

25 JAN 2017

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Justice

Office of the Secretary
Justice Precinct Offices
Locked Bag 5111
PARRAMATTA NSW 2124

Dear Attorney-General
Senator the Hon George Brandis QC
PO BOX 6100
CANBERRA ACT 2600

Dear Attorney-General

Thank you for your letter received 8 December 2016, seeking input on the draft terms of reference for the Australian Law Reform Commission (ALRC) inquiry into the incarceration rate of Indigenous Australians. The Attorney General has asked me to respond on her behalf.

In 2015-16, individuals who identified as Indigenous accounted for approximately 24% of adults and 52% of young people in custody in NSW, despite comprising only 2.9% of the wider community.

The Department of Justice has consulted with NSW departments and agencies and confirm that NSW is broadly supportive of the proposed scope of the ALRC's Terms of Reference. NSW has two overarching recommendations. The first is that the inquiry should focus specifically on evidence of what is effective in reducing crime and recidivism, and how laws and legal frameworks can best assist in implementing those measures. The second recommendation is to ensure that the inquiry specifically reference vulnerable people and cohorts *within* the Indigenous community: women, youth, those in state care, and those suffering from mental illness and cognitive impairment. Each of these cohorts face different vulnerabilities and factors that may contribute to the overrepresentation of Indigenous people in prisons.

Scope of terms

NSW departments and agencies recommend the terms refer to community based alternatives to prison (such as home detention and intensive correction orders). The terms should also refer to preventative detention in the post sentence detention context. Further, the terms should refer to the nature of conduct that results in incarceration (such as driving offences and the non-payment of fines).

NSW departments and agencies recommend the terms examine the effect that increasing penalties and changing bail laws has on Indigenous incarceration. Further, the inquiry should examine the role of enforcement of legal orders on incarceration, specifically on methods for dealing with family and other violence.

As noted above, the terms should specifically refer to the laws, legal frameworks, policies and practices that contribute to the incarceration rate for particular cohorts *within* the Indigenous community. If the terms are expanded to refer to Indigenous young people, this could include examining the pathways for Indigenous youth progressing into the criminal justice system, diversionary options or culturally appropriate court frameworks, role of legal services for Indigenous young people and the implications of criminal convictions on access to education and employment.

Process and community involvement

A multi-disciplinary, collaborative and coordinated approach will provide comprehensive coverage of any recommendations made by the inquiry. NSW departments and agencies support the inquiry examining how incarceration affects health, education, employment, housing, social cohesion, families and the community. Incarceration has broad social and economic impacts upon Indigenous individuals and communities and often continues the cyclical nature of engagement with the criminal justice system. Community engagement throughout this process should be trauma-informed, socio-culturally respectful and seek to deliver community-based recommendations that address the factors inherent within incarceration. Throughout the inquiry, the ALRC should draw on the expertise and practices adopted within state and territory governments in this respect.

Prior reports and inquiries

While reference is made to the ALRC considering prior reports and inquiries, analysis of progress against prior recommendations/reforms will be important. This will ensure that the Inquiry does not repeat previous work. In addition to the reports and inquiries cited, the ALRC may also wish to consider:

- the Productivity Commission annual reports *Overcoming Indigenous Disadvantage*
- the Australian Medical Association's 2015 Health Report Card on Indigenous Health
- the UNSW 2015 Report *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, and
- reports prepared by the NSW Bureau of Crime Statistics and Research
- inquiries relating to the incarceration of Indigenous young people including:
 - the NSW Inspector of Custodial Services *Review of behaviour management practices undertaken by Juvenile Justice NSW* (due to report March 2017)
 - The 2008 Wood *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, and
 - Noetic Solutions' *Strategic Review of the New South Wales Juvenile Justice System in NSW* (2010).

The ALRC may consider consulting with the Australian Institute of Criminology throughout this process given its work in examining broader legal frameworks.

Timeframes

Noting the ambitious timeframes and broad scope of the inquiry, it will be important to ensure the inquiry engages with each issue in depth and with sufficient analysis necessary to build on previous inquiries and reports and formulate practical recommendations that can be implemented.

We look forward to working with the ALRC as the inquiry progresses. If your office needs further information, please contact Ms Anna Read, Senior Policy Officer at the Department of Justice on [REDACTED] or by email at [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Cappie-Wood', written over a horizontal line.

Andrew Cappie-Wood
Secretary