

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

## Your details

<b>Name/organisation</b> <i>(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)</i>	Commissioner for Children and Young People Western Australia
<b>Contact details</b> <i>(one or all of the following: postal address, email address or phone number)</i>	██████████ ██████████ ██████████████████ ██████████████████████████████

## 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

## **Draft terms of reference for the Australian Law Reform Commission inquiry into the incarceration rate of Indigenous Australians**

Thank you for the opportunity to comment on the draft terms of reference for the Australian Law Reform Commission (ALRC) inquiry into the incarceration rate of Indigenous Australians.

Under the Commissioner for Children and Young People Act 2006 it is my role to advocate for the best interests of all children and young people under the age of 18 years in Western Australia (WA) and to promote and monitor their wellbeing.

In doing so I must have regard for the United Nations Convention on the Rights of the Child and give priority to Aboriginal children and young people, and children and young people who are vulnerable or disadvantaged for any reason.

Aboriginal children and young people are disproportionately represented in the WA youth justice system.<sup>1</sup> Given the profound impact that contact with the criminal justice system can have on Aboriginal children and young people's wellbeing and capacity to lead productive lives, as well as the general vulnerability of such children and young people, youth justice is a priority area of work for my office.

We support a youth justice system that seeks to encourage young people to accept responsibility for their actions in a positive way that emphasises social responsibility and rehabilitation. This is consistent with principles set out in the Young Offenders Act 1994 (WA).

I note the draft terms of reference are comprehensive in their scope, making regard to laws and legal frameworks, existing data and research and consideration of previous reports and inquiries. However, I recommend that the terms of reference explicitly highlight Aboriginal children and young people, and identify them as a key population group to be consulted as part of the Inquiry. This should include reference to the complex, socioeconomic and intergenerational factors that influence their involvement in the criminal justice system, and the subsequently nuanced policy and legislative responses that are required to redress this.

I also propose the terms of reference recognise the strong correlation between children and young people's participation in criminal activity and their experience of neglect or abuse.<sup>2</sup> In 2013–14 in Australia, young people who were the subject of a care and protection order were 27 times as likely to be under youth justice supervision in the same year as the general population. Almost half of young people in youth detention in 2013–14 were also in the child protection system in the same year.<sup>3</sup>

This data highlights the importance of better understanding the characteristics and pathways of children and young people who are in both the child protection system and under youth justice supervision. Given the overrepresentation of Aboriginal children and young people in these systems, it is imperative this information is considered as part of the Inquiry.

In December 2016 my office released a report, *Speaking Out About Youth Justice*. The report details the findings from a consultation with 92 young people under the supervision of the WA youth justice system. Two-thirds of these young people were Aboriginal.

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<sup>1</sup> Australian Institute of Health and Welfare 2016. *Western Australia: youth justice supervision in 2014-15. Youth justice fact sheet No.63*. Cat. no. JUV 83. Canberra: AIHW.

<sup>2</sup> AIHW 2016. *Young people in child protection and under youth justice supervision 2013–14*. Data linkage series no. 21. Cat. no. CSI 22. Canberra: AIHW.

<sup>3</sup> AIHW 2016. *Young people in child protection and under youth justice supervision 2013–14*. Data linkage series no. 21. Cat. no. CSI 22. Canberra: AIHW.

Young people in the consultation identified the dominant factors that contributed to their involvement in the youth justice system, including family dysfunction, particularly ingrained criminal activity, alcohol and drug abuse, a lack of structure and boundaries, family violence and mental health issues.

Young people also described what they thought could be helpful in developing positive behaviours, and changes to the current youth justice system that would support them to navigate away from criminal behaviour. This report provides important insights from the perspective of young people already involved in the youth justice system, and would be a valuable resource to inform the Inquiry's research.

The report is available on my website [www.cyp.wa.gov.au](http://www.cyp.wa.gov.au).

I would also recommend the terms of reference 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.

Thank you again for the opportunity to comment on the draft terms of reference and I look forward to preparing a submission to the inquiry.

Yours sincerely

COLIN PETTIT

Commissioner for Children and Young People WA

19 December 2016