



North Australian Aboriginal Justice Agency

Consultation in relation to the draft terms of reference

Australian Law Reform Commission: Inquiry in
relation to the Incarceration Rate of Indigenous
Australians

Dated 12 January 2017



North Australian Aboriginal Justice Agency

Introduction

The North Australian Aboriginal Justice Agency ('NAAJA') is grateful for the opportunity to provide comment in relation to the Draft Terms of Reference to the ALRC Inquiry into the Incarceration Rate of Indigenous Australians.

NAAJA supports the proposed ALRC Inquiry as believes that it is of national importance not only to the Aboriginal people of the Northern Territory but all Australians. NAAJA will provide a submission to the ALRC Inquiry upon the settling of the Terms of Reference.

Our History

NAAJA was formed in February 2006, bringing together the Aboriginal Legal Services in Darwin (North Australian Aboriginal Legal Aid Service), Katherine (Katherine Regional Aboriginal Legal Aid Service) and Nhulunbuy (Miwatj Aboriginal Legal Service). NAAJA and its earlier bodies have been advocating for the rights of Aboriginal people in the Northern Territory since 1974.

NAAJA has offices in Darwin and Katherine. We service both the major towns of the Top End as well as bush courts in 22 remote communities. NAAJA is governed by an all-Indigenous Board which represents the three major regions and employs a staff of around 118, of which about 42% are Aboriginal.

Our core legal services cover the areas of criminal and civil law. NAAJA also has a law and justice section, which pursues the rights of Aboriginal people through law and policy reform and community legal education. NAAJA also provides prison support and Indigenous Throughcare programs.

Terms of Reference

It is our view that the draft head Terms of Reference are comprehensive, wide ranging and will go a long way to addressing the key determinates of Indigenous incarceration. We suggest that further consideration be given to including the following sub headings or issues:

- **Laws and legal frameworks that inform decisions to hold or keep Indigenous Australians in custody including decisions in relation to:**
 - Prisoner pre-release planning and community reintegration.
 - The levels of assistance provided by Throughcare prisoner support programs.
 - The comparison of NGO run Throughcare prisoner support to Corrections based support programs.
 - The coordination of alcohol, drug and volatile substances rehabilitation services to meet the needs of persons with complex issues.
- **Factors within laws and legal frameworks that affect decisions to hold or keep Indigenous Australians in custody:**
 - The need for therapeutic sentencing and orders.
 - The relevance of principle of retribution.
 - The issue of access to services for medical, disability and mental illnesses in prison settings and remote regions.
 - That availability of Aboriginal language and sign interpreters to allow clients to understand proceedings, rights and obligations and to provide instructions.



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- **Whether certain laws and legal frameworks, for example laws that regulate the availability of alcohol, contribute to the rate of Indigenous offending and incarceration.**
 - The examination of mandatory alcohol treatment orders, detention and offences.
 - The effective regulation of liquor licences in vulnerable Aboriginal communities or populations.
 - The consequences on others with the seizure and forfeiture of property such as vehicles in liquor related transportation offences.
 - The criminalisation of drunkenness in public spaces, housing and transport hubs.
- **Best practice laws and legal frameworks in Australia and internationally that reduce the rate of indigenous incarceration.**
 - The role of Aboriginal Law and Justice Groups in providing a community justice framework.
 - That role of Aboriginal Law and Justice Groups in formulating community safety, pre-court conferencing and references.
 - The role of Aboriginal community courts and Indigenous sentencing lists.
- **The broader contextual factors contributing to Indigenous incarceration and any laws and frameworks with regard to these, including:**
 - The characteristics of the Indigenous prison population**
 - The rate of the rate at which Indigenous women come into contact and imprisoned within the criminal justice system;
 - The rate which Indigenous people with disabilities including mental and cognitive impairment come into contact with the criminal justice system.
 - The experience of the criminal justice system and incarceration for Indigenous Australians who identify as LGBTQI;
 - fines payment schemes and laws that permit imprisonment for persons in default of fine payments;

Timeframe

It is our view that there is an adequate timeframe for the delivery of the report on 15 December 2017. It is our recommendation that the ALHR Inquiry have regard to the recommendations of the final report of the Royal Commission into the Protection and Detention of Children in the Northern Territory to be delivered on 1 August 2017.

[Contact details redacted]