

CRITICAL CONDITION

The impact of Covid-19 policies,
policing and prisons on First Nations
communities



**CHANGE
THE RECORD**

Smarter Justice. Safer Communities.

About Us

Change the Record is Australia's only national Aboriginal led justice coalition of Aboriginal peak bodies and non-Indigenous allies. We work to end the incarceration of, and family violence against, Aboriginal and Torres Strait Islander people.

Everything we do is strength-based, culturally focused and grounded in Aboriginal and Torres Strait Islander self-determination and rights.

We are lead by Aboriginal Chair Cheryl Axleby, the Blak Caucus and a Steering Committee of Aboriginal and non-Indigenous expert organisations.



ANTaR: ANTaR listens to and supports the aspirations of Australia's First Peoples and works to educate the wider community, shape public opinion, speak up against injustice, and influence public policy to advance our vision of justice, rights and respect for Aboriginal and Torres Strait Islander people

Amnesty International: Amnesty International is a global movement of over 7 million people committed to defending those who are denied justice or freedom

ACOSS: The Australian Council of Social Service is the peak body of the community services and welfare sector and the national voice for the needs of people affected by poverty and inequality. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life.

Federation of Community Legal Centres (Vic): The Federation of Community Legal Centres is the peak body for Victorian community legal centres and leads the Smart Justice coalition, a coalition of organisations working to promote a safer community through criminal justice policies that reduce crime, are based on evidence, and comply with human rights.

First Peoples Disability Network Australia: First Peoples Disability Network (Australia) ('FPDN') is a national organisation established by and for Aboriginal and Torres Strait Islander people, families and communities with lived experience of disability. With a Board of Directors entirely comprising First Peoples with disability, we are guided by the lived experience of disability in determining our priorities and our way of doing business.

Human Rights Law Centre: the Human Rights Law Centre is dedicated to promoting and protecting human rights in Australia and beyond. We do this through a strategic combination of evidence-based advocacy, research, litigation and education.

Law Council of Australia: the Law Council of Australia represents more than 60,000 Australian legal professionals through its constituent member bar associations, law societies and the Large Law Firm Group, on national issues, and promotes the administration of justice, access to justice and general improvement of the law. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

National Aboriginal Community Controlled Health Organisations: NACCHO is the national peak body representing over 150 Aboriginal Community Controlled Health Services (ACCHSs) across the country on Aboriginal health and wellbeing issues. It has a history stretching back to 1974.

National Aboriginal and Torres Strait Islander Legal Services: Aboriginal and Torres Strait Islander Legal Services (ATSILS) are the leading legal service provider for Aboriginal and Torres Strait Islanders and have been in operation for over forty years. Together the ATSILS provide over 200, 000 legal assistances annually in the areas of criminal, family and civil law in addition to undertaking community legal education, prisoner through-care and law reform and advocacy activities. NATSILS is the peak.

National Association of Community Legal Centres: the National Association of Community Legal Centres (NACLC) is the peak national body for Community Legal Centres (CLCs) in Australia. NACLC members are the state and territory peak bodies of Community Legal Centres.

National Congress of Australia's First Peoples: National Congress of Australia's First Peoples (Congress) is a national voice for Aboriginal and Torres Strait Islander Peoples. Congress is owned and controlled by its membership and is independent of Government. We aim to be leaders and advocates for recognising our status and rights as First Nations Peoples in Australia.

National Family Violence Prevention and Legal Services Forum: Family Violence Prevention Legal Services (FVPLSs) provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults, primarily women and children who are victims/survivors of family violence, including sexual assault/abuse. The National Family Violence Prevention and Legal Services Forum (NFVPLS) was established in 2012, with FVPLSs coming together to collaborate on issues affecting service delivery. The goal of the NFVPLS is to work in collaboration and increase access to justice for victims/survivors of family violence.

Oxfam Australia: Oxfam is a world-wide development organisation that mobilises the power of people against poverty. Oxfam provides people with the skills and resources to help them create their own solutions to poverty.

Reconciliation Australia is the lead body for reconciliation in Australia. Reconciliation Australia works to build relationship, respect and trust between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians.

SNAICC - National Voice for Our Children: In existence for over 30 years, the Secretariat of National Aboriginal and Islander Child Care - SNAICC - is the national non-government peak body representing the interests of Aboriginal and Torres Strait Islander children and families.

Victorian Commissioner for Aboriginal Children and Young People: The Commission for Children and Young People is an independent Victorian Government organisation committed to Improving Young Lives, whilst making sure all Victorian children are safe, well and heard

Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission

This report has been compiled by Change the Record Executive Officer Sophie Trevitt and reflects the invaluable work, contributions and evidence provided by our member organisations who work every day for and with First Nations communities.

Covid-19 and First Nations people

Covid-19 is affecting people from all walks of life, all around the world. Certain groups of people are most at risk to the worst health impacts of Covid-19 - people with chronic illnesses, respiratory conditions, the elderly, people who smoke and people with disabilities or compromised immune systems. Due to the ongoing impacts of colonisation, poverty and inequality; Aboriginal and Torres Strait Islander peoples have poorer health outcomes than Australia's non-Indigenous population.

As well as being particularly at risk of the worst health impacts of the virus itself, Aboriginal and Torres Strait Islander peoples are also disproportionately affected by some of the more punitive and restrictive Covid-19 policy responses at a state, territory and Commonwealth level.

It is these measures that this report seeks to address.

It has been the subject of many dozens of reports, inquiries and commissions that Aboriginal and Torres Strait Islander peoples have been - and continue to be - disproportionately and adversely impacted by government policies and programs. This has taken the form both of explicit government initiatives which target Aboriginal and Torres Strait Islander communities - such as the NT Intervention or the cashless welfare card - as well as decision-making which in effect targets Aboriginal and Torres Strait Islander peoples such over-policing of particular communities or criminal laws which target people experiencing homelessness or spending time in public areas.

As with the bushfire crisis, many of these decisions cross state, territory and Commonwealth lines of responsibility. As such, we have not attempted to delineate jurisdictional responsibility in this report. This report aims to provide a national overview of the Critical Condition of First Nations communities during Covid-19. It contains the observations, testimonials and evidence collected by our member organisations who work on the frontline across the health, legal and community sectors, and every day navigate the impacts of Covid-19 policies on Aboriginal and Torres Strait Islander communities.



Prisons and Youth Detention Centres

Places of detention are hot spots for the transmission of Covid-19. Like cruise ships or nursing homes, correctional facilities and youth detention centres are closed, crowded environments where large numbers of people touch the same surfaces, share facilities and cannot socially distance from one another. This is not contentious. The CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia endorsed by the National Cabinet states:

“Correctional and detention facilities are likely to be at increased risk of significant transmission and infection with COVID-19.” [1]

Correctional facilities are particularly risky environments because staff, security, medical and legal personnel enter and exit the facilities every day - taking any sources of infection in and out of the facilities and potentially sharing them with the enclosed prison population.

The COVID-19 pandemic presents an opportunity to rethink detention and sentencing policies generally, and to fully realise the vision of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) regarding what best practice oversight and transparency of places of detention should look like. Australia ratified OPCAT in December 2017, and Federal, State and Territory Governments should urgently designate and/or establish National Preventive Mechanisms, to oversee the conditions of detention and treatment of people in places of detention. Governments must engage with Aboriginal and Torres Strait Islander organisations in a transparent, inclusive and robust manner during this process.

As has been Australia's shame for many decades, Aboriginal and Torres Strait Islander peoples are grossly overrepresented in both the adult and youth criminal justice systems.

Due to the ongoing trauma of colonisation, poverty, dispossession and discriminatory laws and policies, Aboriginal and Torres Strait Islander peoples also have significantly poorer health than non-Indigenous Australians and significantly shorter life expectancies. This means we are facing a situation where many of the people who are statistically most vulnerable to the worst impacts of Covid-19 are trapped in some of the most high risk environments.

[1] CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia <<https://www.health.gov.au/sites/default/files/documents/2020/03/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>>

A public health response

The public health response to Covid-19 in Australia, and around the world, has primarily focused on the one preventative strategy we have available to us - social distancing. This has resulted in public health orders that required members of the public to work from home where possible, restricted gatherings in private and public spaces and required social distancing.

These precautionary, risk minimisation strategies are not available in prisons and youth detention centres because conditions are often overcrowded, people in prisons and youth detention centres use shared facilities, there is a high turnover of people entering and exiting on a daily basis (potentially bringing in and taking out Covid-19) and hygiene is often poor.

A public health response to Covid-19 would involve the release of low-risk and high vulnerability prisoners from prisons and youth detention centres to keep people safe both in prisons and in our community.

Recommendation 1: Release Aboriginal and Torres Strait Islander prisoners who are low-risk, have chronic health conditions, are on remand, are elderly, children or are for whatever reason at increased risk of Covid-19

We note that this measure is not unprecedented. Many countries around the world have released prisoners who have less than 6 months less to serve, are on remand, elderly or have chronic illness.[2]

We acknowledge the leadership shown by some states such as NSW and the ACT in passing legislation that would enable the early release of prisoners should emergency conditions arise, however as far as we are aware no steps have been taken to utilise these measures and release prisoners from correctional facilities. Rather, the burden has fallen to Aboriginal Legal Services, Community Legal Centres and Legal Aid Commissions to make bail and parole applications to try and reduce the risk of Covid-19 to their clients.

It is Change the Record's position that governments have a responsibility to take a proactive, preventative approach to this health crisis rather than relying on the efforts of under-resourced and overburdened legal centres and courts to try to mitigate the risks to individuals on a case by case basis.

[2] Thalia Anthony, 'Why releasing some prisoners is essential to stop the spread of Coronavirus' The Conversation (online) March 18 2020 <<https://theconversation.com/why-releasing-some-prisoners-is-essential-to-stop-the-spread-of-coronavirus-133516>>

Case Study - Chantelle Baker

Chantelle Baker is an Aboriginal woman who was granted bail after consideration was given to her particular vulnerability to the effects of Covid-19, should there be an outbreak in the prison. Ms Baker, like many incarcerated Aboriginal people, has a number of chronic illnesses including diabetes, PTSD, is recovering from an addiction and has damage to her lungs due to pneumonia.

Sarah Crellin, principal solicitor at the Aboriginal Legal Service, told the ABC "we already know that the medical care that Justice Health is able to provide is limited, we already know that Aboriginal people continue to die in custody as a result of inadequate medical care [and] we also know that Aboriginal people are more likely to suffer from those illnesses that put them at risk of COVID-19. The consequences of Covid-19 entering a prison would be extremely dire."^[3]

Change the Record is particularly concerned that as restrictions ease around the country; state, territory and Commonwealth governments will ignore or underestimate the ongoing health risks posed to Aboriginal and Torres Strait Islander peoples in places of detention, and the broader community. Our member organisations have reported heightened concerns that as restrictions lift and more people return to work and mix within the community, the risk of new hot spots emerging and Covid-19 being transmitted into the prison environment is greatly increased.



[3] Meghna Bali, 'Coronavirus was the reason Chantelle walked out of prison on bail' ABC (online) 3 May 2020
<https://www.abc.net.au/news/2020-05-03/coronavirus-was-a-reason-chantelle-walked-out-of-prison-on-bail/12206296>

Human Rights and Oversight

The risk to Aboriginal and Torres Strait Islander people in correctional facilities is posed not just by the Covid-19 virus itself, but also by the policies enacted in these institutions in response to the threat of transmitting Covid-19. Change the Record, through its member organisations, has heard reports of:

- Increased use of lock downs and separation / isolation within correctional facilities;
- Forced quarantine of incoming prisoners, including of children and young people;
- Reduced access to programs
- Reduced access to education
- Reduced access to family
- Reduced access to family and legal visits

NATSILS - Tasmania

An Aboriginal man, Daniel, has been remanded in prison in Tasmania since early 2020. It is his first time in custody. His matter is heard by telephone in April but he is refused bail. His lawyer sought an adjournment of his matter because they were unable to prepare a defence without being able to see him, properly take his instructions or go through the material with him.

Daniel is not allowed any visits with his family or his lawyer because of Covid-19 restrictions. He reports feeling lost in the legal proceedings because he cannot have a decent chat with his lawyer about the matters and get advice. He also has health issues, asthma and has extreme anxiety about the virus getting into the prison.

Daniel has been unable to access his solicitor or his family and had to spend his own money to make a phone call and connect with a solicitor. Despite his anxiety about Covid-19, he reports having no access to any type of sanitiser in prison and was frequently without soap

Daniel has signed up for every program but has been unable to complete them because nothing is running due to Covid-19.

Change the Record has received numerous reports from member organisations about the patchy response to the provision of hygiene and sanitation equipment in prisons across the states and territories. Most correctional facilities do not provide hand sanitiser because of its alcohol content - making the provision of soap even more important. NATSILS reports that some prisons are providing adequate soap to people in prison, but in others people are being forced to spend their own money to buy soap

Aboriginal legal services around the country have reported that inconsistent provision of information about Covid-19 is creating fear and uncertainty in some facilities. We are aware that some prisons have been using 'preventative lock-downs' for up to 14 days in response to the threat of Covid-19 and have been providing people with inconsistent access to telephones, audio-visual equipment and in some states and territories the mail service has also been restricted.

Change the Record is extremely concerned about reports of prisons requiring prisoners to pay exorbitant fees to call family and other loved ones. This contributes to the anxiety already experienced by both prisoners and their families during Covid-19. We have also heard reports of for-profit services which appear to have sprung up during the Covid-19 crisis allowing people to 'email a prisoner' at high costs.

It has been difficult for Change the Record to get up to date information about the conditions in adult and youth correction facilities due to restrictions on legal and family visits and the withdrawal of independent oversight bodies and external scrutiny in many states and territories. For example, the Western Australian Office of the Inspector of Custodial Services are undertaking inspections on a remote basis via daily reports, phone briefings and monitoring [4]. the NSW Inspector of Custodial Services has temporarily postponed their scheduled visits and inspections' [5] and the ACT Inspector of Custodial Services has also suspended visits.[6]

Recommendation 2: Protect the human rights, health, wellbeing and lives of Aboriginal and Torres Strait Islander peoples in prison by ensuring access to oversight and monitoring agencies, family, legal services, mental health care, education and programs

Access to Justice

Across all types of legal issues, access to justice has emerged as a key issue for Aboriginal and Torres Strait Islander people during Covid-19. Change the Record has received reports of remandees being unable to access adequate legal advice, victim-survivors of family violence unable to access appropriate police protection and support and matters before courts being delayed. In some jurisdictions jury trials have been suspended.

[4] Our response to COVID-19 (20/04/20) - https://www.oics.wa.gov.au/about-oics/our-response-to-covid-19/?oing_wp_cron=1587878076.0483300685882568359375&fbclid=IwAR15_7LEInbkXlitKMRmSTY-Z9FKDASf8gVW_6SsQRnXKdH9_HC2HhBAuqM

[5] Inspector of Custodial Services COVID-19 plan

http://www.custodialinspector.justice.nsw.gov.au/Documents/Inspector_of_Custodial_Services_COVID-19_plan.pdf?fbclid=IwAR3jXw8sPijffhDGO4aOEYnCsEPeOT7CIer5r1eAt-E5Xnb5I8BWtmXgMOM

[6] COVID-19 (30/04/20) - <https://www.ics.act.gov.au/latest-news/articles/covid-19>

NATSILS - Tasmania

Daniel is being held in remand in Tasmania. He has a hearing in court on Tuesday. The Friday before his hearing, Daniel's defence lawyer is provided with body worn footage, police statements and interviews by the prosecution. Daniel's lawyer is in court on Friday and so is only able to speak to Daniel on Monday. Because of Covid-19 restrictions, he is unable to see him in person and is only able to speak to him over the phone. The phone is in a yard with other people and so Daniel is denied the confidential legal appointment that he is entitled to.

Daniel's lawyers cannot see him in person, nor can they get the paperwork to him to look at because all paperwork entering the prison has to be quarantined for 3 days. They are unable to access any audiovisual equipment and so Daniel's lawyer cannot show him any of the footage. The telephone call cuts out at one point and Daniel's lawyer was told that he would have to wait to speak to Daniel again because another legal call had to be put through to another inmate.

It appears there was only one phone for people on remand to access.

On Tuesday, Daniel's lawyers were forced to apply for an adjournment because they were unable to prepare a defence due to the aforementioned circumstances. The adjournment was granted but Daniel was denied bail and remained in prison on remand.

Daniel's story is not an anomaly. Restrictions on legal visits, limited access to telephone and audio visual equipment, a failure to provide the facilities required for adequate, confidential legal meetings meant that Daniel's matter was unable to be resolved in court on the day it was listed for and Daniel is spending more time in prison on remand. Adequate, and private, telecommunication is critical to the provision of adequate legal advice and representation. Aboriginal legal services around the country have also reported that lawyers and prison through care officers have not been given access to people in prison to provide support, and audio visual equipment has not always been provided. This means that not only are people in prison being denied adequate legal services, but in some instances other care and programs that operate within the prison have been suspended without adequate replacement.

Criminal, civil and family courts have similarly been experiencing disruptions during Covid-19 that have resulted in Aboriginal and Torres Strait Islander peoples having their matters delayed - sometimes for months - and unclear and inconsistent information being provided about what legal options are available to them.

NATSILS is concerned that a large number of matters, particularly those listed for bush and regional courts which are not sitting during this time, have been deferred. They are anticipating an abrupt spike in caseload when courts reopen on top of the existing case load. Without additional funding and resourcing this is going to put even more pressure on already stretched Aboriginal legal services.

Change the Record has also received reports of significant access to justice issues experienced by Aboriginal and Torres Strait Islander women who are attempting to secure DVOs and other protective legal interventions to reduce the risk of family violence.

NFVPLS - Northern Territory

One Aboriginal legal service in Alice Springs providing specialist family and domestic violence support has described the impacts of Covid-19 restrictions on their ability to deliver client support services. Zoe is an Aboriginal woman living in Alice Springs. She suffered domestic violence perpetrated by her ex-partner over a number of years. After the parties separated, Zoe's ex-partner continued to verbally abuse her and threatened to kill her. As a result, Zoe obtained a DVO - however it has now expired. Zoe continues to be fearful of her ex-partner, particularly when he is drinking alcohol. He is currently incarcerated by Zoe is frightened about what might happen when he is released from custody if she doesn't have a DVO in place. Zoe does not have a car and there is limited public transport in Alice Springs. Due to COVID-19 restrictions, lawyers were unable to provide client support services, namely attend Zoe's house to pick Zoe up and bring her to the office to complete/sign the appropriate paperwork for a DVO.

Change the Record's member organisations have also reported a lack of clear information about what their clients are expected to do with respect to their ongoing legal matters during Covid-19. There has been a lack of information about what court services are still available and what legal interventions are possible.

NFVPLS - National

Family violence legal services have reported inconsistent approaches of different courts to the safety of Aboriginal and Torres Strait Islander clients and their children. For example, it has been unclear in some jurisdictions whether clients are expected and required to attend court. One family violence service reported that a number of clients had been seeking to withdraw restraining orders, not understanding that you can actually vary an order. Some of the reasoning is that "this is a terrible time and we all need to pull together."

This lack of clear information presents a very real safety risk to Aboriginal and Torres Strait Islander women and children who are responding to the threat of family violence.

Securing adequate ongoing funding for specialist, culturally appropriate and trauma-informed legal services for Aboriginal and Torres Strait Islander people has been a challenge for many years. The Covid-19 crisis has highlighted the vital need that exists in the community for these services, particularly when coping with the many flow-on effects of a health crisis such as Covid-19.

NATSILS welcomes the National Cabinet's funding announcement of \$63.3 million for the legal assistance sector but it is imperative that state and territory governments prioritise allocating these resources towards the already stretched Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services. With increased public funding and resourcing our services will be able to respond to meet the increased legal needs of Aboriginal and Torres Strait Islander people during and after the pandemic. Additional funding for ATSILS and FVPLS will help with the impact of policing, and the closure and delay of courts during the COVID-19 pandemic as well as responding to domestic and family violence, child protection, social distancing infringements, and Covid-19 related industrial relations, employment and social security issues. As the pandemic has demonstrated, the systems put in place to govern our lives can be quickly changed for our collective good if we centre the health and wellbeing of our people and make decisions accordingly. We ask our governments to work in partnership with us to keep our people safe now and into the future.

Children and Young People

Children and young people are widely considered at a lower risk of Covid-19 than older people, but that does not mean that youth detention centres are safe places for them - particularly not for Aboriginal and Torres Strait Islander youth.

Human Rights Watch has called for the release of children in youth detention facilities around the world and heralded concerns that young people are being left behind in Covid-19 responses and remain at high risk in youth detention facilities.[7] Youth detention centres, much like adult correctional facilities, are often overcrowded, unhygienic and lack the space for social distancing. In overseas examples, as many as 46% of children in affected facilities have contracted Covid-19.[8]

Aboriginal and Torres Strait Islander children in Australian youth detention centres have high rates of chronic illness, respiratory conditions and disability - all which make them particularly susceptible to the worst effects of Covid-19.

[7] Human Rights Watch, 'Detained Children Left Out of Covid-19 Response' (online)

<<https://www.hrw.org/news/2020/05/14/detained-children-left-out-covid-19-response>>

[8] John Fuddy, 'Franklin County prosecutor objects to some of youths released amid COVID-19 outbreak at juvenile lockup' The Columbus Dispatch (online) May 6 2020 <<https://www.dispatch.com/news/20200506/franklin-county-prosecutor-objects-to-some-of-youths-released-amid-covid-19-outbreak-at-juvenile-lockup>>

Further, the vast majority of children and young people in youth detention are on remand - they have not been convicted of criminal offences [9] and have been charged with non-violent offences. These are all appropriate candidates for early release.

The measures proposed by state and territory governments to respond to potential outbreaks of Covid-19 within youth detention centres also pose significant risk to the mental health and wellbeing of detained youth and children.

For example, emergency legislation passed in Victoria will allow for children to be isolated (i.e. that is the placing of the child in a locked room) for the purposes of detecting Covid-19, mitigating against its transmission or “whether or not the person isolated is suspected of having, or has been diagnosed as having, COVID-19 or any other infectious disease” for no more than 14 consecutive days. [10] Isolating a child for any amount of time can have harmful and long term impacts on their mental health. [11]

Emergency powers such as those passed in Victoria undermine safeguards in place to prevent the separation and isolation of children precisely because of the potential harm they cause. The damaging effects of isolation / separation, lack of access to family, cultural programs and education have all been extensively researched and well documented - including in the most recent Royal Commission into the Detention and Protection of Children and Young People in the Northern Territory.[12] These are the exact circumstances that threaten to affect young people in detention during Covid-19.

Recommendation 3: Raise the age of criminal responsibility from 10 to at least 14 years old and urgently release children and young people from youth detention centres as a public health response to Covid-19.

Challenges in delivering legal services

Due to a lack of proactive, prevention-focused government leadership when addressing the threat Covid-19 poses to prisons, youth detention centres and other places of detention; Aboriginal Legal Services, Legal Aid, Community Legal Centres and the courts have borne the burden of responding to the Covid-19 crisis. Aboriginal and Torres Strait Islander legal services, and community legal centres around the country, have reported substantial challenges in delivering legal services to their Aboriginal and Torres Strait Islander clients during the Covid-19 crisis.

[9] Australian Institute of Health and Welfare, 'Youth Detention Population in Australia 2018' Bulletin 145 (December 2018)

<<https://www.aihw.gov.au/getmedia/55f8ff82-9091-420d-a75e-37799af96943/aihw-juv-128-youth-detention-population-in-Australia-2018-bulletin-145-dec-2018.pdf.aspx?inline=true>>

[10] S 600M COVID-19 Omnibus (Emergency Measures) Bill 2020 (Vic)

[11] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, Volume 1 p 16 <<https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-final-report-volume-1.pdf>>

[12] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, Volume 1 p 16 <<https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-final-report-volume-1.pdf>>

Some have reported increased workloads trying to respond to the immediate risks presented by Covid-19 within custodial settings and have been applying for bail and assisting with parole hearings in light of the vulnerability of incarcerated clients. Others are concerned about a spike in legal demand as soon as Covid-19 restrictions are lifted and deferred matters are listed for hearings when courts once again become fully operational. Despite these different experiences, what is clear, is that no legal service has been unaffected by the Covid-19 crisis.

Community Legal Centres - National

Community Legal Centres Australia represents 179 community legal centres around the country who deliver critical civil, criminal and family law services to our community. Many CLCs did not have the technological capacity to maintain the same level of service delivery throughout the Covid-19 crisis. Additional resources had to be procured so that services could transition away from a face to face model of client delivery and towards remote working arrangements. CLCs have experienced a 31.1% increase in demand for telephone services when comparing demand in March 2019 to March 2020. In remote and regional areas CLCs have faced huge challenges as many clients do not have regular access to phone or internet.

Community Legal Centres Australia, like Change the Record's other member organisations, are concerned about a second spike in legal demand when restrictions are lifted and clients are able to resume face to face legal appointments or more easily access telephone and internet in town centres.

Community Legal Services Australia have identified that government response measures to COVID-19 (such as restrictions, isolation, packages to minimise the impact on the economy, public health tracking) have secondary impacts on both people trying to access community legal services and the community legal services themselves; these measures also create waves of future legal need, and demand for community legal services, for example:

- Changes to Courts, proceedings and other referral pathways to Centres
- Changes to the way that clients can access services, compounding inequity within most vulnerable communities
- Increases in the volume of clients, and type of need, i.e. the legal issues or problems
- Additional barriers presented by social distancing and isolation measures where vulnerable groups face further barriers in accessing services – including family violence victims
- Changes to authorities and powers in ensuring compliance.

A key component of delivering culturally appropriate and trauma-informed family violence legal services to Aboriginal and Torres Strait Islander people is being flexible and able to meet clients' needs in a variety of circumstances. Often this means being able to travel to clients if they do not have access to a vehicle or a telephone, having face to face meetings so that proper welfare checks can be carried out and providing information and options in a safe and confidential environment. All of this has been disrupted by Covid-19.

NFVPLS - National

Family violence legal services have faced a raft of challenges delivering legal services during Covid-19 including having to deliver counselling services on clients' front lawns because of Covid-19 restrictions, safety concerns around contacting clients via telephone when they are at home and potentially with perpetrators of family violence, a lack of informal face to face contact where welfare checks can be conducted and injuries are visible etc. and an overall increase in stress and anxiety for entire families due to fears around Covid-19 and a lack of affordable food and essential supplies in many remote communities who would typically go into town centres to do grocery shopping.



Family and Domestic Violence

International evidence demonstrates that disaster situations increase family violence, [13] and Aboriginal and Torres Strait Islander people - particularly women and their children - are disproportionately affected in crises such as Covid-19. Systemic disadvantage has increased the barriers faced by Aboriginal and Torres Strait Islander people experiencing or at risk of family violence who are seeking assistance during Covid-19, and family violence prevention services around the country have reported concerns that women are not getting access to the legal and emergency support they need.

Further, chronic underfunding of vital support services has meant that already stretched frontline service providers have been struggling to reach clients they know are in need of support. Chronic housing shortages have left Aboriginal women and children without safe and secure accommodation putting them at immediate risk, and impacting on prospects of reunification with children and babies in out of home care. The National Family Violence Prevention and Legal Services Forum represents thirteen member organisations nationally which deliver culturally appropriate, specialist legal and non-legal services to victim/survivors of family and domestic violence and sexual assault. 90% of clients are Aboriginal or Torres Strait Islander women and their children. The Forum has provided Change the Record with invaluable information about the impacts of Covid-19 policies on women and children experiencing violence.

Access to safety

Access to justice and to safety has long been an issue for Aboriginal and Torres Strait Islander women seeking protection and assistance. These historic and ongoing barriers have been exacerbated by disruptions caused by Covid-19. For example, the Forum has reported - as have domestic and family violence services around the country - that contact with service providers has declined, despite evidence that incidence of domestic and family violence are increasing. Many Aboriginal clients do not have mobile phone access or sufficient money or data to make calls to services. Remote communities are further disadvantaged by the technology gap which has reception 'black spots' and limited internet leaving some communities relying only on public phones to reach vital support services. Public phones are of limited utility because of the lack of privacy and safety they provide.

[13] Debra Parkinson, Claire Zara, 'The hidden disaster: domestic violence in the aftermath of natural disaster' The Australia Institute for Disaster Resilience <<https://knowledge.aidr.org.au/resources/ajem-apr-2013-the-hidden-disaster-domestic-violence-in-the-aftermath-of-natural-disaster/>>

In some places, Covid-19 measures have also diverted resources away from preventing and responding to family violence. For example, Change the Record has been concerned by reports of women seeking help from local police and women's shelters who have been denied assistance due to staffing shortages.

NFVPLS - Northern Territory

Regina is an Aboriginal woman living in a remote community in the Northern Territory. Regina was recently assaulted by her partner and sought assistance from the Aboriginal family violence legal service. Lawyers sought to assist Regina to access the Women's Safety House. The Women's Safety House in this community is run by the police so lawyers contacted police to request Regina's admission. Police advised that they were unable to assist as their resources were required on border and checkpoint patrols.

Recommendation 4: Connect Aboriginal and Torres Strait Islander peoples who experience family violence, and who are engaged with the child protection system, with culturally appropriate services through their nearest Family Violence Prevention Legal Service.

Safe housing

As with persistent issues of limited access to justice; the lack of adequate safe and secure accommodation for Aboriginal and Torres Strait Islander peoples has only been exacerbated by the Covid-19 crisis.

Family violence prevention services have reported that closures of residential drug and alcohol facilities have resulted in people being sent home and no new referrals being accepted. This has left some victim/survivors without alternative and safe living arrangements.

Similarly, for women who have experienced domestic and family violence who are incarcerated, the closure of drug and alcohol treatment centres has impacted on the prospects of women being granted bail, or if they are, their ability to access somewhere safe and supported to live and access supports.

NFVPLS - Queensland

Chantal is the mother of two children who are currently on a Care Agreement and are living with Kin. Chantal voluntarily went to rehab to seek treatment for an addiction. Due to Covid-19 the residential rehab facility closed and left Chantal without anywhere to live.

Legal services assisted Chantal to secure temporary accommodation at a motel nearby to her children's Kin carers so she could continue to have access. Due to chronic rental shortages in regional Queensland, and Chantal's limited income of Centrelink payments, Chantal is struggling to find long term housing.

The Department has informally advised Chantal that they may apply for an Order to remove the children until she secures ongoing accommodation. Chantal's child protection concerns have not been adequately addressed as she has been unable to complete her rehabilitation (due to the early Covid-19 closure) and she has not been able to secure ongoing accommodation. These factors are standing in the way of reunification occurring.

Recommendation 5: Increase support and access to safe accommodation for Aboriginal and Torres Strait Islander families fleeing family violence to stop further removals of Aboriginal and Torres Strait Islander children

Children, Out Of Home Care and Reunification

Aboriginal and Torres Strait Islander children are taken away from their parents and families at far higher rates than non-Indigenous kids. This is often due to circumstances such as overcrowding, poverty, inadequate housing and other factors arising from trauma and inequality. One of the most painful consequences of policy responses to Covid-19 that have seen essential services shut down, is that Aboriginal and Torres Strait Islander parents who have children in out of home care have had access to their children restricted. This is causing distress and anxiety in a time of heightened stress for everyone.

Service closures

Regular, supported access to kids in out of home care is crucial to the wellbeing of both children and parents. This is important for all kids, but particularly where Aboriginal and Torres Strait Islander children rely on contact with their parents to have connection with their culture and country. There are often conditions placed on having visits with children in out of home care - such as a parent undertaking drug and alcohol screenings before being able to have access to their children. Due to Covid-19 these services have been interrupted, and in some cases entirely closed, making it extremely difficult for parents to fulfill these conditions.

The impact of service closures is wide reaching. For example, one family violence service described the difficulties encountered by one client who was regularly undertaking drug and alcohol urine screenings as part of the conditions associated with her having visitation access to her children. Due to Covid-19 a number of pathology centres in her local area were closed. This woman had to drive to three different pathology centres before she was able to obtain a urine screen so she could see her kids.

NATSILS - Tasmania

In Tasmania, one Aboriginal legal service reports that Child Safety will not facilitate face to face contact with children in out of home care and their Aboriginal parent. Julia had been having multiple face to face visits with her child every week. Due to Covid-19 Julia's contact with her daughter has been reduced to one phone/video call a week.

Legal services in Tasmania report that this is a particular issue for young people who are unable to speak on the phone. When children cannot engage in this mode of communication, for some parents contact with their children has stopped all together. Anecdotally lawyers report that this impact is worse for children in departmental placements compared to kinship placements and long-term placements where parents have a good relationship with the carer and can contact them directly.

Frontline legal services and their clients are reporting serious concerns about the possible long term impacts of Covid-19 restrictions on families' reunification plans. They hold serious concerns that clear answers are not being provided to affected families in a timely manner. Parents with children in out of home care are extremely worried about what the consequences of being unable to maintain face to face contact with their children may have on their future prospects of reunification.

NATSILS - Tasmania

Claire is an Aboriginal mother living in Tasmania. Her child is currently living in out-of-care. There is a reunification plan in place for Claire and her child to be reunified within 6 months (in approximately October/November this year). A key step in that plan was an increase to overnight time. Due to Covid-19, Claire has been denied all face to face visits with her child and contact has been reduced to one phone call a week. Claire's lawyers have sought clarification from Child Services as to the reasons for these restrictions and potential long term impacts they may have on the reunification plan. Claire has been told that her situation is "under review" but she does not know what that means.

Recommendation 6: Implement immediate short-term changes in legislation where applicable in each State and Territory in relation to Aboriginal and Torres Strait Islander children in out of home care to ensure parents don't lose their children to permanent care during Covid-19.

Child Removals

The NFVPLS are extremely concerned about the impact of Covid-19 on Aboriginal parents who have children in out-of-home care. They are calling for short-term changes in legislation to ensure more Aboriginal parents don't lose their children to permanent care, and for the establishment of a child protection notification scheme. Concerns have been expressed by a number of family violence and women's legal services around the country about the removal of newborn babies immediately after birth. This is both traumatic for the mother, and means the newborn baby cannot be breastfed.

NFVLPS - Northern Territory

When Benjamin was born in February of this year, he was removed immediately. Due to Covid-19 restrictions contact with Benjamin and accessing information from FaCS has been even more difficult than usual. Benjamin's mother sought legal assistance due to her inability to get any information from FaCS about Benjamin on when the matter was due to be filed. Lawyers were told by FaCS that an update had not been forthcoming due to the responsible case worker being unwell. They were forced to make a formal request for a photograph of Benjamin to provide a picture to his mother.

Recommendation 7: Enact a national Aboriginal and Torres Strait Islander child protection notification and referral scheme to reduce family violence driven child removal through proactive, culturally safe and holistic legal assistance.

Travel restrictions and border closure

A number of Aboriginal and Torres Strait Islander parents have been separated from their children due to border closures and travel restrictions. This has affected families with children in out of home care as well as those who are in shared parenting arrangements or informal caring arrangements with extended family members.

NVFPLS - Northern Territory

June recently separated from her partner. She returned to Alice Springs from an interstate remote community, leaving her young child with her ex-partner's family. June has not seen her son since the COVID-19 border restrictions have been in place. June contacted the specialist Aboriginal family legal service to assist with contact with her child. They were able to assist June to negotiate with her ex-partner to enable regular telephone contact until border restrictions are eased.

Policing of Public Health Regulations

Covid-19 restrictions on public gatherings, and restrictions on use of and movement within public spaces, has been an important part of the public health response to Covid-19. However, these restrictions do not affect everyone equally - and certainly the experience of Aboriginal and Torres Strait Islander peoples, as born out by the evidence below, is that the burden of policing and punishment for breaching these guidelines has also not been experienced equally across our communities.

The over policing of certain groups of people who use public spaces is a well known and well evidenced phenomenon. Offences such as public nuisance, public drunkenness, fare evasion, failure to comply with move on orders all disproportionately impact certain groups of people who have greater contact with public areas - including Aboriginal and Torres Strait Islander people, people who are experiencing homelessness, people with disabilities and children and young people. Frequently this also correlates with socio-economic disadvantage, housing insecurity and overcrowding which results in Aboriginal and Torres Strait Islander peoples spending more time in public places and as a result being exposed to higher levels of policing surveillance and criminalisation than those who have the option of living their lives in private.

This has been seen particularly acutely in Northern Territory community Tennant Creek. According to media releases published by the Northern Territory Police, in the Northern Territory 9042 compliance checks have been completed and 48 fines issued. [14] Of those 48 fines, 15 were issued in Tennant Creek - a town of approximately 3000 people with approximately 50% of the population identifying as Aboriginal or Torres Strait Islander.

Amnesty - Northern Territory

One complaint made to Amnesty alleges a group of officers, thought to be both police and military, attended a property in Tennant Creek. Officers entered the house and made residents stand for a headcount. A separate complainant said a group of authorities showed up to her home to see who was there, before police entered and poured out the residents' alcohol.

The presence of military personnel in the Northern Territory purportedly in response to Covid-19 is a source of great concern for First Nations communities and organisations living and working there. The ABC reported that military personnel were stationed at bottle shops in Tennant Creek with no warning or explanation, and according to at least one local store owner were engaged in targeting Aboriginal patrons. [15]

[14] Northern Territory Police Media Room, 'Media Release - Covid19 Compliance Activity' (17 May 2020) <<https://pfes.nt.gov.au/newsroom/2020/covid-19-compliance-activity-2>>

[15] Samantha Jonscher and Stewart Brash, 'NT Police says Defence Force presence at bottle shop a 'mistake' ABC (online) 21 April 2020 <<https://www.abc.net.au/news/2020-04-21/police-say-defence-force-presence-at-bottle-shop-a-mistake/12168892>>

It has also been well documented that Aboriginal and Torres Strait Islander people are the target of disproportionate police attention and apprehension. Website covidpolicing.org.au which involves two of Change the Record's member organisations Amnesty and NATSILS, collates stories from the public about their interactions with police for Covid-19 related infringements. The following story highlights the impact of discriminatory policing on First Nations people.

CovidPolicing.org.au

"Two police vehicles were coming in the opposite direction. The second vehicle stopped to talk to an Aboriginal man who was walking slightly ahead of me in the same direction. I stopped in case he needed help or a witness. He was agitated and told the police he'd already been stopped twice in the preceding 10 minutes and that he was on his way to the Glebe police station to lodge a complaint about racial profiling. He had been stopped 37 times in the past month. He had lived in the area for more than 30 years."

There have been other instances documented where high numbers of fines have been issued in small towns with high Indigenous populations and low levels of Covid-19. For example, Osman Faruqi reported that in the town of Coonamble, NSW (in which one in three residents are Indigenous) 10% of infringements of the state's entire number of infringements have been issued despite Coonamble only having 0.04% of the state's population.[16]

Policing, overcrowding and housing

All states and territories have at various points implemented restrictions on the number of people who are allowed to gather in a residence.[17]

However, due to inadequate affordable housing - and a failure for governments to respond to long-standing requests for more funding for affordable and social housing - it is impossible for many people to comply with these directions. For Aboriginal and Torres Strait Islander people living in overcrowded conditions, or living with large family or kinship groups, the public health restrictions on gathering numbers risks criminalising people for what is essentially a housing issue - not a law and order one.

[16] Osman Faruqi, 'Compliance Fines under the Microscope' The Saturday Paper (online), 18 April 2020

<<https://www.thesaturdaypaper.com.au/news/health/2020/04/18/compliance-fines-under-the-microscope/15871320009710>>

[17] UTS Jumbunna Institute for Indigenous Education and Research, 'Clarifying Covid-19 Restrictions for Australia's First Peoples' 20 May 2020 <<https://jumbunna.institute/2020/05/20/clarifying-covid-19-restrictions-for-australias-first-peoples/>>

Amnesty - Northern Territory

Aboriginal and Torres Strait Islander residents in Tennant Creek have reported that police have attended houses known to them as overcrowded, and used Covid-19 regulations to order people to disperse. When household members failed to disperse, because they had nowhere else to go, they were issued fines.

Rodney Dillon, Amnesty International Indigenous Advisor said that this was “one of the only times in my career that I have had families too scared to speak up. I think it’s one of the first times I’ve seen people scared that if they complain they will face repercussions.”

Amnesty has also received reports that members of the community have been abandoning their houses and hiding from police because they are scared of being issued with fines for breaching gathering rules as a result of living in overcrowded housing or staying with family.

Police targeting of Aboriginal and Torres Strait Islander peoples, and people experiencing homelessness, has been reported in numerous inquiries, submissions and reports. What Change the Record’s member organisations have found during Covid-19 is that this conduct has persisted, but has been exacerbated by the new police powers to enforce the public health measures. For example, Amnesty was advised of the below situation in Perth.

Amnesty - Western Australia

A number of Noongar people had gathered together in a public place in Perth. They were all homeless and had nowhere to spend the night. Police approached the group and issued 15 minute ‘move on’ orders citing Covid-19 public health regulations. Despite explanations that they had nowhere to go, police issued members of the group with fines as a result of their failure to comply with a police direction.

Policing and travel restrictions

The policing of travel restrictions and travel bans has also had a disproportionate impact on some Aboriginal communities - particularly those in remote or regional areas. There have been numerous reports of price gouging in small community stores, food insecurity, increased pressure on already overcrowded houses and limited health care available to those who were shut off from major towns or regional centres when restrictions were put in place.

Amnesty, Northern Territory

First Nations communities in the Central Desert region report that they have been given conflicting messages from government agencies. On the one hand, Aboriginal and Torres Strait Islander people were encouraged to return to homelands and to self-isolate in order to decrease the risk of Covid-19 transmission. At the same time, community members reported being told to physically attend their Community Development Programme training (equivalent of 'Job Seeker') in order to receive Centrelink. This would often require travelling over 100km and then staying with family and friends in town in order to complete the training. In turn, this attracted the attention of police who were monitoring travel restrictions and restrictions on gatherings in private dwellings.

Change the Record has been advised by Aboriginal legal services from the Northern Territory, South Australia and Western Australia that there are significant concerns about the issuing of fines and over policing in border towns. Aboriginal and Torres Strait Islander people regularly cross borders between Alice Springs and Adelaide, for example, to get warm clothes and supplies during winter and to see family. During Covid-19 when travel bans and border restrictions have been in place, border town communities have been reporting higher levels of police presence, policing of borders and issuing of penalties. This is despite practical measures not always being put in place to ensure communities have access to the supplies they normally cross over the borders to obtain.

Recommendation 8: Resist punitive policy responses to Covid-19 and the over-policing of already targeted communities, and require transparency and oversight in policing - the issuing of fines, warnings and other penalties should be made publicly available alongside details of whether the infringement was issued against an Aboriginal or Torres Strait Islander person.

Disproportionate impact of fines

In many jurisdictions breaching a public health order is a criminal offence and may attract a fine of thousands of dollars. For example, in NSW, a fine of up to \$11,000 can be issued with further fines if the offence continues. In Queensland a person can be fined over \$13,000.

These are large fines, but they are particularly punitive when applied to Aboriginal and Torres Strait Islander peoples who may have limited means to pay. As demonstrated above, Aboriginal and Torres Strait Islander people disproportionately attract police attention largely because of socioeconomic factors which may mean they spend more time in public spaces, have insecure or no housing, or are living in overcrowded conditions. Issuing fines against people in these circumstances who have no ability to pay just further entrenches poverty, inequality and disadvantage.

It is worth noting that the punitive effect of fines does not stop there. People who default on fines and are unable to pay then risk being subjected to further fine enforcement measures, the establishment of a debt with interest, cancelled drivers licences, confiscation and sale of property, and imprisonment in some jurisdictions



Recommendations

We urgently call on state, territory and federal governments to:

1. Release Aboriginal and Torres Strait Islander prisoners who are low-risk, have chronic health conditions, are on remand, are elderly, children or are for whatever reason at increased risk of Covid-19
2. Protect the human rights of Aboriginal and Torres Strait Islander peoples in prison by ensuring access to oversight and monitoring agencies, family, legal services, mental health care, education and programs
3. Raise the age of criminal responsibility from 10 to at least 14 years old and urgently release children and young people from youth detention centres during Covid-19
4. Enact a national Aboriginal and Torres Strait Islander child protection notification and referral scheme to reduce family violence driven child removal through proactive, culturally safe and holistic legal assistance.
5. Connect Aboriginal and Torres Strait Islander peoples who experience family violence, and who are engaged with the child protection system, with culturally appropriate services through their nearest Family Violence Prevention Legal Service.
6. Increase support and access to safe accommodation for Aboriginal and Torres Strait Islander families fleeing family violence to stop further removals of Aboriginal and Torres Strait Islander children
7. Implement immediate short-term changes in legislation, where applicable, in relation to Aboriginal and Torres Strait Islander children in out of home care to ensure parents don't lose their children to permanent care during Covid-19.
8. Resist punitive policy responses to Covid-19 and the over-policing of already targeted communities, and require transparency and oversight in policing;
9. Ensure that Aboriginal and Torres Strait Islander peoples, including those with disability, are given equal access to high quality and culturally-appropriate health care during Covid-19; and
10. Rebuild our justice system after Covid-19 to focus on investing in community, not prisons, to increase community safety and prevent black deaths in custody.



Smarter Justice. Safer Communities.

For media inquiries please contact
Sophie Trevitt
0431 843 095
sophie@changetherecord.org.au