# Rehabilitation and Beyond in Settler Colonial Australia: Current and Future Directions in Policy and Practice

Sophie Russell, James Beaufils, and Chris Cunneen

As other Chapters in this edited collection have pointed to, and as scholars in the field of criminal legal punishment have previously noted (Burke et al., 2019), the concept of rehabilitation and its practice is both complex and contested—*what* is counted as rehabilitation, *where* it takes place, and *who* is subject to it—are all important questions with potentially different answers depending on who is asked. Providing an account of rehabilitation becomes distinctly more complicated in a federal nation such as Australia—with its states and territories responsible for administering the criminal legal system over an expansive continent. Nevertheless, the interrogation of rehabilitation is an important one—not least when we consider recent shifts in the Australian criminal legal system.

S. Russell (✉) · J. Beaufils
University of New South Wales, Sydney, NSW, Australia
e-mail: sophie.russell@uts.edu.au

J. Beaufils
e-mail: James.Beaufils@uts.edu.au

C. Cunneen
Jumbunna Institute for Indigenous Education and Research,
University of Technology Sydney, Sydney, NSW, Australia
e-mail: Cunneen@uts.edu.au

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Over the decade to 2021 the number of people in prison across Australia has increased by 48%, from 29,107 to 42,970 (Australian Bureau of Statistics [ABS], 2021a). First Nations people,[1] women, and those with complex disadvantages have been most affected—the number of First Nations people increased by 70% and the number of women by 62%. Alongside this, we have seen the number of people imprisoned on remand more than double and a 30% increase of people in prison with known prior imprisonment (ABS, 2021a). In some states—such as New South Wales (NSW), the Australian jurisdiction which is the focus of this Chapter—we have seen an explosion in the numbers of people under community sanctions, increasing 75% over the last 3 years (ABS, 2021b). At the same time, there has been enormous prison infrastructure expansion (NSW Government, 2019), and significant investment into rehabilitative strategies intended to reduce reoffending (Elliot, 2016).

NSW has the largest population of any Australian state or territory, as well as the largest number of people—including non-Indigenous and First Nations people—in prison and under community supervision (ABS, 2021b). Throughout this Chapter, we centre our analysis of rehabilitation within the context of settler colonialism in Australia, drawing on empirical findings from recent exploratory research into the experiences of First Nations people on parole in NSW[2] (Beaufils et al., 2021).

In Australia, the criminal legal system is managed at a state or territory level. Each of the six states and two territories operates their own sentencing regimes, as well as custodial (youth and adult prisons) and community (probation and parole) 'correctional' services.[3] Most funding for non-government organisations (NGOs) that support people under community supervision also comes from respective state government agencies, with some NGOs funded through the federal government or philanthropic grants. While there are particularly marked differences across each of the Australian jurisdictions—such as rates of community-based orders and imprisonment and the provision of rehabilitative programmes and services—there are also notable similarities, such as the high rates of imprisonment of marginalised groups, including First Nations people (ABS, 2021a).

## Settler Colonialism and the Criminal Legal System in Australia

Between 1787 and 1868, approximately 160,000 British convicts were transported to the continent now known as Australia. The 'global phenomenon' of the forced migration of convicts, along with indentured workers and slaves, involved all leading colonial powers. Through transportation, nation states expanded their 'spheres of influence' by securing economic, political, and military advantage, and seizing resources and land (Cunneen et al., 2013: 21–22). In Australia convictism in particular was central to the establishment of a settler colonial state. While the British claimed sovereignty over the sacred lands, the lands were not, as declared, Terra Nullius; 'land belonging to no one'. The lands were—and continue to be—the social and cultural place of First Nations peoples who have lived here for over 65,000 years prior to the arrival of European convicts and settlers.

The invasion by the British and the colonial project involved the massacre of First Nations peoples, the brutal dispossession of land, the denial of traditional law, language, and cultural practice, enforcement of Eurocentric norms and values, the forced removal of First Nations children, and the subjugation of First Nations peoples through various forms of enforcement and imprisonment. From the end of the nineteenth century, First Nations peoples were confined in reserves and missions under 'protection' legislation, which, despite its name, was essentially 'a penal mode of administration and control utilising the institutions of criminal justice and punishment based on the deprivation of liberty' as all aspects of the lives of First Nations peoples were regulated and controlled (Cunneen et al., 2013: 29). Colonial policies also impacted the development of the penal system for non-Indigenous people. The demand for labour in the colony saw the introduction of the 'ticket of leave' scheme—a form of conditional release for convicts, which formed the original basis for the contemporary parole system in Australia. While the ideology of rehabilitation has always been present in community supervision, extraneous economic, political, and social factors have continuously impacted on policy (Figgis, 1998; Simpson, 1999; ATSISJC, 2011).

We take this context of colonisation and stolen land as the starting point for our discussion of rehabilitation in the context of the Australian criminal legal system. In settler colonial states such as Australia, the enduring legacy of colonisation and invasion is evidenced by extraordinarily high rates of surveillance, policing, and over-criminalisation of First Nations people across all levels of the criminal legal and child 'welfare' systems (Behrendt et al., 2019). First Nations adults make up around 3% of the national population, but constitute 30% of those in prison, making them 14 times more

likely to be in prison than those who are non-Indigenous (ABS, 2021a).[4] The range of structural and systemic disadvantages experienced by First Nations people make contact with the criminal legal system more likely—including structural poverty, ill-health, higher levels of disability and mental illness, and significant levels of institutional intergenerational trauma as a result of government policies and intervention (Anthony et al., 2020). The 1991 Royal Commission into Aboriginal Deaths in Custody (Johnstone, 1991) found that the dispossession of land and resultant economic marginalisation of First Nations communities has contributed significantly to disproportionate rates of imprisonment and contact with the criminal legal system. The Australian Law Reform Commission (ALRC, 2017) described this over-representation as a persistent and national problem, highlighting the high levels of systemic discrimination and the consequent social and economic disadvantage experienced by First Nations people as a result of colonisation.

While First Nations people are over-represented in criminal legal systems across Australia, imprisonment rates are not monolithic and differ from jurisdiction to jurisdiction. As Table 1 shows, the general rate of imprisonment is lowest in the Australian Capital Territory (ACT) at 113 per 100,000 and highest in the Northern Territory (NT) at 971 per 100,000. The rate of imprisonment for First Nations people is lowest in Tasmania (Tas) at 776 per 100,000 and highest in Western Australia (WA) at 3,449 per 100,000 (ABS, 2021a).

The rate of people serving community-based orders[5] also differs across these jurisdictions. It is the lowest in Victoria (Vic), at 168 per 100,000 and highest in the NT at 616 per 100,000. In most states and territories, the rate of community sanctions is considerably higher than the rate of imprisonment (see Table 2). It is therefore common in Australia that a larger number of people appearing before courts are sentenced to lesser penalties such as community sanctions, as opposed to harsher penalties, such as imprisonment—thus emphasising the principle of imprisonment as a sanction of last resort.

**Table 1** Age standardised rate of imprisonment (per 100,000 adult population) in Australian states and territories by Indigenous status, 2021 (ABS, 2021a)

| | NSW | vic | Qld | SA | WA | Tas | NT | ACT | Aus |
|---|---|---|---|---|---|---|---|---|---|
| Indigenous | 1906 | 1816 | 2144 | 2531 | 3449 | 776 | 2557 | 1642 | 2223 |
| Non-Indigenous | 165 | 128 | 185 | 197 | 216 | 148 | 195 | 84 | 164 |
| Total persons | 206 | 139 | 248 | 221 | 326 | 149 | 971 | 113 | 214 |
| Ratio | 12 | 14 | 12 | 13 | 16 | 5 | 13 | 20 | 14 |

**Table 2** Rate of imprisonment and community-based orders (per 100,000 adult population) in Australian states and territories, 2021 (ABS, 2021a, 2021b)

| | NSW | vic | Qld | SA | WA | Tas | NT | ACT | Aus |
|---|---|---|---|---|---|---|---|---|---|
| Rate of imprisonment | 206 | 139 | 248 | 221 | 326 | 149 | 971 | 113 | 214 |
| Rate of community-based orders | 556 | 168 | 486 | 379 | 280 | 491 | 616 | 285 | 395 |

*Sources* Australian Bureau of Statistics (2021a) Prisoners in Australia, 2021. Canberra: Australian Bureau of Statistics
Australian Bureau of Statistics (2021b) Corrective Services, Australia, September Quarter 2021. Canberra: Australian Bureau of Statistics

However, it is important to point out that the 'frontier states' in Australia of WA and the NT (which were the last to be colonised) and the relative size of the First Nations population impact on the rates of imprisonment and community sanctions. In the NT, which has the largest proportional First Nations population of any Australian jurisdiction (31%),[6] imprisonment rates are the highest in Australia and significantly higher than rates of community-based orders (see Table 2). We can see that when a penalty is imposed in this jurisdiction, imprisonment is favoured over a community-based order. Nearly 90% of people imprisoned in the NT are First Nations.

Over recent years, there has been growing recognition that criminal legal systems—and particularly prisons—are disproportionately filled with people who have multiple and complex support needs, including mental health diagnoses, cognitive impairment, substance dependency, experiences of homelessness, and backgrounds of disadvantage, and that these needs manifest in a way which is both intersecting and compounding (Baldry, 2014, 2017; Butler et al., 2011; McCarthy et al., 2016; Sharma, 2018). Disability in particular is intimately linked with the prison system—both from the disabling effects of imprisonment to the pervasiveness of people with disability within prisons (Ben-Moshe, 2020). First Nations people in particular experience high rates of mental health disorders, cognitive impairment, and other health concerns, yet have significantly lower rates of access to appropriate health and disability support (Baldry et al., 2015; JH & FMHN, 2017; Sharma, 2018). Women are particularly vulnerable: 43% of First Nations women (v 31% non-Indigenous) and 23% of First Nations men (v 24% non-Indigenous) reported having a disability and 12% of First Nations women (v 12% non-Indigenous) and 23% of First Nations men (v 17% non-Indigenous) reported receiving a mental health diagnosis while in custody (JH & MHN, 2017: 20, 28). Alongside this, First Nations people with disability are likely to have experienced earlier and more significant contact with the criminal legal system and to experience higher levels of disadvantage (Baldry et al., 2015),

and are more likely to face difficulties with parole related to difficulties in understanding or comprehending parole conditions and complying with the terms (ALRC, 2017; Grunseit et al., 2008). At the same time, in many parts of Australia we see a shortage of culturally safe and appropriate, and adequately funded and evaluated First Nations community-controlled and specific services, particularly for those living in regional, rural, and remote areas and who require specialist support (ALRC, 2017).

The multiple and intersecting forms of disadvantage experienced by those under penal supervision bring to bear questions of the very concept of 'rehabilitation'. As others have pointed out, the prefix 're' symbolises a return to a previous condition (Robinson & Crow, 2009), yet for many of those enmeshed in the system, the emphasis should not be on returning to a diminished state but instead be focused on healing, building, and creating life anew.

## The Law and Policy Context of Rehabilitationin NSW

Rehabilitation is one of the key purposes of sentencing set out in legislation across Australian jurisdictions and, at least theoretically, forms a component of the sentence for those serving orders in the community and in prison. Depending on the specific order, people under supervision may be required to engage in supervision by Community Corrections, attend specific government-run programmes, and/or engage with various external agencies, such as those focused on addressing substance dependency, or providing mental health and disability-related support.

The pre-eminent model of rehabilitation in many Anglophone nations, including Australia—and particularly within NSW—is Risk-Needs-Responsivity (RNR), developed by Canadian psychologists Andrews and Bonta (1994). The Risk principle determines *who* should be treated for intervention (only those considered to be at the highest risk of reoffending); the Need principle provides *what* should be targeted ('criminogenic needs' related to offending behaviour); and the Responsivity principle refers to *how* these interventions are to occur (typically through cognitive behavioural therapy). In this way, rehabilitation becomes tightly *linked* to risk and the broader project of reducing reoffending (as defined by criminogenic need). The Corrective Services NSW Officer Handbook for example makes this point explicitly, stating that 'Community Corrections is not responsible for

providing welfare or therapeutic services unless they are directly related to risk of offending' (Corrective Services NSW, 2015: 11).

The NSW Reducing Reoffending Strategy 2016–2020 included a significant investment into 'correctional' rehabilitation, predominantly focused on short-term interventions based on criminogenic needs frameworks and underpinned by RNR. Part of this included an expansion of its various CBT programmes under the EQUIPS umbrella (Explore, Question, Understand, Investigate, Practice, Succeed) and the introduction of the Practice Guide for Intervention (PGI) to structure community-based supervision in accordance with RNR principles. Supervision is predominantly focused on behaviour change, with correctional agencies stating that 'the most significant role that Community Corrections can play in reducing the impact of crime is in changing offending behaviour' (Corrective Services NSW, 2015: 24). As a result, the welfare needs of people under supervision are referred to external agencies—who may or may not be able to meet these basic needs (such as secure, stable accommodation).

The RNR model and its use in NSW (and other jurisdictions) tell us very little about exactly how the welfare needs of people may or may not affect their interaction with the criminal legal system. Moreover, it operates as a very narrow form of *personal* rehabilitation, as Burke and colleagues note (2019)—limited to addressing cognitive skills. In our research with First Nations people on parole in NSW, interviewees pointed to a range of systemic, structural, and social factors which they identified as driving their interaction with the criminal legal system and as hindering their efforts at desistance. Examples included a lack of housing, limited access to drug and alcohol support services, inadequate transport in regional or rural areas, and the difficulties of managing mental illness and disability alongside limited access to necessary pharmacotherapies. A lack of employment opportunities, systemic failings at the point of release from prison, and at times a complete absence of throughcare were other factors highlighted repeatedly by interview respondents. These needs superseded requirements for discrete programmes or interventions focused primarily on 'offending behaviours' (see ALRC, 2017: 299). Libby, a Bundjalung woman on parole who we spoke with, described feeling:

> It's like they set you up for failure. It's a set up for failure all together getting out of gaol. They wanted me to do a course in [town] 20 minutes away by car, knowing that I have a baby… he was only a couple months old at the time. Knowing that I've got a young child. Wanting me to come up here to [town], no transportation of my own, public transport. And it's hard, you know. Get

> up, make sure the child's right. You've got to make sure you have someone to watch the child to do the programmes. And I told them, and they were notified that I didn't have the resources at the time. (Libby, Parolee)

Our research, alongside others (Baldry & McCausland, 2009; Day et al., 2019; Tubex et al., 2020) indicates that a thorough exit plan from prison is essential. Throughcare, a form of comprehensive and holistic case management from prison to the community, is recognised as a best practice approach to the operationalisation of reintegration and rehabilitation. All Australian jurisdictions have a policy commitment to throughcare, however the gap with practice can be a chasm. For several First Nations parolees in our research, such as Joe, Niah, and Richard below, throughcare was incompetent and almost non-existent:

> I was just let out on the street. I had to try and find a way back here. They didn't give me any directions or any plan on what I should do. I tried to get on a bus and then work out how to get from the bus to train station and all that with a phone that doesn't work anymore, because of how long I've been locked up… I didn't know where I was going. I knew where I had to go, I didn't know how to get there. So that was my first problem. [I had] just my gate money, that I'd stored up from not spending in buy-up, about $60 or something… and the Opal [public transport] card. I had to sign in by two o'clock at parole that first day. They [prison] didn't even give me medication that I was meant to get – six days of medication. I didn't get that. They did help with three days accommodation. And then I had to just go through the stress of trying to sort more accommodation out… Initially I guess your biggest stress was a roof over my head. (Joe, Parolee)

> It's a bit scary when you first get out because they don't sort of give you anything on the way out, you know? They don't offer anything. You just get out and just land on your feet or not… I think there should be more in place. They make out like there's all these pre-release programmes and shit, but there's not. I sat in gaol for 12 months and then got out and that's it. I think one person came to see me. There's no plan put in place. (Niah, Parolee)

We interviewed Richard, a young Wiradjuri man, seven days after being released from a regional prison over 200 kms from the parole office where he needed to report. He stated,

> It's just stressful when I got out. I lost everything when I went to gaol. I got out with not even socks and jocks. Like I've got no ID and Corrective Services give

> me a release certificate with the wrong date of birth, and the wrong spelling of my name. So I can't access none of my bank accounts. I can't do nothing. I've got out with no ID, no birth certificate. (Richard, Parolee)

Research from Australia indicates that throughcare models are likely to be more successful for First Nations people if they are culturally competent, strengths-based, incorporate family members, and are led by Aboriginal community-controlled organisations (ALRC, 2017; Day et al., 2019; Willis & Moore, 2008). One concern regarding throughcare in NSW is that people in prison are often transferred to prisons across the state and released to locations far away from their home communities, as was the case for Richard noted above. This separation from community and Country can have the effect of hindering family support (Day et al., 2019), feeling dislocated, and be another imposed obstacle to desistance.

Correctional agencies in NSW maintain that the group programmes and supervision structure they deliver have been developed 'to ensure that programs are available to all offenders irrespective of their culture, language, motivation, or whether they accepted responsibility for their offending. By design, this core suite of programmes should be suitable and available to all moderate to high risk offenders' (Grant et al., 2017: 169–170). However, in our interviews with Community Corrections Officers (CCO)[7] and Aboriginal Community Support Officers (ACSOs), there were comments about the cultural relevance and suitability of rehabilitative approaches that are grounded in RNR. One CCO, Sally, commented on the suitability of some exercises used in supervision:

> I find that cravings one's a pain in the butt… "Managing cravings". I just think that just doesn't fit well. I think there should be a little bit more that's relating to their thoughts and feelings on things. Like what they personally think about instead of trying to direct them to this is how they should think… There's others [PGI exercises] that I wouldn't even touch with them because they are Aboriginal. It's some of the relationship ones… the pro-social ones. It talks about someone who hasn't been in trouble before and why can't you…? Do you know anyone like that? Some of these kids don't know anyone that hasn't been in trouble before and that might be their role model. And they might have been in trouble before and they still might have a little infringement against them now but they're not bad people. But that model actually just talks about you have to be a pro-social person that's squeaky clean… I just struggle with that one very much... Because the best role model could be Uncle Joe that's at home and pulls them into line and whatever else. But Uncle Joe could still smoke a cone or do whatever, but he still has his moral compass right… And

> that [worksheet] doesn't cater for that… But just the whole word, pro-social, antisocial just doesn't sit… If they're reading it or they can see it, and you're trying to ask the questions of it, they go, 'Oh, this is crap, Miss'. (Sally, CCO)

Western rehabilitation and reintegration frameworks are based on risk management and focused on addressing individualised 'criminogenic needs' may ignore core, underlying issues and complexities related to involvement with the criminal legal system. For example, for First Nations people, the grief and intergenerational trauma associated with historical and ongoing colonial processes related to stolen land, environmental destruction, the removal of babies and children, and over-policing of First Nations families and communities, may all have the effect of driving substance dependency. 'Criminogenic needs' frameworks place significant emphasis on individual choice, even in circumstances where freedom for First Nations people may be significantly constrained by both historical injustices from colonisation and by contemporary systemic discrimination, police surveillance, and criminalisation.

A related problem concerns the focus on risk and the use of risk assessment tools such as the Level of Service Inventory-Revised (LSI-R) for determining needs and levels of supervision. The validity of these tools for diverse populations, including First Nations people and women, have been questioned both in Australia and internationally (Cunneen & Tauri, 2016: 158–160). The legacy of colonisation and contemporary discrimination means that First Nations people are likely to score higher on the LSI-R and be deemed 'high risk' according to this assessment (Hsu et al., 2010). These scores can lead to more stringent conditions, reporting and monitoring for those undergoing community sanctions as well as requirements to undertake certain programmes, which may in turn lead to higher rates of breach and non-compliance. CCOs we interviewed spoke of the need to move beyond conceptualisations of risk when supervising First Nations people:

> Try not to make it all about just focussing on the risks/needs. But actually have real, meaningful conversations, that are meaningful to them, about their community. About where they fit in, about who their family is, how they view themselves… Focus on things outside the fact that, "okay, you're an offender, this is the offence you committed and what we're going to do about that". Look at some of the other things and find the foundation of who that person is. (Camilla, CCO, regional area)

## Future Directions in Rehabilitation Policy and Practice: Abolitionism and First Nations Justice Approaches

Burke and colleagues (2019) have developed a more interdisciplinary conceptualisation of rehabilitation in order to move beyond some of the common 'paradigm conflicts' (McNeill, 2012) between competing models of rehabilitation. They argue in favour of departing from a central focus on any one form of rehabilitation, such as personal (i.e., psychological) and to recognise its other forms—judicial/legal, moral, and social—which are equally important to processes of desistance (Burke et al., 2019). These various personal, social, judicial/legal, and moral forms of rehabilitation have particular specificity in the context of First Nations people being caught in a non-Indigenous justice system, where for example personal/social formations are deeply affected by kinship and community relations and systemic racial discrimination which prevents access to a range of social goods. If judicial or legal rehabilitation refers to processes or practices which work to restore the civil or human rights of people under penal control, then the profound disregard of First Nations law, and confronting the ongoing levels of police violence against First Nations people must be at the forefront of rehabilitation, as well as the existing legal barriers that diminish the opportunity for rehabilitation for all people leaving prison. If moral rehabilitation has a focus on repairing the harm caused through moral redress to victims and communities then it would need to include legal processes that are suitable for First Nations people such as the development of First Nations sentencing courts and procedures.

These four forms of rehabilitation might achieve social, rather than criminal justice. However, in the context of settler colonialism in Australia, the need for approaches to rehabilitation for First Nations people must be grounded in First Nations justice approaches and healing practices, which are underpinned by self-determination. In looking towards the future directions in rehabilitation policy and practice in Australia, here we explore the contribution that Indigenous studies and abolitionist perspectives have for the future of rehabilitation. Both perspectives challenge the efficacy of contemporary approaches to punishment and demand a reconsideration of the role of civil society as well as broader questions of political legitimacy. First, we turn our attention to healing as an Indigenous justice approach and practice framework for rethinking rehabilitation.

Healing is an integral part of Indigenous justice approaches, and diverse healing approaches have developed in settler colonial states focusing on

different areas—including the Stolen Generations, residential schools, family violence, and substance dependency (Cunneen & Tauri, 2016: 128–131). In Australia, there are various healing programmes based on Indigenous ways of knowing (McKendrick et al., 2017). In the context of the criminal punishment system, individual rehabilitation and risk/need paradigms have the effect of marginalising First Nations standpoints and epistemologies in the design and delivery of rehabilitative interventions. The imposition of Eurocentric values and beliefs is reflected in the institutional dominance of these approaches and the focus on CBT-based interventions within custodial and community settings undermines First Nations approaches to health, healing, and wellbeing (Cunneen & Rowe, 2014; Tauri & Porou, 2014).

In contrast to dominant models of rehabilitation grounded in risk/need, First Nations approaches to healing are not just an individual practice focused on reducing offending as an individual phenomenon but are about working with families and seeing treatment as a *community* objective (Atkinson, 2013; Cunneen, 2002). The Aboriginal and Torres Strait Islander Social Justice Commissioner (ATSISJC) has previously stated that:

> Indigenous concepts of healing are based on addressing the relationship between the spiritual, emotional and physical in a holistic manner. An essential element of Indigenous healing is recognising the interconnections between, and effects of, violence, social and economic disadvantage, racism and dispossession from land and culture on Indigenous peoples, families and communities. (ATSISJC, 2004: 57)

In this way, healing is grounded in the recognition of the significant and ongoing harms of colonisation to First Nations individuals, families, and communities. As Black and colleagues (2019) point to mainstream therapeutic approaches such as counselling may be insufficient for First Nations people, as they may 'not have the appropriate frameworks or the cultural safety for addressing the unique experiences of multiple traumas, disconnection, loss and grief for Aboriginal peoples' (2019: 1060). Within First Nations healing approaches there is a greater focus on community-controlled interventions that are strengths-based, holistic, and underpinned by self-determination. Critical Indigenous and non-Indigenous scholars have alerted us to the importance of looking at First Nations-owned and led strategies that occur *outside* state interventions or 'justice' agencies (Anthony et al., 2020).

The UN Declaration on the Rights of Indigenous Peoples recognises that First Nations people have the collective right to self-determination. Put simply the right to self-determination is the right to make decisions. At a community or regional level, it includes the right to exercise control

over decision-making, community priorities, how communities operate, and processes for resolving disputes (ATSISJC, 2011: 109–110). The recognition that self-determination is a process rather than a single act has important implications: it requires that there are *ongoing* processes that facilitate self-determination, and these may change over time. The right to make decisions might include First Nations controlled and operated criminal legal processes, but it might also involve collective decisions to participate in non-Indigenous processes where First Nations people negotiate processes and outcomes.

We argue for a more transformative vision of rehabilitation in Australia. One that moves the processes away from 'correctional' penal apparatuses and returns them to the community. Such an approach is consistent with both penal abolitionism and First Nations demands for self-determination. It is an approach that is grounded in 'collective practices of safety, accountability, and healing, untethered from the existing criminal legal system' (Davis et al., 2022: 5). There is such transformative work happening across Australia. Often, this is grassroots, community-developed and led, and in some cases led by community sector organisations who have people with lived experience embedded throughout the organisation—importantly in executive positions, driving the strategic direction of the organisation.[8] First Nations community owned, led, managed, and designed services and programmes to address the needs of First Nations communities and redefine needs for their community which is in direct contrast to the dominant government universalist approaches of one-size-fits all—largely embodied in the CBT/risk-based approaches. Moreover, in contrast to government and 'justice' departments, First Nations community-controlled organisations are accountable to their communities, helping to build legitimacy. A result of Australia's history and treatment of First Nations people is a distrust of government services, and our research in NSW found that there are few First Nations operational staff in community corrections and even less in middle or senior management levels. Our research points to the benefits that could flow from shifting decision-making from government 'correctional' agencies back to the community by involving First Nations organisations and communities in processes related to supervision. We found that while ACSOs may assist in developing supervisory relationships and act as a conduit between CCOs, First Nations individuals, families, and communities, they are directly employed by the system and bounded by its institutional structure and therefore have limited autonomy.

In Western Australia there is a legislative base for local First Nations communities providing court-ordered supervision of adults and young people. Legislation allows for the use of contractual arrangements between

WA Corrective Services and First Nations communities for the local provision of community supervision. However, there has been no evaluation of the extent to which the provision is used or of the outcomes. First Nations legal services in Queensland have argued for the establishment of a community authority to assist with the reintegration of First Nations people on parole back into the community through working with specific communities and supporting reintegration (ATSILS Qld, 2016: 36). Moving beyond individual rehabilitation, First Nations-led justice reinvestment projects in Australia provide an example of a whole community approach to the problem of entrenched criminal legal system involvement. Distinct from the US model, justice reinvestment in Australia takes a more radical approach as First Nations community-led and underpinned by self-determination (Brown et al., 2016: 130–138, 240–241).

There are also good examples of non-Indigenous NGOs providing holistic, community-based outreach and throughcare support to people leaving prison, such as the Community Restorative Centre (CRC) where its alcohol and other drugs, transition and reintegration programmes have led to a dramatic reduction in criminal system contact (Sotiri et al., 2021). In our research, we noted the importance of both systemic and structural factors driving criminal legal system contact and the relational factors supporting desistance, in particular the necessity of building rapport and genuine relationships grounded in patience, trust, honesty, and respect (Beaufils et al., 2021). An evaluation of CRC's programme similarly noted:

> incarceration disadvantage is itself located in the context of a lifetime of other kinds of disadvantage; that meeting basic welfare, housing, health and support needs is fundamental to building a life outside the prison system, and that the way in which support is provided (flexible, outreach, relational, long term) and the manner in which people who have experienced incarceration and disadvantage are treated by workers (respectful, non-judgmental, compassionate, consistent) is a fundamental factor in achieving change in a range of areas, including breaking cycles of recidivism and alcohol and other drug use. (Sotiri et al., 2021: 4)

## Conclusion

Decades of Australian research, government inquiries, reports, and commissions have confirmed that the vast majority of those under penal supervision come from backgrounds of complex disadvantage (ALRC, 2017). Macro policies and structural forces—such as poverty and marginalisation—drive cycles

of contact with the criminal legal system. There remain a range of institutional barriers to reintegration and rehabilitation in NSW—particularly for First Nations people—including a shortage of adequately funded, culturally led First Nations community-controlled services. Across Australia, but particularly in NSW, we are seeing increasing investment into narrow conceptualisations of 'correctional rehabilitation' which are focused on individual choice and narrative without adequate acknowledgement or understanding of the ways in which choice may be constrained by historical injustices. Our research points to the need for a more transformative and collective vision of rehabilitation in Australia—one that shifts decision-making from penal apparatuses to the community and is grounded in both penal abolitionism and First Nations demands for self-determination.

## Notes

1. Throughout this Chapter, a number of different terms are used to refer to First Nations people, including 'Aboriginal', 'Aboriginal and Torres Strait Islander', and 'Indigenous', depending on the context and protocols of government and non-government organisations that may be referenced. We have chosen primarily to use the term First Nations, as it is becoming increasingly preferable in Australia. We acknowledge that any broad term is imperfect as it fails to reflect the diversity of the more than 250 nations—each with their own culture, customs, and language—and over 800 dialects spoken across the continent. We specifically refer to a person's identification with an Aboriginal nation where appropriate.
2. As part of this research, we interviewed 19 First Nations people with experience on parole—13 who were at different stages of their parole order and 6 who were returned to prison following parole revocation. This cohort included 8 women and 11 men. We also interviewed 4 Aboriginal Client Services Officers in urban and regional areas and 9 Community Corrections Officers who supervise First Nations people on parole in urban and regional locations throughout NSW. Ethics approval was granted by the UTS Ethics Committee and Corrective Services NSW.
3. Throughout this chapter we use the government term 'community corrections' and 'correctional services' to refer to punishment and supervision which takes place in the community and the agencies which are responsible for administering these systems. However, we acknowledge the problematic nature of this language, in that many of those who are criminalised need not be corrected but require equality and equity in opportunity and access to resources and capital.

4. The age-standardised imprisonment rate of Aboriginal and Torres Strait Islander people is 2223 per 100,000. For non-Indigenous people it is 164 per 100,0000 (ABS, 2021a).
5. The data drawn on in Table 2 is from the ABS (2021b) which defines types of community-based orders to include: restricted movement; fine options; community service; parole; bail; sentenced probation; and post-sentence supervision.
6. The estimated Indigenous population is 4% in NSW; 1% in Vic; 4% in Qld; 3% in SA; 4% in WA; 6% in Tas; and 2% in the ACT (AIHW, 2021).
7. In NSW, the term Community Corrections Officers to refer to Officers who supervise people under community-based orders, sometimes referred to as a Probation/Parole Officer in other jurisdictions.
8. See, for example, Aboriginal community-controlled organisation Deadly Connections (https://deadlyconnections.org.au/) and women's specific service Sisters Inside (https://www.sistersinside.com.au/).

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