

Submission on the ALRC inquiry into the incarceration rate of Indigenous Australians

Your details

Name/organisation <i>(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)</i>	MACARTHUR LEGAL CENTRE
Contact details <i>(one or all of the following: postal address, email address or phone number)</i>	[Contact details redacted]

Publication of submissions

In meeting the Australian Government's commitment to enhancing the accessibility of published material, the Attorney-General's Department will only publish submissions to this website that have been submitted electronically. The following formats are preferred:

- Microsoft Word
- Rich Text Format (RTF)
- txt format.

Please limit individual file size to less than 5MB. The department may create PDF documents from the above formats.

Hardcopy submissions received by mail or fax will still be considered, however they will not be published on the website.

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**

Your submission

Insert your text here and submit it as an electronic Word document.

It is requested that submissions are limited to comments about the terms of reference. There will be opportunities to make submissions directly to the ALRC on relevant issues and possible recommendations during the course of the inquiry.

16 January 2017

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

By Email: ALRCIncarcerationInquiry@ag.gov.au

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

Macarthur Legal Centre welcomes 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.

Macarthur Legal Centre (MLC) is a community legal centre, located south west of Sydney, which provides free legal advice, referrals and assistance to some of the most vulnerable and disadvantaged members of our community. 16% of our casework clients in 2015-16 identified as Aboriginal or Torres Strait Islander, the majority of whom obtained assistance in relation to child-related matters (such as family law and child protection).

In addition, MLC runs the Children's Court Assistance Scheme at Campbelltown Children's Court. In 2015-16 we helped over 700 young people with matters listed before the court – this included information, referrals and casework assistance. At least 24% of young people we assisted identified as Aboriginal or Torres Strait Islander.

Promoting justice for children and families is a fundamental part of the work that we do. Our experience at the coalface informs this brief submission and we respectfully suggest the following:

1. The terms of reference should be extended to expressly consider the experiences of Indigenous youth

Across all States and Territories, Aboriginal and Torres Strait Islander youth are incarcerated at significantly higher rates compared to non Indigenous youth. Current statistics indicate that Indigenous youth are 26 times as likely to be incarcerated as other Australian youth.¹

Indigenous youth also present younger in the youth justice system compared to non-Indigenous youth.²

We therefore propose that the terms of reference *expressly* consider the experiences of Indigenous children and young people in the youth justice system.

¹ Australia Institute of Health and Welfare 2016. Youth detention population in Australia 2016. AIHW bulletin no. 138. Cat. no. AUS 210. Canberra: AIHW. Note that the figure was 26 times for the June quarter 2016 however, it fluctuated between 23 times and 28 times over the 4-year period.

² Australian Institute of Health and Welfare 2012. Indigenous young people in the juvenile justice system: 2010-11. Bulletin no 109. Cat no AUS 164. Canberra: AIHW

The alarmingly high rate of Indigenous youth detention is a serious human rights and social justice issue. The inquiry should explore the complex interplay of factors contributing to young Indigenous people's disproportionate involvement in the youth justice system, as well as a consideration of current social science research and evidence-informed interventions that have the potential to halt the pathway from juvenile offending and incarceration to, ultimately, the adult corrections system.

2. The terms of reference should be extended to consider the connection between child abuse/neglect and youth offending and incarceration

We propose that the terms of reference be extended to consider the connection between child abuse/neglect and youth offending and incarceration (the so-called 'path from care to court to custody').

Indigenous children in 2014-15 were 7 times as likely as non Aboriginal and Torres Strait Islander children to be subject child protection involvement.³ Young people who have been removed from their families due to maltreatment are significantly more likely to be involved in youth offending behaviour: 45% of young people in youth justice detention in 2013-14 were also in the child protection system in the same year.⁴

In the Children's Court many young people we come into contact with (Indigenous and non-Indigenous) have been placed by Family and Community Services in out-of-home care. Frequently they present to the Children's Court facing AVOs and related assault charges against out-of-home care staff or residents, and/or damage to out-of-home care property. Like most young people who live in out-of-home care, these individuals are likely to have experienced abuse, trauma, neglect, school exclusion, disengagement from family, friends, community and culture, and high rates of alcohol and drug abuse. A large proportion of these young people also have a disability or diagnosed psychological or behavioural

³ Australian Institute of Health and Welfare 2016. Child protection Australia 2014-15. Child welfare series no. 63. Cat. no. CWS 57. Canberra: AIHW.

⁴ Australian Institute of Health and Welfare 2016. Young people in child protection and under youth justice supervision 2013-14. Data linkage series no 21. Cat.no. CSI 22. Canberra: AIHW

disorder. Once police lay charges, interventions often focus on criminalizing the young person's anti-social behaviour and move away from treatment. It is our view that these young offenders' welfare and basic needs (especially relating to mental health and behavioural disorders) are often overlooked or paid inadequate attention, which leads to a cycle of further offending and incarceration.

We thus propose that the terms of reference include a consideration of possible legal reforms or other changes that could be implemented to (1) better ensure the welfare of young offenders who have been placed in out-of-home care, and (2) better coordinate the responses of Family and Community Services, Juvenile Justice, community elders and other service providers in the lives of these vulnerable young people.

3. The terms of reference should be extended to consider the adequacy of funding and resources for Aboriginal Legal Services

We also recommend that the terms of reference be extended to include consideration of the adequacy of funding and resources for Aboriginal and Torres Strait Islander Legal Services.

Indigenous people need to access culturally tailored legal advice and representation. Simply put, Aboriginal and Torres Strait Islander people are more likely to trust and successfully engage with indigenous specific legal services.

Based on our frequent contact with ASTI Legal Services, we believe that chronic under resourcing has resulted in unmanageable work loads for the solicitors working for that service.

Thank you for considering our submission.

Prepared By: Laura Sutton

Position: Children's Court Assistance Coordinator

Organisation: Macarthur Legal Centre