



4 September 2017

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

Email: [Indigenous-incarceration@alrc.gov.au](mailto:Indigenous-incarceration@alrc.gov.au)

Dear Executive Director,

**Incarceration Rates of Aboriginal and Torres Strait Islander People: IAHA submission to the ALRC Discussion Paper**

Thank you for the opportunity to comment on the Australian Law Reform Commission's (ALRC) Discussion Paper *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*. Indigenous Allied Health Australia (IAHA) supports effort to address unacceptably high rates of Aboriginal and Torres Strait Islander incarceration.

IAHA is the national organisation for Aboriginal and Torres Strait Islander allied health professionals. IAHA aims to increase the number of Aboriginal and Torres Strait Islander people working in allied health care professions and to make the health system more holistic and culturally responsive. IAHA works to improve the lives of Aboriginal and Torres Strait Islander peoples now and for future generations, and to change how health and other systems work with Aboriginal and Torres Strait Islander people to improve health and wellbeing.

We represent allied health as a collective and our membership includes representatives from 24 allied health professions operating across the health, education, community and justice sectors. We are more than 1000 members strong and our membership is growing at over 30 per cent per annum.

The tragically high rates of Aboriginal and Torres Strait Islander people in incarceration must spur policy makers to implement decisive, effective action to prevent unwarranted incarceration. Crucial to that effort is reducing the incidence of Aboriginal and Torres Strait Islander people coming into contact with the justice system in the first place. For decades these issues have been a subject of extensive official inquiry and reporting, but have not led to sufficient action to address the underlying issues. Stronger, concerted action needs to be taken to reduce incarceration and the tragedy associated with it; including, for example, implementing the recommendations of the 1991 report of the Royal Commission into Aboriginal Deaths in Custody.

These issues cannot be addressed effectively without a broad commitment to action, and in multiple areas of policy and services. The Prime Minister noted in introducing his **2017 Closing the Gap** report, noted:

*"The high rates of suicide and disproportionately high rates of incarceration among our First Australians are issues that all governments, in partnership with community, need to work tirelessly to resolve."* (page 4)

The ALRC may be aware of the coordinated effort of national Aboriginal and Torres Strait Islander peak representative and community based organisations through National Congress, to address the fallout of systemic disadvantage and intergenerational trauma. These organisations, with expertise in legal, health among others are advocating the need for coherent, systemic change through the Redfern Statement campaign.

As signatories to the Redfern Statement argue, addressing Indigenous disadvantage requires a sustained, system-wide effort to change the way health, community service and protection, legal, education, employment and other sectors understand and engage with Aboriginal and Torres Strait Islander people. The approach must be holistic, entail much more than a review of operational procedures, and fundamentally address whether the structure of those systems delivers outcomes that demonstrate principles such as equality before the law.

IAHA also welcomes recognition of the impact these complex factors have on the incarceration of Aboriginal and Torres Strait Islander peoples, as noted in the Attorney General's Terms of Reference for the inquiry:

*"It is acknowledged that while laws and legal frameworks are an important factor contributing to over-representation, there are many other social, economic, and historic factors that also contribute."*

Acknowledging these issues means recognising the facts. Unfortunately, the importance of this acknowledgement does not appear to be reflected in the scope, tone and focus of the discussion paper and proposed questions. The purpose of acknowledging these issues should be to identify areas and at what intersecting points work is needed, and not primarily to stipulate what the inquiry will not consider.

For the inquiry to deliver substantive change, it needs to acknowledge that Australia's laws and legal frameworks contribute to systemic differences in the treatment and outcome of people, associated with race. There should be consideration of issues such as why there are such high rates of hearing impairment and intellectual disability among incarcerated Aboriginal and Torres Strait Islander people in some jurisdictions. The most effective approach to reducing incarceration rates may sit in the health and/or education systems rather than in policing and prisons.

The situation has analogies in the health system. For instance, many people would acknowledge that alarming rates of chronic disease and inadequate access to health care services contribute to avoidable hospital admissions and premature death. There are, of course, social, economic, cultural and historic factors that contribute to the situation. An effective health system would see preventative health measures reduce the incidence of disease and trauma, with the efficiency of procedures in accidents and emergency departments being a complement to those efforts. The rationale is similar for approaches to justice. The scoping of these issues is crucial, not least because it signals whether having recognised these problems there is also an intention to do something about them.

Addressing the underlying issues is likely to will have more positive impact than wholesale reform of processes to deal with avoidable problems once they have occurred. IAHA recognises that such an approach would require collaboration between jurisdictions and across established portfolio delineations. One result of such collaboration could be to put downward pressure on policing and prison budgets.

IAHA offers the following comments on specific aspects of the discussion paper.

## **Section 10**

Proposal 10 – 1.

- IAHA supports the proposal for state and territory Governments to work with peak bodies to develop Aboriginal Justice Agreements.

Proposal 10. 2.

- As active members on the Close the Gap Campaign, we support the proposal that the Commonwealth Government develop justice targets. We urge Governments to establish a separate inquiry process which is co-led by Aboriginal and Torres Strait islander peak bodies to undertake this body of work.

Section 12 – Police Accountability.

The scope of the questions in this section appear to reinforce a presumption of criminality and offending behaviour among Aboriginal and Torres Strait islander individuals and communities.

The paper identifies the potential value of Reconciliation Action Plans, and these may support greater engagement at the operational level. Ideally, however, these need to be complemented by higher level strategic commitments that recognise that justice and policing structures and systems can operate to reinforce processes and actions that lead to different treatment and impacts for people based on their race – or structural racism.

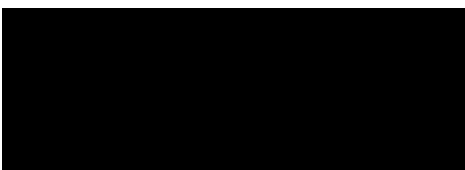
Also, there needs to be a stronger focus on integrating accountability frameworks for situations where Aboriginal and Torres Strait Islander People are abused by police or other officials.

The ALRC could consider whether the current process adequately considers opportunities to improve public trust and confidence in accountability arrangements that relate to policing and the treatment of Aboriginal and Torres Strait Islander people. The following examples, suggest areas where much more could be done to provide assurance that Aboriginal and/or Torres Strait Islander people are subject to fair and equitable treatment through the justice system.

- The case of Ms. Dhu, a young woman who died in police custody in Western Australia. The coroner described the behaviour of police in charge of her care as “unprofessional and inhumane”. However, this led to sanctions but apparently no further official action. Such examples damage trust and reinforce concerns about systematic racism in the criminal justice system.
- IAHA is concerned that there appears to be no mention in the discussion paper of “paperless arrest”, which is outlined in Div 4AA of the Police Administration Act (NT). This law makes Aboriginal and Torres Strait Islander people particularly vulnerable to detention and incarceration with little or no record being kept.
- IAHA also calls that systems, such as the Custody Notification System (ACT/NSW), could be supported nation-wide and be mandatory when any Aboriginal and/or Torres Strait Islander person is detained.

If you would like to discuss this submission or require and further information, please contact either Hayley McQuire or Allan Groth on 02 6285 1010.

Yours Sincerely



Donna Murray  
CEO, Indigenous Allied Health Australia