

25 November 2022

Dr Jackie Hartley  
Policy Manager  
NSW Law Reform Commission and  
Sentencing Council Secretariat  
Department of Communities and Justice

*By email:*

[sentencingcouncil@justice.nsw.gov.au](mailto:sentencingcouncil@justice.nsw.gov.au)

Dear Dr Hartley,

**Re: Fraud Consultation Paper**

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (ALS) and thank you for the opportunity to provide a submission in response to the Sentencing Council's review of fraud and fraud-related offences ('the Review') and the resulting consultation paper.

The ALS is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. The ALS currently undertakes legal work in criminal law, children's care and protection law, and family law; as well as broader work in law reform and wrap-around programs for community wellbeing. We provide this response based on our direct involvement with and representation of Aboriginal and Torres Strait Islander people who are too often forced into the quicksand of the criminal justice system.

The ALS is unable to provide a direct response to each of the Review questions on this occasion, as the limitations on our resourcing mean we cannot prioritise the development of a detailed policy response above providing frontline services to our vulnerable clients. As such, the following will provide the Sentencing Council with some insight into our key concerns.

We note the data presented at Chapter 7 of the consultation paper and the findings that Aboriginal people are over-represented in fraud and fraud related offences, and overrepresented among those sentenced to imprisonment.

The finding did not come as a surprise to the ALS or its solicitors who regularly deal with these matters because, as the Sentencing Council is aware, Aboriginal people are over-represented at every stage of the criminal justice system and are disproportionately impacted by socio-economic disadvantage. The majority of fraud offences that ALS Solicitors appear in relate to matters that are at the lower level of objective seriousness. Most of those matters relate to 'tap and go' offences for items of low value (items with a value of less than \$100) and in our experience, the most common items fraudulently obtained are food, petrol, alcohol and cigarettes.

The ALS encourages the Sentencing Council's consideration at Chapter 8 of the Consultation paper for options for reform that look to deal with low-level offending more appropriately. The ALS is generally supportive of alternative approaches such as creating a summary only offence, limiting the use of imprisonment for minor fraud offences and the further exploration of diversion and decriminalisation.

In highlighting this, we note the importance of applying a broad and comprehensive understanding of the potential impact of any reform on the overrepresentation of Aboriginal people in custody. In our experience representing Aboriginal people charged with fraud offences, most often at the lower end of objective seriousness, the impact of the criminal justice system response can be disproportionate, and can compound rather than address factors underlying offending.

By way of example, we briefly note the following matters:

- A woman who was struggling financially in a domestic violence situation fraudulently used a debit card on 10 occasions within a ten-hour period for goods totalling less than \$300. To finalise the matter expeditiously she entered early guilty pleas rather than go through a lengthy negotiating period to seek that the charges be 'rolled into' one charge. She was sentenced to a community base order for each sentence and was liable for court fees in relation to each charge totalling \$1500. The court had no discretion to reduce this amount.
- A man struggling with drug addiction albeit engaged in drug counselling, experiencing homelessness and poverty so acute he regularly skipped meals, fraudulently used a credit card to purchase a McDonalds meal for the amount of \$12.99. Although at court the matter is dismissed (pursuant to s10(1)(A)), because the offence type is viewed as serious and is a 'show cause' offence, he was refused bail by Police and was made to spend the night in custody.

The NSW Government is currently undertaking an extensive program of work regarding Closing the Gap. It is vital that the Sentencing Council in its review, considers not merely the impact of any reform on the overrepresentation of Aboriginal people, but is bold in recommending alternative approaches that are consistent with the targets, the spirit and the Priority Reforms of the Closing the Gap agreement; namely Priority Reform 3 which calls on Government to transform the way they work with Aboriginal people, to identify racism and systemic disadvantage and to be creative about developing solutions.

The ALS welcomes the opportunity to discuss this letter further. If you have any questions, please don't hesitate to contact the ALS Policy and Advocacy Manager Denise Wireko-Brobby via email on

Sincerely,

**Nadine Miles**

Principal Legal Officer

Aboriginal Legal Service (NSW/ACT) Limited