

Submission on the Terms of Reference for the ALRC inquiry into the incarceration rate of Indigenous Australians

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The Change the Record (CTR) Coalition welcomes the opportunity to provide brief comments on the draft Terms of Reference (ToR) for the Australian Law Reform Commission's (ALRC) *Inquiry into the incarceration rate of Indigenous Australians* (Inquiry).

The CTR Coalition¹ is a group of leading Aboriginal and Torres Strait Islander, legal, community and human rights organisations working collaboratively to address the disproportionate rates of violence and imprisonment experienced by Aboriginal and Torres Strait Islander people. The CTR campaign is calling for greater investment in early intervention, prevention and diversion strategies. These are smarter solutions that increase safety, address the root causes of violence against women, cut re-offending and imprisonment rates, and build stronger and safer communities.

The CTR Coalition has identified two overarching goals, to:

- (a) Close the gap in rates of imprisonment between Aboriginal and Torres Strait Islander and non-Indigenous people, by 2040; and
- (b) Cut the disproportionate rates of violence to at least close the gap by 2040, with priority strategies for women and children.

The CTR Coalition welcomes the ALRC's Inquiry and broadly supports the majority of the draft ToR. Below we make a number of general comments, and suggestions for additional inclusions and amendments.

¹ See *Appendix 1*.

General comments

- We have a preference for the language of “Aboriginal and Torres Strait Islander” peoples/communities to be used by the Inquiry rather than “Indigenous”;
- We strongly support the ToR’s inclusion of the requirement to consult with Aboriginal and Torres Strait Islander peoples and their representative organisations, as well as with Aboriginal and Torres Strait Islander legal assistance services. However there is currently no reference within the ToR to Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs). As a result, we recommend the inclusion of an additional requirement for the ALRC to consult with ACCOs;
- We recommend that the Attorney-General considers appointing an Aboriginal and/or Torres Strait Islander person as an ALRC Commissioner to work on this Inquiry; and
- We welcome the ToR’s specific references to bail and remand, but recommend this be expanded to include a specific reference to preventative detention.

Suggestions for inclusion or amendments

- The disproportionate incarceration rates of Aboriginal and Torres Strait Islander women

Aboriginal and Torres Strait Islander women are currently the fastest growing prison population in the country, with their imprisonment rate increasing at a significantly higher rate than for Aboriginal and Torres Strait Islander men since 2000.² As a result, it is critical that the ALRC Inquiry includes a gendered analysis and a specific focus on Aboriginal and Torres Strait Islander women’s experiences within the justice system.

In addition, there is a strong link between experiences of family violence and the over-imprisonment of Aboriginal and Torres Strait Islander women, which the Inquiry should examine. It is estimated that around 90% of Aboriginal and Torres Strait Islander women in prison have previously been a victim/survivor of family violence.³

² Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2016, Productivity Commission, Canberra), 112.

³ Data drawn from a 2004 study. See, Smart Justice, Factsheet: more prisons are not the answer to reducing crime, 2011, page 2 <http://www.smartjustice.org.au/resources/SJ%20Factsheet%20Prisons%202011.pdf> and cited in Victoria Equal Opportunity and Human Rights Commission, *Unfinished Business – Koori women and the justice system*, 2013, page 29 http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Unfinished_business_-_Koori_women_and_the_justice_system.pdf

We recommend that:

- *An examination of Aboriginal and Torres Strait Islander women’s incarceration rates, including the underlying causes and interrelated factors relating to their criminalisation, is added to the Inquiry’s ToR.*
 - *Family violence is considered as a stand-alone causal issue within this inquiry.*
- Broader contextual factors and intergenerational disadvantage

Aboriginal and Torres Strait Islander people often face multiple layers of disadvantage. As a result it is critical that any examination of Aboriginal and Torres Strait Islander incarceration rates includes a holistic and intersectional approach. This should include, for example, an examination of underlying driving factors of imprisonment rates, such as social and economic disadvantage, housing, employment, education, health, disability, family violence, child removal and discrimination.

We recommend the Inquiry’s ToR ‘the broader contextual factors contributing to Indigenous incarceration’ be expanded to include reference to:

- *Child removal;*
- *Psychiatric and cognitive disability;*
- *Access to training and employment opportunities;*
- *Availability of rehabilitation and community reintegration supports both in custody, and prior to detention; and*
- *Mapping the trajectory and the intergenerational nature of Aboriginal and Torres Strait Islander peoples’ incarceration rates.*

We recommend the Inquiry’s ToR ‘the effects of laws and legal frameworks on the rate of Indigenous incarceration’ be expanded to include reference to:

- *‘Justice Reinvestment’ approaches, as an example of availability of alternatives to imprisonment;*
- *Specific factors relating to the disproportionate imprisonment rates of Aboriginal and Torres Strait Islander young people, including prior contact with child protection system and juvenile justice system;*
- *Bias and discrimination; and*
- *The rights and conditions of Aboriginal and Torres Strait Islander people in custody.*

- Funding of Aboriginal and Torres Strait Islander Community Controlled Organisations and legal assistance services

The Inquiry's ToR currently make reference to the availability of legal assistance services, however this needs to include consideration of current funding gaps within the community/legal assistance sector, particularly Aboriginal Community Controlled legal assistance services. Aboriginal and Torres Strait Islander community-controlled organisations play a critical role in providing culturally safe wrap-around legal assistance services to Aboriginal and Torres Strait Islander people. However significant funding uncertainty for Aboriginal Community Controlled services, and the broader legal assistance sector, has resulted in significant unmet demand for services.

We recommend that:

- *The Inquiry includes a consideration of funding/resourcing of Aboriginal and Torres Strait Islander Community Controlled organisations and legal assistance services.*

Conclusion

The CTR Coalition welcomes the ALRC's *Inquiry into Indigenous Incarceration Rates*, and notes that the Commonwealth Government has a critical leadership role to play in relation to driving action on this issue. It is vitally important that the appropriate structures are put in place to ensure that the recommendations of this Inquiry are promptly considered and implemented. We hope that this inquiry is a stepping stone to the development of national holistic and whole-of-government approach to tackling this issue.

We look forward to contributing further to this important Inquiry.

Appendix 1

The 'Change the Record' (CTR) Coalition is a group of leading Aboriginal and Torres Strait Islander, community and human rights organisations working collaboratively to address the disproportionate rates of incarceration and violence experienced by Indigenous Australians.

The CTR Coalition has identified two goals:

- Close the gap in rates of imprisonment by 2040; and
- Cut the disproportionate rates of violence to at least close the gap by 2040 with priority strategies for women and children.

The CTR campaign is calling for greater investment in early intervention, prevention and diversion strategies. These are smarter solutions that increase safety; address the root causes of violence against women, cut re-offending and imprisonment rates, and build stronger and safer communities.

The CTR Coalition Steering Committee includes:

- Aboriginal and Torres Strait Islander Social Justice Commissioner
- ANTaR
- Amnesty International
- Australian Council of Social Service
- Federation of Community Legal Centres (Vic)
- First Peoples Disability Network (Australia)
- Human Rights Law Centre
- Law Council of Australia
- National Aboriginal Community Controlled Health Organisations
- National Association of Community Legal Centres
- National Aboriginal and Torres Strait Islander Legal Services
- National Aboriginal and Torres Strait Islander Women's Alliance
- National Congress of Australia's First Peoples
- National Family Violence Prevention Legal Services Forum
- Oxfam Australia
- Secretariat of National Aboriginal and Islander Child Care
- Sisters Inside
- Victorian Commissioner for Aboriginal Children and Young People, Andrew Jackomos