

'Systemic racism' fueling skyrocketing rates of Indigenous imprisonment, says peak law body

By Michael Koziol
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The nation's peak law body has warned of "systemic racism" in the justice system, as it presented shocking statistics on the sky-rocketing rate of Indigenous incarceration and called for a massive cash injection to fund legal aid.

In his first major speech as president of the Law Council, Morry Bailes said the number of Aboriginal Australians in jail cells was "catastrophic" and required "urgent" action to address.

"The figures are shocking," he told the National Press Club on Wednesday. "In the last decade, Aboriginal and Torres Strait Islander incarceration in this country has risen 88 per cent. Those peoples represent less than 3 per cent of the population but are 27 per cent of our incarcerated population."

This increase in prison numbers is far greater than the general Indigenous population, which rose by 17 per cent between 2011 and 2016 according to census figures.



Law Council of Australia president Morry Bailes, and predecessor Fiona McLeod, said they were frustrated at the under-resourcing of legal aid.

Mr Bailes also pointed to the worsening situation for Indigenous women, who in 1987 made up 17 per cent of women in Australian prisons - a rate that has now doubled to 34 per cent.

"It's a situation that shames us all," he said.

Mr Bailes said the law council would lobby the Turnbull government to include justice targets in the Closing the Gap strategy, in a bid to identify "who shouldn't be in jail" and drive down the number of Indigenous Australians in prison.

His predecessor as LCA president, Fiona McLeod, said during a year-long research mission she saw "direct evidence of racism" during consultations, including "systemic, institutionalised racism in the justice system, which points to a failure of imagination and a failure of political will".

She said some of the cases she heard involved women who sought police protection from domestic violence, only to end up in jail for unpaid fines. Other reports involved children "being born on [jail] cell floors", and mothers under anaesthetic giving consent to the removal of their children.

Ms McLeod said there needed to be significant and "obvious" changes to laws and sentencing practices that led to Aboriginal Australians being thrown in jail for minor offences.

"If you jail people because they're disqualified from driving, but they need to drive, they're going to continue to drive. If you assist them to get a licence, then you solve the problem," she said.

"If you're jailing a kid - in NSW for example - for stealing a bottle of soda water, [you should] install a drinking foundation so they can have a drink on the way home. These solutions are so obvious that they have to be seriously taken."

The recommendations were part of the Law Council of Australia's interim Justice Project report, which also called for another \$390 million a year - more than \$1.5 billion over the forward estimates - for legal aid and to address long backlogs in the courts, particularly the Family Court.

Mr Bailes said 14 per cent of Australians were living below the poverty line but only 8 per cent of people currently qualified for legal aid. "That has just got to be shifted," he said.

A frustrated Ms McLeod said scrimping on legal services was a "false economy" because it only resulted in a court system clogged with unrepresented clients and exasperated judges.

"If you actually want to save money, spend some money," she said.

Attorney-General Christian Porter told Fairfax Media the government had committed \$1.77 billion for legal assistance services between 2015 and 2020, including money from the states.

Funding measures would be reviewed this year to inform arrangements after 2002, he said.