



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC/DHvk:1446121

28 March 2018

The Hon. Mark Speakman SC MP
GPO Box 5341
SYDNEY NSW 2001

Dear Attorney,

Walama Court proposal

The Law Society of NSW understands that the Government has determined not to proceed with the establishment of the Walama Court at this time, and that the reasons include the resource requirements of the initiative.

On the basis that this is indeed the case, we write to urge a reconsideration of this decision. We appreciate the Government's expressed commitment to reducing the disproportionate incarceration rates of Aboriginal and Torres Strait Islander people. In our view, this is a missed opportunity for NSW to address this long-standing and deteriorating problem.

We understand that the Walama Court proposal would adopt features of the NSW Drug Court. As you would know, the Bureau of Crime Statistics and Research and the Centre for Health Economics Research and Evaluation conducted an evaluation of the NSW Drug Court in 2008, which demonstrated that the Drug Court was both more cost-effective than conventional sanctions, as well as more effective in reducing recidivism. That evaluation found that:

When the Drug Court and comparison group were compared on an as-treated basis, members of the Drug Court group were found to be 37 per cent less likely to be reconvicted of any offence, 65 per cent less likely to be reconvicted of an offence against the person, 35 per cent less likely to be reconvicted of a property offence and 58 per cent less likely to be reconvicted of a drug offence¹.

While clearly the offending cohorts will differ in some respects, as will the nature of programs for offenders, in our view the therapeutic model of justice used by the Drug Court represents a significant opportunity to address a difficult problem in an innovative way, but building on the strength of existing, and proven, programs.

The Law Society's support for specialist Indigenous courts is also underpinned by evidence that there are significant benefits to returning some level of ownership and community engagement of this aspect of the justice system to Indigenous communities.

¹ Don Weatherburn, Craig Jones, Lucy Snowball and Jiuzhao Hua, "The NSW Drug Court: A re-evaluation of its effectiveness," *Crime and Justice Bulletin No 121*, September 2008, 11-12, online: <http://www.bocsar.nsw.gov.au/Documents/CJB/cjb121.pdf>

Research suggests that Indigenous sentencing courts have had an impact on strengthening informal social controls within Indigenous communities.² One study found the courts could achieve positive criminal justice outcomes, and that the processes that were most helpful for an offender to desist from criminal behaviour were those that included access to effective alcohol and drug rehabilitation programs and Elder support of the offender.³

The over-incarceration of Indigenous people contributes significantly to the continuing life expectancy gap between Indigenous people and other Australians. Research indicates that the high rates of repeated short-term incarceration experienced by Aboriginal people in Australia have a multitude of negative health effects for Aboriginal communities and the wider society.⁴ Further, the incarceration of Indigenous adults affects not only the individuals involved, but also their families and their communities, including by potentially placing Indigenous children at risk of engagement with the care and protection jurisdiction.

Given the very high daily costs of keeping an inmate in custody, the extremely high rate of Indigenous incarceration means that a substantial proportion of Corrective Services existing budget allocation is spent on keeping Indigenous people in custody. For the reasons outlined above, we are of the view that the Walama Court could play a significant role in keeping Indigenous offenders *out* of custody, and *in* community-based programs, that should be able to be delivered at a significantly lower cost to the budget. Should the Court and the associated programs also have an impact on the re-offending rate, this would ultimately result in very significant savings for the Justice sector.

We also note that the Australian Law Reform Commission, in its Final Report *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133), has formally recommended that, where needed, state and territory governments should establish specialist Aboriginal and Torres Strait Islander sentencing courts, and that these courts should incorporate individualised case management, wraparound services, and be culturally competent, culturally safe and culturally appropriate (Recommendation 10-2).

Recommendation 10-3 of the ALRC states that relevant Aboriginal Torres Strait Islander organisations should play a central role in the design, implementation and evaluation of specialist Aboriginal and Torres Strait Islander sentencing courts.

We commend the recommendations to you, and reiterate our view that, by implementing the Walama Court as proposed, the NSW Government would be adopting an important innovation in respect of initiatives to address the vexed issue of Indigenous over-incarceration.

Yours sincerely,



Doug Humphreys OAM
President

² Marchetti, Elena; Anthony, Thalia --- "Sentencing Indigenous Offenders in Canada, Australia, and New Zealand" (2016) *UTSLRS* 27.

³ Daly, Kathleen, and Gitana Proietti-Scifoni, *Defendants in the Circle: Nowra Circle Court, the Presence and Impact of Elders, and Re-Offending*, (Brisbane, 2009, Griffith University), 107.

⁴ See for example AS Krieg, "Aboriginal incarceration: health and social impacts," (2006) *Med J Aust.* 184(10), 534-6.