



CLCA (WA) Submission to
Finance and Public Administration References Committee
on
Access to Legal Assistance Services
April 2015

About CLCA (WA)

The Community Legal Centres Association of WA (the **Association**) is the peak organisation representing the twenty eight Community Legal Centres (**CLCs**) operating in Western Australia.

The Association is committed to the principles of human rights, social justice and equity, including the rights of West Australians to equity in access to legal services.

The Association is also part of the National Association of Community Legal Centres (**NACLC**).

Located throughout the state, CLCs are independent, non-profit organisations which provide legal services to disadvantaged and vulnerable people or those on low incomes who are ineligible for legal aid.

While three of our members – Aboriginal Family Law Services, Family Violence Prevention Legal Service in Albany and Marninwarntikura Women’s Resource Centre in Fitzroy – are operated by Aboriginal organisations, many of our members located in both metropolitan and regional areas have a large number of Aboriginal clients. Some centres, including Kimberley Community Legal Services and Goldfields CLC have taken up specific projects on behalf of Aboriginal clients such as in relation to stolen wages and the Redress Scheme. The Association would be happy to facilitate contact between the Inquiry Committee and specific CLCs, so that the work of these valuable but under-funded community resources can be better understood and fed into the Committee’s deliberations.

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Introduction

The Association welcomes the opportunity to contribute a submission to this Senate Inquiry.

In doing so, the Association reiterates the view of the Law and Justice Foundation of New South Wales that: *“more than a decade of empirical research conducted in Australia and overseas provides a clear picture of the nature and distribution of legal need, and the capability of different people to manage their legal issues”*¹ and further draws the Committee’s attention to the work of the Indigenous Legal Needs Project. That Project, along with a wide range of other work including the Aboriginal Deaths in Custody and the Bringing Them Home reports as well as state inquiries such as the one conducted by Magistrate Sue Gordon, also highlights the link between legal need and broader disadvantage.

While it is clear that there are not enough legal service providers for Indigenous communities in WA, and additional funding is required, other measures which can also be put in place to more adequately address the access to legal assistance services by Aboriginal and Torres Strait Islander Australians are also identified in this submission.

What the research tells us

According to the Law and Justice Foundation of New South Wales,² the research indicates that:

- There is clear inequality in the experience of legal problems.
- Inequity links to social disadvantage.
- Social disadvantage is linked to lower capability.
- Legal problems don’t exist in isolation.

And in order to most efficiently and effectively assist those with the disproportionate amount of legal need, services should be increasingly client focussed. This involves services being:

- **Targeted** to reach those with the highest legal need and lowest capability.
- **Joined-up** with other services to address complex life problems.
- **Timely** to minimise the impact of problems and maximise the utility of services.
- **Appropriate** to the needs and capabilities of users.³

The Foundation further argues that *“Indigenous people have higher vulnerability to multiple legal problems and multiple substantial legal problems”* and that this compounding effect *“appears to be stronger for Indigenous people than for other people.”*⁴

¹ Law and Justice Foundation of New South Wales. Updating Justice. No 43. October 2014.

² Ibid. page 1

³ Ibid. pages 2-3

Indigenous Legal Needs Project

The Indigenous Legal Needs Project⁵ is a national research study of the civil and family law needs of Indigenous Australians. The project is based at The Cairns Institute, James Cook University (JCU). The Australian Research Council (ARC) has funded the research by way of a Linkage Project grant.

Their research highlights that *“civil/family law issues impact upon many Aboriginal and Torres Strait Islander peoples on a daily basis and that the vast majority of these issues are left unaddressed through legal avenues or otherwise. The consequences felt across Indigenous communities of not having these issues addressed are often critical, including placement of children into state care, eviction and homelessness, loss of income (through social security or employment) as well as increased offending.”*⁶

As part of this project, reports have been prepared for the different jurisdictions. The WA report was the final one to be completed and was published in 2014.

*The major areas of legal need in WA were identified as housing/tenancy (60.1%), discrimination (40.9%), neighbourhood disputes (36.8%), credit/debt issues (30.7%) and related consumer issues (20.6%), and Stolen Wages (26.2%) / Stolen Generations (21.9%). Child protection, social security, education and wills/estates are also identified as priority areas.*⁷

While broadly similar issues were identified across the jurisdictions, two different areas were identified in WA – education and stolen wages/Stolen Generations.

*Nearly two thirds of those engaging in education or responsible for someone (a child) studying reported having had a problem, often as bullying or harassment with a racial element, for example.*⁸

Stolen Wages is an issue that has been a particular focus of one of the Association’s members – Kimberley Community Legal Services.⁹ The WA Stolen Wages Reparation Scheme opened in March, 2012 and closed on November 30 that year. KCLS staff talked to hundreds of Aboriginal people and identified a number of key reasons why people thought the Scheme was unfair. It didn’t:

- *respond to the effects of stolen wages on Aboriginal people as a group, as families and as communities;*
- *respond to the life experience of people who had passed away or allow families to apply to honour deceased family members, for example by putting up a headstone on their grave;*

⁴ Ibid. page 8

⁵ See: www.jcu.edu.au/ilnp/

⁶ See WA Jurisdictional Report (released December 2014)

⁷ Ibid

⁸ Ibid

⁹ See Kimberley Community Legal Services Inc. Annual Report 2013-14 pages 22-26.

- *allow Aboriginal families, Aboriginal communities or Aboriginal organisations to apply for funds for programs, projects or events to acknowledge and record what happened; or*
- *help non Aboriginal people understand and properly respond to the treatment Aboriginal people experienced.*¹⁰

Additionally, people felt that the amount of \$2000 was far too low and many found this hurtful or insulting given the context which generally involved being denied income of all kinds and being required to work for rations or for rations and low wages. KCLS have continued in their efforts to assist people to advocate around a range of issues- eligibility, review of decisions refusing applications etc. as well as exposing the situation and the stories of the claimants to a state-wide audience, including to Members of Parliament.

Link between legal needs and broader disadvantage

As WACOSS has previously noted,¹¹ the most vulnerable in our community are often faced with a complex web of intersecting issues including: unemployment; poor education and health outcomes; drug and alcohol abuse; homelessness or inadequate housing conditions; offending behaviour and incarceration; family breakdown, including family and domestic violence and interactions with the child protection system; and social isolation. These complexities are often most apparent when children are involved. Government departments, too, are very aware of such links. As the Western Australian Department for Child Protection and Family Support's 2013-14 Annual Report notes:

*Family and domestic violence is now recognised as one of the most common reasons for notification to statutory child protection services.... It is strongly associated with and linked to a number of other serious social issues including other forms of child abuse, homelessness, mental health issues, poverty, and drug and alcohol misuse.*¹²

The impact of such issues are demonstrated in the alarming statistic that despite comprising less than 7% of the state's children, over 50% of children in care in Western Australia are Aboriginal. While the absolute numbers of children in care has been steadily rising in Western Australia the proportion of those children who are Aboriginal has been increasing at a faster rate.¹³

One of the Association's members, Aboriginal Family Law Services has consistently raised the need to ensure that there is a driver to motivate sectors towards change –specifically a statewide Indigenous specific Family & Domestic Violence strategy which makes all services/departments accountable. It would run parallel to the CPFS mainstream F&DV strategy and new out of home care strategy (due July 2015). This would take into account the associated issues of housing, mental health and wellbeing, poverty, drugs and alcohol

¹⁰ *ibid* pages 22-23.

¹¹ WACOSS Pre-Budget Submission 2015-16 page 16.

¹² DCPFS Annual Report 2013-14 page 1.

¹³ DCPFS Annual Report 2013-14.

etc. CPFS has recently completed an Indigenous specific F&DV plan for the Kimberley but has no plans at this point to expand it beyond this region¹⁴.

The links between legal need and broader disadvantage are also echoed in the ILNP research:

*Our research also indicates, however, that unmet Indigenous civil/family law need is directly linked with the continuing marginalisation of Indigenous Australians, evident (for example) in their poorer educational outcomes, unemployment and poverty. Whilst being able to better resolve civil and family law issues is an essential goal in and of itself, the clear connection between not doing so and broader Indigenous social disadvantage provides added impetus for ensuring that Aboriginal and Torres Strait Islander access to justice in these areas is enhanced.*¹⁵

The WA Association of Mental Health (WAAMH) has providing a compelling contribution to consideration of these issues with a focus on the interrelationship of mental health and justice issues for Aboriginal people. WAAMH refers to the criminalisation of social and health issues as being a key feature of the existing approach to crime and justice issues in WA.

*For example, there are known to be strong links between offending behaviour and alcohol and other drugs, mental health and cognitive impairment. That is, there are strong links between offending behaviour and issues relating to health and disability. The lack of support provided for those experiencing significant social and health disadvantage together with the lack of appropriate and effective treatment for mental health, alcohol and other drug problems (and their comorbidity) contributes to circumstances where those affected and untreated are significantly more likely to end up in our justice system. This is evidenced in high rates of over-representation in our courts, prisons and juvenile justice system, and as victims of crime. These issues are particularly evident when viewing prison statistics with a gender or indigenous lens.*¹⁶

A more detailed consideration of these issues prepared by WAAMH, which specifically addresses some of the Inquiry's specific terms of reference is included as Attachment A.

Another example of this interaction is in relation to FASD (Foetal Alcohol Spectrum Disorder). This issue has been addressed in a Telethon Kids Institute project which looked at knowledge, attitudes and practice in the Western Australian justice system in relation to FASD. In the report of that project, reference is made to the work of Professor Heather Douglas, Law Professor at the University of Queensland Beirne School of Law, who has outlined the challenges within the justice sector for people with FASD.

¹⁴ These issues are addressed in greater detail in the AFLS submission to this Inquiry.

¹⁵ ILNP Progress Report No %. February 2015 page 1.

¹⁶ 2015, Western Australian Council for Social Service, Western Australian Association for Mental Health and Western Australian Network of Alcohol and Other Drug Agencies, 'Submission to the Economic Regulation Authority Prisons Inquiry (2014)', available at <http://waamh.org.au/assets/documents/systemic-advocacy/submissions-and-briefs/wacoss,-waamh,-wanada-joint-submission-to-era-prisons-inquiry.pdf>

Professor Douglas charted the range of concerns facing people with FASD who become involved with criminal justice, such as their inability to be credible witnesses, their disadvantage through the processes related to police questioning, their vulnerability to suggestion and acquiescence, and their ability for confabulation; which together suggest a diminished capacity of fitness to plead. Professor Douglas went on to advocate: "It may be appropriate, considering the apparent under-diagnosis of FASD, to require sentencing report writers to address the possibility of FASD in preparation of their reports in circumstances where there has been a history of breaches of court orders or where there are other matters that suggest the possibility of FASD (for example impulsive offending or known history of maternal drinking). While more resources directed towards therapy are needed, the first step is awareness."¹⁷

Both Federal and WA Parliaments have held inquiries into FASD in recent years, which have detailed the complexities around this issue and are appropriate to be reconsidered by this Senate Inquiry¹⁸.

Another matter of relevance to this Inquiry is the Commonwealth's recent decision that it intends to withdraw responsibility for funding municipal and essential services in remote Aboriginal communities, which will have a significant impact on the 274 remote Aboriginal communities in WA containing 15,000 residents. Aboriginal People are likely to be faced with the "choice" of remaining in communities with inadequate municipal services, or be forced to shift to other locations that may be overcrowded, unhealthy and unsafe. Community Legal Centres are already seeing the impact of this decision:

"There are a significant number of homeless Aboriginal people living here. They tend to try and stay with family, however that puts pressure on tenants in Dept of Housing accommodation. There is clearly an impact on the looming closing communities issue.

The fear is out there, it's very cold here now and people have left their communities and are always around the town but with no real sense of place any longer it would appear. I have actually seen a family sleeping on the footpath opposite the Centre."¹⁹

What should be done?

The Association is part of a campaign known as Community Law Australia, which has sought to demonstrate the importance of government investment to ensure Australia has a fair and functioning legal system. Investing in equal access to the law is not only the right thing to do, it will save money overall:

Repeated government inquiries, the courts and legal bodies all confirm the lack of access to legal help in Australia. Most recently, a 2009 Senate Inquiry found that "the legal system is

¹⁷ Telethon Institute for Child Health Research, Centre for Child Health Research. Fetal Alcohol Spectrum Disorder: Knowledge, attitudes and practice in the Western Australian justice system. April 2013.

¹⁸ See for example, the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into FASD (2012) and the Parliament of Western Australia's Education and Health Standing Committee inquiry into Foetal Alcohol Spectrum Disorder in 2012.

¹⁹ Personal communication from Effie Harris, Manager, Goldfields Community Legal Centre, May 2015.

*not sufficiently providing members of the Australian community with access to justice...and is beset with various weaknesses.” That Inquiry repeated recommendations for increases in funding.*²⁰

While our members assist those on low incomes who do not qualify for legal aid, there is chronic government underfunding and consequently, many miss out as overstretched services are forced to make difficult choices about who gets help, how much help they get and for what types of legal issues. The Association is also involved with Law Access – an initiative with the Law Society of WA to support the provision of pro bono legal services. Again, while private lawyers acting pro bono make an important contribution, there is no substitute for properly funded legal assistance services.

A major investment in community legal services is needed. In 2012, an economic cost benefit analysis of Community Legal Centres was undertaken by the Law Council of Australia which found that for every \$1 invested on community legal services, there was \$18 in downstream savings to the community.²¹ This was echoed in the findings of the Productivity Commission which last year called for an additional \$200 million a year for national legal assistance services²². It recognised that a lack of legal knowledge and capacity contributes to legal problems going unresolved, which can lead to more severe (and costly) legal problems in the future.

The impact for Aboriginal communities is even more profound:

*Indigenous legal assistance services need to be given greater resources to be able to assist offenders through meaningful alternative programs, to stop communities being torn further apart.*²³

In addition to increased resources, the ILNP has identified additional areas that could be addressed.

- Enhancing the servicing of Aboriginal civil and family law need,
- Meeting the challenges of working regionally in WA,
- Improving access to justice through education, such as the community legal education provided through Community Legal Centres,
- Addressing the non-legal issues people are facing personally or within their family unit, including substance abuse, mental health and disability,
- Genuinely engaging with Aboriginal communities,
- Services working in collaboration.²⁴

The WA Chief Justice has also raised the importance of Aboriginal interpreting services and criticised the decision to stop funding the state’s only Aboriginal interpreting service.

²⁰ www.communitylawaustralia.org.au

²¹ Judith Stubbs and Associates Economic Cost-Benefit Analysis of Community Legal Centres. 2012.

²² Productivity Commission. Access to Justice Arrangements. September 2014. Recommendation 21.4.

²³ Statement by the President of the Law Council of Australia on 9 April, 2015 (Law Society Brief.)

²⁴ See WA Jurisdictional Report (released December 2014)

“There is a need... in the justice system for an adequately resourced interpreter service.There are large parts of the State where the primary language spoken is not English and indeed in some of these communities people speak there or four languages, the fourth of which is English.....If somebody doesn’t understand English to a sufficient level to be able to participate in the trial process or the sentencing process or to deal with interviews by police, then its not fair”.²⁵

The Productivity Commission, in its final report, also called for better evidence on legal and unmet legal need in Australia, and for governments to report annually on the extent of any failure to meet agreed coverage and priorities.²⁶

The size of WA creates enormous physical barriers to accessing justice and these additional costs must be acknowledged in funding arrangements. Most organisations whether regionally based or operating from a central point such as Perth or a key regional centre, have massive geographic areas to cover and limited capacity to provide outreach. This applies not only to legal assistance services but other legal services such as courts and the range of community support services. Put simply, people’s access to justice should be determined on the basis of need – not their postcode.

A further consideration is the need to build the capacity of Aboriginal organisations. There are significant benefits to building partnership-centred approaches to service delivery through partnerships with Aboriginal community controlled organisations. In considering responses to Aboriginal disadvantage in WA, the Association is pleased to draw attention to an important piece of work currently underway within the Northern Territory. The Northern Territory Council of Social Service (NTCOSS) has been working collaboratively with both local and national peak organisations to develop a set of principles to guide partnership-centred service delivery in Aboriginal communities. This approach recognises the strong aspirations of Aboriginal community controlled organisations to work with (and secure the support of) non-Aboriginal NGOs to strengthen and rebuild an Aboriginal controlled service sector. It is about putting Aboriginal people back in the driver’s seat.

Conclusion

Equal access for all Australians to our legal system is not beyond our reach. As our submission outlines, what needs to be done is already well known. It is to be hoped that this Inquiry by the Senate will result in some positive steps being taken to ensure that the challenges being faced by Aboriginal and Torres Strait Islander Australians in accessing legal assistance services are addressed.

The Association would welcome the opportunity to provide any additional information about the work of community legal centres in WA or in relation to any of the matters raised in this submission.

²⁵ Reported in ABC News Online. 17 November, 2014

²⁶ Chapter 25 of the Productivity Commission’s Report, Access to Justice Arrangements. September 2014, dealt with data and evaluation.

Attachment A: A perspective from the WA Association for Mental Health

The peak body for mental health in WA, WAAMH, has prepared the following information for the CLCA (WA) to include in our submission. The Association expresses our appreciation to WAAMH for this and suggests contacting Chelsea McKinney, Consultant Systemic Advocacy at WAAMH on (08)9420 7277 or email: CMcKinney@waamh.org.au for additional information or clarification.

TOR d - the consequences of mandatory sentencing regimes on Aboriginal and Torres Strait Islander incarceration rates;

One of the central principles of the criminal law system is recognition of the difference between people who knowingly commit an offence and those who are not morally culpable. Mandatory sentencing removes the protective legal frameworks which have been put in place to respond to this principle by removing judicial discretion.

It is well established that people with mental illness are over represented in Australian prisons , as are Aboriginal people.²⁷ Minimum Mandatory Sentencing laws exacerbate the problems that people with mental illness already face by placing them in the criminal justice system, and will have the tendency to increase their over-representation in our prisons.

It has particular detrimental impacts on people with mental illness. In WA, there are instances of people receiving mandatory sentences for assault to police officer when resisting arrest during psychotic episodes.

We are concerned that the combination of over-representation of both mental distress and Aboriginal people in custody greatly increases the impact of mandatory sentencing on Aboriginal people.

Mandatory sentencing removes the discretion for the courts to determine an appropriate sentence with consideration of all the facts and circumstances around this issue. Contrary to mental health courts and other diversionary measures, which recognise and facilitate diversion into mental health treatment, smart sentencing would remove mandatory requirement and make orders which maximise the chances of reducing reoffending; this could include orders to participate in culturally secure mental health treatment.

TOR e the reasons for the high incarceration rates for Aboriginal and Torres Strait Islander men, women and juveniles;

The Inspector of Custodial Services has described the barriers to accessing mental health services in Western Australian prisons.²⁸ These include a dire lack of forensic hospital beds

²⁷ Australian Institute of Health and Welfare (2013) The health of Australia's prisoners 2012

²⁸ Office of the Inspector of Custodial Services, 2014, 'Mentally impaired accused on 'custody orders': Not guilty, but incarcerated indefinitely'. <http://www.oics.wa.gov.au/wp-content/uploads/2014/05/MIA-Report-Final.pdf>

resulting in transfer of the least unwell person to prison, extremely limited psychiatry services, 'limited to non-existent mental health nursing overnight, and lengthy delays to secure an appointment with a mental health nurse or GP.

The Inspector further notes that psychiatry services in remote areas are even more limited – the Eastern Goldfields prison usually has a psychiatrist flown in for around one day every two months, and in Roebourne Prison there has been one video-link psychiatry consultation every six weeks. It must be noted that a higher proportion of prisoners will be Aboriginal in these remote prisons.

The Stokes Review noted that of the 1000 prisoners at Acacia, 40% have a mental illness and 10% are experiencing active psychosis at any one time. Despite this, mental health services at Acacia are extremely limited - only 2 full time GP's (across all health issues), 3 full time mental health nurses and only three sessions of psychiatrist consultant per week.²⁹

All these factors can impede mental health recovery, as well as a person's chance of receiving parole or release from prison when under a custody order under the Criminal Law (Mentally Impaired Accused) Act 1996.

The Inspector also found that both Aboriginal prisoners and those with mental health concerns and/or intellectual disability were significantly over-represented in staff assault incidents in WA Prisons.³⁰ The lack of appropriate care and prison management for people with mental illness in our prisons can lead to greater involvement in staff assaults, and consequently reduce their chance of parole thereby increasing the period of custody.

WAAMH, in consultations with members and mental health stakeholders, have recently heard deeply concerning and disturbing reports from mental health consumers in prison and their carers. Their experiences included:

- Lack of access to medication prescribed prior to incarceration;
- Limited access to treatments and supports;
- Lengthy delays to see a psychiatrist or other clinical specialist;
- Even more limited access to mental health supports for people on remand;
- The impact of detention far from home and country;
- Increased vulnerability due to mental health challenges;
- Being 'stood over' by other prisoners in an effort to gain their medication;
- The impact of detention in an over-crowded prison system;
- Lack of access to independent advocacy;
- Lack of alignment between the mental health and justice systems, and resultant challenges navigating the justice system; and
- The inability of carers to provide or receive information about the mental health and wellbeing of a loved one for whom they may have had caring responsibilities prior to

²⁹ Stokes, B. (2012) Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia, Prepared for the Department of Health, Government of Western Australia, p. 118

³⁰ Office of the Inspector of Custodial Services, 2014, 'Assaults on staff in Western Australian prisons'

their imprisonment (and for whom they may resume caring responsibilities upon their release).

It appears that approaches to clinical management of mental health vary in the different prisons throughout WA. It would seem that there are no service standards that must be met, as there are for people accessing mental health services in the community. A review of clinical health services in WA prisons by DCS stated:

“The mental health program in prisons has been, and remains, contentious. Significant applications to Government for enhanced funding have been made jointly with the Department of Health and independently but none have been successful.”³¹

We contend that for Aboriginal prisoners with mental health issues it is likely that the lack of effective, culturally appropriate mental health treatment prior to, during and after imprisonment is one significant factor associated with the ongoing high rates of Aboriginal imprisonment in WA.

A study on mental health in WA prisons conducted in 2011 argued that the effective management of mental health problems by screening all prisoners and providing evidence-based treatment programs, although initially increasing costs through staffing and service delivery, would reduce overall government expenditure through a reduced recidivism rate and increased eligibility for parole.³²

“Aboriginal people also have higher rates of homelessness, mental health issues, child protection interventions, disability and alcohol and drug use. If we are to succeed in “closing the gap” in incarceration it is essential that prison addresses these broader issues in culturally appropriate ways.”³³

TOR f the adequacy of statistical and other information currently collected and made available by state, territory and Commonwealth governments regarding issues in Aboriginal and Torres Strait Islander justice;

Our joint submission to the ERA prisons Inquiry described the extremely limited publicly available data about imprisonment in Western Australia. Our submission called for DCS to collect and publicly report on data such as the mental health indicators identified by the Australian Institute of Health and Welfare.³⁴ We also called for corrections to collect and make available specific data on marginalised and vulnerable group including young people, Aboriginal people and women.

³¹Department of Corrective Services (2010) Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services, p. 9

³² Fleming, J., Gately, N. & Kraemer, S. (2011) Creating HoPE: Mental Health in Western Australian Maximum Security Prisons, Edith Cowan University, p. 3.

³³ 2015, Western Australian Council for Social Service, Western Australian Association for Mental Health and Western Australian Network of Alcohol and Other Drug Agencies, ‘Submission to the Economic Regulation Authority Prisons Inquiry (2014)’, p. 23

³⁴ AIHW (2009) Bulletin 75: From corrections to community: a set of indicators of the health of Australia’s prisoners, p. 7.

TOR g the cost, availability and effectiveness of alternatives to imprisonment for Aboriginal and Torres Strait Islander Australians, including prevention, early intervention, diversionary and rehabilitation measures;

The needs of transition from prison to community for those in rural, regional and remote areas is often more complex, bringing significant cost implications.

In Western Australia, the need to improve the availability and appropriateness of mental health services within the prison and community corrections systems has begun to be acknowledged by government. The guiding principle for forensic services in the government's 'Western Australian Mental Health, Alcohol and Other Drug Services Plan' (MHAOD Plan) is that people in contact with the criminal justice system should receive mental health, alcohol and other drug services equivalent to services available to individuals in the community, with due regard to community safety.³⁵

The MHAOD Plan further articulates that the cost of not doing so is continued involvement of people with mental health issues in the criminal justice system. We propose that this same principle should apply to people with these health issues in prison and we also note Professor Stokes's comment that "custody offers a unique opportunity to address the needs of mentally ill people who would otherwise go untreated."³⁶

A key matter of concern is the mismatch between the correctional environment and contemporary approaches to mental health care, which include the recovery model. A similar issue has been identified by DCS, which observed that the differing philosophies and foci of corrections and health care causes problems in delivering health care in the prison setting.³⁷ One model that assists in resolving this tension is to take the responsibility for health care outside of corrections and into the jurisdiction of the Department of Health, with the establishment of a Justice Health or similar division as is the case in New South Wales.³⁸ Such a division might incorporate prison health, forensic health, community and court based health issues allowing a focus on early intervention, prevention and diversion of at risk groups.

Mental health and criminal justice responses and frameworks must be in keeping with the recovery model and Aboriginal frameworks of mental health and wellbeing. The must also be across prevention, early intervention, diversion, in-prison support, through care and post-release.

³⁵ Mental Health Commission (2014) Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015– 2015. p. 65

³⁶ Stokes, B. (2012) Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia, Prepared for the Department of Health, Government of Western Australia, p. 116

³⁷ Department of Corrective Services (2010) Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services.

³⁸ *Justice Health and Forensic Mental Health Network* is a state-wide, Board-governed specialty network delivering health care to adults and young people in contact with the forensic mental health and criminal justice systems, across community, inpatient and custodial settings in NSW.

The Royal Commission into Aboriginal Deaths in Custody, Recommendation 152 provides in part:

“That Corrective Services in conjunction with Aboriginal Health Services and such other bodies as may be appropriate should review the provision of health services to Aboriginal prisoners in correctional institutions ... Particular attention should be given to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal prisoners. Such programs should be provided, where possible, by Aboriginal people ... The involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal prisoners...”

The *Bringing them Home*³⁹ report discusses the over-representation of Aboriginal people in custody:

“An efficient prison mental health service with good consultative links with Indigenous health services and employing Indigenous mental health workers will identify and assist many prisoners with mental illnesses or disorders. Again however a broader preventive approach is needed which directly addresses the emotional distress and despair common to most Indigenous prisoners and their underlying causes.

Recommendation 37 of the *Bringing them Home* report:

“That the Council of Australian Governments ensure the provision of adequate funding to Indigenous health and medical services and family well-being programs to establish preventive mental health programs in all prisons and detention centres and to advise prison health services. That State and Territory corrections departments facilitate the delivery of these programs and advice in all prisons and detention centres.”⁴⁰

³⁹ <https://www.humanrights.gov.au/publications/bringing-them-home-chapter-18>

⁴⁰ <https://www.humanrights.gov.au/publications/bringing-them-home-chapter-18>