

2021

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

GOVERNMENT RESPONSE TO THE ASSEMBLY RESOLUTION DATED 9 FEBRUARY 2021

**ABORIGINAL AND TORRES STRAIT ISLANDER LED REVIEW - OVERREPRESENTATION IN THE
TERRITORY'S JUSTICE SYSTEM**

Presented by

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On 9 February 2021, the Legislative Assembly passed a resolution that called on the ACT Government to:

- a. proceed with the review into over-representation of Aboriginal and Torres Strait Islander people in the ACT justice system in a timely way; and
- b. report back to the Assembly on progress by the last sitting day of September 2021.

Given the recent response to the COVID-19 pandemic, we have experienced some unavoidable delays in meeting with community as well as some changes to Assembly and government business. We are pleased to now be able to provide our initial response to that resolution.

Since this resolution regarding a review into the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system, we have been engaged in deep and active discussions with the ACT Aboriginal and Torres Strait Islander community and our Ministerial colleagues.

In particular, we mention the Minister for Corrections and Police and Emergency Services, the Minister for Justice Health, the Minister for Housing and Suburban Land Development and the Minister for Homelessness and Housing Services. We thank them for their ongoing support and commitment on these matters.

Most importantly we have been listening and talking directly to our ACT Aboriginal and Torres Strait Islander leaders and community to understand how to develop a collaborative process that accords with principles of self-determination. Together we have sought to identify and agree those mechanisms for review that will shine a light on lived experience, learn from and build on past recommendations, and that will inform and support the urgent and sustained efforts we need to make to reduce overrepresentation of Aboriginal and Torres Strait Islander people across the ACT justice system.

What we already know is that approximately 1.9 per cent of the Territory's population are Aboriginal and Torres Strait Islander people - but Aboriginal and Torres Strait Islander people make up approximately 22 per cent of the AMC prison population.

We also know that almost a quarter of all children and young people under justice supervision in the ACT, are Aboriginal or Torres Strait Islander people.

And what we also know is that we must turn this around – starting now.

The ACT Government has already committed to reducing the overrepresentation of Aboriginal and Torres Strait Islander people in custody, which is a key pillar of the ACT's

Building Communities Not Prisons Initiative (BCNP) and the RR25by25 Reducing Recidivism Plan.

The ACT Government's *Aboriginal and Torres Strait Islander Agreement 2019-2028* (Agreement) contains Action Plans committed to by each Directorate. A key target under the Justice Action Plan is to reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the ACT criminal justice system.

The ACT Government's commitment to the National Closing the Gap Agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, has set a target that the ACT Government will, by 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent (Outcome 10).

The ACT Government has also agreed to a target of reducing the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent, by 2031 (Outcome 11).

More recently, the ACT Government agreed an even more ambitious target - that by 2031, the ACT would reduce the rate of incarceration of Aboriginal and Torres Strait Islander people to achieve parity with the non indigenous incarceration rate.

With these firm commitments in place, we now need to take immediate steps, working in partnership with Aboriginal and Torres Strait Islander peoples to achieve them. That partnership has begun through a series of Roundtable and other meetings to share perspectives on the issues, and work towards a shared path forward. This includes:

- A first Roundtable meeting on 25 March 2021 where community spoke directly to Ministers about their concerns and regarding possible mechanisms for an Aboriginal and Torres Strait Islander led review. The ACT Government committed to listening to representatives of the local Aboriginal and Torres Strait Islander community and agreed to wait until community had met separately to discuss these matters.
- This was followed by a meeting on 15 April 2021 of local Aboriginal and Torres Strait Islander community leaders. Those leaders have informed us that it is their collective advice that the most effective mechanism for responding to an identified crisis in overrepresentation of Aboriginal and Torres Strait Islander peoples in the ACT justice system is by means of a Commission of Inquiry under *the Royal Commission Act 1991* (ACT). Proposed Terms of Reference for the proposed scope of such a review were also subsequently provided.

- Those community leaders advised that the meeting also resolved and recommended that:
 - a. the Aboriginal community be directly involved in all aspects of the establishment of a Commission of Inquiry including the appointment of Commissioners, counsel assisting the Commission and all staff as well as in the development of its terms of reference; and
 - b. the ACT Government make a commitment to a timeline and the necessary resourcing to implement all outstanding recommendations of all reports and inquiries related to any aspects of the operation of any component of the ACT justice system.
- Further discussions occurred and correspondence was exchanged between May 2021 and August 2021, acknowledging the importance of having a spotlight on the experiences of Aboriginal and Torres Strait Islander people in the ACT justice system.
- This made clear that neither the ACT Government nor Aboriginal and Torres Strait Islander people, want a review that takes years and tells us what we already know, and what we are already doing.
- It also made clear that the ACT Government and community agree that we need to take some urgent and potentially radical steps to achieve parity of representation in the justice system within reasonable timeframes.
- A second Roundtable was proposed for August 2021. This was postponed following the COVID-19 lockdown to September 2021.
- On Wednesday 15 September, a further Roundtable was facilitated, online, by Heidi Yates, Victims of Crime Commissioner. Again, it was hosted by the Attorney-General and Minister for Aboriginal and Torres Strait Islander Affairs, with the support of Minister for Police and Emergency Services and Minister for Corrections, Minister for Justice Health, Minister for Housing and Suburban Land Development and Minister for Homelessness and Housing Services.

Our engagement to date has significantly advanced our collective commitment to reducing overrepresentation and understanding of what this might take to achieve.

In focusing on next steps, we have identified a range of ideas for early actions that would be expected to make a real and immediate impact on reducing overrepresentation of Aboriginal and Torres Strait Islander people across interactions with the ACT justice system through:

- further and more targeted investment in intensive case management programs to provide support and assist in navigating and linking to appropriate services for those with complex needs
- culturally appropriate parole and bail reporting sites to improve connection to family and community
- increasing support for people who need members of community to provide personal and cultural support including during police interviews, and bail and parole hearings.

The meeting also discussed the need for an audit of previous recommendations to harness existing reviews relevant to overrepresentation in a range of justice systems.

We heard that an audit of reviews needs close engagement with the Aboriginal and Torres Strait Islander community to agree which report recommendations have been implemented and which have not.

Moving forward the ACT Government proposes to work with community to establish a panel and commence the audit of reviews based on this advice. In parallel to this process early actions will be considered and prioritised in consultation with community.

In taking steps forward in this way, we confirm again our commitment to reviewing the overrepresentation of Aboriginal and Torres Strait Islander peoples in the justice system, in a manner that is led by the Aboriginal and Torres Strait Islander community. We will continue to work with the community as we work through the elements and design of this process.