



27 November 2015

Royal Commission into Institutional  
Responses to Child Sexual Abuse

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Dear Commissioners

### **Advocacy and Support and Therapeutic Treatment Services**

1. Women's Legal Services NSW (WLS NSW) thanks the Royal Commission into Institutional Responses to Child Sexual Abuse for the opportunity to comment on the Royal Commissions Issues Paper 10: Advocacy and Support and Therapeutic Treatment Services.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. We note that some people who experience child sexual abuse prefer the term 'victim' and others prefer the term 'survivor'. In this submission we use the term 'victim' which is intended to be inclusive of both victims and survivors.
4. WLS NSW has provided legal advice and support to victims of child abuse over several decades. This has primarily been through helping victims to access victims compensation, now called victims support in NSW. Additionally, we acted on behalf of 13 survivors of child sexual assault, in civil litigation against the State of New South Wales that was the subject of the Royal Commission Case Study 19 into Bethcar Children's Home (Bethcar litigation).

### *Responding to victims needs*

5. Through our work we are very aware that services working with victims of child sexual abuse must respond to a range of needs, provide support over the long-term and be accessible for everyone when and where they need it, including Aboriginal and Torres Strait Islanders, Culturally and Linguistically Diverse (CALD) communities, women with disabilities, women living in regional, rural and remote areas, and women in prison.
6. Services must be informed by trauma research and practice.
7. We note the Australian Senate Community Affairs References Committee's *Violence, abuse and neglect against people with disability in institutional and residential settings Final Report* discusses the use of restrictive practices in schools, health settings, institutions and residential settings and prison settings.
8. The Commonwealth's *National Framework for Reducing and Eliminating the Use of Restrictive Practices* defines restrictive practice as "any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability, with the primary purpose of protecting the person or others from harm." It includes, for example, solitary confinement, forced sedation and physical restraints.
9. Significantly, the committee recommends "the Australian Government work with state and territory governments to implement a national zero-tolerance approach to eliminate restrictive practice in all service delivery contexts".<sup>1</sup>
10. This is important as restrictive practices may otherwise be used in situations where the appropriate response is to respond to trauma.
11. Both specialist and mainstream services must be accessible. This means services are culturally responsive and respond to the needs of people with disability. In addition to regular professional development in the workplace, cultural awareness training with respect to Aboriginal and Torres Strait Islander and CALD communities as well as disability awareness training about the needs of people with disability is required to be embedded in TAFE and University courses.
12. Eligibility criteria can be a source of distress and act as a barrier to clients accessing the support services they need, for example, needing to provide medical documentation of a diagnosed disability to access in home support and other supports.
13. There needs to be communication support for people with disabilities to enable them to report child sexual abuse and access relevant support services.
14. There also needs to be greater recognition of and willingness to address the structural disadvantages that victims face as a result of child sexual abuse and the trauma they experience. For example, victims may not be able to access employment opportunities, partly because their educational opportunities were disrupted as a result of the child sexual abuse and/or the trauma manifests as

<sup>1</sup> Senate Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and*

anxiety, depression, post traumatic stress disorder or another health condition which limits or prevents them accessing employment opportunities. It is important that remedies extend beyond economic loss to social supports, including access to safe and affordable housing and ongoing accessible educational opportunities.

15. Completing forms and other paperwork can be overwhelming and difficult to navigate. Victims of child sexual abuse may need support to complete such paperwork and be guided through the process. Given victims may be engaging with a range of services – such as housing, Centrelink, health services and legal services, case management is also required.

### Counselling and support

16. It is important that counselling is available to all victims of child sexual abuse who would like to access it and is available when and where victims request it. For some, this may not be until many, many years after the abuse, for example, when their own children reach the age they were when the abuse first started, or when their own children have grown up or a court matter has been finalised. There should be no time limit on accessing counselling nor a limit to the number of hours of counselling a victim of child sexual abuse can access. It is also important that counselling be voluntary.
17. Astbury notes that of the women who experience violence who access health services, the majority access primary health services rather than specialised sexual assault services. Astbury posits that it is important primary health care workers do not employ techniques that would otherwise be used in other aspects of general health care, such as patient compliance. She argues this would “likely be highly counterproductive [for victims of sexual assault] because it mimics the controlling behaviour of the perpetrator and reinforces the woman's sense of powerlessness and lack of agency.”<sup>2</sup>
18. Several researchers support the need for specialised and different counselling services for victims of domestic violence, sexual assault and child sexual abuse.<sup>3</sup> This includes culturally appropriate frameworks for services working with Aboriginal and Torres Strait Islander women. Additionally, there is a need for a multicultural framework for services working with CALD women, as there are “significant differences in the forms of violence perpetrated” and “even greater diversity in the way violence itself is perceived, understood and incorporated into individual women’s world-views”.<sup>4</sup> In the absence of appropriate training health practitioners have identified that they do not know how to respond to CALD women who have experienced violence because of their “desire to maintain cultural sensitivity” and “a

<sup>2</sup> J. Astbury, ‘Services for victim/survivors of sexual assault – identifying needs, interventions and provision of services in Australia,’ *ACSSA Issues Paper 6*, December 2006 at 20 accessed on 26 November 2015 at: [http://www.aifs.gov.au/acssa/pubs/issue/acssa\\_issues6.pdf](http://www.aifs.gov.au/acssa/pubs/issue/acssa_issues6.pdf)

<sup>3</sup> A. Howard, S. Rigor, R. Campbell, S. Wasco, ‘Counselling services for battered women: a comparison of outcomes for physical and sexual assault survivors’, *Journal of Interpersonal Violence*, July 2003, Vol 18(7) 717-734; E. Hodge & J. Myers, ‘Counseling of adult women survivors of childhood sexual abuse: Benefits of a wellness approach’ *Journal of Mental Health Counselling* Volume 2010, 32(2)

<sup>4</sup> A. Allimant and B. Ostapiej-Piatkowski, ‘Supporting women from CALD backgrounds who are victims/survivors of sexual violence: Challenges and opportunities for practitioners’, *ACSSA Wrap No.9 2011* at 5 accessed on 26 November 2015 at: <http://www.aifs.gov.au/acssa/pubs/wrap/wrap9/w9.pdf>

- fear of offending”.<sup>5</sup> This is also an issue in responding to Aboriginal and Torres Strait Islander women who have experienced violence.
19. WLS NSW supports mandatory cultural awareness training for all counsellors. We believe this is important with respect to both Aboriginal and Torres Strait Islander cultural awareness and Culturally and Linguistically Diverse cultural awareness training.
  20. We also acknowledge the importance of programs such as “Hey Sis, we’ve got your back” which is a network of Aboriginal women from all parts of New South Wales, who are committed to working to prevent sexual assault in their communities. This program requires ongoing, sustainable funding to support “constructive yarning, professional development, networking and support for Aboriginal women who are working to reduce the rates of sexual assault against women and children”.<sup>6</sup>
  21. There also need to be opportunities for group therapy. A number of years ago Mudgin-Gal Aboriginal Corporation identified a need for Aboriginal women to gather in a safe place to yarn about their experiences of child sexual abuse. Working in partnership with Rosemount Counselling the women were offered a choice between one-on-one sessions or group sessions - those present requested group sessions. These group sessions, facilitated by a counsellor, provided the space for these women to talk about their experiences and provide support to one another. Out of these group sessions the women designed flyers with powerful messages such as “Tell someone” and “Believe your kids” which were widely circulated.
  22. In 1998, Dubbo Women’s Housing Programme Inc, the Western Region Domestic Violence Collective and the Macquarie Violence Against Women Regional Reference prepared and held a conference at Lake Burrendong entitled *Partnerships, Prevention and Rural Action: A Conference on Violence against Women*. The conference was attended by Aboriginal and non-Aboriginal women and services providers and provided an important opportunity to discuss all forms of violence against women, particularly Aboriginal Women and women from CALD backgrounds.
  23. In 2004, under the auspices of WLS NSW a group of Aboriginal women organised and ran *Partnerships, Prevention and Rural Action II: A conference on Child Sexual Assault in Aboriginal Communities*. The Lake Burrendong conference was again well attended with a recommendation coming out of the conference to keep child sexual assault on the agenda and have another conference in a few years time.
  24. In 2007, the third conference *Partnerships, Prevention and Rural Action III: A conference on Child Sexual Assault in Aboriginal Communities* was held providing Aboriginal women with a space to speak for themselves as well as network and support each other.<sup>7</sup>
  25. Such gatherings are very resource intensive to organise. To ensure accessibility for Aboriginal women to participate funding is required for transport and the conference itself.

<sup>5</sup> Ibid at 6.

<sup>6</sup> Hey Sis, we’ve got your back accessed on 26 November 2015 at: <http://www.heysis.com.au/Home.aspx>

<sup>7</sup> Women’s Legal Services NSW, *Partnerships, Prevention and Rural Action III: A conference on child sexual assault in Aboriginal Communities, 15-19 October 2007, Conference Report*.

26. It is also important to provide funding for the development of resources such as *Our Silence is Abusing our Kids: What can our communities do about child sexual assault*. This resource, jointly produced by Dymyna House and WLS NSW with significant input from community members describes child sexual abuse, how it happens and what to do when someone tells you about the abuse. It also includes interviews with community women and Aboriginal workers about their own efforts in their communities to protect children and support young people.
27. It is essential that there is adequate funding for such important community development work.
28. Art, music and play therapy should also be available.
29. We also refer to the recent recommendation in the *Violence, abuse and neglect against people with disability in institutional and residential settings Final Report* that "all levels of government provide increased funding for support and counselling services ...[including] to create specialist disability counselling services where required, as well as to mainstream organisations so they may meet the needs of people with disability."<sup>8</sup>
30. We also advocate for standards to ensure a high quality of service to be a requirement of the funding for all programs designed to provide services for women, families and communities impacted by domestic and family violence, sexual assault and child sexual abuse, regardless of the amount or proposed use of the funding.

#### Women in prison

31. The ABS reports a 60% increase in the female prison population over the past 10 years from 1999-2009.<sup>9</sup> In NSW, Aboriginal and Torres Strait Islander women represent 29.4% of women in prison.<sup>10</sup> Aboriginal people are incarcerated at 13 times the rate of non-Aboriginal people<sup>11</sup> and Aboriginal women are the fastest growing group in NSW prisons.
32. As Stathopoulos notes, Aboriginal women generally serve shorter sentences, often for minor offences such as driving infringements and non-payment of fines and are more likely than non-Aboriginal women to be on remand.<sup>12</sup> This raises concerns about over-policing. It is also of great concern that women are being incarcerated because they are poor. As Stathopoulos further acknowledges "prisoners who are on remand are usually not eligible to participate in programs".<sup>13</sup>

<sup>8</sup> Senate Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability Inquiry Final Report*, November 2015, Recommendation 14

<sup>9</sup> ABS 2010 cited in Mary Stathopoulos, *Addressing women's victimisation histories in custodial settings*, ACSSA, No 13, 2012 at 3.

<sup>10</sup> Corrective Services NSW, *Facts and Figure Corrections research, Evaluation & Statistics, March 2013* at [correctiveservices.justice.nsw.gov.au](http://correctiveservices.justice.nsw.gov.au)

<sup>11</sup> Corrective Services NSW, *Statistical Profile of Offenders*, 2009.

<sup>12</sup> Research cited in Mary Stathopoulos, *Addressing women's victimisation histories in custodial settings*, ACSSA, No 13, 2012 at 3.

<sup>13</sup> Ibid.

33. As Stathopoulos further acknowledges “prisoners who are on remand are usually not eligible to participate in programs”.<sup>14</sup>
34. Courts are not generally well informed about the pathways to prison for women as a result of family violence, including sexual assault and child sexual abuse. A high proportion of women in prison have been victims of violent crime prior to coming into custody. The *2009 NSW Inmate Health Survey* found that: 66% of female inmates had been involved in at least one violent relationship and 29% of female inmates had been subjected to at least one form of sexual violence.<sup>15</sup>
35. Lawrie’s 2003 study of Aboriginal women in NSW prisons found that over 75% of Aboriginal women had being sexually assaulted as a child, just under 50% had been sexually assaulted as adults and almost 80% were victims of family violence.<sup>16</sup>
36. Stathopoulos acknowledges that while there is little research regarding the prevalence of child sexual abuse amongst women in prison, where research has been done, prevalence is between 57% and 90%.<sup>17</sup>
37. As Stathopoulos observes, “the most significant co-occurrence of child sexual abuse sequelae is substance addiction and mental health issues ... [which] is intertwined with mental health problems and pathways to offending”.<sup>18</sup> As Herman explains, drugs are a coping mechanism, providing relief and a form of escape from reality.<sup>19</sup>
38. Helping women to address their trauma is key to reducing recidivism. Reducing recidivism for mothers in prison is important so as to limit disruption to the care of children as many mothers in prison were the primary caregiver prior to entering prison.
39. When a vulnerable parent is in custody it is an ideal time to offer treatment and support programs and encourage contact between mothers and children in an environment where they are free of fear and offenders. These programs should also be available to those on remand.
40. While acknowledging that not everyone will want to access counselling while they are in prison, we support the need for women in prison to be given the opportunity to address their trauma if they would like to, as trauma is a factor which contributes to recidivism. One way to address trauma is through counselling.
41. We refer to Australia’s acceptance of the 2011 Universal Periodic Review (UPR) recommendation 86.82 that all victims of violence have access to counselling and assistance with recovery. We note that in the past there have been very limited if any counselling services for women victims of violence in prison despite many women in prison being victims of domestic violence or sexual assault.

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<sup>14</sup> Ibid.

<sup>15</sup> Devon Idig, Libby Topp, Bronwen Ross, Hassan Mamoon, Belinda Border, Shalin Kumar and Martin McNamara, *2009 NSW Inmate Health Survey*, Justice Health, Sydney 2010 at 131

<sup>16</sup> Lawrie cited in Natalie Taylor & Judy Putt, ‘Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia,’ *Trends and Issues in crime and criminal justice*, Australian Institute of Criminology, September 2007 at 2.

<sup>17</sup> Ibid at 4.

<sup>18</sup> Mary Stathopoulos, Note 12 at 6.

<sup>19</sup> Herman cited in Mary Stathopoulos, Note 12 at 6



42. We warmly welcomed the pilot counselling program for prisoners at Dilwynnia and Wellington Correctional Centres which commenced in November 2011 and May 2012 respectively. This program was reviewed and found to be “invaluable” and “effective” with 235 inmates participating, including 159 women.<sup>20</sup> 198 participants disclosed a history of domestic violence or sexual assault with many participants presenting with a history of multiple victimisation and complex trauma.<sup>21</sup> Significantly the report notes a “reduction in severity levels for inmates in the areas of depression, anxiety and stress before and after counselling”.<sup>22</sup> The report recommended the program be expanded to other correctional centres in NSW.<sup>23</sup> We recommend that this program be made available to people in all prisons in Australia who would like to access it.
43. We also believe that in sentencing and considering possible diversionary options, consideration should be given as to primary caregiving responsibilities for a child/ren, any history of violence experienced and any history of mental health and substance abuse. This is consistent with the United Nations Bangkok Rules.<sup>24</sup> Imprisonment of a primary carer for crimes other than violent offences should be as a last resort.
44. If a mother is imprisoned for a non-violent crime, wherever possible, her children under six years of age should be able to live with her. We note this currently occurs very successfully at Emu Plains Correctional Centre and recommend this be expanded to other prisons.
45. Clients consistently tell us that maintaining a relationship with children while in prison is an important factor that can contribute to reducing recidivism. Similarly, an inability to maintain contact with children contributes to recidivism. Toohey cites several studies which found children’s coping skills were also enhanced and “problematic behaviour” was reduced by maintaining contact with their incarcerated parents.<sup>25</sup>
46. Upon release from prison it is also important that women are supported to “transition effectively into the broader community”.<sup>26</sup> The WIPAN pilot mentoring program which was in place from May 2010 to November 2011 is an excellent example of the kind of support required for women leaving prison. In recently evaluating this pilot program it was found that “82% of the women who were engaged in the program for one year or more did not re-offend or return to prison”.<sup>27</sup> This is significant given that “93% of these women were recidivists and/or serial recidivists”.<sup>28</sup>

<sup>20</sup> Thomas Dornan & Elyse Aird, *An evaluation of the counselling in prison trial*, NSW Government – Justice Victims Services, August 2015 at 8-9 accessed on 26 November 2015 at: [http://www.victimsservices.justice.nsw.gov.au/Documents/eval\\_counselling-in-prison.pdf](http://www.victimsservices.justice.nsw.gov.au/Documents/eval_counselling-in-prison.pdf)

<sup>21</sup> Ibid at 8.

<sup>22</sup> Ibid at 8.

<sup>23</sup> Ibid at 8.

<sup>24</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, E/2010/30 adopted by the UN General Assembly on 21 December 2010, Rule 41(b)

<sup>25</sup> Julie-Anne Toohey, ‘Children and Their Incarcerated Parents: Maintaining Connections – How Kids’ Days at Tasmania’s Risdon Prison Contribute to Imprisoned Parent-Child Relationships,’ *Changing the Way We Think About Change*, The Australian and New Zealand Critical Criminology Conference 2012 at 33.

<sup>26</sup> *The Report: The Pilot WIPAN Mentoring Program 2009-2011*, WIPAN, August 2012 at 6 accessed on 26 November 2015 at:

[http://www.wipan.net.au/publications/WIPAN\\_The\\_Report\\_Pilot\\_Mentoring\\_Program\\_2009-2011-OK.pdf](http://www.wipan.net.au/publications/WIPAN_The_Report_Pilot_Mentoring_Program_2009-2011-OK.pdf)

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

47. We further note the importance of having safe and secure housing as another factor that helps to reduce recidivism.<sup>29</sup> This is also a relevant factor to children living with their mother once she is released from prison.

#### Intensive support

48. The Bethcar litigation highlights the vital importance of community legal centre lawyers working alongside community access workers to support our Aboriginal clients in a culturally responsive way. It involved intensive work over a sustained period of time. WLS NSW lawyers travelled along with our community access workers to rural NSW to meet our clients at key stages of the litigation. WLS NSW otherwise kept in touch with our clients via telephone and in writing.

49. Our clients required intensive support when they attended Sydney as part of the litigation. This included arranging their travel, meeting clients at the station, accompanying them to their accommodation, covering travel, accommodation, meal and incidental expenses.

50. Two pro bono counsel were actively engaged over the years of the litigation and a 3 month pro bono secondee solicitor assisted at a critical time in the litigation.

51. Due to the nature of community legal centres, that is organisations that are based in their communities or in the case of a state-wide specialist legal service such as WLS NSW have significant ties to their communities, we are well placed to undertake this work. Our work is informed by trauma research and practice.

52. However, this litigation was a stretch on WLS NSW resources and highlights the need for more adequate and sustainable funding of legal assistance services. In 2014 the Productivity Commission recommended an additional \$200 million for legal assistance services to provide civil legal assistance.<sup>30</sup>

53. Funding is also required for additional wrap around services for clients in the form of social workers. Knowmore legal service provides an excellent example of the level of resourcing required to meet the legal needs of people who have experienced child sexual abuse.

54. When Community Legal Centres were established forty years ago the model included social workers. Since then resources provided to Community Legal Centres are so stretched that most Community Legal Centres do not have the capacity to employ social workers.

55. It is a positive step that the Commonwealth Government funding allocated to Community Legal Centres as part of the Women's Safety Package includes funding for social workers. However, only 10 out of almost 200 community legal centres received this funding. Such funding must be expanded.

<sup>29</sup> See, for example, WIPAN, *Dreaming of a safe home - Consumers and community workers' perspectives on housing and support needs of women leaving prison in NSW*, August 2012 accessed on 26 November 2015 at: [http://www.wipan.net.au/publications/WIPAN\\_Dreaming\\_of\\_a\\_Safe\\_Home\\_WEB.pdf](http://www.wipan.net.au/publications/WIPAN_Dreaming_of_a_Safe_Home_WEB.pdf)

<sup>30</sup> Productivity Commission, *Access to Justice Arrangements Productivity Commission Inquiry Report, Vol 1, No 72*, 5 September 2014, Recommendation 21.4.



### *Systemic advocacy*

56. In addition to advocacy that assists individual clients it is also essential that community organisations are adequately funded to undertake systemic advocacy. Front line services, such as community legal centres, are well placed to undertake such advocacy as they can identify trends and emerging issues through their casework and engagement with their communities.
57. It is important that systemic advocacy is valued.
58. Systemic advocacy is important for our clients. They often tell us “we want the system to change so that it doesn’t happen to someone else”.
59. In addition to social benefits there are also frequently economic cost-benefit arguments that can be made for systemic advocacy.
60. Both individual and systemic advocacy has helped to highlight the need to remove time limits in civil litigation relating to child sexual abuse.
61. Systemic advocacy is also helping to highlight the need for sexuality and health education for all.
62. We also refer to Recommendation 15 in the *Violence, abuse and neglect against people with disability in institutional and residential settings Final Report* that “recommends all levels of government acknowledge the vital role that formal and informal advocacy plays in addressing violence, abuse and neglect of people with disability” and fund training for people with disability so they can self-report; ensure advocates can access to facilities; and fund advocacy programs to include training for informal advocates.

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Janet Loughman, Principal Solicitor on 02 8745 6900.

Yours faithfully,  
Women’s Legal Services NSW

Janet Loughman  
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