

**INQUIRY INTO HIGH LEVEL OF FIRST NATIONS
PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF
DEATHS IN CUSTODY**

Organisation: Community Restorative Centre

Date Received: 24 August 2020

COMMUNITY RESTORATIVE CENTRE
SUBMISSION FOR THE SELECT
COMMITTEE ON THE HIGH LEVEL OF
FIRST NATIONS PEOPLE IN CUSTODY
AND OVERSIGHT AND REVIEW OF
DEATHS IN CUSTODY

24th August 2020

Written by First Nations (Post-Release, Transition and AOD Support)
staff at CRC including:

Kym Bugmy
Terina King
Gail Gray
Melissa Merritt
Tara Morrison
Kelly Parker
Elizabeth Wymarra

and

Mindy Sotiri (CRC Director Advocacy, Policy and Research)

CRC would like in this report to explicitly acknowledge the work and legacy of Uncle Ray Jackson who served on the Community Restorative Centre board for 10 years, and as an Aboriginal advisor to CRC for many more. Uncle Ray spent his life working to confront systemic racism and violence in criminal justice system settings, as well as supporting and fighting for the families of people who had died in police and prison custody. Ray was the founding Secretary of the Deaths in Custody Watch Committee in 1987, and when that was de-funded in 1997, he set up the Indigenous Social Justice Association to continue this work voluntarily. He did this right up until his death in 2015. Ray's legacy, including his relentless intellect, determination and courage in his long struggle for justice for First Nations people continues to inform and inspire the work that we do at CRC. He was greatly loved, and he is greatly missed



INTRODUCTION: DECARCERATION AND THE NEED FOR COMMUNITY LED SUPPORT	4
THE NEED TO STOP IMPRISONING DISADVANTAGE	4
THE NEED TO BUILD GENUINE PATHWAYS <i>OUT</i> OF THE JUSTICE SYSTEM	5
THE NEED FOR COMMUNITY LED, CULTURALLY SAFE, FIRST NATIONS SUPPORT (AT EVERY POINT IN THE JUSTICE SYSTEM)	5
THE NEED FOR DECARCERATION AND DECRIMINALISATION OF FIRST NATIONS PEOPLE	6
SCOPE AND LIMITATIONS OF THIS SUBMISSION	6
INTRODUCTION TO THE COMMUNITY RESTORATIVE CENTRE	7
HISTORY AND FOUNDING PRINCIPLES.....	7
VISION.....	7
PURPOSE	8
VALUES.....	8
FIRST NATIONS OVER-REPRESENTATION	9
DECARCERATION OF FIRST NATIONS PEOPLE.....	10
THE FAILURE OF PRISON TO ACHIEVE ITS CRIME CONTROL AMBITIONS (REHABILITATION, DETERRENCE AND PROTECTION OF THE COMMUNITY).	10
WORKING WITH FIRST NATIONS PEOPLE POST RELEASE	11
THE NEED FOR CULTURALLY SAFE, COMMUNITY BASED FIRST NATIONS SUPPORT WORKERS IN POLICE CELLS AND COURTS.....	13
POLICE STATIONS AND CELLS	14
COURTS	14
<i>Homeless or staying with family?</i>	15
PRISONS.....	16
THE NEED FOR FIRST NATIONS AND COMMUNITY BASED SUPPORT SERVICES TO PROVIDE SUPPORT IN PRISONS... 17	
<i>Self Harm in Custodial Settings</i>	17
THE FAILURE OF PRISON PROGRAMMING FOR FIRST NATIONS PEOPLE.....	17
<i>Risk Needs Responsivity and Criminogenic Needs*</i>	18
<i>The applicability of the findings of the research to populations outside of incarcerated North American young men</i>	18
<i>The ideological underpinnings of the model</i>	18
<i>The conflation of risk and need in the RNR framework</i>	19
<i>The reliance on a deficits approach to reduce re-offending</i>	19
<i>The need for culturally safe First Nations support in prisons</i>	19
DIVERSIONARY RESPONSES AND THE DANGERS OF NET WIDENING	20
WOMEN, MEN, CHILDREN	22
FIRST NATIONS WOMEN.....	22
FIRST NATIONS MEN.....	23
FIRST NATIONS CHILDREN AND YOUNG PEOPLE	23
THE NEED FOR FIRST NATIONS RUN HEALING CENTRES	25
FIRST NATIONS HEALING INTRODUCTION AND OVERVIEW	25

KEY FEATURES OF BEST PRACTICE FIRST NATIONS HEALING MODELS	26
LANGUAGE AND HOLISTIC APPROACHES.....	26
INVOLVEMENT OF FAMILY AND COMMUNITY.....	27
CULTURAL AND SPIRITUAL SUPPORT	27
THERAPEUTIC/TRAUMA INFORMED/FLEXIBLE SERVICE DELIVERY	27

INTRODUCTION: DECARCERATION AND THE NEED FOR COMMUNITY LED SUPPORT

CRC welcomes this inquiry and the opportunity it presents for organisations such as ours to have input into addressing the urgent issue of the over-incarceration, over-representation, and high levels of deaths in custody of First Nations people.

We are writing this as a service delivery organisation with close to 70 years working with incarcerated people who are leaving custody and their families. However, we are also writing this, bringing together the knowledge of CRC First Nations staff; a group of workers and individuals who have both professional and lived experience of the justice system. CRC recognises that First Nations organisations and individuals have been fighting systemic racism, police violence and the horrifying reality of deaths in custody for decades. CRC works every day with incredible individuals who are working and fighting to build pathways out of what is too often, a brutal criminal justice system. We see every single day, the way in which the justice system works to cement inequality, and how hard it is to escape it. We know that we can never imprison our way to a safer, or more just society. We know that the Aboriginal and Torres Strait Islander communities we work with hold the answers, and are waiting for an Australia that is brave enough to sit up and listen.

CRC's position is that the decarceration of First Nations people is not a 'wicked' problem, or an impossible policy dilemma. We believe that dramatic decarceration is entirely possible when there is enough political will, alongside the prioritising of resourcing communities to provide meaningful support for people at risk of incarceration. We know this because we see it in action every day with the men and women we support to build pathways *out* of the justice system. We know this, because the people we support have incredibly low recidivism rates when compared to the general population. Only 12% of the people CRC work with return to prison within two years. This is not because CRC is doing anything miraculous. It is because we are a community based organisation that is doing *something* (providing holistic, long-term support), when most of the time, for most people leaving prison, there is nothing. CRC recognises the importance of employing First Nations staff in order to ensure that First Nations people who are involved in the justice system, have the option of working in a way that is culturally safe. CRC also recognises the enormous value of employing people with lived experience of the criminal justice system, again, so that people leaving prison have the option of connecting with people who understand what that system actually looks like from the inside.

We recognise that the First Nations people we work with leaving custody are the experts in their own lives, are remarkably strong, resilient, and frequently highly motivated to break free of the justice system. Too often, however, the pathway out of this system is thwarted by ongoing and unnecessary over-policing, over-surveillance, and over-supervision, and a complete absence of community based support. Addressing over-incarceration must also address what is – and isn't happening on the ground in the community.

The Need to Stop Imprisoning Disadvantage

Regardless of expressions of purpose, prisons have always housed our most disadvantaged and disconnected citizens. People in prison have multiple and complex support needs that are frequently not identified or supported in the community. This complexity of need can often mean exclusion from mainstream services. People end up being 'managed' in criminal justice system settings rather than being supported in the community. Almost all CRC

clients are homeless, and almost all have experienced regular exclusion from services *because* of their complexity of support need. Often for instance, they are not able to access alcohol and other drug services because they also have a mental health condition. Or they are not able to access supported accommodation, because they also have ongoing drug and alcohol addiction. Or, they are not able to access a DV service, because they have just come from prison. Many mainstream services – especially services with accommodation, will not take people direct from custody. There is very little debate that the prevalence of disadvantage in NSW prisons (as is the case with prisons across Australia) is extraordinarily high. The table below outlines this disadvantage (based on Justice Health and Forensic Mental Health patient survey data).

Disadvantage	Prevalence in NSW Prisons
Homeless (primary or secondary)	24%
Mental health diagnosis	63%
Cognitive disability	8-20%
Experienced traumatic event	65%
Have been in abusive relationship	28% men 71% women
AOD related offence	60%
Placed in care <16 years	14%
Left school by year 10	72%
Juvenile custody	32%

The Need to Build Genuine Pathways Out of the Justice System

Many First Nations people we work at CRC with have never before experienced any culturally meaningful, consistent, or long-term support to find a pathway away from imprisonment. Instead they have experienced relentless 'management' by various institutions of punishment. This submission argues that building pathways out of the justice system requires community led support. While there is clearly the need for significant reform of sentencing, policing, courts, and prisons, this will only ever be of limited value unless there are genuine options community based reforms also. From the perspective of the community sector, shifting First Nations over-incarceration requires looking outside of the justice system entirely and demands proper engagement and resourcing at the level of community.

The Need for Community Led, Culturally Safe, First Nations Support (at every point in the justice system)

The opportunities afforded the men and women who happen upon CRC and engage with our intensive post-release programs, are not available for the majority of First Nations people leaving custody. The demand for our services far outweighs what we, and other comparable community organisations are able to provide. It is our view that every First Nations person who is involved in the justice system should have access to support at every critical point in the justice system. This support should be *independent* from the government institutions that are responsible for policing and punishing, and should be led by First Nations communities. This includes post-release support (as described in some detail in this

submission), support in police stations, and support in courts. This support should always have movement away from both prisons, *and* movement away from state supervision as its goal.

The Need for Decarceration and Decriminalisation of First Nations People

While there are practical suggestions noted in this submission about how to make the existing justice system 'safer' for First Nations individuals, we are also absolutely clear that the key to reducing deaths in custody is by reducing involvement with the justice system entirely. This includes involvement with police, courts, youth justice, and corrections (including parole and non-custodial forms of punishment).

Strategies of decarceration should always be focused on building community resources and community support. They should always be led by First Nations people who know their communities and know what is needed to build sustainable pathways that lead people as far away from prisons as possible. Strategies are required that prevent involvement with the justice system entirely, but in tandem with these, reform is required at every point of justice system involvement to ensure people are safe, and wherever possible have the option of a pathway out.

SCOPE AND LIMITATIONS OF THIS SUBMISSION

This submission is focused on the many ways it is possible to disrupt entanglement with the criminal justice system for First Nations populations who are already criminalised. It is focused on strategies of decarceration for populations who have frequently never received support that is culturally meaningful or had the option to build a pathway *out* of the criminal justice system. We are focusing on justice system settings (particularly prison and post-release), because it is the area of work that we have expertise in. However, we note that there are many critical points prior to *any* engagement with the justice system, that should also be addressed. Any project that is focused on reducing over-incarceration and stopping deaths in custody needs also to look at the social and health drivers of disadvantage. This includes early intervention and the strengthening and supporting of First Nations early childhood education and services, and family and community supports. We note that the men and women we work with have survived incredible disadvantage and trauma often throughout their whole lives. Early intervention in communities where high levels of disadvantage are the social drivers of incarceration is critical. Similarly, although it is not a focus of this submission, we note the importance of sentencing reform as another critical element to assisting with decarceration of First Nations peoples. This includes improving access to culturally meaningful court processes, re-thinking and redesigning bail legislation, and working to looking at culturally meaningful diversion from custody (wherever possible outside of court imposed community sanctions). And finally, although we talk briefly about the need for access to support people in police stations and cells, we do not spend a great deal of time on the significant issue of constant over-policing of First Nations communities, and make only brief mention of the (often extraordinarily discriminatory) experience of policing reported by the First Nations people CRC works with.

INTRODUCTION TO THE COMMUNITY RESTORATIVE CENTRE

The Community Restorative Centre is the lead NGO in NSW providing specialist support to people affected by the criminal justice system, with a particular emphasis on the provision of post-release and reintegration programs for people with multiple and complex needs on release from custody. CRC has almost 70 years specialist experience in this area. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal justice system involvement, and build pathways out of the criminal justice system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social isolation, cultural and community connection, physical and mental health, disability, employment, education, family relationships, financial hardship and histories of trauma.

Clients who participate in CRC's long-term intensive reintegration programs have recidivism rates of 12% over 2 years (measured using BOCSAR's tracking service). CRC works with both individuals and their families in the process of reintegration.

CRC works with around 800 people leaving prison each year. 44% of these clients are Aboriginal or Torres Strait Islander. CRC has a number of projects that are specifically funded to work with First Nations people in the justice system. These projects employ First Nations staff, and include; an Indigenous Throughcare Project in Far West NSW (Broken Hill and Wilcannia), Transitional Support for Aboriginal people leaving custody with complex needs including drug and alcohol use in Western Sydney and in Central Eastern Sydney, and the Miranda Project in Penrith (working with women at risk of both criminal justice system involvement and domestic violence).

History and Founding Principles

CRC was founded in 1951. The principles underpinning its establishment still form the foundations for much of CRC's service delivery. People released from prison have paid their debt to society and have the right to re-establish their lives in the community without stigma, stereotyping or discrimination. They should be offered support that eases their transition back into the community, improves their life options and assists them to build pathways out of the criminal justice system. Families of prisoners should not be punished or suffer from discrimination by the justice system. They should be entitled to support to minimise the effects of having a relative or loved one imprisoned. This support should help sustain their relationships with their relatives in prison, and enable the re-establishment of family upon release of the prisoner, if in the best interest of all parties. People should leave prisons in a better physical, emotional and educational state than when they entered. They should be given a sense of personal dignity and worth and real chances to obtain employment or other forms of community connection and re-establish themselves in the community. Many prisoners are people who have experienced significant social and economic disadvantages that underpin their offending and re-offending. People require support to move out of this cycle. All clients of CRC have the right to support that is non-judgmental and preserves their confidentiality and dignity.

Vision

A just, safe and inclusive society that is working towards decriminalisation and de-carceration.

Purpose

CRC supports individuals, families and communities impacted by the criminal justice system, and works for positive social change.

Values

1. Social disadvantage is an underlying cause of incarceration and people should not be criminalised or discriminated against as a consequence of their disadvantage.
2. Australia's history of colonisation and oppression is reflected in and a cause of the relationship between Australia's Aboriginal and Torres Strait Islander people and the criminal justice system.
3. The application of the law reflects broader inequalities and is not always just.
4. Imprisonment is overused, is a failed response to crime, causes more harm than good and leads to more imprisonment.
5. For as long as there are prisons, they should be fair, just and humane environments which respect universal human rights.
6. There is a need for community based alternatives to the criminal justice system.
7. People who have been released from prison should not experience perpetual punishment.
8. The families and kin of people who are incarcerated are often serving an invisible sentence and require acknowledgement and support.

All CRC services utilise a human rights framework which recognise the inherent value of all people and aim to create genuine opportunities for people affected negatively by the criminal justice system; People leaving prison and their families have the right to be treated fairly and have the ability to make genuine choices about building pathways *out* of the criminal justice system and into the community.

FIRST NATIONS OVER-REPRESENTATION

The over-representation of First Nations people in prisons across Australia has now been the subject of numerous government inquiries and reports. This over-representation both reflects, and reproduces a raft of disadvantage. Across Australia 75% of First Nations people in prison have experienced prior incarceration. First Nations people with mental and cognitive disabilities are also significantly over-represented. This group have frequent contact with police from a younger age than non-Indigenous people with disabilities¹ and are over-represented at all stages of the criminal justice system.

The ABS notes that in the March quarter of 2020, the average daily number of Aboriginal and Torres Strait Islander people locked up was 12,902. The total number of incarcerated individuals over this period was 44,159. This means that First Nations people constitute 29% of the total prisoner population, despite making up only 3% of the general population. In some jurisdictions, and amongst some demographics over-representation is even more stark.

In NSW, there are currently 3,184 Aboriginal and Torres Strait Islander people locked up in adult centres, constituting 25% of the total prisoner population. Of the 200 children locked up in NSW close to 40% are Aboriginal. First Nations men and women in custody are also growing at a rate faster than any other prisoner demographic. That is, the over-representation of Indigenous people in custody is *increasing*.²

The increasing numbers of people being *released from prison*, (in NSW that is over 20,000 per year) requires a response that incorporates in a very practical sense the complexity of First Nations over-representation in the criminal justice system. Over many years of working in post-release (more detail is provided below with regard to CRC's specific service model) it is clear that understanding pathways into custody requires an understanding about the absence of alternative pathways *out* for many First Nations communities. CRC programs are focused on very practically building concrete pathways *outside* of criminal justice settings, and utilising community strengths (particularly culturally) in order to build these. However, there are some areas we work in, where those pathways are almost non-existent. These include:

1. Access to culturally safe First Nations community support in police custody and courts
2. Access to culturally safe First Nations community support *while* incarcerated
3. Access to culturally safe First Nations pre-release planning and post-release support
4. Access to culturally safe First Nations healing programs (including as diversionary programs and alternatives to incarceration).

DECARCERATION OF FIRST NATIONS PEOPLE

Between March 10th and May 15th this year, the NSW prisoner population reduced by more than 1500 people. During the emptying of prisons during COVID-19, the NSW women's population was reduced from 1,022 to 831 (18.7% reduction), compared to a reduction of 9.4% in the men's population. While the catalyst for this dramatic reduction was COVID-19, this process of decarceration provides an important case study. The speed with which the reduction occurred, the political will that allowed it to happen, and the fact that the community did not appear to become any less safe as a consequence, raises important questions about over-incarceration, recidivism, release and indeed the purpose or function of imprisonment.

The failure of prison to achieve its crime control ambitions (rehabilitation, deterrence and protection of the community).

What is clear, is that First Nations over-incarceration has no correlation to improved community safety. What is also clear is that prison itself is criminogenic. The more somebody spends time in prison, the greater the likelihood that they will return. After more than 70 years working with people leaving custody, it is very clear to CRC, that imprisonment does *not* increase community safety, or in fact achieve any of its stated crime-control functions.

It is clear that prison does not rehabilitate (and as discussed below, the concept of rehabilitation is itself problematic); more than 70% of people in NSW prisons have been in prison before. The threat of imprisonment does not deter or prevent people from committing crime. There is no indication in any research that threats of harsher sanctions such as long prison sentences result in decreased crime. We know that most crime is committed with no thought given to its potentially carceral consequences. Most of the crime committed by the men and women we work with is enacted in chaotic circumstances, frequently driven by drug addiction, which in turn is driven by trauma. People are certainly not committing crime and calmly weighing up the benefit of the crime and the costs of incarceration. In this sense, the deterrent justification of imprisonment is deeply flawed. Additionally, although people might be frightened of prison initially, this individualised deterrent effect does not generally last beyond the first experience of custody. People stop being frightened of going to prison, and indeed, often become much more anxious about surviving in the community (after enough periods of time in prison). Although there may be some short-term community protection functions that imprisonment performs (that is, there can be community safety benefits when individuals are imprisoned if they were prolific in committing particular crimes in a particular neighbourhood for instance), but there is no systemic crime control or community safety benefit to incarceration. In the experience of CRC, the current system of incarceration makes things both worse for the individuals who are incarcerated, and less safe for the broader community.

Responding to First Nations over-incarceration (and over-representation) requires exploring *all* avenues for decarceration, and all possible avenues for de-criminalisation of First Nations people. There are clearly some of these avenues that are located in existing justice structures, and many which require a genuine shifting of resourcing *out* of the justice system and in to the community. There are still significant policing, court and prison reforms that are required in order to ensure First Nations communities have the most basic access to justice and support. However, outside of the justice system, there is an enormous need for First Nations led, culturally safe support, programs and community building initiatives that as far as possible turn their back on the existing systems of punishment.

WORKING WITH FIRST NATIONS PEOPLE POST RELEASE

There is a need for First Nations support workers to support First Nations people leaving prison. While CRC is the largest post-release service in NSW (working with close to 800 people on release each year) we are not able to meet the demand for our services, and there are many geographic regions where we are not funded to provide support. There is now consensus in best practice research that the post-release period (particularly the first three months following release) is a time of extremely high risk in terms of re-offending, relapse into problematic drug and alcohol use, as well as risk in terms of mortality (in terms of suicide and drug overdose). These risks are exacerbated for people who are homeless, have mental illness, have cognitive impairment, have long histories of generational unemployment, and are in other ways disengaged from family and community. There is an encouraging emerging research base that notes the significant impact that services that focus on the provision of support in this period can make.

Best practice services for complex needs populations in the post release period include the following characteristics.

1. **Reintegration framed outside of the lens of rehabilitation.** There is a need to create and facilitate pathways for people leaving prison that are not explicitly focused on addressing offending behaviour, but rather focused on the creation of an identity outside of the criminal justice system and addressing systemic barriers to reintegration. This 'non-prison' identity might be accessed in the form of a family role (i.e., mother, carer), employment, volunteering or education opportunities, or through participation in recreational or leisure activities. For First Nations populations, identity is often related to culture, family and community.³
2. **Service delivery incorporating systemic advocacy.** Service delivery must include a significant advocacy component that addresses structural barriers for individuals (such as access to housing, employment, education, health and social security benefits), and advocates systemically for change when this is required (for instance in the case of discriminatory employment practices). Systemic advocacy sees workers walking alongside people leaving custody, and challenging the multiple forms of perpetual punishment experienced by people with criminal records.⁴
3. **Pre-release engagement.** Meeting and working with people prior to release is necessary with respect to building the engagement necessary to sustain the case-work relationship, building trust between someone in prison and the community organisation on the outside, and practically planning for re-entry into the community with complex needs populations).^{5 6 7}
4. **Holistic, relational and long-term casework models.** People with long histories of trauma in combination with the “referral fatigue” experienced by this group, require long-term support in order to build engagement and trust. Long-term support also allows people the opportunity to develop the skills required to navigate frequently hostile or unwieldy service systems.^{8 9 10} Many CRC clients also require support with living skills and adjusting to life outside of institutional environments.

5. **Community based outreach.** Services that work with people with long histories of criminal justice system involvement need to operate outside of the criminal justice system, and in the communities in which people are living.¹¹
6. **Housing first approaches** (and in some jurisdictions, employment first approaches). Support must be concrete. Most people require a solid base from which they can try and make the changes required to stay out of prison.¹²
7. **Genuine collaboration and work with people with lived experience of incarceration** at all levels of program delivery. The expertise of people who have themselves been to prison is critical in both the design and the delivery of community based reintegration services.¹³¹⁴

For First Nations people, there are additional and critical elements of cultural support that are required in order to empower individuals and communities to move away from criminal justice system involvement. Models of Indigenous through-care share many of the features of the holistic model described above. In addition, however, the following elements are critical:

1. **Employment of First Nations people** to provide holistic and culturally safe throughcare support
2. **Engagement with First Nations families and communities** (the post-release journey is not just an individual one)
3. **Engagement with culture and land** (including for instance language, country, and art)
4. **Trauma Informed** post-release support that understands and engages with inter-generational disadvantage, trauma and imprisonment
5. Post-release support that understands and works with legitimate mistrust of white organisations (particularly those attached to institutions of punishment (police, courts, prisons))
6. Support and organisations that are able to work with genuine flexibility (particularly with regard to outreach work, and flexibility in terms of appointment times)
7. Support that acknowledges that in some communities, that although spending time in prison is such a regular event that it has in many ways become 'normalised', this in no way diminishes the damaging impact that continued incarceration and institutionalisation has of both individuals and communities.
8. Support that acknowledges that over-incarceration has a dramatic impact on First Nations communities, especially when people with significant community roles and responsibilities are imprisoned.

THE NEED FOR CULTURALLY SAFE, COMMUNITY BASED FIRST NATIONS SUPPORT WORKERS IN POLICE CELLS AND COURTS

There needs to be **paid/professional** First Nations support workers at all stages of the justice system to work on getting people *out* of the system. These workers are also needed to identify and challenge dangerous and discriminatory practices. While there is obviously also a need for legal support within the legal frameworks of the justice system, there is a need for this to be supplemented with community and social support. First Nations specific, social, cultural and advocacy support should be available to all First Nations people who are in police custody, facing court, or in prison. This support should be independent from the government institutions responsible for policing and incarceration. It should be based in the community sector, funded, and led by First Nations staff.

Although there is frequent and important attention on the need for access to legal representation in police stations and courts, there is also a need for First Nations led, community based support. When existing CRC clients are detained by police, are attending court, or are incarcerated, a large part of our casework involves supporting them and advocating for them through these processes. This support often involves coordinating legal representation, as well as physically attending court and police stations, and assisting whenever possible to move people out of these systems (either through assisting with bail applications, or advocating to the court for non-custodial options). We observe regularly how significant the presence of a CRC worker in courts can be when it comes to giving magistrates options outside of incarceration. It is frequently the case that magistrates are keen to avoid custodial sentencing, but require reassurance that some sort of work and support is happening in the community. It is also the case that support in police stations improves the likelihood of police bail. However, for the bulk of people moving through these systems, this support does not exist.

First Nations families and friends regularly support their loved ones through criminal justice processes, but often report being dismissed in terms of requests for information and transparency, and also report being treated disrespectfully. Having community based First Nations support staff to work alongside family members and lawyers in these spaces which are often considered dangerous and risky (police cells, court cells, prisons) would make a huge difference in terms of improving safety, health and well-being, as well as in ensuring fairer processes, and a greater level of transparency in terms of the practices inside these systems.

It is the position of CRC that these positions should be resourced and funded. While there are important examples of some successful volunteer support schemes (for instance, the Criminal Justice Support Network running out of the Intellectual Disability Rights Service which supports people with disabilities in police stations and courts), this model is unlikely to be sustainable in First Nations communities, where communities are already relied upon in terms of unpaid caring and support labour more than what is often able to be sustained. Although there are some examples also of First Nations volunteer schemes, including for instance, in some jurisdictions elders' groups coming to police stations when young people are locked up, in order to provide a long-term, funded, and systemic form of support, these positions should be resourced.

Police Stations and Cells

The First Nations people we work with have overwhelmingly negative experiences in their interactions with police. Many people we work with report having experienced violence at the hands of police, and most have at the very least, experienced extremely disrespectful behaviour. This includes First Nations people with disabilities, severe mental illness, and chronic health conditions. The fact of someone's Aboriginality tends to eclipse any other support needs that are apparent. That is, behaviour that is sometimes a result of disability tends to be read as non-compliance. Behaviour or appearance that is a result of health conditions, tends to also be read by police as non-compliance. Even when this is not the case, the men and women we work with report very rarely having their legitimate health and welfare concerns taken seriously. First Nations families are on constant alert, and are regularly terrified for the welfare of their family members when in police custody. This is an entirely unacceptable situation, and needs immediate redress.

Very few First Nations clients are aware that they are able to access a support person while in police cells. Right to this support should be widely advertised in police stations, and should be a vital part of information that is given to First Nations people when they are arrested. There should be regular contact between First Nations support services and workers with the custody managers in police lock-ups. Our clients report that having Aboriginal workers visiting them in police cells makes everything more bearable. It has been reported that 'people don't get bashed if there's a witness'. Many Aboriginal people will suggest that if they can, they hide fact of their Aboriginality to facilitate more reasonable treatment in police custody. The thinking is that 'if you don't mention he's a black fella, he's more likely to get off.'

It is our view that whenever an Aboriginal person is arrested by police and detained, not only should there be access to legal representation, there should also be access to skilled, First Nations support people. The custody notification scheme should be supplemented with a scheme that ensures First Nations casework and support is also available to all who require it. There is a need for a triage system in police cells, led by community based First Nations workers, who are able to assess the mental health and well-being of First Nations people in custody, and immediately provide advice and assessment.

Courts

There is the need for paid First Nations support workers to assist people through court processes (specialist and otherwise). This support should include contact with people prior to their court attendance when possible, and on the day of court. This support should then continue in the community (or in prisons if people end up in custody). Courts are a critical juncture in the justice system, and community supports that are in place at this point can make a huge difference in terms of whether or not someone ends up in prison or not. Pre-court support should occur in collaboration with Aboriginal Legal Services and other legal representation. This community led support would ensure legal representation is prepared, support letters where applicable are on hand, and also (importantly) make sure that people are aware of when and where they are needing to attend. There should also be access to clients while in the court cells, including if they are being held there prior to transport to Correctional Centres.

There is also in NSW a need to explore the option of specialist courts and sentencing options that recognise the cultural and social context of criminal justice system involvement for First Nations people, and that are geared towards non-custodial options. While in NSW there are some highly successful specialist schemes (the Koori court for young people, Circle Sentencing options for First Nations people in some geographic regions), these options have limited accessibility, require a guilty plea, and often do not have adequate community or social support attached. The people CRC works with often find the existing court system alienating, intimidating and disconnected. NSW would do well to explore alternative court options that are culturally meaningful for First Nations communities.

HOMELESS OR STAYING WITH FAMILY?

CRC works with people who have frequently been refused bail as a consequence of their homelessness. That is, magistrates make determinations to refuse bail, because someone doesn't have a fixed address. While homelessness is a critical issue for people leaving prison, there needs to be greater scrutiny of what this means in many First Nations communities. It is frequently the case that people move around regularly between families and kin. People in these circumstances would not view themselves as homeless, but frequently courts make this determination if there is not a single address that people are able to confirm as their own. There is a need to explore the designation of homelessness through a cultural lens as it relates to bail refused decisions. First Nations justice support workers would be able to assist with navigating this territory.

PRISONS

The over-representation of First Nations people in NSW prisons requires an urgent political and social response. Despite the best intentions of prison administrators, imprisonment in NSW is experienced by the men and women we work with as dehumanising, demoralising, highly stressful, often violent and at times mind-numbingly boring.

More than 70% of people in NSW prisons have been there before. Although people become very accustomed to institutional settings, and many CRC clients with long histories of justice system involvement frequently describe *leaving prison* as more frightening than *going to* prison, the detrimental impact and trauma of the prison environment should not be underestimated, despite how familiar it is to the majority of people we lock up.

In order to understand the high rates of self-harm and deaths in custody amongst First Nations populations, it is necessary to understand what the punishment of incarceration actually looks like. The punishment of prison extends well beyond loss of liberty, although the significance of what loss of liberty actually entails also requires examination- especially for First Nations people. There are 38 prisons around NSW, and for the most part, people are housed in prisons significant distances from their loved ones and families. For Aboriginal populations, they are housed away from community and country. It is extraordinarily difficult and expensive for families to visit remote centres – and during COVID-19, there have been no family visits at all. Aside from the psychological toll of missing family members (including children of incarcerated people), for First Nations people who are locked up, their incarceration frequently means not only missing country and family, but also missing important cultural participation, including regular Sorry Business.

We have a system of punishment in NSW where people are given numbers, uniforms, stripped of their identities, stripped of their access to supports and families, are subject to humiliating strip searches and other demeaning treatment, and more often than not, do not have access to any meaningful activity or support.

Much of the time, imprisoned populations have no easy access to supports in the community. They cannot pick up a phone and call to request support with housing or domestic violence or drugs and alcohol or other health issues. People are entirely dependent on Corrections officers to facilitate any requests to seek help of any sort. We hear regularly of people having to wait for weeks (after having put in a request form) to receive medical care, psychological care, or have welfare needs met. We hear regularly of requests for help *never* being responded to. This includes requests for medical support.

Educational opportunities are also limited (particularly since sacking of teachers in prisons in 2016) and where they exist they are frequently disrupted because of constant movement throughout the various prisons. Although there are work options inside many Correctional Centres, CRC clients report there are very limited options for work that translates to genuine employment opportunities outside of prison. Time out of cells is in most centres also extremely limited. People are regularly locked inside their cells for more than 20 hours at a time. Lock downs (as a result of staffing shortages or security concerns) are a frequent and normalised part of life in prison.

Although there are some variations on this theme for people who are serving longer sentences (who may find greater work or education or program opportunities), for the vast majority of people who are incarcerated in NSW (1/3 of whom are on remand) imprisonment serves only to diminish, to isolate, and to further disconnect people who have frequently

already experienced disadvantage and marginalisation. This combination of factors results in a situation where mental health frequently deteriorates, and people with already significant health conditions become more unwell.

The Need for First Nations and Community Based Support Services to Provide Support in Prisons.

First nations people in custody need people that they trust, and that they can access. At the moment, many First Nations people in prison report relying on other family and friends – or cell-mates in custody to support them through difficult times. We need to do much, much more. Although CRC is able to provide support to people in prison that we have already worked with in the community, this is often made more complex by the difficulty and restrictions in terms of access. There is a need for independent, First Nations support to be provided to all First Nations people who are incarcerated. This means we need to stop assuming that Corrections NSW is going to offer this support, and open the doors to community based organisations and support services that have support (rather than punishment and security of prisons) as their mandate.

SELF HARM IN CUSTODIAL SETTINGS

There are high levels of self-harm inside prisons amongst First Nations people, and in our experience, there are many First Nations people who self-harm in prison environments who have no previous history of this. Frequently we hear from people in great distress who are locked up and simply not getting the care or treatment they need. Self-harm is often a response to an incredibly desperate situation. There are also instances where 'cultural cutting' (for instance sorry-cuts in response to sorry business) are mistaken for self-harm. There is the need to use a cultural lens to understand this. Regardless of the motivation for cutting or self-harming, there is a need for First Nations culturally safe support to be provided inside prisons that is independent of CSNSW.

The Failure of Prison Programming for First Nations People

In NSW prisons, the key programs that are available in prison (and in fact are often required in order for people to progress through the classification system) are psychological. They are reliant on a highly narrow understanding of offending and crime, and is considered by the people we work with as necessary in order to get parole and classification reductions, but of little value in terms of addressing the key issues that they identify as being important. We spend some time outlining this model here, because it highlights the significant problems with the choice of 'intervention' chosen by Corrections NSW and its inapplicability to incarcerated First Nations populations.

There is very little debate about the demographics of who we send to prison in terms of disadvantage, yet when it comes to Correctional programming, we ignore all of our knowledge about the social drivers of incarceration and disadvantage, and instead focus on a highly individualised, psychological approach. Although we *know* that over-imprisonment for First Nations populations is intimately connected to a history of colonisation and genocide and inter-generational trauma, when we imprison people, we ask them to stop this cycle, by taking responsibility for their 'problematic' psychology. CSNSW has committed considerable resources to these kinds of programs. While there is absolutely value in looking at thought patterns and cognitions and psychological processes when exploring offending, it is suggested here, that the obsession with this approach to 'rehabilitation' within Corrections is

both deeply ineffective for First Nations people who are locked up, and actually highly problematic in terms of how it frames responsibility for incarceration.

RISK NEEDS RESPONSIVITY AND CRIMINOGENIC NEEDS*

The Risk Needs Responsivity (RNR) model developed in 1990 by Canadian researchers¹⁵ and based primarily on large-scale retrospective meta-analyses of North American ‘what works’ literature, has driven the development of a particular approach to therapeutic correctional programs across most Australian jurisdictions, including NSW, for over a decade. This model for understanding ‘what works’ to reduce reoffending, or what works to change ‘offender’ behaviour has also dominated correctional programming in the US and Canada, and is considered in many correctional jurisdictions to constitute the central evidence base on which all programs intended to address offending should be designed.¹⁶ Over the last few years, internationally, there has been growing recognition, even amongst staunch proponents of RNR that only adhering to this model (and ignoring other evidence based approaches which look unapologetically at the key structural, social and health drivers of imprisonment) represents a monumental failure of the correctional imagination.^{17 18} This is *especially* the case when looking at these programs in terms of First Nations populations.

THE APPLICABILITY OF THE FINDINGS OF THE RESEARCH TO POPULATIONS OUTSIDE OF INCARCERATED NORTH AMERICAN YOUNG MEN

There is strong evidence to suggest that RNR and criminogenic frameworks are not meaningful in Indigenous populations,^{19 20 21} are of limited use for women,^{22 23 24 25} and do not have applicability for people with cognitive impairment and mental illness.²⁶ The vast majority of studies that have contributed to the body of meta-analyses research, have focused on populations of young, white men, imprisoned in North American correctional facilities.²⁷ Researchers have noted that the context in which people are imprisoned alongside the demographics of these populations has a remarkable impact on the capacity of programs to be meaningful.^{28 29} Even within the RNR framework, there is recognition that the social characteristics of populations in prison impact the extent to which someone is able to be receptive or responsive to correctional programming.³⁰ Given the NSW context, where Indigenous populations and people with multiple and complex support needs including mental illness, cognitive impairment and homelessness are overwhelmingly over-represented, the extent to which programming based on RNR models actually has a meaningful evidence base (particularly with regard to responsivity) is questionable.

THE IDEOLOGICAL UNDERPINNINGS OF THE MODEL

The ideological underpinnings of the RNR model seek to understand and address offending behaviour by focusing on individual psychology to the exclusion of other social, cultural or systemic drivers of crime and incarceration. Within the RNR model, crime tends to be framed – and offending behaviour addressed – as a product of anti-social thinking and impulsive behaviour, rather than being reflective of a complex array of interconnected social and structural drivers, most of which are also defined by acute disadvantage. The RNR approach ignores all structural predictors of imprisonment in favour of an entirely individualised understanding of why people offend, and ignores entirely why certain populations are imprisoned.³¹ Inherent in this ideology are assumptions that people who commit crime or are incarcerated for committing crime are fundamentally or intrinsically different to those who do not. RNR models focus on a handful of dynamic criminogenic

Please note, an amended version of this critique of the Risk, Needs Responsivity Framework was also submitted to the Special Inquiry into Ice in 2019 and was co-authored with Sophie Russell.

factors³² and use a psychometric model that downplays the relevance of contextual, social and historical factors.³³

THE CONFLATION OF RISK AND NEED IN THE RNR FRAMEWORK

Within this ideological approach, there is a conflation in the RNR model of the concept of 'risk' and the concept of 'need'.³⁴ The needs addressed within the model are based on identification of risk, not on the needs identified by individuals themselves. Many researchers have argued that insufficient attention is paid to the impact of non-criminogenic needs.³⁵ There are of course multiple factors that impact on risk of re-offending and re-incarceration outside of the central eight needs identified in the criminogenic literature. Critics of this model have noted that factors such as poverty, homelessness, poor education, poor functional literacy, systemic racism and structural barriers to support in the community (all widely recognised in literature outside of the RNR research, as structural predictors of crime and imprisonment) are not recognised at all within the central eight.³⁶ For instance, every client CRC works with identifies homelessness as the need they would like reintegration support with. All homeless clients of CRC identify lack of housing as making it incredibly hard to stay out of prison. However, homelessness is not considered a 'need' in the criminogenic framework.

THE RELIANCE ON A DEFICITS APPROACH TO REDUCE RE OFFENDING

Alongside criticism of the conflation between need and risk, the RNR model, has also been criticised for being almost entirely deficits based.^{37 38} Criminogenic needs relate to issues that are problems and require 'fixing'. There is a substantial body of research that notes that this deficits approach is counter-productive when trying to assist people to make changes in their lives – or at the very least, not enough, for desistance from offending to be achieved. Good Lives models note the importance of strengths based approaches, and argue that it is critical to increase people's strengths and abilities in order to support people to move away from offending.³⁹ Similarly, desistance frameworks note the importance of the development of an identity outside of the justice system, and emphasise the value of programs that seek to support people to build an identity narrative that exists outside of that as an 'offender'.⁴⁰ That is; it is not enough for programs to simply focus on risk of re-offending, or criminogenic needs. Programs that are successful do not just seek to 'fix' a person's deficits, they work to support someone holistically to make changes in their lives, to find who they are outside of the justice system, and build alternative ways of living, connecting and being in the world.⁴¹

THE NEED FOR CULTURALLY SAFE FIRST NATIONS SUPPORT IN PRISONS

As long as there is imprisonment, all imprisoned First Nations citizens should have access to community based and First Nations led support. There is a need to acknowledge that the existing suite of compulsory criminogenic programs are not suited to the majority of First Nations people, and that there is a desperate need to build supports into daily life in prison, that are based on individual need, and that acknowledge the structural barriers to living in the community, and the cultural needs of First Nations people inside. This support should primarily be the responsibility of the community sector, and specifically of resourced First Nations communities and community organisations.

First Nations people should retain all of their rights as citizens while incarcerated, and this includes the right to access services and supports. Corrections NSW should be responsible for creating a humane and respectful environment that enables people who are incarcerated to connect with the communities and supporters on the outside who will continue to support people on release. That is, if we continue to send people to prison, we should ensure at the

bare minimum that loss of liberty does not also mean loss of community or loss of access to support. It is the view of CRC that we should not rely entirely on Corrections to provide culturally safe support to incarcerated First Nations people, but rather allow community led and based services to access the prisons regularly *throughout* someone's sentence, in order to build support pathways that are genuinely embedded in the community.

DIVERSIONARY RESPONSES AND THE DANGERS OF NET WIDENING

When developing responses to over-incarceration, particularly within existing legislative frameworks, it is often the case that proponents of decarceration turn to legislative options including Community Corrections Orders, or other community based sanctions such as Home Detention and Electronic Monitoring. Although alternative sentencing options are critical, it is also essential within this, to have mechanisms in place that genuinely prevent net-widening. It is also critical to ensure that legislated alternatives to custody, are properly understood in terms of their impact on people who have these kinds of community sentences imposed.

There is a growing body of research now on the dangers and pains of mass-supervision and other forms of punishment in the community.^{42 43} Mass supervision is growing at a faster and more alarming rate for vulnerable populations than mass-incarceration in places like the US and the UK. There are some indications that Australia is emulating this trend. In NSW, there are more than 34,000 people currently under supervision. Much of the research looking critically at alternatives points to the pains of supervision, as well as the way in which community based orders can net-widen. That is, people who would not otherwise have received *any* kind of court ordered sentence, are sentenced to a community order. And then are at risk of custody through the breach of these orders. In addition, because community based sentences are viewed by so many, as easier or less harmful than imprisonment, the pains of supervision in the community, and the very difficult experience of supervision is often overlooked.

The people that we work with frequently experience community corrections and community orders as extraordinarily punitive, and some describe the experience of being on an order in the community as harder than incarceration. We work with many people who choose to serve their entire sentence in prison rather than be released on parole. People describe that they know what is expected of them when they are locked up, and they know *how* to be in prison. This becomes much less clear when people are serving sentences in the community. People working with CRC note the tension between the experience of freedom in the community and the experience of supervision in the community. It is a complicated and often distressing situation to be living in the community and working to develop an identity outside of the justice system, and yet still be required to submit to supervision which is focused primarily on the fact of 'offending'.

People working with CRC often experience Community Corrections as punitive and arbitrary in decision making with regard to breaches. We regularly support clients who are breached for extremely trivial matters (for instance not answering the phone), or breached for health matters that they are working to resolve (such as drug and alcohol addiction). CRC workers work hard to challenge such breaches, but it is a regular and time-consuming part of supporting people to stay in the community, who are often progressing well, *aside* from their interactions with Community Corrections.

The goal with building alternatives to incarceration should be to build alternatives that are community led and focused on support, rather than alternatives that are focused on supervision. At the very least however, if supervision in the community is on offer as a genuine alternative to imprisonment, there needs to be recognition that supervision is *not* the same as support. Supervision *always* has prison as the fall-back if non-compliance, or *perceived* non-compliance occurs. Although CRC's position is that community based sanctions have benefits, and should in many instances be used as a genuine alternative to imprisonment, this should only be viewed as a small part of the movement towards decarceration. Community sanctions are not the end-game in terms of diversion. We note that unless there are genuine community based and led support alternatives, all of those legal diversion options end up with people back in custody for breaches in any case. And in many cases, people who would *not* have received any kind of sentence, end up at greater risk of imprisonment because of the frequently net-widening impact of legally imposed alternatives.

WOMEN, MEN, CHILDREN

This section identifies some of the issues that are specific to different First Nations groups with regard to the experience of the justice system, particularly with regard to building pathways *out* of the system for men, women and children.

First Nations Women

Women prisoners in NSW have been growing at a rate faster than any other demographic for more than a decade. There was a 33% increase in women's imprisonment between 2013 and 2019. The vast majority of this increase was in the women's remand population (constituting 40% of women in prison). There is now consensus in the research literature that incarcerated women constitute some of our most disadvantaged citizens. First Nations women make up more than 1/3 of all women in prison and are over-represented in the sentenced population, with a 49% increase since 2013 compared to a 6% increase among non-Indigenous women. At least 70% of women in prison have survived some form of gendered violence; 77% have a diagnosed mental health condition; 23% have some form of disability; and around 1/3 of women leave prison into homelessness or housing instability. Many women in prison have long histories of trauma, multiple forms of disadvantage and are frequently accustomed to being 'managed' in justice system settings rather than being adequately supported in the community. Perhaps not surprisingly, more than 70% of women currently in prison have been there before.

The over-representation of First Nations women in prison, and the further over-representation of First Nations women who have experienced violence requires a specific, response and approach. The key issues we have observed that are regularly faced by this population include:

- Histories of systemic racism and associated legitimate mistrust in authorities and services mean that First Nations women often do not seek support from police and other services. Often women who have reported accessing authorities and services have been further victimised due to their own criminal background, current orders and other factors in their life such as substance use, reputation and blatant racism. We have worked with many women who have called the police for assistance during domestic violence, only to be arrested as a consequence of outstanding warrants.
- The history of colonisation and the impact of the stolen generations means that there is significant and long-standing intergenerational trauma. This has significant impacts on mental health, substance use and violence. This is an inherited burden and the result of generations of trauma.
- Violence in some communities is prevalent and considered a normal part of life to be endured, managed and survived. There is enormous reticence to 'dog' to authorities or services about this violence.
- Protection of others. There is a genuine fear and belief that speaking out about violence, or engaging authorities to respond could be catastrophic for loved ones. Many women we work with do not want their loved ones imprisoned for violence, or in contact with the police for violence (or at all) because they do not want them to be harmed by what is broadly understood to be a racist, unsafe and dangerous system

where many First Nations people die at the hands of police and custodial staff. This is not an abstract fear. This is the reality for most First Nations people we work with.

- First Nations clients of CRC also note that when partners go to prison, they are often further impoverished, and at risk of homelessness. There is also sometimes a fear of victimisation by the perpetrators family. Many women fear having to repay debt, and also fear police involvement and increased risk of child-removal, if they are raising children on their own in poverty while their partner is incarcerated.
- Often women have endured violence for so long that they know how best to keep themselves and their children as safe as possible, and this is a perceived better alternative to seeking supports or engaging authorities when such engagement is viewed as coming with such significant risks.
- There is enormous resilience amongst First Nations women which can exacerbate trauma, as their levels of resistance to withstand the violence they endure can mean that they will remain in it longer.

First Nations Men

There is the need for specific programs for First Nations men, run by First Nations men to assist in breaking entrenched, and often inter-generational imprisonment. A significant theme in the most recent evaluation of CRC programs is that there is a great desire amongst CRC clients for First Nations men leaving custody to have the option of being supported by other First Nations men. First Nations staff at CRC are currently predominantly women. This is seen as a significant gap by both staff and clients, who see the value in having strong, culturally connected men as support workers. This is viewed as critical to assisting First Nations men escape the criminal justice system.

Within this, there is a need for support services that recognise the unique drivers of violence within First Nations communities, and that use a culturally meaningful lens to develop useful ways of addressing this. There is a need for approaches that recognise and look holistically at the impact of colonisation on conceptions of masculinity, and the way in which poverty, unemployment, and disconnection interacts with drug and alcohol use, and the use of violence.

First Nations Children and Young People

CRC primarily works with adults in custody. However, we commenced this year a new project in Western Sydney supporting young people leaving youth prisons. There is no way to talk about First Nations over-incarceration without also acknowledging the massive over-representation of young people in Youth prisons. There is also no way to talk about over-representation of young people in prison without also looking at the massive over-representation of First Nations young people in Out of Home Care. There is now considerable research exploring the (out-of-home) Care to Prison pipeline, and there is an urgent need to look at this interaction in order to disrupt the incarceration of First Nations children.

It is the position of CRC that no child should be in custody. Given the relatively low numbers of young people in NSW youth prisons (around 200 at the time of writing), and the fact that more than half of this population are on remand, CRC's position is

that emptying youth prisons is in fact entirely achievable. Close to 40% of incarcerated young people are First Nations people in NSW prisons.

There are currently important conversations about the critical need to raise the age of criminal responsibility (from 10-14). There is however a broader conversation to be had about why we continue to incarcerate children at all. Every single First Nations young person currently incarcerated should have access to:

1. Strong holistic community based long term support provided by paid workers in the communities in which they live and
2. Housing and education options that are safe and secure in the communities in which they live
3. An opportunity to live lives free from over-policing, over-surveillance and over-criminalisation.

THE NEED FOR FIRST NATIONS RUN HEALING CENTRES

Understanding and responding to the entangled relationship between drug and alcohol use and imprisonment for First Nations people, requires looking holistically at the cycles of use and imprisonment in the social and cultural contexts in which they are occurring. It requires understanding on a fundamental level the impact of trauma, and the entirely inadequate responses that currently exist to this trauma, most of which are *still* located in brutal systems of incarceration and disconnection. It requires looking at the critical role of culture and cultural connection, and also looking squarely at the widespread systems of structural discrimination.

70% of people in NSW prisons have problematic AOD use. Close to 100% of the Aboriginal men and women working with CRC, have at some point struggled with drug and alcohol use. People who have been to prison and have criminal convictions are regularly excluded from mainstream alcohol and other drug services. Sometimes this happens explicitly as a consequence of the fact of their criminal convictions or histories of violence but more regularly exclusion occurs as a consequence of the complexity of need of criminalised populations. Many people with both problematic drug and alcohol use and criminal justice system involvement cannot access AOD services because they also have mental illness and/or cognitive impairment. This population regularly *also* cannot access mental health and disability services because they are actively using drugs and/or alcohol. This results too frequently in populations who require support and treatment in the community, being 'managed' in criminal justice system settings.

Many residential rehabs will not take people straight from prison. When people coming from prison do access rehabs, they are regularly unsuccessful at completing because there is a significant chasm between prison culture and culture in AOD services. That is, people get asked to leave or into conflict for behaviours that in prison normalised, but in rehab are considered breaches, threatening or signs of non-cooperation. (This includes things like pacing, swearing, an unwillingness to 'level' and share personal information). For First Nations people leaving prison, access to services is even more complex. Accessing residential rehabs that are culturally meaningful, and that are able to take a holistic approach to understanding drug and alcohol use is in itself very challenging. Many areas in NSW do not have any rehabs at all (let alone First Nations specific rehabs). For people that CRC works with in Far West NSW (in Broken Hill and Wilcannia), residential rehab requires travel to either Dubbo, Sydney or Adelaide. For many people leaving home and country and family makes the prospect of rehabilitation extremely difficult.

FIRST NATIONS HEALING INTRODUCTION AND OVERVIEW

For close to a decade, there has been a growing recognition in Australia of the need for responses to disadvantage in Indigenous communities to genuinely acknowledge the causes of disadvantage. The establishment of the Aboriginal and Torres Strait Islander Healing Foundation in 2009, and the subsequent funding of multiple healing programs across Australia has seen this recognition translate into a variety of practices. Healing practices involve addressing Indigenous disadvantage by firstly attempting to understand and acknowledge the impact of colonisation, including the removal of Aboriginal children from their families, cultural and land dispossession, and intergenerational trauma.

The consequences of the history of both explicitly racist, and implicitly disadvantageous white policies and laws continue to be felt throughout Indigenous Australia. And in those communities where disadvantage is still characterised by high levels of incarceration and child removal, there is often a sense that little has changed over the last century in the way Indigenous people are treated by white institutions.

Healing approaches recognise that in order to ‘move forward’ it is necessary firstly to look at the past and acknowledge squarely the damage that has been wrought, and the pain that has been caused. Interventions are not framed in terms of single outcomes, but rather as a process where the structural and social triggers of Indigenous disadvantage are addressed and acknowledged at the same time as attempting to address the disadvantage itself.⁴⁴ However at the same time as recognising the structural impact of trauma, healing approaches also recognise that individuals must ultimately take responsibility for their journey through this.⁴⁵

There are multiple forms and examples of healing throughout Australia, and even the most cursory of literature reviews establishes the diversity and flexibility of approaches. Central to all healing strategies however, is an acknowledgement that any initiatives must have the support of the local community in which it is intended to operate. Healing can operate at an individual level (for instance Indigenous specific counselling), a regional level (for instance a local healing centre) or it might operate in the form of a healing strategy that is embedded institutionally (for instance in schools, health services or prisons). In addition, healing practice might also operate as a form of capacity building (for instance training around Indigenous trauma informed practice).⁴⁶

Although there are complexities around measuring the impact of Indigenous healing models (including significantly the emphasis on process rather than outcomes) there is some compelling research into the manner in which healing programs have addressed significant and entrenched disadvantage. This has included recent research demonstrating the reduction of Indigenous violence,⁴⁷ the reduction of recidivism⁴⁸, increased school and community participation for disengaged children and young people,⁴⁹ increased pathways into concrete essential services in the community for adults⁵⁰ and on a structural level, the development of strong community and government partnerships.⁵¹

KEY FEATURES OF BEST PRACTICE FIRST NATIONS HEALING MODELS

Language and Holistic approaches

First Nations healing programs tend to use a language that differentiates itself from programs that are focused on criminalizing and/or pathologising⁵². Activities are more likely to be framed for instance, in terms of ‘men’s groups’ rather than for instance ‘violent offenders program’. Healing programs recognise the power of language, both in terms of its capacity to stigmatise and shame, but also in terms of its capacity to minimise complexity. Healing programs steer away frequently from the focus on ‘disease’ and pathologising, and move instead towards a more holistic or ‘well-ness’ focus which reflects an Indigenous understanding of ‘wellness’. Mental and physical well-being are seen in the broad context of family and culture and land, not simply as illness existing within an individual.⁵³

Involvement of Family and Community

Indigenous healing programs tend to involve community and family networks, and recognise the centrality of family and social bonds for many Indigenous people. Strong community leadership is required in both the setting up of programs and in their continuation. A growing body of research now looks specifically at the importance of family involvement in Indigenous specific AOD rehabilitation and healing programs. It is considered best practice in Indigenous AOD support to work with both the individual who has sought support, as well as their family. There are clear indications that Indigenous clients of mainstream rehab services find that family separation has a significant and negative impact on their recovery. While it is clear that there are some instances in which family and social relationships can promote destructive drinking patterns, it is also clear that these same family relationships and responsibilities are frequently powerful catalysts for change.^{54 55 56}

Cultural and Spiritual Support

There is also a strong research base supporting the delivery of programs that connect individuals with both cultural and spiritual support.^{57 58} This can be in the form of traditional cultural activities (including art and dance), connection with community and local knowledge (including language and traditions), and significantly connection with land.⁵⁹ Wherever possible this element of the healing process should be provided by local Indigenous people. Recognition of culture has found to be as significant (and in some cases, more) as education and employment pathways in terms of facilitating change (particularly in terms of rehabilitation).^{60 61 62}

Therapeutic/Trauma Informed/Flexible Service Delivery

There is now a strong body of research suggesting that Indigenous programs need to be based in trauma informed practice and embrace a therapeutic and flexible approach to service delivery.⁶³ Trauma informed practice requires firstly recognising that the vast majority of Indigenous people requiring support (in terms of AOD use, mental illness or criminal justice system involvement) have experienced trauma. It also requires services to look closely at how they might promote a safe and inclusive space in which healing can occur, and further traumatization can be avoided.⁶⁴ In a pragmatic sense this means employing skilled workers, promoting a culture of respect, hope and care, and focusing on the empowerment of individuals to move through complex trauma.⁶⁵

¹ Ba dry, E., McCaus and, R., Dowse, L., and McEntyre, E. (2015) *A Predictable and Preventable Path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, UNSW: Sydney.

² <https://www.a rc.gov.au/pub cat on/pathways-to-just ce- nqu ry- nto-the- ncarcerat on-rate-of-abor g na -and-torres-strat s ander-peop es-a rc-report-133/execut ve-summary-15/d sproport onate- ncarcerat on-rate/>

³ Sot r , M (2016) An Exp orat on of Best Pract ce n Commun ty Based Re ntegrat on for Peop e Leav ng Custody n the US and the UK, A report for the Church Fe owsh p Trust

<https://www.church trust.com.au/fe ows/deta /4075/M ndy+Sot r> (accessed August 20th)

⁴ Sot r & Russe (2018) Pathways Home: How can we de ver better outcomes for peop e who have been n pr son, n Hous ng Works, 41.

⁵ Borzyck , M and Ba dry, E. (2003) Promot ng Integrat on: The Prov s on of Pr soner Post Re ease Serv ces , Trends and Issues n Cr me and Cr m na Just ce, Austra an Inst tute of Cr m no ogy: Canberra.

⁶ G bert, J and E ey, B. (2015) Reduc ng rec d v sm: an eva uat on of the pathway tota re ntegrat on programme , New Zea and Soc o ogy, 30(4): 15-37.

⁷ Ange , B., Matthews, E., Barrenger, S., Watson, A., Dra ne, J. (2014) Engagement processes n mode programs for commun ty re-entry from pr son for peop e w th ser ous menta ness , Internat ona Journa of Law and Psych aty, 37: 490-500.

⁸ G bert, J and E ey, B. (2015) Reduc ng rec d v sm: an eva uat on of the pathway tota re ntegrat on programme , New Zea and Soc o ogy, 30(4): 15-37.

- ⁹ Ange, B., Matthews, E., Barrenger, S., Watson, A., Dra ne, J. (2014) Engagement processes in mode programs for community re-entry from prison for people with serious mental illness, *International Journal of Law and Psychiatry*, 37: 490-500.
- ¹⁰ Hunter, B., Lanza, A., Lawlor, M., Dyson, W. and Gordon, D. (2016) A Strengths-Based Approach to Prisoner Reentry: The Fresh Start Prisoner Reentry Program, *International Journal of Offender Therapy and Comparative Criminology*, 60(11): 1298-1314.
- ¹¹ Padgett, D., Gu cur, L., and Tsember s, S. (2006) Housing First Services for People who are Homeless with Co-Occurring Serious Mental Illness and Substance Abuse, *Research on Social Work Practice*, 16(1): 74- 83.
- ¹² Padgett, D., Gu cur, L., and Tsember s, S. (2006) Housing First Services for People who are Homeless with Co-Occurring Serious Mental Illness and Substance Abuse, *Research on Social Work Practice*, 16(1): 74- 83.
- ¹³ Sot r, M (2016) An Exploration of Best Practice in Community Based Reintegration for People Leaving Custody in the US and the UK, A report for the Church of England Trust.
- ¹⁵ Andrews, D.A., Zenger, I., Hoge, R.D., Bonta, J., Gendreau, P. & Cu en, F. (1990) Does Correctional Treatment Work? A Canadian Relevant and Psycho logical Informed Meta-Analysis, *Criminology*, 28(3): 369-404.
- ¹⁶ Corrective Services NSW (2018) What are Criminogenic Needs
<https://www.correctiveservices.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/Fact-sheet-Needs-accessible.pdf> (accessed May 30th)
- ¹⁷ Porporino, F. (2010) Bringing sense and sensitivity to corrections: From programmes to fix offenders to services to support desistance, in J. Brayford, F. Cowe and J. Deerling (eds.), *What else works? Creative work with offenders*. Coompton: W an.
- ¹⁸ McNe, F. (2004) Desistance, Rehabilitation and Correctionalism: Developments and Prospects in Scotland, *The Howard Journal*, 43(4): 420-436.
- ¹⁹ Cunneen, C. and Taur, J. (2017) *Indigenous Criminology*. Polity Press: Bristol.
- ²⁰ Shepherd, S. (2018). Violence risk assessment and Indigenous Australians: a primer. *Australian Law Journal*, 43(1), 45-47
- ²¹ Spakovsky, C (2007) Approaching Responsivity, The Victorian Department of Justice and Indigenous Offenders, in *Finders Journal of Law Reform*
- ²² Stathopoulos, M and Quadara, A. (2014) *Women as Offenders Women as Victims: The role of corrections in supporting women with histories of sexual abuse*. Corrective Services NSW: Sydney.
- ²³ Van Voorhis, P (2012) On Behalf of Women Offenders: Women's Place in the Science of Evidence-Based Practice, *Criminology and Public Policy*, 11(2): 111-145
- ²⁴ Carlton, B. and Ba dry, E. (2013) Therapeutic correctional spaces, transcarceral interventions, in B. Carlton and M. Segrave (eds) *Women Exiting Prison: Critical essays on gender, post-release support and survival*. Routledge: New York.
- ²⁵ Hannah-Moffat, K. (1999) Moral agent or actuarial subject: Risk and Canadian women's imprisonment, *Theoretical Criminology*, 3(1): 71-94.
- ²⁶ Bonta, J., B as, J., and W son, H. (2013) *The Prediction of Risk for Mentally Disordered Offenders: A Quantitative Synthesis*, Public Safety Canada: Canada.
- ²⁷ Kendra, K. (2004) Dangerous thinking: a critical history of cognitive behaviouralism, in G. Mar (ed) *What Matters in Probation*. Oregon: W an Publishing.
- ²⁸ Spakovsky, C (2007) Approaching Responsivity, The Victorian Department of Justice and Indigenous Offenders, in *Finders Journal of Law Reform*
- ²⁹ Muncie, J (2001) *Policy Transfers and What Works: Some reflections on comparative youth justice*, in *Youth Justice Voice* 1 (No.3)
- ³⁰ Ward, Tony & Brown, Mark. (2004). The Good Lives Model and conceptual issues in offender rehabilitation. *Psychology of Crime & Law - PSYCHOL CRIME LAW*. 10. 243-257.
- ³¹ Hannah-Moffat, K. (2012) Actuarial Sentencing: An "Unsettled" Proposition, *Justice Quarterly* 30(2): 270-296.
- ³² Hannah-Moffat, K. (2005) Criminogenic needs and the transformative risk subject: Hybridizations of risk/need in penalty, Punishment & Society, 7(1): 29-51.
- ³³ Cunneen, C. and Taur, J. (2017) *Indigenous Criminology*. Polity Press: Bristol.
- ³⁴ Ward and Beech (2015) Dynamic Risk Factors: A theoretical dead-end? In *Psychology, Crime and Law*, Volume 21, Issue 2.
- ³⁵ Ward, T., Me ser, J. and Yates, P. (2007) Reconstructing the Risk-Need-Responsivity model: A theoretical elaboration and evaluation, *Aggression and Violent Behavior*, 12: 208 – 228.
- ³⁶ Hannah-Moffat, K. (2012) Actuarial Sentencing: An "Unsettled" Proposition, *Justice Quarterly* 30(2): 270-296.
- ³⁷ Ward, T., Me ser, J. and Yates, P. (2007) Reconstructing the Risk-Need-Responsivity model: A theoretical elaboration and evaluation, *Aggression and Violent Behavior*, 12: 208 – 228.
- ³⁸ Ward, T. and Brown, M. (2004) The good lives model and conceptual issues in offender rehabilitation, *Psychology of Crime and Law*, 10: 243-257.
- ³⁹ Ward, Tony & Brown, Mark. (2004). The Good Lives Model and conceptual issues in offender rehabilitation. *Psychology of Crime & Law - PSYCHOL CRIME LAW*. 10. 243-257

- ⁴⁰ McNe , F., Farra , S., L ghtow er, C., and Maruna, S. (2012) Re-exam n ng ev dence-based pract ce n commun ty correct ons: beyond 'a conf ned v ew' of what works. *Justice Research and Po cy*, 14 (1)
- ⁴¹ McNe , F (2013) Four forms of offender rehab tat on: Towards an nterd sc p nary perspect ve n Lega and Cr m no og ca Psycho ogy
- ⁴² McNe , F (2018) Pervas ve Pun shment: Mak ng Sense of Mass Superv s on, UK
- ⁴³ Schenwar, M + Law, V (2020) *Pr son By Any Other Name*, USA
- ⁴⁴ M roy (2013) n Abor g na and Torres Stra t Is ander Hea ng Foundat on (ATSIHF) (2013). *Grow ng Our Ch dren Up Strong and Dead y – Hea ng For Ch dren and Young Peop e*
- ⁴⁵ McKendr ck J, Brooks R, Hudson J, Thorpe M and Bennett P (2014). *Abor g na and Torres Stra t Is ander Hea ng Programs – A L terature Rev ew*. Abor g na and Torres Stra t Is ander Hea ng Foundat on.
- ⁴⁶ Shepherdson & Weston (2014) *Courage and Innovat on. F nd ng a p ace for Abor g na Hea ng n cr m na just ce at ANZSOC Conference, Sydney October 2014*
- ⁴⁷ Wunders tz J (2010) *Ind genous Perpetrators of V o ence: Preva ence and R sk Factors for Offend ng*. AIC Reports Research and Pub c Po cy Ser es 105. Austran Government.
- ⁴⁸ Abor g na Ch d Sexua Assau t Taskforce (ACSAT) (2006) *Break ng the S ence: Creat ng the Future – Address ng Ch d Sexua Assau t n Abor g na Communt es n NSW*. NSW Attorney Genera s Department. [http://www.aw nk.nsw.gov.au/aw nk/acsat/acsat.nsf/vwF es/80001%20CP%20Rep-a _sm.pdf/\\$f e/80001%20CP%20Rep-a _sm.pdf](http://www.aw nk.nsw.gov.au/aw nk/acsat/acsat.nsf/vwF es/80001%20CP%20Rep-a _sm.pdf/$f e/80001%20CP%20Rep-a _sm.pdf)
- ⁴⁹ Shepherdson & Weston (2014) ANZSOC Conference, 2014 *Courage and Innovat on: F nd ng a p ace for Abor g na Hea ng n Cr m na Just ce (see discussion of Murri School Intergenerational Trauma Project)*
- ⁵⁰ H gg ns D, Hand K and Lohoar S (2013). *Hea ng Foundat on Eva uat on Framework Workshop – Engage, Encourage and Empower*. AIFS, Me bourne.
- ⁵¹ G more M (2014). *Our Hea ng Our So ut ons: Shar ng Our Ev dence*. Abor g na and Torres Stra t Is ander Hea ng Foundat on.
- ⁵² Haswe M, B gnau t I, F tzpatr ck S and Jackson Pu ver L (2013). *The Soc a and Emot ona We be ng of Ind genous Youth: Rev ew ng and Extend ng the Ev dence and Exam n ng the Imp cat ons for Po cy and Pract ce*. Muru Marr Ind genous Hea th Un t, Schoo of Pub c Hea th and Commun ty Med c ne, UNSW Austr a.
- ⁵³ McKendr ck J, Brooks R, Hudson J, Thorpe M and Bennett P (2014). *Abor g na and Torres Stra t Is ander Hea ng Programs – A L terature Rev ew*. Abor g na and Torres Stra t Is ander Hea ng Foundat on.
- ⁵⁴ Munroe & A an (2011) Can fam y-focused ntervent ons mprove probemat c substance use n Abor g na communt es? A ro e for soc a work, *Australian Social Work*, Vo . 64(2): 169-182.
- ⁵⁵ Brady, M (2010) *Strengthen ng and support ng Ind genous res dent a treatment programs*. ATCA Training and Research Symposium, Sydney. <http://www.atca.com.au/wp-content/up oads/2012/09/Magg e-Brady-Strengthen ng-and-support ng-Ind genous-res dent a -treatment-programs.pdf>
- ⁵⁶ Ph ps, G. (2003) *Addictions and Healing in Aboriginal Country*. Canberra: Abor g na Stud es Press.
- ⁵⁷ G more M (2014). *Our Hea ng Our So ut ons: Shar ng Our Ev dence*. Abor g na and Torres Stra t Is ander Hea ng Foundat on.
- ⁵⁸ Abor g na and Torres Stra t Is ander Hea ng Foundat on (ATSIHF) (2014). *Co ect ve Hea ng for Members of the Sto en Generat ons – D scuss on Paper*.
- ⁵⁹ McKendr ck J, Brooks R, Hudson J, Thorpe M and Bennett P (2014). *Abor g na and Torres Stra t Is ander Hea ng Programs – A L terature Rev ew*. Abor g na and Torres Stra t Is ander Hea ng Foundat on.
- ⁶⁰ Tay or, K. Thompson, S. & Dav s, R (2010) *De ver ng cu tura y appropri ate res dent a rehab tat on for urban Ind genous Austrans: A rev ew of the cha enges and opportunt es*. *Australian and New Zealand Journal of Public Health*, Vo . 34, p. 36-40
- ⁶¹ Brady, M (2010) *Strengthen ng and support ng Ind genous res dent a treatment programs*. ATCA Training and Research Symposium, Sydney. <http://www.atca.com.au/wp-content/up oads/2012/09/Magg e-Brady-Strengthen ng-and-support ng-Ind genous-res dent a -treatment-programs.pdf>
- ⁶² Chenha , R (2008) What s n a rehab? Ethnograph c eva uat on research n Ind genous Austran a coho and drug rehab tat on centres. *Anthropology & Medicine*, Vo . 15(2): 105-116
- ⁶³ Atk nson J (2013). *Trauma-Informed Serv ces and Trauma-Spec f c Care for Ind genous Austran Ch dren*. Cos ng the Gap Resource Sheet No 21. Austran Government.
- ⁶⁴ M s, K (2015) The mportance of prov d ng trauma- nformed care n a coho and other drug serv ces, *Drug and Alcohol Review* Ed tor a , pp. 231-233.
- ⁶⁵ McKendr ck J, Brooks R, Hudson J, Thorpe M and Bennett P (2014). *Abor g na and Torres Stra t Is ander Hea ng Programs – A L terature Rev ew*. Abor g na and Torres Stra t Is ander Hea ng Foundat on.