Evaluations across Jurisdictions* (Report, Queensland University of Technology, April 2019) 84; Clare Ringland and Don Weatherburn, *The Impact of Intensive Correction Orders on Re- Offending* (BOCSAR, Contemporary Issues in Crime and Justice No 176, December 2013) 1; Ian Lambie and Isabel Randell, 'The Impact of Incarceration on Juvenile Offenders' (2013) 33 *Clinical Psychology Review* 448, 448; Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 445; Elizabeth S Barnert et al, 'How Does Incarcerating Young People Affect Their Adult Health Outcomes?' (2017) 139(2) *Pediatrics* 1, 7.

<sup>8</sup> Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 105 [3.41] <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>

<sup>9</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time - Time for Doing: Indigenous Youth in the Criminal justice System* (Report, June 2011) ch 2 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Committees\\_Exposed/atsia/sentencing/report](https://www.aph.gov.au/Parliamentary_Business/Committees/Committees_Exposed/atsia/sentencing/report)

<sup>10</sup> BOCSAR, 'Number of adults on remand in NSW the highest on record: NSW Custody Statistics: Quarterly update March 2024' (May 2024) [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2024/mr-custody-Mar2024.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2024/mr-custody-Mar2024.aspx)



prisons are also at a record high, with Closing the Gap Target 11 (reducing the incarceration of children) now 'off-track' for the first time.

BOCSAR analysis provided to the Aboriginal Justice Partnership Committee, which the ALS co-chairs with the NSW Department of Communities and Justice, shows that a significant driver of Aboriginal people on remand is an exponential increase in the volume of police charges against Aboriginal people since 2012 (96%). **Increased policing activity is directly contributing to increased imprisonment.** Imprisonment has well-documented criminogenic effects and makes communities more dangerous by increasing the risk of future offending for incarcerated individuals.<sup>11</sup>

Despite the evidence, populist calls for responses to community safety which prioritise increased numbers of police and laws calibrated to increase imprisonment persist. Research shows, however, that while the visible presence of police probably reduces the incidence of crime in the immediate vicinity of officers, police numbers have very little effect on overall crime, especially 'hidden' crime such as domestic, family and sexual violence (DFS<sup>12</sup>). A 2019 BOCSAR study found that a 1% increase in the size of the police force did not affect crime rates, save for a 0.8% reduction in theft, a 1.1% reduction in car theft and a 0.63% reduction in aggregate property crime, driven by deterrence rather than police apprehending people committing offences. The study found increased police numbers led to no significant reduction in violent crime.<sup>12</sup> BOCSAR cautioned against concluding that the findings about even these moderate reductions in theft were applicable at time of publication in 2019, noting that the data analysed were from 2002–2003 and that 'innovation in security technology has made car theft substantially more difficult, irrespective of how many police are operating in NSW'.<sup>13</sup>

There is evidence, on the other hand, that expenditure on measures effectively equating to a basic income during the Covid-19 pandemic (such as temporarily doubling JobSeeker) 'significantly helped to alleviate poverty and improve wellbeing',<sup>14</sup> suggesting efforts to provide a basic income during lockdowns may have contributed in part to the significant reduction in crime during the pandemic. Measures which alleviate poverty must be central to responses aiming to prevent and reduce crime.

### *Inadequate Diversion of Young People from Criminalisation*

The criminalisation and incarceration of young people increases their risk of reoffending and future imprisonment. It follows that effective strategies to reduce and prevent crime must promote diversion from contact with police and courts in the first instance, yet young people in regional and rural areas are less likely to be diverted from the criminal legal system than young people in metropolitan areas.<sup>15</sup>

The earlier in life that a person experiences contact with the criminal legal system, the more likely it is that they will have future contact with the system as an adult. A NSW longitudinal study which followed the life trajectory of a sample of criminalised children found that 57% of those who appeared before the Children's Court had at least one appearance in an adult court in the 8 years that followed.<sup>16</sup>

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<sup>11</sup> See n 7 above.

<sup>12</sup> BOCSAR, 'The Effect of Police on Crime and Arrests: Are Police Deterring or Incapacitating Criminals?' (Contemporary Issues in Crime and Justice No 223, March 2019) 1, 1 <https://www.bocsar.nsw.gov.au/Publications/CJB/2019-Report-The-effect-of-police-on-crime-and-arrests-CJB223.pdf>

<sup>13</sup> BOCSAR, Media Release 11 April 2019 [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2019/mr-The-effect-of-police-on-crime-and-arrests.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2019/mr-The-effect-of-police-on-crime-and-arrests.aspx)

<sup>14</sup> Kay Cook et al, 'Understanding Covid-19 emergency social security measures as a form of basic income: Lessons from Australia' (2023) 59 *Journal of Sociology* 879, 879.

<sup>15</sup> Legislative Assembly of NSW Law and Safety Committee, NSW Parliament, *Report on the Adequacy of Youth Diversionary Programs in New South Wales* (September 2018), [3.3].

<sup>16</sup> BOCSAR, 'The Transition from Juvenile to Adult Criminal Careers' (Contemporary Issues in Crime and Justice No 86, 2005) cited in Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People* (2017) <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>

People who have experienced incarceration in childhood are also more likely to be re-incarcerated within the following ten years.<sup>17</sup>

The NSW Closing the Gap Implementation Plan 2022–2024 acknowledges that:<sup>18</sup>

*Early contact with the justice system increases the risk of reoffending and poor life outcomes, and can compound intergenerational disadvantage. Prevention and early intervention are therefore the most effective way to reduce the number of Aboriginal children and young people in the justice system. By addressing the drivers of contact with the justice system and reducing the number of young people in contact with the justice system, and any escalation through the system, we can curtail and ... reduce the over-representation of Aboriginal young people in custody.*

The Implementation Plan was formed around priorities identified by Aboriginal and Torres Strait Islander communities in consultations by NSW CAPO involving almost 400 people in 28 locations across NSW.<sup>19</sup> Communities identified the need for stronger support networks, community activities and cultural programs driven by the needs of young people to prevent entry into the justice system: “We need to figure out what’s missing for kids in their lives. The kids should be driving that. As opposed to adults coming in and assuming what they need and want.”

A 2020 review by the Australian Institute of Criminology analysed hundreds of recommendations of key reports into Australian youth justice systems over a 5-year period, and summarised some of the key recurring recommendations:<sup>20</sup>

- Young people who enter youth justice systems, especially those who serve some period in detention, frequently present with an array of vulnerabilities and complex needs.
- These vulnerabilities might be exacerbated by spending time in custody, especially in segregation and isolation. This is particularly the case for Aboriginal young people, who continue to be massively over-represented in youth justice systems across Australia.
- Consequently, detention should be a last resort option. To ensure that youth justice detention is used as a last resort, recommendations from reviews included that:
  - the minimum age of criminal responsibility should be raised;
  - diversion should be more frequently used, where appropriate; and
  - alternatives to being remanded in custody should be employed more often.

Despite the availability of diversionary options under the *Young Offenders Act 1997* in NSW, Aboriginal children are more likely to be criminalised and prosecuted by NSW Police instead of diverted.<sup>21</sup> BOCSAR data for 2022 also show that Aboriginal children are less likely than non-Aboriginal children to receive cautions, and more likely to receive Youth Justice Conferences – the ‘diversionary’ option

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<sup>17</sup> Jason Payne and Don Weatherburn, ‘Juvenile Reoffending: A Ten-Year Retrospective Cohort Analysis’ (2015) 50(4) *The Australian Journal of Social Issues* 349.

<sup>18</sup> *NSW Implementation Plan for Closing the Gap* (2022) 99  
[https://www.aboriginalaffairs.nsw.gov.au/media/website\\_pages/closingthegap/nsw-implementation-plan/2022-24-implementation-plan/NSW-Closing-the-Gap-Implementation-Plan-2022-2024-\(4\)-accessible-Updated-\(1\).pdf](https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/closingthegap/nsw-implementation-plan/2022-24-implementation-plan/NSW-Closing-the-Gap-Implementation-Plan-2022-2024-(4)-accessible-Updated-(1).pdf).

<sup>19</sup> NSW Coalition of Aboriginal Peak Organisation, *NSW CAPO Closing the Gap Community Engagement Report* (2022) 5  
<https://www.aecg.nsw.edu.au/wp-content/uploads/2022/10/2022-NSW-CAPO-Community-Engagement-Report.pdf>

<sup>20</sup> Australian Institute of Criminology, *Youth justice in Australia: Themes from recent inquiries* (Trends & Issues in Criminal Justice No 605, October 2020)

<sup>21</sup> See Donald Weatherburn and Brendan Thomas, ‘The Influence of Indigenous Status on the Issue of Police Cautions’ (2023) 56 *Journal of Criminology* 253.

that brings children closest to a criminal charge.<sup>22</sup> Warnings, the least serious YOA option, were issued to only 889 Aboriginal children, in contrast with 2,889 warnings issued to non-Aboriginal children.<sup>23</sup>

### *Lack of Progress Implementing the National Agreement on Closing the Gap*

The Royal Commission into Aboriginal Deaths in Custody in 1991 identified the need for the inclusion of Aboriginal people and their perspectives in policy development, research, and in the operation of programs and institutions to ensure they are effective and culturally responsive.<sup>24</sup> Nearly 30 years later, the current iteration of the National Agreement on Closing the Gap was launched in July 2020. This was the first time a National Agreement had been developed and negotiated in genuine partnership with Aboriginal and Torres Strait Islander peoples, and the first time it included outcomes relating to reducing the mass incarceration of Aboriginal and Torres Strait Islander adults and children.

All Australian, State, Territory and Local Governments have signed the National Agreement and have committed to a future where policy-making impacting the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership. Implementing the National Agreement is everyone's responsibility and is an unprecedented shift in the way governments work by encompassing shared decision-making on the design, implementation, monitoring and evaluation of policies and programs to improve life outcomes for Aboriginal and Torres Strait Islander people.

Progress on implementing the National Agreement has been mixed, however:

- government organisations continue to implement versions of shared decision-making that involve consulting with Aboriginal and Torres Strait Islander people on a pre-determined 'solution', rather than working together to identify priorities and co-design solutions with Aboriginal people and organisations;<sup>25</sup>
- there appears to be an assumption that 'governments know best', which is contrary to the principle of shared decision-making in the National Agreement;<sup>26</sup>
- existing power imbalances between government agencies and Aboriginal Organisations remain in place, and partnerships are not consistently being used to empower shared decision-making and support processes of self-determination – ACCOs report being treated as passive funding recipients rather than being valued as necessary partners in the delivery of government services and as experts in the development of culturally safe programs that address the needs of their communities;<sup>27</sup> and
- many governments do not recognise that ACCOs are critical partners in delivering services tailored to the priorities of their communities.<sup>28</sup>

Progress towards reducing the mass imprisonment of Aboriginal and Torres Strait Islander adults and children has been hampered as a result, with both adult and child incarceration in NSW currently at the highest levels on record. Until governments take steps to develop and implement criminal justice

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<sup>22</sup> BOC SAR, 'NSW Recorded Crime Statistics January to December 2022: Number of proceedings under the Young Offenders Act initiated by NSW Police by postcode of incident, Aboriginality of person of interest, type of YOA proceeding, and proportion that were a warning (excl. transport regulatory)' (2023; reference: ac23-22377).

<sup>23</sup> Ibid.

<sup>24</sup> Department of the Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) vii <https://www.niaa.gov.au/sites/default/files/documents/publications/rciadlc-review-report.pdf>

<sup>25</sup> Australian Government, Productivity Commission, *Review of the National Agreement on Closing the Gap* (Final Report, 7 February 2024) 4 <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review#report>.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid 5.

<sup>28</sup> Ibid.

policies in meaningful partnership and through shared-decision-making with Aboriginal people, the risks to community safety posed by the harms of incarceration will persist.

### *Inadequate Access to Culturally Safe, Aboriginal Community-Controlled Legal Assistance*

The parties to the National Agreement on Closing the Gap recognise that ACCOs ‘are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services’.<sup>29</sup> As an Aboriginal and Torres Strait Islander Legal Service (**ATSILS**), the ALS not only operates within the legal sector, but also within the Aboriginal Community-Controlled Sector. This comes with significant obligations from multiple stakeholders that other legal assistance providers do not have. It is also our strength.

The ALS has provided specialised, independent, culturally safe and community-controlled legal services for over 50 years in NSW. We recognise that Aboriginal and Torres Strait Islander people are smart, strong and resilient in the face of longstanding structural and systemic forces which disempower communities and disproportionately bring Aboriginal people into contact with the legal system. Because we understand the needs of communities, and because we have a local presence in so many communities, we are uniquely positioned to respond appropriately to local needs, to provide effective service delivery, and to platform community voices in our advocacy.

Our staff work and live in some of the most economically and socially marginalised communities in NSW, where we are often the service provider of choice for Aboriginal people who are frequently reluctant to use mainstream services because of a history of culturally insensitive service provision and lack of trust in government organisations. It is because we understand the needs of community that our service delivery model is unique: a holistic approach is central to our work.

Despite the critical role we play in delivering high quality, culturally appropriate legal services to Aboriginal and Torres Strait Islander people, we have been historically and systemically under-valued, under-funded and under-resourced to meet the known demand for legal assistance services by Aboriginal communities in NSW.

In 2023, we were forced to freeze criminal law services at 13 courts due to a workload crisis caused by inadequate funding: demand for our services has almost doubled since 2018 but our core funding from the Federal Government has decreased in real terms. This was a significant decision that was reluctantly made, knowing it would negatively impact Aboriginal communities who have a reasonable expectation of receiving services from their preferred provider.

Although the NSW Government provides funding to the ALS for some limited non-core legal services, including Closing the Gap programs, the long-standing NSW Government position is that funding of the ALS is a Federal Government responsibility. The recent Independent Review into the National Legal Assistance Partnership (**NLAP**) recommended that the Commonwealth and each State and Territory agree and commit to minimum funding contributions over the life of the successor agreement to the current National Legal Assistance Partnership.<sup>30</sup>

Strain on our already stretched resources is also exacerbated by unilateral changes to the criminal legal system by the NSW Government which increase demand for legal assistance services by Aboriginal people – for example, increasing the number of people requiring court representation by

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<sup>29</sup> Priority Reform Two: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/two>

<sup>30</sup> Independent Review into the National Legal Assistance Partnership (Final Report, March 2024) Recommendation 35 <https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25>

tightening access to bail, or increasing court sittings by introducing specialist Indigenous court lists or additional judicial officers.

At present, the ‘demand funding model’ employed by the NSW Government does not include an assessment of resourcing required by the ALS to meet increased service need created by law and systems changes, despite the essential role we play in the NSW legal sector. Other key stakeholders like Legal Aid NSW, Corrective Services and NSW Police are included in assessments of the impact of systemic changes and additional resourcing allocated accordingly where required.

The Independent Review of NLAP has also recommended that, when a government undertakes law reform that can be expected to change demand for legal assistance services, it should undertake a Legal Assistance Impact Assessment (LAIA) considering the impacts on legal assistance providers and ensure that relevant legal assistance providers are properly resourced to deal with such impacts through an immediate and ongoing increase in baseline funding.<sup>31</sup>

## Recommendations

1. Invest in increasing the availability of public transport in regional communities; the quality and serviceability of roads, footpaths, street lighting and other essential infrastructure; and access to driver licensing, especially for Aboriginal and Torres Strait Islander peoples in line with Recommendation 12–3 of the Australian Law Reform Commission *Pathways to Justice* Inquiry.
2. Urgently address housing shortages in rural, regional and remote communities, in particular by:
  - a. implementing Recommendation 46 of the Committee on Law and Safety’s 2018 *Inquiry into the Adequacy of Youth Diversionary Programs in New South Wales* to increase the supply of social housing for young people who are exiting custody, and for people under the age of 18 years more generally; and
  - b. increasing the number and range of crisis, short- and long-term accommodation options for women, children and men, including Aboriginal-controlled safe houses and crisis accommodation, along with increased support for victim-survivors of domestic and family violence to safely remain in, or return to, their own homes and communities, and funding for programs and initiatives which provide culturally safe housing options designed and run by or in partnership with ACCOs.
3. Provide long-term, sustainable and adequate funding to ACCOs to deliver primary prevention and early intervention services to people who are criminalised or at risk of being criminalised, including increasing the availability of intensive family support to prevent children from entering the out-of-home care system, educational engagement programs, after-school and after-hours services and activities, and therapeutic, on-Country cultural programs.
4. Increase investment in alcohol and other drug (AOD) support for adults and young people in regional areas, including residential rehabilitation and in-patient programs, counselling and health education and group programs, prioritising funding for ACCOs.
5. Divert more children away from the criminal legal system by:
  - a. removing the limit on cautions under the *Young Offenders Act 1997* (YOA);
  - b. reviewing NSW Police directions and operational guidance in relation to YOA diversion with a view to increasing the number of warnings, cautions and Youth Justice Conferences issued to Aboriginal and Torres Strait Islander young people;

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<sup>31</sup> Ibid, Recommendation 22.

- c. increasing the age of criminal responsibility from 10 to 14 years without exception;
  - d. amending the *Children (Criminal Proceedings) Act 1987*, the *Law Enforcement (Powers and Responsibilities) Act 2002*, or both, to explicitly state that arrest should be a measure of last resort;
  - e. funding ongoing training to ensure that all residential out-of-home care staff and frontline NSW Police Force officers receive training on the *Joint Protocol to Reduce the Contact of Young People in Residential Out-of-home care with the Criminal Justice System*.
  - f. strengthening accountability mechanisms for out-of-home care providers and the NSW Police Force in circumstances where the *Joint Protocol* is not implemented.
  - g. establishing fair and safe bail tests, including immediate repeal of s 22C of the *Bail Act 2013*, and ensure that children are never subjected to harsher bail tests than adults in accordance with fundamental principles of both domestic and international law.
  - h. implementing in full the recommendations of the Law Enforcement Conduct Commission *Operation Mantus*;
  - i. implementing the recommendations of the NSW Legislative Assembly Committee on Law and Safety 2018 *Inquiry into the Adequacy of Youth Diversionary programs in New South Wales*, especially:
    - i. Recommendation 10 (that the NSW Government promote Aboriginal community control, and partnerships with Aboriginal communities, in the design and delivery of place-based diversionary programs for Aboriginal young people);
    - ii. Recommendation 28 (increase funding for mental health support services to which courts can refer young people under the age of 18 years, particularly in regional and remote areas of NSW); and
    - iii. Recommendation 31 (increase the availability of AOD rehabilitation services for people under 18 years in NSW, especially detoxification facilities and intensive residential rehabilitation programs);
  - j. the Committee considering and taking into account the findings of key Closing the Gap initiatives co-led by the ALS and DCJ, *Therapeutic Pathways for Children* and *The Aboriginal Throughcare Strategy*, when the reports become available in late 2024.
6. Increase funding for specialist DFSV services, prioritising funding for ACCOs, to respond to the current crisis in demand and to ensure that victim-survivors receive appropriate support.
  7. Increase access to specialist and culturally appropriate legal services and supports provided by Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services, including funding for family law services and care and protection law services to prevent and reduce the risk of child removals and breaches of parenting orders leading to criminalisation.
  8. Invest in programs for Aboriginal men and boys designed and delivered by Aboriginal men to support healing and behaviour change, including registered Men's Behaviour Change Programs, other Aboriginal men's healing programs and men's groups.
  9. Do not introduce more police powers and reduce reliance on 'proactive' policing strategies which disproportionately drive young people, Aboriginal and Torres Strait Islander people and other minority groups into contact with courts and prisons, including by repealing amendments introduced by the Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024.
  10. Implement in full the recommendations of the *Special Commission of Inquiry into the Drug 'Ice'*, especially:



- a. Recommendation 5 (implement a whole-of-Government AOD policy recognising that the use of drugs is a health and social issue, prioritises health and social responses to drug use and recognises the harms associated with punitive responses);
  - b. Recommendation 11 (in conjunction with increased resourcing for specialist drug assessment and treatment services, implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs);
  - c. Recommendation 20 (support local, community-driven collective impact initiatives, including justice reinvestment initiatives, that respond to local drivers of drug use and actively support their further expansion in consultation with local communities);
  - d. Recommendations 57, 58 and 59 (community-led, culturally safe and effective responses to harmful amphetamine-type stimulant use in Aboriginal communities);
  - e. Recommendation 60 (expand the Youth Koori Court to regional areas to improve access to culturally appropriate diversion programs for Aboriginal young people); and
  - f. Recommendation 61 (implement the Walama Court, including through adequate funding and resourcing, to improve access to culturally appropriate diversion programs for Aboriginal people in the District Court).
11. Implement in full the recommendations of the Law Enforcement Conduct Commission *Review of the NSW Police Force Aboriginal Strategic Direction 2018–2023*, especially:
- a. Recommendation 1 (Support Commands and Police Districts to develop localised approaches to working with communities that are aligned with Closing the Gap);
  - b. Recommendation 4 (Work with local communities and ACLOs to develop Region- or Command-specific training materials that reflect the history of the local Aboriginal communities, as well as current challenges and strengths);
  - c. Recommendation 7 (Review all guidance in the Bail Law Reform Standard Operating Procedures in relation to bail determinations for Aboriginal people);
  - d. Recommendation 9 (Review operational training and procedures relating to pro-active policing and other day-to-day policing actions that involve the use of discretion);
  - e. Recommendation 10 (Add a component to the mandatory Aboriginal cultural training dedicated to the impacts, opportunities and risks of proactive and operational policing in Aboriginal communities and options for diversion); and
  - f. Recommendation 11 (Publish a Closing the Gap delivery plan which states how NSW Police will implement the priority reform areas and what it will take to help NSW achieve targets 10 and 11 to reduce over-representation).
12. Work in genuine partnership with Aboriginal and Torres Strait Islander people and organisations, represented by their Peak Organisations, through shared decision-making in the design, implementation, monitoring and evaluation of policies and programs impacting Aboriginal and Torres Strait Islander people, in accordance with Government’s commitments under the National Agreement on Closing the Gap.
13. Involve systems-impacted young people in the design, development, implementation and evaluation of any policy or service affecting young people who are currently or at risk of being criminalised, and consider establishing a standing, funded committee of systems-impacted young people to inform and direct any policy or service affecting young people similar to the Koorie Youth Council in Victoria.
14. The NSW Government commit to contributing to baseline funding for the ALS and working with the Federal Government to implement recommendation 35 of the *Independent Review into the*

*National Legal Assistance Partnership* (agree on minimum funding contributions from all Governments – Commonwealth, States and Territories).

15. The NSW Government commit to implementing recommendation 22 of the *Independent Review into the National Legal Assistance Partnership* (Legal Assistance Impact Assessment) and, in the interim, immediately take steps to ensure that any change in law or policy which increases demand for legal assistance services for Aboriginal people in NSW is accompanied by commensurate additional resourcing to the ALS.

## Conclusion

There are inequities between regional and rural communities and metropolitan areas in NSW which are the product of decades of neglect and chronic lack of investment by successive parliaments.

Irrespective of geography, the inequities between Aboriginal and non-Aboriginal communities in NSW are even more pronounced, deeply entrenched and underpinned by persistent structural racism and discrimination which is the legacy of colonisation and dispossession.

Responding to these inequities requires an approach which strengthens communities through investment in addressing the social and environmental determinants of crime and providing adequate services to meet community needs – not through punitive interventions which increase the risk of crime and decrease community safety.

In accordance with Government's commitments under the National Agreement on Closing the Gap, responses must be undertaken in genuine partnership with Aboriginal and Torres Strait Islander people, represented by their Peak Organisations, through shared decision-making in the design, implementation, monitoring and evaluation of policies and programs impacting Aboriginal and Torres Strait Islander people, and give effect to the Priority Reforms, including strengthening the community-controlled sector.

We welcome the opportunity to discuss this submission further. Please contact us at [policy@alsnswact.org.au](mailto:policy@alsnswact.org.au)



## Annexure: Under-Servicing of ALS Clients in Regional NSW

The ALS respects and protects the privacy of our clients while also seeking to platform their voices and experiences. We also prioritise the experiences of our staff in the design, delivery and evaluation of services to Aboriginal and Torres Strait Islander people across NSW. A total of 95 ALS staff members from our offices across 15 regional communities were consulted in the preparation of this submission: Armidale, Bathurst, Bourke, Broken Hill, Coffs Harbour, Dubbo, Griffith, Kempsey, Lismore, Moree, Moruya, Nowra, Tamworth, Wagga Wagga and Walgett.

A number of common themes relating to the under-servicing of the clients and communities served by the ALS, which have implications for community safety and wellbeing, are summarised as follows.

### *Stable and Safe Housing*

*“Everyone is struggling to get a house, everyone is living with one another.”*

A safe, secure home with working facilities is essential for good health and wellbeing, and the quality, quantity and affordability of housing is a fundamental driver of homelessness,<sup>32</sup> which is one of the social determinants of contact with the criminal legal system discussed above. Historical experiences of Aboriginal and Torres Strait Islander people and the ongoing impacts of colonisation have had a significant impact on housing conditions for Aboriginal communities.<sup>33</sup> Overcrowding, affordability, poor housing conditions, vermin, structural problems, damp and mildew disproportionately impact Aboriginal and Torres Strait Islander people, and overcrowding is growing in some regional areas.<sup>34</sup>

In many regional communities, short- or medium-term accommodation options are unavailable, including for victim-survivors of domestic and family violence. Lack of safe accommodation and supportive environments for men and women increases the risk of domestic and family violence.

We routinely represent children in the care of the Minister across the State, including children below the age of 14, who are granted bail to hotels, motels or other inappropriate short-term accommodation options (‘Alternative Care Arrangements’). A recent interim report by the Advocate for Children and Young people calls for urgent reform to ACAs.<sup>35</sup> In other locations where there are viable accommodation options, prior contact with the criminal legal system is sometimes a barrier to eligibility, meaning that the most vulnerable children in the State are denied access, and, in some regional towns, funded beds are left empty and children are left without appropriate accommodation.

### *Transport and Driver Licensing*

*“If there are services available that are only available by car, [the] vast majority of our clients don’t have access.”*

Lack of access to transportation is significant barrier for ALS clients across all parts of regional NSW, who are often geographically prevented from accessing their closest services and vital supports which protect against contact with the criminal legal system.

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<sup>32</sup> See Australian Institute of Health and Welfare, ‘Housing circumstances of First Nations People’ (September 2023) <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>

<sup>33</sup> Ibid.

<sup>34</sup> Australian Housing and Urban Research Institute (AHURI), *Overcrowding and Severe Overcrowding Report* (Report, 2024) 20 <https://www.facs.nsw.gov.au/download?file=810122>

<sup>35</sup> See Advocate for Children and Young People, *Special Inquiry into Children and Young People in Alternative Care Arrangements, Interim Report* (2 May 2024) <https://www.acyp.nsw.gov.au/special-inquiry>

These barriers often manifest differently. For example, a client in Wilcannia will have to travel two hours to Broken Hill to access most major services. Conversely, a client in Dubbo may be eligible to access services in the same town, but lives on the other side of town and is too far away to access the services without transport. Lack of access to transport also serves as a barrier to release for clients exiting custody on bail or to access residential or in-patient services.

There are long-recognised geographical, cultural, economic and social barriers inhibiting access to driver licensing for Aboriginal people.<sup>36</sup> The circumstances of some Aboriginal and Torres Strait Islander communities have been said to equate to an ‘endemic lack of licensing access for Aboriginal people’.<sup>37</sup> The imperative to drive in communities with low levels of driver licensing can lead to unlicensed driving and subsequent fines, charges and imprisonment for unlicensed or disqualified driving, harming communities. In remote communities where there is no public transportation at all, the risk of criminalisation from driving whilst suspended or disqualified is more acute.

### *Primary Prevention, Early Intervention and Therapeutic Support Programs for Young People*

*“Across the board, regional towns don’t have the funding, don’t have the services, don’t have the caseworkers, don’t have anything to provide this really nuanced and specific knowledge that our clients require.”*

It is increasingly recognised that children who have been exposed to trauma ‘are at greater risk of displaying negative behaviour and that early interventions aimed at reinforcing wellbeing and skill development can be instrumental in bringing about the best crime prevention and community safety outcomes’.<sup>38</sup> Primary prevention programs and family therapeutic interventions ‘have been proven to reduce delinquency and antisocial child behaviour and have an overall positive effect on recidivism’.<sup>39</sup>

The provision of early intervention programs has been found to ‘reduce crime at a population level by as much as 31% [and] reduce offending among at-risk populations by 50%’.<sup>40</sup> Such programs can enhance the health and wellbeing outcomes of young people, their families and the wider community but, while some programs exist, they are not widespread and have a limited capacity due to chronic underinvestment, leaving many communities without vital social and therapeutic supports.

### *Community-based Specialist Services and Supports*

*“I worked across 15 regional courts last year, across the whole State ... the common thread throughout all of them, which magistrates always made a big point about during judgments following hearing, is that there are no resources available to provide services and supports to parents, especially when it comes to rehabilitation, alcohol addiction, drug addiction and domestic violence.”*

Community mental health services are either severely lacking or non-existent across regional NSW. There are multiple regional and remote towns serviced by the ALS that do not have a local psychologist or psychiatrist. In other areas, waiting times to access a mental health professional can be months. Some local medical services reportedly turn away patients seeking psychological services indefinitely, citing no foreseeable appointment times.

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<sup>36</sup> See, eg, Australian Law Reform Commission, *Pathways to Justice* (2017) chapter 12.

<sup>37</sup> *Ibid* 414.

<sup>38</sup> Standing Council of Attorneys-General, *Age of Criminal Responsibility Working Group Report* (September 2023).

<sup>39</sup> *Ibid*.

<sup>40</sup> John W Toumborou et al, ‘Community intervention to prevent adolescent health behavior problems: Evaluation of Communities That Care in Australia’ (2019) 38 *Health Psychology* 536; J David Hawkins et al, ‘Youth problem behaviors 8 years after implementing the Communities That Care Prevention System: A community-randomized trial’ (2014) 168(2) *JAMA Pediatrics* 122; Bosco Rowland et al, ‘Evaluation of Communities That Care: Effects on municipal youth crime rates in Victoria, Australia: 2010–2019’ (2022) 23 *Prevention Science* 24.

While we commend the work undertaken by the Department of Communities and Justice to expand court-based interventions including MERIT, the Justice Health and Forensic Mental Health Network Statewide Court and Clinical Liaison Service, and the Justice Advocacy Service Diversion pilot, we warn against responses which are limited to service provision triggered by contact with the criminal court process and delivered in court-based and custodial settings. Early intervention and effective crime prevention requires investment in accessible and effective service provision in the community, prior to any contact with the legal system.

Aboriginal victim-survivors of domestic, family and sexual violence (DHSV) are chronically underserved across NSW, and this is more acute in regional areas. Many of our clients prefer accessing services delivered by ACCOs over mainstream services, and we know that ACCOs deliver better results for Aboriginal people. It is critical that every Aboriginal victim-survivor has the choice to access an ACCO for specialist HSV supports, no matter where they are located across NSW.

### *Residential Rehabilitation Programs and AOD Services*

*“The last thing you need when you have hit rock bottom and you end up in court is a three-month delay for help.”*

Access to residential rehabilitation and in-patient services is vastly more limited in regional and rural NSW than in metropolitan areas. Many ALS clients who wish to engage with residential programs are forced onto waiting lists for months at a time, often while remanded in custody and experiencing harms that increase their risk of future contact with the criminal process post-release.

Clients who do obtain a bed in residential rehabilitation programs are frequently required to travel long distances to participate in programs that are off-Country and far from their family and community support networks. Many regional towns do not have consistently available community-based AOD programs, and culturally safe services delivered by ACCOs are even less frequently available.

### *Forensic Mental Health Services*

Forensic mental health services are also frequently inadequate in regional locations, with significant implications for regional safety. We have supported clients with significant mental health presentations who are rejected by regional hospitals after a court makes an order that they be taken to hospital for a mental health assessment under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*. Our solicitors report that it is not uncommon for regional hospitals to determine that a person is not mentally unwell in circumstances where the client in question has previously been found to be legally unfit to stand trial or has been subject to extensive Community Treatment Orders, and has existing diagnoses of serious mental illness.

### *Policing and Police-Community Relationships*

*“Because the police used to do that, used to take the kids [during the Stolen Generations], that’s why you see kids today, it’s been drummed into them since they were little kids, if you see the police, run. Now the police come to the schools and say we’re your friends and everything, but we were told, if you see the police, run.”*

*“The [training] they do in their academy and stuff is not accurate to the community they are working in, every community is different.”*

Recent findings of coronial inquests in Bourke and Moree re-affirmed the devastating impact of racism in the NSW Police Force on Aboriginal communities.<sup>41</sup>

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<sup>41</sup> *Inquest into the death of Mona Lisa and Jacinta Smith* (Coroners Court of NSW, State Coroner Magistrate Teresa O’Sullivan, 23 April 2024); *Inquest into the death of Gordon Copeland* (Coroner’s Court of NSW, State Coroner Magistrate Teresa O’Sullivan, 18 April 2023).

Police were historically the enforcers of the Aboriginal Protection Board, meaning in many instances they carried out child removal policies and enforced segregation policies.<sup>42</sup> This recent history of trauma, still in the living memory of many members of Aboriginal communities in regional NSW, alongside the ongoing under-policing and over-policing of Aboriginal communities, means that many Aboriginal community members in NSW hold well-founded mistrust and fear towards NSW police.

We also note the recent Law Enforcement Conduct Commission investigation, Operation Mantus, which found systemic and widespread abrogation of the rights of Aboriginal children when under arrest by NSW police, particularly in regional NSW.<sup>43</sup>

### *Affordable After-school and After-hours Services and Activities for Young People*

*“Services work 9 to 5, who is there for our kids after 5?”*

Many children in regional communities do not have access to affordable, safe and accessible pro-social activities. This was consistently identified as one of the most significant drivers of contact with the criminal process for young people by ALS staff in our regional offices.

In many regional communities, there are no safe, indoor places for children to be at night if they are unable or unwilling to be at home (for example, because home is unsafe or they are at risk of experiencing violence or overcrowding). Many noted that activities readily accessible in city locations, like team sports and sporting facilities, are non-existent, or too expensive to access for low-income regional families. This is particularly true in more remote locations.

### *Education*

*“For Indigenous kids the schools just give up too easily on them, they send them away, you can only do two days here, you’re too naughty, we can’t deal with you.”*

A significant proportion of children we represent are not currently participating in school, and a significant proportion of adults we represent left school before Year 10. Many people we represent do not have basic levels of literacy. This has a significant detrimental impact on prospects of future employment and economic stability.

Many children we represent are excluded from school at an early age, and are not provided pathways to continue education. Our criminal lawyers have represented multiple children in regional towns who have asked their lawyer to let them go into custody because in custody they can attend school.

### *Pre- and Post-Release Support and Throughcare*

*“People get released from custody without much support and a very bad drug problem and quickly reoffend, it seems avoidable.”*

We consistently see both adults and children released from custody without vital supports like housing, identification documents, access to Centrelink, employment or transport. We also consistently see clients who have received medical or mental health treatment for the first time in custody released without a discharge summary or transfer of treatment and medication to a community-based service, meaning there is no continuity of care. All of these factors significantly increase the risk of further contact with police and courts.

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<sup>42</sup> Dr Christine Jennett, ‘[Policing and Indigenous Peoples In Australia](#)’, Paper presented at the History of Crime, Policing and Punishment Conference convened by the Australian Institute of Criminology in conjunction with Charles Sturt University and held in Canberra, 9-10 December 1999.

<sup>43</sup> Law Enforcement Conduct Commission, [Operation Mantus: A report under section 132 of Law Enforcement Conduct Commission Act 2016 concerning alleged excessive use of force and issues concerning police interviews of young persons in custody](#), December 2023.

Adult clients in custody on remand are also denied access to programs and education due to their classification. With 50% of Aboriginal adults on remand released to the community at time of finalisation, this means they have spent time in custody deprived of access to supports which may reduce their risk of future incarceration, while experiencing the disconnection and harm to their social and community supports caused by incarceration.

### *Youth Koori Court*

*“The Youth Koori Court model is working.”*

While we urge prioritisation of primary prevention and early intervention measures, for children who are criminalised, we are supportive of court-based approaches which are more culturally responsive, trauma-informed and individualised to the needs of defendants. The Youth Koori Court model has been evaluated to reduce incarceration (and thereby all the associated harms which increase crime) without increasing recidivism. All Aboriginal children before the Children’s Court across NSW should have the opportunity to access Youth Koori Court, especially in regional and remote areas where intensive casework and support services are most difficult to access.