

Additional and dissenting comments from government senators

Introduction

1.1 Government Senators acknowledge that Aboriginal and Torres Strait Islander people, particularly Indigenous youth, are overrepresented in the criminal justice system. The reasons for the high rates of Indigenous incarceration are complex and multi-faceted but in large part stem from broader issues of Indigenous disadvantage.

1.2 The Minister for Indigenous Affairs, Senator the Hon. Nigel Scullion has reaffirmed that the government is committed to working with jurisdictions to address areas of disadvantage affecting Indigenous Australians which increase the likelihood of a person being exposed to the criminal justice system:

I am committed to reducing Indigenous offending, victimisation and incarceration by tackling the drivers of crime, including alcohol and drug misuse, poor educational outcomes and disconnection from employment. States and territories are responsible for their criminal justice systems, including policing. However, this, like many issues, needs governments to work together to ensure that we get better outcomes.¹

Closing the gap

1.3 Government Senators note that since the establishment of the 'Closing the Gap' campaign 10 years ago, there has been progress in improving some Indigenous outcomes and these are:

...built on the combined efforts of successive governments, business, community and most importantly, Aboriginal and Torres Strait Islander people themselves. But it is undeniable that progress against targets has been variable, and that a more concerted effort is needed.²

1.4 On 10 February 2016 the Prime Minister, the Hon. Malcolm Turnbull MP informed parliament that the government is committed to 'Closing the Gap' for Indigenous Australians.³ The Prime Minister recognised:

The Prime Minister of the day tables the Closing the Gap report as a report card of our nation on our combined efforts. This shared responsibility falls to each and every single Australian, Indigenous and non-Indigenous, every level of government and every business and organisation. With each report we have an opportunity to assess where we must redouble our efforts and

1 Senator the Hon. Nigel Scullion, Minister for Indigenous Affairs, *Senate Hansard*, 13 September 2016, p. 12.

2 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016)

3 The Hon Malcolm Turnbull MP, Prime Minister, *House of Representatives Hansard*, 10 February 2016, pp 1171-1175.

derive better value from the admittedly finite resources of government. State and territory governments are necessary partners. Between this year's report and the next one, I will work to ensure we are better tracking progress across the jurisdictions so we can target our efforts and accelerate outcomes. A key driver of progress has to be economic empowerment through employment, through entrepreneurship and through the use of our human capital.⁴

1.5 In his speech on 10 February 2016, the Prime Minister recognised the issue of Indigenous incarceration:

Indigenous Australians represent three per cent of the Australian population, yet they represent a staggering 27 per cent of the prison population. The Indigenous adult imprisonment rate is increasing. When young Aboriginal and Torres Strait Islander men see jail as a rite of passage, we have failed to give them a place in our society, in our community, and an alternative pathway where they can thrive. There is a vicious cycle of young Indigenous people being placed into prison, reoffending, and then returning to prison. We know the power of employment—the power of a job—as a circuit breaker in that dreadful cycle. Senator Scullion, the Minister for Indigenous Affairs, and Senator Cash, the Minister for Employment, are working across jurisdictions and portfolios, working with Aboriginal and Torres Strait Islander communities to develop a blueprint for supporting, and then transitioning, people from prison to work, to security and to prosperity.⁵

Indigenous incarceration rates

1.6 Government Senators are concerned that the imprisonment rate for Aboriginal and Torres Strait Islanders is 13 times greater than the imprisonment rate for non-Indigenous Australians.⁶ The rates of Indigenous youth in detention as outlined by the Australian Institute of Health and Welfare are particularly concerning:

Close to half (45%) of young people aged 10–17 under youth justice supervision on an average day in 2013–14 were Indigenous, despite comprising only about 6% of young people aged 10–17 in Australia. In detention, this proportion was even greater, at 58%.⁷

1.7 However, the Commonwealth Government recognises its jurisdictional limitations in the criminal justice area:

Primary responsibility for criminal justice rests with the state and territory governments, which deliver a range of programmes to reduce incarceration

4 The Hon Malcolm Turnbull MP, Prime Minister, *House of Representatives Hansard*, 10 February 2016, p. 1174.

5 The Hon Malcolm Turnbull MP, Prime Minister, *House of Representatives Hansard*, 10 February 2016, pp 1174-1175.

6 Australian Bureau of Statistics, *4517.0 Prisoners in Australia 2015*.

7 AIHW, *Youth justice in Australia 2013-14*, Bulletin 127, April 2015, p. 7. References to tables and figures have been removed from this quote.

and re-offending. The Australian Government is working with state and territory governments to ensure its investment complements their efforts and leads to real improvements in Aboriginal and Torres Strait Islander people's lives.⁸

1.8 While criminal justice is primarily a state issue, as noted above, the government is committed to working with jurisdictions to reduce the rates of Indigenous incarceration.

Recognising the reasons for Indigenous incarceration

1.9 Addressing Indigenous disadvantage is key to reducing imprisonment rates. The Queensland Association of Independent Legal Services explained how disadvantage contributes to incarceration:

As identified in the Royal Commission report, one of the biggest factors contributing to overrepresentation by Aboriginal and Torres Strait Islander people in prison is disadvantage. People who are or have been in prison are typically from highly disadvantaged backgrounds and Aboriginal and Torres Strait Islander people are the most disadvantaged group in Australia.⁹

1.10 The committee heard from witnesses such as The Hon Wayne Martin AC, Chief Justice of Western Australia who noted that:

Aboriginal people are significantly over-represented amongst the most marginalised and disadvantaged people within our society, and it is the most marginalised and disadvantaged people within our society who are much more likely to commit crime.¹⁰

1.11 Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Adjunct Professor with the School of Social Science and Policy at the University of New South Wales explained that disadvantage forms a cycle of exposure to the criminal justice system:

Parents exposed to financial or personal stress, or who abuse drugs and/or alcohol are more likely to abuse or neglect their children. Children who are neglected or abused are more likely to associate with delinquent peers and do poorly at school, which in turn increases the risk of involvement of crime. Involvement in crime increases the risk of arrest and imprisonment, both of which further reduce the changes of employment, while at the same time increasing the risk of drug and alcohol abuse. And so the process goes

8 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016), p. 51.

9 *Submission 8*, p. 4.

10 *Submission 1*, pp 7-8.

on, a vicious cycle of hopelessness and despair transmitted from one generation of Aboriginal people to the next.¹¹

1.12 The University of NSW Law Society also outlined that disadvantage increases the likelihood of criminal offending. This is particularly prevalent with Indigenous juveniles, who are:

...disadvantaged when it comes to education, health care and employment and thus more likely to experience domestic violence, to be taken into state care and even to engage in offending behaviours.¹²

Addressing disadvantage

1.13 In 2009, the then Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Tom Calma AO, confirmed the need for a multifaceted approach to tackle Indigenous disadvantage.¹³

1.14 The Australian Justice Reinvestment Project argued that indigenous incarceration cannot be considered independently of broader targets to minimise disadvantage as they are intrinsically interlinked.¹⁴ The Prime Minister's 'Closing the Gap' report showed that improvements in one area can positively impact another:

For example, providing children with a healthy start to life will give them the best chance of academic success which will, in turn, have positive flow-on effects for employment opportunities.¹⁵

Health

1.15 Chief Justice Martin recognised the importance of addressing health disadvantage early:

We know the first three years of a child's life are absolutely critical for their future, so we have to improve health and nutrition in those important years in Aboriginal children's lives.¹⁶

1.16 The Australian Institute of Health and Welfare outlined that Indigenous Australians have poorer health than other Australians.¹⁷ They are more likely to live

11 Weatherburn, D, *Arresting Incarceration-Pathways out of Indigenous Imprisonment*, Aboriginal Studies Press, 2014, pp 86-87.

12 *Submission 14*, p. 11, see also Roz Parker, 'Aboriginal and Torres Strait Islander mental health: an overview' In Nola Pudie, Pat Dudgeon and Roz Walker (eds), *Working together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*. (Commonwealth of Australia, 2010).

13 Australian Human Rights Commission, *Social Justice Report 2009*, p. 54.

14 *Submission 12*, Attachment 1, p. 28.

15 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016), p. 5.

16 *Submission 1*, pp 17-18.

with poor health, experience disability and the life expectancy of Indigenous Australians is approximately 10 years less than non-Indigenous Australians.¹⁸

1.17 The reasons for this disparity include social and economic disadvantages, health behaviours, such as smoking and poor diet, and access to health services. The Australian Institute of Health and Welfare expanded on health disadvantage:

Indigenous Australians have been disadvantaged across many areas of life which continue to affect their health today. Disadvantages such as poor education, unemployment, low income, discrimination and poor quality housing are often referred to as the 'social determinants of health'. Social determinants can affect health outcomes both directly and indirectly.

For example, a direct effect might be where a person on a low income is not able to afford, and therefore benefit from, health services with high out-of-pocket costs. Indirectly, social factors may increase a person's likelihood of engaging in risky health behaviours such as smoking and/or excessive alcohol consumption¹⁹

1.18 Professor Sir Michael Marmot, President of the World Medical Association, Director of the Institute of Health Equity and a leading researcher on health inequality issues has commented on the links between health and criminal offending:

The social conditions in which people are born, grow, live, work and age are strongly determinative both of risk of ill health and of the likelihood of engaging in civil disorder.

Health and inequalities in health are closely linked to the conditions in which we raise our children, the education we get, the neighbourhoods we live in, the work we do, whether we have the money to make ends meet, our social relationships and our care for the elderly.²⁰

1.19 The 'Closing the Gap' Report acknowledges that an early focus on health will have positive effects later in life:

17 Australian Institute of Health and Welfare, *Indigenous Health*, <http://www.aihw.gov.au/australias-health/2014/indigenous-health/>, (accessed 2 September 2016).

18 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016), p. 3.

19 Australian Institute of Health and Welfare, *Indigenous Health*, <http://www.aihw.gov.au/australias-health/2014/indigenous-health/>, (accessed 2 September 2016). Between 2009 and 2013 48 percent of Indigenous mothers smoked during pregnancy, three point seven times the rate for non-Indigenous mothers. Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016), p. 10.

20 Boyer Lectures, *Health Inequality and the causes of the causes*, <http://www.abc.net.au/radionational/programs/boyerlectures/>, (accessed 5 September 2016).

Ensuring Aboriginal and Torres Strait Islander children have a positive start to life will strengthen their opportunities later in life.²¹

1.20 In 2014 the government established the Indigenous Australians' Health Programme by consolidating pre-existing health funding streams.²² The government established the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 (The Plan). The Plan was developed to improve overall health outcomes by:

Provid[ing] an overarching framework which builds links with other major Commonwealth health activities and identifies areas of focus to guide future investment and effort in relation to improving Aboriginal and Torres Strait Islander health.²³

Fetal Alcohol Spectrum Disorders

1.21 As noted in the majority report, Fetal Alcohol Syndrome Disorders (FASD) is an issue in Indigenous communities which may contribute to indigenous incarceration.

1.22 Chief Justice Martin drew the attention of the committee to the issue of FASD in the criminal justice system:

The disadvantage can start before children are born, when too many contract Foetal Alcohol Spectrum Disorder (FASD). We know that in the north of this State FASD is now a significant problem in our criminal justice system.²⁴

1.23 A report by the House of Representatives Standing Committee on Social Policy and Legal Affairs recognised FASD as a contributing factor to incarceration rates in Indigenous communities and emphasised the need for early intervention:

The Committee is convinced of the necessity and benefit of early intervention to improve the life outcomes of individuals born with FASD. Without a diagnosis, or with the wrong diagnosis, the treatment of individuals with FASD by their families, educators, physicians and society in general can inadvertently cause great damage and lead to severe secondary disabilities such as mental illness or substance abuse which may

21 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016), p. 6.

22 This included: primary health care base funding; child and maternal health activities; Stronger Futures in the Northern Territory (Health); and the Aboriginal and Torres Strait Islander Chronic Disease Fund. See the Department of Health, *Indigenous Health*, <https://www.health.gov.au/Indigenous> (accessed 2 September 2016).

23 The Department of Health, *National Aboriginal and Torres Strait Islander Health Plan 2013-2023*, <https://www.health.gov.au/internet/main/publishing.nsf/Content/natsih-plan>, (accessed 2 September 2016).

24 *Submission 1*, p. 17.

then lead on to incarceration. Early intervention is critical to unlocking a better future.²⁵

1.24 The Australian Institute of Health and Welfare also pointed out the interaction between FASD and the justice system:

A high proportion of young people and adults with FASD come into contact with the criminal justice system. Memory difficulties, inability to plan, and failure to recognise the consequences of their actions mean that fines might not be paid and probation orders and good behaviour bonds breached.²⁶

1.25 On 25 June 2014, the government announced \$9.2 million for the National Fetal Alcohol Spectrum Disorders Action Plan to address the harmful impact of FASD on children and families.²⁷ The FASD Technical Network was also established in September 2014 to advise the Department of Health on the activities under the FASD Action Plan.²⁸

1.26 Professor Elizabeth Elliott AM, Paediatrics and Child Health, University of Sydney Clinical School, informed the committee that FASD screening and diagnostic tools were being developed.²⁹

1.27 In mid-2016 the National FASD Diagnostic Instrument was released. The diagnostic instrument is designed to assist Australian's health professionals with identifying and diagnosing FASD.³⁰

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- 25 House of Representatives Standing Committee on Social Policy and Legal Affairs, *FASD: the hidden harm – Inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders*, November 2012. p. 110.
- 26 Australian Institute of Health and Welfare, *Fetal Alcohol Spectrum disorders: a review of interventions for prevention and management in Indigenous Communities*, February 2015, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550296>, (accessed 5 September 2016).
- 27 Senator The Hon Fiona Nash, Minister for Regional Development and Minister for Regional Communications, 'Government Funds National Strategy to Target Fetal Alcohol Spectrum Disorders', 25 June 2014.
- 28 Senator The Hon Fiona Nash, Minister for Regional Development and Minister for Regional Communications, 'Government Funds National Strategy to Target Fetal Alcohol Spectrum Disorders', 25 June 2014. See also Department of Health, *Answers to questions on notice: Question No. 1*, received 13 and 21 April 2016.
- 29 *Committee Hansard*, 23 September 2015, p. 7. *Supplementary Submission 39*, Amnesty International Australia, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, May 2015, p. 29.
- 30 Australian Guide to the Diagnosis of FASD, *diagnosing FASD*, <http://alcoholpregnancy.telethonkids.org.au/about-fasd/diagnosing-fasd/> (accessed 6 September 2016). See also Department of Health, *Answers to questions on notice: Question No. 1*, received 13 and 21 April 2016.

Education

1.28 The government recognises that improving educational outcomes for Indigenous Australians is another area that will reduce contact with the justice system. Senator the Hon Minister Nigel Scullion has emphasised this point:

Without a proper education Indigenous children are more likely than not to be on a path towards welfare dependency, interaction with the justice system, poor health, poor housing and little hope for the future that other Australians enjoy.³¹

1.29 The Law Council of Australia also emphasised this link:

A lack of education, or poor school attendance, has also been identified as a factor that increases the risk of offending later in life.³²

1.30 In 2015 the Australian Government endorsed the National Aboriginal and Torres Strait Islander Education Strategy:

Under the Strategy, education ministers have agreed to a set of principles and priorities that will inform jurisdictional approaches to Aboriginal and Torres Strait Islander education.³³

1.31 Through the Indigenous Advancement Strategy (IAS) the government is continuing to target Indigenous educational disadvantage:

The Indigenous Advancement Strategy (IAS) Children and Schooling Programme is providing \$222.3 million in 2015-16 for a number of projects that support Aboriginal and Torres Strait Islander young people to increase engagement and retention in education, training and employment, and diversionary programmes to encourage re-engagement.³⁴

1.32 Further, the government is working to better integrate services to support vulnerable children and families transition to school:

From 2016-17, the Government is investing \$10 million annually through the *Community Childcare Fund* to integrate early childhood, maternal and child health and family support services with schools in a number of disadvantaged Indigenous communities. The focus is on supporting

31 Senator the Hon. Nigel Scullion, Minister for Indigenous Affairs, *Senate Hansard*, 13 September 2016, p. 10.

32 Law Council of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, submission to the Senate Legal and Constitutional Affairs References Committee for its inquiry into the value of a justice reinvestment approach to criminal justice in Australia, 22 March 2013, p. 15.

33 Department of Education and Training, *National Aboriginal and Torres Strait Islander Education Strategy*, <https://www.education.gov.au/national-aboriginal-and-torres-strait-islander-education-strategy>, (accessed 5 September 2016).

34 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016), p. 23.

Aboriginal and Torres Strait Islander families so their children make a positive transition to school.³⁵

Employment

1.33 The North Australian Aboriginal Family Violence Legal Service argued that Indigenous employment opportunities directly affect the rates of criminal offending.³⁶ The Public Interest Advocacy Centre Ltd also supported this view:

Poor socioeconomic factors, such as poor education attainment and consequent unemployment, are strong determinants of Aboriginal offending.³⁷

1.34 Just Reinvest NSW commented that Aboriginal and Torres Strait Islander Australians are more likely to be from regional areas where there are fewer opportunities to gain employment:

Undoubtedly this contributes to re-offending within the cohort and should be considered against the fact that the rate of prisoners returning to prison in NSW remained above the national average in 2012-13.³⁸

1.35 During the election the government announced:

We are committed to creating more opportunities for Indigenous businesses and, in turn, employment. We want to encourage Indigenous innovation, which creates a pipeline of opportunity.

Indigenous businesses are 100 times more likely to hire Indigenous Australians than non-Indigenous businesses, which is why we are creating an environment where Indigenous business and innovation can grow and prosper.³⁹

1.36 The plan to improve Indigenous business opportunities involves:

- delivering a tax cut for Australia's small businesses
- establishing a \$115 million Indigenous Entrepreneurs package, including:
 - \$90 million for an Indigenous Entrepreneurs Fund
 - \$23.1 million for Indigenous Business Australia's Indigenous Business Development and Assistance Programme

35 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016), p. 13.

36 *Submission 3*, p. 4.

37 *Submission 17*, p. 6, Centre for Economic Development of Australia, *Addressing entrenched disadvantage in Australia*, April 2015, <http://adminpanel.ceda.com.au/FOLDERS/Service/Files/Documents/26005~CEDAAddressingentrencheddisadvantageinAustraliaApril2015.pdf>, p. 73 (accessed 6 September 2016).

38 *Submission 11*, p. 7.

39 Liberal, *The Coalition's Policy to Develop Indigenous Business Opportunities*, <https://www.liberal.org.au/coalitions-policy-develop-indigenous-business-opportunities>, (accessed 2 September 2016).

- \$1.9 million for the development of the Indigenous business sector strategy
- building on the early success of our commitment to three per cent of Government procurement coming from Indigenous businesses
- building on the Employment Parity Initiative to generate even greater opportunity for Indigenous businesses.⁴⁰

1.37 In February 2016 the Prime Minister hosted the 'Prime Minister's Reception for Indigenous Innovators and Entrepreneurs'. This event brought together young Indigenous businesses and innovators with corporate leaders.⁴¹

1.38 In addition, the Indigenous Procurement Policy was launched on 1 July 2015 and in the first 11 months of operation awarded 1070 contracts valued at \$229 million to 284 indigenous businesses.⁴²

Community Development Program

1.39 In July 2015 the government introduced the Community Development Program (CDP), to replace the Remote Jobs and Community Programme:

The CDP is an essential part of the Australian Government's agenda for increasing employment and breaking the cycle of welfare dependency in remote areas of Australia.⁴³

1.40 Minister Scullion commented that early evidence shows that the CDP program is producing positive outcomes:

The CDP is already proving to be a success, with the number of jobseekers placed into activities up 50 per cent since the start of the programme. About 66 per cent of jobseekers have been placed into activities – up from 45 per cent on July 1.⁴⁴

1.41 Building on the increased participation in the CDP program, Minister Scullion outlined reforms the government is making to enhance the progress made:

Under these reforms, there will be more local decision-making by providers who know the jobseekers and have closer connections to what is going on in communities.

40 Liberal, *The Coalition's Policy to Develop Indigenous Business Opportunities*, <https://www.liberal.org.au/coalitions-policy-develop-indigenous-business-opportunities>, (accessed 2 September 2016).

41 The Hon Malcolm Turnbull MP, Prime Minister, Speech to Young Indigenous Businesses and Entrepreneurs, 9 February 2016.

42 See <http://www.dpmpc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp> (accessed 21 September 2016)

43 Department of Prime Minister and Cabinet, *The Community Development Programme (CDP)*, <https://www.dpmpc.gov.au/indigenous-affairs/employment/community-development-programme-cdp>, (accessed 6 September 2016).

44 Senator Scullion, *CDP reforms to drive employment outcomes*, 2 December 2015, <http://www.nigelscullion.com/media-hub/indigenous-affairs/cdp-reforms-drive-employment-outcomes>, (accessed 2 September 2016).

Payments will be made weekly so remote jobseekers have immediate access to their money and feel the financial impact of not turning up to activities straight away – not weeks down the track...

...Remote job seekers will also be able to earn more income on top of their welfare payments. Until they reach the minimum wage, their income support will depend on their participation in CDP activities, rather than income thresholds, taper rates and work credits. This simple system will make it easier to move between income support and intermittent work, which is typical in many remote areas.⁴⁵

1.42 The government is committed to enhancing the CDP programme to assist Indigenous employment:

The Australian Government will continue to establish economic development opportunities for Indigenous businesses and native title holders. Recent amendments to the Government's procurement policy have encouraged government departments to increase their use of Indigenous businesses in their supply chain. This new approach has resulted in new contracts with Indigenous businesses conservatively valued at around \$36 million between July and December 2015. Meanwhile, opportunities for Indigenous land owners and native title holders to leverage their land assets for economic development will be explored, in line with the recommendations of the COAG investigation into Indigenous land administration and use.⁴⁶

Funding

Indigenous Advancement Strategy

1.43 The government is committed to closing the gap on disadvantage and achieving better results for Aboriginal and Torres Strait Islander Australians. In 2015, the government changed the way Indigenous programs are funded through the Indigenous Advancement Strategy (IAS) which involved the streamlining of more than 150 Indigenous programs into five broad program streams.

1.44 The IAS ensures funding is more flexible and better designed to meet the aspirations and priorities of individual communities. As noted by Minister Scullion at the time:

If we keep doing as we have done, we will get the same result. For the first time in decades we have had a holistic look at the myriad of services and projects being funded to ensure future funding is geared towards achieving

45 Senator Scullion, *CDP reforms to drive employment outcomes*, 2 December 2015, <http://www.nigelscullion.com/media-hub/indigenous-affairs/cdp-reforms-drive-employment-outcomes>, (accessed 2 September 2016).

46 Department of the Prime Minister and Cabinet, *Closing the Gap Executive Summary, How is the Australian Government Responding*, <http://closingthegap.dpmc.gov.au/executive-summary.html>, (accessed 2 September 2016).

change on the ground that improves the lives of individuals and communities.⁴⁷

1.45 The results show the number of Aboriginal organisations funded has increased:

In total, 46 per cent of funded organisations are Indigenous and 55 per cent of funds under the IAS round is going to Indigenous organisations.⁴⁸

1.46 In comparison:

...under previous arrangements, fewer Aboriginal organisations were funded – in fact, only about 30 per cent of grant funded organisations were Aboriginal and Torres Strait Islander organisations as at December 2014.⁴⁹

1.47 The increase in the number of Indigenous organisation receiving support and funding reflects the government's commitment to ensuring that services are delivered by Indigenous organisations where possible:

...which we know are more likely to employ Aboriginal and Torres Strait Islander people. They are also much closer to and in-tune with the communities they serve.⁵⁰

1.48 The government outlined that as a consequence of the IAS:

...in addition to a focus on early childhood education and learning at school, we have assisted around 50 Indigenous Australians into a job every day under the Indigenous Advancement Strategy. That is over 1,300 new employment opportunities each month.⁵¹

Community safety

1.49 IAS also supports programs focused on improving community safety

47 Senator the Hon Nigel Scullion, *\$860 Million Investment through Indigenous Advancement Strategy Grants Round*, Wednesday 4 March 2015, <http://www.nigelscullion.com/media-hub/indigenous-affairs/860-million-investment-through-indigenous-advancement-strategy-grants-r> (accessed 6 September 2016).

48 Senator the Hon Nigel Scullion, 'IAS grant round investment totals \$1 billion', *Media release*, 27 May 2015.

49 Senator the Hon Nigel Scullion, *Greens not telling whole story on IAS funding*, Tuesday 5 May 2015, <http://www.nigelscullion.com/media-hub/indigenous-affairs/greens-not-telling-whole-story-ias-funding> (accessed 2 September 2016). Note: On 13 September 2016, the minister advised the Senate that approximately 55 percent of funds for programs are going to Aboriginal and Torres Strait Islander organisations, see Senator the Hon. Nigel Scullion, Minister for Indigenous Affairs, *Senate Hansard*, 13 September 2016, p. 10.

50 Senator Nigel Scullion, *Greens not telling whole story on IAS funding*, Tuesday 5 May 2015, <http://www.nigelscullion.com/media-hub/indigenous-affairs/greens-not-telling-whole-story-ias-funding> (accessed 2 September 2016).

51 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf, (accessed 2 September 2016) p. 3.

The Australian Government is working with 360 organisations across the country to improve community safety as part of the Indigenous Advancement Strategy: Safety and Wellbeing Programme. This includes:

- reducing substance misuse and harm through the delivery of alcohol and other drug treatment services
- crime prevention, diversion and rehabilitation through the delivery of prisoner rehabilitation and other justice-related activities
- violence reduction and victim support through the provision of legal services and family safety activities, particularly for women and children
- improved wellbeing and resilience activities to foster social participation or reduce antisocial behaviour through social and emotional wellbeing counselling activities
- creating safe and functional environments through community night patrols.⁵²

Legal services

1.50 On 25 March 2015, the Attorney-General and the Minister Assisting the Prime Minister for Women announced a reversal of the previously announced funding cuts to the legal assistance sector, guaranteeing funding levels for the next two years and that the changes that were due to take effect from 1 July 2015 would not proceed. This means the government will contribute over \$1.327 billion to the legal assistance sector from 2013-14 to 2016-17.⁵³

1.51 In addition, since the 2013 election the government has examined legal assistance funding to ensure it is directed to front line services where the need is greatest.⁵⁴

1.52 On 1 July 2015 the National Partnership Agreement on Legal Assistance Services (NPALAS) commenced. NPALAS provides Australian Government funding to states and territories to distribute to legal aid commissions and now also community legal centres. Over five years it will provide \$1.3 billion.⁵⁵ For 2016-17:

52 Department of the Prime Minister and Cabinet, *Closing the Gap, Prime Minister's Report*, http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf ,(accessed 2 September 2016) p. 51.

53 Senator the Hon George Brandis QC, Attorney-General, and Senator the Hon Michaelia Cash, Minister Assisting the Prime Minister for Women, *Legal aid funding assured to support the most vulnerable in our community*, *Media Release*, 26 March 2015 (accessed 19 November 2015).

54 Senator the Hon George Brandis QC, Attorney-General, and Senator the Hon Michaelia Cash, Minister Assisting the Prime Minister for Women, *Legal aid funding assured to support the most vulnerable in our community*, *Media Release*, 26 March 2015 (accessed 19 November 2015).

55 Senator The Hon George Brandis QC, 'New National partnership on legal assistance services', *Media release*, 1 July 2015.

...the Australian Government will provide \$257.1 million funding for legal aid services and legal assistance services through the NPALAS. This is an increase of \$6.2 million from 2015–16.⁵⁶

1.53 In March 2016, the Attorney-General advised the Senate:

Under the terms of the national partnership agreement, legal aid funding will increase from \$207.95 million in 2015-16, the first year of the agreement, to \$219.941 million in 2019-20.⁵⁷

1.54 The Attorney-General has confirmed that:

In addition to the significant funding contribution under the national partnership agreement, the Australian Government will continue to directly fund Indigenous legal assistance providers, delivering on the Government's ongoing commitment to improving law and justice outcomes for Indigenous Australians.⁵⁸

1.55 Government Senators note specific measures to assist Indigenous Australians:

The Government has allocated \$350 million over five years to provide culturally appropriate legal assistance services to support Indigenous people to effectively access justice.⁵⁹

1.56 In addition, \$15 million from the Australian Government will support 12 specialist domestic violence units with the first, the South West Sydney Domestic Violence Unit, being launched on 7 March 2016.

The Government has provided \$1.05 million over three years to establish the South West Sydney Unit to assist women who are experiencing, or at risk of experiencing, domestic and family violence.

The Unit will help women access legal advice and representation, as well as other services such as financial counselling, tenancy assistance, trauma counselling, and emergency accommodation. They will work closely with the local Women's Domestic Violence Court Advocacy Service and other legal and non-legal support services.

This pilot program is part of the Government's \$100 million Women's Safety Package, the 12 specialist units are being established in

56 Legal Aid and Legal Assistance Services

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201617/Legalaid

57 Senator The Hon George Brandis QC, Answer to question on notice, 16 March 2016, *Senate Hansard*, p. 2112.

58 Senator The Hon George Brandis QC, 'New National partnership on legal assistance services', *Media release*, 1 July 2015.

59 Senator The Hon George Brandis QC, 'New National partnership on legal assistance services', *Media release*, 1 July 2015. See also: See Senator the Hon George Brandis QC, Attorney-General, *Attorney-General's Portfolio Budget measures 2015-16*, *Media release*, 12 May 2015, available at: www.attorneygeneral.gov.au/Mediareleases/Pages/2015/SecondQuarter/12-May-2015-Attorney-General%27s-Portfolio-Budget-measures-2015-16.aspx (accessed 19 November 2015).

metropolitan, rural and regional locations across Australia with high rates of domestic and family violence.

The specialist units will also include targeted assistance to Indigenous women, and those facing cultural and linguistic barriers.⁶⁰

1.57 Government Senators emphasise the constrained financial environment we need to work within but note that the government is committed to doing what it can to increase funding levels as evidenced by the \$15 million legal assistance component of the \$100 million Women's Safety Package and the restoration of \$25.5 million in funding to the legal assistance sector.⁶¹

Justice Reinvestment

1.58 Government senators support justice reinvestment in principle and look forward to reviewing the outcomes of the trial underway in Bourke. The government has provided funding for this trial, where during the initial stages:

Several community-led meetings occurred which were well attended by representatives from the Department of the Prime Minister and Cabinet, the NSW Department of Premier and Cabinet, nearly all Departmental heads and senior managers, and peak Government and non-government organisations who have all committed to supporting and participating actively in the Maranguka Justice Reinvestment Project.⁶²

1.59 The first stage of the project has focused on building trust between community and service providers, identifying community priorities and circuit breakers and data collection.⁶³

1.60 At the time the committee spoke with Just Reinvest NSW the project was still in the planning phase⁶⁴ but government senators note a recent program on Four Corners indicates a number of programs are underway.⁶⁵

Justice targets

1.61 Government senators note the discussion about justice targets in the majority report and reiterate the point made by Minister Scullion that the Commonwealth has no legislative jurisdiction over state and territory criminal justice systems.⁶⁶

60 Senator The Hon George Brandis QC, Attorney General, 'New legal service to help women and children', *Media release*, 7 March 2016.

61 See <https://www.ag.gov.au/LegalSystem/Pages/response-to-report-into-access-to-justice-arrangements.aspx> (accessed 5 October 2016)

62 Just Reinvest NSW, *Justice Reinvestment in Bourke*, <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>, (accessed 6 September 2016).

63 <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/> (accessed 21 September 2016)

64 Ms Sarah Hopkins, Chairperson, Just Reinvest NSW, *Committee Hansard*, 4 April 2016, p. 8.

65 Geoff Thompson and Lisa McGregor, 'Backing Bourke', Four Corners, 19 September 2016, see <http://www.abc.net.au/4corners/stories/2016/09/19/4539321.htm> (accessed 21 September 2016)

1.62 On this point, however, Government senators note the justice targets set by the former Northern Territory government in its Aboriginal Affairs Strategy.⁶⁷

1.63 Instead, the Commonwealth seeks to contribute by engaging with state and territory governments, Indigenous communities and other stakeholders about how to achieve better justice-related outcomes.⁶⁸

Royal Commission

1.64 On 28 July 2016, the Prime Minister announced the establishment of a Royal Commission into the Child Protection and Youth Detention Systems of the Government of the Northern Territory.⁶⁹

1.65 On 1 August 2016, The Honourable Margaret White AO and Mr Mick Gooda were appointed as Royal Commissioners. The Prime Minister indicated:

The Government acknowledges the importance of having Indigenous voices on the Commission given the high number of Aboriginal and Torres Strait Islander children incarcerated in the Northern Territory detention system and who are involved in the child protection system.⁷⁰

1.66 On 10 October 2016, the Attorney-General announced a free legal advisory service for people engaging with the Royal Commission into the Protection and Detention of Children in the Northern Territory. The legal advisory service will be delivered by the North Australian Aboriginal Justice Agency (NAAJA), the Children in Care and Youth Detention Advice Service will receive \$1.1 million from the Australian Government in 2016-17.⁷¹

Conclusion

1.67 In relation to the recommendations in the majority report, Government Senators note that as indicated above, any further funding for legal services is subject to current budgetary constraints. Also as noted above, the government looks forward

66 Senate Finance and Public Administration Legislation Committee, *Estimates Hansard*, 12 February 2016, p. 43.

67 See Northern Territory Government, Office of Aboriginal Affairs, Aboriginal Affairs Strategy, Aboriginal Affairs, Monitoring, Evaluation and Reporting Framework, pp 6-7.

68 Australian Human Rights Commission, *Social Justice and Native Title Report 2014*, p. 117.

69 Malcolm Turnbull, *Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory*, 28 July 2016, <http://www.malcolmturnbull.com.au/media/royal-commission-into-the-child-protection-and-youth-detention-systems-of-t>, (accessed 2 September 2016).

70 Malcolm Turnbull, *Appointments to the Royal Commission into the Child Protection and Youth Detention Systems of the No*, 1 August 2016, <http://www.malcolmturnbull.com.au/media/appointments-to-the-royal-commission-into-the-child-protection-and-youth-de>, (accessed 2 September 2016).

71 Senator The Hon George Brandis QC, Attorney General, 'Legal advisory service for the Royal Commission into the Protection and Detention of Children in the Northern Territory', *Media release*, 10 October 2016.

to the outcomes from the justice reinvestment trial in Bourke and will consider further support based on the evidence that emerges.

1.68 Government Senators note the large workload generated by state and territory criminal law matters for Indigenous legal assistance services and call on state and territory governments to provide more funding for Indigenous legal assistance services.

1.69 Government Senators support the Indigenous Advancement Strategy process being managed by the Department of the Prime Minister and Cabinet which is showing positive results with the number of Indigenous organisations and their funding increasing.

1.70 Government senators note that the criminal justice system is the responsibility of states and territories. Nevertheless, the Commonwealth Government is committed to working with jurisdictions and Indigenous communities to achieve better justice-related outcomes.

1.71 Government Senators also note the positive work by the government in relation to FASD. The FASD Action Plan and Diagnostic Tool will facilitate improved early intervention which will result in better outcomes. Work will continue under the Action Plan, advised by the FASD Technical Network.

1.72 The majority report has not provided any reasoning why the responsibility for Family Violence Prevention Legal Services should return to the Attorney-General's Department and accordingly this recommendation is not supported by Government Senators.

Senator James Paterson
Deputy Chair

Senator Bridget McKenzie

