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BY: ATSLIA



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Committee Secretary
House Standing Committee on Aboriginal and Torres Strait Islander Affairs

By email to atsia.reps@aph.gov.au

Dear Committee Secretary

Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system

The Law Institute of Victoria (LIV) is pleased to contribute to the House Standing Committee on Aboriginal and Torres Strait Islander Affairs (Standing Committee) *Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System*. The LIV is a constituent body of the Law Council of Australia (Law Council). We are aware that the Law Council is proposing to make a submission to the Inquiry and the LIV makes these comments in addition to those of the Law Council. We also wish to draw the House Standing Committee's attention to the important submission prepared by the Victorian Aboriginal Legal Service (VALS) to the inquiry. The LIV supports and endorses the VALS submission. We agree with the conclusions in the VALS submission that strategies to address youth offending should be grounded in a rights based framework.

The LIV shares the Standing Committee's grave concerns about the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system.

Evidence-based approach

The LIV considers that analysis of relevant studies and available statistics is important to ensure an evidence-based approach to the issue of high levels of involvement of Indigenous juveniles and young adults in the criminal justice system.

As you are aware, statistical evidence is readily available about the over-representation of Indigenous Australians in the criminal justice system. For example:

- 2005-2006 Australian Institute of Health and Welfare and Australian Institute of Bureau of Statistics data indicates that 44 per 100,000 Indigenous youths were under juvenile justice supervision, in comparison with 3 per 1,000 non-Indigenous youths.ⁱ
- The National Indigenous Drug and Alcohol Committee has also recently reported that Indigenous offenders are more likely to begin offending regularly at younger ages than non-Indigenous offenders, and to be younger when they commit a property or violent offence.ⁱⁱ
- Statistics released by the Victorian Department of Justice in 2009 indicate that the Indigenous youth imprisonment rate at 30 June 2009 was 1858.8 per 100,000 Indigenous prisoners under 25 years of age.ⁱⁱⁱ By contrast, imprisonment rates for all prisoners under 25 years of age are at least ten times lower than rates for Indigenous prisoners alone, with 186.3 per 100,000 prisoners at 30 June 2009 (these figures include Indigenous prisoners).^{iv}

In developing its response the government should set clear and measured goals against which the success of new strategies can be assessed. The LIV strongly believes that these goals should include the reduction (leading to virtual elimination) of recidivism among Indigenous offenders. For that purpose, empirical evidence of the success of anti-recidivism measures is already in place.

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Examples of good practice in Victoria

The Victorian Department of Justice data shows that Indigenous imprisonment rates were lowest at 30 June 2009 for the entire review period (2004 – 2009). Although the decrease is not considerable, it suggests a possible reversal in the trend of previously increasing rates of Indigenous incarceration in Victoria.

In 2004, the Victorian government initiated the *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) led by two Indigenous Australian community chairpersons. The report from that Review and the government response was released in 2005.^v While the implementation of RCIADIC recommendations in Victoria remains incomplete, the process of reviewing the implementation status is an example of good practice. The LIV submits that a similar process should be adopted in other Australian jurisdictions and a national review of the implementation status of the RCIADIC should be undertaken by the federal government.

The LIV also draws the Standing Committee's attention to the Inquiry to the Victorian Aboriginal Justice Agreement (the Agreement), launched in 2000 and now in the second phase of its operation. The Agreement aims to address the ongoing issue of Aboriginal over-representation within all levels of the criminal justice system in Victoria by improving accessibility, utilisation and effectiveness of justice-related programs and services in partnership with the Koori community. Initiatives undertaken under the Agreement include:

- establishing the Aboriginal Justice Forum and Regional Aboriginal Justice Advisory Committee network, and
- establishing the Koori Court (a division of the Magistrates' Court of Victoria), the Community Grants Program (including the Koori Night Patrol) and additional Koori Courts in other jurisdictions (including Children's and County Courts of Victoria).

The LIV promotes the need for the Australian legal system to recognise and value Indigenous Australian customary law and alternative systems to the justice system, such as restorative justice. In particular the success of the Koori Court and Circle of Sentencing is noted.

Despite some improvements and significant government commitment in Victoria, Indigenous imprisonment rates continue to be alarmingly high.

Importance of genuine consultation

The LIV stresses the importance of genuine consultation with Aboriginal people and Indigenous communities by Commonwealth, State and Territory governments, including regional and remote communities for the purposes of this Inquiry. We commend to the Committee the Government publication *Best Practice Regulation Handbook*, which includes a chapter on "best practice consultation requirements". The LIV would be grateful to receive information from the Standing Committee about its consultation strategy.

Yours faithfully

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ⁱ Australian Human Rights Commission, *Social Justice Report 2008*, page 305. See http://www.hrcoc.gov.au/social_justice/sj_report/sjreport08/downloads/SJR_2008_full.pdf.

ⁱⁱ National Indigenous Drug and Alcohol Committee, *Bridges and Barriers: Addressing Indigenous Incarceration and Death*, page 4. See http://www.nidac.org.au/publications/pdf/nidac_bridges_and_barriers.pdf.

ⁱⁱⁱ Department of Justice, *Statistical Profile of the Victorian Prison System 2004-05 to 2008-09*, page 55. See Department of Justice, *Statistical Profile of the Victorian Prison System 2004-05 to 2008-09*, available at http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/cbf44a49e9dedc5/Statistical_Profile_Victorian_Prison_System_2004-05_to_2008-09.pdf.

^{iv} *Ibid*, page 19.

^v Victorian Implementation Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody - Review Report Volume I, available at:

[http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Indigenous+Victorians/Aboriginal+Justice/JUSTICE+-+Victorian+Implementation+Review+of+Recommendations+-+Review+Report+Volume+I+\(PDF\)](http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Indigenous+Victorians/Aboriginal+Justice/JUSTICE+-+Victorian+Implementation+Review+of+Recommendations+-+Review+Report+Volume+I+(PDF)).