



*The Chief Judge of the  
District Court & President  
of the Dust Diseases  
Tribunal of NSW*

19 January 2021

The Hon. Adam Searle MLC  
Committee Chair  
Select Committee on High Level of First Nations  
People in Custody and Oversight and Review of  
Deaths in Custody

By email: [First.Nations@parliament.nsw.gov.au](mailto:First.Nations@parliament.nsw.gov.au)

Dear Mr Searle,

I refer to your letter dated 15 December 2020 and respond to the Select Committee's questions as follows:

1. *Is there overt, covert or unconscious racism in the judicial system?*

I am not aware of any overt, covert or unconscious racism in the judicial system.

2. *What training or instruction have magistrates and judges received in relation to Aboriginal and Torres Strait Islanders in relation to:*

- a. *vulnerability*
- b. *alternative options to imprisonment?*

The Judicial Commission of New South Wales provides education programs for judges of the District Court in relation to "vulnerability" and "alternative options to imprisonment" with respect to Aboriginal and Torres Strait Islanders. Some of these education programs have included:

- (1) "The Ngarra Yura Program", His Honour Judge Andrew Haesler SC, District Court of NSW and Ms Joanne Selfe, Judicial Commission of NSW
- (2) "Intervention Programs - Indigenous Offenders"
- (3) "How can Corrective Services NSW Best Respond to the Needs of Aboriginal Offenders", Mr Luke Grant, Assistant Commissioner, Corrective Services NSW.
- (4) "Indigenous justice - diversionary programs and other services"
- (5) "Ngalarra youth justice program", Ms Melissa Merritt, Team Leader, Creating Futures Justice Program, Weave Youth & Community Services.
- (6) "Indigenous justice", Mr Jeff Amatto, founder, Brothers 4 Recovery and More Cultural Rehabs Less Jails.
- (7) "Corrective Services NSW Mothers and children's program", Ms Belinda McInnes, Manager, Mothers and Children's Program, Jacaranda Cottages, Corrective Services NSW, Department of Justice
- (8) "Webinar: An introduction to the Bugmy Bar Book Project" (22 July 2020) Her Honour Judge Sophia Beckett, District Court of NSW, Peter McGrath SC and Richard Wilson SC.

District Court judges also attend Ngara Yura Seminars and Ngara Yura Program Sessions hosted by the Judicial Commission.

*3. Are Aboriginal and Torres Strait Islanders being imprisoned at a higher rate than non-Aboriginal and Torres Strait Islanders?*

The District Court does not keep statistics of the background of any offender who is sentenced to a term of imprisonment by a District Court judge. I understand that this information may be obtained from the NSW Bureau of Crime Statistics and Research. However, the District Court recognises that there is a disproportionate level of Aboriginal and Torres Strait Islanders in custody throughout Australia.

*4. Can you inform the committee of the implications and application of Section 18 (1)(k) of the Bail Act 2013?*

Section 18(1)(k) mandates that consideration be given to any special vulnerability or need the accused person has in assessing bail concerns under the Act. Where the provision applies, it serves as a factor which militates against an ultimate finding of unacceptable risk.

*5. Can you inform the committee of the implications and application of Section 5 (1) of the Crimes (Sentencing Procedures) Act 1999?*

This section requires that a court only impose a custodial sentence if it considers no other penalty appropriate, having considered all possible alternatives. Accordingly, the imposition of a custodial sentence is a sanction of last resort and the preliminary question in sentencing is whether there is an alternative to the imposition of a sentence of imprisonment.

I ask that these responses remain confidential.

Yours sincerely

Justice D Price AO  
Chief Judge