

Wednesday, 3 June 2020

Statement on High Court ruling of unlawful use of force in Don Dale, by Law Council President, Pauline Wright

All comments to be attributed to Law Council of Australia President, Ms Pauline Wright.

The High Court's decision that the deliberate and intentional deployment of tear gas on four teenagers by prison officers in Darwin's Don Dale Youth Detention Centre was unlawful, is a timely reminder that the use of force on Aboriginal and Torres Strait Islander peoples will not be tolerated in Australia.

The High Court's unanimous ruling in the case of *Binsaris v Northern Territory* [2020] HCA 22, overturns earlier decisions of the Supreme Court and Court of Appeal of the Northern Territory, and finds that the use of tear gas is not allowed under the *Youth Justice Act* (NT).

The judgment of the High Court lends support to the recommendation of the 2017 Royal Commission into the Northern Territory's youth justice system, that tear gas should be prohibited in juvenile detention centres.

There is a national tragedy on our own doorstep which cannot be ignored.

While Aboriginal and Torres Strait Islander people make up around 3 per cent of the total Australian population, they account for 29 per cent of the total adult prisoner population in Australia ([Australian Bureau of Statistics, December 2019](#)), and 58 per cent of the juvenile detention population.

This makes them one of the most incarcerated populations in the world ([SBS Factcheck](#)).

Australia is still waiting for a comprehensive response by federal, state and territory governments, to the Australian Law Reform Commission (ALRC) seminal *Pathways to Justice* report into the incarceration rates of Aboriginal and Torres Strait Islander peoples, more than two years after its publication.

The Law Council calls on all governments to work together to implement the ALRC's recommended reforms to Australia's criminal laws, such as for bail, parole and mandatory sentencing; review of police procedures and practices so that the law is enforced fairly, equally and without discrimination.

The Law Council believes that a 'justice reinvestment' approach, and the redirection of funds currently spent on incarceration, instead targeting community support and prevention, the provision of diversion and rehabilitation programs, is urgently needed to reduce the disproportionate number of Aboriginal and Torres Strait Islander people in the justice system.

The Law Council also asks federal, state and territory governments, whether it is right and appropriate in 2020 to incarcerate 10 year-olds, with the knowledge that Indigenous children between 10-17 are 22 times more likely to be in detention than their non-Indigenous counterparts, and calls for there to be wide ranging support to raising the age of criminal responsibility.

ENDS

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