

13 January 2017

ALRC Incarceration Inquiry
Legal Assistance Branch
Attorney-General's Department

By Email: ALRCIncarcerationInquiry@ag.gov.au

Dear ALRC Incarceration Inquiry,

ALRC Incarceration Inquiry Terms of Reference

1. Women's Legal Service NSW (WLS NSW) thanks the Attorney-General's Department for the opportunity to comment on the Terms of Reference for this Inquiry.
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 provide legal advice and advocacy to women in prison, many of whom are Aboriginal.
4. WLS NSW has an Aboriginal Women's Legal Program (IWLP). This program delivers a culturally sensitive legal service to Aboriginal women in NSW. We provide an Aboriginal legal advice line, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for Aboriginal and Torres Strait Islander women.
5. An Aboriginal Women's Consultation Network guides the IWLP. It meets quarterly to ensure we deliver a culturally appropriate service. The members include regional community representatives and the IWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.

The needs of Aboriginal and Torres Strait Islander women

6. The intersection of Aboriginal and Torres Strait Islander race and culture, and being a woman produces outcomes in the justice system characterised by extremely high rates of



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victimisation, high rates of incarceration, high rates of murder, trauma and disruption. Aboriginal and/or Torres Strait Islander women are least served by the justice system in Australia.

7. We submit that the Terms of Reference clearly identify the need to inquire into the particular experiences and needs of Aboriginal and/or Torres Strait Islander women who are incarcerated or at risk of incarceration.
8. It is also important in the term of reference regarding "whether certain laws and legal frameworks contribute to the rate of Indigenous offending and incarceration" to particularly include penalties, such as for unpaid fines and driving offences. This is particularly important in the context of such penalties being a barrier for some Aboriginal and/or Torres Strait Islander women reporting domestic violence to police.

Consultation and advisory mechanisms

9. Aboriginal and/or Torres Strait Islander women are best placed to identify what has impeded their access to justice, what needs to be done to remove the barriers to access and identify ways to reduce the increasing rates of incarceration.
10. We submit that in addition to consultation with Aboriginal and Torres Strait Islander women as part of stakeholder consultation as outlined in the Terms of Reference, there also needs to be formally included in the Terms of Reference the establishment of high level Aboriginal and Torres Strait Islander advisory groups made up of members who are active in their communities. This should include Aboriginal and Torres Strait Islander women in the community with expertise in responding to sexual assault and domestic and family violence. This is particularly important given pathways into prison for Aboriginal and Torres Strait Islander women as a result of violence against women as outlined below. We further recommend that these appointments be made through an application process.
11. It is also vital that there be consultation with people with lived experience of incarceration.
12. In addition to this we also recommend the appointment of an Aboriginal and/or Torres Strait Islander person as an ALRC Commissioner working on this Inquiry.

Broader contextual factors and impact of intergenerational trauma

13. The Terms of Reference acknowledge the broader contextual factors contributing to Indigenous incarceration including inter-generational trauma.
14. We submit that it is important to acknowledge that the impact of the Stolen Generations extends not only to those children who were removed but there has been, and continues to be, trans-generational traumas experienced by the children, grandchildren and extended family members of the Stolen Generations.
15. In addition to the trauma experienced as a result of loss of identity, belonging, community, country connection and impact on wellbeing, many have also experienced trauma as a

result of sexual and/or physical abuse which occurred following the forced removal of children from their families.

16. In NSW, Aboriginal and Torres Strait Islander women represent 29.4% of women in prison.¹ Aboriginal people are incarcerated at 13 times the rate of non-Aboriginal people² and Aboriginal women are the fastest growing group in NSW prisons. While it is not clear how many Aboriginal women in NSW had children in their care before being incarcerated, based on our experience of working with women in prison, many children would have been removed from their primary caregiver mother for this reason.
17. The over-representation of Aboriginal and Torres Strait Islander women in prison is impacting on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.
18. Additionally, courts are not generally well informed about the pathways to prison for women as a result of family violence, including sexual assault. 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.³
19. 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.⁴
20. We therefore submit that in addition to the reports listed in the Terms of Reference, the ALRC also take into account the *Bringing them home: The 'Stolen Children' (Bringing them home) report and the report(s) of the Royal Commission into Institutional Responses to Child Sexual Abuse*.

Access to legal services

21. An assessment of whether the funding and resources provided to legal assistance services for Aboriginal and Torres Strait Islander peoples must be an essential part of inquiring into the laws and legal frameworks that contribute to the incarceration rate of Indigenous Australians.
22. It is significant that at a time when the Productivity Commission recommends an urgent injection of funding for legal assistance services providers,⁵ community legal centres are

¹ Corrective Services NSW, *Facts and Figure Corrections research, Evaluation & Statistics*, March 2013

² Corrective Services NSW, *Statistical Profile of Offenders*, 2009.

³ 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.

⁴ 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.

⁵ Productivity Commission, *Access to Justice Arrangements*, 2014, Recommendation 21.4

facing commonwealth funding cuts through the Community Legal Services Program. In the case of WLS NSW while IWLP community access workers are funded through the Commonwealth Indigenous Advancement Strategy the lawyers are funded through the Community Legal Services Program. Reduced resources will lead to a reduction in client services.

23. It is vital that Aboriginal and Torres Strait Islander community controlled legal services are adequately funded. All legal assistance services must be able to provide culturally safe and responsive services and be adequately funded. This is important to enable choice of service, agency around choice and to respond to conflict of interest issues.
24. We submit that the scope of the Terms of Reference include access to legal services.

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

Yours faithfully,

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Women's Legal Service NSW