



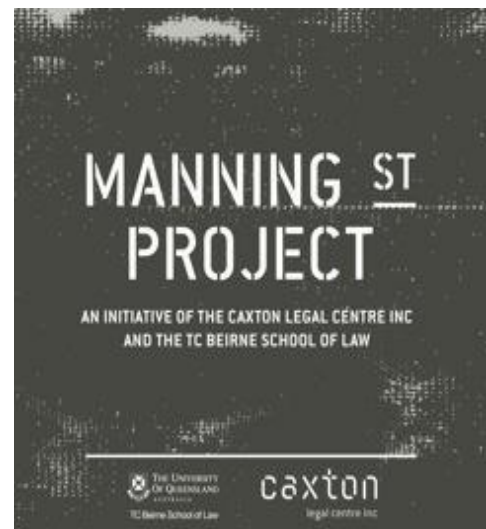
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Justice Behind Bars

PRISONERS'
LEGAL
SERVICE INC.



Barriers to Parole for Aboriginal and Torres Strait Islander People in Australia

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Introduction

It is widely known that Aboriginal and Torres Strait Islander people are significantly overrepresented in the prison population, with incarceration rates approximately 14 times higher for Indigenous Australians than non-Indigenous Australians.¹ Aboriginal and Torres Strait Islander people represent approximately one quarter of the prison population, despite comprising only 2.5 per cent of the general population.²

This report highlights the challenges faced by Aboriginal and Torres Strait Islander prisoners when accessing parole, and reasons for return to custody when on parole. Research demonstrates that Aboriginal and Torres Strait Islander prisoners suffer greater challenges in obtaining parole than non-Aboriginal and Torres Strait Islander prisoners, and that Aboriginal and Torres Strait Islander parolees are significantly less likely to complete parole. The 2012 Queensland *Inside Out* study³ found that of the 420 Aboriginal and Torres Strait Islander prisoners who were interviewed, around 25 per cent of participants “believed they were destined to return to custody again after their release”.⁴

This report is divided into two parts. The first section analyses barriers for Aboriginal and Torres Strait Islander prisoners in attempting to access parole. These barriers include lack of access to legal support and information, literacy and education, mental illness, lack of housing prior to custody and substance abuse. The second part of the report analyses, the most common reasons for Aboriginal and Torres Strait Islander prisoners’ return to custody whilst on parole. These reasons include breaching parole conditions, committing further offences, lack of employment, and lack of housing, substance abuse and domestic violence.

Methodology

In February 2013, Prisoners’ Legal Service Inc. (PLS) approached the Manning St Project to conduct research into Aboriginal and Torres Strait Islander (**Aboriginal and Torres Strait Islander**) parole rates in Australia. The Manning St Project is a partnership between the UQ Pro Bono Centre and Caxton Legal Centre, which

¹ Edward Heffernan, Kimina Anderson and Abhilash Dev, ‘Inside Out: The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report’ (2012), *Queensland Government (Queensland Health)* 10.

² Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Population* (30 April 2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/1301.0Main+Features142012>>

³ Heffernan, above n 1.

⁴ Ibid 11.

offers law students the opportunity to work on action research and law reform projects on a pro bono basis. Under the supervision of Matilda Alexander (PLS Principal Solicitor) and Monica Taylor (Director, UQ Pro Bono Centre), three students undertook research into this area, the aim of which was to review current literature in relation to Aboriginal and Torres Strait Islander parole rates in Australia and produce a coherent report which articulated key findings. The focus of the research was on barriers to parole for Aboriginal and Torres Strait Islander prisoners and the most common reasons for an Aboriginal and Torres Strait Islander prisoner's return to prison whilst on parole.

The following activities were undertaken as part of the research:

- A literature review of existing research into this area;
- Informal discussions with PLS lawyers to ascertain issues facing PLS clients;
- A confidential and de-sensitised review of PLS case files to obtain first-hand accounts of parole issues affecting Aboriginal and Torres Strait Islander clients of the service.

The scope of this project was limited by the scarcity of information and literature specifically directed to Aboriginal and Torres Strait Islander parole rates, and a lack of direct access to Aboriginal and Torres Strait Islander prisoners. As a consequence, some of the literature informing the report focuses on prisoners generally, and inferences have therefore been made to include Aboriginal and Torres Strait Islander prisoners.

It is hoped that this report will contribute to the gap in research in this area and in doing so, highlight the various challenges to parole faced by Aboriginal and Torres Strait Islander prisoners.

Summary of recommendations

1. That more Aboriginal and Torres Strait Islander-specific educational courses regarding access to legal education be provided, in particular in rural prisons.
2. That education courses in prisons include writing skills and techniques for form-filling.
3. That there be greater access within prison to Aboriginal or Torres Strait Islander health professionals.
4. That a different procedure be implemented for prisoners to demonstrate post-release accommodation, especially when that accommodation is crisis accommodation.
5. That drug and alcohol courses and programs in prisons be increased and better targeted to Aboriginal and Torres Strait Islander prisoners, including those in rural prisons.
6. That Aboriginal and Torres Strait Islander prisoners be given greater access to PLS in order to amend impractical parole conditions and to ensure that parole conditions are understood.
7. That parole boards attempt to modify parole conditions for rural Aboriginal and Torres Strait Islander prisoners in order to account for the often transient Aboriginal and Torres Strait Islander lifestyle.
8. That employment courses in prisons include information about maintaining employment, as well as increased opportunities for Aboriginal and Torres Strait Islander prisoners to gain marketable skills.
9. That increased housing support be provided to Aboriginal and Torres Strait Islander parolees in order to reduce recidivism and prevent parolees' return to custody.
10. That substance abuse and mental health services in prisons be coordinated into drug dependency programs.
11. That Aboriginal and Torres Strait Islander female parolees be given access to emergency support accommodation, particularly if they are survivors of domestic violence or have children.

Part I

Lack of access to legal support, information & courses as a barrier to parole

Access to legal support and information has been identified as an issue for prisoners in Australia,⁵ including for Aboriginal and Torres Strait Islander prisoners when applying for parole. Examples of some of the barriers to information for prisoners include a lack of access to computers and telephones⁶ and lack of information regarding how to access Legal Aid.⁷

Why do Aboriginal and Torres Strait Islander prisoners find accessing legal information difficult?

Aboriginal and Torres Strait Islander prisoners tend to have even poorer access to legal support before and during their imprisonment in comparison to other prisoners. Some known reasons for this include language barriers, socio-economic disadvantage, the often-serious nature of their criminal offences and cross-cultural issues.⁸ The Aboriginal Legal Service (**ALS**) reported that 83 per cent of Aboriginal and Torres Strait Islander prisoners interviewed did not have any legal support present following their arrest.⁹

Emotional issues as a barrier to information

It is suggested that Aboriginal and Torres Strait Islander prisoners often feel dejected by the legal process and feel as though it is not worth even trying to obtain parole. One Aboriginal and Torres Strait Islander prisoner stated:

I've given up on trying to get some legal action while I'm in jail. It's just too hard. It just drains you of all that get up and go.¹⁰

Other emotional issues such as depression and despondency have been attributed to Aboriginal and Torres Strait Islander prisoners' poor access to legal support, because they may not feel motivated or optimistic about the potential outcome. This results in their legal issue (such as applying for parole) being neglected, resulting in fewer numbers of Aboriginal and Torres Strait Islander prisoners obtaining parole. Another

⁵ Anne Grunseit, Suzie Forell & Emily McCarron, 'Taking Justice Into Custody: The Legal Needs of Prisoners' (2008) *Law and Justice Foundation of New South Wales* 30.

⁶ Lester, A. 2006, 'Computer access for prisoners', *Unsolicited*, no. 1, pp. 19–21, as cited in, Anne Grunseit, Suzie Forell & Emily McCarron, 'Taking Justice Into Custody: The Legal Needs of Prisoners' (2008) *Law and Justice Foundation of New South Wales* 30.

⁷ de Simone, T. & d'Aquino, C., 'Inside Out: The Access of Women and Girls to Legal Aid Services', (2004) Legal Aid Queensland, Brisbane, as cited in, Anne Grunseit, Suzie Forell & Emily McCarron, 'Taking Justice Into Custody: The Legal Needs of Prisoners' (2008) *Law and Justice Foundation of New South Wales* 30.

⁸ Chris Cuneen, 'Criminology, Criminal Justice and Aboriginal People: A Dysfunctional Relationship?' (Speech delivered at the John Barry Memorial Lecture, University of Melbourne, 25th November 2008).

⁹ *Ibid.*

¹⁰ Grunseit, above n 5, 141.

issue is shame, where prisoners feel embarrassed by the trouble they were in and did not want to draw attention to it by seeking legal support.¹¹ The following section, 'Mental Illness as a Barrier to Accessing Parole' considers the influence of mental illness on Aboriginal and Torres Strait Islander prisoners' parole access in more detail.

Lack of knowledge about how to access Legal Aid Queensland

In relation to Legal Aid Queensland (LAQ), a study focussing on women in prison found that only 26 per cent of female prisoners had utilised the services of LAQ.¹² One of the main reasons cited for this was the lack of information in prison about LAQ services, and a reliance on 'word of mouth' information between prisoners about what their entitlements may be.¹³ Anecdotally, word of mouth appears to be a common way that prisoners share information about what to expect from the legal process and how to access legal support. Inmates have also reported that it is difficult to contact their Legal Aid lawyers and expressed a need for more telephone access.¹⁴

Lack of access to educational courses as a barrier to parole

There are educational courses offered within prisons that prisoners can participate in. This participation can assist in strengthening the prisoner's parole application, as it demonstrates that the prisoner has developed skills to adapt back into community life.¹⁵ Therefore, poor access to these courses is a barrier to a prisoner's success in obtaining parole. Rural prisoners are particularly disadvantaged as limited resources mean places in the courses are competitive, and there are anecdotal reports of six to twelve month waiting lists. Furthermore, if prisoners are transferred between prisons then they may not be able to continue or complete a course,¹⁶ which is not only frustrating and discouraging for the prisoner but also detrimental to his or her parole prospects. There is also anecdotal evidence that suggests that transfers between prisons can hinder a prisoner's access to his or her lawyer, as contact details may have changed.

What is being done to address this issue?

There has been an effort to address Aboriginal and Torres Strait Islander prisoners' lack of access to legal support during their incarceration. When an Aboriginal and Torres Strait Islander prisoner is brought into custody, police must contact the ALS. An ALS lawyer will then provide advice, attend court and regularly visit prisons. Another example is the ThroughCare Program provided by the ALS, which provides Aboriginal and Torres Strait Islander prisoners with support before and after release from prison. However this is a

¹¹ Ibid 143.

¹² Ibid 33.

¹³ de Simone, above n 7, 33.

¹⁴ Ibid.

¹⁵ Grunseit, above n 5, 170.

¹⁶ Ibid 170.

voluntary Queensland program where prisoners complete a Client Assessment Form to apply and there are few places available due to limited resources.¹⁷ From the literature and anecdotally through case studies, it appears that despite some mechanisms in place to assist Aboriginal and Torres Strait Islander prisoners, these prisoners are still reporting a lack of access to information and legal assistance whilst in prison. It is therefore recommended that more courses and/or programs be implemented to assist Aboriginal and Torres Strait Islander prisoners to understand their rights and the legal process for applying for parole, particularly in rural prisons. It is further recommended that these programs be designed to address Aboriginal and Torres Strait Islander-specific issues such as feelings of shame, dejection and lack of motivation to seek legal information.

Recommendation 1:

That more Aboriginal and Torres Strait Islander-specific educational courses regarding access to legal education be provided, in particular in rural prisons.

Literacy and education as a barrier to accessing parole

Poor literacy is a significant problem amongst prison populations both in Queensland and throughout Australia. In 2001, the Department of Community Safety (DCS) reported that 60 per cent of inmates were not functionally literate or numerate.¹⁸ A 2007 study by the Australian Bureau of Statistics showed that educational attainment is correlated with literacy levels. The retention rate for students attending school until year 12 in Australia is 75.9 per cent for non-Indigenous students and 40.1 per cent for Indigenous students.¹⁹ If education attainment is in fact correlated with literacy levels, then this statistic indicates that Indigenous prisoners are likely to have a lower literacy rate than non-Indigenous prisoners.

Literacy and education levels of Aboriginal and Torres Strait Islander prisoners

In a 2008 study by the Australian Institute of Criminology, 2,047 Indigenous violent male prisoners were surveyed regarding their education level.²⁰ The study found that 84 per cent of Indigenous prisoners had not completed a year 12-education level, and 37 per cent of those had left school before year 9. The study concluded that Indigenous male violent prisoners tend to have lower levels of education. The 2012 Queensland *Inside Out* study²¹ found that of 419 Aboriginal and Torres Strait Islander prisoners across Queensland, 22.4 per cent of participants had not completed Year 8, making this category the most common.

¹⁷ Cuneen, above n 8.

¹⁸ Grunseit, above n 5, 26.

¹⁹ Australian Bureau of Statistics 2007, *Schools, Australia, 2006*, Catalogue No. 4221.0, Canberra as cited in Anne Grunseit, Suzie Forell & Emily McCarron, 'Taking Justice Into Custody: The Legal Needs of Prisoners' (2008) *Law and Justice Foundation of New South Wales*, 26.

²⁰ Matthew Willis, 'Reintegration of Indigenous Prisoners' (2008), *Australian Institute of Criminology*, 15.

²¹ Heffernan, above n 1, 22.

The least common was tertiary qualifications, with only 2.1 per cent of participants reaching this level of education.

Poor literacy rates affect Aboriginal and Torres Strait Islander prisoners in their application for parole because the application process involves a written submission.²² The application involves filling in a form as a bare minimum, but prisoners hoping to be successful should also attach extensive additional documents. Case studies from the PLS have shown that these documents can include criminal history, plans for monitoring substance abuse and other issues in the community, references from members of the community and proof of accommodation and/or employment post release. These case studies show that even very lengthy applications can be rejected for not adequately demonstrating how the applicant will function in the community. While PLS does assist prisoners with their parole applications, it is recommended that the prisoner write the application personally. It is difficult to envisage how an illiterate prisoner would manage to construct convincing arguments and put them in writing to the Parole Board. It is therefore recommended that education courses for Aboriginal and Torres Strait Islander prisoners ensure basic literacy skills are covered, including workshopping answers for parole applications and filling in forms generally. It is not recommended that the teachers give the prisoners answers for the questions, but rather ensure the prisoner is equipped with the skills to complete a comprehensive application. It is the authors' belief that improving Aboriginal and Torres Strait Islander prisoners' writing skills may also address some issues Aboriginal and Torres Strait Islander prisoners face such as lack of motivation to apply for parole, and will assist when applying for jobs while on parole that may require a written form.

Recommendation 2:

That education courses in prisons include writing skills and techniques for form-filling.

Mental health issues as a barrier to parole for Aboriginal and Torres Strait Islander prisoners

Prevalence of mental illness amongst Aboriginal and Torres Strait Islander prisoners

Aboriginal and Torres Strait Islander persons face many health challenges, and within the context of prison these issues are magnified, particularly in the area of mental health.²³ The 1991 Royal Commission into Aboriginal Deaths in Custody resulted in more than 300 recommendations regarding social, health and judicial issues, with the main focus being on suicide prevention of Aboriginal and Torres Strait Islander prisoners. Despite these concerns, there have been relatively few publications concerning substantial mental

²² *Corrective Services Act* s180(3)(a) states that the application for parole must be in the approved form.

²³ Heffernan, above n 1, 3.

illness issues affecting Aboriginal and Torres Strait Islander prisoners. The NSW Inmate Health Survey, which is the most comprehensive study of prisoner health in Australia, identified the three most common mental health issues affecting Aboriginal and Torres Strait Islander prisoners as being depression, anxiety and drug dependence.²⁴ Another study in Queensland found that 73 per cent of male and 86 per cent of female Aboriginal and Torres Strait Islander prisoners (of a sample of 396 Queensland inmates in high security prisons) suffered some kind of mental disorder.²⁵

From these statistics there is little doubt that Aboriginal and Torres Strait Islander prisoners suffer from high levels of mental illness. The issue at hand is how mental illness may be a barrier for Aboriginal and Torres Strait Islander prisoners in accessing parole.

Transition from custody to the community: the effect of mental illness

The transition from custody to the community is recognised as a high-risk period for Aboriginal and Torres Strait Islander prisoners suffering from a mental illness.²⁶ In the Queensland 2012 study *Inside Out*, more than half (54.3 per cent) of the participants had reported having suicidal ideations and reported that the suicidal ideations had been worse when they were out in the community than when in custody. Furthermore, prisoners have expressed worry and fear for their return to the community, and a desire for there to be Aboriginal and Torres Strait Islander-specific transition officers available.²⁷ One inmate stated:

Set up a support mechanism outside...where they [Aboriginal and Torres Strait Islander parolees] can feel a sense of belonging...so that they don't see jail as a place for social gatherings...²⁸

Case studies demonstrate that one of the predominant factors that the parole board considers when assessing whether or not to grant parole is the prisoner's ability to re-integrate back into the community. Based on the above information, it is justifiable that a parole board expects to see a high degree of planning from the prisoner about how his/her mental illness will be managed in the community. However, a prisoner with a mental illness may be less likely to be able to construct and maintain a convincing argument for why s/he should be released into the community, or even have the motivation to submit such a substantial application to the parole board. For this reason, the high prevalence of mental illness amongst Aboriginal and Torres Strait Islander prisoners is a barrier to parole.

²⁴ Phyllis et al., 'Editorial Healing for Aboriginal and Torres Strait Islander Australians at Risk with the Justice System: A Program with Wider Implications?' (2012) *Criminal Behaviour and Mental Health*, 22 at 299.

²⁵ Heffernan et al. *Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland Prisons*. (2012) 197 *Medical Journal Australia*; 1, 37.

²⁶ Heffernan, above n 1, 12.

²⁷ *Ibid* 52.

²⁸ Heffernan, above n1, 52.

Need for support upon release

Upon release on parole, many Indigenous prisoners return to remote communities where there is little mental health support. This could potentially further weaken an applicant's case when attempting to demonstrate that he/she could cope in the community. Community re-integration for Aboriginal and Torres Strait Islander parolees has been shown to be most successful when there are spiritual and culturally specific support programs available. Community programs, such as the Gathering Place Healing Program in Melbourne, which address the physical and mental health concerns of Aboriginal and Torres Strait Islander people through culturally appropriate therapies, are preferred.²⁹ Aboriginal and Torres Strait Islander prisoners who are from very remote rural areas are less likely to have access to these programs, making it difficult for these applicants to demonstrate in their application what protective factors they will put in place to ensure they can cope with their mental illness in the community.

Aboriginal and Torres Strait Islander prisoners in the recent 2012 Queensland study³⁰ expressed a need for there to be more Aboriginal and Torres Strait Islander health professionals available while in custody, with accessibility to mental health services being an issue due to long wait times. One male Aboriginal and Torres Strait Islander prisoner stated:

We need more Murri counsellors and psychiatrists in here to talk to us, as they understand where we come from, and help deal with language and cultural issues...

Therefore it is recommended that greater access to health professionals who are Aboriginal or Torres Strait Islander be implemented into prisons, as this would assist Aboriginal and Torres Strait Islander prisoners in addressing their mental health issues. These professionals may also be able to assist Aboriginal and Torres Strait Islander prisoners in finding appropriate programs in their communities to help monitor their mental illness.

Recommendation 3:

That there be greater access within prison to Aboriginal or Torres Strait Islander health professionals.

²⁹ Pau, above n 24, 300.

³⁰ Heffernan, above n 1, 51.

Lack of housing as barrier for Aboriginal and Torres Strait Islander prisoners facing parole

A lack of appropriate housing has been widely identified as a key barrier to an Aboriginal and Torres Strait Islander prisoner's successful parole application. This was recognised by Western Australia's Law Reform Commission in 2006, which stated that Aboriginal and Torres Strait Islander prisoners "encounter problems" with respect to bail.³¹ The Commission found that Aboriginal and Torres Strait Islander prisoners were more likely to be unsuccessful in a bail application and "more likely to be unable to meet the requirements or conditions that have been imposed". The requisite bail conditions include suitable accommodation.³² It is appropriate to consider this finding in light of a 2005 survey of male South Australian Aboriginal and Torres Strait Islander prisoners, which found that 36 per cent were homeless before prison, and that 73 per cent had not identified secure accommodation on release.³³

Accommodation as a requirement of parole application

As release on parole requires a prisoner to adhere to certain conditions,³⁴ it is necessary for the individual to demonstrate that appropriate accommodation arrangements have been organised. Prisoners, however, have limited means to find appropriate accommodation options and support networks within the community, and as such the barriers to successfully applying for parole are "often insurmountable".³⁵ In the 2012 Queensland *Inside Out* report,³⁶ DCS workers found that many inmates were unable to get parole because suitable accommodation could not be found. This issue was particularly prominent for individuals leaving rural and regional jails. As one Throughcare officer at a rural prison explained:

And the difficulty now is that probation and parole need to confirm the accommodation. The nature of crisis accommodation, basically crisis accommodation is exactly that... they're not going to [hold them] there for a week, but probation and parole need to know a couple of weeks before they're released so they can get it checked out. So it's like a, it's a catch 22 situation for the guys... it's very hard for me to get them accommodation two weeks out, and it's virtually impossible in that type of accommodation, but probation- they need it.

³¹ Matthew Ericson and Tony Vinson, 'Young People on Remand in Victoria: Balancing individual and community interests' (Report, Jesuit Social Services, 2010) 24.

³² Ibid 24.

³³ Ibid 24.

³⁴ Grunseit, above n 5, 62.

³⁵ National Aboriginal & Torres Strait Islander Legal Services, Submission to Senate Legal and Constitutional Affairs Committee, Commonwealth Government, *Inquiry into Justice Reinvestment in Australia*, March 2013.

³⁶ Grunseit, above n 5, 62.

Attempts to resolve the issue of accommodation while on parole

When considering how to address this housing barrier, King et al³⁷ noted calls for “supervised bail accommodation”. It was found that although Victoria did not have “bail hostels”, it was providing suitable public housing to accommodate ex-prisoners who otherwise may not have been successful in applying for parole. In contrast, Frank Guivarra, the director of the Victorian ALS, stated that there was a “chronic shortage” of bail hostels for Indigenous juveniles.³⁸ In South Australia, it was noted that whilst the South Australian Courts Unit assisted prisoners in locating accommodation in SAAP programs, there were insufficient resources allocated to the program and there was a shortage of housing stock. As a result, prisoners were often held in custody pending the availability of suitable accommodation.³⁹ Further, some types of accommodation were found not to have the facilities required for home detention monitoring and thus, “if the bail authority is minded to place significant restrictions on the defendant these forms of housing will not provide an opportunity for monitored bail”.⁴⁰

It is recommended that if a prisoner intends to live in crisis accommodation upon release, instead of probation and parole needing to confirm residency two weeks in advance, they instead accept a letter from the crisis accommodation saying that they will likely take the prisoner on as a resident. If not a letter, then perhaps the prisoner could demonstrate a high likelihood of being accepted into this type of accommodation as per a criteria or checklist. Given the high number of Aboriginal and Torres Strait Islander prisoners who rely on this type of accommodation post-release, it is important that this procedural technicality is altered.

Recommendation 4:

That a different procedure be implemented for prisoners to demonstrate post-release accommodation, especially when that accommodation is crisis accommodation.

Substance abuse as a barrier in applications for parole

Alcohol and other drug problems are the key drivers of Indigenous over-representation in Australian prisons.⁴¹ In the survey from the *Inside Out* report, more than two thirds of respondents reported being under the influence of alcohol at the time they offended (71 per cent of males and 70 per cent of females).⁴²

³⁷ Ericson, above n 31, 20.

³⁸ Ibid 36.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Don J. Weatherburn. ‘The role of drug and alcohol policy in reducing Indigenous over-representation in prison’ (2008) 27 *Drug Alcohol Review* 1, 91-94.; Judy Putt, Jason Payne & Lee Milner. ‘Indigenous male offending and substance abuse.’ *Trends and Issues in crime and criminal justice* (2005). no. 293. Accessed April 24th 2013 from <<http://www.aic.gov.au/publications/tandi2/tandi293.html>>; Anne Grunseit, Suzie Forell & Emily McCarron, ‘Taking Justice into Custody: The Legal Needs of Prisoners’ (2008) *Law and Justice Foundation of New South Wales* 62.

⁴² Heffernan, above n 1, 11.

Substance abuse as a barrier to parole

Furthermore, once in prison, substance abuse becomes a barrier to Indigenous prisoners applying for parole. Parole boards will look at parole applications and see whether people with a history of substance abuse have undertaken any rehabilitation programs whilst in prison to prevent them from relapsing and reoffending.⁴³ Those people who have completed drug dependency courses are able to make a stronger application to the parole board. However this severely disadvantages people held in rural and poorly resourced prisons where such programs are not readily available to prisoners. This is an issue of access, and highlights the need for such programs to be readily available to prisoners regardless of geographical location.

Offenders also need to show in their parole application how they will manage their substance abuse once released. Anecdotal evidence demonstrates that this disadvantages people who are in rural or regional areas where rehabilitation programs are not readily accessible, making it difficult for them to present a convincing case to the parole board of how they will manage a relapse.

Given the heavy reliance parole boards place on Aboriginal and Torres Strait Islander prisoner participation in drug and alcohol rehabilitation programs, it is recommended that these programs have:

- a) Greater reach to include more Aboriginal and Torres Strait Islander prisoners in rural prisons; and
- b) The potential to take on more students in these courses to reduce long wait times.

Recommendation 5:

That drug and alcohol courses and programs in prisons be increased and better targeted to Aboriginal and Torres Strait Islander prisoners, including those in rural prisons.

Part II

Reasons for return to custody & Aboriginal and Torres Strait Islander parolees' poor parole completion rates

Aboriginal and Torres Strait Islander prisoners also face many issues whilst in the community on parole, and these will now be addressed. The first issue to be addressed is the high incidence of parole condition breaches.

Breaching parole conditions

⁴³ Anthea S. Krieg . 'Aboriginal incarceration: health and social impacts'. (2006) 184 *Medical Journal of Australia* 10, 534-6.

The grant of parole requires a prisoner to adhere to certain conditions while in the community.⁴⁴ A breach of a parole condition may result in the parolee returning to prison for the remainder of their sentence. It has been found that many parolees who return to prison do so as a result of breaching the technical conditions of their parole orders.⁴⁵

Examples of breaches of parole conditions

For example, some parolees indicated that they had breached their parole conditions by associating with 'known criminals' when they returned home as family members had also been convicted of crimes.⁴⁶ Other breaches include when an ex-prisoner moved to a new address without informing the relevant parole officer or a failure to comply with a mental health order.⁴⁷ In addition, practical issues including limited public transport have been identified as impacting on a parolee's ability to meet strict conditions such as attending appointments with one's parole officer.

The effect of strict parole conditions on an Aboriginal and Torres Strait Islander parolee's prospect of successful completion

It was indicated in one study that the inclusion of too many parole conditions often made it difficult for all the requirements to be adhered to.⁴⁸ One parole officer identified that Aboriginal parolees often had more stringent parole conditions, including more appointments with family services and their parole officer, as a result of their community ties and more transient lifestyles.⁴⁹ It follows that the more stringent the parole obligations, the greater the possibility of breaching these conditions.

Further, impulsiveness has been identified as an issue for prisoners who are released. The removal of physical boundaries and prison routines may leave some prisoners vulnerable to re-offending.⁵⁰ As one 35 year old male Aboriginal prisoner stated:

... when some of the guys get out of jail... they're pretty much lost you know? They're like a little kid in a fun park. Doesn't know which way to go.... You know, he's got no one there to point out how to do his seatbelt up, you know, so to speak.

⁴⁴ Jones, C., et al. *Risk of re-offending among parolees* (2006) Crime and Justice Bulletin no. 91, NSW Bureau of Crime Statistics and Research, Sydney,

Available at: <[http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb91.pdf/\\$file/cjb91.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb91.pdf/$file/cjb91.pdf)>.

⁴⁵ Ibid 2.

⁴⁶ Grunseit, above n 5, 63.

⁴⁷ Ibid 64.

⁴⁸ Ibid 64.

⁴⁹ Ibid 64.

⁵⁰ Ibid 145.

In some jurisdictions parole officers are required to follow a strict compliance model and report any parole breach no matter how minor. In the Northern Territory, for example, this model has resulted in a high rate of parole revocations despite there being no high risk offending. It was found in 2011 that of the 46 parolees who had their parole revoked, 41 revocations, or approximately 89 per cent, were the result of breached conditions.⁵¹ Such breaches, which resulted in parole revocation, included isolated instances of failing to report at the required time and travelling without permission.⁵²

It is recommended that prisoners have greater access to the PLS in order to reduce breaches of parole conditions. As prisoners often agree to parole conditions prior to their release they may subsequently find that some of the conditions are not suitable in practice. With appropriate increases in funding and resources, the PLS could assist in amending impracticable parole conditions and this in turn may reduce revocation of parole.⁵³ The PLS could also assist in explaining to parolees what the terms of the parole are, so that confusion regarding strict reporting dates and locations is reduced.

Recommendation 6:

That Aboriginal and Torres Strait Islander prisoners be given greater access to PLS in order to amend impractical parole conditions and to ensure that parole conditions are understood.

Given the often transient nature of an Aboriginal and Torres Strait Islander person's lifestyle, and the high rural population of Aboriginal and Torres Strait Islander prisoners who are required to report in cities, it is recommended that parole boards attempt to modify certain parole conditions such as the regularity of reporting dates to be as lenient as would be just to other prisoners.

Recommendation 7:

That parole boards attempt to modify parole conditions for rural Aboriginal and Torres Strait Islander prisoners to account for the often transient Aboriginal and Torres Strait Islander lifestyle

Crime

It is necessary to consider crime as a reason for return to prison independently from breaching parole conditions. A study which explored patterns of recidivism in Victoria found that males and Indigenous prisoners were more likely to return to prison than females and non-Indigenous prisoners respectively, and

⁵¹ Parole Board of the Northern Territory, *2011 Annual Report*, 16
<http://www.nt.gov.au/justice/documents/depart/annualreports/paroleboard_annualreport_2011.pdf>.

⁵² National Aboriginal & Torres Strait Islander Legal Services, above n 35, 6.

⁵³ Grunseit, above n 5, 65.

were also more likely to return to prison more quickly.⁵⁴ Further, it was found that while 13 per cent of prisoners returned with a violent offence,⁵⁵ 52 per cent returned with a property offence.⁵⁶ In the study, Indigenous recidivism rates were observed as being 'substantially higher' than non-Indigenous rates and that Indigenous parolees were more likely to return to prison in the early periods after release.⁵⁷

In a different study,⁵⁸ it was found that in most cases a parolee committed an offence in the earlier stages of their parole period. While one third committed a new offence within the first three months, over half had committed an offence within six months.⁵⁹ Offences that resulted in revocation of bail included major assault, most property offences and some drug offences.⁶⁰ Overall, 47 per cent of parolees had their parole revoked as a result of a further offence.⁶¹ These findings indicate that subsequent crime post-release as a reason for return to prison is a significant issue for Aboriginal and Torres Strait Islander parolees.

Lack of employment

Employment stability has been found to be related to successful parole completion for prisoners generally.⁶² Stable employment would help keep parolees occupied while on parole, reduce the need to commit crime for financial reasons, help parolees re-integrate into the community and bolster self-esteem. There is little data regarding employment issues for Aboriginal and Torres Strait Islander parolees specifically, but in the authors' view the current literature is equally applicable to Aboriginal and Torres Strait Islander prisoners and parolees.

Employment issues for parolees

In her report, Borzycki cited "a prolonged absence from the job market and associated job skill loss" as being an issue for parolees finding employment on parole.⁶³ Studies have shown that while many prisoners on parole are able to find initial employment,⁶⁴ the difficulty is in securing and maintaining regular employment.

⁵⁴ Shasta Holland, Kym Pointon and Stuart Ross, 'Who returns to prison? Patterns of recidivism among prisoners released from custody in Victoria in 2002-03' (Corrections Research Paper Series Paper No 1, Research and Evaluation Unit Corrections Victoria, 2007) 8.

⁵⁵ Offences which were categorised as violent offences included homicide, assault, sex offences, robbery and other offences against the person.

⁵⁶ Holland, above n 54, 8.

⁵⁷ *Ibid* 19.

⁵⁸ Angela Gorta, 'Parole in NSW: The interrelated problems of education and unemployment' (1982) *NSW Department of Corrective Services Research Bulletin* 4.

⁵⁹ *Ibid*.

⁶⁰ *Ibid* 3.

⁶¹ *Ibid* 4.

⁶² Gorta, above n 58, 11.

⁶³ Maria Borzycki, *Interventions for prisoners returning to the community* (2005) Australian Institute of Criminology, Canberra.

⁶⁴ In a sample of 250 parolees in NSW in 1974, 93 per cent held at least one job while on parole. Gorta, above n 58, 10.

⁶⁵ In a study of 250 prisoners on parole in NSW, 72 per cent cited a lack of marketable skills as being the reason for unstable employment while on parole. When the participants were asked to report reasons for job changes while on parole, employer dissatisfaction was reported by 62 per cent of parolees.⁶⁶ Furthermore, 78 per cent of parolees surveyed reported periods of unemployment while on parole,⁶⁷ despite 93 per cent having held one job at some point.

Attitudes and expectations of prisoners towards employment

The expectations of prisoners regarding employment who are soon to be released on parole were surveyed in Queensland's 2012 *Inside Out* study.⁶⁸ The results showed that four out of every five prisoners (from 290 surveyed) intended to seek employment within two months post-release on parole. More than half the participants expected to be in full-time employment.

A NSW study found that 64 per cent of female prisoners and 45 per cent of male prisoners were not employed in the six months *prior* to their incarceration.⁶⁹ When considering these figures in the context of the finding that 93 per cent of parolees in the aforementioned NSW study⁷⁰ had found initial employment, one could infer that as employment rates decline the risk of incarceration may increase.

In summary, the research shows that prisoners are justifiably optimistic about their employment prospects post-release, however, the issue for prisoners is the difficulty in maintaining stable employment, which could be a factor in a parolee's return to prison. It is recommended that prisoners have the opportunity to gain marketable skills whilst in prison to a greater degree than is currently available. It is further recommended that employment courses and programs in prison include information about expectations in a workplace and tools for how to maintain ongoing employment, as opposed to simply finding one initial job.

Recommendation 8:

That employment courses in prisons include information about maintaining employment, as well as increased opportunities for prisoners to gain marketable skills.

Lack of housing

⁶⁵ Gorta, above n 58, 11.

⁶⁶ *Ibid.*

⁶⁷ The period of unemployment ranged from 0-56 months, with the average length being less than 3 months., above n 58, 10.

⁶⁸ Heffernan, above n 1, 49.

⁶⁹ Grunseit, above n 5, 27.

⁷⁰ Gorta, above n 58, 10.

Research suggests that housing can be a determinative factor in Aboriginal and Torres Strait Islander parolees' return to prison. It has been found that many parolees do not have suitable accommodation post-release.⁷¹ In a report produced by the Australian Housing and Urban Research Institute ("AHURI") it was found that parolees were more likely to return to prison if they were homeless, transient or were Aboriginal or a Torres Strait Islander.⁷² Significantly, the AHURI found that many of the Indigenous participants in the study were reliant on public and publicly-assisted housing. Further, none of the Indigenous participants had resided in the family home post-release.⁷³ The AHURI noted that providing assistance to parolees in securing stable housing post-release should be a priority for the government.⁷⁴

Family and housing

As previously mentioned, parolees are required to meet certain specified conditions when on parole. An example provided in the 2012 Queensland report⁷⁵ was when parolees were held to have breached their parole for associating with 'known criminals' when they returned to live with family or community members who had been previously convicted of crimes. An official visitor from an urban prison stated:

They're not allowed to mix with known criminals either. So it makes it difficult because mum, dad, your brothers and sisters, and aunties and uncles, you know, could all have sentences. What the hell do you do?

Naturally, a parolee would feel inclined to return to his or her family home, and if this is the only housing option available, the parolee risks either being rejected from parole for not having a housing option, or breaching parole conditions for associating with known criminals.

Aboriginal and Torres Strait Islander lifestyle and housing

Particular issues faced by parolees have been identified in various reports. These include the loss of Department of Housing properties while in prison, being cut off from public housing waiting lists, and being unable to apply for public housing due to lack of certainty regarding release dates.⁷⁶

⁷¹ Eileen Baldry et al, Ex-Prisoners, Homelessness and The State in Australia, (2006) 39(1) *The Australian and New Zealand Journal of Criminology* 22.

⁷² Australian Housing and Urban Research Institute, The role of housing in preventing re-offending, (February 2004) Issue 36 *AHURI Research and Policy Bulletin* 1.

⁷³ *Ibid* 5.

⁷⁴ *Ibid* 1.

⁷⁵ Grunseit, above n 5, 63.

⁷⁶ *Ibid* 101.

The influence of housing and homelessness on re-incarceration rates

In a study conducted over a nine month period⁷⁷ it was found that only 22 per cent of parolees post-release who did not move or only moved once, were re-incarcerated. In contrast, 59 per cent of the parolees who stated that they had moved twice or more were back in prison. These statistics inform the study's proposition that parolees who were living in unstable housing circumstances were more likely to return to prison.⁷⁸ Table 1 below is illustrative of the study's findings.

TABLE 1

Number of Moves Postrelease

| Moves | 0 or 1 | 2 or more | Total |
|-----------------|----------|-----------|-------|
| Not returned | 89 (78%) | 46 (41%) | 135 |
| Returned prison | 25 (22%) | 66 (59%) | 91 |
| Total | 114 | 112 | 226 |

The report found that there was a significant relationship between being homeless and being re-incarcerated.⁷⁹

TABLE 2

Type of Housing Postrelease

| Type of housing | Homeless | Other | Total |
|-----------------|----------|-----------|-------|
| Not returned | 19 (39%) | 117 (65%) | 136 |
| Returned | 30 (61%) | 63 (35%) | 93 |
| Total | 49 | 180 | 229 |

In another study,⁸⁰ it was found that the rate of homelessness increased from 20 per cent prior to incarceration to 38 per cent six months after release. In this study significant links were drawn between returning to prison and being homeless. It is contended that greater housing support is required in order to help address the housing situation of parolees post-release.⁸¹

Recommendation 9:

That increased housing support be provided to parolees in order to reduce recidivism and prevent parolees' return to custody.

⁷⁷ Baldry, above n 73, 24.

⁷⁸ Ibid 25.

⁷⁹ Ibid 25.

⁸⁰ Ibid 25.

⁸¹ Ibid 22.

Substance abuse

If released prisoners are not adequately rehabilitated in prison or on parole, it can lead to parolees breaching their parole conditions. It has been noted that alcohol abuse largely affects those Indigenous people living below the poverty level.⁸² Many with a history of risky drinking return to pre-incarceration patterns of alcohol consumption quite rapidly.⁸³ Substance abuse is noted in the literature to be both a result of disadvantage and a further challenge parolees face once released.⁸⁴ Substance abuse often leads to unemployment and mental illness, and is a risk factor for poverty and criminal activity. Young people lacking strong family support are particularly affected post release by substance abuse problems and will often drift into a life of social exclusion and crime.⁸⁵ As a result, substance abuse when linked with all these other factors can lead released prisoners to reoffend or breach their parole conditions. This finding reflects anecdotal reports and case studies from the PLS.

Due to the strong correlation between substance abuse and mental illness it is recommended that there is a coordination of substance use and mental health services within prison drug dependency programs. Secondly, due to the wide-reaching effects of substance abuse, it is further recommended that post-release substance abuse programs incorporate families and communities.⁸⁶

Recommendation 10:

That substance abuse and mental health services in prisons be coordinated into drug dependency programs.

Domestic violence and issues specific to Aboriginal and Torres Strait Islander women on parole

Aboriginal and Torres Strait Islander women are often victims of violence long before they commit crime themselves. Women and children are the primary victims of domestic, family and sexual violence in Aboriginal and Torres Strait Islander communities.⁸⁷ The Aboriginal Justice Advisory Council found that 70

⁸² Kinner et al 'Prevalence and correlates of alcohol dependence in adult prisoners vary according to Indigenous status' (2012) 36 *Australian and New Zealand Journal of Public Health* 4.

⁸³ Stuart A. Kinner. 'Continuity of health impairment and substance misuse among adult prisoners in Queensland, Australia' (2006) 2 *International Journal Prison Health* 2: 101-113.

⁸⁴ 'Royal Commission into Aboriginal Deaths in Custody'. *National report*. (1991) Canberra: AGPS.

⁸⁵ Barrow Cadbury Commission 'Lost in transition: a report of the Barrow Cadbury Commission on Young Adults and the Criminal Justice System' (2005) London: Barrow Cadbury Trust.

⁸⁶ Matthew Willis & John-Patrick Moore. *Reintegration of Indigenous prisoners* (2008) Research and public policy series no. 90. Canberra: Australian Institute of Criminology Available at <<http://www.aic.gov.au/publications/rpp/90/index.html>>

⁸⁷ Queensland Department of Aboriginal and Torres Strait Islander Policy and Development. *Aboriginal & Torres Strait Islander Women's Taskforce on Violence Report* (2000). Brisbane, Australia.

per cent of Aboriginal women in NSW prisons had been sexually abused as children and approximately 80 per cent had been victims of domestic and/or family violence as adults.⁸⁸

Domestic violence and housing

The violence experienced by Aboriginal and Torres Strait Islander female parolees presents a unique challenge when attempting to successfully complete parole. Firstly, finding adequate, stable, supportive housing has been identified as a key factor influencing Aboriginal and Torres Strait Islander female parolees breaching their parole.⁸⁹ In Baldry et. al's NSW and Victorian post-release study, the highest rates of re-incarceration and homelessness were found in the sample of Aboriginal and Torres Strait Islander women ex-prisoners.⁹⁰ According to Krieg, the location of housing is a key factor in recidivism, as women who return to economically and socially disadvantaged suburbs with poor infrastructure are at a higher risk of reoffending than those who are relocated in adequately resourced suburbs.⁹¹

Domestic violence and support from community

Secondly, studies suggest Aboriginal and Torres Strait Islander women struggle to re-establish positive social connections and find community support whilst on parole, and this increased their chances of reoffending.⁹² This was primarily due a number of interrelated issues, including their inability to secure stable housing, combating mental illness, and resorting to alcohol or other drugs to cope with domestic violence. All of these factors could lead to a breach of parole conditions, especially the combination of prevalent mental illness and substance use, which is strongly correlated with reoffending behaviour.⁹³

Domestic violence and motherhood

Aboriginal and Torres Strait Islander female parolees reported high levels of stress when finding suitable accommodation for themselves and their children, and the expected care that was required of them.⁹⁴ Many Aboriginal and Torres Strait Islander mothers with a number of children to care for often returned to the original place of violence, either in their community or their partner. As aforementioned, this can lead to

⁸⁸ Rowena Lawrie. 'Speak out speak strong: Researching the needs of Aboriginal Women in custody'. (2002) Sydney, Australia: New South Wales Aboriginal Justice Advisory Council, 51.

⁸⁹ Rowena Lawrie. 'Speak Out, Speak Strong: Rising Imprisonment Rates of Aboriginal Women'. (2003). Aboriginal Justice Advisory Council Sydney, 27; Sisters Inside. 'Post Release housing difficulties' (2007) *Media Release*. Available at <www.sistersinside.com.au/media/housing.doc>

⁹⁰ Baldry et al. 'Australian prisoners' post-release housing' (2003) 15 *Current Issues in Criminal Justice* 2, 155-169.

⁹¹ Krieg, above n 43.

⁹² Bev Fabb. 'Post release: Female prisoners' experience'. (1991). Women and Imprisonment Group Fitzroy Legal Service Melbourne; Kathryn Lewis. and Susan Hayes. 'Health of Women Ex-Prisoners' (1997) 4 *Psychiatry Psychology and Law* 1, 55-64.

⁹³ Stephanie Hartwell. 'Female Mentally ill offenders and their community reintegration needs: an initial examination' (2001) 24 *International Journal of Law and Psychiatry* 1, 1-11; Chris Cunneen., & Kate Kerley. 'Indigenous women and criminal justice: Some comments on the Australian situation'. In Kayleen M. Hazlehurst (Ed.), *Perceptions of justice: Issues in Indigenous and community empowerment*. (Sydney, Aldershot Avebury, 1995). 71-94;

⁹⁴ Baldry et al, above n 90; Legislative Council Standing Committee on Social Issues. *Children of Imprisoned Parents Report* (1998) NSW Parliament Sydney.

substance abuse as a mechanism to cope with the violence. The combination of being the victim of violence and substance abuse can increase the risk of breaching parole and returning to custody.⁹⁵ The lack of access to emergency accommodation options for the purpose of safety from family violence for Indigenous women ex-prisoners also increases the vulnerability of women.⁹⁶

Domestic violence and employment

Unemployment prior to incarceration and poverty on parole also make it difficult for female ex-prisoners to seek employment and break the cycle of disadvantage and violence.⁹⁷ Indigenous women who experience family violence may also face difficulties gaining access to support from agencies in either Indigenous or non-Indigenous communities, leaving them without legal means of protecting themselves from violence.⁹⁸

It is recommended that Aboriginal and Torres Strait Islander female parolees (including those living in rural areas) have adequate access to emergency accommodation immediately post-release, to prevent a return to a previously violent residence. This is particularly the case for parolees who have to care for children.

Recommendation 11:

That Aboriginal and Torres Strait Islander female parolees be given access to emergency support accommodation, particularly if they are survivors of domestic violence or have children.

Conclusion

This report has aimed to highlight the reasons for Aboriginal and Torres Strait Islander prisoners' poor access to parole, and the reasons behind poor completion rates while on parole. The report was divided into two sections. Within the first section, the barriers Aboriginal and Torres Strait Islander prisoners face when applying for parole were analysed, and in the second section challenges Aboriginal and Torres Strait Islander parolees face while out in the community on parole were considered. As the report demonstrates, each of these areas presents challenges that are particularly pronounced for Aboriginal and Torres Strait Islander prisoners, and should be focussed upon in future reform.

A total of eleven recommendations have been made regarding potential improvements for Aboriginal and Torres Strait Islander prisoners' access to parole, and a reduction of high level of parole breaches.

⁹⁵ Lawrie, above n 89.

⁹⁶ Aboriginal and Torres Strait Islander Social Justice Commissioner. *Social Justice Report 2004*. (2005) Human Rights and Equal Opportunity Commission, Sydney.

⁹⁷ Lawrie, above n 89.

⁹⁸ Julie Stubbs & Julia Tolmie. 'Race, gender and the battered woman syndrome: An Australian case study' (1995) *Canadian Journal of Women and Law* 8, 122–158.

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