

27 September 2023

Our ref: [BC:FNLP]

Dr James Popple
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Law Council of Australia
Level 1, MODE3
24 Lonsdale Street
BRADDON ACT 2612

Dear Dr Popple

Review of the National Agreement on Closing the Gap

Thank you for the opportunity to provide input in response to your memorandum of 21 August 2023 in relation to the above. The Queensland Law Society (QLS) appreciates being consulted on the Productivity Commission's important draft report.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of members and guests of the QLS First Nations Legal Policy Committee, whose members have substantial expertise in this area.

QLS has responded only to the information request that it is well placed to provide a submission on.

General Comments

QLS has previously called for more urgent and effective action to be taken to ensure the recommendations from previous consultations, inquiries and reports are implemented and progressed. The Society's key areas of advocacy in its 2022 Call to Parties included calling for:

- urgent change to the way government implements policies and laws which affect Aboriginal and Torres Strait Islander Peoples;

- implementing meaningful and evidence-based strategies to address the disparate imprisonment rates and rates of violence against Aboriginal and Torres Strait Islander Peoples, particularly having regard to the key recommendations of the Australian Law Reform Commission Report into Reducing Indigenous Incarceration, including:
 - the establishment of a justice reinvestment body;
 - review of police complaints handling policies and practices;
 - national criminal justice reforms (including appropriate resourcing and funding commitments to service providers) to reduce the incarceration of, and violence against, First Nations Peoples.

In July 2020 the Federal Government announced a national justice target aimed at reducing adult incarceration of First Nations Peoples by 15 percent by 2031.

QLS considers that higher targets to reduce the over-representation of First Nations Peoples in the criminal justice system in Queensland could be achieved more quickly and safely. These alternative measures include enabling Aboriginal and Torres Strait Islander community members to lead criminal justice interventions and create solutions, achieving better resourced and more effective ways of meeting Aboriginal and Torres Strait Islander people's, and children's, needs than through detention and incarceration.

Accordingly, members of QLS's First Nations Legal Policy Committee submit that the Australian Government (and its relevant consistent parts) need not wait until the prescribed timeframe of 2031 to respond to and achieve the majority of Closing the Gap targets that share this assigned timeframe. To this end, members of QLS's First Nations Legal Policy Committee submit that the justice targets could be broken down into achievable stages and associated timeframes.

QLS broadly supports the recommendations and observations set out in the draft report. Members of QLS's First Nations Legal Policy Committee provide the following observations that touch on certain of the information requests and recommendations set out in the draft report.

Information Request 1 - Effectiveness of policy partnerships

From the outset, the Justice Policy Partnership (**JPP**) should be adequately reviewed and consideration given to redevelop the Indigenous Legal Assistance Program (**ILAP**), or at the very least analyse the two initiatives to compare what is more culturally viable for the long term. While the JPP has its merits, there is an overwhelming need to get services back to being independent – self-determining – to serve the community and organisations as was the intent in previous years.

The objectives of the JPP are to, among other things, “*establish a joined-up approach between all governments and Aboriginal and Torres Strait Islander representatives to address the overrepresentation of Aboriginal and Torres Strait Islander adults and youth in incarceration*”.¹

¹ <https://www.ag.gov.au/sites/default/files/2021-10/justice-policy-partnership-agreement-to-implement.pdf>

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QLS's view is this is a key issue for transparency, collaboration, and coordination. There are too many layers of bureaucracy in the Indigenous Australian justice policy space. Funding and resourcing should come directly from the Commonwealth. The key Indigenous national policy for closing the gap is a Commonwealth strategy. Thus, the Closing the Gap and its initiatives should be between the Commonwealth and First Nations peoples and organisations.

The relationship between state and territory governments can become strained when there is a conflict or local issue of concern, leaving First Nations organisations vulnerable when their funding body (state government) are not complying with their obligations under the closing the gap or any other national agreement in relation to Indigenous justice issues.

In Queensland, the state government addresses justice issues through its own entities, like strengthening prisons and building new detention centres. Unsurprisingly, the Queensland government's response to justice issues is failing, in particular Queensland youth. This will have a profoundly negative impact on First Nations people and communities that exacerbates their disadvantage further.

Information request 5 – Legislative and policy change to support Priority Reform 4

The Queensland Government's hardening of criminal law will have significant and disadvantageous outcomes for Aboriginal and Torres Strait Islander Peoples. Notably, earlier this year the Strengthening Community Safety Bill 2023 was announced without consultation with First Nations leaders. This seems directly at odds with the Queensland Government's intention to cultivate a new relationship with First Nations peoples as part of its commitments to the National Agreement on Closing the Gap.

What's more, in August 2023 the Queensland Government made changes to declare a police watch house or an adult jail as a "youth detention centre" to permit jailing a child there. It sunsets on 31 August 2027, although the government can extend this for an additional 12 months. It is difficult to reconcile recent local criminal law reform with the objectives of the National Agreement.

These types of decisions will result in an exacerbation of the issues which are sought to be addressed. The lack of current accountability measures means that these types of decisions will continue to occur unchecked. Accordingly, members of QLS's First Nations Legal Policy Committee query what, if any, sanctions exist for the failure of governments to carry out their commitments or, more importantly, for actions in disregard to their commitments to the Closing the Gap agreements.

Draft recommendation 1 – Appointing an organisation to lead data development under the Agreement

It would be appropriate for an organisation to lead data development, however there will be capacity constraints and lack of First Nations people who are skilled in this area. A model should be based on self-determination in line with the United Nations Declarations on the Rights of Indigenous Peoples.

Listening to the voices of Aboriginal and Torres Strait Islander young people

In response to QLS's Call to Parties Statement 2022, the Queensland Government gave an election commitment which involved tasking the Queensland Family and Child Commission (QFCC) to undertake conversations with Aboriginal and Torres Strait Islander children and young people about their experiences with the justice system, as part of the *Growing up in Queensland* survey.

The QFCC determined that a survey was not an adequate means of achieving the objective and instead it established the *Yarning for Change* study which was designed and conducted to ensure that engagement was authentic, appropriate and flexible to the needs of children and young people. The purpose of this study is to:

- (i) ensure the voices of children, young people, their families, their communities and those who support them are heard and considered when informing and evaluating changes to the youth justice system in Queensland;
- (ii) assess the impact of the current youth justice reforms on wellbeing and rights of children and young people, and consider the effectiveness of existing responses in addressing the cases of recidivism.²

In September 2022 the QFCC released its report "*Yarning for Change*" which observed, amongst other things, 'the rights and aspirations of First Nations children and young people with a lived experience of the youth justice system are largely rendered invisible in the discourse, in the policy and practice of 'justice'. Notably, of the more than 100 children and young people aged between eight and 25 who participated in the study, the "vast majority" were First Nations.

There are many take-aways to be gleaned from the information-gathering approach used in this study and its results. In particular, it highlights the importance of embedding an effective evaluative mechanism into program design and practice in order to effectively harness the important empirical data to readily assess progress or the lack thereof. The evaluative approach taken in the *Yarning for Change* study also has the potential to operate as a further layer of accountability in respect of the overarching objectives of the Closing the Gap targets.

We urge the Australian Government to listen to the experiences of these interactions both within the child protection and youth justice systems and to refrain from continuing to perpetuate previous legislative and policy failures.

² Yarning for Change – Listen to my voice. Conversations with Aboriginal and Torres Strait Islander Peoples. September 2022. <https://www.qfcc.qld.gov.au/sites/default/files/2022-11/Yarning%20for%20Change.pdf>

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Thank you for the opportunity to provide comments. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully

[REDACTED]
Chloé Kopilović
President