

4 September 2017

Ms S Wynn  
The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

**Copy by Email: [indigenous-incarceration@alrc.gov.au](mailto:indigenous-incarceration@alrc.gov.au)**

Dear Ms Wynn,

**DISCUSSION PAPER NO. 84: INCARCERATION RATES OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES**

The Australian Capital Territory Law Society ("the Society") is pleased to submit a response to the Australian Law Reform Commission's ("ALRC") Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples.

The Society is the peak professional association that supports and represents the interests of the members of the legal profession in the Australian Capital Territory ("ACT"). The Society maintains professional standards and ethics as well as providing public comment and promoting discussion regarding law reform and issues affecting the legal profession. The Society currently represents over 2,400 legal practitioners within the ACT.

The Society pays respect to Aboriginal and Torres Strait Islander Traditional Owners and Elders, past and present, across Australia, and extends that respect to all Aboriginal and Torres Strait Islander people.

In the March Quarter 2017, Aboriginal and Torres Strait Islander persons comprised approximately 20% of the ACT's daily average sentenced detainee population (held at the Alexander Maconochie Centre ("AMC")).<sup>1</sup> This figure is disconcerting as Aboriginal and Torres Strait Islander persons account for only 1.6% of the ACT population.<sup>2</sup>

Between 2011 and 2026, it is predicted that the Indigenous population living in the ACT will increase by 54%.<sup>3</sup>

The Society is commenting only on specific issues discussed during our meeting with the ALRC on 11 August 2017 and acknowledges that specialised Aboriginal and Torres Strait Islander legal services are uniquely placed to provide the ALRC with the most appropriate expertise on the incarceration rates of Aboriginal and Torres Strait Islander people.

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<sup>1</sup> ACT Government Justice and Community Safety Directorate, *March 2017 Statistical Profile: ACT Criminal Justice*, 139 <[http://cdn.justice.act.gov.au/resources/uploads/JACS/4\\_ACT\\_Criminal\\_Justice\\_Statistical\\_Profile\\_March\\_2017\\_-\\_FULL\\_VERSION\\_-\\_FINAL\\_17\\_07\\_07.pdf](http://cdn.justice.act.gov.au/resources/uploads/JACS/4_ACT_Criminal_Justice_Statistical_Profile_March_2017_-_FULL_VERSION_-_FINAL_17_07_07.pdf)>.

<sup>2</sup> Australian Bureau of Statistics, *2016 Census QuickStats* (12 January 2017) <[http://www.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/8?opendocument](http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/8?opendocument)>.

<sup>3</sup> Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples 2015* (2015), 9 <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551281>>.

The Society is concerned that Indigenous incarceration rates in the ACT and around Australia will continue to rise if a number of deficiencies around Australia, including the following, are not rectified:

1. legislation that enables bail authorities to impose unachievable bail condition(s) on an accused person (specifically addressed here are conditions that prohibit a person with an alcohol dependency from consuming alcohol);
2. the incautious administration of opioid maintenance treatment programs to detainees; and
3. the numerous barriers faced by, in particular, regional and remote Aboriginal and Torres Strait Islander communities in obtaining driver's licenses, combined with factors tending to encourage unlicensed driving (including lack of access to reliable public transport, illiteracy, lack of access to driving instruction, lack of access to vehicles, and lack of funds).

Accordingly, the Society has responded to the following proposals and questions:

1. **Alcohol withdrawal can be fatal. Alcohol addicted persons cannot comply with bail conditions not to consume alcohol, and breaches of bail see these persons remanded in custody when bail is otherwise appropriate.**

Recommendation:

The Society does not support the imposition of bail condition(s) that prohibit an accused person (who suffers from an alcohol dependency) from consuming alcohol.

Bail legislation should include a presumption against imposing conditions that prohibit alcohol consumption when an accused person has an alcohol dependency. Alternatively, the legislation should require a bail authority to assess whether a bail condition is reasonable, having regard to an accused person's alcohol dependency, and community safety considerations.

- In 2012, Indigenous people entering prison were 20% more likely than non-Indigenous entrants to report that they had engaged in risky alcohol consumption.<sup>4</sup>
- The Society concurs with the Aboriginal Legal Service's (NSW/ ACT) ("ALS") view that oppressive bail conditions, "set [people] up to fail".<sup>5</sup> Accused persons' bail could be revoked if they are unable to comply with their bail condition(s). If alcohol dependent persons comply with their bail conditions, it is possible that they could experience serious alcohol withdrawal complications (including death).<sup>6</sup>

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<sup>4</sup> Ibid 48.

<sup>5</sup> Aboriginal Legal Service (NSW/ACT) Limited, Submission to the New South Wales Law Reform Commission, *Bail*, 22 July 2011, 18.

<sup>6</sup> Alcohol and Drug Foundation, *Alcohol* (30 August 2017) <<https://adf.org.au/drug-facts/alcohol/>>.

2. **Question 5-1: What are the best practice elements of programs that could respond to Aboriginal and Torres Strait Islander prisoners held on remand or serving short sentences of imprisonment?**

**Drug addiction is a significant risk factor for contact (or further contact) with the criminal justice system. Aboriginal and Torres Strait Islander persons without pre-existing opioid addiction are accessing methadone “treatment” while on remand or serving sentences. People are leaving prison with drug addictions that they did not have before.**

Recommendation:

The Commonwealth Government's National Guidelines for Medication-Assisted Treatment of Opioid Dependence (2014) and the ACT Government's Opioid Maintenance Treatment Guidelines (due for review since September 2012) should be amended in the following respects:

- Consultation with medical professionals should be sought to make the following recommendation as appropriate as possible, but prior to prescribing methadone treatment, providers should be required to investigate a detainee's substance use history and to conduct an examination of their physical (i.e. urine drug screening) and mental state to attempt to corroborate a detainee's self-reported use of opioids;
  - Treatment providers should provide daily supervision to patients during the first week of treatment (the highest risk period for methadone overdose); and
  - Aboriginal and/or Torres Strait Islander health services should provide health care to Indigenous detainees receiving methadone treatment.
- As drug addiction can impact upon rehabilitation, the Commonwealth Guidelines acknowledge that prisoners are a vulnerable client group.<sup>7</sup>
  - The 2016 'Moss Inquiry' ("The Inquiry") stated that in 2015, the ACT Health Services Commissioner and Justice Health were consulted about reports that male detainees at AMC were prescribed methadone without an opiate addiction.<sup>8</sup> Several Indigenous prisoners reported that methadone is easily prescribed at AMC without having to complete an opiate addiction clinical assessment.<sup>9</sup>
  - The Inquiry further reported that in breach of the ACTCS Drug Testing Policy,<sup>10</sup> an Indigenous detainee was not drug tested on his admission to the AMC (or on his subsequent return to the AMC after receiving treatment at The Canberra Hospital).<sup>11</sup> Additionally, the medical officer prescribing methadone to the detainee did not co-sign his Opioid Guidelines Rights and Responsibilities Form.<sup>12</sup>

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<sup>7</sup> Linda Gowing et al, *National Guidelines for Medication-Assisted Treatment of Opioid Dependence* (April 2014) Commonwealth of Australia, 52  
<[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/AD14DA97D8EE00E8CA257CD1001E0E5D/\\$File/National\\_Guidelines\\_2014.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/AD14DA97D8EE00E8CA257CD1001E0E5D/$File/National_Guidelines_2014.pdf)>.

<sup>8</sup> ACT Government, "So Much Sadness in our Lives" (7 November 2016), 64  
<[http://cdn.justice.act.gov.au/resources/uploads/JACS/Reviews/submissions/Treatment\\_in\\_Custody/Report\\_of\\_Independent\\_Inquiry.pdf](http://cdn.justice.act.gov.au/resources/uploads/JACS/Reviews/submissions/Treatment_in_Custody/Report_of_Independent_Inquiry.pdf)>.

<sup>9</sup> Ibid 63.

<sup>10</sup> Ibid 61.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid 63.

- The ACT Guidelines list the Winnunga Nimmityjah Aboriginal Health Service (“the Service”) as a health care provider for Indigenous people.<sup>13</sup> However, at the time of the Inquiry, the Service did not provide health care to AMC detainees.<sup>14</sup> Both the Inquiry and the Government’s response to the Inquiry recommended that the Service be introduced at AMC.<sup>15</sup> Prior to prescribing methadone, the Service seeks to address the underlying causes of drug addiction (such as intergenerational and personal trauma).<sup>16</sup> Proper funding will be required to ensure that the Service can assist prisoners in the AMC.

**3. Question 6-10: How could the delivery of driver licence programs to regional and remote Aboriginal and Torres Strait Islander communities be improved?**

**It is well-known that driver licensing offences are the gateway between many Aboriginal and Torres Strait Islander people and the criminal justice system.**

Recommendation:

Coinciding with the views of ALS, the New South Wales Council of Social Service (“NCOSS”) and the New South Wales Law Society, the Society supports the implementation of comprehensive and culturally-appropriate driver education programs for Indigenous peoples.

By acquiring a driver licence, Indigenous persons living in remote areas will be able to fulfil their social, legal and cultural obligations and access medical and government services. They will also gain access to otherwise unattainable education and employment opportunities.

- In contrast to 2% of non-Indigenous Australians, 21% of Indigenous Australians live in remote areas<sup>17</sup> (of these, 13.7% live in very remote areas).<sup>18</sup>
- Aboriginal and Torres Strait Islander peoples living in regional and remote communities encounter challenges to accessing public transport. In 2008, 71% of adult Indigenous people living in remote areas did not have access to public transport.<sup>19</sup> Consequently, 15% of Indigenous people reported that they were unable to access locations when required.<sup>20</sup>
- The George Institute’s Driving Change program (supported by the New South Wales Government) assists young Aboriginal people in regional and remote New South Wales to acquire a driver licence. The program supports students with obtaining their birth certificate, paying fines, completing log book hours and booking

<sup>13</sup> ACT Health, *The ACT Opioid Maintenance Treatment Guidelines*, 11  
<<https://www.health.act.gov.au/sites/default/files/Opioid%20maintenance%20treatment%20guidelines.pdf>>.

<sup>14</sup> Above n 8, 13.

<sup>15</sup> Above n 8, 13; The Legislative Assembly for the Australian Capital Territory, *Government Response to the Independent Inquiry into the Treatment in Custody of Steven Freeman*, 10

<[http://cdn.justice.act.gov.au/resources/uploads/JACS/Reviews/submissions/Treatment\\_in\\_Custody/Government\\_response\\_to\\_the\\_Independent\\_Inquiry\\_into\\_the\\_Treatment\\_in\\_Custody\\_of\\_Steven\\_Freeman.pdf](http://cdn.justice.act.gov.au/resources/uploads/JACS/Reviews/submissions/Treatment_in_Custody/Government_response_to_the_Independent_Inquiry_into_the_Treatment_in_Custody_of_Steven_Freeman.pdf)>.

<sup>16</sup> Above n 8, 63.

<sup>17</sup> Above n 3, 8.

<sup>18</sup> *Ibid* 13.


<sup>19</sup> Australian Bureau of Statistics, *Access to Health and Community Services: Barriers to Accessing Services* (19 December 2012) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter960Oct+2010>>.

<sup>20</sup> *Ibid*.

and preparing for both their learner's and provisional licence tests. Students with literacy problems are mentored by volunteers prior to completing the learner's licence knowledge test.<sup>21</sup>

If you have any queries regarding our submission, please do not hesitate to contact us.

Yours sincerely,

  
(for) Sarah Avery  
President

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<sup>21</sup> The George Institute for Global Health Australia, *Driving Change* (2017) <<http://www.drivingchange.com.au/>>; Staysafe (Joint Standing Committee on Road Safety), Parliament of New South Wales, *Driver Education, Training and Road Safety* (2017), 5.