

Submission on the terms of reference for the ALRC inquiry into the incarceration rate of Indigenous Australians

Details

<p>Name/organisation</p> <p><i>(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)</i></p>	<p>Australian Lawyers for Human Rights (ALHR)</p>  <p>AUSTRALIAN LAWYERS FOR HUMAN RIGHTS</p>
<p>Contact details</p> <p><i>(one or all of the following: postal address, email address or phone number)</i></p>	<p>[Contact details redacted]</p>

Confidentiality

Submissions received may be published on the Attorney-General's Department webpage, except where requests have been made to keep them confidential or where they relate to particular cases or personal information.

Would you prefer this submission to remain confidential? **NO**

Submission

Australian Lawyers for Human Rights (ALHR) is grateful for the opportunity to provide this submission in relation to the consultation on the draft terms of reference for the ALRC inquiry into the incarceration rate of Indigenous Australians.

Australian Lawyers for Human Rights ("ALHR") welcomes the proposed Australian Law Reform Commission ("ALRC") inquiry into the incarceration rate of Indigenous Australians but registers the following concerns about the draft terms of reference.

1. Contact with Criminal Justice System

ALHR is concerned that the draft terms of reference might be interpreted to limit the inquiry to the incarceration of Indigenous Australians rather than the rate at which Indigenous Australians come into contact with the criminal justice system.

ALHR notes that, whilst incarceration rates are linked to rates of contact with the criminal justice system, the two issues cannot properly be merged. Non-custodial contact with the criminal justice system can have as significant an impact on an individual's life as incarceration. ALHR recommends that the terms of reference explicitly permit the ALRC to inquire into the rate at which Indigenous Australians come into contact with the criminal justice system. This would allow the ALRC to report on the experience of Indigenous Australians with non-custodial aspects of the criminal justice system including:

- Relations between Indigenous Australians and police (including alternatives to traditional policing, such as self-policing);
- Evidence of over-policing of Indigenous communities, particularly in the context of the 'trifecta of charges' (IE offensive conduct, resisting arrest and assaulting police);
- Non-custodial sentences for minor offences, specifically the efficacy and appropriateness of recording a conviction, financial penalties, drivers licence disqualification, good behaviour bonds, community work orders and court-ordered rehabilitation programs;
- Evidence of more severe sentencing practises in relation to Indigenous Australians, as compared to members of the non-Indigenous community;
- Confiscation legislation, particularly the laws permitting the confiscation of motor vehicles found to be involved in minor liquor and drug offences.

2. Additional Issues

ALHR considers that the terms of reference should make specific mention of the following issues:

- a) Fines payment schemes and laws that permit imprisonment for persons in default of fine payments;
- b) Indefinite and mandatory detention regimes;
- c) Recidivism;

- d) The rate at which Indigenous Australian women come into contact with the criminal justice system;
- e) The experience of the criminal justice system and incarceration for Indigenous Australians who identify as LGBTI;
- f) The attribution of criminal liability on Indigenous Australians, particularly young males, by the legal doctrines of complicity; and
- g) The relationship between trauma arising from contact with the child protection system, the overrepresentation of Indigenous children in out of home care and the incarceration rate of Indigenous Australians.

3. Timeframe

ALHR notes with concern the limited timeframe afforded to the ALRC for the inquiry (the final report being due by 15 December 2017).

In this respect ALHR notes that the ALRC is expected to have regard to the final report of the Royal Commission into the Protection and Detention of Children in the Northern Territory, which is not due until 1 August 2017. ALHR recommends that the timeframe for the ALRC inquiry be extended to permit the appropriate incorporation of the eventual conclusions of the Royal Commission.

4. Lack of governmental action following previous reports

Given numerous recommendations and findings made within previous reports on the issues surrounding Indigenous incarceration have failed to be implemented or acted on by governments, including the recommendations of the Royal Commission into Aboriginal Deaths in Custody, ALHR calls for the terms of reference to include an investigation into why previous reports into this subject have not been acted on by Australian governments.

5. Endorsement of other submissions lodged

5.1 ALHR endorses the submission made by the Commissioner for Children and Young People Western Australia, particularly in relation to:

- a) The need for the terms of reference to explicitly highlight Aboriginal children and young people, and identify them as a key population group to be consulted as a part of the inquiry; and
- b) The terms of reference should identify the need for the ALRC to conduct its own research into current evidence and models of early intervention and rehabilitation to investigate strategies that are effective in preventing Aboriginal Australians entering the justice system and reforming their offending behaviour, so they can go on to lead productive, positive lives.

5.2 ALHR endorses the submission made by the Australian Medical Association, particularly in relation to:

- a) The need for the terms of reference to allow for a consideration of calls for a national integrated approach to reducing both the Aboriginal and Torres Strait Islander health and imprisonment gaps, specifically the AMA's calls for the federal government to:
 - keep those out of prison who should not be there, principally those with mental health and substance abuse problems;
 - ensure that health service provision in prisons is the best it can be – in particular, supporting inmates to take control of their health and the determinants of their health;
 - set a national target for 'closing the gap' in the rates of imprisonment of Aboriginal and Torres Strait Islander peoples (that is, bringing it down to at least the rates among non- Indigenous Australians); and
 - adopt a justice reinvestment approach to fund services that will divert individuals from prison as a major focus.

5.3 ALHR endorses the submission made by the Queensland Council for Civil Liberties, particularly its call for the terms of reference to be extended to:

- a) The adequacy of funding and resources generally available to solicitors and other lawyers who work within ATSI Legal Services to properly represent their clients; and
- b) The adequacy of interpreters available to lawyers representing Aboriginal and Torres Strait Islander people, particularly in remote areas especially in North Queensland, the Northern Territory and Western Australia.

ALHR

ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

If you would like to discuss any aspect of this submission, please contact Benedict Coyne, ALHR President, at: president@alhr.org.au.

Yours faithfully,

Benedict Coyne, President

Lincoln Crowley, Dr Amy Maguire, David Woodroffe

Indigenous Rights Subcommittee co-chairs

Australian Lawyers for Human Rights

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