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



To whom it may concern,

Australian Law Reform Commission inquiry into the incarceration rate of Indigenous Australians – comment on the proposed Terms of Reference

Amnesty International supports the ALRC's inquiry into the incarceration rate of Aboriginal and Torres Strait Islander people, and welcomes the opportunity to provide brief comments on the proposed Terms of Reference (ToR).

Amnesty urges the ALRC to ensure Indigenous-led solutions, including in diversion, bail and sentencing, form part of the inquiry. Amnesty's research has found that Indigenous designed and led justice programs consistently outperform those that are externally imposed.¹

Also, noting the fact the imprisonment rate for Indigenous women has grown at a significantly higher rate than for Indigenous men since 2000,² Amnesty recommends the ALRC to ensure the inquiry investigates what gender-specific issues may be driving this growth. We also urge the ALRC to inquire into the relationship between family violence against Aboriginal and Torres Strait Islander women and incarceration.³

Amnesty recommends the ALRC ensure the links between cognitive impairment and ongoing imprisonment for Aboriginal and Torres Strait Islander people is part of the inquiry.⁴

Since 2013, Amnesty International has undertaken a wide project to study and report on the disproportionate rates at which Aboriginal and Torres Strait Islander children are incarcerated across Australian jurisdictions. Since mid-2015, Amnesty has published a [National Overview](#), as well as specific reports on [Western Australia](#) and [Queensland](#), and has been participating in the Royal Commission into the Detention and Protection of Children in the Northern Territory. We will share the findings of this research with the ALRC during the formal submission process.

¹ Amnesty International, ['Heads Held High: Keeping Queensland kids out of detention, strong in culture and community'](#) (2016), p.25

² Productivity Commission, [Overcoming Indigenous Disadvantage 2016](#), part 4.112, accessed at <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-chapter4-coag-targets-and-headline-indicators.pdf>

³ See, for example, Amnesty International, ['There is Always a Brighter Future: Keeping Indigenous kids in the community and out of detention in Western Australia'](#), p.14: The Office of the Inspector of Custodial Services [WA] recently noted that many of the older Aboriginal girls in detention are victims of family violence. Legal representatives in Perth noted that as a trend the girls they represent were more likely to be appearing in court for a serious one-off offence than boys, and the girls appearing in the drug court were often victims of serious domestic violence who had retaliated following sustained abuse.

⁴ See, for example: [First Peoples Disability Justice Consortium submission to the Senate Committee Inquiry into Indefinite detention of people with cognitive and psychiatric impairment](#)

Amnesty supports the majority of the proposed ToR. We note the ToR states the ALRC should look into the “progression from juvenile to adult offending.” Amnesty is concerned the ToR, as drafted, does not fully turn the ALRC’s attention to how and why contact with the criminal justice system as a child can lead to ongoing contact in adulthood.

The overrepresentation of Aboriginal and Torres Strait Islander children in detention

Given the disproportionate rate at which Aboriginal and Torres Strait Islander children are incarcerated across the country, Amnesty recommends there is a specific term inquiring into how and why Aboriginal and Torres Strait Islander children are incarcerated at significantly higher rates than their non-Indigenous peers.

This would go beyond the question of how and why children progress from the youth justice system into the adult criminal justice system, and question what specific laws, legal frameworks, policies and practices (such as police cautioning), and underlying social factors lead to holding Aboriginal and Torres Strait Islander children in custody.

If a specific term looking at children were not included in the ToR, then new dot points under the “factors within laws and legal frameworks that affect decisions to hold or keep Indigenous Australians in custody” should be added which address:

- Specific factors affecting the incarceration of Aboriginal and Torres Strait Islander children; and
- Prior contact with the juvenile criminal justice system or child protection system.

The existing ToR directs the ALRC to have regard to issues related to bail and remand. This is especially welcome. Amnesty’s research has found issues relating to bail and remand are key factors in the over-representation of Aboriginal and Torres Strait Islander children in detention.

Conditions within detention

Noting the extensive and ongoing reporting of mistreatment of Aboriginal and Torres Strait Islander people in Australia’s criminal justice system, Amnesty also supports the inclusion of a point regarding the condition, treatment, rights, oversight, accountability, legal protections and remedies afforded to Aboriginal and Torres Strait Islander people in detention. This could be included under “the effects of laws and legal frameworks on the rate of Indigenous incarceration” heading.

Yours sincerely

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