

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>	National Aboriginal and Torres Strait Islander Legal Service (NATSILS)
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Submission

NATSILS welcomes the Australian Law Reform Commission’s (ALRC) *Inquiry into the Incarceration rate of Indigenous Australians* (the Inquiry) and hopes that it will drive a national, holistic, whole-of-government response to addressing imprisonment, violence, and the rates of children removed from their families. It is critical that the results of the Inquiry are analysed and met with a reciprocal plan for action and implementation.

Over-arching comments

- NATSILS supports the overwhelming majority of the draft terms of reference
- NATSILS preference is for a reference to “Aboriginal and Torres Strait Islander peoples” rather than “Indigenous”.
- NATSILS has some concerns about the reporting timeframe - a reporting date of 15 December 2017 seems ambitious and will place pressure on Aboriginal and Torres Strait Islander organisations.
- There is little reference to the recognition of Aboriginal and Torres Strait Islander legal systems and culture.
- There is no reference to ‘Aboriginal and Torres Strait Islander community controlled organisations’.

Suggested inclusions and amendments

We suggest the following inclusions and amendments to the draft terms of reference:

- *laws and legal frameworks that inform decisions to hold or keep Indigenous Australians in custody, including decisions in relation to:*
 - *preventative detention*

- *factors within laws and legal frameworks that affect decisions to hold or keep Indigenous Australians in custody or prison, including:*
 - other factors contributing to bail and the length of pre-trial detention, such as the preparation of mental health and health assessments
 - availability of rehabilitation and community reintegration supports to assist people to address the underlying causes of their offending, and reduce the risk of reoffending (though we note this is mentioned under “the effects of laws and legal frameworks on the rate of Indigenous incarceration”)
 - recognition of Aboriginal and Torres Strait Islander legal systems and culture
 - Where ‘consideration of incarceration as a last resort’ is mentioned, we also suggest that the barriers to adherence with this principle need to be considered
- *the effects of laws and legal frameworks on the rate of Indigenous incarceration, including:*
 - the relative rates and link between Indigenous juveniles progressing from the child protection system to the criminal justice system
 - the conditions in custody and the rights of Aboriginal and Torres Strait Islander peoples in custody
 - increasing rates of women and men in the prison system
 - discrimination, bias and perceptions of cultural differences
 - ‘justice reinvestment’ should be added to ‘availability of alternatives to imprisonment’
- *the broader contextual factors contributing to Indigenous incarceration and any laws and legal frameworks with regard to these, including:*
 - add: prior contact with the criminal justice system and child protection systems
 - ‘child removal’ should be mentioned, not just ‘child abuse and neglect’
 - add: employment and training opportunities, psychiatric and cognitive impairments, access and ownership of country,
- *In undertaking this reference, the ALRC should identify and consider other reports, inquiries and action plans that relate to this issue, including:*
 - Reports of Aboriginal and Torres Strait Islander community controlled legal assistance providers.
- *In undertaking this reference, the ALRC should identify and consider other reports, inquiries and action plans that relate to this issue, including:*
 - Add: Bringing them Home report.

Additional feedback

Whilst NATSILS welcomes the announcement of the Inquiry and of the opportunity to contribute meaningfully, we raise concerns about the capacity of the ALRC, as a law reform body, to inquire into Aboriginal and Torres Strait Islander people’s experience of social disadvantage and its effect on imprisonment.

NATSILS considers it vital that this Inquiry is led by a body that possess the capacity to consider not only law reform but also political and social reform necessary to reduce mass incarceration of Aboriginal and Torres Strait Islander peoples across the nation. In particular, NATSILS is concerned that the ALRC will be unable to consider social, geographical, cultural, environmental, racial and financial factors specific to Aboriginal and Torres Strait Islander people. Furthermore, NATSILS anticipates the ALRC’s limited capacity to evaluate social policies and programs concerning education, health, disability, housing and employment, will hinder meaningful recommendations regarding Aboriginal and Torres Strait Islander peoples.

NATSILS further raises concern over the capacity of Aboriginal and Torres Strait Islander Legal Services to meaningfully engage with the Inquiry in light of funding cuts set to come into effect in 2017 and over the forward estimates.

The ALRC will be awarded a significant budget to conduct the Inquiry. The success of an Inquiry regarding Aboriginal and Torres Strait Islander people relies upon the experience and knowledge of Aboriginal and Torres Strait Islander people.

Submissions provided by Aboriginal and Torres Strait Islander Legal Services (ATSILS) are prepared voluntarily. NATSILS considers it essential that ATSILS and community-controlled organisations play a vital role in the Inquiry. However, NATSILS perceives that a lack of funding in relation to legal services and organisations will significantly reduce the ability of the Inquiry to gain important information. As such, NATSILS wishes to bring to light the issue of funding asymmetry and the impact this will have on facilitating a national, holistic and whole-of government Inquiry and plan for action and, ultimately, to reducing the rates of incarceration across the country.



Mr Wayne Muir

Co-Chair

National Aboriginal and
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Services

