

15 September 2017

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

**By email: [indigenous-incarceration@alrc.gov.au](mailto:indigenous-incarceration@alrc.gov.au)**

Dear Ms Wynn,

**CAALAS response to the ALRC Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander People**

It is an unacceptable state of affairs that the disproportionate incarceration rates experienced by Aboriginal and Torres Strait Islander (ATSI) people continue to be such that an ALRC Inquiry is needed.

That these disproportionate incarceration rates continue in a context of numerous past inquiries relating to incarceration rates amongst ATSI communities, including the driving factors behind this, makes this situation all the more of a travesty. We note that numerous recommendations arising from such inquiries are yet to be implemented. The bulk of the 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) remain unimplemented or only partially implemented. We note that some laws in the NT blatantly contravene the recommendations of RCIADIC, including paperless arrest and mandatory sentencing laws.

It is any wonder that the announcement of subsequent inquiries is often met with cynicism and hopelessness by Aboriginal community members. CAALAS agrees with the remarks made at the opening of the Royal Commission into the Protection and Detention of Children in the NT (RCPDCNT) by Senior Counsel Assisting the Commission Peter Callaghan SC:

*There is a need to confront some sort of 'inquiry mentality', in which investigation is allowed as a substitution for action, and reporting is accepted as a replacement for results.<sup>1</sup>*

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<sup>1</sup> Senior Counsel Assisting, *Opening Address to the Royal Commission into the Protection and Detention of Children in the Northern Territory*, 11 October 2016, p.4  
<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/transcripts-2016/Openings-Senior-Counsel-Assisting.pdf>

The 2016 Redfern Statement, which was developed and delivered by a coalition of Aboriginal organisations from across Australia, condemns the lack of improvement in the daily injustices that are experienced in Aboriginal communities across Australia. The Redfern Statement called on the Commonwealth Government to commit to a number of measures aimed to address this disadvantage. CAALAS whole heartedly supports the Redfern Statement and attaches this to our letter for your reference.

It is essential that the current Inquiry of the ALRC address this history of inaction, to avoid compounding the lack of trust that has ensued. Government accountability in relation to the implementation of recommendations must be increased. To combat the risk of these recommendations being added to the long list of those that are yet to be implemented, a robust monitoring mechanism must be established to oversee progress regarding implementation of the recommendations that the ALRC makes as a result of this Inquiry.

Self determination for Aboriginal people is critical to effecting progress in relation to disproportionate incarceration rates, the underlying causes of incarceration, and the unacceptable and pervasive disadvantage that Aboriginal people continue to experience across many areas such as health, education, legal, housing, and employment, amongst others. Approaches based on 'doing for', or 'doing to' Aboriginal people will never work – the approach must be to 'do with'. CAALAS agrees with the observation of Pat Anderson OAM, that *"the only gains we have ever made in this country... has been through our own activism and joined by other people."*

CAALAS has provided input to the submission by the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) to this ALRC Inquiry, and endorses all recommendations therein.

In our written submissions to the RCPDCNT CAALAS also addressed a number of the topics included in the Discussion Paper released by the ALRC in connection with this Inquiry. We attach copies of our submissions on Youth Detention, and Pre and Post Detention to provide you with more detailed content as to the driving factors behind the overrepresentation of Aboriginal youth in detention in the NT, and our recommendations to address this. The theme of overrepresentation flows constantly throughout these submissions.

CAALAS would be happy to discuss any elements of these submissions and provide further information where needed to assist the ALRC in a fulsome Inquiry. Please do not hesitate to contact CAALAS if we can be of any further assistance.

Otherwise, we look forward to the ALRC's final report into Incarceration Rates of ATSI People, and what will hopefully be a proactive and supportive governmental response to the recommendations therein.

Yours faithfully  
**CENTRAL AUSTRALIAN ABORIGINAL LEGAL AID SERVICE LTD.**



**Eileen Van Iersel**  
**Chief Executive Officer**