

MEDIA RELEASE

ALRC INQUIRY FINDINGS BACK CALLS FOR A NEW INDIGENOUS COURT IN NSW



NEW SOUTH WALES
BAR ASSOCIATION

28 March 2018

The Australian Law Reform Commission's Report "*Pathways to Justice— An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*" released today represents a comprehensive blueprint for urgent action to address the shameful over-representation of Aboriginal and Torres Strait Islander people in our prisons, the President of the New South Wales Bar Association Arthur Moses SC said today. "Swift and decisive action is now required from Commonwealth, State and Territory Governments to ensure its recommendations are implemented."

"The disproportionate incarceration rates in this country are deeply troubling" Mr Moses said. "As the report makes clear, although Aboriginal and Torres Strait Islander adults comprise 2% of the population, they make up 27% of prisoners nationwide. The situation in NSW is no better. As at 30 June 2017, 24% of the NSW prisoner population identified as Aboriginal and Torres Strait Islander - that is, 3, 197 out of the 13, 149 prisoners in this State."

As the Commission has noted, its inquiry and report raises fundamental issues about how substantive, not just formal, equality before the law can be achieved.

"Many of the Report's recommendations reflect the New South Wales Bar Association's submissions to the Inquiry. Last year the Bar Council established a high level Joint Working Party on the Over-representation of Indigenous People in the NSW Criminal Justice System consisting of practising barristers, judges and prominent experts to prepare submissions to the Inquiry. The Joint Working Party was chaired by Phil Boulton SC and Dr Sarah Pritchard SC. The NSW Bar is indebted to the working party for their important work which has significantly contributed to this outcome." said Mr Moses.

Some of the Report's major recommendations for the justice system include:

- the introduction of specific sentencing legislation to allow courts to take account of unique systemic and background factors affecting Indigenous peoples;
- the revision of bail laws to require bail authorities to consider cultural issues that arise due to a person's Aboriginality;
- repeal of mandatory or presumptive sentencing regimes which have a disproportionate effect on Aboriginal offenders;
- establishment of an independent justice reinvestment body, overseen by a Board with Aboriginal and Torres Strait Islander leadership, and the initiation of justice reinvestment trials to promote

the diversion of resources from the criminal justice system to community based initiatives that aim to address the causes of Indigenous incarceration;

- the expansion of culturally appropriate community-based sentencing options, resourced and supported by State and Territory Governments;
- Fine default should not result in imprisonment in lieu of or as a result of unpaid fines;
- The abolition or restriction of offences relating to offensive language to genuinely threatening language; and
- the establishment of properly resourced specialist Aboriginal and Torres Strait Islander sentencing courts to be designed, implemented and in consultation with Aboriginal organisations.

“All of these recommendations are supported by the Association as important initiatives which will contribute to addressing Aboriginal incarceration rates” Mr Moses said.

“I am particularly pleased that the Report supports the establishment of specific Indigenous sentencing courts: see recommendations 10-2 and 10-3. The Bar Association for some time has been promoting the Walama Court proposal with the State Government. The establishment of the Walama Court is critical in reducing Indigenous incarceration rates. The model would involve community participation and more supervision resulting in reduced recidivism and increase compliance with court orders to better protect the community. It is not a “soft on crime” initiative but rather a more effective manner to supervise offenders post-sentence in order to enhance rehabilitation and prevent re-offending.”

“At this stage the State Government has not allocated funds to enable the establishment of the Walama Court in the 2018-19 financial year, despite the fact that it would have long term economic cost savings for NSW. In the long term it will save the Government money as fewer Indigenous persons will be imprisoned and the reduced rates of recidivism will mean generations of people will not continue to cycle through the criminal justice system” said Mr Moses.

“I have commenced discussions with the NSW Premier to urge her to provide the Attorney-General with the funding that he requires to allow the Walama Court to be set up in the coming financial year. Given that the ALRC has specifically supported the establishment of the Walama Court in its Report, it is important that the NSW Government commit, as a matter of urgency, to fund the proposal so that it can proceed without further delay.”

“One of the major themes running through the Report and its recommendations is the need for Commonwealth, State and Territory Governments to provide sufficient resources to ensure that the ALRC’s proposals can be effectively implemented. The time has come for Governments to commit to the financial resources necessary to ensure that these crucial initiatives are put in place in consultation with Aboriginal communities and organisations” said Mr Moses.

“Until there is a genuine commitment from Governments to address this worsening problem and end years of inaction, Aboriginal incarceration rates will remain a national disgrace”

MEDIA CONTACT: Alastair McConnachie 0420314462