

# Australian Greens' Additional Comments on Access to Legal Assistance Services

## Introduction

1.1 The inquiry into Aboriginal and Torres Strait Islander peoples access to legal services is extremely important. As identified in the Redfern Statement, '[t]he state of access to justice for Aboriginal and Torres Strait Islander people and their over-representation in the criminal justice system is a national crisis.'<sup>1</sup> The Redfern Statement makes a number of urgent calls of the Government. The Australian Greens urge the Government to act on the urgent issues in the calls for action.

1.2 While the majority committee report addresses a number of issues raised throughout the inquiry, the recommendations only go some way to addressing the issues that have been identified during the inquiry. In particular, recommendations 1, 3, 9 and 11 should be strengthened. The Australian Greens also have a number of additional recommendations in relation to consumer credit/debt matters, justice targets, mandatory sentencing and the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

## Barriers to legal assistance

1.3 Chapter three of the majority committee report looks at the barriers faced by Aboriginal and Torres Strait Islander peoples accessing legal assistance services.

1.4 One of the barriers identified by submitters and discussed in the majority committee report is the provision of interpreters.

1.5 In its submission to the inquiry, the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) said:

Hearing loss can result in the same communication barriers as those produced by language difficulties and cross-cultural differences. Given the high rate at which Aboriginal and Torres Strait Islander peoples suffer from hearing loss this is an issue that must be addressed[.]<sup>2</sup>

1.6 In relation to recommendation 1 and interpreters, the majority committee report recommends that:

... the Commonwealth Government adequately support legal assistance services, and that specifically funding should focus on ... interpreters for Aboriginal and Torres Strait Islanders in both civil and criminal matters to ensure that they receive effective legal assistance.<sup>3</sup>

1.7 This funding should include the provision of interpreters for Aboriginal and Torres Strait Islander peoples with hearing loss and hearing impairment.

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<sup>1</sup> Aboriginal and Torres Strait Islander Peak Organisations, *The Redfern Statement*, 9 June 2016, p. 11.

<sup>2</sup> *Submission 13*, p. 8.

<sup>3</sup> Majority Committee Report, p. 119.

## **Recommendation 1**

**1.8 The Commonwealth Government provide funding for the provision of interpreters for Aboriginal and Torres Strait Islander peoples with hearing loss and hearing impairment.**

1.9 A number of submissions to the inquiry dealt with consumer credit/debt matters, including the submissions from the Northern Australian Aboriginal Family Violence Legal Service (NAAFVLS) and the Northern Territory Legal Aid Commission.

1.10 The NAAFVLS said in its submission:

Isolated communities are often 300 to 1000 km from white community services' advice and assistance, making some legal services entirely inaccessible. For instance, legal information on consumer rights, employment, discrimination and credit/debt issues is virtually non-existent in remote communities. The accrual of debt can have serious long-term ramifications. NAAFVLS is aware that members of communities, have no knowledge of how to manage a Telstra contract, and may not know they must continue payments if their mobile phone is damaged, lost or stolen, which can lead to serious financial and legal consequences. One resident of an isolated community was being harassed by a debt collection service and demands for payment over a six month period regarding payments on a car loan he had taken out some years previously. He owed over \$20,000.00, had recently lost his job, and did not know about his rights under bankruptcy.<sup>4</sup>

1.11 The majority committee report discusses these issues but does not provide a recommendation that directly addresses the need for legal education and legal assistance services that relate to consumer credit/debt matters to Aboriginal and Torres Strait Islander communities.

## **Recommendation 2**

**1.12 The Commonwealth Government adequately support legal assistance services, including legal education and advocates, for consumer credit/debt matters.**

## **Imprisonment of Aboriginal and Torres Strait Islander peoples**

1.13 Chapter four of the majority committee report discusses imprisonment rates for Aboriginal and Torres Strait Islander peoples and includes a discussion on justice targets being included in the Closing the Gap targets.

1.14 In surmising on justice targets, the majority committee report says:

The committee notes the strong support for justice targets to form part of the Closing the Gap measures. The Committee also notes the Coalition parties, despite supporting such targets prior to the last election, have, in government, backed away from that commitment.

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<sup>4</sup> *Submission 3, 2.*

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The committee accepts the Minister for Indigenous Affairs' statement that the Commonwealth government is going to work with the states and territories, which have responsibility in this area, to assist them to put in place justice targets and the measures to meet those targets.<sup>5</sup>

1.15 The Australian Greens are disappointed the report accepts the Government's failure to take leadership on justice targets.

1.16 We accept the criminal justice system is largely the responsibility of states and territories. However, the Commonwealth Government should be taking a leadership role in this space by developing justice targets.

1.17 In his submission, Mr Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner at the time, said:

I understand that, generally, justice-related issues are state and territory responsibilities. However, there are a number of areas, particularly regarding Aboriginal and Torres Strait Islander people's experience of the justice system, in which the Australian Government has a role to play, for example in leadership, coordination and funding.<sup>6</sup>

1.18 In its submission, NATSILS stated:

NATSILS believes that the crisis levels of Aboriginal and Torres Strait Islander peoples' imprisonment demands critical federal government leadership which should include a commitment to justice targets. It is noted, that the safer communities 'building block' of the COAG Closing the Gap Strategy is the only area that does not incorporate specific targets and this is where clear targets on lowering imprisonment and violence against Aboriginal and Torres Strait Islander people should be incorporated. It is argued that the lack of specific targets for justice is a glaring omission which undermines the government's attempts to tackle key priorities such as education and health due to the interrelated nature of these issues.<sup>7</sup>

1.19 The Redfern Statement calls on the Government to '[a]dopt justice targets as part of the Close the Gap framework'.<sup>8</sup>

1.20 The Australian Greens are concerned that recommendation 3 does not call on the Commonwealth Government to develop justice targets for inclusion in the Closing the Gap targets for COAG to consider at its next meeting, especially when there was multiparty commitment for an additional Closing the Gap target relating to justice prior to the 2013 federal election.

### **Recommendation 3**

**1.21 The Commonwealth Government develop justice targets for inclusion in the Closing the Gap targets for presentation and adoption at the next COAG meeting.**

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<sup>5</sup> Majority Committee Report, p. 117.

<sup>6</sup> *Submission 5*, p. 2.

<sup>7</sup> *Submission 13*, p. 23.

<sup>8</sup> Aboriginal and Torres Strait Islander Peak Organisations, *The Redfern Statement*, 9 June 2016, p.11.

## **Reasons for high Indigenous imprisonment rates**

1.22 Chapter five of the of the majority committee report looks at reasons for high Aboriginal and Torres Strait Islander peoples imprisonment rates.

1.23 The Aboriginal Legal Service of Western Australia (ALSWA) stated in its submission to the inquiry:

[T]he reasons fall into two main categories. The first category are underlying factors that contribute to higher rates of offending (eg, socio-economic disadvantage, impact of colonisation and dispossession, stolen generations, intergenerational trauma, substance abuse, homelessness and overcrowding, lack of education and physical and mental health issues). The second category is structural bias or discriminatory practices within the justice system itself (ie, the failure to recognise cultural differences and the existence of laws, processes and practices within the justice system that discriminate, either directly or indirectly, against Aboriginal people such as over-policing practices by Western Australia Police, punitive bail conditions imposed by police and inflexible and unreasonable exercises or prosecutorial decisions by police).<sup>9</sup>

1.24 The Australian Greens are concerned that the recommendations of the majority committee report addressing the reasons for high imprisonment rates, specifically recommendations 4 and 5, are limited to Fetal Alcohol Spectrum Disorders and do not address the other factors, specifically socio-economic factors, contributing to high imprisonment rates. The Commonwealth Government needs to be addressing the underlying causes of the high rates of imprisonment.

### **Recommendation 4**

**1.25 The Commonwealth Government should address the underlying socio-economic causes of high imprisonment rates for Aboriginal and Torres Strait Islander peoples.**

**For a start, the Commonwealth Government should reinstate the funding that was removed from the Indigenous Advancement Strategy in the 2013-14 Budget.**

1.26 In the Redfern Statement, it says:

Aboriginal and Torres Strait Islander people with disability are amongst the most marginalised in Australian society. It is estimated that approximately 45 per cent of Aboriginal and Torres Strait Islander people identify as having some form of disability, with 9.1 per cent having severe and profound disability.<sup>10</sup>

1.27 At the recent Perth hearing of the Senate Community Affairs References Committee's inquiry into indefinite detention, Mr Peter Collins, Director of Legal Services for the Aboriginal Legal Service of Western Australia, said:

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<sup>9</sup> *Submission 10*, pp 21-22.

<sup>10</sup> Aboriginal and Torres Strait Islander Peak Organisations, *The Redfern Statement*, 9 June 2016, p.18.

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In my estimate, 95 per cent of Aboriginal people charged with criminal offences appearing before the courts have either an intellectual disability, a cognitive impairment or a mental illness. The overwhelming majority of those are undiagnosed and therefore untreated. If they go to jail it is almost impossible to conceive of them being diagnosed in jail; therefore, they are untreated.

1.28 The Australian Greens are deeply concerned with the high number of Aboriginal and Torres Strait Islander peoples with a disability that are interacting with the justice system and it is imperative that the Aboriginal legal services have additional resources and expertise to support Aboriginal and Torres Strait Islander peoples with a disability.

### **Recommendation 5**

**1.29 The Government should fund a therapeutic model of justice for Aboriginal and Torres Strait Islander peoples with cognitive and psychosocial disability to address their incarceration rates.**

### **Recommendation 6**

**1.30 The Commonwealth Government should fund an Aboriginal disability justice program with dedicated disability advocates for Aboriginal and Torres Strait Islander peoples with disability at all points of the policing and justice systems.**

1.31 In terms of structural bias, mandatory sentencing is a contributing factor to the incarceration of Aboriginal and Torres Strait Islander peoples.

1.32 We note the contributions outlined in the majority committee report, specifically the following contribution from the National Association for Community Legal Centres that:

[M]andatory sentencing laws are arbitrary and undermine basic rule of law principles by preventing courts from exercising discretion and imposing penalties tailored appropriately to the circumstances of the case and the offender. Of particular concern is the disproportionate impact of such laws on Aboriginal and Torres Strait Islander peoples in light of the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.<sup>11</sup>

1.33 In his submission, Mick Gooda stated:

Twenty-four years ago, the Royal Commission into Aboriginal Deaths in Custody recommended that governments which had not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.<sup>12</sup>

1.34 A number of submissions to the inquiry, as noted in the majority committee report, highlighted that the United Nations Committee against Torture recommended

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<sup>11</sup> *Submission 42*, p. 8.

<sup>12</sup> *Submission 5*, p. 3.

in 2014 that Australia abolish mandatory sentencing somewhat due to the discriminatory impact on Aboriginal and Torres Strait Islander Australians.<sup>13</sup>

1.35 In relation to recommendation 11 and mandatory sentencing, the majority committee report recommends that:

... COAG task the Council of Australian Government's Law, Crime and Community Safety Council to review state laws such as mandatory sentencing which have a disproportionate effect on Indigenous Australians in order to quantify the effects and report to COAG.<sup>14</sup>

1.36 The Australian Greens have grave concerns regarding the disproportionate impact of mandatory sentencing laws on Aboriginal and Torres Strait Islander peoples.

### **Recommendation 7**

**1.37 The Commonwealth Government work with the States and Territories to repeal mandatory sentencing legislation.**

#### **Current Programs**

1.38 Chapter six of the majority committee report looks at a number of successful programs providing services to Aboriginal and Torres Strait Islander peoples pre-incarceration through to post-incarceration.

1.39 At the beginning of the chapter there is a discussion of fines and infringements and the effect of incarceration on Aboriginal and Torres Strait Islander peoples for non-payment of fines.

1.40 The Australian Greens note the contributions outlined in the majority committee report regarding the Work and Development Order (WDO) program and are encouraged by the successes this program appears to be having.

1.41 At the public hearing in Sydney, Ms Monique Hitter, the Executive Director of the Civil Law Division of Legal Aid NSW, said:

[S]ince the program has been operating, it has waived \$44 million worth of unpaid fines. In Aboriginal communities the figure is \$9 million. One in five people on a work and development order is Aboriginal, which is huge.<sup>15</sup>

1.42 The Australian Greens note the contributions outlined in the majority committee report regarding the Custody Notification Service (CNS) in New South Wales and the Australian Capital Territory in the same chapter. The CNS, which was

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<sup>13</sup> Majority Committee Report, p. 74.

<sup>14</sup> Majority Committee Report, p. 121.

<sup>15</sup> *Committee Hansard*, 23 September 2015, p. 34.

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established in response to the Royal Commission into Aboriginal Deaths in Custody, costs \$526,000 per annum and assists over 15,000 Aboriginal people per annum.<sup>16</sup>

1.43 Recommendation 9 of the majority committee report deals with ‘supporting programmes which strengthen families and communities through a focus on early intervention and support.’<sup>17</sup>

1.44 The Australian Greens would like to see the Commonwealth Government show leadership by investing more in successful programs similar to those outlined above so they can be rolled out across Australia where appropriate.

1.45 Many of the issues raised during the inquiry were previously addressed in the report of the Royal Commission into Aboriginal Deaths in Custody. It is unfortunate that more than 25 years later we are still discussing how to resolve these issues when many of the recommendations of the Royal Commission remain unimplemented. The Government should work with the States and Territories to implement these recommendations.

### **Recommendation 8**

**1.46 The Commonwealth investigate alternatives to incarceration for non-payment of fines and work with the States and Territories to implement these alternatives.**

### **Recommendation 9**

**1.47 The Commonwealth Government and States and Territories implement all remaining recommendations of the Royal Commission into Aboriginal Deaths in Custody.**

**Senator Rachel Siewert  
Australian Greens**

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<sup>16</sup> Aboriginal Legal Service (NSW/ACT), ‘Save the Custody Notification Service (CNS) and prevent Aboriginal deaths in police cell custody’, Media Release, 3 June 2015, [http://www.alsnswact.org.au/media\\_releases/37](http://www.alsnswact.org.au/media_releases/37) (accessed 12 October 2016).

<sup>17</sup> Majority Committee Report, p. 120.

