

The Hon John Rau MP

22 January 2017

The Hon George Brandis MP
Attorney-General
Parliament House
CANBERRA ACT 2600

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Government
of South Australia

Deputy Premier
Attorney-General
Minister for Justice Reform
Minister for Planning
Minister for Housing and Urban
Development
Minister for Industrial Relations
Minister for Child Protection
Reform
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Dear Attorney-General *George*


**Australian Law Reform Commission Inquiry into the incarceration rate of
Indigenous Australians - draft Terms of Reference**

Thank you for the opportunity to provide input on the draft terms of reference for the Australian Law Reform Commission Inquiry into the incarceration rates of Indigenous Australians.

I have consulted with relevant South Australian Government Ministers and departments and have enclosed a summary of the feedback for your consideration.

I join with you in acknowledging the important work that needs to be done to address issues that contribute to Indigenous Australians overrepresentation in our national prison population.

Yours sincerely


John Rau
Deputy Premier
Attorney-General

South Australian government feedback on the draft terms of reference - ALRC Inquiry

The South Australian Government is generally supportive of the draft terms of reference for the Australian Law Reform Commission Inquiry into Indigenous incarceration.

We are pleased to see the commitment to consultation with Aboriginal people in the terms of reference and note it is critical this extends to include representation from all jurisdictions.

Laws and legal framework

In addition to the draft terms of reference:

- When considering laws and legal frameworks which inform decisions to hold or keep Aboriginal Australians in custody such as sentencing, this should include breaches of community service orders and home detention.
- The consideration of factors within laws and legal frameworks that affect decisions to hold or keep Aboriginal Australians in custody should be expanded to include availability of comprehensive information about the defendant. Inquiries regarding the availability of alternatives to incarceration should include bail hostels.
- Consideration of legal and law enforcement institutions should extend to the employment of Aboriginal staff within justice agencies e.g. Aboriginal Community Constables, Aboriginal Justice Officers and Aboriginal Liaison Officers.
- Consideration of application of laws in different local contexts should include access to the justice system and non-custodial sentencing options in the more remote locations.
- The effects of laws and legal frameworks on the rate of Aboriginal incarceration should be expanded to include remand rates and the cultural appropriateness of alternatives to custody such as bail hostels and post release supported housing.
- Broader contextual factors should include consideration of the impact of and interaction with the Child Protection system for Aboriginal people.

Specific issues for consideration under the draft Terms of Reference

The following issues are raised for consideration in terms of whether they should be specifically referenced in the Inquiry terms of reference or considered as part of the broader Inquiry process.

- **Youth incarceration** could be included in the TOR and accordingly, references to the 'prison system' could be expanded to include juvenile detention centres.
- **Family violence** - could be considered due to the high incarceration rates of Aboriginal and Torres Strait Islander men in a number of jurisdictions for assault, sexual assault and breaches of apprehended violence orders.
- **Diversion and Rehabilitation** - assess the scope of support and funding models of programs aimed at reducing Aboriginal offending (especially issues around short term funding and cultural appropriateness).
- **Rising incarceration rates** of Aboriginal women.
- **Cross cultural awareness training** - the availability and uptake of training by staff in the criminal justice system e.g. police, correctional services, courts, legal services.

- **Policing of public order offences** - whether policing practices for public order offences such as drunkenness, offensive language, loitering etc. unfairly target Aboriginal people resulting in arrest and detention.
- **Differences in policing practices** between urban, regional and remote communities.
- **Indigenous Justice Agreements** - the TORs should allow the ALRC to consider the existence and nature of Indigenous Justice Agreements nationally and whether they impact on Aboriginal offending and incarceration.
- **Royal Commission into Deaths in Custody** - the extent to which recommendations have been implemented noting that the RCIADIC identified racism and the differential treatment of Aboriginal and Torres Strait Islander people as a contributing factor to over representation rates in the justice system.