



# ALS

Aboriginal Legal Service (NSW/ACT) Limited

13 January 2017

ALRC Incarceration Inquiry  
Legal Assistance Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

By email: [ALRCIncarcerationInquiry@ag.gov.au](mailto:ALRCIncarcerationInquiry@ag.gov.au)

Dear Sir/Madam

***Re: Draft terms of reference – ALRC inquiry into the incarceration rate of Indigenous Australians***

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (“ALS”). The ALS thanks you for the opportunity to provide its views in relation to the draft terms of reference for the Australian Law Reform Commission (“ALRC”) inquiry into the incarceration rate of Indigenous Australians (“the inquiry”).

The ALS is a member of the National Aboriginal and Torres Strait Islander Legal Services (“NATSILS”) peak body and supports and reiterates the contents of their submission. Additionally, the ALS has had the opportunity to consider the draft terms of reference for the inquiry, and makes this submission as a reflection of the needs and experiences of Aboriginal and Torres Strait Islander people from communities across NSW and the ACT.

The ALS notes its preference for the use of “Aboriginal and Torres Strait Islander” rather than “Indigenous”, and uses the former throughout this submission.

**General comments**

In general, the ALS submits that the inquiry will be more effective if it follows terms of reference that recognise and consider the intricacies of and differences between Aboriginal and Torres Strait Islander communities across Australia. The terms of reference should acknowledge the range of geographical and social components that relate to the incarceration rate of Aboriginal and Torres Strait Islander people, and the different issues and responses raised by those components. The ALS submits that this will allow for a more

nuanced and in-depth inquiry that will be capable of producing localised, rather than sweeping, recommendations.

### **Laws and legal frameworks**

The ALS broadly supports the terms of reference set out in this section.

However, the ALS submits that the terms of reference should explicitly and separately consider the factors influencing the rate of incarceration of Aboriginal and Torres Strait Islander women, as well as Aboriginal and Torres Strait Islander young people. The ALS makes this submission in light of the extremely disproportionate rates of Aboriginal and Torres Strait Islander women,<sup>1</sup> and young people,<sup>2</sup> in custody. The ALS submits that the terms of reference should clarify that challenges faced by women and young people will be specifically considered, especially in relation to *“factors within laws and legal frameworks that affect decisions to hold or keep Indigenous Australians in custody”* and *“whether certain law and legal frameworks...contribute to the rate of Indigenous offending and incarceration”*.

### **Existing data and research**

The ALS broadly supports the terms of reference set out in this section.

The ALS submits that the pathway of young people from out of home care to the criminal justice system should be included under *“the effects of laws and legal frameworks on the rate of Indigenous incarceration”*. The ALS submits that the inquiry should take an analytical approach to laws and legal frameworks in the area of care and protection, and the impact of factors such as lack of connection to culture, placement instability, and trauma of intergenerational removals on young people in care.

The ALS further submits that, under *“broader contextual factors contributing to Indigenous incarceration”*, the terms of reference should include a consideration of the pathway of young people to out of home care, focusing on prevention and early intervention responses that will lead to long-term improved outcomes. The ALS supports an approach to the inquiry that considers systemic and practical strategies at this earlier stage of a young person’s life, rather than only focusing on the tertiary end of the legal system.

### **Reports, inquiries and action plans relating to Indigenous incarceration rates**

The ALS broadly supports the inclusion of the various reports, inquiries and action plans set out in this section.

---

<sup>1</sup> For example, according to Corrective Services NSW, as at 1 October 2016 34% of women in custody in NSW were Aboriginal or Torres Strait Islander – see Corrections Research, Evaluation & Statistics, *Aboriginal Offenders Report* (October 2016, Corrective Services NSW).

<sup>2</sup> For example, according to the NSW Department of Justice, as at August 2016 53% of young people in custody in NSW were Aboriginal or Torres Strait Islander.

While the ALS acknowledges that the list is not exhaustive, the ALS submits that the following reports should be included in this section of the terms of reference:

Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families

The ALS supports the inclusion of this report in the terms of reference in order to recognise the link between the trauma of intergenerational forced removal of Aboriginal and Torres Strait Islander young people (which continues today), and incarceration rates of Aboriginal and Torres Strait Islander people.<sup>3</sup>

Ampe Akelyernemane Meke Mekarle, "Little Children are Sacred": Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse

The ALS supports the inclusion of this report in the terms of reference given its recommendations in relation to the role of Family and Community Services, rehabilitation of sex offenders, and the importance of preventative and early intervention supports and responses to child sexual abuse.

Thank you for the opportunity to contribute to this inquiry.

Yours sincerely



**Nadine Miles**  
**Chief Legal Officer**  
**Aboriginal Legal Service (NSW/ACT) Limited**

---

<sup>3</sup> See e.g. Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 2, [11.7.1], [11.7.9]-[11.7.18].