



9 August 2019

The Honourable Niall Blair MLC  
Committee Chair  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Blair

**Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**

I refer to your letter dated 30 July 2019 requesting information concerning Commission initiatives since 2014 to improve cultural sensitivity towards Indigenous people within the court system.

As your letter indicates the *Criminal Trial Courts Bench Book* contains information concerning cultural and linguistic factors about which judicial officers should be aware with respect to particular witnesses. The information in that section of the Book is complemented to a significant extent by material in the *Equality Before the Law Bench Book* which contains extensive information concerning Aboriginal people and provides guidance as to the approach to be taken with respect to different aspects of the justice process.

As you will be aware from our response to the draft options paper provided following recommendations of the Committee in its report *The family response to the murders in Bowraville*, the Judicial Commission has had an Aboriginal Cultural Awareness program since 1992. In the years since 2014, that program has continued to provide education to increase the awareness among judicial officers about contemporary Aboriginal social and cultural issues, and their effect on Aboriginal people in the justice system. Most recently, there have been sessions about such issues, particularly in the context of the criminal justice system, at both the District and Local Courts conferences in April and August respectively. The Ngarra Yura Program also facilitates judicial visits to Aboriginal communities in NSW and this also provides Aboriginal people with an opportunity to learn about the judicial process.

The Commission continues to facilitate joint seminars with the Law Society of NSW and the NSW Bar Association concerning matters of mutual interest. The most recent example is the Exchanging Ideas symposium held on 15 June 2019 to discuss the processes leading to the 2017 Uluru Statement from the Heart. I enclose a copy of the July edition of the Judicial Officers' Bulletin which includes an article summarising the sessions held during the symposium and other articles which provide an indication of the way the Commission's cultural awareness program may be delivered.


In addition, the Education and Research Directors are members of the Steering Committee for *The 'Bugmy' Evidence Project* which is co-ordinating the development of profiles for particular Aboriginal communities in New South Wales so there is an evidence base about the disadvantage experienced by particular communities which can be presented in court. The project is so named because of the High Court decision in *Bugmy v The Queen* (2013) 249 CLR 571 which considered the impact of profound disadvantage on an individual offender and suggested that in such cases it was necessary to point to material tending to establish that background (see at [41]).

The Research Director has also been discussing with the NSW Public Defenders Office, the Bar Book Project which is currently in development and is anticipated to be available on the Public Defenders website later in 2019. The Bar Book is intended to provide guidance to the legal profession as to the appropriate way to present evidence of disadvantage in a variety of contexts including as it relates to Aboriginal people who are protagonists in the justice system. As you are probably aware, that project's Committee includes representatives from a variety of agencies including the Aboriginal Legal Service, Legal Aid NSW, Just Reinvest NSW and academics, students and graduates of the Law Faculty of various universities including the University of NSW. Although the Commission is not providing resources for this project, the Research Director is being kept apprised of the progress of this project and the Commission is considering appropriate ways of keeping judicial officers informed of this project and its broader ramifications for the work of the courts. I anticipate a link to the Book on the website of the Public Defenders will be made available to users of the Judicial Information Research System (JIRS).

I trust this information provides you with some useful insight to the ongoing work of the Commission in this area.

If you have any further questions concerning the above please contact Ms Una Doyle or Ms Pierrette Mizzi

Yours sincerely

 Ernest Schmitt, AM PSM  
Chief Executive