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36

**Stories that matter:
Learning from Aboriginal
and Torres Strait Islander
people's experiences of the
criminal legal system**

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This report is dedicated to the memory of our colleague, mentor and friend, Emeritus Professor Joe Graffam, who was named on the grant underpinning this project. Joe passed away in July 2023—after which Ashlee joined the project, to continue the work in Victoria. Joe was a formidable researcher and champion of the rights of people with lived experience of the criminal legal system, especially through his work establishing the Reintegration Puzzle Conferences (see Deakin University 2023). Despite his illness, Joe remained involved in research and advocacy as long as possible, demonstrating his ongoing passion for, and commitment to, his life’s work. It was with great sadness that we had to press on with the project without him. We hope that this report does him justice.

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Acronyms and abbreviations

AAD	Aboriginal Affairs Division (Western Australia Police Force)
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALRC	Australian Law Reform Commission
CLS	criminal legal system
FDV	family and domestic violence
LE	person with lived experience
SP	service provider

Terminology

Criminal legal system: In this report, we have made a conscious decision to refer to the criminal legal system, instead of the criminal justice system. This is part of a broader movement, in Australia and internationally, which asserts that the system often does not deliver just outcomes for Indigenous people.

First Nations/Indigenous/Aboriginal (and Torres Strait Islander): We use the terms Aboriginal and Indigenous people/s interchangeably when it comes to Australian studies. If the research includes Indigenous peoples beyond Australia, we use the term First Nations peoples.

Abstract

The 'Stories that Matter' project aims to build a better understanding of Aboriginal and Torres Strait Islander people's experiences of the criminal legal system, using yarning sessions with Indigenous people with lived experience and service providers working in this field, in Western Australia, the Australian Capital Territory and Victoria. Our findings confirm the lasting impacts of colonisation and intergenerational trauma, which create the conditions that lead Indigenous people into engagement with the criminal legal system. Findings also demonstrate ongoing systemic bias and discrimination throughout the criminal legal system, undermining the trust of Indigenous people. The project delivers a strong and shared message that reform is only possible if it is led by, and undertaken in collaboration with, Indigenous people. Our research reinforces the need for government agencies and researchers to support and contribute to Indigenous self-determination.

Executive summary

The ‘Stories that Matter’ project aims to build a better understanding of how Indigenous involvement with the criminal legal system (CLS) is different, through listening to people’s lived experiences recorded across three Australian jurisdictions, in order of participation numbers: Western Australia, the Australian Capital Territory and Victoria.

Our methodology involved the active participation of service providers (SPs), their staff and clients as research partners. We engaged with them through individual and group yarning sessions to document their experiences from the early stages of contact with police, through the sentencing process, during imprisonment and post release.

Our findings confirm the lasting impacts of colonisation and intergenerational trauma, which cause criminogenic situations that lead Indigenous people into the CLS. Findings also demonstrate ongoing systemic bias and discrimination throughout the CLS, undermining the trust of Indigenous people and their willingness to engage.

At all levels throughout the CLS, people talked about being let down, maltreated, misunderstood and disrespected. We identified a lack of understanding and cultural awareness, but we also heard of indifference and easy targeting. Evidence of racism emerged. Belief in the imposed Western ‘justice’ system was therefore low; the system was merely something to endure. Alternatives to imprisonment are lacking, and prison programs are unavailable or not culturally appropriate; as a result, the determinants of incarceration remain unaddressed. For many of our participants, there was little promising to go back to after interactions with the CLS. The SPs we talked with were also very aware of their limitations in offering support. For those who identified as Indigenous, the situation was particularly delicate, because the difficulties they faced related to their communities, families and close relatives.

The research fatigue already present in Indigenous communities, exacerbated by the Indigenous Voice referendum process in October 2023 and compounded by the defeat, affected our project. Throughout the research, we had to face the limitations of our own approach: research led by mostly non-Indigenous people, inviting Indigenous people to relive their stories of colonisation, intergenerational trauma and ongoing discrimination and racism.

From the conversations we had ($n=36$), we captured a strong and shared message that penal reform is only possible by, and with, Indigenous people, emphasising the need for self-determination. In the spirit of self-determination, Aboriginal and Torres Strait Islander people

should be empowered, to the point where they are leading the storytelling process. To get there, they need meaningful recognition of the challenges they face and a shared commitment to addressing these challenges in practice. For government agencies and non-Indigenous researchers, a key goal is therefore to support Aboriginal and Torres Strait Islander people and communities to a point where non-Indigenous researchers are not needed for this process, and the stories and solutions come directly from the people affected.

Introduction

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SP1: Aboriginal people working for Aboriginal people, that's the only way it's going to be made better. You can't fix the situation if you don't understand the situation to start with.

In December 2024, the Australian Bureau of Statistics (2024b) released new data showing that the ratio of Indigenous to non-Indigenous imprisonment rates had risen to the highest level on record. There is a large and growing body of research and government reports investigating what is driving Indigenous over-representation in the CLS. However, it is still relatively rare to hear the voices of the Indigenous people involved in the system, speaking in their own words about their lived experiences of the CLS.

The idea for the research proposal underpinning this project is closely connected with the Reintegration Puzzle Conferences, initiated by Joe Graffam, and the organisation of this conference in Perth. During the planning stage for the event, an Aboriginal woman working in this space suggested that 'someone should listen to our stories about the criminal justice system'. Following consultation with similar organisations in Victoria and the Australian Capital Territory, we found widespread support in all three jurisdictions where we proposed to undertake this research. This comment thus gave rise to the present research proposal, which was supported as part of the inaugural Indigenous Justice Research Program funded by the Australian Institute of Criminology. The project had significant buy-in from the SPs we contacted in Western Australia, the Australian Capital Territory and Victoria, who provided support letters for our research proposal. We undertook to capture the voices of Indigenous people who had experienced the CLS, listen to their stories and identify current issues.

The report begins with a brief literature review of the key issues known to underpin Aboriginal and Torres Strait Islander people's involvement in the CLS, focusing on the social determinants of incarceration and systemic bias. However, because this research is well-established and generally deficit oriented, we do not propose to review this literature in extensive detail. We then present our research design and methodology, including the decision to focus on a qualitative approach and the active participation of Indigenous people with lived experience. This section also provides more detail about each of the three research sites and the 36 participants (for further details, see the *Appendix*).

We then present our findings, focusing particularly on the participants' own words. We highlight their views on the drivers of contact with the CLS. Key themes that emerged here were legacies of colonisation, the stolen generations and intergenerational trauma; violence and substance use; and mental health issues. Participants spoke about their interactions with the CLS, including systemic racism in the CLS, interactions with the police, courts and sentencing, prison, pre-release programs, parole, and transition and life after release. They also discussed their challenges and triumphs after release. In this context, the key themes revolved around accommodation, employment and driver's licences. Participants also reflected on desistance and ways to improve the CLS. This coalesced around the need for cultural awareness among non-Indigenous people, self-determination, a strengths and family-based approach, the involvement of the community and Indigenous people/Elders, addressing culture loss and promoting reconnection. In the *Discussion* and *Conclusion* sections, we reflect on the implications of our research approach and findings. In particular, we note that our findings echo so much previous research and consider how and whether to further undertake research of this nature, in the wake of the outcome of the 2023 Voice referendum.

Literature review

The number of Aboriginal and Torres Strait Islander people incarcerated in Australia is higher than ever and on an upward trajectory. In September 2024, there were 15,747 Indigenous people incarcerated across Australia, at a rate of 2,707 adults per 100,000 (Australian Bureau of Statistics 2024a; see also 2024b). Five years earlier, these figures stood at 12,263 and 2,524 respectively (Australian Bureau of Statistics 2019). In this literature review, we provide a summary of what is known about the drivers of Indigenous over-representation in the CLS.

Over the years, numerous academic articles and government reports have considered this topic. Much of this evidence was brought together in the 2017 report from the Australian Law Reform Commission (ALRC), *Pathways to justice: The inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*, which forms the backbone of this literature review. The ALRC identified several social determinants of incarceration for Aboriginal and Torres Strait Islander people, including education, employment, health and disability, housing and homelessness, child protection and youth justice.

Additional impacts come from ongoing colonisation and intergenerational, individual and collective trauma, as well as racism and systemic bias within the CLS. They have an ongoing impact on Indigenous people's psychological, emotional, physical and social wellbeing, which in turn affects individuals' and communities' interactions with the CLS.

Social determinants of incarceration

Housing is an issue. For many Indigenous people, for various reasons, private housing is not an option, and supported housing is scarce (ALRC 2017). The lack of a safe house can lead to homelessness, people staying in situations of family and domestic violence (FDV) and overcrowding, which can lead to criminal behaviour. Access to the housing market becomes even more problematic after release from prison; this is particularly the case for Indigenous women (Doyle et al. 2024; Tubex & Gately 2025).

Recent research in Perth, Western Australia emphasised Indigenous perspectives on homelessness (Birdiya Maya 2023), revealing that the current housing system fails to support Indigenous people. There is a pressing need for an Indigenous-centred response to homelessness, to ensure that housing options, services and policies reflect the cultural values and needs of Aboriginal communities and families—especially for Aboriginal women after release (Birdiya Maya 2023). A housing shortage and limited accommodation access, compounded by socio-economic factors such as poverty, unemployment, mental health issues and low educational attainment, significantly contribute to the recidivism rates among people released from prison (Conroy & Williams 2022; Doyle et al. 2024).

Unemployment and the lack of stable employment are also linked to (re)offending and reconviction. In his 2016 ‘Closing the Gap’ address to Parliament, then Prime Minister Malcolm Turnbull (2016) referred to employment as a circuit-breaker in the cycle of prison, recidivism and return to prison. The *Prison to work* report (Council of Australian Governments 2016) followed from this statement and described the types of services—including education, employment and other programs—needed in the transition of Aboriginal and Torres Strait Islander people after release from prison. The Australian Government’s Time to Work Employment Service sought to assist First Nations adults to better prepare for, and find, employment after prison. However, evaluation of this program (Australian Government 2023) found that it had low uptake and poor success rates in creating connections between participants and employment services post release. One of the key difficulties identified with the program’s implementation was the limited evidence of Aboriginal and Torres Strait Islander stakeholder consultations in its design and implementation, highlighting the need to hear the voices of Indigenous people in service design and delivery.

Lack of access to education has also been identified as a criminogenic factor (ALRC 2017; WA Justice Association 2023), and several Closing the Gap (2024) targets concern enhancing education. Concerningly, research points to the over-representation of Indigenous children among those suspended and excluded from school and demonstrates the racial dimension of the ‘school-to-prison’ pathway (see, for example, Graham et al. 2023; O’Brien & Trudgett 2018).

Finally, health issues, including mental health and physical and cognitive disability, are related to high incarceration rates. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023a, 2023b) recently reaffirmed the disproportionate extent to which Indigenous people experience disability and the intersection between disability and the CLS for Indigenous people (see also McCausland, McEntyre & Baldry 2017).

However, it is important to recognise that prison health surveys do not always align with Indigenous concepts of health and social and emotional wellbeing (Darnett, Peters & Thielking 2024; Dudgeon & Walker 2015). Social and emotional wellbeing is a comprehensive concept that acknowledges the significance of Aboriginal people's connection to land, culture, family and community (Sherwood & Mohamed 2020; Westerman & Sheridan 2020). This view of health requires looking beyond the physical needs of the individual and understanding health in the context of inequity, trauma, racism and discrimination (Dudgeon & Walker 2015).

Research by Worimi and Wonnarua woman Elizabeth McEntyre and others (see, for example, McCausland, McEntyre & Baldry 2018) has highlighted how government and community responses have exacerbated structural violence and serial incarceration. Increasingly, prisons have become institutions of default and management for Aboriginal and Torres Strait Islander people with disability. This reinforces the need for culturally appropriate forensic mental health programs that facilitate connections to family and community (McEntyre et al. 2024).

To this end, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability made several relevant recommendations, including that First Nations organisations be engaged to provide culturally safe disability screening and assessment services for First Nations people in custody. Unfortunately, only one jurisdiction (Queensland) accepted this recommendation (for discussion, see Bartels 2024).

Compounding these issues, Rose et al. (2019) found that Indigenous Australians in prison reported significantly higher levels of distress and more symptoms of anxiety and depression than people from other backgrounds. In their systematic review of the health and social needs of Indigenous people leaving prison, Abbott et al. (2018) concluded that transitional and post-release programs are inadequate. They formulated recommendations for improved effectiveness, including the need for programs, services and people working with Aboriginal and Torres Strait Islander people leaving prison to be culturally competent, incorporating an Aboriginal and Torres Strait Islander world view and involving families and communities in both the design and evaluation of programs. Similarly, Ogloff et al.'s (2023) evaluation of a short-term psycho-educational program for people in prison found positive outcomes for those from an English-speaking background, and some for participants from culturally and linguistically diverse backgrounds, but no differences in the Indigenous Australian group. The authors noted the lack of Indigenous cultural considerations and the non-Indigenous facilitators within the program, suggesting that these may have been contributing factors to the lack of positive outcomes for the Indigenous Australian cohort.

McCausland and Baldry (2023) noted that, within the Mental Health Disorders and Cognitive Disability in the Criminal Justice System databank from New South Wales, Indigenous people had the highest rates of complex support needs, such as multiple diagnoses and disabilities.

Systemic bias

McCausland and Baldry (2023: 47) observed:

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... the social determinants of who goes to prison cannot be explained without acknowledging the role of structural racism, discrimination and the unequal distribution of power, income, wealth and services. Criminal legal systems, like health systems, operate inequitably. This is evident in the over-surveillance of particular populations and neighbourhoods by police, lack of access to well-resourced legal representation, not being granted diversionary options and bail, and lack of specialist services and support.

There has been increasing recognition in recent years of the systemic bias of the CLS in Australia against Aboriginal and Torres Strait Islander peoples. Research shows that Indigenous Australians face overpolicing, harsher sentences and limited access to justice, leading to their disproportionate over-representation in the CLS (Cunneen & Tauri 2016).

Australian police have a history of racial bias, surveillance, stereotyping, targeting and harassment of Indigenous people (Cunneen 2020; Joy 2023; O'Brien 2021). Porter and Hannan have explained that the role of the Australian police in 'genocide and implementing policies built on institutional racism is widely recognised' (2023: 81). The combination of wide discretionary powers and systemic bias has led to overpolicing, resulting in violence and abuse of Indigenous people, and there continue to be instances of police brutality and excessive use of force against Indigenous people by Australia's state and territory police (Cunneen & Tauri 2019). Indigenous people are also more likely than non-Indigenous to be issued warrants and cautions and more likely to be met with aggression when interacting with police (O'Brien 2021). Senior police in Victoria, Western Australia and the Northern Territory have apologised for the racism and discrimination within their respective agencies and the impacts of this on Indigenous people (see, for example, Henriques-Gomes 2018; Northern Territory Police, Fire and Emergency Services 2024; Ore 2023). Nevertheless, these practices persist across Australia (Piccione 2025).

There is an overall increase in the use of remand, because of stricter bail legislation, and this particularly impacts Indigenous people (Bartels 2019). Indigenous people experience more frequent bail refusal, due to factors including irregular employment, previous convictions, lack of secure accommodation and a record of previous bail breaches (Snowball, Roth & Weatherburn 2010; Weatherburn & Snowball 2012). Indigenous people granted bail have a higher prevalence of breaches and revocation of bail, resulting in (re)imprisonment. This can be due to cultural obligations and responsibilities; remoteness; their offending and remand history; and social, economic and cultural disadvantage (ALRC 2017; Bartels 2019; Sanderson, Mazerolle & Anderson-Bond 2011).

Quantitative evidence pointing to systemic bias in sentencing, all other factors but the criminal behaviour being identical, is numerous—but disparate, depending on the jurisdiction and court level (for an overview, see Lockwood, Hart & Stewart 2015). However, this may result from an inadequate understanding of the complexity of issues, including intergenerational trauma. Judges in South Australia have recognised that trauma is present in Indigenous defendants' lives but did not always recognise the link to offending behaviour, resulting in a lack of consideration of such trauma in sentencing (McLachlan 2022). Hopkins et al.'s (2023) analysis of all Supreme Court cases involving an Indigenous defendant in the Australian Capital Territory over a 10-year period also revealed a prevailing silence about cultural issues and an absence of strengths-based perspectives. Heenan, Bond and Lockwood (2024) analysed judicial sentencing transcripts to explore the ways judicial officers refer to customary law and cultural evidence when sentencing Indigenous people for domestic violence offences in the Northern Territory Supreme Court. This study found that, when Indigenous cultural factors were identified, the impacts on sentencing were absent, superficial or applied in a way that removed cultural meaning.

In any event, the data analysed by the ALRC (2017) demonstrated that more Indigenous people receive a prison sentence than non-Indigenous people, while fewer receive a community-based sanction. The data also show that Indigenous people tend to serve shorter sentences, which are particularly damaging because they have all the criminogenic effects of imprisonment without providing access to prison programs.

Further, it has been demonstrated that Indigenous people often do not apply for or receive parole, believing that they are unlikely to be granted parole or preferring to walk free at the end of their sentence, without the risk of parole revocation (Beaufils, Cunneen & Russell 2021; Tubex, Rynne & Blagg 2020). The ALRC (2017) also found that the standard parole conditions can pose issues for Aboriginal and Torres Strait Islander people, especially where they conflict with cultural obligations or prevent reconnection with family and community. Indigenous people testified that getting parole and returning to the community was terrifying; reasons included feelings of shame, anxiety or fear—particularly about the need to start a new routine, of being recognised in the community and being exposed to peers who were still engaging in drug and alcohol use or offending behaviour (Beaufils, Cunneen & Russell 2021). Abbott et al. (2018) identified the need to incorporate Aboriginal and Torres Strait Islander people in the planning and delivery of post-release programs, including those associated with parole, to ensure that the programs appropriately consider the needs of Aboriginal and Torres Strait Islander people.

The incarceration of Indigenous people leaves them disconnected from communities and away from family, reducing their ability to access cultural support and services (Tubex, Rynne & Blagg 2020). Research has found that the needs of Indigenous people have gone unmet, with few programs designed to meet their release needs (eg Abbott et al. 2018), and identified a clear need for more culturally appropriate support on release (Beaufils, Cunneen & Russell 2021). The current approach is considered to contribute to subsequent reoffending (Anthony et al. 2021; Shepherd, Ogloff & Thomas 2016).

Further, there are the intergenerational effects of parental incarceration. Roettger, Lockwood and Dennison's research (2019) points to the need to work with Indigenous people, reduce incarceration levels, minimise trauma from separation, implement parenting skills initiatives and provide wraparound services.

The over-representation of Indigenous youth in the CLS is especially problematic because this perpetuates a cycle of disadvantage and recidivism. Concerningly, 63 percent of 10- to 17-year-olds in detention are Indigenous youth (Australian Institute of Health & Welfare 2023). Indigenous youth are more likely to be placed under supervision while unsentenced (O'Brien 2021). Many Indigenous youth (especially males) have had early contact with the CLS, which acts as a facilitator of future offending (Cunneen, Goldson & Russell 2016). The treatment of youth in detention is so inadequate and poor that it results in human rights violations (Boffa & Mackay 2025), with reports of physical abuse, inadequate facilities, extreme solitary confinement and a lack of rehabilitative programs for detainees. This treatment is only exacerbated by slow government responses (Cunneen, Goldson & Russell 2016). Indigenous young people's involvement in the CLS also needs to be considered in the context of concurrent over-representation in child 'protection', which has also been the subject of extensive critique (see, for example, Beaufils 2024; Davis 2019).

The end result of all these issues is that Indigenous people show high recidivism rates (Australian Bureau of Statistics 2024b). This is also due to a lack of programs addressing criminogenic issues and, in particular, throughcare needs not being met (Tubex 2021).

Conclusion

The importance of documenting Indigenous people's experiences with the CLS became blatantly apparent in the Black Lives Matter movement. Researchers, academics and activists clearly demonstrated Australia's own problems in how Indigenous people are treated throughout the CLS. This is evidenced by the mounting number of deaths of Indigenous people in custody since the Royal Commission into Aboriginal Deaths in Custody: in December 2024, this figure stood at 582 (Australian Institute of Criminology 2024; see also Miles, McAlister & Bricknell 2024). However, Koori academic and activist Amanda Porter (2016: np) wrote on the 25th anniversary of the report being tabled:

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Sometimes the language of statistics and level of analysis used to discuss deaths in custody make us lose sight of something more fundamental. We are talking about people—people with families and friends, people who loved and were loved, people who may have died prematurely or in brutal circumstances.

There is also increasing recognition of the need to listen to the 'lived experience' of people who have been involved in the CLS, in order to develop effective justice policies (Doyle, Gardner & Wells 2021). Although there is a burgeoning 'lived experience criminology' community in Australia (see Antojado et al. 2024; Antojado & McPhee 2024), there have been relatively few Indigenous voices, at least in the context of academic research (see also the work of Tabitha Lean and Keenan Mundine; for example, Kilroy, Lean & Davis 2023; Sercombe et al. 2022 respectively). There may be a range of personal and structural reasons for this. However, Māori academic Linda Tuhiwai Smith has noted, in the Aotearoa New Zealand context, that we need to ensure a research approach that is 'more respectful, ethical, sympathetic and useful' (2012: 9). This is particularly important in the context of Aboriginal and Torres Strait Islander people's experiences, in order to promote self-determination. That this is of paramount importance has become even clearer following the outcome of the Voice referendum in October 2023. The Australian Human Rights Commission (2024: 44) observed recently:

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Participants throughout the consultations spoke freely about the impact of the Voice Campaign and the fall out post referendum. Whether or not participants were in favour or opposed to the Voice, there was consensus that the decision should have sat solely with First Nations people. The campaign and referendum were said to be the 'most violent form of political racism experienced by our generation'. Participants urged government to cease the politicisation of First Nations human rights to progress individual agendas.

The following section details the practical and ethical challenges around ensuring that Aboriginal and Torres Strait Islander people's voices are heard and listened to. Increasingly, these challenges include a sense of frustration in the community about participating in research—often at significant personal emotional expense—without anything changing.

Research design and methodology

Research aims

The 'Stories that Matter' project aims to build a better understanding of how Indigenous involvement with the CLS is different, through listening to people's lived experiences, recorded across three Australian jurisdictions: Western Australia, the Australian Capital Territory and Victoria. Most of the data were collected in Western Australia, for reasons explained below.

The choice for qualitative research

The National Agreement on Closing the Gap (2024) recognises the need to collect data to identify the specific drivers of Indigenous over-representation at all stages of the CLS. However, currently available databases from the Australian Bureau of Statistics are limited in their ability to aid understanding of Indigenous trajectories throughout the CLS, particularly in relation to intersectional data. We definitely lack information about the early stages of the CLS, before Indigenous people end up in prison, especially in relation to current practices and opportunities for early intervention and diversion. Further, quantitative data sources are contested in an Indigenous context (Walter & Suina 2023). Consequently, quantitative data collection needs to be paired with qualitative research, capturing the perspectives and experiences of Indigenous people with the CLS, to inform us about how we can move to better practices.

The active involvement of Indigenous people with lived experience

Within academia, there is a growing awareness that the way we currently seek to find solutions for Indigenous involvement in the CLS risks the continuation of colonisation, if we start from Western perspectives, values and approaches. Increasingly, research acknowledges the need to listen to Aboriginal and Torres Strait Islander voices, because Indigenous people are the experts on their own lives (Haswell et al. 2014; Schultz 2020; Tuhiwai Smith 2012). Therefore, the active involvement of Indigenous people, illustrating their experiences with the CLS, was the main source of our research.

To ensure that Indigenous voices and perspectives were captured faithfully, not interpreted through a non-Indigenous lens, we adopted a yarning approach. This is increasingly accepted as a culturally safe research method with First Nations communities (Bessarab & Ng'andu 2010; Geia, Hayes & Usher 2013). This approach privileges Indigenous experiences, stories, histories and priorities, to contribute to a deeper understanding of what led to their CLS involvement, including incarceration. The use of storytelling and presenting case studies is emerging in the field of criminology more generally (see, for example, Anthony et al. 2021; Baldry 2013; Bevis et al. 2020; Doyle, Gardner & Wells 2021; McCausland & Baldry 2017; Sotiri et al. 2021).

Methodology

Our approach was led by the guidelines on ethical research in this area, especially the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) *Code of ethics for Aboriginal and Torres Strait Islander research* (AIATSIS Code; AIATSIS 2020).

The project received ethics approval from the University of Western Australia (2022/ET000268), with corresponding ethics approval from the Australian National University and Deakin University. (For a comprehensive analysis of ethical issues associated with research of this nature, see Smyth, Martin & Downing 2024, especially Part II; see also Australian Institute of Aboriginal and Torres Strait Islander Studies 2024, 2020). All three principal researchers have considerable expertise in the field, from criminological, legal and psychological backgrounds. They were assisted by a local Indigenous research assistant to conduct the interviews and contribute to the analysis and report writing.

Prior to the interviews, participants were informed about the purpose of the 'Stories that Matter' project by the liaison person and/or researcher. If they expressed interest in participating, we further explained the research approach and use. Participants were given the participant information form and asked to sign the consent form (see *Appendix*). During the interviews, we invited people to share their lived experiences of the CLS—from the early stages of contact with police, through the sentencing process, including any non-custodial outcomes, during imprisonment and post release. While the research questions led our conversations (see *Appendix*), they functioned merely as a narrative topic list for the discussions, rather than a set interview format. Interviews were recorded, after people agreed to this. Participants were offered a \$50 voucher in appreciation of their time and effort.

Table 1 presents a summary of the participant demographics. Further details are set out in Table A1 in the *Appendix*.

	<i>n</i>	%
Staff	14	39
Client	22	61
Indigenous	32	89
Non-Indigenous	4	11
Male	16	44
Female	20	56
WA	31	86
ACT	4	11
Vic	1	3

The ‘Stories that Matter’ were professionally transcribed and analysed by the local researchers. In Western Australia, this analysis was completed in NVivo. The small number of interviews conducted in the Australian Capital Territory and Victoria were analysed thematically in Microsoft Word.

After the interpretation of the data in each jurisdiction, we aimed to return to the participating SPs for consultation, through yarning circles, to ensure a correct understanding of the results. This happened in Western Australia to a certain extent: two full yarning circles took place in Albany and Geraldton, and several individual feedback sessions were organised in the metropolitan area. However, this did not occur in the Australian Capital Territory or Victoria (discussed below).

The research aimed to formulate strategies for better practice involving Indigenous people in the CLS, to build pathways to achieve Target 10 in the Closing the Gap (2024) National Agreement: to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 percent by 2031. To achieve this, we need to listen to the stories that matter, to ensure policy development is informed by the experiences of people who can explain firsthand what does, and does not, work at all stages of the CLS.

Western Australia

The research design in Western Australia had two components: preliminary interactions with police and courts, to get insights into the earlier stages of the CLS and provide a better understanding for the second stage, consisting of the interviews with SPs and people with lived experience. This was to take place in all three jurisdictions.

Tubex contacted the Western Australia Police Force's Aboriginal Affairs Division (AAD) and requested an interview with their staff. She was invited by the Superintendent, who provided her with an overview of the AAD and the cultural awareness training they have in place. In February 2023, Tubex was allowed to interview AAD staff in a focus group of five people, one of whom was Aboriginal. The focus group ran for nearly 90 minutes and was recorded and transcribed.

The research in Western Australia also included observations of court practices, to get a firsthand grasp of what is happening on the ground. Observations took place at the end of 2022 at Courtroom 42 of the Perth Magistrates Court (over three days), the Drug Court (four days) and Mental Health (START) Court (four days). Tubex was also allowed to attend a session of the Barndimalgu Family Violence Court in Geraldton (Barndimalgu means 'to fix things, make good').

Recruitment for interviews and yarning circles

In Western Australia, we aimed for 30 participants, spread over the metropolitan area and the regions. To recruit participants in the metropolitan area, we collaborated with Wungening Aboriginal Corporation. Because of the limited response in the metropolitan area, we contacted local Aboriginal communities, involving Elders and women's groups, in the Medina, Kwinana and Gosnell area. In the regions, we were supported by the After Prison Network (2024). We visited the agencies to explain the research, and they subsequently contacted potential participants with the invitation to share their lived experience. The involvement of these agencies and local communities provided us with the opportunity and confidence to reach out to potential participants, ensuring that our team was equipped with local knowledge and protocols relevant to engaging with their staff and clients.

Despite the generous support of the SPs and community members, recruitment was not an easy task. The limited interest in participating in research, and research fatigue generally, were apparent. We therefore needed to be creative and adjusted our approach to the local situation and practices. Beyond participants being invited by their caseworkers to attend an interview at the office, we accompanied SPs during place-based check-ups: we visited people in their homes, at temporary accommodation or in a cafe, at free barbecues or walk-in breakfasts for people experiencing homelessness and at community gatherings involving Elders and Aboriginal women's groups. This enabled us to meet the target number ($n=31$).

The SPs were consulted and informed throughout the project. The progress of the Western Australian component of the research was discussed at the regular meetings of the organising committee of the Reintegration Puzzle Conference in Perth—which spread over more than two years because of the COVID-19 pandemic. Eventually, the conference took place in March 2023, and we presented a keynote speech on the project's progress.

Metropolitan area

The 10 metropolitan interviews were conducted by Emma Tufuga, an Indigenous Samoan woman, between March and September 2023, initially in collaboration with the lead author. All 10 participants identified as Aboriginal and female. There were six participants with lived experience of the CLS and four staff members working in various roles, including caseworkers and senior program facilitators.

Regional areas

Hilde Tubex conducted the 21 regional interviews, in Mandurah, Bunbury (supported by Accord West), Albany (supported by PIVOT), Broome (supported by CentaCare), Geraldton (supported by Regional Alliance West), Port Hedland/Karratha/Roebourne and Tom Price (supported by Pilbara Community Services Ltd). Of the 21 interviewees, 17 identified as Aboriginal, 10 were women and 11 were men. There were 11 people with lived experience of the CLS and 10 people working in the system, some of them having close relatives with lived experience. To reach enough participants and allow for consultation, most regions were visited twice, and fieldwork was conducted between December 2022 and November 2023.

Analysis

The recorded interviews were professionally transcribed and uploaded in NVivo 14. They were analysed independently by the two WA researchers. The interviews were examined to identify broad themes, core categories and sub-categories. Throughout this process, coding continued until a point was reached where codes were recognised, and data were interpreted consistently (open coding). After comparing both outcomes of this first analysis, the two researchers discussed coding until a consensus was established that all codes were identified and data interpreted consistently. Themes and sub-themes were identified, reviewed, revised and refined. Each theme and sub-theme was then organised in NVivo for data management, using nodes and sub-nodes, allowing us to keep the origin of the sources while abstracting broader themes and reflecting on common experiences participants shared with us in their stories (axial coding). Based on this, we developed the narrative reflected in the findings below: going theme by theme, summarising the content of each section and illustrating with quotes (selective coding).

Consultation and feedback

We stated in the subsection *Methodology* that our aim was to organise consultation sessions to validate our interpretation of the findings with the participants. In reality, this was very difficult. The complexity of the lives of the people we talked with did not often allow for standardised protocols. Several participants could not be reached; they had moved or changed phone numbers, were no longer under supervision or had returned to prison, while others did not respond to our invitation. We reached out to people as much as possible and communicated our findings over the phone or in person.

Australian Capital Territory

Recruitment for interviews and yarning circles

The original intention for this project was to undertake 10 interviews in the Australian Capital Territory, in partnership with two Aboriginal-controlled organisations that support Indigenous people involved with the CLS in the Australian Capital Territory: Worldview Foundation and Tjillari Justice. Unfortunately, by the time the project commenced, Tjillari was not active.

Worldview facilitated the researchers' access, and Hunter Culbong, a proud Noongar man, conducted four interviews with Worldview clients over one day in late May 2023. These interviews were all recorded and ranged from 10 to 21 minutes. However, Worldview only works with men, particularly with young men aged 16 to 25, on a diversionary basis (Worldview 2024b, 2024c). This constituted too specific a profile to be representative for the Australian Capital Territory. We reached out to other Aboriginal-controlled organisations in the Australian Capital Territory to broaden the pool; however, these organisations suggested that it would be appropriate to postpone further recruitment until after the Voice referendum in October 2023.

The referendum was a historically important moment for Aboriginal and Torres Strait Islander peoples. There were varied perspectives among Indigenous community members about the Voice to Parliament, but most generally supported it (see, for example, Beazley 2023). Many felt, and continue to feel, a profound sense of grief about the outcome (Central Australian Aboriginal Congress 2023; Jenkins 2024). The Australian Capital Territory was the only jurisdiction in Australia with a majority 'Yes' vote in the referendum (61%, compared with 32–46% elsewhere; ABC News 2023). This disjuncture and the fact that the Australian Capital Territory's vote did not count towards the national vote may have heightened the sense of despair that was palpable across the community. In any event, ongoing discussions with Indigenous-controlled organisations in the Australian Capital Territory in late 2023 and early 2024, including those that had previously participated enthusiastically in research, made it clear that it would be disrespectful and counterproductive to continue fieldwork on this project. There was also a general sense of research fatigue. The Australian Capital Territory has a relatively small Indigenous community, with significant research burdens regularly placed on them. Accordingly, the Australian Capital Territory component only comprises the four interviews conducted with men in May 2023.

Victoria

Recruitment for interviews and yarning circles

The aim for Victoria was to conduct 20 interviews with Indigenous people involved with the CLS. Several Victorian organisations who support Aboriginal and Torres Strait Islander people assisted with recruitment efforts for the project. However, the timing of recruitment attempts in Victoria, which took place in the second half of 2023, led to an understandable lack of interest in participation.

To increase the potential pool of participants, we sought approval from the Victorian Justice Human Research Ethics Committee to recruit Aboriginal and Torres Strait Islander people on community-based orders, via their justice workers.

Our project experienced delays throughout this important but lengthy approval process. In light of the experiences in the Australian Capital Territory, we were also concerned that the project no longer met the needs of the community members. Accordingly, we decided in March 2024 to withdraw our application. The Victorian sample, therefore, had one participant, who was male and based in a regional area. The interview was conducted in August 2023 by Dr Nichole Lister, a descendant of Dja Dja Warrung family, and went for one hour and 12 minutes.

Limitations

For the reasons outlined above, the original research design of fieldwork in three jurisdictions could not be realised. The findings below are thus mainly based on yarning sessions conducted in metropolitan and regional Western Australia. We did, however, use quotes from the interviews in the Australian Capital Territory and Victoria, where these were not jurisdiction specific and were illustrative of the overall aim of the research.

Findings

Interviews with WA Police—Aboriginal Affairs Division

When asked about their daily tasks, AAD staff explained that they are not frontline workers themselves but support frontline police staff in whatever is related to Aboriginal matters (eg liaising with families in case of incidents, funerals, going to court, assisting in cold cases). An important task was the development of the cultural induction packages for all WA police working in the regions:

“

So when a new officer is actually going to those stations, they read this document ... before they get there, they learn who their significant Elders are in the community, how to approach Aboriginal people, what are the sacred sites in that area, who should they get permission from, how to do a Welcome to Country, how to do Acknowledgement of Country. So there's a vast variety of all different phases and it also gives a cultural history of the area. So all of these packages are being completed and we're just refining them at the moment.

Most of the staff had extensive experience working in the regions themselves and reflected on their time living in regional and remote communities:

“

[I have been to] Leonora, Wiluna, Meekatharra, Nullagine, Wyndham ... It's the old saying, 'you cry when you get there and you cry when you leave'. It's very true.

They explained that the regional police work as a ‘one-stop shop’, where they are confronted with all aspects of community life. Because police are often the only (permanent) government agency—definitely the only one that is accessible 24/7—they develop strong knowledge of local affairs, which they saw as the cornerstone of being able to do their job. There was clearly some frustration about that social and community aspect of their role being overlooked or not appreciated. Because it is not considered a core policing task, it is not in their funding models, and they often thought that there was not enough time to really invest in these important aspects of the job. They had the impression that police often have a negative image, being seen as too harsh, especially on young Aboriginal people, or, conversely, as not intervening enough. At the same time, they thought that they did not have a mandate to address all the issues they are confronted with, because they are other agencies’ responsibilities; the police are, as they expressed it, ‘driving from the passenger’s seat’.

As we will explain further in this report, discussing Indigenous experiences with the CLS rapidly links back to the ongoing impact of the stolen generations. The Aboriginal AAD staff member we spoke to said:

“

They think the stolen generation was about the *Rabbit proof fence* that they watched in high school, that happened hundreds and hundreds of years ago, but it wasn’t. It’s a part of my lineage.

The AAD staff acknowledged that, in many families, this legacy led to the children of stolen generations parents having trouble with alcohol and drugs. This left the responsibility for the young people with grandparents.

These young Aboriginal people were the main concern coming up in the conversation: coming in contact with the CLS from a very young age, often being on remand for several months with no access to programs. Further, detention was referred to as a crime school: ‘So kids are going in, probably first offenders, making associations and networks with kids who are further down the chain and learning’. There was a sense that young Aboriginal people need to be the focus of interventions, because they were described as ‘lemmings running off the cliffs’.

In the discussion, the use of social media was raised on several occasions. It connects young people from different regions and even jurisdictions, challenging each other into posting ‘daring’ video clips (eg on TikTok; known as ‘post and boast’), such as trying to steal police cars. These social media outlets were described as ‘echo chambers’ and as very hard to manage, from a policing perspective.

Participants in the focus group agreed that reconnection to culture and stable homes were the only constructive options for these young people, but they believed that there are too few opportunities for these diversionary approaches. The unfortunate result is that the CLS becomes a refuge:

“

... and then those kids get incarcerated and they get fed every day. They've got shelter, they've got their own room. Then you kind of can't blame them for wanting to go back into the justice system.

Western Australia court observations

The research in Western Australia also included observations of court practices across various courts, to get a firsthand grasp of what is happening on the ground, as detailed in the *Methodology* subsection.

The solution-based court programs were managed by a multidisciplinary team of very motivated people and were organised in a client-friendly courtroom. Discussions presented as empathetic, interactive and firm. This was in sharp contrast with the mainstream Courtroom 42, where proceedings were very difficult to follow—including for the researchers—because of the jargon, the rapidity of the process and the poor acoustics, as well as the health precautions then in place because of the pandemic (masks, the arrested person being behind glass). The acoustics in court have been the subject of discussion (Russell, Carlton & Tyson 2022) and are of particular concern because over 40 percent of Indigenous people aged seven and over have measurable hearing loss (Australian Institute of Health and Welfare 2023). The Barndimalgu program has been positively evaluated (Government of Western Australia 2014), and there is general support for more culturally appropriate court programs, such as Indigenous sentencing courts (see ALRC 2017 for a discussion). However, these programs can only reach a limited number of people who might need them, particularly Indigenous people; throughout the rest of our research, we never heard anyone referring to them or describing any experience with them.

Interviews and yarning circles

The following section is built on what was shared with us in the interviews, reflecting the participants' unique stories and experiences with the CLS. They also shared their recommendations for system improvement and ways forward that are culturally respectful in addressing Indigenous over-representation in the CLS.

The presentation of the findings is mainly led by quotes, because only Indigenous voices can reflect their experiences. The number of participants is limited, so the quotes are primarily labelled as a person with lived experience (LE) or an SP, noting that both might have lived experience in a direct or indirect way. The four interviews with non-Indigenous staff in Western Australia were mainly used for background information and a better understanding of local circumstances; but we prioritised the voices of Aboriginal and/or Torres Strait Islander people in the quotes. If the comment relates to a non-Indigenous participant, this will be indicated.

This section presents the key findings from the 36 interviews, as set out above, mostly with participants in Western Australia ($n=31$), with additional interviews taking place in the Australian Capital Territory ($n=4$) and Victoria ($n=1$).

Overall, we spoke with 20 women and 16 men. Most of the people we spoke were CLS clients ($n=22$). Fourteen were staff, but several of them had their own lived experience or had close relatives with lived experience.

Drivers of contact with the criminal legal system

Colonisation, stolen generations and intergenerational trauma

The stories of the Indigenous people we met illustrated their longstanding and ongoing experiences and contact with the CLS. Without questioning or our referring to it, the impact of colonisation on the lives of Indigenous people spontaneously came up in many conversations. The ongoing impacts of colonisation, particularly child removal policies, continue to impact on the lives of Indigenous people today. Participants referred to experiences of discrimination and unfair treatment in today's practices, causing feelings of resentment. The following comments illustrate this powerfully:

“

LE1: We're still under the colonial [system] over here, they're trying to wipe all the blackfellas out over here, so there's no one to claim for the fucking land. What a shit move that is. What should you do? Well, like they say about the army, the war, lest we forget. Right? ... Where's the equal opportunity in that? They say we've got rights. We've got no rights. What rights have we got? They say freedom of speech, freedom of this, freedom of that. No we ain't.

“

LE2: That bureaucratic control, it's been there since the 1905 Act and it's just sort of permeated all the way through in some way and now it's just there and it's law.

This participant referred to the *Aborigines Act 1905 (WA)*, which purported to 'make provision for the better protection and care of the Aboriginal inhabitants of Western Australia'; it has been the subject of significant critique (Buti 2002).

Participants shared their experiences of how being part of the stolen generations (see Australian Human Rights and Equal Opportunity Commission 1997), the loss of land, culture and language, and the displacement of children created intergenerational traumas, with long-term and deep-seated consequences for Indigenous people, families and communities:

“

SP2: Look I think a lot of this is way back in early days with the stolen generations, the loss of culture, the loss of language, displacement, all of that and you've also then, out of that, got your transgenerational trauma, intergenerational trauma. So, if you're thinking way, way back about when there was stolen [generations] and all of that and what happened is, what I think, is because there's still trauma back here and there's a lot of the times with families, all right, low-socio-economic, the social and economic issues are huge.

Another participant had normalised the issues in their childhood:

“

LE3: I've had a few run-ins with the police. Obviously, everyone's got troubled childhoods, so parents and shit, end up having that kind of—you're not involved but you're around it.

The intergenerational impacts of the stolen generations and consequent involvement in the CLS are well documented (see, for example, ALRC 2017; De Maio et al. 2005). Recent research from the Australian Institute of Criminology (Weatherburn et al. 2024) confirmed that being a member of the stolen generations increases the risk of arrest, regardless of a respondent's age. Further, having family members who are members of the stolen generations also increases the risk of CLS involvement. The authors acknowledged: 'The true effect of being a member of the stolen generation (or having a relative who is a member) is probably larger than it appears' (Weatherburn et al. 2024: 16). This echoes the poignant observations of the people we spoke to:

“

LE4: And like I said, if at the beginning kids didn't get taken away and all that, there they wouldn't be so fucked up, like me, for a start. The other thing is when the prisoners get out, even juvies, where's our home?

“

SP2: Because if you're thinking about transgenerational trauma and intergenerational trauma as a result of stolen generation, that's still—even though that was still back in the '60s, that was still like it was yesterday for a lot of people. If the kids back then weren't taught about resilience and self-care and go and get a job and you look after your family, you buy a car, all of those things which we think is normal, the normal thing is, they just lose their way.

Some participants who had been taken away from their parents and grew up in white families testified how this affected them, making them feel lost or not belonging:

“

LE5: I grew up in a white family, they grew me up in a white way ... but I get punished by white people ... I have a white name; I don't have an Aboriginal family name.

Facilitator: Would you like that [an Aboriginal name]?

LE5: Well, it's like I've been [unclear], one because I'm white and I'm black.

“

LE6: Yeah, or even from this day on, like, for myself personally I didn't know nothing about our culture. We'd been brought up the white way; brainwashed, you know. I'm just trying to work out my family history and I'm just working out ... our ancestors alone in the bush, we'd be deadly. We'd be deadly. But, no, they decide to change our lifestyle ... so we can understand the white way.

For some, the out-of-home care (and being away from family) came with maltreatment and abuse, which led to them acting out and engaging in criminal behaviour:

“

SP3: My ex-husband, because he was a stolen generation [member] as well ... He was taken from Meekatharra as a little six-week-old, his mother was 14 when she had him. He was put with a white family down here and he had a horrible experience. He was ... sexually abused, flogged with iron bars by the priest. By the time he was 13, he was a street kid, so he was used to crime.

Another interviewee spoke about similar traumas:

“

LE4: It started when I was a kid and I run off the rails. I was burning—like when I was a child, I was setting fire to shops in [town] and everything, man. Because I was molested and I was—and you couldn't tell nobody because what happened is, if I'd tell he [was] going to kill my mum, dad, my sisters and my bubba. So I couldn't tell. So it's—tried to scream out, by smashing street lights and setting fire to shops and [government] shops and that there and ... I was knocking around in the streets like ... drinking beers and that there and smoking cigarettes at that age. I got expelled from grade 1 ... It happened to mum apparently, because when I broke out at 29 years of age and told the family—that's when I was like 29 when I told them. Dad said 'Well, why didn't you come to us earlier, son?' We—because I was saving you.

Many participants had similarly difficult childhoods:

“

LE7: Traumatizing, pretty much. Rough childhood, so growing up around that was pretty tough, because I lost my father in 2016, I think, so I didn't have that father figure on, and I was always like the father of the house. So I looked after my younger brother and my older sister at the time ... we were in and out of foster care and stuff.

Participants shared how this is happening to young kids, while they do not feel able or are too ashamed to reveal their experiences and reach out for help, and this leads them into alcohol and drugs as a coping mechanism:

“

SP2: There's a lot of young girls especially and boys, they don't feel safe to be able to tell mum and dad or aunty that Uncle Johnny is being, you know, so what they do, they turn to drugs, they turn to alcohol and that numbs it.

In addition to the trauma of having been taken and of the abuse, participants protected their families by not talking about it:

“

LE5: Yeah, I have beautiful memories of my white nan. I like my nan, but I just don't know about my grandpop, because that was sexual abuse too and I never talk much about that, and I don't want to bring that up to my mother as well.

One participant explained that they did receive redress payments, but what they were looking for was an apology:

“

LE1: They say to us—the government say to us 'They're only black fellas. Give them—just give them some money just to tide them over and they'll be happy'. Really? For the torment you put us through and the shit that you done to us? And you think this little bit helps here and there? You are—you've got another thing coming. If they've been through what we've been through they'll understand.

These quotes make it clear that the impact of colonisation and intergenerational trauma is strongly linked to a cluster of ongoing harms that many of the participants had been exposed to, leading down a path of unhealthy coping mechanisms, self-destruction and interactions with the CLS. Many people highlighted the past as particularly relevant to contemporary CLS responses:

“

LE2: You know, the big topic at the moment is build detention centres, and the public are being fed by the media. I think 45 percent of those kids are departmental [Department of Communities] kids, but that's not being put out there, no, it's put out there that they're the Aboriginal problem but it's not, those kids are part of [the Department of Communities'] apprehension and placement, and that's why you have 10 year olds in the department [youth detention] centre because they've been apprehended ... Yes, it's a pathway.

The intergenerational effects are ongoing. The lack of a stable home situation and good role models was regularly referred to in relation to young people getting entangled with the CLS:

“

SP4: It starts at a very young age. I've worked with kids that are, like, eight years old and they get in trouble with police every day and it's—yeah, and that's sort of where it all starts for me. Seeing it at that very young age. Yeah, like I think it's hard, because a lot of the kids that do get in trouble and that's where it does start, it's because they don't have that person that can lead them in the right direction and—yeah, that pathway just keeps going down and down and down and before you know it, they're ... either in a prison or even worse.

Therefore, participants expressed a strong need for cultural and familial safeguards, a network of people reconnecting and supporting young people:

“

SP2: With the kids, I don't think they are, I think some of them are lost. Unless they've got a really good family unit and I'm saying extended family, aunties, uncles, unless they've got that support there and even when they're getting out or before they go in, that support or someone to say 'Hey, what are you doing that for? You're going to go in, you're going to go to jail, you're going to be like Uncle [name]'. Or to talk about 'Do you want to have a car? Do you want a job?' So all these things somehow get missed and it's really, really sad, but that's saying we don't have the adults there, mum and dad. A lot of the mum and dads are in jail.

There was a view that, if children cannot stay with their parents, alternatives should first be looked for in the close environment and with Aboriginal relatives:

“

LE8: So everybody's not in that particular family line, they're not the same, why can't DCP [Department of Child Protection] look more closely at—or sit down with the group of family members and talk to them and ask them who would be able to take on a responsibility, not who they should pay for them, but who is willing to take on that responsibility and provide them with a good home.

For the purposes of this report, it is important to emphasise that the wrongs of colonialism are not a thing of the past; several participants reported instances of ongoing forms of racism and discrimination and spoke about how that affects their views of the CLS:

“

LE9: I think the thing to start off with is the fact that being an Aboriginal [person] growing up in Broome [was] so totally different to how it is down here. Like how I feel you can't walk into a shop without having everyone staring at you thinking you're going to steal or do something really. So it gets to the point where you get rebellious against things. You come to the point of you don't care about the law, because you're already being, I don't know how to say it, but feeling that pressure just for the colour of our skin, really.

Because of this labelling, some participants chose not identify publicly, to prevent being treated differently (in the CLS):

“

SP5: I had 63 years in Tasmania, grew up, born and bred in Tassie in a very small racist, small-minded country town. Hence the reason we were always told as children 'Don't tell anyone you're Aboriginal'. So that was the directive from our parents, 'Do not tell anyone you're Aboriginal, because they'll make life very difficult.' And we didn't tell anyone we were Aboriginal for a really long time and then, when I was 14 years old, I met my husband who I went on to have three children with and he was an Aboriginal activist at the time and still is today, very big Aboriginal activist in fact, and [does] a lot of stuff for Tasmanian Aboriginal people. And that's when I found me. That's when I found myself ...

“

LE3: And then I was quite violent as a teenager and had run-ins for my own things when I was a little bit younger as well. But I think my experiences would be a bit different, because I never disclosed that I was Indigenous and I did that so that there was no way of everything being something that could cause me any issues. Obviously, that can't be done for everyone ... I was always told by my mum, 'Yes, you're Indigenous, but if something like that was to happen, then don't disclose that kind of stuff, because you can get looked at differently, and you don't want people to treat you differently just because of your race.'

“

Facilitator: In your experiences with the justice system, do you think that that would have been a more negative outcome in doing so?

LE3: If I was to disclose? Yes, definitely.

Facilitator: So why do you think that is?

LE3: Because of all the stories I've heard from my mum about stuff ... it doesn't feel right to not be able to put yourself forward as you, just because you'll be treated different.

Violence and substance use

The stories of Indigenous people we listened to often illustrated how they were growing up in environments where violence and substance use were prevalent:

“

SP2: I don't know of any Aboriginal family that didn't end up—that didn't have violence in their family, because there probably are people that didn't have violence, but I'll tell you, there was a huge amount, where violence was a part of your life, and you grew up with violence.

“

SP5: Grew up with a drunken abusive dad, best dad in the whole world when he didn't drink. Best father you can imagine and they're the times that I try and remember. But it's very hard to forget the bashings that my mum got. Didn't hit us kids a lot, so as I grew older, I veered into the area of domestic violence, because that was my baby, that was who I was. That were the people I wanted to help ...

The longer-term impacts of these experiences on children and young people are significant, ranging from feeling unsafe and unsettled to seeking comfort in drugs and alcohol, often initiated by others in their environment:

“

SP2: Because it's prevalent ... I grew up with domestic violence. But I think also kids not knowing it's safe, not having a place to be. You're not then settled, you're thinking 'Where am I sleeping next? I'm homeless, I've got no money, I've got no food, mum's struggling, mum's fleeing domestic violence,' for example and very, very unsettled.

Another person explained this trajectory:

“

SP3: He was extremely vulnerable in that environment with his father. His father was not a parent ... So by the time [he] was 15, he was on meth, he was smoking it. He'd started out, as soon as he got to his dad's, he started smoking weed, pot and then by 15 his auntie gave him a shot ...

The use of violence and FDV was, for many participants, related to the loss of Aboriginal culture:

“

SP2: A lot of the dads are in their VROs [violence restraining orders], drugs and alcohol, bashing their missus. But I think they've lost their way. They've lost culture, but also lost their way—maybe also what's expected of them as a role, and I'll just work with some of the dads.

Mental health problems

Several participants referred to mental health problems, which were often related to the situations of violence and abuse. While people are cycling through the system, ongoing trauma remains undisclosed (out of shame), untreated or treated badly. This can result in people reaching the point of finding themselves suicidal:

“

SP2: I think also there are a lot of undisclosed mental health issues. People don't disclose it because they're ashamed ... 'if I tell them that, they'll put me in a looney bin and lock me up'. So I think also there's a lot of people that have got mental health issues and other issues in jails that probably really shouldn't be in jail. This is also young kids.

“

LE4: Well, no future out here. I just want to get the—off this planet man, you know? I can't kill myself because I tried that plenty of times and—like the last time I hung myself out here—seriously one, right—and dad called me a coward for doing it, when I got out. So I can't kill myself because I'm no coward. But I'd love to ... I'd love to go right now, because I've fucking had enough.

“

SP6: I've got a client at the moment and the first time I met him, he said, 'I'm going to hang myself at 1 pm in the gym with a sheet that I stole' ... So an officer came in and I said, 'I've got a bed for him in Medical, because he's advised that he wants to self-harm at the moment. He's not in a good head space. I'm going to escort him up there.' Within minutes, six officers had him in shackles. They had his legs in shackles, his arms in shackles and they dragged him, because he had disclosed self-harm ... So then I advocated really hard to get him back to the block. 'No, because he still wants to self-harm.' 'Why do you think he wants to self-harm? Because he's in the DU [Detention Unit: separation/punishment unit] and he hasn't been treated.'

“

LE3: I think better mental health support is important, because we've been using the same system for quite a while, and it just doesn't really do much, putting young people, anyone really, just onto meds, and having them rely on those to keep themselves stable is too much, and it's not healthy for people. So we need better mental health support for people that are going through hard times.

Interactions with the criminal legal system

Systemic racism

Participants reported on discriminatory practices throughout the CLS and how they undermined Indigenous people's trust in the system. Many of them grew up with the experience that the system is 'after' them and that they are not likely to be treated fairly by the 'white' CLS, as the following quotes illustrate:

“

LE4: I've just got no respect for government, because of what they've done [to me] and a lot of our family [who have been in and out of] prison system, have [not] got respect for youse—like the government.

“

SP2: So this, for me and for the last, I would say—and I'm in my 60s, so as long as I've been aware, we've had Aboriginal people going or being incarcerated. We've had them going into jail for simple things, not being represented properly, this is white man's law, it's not Aboriginal law and it's not the Aboriginal culture.

Interactions with the police

Some participants had neutral or even positive experiences with police, but many mentioned negative confrontations with police:

“

LE3: In general, the police are quite—not so nice. Sometimes you get ones that are okay, but a vast majority of, especially the male ones, are quite rude to pretty much everyone. Because they think they are everything and everyone else is just shit.

Participants gave examples of police brutality, racist comments and the targeting of Indigenous people, which they or their children experienced, often from a very young age:

“

LE11: My earliest contact with police would have been around about 10, but always hanging around there with cousins, uncles, and all that sort of stuff. So I was always exposed to it, and had contact with it, I suppose.

“

LE7: [First police contact was] probably like care and protection stuff, getting taken away from my mother and my father, going from different homes ... Probably seeing that, I guess. It was overwhelming, because they're taking us from my parents, my mum and that screaming, doing all that stuff. But I was young at the time, so I didn't quite understand. So I didn't take police as nice, because I thought they're bad people.

“

SP3: By the time he was 12, he actually experienced two racist incidents, while he was in my care. The first one was with the cops. He was having a student-free day and ... he was 12. The cops pulled him over, he was walking and they searched his backpack. They said 'Do you do needles?' It scared the shit out of him; he'd never had any engagement with the police up to that point. But because he was starting to look like an older Noongar boy ...

“

LE12: I've had police officers call me racist names and they just pick on me. I'm walking home, a 15-year-old kid and a 21-year-old man and you're walking home and you get a fucking—get searched. I haven't even done anything, but because [of] the way I grew up, I'm like, what have I done now? But I haven't done anything. But that thought, it's because that's how I was brought up. Got to the stage where I didn't give a fuck. I just run. I'm not going to fucking get pat searched and held up against the car.

“

LE13: It's always been, I guess, like a war. Always the enemy, no matter what. In that setting [ward of state], if the workers rang the cops, they just came there, they're on ya, so you're getting arrested, you're getting handcuffed ... half the time, you don't even know what for, and sometimes they're coming in the door and saying 'Oh we've got the wrong one' and we're not allowed to do anything.

“

LE15: hanging out with cousins ... I guess they'll just pull us aside, have a chat, see what's going on. Not really mean or anything, just have a little talk ... I guess it's a little scary. Because when you're growing up, aunties, they'll tell stories about policemen. I guess you get a little scared of them.

The difficult relationship with the police has historical roots, as these comments reiterate:

“

SP2: Now, the police and this is going back again from history, they never had a good relationship [with us] because they would take people into jail that helped people with the stolen generation. Back then, years ago, they had a thing called the Dog Act and they'd be like you're on a patrol, you're on a bit of a bond thing and if you stuffed up, you'd be going back. Oh, I'd hear my aunties and uncles go 'I'm on the dog act'. The dog act is like, they've got to be good or, if they stuff up, next time they're going into jail.

In this context, references to the ‘dog act’ relate to the process whereby people defined as Aboriginal had to apply for an ‘exemption’, whereby government administrators could:

“

... declare some individual Indigenous people, who were somehow judged to be worthy, **‘exempt’ from this legislation**. This meant **they were no longer under control of the legislation**, but it also meant that **they were not supposed to have contact with non-exempt Aboriginal people any more**.

Exemption is an important, but often unknown, part of the history of the assimilation policies imposed on Aboriginal and Torres Strait Islander people in Australia. (Aboriginal Exemption 2025: np; emphasis in original)

This provided broader rights, including citizenship, but came with significant conditions, including cutting off contact with family members. These laws were often described as the ‘dog collar act’ or ‘the dog act’, because people felt they were being pushed and pulled as if they were a dog on a lead (National Museum of Australia 2024: np; see also Moore 2014).

These historically rooted experiences are being reinforced by contemporary incidents:

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LE8: I think our community was mainly rocked or shocked by the shooting of the young Aboriginal girl up in [city], that was like a, whoa, big eye opener. Since that happened and stuff and then ... we’ve had quite a few deaths in custody over ... maybe 30 years, yeah and younger women too as well, it’s not no longer the men are being found dead in custody because my brother-in-law now, his father, he’s the old, old Mr [name]. One hanged himself, died a year in the police station, one hanged himself in ... Prison.

Over time, some had been building negative feelings, including resentment or even hostility, and did not see the point of even reaching out to them:

“

LE14: I don't like the cops, the cops don't like me. I know it for a fact, they're out to kill me, or they're out to keep me in jail, one of the two. It's as simple as that. Dead or alive. In jail, or six foot under. So you've got to fight that shit, too. Be good. So people like me end up dead. All the brothers I done jail with, most of them, all the boys, my generation now, all the brothers, all the big brothers I looked up to, they're dead now, all them boys, most Noongar boys too.

“

LE1: Because the police down here turn around and said 'The only time we like seeing Aboriginals or black fellas is when we're zipping up a body bag.' What a fucking thing to say.

“

LE13: There's never been any pleasant interactions with them [and] myself. I'd never ring them for any help, I can tell you that much. And that goes all the way up to the sergeants, they're just as bad, if not they're worse. Even time you get taken, or get a hiding from them, you see a sergeant, they all just band together ... there's no actual person or independent person in any police station where an incident happens. You can't even get an ambulance, you ask for a doctor, they won't give you a doctor. They just lock you in a cell, that's it. Could be a week, could be two weeks. Even now, my teenage kids, they're not gonna ring them if they're in trouble, and it's shit, because that's what they're meant to be there for.

Mothers testified how their children and especially young Aboriginal boys are harassed by police:

“

LE6: I mean, you've seen my kids, what they go through. They're getting stood over with weapons, like in America. Why would you want to do that?

“

SP5: Yeah, when I worked in Tasmania, I worked for South East Tasmania Aboriginal Corporation and we had a legal service there, so quite often we'd get people coming in for legal service and quite often brought in by the police. It's not a pretty sight, when you've got a 14 year old being shoved into the office with handcuffs on. Same here, worse here, our children are treated worse here. It's a national fucking disgrace.

For some of the women we spoke to, police interactions led to losing the care of their children:

“

LE9: Yeah, I've got one boy. I've been dealing with, so—I've got him taken off me, because of using methamphetamines, but there was some things with the—I felt like the police have not listened to me. One day, they came and actually attacked me on the street with my son, took him off me and took me to a mental ward. And then they tried to diagnose me with three different types of ... with schizophrenia, bipolar and some other, I don't know what it was, until they realised that there was nothing actually wrong with me, besides coming down off drugs. I was not a bad mother, I never abused my child, I've never done none of that, besides look after him.

One of the women described what happened to her, when she stood up against the police for her boys. She was worried about how that would affect her other children:

“

LE16: One of them came over and put his foot on my sore foot and, like, grinded it into the ground more, and said if I wasn't a cheeky so-and-so, they'd let me up and let me move ... You know, I see my kids' attitudes towards the police, and it's not healthy. Because they are the good ones, but the ones that aren't, they're horrible. And if something ever happens to my daughters, I want them to be able to trust the police, but I don't know how that's going to turn out now.

On several occasions, participants referred to Aboriginal women being mistreated by police, in cases of FDV, because of negative stereotyping associated with violence in Indigenous communities. A non-Aboriginal staff member recalled the following occasion:

“

SP7: I did ring the police on a number of occasions, expressing my concerns. But when it came to this particular individual, because of her past history involving DV [domestic violence], the police were just really not caring. It was actually quite shocking, to hear their responses. It was like, 'Oh, it's just so-and-so. This is part of her life.'

For some of the Indigenous women, the treatment by police triggered past negative experiences of FDV and abuse:

“

LE5: Well, I don't know [if there's been] so much in the past because I've always been abused by the police and it's like police brutality for me, because I've never had that upper hand and I've let them know that I'm Indigenous and I want to be seen as a rightful woman to be not touched, but to be heard what has happened and why I do them things.

It was mentioned that police officers are not informed and lack the training to know how to best deal with Indigenous people:

“

SP2: Oh and the police. I think they're getting better but we—again it's got to come from that, you know, have you heard the word cultural competency? Where a lot of agencies do a—they'll do a bit of a mapping on who identifies [as Indigenous]—I'm not culturally competent, I don't know this, I've got to work through this and I've got to do that.

Courts and sentencing

Participants shared with us the barriers and challenges in the court and other sentencing proceedings they experienced. Court hearings, procedures, processes and the language used are unknown and inaccessible to them. Several participants referred to occasions where they felt unheard and did not believe that they got a fair go during the sentencing process:

“

LE14: Some listen to me. Yeah. When I was going through the system, the judges give me a go. Was always there for me. But sometimes, the lawyer's out to put you in jail too. They think that's good for you, that's what you need for now. But it's not what you need. That's how they think we should be, think—no it's not.

On other occasions, people believed that their past was being held against them, regardless of how long ago this was:

“

LE17: So I went to my daughter's court, in Fremantle and she was remanded for a pre-sentence report. Now a pre-sentence report is just writing about your background but I couldn't believe they were still talking about my life: 'Oh the parents was on drugs,' and everything. And I'm sitting out the back in my uniform ... Why did you bring up my past? ... So they always leave the same pre-sentence report. The last time I got sentenced, they were talking about my mother who passed away, in 1988. That's a long time ago.

Some thought that court orders were interfering with their lives and needs:

“

LE5: The justice system has me to go to a place to talk over my problems, that's mental health, so—I keep missing out on my doctor's appointments and that's from the courts, so I feel like I'm on a leash and I feel like I'm walking on a thin string. I'm trying to support my life and I'm trying to look at it in a perspective way, but now I'm in this predicament of justice again, where I'm trying to appeal for my rights.

According to some of the participants, Aboriginality is often categorised as an additional 'risk factor' in play during sentencing and this continued during imprisonment:

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SP6: It's also what the magistrates use, as well. When they get to court, again, being Aboriginal will up that risk factor for you, so you're more likely to get more time. Being Aboriginal is automatically—it ups your risk category. When you do your treatment assessment, that's still the same ... Based on my answers, which is a very honest reflection of my life, I was Category C, which is one off maximum security. So it's medium, but it's one off maximum security and the only thing ... that increased my risk factor was that I ticked that I was Aboriginal.

Prison

Several participants reflected on prison as being part of their life, starting with detention at a young age and transferring from the juvenile into the adult system:

“

LE12: I went to juvenile, which was Rangeview. Then in '96, I went to Rangeview, '96 again Rangeview, then '96 again Rangeview, '97, locked up '97 again. Locked up. Locked up a couple of times, '97. '96, locked up and then I actually went to Banksia Hill. Then, '98 locked up; '98 locked up. Got out. Went back to Rangeview. Went back to Banksia '99, and then stayed there for about 17 months. Got out 2000, just before I turned 18. Kind of had a few problems, then went back again in 2000 and stayed there for probably another five months, six months. Then was released and I was out for about two months, and then straight to Casuarina; straight to the men's prison. Then every year, I've been in jail from '96 to 2011.

“

LE5: I've been in prison every year, nearly every year for nearly 20, 30 years ... I've only been out for about four birthdays and my eldest daughter, she's been with me in jail, in [prison], when she was a baby.

One participant spoke about the determination not to go to prison, having seen both parents incarcerated repeatedly during childhood:

“

LE7: I grew up around it, and yes, ever since my dad passed away, I made a word to myself that I wouldn't do anything like that, go to jail, and change the cycle, which was hard, because I was falling into a hole, but I got myself out and stood up, did what was right. So I've changed quite a bit from my family. I don't think the rehab was really good, because I think they went to rehab quite a bit, but it didn't really do much for them. And I guess time in prison didn't do anything either, because they just kept continuing to do stuff.

As a result of the cycles of imprisonment, people become institutionalised; being in prison becomes the norm, a safe place where one's basic needs are provided for:

“

LE14: I grew up with my parents but ... from 11 to 18, I was in and out of the system, Banksia and Rangeview, like justice system. Then, throughout the years, I just got adapted to it ... and it's just what was there. That was the cycle I was in. It was a cycle ... So I go back to the system, and the system, they're there to help, do their job. The system, I benefited a lot out of it, I would get what I could out of the system as well, education-wise. They do help, they try to do good ...

“

SP2: The guys that I hear and see at the prison at [location], the Aboriginal fellas, that's all they know. If I go into prison, I'm going to get fed. I'll get a combination. I don't have to think about where I'm going to live. I don't have to worry about the bills, a job, all those things, because the prison—and it's a terrible thing to think of. But I had one Aboriginal fella, someone was interviewing him, ah, 'When you get out, would you like?' He goes, 'This is my home. This is what I know. No, I'm not going out. I'm going to stop here.' But it's actually quite sad, and we've got people crying out and going, 'Oh, these statistics and high incarceration rates' and we've got this and that, but I think there's a lot to do with the institutionalised people that don't know any better. Because it's safe there. It's also safe—I've got a bed. I've got meals. I can get an education. All of those things.

Regardless, being in prison was mostly referred to as a crime school for young people who offend:

“

LE4: Of course you're going to get—go and reoffend and go straight back to jail, because that's all you know and it's so easy in there. It's not punishment. You don't learn nothing. You just learn more violence or how to crack a safe open or whatever—you know what I mean—or how to get away with the crimes a lot easier. That's all you learn. It's a revolving door for a lot of my family and—I've got my nephew in there at the moment.

“

LE11: It's just learning, a place to learn, you go get more ideas when you get out, you do more crime, and as far as the programs that they run in there, they're just simple programs, like cognitive skills, drug and alcohol, and a few other programs. But a lot of boys just do them to get their free ticket to get out of jail. It's not because they want to do them to better their lives, they just do it, get their parole, get out and reoffend again and do the same things. But the programs are pretty crap, pretty shit.

There were testimonies of mistreatment of Aboriginal people in prison by officers, in both adult and juvenile justice. Further, people felt that they had no defence, because they were not believed and were powerless:

“

LE14: There was Rangeview, yeah, Rangeview. Even in Banksia, I got stand on my head by an officer, [name]. I remember his name. He slammed me on my head, and he picked me up like I was little toy, and he just jackhammered me into the ground. I took him to court, he got found not guilty. There was prisoners there, officers that seen it all. Lied. When the outcome come, not guilty ... Violence, because a lot of screws do a lot of things in the justice system, and intimidate the other people. They bash a lot of prisoners, they flog us, and it's not recognised, and we don't have a voice. Because it happened to me, and it's not nice. It's not nice at all. But there's nothing you can do, and if you survive it, you survive it, if you don't, you don't.

“

LE13: They don't care, because they see us as cash cows, I don't know what you try and do to change it, it's not good enough, but 'You'll be back, we've got a bed waiting for ya.' What are they saying that sort of shit for?

One of the participants explained the divisions between ‘good ones and bad ones’:

“

LE12: Percentages, it comes down to the officers in juvenile and in the adult system. You might have three officers—so that’s 30 percent ... out of 10 and seven are arseholes; so you have 70 percent. Seventy percent of them officers are going to give you a hard time.

Other sources of frustration and pain were prison visits. These comments emerged from those who had been incarcerated and from visitors:

“

LE2: We’re the ones that are lined up, we’re the ones that are pulled to the side ... They only got one visit, because I said I’m not having my grandchildren get used to coming in and visiting their mother and for that to be acceptable in their life. For me my personal experience was really, traumatic.

A specific mention related to not being allowed to attend funerals and the security measures that came with attending, interfering with tradition and custom, from an Aboriginal perspective:

“

LE4: One thing that really was upsetting for me, and I haven’t forgotten it, is that when my sister-in-law, who helped rear my son up, she passed away and he used to call her mum. He came to her funeral and the way that—there was four of them. There was [my son] and three other young men. They had [him] shackled with the chains around his ankles and his hands to the prison officer ... they’re going back when, in the early days, when they shackled the black fellas ... But [he] came to the cemetery, but he started off at the front and he was way at the back [because of the shackles] and traditionally the next-of-kin’s going to be right up front and ... that was really, really bad.

Finally, prison transfers create additional problems because of overcrowding and for classification purposes. Being away from Country not only creates a culture shock; it also means limited access to family support and after-prison services linked to the place people are returning to. According to a non-Aboriginal staff member:

“

SP7: You have guys coming from Perth. You have guys coming from up north. We're ringing the providers in Perth. They were saying, well, they're not in Perth prison. We can't help them. It's not their fault they were moved, due to the size of the prisons.

Participants referred to a lack of alternatives to custody to keep young Indigenous people out of prison. However, prison was also referred to as the easier option, instead of the longer community-based orders:

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SP2: Many, many years ago, there was a guy, an Aboriginal guy in Carnarvon. When the kids or the young people got into trouble, he used to take them out on Country and he would take them out on two stations and, you're out here for three months. In that time, they learnt skills about becoming a stockman, about respect, values, so they learnt about culture, they learnt so many things, okay? I think there's a big difference now, in the fact that—do we have those sort of things that are regularly, where a magistrate or a judge will make a decision and say, 'Look you need to go out on Country,' or 'Do we have services that can provide that?' I don't think we do.

“

LE12: So all them orders and kind of those courses is better than going to jail, but it—you've got to do it. If you don't want to go to jail ... you've got to do it. Those kind of things make you realise that you don't want to do them things ever again, because you don't want to do that, where you get locked up. I used to wake up in jail and think, 'Oh, yay, I'm home, woo hoo.' Yeah, it is easier. You don't have to do it. You can do an eight-month order or do six months' jail. Well, fuck that, I'm only going to do six months anyway.

Another participant also spoke of being released with no perspectives, no one and nowhere to go to:

“

LE11: Cases of people going back, actually staying at the front gate, and they wanted to go back inside. One case I've heard of that. And a few other boys, they get out, they get their half a cheque, they've got no place to go to, they're on the street, and they've got nothing.

Pre-release programs

Participants mentioned the lack of culturally appropriate pre-release programs in prison. As a result, the needs of the people we spoke to were not addressed in prison. One non-Aboriginal staff member described the lack of programs addressing substance use:

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SP7: Access to programs for prisoners is terrible in [prison], so a lot of the guys, especially a lot of the Indigenous guys, have serious substance use, a long history of substance use. There's no rehab here and they can't get any counselling for it, while they're in prison, so these guys are already set up to fail, as soon as they go in. They can't address their issues while they're in there. Then, when they come out, it's a 10-to-13-week wait list, before they start counselling. That's too late. They've already started. They also can't get parole, because there's nothing. It's not their fault they're not addressing it.

There are ongoing challenges around the backlog of assessment, where many Indigenous people are being released from prison without the required skills or treatments to prepare their release:

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LE17: They don't address treatment. You've got hundreds of Aboriginal people in prisons [and] they haven't been assessed for assessments, because they're just so caught up in other files. Our people don't get to do their treatment. As I said, you wonder why they do their full time and come out with no tools in their toolbox to even know what a trigger is ... They wouldn't know that.

There was also a call for more in-prison education:

“

LE13: Why isn't there sort of like [in] the [United] States, where you can do the whole high school in jail? They're all run by universities, why isn't there something like that?

Parole

The ALRC (2017) identified a range of issues with parole for Indigenous people, and several participants confirmed this. Parole conditions were considered too burdensome and chances of failing too high:

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LE12: Twenty-five percent will get out on parole. It's kind of sad, because you've got to—you got parole for a reason: to get out and try and be good. You know why they don't want to do parole? For the same thing that we just spoke about. Because they're going to get out, they're going to be put on all these things and they're going to get locked up anyway.

“

LE9: I'm finding it very difficult. They expect me to do 13 conditions. Most people have more than what I have. Like this is my first time ... I've never actually been on parole before. It's like having to do parole, I have to drop everything just to run to adult corrections ... So I've dropped down to [reporting every] two weeks, but whenever they want me to do a urine I have to run and do it. If I don't, it'll be a breach and then I'll be gone back to jail ...

“

LE13: There's no information on what you need to do to apply for parole, or what they might look into, or what you need to double-check before applying, there's nothing ... you get told 'You have to do this, you gotta do that.' You do all that, it comes before your earliest [release date], you apply, and sit there and wait and wait and wait and wait and wait.

“

LE7: I think anyone on parole has breached, because it's rough at the start, because you don't want to do it, but you know, you have to. So yes, it was rough off the start.

Transition and life after release

As a result of all the issues described above, participants often felt let down by the system. There was very little for them to return to, and they had immense obstacles to overcome, with limited support but for their families—while families were not well equipped to take on that task:

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LE2: I feel that the justice system has let our people down—and not only our people, but the kids in Bandyup, the support is not there, once they have returned home. They could come out on conditions, or they can come out on parole, but that intense support is not there ... Basically, the prisoners are dumped on family, absolutely just dumped. Why do you think they fall down, and they're locked up before you know it? There's homelessness there. There're the three strikes [with public housing in Western Australia], you overcrowd and you make a noise, you whatever, you're out, you're out on the street. You can't live with extended family anymore, there's financial, there's social, there's pandemic stuff and all of that.

There was strong emphasis on the need for throughcare, a follow-through from what is being offered in the prison. Relatedly, it was seen as vital that the programs offered in prison lead to something afterwards and have an impact on their lives, so they see progress:

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SP5: This parenting course is really good, it's only for two days. However, after day one, the girls are going out and talking and we've got women coming in from the prison yard saying 'Can we come, can we come, can we come?' Because they're going out there and talking about how good the program is. After day two, I want to cry, because they've got fire in their belly, they want to look after their babies, they want to get out of prison, they want to go and get their kids and they want to rear them on their own. They want to get a job, they want to make sure their kids are in—two days and they've changed. Okay beautiful, they all leave happy. However, they're still in prison, they go back to the prison system, they go back to the racism, they go back to the hatred from the officers, they go back to the fights and the bullying and the bullshit that goes with being in prison and the fire in their belly dies and they forget about it, because there's too many other important things for them to cope with.

The sort of support that was referred to was beyond the 'make an appointment' approach, but more like mentoring, a 'buddy' who is available 24/7, as well as support groups of people with lived experiences:

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SP2: I've said, 'Look, when you get out, you need to try and find a really good mentor or an Elder or someone who's going to, if you make a decision or a bad decision, try to stop that'—but I don't know. I think when it's in there, it's all easy. When people are getting out, it's all too hard. 'I've got to make decisions. I've got to report to Centrelink. I've got to report to my job network. I've got to find a job. I've got to look at where are we going to live.' Yes, yes. You need to have a sponsor. You need to have somebody that's going to be able to put you on the straight and narrow. Not be your friend and go 'Oh, Johnny, that's okay' ... I think there needs to be some focus groups on people that have been incarcerated and what their experiences are, what their recommendations are to stop this next generation, because I think this next generation or these young kids are going to be worse, because there's so much more out there. There's so much—there seems to be so much anger. I've never seen such kids.

“

LE11: You can't beat the experience. You can have all the degrees in the world and certificates and that, but I think it's important—no offence, not point a finger—but I think it's important to have someone there as well that's been inside the system, that's come here, done well, and is now a positive member of society and a good role model in the community. I think that helps a lot as well. I think that's very valuable, someone that's done a full 360, they've turned their life around and now trying to be a mentor and help some of these young fellas I reckon ... An older sort of mentor, there's a guy ... [who] comes around, and he does talks about his life and how he's overcome things. And he was the reason why I started doing what I was doing, because I've seen a thing on him, and me and him was the first ones to actually do drugs together, the hard sort of drugs together. I've seen him doing well, he went to a place called The Glen on the Central Coast, which was a drug rehab program, and now I've seen his story, and it affected me so much. I said, 'If he can do it, I can do it.' And that's how I started. And I had a couple of young fellas coming in, they've seen my story, and they came into the program because of what I did and how I've come to things. I think it's important to have positive mentors and uncles and positive community members in programs like this, to help young fellas, because it can affect people. It rubs off on people.

Without these support systems, life on the outside can get too hard, leaving people no perspectives for a satisfactory life, which can then lead back into crime and drug use:

“

LE4: I've been out eight years. I got out 2016 and I've been out since then. I've had too much dramas out here. I just want to go back, you know? I could be at home in there, compared to out here man ...

“

LE18: I think drugs play a big part in their lives. They just seem to—like there's nothing to come home to. All they got to do is fit back into that routine of drugs, wait for the next person, drugs, you know like the—there isn't—they need a rehab thing here. They need a rehab ...

Challenges and triumphs after release

Accommodation

When we discussed the common needs after release, the most pressing topic that came up was housing. Our interviews were conducted in 2023, before the worst of the housing crisis that is now affecting Australia (Sheth-Patel 2024). In the light of these issues, including private rental shortages, the chances for an Indigenous person with a criminal record are slim. Indeed, 2021 Census data indicated that Western Australia had the second highest rate (after the Northern Territory) of Indigenous people experiencing homelessness (Australian Bureau of Statistics 2023; Shelter WA 2023). Lack of housing was the biggest issue for many participants. One non-Indigenous staff member explained:

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SP7: Housing is catastrophic ... our guys are coming out to homelessness. They come out to nothing. If they're lucky, we can give them a swag. If they're really, really lucky, we might be able to get them into a caravan park. But that's very slim these days, because caravan parks are full up pretty much with travellers now.

Waiting lists are enormous. While in prison, people risk dropping off the waiting list for public housing and have to start over again after release. One staff member explained:

“

SP4: I've worked with a few people who were on the community listing and yeah, due to the fact that they were in prison, they'd been taken off and that's just—yeah, just because they send letters out to locations and they might not be living there anymore obviously, because they're incarcerated, so they then lose that spot on the list.

One person we spoke to described his situation as follows:

“

LE4: I've waited over 19 years for a Homeswest [place]—and that's the other thing. Before we go to jail, we've got houses, right? But when we get out of jail, we've got to live on the streets, man, and survive on the streets. I lived on the streets four years and it's bloody hard. No wonder all these blokes getting out of jail and revolving door go 'bang, bang, bang, bang, bang, bang, bang', because there's no houses. Wake up, Australian Government!

Research clearly demonstrates the importance of housing in establishing a crime-free life (for a recent review, see Doyle et al. 2024). One person could attest to this:

“

LE14: I've got my house—that helped me get back to society, because I've got my own thing. That's another thing, for people from the justice system, people that don't really help with the criminals and people that's getting out, is housing. Because that's the first step for anybody, any criminal, anybody that comes from jail, they need their own privacy.

Employment

Similar comments were made about the chances of finding employment in a very competitive environment (see also Doyle et al. 2022):

“

LE2: I'll speak for my children who are adults now, it's so hard to watch them walk out into the community, they are homeless, they are penniless, and they go to Centrelink and they get a pittance of a first payment and how is that going to last them until they get on Centrelink and until they find a job, which at this point is so competitive. You've got interest rates and you've got a lot of families doing it hard, and you're competing against professional people, you're competing against straight people, it's so hard, it's just so hard.

Driver's licences

Anthony et al. (2023) have considered in detail the role of cars and road regulation in imposing colonialism on Indigenous people and communities. Their research has highlighted how Indigenous people are often disproportionately criminalised for non-compliance with vehicle regulations; the role of vehicles as a tool of racial violence; and how Indigenous communities use vehicles for protection, cultural expression and reconnection with their land. One participant said: 'I've never had a driver's licence in my life, but I've had plenty of cars.' Echoing this research by Anthony et al. (2023) and the ALRC's (2017) findings, several people spoke about drink-driving as their entry into the CLS:

“

LE10: But as I got into alcohol and stuff, then as I got older, driving, I lost my licence first for drink-driving. I got it at 17 but then I lost it again in my middle 20s and that ... became a reoccurring thing for me where that one time, I think, I drove without a licence, then, 'Oh I'll chance it again,' you know, pushing my luck, totally sneaky. But I find that a lot of Aboriginal people that I know too have got lots of records that are caught driving without their licence ... they start off with the drink-driving and then like ... the magistrate, I done a year out here in Geraldton, Greenough Regional for now driving with no licence and she put the label of I'm a serial reoffender.

Therefore, while it is part of normal life for many, several of our participants identified getting a driver's licence as an important achievement:

“

LE14: I've got my licence. I'm on my Ps now. It's all the little things that I'm proud of myself ... I couldn't be too proud of it, but I am proud of it.

To this end, we note that there are some programs that are explicitly designed to provide driver training for Indigenous people involved in the CLS, such as:

“

The Driving and Equity Program supported by the Department of Transport Western Australia, and the Department of Justice provide Aboriginal people who are in the criminal justice system ... with culturally appropriate driver training and education aimed at helping them retain and regain their driver's licence. (Wunan 2024)

Worldview also offers a driver program which provides:

“

... holistic support including administrative and literacy support, access to a car, professional driving instruction, and a committed team of staff and volunteers to help complete their mandatory driving hours and pass their tests ... (Worldview 2024a)

Desistance

Several of our participants on the outside expressed the desire for desistance, reaching that stage in life when they want to refrain from prison, 'having enough' or getting 'tired' of prison. Age and children are a source of motivation to stop the cycle:

“

LE14: The juvenile detention and that is all right. Go there for a little while, get out, come back. But then, as I got older, my sentences were starting to get longer, and I started growing out of it. I don't want to do it no more. Like slowing down on my shit ... I think the last two sentences made me open my eyes, like, 'Fuck, I can't do it no more, I'm going to turn 30.' My kids, and me, and getting older. I can't do it no more, man, fuck, you know, stupid jail, man. I could get old, and I can't do it, and just making choices, making choices too. If you don't make the right choices, you're going to go backwards.

“

LE12: Yeah. Then it stopped—a few of them have stopped and a few—the people—now, I grew up with—a lot of them that I grew up with there. I used to walk into the prison—when I walk into prison, there wasn't a [unit]—I could still—still can do now. But back in them days, there wasn't a unit I could go to, without knowing nearly everyone, all them people.

Facilitator: Why do you think they stopped, the ones that did?

LE12: Some of them—because I've noticed and I've actually—have a few step-kids who are older. I have some nephews that are older. I have some baby brothers, because I have seven brothers. So I think they just learn from other people's mistakes and learn from their own mistakes. Some of my brothers ... they're actually working now. Their kids are 21 and 22. Well, they don't want that for their kids, so they stop that on their own.

One staff participant explained how they were that example of desistance for their siblings:

“

SP4: I think it's—I'm sort of the stepping stone for all of them to realise that you don't have to be on that same pathway, I guess. So yeah, my younger siblings, they see what I do now and it's good because I didn't have to see that with my older siblings.

Another participant confirmed the importance of family in desistance:

“

LE7: I think everyone knows that—family over everything. It's definitely a way to change something, like something from bad to positive.

However, there was a sense that the system works against people, even when they are trying to change. There is a need for more joined-up support, rather than judgement:

“

LE13: First things first, you need to get all of the head honchos, corrections, parole, [community] services, and there needs to be a building or an office where it's got one person from [the community services] department, one person from parole, one person from corrections, because when you've got to deal with the department, even the officers don't know who they can call, who they can ring, when they can email, so that's a big one, cos it's about connect with family, but how the hell is that helping us? So they need to cut their bullshit between one another, cos they all work for the government, or if not—have some older people who have worked in them areas, to come up with a program or training or information or a number that the officers can ring or a form that I can fill in that I need or talk to someone about this from this department or that department ... the stuff that I'd done at this location with the department didn't follow me to this location. None of the information, nothing. Okay, but if I punched the crap out of a prisoner at this location that follows, but this hard work good stuff I'm trying to do, that doesn't cos they don't like it when you're doing that stuff in there, cos they want us to come back. It keeps them in the job. What is it, \$180,000 a year per prisoner? \$180,000 a year? We don't even get \$20,000 of food out of them a year.

One participant spoke about what it took to exit the CLS after decades of involvement. The statement is lengthy but worth quoting from extensively, because this person's story exemplifies the importance of intensive, practical support:

“

LE11: I've spent years and years on parole. I think my last parole period was four years. And it was only just by chance that this program ... came up, and it was made available to me, and I was given an option. And before that, going back as far as 96, 95, when I first entered into the juvenile system, then later into the adult system, I sort of got out to nothing.

So there was nothing in place, it was just simple things like getting a few vouchers, getting half a cheque or whatever. And everything else, I had to do myself. But it was only this time around, I was exposed to this program, and it sort of changed my life, and gave me the tools I needed to succeed in life.

... the system is sort of set up to fail. It fails pretty much everyone. 90 percent of people that I know, probably more, I don't know the percentage or whatever, but they tend to end up back inside. It's not—everyone sort of gets out, and a couple of months later, they're back in, because they're just stuck, and they can't get out of it. Because there's no options available to them ...

This time it was good, because I had a place to go to. My first two months was rent free, I had to pay \$50 or something a week, just to give me the opportunity to start getting my life back together. I was being charged child support while inside the system, no case managers come to see me, I received no letters or anything, so I had a \$32,000 child support debt. And I didn't know I had to appeal it within six months, but they cut the debt in half.

“

And I wasn't even earning any money or anything on the inside, but the stuff that was given to me this time around was good, the post-release stuff. Everything was explained pretty good to me, I was told I was going into a program, I had a job, I had a house, my licence—I come out with a full C Class licence. It was really good this experience this time, being released ... It was everything to me, the support, because there was actually someone there. As soon as the roller-door opened up, there was a lady waiting there for me, to take me. She took me to breakfast, she took me, introduced me to everyone ... Everything was available to me inside, but out here, outside, I didn't want ... to get out. But once I knew I had all this, I wanted to get out and have a go and succeed.

I was pretty happy with the stuff that I got out with, and I had someone come and pick me up on the weekend, in the beginning, the first month or so, to take me to breakfast and lunch and stuff. So yes, it was a good experience last time. And that's why I'm sitting here today talking to you. It was a really good experience getting out last time. As before that it was—yes, I got out to nothing. And that's why I failed a lot of times in my life ...

But this time it was really good. Just more people going in and talking to them, supporting them, someone to be there for them when they get out. Just someone to tell them that 'you can do this'.

Areas for improvement

Cultural awareness among non-Indigenous people

There was a general view that non-Indigenous staff dealing with Indigenous people lack knowledge and understanding and do not acknowledge the underlying structural factors driving a high number of Aboriginal people into the CLS (see McCausland & Baldry 2023). Reinforcing the need for an Indigenous-led response, one person said:

“

LE19: My co-facilitator was a blue-eyed blonde, she was good at her job, she was good at what she'd done, but perhaps better suited to white people rather than Aboriginal people. There's no cultural aspect from her and that's not her fault. That's through lack of education, like it is with everyone ...

The dominant theme was that change should be led by Aboriginal people, for Aboriginal people, with respect for different gender roles and responsibilities and Country-related cultural relevance:

“

LE18: You should have more men on board here, to work with Aboriginal men—and all men I guess. There's things that they might want to talk about privately and that's what they got to remember, there's got to be culturally appropriate staff and I mean sometimes they send young girls out here, single, and they haven't got any experience of a family themselves, where—I'm just saying, like a man, they can strike up a conversation about sports or movies, I'm just saying something different. Where a female, she'd just do her job and she can't let her guard down, because she's got to be extra careful how she conduct herself, present herself to a male prisoner too. Yeah, but they should have male and female workers out here at the prison. Yeah, well there's one there, but they should have people from their own territory. They got a guy there—no disrespect to him. He comes from way up Yamaji Country, way up the other side of Geraldton, where there's a lot of Noongars, who should be there just to be a liaison with the prison, with counsellors, with doctors. They should be the link, but obviously the response what I've heard from the boys out here, they said he's too white.

One person we spoke to has been involved in delivering cultural programs in the prison he had previously been incarcerated in:

“

LE11: And I also go out to the prison and talk to the new guards that go in and try to educate them about how to talk to Indigenous inmates that are coming in, off Country. Because they've never had that before. Just through little things like that, they start making a few little changes. And I've got some good feedback out in the prison. It's actually helped a few of the guards for just dealing and talking to some of the boys.

They've actually used some of the stuff that I've been telling them ... It's been different for me, anyway, because I'm used to getting them talking to me, but now I go at least five times a year and do talks with them. And they appreciate it. And it just shows that it can work with more of these things in place, and the supports and all that sort of stuff.

The need for gender- and culture-specific programs and local knowledge has already been the subject of extensive research (see, for example, ALRC 2017; McCalman et al. 2006; Radke 2018). Indigenous involvement was seen as a need not only in the prison but throughout the whole CLS:

“

SP2: There needs to be something done within the courts. There needs to be something, where the traditional Elders start making some decisions and working with magistrates and judges, in regards to sentencing. So the loss of land, the loss of language, culture, all of those cultural things come into play. But also the decision-making when we look at the courts. I don't know how many Aboriginal judges or Aboriginal magistrates there are and I know there's Aboriginal liaison officers and those sort of things, okay?

“

LE17: [About the lack of Aboriginal judges] That is so shocking. There should be more. And no juries. You know when you really look back. So there's no Aboriginal juries, it's all being judged from them by a white system.

Again, this aligns with research on the need for cultural judicial education (Department of Justice Western Australia 2021; Judicial Commission of New South Wales 2024; National Judicial College of Australia 2024) and the barriers to Indigenous participation on juries (Hunter & Crittenden 2023). The years since the fieldwork for this project have seen more Indigenous judicial officers appointed across Australia, including the first Indigenous Supreme Court judges in Western Australia, Queensland and the Australian Capital Territory. However, the reality remains that most jurors and judicial officers are not Indigenous, and this can contribute to perceptions of racism in the CLS.

Self-determination

Many of the Indigenous people we spoke with felt that they are still subject to control by the colonial state. Past practices are replicated in current policies and legislation, which continue to undermine Indigenous peoples' rights to self-determination and rights to take control of their own affairs. One person expressed it in eloquent terms:

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SP3: We are still under the management of the dominant culture, the colonial state, we still are, in every aspect. If we are, you go and try to bring about change. The power imbalance needs to change, we have to have self-determination, in the care of our children, in the care of people. Yeah, a rights-based approach has to be applied in everything, because our rights for a long time have not been acknowledged and respected.

This participant continued:

“

SP3: They must acknowledge that this system, the justice system, everything around us was imposed upon us. That nightmare has never been addressed, it's not been addressed, it's not been, we are silenced in every possible frame of mind, we are not self-determined.

The importance of family and a strengths-based approach

There was a strong and shared feeling across the interviews that the cornerstone of any change is the need for stable families. However, this was sometimes difficult to achieve, if other family members remained enmeshed in the CLS. One participant said:

“

LE11: For me to succeed, to do well, where I'm at now, in my life, I had to cut everyone off pretty much. That includes ... some family members.

However, with so many Indigenous people involved in the CLS, parental figures or role models are often not around for children growing up. This was apparent from both personal and broader experiences:

“

SP2: So a lot of these young kids, they didn't have role models, they didn't have Elders who could discipline them, who could tell them right from wrong. They were also couch-surfing because of domestic abuse, drug and alcohol issues, sexual violence, a lot of that. I found a lot of children, younger ones, were roaming the streets and getting into trouble roaming the streets, because it's safer to be out on the streets and not be home, where uncle's going to sexually abuse you or, you know, you're going to get bashed or even see mum [getting bashed].

“

SP8: Well, the younger ones, they get distracted by all the other modern [stuff] but yes. Yeah, there is a need to, I guess, bring them back towards that. Some families do it really well, others can't. Sometimes that's because of modern needs, like a vehicle [for] getting out to Country, for instance. People don't have that resource and they rely on other things—other extended members.

“

LE15: Yes, it does affect me [having family members in prison], just knowing, staying in there, not going, seeing whatnot, shit, like, what's going on in the outside world, not knowing and stuff. Not sleeping in your own bed. I guess also not having freedom, always in that one spot.

Involvement of the community and Indigenous people and Elders

A very strong call, which was shared and supported by many participants, was the need for more Indigenous people working or being present in the CLS. They can take up roles non-Indigenous people will never be able to. For example, all four ACT participants desired initiatives and programs that would provide support and assistance to Aboriginal and Torres Strait Islander people, even if they did not now feel that they needed further support themselves. They were able to identify stages where formal support programs and structures were inadequate and did not effectively support them or others they knew. These participants wanted activities, workshops, initiatives or programs that were grounded and informed by culturally significant knowledge. There was a clear need for community and Elder involvement, in prison and programs, as culturally appropriate support. Again, these observations align closely with existing research, including the ALRC (2017; see also Bevis et al. 2020). The crucial role of Elders was highlighted in this comment:

“

SP5: National disgrace what's happening here. Those kids the other day on the roof at Banksia ... You know what they had to do, do you know what they had to do to get those kids down? Bring in their grandmas, bring in their mummas, bring in their pappas, 'Come on, mate, down you get.' They would have got off, but no, they went in with big machine guns and handcuffs and all they had to do was bring in the grandma, mate. 'Get off the roof, Toby, get off,' down he would come ... Is anyone going to hear their side of the story? No. When you get locked up for 23 hours a day—put a cat in a cage, see what it does when you let it out. Is it coming back? No ...

Others echoed the importance of Indigenous-led responses:

“

LE17: You put a black fella in a therapeutic rehab, you got to do rehab different because, one, it's a different language you've got to use in this program ... And I reckon, for cultural reasons, they should have more Indigenous people delivering it. Let us deliver a program to our people. Let's write our own program that's going to mean something, that's going to change the way we live.

“

LE11: And just be around a couple of old uncles or whatever, getting around with a couple of Elders coming in and talking, and just putting a bit of culture back into the boys. That's what I reckon, that would be a good thing. More cultural stuff. They need more cultural programs run. The jails, especially this one, there's not much to do with culture ... [and after prison]. Someone even just to go there, pick them up in a bus, whatever, just take them out to the bush for a couple of days, or a day even. Just go, take them out and feed them, you know? Just like a men's group, or a women's group, whatever, whoever's getting out. And just take them out for a bit. That's what I think. It could be more of that, just people telling them 'You can do this' rather than say 'You're going to be back, you'll fail.' And yes, just a bit more support that way.

“

LE18: Because I'm a blackfella, I'm able to do that. That's what I think our young boys need. They need the role models and mentors going in and talking to them, just sit round yarning, have a cup of tea and really talk and say, 'How you going, love?' Like me, I always call everyone love, but—and show them that we think of them, not because they're in prison, they're criminals and whatever. They still human beings, they're still connected to someone, they got a family member. A lot of them don't get support ... and like I say, the visitor scheme was so important.

“

SP6: I think the big difference with having an Aboriginal caseworker is I wasn't afraid to call their Nan or Auntie to dob on them, if they were doing the wrong thing and get their family involved in helping their fellas to reintegrate, talk to their family about what it's like in prison and why their son or brother is really uncomfortable on the outside with them. It's like, 'It's not you guys. You just don't have any memories to share.' So create them with them.

“

SP2: Culturally appropriate services that are able to then—we qualify Aboriginal people that are going to be able to have that hard yard talk and not our lovely beautiful non-Aboriginal people, no offence, that's going to say 'Hey, we can have that chat and those practices.' To get qualified people to be able to understand that culture, understand where people are coming from and understand so many things.

Addressing culture loss and promoting reconnection

Building on the above, alienation from culture felt like a challenge, particularly for young people. Therefore, reconnection—through prison programs or community-based programs—was seen as an important step on the way to desistance and a life free of violence and abuse:

“

LE7: I think the one thing that helped most was the Indigenous programs, so learn[ing] about my culture and stuff. And that got me to open up again.

“

LE3: I feel like we have quite a bit [of cultural stuff], but you can never have too much. More is more.

“

LE8: Also learning, because I did not grow up with culture, I grew up with no connection to lore, Aboriginal lore, so I learnt cultural lore things through my big brother, cousin–brother and his wife. But a lot of that stuff was, like our lore for Aboriginal people is different to the law of the white man. I couldn't comprehend; it took me a long time to understand that line, how it worked.

“

SP9: But it was the drawing back to basics of their culture that really started making the difference, because a lot of them didn't realise what their culture was or didn't know their family or didn't know, you know, the areas that they came from. So I always had Elders on site, who knew where these families came from. And nine times out of 10, [they] would know part of their family and uncle and auntie or whatever, to bring them back to the connectiveness of family. It was a huge success. And, you know, suddenly they had a purpose, because in Aboriginal culture we don't have, like, domestic violence. We don't have alcoholism or drug addiction or, you know, things like that. So when they go back to basics of their culture, they realise that these leadership potentials are popping out in front of them. Because they're starting to say, 'Hey, I do have a place in society. I do have a place in my culture and I do have a responsibility to my family and my community.' So these are the really important things for them.

Discussion

In the 'Stories that Matter' project, we sought to share the experiences of the Aboriginal and Torres Strait Islander people who had entrusted them to us. These stories are possibly not surprising, because the underlying causes of Indigenous over-representation in, and experiences of, the CLS have been discussed extensively, including in several reports ranging from the Royal Commission into Aboriginal Deaths in Custody report in 1991 to the ALRC in 2017. Yet there remains a lack of evidence for progress towards the implementation of recommendations of such reports (Cubillo 2021). Nevertheless, the lived experiences of those who are subject to the CLS and those who work with them in daily practice are less heard and are therefore an important contribution to this scholarship.

Asking our participants about their first experiences with the CLS almost immediately led the conversation into stories of ongoing colonisation and discrimination and feelings of being overpowered, disrespected and treated unfairly. The impacts of child removal during the stolen generations era are devastating and have been well documented (see Davis 2019). These effects are ongoing, and we are now facing at least the third generation of people who grew up with trauma and the disruption of almost everything that gave them identity and grounding. This imposed cycle of dysfunction continues, with Aboriginal and Torres Strait Islander children over 10 times more likely than non-Indigenous children to be on protection orders (Australian Government 2024), highlighting the need for trauma-informed, dignity driven and culturally appropriate supports for children before they enter care, and support for restoration once they are in care (Davis 2019). We also heard how this outplacement often came with maltreatment and abuse; this is sometimes referred to as 'historical', but it was very much in the present in the stories that were shared.

Many participants were exposed to violence and substance use and, subsequently, used these themselves as coping mechanisms. For many who observed and experienced this, the loss of culture and positive role models lies at the basis of these behaviours. Mental health problems derived from, and were exacerbated by, this behaviour, and there were several accounts of suicidal thoughts.

Early interactions with the CLS were part of growing up for many participants, and these experiences were mostly negative. People talked about occasions where they were let down, maltreated, misunderstood and disrespected at all levels throughout the CLS, to an extent that few non-Indigenous people can probably recount. Racism became apparent from a lack of understanding and cultural awareness but also from indifference and easy targeting.

Engagement with, and belief in, the imposed Western ‘justice’ system was low. It was mainly something to endure.

For many of our participants, there was little promising to go back to after interactions with the CLS, and the SPs we talked with were also very aware of their limitations in offering support. For those who identified as Indigenous, the situation was particularly delicate, because the difficulties they faced related to their communities, families and close relatives.

The fact that our participants were people in the community, most of them with direct or indirect lived experience, also provided stories of strength and ongoing resilience and a strong and shared message that the healing of Indigenous people can only happen with and through Indigenous people.

On several occasions throughout this project, we had to ask ourselves as researchers about the value of retraumatising people by asking them to retell their stories. The outcome of the Voice referendum made this question even more complicated. From our perspective, a respectful acknowledgement of the pain and disillusionment was the only option. Writing a year after the referendum, we hear an emerging discourse about how we can go forward. The outcome of the referendum may be a permanent disappointment that will stay with those affected for the rest of their lives. Moreover, the result appears to have emboldened some non-Indigenous Australians in their racism and ignorance about, and hostility towards, Indigenous cultures (Allison et al. 2025).

Despite the sense of disappointment, this does not mean defeat. As Munanjahli and South Sea Islander academic Chelsea Watego (2021) might say, it is just ‘another day in the colony’. There are still chances for change, and non-Indigenous people have opportunities—even an obligation—to play a role in this. The challenge is now to move forward in a way that is truly collaborative and reciprocal. Because the loss of culture and the need for empowerment and self-determination were a common thread throughout most stories, we will focus the rest of the discussion on how this could be achieved.

For Indigenous peoples, self-determination relates to the ‘capacity to control their own destiny’ (Yoorrook Justice Commission 2023). The foundation for the assertion of self-determination for Indigenous peoples is tied to their relationship to Country, land and waters and requires ensuring all human and cultural rights of Indigenous peoples. The Yoorrook Justice Commission heard from Indigenous people in Australia that there is a need for self-determination in both the child protection system and CLS, and that self-determination should underpin any reform.

The report deemed it critical that government understand and apply the full meaning of self-determination, if the commitments it has made are to be realised.

Behrendt and Vivian (2010) set out a list of five recurring concepts that underpin the exercise of self-determination: the recognition of past injustices; autonomy and decision-making powers; property rights and compensation; the protection of cultural practices and customary laws; and equal protection of rights. An Indigenous person cited in their discussion paper said: 'No government can tell us what self-determination is. Only we can determine what self-determination means to us. That is the first step to self-determination' (Behrendt & Vivian 2010: 3). Consistently with this, the Yoorrook report emphasised that self-determination requires the transference of decision-making power, authority, control and resources to Indigenous peoples (Yoorrook Justice Commission 2023).

Greater self-determination in the CLS remains a domain of focus within the Burra Lotjpa Dunguludja Outcomes Framework, with the more specific goals of greater accountability for justice outcomes and greater Aboriginal community leadership and strategic decision-making (Behrendt & Vivian 2010). Burra Lotjpa Dunguludja refers to the fourth phase of the Victorian Aboriginal Justice Agreement and has been shaped by Aboriginal people in their pursuit of self-determination (Aboriginal Justice 2024).

In 2023, the Yoorrook Justice Commission recommended that the Victorian Government must (among many other recommendations relevant to the present report):

- transfer decision-making power, authority, control and resources to Indigenous peoples, which includes (but is not limited to) system design, obtaining and allocating resources, powers of and appointments to bodies or institutions and accountability and oversight functions, including new Indigenous-led bodies, oversight processes or complaints pathways; and
- give full effect to the right of Indigenous peoples to self-determination in the Victorian CLS, as it relates to them. This includes negotiating through the Treaty process, including through potential interim agreements, the transfer of decision-making power, authority, control and resources in that system to Indigenous peoples.

The *Yoorrook for Justice* report highlights the fact that, until Indigenous peoples in Australia are fully self-determining, the CLS will continue to fail them. It argues that this transformation can only be achieved when genuine power, resources and authority are transferred fully to Indigenous peoples, so they can create the systems needed to best support their families and communities. It is noted that one way to achieve this in Victoria is via the negotiation of treaties. The Yoorrook report suggests that self-determining systems may involve decisions about system design, revenue raising and resource allocation and powers of, and appointments to, bodies and institutions, including accountability and oversight bodies, so that these are Indigenous led. In the CLS specifically, this may include cautioning, diversion and pre-sentence decisions, such as bail.

Conclusion

The findings and recommendations of far too many reports, including that of the Royal Commission into Aboriginal Deaths in Custody (1991) and ALRC (2017), have been consigned to the dustbin of history. The time for merely writing reports is over, and the time for action on their findings must finally begin. Governments need to do more than pay lip-service to these repeated and consistent findings—they need to holistically manage the over-representation of Indigenous involvement with the CLS and broader social justice issues. There also needs to be fuller commitment to formal truth-telling processes, to help the whole community—Indigenous and non-Indigenous—heal from the legacies of colonisation.

Any future Australian research projects that engage with Aboriginal and Torres Strait Islander people's experiences of the CLS must at least meet the requirements of ethical research set out by AIATSIS (2024, 2022; for discussion, see Martin, Smyth & Downing 2024; Tomkins & Harden 2024). In this project, this meant that, while the project was initiated and strongly supported by the community, we adapted and ended our fieldwork when that support waned. At all stages, we sought to provide a platform for the 32 Indigenous people who so powerfully and generously shared their experiences, trauma and wisdom. However, the true 'story that matters' is surely that even good intentions and careful execution are no longer enough. Because most of the research team for this project is not Indigenous, it becomes all the more important to reflexively engage with the AIATSIS principles, especially around issues such as respect, cultural capability, leadership and accountability (see Tomkins & Harden 2024). More broadly, there is a need to achieve benefits beyond what is currently being offered, because there is no real incentive for community members to participate, if the results do not lead to meaningful reform.

Looking to the future, there will need to be change in how research exploring the experiences of Aboriginal and Torres Strait Islander people in the CLS is undertaken. Research starting from a deficit approach and focusing on negatives and failure is not ethical or beneficial to participants or the broader community. Research will need to be empowering and supportive. Ideally, research will be community led and collaborative and should facilitate resilience. This is a crucial step towards *yindyamarra*, a Wiradjuri word with multiple meanings, including respect, going slow and taking responsibility (Grant & Jacobs 2022).

Community-led and collaborative approaches are not new—this approach exists in Aboriginal-controlled community organisations in health, education and cultural practice. The same principle should be applied to crime and justice issues for Indigenous people. There is collaborative work done with communities and by Indigenous researchers that should be used as the foundation for research addressing Indigenous experiences in the CLS. Beaufils, Cunneen and Russell (2021), Heenan, Bond and Lockwood (2024), McCausland, McEntyre and Baldry (2017) and Reeve et al. (2024) have highlighted the need for justice responses to be guided by community engagement and cultural practice and driven by Indigenous input. Crucially, Indigenous people come from different backgrounds, with different lived experiences and different communities; the diversity of Indigenous people and their circumstances in the CLS should be addressed in ways that reflect diverse needs. Furthering research that is collaborative with Indigenous people, or autonomous research that develops from grassroots organisations that have experience with police, in courts and in prisons will be necessary for just practice.

In the spirit of self-determination, Aboriginal and Torres Strait Islander people should be empowered, to the point where they are leading the storytelling process. To get there, however, there needs to be meaningful recognition of the challenges faced and a shared commitment to addressing these challenges in practice. For non-Indigenous researchers, a key goal is therefore to empower Aboriginal and Torres Strait Islander people and communities, to a point where non-Indigenous researchers are not needed for this process, and the stories and solutions come directly from the people affected.

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Appendix

Participant information form

Indigenous people's experiences with the criminal justice system: Stories that matter

Funding: Australian Institute of Criminology, Indigenous Justice Research Grant

Researchers: A/Professor Hilde Tubex, Professor Lorana Bartels and Professor Joe Graffam

If I can introduce myself; I am ...

The aims of this research are to:

- document Indigenous peoples' experiences with, and perspectives of, their contact with the criminal justice system at various stages;
- identify and analyse what did or did not work well;
- develop recommendations for improved practice; and to
- address the overrepresentation of Indigenous peoples.

Therefore, I would like to invite you to be part of this research project and to share with me your experiences with the criminal justice system. We are convinced that people with lived experience know best what goes wrong/well and how we can improve the system.

Your support officer introduced the research to you and said you were willing to participate. Participation is voluntary and you can stop at any stage without reason or negative effects. In the case you want to withdraw, it is your decision what needs to happen with the information already provided. The interviews will be recorded if you agree to this, as it helps us to further analyse them. The recording and transcription will be de-identified and you will be given a code in case you want to withdraw and have your information removed from the data. All information you give us is confidential, unless if you tell me about any illegal activity you have not been charged / convicted for, in which case I am legally bound to report this. As an expression of our appreciation for you sharing your lived experience, you will be remunerated with a \$50 voucher.

If you have any further comments or questions after the interview, I will be around to answer them. After we have analysed the interviews, we will hold a yarning circle to discuss the findings. If you are willing to participate in that, we will contact you again via your support officer at that time. If you want to access the results of the study, these will be provided to you on your request.

For further information or complaints, please contact [email address].

Approval to conduct this research has been provided by the University of Western Australia, in accordance with its ethics review and approval procedures. Any person considering participation in this research project, or agreeing to participate, may raise any questions or issues with the researchers at any time.

In addition, any person not satisfied with the response of researchers may raise ethics issues or concerns, and may make any complaints about this research project by contacting the Human Ethics Office at the University of Western Australia on (08) 6488 3703 or by emailing to humanethics@uwa.edu.au.

All research participants are entitled to retain a copy of any Participant Information Form and/or Participant Consent Form relating to this research project.

Research questions

As explained above, the interviews will follow an informal yarning approach. However, as the research will be conducted by several researchers and at several locations, we have developed a topic list to ensure a comparable approach to the conversations.

Topics to discuss will be related to:

- Early stages of contact with the CLS: experiences with police interventions, arrest, and legal support throughout the sentencing process.
 - Was the process clear to you?
 - What information did you get/need?
- During a community-based sanction (CBS)
 - Did you know about opportunities for CBS/were they suggested in the sentencing process?
 - How did the CBS impact on your situation, in positive/negative ways?
- During imprisonment: experiences with prison programs and interventions, preparation for and information about release.
 - How did imprisonment impact on your situation, in positive/negative ways?
 - How did you feel about options for early release?
- After release:
 - Could you tell us about your experiences of returning home and reintegration needs, opportunities to 'go straight'?
 - What kind of help did you need? Did you get it?

Participant demographics

Table A1: Participant demographics							
	Staff	Client	Indigenous	Non-Indigenous	Male	Female	Location
1	X		X			X	WA—Metro
2	X		X			X	WA—Metro
3		X	X			X	WA—Metro
4		X	X			X	WA—Metro
5		X	X			X	WA—Metro
6		X	X			X	WA—Metro
7	X		X			X	WA—Metro
8	X		X			X	WA—Metro
9		X	X			X	WA—Metro
10		X	X			X	WA—Metro
11		X	X		X		WA—Peel region
12	X		X			X	WA—South West
13	X		X			X	WA—South West
14	X			X		X	WA—Great Southern
15		X	X		X		WA—Great Southern
16	X		X		X		WA—Great Southern
17		X	X		X		WA—Great Southern
18		X	X			X	WA—Great Southern
19		X	X		X		WA—Great Southern
20	X		X			X	WA—Great Southern
21		X	X			X	WA—Mid West
22		X	X			X	WA—Mid West
23		X	X			X	WA—Mid West
24		X	X		X		WA—Mid West
25		X	X		X		WA—Pilbara
26	X			X		X	WA—Pilbara
27	X			X		X	WA—Pilbara
28	X			X	X		WA—Kimberley
29	X		X		X		WA—Kimberley
30		X	X		X		WA—Kimberley
31	X		X		X		WA—Kimberley
32		X	X		X		ACT—Metro
33		X	X		X		ACT—Metro
34		X	X		X		ACT—Metro
35		X	X		X		ACT—Metro
36		X	X		X		Vic—Regional

AIC reports
Research Report

Hilde Tubex is a Professor of Criminology and Director of the Criminology program at the Law School of the University of Western Australia.

Lorana Bartels is a Professor of Criminology at the Australian National University and Adjunct Professor of Law at the University of Canberra and University of Tasmania.

Ashlee Curtis is a Senior Lecturer in the School of Psychology at Deakin University.

Hunter Culbong is a Noongar man from Perth and a doctoral candidate and academic associate at the Australian National University.

Emma Tufuga is a proud Indigenous Samoan woman and Research Fellow at the National Drug Research Institute and the Justice Health Group at Curtin University.

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