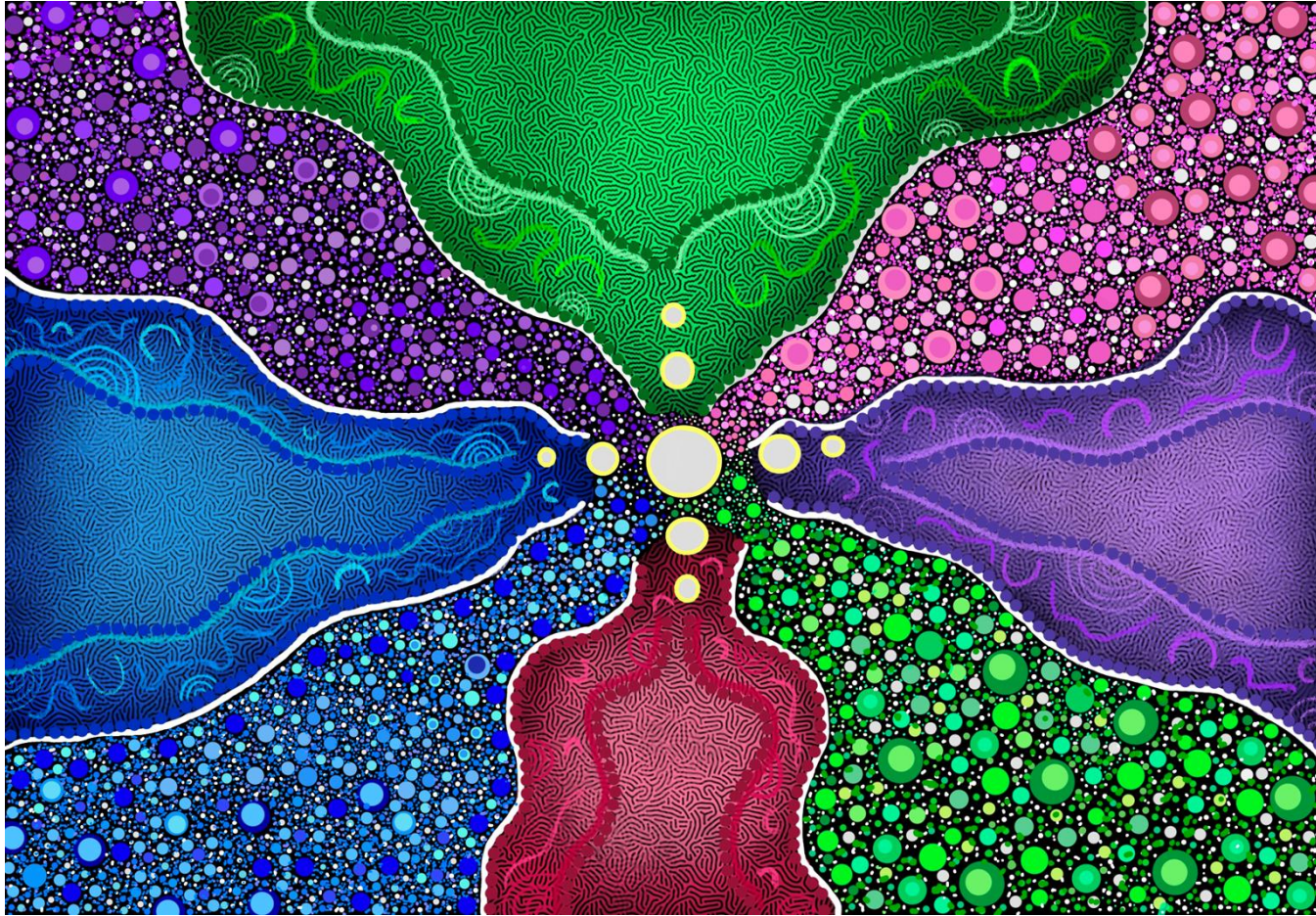


INDEPENDENT REVIEW: ACT OVER- REPRESENTATION

STAGE TWO FINDINGS (September 2025)



Jumbunna
Institute for Indigenous
Education and Research



"Journey To Justice"
by Erica-Jade Church, Jayde Mitchell, Damon Brown

Artwork Description:

As proud, Aboriginal young people, we recognise the significant challenges we face within the justice system. We have grown up knowing about deaths in custody, police brutality and racism. Something that we shouldn't be worrying about but unfortunately is our reality.

Our artwork shows the journey of Aboriginal people in the justice system. We used lots of colourful dots to tell the story because we want our people to have bright futures despite the barriers. Each dot represents a person and their own journey. There are also symbols that represent the community surrounding our people. All the people are moving toward a big, bright star in the middle. We wanted the star to be the light at the end of the tunnel. It represents hope, fairness, and equality.

This painting is about not giving up, even when systems are working against us. We want to believe change is possible.

INDEPENDENT REVIEW

into the Over-Representation of First Nations
People in the ACT Criminal Justice System

WHAT WE FOUND

- There is no single cause, and no single solution.
- Over-representation is shaped by decisions across youth justice, policing, courts, prisons and post-release, but also by systems such as education, child protection, health, and housing
- The drivers are complex and interconnected, and so too must be the solutions

WHAT WE RECOMMEND



Community-led
and self-determined



Government
transformation
to match its Closing
the Gap commitments



Joined-up action,
accountability, and
First Nations
leadership at the
centre

**REAL CHANGE REQUIRES JOINED-UP ACTION.
ACCOUNTABILITY, AND FIRST NATIONS LEADERSHIP AT
THE CENTRE**

Approaches, Principles and Conceptual Matters Underpinning Our Report

Approaches and Principles

- *Coordinated responses to over-representation*
- *Community-led, self-determined approaches*
- *Transforming government*

Disability

Women

A Note on Over-Representation Measures

Inequality, Imprisonment and First Nations People

The ACT Context

Responding to Intergenerational Trauma and Community Cohesion

Who We Spoke To

68 Dialogues
175 Participants
71 Organisations

Aboriginal Community Members
(55 total)

4 community dialogues – 33 participants
5 yarning circles – 16 AMC detainees
6 young people in Bimberi

Aboriginal Organisations
(16 participants, 12 organisations)

Includes 2 written submissions

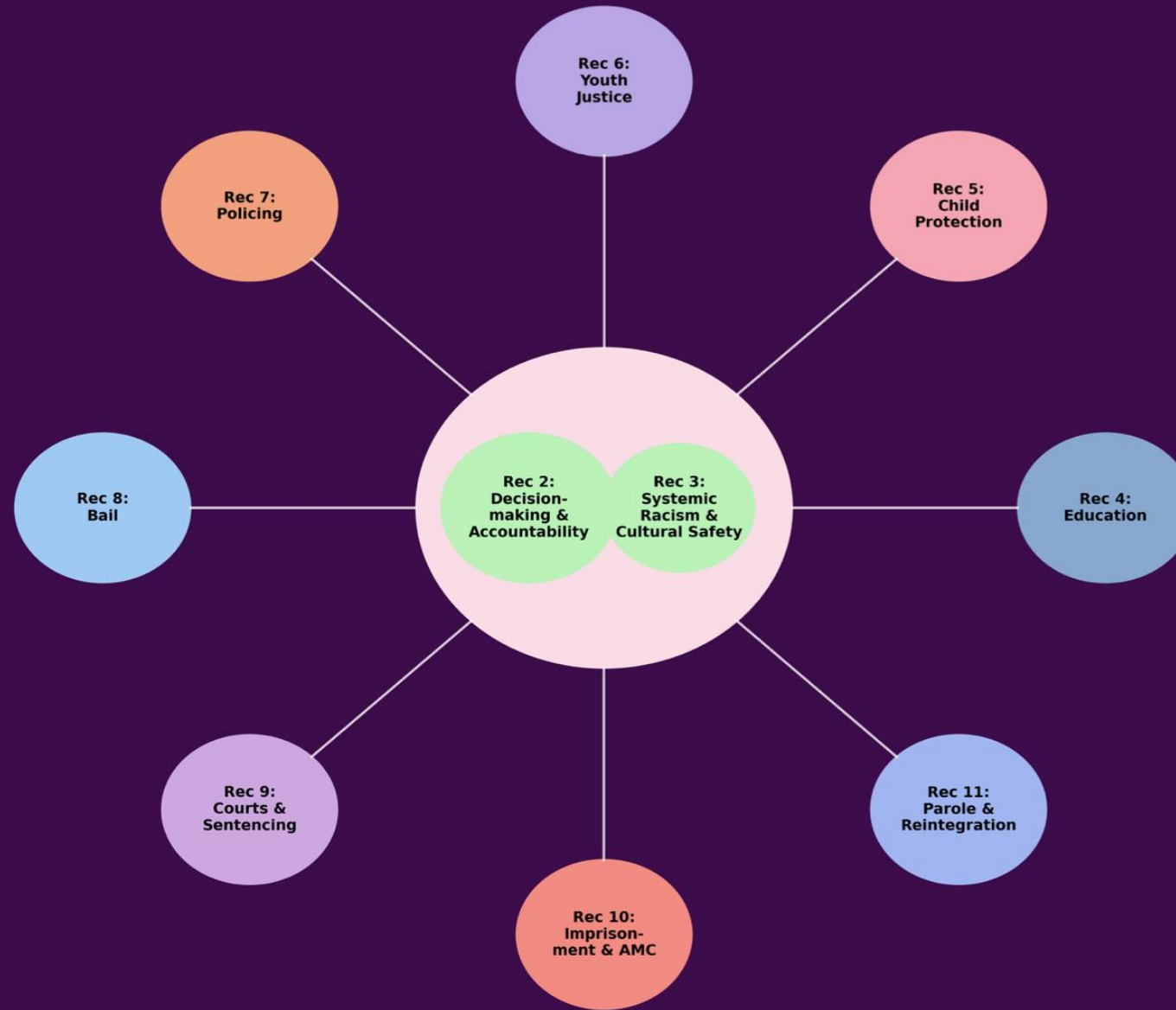
Other / Non-Indigenous Organisations
(18 participants, 12 organisations)

Legal services
Community organisations
Peak bodies
Statutory authorities

ACT Government
(88 participants, 47 agencies)

Agencies
Courts
Tribunals

Independent Review into the Overrepresentation of First Nations People in the ACT Criminal Justice System



2. KEY STRUCTURAL ISSUES: DECISION- MAKING, ACCOUNTABILITY AND COORDINATION

- Criminal legal system reform is required. However, more holistic responses to over-representation involving areas sitting *outside* the criminal legal system are also essential, including to work more preventatively.
- **Lack of coordination** (govt silos) makes this difficult.
- ACT Government needs to come together to identify and coordinate responses to issues/activity linked with over-representation. JACS/CSD don't carry responsibility alone.

We've got to actually ensure that we're dealing with [over-representation] everywhere (Government Agency)

It's never just one solution. We need to tackle the front and the back ends as well (Legal Service Provider)

2. KEY STRUCTURAL ISSUES: DECISION- MAKING, ACCOUNTABILITY AND COORDINATION

- Whole-of-govt action required to address **lack of First Nations decision-making and government accountability**
- Insufficient First Nations input into decision-making at all levels
- Limited accountability to ensure government 'does better' (including via Closing the Gap/ACT Agreement commitments)
- Dual focus is essential: increase self-determination without reducing govt responsibility for transformation.

*It's that oppressive hold that these systems still have over our people...
And they just get away with it
(First Nations Org)*

[T]here have been no negative repercussions for any government officials to fail to deliver on government commitments (Government Agency)

Is it our problem to solve or is our responsibility to listen to fund and to enable and support community to work towards solutions? And the answer is it's always going to be both (Gov Agency)

2. MECHANISMS: DECISION-MAKING, ACCOUNTABILITY, COORDINATION

- Role of justice/cross-sector & government/First Nations-led mechanisms needs further consideration, but the need for independent First Nations-led justice body to provide oversight is clear.
- **Establish Interim First Nations-Led Justice Body and processes for considering ongoing mechanisms** (2.1, 2.2)
- **Establish three First Nations justice roles within ACT Govt** with 'real power to make decisions and not just tick a box' (Community participant) (2.3.a)
 - o Assistant Commissioner ACT Corrective Services
 - o Deputy Director General (JACS)
 - o Assistant Commissioner (Police)

One of the reasons why the ACT does so poorly, where it could do so well, is that there is no overarching mechanism for scrutiny or accountability or driving the agenda ... Government has benefited from that lack of overarching scrutiny (Courts and Tribunals)

I do think there is a need to think about how we resource the community to participate in these pieces of work and discussions and not expecting that it can be done for a minimal fee or for free a lot of the time (Government agency)

3. SYSTEMIC RACISM AND CULTURAL SAFETY

- These issues are significant drivers in and out of criminal legal system, evidenced by over-representation
- Some lack of understanding and openness to confront these issues.
- First Nations experiences of racism/cultural safety - generally poorly responded to, including defensively
- **Independent systemic racism reviews** across relevant Directorates (3.2)
- First Nations input at all stages and from across the community (design, implementation, and monitoring and evaluation (oversight)).

When they first come into contact with the system at you know, 14 to 15, they'll get a harsher result. They'll get three months in Bimberi. Whereas a White kid who's attending school and whose parents went up at the court case and paid for a lawyer might get a different outcome

(Statutory Authority/Public Body)

[W]e talk about cultural integrity, cultural capability, cultural responsiveness, whatever it is, but we don't talk about systemic racism (Govt agency)

[P]erception [of racism] is king. And if the perception is X, that's what you have to deal with. It's no answer to perception to say, 'Well we don't believe that we do this'
(Courts/Tribunals)

4. EDUCATION

Kept on getting suspended ... Go to school, first recess they'll send me home (Bimberi young person)

*All this stuff that happens within the education system, with our kids, they're set up to fail. And then they get expelled. Where is the duty of care?'
(Sisters in Spirit Community Dialogue)*

*[At Muliyian they are] attending 80, 90%, but prior to that they weren't attending. That's when they've gotten into strife and ended up in Murrumbidgee. So, you can see that positive connection and engagement is definitely a mitigation factor
(Gov Agency)*

- Education can contribute to over-representation. Issues include disproportionate rates of exclusion, reduced attendance/disengagement, lack of cultural safety/racism
- Education can help reduce over-representation as early intervention/prevention space).
- Positive approaches already in place in some areas (e.g. Muliyian/Murrumbidgee schools)
- Solutions sit in part with community: e.g. via **establishment of a First Nations-led Advisory body** for input/oversight (4.11)
- System reforms include **targeted (increased) resourcing** for things that work well (cost-effective) and **cross-Directorate coordination** (policy development) (4.8-4.10)

5. CHILD PROTECTION

- Over-representation at all stages of the child protection and OOHC (Out-of-Home Care) systems is high and increasing
- Key issues raised by stakeholders:
 - More needs to be done to support sustainable reunification
 - Barriers for First Nations people becoming authorised carers
 - Importance of First Nations-led models of care – not just transition of authority

I don't actually believe that that help is best placed coming from the child protection system, because people don't want to engage that that system and are more likely to refuse support... if it's coming out of a system that they're scared of (First Nations Organisation)

The system is just so rigid in its view that the best thing for a child is to be in a stable placement. And once you place them there and they're stable, you them, [but] that's not true for our kids, if they haven't learned that over history. It's not true for our kids that you remove them and put them in a stable place and then they're set for life (First Nations Organisation)

5. CHILD PROTECTION – CARE CRIMINALISATION

*I don't actually believe that that help is best placed coming from the child protection system, because people don't want to engage that that system and are more likely to refuse support... if it's coming out of a system that they're scared of
(First Nations Organisation)*

*The pipeline from child protection to youth justice is probably the numbers of Aboriginal young people who end up in residential care and once they're in residential care the higher level of scrutiny... [and] the kind of reporting things as criminal matters or getting police and justice system involved where if you're in a family context [...] you wouldn't necessarily end up in the justice system
(Statutory Authority/ Public Body)*

- Care criminalization (McFarlane, 2018) refers to the processes of criminalization that occur within the OOHC system and that criminalise children by virtue of being in (residential) care (Corrales et al., 2025)
- Linked to:
 - Over-reliance on police + policies within OOHC that perpetuate over-reliance
 - Lack of coordination between statutory services
 - Lack of support for dual-system impacted children
- No data in the ACT that examines the prevalence of dual-system contact specifically for First Nations children
- Stakeholders raised concerns about the increasing rate of First Nations children in residential care and the increased risk of police contact

5. CHILD PROTECTION – STRATEGIES & RECOMMENDATIONS

- Child protection policies and practices have a direct impact on criminalisation and over-representation, from the point of removal
- Our recommendations focus on strengthening the ACCO sector to provide prevention and early intervention services/ support to avoid child protection intervention
- Where intervention is needed, First Nations-led models of child protection can better support children to remain with family and within community

6. YOUTH JUSTICE – KEY ISSUES

- Important reforms in the ACT including:
 - Raising the minimum age of criminal responsibility
 - Introduction of Therapeutic Support Panels
 - Introduction of Intensive Adolescent Support Services
 - Introduction of 'active efforts principle'
- However, none of these are targeted specifically at First Nations children
- Over-representation of First Nations children in youth justice is worsening

6. YOUTH JUSTICE

...if we did some intensive case management work we might be able to actually stop [these children and young people] from going back into Bimberi (Government Agency)

And what happens between the time they are 10 to 14 years old is they've already been getting into trouble... and they then are almost hardened by the time they're 14 (years old). And it's then just a waiting game until they're 18 (years old) and they're out of the youth system into the adult system
(First Nations Organisation)

We got to make sure our youth are being supported through our families... for me, early intervention is with youth and if we can break one or two cycles...the stats may alter in our favour
(First Nations Organisation)

- Lack of appropriately funded diversion options for First Nations children (including prevention and early intervention)
- High rates of First Nations children on remand
- Absence of culturally appropriate services/ programs for children at Bimberi

6. YOUTH JUSTICE – STRATEGIES & RECOMMENDATIONS

- Need for ongoing funding for community diversion programs that are culturally appropriate and can work holistically with children and families
- Clear and transparent processes within ACT Policing to review all decisions that when diversion is not utilized.
- Development, design and implementation of a youth justice model for First Nations children – needs to occur via First Nations-led governance bodies discussed earlier

7. POLICING

- ACT Policing responses to the Ombudsman's Own Motion Investigation into engagement with Aboriginal and Torres Strait Islander communities acknowledges the need for improved engagement
- Main issues identified in our interviews coalesce around the role of systemic racism and perceived lack of accountability/ transparency in ACT Policing
- Community members particularly noted ongoing issues with:
 - Use of excessive force
 - Targeting/harassment
 - Complaint mechanisms

It's about racism. It's a small jurisdiction and once you're on the radar you can't get off it. And so when you've got a police force that basically isn't accountable to [the ACT] government because it's the Feds... I think that's a fundamental problem which is not easily fixed (Statutory Authority/ Public Body).

7. POLICING

In the ACT, that mentality of just lock them up is what we're seeing.

There's also not been a lot of opportunities for the police to really engage with the community here in ACT, to have a better understanding as to why that is, or to find out what systems they have in place, what are their protocols and practices in regards to approaching and arresting Aboriginal and Torres Strait Islander people in the ACT. But based on conversations I've had with the community a lot of people feel that it's racial profiling. That's playing a major part (First Nations Organisation)

- Lack of appropriate/sufficient cultural knowledge within ACT Policing
- Lack of 'trauma-informed' practice models
- Absence of transparent or accessible mechanisms for police accountability

7. POLICING – STRATEGIES & RECOMMENDATIONS

- Our recommendations center on addressing issues around police accountability in the ACT
- Establishment of an independent oversight body that can not just investigate complaints but compel action and/or impose sanctions
- Improving community perceptions of ACT Policing requires a change in culture
 - Introduction of expanded First Nations Liaison Officer and mandatory cultural awareness training are positive but not sufficient steps
- ACT Policing should be a priority area for a systemic racism

8. BAIL

Current approaches are not working to address the disproportionate effect of bail laws on Aboriginal and Torres Strait Islander adults, children and young people.

Key recommendations:

- Improved data collection on bail (eg bail outcomes, conditions, breaches etc.) – by age, gender and Indigenous status.
- Bail reforms to: *require* the consideration of any issues around First Nations status, disability, mental health, other health conditions when determining bail (Rec 8.2); expand bail court to include Sundays (8.2); and review current presumptions against bail and its impacts on First Nations people (and consider abolishing) (8.3).
- Expanding the Ngurrambai Bail Support Program for children/young people (8.4)
- Improved access to both First Nations *and* mainstream bail support services for First Nations adults and children/young people (eg wraparound, early intervention) (8.5). (Per Standing Committee on Justice and Community Safety (2024) Inquiry into the administration of bail, recs 9-13).

There's no bail support program for young people which just blows my mind (Courts and Tribunals)

Many of our clients who are imprisoned on remand are experiencing homelessness, living with disability and/or experiencing mental health challenges, and are remanded because they are under-serviced by the human services system, and inadequately supported to meet bail conditions (ALS Written Submission)

9. COURTS & SENTENCING

Current approaches are not working to address/reduce disparities in the number of First Nations people remanded in custody and use of imprisonment sentences.

Key issues raised:

- Access, identification processes, community engagement, pleading guilty, supports/services, cultural connection, legal representation.

Key recommendations:

- Improved data collection and publication to identify (and reduce) sentencing disparities (incl. sentencing data for offences by outcomes and Indigenous status) (Recs 9.1, 9.2).
- Properly fund/resource Galambany bail court and Ngurrumbai Bail Support Program (9.3).
- A *permanent* Supreme Court Circle Sentencing List, following a review of current issues and potential improvements (9.4).
- *Require* courts to consider the unique systemic/background factors of First Nations defendants at sentencing (9.5).
- Review of the Drug and Alcohol Sentencing List to identify and address barriers to access and successful completion by First Nations people (9.6).
- Improve Aboriginal women's access to Family Violence Orders (9.7).
- Other sentencing, diversion and procedural reforms to increase diversion and the use of community-based alternatives to imprisonment or reduce length of imprisonment (9.8).

Galambany is better for us because it [does] not force you into treatment but opens the doors for you. Rather than magistrates court, they just go, 'Yep. Done. Done. Done. Get out' (Yeddung Mura Community Dialogue, Male)

We've got to get the administration to understand what we really need which is people who can reach out to the community who can connect people in the community with the services and try and bring the services in more (Courts and Tribunals)

10. IMPRISONMENT & THE AMC

Key issues raised:

- Systemic racism, lack cultural safety and accountability, mixing of remand and sentenced detainees, absence of a structured day and purposeful activities, lack of First Nations specific, culturally appropriate and trauma informed programs/services, particularly for women.

Key recommendations:

- Racism, accountability and deaths in custody: systemic racism review of AMC (Rec 10.2); identified Aboriginal and Torres Strait Islander position in the Office of the Inspector of Custodial Services (OICS) (10.3); cultural support plans for all First nations people in custody (remand and sentenced) (10.6); AMC Cultural Safety Action Plan (10.7); expedite coronial investigations into deaths in custody; preliminary assessments of recent deaths by OICS; Independent Inquiry with particular attention to systemic issues (10.12).
- Programs and services: introduce a structured day in AMC and increase funding for improved programs, training and education, including work and First Nations specific cultural programs (10.1, 10.4, 10.5, 10.8); develop a First Nations model of care for the AMC (Winnunga X ACT Health) (10.9); introduce suitable cultural, therapeutic and training programs and activities, and flexible accommodation options for First Nations women in AMC (10.10); establish a civil law clinic in AMC (ACT Legal Aid X ALS NSW/ACT X Mulleun Mura) (10.11).

*You're lucky to get a job here
(AMC Mens Group)*

*There're gaols in New South
that aren't human rights that
are run better than the one
here. There're no human rights
here
(AMC Mens Group)*

*You can get on drugs more in
AMC than you will outside
(AMC Mens Group)*

*In NSW you line up and you get
counted off. Here... [COs]
will accept someone shaking
their leg to show that they
are alive
(AMC Staff Female)*

*They can put you in segro for
the night if they're disliking
you
(AMC Womens Group)*

*Officers are picking and
choose who to make examples
out of it and it's always us
Black ones
(AMC Womens Group)*

11. PAROLE, REINTEGRATION, SUPERVISION & SUPPORT

Current approaches are failing to address First Nations imprisonment rates due to the lack of self-determined holistic wraparound approaches and increased and varied practical supports in community.

Key issues raised:

- Access to and engagement with parole; cross border issues; lack of flexibility/discretion for conditions, lack of adequate/appropriate legal, holistic, wraparound supports.

Key recommendations:

- Improved data: community supervision orders/breaches – by Indigenous status, type of order, outcome of breaches (Rec 11.1); and parole data – by status, gender, success of applications, warnings, revocations, completions (11.2). This data should inform policy reforms to reduce return to prison/community corrections and improve access to and successful completion of parole.
- Concurrent sentencing in ACT/NSW (11.3); at least 2 more identified CO positions; urinalysis testing at external reporting sites (11.5); greater flexibility and continuity of support for intensive corrections and parole orders (11.6); improved access to culturally appropriate, holistic, wraparound supports/services incl. legal, housing, health, mental health, disability, AOD, DFV, employment and education, mentoring etc. (and prioritising ACCOs) (11.4, 11.7).

[I-Can program] they come and visit me... I've built a relationship with them before I get out. So that way I feel comfortable talking to them when I get out. Feel comfortable calling them up saying 'I'm having a bad day'... (AMC Mens Group)

We can go to a refuge, but we can't take our kids. So what? Do we got to give our kids up to get out? No, that's not happening (AMC Womens Group)

There's a young girl here, now she's always in and out. If she had her own stable place I know personally for a fact... she would be out of the system (AMC Womens Group)

[There's nothing for] girls that need houses on release for parole... [Yeddung Mura] give the males' houses and don't give us women with children houses... Where's us women to come out to a house? That's most of our problem (AMC Womens Group)