



Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug policy

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Inquiry into Youth Mental Health in the ACT by the Standing Committee on Education, Employment and Use Affairs

Submission of Families and Friends for Drug Law Reform

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Inquiry into Youth Mental Health in the ACT

Inquiry into Youth Mental Health in the ACT by the Standing Committee on Education, Employment and Use Affairs

Submission of Families and Friends for Drug Law Reform

1. Families and Friends for Drug Law Reform appreciates the concern of the committee that has moved it to enquire into the state of youth mental health in the ACT and that its broad remit embraces the prevention and early intervention of mental health and addiction challenges and youth suicide prevention including those in the Aboriginal and Torres Strait Islander communities. In the time available we have not had the time to tailor a submission precisely to the committee's terms of reference but in the light of the intense attention we have given in the past year to the interaction between mental health, substance dependency, prison, in the context of COVID-19, to submissions to the Productivity Commission Inquiry into mental health and the scope for the adjustment of drug policy to facilitate the release of people from our overcrowded prison, we are attaching the following annexures. These form integral parts of this submission:

- A. Initial submission dated 12 April 2019 of Families and Friends for Drug Law Reform to the inquiry of the Australian Productivity Commission into the Social and Economic Benefits of Improving Mental Health
- B. Post draft submission dated 16 January 2020 to the inquiry of the Australian Productivity Commission into the Social and Economic Benefits of Improving Mental Health
- C. Submission dated 11 April 2016 of Families and Friends for Drug Law Reform to the inquiry into youth suicide and self harm in the ACT by the Health, Ageing, Community and Social Services Standing Committee.
- D. Paper dated 1 June 2020 calling for the initiation in the Australian Capital Territory of heroin assisted treatment to underpin the release of vulnerable prisoners, improve mental health and protect the ACT population from COVID-19

1. Interaction of mental health and drug policy

2. This is not the first time Assembly committees have considered the issues embraced by your terms of reference. Families and Friends have long pointed out the coincidence between poor mental health and illicit drugs, a coincidence that can be ameliorated by less stigmatising and less punitive drug policies that give primacy to a health approach. Such an approach can stabilise people struggling with addiction, providing an opportunity for them to take advantage of complementary psychosocial support to addresses notorious risk factors for ill health and crime.

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3. The high level of national concern about mental health is linked to:
 - the lingering threat of coronavirus;
 - the Black Dog Institute and Mission Australia youth mental health survey;
 - the current inquiry into mental health of the Productivity Commission, the final report of which is about to be released;
 - public consultations conducted by the National Mental Health Commission to help shape a 2030 vision for mental health and suicide prevention in Australia. Families and Friends participated in the sole ACT consultations held on 21 August 2019 at Forde;
 - the current Victorian Royal Commission the [terms of reference](#) of which include “how to best support those in the Victorian community who are living with both mental illness and problematic alcohol and drug use, including through evidence-based harm minimisation approaches;” and
 - the attention to Aboriginal deaths in custody and high indigenous incarceration rate linked to the international black lives matter movement.
4. Families and Friends cannot hide its frustration at the perverse resistance of authorities to connect the obvious and well documented dots that point to the potential for better drug policies to bring about a quantum improvement in mental health in Australia.
5. The work of the Productivity Commission in fulfilling [its commission](#) of the Commonwealth Treasurer to “undertake an inquiry into the role of improving mental health to support economic participation and enhancing productivity and economic growth.” In its detailed draft report is a thorough assembly of information on the drivers of mental ill-health and it accurately identified the absolute need to integrate psychosocial support with a stepped model of care varying in intensity from self-management estimated to encompassed 6.4 million people or 26% of the Australian population through five increasing levels of intensity to people requiring “complex care” who are estimated to number 350,000. It is this group of people with complex needs that are of most concern to Families and Friends because it is this group that is characterised by co-occurring substance dependency and other mental health problems. One cannot fault the Productivity Commission’s prescription that this complex group requires coordinated care of:
 - a range of health providers (GPs, psychiatrists, mental health nurses and adult allied health);
 - inpatient services;
 - psychosocial support;
 - a single care plan;
 - a care team; and
 - a care coordinator.

It’s the full Monty.

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6. Full Monty or not, the prescription will inevitably fail because at its core it recommends no more than better and greater coordination of services. As canvassed in our “post draft” submission (annexure B) this is exactly what a succession of mental health strategies going back to the mid-1990s had committed governments to implement and which has seen mental health become a bigger and bigger problem. Even though the concept of coordination is accepted, the commission itself admits “its implementation has proved challenging”. The Commission acknowledges that very many of those requiring complex care are embroiled in the criminal justice system whether in contact with the police, prosecution, subject to non-custodial penalties like fines and ultimately imprisonment. A high proportion of these people are indigenous Australians. As consumers of illicit drugs these people are criminals thus redoubling the stigma and discrimination of this population. The Productivity Commission identifies stigma and marginalisation “directed at both those people with mental illness and those who support them” as one of several key factors driving poor outcomes in Australia’s mental health system (PC overview 2019 p.6). In spite of this acknowledgement and in spite of the patent intensification of stigma and discrimination brought about by the criminalisation of their behaviour, the Productivity Commission panel made it clear to Families and Friends that it considers consideration of the reform of drug policy as beyond its terms of reference. From our point of view this is made all the more reprehensible by the acknowledgement made off the record to us that “the panel really understood what we were saying”.

7. The “challenge” acknowledged by the Commission is how to enfold people with the most complex needs into its stepped model of care. Imprisonment is about the worst possible place for people with mental health problems to be: treating mental health conditions in prison is akin to attempting to treat malaria in a swamp. Recent coronial enquires into deaths in custody of [Stephen Freeman](#) and Jonathan Hogan (NSW Coroner’s Court 6 May 2020) highlight this. It is just not possible for healing mental health services and support to be provided in a correctional environment.

8. To some extent the ACT Government response acknowledges the inherent impossibility of providing effective mental health care to people in prison. (Annexure D §§62-65). This acknowledgement is evident in the government’s embrace of the vacuous idea of “therapeutic jurisprudence” in terms of:

- an ACT drug court,
- detention under reduced security outside the prison perimeter of certain offenders,
- greater recourse to diversion programs,
- restorative justice; and
- justice reinvestment.

Harmful role of the criminal law

9. With the exception of the last two (restorative justice and justice reinvestment) all these measures seek to engage the criminal law as the gatekeeper and ultimate

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guarantor: it is the police who net the offender (who are known to be overwhelmingly highly disadvantaged vulnerable people) and the prosecutorial process that snaps in should the offender not comply with the mandatory regime prescribed by the drug court or the terms of parole or bail in the case of diversion. All those measures seek to engage the dynamic of compulsory treatment the benefits of which are at best marginal and in some cases counter-productive (Annexure D §§162-182) – certainly nothing to compare with the track record of respectful person centred care allied to proven pharmacotherapies (discussed below §§ 65-68).

Justice reinvestment

10. Is it credible that someone suffering from schizophrenia or a far more common mental health condition like anxiety accompanying a multitude of personal problems like poverty, homelessness and unemployment would get better by being ordered to do so on pain of separation from what is already probably tenuous family and community support? The answer is no. How is it any different if the person is also wrestling with substance dependency (itself a recognised mental health condition)? In short it is as futile to order someone to overcome their addiction as it is to demand that the person desist from a diet and lifestyle that will lead to a heart attack or life-threatening complication of diabetes such as the amputation of a leg. They would probably double down on their unhealthy lifestyle.

11. The benefits of justice reinvestment are self-evident: the redeployment of resources swallowed up by an ineffective and harmful set of law enforcement measures to address the underlying drivers of the offending behaviour. It works and is effective but only if it is grounded in a realistic assessment of those underlying drivers. It therefore beggars belief that the Minister responsible for all of Mental Health, Justice Health and Corrections should therefore publish in *The Canberra Times* of 5 June an article on the justice reinvestment that makes no reference to the two dominant characteristics of prison populations: co-occurring problems of mental health and substance dependency which the Productivity commission and the 2006 landmark Senate inquiry into health termed the expectation rather than the exception. This inexplicable silence by Mr Rattenbury about the relevance of mental health and substance dependency to justice reinvestment is also reflected in the failure to include among the 25 people he convened for a national forum in December 2018 to discuss the concept, anyone who could speak with knowledge and authority about either mental health or substance dependency. These co-occurring issues are brontosaurus in the room of any discussion about justice reinvestment. It was heartening therefore that the government's announcement on 3 June 2019 about the establishment of a Reintegration Centre outside the prison perimeter, albeit still subject to a coercive regime, should refer to "alcohol, tobacco and other drug rehabilitation" but, alas, not to mental health.

12. A key objective of Justice Reinvestment is to reduce reoffending. How credible then is the intention of the government in its commitment to the concept when it does not even consider a drug treatment that has been described as "one of the most effective measures ever tried in the area of crime prevention"? (Annexure D §113).

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2. Suicide

13. The Mission Australia/Black Dog Institute survey draws attention to the “greater risk” of intentional self-harm and suicide that mental health disorders put individuals. To drive the point home the survey mentions that suicide accounts for one third of all deaths among young people aged 15 – 24 years, making it the leading cause of death for this age cohort.” Families and Friends would add coincidence of substance dependency and other mental health issues increases the risk even further.

14. In 2016 Families and Friends brought these matters to the attention of the Standing Committee on Health, Ageing, Community and Social Services that was commissioned to enquire into Youth Suicide (Annexure C). One of our members whose opiate dependent daughter took her own life out of desperation at her inability to overcome her addiction was willing to give public evidence. The terms of reference required the committee to examine:

“ . . . the extent and impact in the ACT [of these findings of the Bureau of Statistics], having regard to:

(a) ACT Government and Commonwealth Government roles and responsibilities in regard to youth mental health and suicide prevention, particularly in relation to the recently announced Commonwealth response to the National Mental Health Commission Report and the mental health and suicide commissioning role for the Primary Healthcare Networks as it affects the ACT;

(b) any gaps or duplicate roles and responsibilities;

(c) whether there are unique factors contributing to youth suicide in the ACT, taking into account the small number of young people who have died by suicide in the ACT in recent years, and the impact public investigation may have on families and close friends, that can be identified through submissions and expert witnesses; and

(d) ACT government-funded services, agencies and institutions, including schools, youth centres, and specialist housing service providers’ role in promoting resilience and responding to mental health issues in children and young people; . . .

(http://www.parliament.act.gov.au/__data/assets/pdf_file/0010/828172/2016-03-04-Media-Release-call-Public-Submission-HACSS.pdf).

15. Our submission urged the Committee to:

“carefully consider the effect of criminalisation of drugs on the marginalisation of drug takers and how changes to drug policy would have a direct bearing on the suicide rate.

16. In transmitting its submission to the committee, Families and Friends wrote that “we would very much appreciate the opportunity of appearing before the committee in relation to [the submission]”. As it turned out on 9 June the committee

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tabled in the Assembly its report. The report contained only cursory reference to our submission. It paid no attention to the issues of substance raised in it.

17. On 16 June Ms Joy Birch, the committee's Labor Party chair wrote expressing the regret of the committee that it was "unable to facilitate a hearing for [us] to appear and to give evidence." The reasons conveyed by Ms Birch were curious: the committee declined to hear us "due to the nature of that submission and a limited time available to the committee for preparing the report into the enquiry."

18. The report and this response invited the conclusion that the committee did not want to consider the association between drug policy and suicide that our submission examined.

19. Given the continuing relevance of the issues raised in that 2016 submission we incorporate it into the present submission as Annexure C in the expectation that unlike its predecessor and the Productivity Commission the present committee will not dodge the issue.

20. The interest of Families and Friends in mental health and suicide prevention is founded upon several harsh realities that we urge the Committee to accept as a basis for its work:

- Co-occurring mental health and substance dependency, particularly on illicit drugs is the expectation rather than the exception (Senate 2006 Chapt .14).
- Substance dependencies are recognised mental health conditions under the International Classification of Diseases (ICD) of the World Health Organization and the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association.
- Anxiety, a prevalent mental health condition particularly among vulnerable young people, is a potent risk factor for becoming entangled in illicit drug dependency. For such people substance taking is a form of self-medication (Mattick & O'Brien 2018, pp.124 & 129).
- The criminalisation of drug use exposes drug users to the coercive, stressful processes of the criminal law that constitute recognised risk factors for mental illness or aggravation of existing mental health conditions.
- Risk factors for mental ill-health initiated or intensified by the stressful processes of the criminal law include: isolation from family and other support, deviant peer group school failure, job insecurity (Commonwealth Department of Health and Aged Care, 2000, tables 1 & 2, pp. 15-16, further discussed at Annexure A §§53-58).
- Australian prisons are crowded with some 80% of people with these co-occurring conditions propelling, courtesy of an even higher proportion of co-occurrence, the fast rising number of women ending up in prison (Butler & Allnutt (2003) the table 3, p. 14 & Indig et al., (2010a) p.107).
- Criminalisation of drug users intensifies the risk factors for both mental illness and substance abuse thus creating a feedback loop (Marel et al. 2016 p. 8).
- The criminalisation of drug users initiates and drives intergenerational disadvantage (Annexure A, paras, 123-125).

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- Someone with an opioid use disorder is 13 times more likely to attempt suicide than a member of the community at large, intravenous drug users are between 13 and 14 times more likely and mixed drug users (those we would referred to as polydrug users) an astounding 16 to 17 times more likely (Wilcox et al. 2004).

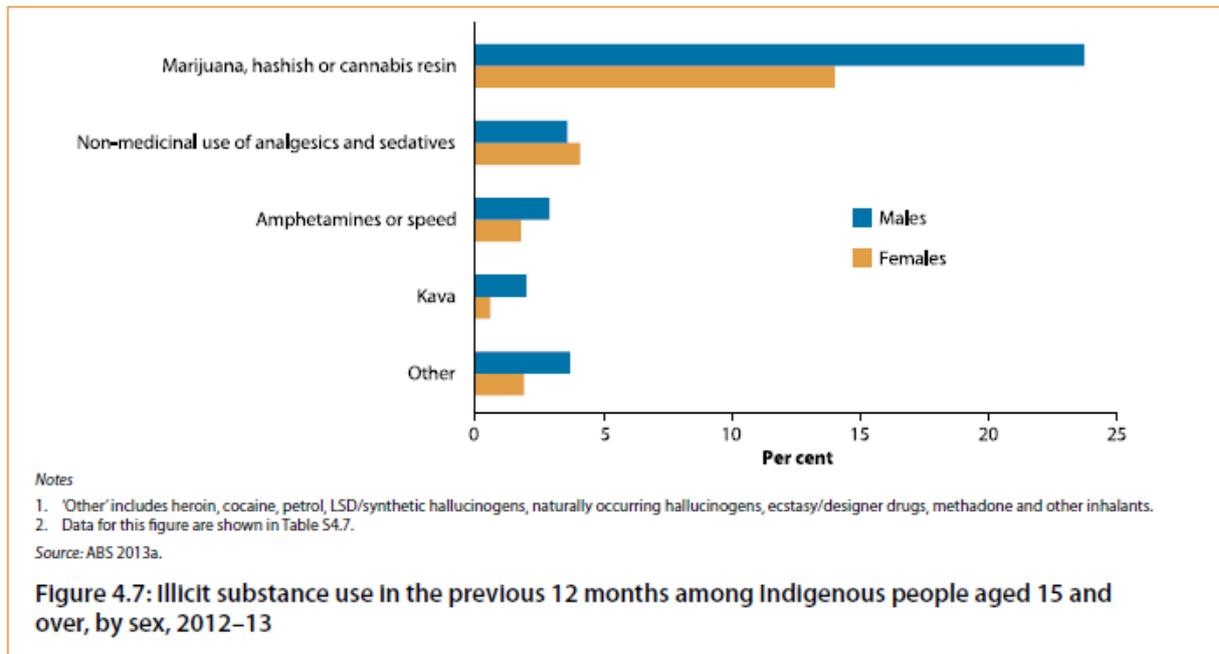
3. Indigenous interaction with the Justice System

21. Families and Friends calls on the committee to consider the destructive role that a criminal law based drug policy plays in enmeshing indigenous Australians in disadvantage and materially contributing to the scandal of black deaths in custody.

22. We suggest a productive approach is to compare the many parallels between the situation of African Americans and indigenous Australians.

Prevalence of illicit drug use in the indigenous community

23. The 2015 report of the health and welfare of Australia's Aboriginal and Torres Strait Islander peoples by the Institute of Health and Welfare summarises illicit drug use in the following chart (AIHW 2015 p. 58):



24. "Other than ecstasy and cocaine, Indigenous Australians aged 14 or older used illicit drugs at a higher rate than the general population (Table 8.6). In 2016, Indigenous Australians were: 1.8 times as likely to use any illicit drug in the last 12 months; 1.9 times as likely to use cannabis; 2.2 times as likely to use meth/amphetamines; and 2.3 times as likely to misuse pharmaceuticals as non-Indigenous people. These differences were still apparent even after adjusting for differences in age structure (Table 8.7). There were no significant changes in illicit use of drugs among Indigenous Australians between 2013 and 2016" (AIHW 2016 p. 108).

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Wilkes, Gray & Casey 2014

[Prevalence of illicit drug use among indigenous prison entrants](#)

25. “Almost two-thirds (65%) of prison entrants reported using illicit drugs during the previous 12 months. Female prison entrants (74%) were more likely to report recent illicit drug use than male entrants (64%), and non-Indigenous entrants (66%) were more likely than Indigenous entrants (63%). Methamphetamine was the most common illicit drug used, followed by cannabis.

“Almost 1 in 6 (16%) prison dischargees reported using illicit drugs in prison, and 1 in 12 (8%) said they had injected drugs in prison” (AIHW 2019 p. vii).

[Co-occurring substance dependency and other mental health conditions in the indigenous community.](#)

26. According to an overview of Aboriginal and Torres Strait Islander mental health:

“Given the high levels of background stress, substance misuse also figures prominently as a background factor to mental illness. It is well recognised that Aboriginal and Torres Strait Islander peoples experience harmful rates of alcohol and other substance use and that this tends to be more pronounced in rural communities. . . .

“Aboriginal and Torres Strait Islander men are hospitalised at over four times the expected rate for population with severe mental illness related to substance misuse, and over double the expected rate for severe chronic mental illnesses such as schizophrenia.³⁵(p112) The rates of hospital admission for severe mental illness in Aboriginal and Torres Strait Islander women is also substantially above expected rates for their numbers in the population” (Parker & Milroy p. 30).

Indigenous adults with high or very high levels of psychological distress were significantly more likely than those with lower levels of psychological distress to:

- assess their health as fair or poor (42% and 20%, respectively)
- smoke daily (55% and 39%)
- have used illicit substances in the past 12 months (30% and 18%) (AIHW 2015, p. 72).

[Black lives matter in Planet America – a comparison with deaths in custody in Continent Australia](#)

27. To that end we refer the committee to the telling summary of research findings on how the criminal justice system in the United States discriminates against black American citizens. It was broadcast on ABC's *Planet America* on 10 June. A transcript of Licciardello's commentary is reproduced below in italics. It is interspersed with descriptions in plain text of parallel situations in Australia:

28. *There has been a lot of talk in the last two weeks about police shootings of black people. You may have seen stats like these.*

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29. *Even though the population is only about 12% black about 26% of people shot and killed by police are black and 36% of unarmed people who were shot and killed by police are black, so that's racist right? Well not necessarily because maybe police are around black people a whole lot more than they are around white people. That's why you get studies that find black men are 2 1/2 times more likely than white men to be killed by police. Yet the study still doesn't draw conclusions about racial bias because they say not every person has an equal chance of coming to contact with police and crime rates and policing practices differ across different populations.*

30. The following is the latest tally published by the Australian Institute of Criminology of Deaths in police custody and custody-related Operations:

“Of the 21 deaths occurring in police custody in 2017–18, three were Indigenous deaths and 14 were non-Indigenous deaths. No Indigenous status was recorded in the remaining four cases. Consistent with all years of data on deaths in police custody (1989–90 onward), the number of non-Indigenous deaths exceeded the number of Indigenous deaths” (Doherty & Bricknell 2020)

31. In the year covered (2017-18) “The largest numbers of deaths occurred in New South Wales ($n=27$) and Victoria ($n=17$). There were no deaths in the Australian Capital Territory” (the same) though it was in April 2018 that an ACT [coroner issued findings](#) following his inquest into the death in the ACT prison of Stephen Freeman in May 2016.

32. The report went on to analyse shooting deaths in police custody:

“In 2017–18 there were eight shooting deaths in police custody, three more than in 2016–17 (see Figure 12). Four deaths occurred in New South Wales, and one death occurred in each of Victoria, Queensland, Western Australia and South Australia. All eight shootings involved persons who had been shot by police. Since 1989–90 there have been 139 deaths involving persons shot by police, and a further 104 deaths where persons shot themselves (see Table C33). Of the eight deaths resulting from police shootings in 2017–18:

- seven were of non-Indigenous persons, and the Indigenous status was unknown in one death. Police shootings of non-Indigenous persons have consistently outnumbered those of Indigenous persons since 1990–91;
- all were of males. In all years but four since 1989–90, all persons shot by police were males;
- the median age at time of death was 32 years. Forty-nine percent of total police shooting deaths between 1989–90 and 2016–17 were of persons aged between 25 and 39 years;
- seven were of persons suspected of committing a violent offence as their MSO, and one was of a person suspected of committing an offence recorded as 'other'. Police shootings of persons suspected of committing a violent offence have outnumbered other offence types in all but six years since 1989–90; (Doherty & Bricknell 2020).

33. Australia differs from the United States in the fewer number of police shootings and in the dominant characteristic of those who are shot. It is not on the basis of the colour of the skin of the victims so much as their mental health. Having said that, the greater prevalence of mental illness in the indigenous community and a

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likely tendency for police to be “around” young indigenous people, suggest that more mentally disturbed indigenous Australians are victims of this police violence than mentally disturbed nonindigenous Australians.

“Between 1989 and 2011 . . . police fatally shot 105 people. The victims were almost entirely male and 60% were between 20 and 39 years of age.

“Of those persons shot by police, 42% were suffering a mental illness at the time of the shooting. Schizophrenia was the most common illness (59% of those with a mental illness) suffered. In at least one of the recent Queensland shootings, the person shot was allegedly a sufferer of mental illness” (Goldsworthy 2014).

34. *Also with unarmed people getting shot by police we're talking very small sample sizes and thankfully getting smaller but some studies try to crunch the numbers anyway. This is what they find. When contextual factors are taken into account the racial differences, in shooting numbers disappear.*
35. *But on non-lethal uses of force Blacks and Hispanics are more than 50% more likely to experience some sort of force and contextual factors may reduce but they do not fully explain these racial disparities. You find that all over the criminal justice system. It's not so much the big things as the little things that are demonstrably racially biased and they all add up to create extremely biased outcomes. Let me show you.*
36. *Now shootings are a big deal, even racist police usually need a good reason to shoot someone, but pulling a car over on the other hand? Not so much. What's interesting, a study of 20 million car stops found black drivers have four time the odds of white drivers of being stopped and searched even though they were less likely to be found with contraband after being searched, according to the study.*
37. The Australian Law Reform Commission found that: "Poor relations influence how often Aboriginal and Torres Strait Islander people interact with police and how they respond in interactions with police. Poor police relations can contribute to the disproportionate arrest, police custody and incarceration rates of Aboriginal and Torres Strait Islander people. It may also undermine police investigations." (ALRC 2017 p. 33)
38. *You see it's those kind of decisions when the police have most discretion, and that's where their bias really shows. Like for instance, how the black arrest rates for prostitution are five times higher than the white arrest rates or the black arrest rates for gambling are ten times higher than white arrest rates. That's discretion.*
39. *The biggest discretionary charge, drug possession: black and white people use illegal drugs at about the same rate.*
40. Families and Friends are unaware of data on the actual level of substance dependency within the indigenous community in the ACT but expect from other evidence and surveys elsewhere in the country that the level of problem drug use is higher than in the general community.
41. “Intergenerational trauma and dispossession are risk factors that explain the high prevalence of substance dependency (including alcoholism) in the indigenous

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community. A Western Australian survey of the psychological well-being of members of the Stolen Generation noted:

“ . . . that members of the Stolen Generations were more likely to live in households where there were problems related to alcohol abuse and gambling. They were less likely to have a trusting relationship and were more likely to have been arrested for offences. Members of the Stolen Generations were more likely to have had contact with mental health services. The survey commented that children of members of the Stolen Generations had much higher rates of emotional/behavioural difficulties and high rates of harmful substance use” (Parker and Milroy 2014, p. 30).

42. Although indigenous people constitute a mere 1.6% of the ACT population, according to ATODA’s 2015 Service Users’ Satisfaction and Outcomes Survey, a quarter (25.1%) of respondents indicated that they were of Aboriginal and/or Torres Strait Islander descent. This and inmate health surveys (ACT Government Health Directorate, 2011, Young *et al.* 2016 discussed at annex §§132-36) also confirm that these people are further burdened with psychosocial problems that the coercive processes of the criminal law only intensify.

- 19.4% of respondents who attended only mainstream AOD services identified as Aboriginal and/or Torres Strait Islander.
- Nearly three-quarters of the respondents (73.5%) stated that they were unemployed.
- Almost half (45.6%) of the surveyed population identified that they were either homeless or at risk of homelessness.
- 38% of respondents indicated that they are parents (ATODA, Service Users’ Satisfaction and Outcomes Survey 2015)

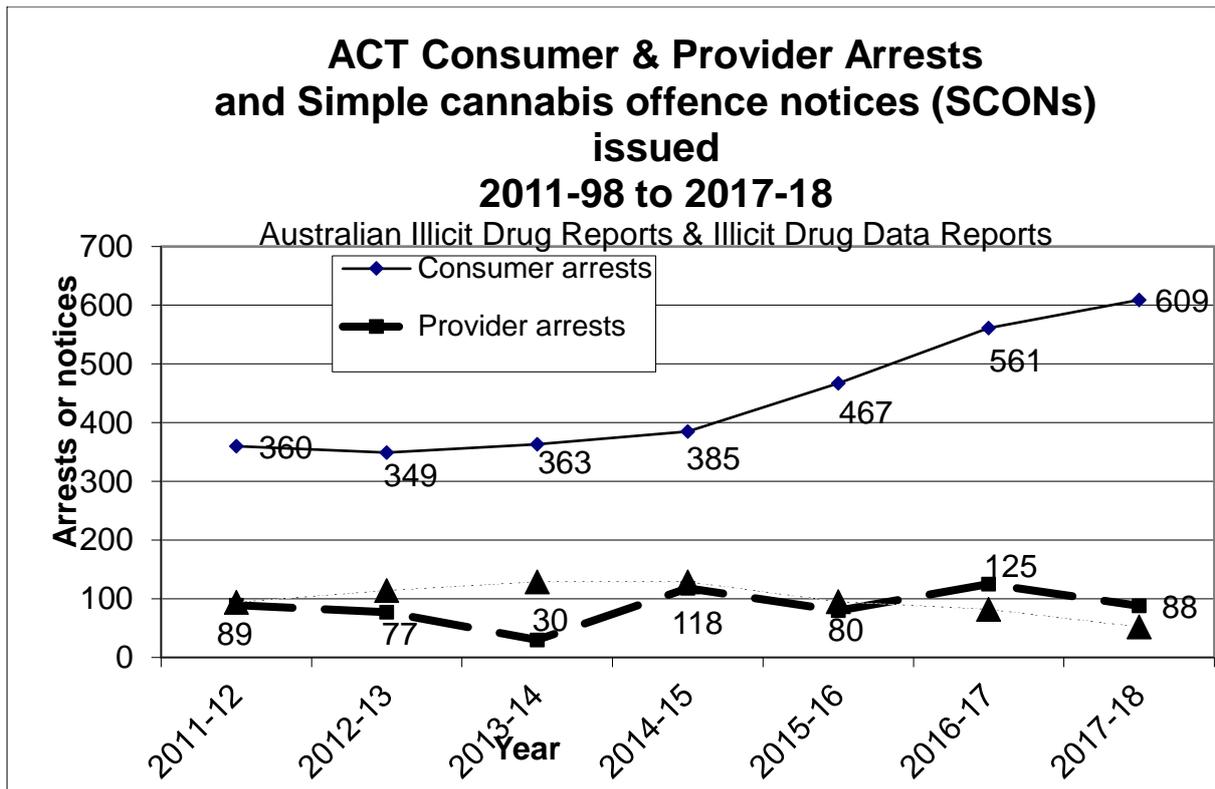
43. *Yet black people are about five times as likely to go to prison for drug possession as white people are. Let’s take it further. For any misdemeanour charge carries a potential prison sentence. White people are 75% more likely to have those charges dropped, dismissed or amended than black people are. You see, racial bias doesn’t just look like the barrel of a gun. Sometimes it just looks like the fine print of a law journal.*

44. Contradicting the ostensible national policy of harm minimisation, drug law enforcement in Australia including the ACT is overwhelmingly focused on consumers. That is the conclusion that over 80% of arrests for all drug offences are of consumers rather than providers. For each of the seven years from 2011–12 to 2017 – 18 the proportions for the ACT were:

83.61% 85.74% 94.25% 81.33% 87.54% 83.72% 88.25%
(Annual IDDR 2010-12 to IDDR 2017-18 of the Australian Crime Commission and the Australian Criminal Intelligence Commission).

45. The number of consumer arrests and Simple Cannabis Notices issued are a proxy for interactions between young drug users and police.

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46. *What about more serious crimes, though? Another point of discretion is in setting bail and the average bail for black men charged with violent crimes is set about \$7,000 higher than the average bail for white people charged with violent crimes. Bail is set \$10,000 higher for black men charged with public order crimes and \$13,000 higher for black men charged with, of course, drug crimes and that is all controlled for a bunch of stuff like the seriousness of the crime and the criminal histories etc. but don't think the judges stop there. Oh no, they also sentence black men to federal prison sentences that are 19% longer than white men receive for the same crimes and that's, once again, after controlling for like - everything - but guess what? That gap has grown over the last 20 years or so. In fact when it comes to drug crimes - again - and property crimes, black people are serving 1% more time a year while time served by white people is dropping.*

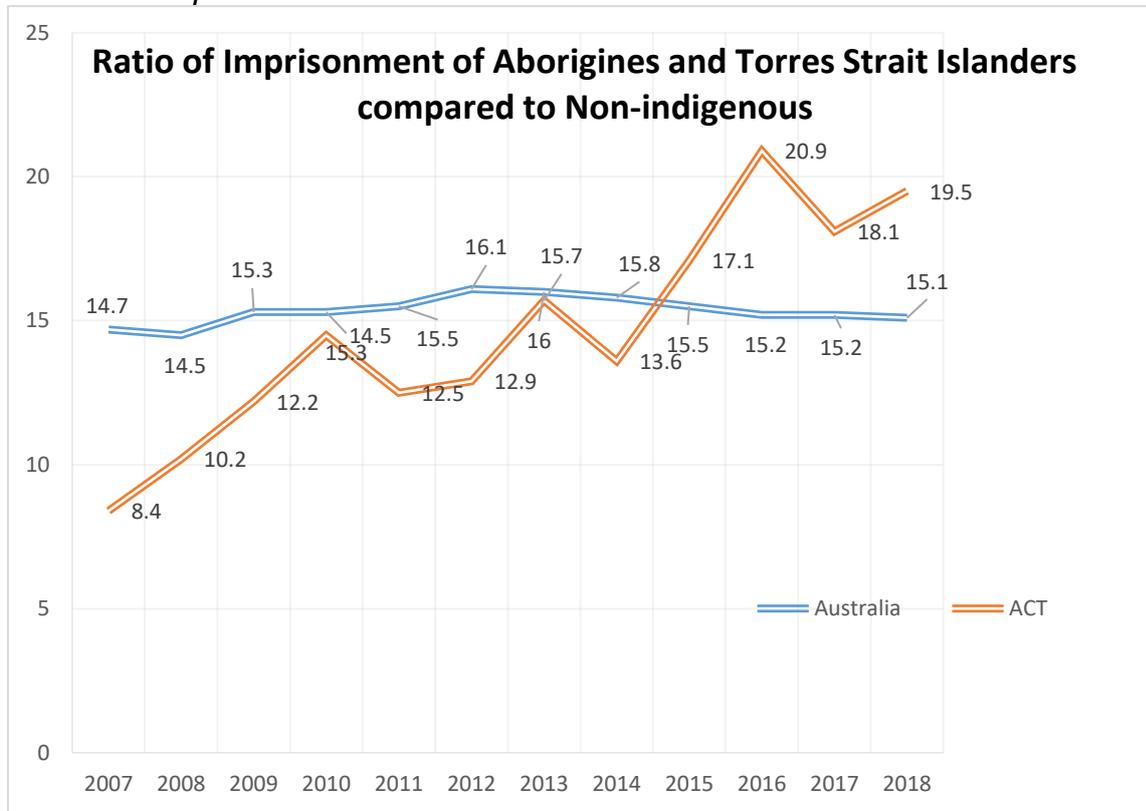
47. The Australian Law Reform Commission comments that “there is evidence that the law is applied unequally— for example, Aboriginal and Torres Strait Islander young people are less likely to be cautioned and more likely to be charged than non-Indigenous young people” (ALRC 2017 p. 33).

48. *By now you will be unsurprised to hear that nearly half of life and effectively life sentenced prisoners are black, although maybe, black people just commit more of the worst crimes. That could be the case, or maybe they get screwed over more. Black people make up a majority of innocent people wrongfully convicted of crimes and later exonerated. Black sexual assault convictions are 3 1/2 times more likely to be found wrongful than white convictions. Black drug crime convictions, of course, are 12 times more likely to be found wrongful and black murder convictions are seven times more likely to be found wrongful and, out of those, black wrongful convictions are 22% more likely to involve police misconduct than white wrongful convictions. So, where does that all leave us?*

49. *It leaves us with over 2% of adult black males in prison at any one time. We're*

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talking about 465,000 black prisoners or about a third of the people in prison and if you compare that to the general population where there is only 12% of black people so the black rate of incarceration is about 2 1/2 times their share in the population, and black 18 and 19-year-olds are about 12 times more likely to be imprisoned than their white equivalents.



SOURCE: Embedded ABS data in Inman & Byrne 2019.

50. When the ACT prison opened, the territory’s imprisonment rate was 63.4 per 100,000 of the population. By 2018 – 19 the Productivity Commission reported that it had increased by 132% to 147 per 100,000 (PCrog 2020 table 8A.13). Health surveys show that the detainee population is characterised by co-occurring substance dependency and other mental health issues in combination with severe social disadvantage (ACT Government Health Directorate, 2011 & Young *et al.* 2016 discussed in Annexure at §§133-135).

51. In 2018-19 in the ACT the crude imprisonment rate for the Aboriginal and Torres Strait Islander population was 3,398.6 offenders per 100,000 relevant adult population, compared with 112.2 for the non-Indigenous population. After adjusting for differences in population age structures, the rate per 100,000 for the Aboriginal and Torres Strait Islander population in 2018-19 was 1,602.5, compared with a rate of 107.6 for the non-Indigenous population. Therefore, after taking into account the effect of differences in the age profiles between the two populations, the ACT indigenous corrections rate is 14.9 times greater than for the non-Indigenous population. Rates that do not take age profile differences into account are almost 18.9 times greater (only Western Australia, at 19 times, is worse). In 2004 the Chief Minister could claim the indigenous imprisonment rate was lower than the national average. The ACT thus has now the shameful distinction of an incarceration rate for indigenous Canberrans much higher than the national rate.

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52. *By the age of 23, 49% of black males have been arrested compared to 38% of white males which actually, stop! stop! stop!*
53. According to the Australian Institute of Health and Welfare, “Indigenous prison entrants were more likely than non-Indigenous entrants to have an extensive prison history. Almost half (43%) of Indigenous entrants had been in prison at least 5 times before, compared with 25% of non-Indigenous entrants” (AIHW 2019 p. vi).
54. *I know what you're thinking. I've also found it hard to believe that 1/2 of young black men and 38% of young white men had been arrested but arrested doesn't mean charged or convicted, and also I found three studies that were all in the same ballpark, so hey, America arrests a lot of people!*
55. “By the age of 23, more than three quarters (75.6%) of the NSW Indigenous population had been cautioned by police, referred to a youth justice conference or convicted of an offence in a NSW Criminal Court. The corresponding figure for the non-Indigenous population of NSW was just 16.9%. By the same age, 24.5% of the Indigenous population, but just 1.3% of the non-Indigenous population had been refused bail or given a custodial sentence (control order or sentence of imprisonment)” (Weatherburn 2014 p. 5 quoted in ALRC 2017p. 43).
56. *This is a problem because the odds of a black man making it to the middle class are about 60% lower for those who are charged with a crime as a young adult and this affects the whole community. 63% of black people have had an immediate family member incarcerated compared to 42% of white people. Black women between the ages of 25 and 54 outnumber black men of the same age in the general community by a staggering 1 1/2 million. So for every 100 prime aged black women living outside jail there are 83 black men. That's not just in jail, by the way, black men also die early.*
57. The prison health survey of the Australian Institute of Health and Welfare tells us that: “almost 1 in 5 (18%) prison entrants reported that one or more parents or carers had been in prison when they were a child. This was more likely among Indigenous entrants (31%) than non-Indigenous entrants (11%).
58. “Younger prison entrants (27% of those aged 18–24) were almost 3 times as likely as older entrants (10% of those aged 45 and over) to have had a parent or carer in prison during their childhood” (AIHW 2019 p. vii).
59. *But, anyway, I've left the worst to last. You might think this is just a poverty thing. Well not entirely, because this is the curve of incarceration rates for young white men versus how much their parents earned when they were growing up, and this is the same curve for young black men. So, the top 1% of young black men who grew up in millionaire families had the same incarceration rate as young white men who grew up in families earning \$36,000 a year, so it's not just a poverty thing, although, look at those incarceration rates for poor young black men, yikes.*
60. Mick Palmer, former Commissioner of the Australian Federal Police, makes the point that drug law enforcement has ruined the life chances of innumerable young people nabbed for using drugs.
- “As a young detective I found myself arresting decent young Australians who had never come to attention of police for any other crime, weren't really ever likely to, who were planning careers in a whole range of areas including

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teaching and police, in defence and the list went on - little tiny quantities were likely to kill these people's careers. What sort of policy is that? Why would we want to do that to people who, again, had never come to notice of police and weren't ever likely to for any other crime or offence?" (Transcribed from Uniting's Fair Treatment documentary *Half a Million Steps*)

61. *Now don't get me wrong, things are getting better. From 2000 to 2016 the rate of black male imprisonment has fallen from nine times the white man's rate to just under six times the white man's rate and black women have progressed even further from about six times the white women's rate to about twice the white women's rate but like I always say, there is a long, long way to go.*

Psychosocial factors

62. Quoting the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Australian Law Reform Commission noted that "there is a strong correlation between having a family member removed and arrest and incarceration. The high rate of imprisonment is occurring in the context of poor health, inadequate housing, high levels of family violence, and high levels of unemployment (ALRC 2017 p. 41). The underlying causes of the disproportionate indigenous imprisonment were tellingly described by the New South Wales deputy coroner in the findings that she made just over a month ago in the course of her inquest into the death by hanging in February 2018 in Junee prison of young ACT indigenous resident, Jonathon Hogan.

"Almost 30 years after the RCIADIC [Royal Commission into Aboriginal Deaths in Custody], we have failed to appropriately reduce the shockingly disproportionate incarceration of indigenous people or to properly grapple with the underlying factors. The RCIADIC identified indicators of disadvantage that contribute to disproportionate incarceration including: "the economic position of Aboriginal people, the health situation, their housing requirements, their access or non-access to an economic base including land and employment, their situation in relation to education; the part played by alcohol and other drugs - and its effects". The Commission also identified dispossession without the benefit of treaty, agreement or compensation as a factor in over-representation in custody. Decades later, these factors remain at the forefront of our failure to reduce incarceration rates. Despite attempts to "Close the Gap", disadvantage abounds and successive governments have been unable to squarely face the effects of dispossession and move forward with "truth telling" and agreement with Aboriginal and Torres Strait Islander peoples" (NSW Coroner's Court 6 May 2020).

63. The ACT Health and Justice system has much to answer for in connection with Jonathan's death. He apparently simply walked out of the Adult Mental Health Unit to which a magistrate had committed him for an assessment of his mental health condition. Before his return to custody in NSW he reported using methamphetamine daily (IV, smoked) and smoking '10 cones' of cannabis daily. In August 2014 ACT Justice Health had diagnosed him as suffering from schizophrenia.

64. Families and Friends calls on the committee to heed the observations of the New South Wales coroner: that

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- “more young Aboriginal citizens like Jonathon must be diverted away from the criminal justice system if we are to reduce the number of Aboriginal deaths in custody nationally” (§14) and
- that justice re-investment as urged by the Australian Law Reform Commission is “one crucial strategy“ to achieve this (§14)

Person-Centred Care

65. Families and Friends puts it to the committee that proven pharmacotherapies should be supported by culturally sensitive, person centred care. Person-centred care is a standard of the [Australian Commission on Safety and Quality in Health Care](#) which its website describes as:

“Person-centred care is widely recognised as a foundation to safe, high-quality healthcare. It is care that is respectful of, and responsive to, the preferences, needs and values of the individual patient.

It involves seeking out, and understanding what is important to the patient, fostering trust, establishing mutual respect and working together to share decisions and plan care.

Key dimensions of person-centred care include respect, emotional support, physical comfort, information and communication, continuity and transition, care coordination, involvement of carers and family, and access to care.

There is good evidence that person-centred approaches to care can lead to improvements in safety, quality and cost effectiveness, as well as improvements in patient and staff satisfaction. More information about the evidence for person-centred approaches to care can be found in [Patient-centred care: Improving quality and safety through partnerships with patients and consumers](#).

To achieve person-centred care healthcare providers, organisations and policy-makers need to work in partnership with consumers.

Partnering with consumers recognises the value of the consumer voice, and the need for consumer experience and expertise to help shape decisions about health care at the level of the system, service and individual.”

66. Person-centred care is modelled in real life at the Crosstown drug treatment clinic in Vancouver (discussed at Annexure D §§168-180) and embodied in the [Customer Service Promise](#) that guides the Uniting Medically Supervised Injecting Centre in Sydney.

67. The 2014 landmark study on Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice specifies key initiatives for the progression of mental health services for Aboriginal and Torres Strait Islander peoples as including: “self-determination within Aboriginal and Torres Strait Islander

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mental health service development, a holistic approach to mental health, specific services for population sub-groups, improved coordination of service delivery for people within mainstream health services, Aboriginal mental health worker (AMHW) and other staff development, and improved research. (Parker & Helen Milroy 2014, p. 34)

68. In the context of indigenous Canberrans these principles are exemplified by Winnunga Nimmityjah Aboriginal Health Service.

69. In summary, to paraphrase the words of the New South Wales coroner, if there are to be no more deaths in custody, black or otherwise, indigenous Canberrans and those with mental health conditions must be “diverted away from the criminal justice system”. The easiest and most efficient way of doing this is to cease to stigmatise and marginalise these people to divert the freed resources to boosting culturally sensitive drug treatment implementing proven treatments in an environment of person-centred care.

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