



New South Wales  
Council for  
Civil Liberties

NSW COUNCIL FOR CIVIL LIBERTIES

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The Hon. Mark Speakman SC MP  
NSW Attorney General  
GPO Box 5341  
Sydney NSW 2001

26 August 2019

Dear Attorney General,

### **Administration of Criminal Justice**

We write to raise three criminal justice issues, each of which involve a concerning degree of delay.

#### **1. Delays in the District and Supreme Courts**

The NSWCCL is concerned about the lengthy delays which accused persons face in having their charges determined before the NSW criminal courts. We are particularly concerned in relation to those persons who are on remand, awaiting their trial. The impact of incarceration on individuals, families and their communities is damaging and significant. The impact upon Aboriginal and Torres Strait Islander peoples is disproportionate.

We support the recently announced review in relation to case management and jury processes in the District and Supreme Courts. We also acknowledge the intention of the Department of Justice to reduce delays and the number of matters being committed to the higher courts through its EAGP reforms and we wish these reforms success in achieving their aims.

It is clear, however, that the criminal justice agencies, including the judiciary and legal services on both sides of the bar table, remain sorely underfunded. We are strongly of the view that the trial backlog and reduction in remand periods can only be addressed in a meaningful and ongoing way through extra funding to build the capacity of the courts and services to hear and determine matters in a timely manner.

#### **2. Operation Tambora**

The second issue we wish to raise concerns Operation Tambora, LECC's investigation of the police conduct in relation to the incident concerning a young person in the early hours of January 11, 2018 in Byron Bay. We note that LECC found, in its report dated September 2018, that the conduct constituted 'an inappropriate use of excessive force'. LECC recommended in its report that advice be obtained from the NSW DPP with respect to the prosecution of officer E for the offence of assault occasioning actual bodily harm pursuant to section 59 of the *Crimes Act* 1900 (as well as consideration being given to taking action under sections 181D or 173 of the *Police Act*).

We note that it has now been 17 months since the incident took place and 11 months since the recommendation by LECC and there has been no notification as to how this case will proceed. The NSWCCL is of the view that this delay is unacceptable. The young person, who was seriously injured

in this incident, and the community are entitled to know, in a timely manner, where the accountability lies in relation to this incident of excessive force and whether the officer involved will be prosecuted. We expect this matter would be weighing heavily upon the young person involved.

### 3. **Pathways to Justice report**

The ALRC's report 'Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples' was presented in December 2017. The report made a number of important recommendations addressing the disgraceful overrepresentation Aboriginal and Torres Strait Islander people in custody. We are concerned that there has been a delay in implementing the report's recommendations.

We acknowledge the NSW sentencing reforms which were enacted in September 2018 are geared towards strengthening community-based sentencing options. These reforms are an important tool to reducing the imprisonment rates. However, they will only be effective if there are appropriate health and support services (including mental health and drug and alcohol rehabilitation services) for offenders to connect to in order to address the issues underlying their offending. The Law Council in their Justice Project Report 2018: [Law Council Final Report Critical Support Services](#) identified the inadequacies of such services. The lack of services is most acutely felt by people in rural, regional and remote locations. We urge the government to consult with communities and deliver the services, including culturally appropriate drug and alcohol rehabilitation centres and mental health services across New South Wales. This will reduce the incarceration rates and make our communities safer.

Further in relation to access to justice and the sentencing, we strongly support all of the recommendations made by the report, including:

- The establishment of specialist Aboriginal and Torres Strait Islander sentencing courts, such as in NSW, the Walama Court which we understand stands ready to deliver justice;
- Reform to legislation to provide that, 'when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples... which recognises the unique experience of Aboriginal and Torres Strait Islander peoples';
- NSW, in partnership with Aboriginal and Torres Strait Islander organisations, should implement schemes to facilitate the preparation of 'Indigenous Experience Reports' for offenders appearing for sentence in superior courts and other means of presenting evidence of 'unique systemic and background factors' in summary courts.

We remain concerned that the majority of the crucial recommendations in the report remain to be addressed, 18 months after publication.

We strongly recommend that the government move swiftly to work with the Aboriginal and Torres Strait Islander community, as well as health and justice agencies to develop strategies to implement the recommendations.



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We would be pleased to meet with you to discuss these issues or provide input to any working groups established in these areas.

We thank you for your consideration of these important issues.

Yours sincerely,

**Therese Cochrane**

**Secretary**

**New South Wales Council for Civil Liberties**