



# Change the Record

## Federal Budget Submission 2022-23

January 2022

### About Change the Record

Change the Record is Australia's only national First Nations-led justice coalition. We are a coalition of legal, health, human rights and First Nations organisations including the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) and the National Forum for Family Violence Prevention Legal Services (the Forum).

Change the Record has two key objectives - to end the mass incarceration of Aboriginal and Torres Strait Islander peoples and the disproportionate rates of family violence experienced by Aboriginal and Torres Strait Islander women and children.

This pre-budget submission sets out nineteen key recommendations which would increase access to justice and crucial frontline legal and family violence prevention services for Aboriginal and Torres Strait Islander peoples, address the systemic drivers of poverty and offending, and support our communities to thrive. The submission draws on Change the Record's continuing advocacy work to achieve justice and safety for First Nations peoples, including our recent *Pathways to Safety* report.

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## Summary of recommendations

1. Increase base funding to Family Violence Prevention Legal Services by at least \$32 million per annum.
2. Provide recurrent funding of \$1 million per annum, indexed to CPI, for the sector peak the National Family Violence Prevention Legal Services Forum.
3. Commit to a genuinely self-determined, stand-alone National Safety Plan for Aboriginal and Torres Strait Islander Women.
4. Increase base funding of ATSILS by 20% from 2022-23 to achieve salary parity with Legal Aid Commissions for ATSILS staff; and further increase overall funding to ATSILS by 20% each year over 5 years to meet expected demand for services, commencing in 2022-23 and compounding each year.
5. Increase its funding to the NATSILS by \$312,000, from \$1.569m to \$1.881m.
6. Fund data collection, ownership and utilisation by Aboriginal Community-Controlled Organisations.
7. Establish and resource a National Justice Reinvestment Body.
8. Commit to resourcing nation-wide implementation of the United Nations Optional Protocol to the Convention against Torture (OPCAT).
9. Invest in Aboriginal Community-Controlled Organisations to deliver holistic, culturally responsive programs focussed on healing.
10. Invest in the Aboriginal community-controlled housing sector, restore Commonwealth funding to remote Indigenous housing agreements, and invest in new codesigned, culturally-appropriate housing and upgrades in existing stock to meet current and projected need as a matter of urgency.
11. Establish a National Aboriginal Housing peak body and State and Territory peak bodies.
12. Invest in Aboriginal Community-Controlled Specialist Homelessness Services.

13. Invest in public and community housing and reform housing tax settings.
14. Abolish mutual obligations and cease all funding to private JobActive and Disability Employment Services agencies, redirecting funds to voluntary public, Community-Controlled and not-for-profit supportive employment programs.
15. Abolish compulsory income management and make participation in income management schemes voluntary and supported.
16. Abolish the ParentsNext program and replace it with voluntary, evidence-based programs that support parents, value caring labour, and break down structural barriers Aboriginal and Torres Strait Islander parents face in the labour market.
17. Permanently restore Jobseeker and related social security payments to the full 2020 supplemented Jobseeker rate, indexed to wages and prices.
18. Increase the Disability Support Pension to reflect the additional costs people with disability face and ameliorate diminished earning capacity experienced across the lifecycle, indexed to wages and prices.
19. Increase the maximum rate of Commonwealth Rent Assistance by 50%.

## Introduction

Covid has exposed the inequality in our community. Unaffordable, unsafe and inappropriate housing, punitive, conditional and inadequate social security and family violence and social services starved of funding, means people - particularly Aboriginal and Torres Strait Islander peoples - are being driven into poverty, into the criminal legal system, and put at risk of violence and homelessness.

Aboriginal and Torres Strait Islander women face violence at starkly disproportionate rates. First Nations women are 32 times more likely to be hospitalised due to family violence<sup>1</sup>; 10 times more likely to die due to assault<sup>2</sup>; and 45 times more likely to be victims of violence<sup>3</sup> than non-Indigenous women. The disproportionate prevalence and severity of violence experienced by Aboriginal and Torres Strait Islander women demands proper investment in Family Violence Prevention Legal Services, adequate resourcing of sector peak the National FVPLS Forum, and a dedicated, self-determined National Safety Plan for First Nations Women and their Children.

More than 30 years after the Royal Commission into Aboriginal Deaths in Custody report was handed down, outcomes for Aboriginal and Torres Strait Islander peoples caught in the criminal legal system are getting worse. More of our people are being incarcerated, nearly 500 First Nations people have died in custody, families continue to be torn apart by child removal, and punitive law and order responses are disproportionately applied to Aboriginal and Torres Strait Islander men, women and children. We call for self-determined alternatives to carceral responses, and redress for the systemic wrongs that cause and perpetuate the mass incarceration of First Nations peoples.

By implementing our recommendations for the 2022-23 federal budget, the federal government would be taking meaningful action to meet Closing the Gap targets and significantly improve the health and wellbeing of Aboriginal and Torres Strait Islander peoples and communities.

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<sup>1</sup> Australian Human Rights Commission, 2020, Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report, AHRC, Sydney.

<sup>2</sup> Al-Yaman, F, Van Doeland, M, and Wallis, M, 2006, Family violence among Aboriginal and Torres Strait Islander peoples, AIHW, Canberra, cat. no. IHW 17.

<sup>3</sup> Goulding D, 2007, The Role of Socio-Economic and Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family and Domestic Violence, Centre for Social and Community Research, Murdoch University, Perth, p.v.

# Reducing violence against Aboriginal and Torres Strait Islander women and children

## Adequately and securely fund Family Violence Prevention Legal Services

Family Violence Prevention Legal Services provide holistic, culturally safe, specialist frontline legal assistance services, early intervention and prevention services and community legal education to Aboriginal and Torres Strait Islander victim-survivors of family violence. Support is trauma-informed, strength-based, and designed to holistically address the complex socio-economic issues underlying clients' legal issues and experiences of family violence. Services are First Nations-led and controlled and embedded in communities. Cultural awareness and strength-based practices are at the heart of FVPLS service planning and delivery, and high priority is placed on collaboration with victim-survivors of family violence and communities in program design.

Despite the expertise, best practice holistic methods and community legitimacy enjoyed by FVPLSs, they are significantly under-resourced. Compounding the issue of under-resourcing, Commonwealth funding commitments at both service and program level are short-term, making long-term service planning difficult and creating an environment where programs are at perpetual risk of defunding regardless of how well their success is demonstrated or recognised in communities.

In response to questioning at a 2020 Senate inquiry into Family, Domestic and Sexual Violence, the Forum reported<sup>4</sup>:

'Our FVPLSs are not adequately resourced to capture, analyse and evaluate our own data. Not all FVPLSs were able to provide data on how many women they are currently working with however based on an average of those services that could provide data, estimates show that FVPLSs are currently working with in excess of 3,500 women across Australia.

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<sup>4</sup> NFVPLS Forum, 2020, Supplement to Submission 63 to the House of Representatives Inquiry into Family, Domestic and Sexual Violence. Accessed at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FamilyViolence/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FamilyViolence/Submissions).

Caseloads vary across FVPLSs and many clients have multiple files for their legal matters. One FVPLS recently reported a current caseload of approximately 301 active files across four lawyers (with one of those four positions currently vacant). In addition to cases, FVPLSs also provide advices including standalone legal advice and when a client does not wish to pursue a case.

Unmet need is a consistent issue across FVPLSs. COVID-19 and lockdown policies make it very difficult to assess current levels of unmet need. Some years ago we reported to our funder that turn away rates were up to 30- 40% of Aboriginal and Torres Strait Islander women because there is insufficient capacity to support them.’

FVPLS are not funded to provide national coverage and as a collective are only able to service an area covering half the Aboriginal and Torres Strait Islander population. Much of the service coverage in the bush is limited, often consisting of only one or two days a month in remote areas.

The 2021-22 Federal Budget allocated \$26 million over 2021-23 ‘to better support Aboriginal and Torres Strait Islander women and children who have experienced or are experiencing family violence’<sup>5</sup>, with the Commonwealth Closing the Gap Implementation Plan (CTG Plan) later clarifying that just \$17 million of this would be allocated to expanding FVPLS<sup>6</sup>. This is less than a fifth of the extra funding needed just to meet current service demands.

**In order to meet national demand, we call for an additional investment of at least \$32 million per year in FVPLS.**

### **Fund the National Family Violence Prevention Legal Services Forum (the Forum)**

In May 2012, FVPLSs came together to establish the National FVPLS Forum. The Forum works in collaboration across its member services to increase access to justice for Aboriginal and Torres Strait Islander people experiencing or at risk of family violence, especially women and children. It performs essential systemic advocacy and provides coordination and secretariat support to FVPLS. The Forum acts as a unified voice for FVPLS in policy, sector planning and

<sup>5</sup> 2021-22 Federal Budget, [Budget Paper 2](#), p.84.

<sup>6</sup> National Indigenous Australians Agency, 2021, [Commonwealth Closing the Gap Implementation Plan](#), p.162.

law reform, and plays a vital role in ensuring the voices of Aboriginal and Torres Strait Islander victim-survivors of family violence are amplified and heard.

The participation of the Forum in national policy discussions is now more crucial than ever to assist governments meet Target 13 of the Closing the Gap National Agreement. It states that “by 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.” Family violence intersects with other aspects of inequality for First Nations people, such as rates of children in out-of-home care, children’s health, homelessness and incarceration.

Despite the essential work of the Forum in representing and advocating for First Nations women and services, the federal government has failed to increase funding for the National FVPLS Forum over many years, and in 2020 Government chose to cut direct funding to the Forum. The Forum no longer receives any direct government funding, either from NIAA or the Commonwealth Attorney-General’s Department. Rather, the Forum relies on year-to-year contributions from FVPLS member services. This lack of adequate, direct and recurrent government funding impedes continuity and stability, and limits the ability of the Forum to participate in national policy discussions or develop a genuine partnerships with government, and it ignores the decades of experience of the FVPLS sector in supporting and advocating for First Nations women and children affected by family violence.

**We call on the government to enable the Forum to meet its strategic purpose as a peak body by committing recurrent government funding of \$1 million per annum, indexed annually to CPI.**



## **Commit to a genuinely self-determined, stand-alone National Safety Plan for Aboriginal and Torres Strait Islander Women**

In our November 2021 report, Pathways to Safety, Change the Record put the case for a dedicated, stand-alone and self-determined National Plan to end violence against First Nations women. The report contained 15 recommendations we believe are crucial to meeting Closing the Gap targets and building a future where all Aboriginal and Torres Strait Islander women and girls are safe and thriving, strong in their Culture and connection to Country.

We note that in January 2022 the Morrison government released its draft National Plan to End Violence against Women and Children 2022-2032, which will include two five-year Aboriginal and Torres Strait Islander Action Plans sitting under the National Plan proper and developed by a government-appointed Aboriginal and Torres Strait Islander Advisory Council.

We acknowledge what appears to be an intention to shift to five-year service funding cycles, and the draft plan's stated commitment to funding Aboriginal Community-Controlled Organisations. However, the draft plan does not satisfy our call for a stand-alone plan developed independent of government, by Aboriginal and Torres Strait Islander women for Aboriginal and Torres Strait Islander women.

**We reiterate our call for the government to commit to resourcing and implementing a genuinely self-determined, stand-alone plan, and we seek a commitment to this in the 2022-23 Budget.**

# Pursuing justice for First Nations peoples

## Increase funding to Aboriginal and Torres Strait Islander Legal Services (ATSILS)

Aboriginal and Torres Strait Islander people are over-represented in the justice system as victims of crime and among people who have been arrested, charged and convicted of criminal offenses, as well as experiencing multiple and compounding legal issues within civil jurisdictions.

Aboriginal and Torres Strait Islander Legal Services (ATSILS) were established as part of a broader social justice movement to promote the civil rights of Aboriginal and Torres Strait Islander people. ATSILS are an exercise of self determination by Aboriginal and Torres Strait Islander peoples through the creation of Community-Controlled legal organisations and initiatives to meet Aboriginal and Torres Strait Islander people's needs. ATSILS hold unparalleled knowledge and expertise in representing Aboriginal and Torres Strait Islander peoples in often complex legal matters and in individual and systemic advocacy, based on nearly 50 years' experience. They are representative of, and accountable to, First Nations communities. It is essential that ATSILS are adequately funded to deliver culturally appropriate and responsive services and contribute to law reform and policy development.

To meet the Closing the Gap targets, and provide legal services to Aboriginal and Torres Strait Islander peoples around the continent, ATSILS require secure funding proportionate to community demand.

### 1. Salary parity

According to NATSILS, 'a culturally safe and competent legal service is also limited by funding to recruit and provide pathways for Aboriginal and Torres Strait Islander lawyers'. The independent review into the Indigenous Legal Assistance Program found that currently ATSILS salaries are approximately 20-24% less than the equivalent at Legal Aid Commissions.<sup>7</sup>

While the important inclusion of SACS funding in the NLAP, folded into the baseline funding for some ATSILS from 2021-2022 and onwards, was welcome, it should be ensured that all ATSILS are supported through increased baseline funding to meet salary parity for their employees, in the context of an ever increasing demand for service delivery.

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<sup>7</sup> Independent Review into the Legal Assistance Program (ILAP Review), <<https://www.ag.gov.au/sites/default/files/2020-03/Review-of-the-ILAP.PDF>>, p.130.

In 2014 the Australian Productivity Commission Inquiry into Access to Justice Arrangements found:

‘The scale of providers does not just affect administrative costs; it can also affect career progression opportunities and the support that providers can offer for staff training. These compound other difficulties providers face in recruiting and retaining legal practitioners including comparatively low salaries and high workloads, funding uncertainties and the demands of remote travel and work.’<sup>8[6]</sup>

According to NATSILS, current funding and funding arrangements mean that ATSILS are unable to achieve salary parity for staff without an additional injection of funds. NATSILS has warned that ‘any proposals to reduce staff to increase salaries of the remaining would have a devastating impact on Aboriginal and Torres Strait Islander people accessing justice due to the withdrawal of front line services. With greater funding, salaries at ATSILS could be competitive with other legal service providers.’

## 2. Increase funding to ATSILS over 5 years

Additional funding is needed to enable ATSILS to meet anticipated demand in First Nations communities. It is well acknowledged, including in the 5-year review commissioned by the Commonwealth Attorney-General into the Indigenous Legal Assistance Program, that ATSILS are significantly underresourced to meet current demand, and those service demands are predictably increasing. Per the ILAP review:

‘As the primary providers of legal assistance services for Aboriginal and Torres Strait Islander people, ATSILS face significant service delivery pressures which appear to be growing over time. These pressures include: large and unmet criminal, civil and family law needs, regional and remote service gaps, funding limitations, and expectations from the community and government agencies that ATSILS will deliver a large volume and range of services beyond those for which they are funded.’<sup>9</sup>

Increasing rates of incarceration and the disproportionate representation of Aboriginal and Torres Strait Islander peoples among those imprisoned necessitate greater resourcing for the ATSILS. According to the Australian Productivity Commission, ‘Aboriginal and Torres Strait Islander people are vastly overrepresented in Australian prisons — comprising 3 per cent of the

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<sup>8</sup> Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview* (2014) 799.

<sup>9</sup>ILAP review, p.61.

Australian population but 29 per cent of prisoners — and have also seen the most growth in imprisonment rates over the past two decades.<sup>10</sup>

While the bulk of the work of ATSILS is assistance with criminal legal matters, all ATSILS also provide civil and family law assistance services. The ILAP review noted that the proportion of non-criminal legal assistance services provided by ATSILS has increased over time.<sup>11</sup>

We are presently unaware of the true scale of need for legal assistance services in Aboriginal and Torres Strait Islander communities, which is itself a serious concern. Comprehensive mapping of the unmet legal need of Aboriginal and Torres Strait Islander people must be undertaken in order to understand the true quantum of additional funding needed to meet need.<sup>12</sup> What is unquestionable, though, is that demand on the already under-resourced ATSILS is increasing.

Insufficient funding for ATSILS means they are constrained in their ability to perform essential functions, including providing legal assistance to all who need it across often huge geographical areas; providing early intervention and prevention services (where ATSILS are able to run these services, they are often pilot programs with non-ongoing funding or delivered with funding outside of the NLAP and the previous ILAP)<sup>13</sup>; performing necessary policy and law reform advocacy, including where their advice is specifically sought out by jurisdictions in formal consultations; and working to increase the consistency of data for monitoring and reporting, and to analyse, collect and communicate their own data and impact.

The crucial role played by ATSILS was recognised by the Royal Commission into Aboriginal Deaths in Custody, which commented that:

‘The most important safeguard to the rights of Aboriginal people, especially in ensuring reduction in the numbers of Aboriginal people convicted and sentenced to imprisonment, is the provision of competent legal representation. In Australia the provision of such assistance has been primarily provided through the network of Aboriginal Legal Aid Services (ALS). These organisations are Aboriginal controlled and community based,

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<sup>10</sup> Australian Productivity Commission, 2021, [‘Australia’s Prison Dilemma’ research paper](#),, p.19.

<sup>11</sup>ILAP review, p.61.

<sup>12</sup> In their pre-budget submission, Community Legal Centres Australia recommends providing \$1.5m every four years for a regular national survey of unmet legal needs.

<sup>13</sup> ILAP review p14.

and they have been at the forefront of the advancement of the legal rights of Aboriginal people for two decades.’<sup>14</sup>

In previous pre-budget submissions, NATSILS, ATSILS and others have called for urgent injections of funds for civil and criminal legal assistance services to meet significant unmet need for civil and family law services in Aboriginal and Torres Strait Islander communities, as highlighted in a number of reports<sup>15</sup>. In 2018, the Law Council of Australia’s Justice Project recommended that Commonwealth, state and territory Governments should invest significant additional resources in the legal assistance sector to address critical need for civil and criminal legal assistance services, suggesting that at a minimum this should include \$390 million per annum.<sup>16</sup> Such a commitment has not yet been made by governments.

In the absence of such a commitment, this submission seeks a remedy for two major outstanding and urgent funding issues affecting ATSILS: **we call for an increase to base funding of ATSILS of 20% to achieve salary parity with Legal Aid Commissions for ATSILS staff; and a further overall funding increase to ATSILS of 20% each year over 5 years to meet expected demand for services, commencing in 2022-23 and compounding each year.**

### **Increase funding to the National Aboriginal and Torres Strait Islander Legal Services (NATSILS)**

National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the representative peak body for ATSILS. NATSILS has an important function in supporting ATSILS and in contributing to nation-wide policy and law reforms to address the legal disadvantage and barriers that affect Aboriginal and Torres Strait Islander people.

We welcome the Morrison Government’s commitment to reduce the rate of Aboriginal and Torres Strait Islander adult incarceration by at least 15% by 2031, and the rate of youth

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<sup>14</sup> Royal Commission into Aboriginal Deaths in Custody (1991) *National Report, Vol. 3, Part D, 22.4.52.*

<sup>15</sup> See in particular Allison, F., Schwartz, M., and Cunneen, C., ‘The Civil and Family Law Needs of Indigenous People in WA (A report of the Australian Indigenous Legal Needs Project)’ (2014); and Cunneen, C., Allison, F., and Schwartz, M., ‘Access to Justice for Aboriginal People in the Northern Territory’ (2014) 49(2) *Australian Journal of Social Issues* 219.

<sup>16</sup> Law Council of Australia, *Justice Project* (2018), rec 2.1.

incarceration by at least 30% in the same time frame. To achieve this, state, territory and Commonwealth Governments will be required to review and reform discriminatory laws and their applications, unequal access to services and barriers to access to justice.

ATSILS and NATSILS must be sufficiently resourced to contribute to law reform and policy development, to address the legal disadvantages faced by Aboriginal and Torres Strait Islander people. They must have sufficient resources to participate meaningfully, which requires ATSILS and NATSILS to have sufficient resources for community consultation and collaborative processes. Without this capacity, governments will be unable to access the First Nations expertise they require to effect broader systemic changes, address inequalities and meet the legal needs of Aboriginal and Torres Strait Islander people.

Funding to NATSILS must be expanded to enable NATSILS to deliver both support to its member organisations, and to contribute to systemic law reform and policy development by representing their members and Aboriginal and Torres Strait Islander communities affected by inequality in the justice system.

**We call for the Commonwealth to increase its funding commitment to the NATSILS by \$312,000, from \$1.569 million to \$1.881 million.**

## **Fund data collection, ownership and utilisation by Aboriginal Community-Controlled Organisations**

Priority Reform Four of the National Agreement on Closing the Gap highlights the need for Aboriginal Controlled-Community Organisations and peaks to have access to disaggregate data and information so they can build a comprehensive picture of what is happening, and what is needed, in communities.

The Productivity Commission's 'Indigenous Evaluation Strategy' contained a number of recommendations that support this principle and call for Aboriginal and Torres Strait Islander experiences and expertise to be incorporated into program evaluation<sup>17</sup>.

Government parties simply providing access to, or handing over, data will not see these principles realised.

**Accordingly, we call for adequate funding to be provided to Aboriginal Community Controlled Organisations and NATSILS to fully implement the Indigenous Evaluation Strategy data principles and allow ACCOs to meaningfully engage with the data provided under Priority Reform Four.**

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<sup>17</sup> See Productivity Commission, 2020, Indigenous Evaluation Strategy, accessed at <<https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy>>.

## **Establish and resource a National Justice Reinvestment Body**

Justice reinvestment is a tried and tested model that recognises that every dollar put towards building or maintaining prisons, is a dollar that could be spent investing in our communities to prevent offending, provide housing, employment, health care and education. Justice reinvestment calculates savings as a result of reducing contact with the justice system and avoiding prison expansions by investing in front-end, long term community development instead. These savings are diverted and reinvested into communities to support them to thrive.

There are already successful justice reinvestment trial sites operating in Australia, and many more overseas. The Maranguka Justice Reinvestment in Bourke, as an example, has demonstrated the efficacy of justice reinvestment through economic impact analysis and improved justice outcomes data.

Federal, State and Territory governments have committed to Closing the Gap justice targets to reduce the disproportionate incarceration of Aboriginal and Torres Strait Islander peoples. However, these targets cannot and will not be met if business continues as usual. Governments must divert funds away from the extremely costly, and ineffective, criminal justice system and start investing in community-led and evidence-based solutions that address the root causes of offending.

**We urge the government to recognise this imperative in the 2022-23 budget by funding a national Justice Reinvestment Body and contributing seed and 5 year funding to new and existing justice reinvestment trial sites.**

### 1. Establish a National First Nations-led Justice Reinvestment Body

A national First Nations-led Justice Reinvestment Body that embodies Aboriginal leadership and expertise at all levels will support the work of states and territories in carrying out their own justice reinvestment initiatives to reduce the incarceration of First Nations peoples.

The body would be responsible for coordinating information-sharing between community-led justice reinvestment initiatives across Australia and conduct research and data analysis of trial programs and provide accessible data for local justice reinvestment initiatives to utilise, and for



evaluations to take place. It would be well-placed to provide technical expertise and best practice advice to justice reinvestment trial site programs and initiatives, and maintain databases of evidence-based justice reinvestment strategies.

This submission urges the Federal Government to build on the success of Justice Reinvestment initiatives to date, and support and facilitate its implementation on a larger scale, across Australia, by investing in a national Justice Reinvestment Body that:

- Coordinates and supports community-led justice reinvestment initiatives across Australia;
- Conducts research and data analysis of trial programs and provides accessible data for local justice reinvestment initiatives to utilise;
- Provides technical expertise and best practice advice to justice reinvestment trial site programs and initiatives;
- Maintains a publicly accessible database of evidence-based justice reinvestment strategies; and
- Embodies Aboriginal leadership and expertise at all levels.

Given the grossly disproportionate rates of incarceration of Aboriginal and Torres Strait Islander peoples, it is crucial that an Australian model of Justice Reinvestment incorporates Aboriginal and Torres Strait Islander leadership and expertise at every level.

We note that the establishment of a national Justice reinvestment Body was a key recommendation of the Australian Law Reform Commission's 2017 report 'Pathways to Justice - An Inquiry into the Rates of Incarceration of Aboriginal and Torres Strait Islander Peoples'<sup>18</sup>. Specifically, it called for:

*Recommendation 4-1: [...] the establishment of an independent JR Body. The purpose of the body should be to promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration and to provide expertise on the implementation of JR.'*

## 2. Fund Justice Reinvestment trial sites

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<sup>18</sup> Australian Law Reform Commission (ALRC), 2017, Pathways to Justice - An Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples: Final Report, No. 133, Canberra, p.13.

There is a considerable body of evidence, established in Australia and internationally, that attests to the importance of place-based, community-driven solutions to ‘criminal justice’ issues. Unfortunately, these solutions frequently lack the kind of funding they require to build genuine community capacity, enable data collection and evaluation and develop robust, long-term programs that serve the community and drive incarceration rates down.

The Commonwealth must play an active role in delivering on Closing the Gap justice targets by committing dedicated funding to seed and support Aboriginal and Torres Strait Islander-led and controlled justice reinvestment sites around the country.

There is a strong evidence base in support of justice reinvestment as both an effective way to reduce offending and to make substantial economic savings. The 2017 KPMG assessment of the Maranguka Justice Reinvestment project in Bourke found that the project resulted in a gross economic impact of \$3.1 million in 2017. It projected that “if just half of the results achieved in 2017 are sustained, Bourke could deliver an additional economic impact of \$7 million over the next five years.”<sup>19</sup> It is crucial that these sites are designed with and by community, and that Aboriginal and Torres Strait Islander Community-Controlled Organisations are supported to deliver programs.

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<sup>19</sup> KPMG, 2018, [Maranguka Justice Reinvestment Project: Impact Assessment](#), p.3.

## Budget Impact (\$m)

	2022-23	2023-24	2024-25	2025-26	Total
National JR Body	1.92	1.98	2.06	2.12	8.08
Funding for existing JR sites	11.0	13.0	15.0	17.0	56.0
Establishment funds for new JR sites	1.5	1.5	1.5	1.5	6
<b>Total</b>	<b>14.24</b>	<b>16.48</b>	<b>14.24</b>	<b>16.48</b>	<b>70.08</b>

Key assumptions for JR sites:

- \$1m per site per annum to provide sufficient resources for the functions outlined above in section 1.2, and to establish a clear basis for site funding in locations with varying circumstances (including remoteness, population, existing capacity/support, and availability of other funding sources).
- \$500,000 - \$800,000 per annum in establishment funds to support the development of two new sites per year.

### **Invest in Aboriginal Community-Controlled Organisations to deliver holistic, culturally responsive programs focussed on healing**

Support for truth-telling and healing are essential to addressing and redressing the injustice and trauma of colonisation, dispossession of and displacement from Country, criminalisation and the fracturing of First Nations families and communities caused by forced child removal. The 1997 Bringing them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families recommended that healing should be included in wellbeing services provided to survivors of the Stolen Generations.

Place-based, culturally-responsive, trauma-informed healing services provide support to First Nations peoples involved with or at risk of involvement with the child protection and legal systems, and should be funded and expanded to promote wellbeing and truth-telling and provide increased referral pathways to alternatives to incarceration. Ensuring ACCOs are resourced to promote community healing and provide healing programs is essential to meeting Closing the Gap targets to reduce the overrepresentation of Aboriginal and Torres Strait Islander adults, young people and children in the criminal legal system and child removals.

### **Commit to resourcing nation-wide implementation of OPCAT**

At the January 2022 the deadline for implementation of the United Nations Optional Protocol to the Convention against Torture (**OPCAT**) in Australia, just three jurisdictions (WA, ACT, Tasmania) have established National Preventive Mechanisms (NPMs) and a legislative framework for OPCAT.

Though the Morrison government committed to providing ‘support for jurisdictional implementation of the OPCAT’ in its CTG Plan<sup>20</sup>, this support is subject to negotiation with the states and territories. We understand negotiations are ongoing, per government advice in November 2021 that a ‘revised draft Intergovernmental Agreement on Australia’s agreed approach to implementing OPCAT is currently being negotiated with jurisdictions.’<sup>21</sup> It is disappointing that Australia has not met its obligations under the Protocol.

**We urge the federal government to commit to ensuring implementation of OPCAT is properly resourced across all jurisdictions through Intergovernmental Agreements as a matter of urgency.**

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<sup>20</sup> Media release, Prime Minister and Minister for Indigenous Australians, 5/8/21, [Commonwealth's Closing the Gap Implementation Plan](#).

<sup>21</sup> Commonwealth Attorney-General, response to Question on Notice 4267 from Senator Thorpe, 9/11/21 <<https://parlwork.aph.gov.au/senate/questions/4267>>.

# Investing in Aboriginal Community-Controlled Housing and Homelessness Services

Safe, secure housing is a human right, a crucial determinant of health and wellbeing, and a strong protective factor against family violence. Aboriginal and Torres Strait Islander peoples experience homelessness and lack of access to affordable, appropriate, safe and secure housing at disproportionately high rates. The importance of housing access is significant and acute for Aboriginal and Torres Strait Islander women experiencing and escaping family violence. Access to secure, appropriate supported or independent housing is also crucial for people exiting or at risk of falling into the criminal legal system.

Without significant investment in Community-Controlled housing, homelessness services and genuine reform of housing markets, the major barrier to safety, economic security and better justice outcomes posed by a lack of secure, appropriate and affordable housing will remain. Powerful policy levers for improving housing affordability and access are available to the federal government, but at the moment federal intervention in the housing system is limited to maintaining tax settings that encourage property speculation and enrich investors, and stimulus programs and payments that add more heat to the market. We urge the government to use its fiscal and regulatory power to improve housing outcomes for everyone.

## 1. Invest in Aboriginal Community-Controlled Housing

A major concern raised by women and girls in the Wiyi Yani U Thangani consultations was inadequate maintenance and repair of social housing, particularly in the bush.<sup>22</sup> The report cites research findings that in 2016, 31.4% of social housing for Aboriginal and Torres Strait Islander families did not meet agreed minimum acceptable standards compared to 19.3% of all households.<sup>23</sup> The report found “Inadequate housing conditions and poor maintenance leaves Aboriginal and Torres Strait Islander women and their families vulnerable to living in dangerous environments,” and that “The chronic shortage of social housing stock across Australia has left Aboriginal and Torres Strait Islander women and their families struggling in overcrowded and

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<sup>22</sup> Australian Human Rights Commission and Oscar et al, op. cit., p300.

<sup>23</sup> *ibid.*, p300.

inadequate living conditions, unable to keep themselves and their families safe and secure, and with the constant threat of homelessness if they cannot find a way to make ends meet.”<sup>24</sup>

The Wiyi Yani U Thangani report highlights that Aboriginal and Torres Strait Islander women and girls ‘need more control over policy and decision-making to ensure that the Indigenous housing sector is better designed to suit us’, and critiques the defunding and termination of Indigenous Community Housing Organisations following the abolition of ATSIC. The report found that ‘a current lack of investment in community- controlled organisations continues to undermine Indigenous capacity to be in control of our own housing circumstances’, and calls for investment in community-controlled housing.<sup>25</sup>

The chronic shortage of culturally appropriate housing for First Nations peoples has long been acknowledged by federal, state and territory governments, however this has not been reflected in funding. Since 2013 Commonwealth funding for remote Indigenous housing agreements, and for social housing and homelessness services through national housing agreements overall, has declined significantly in real terms. The 2021-22 budget contained no provision for remote Indigenous housing, or indeed any dedicated funding for Aboriginal Community-Controlled housing, beyond this financial year.<sup>26</sup>

Alongside chronic underinvestment in new Aboriginal Community-Controlled housing over decades, widespread neglect of existing social housing, mainstreaming of previously Community-Controlled housing and a lack of consultation with First Nations peoples about solutions to our housing needs have left communities frustrated and disempowered.

The inclusion of Housing targets in the National Agreement on Closing the Gap and governments’ acknowledgement of the importance of investment in and rebuilding the capacity of the Aboriginal Community-Controlled housing sector is welcome. For these acknowledgements to be meaningful, they must be matched by clear, adequate funding commitments in this and future budgets.

Communities must be empowered to drive decision-making on housing in the bush, regions and cities, and have access to and control over data and information needed to inform housing,

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<sup>24</sup> *ibid.*, p304.

<sup>25</sup> *ibid.*, p295.

<sup>26</sup> 2021-22 Federal Budget, [Budget paper 3](#), p50-52.

planning and infrastructure policy development and implementation. Without community control of housing solutions, Aboriginal and Torres Strait Islander people, particularly in the bush, will continue to be disadvantaged by culturally inappropriate, one-size-fits-all social housing policy that fails to account for kinship obligations and connection to Country.

**We call for restored and significant funding to remote Indigenous housing, and reinvigoration of the community-controlled housing sector and investment in new culturally-appropriate housing and upgrades in existing stock to meet current and projected need as a matter of urgency.**

**We also call for the establishment of a National Aboriginal Housing peak body and State and Territory peak bodies, and codesign of new builds with communities to ensure homes are designed to meet the needs of families.**

## 2. Invest in Aboriginal Community-Controlled Specialist Homelessness Services

Aboriginal and Torres Strait Islander peoples experience much higher rates of homelessness than non-First Nations people. The last census found that 1 in 28 Aboriginal and Torres Strait Islander peoples were experiencing homelessness on Census night, representing 22% of all people experiencing homelessness in Australia. More than half of Aboriginal and Torres Strait Islander peoples experiencing homelessness lived in the bush.<sup>27</sup>

Homelessness in First Nations communities must be understood in the context of historic and ongoing colonisation, dislocation from and dispossession of Country, intergenerational trauma and disadvantage and mass incarceration. Despite the hugely disproportionate rate of homelessness experienced by First Nations peoples, there isn't a corresponding supply of community-controlled and -delivered specialist homelessness services for First Nations peoples. In addition to the chronic inadequacy of support services overall, the lack of cultural competence and lived experience expertise in mainstream services greatly reduces the chances of Aboriginal and Torres Strait Islander people receiving the support needed to secure safe, stable and appropriate housing.

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<sup>27</sup> Australian Institute of Health and Welfare, 2019, 'Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness'.

Funding for early intervention homelessness services and holistic wraparound services is essential in helping people experiencing or at risk of homelessness receive the support and stability needed to secure long-term appropriate housing.

**We urge the government to commit to increasing funding and resources to Aboriginal Community-Controlled Organisations to provide culturally-appropriate early intervention, crisis and transitional accommodation for Aboriginal and Torres Strait Islander peoples, particularly women and children experiencing family violence.**

**Where ACCOs don't currently exist, funding should be provided to bridge service gaps in consultation with communities and people accessing services and provide sector support to establish new Community-Controlled services.**

3. Commit to systemic reform of the housing market to realise everyone's right to a home

In addition to investing in First Nations-led housing and homelessness responses for First Nations peoples, we call for systemic housing reform to end housing precarity, housing poverty and homelessness for Aboriginal and Torres Strait Islander peoples and non-Indigenous people alike. Without systemic reform that recognises housing as a right, not a commodity, the housing affordability and homelessness crisis will continue.

At the same time as we are facing a national housing affordability crisis, the conditions for government borrowing for investment in critical infrastructure like public and community housing have never been more favourable. In addition to the abolition of negative gearing and reform of capital gains tax discounts for housing, we support calls for greater investment in public and community housing across the continent to meet current and future need, build public wealth, provide useful economic stimulus, and increase supply of genuinely affordable housing.



# Building a fairer social security system

## Abolish mutual obligations and compulsory income management

Australia's highly conditional social security system forces recipients to participate in compulsory job searches and meetings with private job agencies (regardless of employment status), stringent reporting requirements with regular administrative failures, forced labour programs like Work for the Dole and the Community Development Program, and discriminatory programs targeted at specific groups of people with punitive financial penalties for noncompliance. As we call for the abolition of mutual obligations generally, we also hold particularly serious concerns about compulsory income management and ParentsNext.

Compulsory income management faced heavy criticism from women and girls in the Wiyi Yani U Thangani report. Women perceived cashless welfare as racist, a blunt instrument that was impractical and ineffective in addressing the underlying causes of harmful behaviours, and that it increased crime<sup>28</sup>.

Independent research from the University of Queensland into compulsory income management<sup>29</sup> found that having to live on the cards caused a serious decline in mental health and wellbeing across trial sites, and that overall cashless welfare is disabling, compounds the problems caused by Australia's low rate of income support payments, hinders people's management of their financial affairs, 'reduced their sense of autonomy, wellbeing and overall locus of control', and 'may undermine rather than support the stated policy objectives of creating more autonomous, independent individuals who will be more likely to transition into employment.'

ParentsNext is directly and indirectly discriminatory against single mothers of young children and Aboriginal and Torres Strait Islander mothers, with the program's targeting of these cohorts being acknowledged in governments' own policy documents.<sup>30</sup> The scheme does not

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<sup>28</sup> Australian Human Rights Commission and Oscar et al, op. cit., p547.

<sup>29</sup> Marston, G., Mendes, P., Bielefeld, S., Peterie, M., Staines, Z. and Roche, S., 2020, 'Hidden Costs: An Independent Study into Income Management in Australia', School of Social Science, The University of Queensland, p.9-12.

<sup>30</sup> For more detailed discussion see Human Rights Law Centre and National Family Violence Prevention Legal Services Forum, 2021, Submission to Parliamentary Joint Committee on Human Rights (Cth), Inquiry into ParentsNext: Examination of Social Security (Parenting Payment Participation Requirements - Class of Persons) Instrument 2021, Submission 38.

acknowledge that parents are already engaged in the most important and undervalued work in the economy - that of unpaid care and social reproduction.<sup>31</sup>

Unfair breaches, nonsensical compliance requirements and a lack of cultural appropriateness characterise the scheme. Research by Klein finds ParentsNext also risks retraumatising victim-survivors of family violence.<sup>32</sup>

**We urge the government to:**

- **Abolish mutual obligations and cease all funding to private JobActive agencies, redirecting funds to voluntary public, Community-Controlled and not-for-profit supportive employment programs;**
- **Abolish compulsory income management, making participation in income management schemes voluntary and supportive; and**
- **Abolish the ParentsNext program and replace it with voluntary, evidence-based programs that support parents, value caring labour, and break down structural barriers Aboriginal and Torres Strait Islander parents face in the labour market.**

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<sup>31</sup> See Klein, E., 2021, 'Unpaid care, welfare conditionality and expropriation', Gender Work and Organisation (Volume 28, Issue 4).

<sup>32</sup> Klein, E., 2021, Submission to Parliamentary Joint Committee on Human Rights (Cth), Inquiry into ParentsNext: Examination of Social Security (Parenting Payment Participation Requirements - Class of Persons) Instrument 2021, Submission 14, p3.

## Restore and expand liveable social security payments

No one should live in poverty in a country as wealthy as Australia, yet the current social security system is a poverty trap. Aboriginal and Torres Strait Islander peoples are over-represented among recipients of income support payments<sup>33</sup> and among those living in poverty.<sup>34,35</sup>

2020 saw an effective doubling of Jobseeker and related payments in the form of the Coronavirus Supplement. According to research by the Australian National University, prior to Covid the poverty rate in single parent households was 20.2%. If the Coronavirus supplement had not been introduced, it was projected to have risen to 27.9%. In June 2020, as a result of Covid payments, the rate of poverty in single parent households fell to 7.6%.<sup>36</sup>

People receiving the supplement reported being able to afford rent, bills, fresh food, medicines, essential medical, dental and mental healthcare and treats and presents for their children, which had previously been out of their reach.<sup>37</sup> An ACOSS survey conducted in August 2020 found that 58.8% of Coronavirus supplement recipients found it easier to pay rent or be able to move into better or safer accommodation, and 51.7% were better able to save up for emergencies - key considerations for people experiencing family violence.<sup>38</sup>

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<sup>33</sup> For demographic breakdown of people receiving social security payments, see DSS Payment Demographic Data, available at <https://data.gov.au/data/dataset/dss-payment-demographic-data>

<sup>34</sup> 2017 analysis of Census data by Markham and Biddle found 31% of Aboriginal and Torres Strait Islander people were living in poverty *before* housing costs in 2016, based on a poverty rate of 50% of median income. Meanwhile, the most recent ACOSS report into poverty in Australia, studying the same data, found that across the whole Australian population, the poverty rate *after* housing costs was 13.6%. See: Markham, F. and Biddle, N., 2018 'Income, Poverty and Inequality', Centre for Aboriginal Economic Policy Research, ANU College of Arts & Social Sciences (CAEPR 2016 Census Paper 2), p16; and Davidson, P., Bradbury, B., and Wong, M., 2020, 'Poverty in Australia 2020: Part 2, Who is affected?', ACOSS/UNSW Poverty and Inequality Partnership Report No. 4 (2020), p23.

<sup>35</sup> We note that if the analysis was conducted using the Henderson Poverty Line (a more sophisticated measure of poverty benchmarked against living costs, rather than the purely relative calculation based on median income) as the benchmark for poverty, the rates of poverty would be even higher than those presented. It should also be noted that the disproportionate distribution of poverty is likely to be even more profound than these percentages suggest, as before-housing poverty rates are generally lower than after-housing rates.

<sup>36</sup> Phillips, B., Gray, M. and Biddle, N., 2021, 'COVID-19 JobKeeper and JobSeeker impacts on poverty and housing stress under current and alternative economic and policy scenarios', Centre for Social Research and Methods, Australian National University, p iv.

<sup>37</sup> Australian Council of Social Service, May 2020, "I Can Finally Eat Fresh Fruit And Vegetables": Survey Of 955 People Receiving The New Rate Of JobSeeker And Other Allowances', p1.

<sup>38</sup> Australian Council of Social Services, August 2020, 'If It Wasn't For The Supplement, I've No Idea Where I'd Be': Survey of more than 600 people receiving the new rate of JobSeeker or related income support payments, p1.

Research has shown the positive social and economic impacts of increased and unconditional social security payments in the bush, particularly in food security and choice and in enabling greater access to Country.<sup>39</sup> The positive mental health impacts of increased payments and lack of mutual obligation requirements have been documented throughout the Covid-19 pandemic.<sup>40</sup>

Despite this, the supplement was removed completely in 2021, and Australia's unemployment payment was cut back to a level which is currently the second-lowest in the OECD. The federal government's introduction of the Coronavirus supplement to unemployment payments in response to the Covid pandemic in 2020 demonstrated that it recognised the rate of income support was insufficient, and that the government had the capacity to significantly reduce this hardship with a more generous payments.

**We urge the government to:**

- **Permanently restore Jobseeker and related social security payments to the full 2020 supplemented Jobseeker rate, indexed to wages and prices;**
- **increase the Disability Support Pension to reflect the additional costs people with disability face and ameliorate diminished earning capacity across the lifecycle, indexed to wages and prices; and**
- **increase the maximum rate of Commonwealth Rent Assistance by 50%.**

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<sup>39</sup> Staines, Z., Altman, J., Klein, E. and Markham, F., 2021, 'Remote access: Guiding principles for a new livelihood and work program in remote Indigenous Australia', The Australia Institute, p14-15.

<sup>40</sup> Australia's Mental Health Think Tank, 2021, [COVID-19 and Australia's Mental Health: An overview of academic literature, policy documents, lived experience accounts and community reports](#), p20.