

Submission  
No 121

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

**Organisation:** St Vincent de Paul Society NSW

**Date Received:** 18 September 2020

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**St Vincent de Paul Society**  
CANBERRA/GOULBURN  
*good works*



**St Vincent de Paul Society**  
NSW  
*good works*

# Submission to the Inquiry into First Nations People in Custody

17 September 2020

## Acknowledgement of Country

The St Vincent de Paul Society acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land on which we live and work, with deep respect. May Elders, past and present, be blessed and honoured. May we join together and build a future based on compassion, justice, hope, faith, and reconciliation.

## About the St Vincent de Paul Society

The St Vincent de Paul Society (the Society) seeks to shape a more just and compassionate society by working to address the causes of poverty and injustice.

The Society is a significant provider of services to people experiencing disadvantage. We provide accommodation and supported accommodation services to people experiencing homelessness or at risk of homelessness; food supply services; services to people with complex mental health diagnoses and/or complex behavioural support needs, to people experiencing problematic alcohol or other drug use, to people with disability, and to young people at risk of exclusion.

Our extensive network of member volunteers also provide immediate care and assistance in the form of financial and material support: food parcels or vouchers, assistance paying energy and other bills, no-interest loans, and clothing and household items including furniture.

This submission has been jointly authored by the St Vincent de Paul Society NSW and the St Vincent de Paul Society Canberra/Goulburn.

## Introduction

The Society appreciates this opportunity to provide input into the Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody.

We are deeply concerned about the unacceptably high level of First Nations people in custody. As the Uluru Statement from The Heart declares, First Nations people “are not an innately criminal people”. Rather, the disproportionate representation of First Nations people in the criminal justice system is a legacy of colonisation. It is reflective of intergenerational trauma, dispossession, and systemic racism. This has been made evident in dozens of inquiries and reviews over many decades. Yet despite high levels of scrutiny, little progress has been made. In fact, the 2017 Australian Law Reform Commission (ALRC) inquiry noted that the incarceration rate for Aboriginal and Torres Strait Islander people was higher in 2016 than that reported in the 1991 Report into Aboriginal deaths in Custody.<sup>1</sup>

While we welcome this Inquiry, we therefore regard it as imperative that the Select Committee also gives due consideration to the recommendations made by previous inquiries and seek to progress these where possible within the NSW Government’s sphere of influence.

We note that the Closing the Gap refresh process currently presents a welcome opportunity to marshal collective efforts towards agreed outcomes: in this case, that adults and young people are not overrepresented in the criminal justice system. In progressing towards this outcome, we support calls for the NSW Government to set more ambitious targets than those agreed at the national level. We also recognise the importance of a new way of working, as outlined in the National Agreement’s four Priority Reforms, to successfully achieving these outcomes. To this end, we urge both the Select Committee, and the NSW Government more broadly, to acknowledge the leadership of the relevant Aboriginal peak bodies, and to form genuine partnerships in charting a path towards meaningful change.

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<sup>1</sup> Australian Law Reform Commission (2017) *Pathways to Justice - Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*. Available at [https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf)

## Recommendations:

1. The Select Committee should review the results of previous inquiries and the status of existing recommendations and seek to progress those within the NSW Government's remit.
2. The NSW Government should adopt ambitious justice targets in its Closing the Gap jurisdictional action plan.
3. The NSW Government should establish an independent justice reinvestment body overseen by a board with Aboriginal and Torres Strait Islander leadership.
4. The age of criminal liability should be increased from 10 to 14 years.
5. The NSW Government should implement the recommendations in the Family is Culture report aimed at addressing the over-representation of Aboriginal children and young people in the child protection system.
6. Proactive policing strategies such as the Suspect Targeting Management Plan should be reviewed to ensure they do not result in discriminatory application of the law.
7. The NSW Government should amend the Bail Act 2013, as per the recommendations put forward by the Aboriginal Legal Service (NSW/ACT), to address its disproportionate impact on Aboriginal and Torres Strait Islander people.
8. Sentencing legislation should provide that, when sentencing First Nation peoples, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.
9. The NSW Government should support the establishment of properly resourced, specialist Aboriginal and Torres Strait Islander sentencing courts, including the proposed Walama Court in the NSW District Court.
10. The NSW Government should support the expansion of culturally appropriate community-based sentencing options.
11. The NSW Government should invest in culturally appropriate throughcare programs for First Nations people.
12. The NSW Government should invest in post-release programs that provide a clear accommodation pathway for people leaving custody linked to the provision of wrap-around support.
13. The NSW Government should invest in increasing the supply of social housing by at least 5,000 homes every year for the next ten years.
14. The NSW Government should ensure the benefit of any new investment in social housing flows to Aboriginal people and communities, including through the appropriate resourcing of Aboriginal housing providers.
15. The NSW Government should consider establishing an independent body, located within the NSW Coroner's Office, with responsibility for all investigations into Aboriginal deaths in custody.
16. Correctional facilities should review intake procedures to ensure inmates with mental health conditions are reviewed by a suitably qualified mental health clinician in a timely manner.
17. Correctional facilities should create Aboriginal Health Worker positions, including positions with responsibility for the provision of mental health care and treatment to Aboriginal inmates.

## Responses to the Inquiries' Terms of Reference

### *The unacceptably high level of First Nations people in custody in New South Wales (TOR a)*

The unacceptably high level of First Nations people in custody has been highlighted in numerous reports, inquiries and articles including the 1991 landmark Royal Commission Report on Aboriginal Deaths in Custody.

The Australian Law Reform Commission Report *Pathways to Justice - Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* noted that First Nations men are 14.7 times more likely to be imprisoned than non-Indigenous men and that First Nations women are 21.2 times more likely to be imprisoned than non-Indigenous women.<sup>2</sup> The Report also noted that although First Nations adults make up around 2% of the national population they constitute 27% of the national prison population. In 2016, around 20 in every 1000 Aboriginal and Torres Strait Islander people were incarcerated. Overrepresentation is both a persistent and growing problem. First Nations incarceration rates increased 41% between 2006 and 2016, and the gap between First Nations and non-Indigenous people over the decade widened. The Report noted that the over-incarceration rate for First Nations women was higher than for First Nations men.

The report included research that overrepresentation increases with the stages of the criminal justice system. "In 2016 Aboriginal and Torres Strait Islander people were 7 times more likely than non-Indigenous people to be charged with a criminal offence and appear before the courts; 11 times more likely to be held in prison on remand awaiting trial or sentence and 12.5 times more likely to receive a sentence of imprisonment. This is a cyclical program with 76% of Aboriginal and Torres Strait Islander prisoners having been in prison before."<sup>3</sup>

The more recent *Profile of women in prison in NSW*, published by the Keeping Women Out of Prison Coalition, highlighted that First Nations females account for 32% of the female prison population of NSW although they represent only 2.9% of the total female population of NSW.<sup>4</sup> The Report noted that there had been a 49% increase in the prison population of Aboriginal and Torres Strait Islander females in NSW since 2013 compared with a 6% increase in non-Indigenous females. The Report further noted that 87% of First Nations female prisoners had been incarcerated previously compared to 72% of women in total. The Report concludes that "the over-representation of Indigenous women further reflects the unacceptably high levels of disadvantage and discrimination experienced by Indigenous people within the criminal justice systems across Australian jurisdictions".<sup>5</sup>

Dr Andrew Leigh MP, member for the federal seat of Fenner, has sought to raise the profile of this important issue. In his Evatt Foundation address of 17 September 2019, Dr Leigh referred to his recent paper *The Second Convict Age: Explaining the return of mass imprisonment in Australia*.<sup>6</sup> Dr Leigh noted that the incarceration rate for First Nations people is 2.5% - 2481 prisoners per 100,000 adults, with almost one in four Indigenous men born in the 1970s spending time in jail during his life. It was noted that the national incarceration rate per 100,000 for adults had increased by 130% between 1985 and 2018 whilst the national Indigenous incarceration rate had increased in the same period by 250%.

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<sup>2</sup> Australian Law Reform Commission (2017) *Pathways to Justice - Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*. Available at [https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf)

<sup>3</sup> Ibid, p. 26

<sup>4</sup> Keeping Women Out of Prison Coalition (2019) *Profile of women in prison in NSW*. Available at <https://www.sydneycommunityfoundation.org.au/wp-content/uploads/2020/04/KWOOP-Coalition-Profile-of-women-in-prison-in-NSW.-Part-A.-A-snapshot.-Final-9-March-2020.pdf>

<sup>5</sup> Ibid, p. 6

<sup>6</sup> Leigh, A (2020) 'The Second Convict Age: Explaining the Return of Mass Imprisonment in Australia' in *Economic Record*, v. 96:3 13, pp 187-208.

Dr Leigh also noted that Indigenous people in Australia are more likely to be in prison than African Americans and Indigenous people in Canada and New Zealand. They are the most highly incarcerated group in the western world.

Yet even though the significant overrepresentation of First Nations people in the criminal justice system has been the subject of numerous inquiries, reports and recommendation, there has been a shameful lack of progress.

In fact, the Australian Law Reform Commission (ALRC) inquiry – delivered to the Government in December 2017 and tabled in the Parliament on 28 March 2018 – noted that the incarceration rate for Aboriginal and Torres Strait Islander people was higher in 2016 than that reported in the 1991 Report into Aboriginal deaths in Custody. In 1991 Indigenous peoples made up 14% of the national prison population, by 2015 this had increased to 27%.

In large part, this is because the recommendations made as a result of previous inquiries have not been properly implemented. As part of the current inquiry, we therefore recommend that the Select Committee review the results of previous Inquiries and the status of existing recommendations, and seek to progress those within the NSW Government's remit.

**Recommendation:**

The Select Committee should review the results of previous inquiries and the status of existing recommendations, and seek to progress those within the NSW Government's remit.

### *Closing the Gap*

The Society welcomed the inclusion of justice measures in the new National Closing the Gap agreement. However, it is of concern that there is a long lead time to achieve the benchmarks:

- Moving 30 per cent of young Indigenous prisoners out of detention by 2031
- Moving 15 per cent of Indigenous adults out of jail by 2031
- Reducing by 45 per cent the number of Indigenous children in out-of-home care by 2031.<sup>7</sup>

In the Society's view, with adequate funding, resources and political will, these targets could be reached in a much shorter time frame.

We support the calls made by the NSW Coalition of Aboriginal Peak Organisations to develop comprehensive, strengths-based reforms to reduce incarceration accompanied by ambitious justice targets for NSW.

**Recommendation:**

The NSW Government should adopt ambitious justice targets in its Closing the Gap jurisdictional action plan.

### *Measures to reduce incarceration rates*

In addition to recommending that the Select Committee thoroughly review recommendations made by previous inquiries, the Society would like to draw attention to the following measures that would lead to a significant decline in incarceration rates of First Nations people:

### **Justice reinvestment**

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<sup>7</sup> National Agreement on Closing the Gap, July 2020.

There is wide agreement that justice reinvestment should be pursued as a significant reform. By diverting funds from the corrections system to diversionary programs run by community bodies there is the potential for a significant reduction in incarceration rates.

KPMG's Impact Assessment of the Maranguka Justice Reinvestment Project in Bourke, for example, found the approach had achieved a 23% reduction in police recorded incidence of domestic violence, a 14% reduction in bail breaches, and a 42% reduction in days spent in custody. It also achieved a 31% increase in year 12 student retention rates.<sup>8</sup> The St Vincent de Paul Society is proud to have been among the many sponsors of this Project.

To support the broader uptake of a justice reinvestment approach, underpinned by community-led initiatives, the establishment of an independent justice reinvestment body has been recommended by the ALRC, the NSW Bar Association and Just Reinvest NSW. We support these recommendations.

#### **Recommendation:**

The NSW Government should establish an independent justice reinvestment body overseen by a board with Aboriginal and Torres Strait Islander leadership.

#### **Reducing the age of criminal liability**

The over-representation of First Nations people in the criminal justice system is evident from an early age. AIHW's *Youth justice in Australia 2018-19* report notes that although only 6 per cent of young people aged 10-17 are Indigenous, half of those under supervision were Indigenous. About two in five (38%) Indigenous young people enter youth supervision between the ages of 10 and 13, compared with one in seven (15%) non-Indigenous young people.<sup>9</sup>

Early contact with the criminal justice system is linked to early experiences of poverty and disadvantage. Rather than addressing the impact of these early experiences, early contact with the criminal justice system is a key predictor of future contact.<sup>10</sup> The criminalisation of children – and particularly the criminalisation of children who have experienced poverty – thus serves to reinforce a cycle of intergenerational inequality.

With more than 60 per cent of the almost 600 children aged 10 to 13 in detention in 2018-19<sup>11</sup> being of Aboriginal and/or Torres Strait Islander heritage, increasing the age of criminal liability from 10 to 14 years would have an immediate effect on youth incarceration rates.

The Society notes with concern the failure of the National Cabinet sub-committee to progress this reform, calling for more information. In the view of the Society, this reform should be progressed immediately as all of the evidence is currently available. The Society welcomes the announcement of the ACT Government to introduce legislation to achieve this reform.

The recommendation in the ALRC Report to reduce the number of children and young people in out of home care is another important area of reform. The ALRC Report noted that "Research suggests that the relationship between the child protection system, juvenile justice and adult incarceration is so strong that child removal into out-of-home care and juvenile detention could be considered key drivers in adult incarceration".<sup>12</sup>

<sup>8</sup> KPMB (2018) Maranguka Justice Reinvestment Project. Available at <https://www.justreinvest.org.au/wp-content/uploads/2018/11/Maranguka-Justice-Reinvestment-Project-KPMG-Impact-Assessment-FINAL-REPORT.pdf>

<sup>9</sup> AIHW (2020) Youth justice in Australia 2018-19. Available at <https://www.aihw.gov.au/getmedia/a5a364b9-fe69-4d02-9c93-1965a69a3d93/aihw-juv-132.pdf.aspx?inline=true>

<sup>10</sup> Agnew-Pauley and J Holmes (2015) *Re-Offending in NSW*. Crime and Justice Statistics Brief No 108, Bureau of Crime Statistics and Research.

<sup>11</sup> AIHW (2020) Youth justice in Australia 2018-19. Available at <https://www.aihw.gov.au/getmedia/a5a364b9-fe69-4d02-9c93-1965a69a3d93/aihw-juv-132.pdf.aspx?inline=true>

<sup>12</sup> Australian Law Reform Commission (2017) *Pathways to Justice - Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*. p. 34.



The 2019 Family is Culture report – based on the independent review of 1,144 Aboriginal children who were removed from their families by the child protection system – contains 125 recommendations aimed at addressing the over-representation of Aboriginal children and young people in the child protection system.<sup>13</sup> We support calls for the NSW Government to implement these recommendations.

#### **Recommendations:**

The age of criminal liability should be increased from 10 to 14 years.

The NSW Government should implement the recommendations in the Family is Culture report aimed at addressing the overrepresentation of Aboriginal children and young people in the child protection system.

#### **Policing practices and approaches**

There is strong evidence that police practices and policies continue to contribute to the over-incarceration of Aboriginal and Torres Strait Islander peoples.

Of particular concern in NSW is the Suspect Targeting Management Plan, and its impact on Aboriginal and Torres Strait Islander children and young people. According to the Law Enforcement Conduct Commission, 72% of the children aged nine to 17 targeted by the plan between 2016 and 2018 were identified by the NSW Police Force as “possibly Aboriginal and Torres Strait Islander (sic)”.<sup>14</sup> Some of the children targeted by this program have never previously committed a crime and have been targeted due to their parents’ records or their socioeconomic background. Practices such as this reinforce existing inequities and have a detrimental impact on the relationship between Aboriginal people and the police.

We agree that proactive policing strategies should be reviewed to ensure they do not result in discriminatory application of the law. Such strategies have a particularly detrimental impact on children and young people, and we support the recommendation put forward by the Aboriginal Legal Service (NSW/ACT) that children and young people should not be targeted in this way.

As above, we also note the importance of initiatives that seek to build cultural understanding and awareness and create genuine partnerships between the police and Aboriginal people and communities.

#### **Recommendations:**

Proactive policing strategies such as the Suspect Targeting Management Plan should be reviewed to ensure they do not result in discriminatory application of the law.

#### **Bail and Sentencing practices and approaches**

Numerous reviews have emphasised the importance of ensuring bail and sentencing decisions take into account the unique factors impacting Aboriginal and Torres Strait Islander peoples, including the intergenerational effects of past government policies.

The Royal Commission into Aboriginal Deaths in Custody, for example, noted that the “lack of flexibility of bail procedure and the difficulty Aboriginal people frequently face in meeting police bail criteria by

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<sup>13</sup> Family is Culture, Final Report. Independent Review into Aboriginal Out-of-Home Care in NSW. Professor Megan Davis, Chairperson. October 2019.

<sup>14</sup> Law Enforcement Conduct Commission (2020) *Operation Tepito Interim Report*. Available at <https://www.lecc.nsw.gov.au/news-and-publications/news/publications/operation-tepito-interim-report-january-2020.pdf>

virtue of their socioeconomic status or cultural difference contributes to their needless detention in police custody. This is the case for both adults and juveniles.”<sup>15</sup>

In NSW, the Administrative Review of the Bail Act 2013 presents an immediate opportunity to amend the Act to address the disproportionate impact of the current legislation on Aboriginal and Torres Strait Islander people, and particularly children and young people. The Aboriginal Legal Service (NSW/ACT) recommends a series of amendments focused on:

- consideration of the unique needs of Aboriginal and Torres Strait Islander people
- consideration of the particular impact of remand on children and young people
- greater consistency between police and court decision making
- greater accountability for police decision making
- preventing the erroneous detention of individuals for minor offending.

We support these recommendations.

The ALRC Report similarly recommended that sentencing legislation should provide that, when sentencing First Nation peoples, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

To support more effective sentencing practices, and implementation of the principle of imprisonment as a sentence of last resource, the Society would also like to add its voice to calls for:

- The establishment of properly resourced, specialist Aboriginal and Torres Strait Islander sentencing courts to be designed and implemented in consultation with Aboriginal organisations, including the Walama Court in the NSW District Court.
- The expansion of culturally appropriate community-based sentencing options, resourced and supported by the State Government.

We note that these recommendations are strongly supported by relevant industry associations and peak bodies. The Public Defenders Office notes that both the Victorian Koori Courts and Canadian Aboriginal Justice Program have helped reduce overrepresentation, and in fact, that it is only in those jurisdictions where a specialist court (or a specialist program within a court) operates that any decreases in the rates of Indigenous imprisonment overrepresentation is evident.<sup>16</sup>

#### **Recommendations:**

The NSW Government should amend the Bail Act 2013, as per the recommendations put forward by the Aboriginal Legal Service (NSW/ACT), to address its disproportionate impact on Aboriginal and Torres Strait Islander people.

Sentencing legislation should provide that, when sentencing First Nation peoples, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

The NSW Government should support the establishment of properly resourced, specialist Aboriginal and Torres Strait Islander sentencing courts, including the proposed Walama Court in the NSW District Court

The NSW Government should support the expansion of culturally appropriate community- based sentencing options.

<sup>15</sup> Royal Commission into Aboriginal Deaths in Custody, National Report, Volume 3, 21.4.2.

<sup>16</sup> Manuell, Janet (2009) The Fernando principles: The sentencing of Indigenous offenders in NSW. Discussion Paper prepared for the NSW Sentencing Council by Janet Manuell SC.

### **Culturally appropriate throughcare and post-release programs**

Throughcare programs have a demonstrated positive benefit for First Nations peoples and reduce recidivism. A recent report from the Australian Institute of Criminology, “Throughcare needs of Indigenous people leaving prison in Western Australia and the Northern Territory” highlights the importance of the programs.<sup>17</sup> Throughcare programs have been adopted by most State and Territory Governments but remain underfunded.

Throughcare programs are designed to support the successful re-integration of offenders returning to the community. It is imperative that throughcare programs for First Nations people are culturally appropriate and are designed by First Nations people.

We note that post-release programs that include a residential component have been found to produce the best outcomes, and reduce both the likelihood and the severity of future reoffending. However, the availability of such programs is limited.

The St Vincent de Paul Society NSW is a partner in the People Leaving Custody program in the Shoalhaven Region, a pilot housing and support project based on Housing First principles. This program offers successful candidates a community housing tenancy as soon as possible after their release, together with wrap around support to set up and maintain the tenancy. Should this, and other similar pilots prove successful, they should be provided ongoing support.

#### **Recommendation:**

The NSW Government should invest in culturally appropriate throughcare programs for First Nations people.

The NSW Government should invest in post-release programs that provide a clear accommodation pathway for people leaving custody linked to the provision of wrap-around support.

### **Housing**

As well as focusing on issues in the criminal justice system, consideration must be given to broader measures to address the socio-economic disadvantage faced by Aboriginal and Torres Strait Islander Communities in order to address the over-representation of First Nations people in custody.

While there are many areas at which attention should be directed, based on our footprint as a service provider we would like to emphasise the need for increased investment in housing.

Safe, secure, affordable and appropriate housing can provide a foundation from which people can raise a family, access education, secure a job, and build relationships. Yet a severe shortage of social and affordable housing in NSW has contributed to an increase in homelessness which in turn can be both a cause and a consequence of contact with the criminal justice system.

Aboriginal and Torres Strait Islander people are four times more likely to experience homelessness than other Australians. According to the Aboriginal Land Council, there is already a shortfall of over 24,000 social and affordable dwellings for Aboriginal people in NSW and this is expected to rise to 61,000 dwellings by 2031.<sup>18</sup>

To improve access to housing and reduce the number of people experiencing homelessness in NSW, the St Vincent de Paul Society has called on the NSW Government to invest in creating at least 5,000 new social housing dwellings every year for the next ten years. Steps should be taken to ensure the benefit of

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<sup>17</sup> Tubex H. Rynne J, & Blagg (2020) Throughcare needs of Indigenous people leaving prison in Western Australia and the Northern Territory. Trends & Issues in crime and criminal justice no. 585. Canberra: Australian Institute of Criminology.  
<https://www.aic.gov.au/publications/tandi/tandi585>

<sup>18</sup> NSWALC (2019) Aboriginal Land Council Strategy on Aboriginal Housing.

any new investment flows to Aboriginal people and communities, including through the appropriate resourcing of Aboriginal housing providers.

**Recommendation:**

The NSW Government should invest in increasing the supply of social housing by at least 5,000 homes every year for the next ten years.

The NSW Government should ensure the benefit of any new investment in social housing flows to Aboriginal people and communities, including through the appropriate resourcing of Aboriginal housing providers.

*Oversight of deaths in custody in New South Wales (TOR b-d)*

There is a clear connection between incarceration rates and deaths in custody. The more people that are incarcerated the greater potential there is for deaths in custody.

This was recognised by the NSW Deputy Coroner in her report of 6 May 2020, on the death in custody of Jonathon Hogan, that the tragedy of Aboriginal deaths in custody must be addressed in the context of the over representation of Aboriginal people in the criminal justice system.<sup>19</sup>

This was re-enforced in a more recent Coroner's report into the death in custody of Tane Chatfield. The Deputy Coroner noted:

"Once again it is incumbent upon me to stress that if we are to reduce the number of Aboriginal deaths in custody, we need to grapple with the underlying causes of over-representation.

Quite simply, more young Aboriginal men like Tane must be diverted away from the criminal justice system if we are to reduce the number of Aboriginal deaths in custody nationally."<sup>20</sup>

The Society notes that there have been 290 deaths in custody in NSW since the 1991 landmark Royal Commission Report into Aboriginal Deaths in Custody.

Despite a number of coronial recommendations for criminal charges to be considered against NSW Police and Corrections Officers, the Society notes that no prosecutions have been authorised by the NSW DPP. It is clear that the First Nations community has lost faith in the internal investigative processes undertaken by the NSW Police and NSW Corrections. In the view of the Society, consideration should be given to establishing an independent body located within the NSW Coroner's Office with responsibility for undertaking all investigations into Aboriginal deaths in custody. This office could be headed by a retired Supreme Court Judge and be staffed to the maximum extent possible by First Nations people.

**Recommendation:**

The NSW Government should consider establishing an independent body, located within the NSW Coroner's Office, with responsibility for all investigations into Aboriginal deaths in custody.

The Deputy Coroner's Report also highlighted a disconnect in the provision of services to First Nations prisoners in NSW prisons in particular the lack of communication with Justice Health.

In the case of Jonathon Hogan, the Deputy Coroner found:

- that the state failed to provide the prisoner with adequate care at a time of great need and that the prisoner was left "flying under the radar"<sup>21</sup>

<sup>19</sup> Coroners Court of NSW (2019) Inquest into the death of Jonathon Hogan.

<sup>20</sup> Coroners Court of NSW (2020) Inquest into the death of Tane Chatfield, p. 7.

<sup>21</sup> Coroners Court of NSW (2019) Inquest into the death of Jonathon Hogan.

- that input and involvement from an Aboriginal Mental Health Worker could have been an important component of improved care which could also have impacted on the prisoner's mental state and that the provision of culturally appropriate treatment and cell placement must be pursued.

The recommendations made by the Deputy Coroner are relevant across all custodial centres:

- the relevant prison should review the practice and procedures at the intake stage to ensure that inmates with known diagnoses for serious mental illnesses are reviewed by a suitably qualified mental health clinician in a timely manner; and
- the prison should consider creating Aboriginal Health Worker positions, at least one of whom has responsibility for the provision of mental health care and treatment to Aboriginal inmates.

The Society supports these recommendations.

#### **Recommendations:**

Correctional facilities should review intake procedures to ensure inmates with mental health conditions are reviewed by a suitably qualified mental health clinician in a timely manner.

Correctional facilities should create Aboriginal Health Worker positions, including positions with responsibility for the provision of mental health care and treatment to Aboriginal inmates.

## **Conclusion**

There is both a pressing need to respond to the overrepresentation of First Nations people in custody and a valuable opportunity to do so. We have prepared this submission in order to provide information that may be useful to the Select Committee's deliberations, and to add to the impetus for action. We appreciate this opportunity to do so. Should you have any questions about this submission, please contact Rhiannon Cook, Manager, Policy and Advocacy, at .