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Royal Commission into Aboriginal Deaths in Custody requires urgent action 30 years on

Statement attributable to Dr Jacoba Brasch QC, President, Law Council of Australia.

The Law Council of Australia is calling for a comprehensive national response to address the vastly disproportionate imprisonment of Aboriginal and Torres Strait Islander peoples, 30 years on from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC).

In 1991, the Royal Commission concluded: “The conclusions are clear. Aboriginal people die in custody at a rate relative to their proportion of the whole population which is totally unacceptable and which would not be tolerated if it occurred in the non-Aboriginal community.” This occurred because “too many Aboriginal people are in custody too often.”

Yet in December 2020, the Aboriginal and Torres Strait Islander imprisonment rate was 2,333 persons per 100,000 adult Aboriginal and Torres Strait Islander population, compared to the imprisonment rate of 208 persons per 100,000 adult population generally.

One of the key findings of the Royal Commission was that, in order to address this national tragedy, governments must “let go of the controls” and allow Aboriginal and Torres Strait Islander peoples to identify and own the solutions on the issues that affect them and their communities, in accordance with the right to self-determination.

First Nations peoples have consistently provided these solutions. They were most recently reflected in the ALRC’s Pathways to Justice Report. Its implementation must be prioritised.

The refreshed Closing the Gap process requires more ambitious targets for reducing incarceration, and clear frameworks and sufficient resources in place to achieve them.

We need increased funding for the Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.

We must raise the minimum age of criminal responsibility to at least 14 years, with the Commonwealth Government leading action across all Australian jurisdictions.

We must establish a national justice reinvestment body and expanded justice reinvestment trials, to redirect prison spending to early intervention and prevention strategies, comprehensive support, and ‘exit strategies’ to transition people out of the prison system.

We need increased investment in social support services, including in remote areas, to stop the rapid increase in the number of Aboriginal women imprisoned, and to deal with the underlying reasons children become embroiled in the criminal justice system.

We need a suite of state and territory-led statutory reforms addressing the contribution of bail, parole and mandatory sentencing to over-incarceration.

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