

Indigenous Imprisonment Symposium: *Communique*

Background

On 26 November 2015, the Law Council of Australia convened a national symposium into the disastrous numbers of Aboriginal and Torres Strait Islander people who are incarcerated in Australian prisons.

The Symposium noted the extent of the crisis:

- Twenty-seven per cent of the prison population is Indigenous, while comprising just 2.5 per cent of the national census;
- One in five deaths in custody is Indigenous
- The rate of imprisonment of Aboriginal people has increased by over 57 per cent since the year 2000.

The Law Council drew together some of the nation's top legal experts and community leaders to examine the issue and put forward constructive approaches to addressing the crisis. Generally agreement was reached with respect to the following:

Key resolutions

- **The Council of Australian Governments (COAG) to place 'reducing Indigenous imprisonment' as a key item on its 'Closing the Gap' agenda and establish specific targets, including:**
 1. Reducing rates and length of imprisonment for men, women and youths by 50 per cent, within five years
 2. Implementing trials in all jurisdictions aimed at reducing imprisonment by effective diversionary programs within 12 months with:
 - a. Commitment to fund programs for five-year cycles, subject to performance targets
 - b. National review of programs within three years
- **COAG to develop:**
 1. **Immediate strategies to address violent offending, particularly violence against Indigenous women and children.**
 2. **Immediate strategies to address imprisonment of Aboriginal and Torres Strait Islander youths, women and those with cognitive disabilities, including:**

Indigenous youths

- (a) A one-off increase in funding to to community-controlled, culturally appropriate youth diversion/engagement programs to match urgent need;
- (b) A review of Family and Community Services to reduce the number of children in care entering the juvenile justice system;
- (c) A campaign to increase Indigenous youths' pride in culture and identity, and creating pathways to self-esteem through education and work;

Indigenous women – imprisonment and family violence

- (d) Establish a legislative presumption against arresting victims of domestic violence at time of police intervention for outstanding unrelated charges (in light of evidence victims may be reluctant to report violence or seek help, for fear of arrest);
- (e) Address the specific needs of Indigenous women, particularly in relation to family violence and child protection, and ensuring the availability of culturally appropriate and community-controlled health services;
- (f) Substantially increase funding for Family Violence Prevention Legal Services, as the primary providers of joined-up legal assistance and referral to Aboriginal and Torres Strait Islander victims of family violence;

Imprisonment of disabled persons

- (g) Implement screening processes for all Indigenous youths and adults arrested by police to identify impairments and any reasonable treatment and rehabilitation required to minimise their prospects of reoffending;
- (h) Ensure a continuum of support for Indigenous Australians with cognitive impairments and mental health disorders, including culturally relevant early intervention and support, diversion from detention and pathways out of prison into supported accommodation programs and appropriate services;

Justice system reforms and funding

- (i) Review penalties for minor infringements, and stop fine default imprisonment;
- (j) Abolish mandatory sentencing and 'baseline' sentencing;
- (k) Increase funding Aboriginal and Torres Strait Islander legal services; and
- (l) Increased funding for tailored prisoner thorough-care programs for Indigenous custodial offenders on release.

- **Law Council to convene a taskforce to identify a national data set for collection by all States and Territory Governments by 30 April 2016.**
 - **Urgent reform of laws with disproportionate effect on Indigenous people including:**
 - 1. Driving licence disqualification and custodial sentences for traffic infringement defaults (other than offences involving alcohol);
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2. Bail laws;
 3. Mandatory sentencing; and
 4. Parole policies.
- **Diversion, not custodial sentences of less than 6 months, except where the offender is a risk to the community.**
 - **Through the Law Council and State and Territory law societies and bar associations, drive engagement between government and the Indigenous communities to achieve Indigenous participation in, and equal access to, alternatives to imprisonment.**
 - **Support a campaign of informing the broader Australian community of the crisis in Indigenous imprisonment.**

The Law Council will be working with participants in the Symposium to elevate this national crisis to the COAG agenda. It is unacceptable for governments to simply accept the status quo. It is time for governments to act, to break the vicious cycle of imprisonment, which is simply getting worse each year and seriously stymieing efforts to overcome Indigenous disadvantage.

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