



Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:

Select Committee on Measuring Outcomes for First Nations Communities

February 2025

INTRODUCTION

The Tasmanian Aboriginal Legal Service (“TALS”) is an Aboriginal and Torres Strait Islander Legal Service (ATSILS) that specialises in criminal, civil and family law matters for Tasmanian Aboriginal peoples. TALS also assists our clients, with a range of complex issues, via our Aboriginal Liaison Officers and Aboriginal Wellbeing Officers. TALS is an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations (ICN 9283),

As an advocate for true justice, dignity and respect for all Tasmanian Aboriginal peoples, TALS welcomes the opportunity to make a submission to the *Senate Select Committee on Measuring Outcomes for First Nations Communities* regarding the regression of *Closing the Gap* targets. In this submission, any reference to Aboriginal peoples is understood to encompass Torres Strait Islander peoples.

TALS is committed to *Closing the Gap* and improving the life outcomes of Aboriginal peoples. Specifically, TALS set a strong, courageous challenge to drive our work over the next ten (10) years: *to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade*. Additionally, TALS strategic goals aim to not only provide an innovative, professional legal service, but to empower Aboriginal communities.¹

This submission aims to provide insight and drive discussion regarding the regression of *Closing the Gap* targets and the subsequent repercussions for the Aboriginal community.

¹ Tasmanian Aboriginal Legal Service, *Strategic Plan* (25 February 2025).

CLOSING THE GAP

Established in 2008, The *Closing the Gap Agreement* is an initiative aimed at addressing significant disparities in health, life expectancy, education and socio-economic outcomes between Aboriginal and Torres Strait Islander peoples and the wider Australian community. The *Closing the Gap* initiative recognises the required structural change in the way governments work with Aboriginal and Torres Strait Islander peoples and is underpinned by the participation and partnership from Aboriginal and Torres Strait Islander peoples, and their representative bodies, to determine, drive and own their desired outcomes alongside the Australian Government.²

The *Closing the Gap Agreement* has set nineteen (19) targets across areas that have socio-economic impacts on the lives of Aboriginal peoples.³ However, this submission will focus on the four (4) target areas that the *Senate Select Committee on Measuring Outcomes for First Nations Communities* will be reviewing and reporting on. The four (4) target areas are in relation to:

- Suicide rates in First Nations communities.
- The number of children in out-of-home care.
- Adult incarceration rates.
- The number of children commencing school and not developmentally on track.

Suicide rates in First Nations communities

Aboriginal peoples continue to experience higher rates of death by suicide. Whilst there is a lack of Tasmania-centric data, the most recent national figures inform that:

- First Nations males experienced 2.6 times more suicide deaths than non-indigenous males.
- First Nations female experienced 2.5 times more suicide deaths than non-indigenous.
- First Nations peoples experience significantly higher suicide rates across all age brackets up to the age of 65.
- From birth 0 to 44 years old, First Nations peoples are 3.1 times more likely of death by suicide than non-indigenous.⁴

Reducing deaths by suicide among First Nations peoples is a major concern for First Nations communities and one that should be a public health priority for all levels of Government. The first step however is to acknowledge the underlying factors that contribute to the higher suicide rates experienced by First Nations peoples.

It is well evidenced that First Nations peoples remain the most disadvantaged community in Australia and are a significantly higher risk of experiencing a range of issues such as unsupported mental health, lack of access to health treatment, living in a low socio-economic locations or living with substance use.⁵ *The Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention* has attributed the higher

² Australian Human Rights Commission, *Close the Gap: Indigenous Health Campaign* (17 March 2022).

³ Closing the Gap, *Closing the Gap Targets and Outcomes* (25 February 2025).

⁴ Australian Government – Australian Institute of Health and Welfare, *Deaths by suicide among First Nations people* (3 February 2025).

⁵ Parliament of Australia, *Chapter 13 – Indigenous Australians* (accessed 1 February 2025).

suicide rates experienced by First Nations peoples to one or more of these social health issues, in addition to the deep-rooted impacts of colonisation and intergeneration trauma.⁶ The lack of access to support services, particularly in remote areas, further exacerbates poor mental health, and results in increased substance use, poorer physical health, and ultimately, higher rates of death by suicide.⁷

Moving forward, *The Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention* recommends that ‘suicide prevention strategies must be culturally informed and focus on social and emotional wellbeing, encompassing mind, body, community and Country’ to address the crisis. It is also recommended that Aboriginal and Torres Strait Islander communities be empowered to lead their own mental health initiatives to both respect self-determination and mitigate additional barriers faced.⁸

Aboriginal community members have stated that whilst culturally safe and appropriate mental health services can lead to better outcomes, it is acknowledged that clinically skilled care must compliment traditional knowledge and cultural responses to have the most positive outcomes.⁹ This further highlights the importance of facilitating better access to such support services, particularly in remote areas where transport limitations, language barriers, or simply lack of service availability continue to present as significant contributors to poor outcomes.¹⁰

The number of children in out-of-home care

In 2023, the number of Aboriginal and Torres Strait Islander children in out-of-home care peaked at nearly 23,000, which represented 41% of all children in out-of-home care at that time.¹¹ In fact, Aboriginal children are still 10.5 times more likely to be in out-of-home care than non-indigenous.¹² This is highest rate of over-representation, in relation to out-of-home care, on record in Australia.¹³

The *Secretariat of National Aboriginal and Islander Child Care* (‘SNAICC’) report that Aboriginal controlled organisations around the country continue to develop strategies for meaningful change, however lack of government commitment to systemic change has seen a regression of *Closing the Gap* targets in relation to Aboriginal and Torres Strait Islander children in out-of-home care.¹⁴

To effectively respond to the needs of Aboriginal and Torres Strait Islander children, and appropriately grasp the scale of change required, SNAICC proposed a series of recommendations for government action:

1. Increased availability of targeted prevention, intervention and support services.
2. Aboriginal and Torres Strait Islander peoples participation and control over decisions that affect their children.

⁶ The University of Western Australia, *Alarming rise in Aboriginal and Torres Strait Islander suicide rates* (11 October 2024).

⁷ Ibid.

⁸ Ibid.

⁹ Australian Government – Australian Institute of Health and Welfare, *Protective and risk factors for suicide among Indigenous Australians* (2022).

¹⁰ Ibid.

¹¹ Secretariat of National Aboriginal and Islander Child Care, *Family Matters* (25 February 2025).

¹² Remeikis, A., *Out-of-home care for Indigenous children to be all Aboriginal controlled*, *The Guardian* (25 September 2024).

¹³ Secretariat of National Aboriginal and Islander Child Care, *Family Matters Report 2023* (2023).

¹⁴ Ibid.

3. Laws, policies and practices being culturally safe and responsive, including cessation of Aboriginal and Torres Strait Islander children being adopted from out-of-home care, legislating that Aboriginal Community-Controlled Organisations (ACCO) approve care orders and increased investment in initiatives that improve practice, responsiveness and accountability.¹⁵

With regards to Tasmania-centric indicators, recommendations 2 and 3 are particularly relevant. Whilst having the lowest over-representation in out-of-home care and lowest Aboriginal entry to out-of-home care, the figures are still trending backwards with Aboriginal children are over-represented in Tasmanian out-of-home care at 5.2 times (an increase of 0.2) the rate of non-indigenous.¹⁶ It is also said by SNAICC that there are gaps and limitations in the data collected by the *Department for Education, Children and Young People* ('DECYP') which creates reliability issues.¹⁷ This in itself is unacceptable moving forward.

There are system concerns with regards to government organisation engagement with ACCO's in Tasmania. There are currently unmet commitments to employ Aboriginal Family Group Conference Facilitators, with ACCO's only being engaged on an ad hoc basis regarding child protection decisions.¹⁸ Additionally, Tasmania has the lowest rate of placement with Aboriginal kin (12%) and the third lowest reunification rate for Aboriginal children and their families (4.3%).¹⁹

These figures are concerning and work against the *Aboriginal and Torres Strait Islander Child Placement Principle*, which aims to keep children connected to community and culture.²⁰ This principle includes both preventative and reunification strategies to ensure culturally connected placements and community consultation in decision making.²¹ Ultimately, this principle was established to not only recognise the best interests of Aboriginal children and recognise the importance of safe kinship care, but also to ensure that the actions that resulted in Stolen Generations are not repeated.²²

In addition to working with communities, it is crucial that ongoing training for child safety, intervention and protection services is provided, and that meaningful application of these learnings is applied when working with Aboriginal children. This ensures that the *Aboriginal and Torres Strait Islander Child Placement Principles* are applied and that situations that are very traumatic for children, and their families, can be navigated with cultural sensitivity. This also builds resilience within Aboriginal and Torres Strait Islander children and promotes connection to culture and community.²³

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Secretariat of National Aboriginal and Islander Child Care, *Aboriginal and Torres Strait Islander Placement Principle* (25 February 2025).

²¹ Ibid.

²² Ibid.

²³ Secretariat of National Aboriginal and Islander Child Care, *Keeping our kids safe: Cultural Safety and the National Principles for Child Safe Organisations* (25 February 2025).

Adult incarceration rates

In discussing the most current incarceration rates, it is accepted that the Aboriginal and Torres Strait Islander community represent just over 3% percent of the total Australian population.²⁴

Aboriginal and Torres Strait Islander peoples undoubtedly continue to be grossly overrepresented in the adult prison system. The 2024 *Closing the Gap Annual Data Compilation Report* informs that not only do Aboriginal and Torres Strait Islander peoples continue to be overrepresented, but the rates of incarceration are worsening.²⁵ As of June 2024, 36% of Australian prison population identified as Aboriginal, with 78% having experienced prison within the preceding two years.²⁶ The recidivism rate is of particular concern as it not only contributes to continuous ‘churn’ through the justice system, but also indicates that there are inadequate provisions in place to facilitate rehabilitation and community reintegration.²⁷

Regarding the Tasmanian prison system, as of September 2024 24% the prison population identified as Aboriginal.²⁸ Alarming, 30% of Aboriginal peoples in custody at this time were unsentenced.²⁹ This follows a national trend where the 2023/24 financial year saw a 13% increase in unsentenced prisoners, despite an overall prison population increase of just 6%.³⁰

What these figures tells us is that despite Australia incarcerating a higher number of people, both Aboriginal and non-indigenous, we are still seeing a negligible shift in recidivism rates.³¹ These figures also fuels debate regarding the best way to manage people in contact with the justice system, as the prospect of incarceration does not act as a deterrent to repeated contact with the justice system and is not conducive to rehabilitation and community reintegration that facilitates better life outcomes.

Studies have identified several social determinants (or factors) that, if experienced, considerably increase a person’s likelihood of being incarcerated at some point of their life.³²

- 1 – Having lived in ‘out of home’ or foster care.
- 2 – Receiving an inadequate school education.
- 3 – Having unsupported mental health or cognitive issues.
- 4 – Experiencing homelessness/transience.
- 5 – Coming from, or living in, a low socio-economic or disadvantaged location.
- 6 – Living with substance dependency.

²⁴ Australian Bureau of Statistics, *Australia: Aboriginal and Torres Strait Islander population summary* (1 July 2022).

²⁵ Australian Government - Productivity Commission, *Closing the Gap Annual Data Compilation Report* (July 2024).

²⁶ Australian Bureau of Statistics, *Prisoners in Australia* (19 December 2024).

²⁷ Burton, T., *Repeat offenders account for half of prisons costs*, Financial Review (28 January 2022).

²⁸ Australian Bureau of Statistics, *Prisoners in Australia* (19 December 2024).

²⁹ Ibid.

³⁰ Ibid.

³¹ Australian Government – Productivity Commission, *Report on Government Services 2023* (31 January 2023).

³² University of New South Wales, *The social determinants of justice: 8 factors that increase your risk of imprisonment* (18 April 2023).

7 – Having contact with the justice system at a young age.

8 – Identify as Aboriginal or Torres Strait Islander

There are structural factors to consider, such as access to support or having a strong family dynamic, that can increase someone's ability to navigate these challenges successfully.³³ This is where the concept of equity is important, as it recognizes that certain people or groups require a different allocation of resources, responses and initiatives to overcome barriers to service delivery and facilitate access to the same opportunities in order to achieve *fairness*.³⁴

Unfortunately, the Aboriginal community remain the most socially and economically deprived in Australia and therefore are far more likely to experience one or more of the social determinants of incarceration.³⁵ This is a primary contributor to Aboriginal peoples being overrepresented in the prison system, as their circumstances, and lack of access to appropriate support, somewhat 'pre-determines' their life outcome.³⁶

The Australian Government acknowledges the issue of overrepresentation and flagged an intention to address this issue via the *Closing the Gap* initiative. However, to date, the data evidences a regression against addressing incarceration rates for adult Aboriginal peoples. There must be a true, meaningful commitment from all levels of government to collaborate with ACCO's to reverse this trend. This will enable a better understanding of how services can be developed to assist Aboriginal peoples and ensure effective distribution of resources.³⁷

Overrepresentation is largely driven by the abovementioned challenges faced by Aboriginal communities, which are exacerbated by inequitable access support services, education, legal assistance and justice. Ultimately, significant investment is required to address the underlying issues that are disproportionately experienced by Aboriginal peoples, and subsequently, contribute to offending behaviour and increased risk of incarceration.

The number of children commencing school and not developmentally on track

While the most recent data shows that Aboriginal preschool enrolments have increased by 2.7%³⁸, a considerable gap remained between Aboriginal and non-indigenous children when it came to those deemed 'developmentally vulnerable' and 'developmentally on track', in relation to five broad domains, as they progressed to full-time school.

42% of Aboriginal children were assessed as 'developmentally vulnerable' in one or more domains, compared with only 22% of non-indigenous children in the transition to full-time school.³⁹ With regards to

³³ Australian Government – Australian Law Reform Commission, *Social determinants of incarceration* (9 January 2018).

³⁴ Australian Human Rights Commission, *Let's talk about equality and equity* (accessed 31 January 2025).

³⁵ Parliament of Australia, *Chapter 13 – Indigenous Australians* (accessed 1 February 2025).

³⁶ Ibid.

³⁷ New South Wales Justice, *Reducing Aboriginal Overrepresentation in the Criminal Justice System 2018-2020* (25 February 2025).

³⁸ Australian Government – Australian Institute of Health and Welfare, *Early childhood and transition to school* (7 September 2023).

³⁹ Ibid.

those 'developmentally on track', Aboriginal children once again present as being worse off, with 34% deemed on track in all 5 domains, compared with 54% of non-indigenous children.⁴⁰

As children advance to full-time school, it is evident that there is a widening gap in attendance rates. From years 1 to 10, Aboriginal students maintain an attendance rate of 75%, compared to 87% for non-indigenous.⁴¹ Aboriginal student attendance rates also dropped to as low as 65% for secondary school, with even wider gaps in attendance between Aboriginal and non-indigenous children in remote areas.⁴² Lower school attendance is referenced as a main driver of poorer education outcomes, the development of social welfare issues and lesser employment prospects for Aboriginal peoples.⁴³

To improve attendance rates, and subsequently education outcomes for Aboriginal peoples, focus must be given to working with Aboriginal communities and mentors to improve retention, attainment and foster lifelong learning. This would include a collaborative development of culturally relevant curriculums and ensuring that schools, particularly in remote areas, are well resourced.⁴⁴

Experiences of racism and discrimination have also been found to have a significant impact on the school experiences of Aboriginal children. Programs such as *Speak Out Against Racism* (SOAR) have evidenced success in improving racial literacy amongst students and improving confidence and general wellbeing amongst Aboriginal students, thus improving attendance and achievement.⁴⁵ Additionally, ensuring that educators have the appropriate plans to integrate such programs, in addition to other Aboriginal-centric supports, into the existing curriculum will positively impact the learning experience for Aboriginal children.⁴⁶

⁴⁰ Australian Government – Australian Institute of Health and Welfare, *Education of First Nations people* (7 September 2023).

⁴¹ Ibid.

⁴² Ibid.

⁴³ Australian Government – Australian Institute of Health and Welfare – National Indigenous Australians Agency, *2.05 Education outcomes for young people* (2 July 2024).

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

CONCLUSION

Aboriginal and Torres Strait Islander peoples have long experienced disadvantage and suffered systemic discrimination. The *Closing the Gap* agreement saw the Australian Government acknowledge the inequity faced by Aboriginal peoples and demonstrated a commitment to work closely with Aboriginal communities and address ongoing disadvantage and poorer life outcomes.

TALS are supportive of the *Closing the Gap* initiative and are committed to playing their role meeting *Closing the Gap* targets and improving the life outcomes of all Aboriginal peoples. However, as an advocate for law reform, justice and equity for all Tasmanian Aboriginal peoples, it is disappointing to see that many of the *Closing the Gap* targets are regressing.

To reverse this trend, all levels of government must deliver on commitments, whether they be financial, social or structural and continue to engage with the Aboriginal community. TALS are supportive of the *Senate Select Committee on Measuring Outcomes for First Nations Communities* and review of *Closing the Gap* targets and maintain a position that these targets should hold all levels of government to account.

If you have any questions or would like to discuss anything in the contents of this report, please reach out to me directly.

Warmest regards,

A handwritten signature in black ink, appearing to be 'Jake Smith', written in a cursive style.

Jake Smith (He/Him)

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