

# AGREEMENT TO IMPLEMENT THE JUSTICE POLICY PARTNERSHIP

## PARTNERSHIP AGREEMENT TO IMPROVE OUTCOMES UNDER CLOSING THE GAP FOR JUSTICE (ADULT AND YOUTH INCARCERATION)

ESTABLISHED BY THE JOINT COUNCIL ON CLOSING THE GAP

UNDER THE AUTHORITY OF THE NATIONAL AGREEMENT ON CLOSING THE GAP

### Preamble

The National Agreement on Closing the Gap (the National Agreement) makes provision for the establishment of policy partnerships under Priority Reform One: Formal Partnerships and Shared Decision-Making. Policy partnerships are partnerships created for the purpose of working on discrete policy areas, such as education, health or housing (Clause 30, National Agreement).

The National Agreement states at Clause 38, that by 2022, the Joint Council will establish a joined-up approach to five policy priority areas, between the Commonwealth, states and territories and Aboriginal and Torres Strait Islander representatives. The five policy priority areas are:

- a) justice (adult and youth incarceration)
- b) social and emotional wellbeing (mental health)
- c) housing
- d) early childhood care and development
- e) Aboriginal and Torres Strait Islander languages.

The National Agreement states that policy partnerships should include the strong partnership elements articulated at Clause 32 unless Aboriginal and Torres Strait Islander people, communities and organisations choose not to pursue elements (Clause 35).

On 16 April 2021, the Joint Council agreed to accelerate the establishment of the Justice (adult and youth incarceration) Policy Partnership. The Joint Council recognised the urgency for joined up national action and leadership in light of the increasing overrepresentation of Aboriginal and Torres Strait Islander people incarcerated, and in acknowledgment of the enduring crisis of Aboriginal and Torres Strait Islander deaths in custody, including the number of deaths in the first few months of 2021. The mass incarceration of Aboriginal and Torres Strait Islander people must be addressed, by changes at the systemic and institutional level.

### Strong partnership elements

The Justice Policy Partnership (JPP) is consistent with the Partnership Agreement on Closing the Gap and the National Agreement on Closing the Gap. The strong partnership elements at Clauses 32 and 33 of the National Agreement apply to the JPP.

## Purpose

1. The purpose of this Agreement is to establish a mechanism for the Parties to develop a joined-up approach to Aboriginal and Torres Strait Islander justice policy, with a focus on reducing adult and youth incarceration.
2. The primary function of the JPP is to make recommendations to reduce over-incarceration.

## Objectives

3. The objectives of the JPP are to:
  - a. Establish a joined-up approach between all governments and Aboriginal and Torres Strait Islander representatives to address the overrepresentation of Aboriginal and Torres Strait Islander adults and youth in incarceration.
  - b. Give a focus to the Priority Reforms in the National Agreement, and how they can be harnessed to make the changes needed to effect sustainable reductions in overrepresentation and the number of Aboriginal and Torres Strait Islander people dying in custody.
  - c. Identify specific measures to reduce the overrepresentation of Aboriginal and Torres Strait Islander adults and young people in incarceration
  - d. Identify opportunities to work more effectively across governments, reduce gaps and duplication and improve outcomes under Closing the Gap.
  - e. Support efforts to implement the National Agreement including meeting targets for the Priority Reform areas and socio-economic outcomes.
  - f. Drive Aboriginal and Torres Strait Islander community-led outcomes on Closing the Gap, and support community-led development initiatives.
  - g. Enable Aboriginal and Torres Strait Islander representatives, communities and organisations to negotiate and implement agreements with governments to implement all Priority Reforms and policy specific and place-based strategies to support Closing the Gap.

## Scope

4. The JPP will focus on issues and actions that will deliver progress towards Outcomes 10 and 11 of the National Agreement:
  - a. Outcome 10: Aboriginal and Torres Strait Islander People are not overrepresented in the criminal justice system
  - b. Outcome 11: Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system.
5. Topics in scope for consideration are:
  - a. Issues and actions that progress the objectives of the JPP including establishing a joined-up approach to overincarceration, reducing gaps and duplication, and giving effect to the transformational Priority Reforms of the National Agreement.
  - b. Issues and actions that can be directly linked to progressing the socioeconomic targets and indicators related to incarceration in the National Agreement.

- c. Issues and actions that progress the Priority Reforms as they relate to incarceration. This may include:
    - i. Review of existing, or creation of new partnerships related to justice, including place-based partnerships
    - ii. Review of the community-controlled justice sector and plans to strengthen the sector
    - iii. Transformation of mainstream agencies such as police or corrections
    - iv. Issues relating to the structure and operation of the justice system that disproportionately and unfairly impact Aboriginal and Torres Strait Islander people
    - v. Review of data available and needed to develop evidence-based and locally responsive policies
  - d. Issues and actions that relate to the drivers of incarceration, including socio-economic drivers and targets that have a direct and tangible effect on reducing incarceration
  - e. Issues and actions related to prevention and early intervention.
6. The Parties to the JPP will have authority to determine by consensus whether a topic is in scope or not. If the Parties are unable to agree on whether a topic is in scope, the dispute resolution processes may be triggered.
  7. Matters which are considered out of scope for the JPP may be referred to other bodies or mechanisms for consideration in line with powers of the JPP set out above.

#### Chairing arrangements

8. The JPP is co-chaired by a representative of the Coalition of Peaks and a representative of the Commonwealth who are Parties to the Agreement. The co-chairs are indicated in Schedule A.
9. The co-chairs are responsible for agreeing meeting agendas, chairing meetings, and overseeing and monitoring the work of the JPP.

#### Parties

10. The Parties to the Agreement are all Australian Governments, the Coalition of Peaks, and other Aboriginal and Torres Strait Islander representatives.
11. Continuity of membership and attendance at meetings is critical to the effective functioning of the JPP.
  - a. Coalition of Peaks representatives will confirm their attendance with the Peaks' co-chair prior to meetings. If they are unable to attend the Peaks' co-chair will nominate an alternative representative in consultation with the relevant Peak. If the member misses three meetings the co-chair will ask them to reconsider their ongoing membership.
  - b. Other Aboriginal and Torres Strait Islander representatives will also confirm their attendance with the Peaks' co-chair prior to meetings. They have been selected in their own right and it will not be appropriate for them to nominate someone else if they cannot attend. If the member misses three meetings the co-chair will ask them to reconsider their ongoing membership and advise the Coalition of Peaks. In such an

event, the Coalition of Peaks may remove the member and call expressions of interest for a replacement.

- c. Government representatives will confirm their attendance with the Government co-chair prior to meetings. If a Government representative is unable to attend a meeting, then the jurisdiction will nominate an alternative representative.

12. The Parties to the Agreement are listed at Schedule A.

### Roles and responsibilities

13. All Parties are jointly responsible for:

- a. Developing a joined-up approach to the justice policy area including:
  - i. identifying opportunities to work more effectively across governments
  - ii. reducing gaps and duplication, and
  - iii. reducing adult and youth incarceration and improving related outcomes.
- b. Agreeing the priorities and work plan for the JPP
- c. Conducting and commissioning research and studies, analysing data and information, preparing reports
- d. Developing recommendations for action through the implementation approaches of the National Agreement, and
- e. Tracking and reporting on progress.

14. The government Parties will:

- a. Liaise with other agencies in their jurisdiction to develop cross-agency perspectives to inform the work of the JPP
- b. Engage with other organisations to seek expert advice
- c. Engage with relevant Ministers and seek Ministerial clearance of key actions ahead of JPP agreement
- d. Consider how recommendations of the JPP can be implemented in their jurisdiction, including through the implementation planning process or more urgent action
- e. Communicate the work of the JPP to other agencies in their jurisdiction
- f. Share data with Aboriginal and Torres Strait Islander representatives, where government is the owner of that data and privacy or other requirements allow, to inform shared decision-making.

15. The Coalition of Peaks Parties will:

- a. Liaise across the Coalition of Peaks and their membership and bring the perspectives of the Aboriginal and Torres Strait Islander people, communities and organisations, their expertise, and their lived experiences to the deliberations of the partnership;
- b. Provide opportunities for Aboriginal and Torres Strait Islander people, communities and organisations to inform them of their concerns and how they might be ameliorated (resolved).

## Term

16. The Agreement comes into effect on the date of signing and continues for an initial period of three years.
17. The JPP will be reviewed before the end of its initial three-year term with a view to being extended or renewed to drive ongoing progress. The process for this review will be established by the Drafting Group in consultation with JPP Parties, agreed by the Partnership Working Group and advice provided to Joint Council which will endorse a decision on next steps.

## Amendment

18. The Agreement can be amended at any time by agreement of the Parties.
19. The JPP will consider whether any amendments are required to this Agreement, its membership and its forward work plan at least once each year.

## Decision-making

20. The JPP is guided by the principle that decision-making is shared between governments and Aboriginal and Torres Strait Islander people. Shared decision-making is:
  - a. By consensus, where the voices of Aboriginal and Torres Strait Islander Parties hold as much weight as the governments'
  - b. Transparent, where matters for decision are in terms that are easily understood by all Parties and where there is enough information and time to understand the implications of the decision
  - c. Where Aboriginal and Torres Strait Islander representatives can speak without fear of reprisals or repercussions
  - d. Where a wide variety of groups of Aboriginal and Torres Strait Islander people, including women, young people, elders, LGBTQI and Aboriginal and Torres Strait Islander people with a disability can have their voice heard
  - e. Where self-determination is supported, and Aboriginal and Torres Strait Islander lived experience is understood and respected
  - f. Where relevant funding for programs and services align with jointly agreed community priorities, noting governments retain responsibility for funding decisions
  - g. Where partnership Parties have access to the same data and information, in an easily accessible format, on which any decisions are made.

## Recommendations

21. The JPP may make recommendations under this Agreement and will provide those recommendations to the Joint Council for its information, unless the recommendation is for an action to be taken to Joint Council for agreement.
22. All recommendations made pursuant to this Agreement are made by consensus of the Parties. Recommendations are non-binding.
- 22A. Recommendations of the JPP made to Joint Council will only be made public with the express agreement of Joint Council.

23. Recommendations may be made as national recommendations or may apply to a specific member or other party. Recommendations should not duplicate existing efforts in a particular jurisdiction and should be tailored to existing structures and jurisdictional drivers. It is not the intention that jurisdictions would have to report against all the recommendations of the JPP as some may not be applicable.
24. Actions to respond to relevant recommendations would be included in each Parties' annual implementation plan updates where publication of the recommendations is endorsed by Joint Council. Specific actions should be considered and taken forward through jurisdictional partnership arrangements for implementation plans, to enable actions to be tailored to the specific circumstances of each jurisdiction. Progress on actions against recommendations should be outlined in Parties' annual reports.
25. Beyond incorporating actions to respond to the recommendations in implementation plans, Parties may take more urgent action if appropriate.
26. The extent to which recommendations have been implemented by jurisdictions and other organisations will be reported as part of the JPP reporting process (set out under the Reporting' section of this Agreement).

#### Referring matters

27. The JPP may refer matters which it deems out of scope to an appropriate mechanism for consideration.
28. By agreement, the Parties may establish sub-structures or working groups as required to progress recommendations or explore specific topics arising under the JPP. Where possible, Parties should rely on existing structures, including existing jurisdictional and regional arrangements to progress recommendations.

#### Expert advice

29. Subject matter experts, including people with lived experience, may be invited to attend meetings of the JPP from time to time for the purpose of presenting on topics being considered by the JPP or to provide expert advice. Experts must be agreed by Parties before being invited to attend a meeting.

#### Data sharing

30. Parties should endeavour to share available data with the JPP to assist the JPP to have clear understanding of context, to make evidence-based recommendations and to gauge progress toward the targets. The JPP may agree to ask Parties to collate and provide relevant data, and Parties will endeavour to do so as far as possible.

#### Reporting

31. Policy partnerships will be a standing item at Joint Council. This standing item will include a verbal update on how the JPP is progressing, including jurisdictional updates on actions taken to support the objectives of the JPP.
32. In addition to verbal updates, the JPP will report annually in writing to the Joint Council on:
  - a. Recommendations it has made

- b. Actions being taken to implement recommendations
  - c. Progress against the objectives of the JPP
  - d. Progress against any relevant Priority Reforms and socio-economic targets in the National Agreement
  - e. Any other updates
33. The written report will, where possible, draw on existing reporting and not add additional reporting burdens. It will compile information from all the jurisdictional implementation plans on how recommendations of the JPP are being addressed. It will also include a short summary of how the JPP is progressing, and a list of any recommendations made by the JPP.
34. The JPP annual report to Joint Council will be tabled via the Partnership Working Group. The Partnership Working Group may prepare additional materials or responses to accompany the report.
35. Actions arising from recommendations of the JPP which are incorporated into Implementation Plans will also be reported on through the annual public reports (clause 118 and 119 of the National Agreement). These reports should also include a specific reference to the JPP and its progress.

#### Dispute resolution

36. The Parties to the JPP will endeavour in the spirit of co-operation, good faith, and mutual trust to resolve any difficulties or misunderstandings with respect to the JPP.
37. If the matter cannot be resolved by negotiation, the JPP will refer the matter to the Joint Council for resolution.

#### Meetings

38. Regular meetings of the Parties will be held as required. The Parties will meet at least four times per calendar year.
39. The forward work plan for the JPP for its first 12 months will be determined at the first meeting of the Parties. The agenda for each meeting will be determined with input from the Parties and approved by the co-chairs.

#### Secretariat support

40. A Secretariat will be established to support the JPP by:
- a. Preparing papers
  - b. Organising meetings including travel
  - c. Compiling the annual reports
  - d. Maintaining and updating public material
41. Papers will be distributed one week ahead of each meeting. The JPP may agree to progress items out of session.

#### Resourcing

42. In accordance with Clause 33 of the National Agreement, the Parties acknowledge that the Coalition of Peaks Parties need to be provided with adequate and ongoing financial support to

enable them to engage and negotiate as equal partners. This financial support will be separate to their current funding as this is a new activity not covered by existing funding sources.

43. The Parties acknowledge that the other Aboriginal and Torres Strait Islander Parties also need to be provided with adequate and ongoing financial support to enable them to engage and negotiate as equal partners.
44. The Commonwealth will provide funding for the establishment of the JPP, including resourcing for the JPP Secretariat and reasonable meeting costs such as travel for the JPP. The Commonwealth will also support the participation of the independent Aboriginal and Torres Strait Islander members of the JPP, including through sitting fees. Members can choose not to accept fees where they may already be receiving a salary or payment from their employer.
45. Resourcing for additional activities of the JPP will be negotiated and agreed by the Parties as they arise during the life of the Agreement. This includes the commissioning of any reports or expert evidence.



## Schedule A: Parties to the Agreement to Implement the Justice Policy Partnership

### Coalition of Peaks representatives

NATSILS (Priscilla Atkins, Chair), Co-Chair of the Justice Policy Partnership

SNAICC (Catherine Liddle, CEO)

NFVPLS (Antoinette Braybrook, Chair)

NACCHO (Donnella Mills, Chair)

FPDN (June Riemer, Deputy CEO)

### Other Aboriginal and Torres Strait Islander representatives

Keenan Mundine

Boneta-Marie Mabo

Dr Jocelyn Jones

David Woodroffe

Peta MacGillivray

### Government representatives

Commonwealth – Iain Anderson, Deputy Secretary of the Attorney-General's Department, Co-Chair of the Justice Policy Partnership

ACT Government – Karen Doran, Deputy Director-General, Justice and Community Safety Directorate

NSW Government – Anne Campbell, A/Deputy Secretary, Department of Communities and Justice

NT Government – Leanne Liddle, Director, Department of the Attorney-general and Justice

Qld government – Jennifer Lang, Deputy Director-General, Department of Justice and Attorney-General

SA Government – Melissa Clarke, General Manager, Youth Justice Strategy, Policy and Reporting, Communities and Justice, Department of Human Services

Tas Government – Kristy Bourne, Deputy Secretary, Corrections and Justice

Vic Government – Jana Stewart, Executive Director, Aboriginal Justice, Department of Justice and Community Safety

WA Government – Kylie Maj, A/Executive Director, Strategic Reform, Department of Justice