

4 September 2017

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001



Via email: indigenous-incarceration@alrc.gov.au

Dear Sir/Madam,

Re: Incarceration rates of Aboriginal and Torres Strait Islander peoples

Thank you for the opportunity to contribute to the Australia Law Reform Commission's (the Commission) inquiry into incarceration rates of Aboriginal and Torres Strait Islander peoples.

The NSW Council of Social Service (NCOSS) works with and for people experiencing poverty and disadvantage to see positive change in our communities. As the peak body for health and community services in NSW we support the sector to deliver innovative services that grow and evolve as needs and circumstances evolve.

The high rate of incarceration among Aboriginal people due to systemic barriers causes untold harm to families and the communities in which they live. The Commission's inquiry and report represents a positive stepping stone to reducing the incarceration rate of Aboriginal people in this country.

NCOSS has recently travelled across regional and metropolitan NSW to hear from communities about the barriers they face and what needs to change. Right across the state, Aboriginal community members told us they are not receiving the right kind of help to break through the barriers imposed by the justice system. There are concerns a tipping point has been reached where imprisonment has become normalised, threatening the viability of our Aboriginal communities and their youth. We also heard there is limited access to the legal assistance and community support programs that recognise the complex mix of needs – including culture, kinship and trauma – and are crucial to reducing Aboriginal people's contact with the justice system.

NCOSS endorses the submission made by one of our member organisations, the Aboriginal Legal Service NSW/ACT (ALS), to the discussion paper *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*. As you may be aware, the ALS provides a range of legal assistance and support services to Aboriginal men, women and young people who come into contact with the criminal justice system. They have extensive knowledge and grassroots experience of the issues into which the Commission is inquiring. Accordingly, we wish to emphasise the following points and issues raised in ALS's submission:

- Urgent reform is needed to the laws that drive the disproportionate rate of Aboriginal imprisonment. This includes imprisonment arising from low level offences such as fine defaults and minor traffic offences, and mandatory sentencing laws that disproportionately impact Aboriginal people.
- In relation to sentencing options, we share ALS's position that steps should be taken to reduce the imposition of short custodial sentences by increasing the availability of alternative community-based sentencing orders, such as Intensive Corrections Orders (ICOs). ICOs focus on addressing the underlying causes of offending behaviour and keep Aboriginal people in the community rather than in prison.
- Imprisonment data shows that 40% of persons sentenced to prison for less than 6 months are Aboriginal and that some 60% who received such sentences were likely to re-offend within two years. Short sentences are costly and do little to address offending behaviour. Once in prison there is little if

any opportunity for people to access rehabilitation programs that address the underlying cause of their incarceration.

- We share ALS's concerns about the growing number of Aboriginal going to prison for low level offences such as driving without a licence. Research shows that driving relate offences is one of the main factors driving up incarceration rates among Aboriginal people. We note that some 200 Aboriginal people went to prison for this offence in 2016. The consequences of driving without a licence can be serious and significant for Aboriginal people and the communities in which they live. Not being able to drive can mean not being able to access vital services, such as receiving medical treatment. Being caught driving without a licence can exacerbate financial hardship and result in loss of employment and potential imprisonment. This is one area of the legal and justice system that we and ALS believe needs urgent fixing.
- We also share the ALS's position that the justice system and associated policies and practices play a big part in creating and sustaining the incidence of contact with Aboriginal people. For example, Aboriginal people are much more likely to be:
 - Questioned by police than non-Aboriginal people
 - Arrested rather than proceeded against by summons
 - Remanded in custody than given bail
 - Convicted and incarcerated.
- Further, Aboriginal people are also much more likely to plead guilty than go to trial and much less likely to get parole at the end of their term of imprisonment. So, at every single step in the criminal justice process, Aboriginal people fare worse than non-Aboriginal people.
- Like ALS, we are deeply concerned about the rapidly growing rate of incarceration of Aboriginal women. Since the Deaths in Custody Inquiry report in 1993, Aboriginal women's imprisonment has increased by 250%. Aboriginal women make up 32% of the female prison population in NSW, and 80% of these are mothers. Imprisoning women profoundly impacts their children and results in an increasing number of Aboriginal children being placed in out of home care. As acknowledged in the discussion paper, there are few if any diversionary programs for these women.

There needs to be greater investment in culturally appropriate services and programs to help Aboriginal communities reduce contact with the justice system. In our recent community consultations, we heard that services such as the ALS are chronically underfunded and unable to provide a level of service that ensures equal access to justice for their Aboriginal clients. We believe greater funding is needed to increase the capacity of legal assistance services to respond to growing demand and address the underlying causes of Aboriginal people's contact with the justice system.

Further, governments need to do more to reduce Aboriginal people's contact with the justice system and prevent re-offending by funding services and programs that divert their contact with every point of the justice system. Our consultations revealed these are urgently needed for Aboriginal women and young people in rural communities.

Finally, governments can help Aboriginal people avoid returning to prison by investing more in helping them find appropriate housing, healthcare and employment upon exiting prison. Finding safe, stable and affordable housing is one of the major challenges faced by prisoners on release. It is also one of the greatest challenges for community organisations working in the area of reintegration and transition.

The over-representation of Aboriginal men, women and young people in our prisons tells us that the current justice system is failing to address the underlying causes of offending and re-offending. It is patently clear that strategies other than imprisonment are needed and that these need to be identified and implemented quickly if we are serious about 'closing the gap' between Aboriginal and non-Aboriginal

people. We therefore call on the Commission to recommend to the Australian Government the setting of justice targets: one to reduce imprisonment rates, the other to reduce victimisation, and for these to be underpinned by robust policies and more investment in community-based and Aboriginal-led legal assistance, diversion, rehabilitation, and post-release programs.

We thank the Commission for its consideration of this important area of social and legal policy and look forward to hearing about the outcomes of the Inquiry.

If you require further information in relation to our submission, please contact Ben Folino, Policy & Research Officer on 02 8960 7905 or ben@ncoss.org.au.

Yours sincerely



Tracy Howe
Chief Executive Officer

