

**Submission to the Australian  
Parliament Senate Community  
Affairs References Committee**

*Inquiry into the indefinite detention of people with  
cognitive and psychiatric impairment in Australia*

The Australian College of Mental Health Nurses (ACMHN), the Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM) and the Australian College of Nursing (ACN) provide this joint submission to the Australian Parliament Senate Community Affairs References Committee inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia.

The signatures below represent each organisation's formal endorsement of this submission and its recommendations.

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## **Our organisations**

### **Australian College of Mental Health Nurses**

The Australian College of Mental Health Nurses (ACMHN) is the peak professional organisation representing mental health nurses in Australia. A primary objective of the ACMHN is to enhance the mental health of the community through the pursuit of efforts to improve service and care delivery to those affected by mental illness and disorder. The ACMHN also sets standards of practice for the profession and promotes best practice of mental health nursing.

### **Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM)**

CATSINaM was founded in 1997 with a primary role to represent, advocate and support Aboriginal and Torres Strait Islander nurses and midwives at a national level. Aboriginal and Torres Strait Islander health professionals play a critical role in the delivery of improved social and emotional wellbeing outcomes for all Australians. CATSINaM is committed to providing national leadership around Aboriginal and Torres Strait Islander health and health workforce policy development and implementation.

### **Australian College of Nursing (ACN)**

ACN is the national professional organisation for all nurse leaders. ACN is an advocate for the nursing profession, advancing the skills and expertise of nurses to provide leadership in their contribution to the policy, practice and delivery of health care. ACN is a membership organisation with members in all states and territories, health care settings and nursing specialties. ACN's membership includes many nurses in roles of influence, including senior nurses, organisational leaders, academics and researchers. ACN is also the Australian member of the International Council of Nurses headquartered in Geneva.

## **1. Introduction**

This joint submission acknowledges the Terms of Reference (TOR) for the Senate Community Affairs References Committee inquiry which cover a broad range of issues in relation to the criminal justice system, legislative and regulatory frameworks, the availability of and access to programs and assistance, the interface between different service sectors, and prevalence in Aboriginal and Torres Strait Islander people.

This submission will focus on a number of key issues which are relevant to the TOR:

- assessing people with cognitive and psychiatric impairment;
- the pathways for people into and out of the criminal justice system;
- Fetal Alcohol Spectrum Disorder (FASD) and its impacts;
- access to specialist, appropriate and coordinated care and assistance;
- cultural safety and responsiveness, cost, location and accessibility for Aboriginal and Torres Strait Islander people in accessing health services;
- the central role of culture to Aboriginal and Torres Strait Islander health and well-being;
- upskilling the nursing workforce to understand and identify cognitive and psychiatric impairment; and
- ensuring the Australian health workforce, now and into the future, is positioned and capable of meeting the unique health and wellbeing needs of Aboriginal and Torres Strait Islander Australians who live with cognitive impairment, which includes recognising the critical role of Aboriginal and Torres Strait islander health professionals.

## **2. Assessing people with cognitive and psychiatric impairment**

Ensuring appropriate assessment to identify cognitive and psychiatric impairment is a key issue in terms of people's interactions with the criminal justice system, and in accessing and receiving appropriate assistance.

The Australian Human Rights Commission (AHRC) report *Equal Before the Law* on the experiences of people with a disability in the justice system, discusses people with cognitive disabilities, acquired brain injury and mental illness. Various reports highlight that the proportion of people in prison with a disability is high, however, assessment of the level of

impairment is inconsistent and not measured. Many people with disabilities are not identified as having a disability on entry into, or while in, prison. Even where a person's disability may have been identified or known, appropriate support and services are frequently not provided or there is limited follow-up.<sup>1</sup> This is also demonstrated through the lack of available information about the services and assistance that are available to people once in detention or the criminal justice system.

A study examining the experience of Aboriginal and Torres Strait islander people in the criminal justice system found that there was typically poor diagnosis and unclear definitions of mental and cognitive disability applied which lead to serious consequences in terms of accessing supports. There was found to be a severe and widespread lack of appropriate early diagnosis and positive culturally responsive support for children and young people with cognitive impairment. With adults cognitive impairment was either not recognised at all, or when recognised, poorly understood, and in many cases diagnosis came with an assessment on entry to prison. The findings demonstrated that this rarely leads to appropriate services or support while in prison; and data analysis showed that subsequent interventions tended to focus on the offending behaviour rather than disability, mental health or alcohol and other drug, or impacting social factors.<sup>2</sup>

A staff survey conducted in July 2011 in a rural NSW substance misuse treatment agency found:

...that employees had little or no knowledge about the characteristics of cognitive impairment, could not easily identify cognitive impairment in patients and did not perceive cognitive impairment to be common in those patients they were working with.<sup>3</sup>

Differentiating mental or psychiatric disability from cognitive impairment can be a challenge, particularly for people working outside specialist medical and/or disability fields.

Professor Eileen Baldry in *Disabling Justice* notes that:

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<sup>1</sup> Australian Human Rights Commission (2014), *Equal before the law: Towards disability justice strategies*. AHRC.

<sup>2</sup> Baldry, E., McCausland, R., Dowse, L. and McEntyre, E. (2015), *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*. UNSW, Sydney.

<sup>3</sup> Allan, J, Kemp, M and Golden, A (2012), *The prevalence of cognitive impairment in a rural in-patient substance misuse treatment programme*, *Mental Health and Substance Use*, DOI:10.1080/17523281.012.711767

...when it comes to recognising and working with people with both mental and cognitive impairment who have lived with social disadvantage, abuse and exclusion (complex needs), most people working in criminal justice systems, including police, legal officers and corrections staff, have virtually no idea of what this means or what to do to best assist.<sup>4</sup>

A report by the NSW Law Reform Commission noted the importance of case management where a person is diverted to services that deal with cause of their offending, to ensure the identification of services and the person's links to them are done effectively. There are often problems in maintaining links in situations of complex need and a case manager can resolve these problems. The Court Referral of Eligible Defendants Into Treatment (CREDIT) program from NSW and the Court Intervention Services Program (CISP) in Victoria were identified as successful programs and models, and recommended these types of programs be expanded.<sup>5</sup>

These programs are based on the principles of problem-solving justice models, and provide targeted support to people with multiple and complex needs and address underlying factors contributing to offending or reoffending. People are assessed, treated and referred to services.<sup>6</sup>

### **Recommendation**

*1. There be a mandatory requirement for when a person has been assessed as having a cognitive or psychiatric impairment, to have a case manager assigned and a care or treatment plan developed and progressed.*

### **3. Fetal Alcohol Spectrum Disorder**

The consumption of alcohol during pregnancy has major implications on an unborn baby.<sup>7</sup> Prenatal exposure to alcohol can have long-term consequences for learning and behaviour, and can potentially cause lifelong disabilities. The consequences are wide-ranging, occurring

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<sup>4</sup> Baldry, E. (2014), *Disabling Justice*, Issue 8 Crime and Justice, Insight. Victorian Council of Social Services, <http://insight.vcoss.org.au/disabling-justice/>

<sup>5</sup> NSW Law Reform Commission (2012), *People with cognitive and mental health impairments in the criminal justice system, Diversion*, report 135, June 2012. Sydney: NSW Law Reform Commission.

<sup>6</sup> Trimboli, L (2012) *NSW Court Referral of Eligible Defendants into Treatment (CREDIT) pilot program: An evaluation*, Crime and Justice Bulletin, Contemporary Issues in Crime and Justice, Number 159, February 2012. Sydney: NSW Bureau of Crime Statistics and Research.

<sup>7</sup> Nolan, E.J. (2011), "Mummy beerest": A study of fetal alcohol spectrum disorder, a mother's duty of care and strategies for intervention. In *Journal of Law and Medicine*, 19, 69-87.

along a spectrum of abnormalities ranging from subtle to the most serious outcome, a diagnosis of fetal alcohol syndrome (FAS).<sup>8</sup>

FAS is a brain injury which is enduring and irreversible.<sup>9</sup> It is recognised as the leading cause of environment-related birth defects and intellectual disability in the western world, and is preventable.<sup>10</sup> FAS is caused by alcohol use during pregnancy and is characterised by combinations of growth restriction of the developing baby, facial anomalies, microcephaly (a rare neurological condition where an infant's head is smaller than children of the same age and gender<sup>11</sup>) and Central Nervous System (CNS) impairment, including intellectual disability, behavioural problems and damage to major organs.<sup>12</sup> The FAS continuum is now more commonly referred to as fetal alcohol spectrum disorders (FASD) and includes a range of effects referred to as foetal alcohol effects (FAE), alcohol-related birth defects (ARBD) and alcohol-related neurodevelopmental disorder (ARND).<sup>13</sup>

Diagnosis of FASD is difficult and relies on a pattern of abnormalities that make up the syndrome and generally self-reports of alcohol use or misuse by women during their pregnancy and around the time of conception. The emphasis is on the incidence of a set of criteria, as individual abnormalities are often subtle, not easy to identify, and may happen in circumstances where alcohol is not a factor.<sup>14</sup> Confirmation of diagnosis requires a history of maternal alcohol use during pregnancy, although if reliable information on maternal drinking behaviour is not available, a diagnosis of FAS can be made providing abnormalities are consistent with the syndrome and other possible diagnoses have been excluded.<sup>15</sup>

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<sup>8</sup> Walker, M.J., Al-Sahab, B., Islam, F. & Tammin, H. (2011). The epidemiology of alcohol utilization during pregnancy: an analysis of the Canadian Maternity Experiences Survey (MES). In *BMC Pregnancy and Childbirth*, 11(52), 1-9. Retrieved 23 November, 2011 from PubMed Central database.

<sup>9</sup> Russell, E. (2007) *Alcohol and Pregnancy: No blame – No shame!* Burleigh, Qld: Zeus Publications.

<sup>10</sup> Soby, J.M. (2006). *Prenatal Exposure to Drugs/Alcohol: Characteristics and Educational Implications of Fetal Alcohol syndrome and Cocaine/Polydrug Effects* (2nd ed.). Springfield, USA: Charles C. Thomas Publisher, Ltd.

<sup>11</sup> Definition, Microcephaly, Diseases and Conditions, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/microcephaly/basics/definition/con-20034823>, Accessed 7 March 2016.

<sup>12</sup> Fleisher, S. (2011). Alcohol and pregnancy: Advising women not to take risks. In *British Journal of Midwifery*, 19(6), 396-397.

<sup>13</sup> Whitbeck, L.B. & Crawford, D.M. (2008). Gestational Risks and Psychiatric Disorders Among Indigenous Adolescents. In *Community Mental Health Journal*, 45, 62-72. doi: 10.1007/s10597-008-9172-5

<sup>14</sup> Harris, K.R. & Bucens, I.K. (2003). Prevalence of fetal alcohol syndrome in the Top End of the Northern Territory. In *Journal of Paediatric Child Health*, 39, 528-533

<sup>15</sup> O'Leary, C.M. (2004). Fetal alcohol syndrome: diagnosis, epidemiology, and developmental outcomes. In *Journal of Paediatric Child Health*, 40, 2-7



Much has been written about the lack of diagnosis, misdiagnosis or lack of recognition of FASD being a problem within Australia,<sup>16</sup> yet making a correct and early diagnosis of FAS is of value in improving opportunities for early intervention and management for the affected child and for reducing foetal exposure to alcohol in subsequent pregnancies.<sup>17</sup> When the condition is not recognised and appropriate interventions not put in place, secondary disabilities may occur. These include mental health problems, disrupted schooling, inappropriate sexual behaviour, alcohol and drug problems, problems with employment and problems with parenting and criminal conviction.<sup>18</sup>

The 2012 report of the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders *FASD: The Hidden Harm*, examined FASD prevention strategies, and intervention needs and management issues. Nineteen recommendations were made including undertaking a National Plan of Action for the prevention, diagnosis and management of FASD and establishing a FASD Reference Group to provide advice and oversight of the National Action Plan.<sup>19</sup> Other recommendations included:

- promoting awareness of FASD and the risk of drinking alcohol when pregnant;
- improving health professional training;
- national implementation of FASD diagnostic and screening tool;
- mandating health warning labels on alcoholic beverages and packaging;
- developing a National Alcohol Sales Reform Plan including the impacts of alcohol pricing, availability and marketing; and
- including FASD in the List of Recognised Disabilities and ensuring access to support services for people affected by FASD and their carers.

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<sup>16</sup> Payne, J., Elliott, E., D'Antoine, H., O'Leary, C., Mahony, A., Haan, E., Bower, C. (2005). Health Professionals' knowledge, practice and opinions about fetal alcohol syndrome and alcohol consumption in pregnancy. In *Australian and New Zealand Journal of Public Health*, 29(6), 558-564.

<sup>17</sup> Ibid

<sup>18</sup> Russell, E. (2007). *Alcohol and Pregnancy: No blame – No shame!* Burleigh, Qld: Zeus Publications; and Grant, T., Pedersen, J.Y., Whitney, N. & Ernst, C. (2007). The Role of therapeutic Intervention with Substance Abusing Mothers: Preventing FASD in the Next Generation. In O'Malley, K.D. (Ed.), *ADHD and Fetal Alcohol Spectrum Disorders (FASD)*, (pp. 69-94). New York: Nova Science Publishers, Inc.

<sup>19</sup> Fetal Alcohol Spectrum Disorders report tabled, House of Representatives Standing Committee on Social Policy and Legal Affairs, Media Alert issued 29 November 2012.

In August 2013 the Australian Government responded to the inquiry report, and the current Federal Government released a FASD Action Plan in 2014. A number of the House of Representatives inquiry's recommendations have been progressed, including the development of an action plan, establishing a national expert group, finalising a national diagnostic tool, and developing resources for health professionals to promote awareness.

### ***Recommendation***

*2. The Australian Government commit to the ongoing implementation of the National FASD Action Plan and the recommendations of the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders FASD: The Hidden Harm.*

#### **4. The pathways for people into and out of the criminal justice system**

As noted above, studies have found that there is generally poor early diagnosis of cognitive and mental impairment from a younger age, which then translates through to adulthood. There is also a strong correlation with social disadvantage.

A 2013 report of a cost benefit analysis of early support and intervention for people with mental health disorders and cognitive impairment in the criminal justice system discussed a NSW study of people with mental health disorders and cognitive impairment in the NSW criminal justice system, whose diagnoses were known. This created a dataset on lifelong use of government services, and pathways of these people were developed.<sup>20</sup>

The report, along with other research, showed the importance of early holistic support for the development and well-being of children and young people with mental health disorders and cognitive impairment, particularly Aboriginal children and young people and those from disadvantaged backgrounds. Without such early intervention and diversion, the costs to individuals, their families and communities, and Government could be extremely high. The

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<sup>20</sup> McCausland, R, Baldry, E, Johnson, S and Cohen, A. (2013), People with mental health disorders and cognitive Impairment in the criminal justice system: cost-benefit analysis of early support and diversion. University of NSW and Price Waterhouse Coopers.

costs increase as people with mental health disorders and cognitive impairment become entrenched in the criminal justice system and are further disadvantaged.<sup>21</sup>

There is much written in the available literature about the connections between cognitive impairment and disadvantage such as low incomes, low education levels and access to housing. The disadvantage experienced by a person with a cognitive impairment can increase susceptibility to legal issues and present barriers to addressing and resolving these issues, and this must be considered around the legal needs of this group. Early and diversionary investment resulted in significant savings in the long term, along with the overall economic and human costs of this group of people cycling in and out of the criminal justice system.<sup>22</sup>

### ***Recommendation***

*3. The court diversion system must be resourced adequately to build services that can assess and assist people with cognitive and psychiatric impairment to not enter and be moved out of the criminal justice system.*

### **5. Access to appropriate and coordinated care and assistance**

A prominent issue in the available literature and research on people with cognitive and psychiatric impairment in the criminal justice system is the lack of available services, in particular housing to divert people, and the lack of such services early on in someone's life. Where there are services, they are limited and typically not long-term community solutions. This literally means that people have nowhere to be diverted when going through the courts, for example, and they remain in custody, sometimes indefinitely. Professor Eileen Baldry in *Disabling Justice* sums up the situation:

Persons with these disabilities are significantly more likely to end up in police custody, juvenile or adult remand as they have no safe place to live and have long histories with the police. There is no doubt that much of the behaviour of people in

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<sup>21</sup> McCausland, R, Baldry, E, Johnson, S and Cohen, A. (2013), People with mental health disorders and cognitive Impairment in the criminal justice system: cost-benefit analysis of early support and diversion. University of NSW and Price Waterhouse Coopers.

<sup>22</sup> Gray, A, Forell, S and Clarke, S. (2009), Cognitive impairment, legal need and access to justice, Justice Issues, paper 10, March 2009, ISSN 1834-7266. Law and Justice Foundation of NSW.

the group is very 'challenging', but working with challenging behaviour is one of the tasks of child protection, special education, psychiatric and disability services.<sup>23</sup>

In a further paper Professor Eileen Baldry and colleagues made the following conclusion related to case studies in NSW:

The evidence is stark that ... early lack of adequate services is associated with costly criminal justice, health and homelessness interactions and interventions later ... Millions of dollars in crisis and criminal justice interventions continue to be spent on these vulnerable individuals whose needs would have been better addressed in early support or currently in a health, rehabilitation or community space. It is obvious that access to integrated and responsive support services including drug and alcohol support, mental health and disability services or other psycho-social forms of support is needed.<sup>24</sup>

The Annual Report of the Mentally Impaired Accused Review Board<sup>25</sup> established under the Criminal Law (Mentally Impaired Accused) Act 1996 to report and make recommendations to the Attorney General 'on matters relating to people who are either unfit to stand trial or acquitted on account of unsoundness of mind and detained under custody orders issued under the Act' offers an insight into the barriers to supporting people with cognitive and psychiatric impairment when they become involved in the criminal justice system:

The lack of appropriate residential facilities, and the critical shortage of resources in the mental health system generally, continues to impede the effective discharge of the Board's functions and the operation of the Act. Mentally impaired accused who suffer from cognitive impairment rather than mental illness can only be held in prisons if they are placed on a custody order by the courts.

In many cases, particularly involving aboriginal (sic) mentally impaired accused who have little family or community support, they remain in prison even though they do not constitute a significant risk to the safety of the community. This is because there are simply no appropriate facilities or supportive accommodation for them to go to.<sup>26</sup>

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<sup>23</sup> Baldry, E. (2014). *Disabling Justice*, Issue 8 Crime and Justice, Insight. Victorian Council of Social Services, <http://insight.vcoss.org.au/disabling-justice/>

<sup>24</sup> Baldry, E, Dowse, L, McCausland, R and Clarence, M. (2012), *Lifecourse institutional costs of homelessness for vulnerable groups*, School of Social Sciences, University of New South Wales, National Homelessness Research Agenda 2009-2013.

<sup>25</sup> Mentally Impaired Accused Review Board, Criminal Law (Mentally Impaired Accused) Act 1996, Annual Report for the year ended 30 June 2012.

<sup>26</sup> *Ibid*

The Australian Human Rights Commission (AHRC) report *Equal before the law: towards disability justice strategies*<sup>27</sup> involved a consultation to examine how people with disabilities and people who work in the criminal justice system deal with barriers including access to appropriate and specialist services and addressing social disadvantage. People with a disability in this report includes people with cognitive and psychiatric impairment. The indefinite detention of people with disabilities was identified as a persistent issue of significant concern with release without long-term planning; a lack of culturally appropriate supports; and a lack of housing and employment leading people cycling in and out of the criminal justice system.

The AHRC noted that a coordinated, holistic approach was needed including through each jurisdiction having a Disability Justice Strategy. The Strategy should address the following core principles:

- Appropriate communications
- Early intervention and diversion
- Increased service capacity
- Effective training
- Enhanced accountability and monitoring
- Better policies and frameworks<sup>28</sup>

The study examining the experience of Aboriginal and Torres Strait Islander people in the criminal justice system, identified possible solutions that translate to all people with cognitive and psychiatric impairment. These solutions include:

- Pre-court diversion – discontinue proceedings and refer to services to limit the number of people brought before court and in the formal criminal justice system.
- Diversion in the Court of Summary Jurisdiction – clients to be referred into treatment without the consent of the prosecution or being required to enter a guilty plea.
- Assessment and support services at court – identify and assess people as a first response and course of action.

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<sup>27</sup> Australian Human Rights Commission (2014), *Equal before the law: Towards disability justice strategies*. AHRC.

<sup>28</sup> Ibid

- Information and training – support early identification and referral for the people who refer including police, lawyers, magistrates and court staff.
- Problem solving and case management court - give Local Court defendants support to access treatment, programs and services to assist in reducing reoffending.
- Expanding supports and programs for people in custody including:
  - standardised assessment tool to screen clients entering detention or prison;
  - disability services unit in correctional settings to provide case management and support;
  - physical adjustments such as hearing loops in cells, common areas, program/education centres and visiting areas;
  - enhanced funding for legal aid services, particularly Aboriginal Legal Aid Services; and
  - mental health counselling and support, including in remote Aboriginal communities.<sup>29</sup>

### **Recommendations**

*4. Investment should be directed towards prevention and intervention strategies that assists families and communities to support people with cognitive and psychiatric impairment that enables the individual to avoid behaviour that brings them into contact with the criminal justice system.*

*5. There must be leadership from governments at both the national and state and territory level to direct responsible agencies and government departments to review clients in detention or the criminal justice system for cognitive and psychiatric impairment and prioritise places for alternative accommodation.*

### **6. Justice Reinvestment**

Prevention and intervention strategies should include a justice reinvestment approach. Justice reinvestment is a criminal justice policy approach that invests resources into communities to address causes of crimes and imprisonment. It is about diverting funds from

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<sup>29</sup> Baldry, E., McCausland, R., Dowse, L. and McEntyre, E. (2015), A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system. UNSW, Sydney.

imprisonment into local communities where there is a high concentration of offenders<sup>30</sup>.

Implementing a national justice reinvestment strategy would assist people with cognitive and psychiatric impairment from being imprisoned indefinitely in institutions that are inappropriate in meeting the needs of people acknowledged as being unable to fully comprehend the consequences of crimes they may have committed.

Many Aboriginal and Torres Strait Islander people with an impairment or disability are more likely to be involved in the criminal justice system and have complex support needs. This often results from families and communities being overwhelmed with support services not set up or sufficiently resourced to provide the necessary services to support people who experience multiple mental and cognitive disabilities<sup>31</sup>. There are justice reinvestment models already working in Australia which have demonstrated that a community driven investment in localised early intervention, prevention and diversionary solutions can reduce crime, build local capacity and build local communities<sup>32</sup>.

In 2013 the Australian Senate Legal and Constitutional Affairs Committee held an inquiry into the value of a justice reinvestment approach to criminal justice in Australia. The Senate Committee's response to the inquiry was not unanimous, due to:

- a perceived lack of evidence that such an approach works;
- the criminal justice system is for the most part a responsibility of the states and territories and the prison system is entirely the responsibility of the states and territories;
- not wanting to create perception of disinterment in the criminal justice system and thus reducing the retributive element central to criminal justice; and

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<sup>30</sup> Australian Human Rights Commission (2013), Value of a justice reinvestment approach AHRC Submission to the Legal and Constitutional Affairs Committee; and Australian Red Cross submission to the Senate Inquiry into the value of a justice reinvestment approach to criminal justice in Australia March 2013

<sup>31</sup> Baldry, E., McCausland, R., Dowse, L. and McEntyre, E. (2015), A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system. UNSW, Sydney.

<sup>32</sup> Australian Human Rights Commission (2013), Value of a justice reinvestment approach AHRC Submission to the Legal and Constitutional Affairs Committee; Australian Red Cross submission to the Senate Inquiry into the value of a justice reinvestment approach to criminal justice in Australia March 2013; and Justice Reinvestment NSW 2014.

- acknowledgment that justice reinvestment is unlikely to gain political bipartisanship for a national strategic approach to implementing a justice reinvestment approach.

However, a number of submissions advocated that existing local programs do have an impact and how they can reduce crime and costs of imprisonment, but more importantly how it can assist individuals and communities to build capacity and grow to become stronger and healthier places to live and work.

### **Recommendation**

*6. The Australian Government work with the State and Territory Governments to implement a national justice reinvestment approach as part of a broader prevention and intervention strategy that tackles the detention of people with cognitive and psychiatric impairment.*

### **7. The central role of culture to health and wellbeing of Aboriginal and Torres Strait Islander people**

Aboriginal and Torres Strait Islander people have the right to live a healthy, safe and empowered life with strong connections to culture and country. The National Aboriginal Health Strategy provides a definition of health as a holistic concept:

Health is not just the physical wellbeing of the individual, but the social, emotional and cultural wellbeing of the whole community in which each individual is able to achieve their full potential as a human being, thereby bringing about the total wellbeing of their community. This is a whole-of-life view and it also includes the cyclical concept of life-death-life.<sup>33</sup>

Cognitive disability covers impairment such as intellectual disability, acquired brain injury, dementia and FASD. These are ongoing impairments in comprehension, reason, judgement, learning or memory.<sup>34</sup>

A person-centred health care system is needed that recognises the centrality of culture (including family and country) to health and wellbeing as working best for Aboriginal and Torres Strait Islander people. Furthermore, there is a requirement for a criminal justice

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<sup>33</sup> National Aboriginal Health Strategy Working Party, A National Aboriginal Health Strategy, Australian Government Publishing Service. Canberra, 1989.

<sup>34</sup> Baldry, E, McEntyre, E and McCausland, R (2015) 'Why Aboriginal people with disabilities crowd Australia's prisons', Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System (IAMHDCD) Project, University of New South Wales.



system that has the understanding and capacity to safely manage people who have a cognitive impairment, which may have led to them entering the criminal justice system. Such a system should also have the capacity to support people with cognitive impairment to avoid entering the system at all or leave the system safely and not detain them longer than necessary or on an indefinite basis. To achieve this, there needs to be a criminal justice system that provides pre-emptive action and interventions including education and training to staff, particularly front line policing, to understanding what cognitive impairment is, why people may behave the way they do and how best to intervene in the best interests of people.

CATSINaM's Cultural Safety Position Statement (Appendix 1) reiterates the importance and need for cultural safety work practices not just in the health system, but in all relevant areas including education and tertiary institutions, policy development, government departments, health providers, and colleges and professional health bodies.

### **Recommendations**

*7. To address the issue of Aboriginal and Torres Strait Islander people with cognitive and psychiatric impairment, the following recommendations are made, which are relevant to any person with a cognitive or psychiatric impairment:*

- *For many Aboriginal and Torres Strait Islander people connectedness to country is a critical component of wellbeing and quality of life. There is a need for changes within the criminal justice system that would as a first priority enable access to a public advocate who can act and speak on behalf of a person with a cognitive or psychiatric impairment. Secondly, develop models of care that enables a person to stay on country rather than detained in centres far removed from home.*
- *For the Justice, Corrections, Human and Health Services to take a collaborative approach in the provision of support and treatment/management services to prevent imprisonment or facilitate early release from detention for those who have cognitive or psychiatric impairment is crucial. To achieve this goal, inter-professional service delivery is vital rather than a focus of detaining an individual indefinitely.*
  - *“Better education and information are needed for police, teachers, education support workers, lawyers, magistrates, health, corrections, disability and community service providers regarding understanding and working with Aboriginal and Torres Strait*

*Islander women, men and juveniles with cognitive impairment, mental health disorders and complex support needs.”<sup>35</sup>*

- *“Information and resources are needed for Indigenous communities, families and carers, provided in a culturally informed and accessible way.”<sup>36</sup> This is necessary to engage and support families to play an active role in supporting and caring for family members who have a cognitive or psychiatric impairment.*
- *Aboriginal and Torres Strait Islander health workers must be better utilised as a conduit between the criminal justice and health and community service systems, as well as providing connection with family and the broader community.*
- *Aboriginal and Torres Strait Islander nurses have the skills and knowledge and the cultural and social understanding to play a greater role in coordinating care plans for people with cognitive or psychiatric impairment and formalising this role would improve resourcing especially to regional and remote areas where services are limited.*
- *With a growing Aboriginal and Torres Strait Islander population, there is potential to position secondary, vocational and tertiary training interventions for Aboriginal and Torres Strait Islander people to meet workforce needs and ensure a quality service system for all Australians who have cognitive or psychiatric impairment.*
- *A thorough social impact assessment should be undertaken as part of the development process for major policies and programs, which impact on people with cognitive and psychiatric impairment such as the criminal justice system, health system or community services.*

## **8. Increasing the skills of the nursing workforce to understand and identify cognitive and psychiatric impairment**

Mental health nurses work in mental health across a variety of settings – acute psychiatric units in hospitals, specialist community mental health teams, general practices, emergency departments, as well as in policy, administration, management and research roles. Mental health nurses as individuals and a profession are a key component of Australia’s mental

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<sup>35</sup> Baldry, E, McEntyre, E and McCausland, R (2015) ‘Why Aboriginal people with disabilities crowd Australia’s prisons’, Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System (IAMHDCD) Project, University of New South Wales.

<sup>36</sup> Ibid

health care system, and are one of the most widely geographically represented health professions in Australia. However, the specialty is facing significant workforce shortages, which will impact on Australian's ability to access suitably qualified specialist mental health nursing services into the future.

### **Recommendation**

*8. It is recommended that along with developing and sustaining a specialist mental health nursing workforce to improve access and equity for people with mental health problems, developing the knowledge and skills of mental illness in the nursing workforce is also required. The aspects of this include:*

- *scoping the mental health workforce;*
- *identifying mental health literacy of the nurses and midwives not working in mental health;*
- *providing professional development opportunities in mental health for non-mental health nurses; establishing career pathways into mental health for non-mental health nurses;*
- *increasing the mental health component in undergraduate comprehensive nursing courses;*
- *ensuring consistency and quality across postgraduate mental health nursing programs;*
- *focusing on retention strategies for those currently working in mental health, including through high quality professional development and clinical supervision.<sup>37</sup>*

### *The need for specialist intervention services*

As the literature and research clearly indicates, specialist early intervention services are required that address issues of disadvantage when someone with a cognitive and psychiatric impairment first becomes involved in the criminal justice system. This is the type of intervention that qualified and knowledgeable mental health and other nurses are able to provide. The health and criminal justice systems must make much better use of the existing

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<sup>37</sup> ACMHN submission to the Health Workforce Scholarship Programme Stakeholder Consultation [http://www.acmhn.org/images/stories/Resources/ACMHN\\_Scholarships\\_Submission\\_Sept2015.pdf](http://www.acmhn.org/images/stories/Resources/ACMHN_Scholarships_Submission_Sept2015.pdf)

health workforce and nurses are an existing and highly skilled yet underutilised part of this available workforce.

Given the chronic shortage of appropriate services for people with psychiatric and cognitive impairment and the lack of accurate assessments to identify these impairments, it is imperative that existing sources of knowledge and expertise are used to assist in areas where people with cognitive and psychiatric impairment interact or enter the criminal justice system, and that there is assistance and advocacy that actually understands their condition and what is an appropriate pathway.

### ***Recommendation***

*9. With shortages in appropriate services for people with psychiatric and cognitive impairments, the health and criminal justice systems need to make use of the available workforce and expertise, including nurses, and ensure there is appropriate assistance and advocacy that understands and can implement an appropriate referral pathway.*

## **9. Meeting the unique health and wellbeing needs of Aboriginal and Torres Strait Islander Australians who live with cognitive impairment**

Cultural safety and responsiveness, cost, location and accessibility are key issues for Aboriginal and Torres Strait Islander people in accessing health services, particularly concerning prevention, management and treatment services for families and individuals with cognitive impairments. Through the *National Aboriginal and Torres Strait Islander Health Plan 2013-2023 (NATSHP)* the Commonwealth Government has committed to the vision of an *'Australian health system free of racism and inequality and all Aboriginal and Torres Strait Islander people have access to health services that are effective, high quality, appropriate and affordable.'*<sup>38</sup>

In line with this commitment, government must ensure that the Australian health workforce, now and into the future, is positioned and capable of meeting the unique health and wellbeing needs of Aboriginal and Torres Strait Islander Australians who live with cognitive impairment – this includes recognising the critical role of Aboriginal and Torres

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<sup>38</sup> Australian Government, (2013) National Aboriginal and Torres Strait islander Health Plan 2013-2023, Commonwealth of Australia

Strait islander health professionals including nurses, midwives, health workers, health practitioners, and allied health.

There is a significant concern with the lack of in-depth understanding of Aboriginal and Torres Strait Islander health, other than the health statistics, among the general population, but more importantly for those who work in areas that come into contact with Aboriginal and Torres Strait Islander Australians on frequent and ongoing basis such as the health and criminal justice systems. The health statistics do not explain, provide context nor give meaning to the health outcomes. For a health professional or a worker within the criminal justice system to work safely with Aboriginal and Torres Strait Islander people, there needs to be more education and training that provides the contextual information such as the impact of colonisation and the racism that underpinned many government policies and programs (past and present), which have shaped the health outcomes and, more importantly, behaviours today.

### ***Recommendations***

*10. In line with the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 (NATSIHP) government must ensure that the Australian health workforce is positioned and capable of meeting the unique health and wellbeing needs of Aboriginal and Torres Strait Islander Australians who live with cognitive impairment.*

*11. There is a requirement for more education and training for health professionals and other workers in the criminal justice system that provides the contextual information to policies and programs which have shaped Aboriginal and Torres Strait Islander health outcomes and behaviours.*

## **10. Conclusion and recommendations**

This joint submission focuses on a number of key issues related to people in the criminal justice system and indefinite detention with cognitive and psychiatric impairment including:

- Assessment for people with cognitive and psychiatric impairment;
- the pathways for people into and out of the criminal justice system;
- the impacts and effects of FASD;
- access to specialist, appropriate and coordinated care and assistance;

- cultural safety and responsiveness for Aboriginal and Torres Strait Islander people in accessing health services;
- the central role of culture to Aboriginal and Torres Strait Islander health and well-being;
- upskilling the nursing workforce to understand and identify cognitive and psychiatric impairment; and
- ensuring the Australian health workforce is capable of meeting the unique health and wellbeing needs of Aboriginal and Torres Strait Islander Australians living with cognitive impairment, including recognising the critical role of Aboriginal and Torres Strait islander health professionals.

The following recommendations were made:

*Assessing people with cognitive and psychiatric impairment*

1. There be a mandatory requirement for when a person has been assessed as having a cognitive or psychiatric impairment, to have a case manager assigned and a care or treatment plan developed and progressed.

*Fetal Alcohol Spectrum Disorder*

2. The Australian Government commit to the ongoing implementation of the National FASD Action Plan and the recommendations of the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders *FASD: The Hidden Harm*.

*The pathways for people into and out of the criminal justice system*

3. The court diversion system must be resourced adequately to build services that can assess and assist people with cognitive and psychiatric impairment to not enter and be moved out of the criminal justice system.

*Access to appropriate and coordinated care and assistance*

4. Investment should be directed towards prevention and intervention strategies that assists families and communities to support people with cognitive and psychiatric impairment that enables the individual to avoid behaviour that brings them into contact with the criminal justice system.

5. There must be leadership from governments at both the national and state and territory level to direct responsible agencies and government departments to review clients in detention or the criminal justice system for cognitive and psychiatric impairment and prioritise places for alternative accommodation.

#### *Justice Reinvestment*

6. The Australian Government work with the State and Territory Governments to implement a national justice reinvestment approach as part of a broader prevention and intervention strategy that tackles the detention of people with cognitive and psychiatric impairment.

#### *The central role of culture to health and wellbeing of Aboriginal and Torres Strait Islander people*

7. To address the issue of Aboriginal and Torres Strait Islander people with cognitive and psychiatric impairment, the following recommendations are made, which are relevant to any person with a cognitive or psychiatric impairment:
  - For many Aboriginal and Torres Strait Islander people connectedness to country is a critical component of wellbeing and quality of life. There is a need for changes within the criminal justice system that would as a first priority enable access to a public advocate who can act and speak on behalf of a person with a cognitive or psychiatric impairment. Secondly, develop models of care that enables a person to stay on country rather than detained in centres far removed from home.
  - For the Justice, Corrections, Human and Health Services to take a collaborative approach in the provision of support and treatment/management services to prevent imprisonment or facilitate early release from detention for those who have cognitive or psychiatric impairment is crucial. To achieve this goal, inter-professional service delivery is vital rather than a focus of detaining an individual indefinitely.
    - “Better education and information are needed for police, teachers, education support workers, lawyers, magistrates, health, corrections, disability and community service providers regarding understanding and working with Aboriginal and Torres Strait Islander women, men and juveniles with cognitive impairment, mental health disorders and complex support

needs.”<sup>39</sup>

- “Information and resources are needed for Indigenous communities, families and carers, provided in a culturally informed and accessible way.”<sup>40</sup> This is necessary to engage and support families to play an active role in supporting and caring for family members who have a cognitive or psychiatric impairment.
- Aboriginal and Torres Strait Islander health workers must be better utilised as a conduit between the criminal justice and health and community service systems, and well as providing connection with family and the broader community.
- Aboriginal and Torres Strait Islander nurses have the skills and knowledge and the cultural and social understanding to play a greater role in coordinating care plans for people with cognitive or psychiatric impairment and formalising this role would improve resourcing especially to regional and remote areas where services are limited.
- With a growing Aboriginal and Torres Strait Islander population, there is potential to position secondary, vocational and tertiary training interventions for Aboriginal and Torres Strait Islander people to meet workforce needs and ensure a quality service system for all Australians who have cognitive or psychiatric impairment.
- A thorough social impact assessment should be undertaken as part of the development process for major policies and programs, which impact on people with cognitive and psychiatric impairment such as the criminal justice system, health system or community services.

*Increasing the skills of the nursing workforce to understand and identify cognitive and psychiatric impairment*

8. It is recommended that along with developing and sustaining a specialist mental health nursing workforce to improve access and equity for people with mental

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<sup>39</sup> Baldry, E, McEntyre, E and McCausland, R (2015) ‘Why Aboriginal people with disabilities crowd Australia’s prisons’, Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System (IAMHDCD) Project, University of New South Wales.

<sup>40</sup> Ibid



health problems, developing the knowledge and skills of mental illness in the nursing workforce is also required. The aspects of this include:

- scoping the mental health workforce;
  - identifying mental health literacy of the nurses and midwives not working in mental health;
  - providing professional development opportunities in mental health for non-mental health nurses; establishing career pathways into mental health for non-mental health nurses;
  - increasing the mental health component in undergraduate comprehensive nursing courses;
  - ensuring consistency and quality across postgraduate mental health nursing programs;
  - focusing on retention strategies for those currently working in mental health, including through high quality professional development and clinical supervision.
9. With shortages in appropriate services for people with psychiatric and cognitive impairments, the health and criminal justice systems need to make use of the available workforce and expertise, including nurses, and ensure there is appropriate assistance and advocacy that understands and can implement an appropriate referral pathway.

*Meeting the unique health and wellbeing needs of Aboriginal and Torres Strait Islander Australians who live with cognitive impairment*

10. In line with the *National Aboriginal and Torres Strait Islander Health Plan 2013-2023 (NATSIHP)* government must ensure that the Australian health workforce is positioned and capable of meeting the unique health and wellbeing needs of Aboriginal and Torres Strait Islander Australians who live with cognitive impairment.
11. There is a requirement for more education and training for health professionals and other workers in the criminal justice system that provides the contextual information to policies and programs which have shaped Aboriginal and Torres Strait Islander health outcomes and behaviours.