

5 April 2019

Ms Silvia Lopic
Director Access System Redesign
Their Futures Matter

By email: TFM-info@theirfuturesmatter.nsw.gov.au

Dear Ms Lopic

Access System Redesign

1. Women's Legal Service NSW (WLS NSW) thanks Their Futures Matter for the opportunity to comment on the Access System Redesign Discussion Paper.
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. 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.
4. 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.
5. We note there is no reference throughout the Discussion Paper of referrals of families to early legal advice about the care and protection of their children. This submission highlights the important role of early legal advice and support services for parents/primary caregivers and how a collaborative approach involving families, support services, child protection services and other relevant services is an important early support and can prevent a matter escalating to removal of a child from their family.



Terminology

6. Domestic and/or family violence occurs when one person tries to coerce or control another person in a range of "domestic relationships" as outlined in section 5 *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*. Family violence is the preferred term to encompass the complex interaction of kinship structures and extended family relationships in Aboriginal and Torres Strait Islander communities.
7. The term "family violence" is intended to include domestic and family violence.
8. Family violence involves an abuse of power and can take the form of physical violence, sexual abuse, emotional or psychological abuse, verbal abuse, stalking and intimidation, social and geographical isolation, denial of culture, financial abuse, cruelty to pets, damage to property or threats to be violent in these ways. In the large majority of cases, family violence is gendered, that is, it is perpetrated by men against women.
9. The term "early support" is used in this submission instead of "early intervention". "Early support" is intended to mean being offered strengths based, client-centred, trauma informed, culturally safe support at the earliest opportunity when an issue of child safety is identified. Concerns have been raised by community members about the connotations associated with the term "intervention" for Aboriginal and Torres Strait Islander people. The term "support" is preferred as it suggests a more collaborative strengths-based approach.

Recommendations

10. In summary we recommend:
 - 10.1 Aboriginal and Torres Strait Islander peoples' right to self-determination be included as a guiding principle.
 - 10.2 The words "*services that are available, accessible and at very low or no cost*" should be included in the guiding principles.
 - 10.3 Parents and primary caregivers have an enforceable legislative right to services that are meaningful, available, accessible and at very low or no cost.
 - 10.4 Establish accountability mechanisms to ensure that FACS and NGO child protection workers must inform parents in a timely manner if there are issues that may lead to the removal of their children and provide culturally safe and appropriate support to them to address those issues.
 - 10.5 Include "*access to justice*" as a guiding principle.
 - 10.6 When parents have themselves been the subject of significant risk of harm reports when they were children, FACS and other child protection and support services should have a higher duty of care to support them, including as parents.

Women's Legal Service NSW

- 10.7 Courts are better informed about the pathways to prison for women as a result of child sexual abuse, sexual assault and family violence.
- 10.8 Imprisonment of women and particularly pregnant women and women caring for children should be as a last resort. Flexible and accessible, non-custodial alternatives to prison should be available throughout all states and territories, including in rural, regional and remote areas.
- 10.9 Better promotion and implementation of the Housing Pathways policy which prioritises access to social housing if a parent can provide evidence which demonstrates that the lack of appropriate accommodation is impacting their ability to have children restored to their care.
- 10.10 Fund the services providing Legal Education and Advice in Prison (LEAP) program for women in custody to undertake a pilot project with Corrective Services, Family and Community Services and relevant support services to provide intensive early legal advice, social support and case management to pregnant women in custody and women with primary carer responsibilities prior to entering custody with a focus on family preservation and restoration.
- 10.11 Adopt the Safe State recommendations relating to creating cultural change to prevent violence and promote gender equality.
- 10.12 Increase funding of community led, culturally safe, strengths based and trauma informed parenting and other support programs, such as integrated social and legal services, to help parents address issues that may lead to the removal of their children.
- 10.13 Fund health justice partnerships to train health workers to identify family violence and provide appropriate referrals to early legal advice and for legal services to refer to counselling and other support services.

Our care and protection work

- 11. We have provided legal advice and support to women in NSW about care and protection of children matters for many years. Following the 2014 child protection legislative reforms the government funded Legal Aid NSW, Community Legal Centres and the Aboriginal Legal Service to provide early legal advice and support in care and protection matters, with a particular focus on early support tools such as parent responsibility contracts and parent capacity orders and alternative dispute resolution to resolve contact disputes. This work is called Care Partners. Women's Legal Service NSW is funded 2 days a week to provide this service. Demand for services and work required in these types of matters far exceeds 2 days a week.
- 12. We provide legal advice about care and protection of children by telephone and at outreaches at Women's Health Centres in Blacktown, Penrith and Liverpool and at metropolitan Women's Correctional Centres as outlined below. Our community access workers also provide Aboriginal women with additional support.

Women's Legal Service NSW

13. The purpose of early legal advice provided by WLS NSW is to help parents and primary caregivers:
 - 13.1 understand the reasons for contact with child protection services
 - 13.2 identify issues that need to be addressed, including any safety concerns
 - 13.3 engage with the Department of Family and Community Services (FACS) and/or NGO child protection services
 - 13.4 discuss what the parent/primary caregiver can reasonably do to address these issues and how they will be supported by FACS/NGO child protection services – including ensuring services are accessible, available and affordable
 - 13.5 where relevant help parents/primary caregivers to identify family members to be assessed to care for the child.
14. Access to early legal advice and other support can be crucial in supporting family preservation. There may be barriers to families engaging with FACS or NGO child protection services which could lead to the removal of children which could be overcome through parents/primary caregivers having access to legal advice and support from independent and trusted community legal services such as Women's Legal Service.
15. Access to early legal advice when a primary caregiver may not be able to care for their child but there is another family member who is appropriate and available could mean a matter is diverted to the family law courts rather than waiting for the matter to escalate to the Children's Court and the removal of a child from their family. The benefit in these circumstances is there is an increased likelihood that the child will stay with family members instead of going into "care". Our Indigenous Women's Legal Program play a vital role in conveying this message to communities.
16. Our specialist legal services include the Legal Education and Advice in Prison (LEAP) program for women in custody which was established in 2009 and received the 2009 NSW Law and Justice Foundation Community Legal Centre Award. WLS NSW works in partnership with Wirringa Baiya Aboriginal Women's Legal Centre and Western Sydney Community Legal Centre (formerly Hawkesbury Nepean Community Legal Centre) to deliver the LEAP program in metropolitan prisons in Sydney. This program was established due to the high levels of unmet need amongst women in custody for civil and family law services, many of whom have experienced child sexual abuse, sexual assault and family violence. LEAP addresses unmet legal need by providing and facilitating access to civil and family legal services for incarcerated women.
17. WLS NSW provides legal services for women in Silverwater Women's and Emu Plains Correctional Centres. We also respond to telephone calls from women in custody across

Women's Legal Service NSW

NSW. LEAP does not receive any dedicated funding and operates from the core resources of the services.¹

18. LEAP provides culturally appropriate services to Aboriginal and Torres Strait Islander women through the Indigenous Women's Legal Program based at WLS NSW and Wirringa Baiya Aboriginal Women's Legal Centre. The service is provided by women solicitors who are also domestic violence and trauma informed.
19. Since 2009, LEAP has provided legal advice to hundreds of women in prison, many of whom need assistance in the areas of family violence, sexual assault, family law, care and protection, housing and victims support.
20. Many of the legal issues of clients of LEAP intersect and relate to the care of children. For example, sexual and family violence are risk factors for the removal of children from their parents/primary caregivers care. Family violence is a leading cause of homelessness and a lack of safe and affordable housing can leave women at risk of imprisonment as outlined below. Further, once children are removed from their mother's care, accessing safe and affordable housing for the mother and children can be challenging and impact on whether children are restored to their mothers/primary caregivers. This highlights the need for early legal advice and support as a preventative measure, to help address issues which may leave women at risk of imprisonment to reduce this risk and the need to support mothers and children so children can remain safely in the care of their mothers.
21. Further, access to legal services in prison is essential to help reduce the risk of prisoners re-offending and being re-incarcerated. This is because imprisonment often exacerbates civil law and family law issues which may be interconnected with the criminal law issues. This can prevent the successful reintegration of people after they are released.²
22. Clients consistently tell us that maintaining a relationship with children while in prison is an important factor that can contribute to reducing recidivism. This is supported by a 2016 report which found that women who participated in programs that allowed their children to live with them were less likely to return to prison than mothers who were separated from their children.³ It also found that mothers may be "*considerably more motivated to succeed*" in educational and substance misuse programs.⁴

¹ The Law Council of Australia recognised the service gap in funding for specific legal services targeted to women in prison, particularly for civil and family law matters in its consultation paper on prisoners and detainees, as part of the Justice Project: Law Council of Australia, *The Justice Project: Prisoners and Detainees Consultation Paper* (August 2017), p4 (5) accessed at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Prisoners%20and%20Detainees.pdf>

² Law Council of Australia, *The Justice Project Final Report – Prisoners and Detainees*, 2018, p21 accessed at:

<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Prisoners%20and%20Detainees%20%28Part%201%29.pdf>

³ University of Melbourne School of Health Sciences, Save the Children Australia Centre for Child Wellbeing and the Vanderbilt University Peabody Research Institute, *Literature Review of Prison-based Mothers and Children Program*, p 3 accessed at:

http://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren_programs.pdf

⁴ Ibid, p4.

23. Additionally, 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.⁵
24. Once establishing a relationship of trust with WLS NSW, women return to our service, contacting us early in their legal problems so we can help them resolve their legal issues before they escalate. Women call us for early legal advice about their safety, arrangements for their children and assistance to avoid parole breaches, for example, by varying reporting conditions. This is particularly important for Aboriginal and Torres Strait Islander women who may have family and community obligations requiring them to move between locations to assist with looking after children and family members.

Guiding principles for Access System Redesign

25. The Discussion Paper outlines the following principles for Access System Redesign:
 - 25.1 Children, young people, families and communities at the centre
 - 25.2 Culturally safe and accessible services
 - 25.3 Focus on prevention and early intervention
 - 25.4 Governance and accountability mechanisms across a multi-agency system
 - 25.5 Building trust in the system through an ethical approach and make

Self-determination

26. Aboriginal and Torres Strait Islander peoples' right to self-determination consistent with the Declaration of the Rights of Indigenous Peoples endorsed by Australia should be included as a guiding principle.

Services that are available, accessible and very low or no cost

27. We welcome a greater focus on prevention and early support through Their Futures Matter.
28. Parents must have a say in what is realistic and achievable when entering any agreement. They must be able to choose which service they engage with, for example, a service they know to be culturally safe and trauma informed.
29. Services must be available, accessible and at no or very low cost.
30. An available service means there is space in a program to start immediately. It is not enough to be referred to a service and put on a waiting list.

⁵ 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, p33.

31. An accessible service means, for example, that transport will be arranged for the parent or primary caregiver and paid for so they can attend the program; free childcare is available while the parent or primary caregiver attends the program; the program is culturally safe, family violence and trauma informed, disability aware, strengths based, non-judgmental and workers understand and undertake response-based practice.
32. Response-based training can help services to ensure their language does not *"obscure or mutualise violence, mitigate perpetrator responsibility and/or blame/pathologise the victim"*.⁶
33. The words *"available, accessible and at very low or no cost"* should be included in the guiding principles.
34. We further recommend parents and primary caregivers must have an enforceable legislative right to services that are meaningful, available, accessible and at very low or no cost.

Accountability mechanisms

35. Accountability mechanisms should be established to ensure that FACS and NGO child protection workers must inform parents in a timely manner if there are issues that may lead to the removal of their children and provide culturally safe and appropriate support to them to address those issues. To ensure this happens services must be adequately resourced.

Access to justice

36. An external review of legal aid service delivery was recently undertaken in British Colombia with a focus on advancing the rule of law and access to justice.
37. The recommendation given the highest priority by the reviewer is the creation of child protection clinics to provide legal and other support to help parents *before* child protection concerns escalate to removal of children from their care.⁷
38. This recommendation was made in recognition of the power imbalances parents experience when children are removed from their care by the state.⁸ Noting the over-representation of Indigenous children in out of home care in British Colombia, the report particularly acknowledges the power imbalances experienced by Indigenous families.⁹
39. The reviewer acknowledges the piloting of a Parents Legal Centre in 2015 in Vancouver. The reviewer recommends that the child protection clinics would be similar to a Parent Legal Centre in its holistic approach of early legal and social supports but would not require parental consent to the orders the child protection department is seeking.

⁶ See, for example, Centre for Response Based Practice, accessed at: <https://www.responsebasedpractice.com> and Safe and Together: <https://safeandtogetherinstitute.com/>

⁷ Jamie Maclaren QC, *Roads to Revival: An External Review of Legal Aid Service Delivery in British Colombia*, January 2019, Recommendation 15, accessed at: https://news.gov.bc.ca/files/Roads_to_Revival-Maclaren_Legal_Aid_Review-25FEB19.pdf

⁸ Ibid, p43.

⁹ Ibid.

40. We recommend similar early legal support for parents/primary caregivers in NSW to ensure parents/primary caregivers have information and understand FACS and NGO child protection services processes; they understand the issues of concern that have been identified and how these can be addressed, including having input into how the issues can be addressed; they are assisted to access services; and to address power imbalances.
41. This can be captured by including "*access to justice*" as a guiding principle.
42. Given the co-existence of family violence in child protection matters and the gendered nature of family violence, specialist women's services, including specialist women's legal services, have an important role to play in supporting women and their children.

Recommendation 1

Aboriginal and Torres Strait Islander peoples' right to self-determination be included as a guiding principle.

Recommendation 2

The words "*services that are available, accessible and at very low or no cost*" should be included in the guiding principles.

Recommendation 3

Parents and primary caregivers have an enforceable legislative right to services that are meaningful, available, accessible and at very low or no cost.

Recommendation 4

Establish accountability mechanisms to ensure that FACS and NGO child protection workers must inform parents in a timely manner if there are issues that may lead to the removal of their children and provide culturally safe and appropriate support to them to address those issues.

Recommendation 5

Include "*access to justice*" as a guiding principle.

Key themes from the evidence

Understanding the drivers of vulnerability

Out-of-home care, the criminal justice system and homelessness

43. There is a correlation between out-of-home-care (OOHC), the criminal justice system and homelessness.¹⁰
44. In 2009 Kath McFarlane examined 111 NSW Children's Court criminal files¹¹ and found that 34% of young people appearing before the court were, or had been, in OOHC, and that children in care were 68 times more likely to appear in the Children's Court than other children. McFarlane also identified that many of these children and young people were charged with assault against OOHC staff or damage of their OOHC property.¹² Further, 26% of the care cohort and overall sample were female and 60% of the female care cohort were Aboriginal or Torres Strait Islander.¹³
45. The Committee on the Rights of the Child in *General Comment No 10: Children's rights in juvenile justice* emphasises that prevention must be a key element of any juvenile justice policy.¹⁴ Prevention includes "*requir[ing] State parties to provide the necessary assistance to parents (or other caretakers), in the performance of their parental responsibilities*", including positive obligations "*even more [so] on the promotion of the social potential of parents*".¹⁵
46. When parents have themselves been the subject of significant risk of harm reports when they were children, we believe FACS and other child protection and support services have a higher duty of care to support them, including as parents.

Women at risk of imprisonment

47. It is important that courts are better informed about the pathways to prison for women as a result of child sexual abuse, sexual assault and family violence.¹⁶
48. A high proportion of women in prison have been victims of violent crime prior to coming into custody. The 2015 Network Patient Health Survey found that 70.8% of female inmates

¹⁰ Australian Institute of Health and Wellbeing, *Children and young people at risk of social exclusion: Links between homelessness, child protection and juvenile justice*, Canberra 2012.

¹¹ McFarlane examined 111 Children's Court criminal matter files heard at Parramatta Children's Court on specific days, chosen at random, from a six month period between June and December 2009.

¹² Kath McFarlane, 'From care to custody: Young women in out-of-home care in the criminal justice system', *Current Issues in Criminal Justice*, Vol 22(2), 2010, p346.

¹³ Ibid.

¹⁴ UN Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 at paragraphs 15-21, accessed at: <http://www.refworld.org/docid/4670fca12.html>

¹⁵ Ibid at paragraph 19.

¹⁶ Unpaid fines can be a barrier to women and particularly Aboriginal and Torres Strait Islander women reporting family violence to police. For further information see *Women's Legal Service NSW submission to the Australian Law Reform Commission Inquiry into the incarceration rates of Aboriginal and Torres Strait Islander Peoples*, 14 September 2017, accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Submission-to-ALRC-inquiry-into-Incarceration-rates-of-Aboriginal-and-Torres-Strait-Islander-Peoples-fa.pdf>

in NSW had been involved in at least one abusive relationship and a significant number of female inmates had been subjected to at least one form of sexual violence.¹⁷

49. 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.¹⁸
50. Some girls and women, including women being protective of their pregnancy, tell us that it is safer for them to be in custody, as it is an escape from violence, they can access health care and nutrition and they may be supported to address their addiction to drugs.
51. It is an indictment on our society that some children and women see prison as a safe refuge and that this is accepted amongst this group because they feel they have nowhere to turn for support and assistance. This is compounded for women in rural and regional areas where there is very limited social housing stock with highly vulnerable people waiting on priority housing lists for many years.
52. In NSW, Aboriginal and Torres Strait Islander women represent 33% of women in prison.¹⁹ Aboriginal people are incarcerated at 13 times the rate of non-Aboriginal people²⁰ and Aboriginal women are the fastest growing group in NSW prisons.
53. We are also concerned that women and particularly Aboriginal and Torres Strait Islander women may not be disclosing their significant histories of being subjected to violence.

Women in custody have instructed us that they have not told the police or their legal representatives or the court about the violence they have experienced. This includes violence that is materially relevant to their charges and to their defence. Most commonly this is because they are not comfortable to make disclosures about sexual violence to male professionals.

One older Aboriginal woman told us that she was simply frozen and filled with shame at the thought of telling a young male solicitor about being raped immediately prior to her offending behaviour. The client requested that we provide this information to her lawyer, which we did, but we remained concerned that she may not be able to provide further relevant instructions.

54. It is important that safe spaces are created to enable women to disclose their histories of violence so that Aboriginal and Torres Strait Islander women are not silenced and further punished due to being silenced.
55. We also believe there is a role for social framework evidence about family violence to be included in criminal trials. We note that such evidence can be used, for example, in some

¹⁷ Justice Health and Forensic Mental Health Network, *2015 Network Patient Health Survey Report*, Sydney, 2017, p72 (74).

¹⁸ 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, p2.

¹⁹ Evann Ooi, 'Recent Trends in the NSW Female Prison Population', *Crime and Justice Statistics*, BoCSaR Issue Paper No 120, January 2018, p 3 accessed at: <https://www.bocsar.nsw.gov.au/Documents/BB/2018-Report-Recent-Trends-in-the-NSW-Female-Prison-Population-BB130.pdf>

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

²⁰ ABS, *4517.0 - Prisoners in Australia*, 2016

jurisdictions relating to protection order proceedings²¹ and can also be used in family law proceedings.

56. 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"*.²² As Herman explains, drugs are a coping mechanism, providing relief and a form of escape from reality.²³
57. Helping women to address their trauma is key to reducing recidivism.
58. The imprisonment of women and particularly pregnant women and women caring for children should be as a last resort. For children under two years of age, bonding with primary carers is important and can affect the child's personal development. Studies have shown if a mother is able and supported to maintain significant time with her child during the initial time of removal and care planning, this increases the chance of successful restoration.²⁴
59. During sentencing, courts should consider 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.²⁵
60. Rule 64 of the Bangkok Rules stipulates that:

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.
61. Furthermore, Rule 58 of the Bangkok Rules stipulates that:

Women offenders shall not be separated from their families and communities without due consideration being given to their families and communities. Alternative ways of managing women who commit offences, such as diversionary measures and pre-trial and sentencing alternatives, shall be implemented wherever appropriate and possible.
62. 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 OOHC. Once the mother is released from custody, she often faces significant difficulty in having the children returned to her care.

²¹ For example, *Family Violence Protection Act 2008 (Vic)* s 73.

²² Mary Stathopoulos et al, 'Addressing women's victimisation histories in custodial settings', *Australian Centre for the Study of Sexual Assault* (2012) 13, p6.

²³ Judith Herman, *Trauma and recovery* (Pandora, 1994) cited in Mary Stathopoulos, p6.

²⁴ Child Welfare Information Gateway, 'Family reunification: What the evidence shows', *Issue Brief* June 2011 accessed at: www.childwelfare.gov/pubs/iisue_briefs/family_reunification/family_reunification.pdf

²⁵ 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) accessed at: <https://undocs.org/A/RES/65/229>

63. One challenge is access to safe and appropriate housing, particularly when the children are not currently in the care of the mother seeking such housing.
64. The vital role of early access to legal advice and support is outlined below.

The importance of early legal advice and support for women at risk of incarceration

We regularly assist pregnant women and mothers in prison, advocating for their children to be in their care in prison through the Mothers and Children Program or in residential drug and alcohol rehabilitation programs with their children. Part of our advocacy includes assisting the judiciary to understand pathways of women into prison who have experienced child sexual abuse, sexual assault and family violence as well as advocating that imprisonment of primary care givers should be a last resort, consistent with the United Nations Bangkok Rules.

We work closely and in collaboration with other services who provide intensive case management support as well as with Corrective Services through the Mothers and Children Program and with FACS.

Through this collaborative approach, mothers have been able to care for their children in prison through the Mothers and Children program and some mothers have been able to enter and they have successfully graduated from residential rehabilitation treatment programs either with their children staying with them in residential rehabilitation or their children being restored to their care following successful completion of residential rehabilitation. A key part of these programs involves strengthening parenting capacity which strengthens the parent-child relationship. Where children are with their mothers, this has been a very important opportunity for children to form and/or maintain a meaningful attachment to their mothers. The birth of children and being supported to care for their children can also be a strong motivator for women to address criminogenic risk factors.

Where babies and other children are not able to be with their mums in custody, we help pregnant women and primary caregivers to identify family members and other possible carers early and help them advocate to FACS for assessment for placements to be undertaken before the birth of their child and for contact with their children and maternal relatives and community. This may result in a Family Group Conference to identify issues of concern and how these can be addressed by the family and community members.

65. The Law Council has recommended Commonwealth, state and territory governments increase the availability of legal assistance services to prisoners, with a particular emphasis on civil and family law matters.²⁶
66. The LEAP program for women in prison provides a culturally safe, family violence and trauma informed service for women. We recommend funding the LEAP program to undertake a pilot project with Corrective Services, Family and Community Services and

²⁶ Law Council of Australia, Justice Project *Final Report – Recommendation and Guiding Principles*, 2018, p20 accessed at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/03%20-%202018%2009%20-%20Recommendations%20and%20Group%20Priorities.pdf>

relevant support services to provide intensive early legal advice, social support and case management to pregnant women in custody and women with primary carer responsibilities prior to entering custody with a focus on family preservation and restoration.

Recommendation 6

When parents have themselves been the subject of significant risk of harm reports when they were children, FACS and other child protection and support services should have a higher duty of care to support them, including as parents.

Recommendation 7

Courts are better informed about the pathways to prison for women as a result of child sexual abuse, sexual assault and family violence.

Recommendation 8

Imprisonment of women and particularly pregnant women and women caring for children should be as a last resort. Flexible and accessible, non-custodial alternatives to prison should be available throughout all states and territories, including in rural, regional and remote areas.

Recommendation 9

Better promotion and implementation of the Housing Pathways policy which prioritises access to social housing if a parent can provide evidence which demonstrates that the lack of appropriate accommodation is impacting their ability to have children restored to their care.

Recommendation 10

Fund the services providing Legal Education and Advice in Prison (LEAP) program for women in custody to undertake a pilot project with Corrective Services, Family and Community Services and relevant support services to provide intensive early legal advice, social support and case management to pregnant women in custody and women with primary carer responsibilities prior to entering custody with a focus on family preservation and restoration.

Key drivers of violence against women and girls

67. Noting the high rates of family violence in child protection matters, greater attention on prevention of violence against women and children is required. As Quadara notes, three key drivers of violence against women and girls include: rigid gender stereotypes, attitudes supportive of male dominance and male entitlement; and gender inequality.²⁷

²⁷ Antonia Quadara, "The Everydayness of Rape: How Understanding Sexual Assault Perpetration Can Inform Prevention Efforts", in Nicola Henry & Anastasia Powell (eds) *Preventing Sexual Violence: Interdisciplinary Approaches to Overcoming a Rape Culture*,

68. In ANROWS research it is acknowledged that *"entrenched gender inequity and patriarchal ideology are the primary causes of men's sense of entitlement and men's belief in the right to exercise power over women"*.²⁸
69. In order to successfully prevent and end violence against women and children male entitlement must be challenged.
70. We must also address intersecting forms of discrimination based on sex, race, gender identity, sexual orientation and ableism which condone violence against women and children.
71. In *Safe State*, the NSW Women's Alliance makes 49 detailed recommendations for policy and law change to prevent and end sexual, domestic and family violence in NSW. Nine recommendations relate to creating cultural change to prevent violence and promote gender equality. These recommendations focus on the need for a co-ordinated approach to primary prevention; making prevention of gender-based violence a key priority in schools through whole of school programs that are evidence based, developed by experts and focus on the drivers of gender-based violence; ensuring education programs address diversity; and the development of an Aboriginal and Torres Strait Islander people led strategy to prevent violence.²⁹
72. WLS NSW is a member of the NSW Women's Alliance and supports these recommendations which are relevant to this review.

Recommendation 11

Adopt the Safe State recommendations relating to creating cultural change to prevent violence and promote gender equality.

Systemic discrimination

73. It is highly concerning that Aboriginal and Torres Strait Islander children are removed at the rate of almost ten times that of non-Indigenous children.³⁰ We note with concern that the second most common substantiation type for the removal of children in Australia is neglect.³¹

London: Palgrave Macmillan, 2014, p 43; See also, Our Watch, VicHealth and ANROWS, *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia*, 2015 p21(27) – 28(34).

²⁸ Erin Mackay, Althea Gibson, Huette Lam, David Beecham, *Perpetrator interventions in Australia: State of knowledge paper*. Sydney: ANROWS, 2015, p 11(17).

²⁹ NSW Women's Alliance, *Safe State – Acting to end sexual, domestic and family violence*, 2018 accessed at: https://d3n8a8pro7vnm.cloudfront.net/safensw/pages/41/attachments/original/1540514938/A_Safe_State_-_Final_Policy_Platform_%28Oct_2018-Mar_2019%29.pdf?1540514938

³⁰ Australian Institute of Family Studies, *Children and Care Resource Sheet*, June 2015, accessed at: <https://aifs.gov.au/cfca/publications/children-care>

³¹ Australian Institute of Health and Welfare, *Child Protection*, accessed at: <http://www.aihw.gov.au/child-protection/>

74. Through our advice and casework, we have seen and had reported to us examples of poor cultural competence and little understanding of family and culture in Aboriginal and Torres Strait Islander communities, including by FACS and NGO child protection workers.
75. There are many things to consider in determining what is best for the child including issues such as identity, belonging, community, country connection and wellbeing. A nuanced approach to judgment about child wellbeing should be applied.
76. FACS' practice standards require "*culturally responsive practice with Aboriginal communities*".³² However, an evaluation of the impact of those standards five years after their introduction found no clear evidence that they resulted in better engagement, outcomes and safety for Aboriginal children and families. Though some FACS workers reported that the model is effective for Aboriginal children the quantitative data did not support this finding.³³ The evaluation concluded that though the standards created organisational culture towards child-centre practice, it did not change child protection outcomes which would require wider service reform in FACS.³⁴
77. Community members express concern about the way Aboriginal and Torres Strait Islander child-rearing practices are judged from the dominant viewpoint and can be misconstrued as neglectful or as exposing children to risk or harm. For example, not having much food in the fridge may be misconstrued as neglect when the practice is that multiple family and community members provide food for children rather than just the parents. Further, where sleeping on mattresses may be a normal part of life, this can be misconceived as inappropriate sleeping arrangements.
78. The *Bringing them home - National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* report called for national standards for Aboriginal and Torres Strait Islander children. These standards include a presumption that it is in the best interests of the child to remain within his or her Indigenous family, community and culture (Rec 46a) and that the best interest of the child considerations are paramount (Rec 47). Further, in determining the best interest of an Aboriginal and Torres Strait Islander child other factors must be considered including the child's need to maintain contact with family, community and culture; the significance of Indigenous heritage and a child's future well-being; the views of the child and his/her family; the advice of an accredited Indigenous organisation (Rec 46b). Removal of Aboriginal and Torres Strait Islander children from their families and community should only be as a last resort (Rec 48).

³² Department of Family and Community Services (FACS), *Care and Protection: Practice Standards*, p7 accessed at: https://www.facs.nsw.gov.au/_data/assets/file/0018/332244/practice_standards.pdf

³³ Parenting Research Centre of the University of Melbourne and the Social Policy Research Centre of the University of New South Wales, *Practice First Evaluation Report* – Prepared for NSW Department of Family and Community Services, 2016, p3 accessed at: https://www.facs.nsw.gov.au/_data/assets/pdf_file/0003/412662/Full-report-Practice-First-Evaluation-Final-Report.PDF

³⁴ Ibid p9.

Engaging with children and families earlier to bring about change and integrated, multi-agency responses are critical to address complex needs

79. With the forced removal of Aboriginal and Torres Strait Islander children from their families, many of these children did not have the opportunity to learn parenting skills from their own parents, aunties, uncles and grandparents. It is therefore essential that parents have access to strengths-based, culturally appropriate parenting programs.
80. A number of years ago Mudgin-Gal Aboriginal Corporation developed the *"Healthy Family Circle"* program in partnership with Relationships Australia. This program had a number of components. One component was to encourage young Aboriginal women from the community to participate in the Playgroup Facilitators Training Course, a certificate course offered through TAFE. This course, run by SDN Children's Services Inc and Connect Redfern, helped build the women's skills and understanding about parenting skills and early childhood development and provided *"positive behavioural modelling for parenting and childcare"* that could be implemented in the women's own families and communities. Some of the women gained employment in the area of early childhood.³⁵
81. In addition to programs like Healthy Family Circle such awareness and early support and prevention work could take the form of, for example, coffee mornings where Aboriginal mothers could gather together in their local community to yarn about a range of issues in a supportive environment, such as getting their children to preschool and where they can go in the community for help. Such programs are consistent with Recommendation 36 of the *Bringing them home* report that the Council of Australian Governments provide adequate funding to relevant Indigenous organisations in each region to establish parenting and family wellbeing programs.
82. Many women fear contact with FACS and services that are mandatory reporters, believing it will result in the removal of their children from their care. This is a fear often strongly felt by Aboriginal women, particularly given colonisation and the Stolen Generations.
83. It is important that pregnant women and primary caregivers be able to access legal advice early to understand FACS and NGO child protection services processes, how to engage with FACS and NGO child protection services, how they and their family can address issues identified with the aim that children be supported to be cared by family where it is safe to do so.
84. Another example of the value of early legal advice and social support with services working in a collaborative way is outlined below.

Role of early legal advice and support services for pregnant women

Some women we work with have previously had children removed from their care. They may contact us when they are pregnant to ask what they need to do so their baby can be in their care.

We provide legal advice, referrals and/or legal support, alongside other support services, and help

³⁵ See Mudgin-Gal Aboriginal Corporation, *Seeding Hope*, accessed at: <http://www.redfernfoundation.org.au/mudgingal.pdf>

women to engage early with FACS. For example, we help them to ask FACS to identify any issues of concern and discuss with FACS the supports available that they can access to address these concerns.

Along with support services we also help women to prepare for conferences also attended by family members to discuss the care of the child.

Access to legal advice before and after such conferences is important due to potential power imbalances and so participants fully understand the process and how to engage in the process.

Some conferences have resulted in the child remaining with their mum, with the mum being supported to care for her baby.

85. There is also a role for parent advocates with lived experience of the child protection system to provide early support to parents and primary caregivers involved in the child protection system. We refer to the Independent Family Advocacy and Support Service being piloted in Bendigo and Melbourne. This service aims to help families involved in the child protection system at the early stages to understand their rights and responsibilities and engage with services. Team members include a lived experience consultant and they have referral pathways for early legal advice.³⁶
86. Noting that family preservation and restoration of children to families is time and resource intensive, we recommend the system be designed with greater investment and incentives to prioritise this work.

Recommendation 12

Increase funding of community led, culturally safe, strengths based and trauma informed parenting and other support programs, such as integrated social and legal services, to help parents address issues that may lead to the removal of their children.

Health justice partnerships

87. Pregnant women and women who have recently given birth to a child are at a higher risk of experiencing family violence. According to the 2016 Australian Bureau of Statistics' Personal Safety Survey, 17% of women had experienced violence by a partner since the age of 15. Of the women who experienced violence by a current partner, 20% experienced violence during their pregnancy. Of the women who experienced violence by a previous partner, nearly half of them experienced violence during their pregnancy.³⁷

³⁶ For further information see Emma D'Agostino, "Victoria Legal Aid launches Independent Family Advocacy and Support pilot in Bendigo", *Bendigo Advertiser*, 4 April 2019 accessed at: <https://www.bendigoadvertiser.com.au/story/5998946/service-seeks-to-make-court-a-last-resort/> and <https://www.legalaid.vic.gov.au/about-us/what-we-do/independent-family-advocacy-and-support>

³⁷ Australian Bureau of Statistics, *Personal Safety Survey, Australia, 2016*, Canberra, 2017 accessed at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Impacts%20of%20partner%20violence%20-%20children%20witnessing%20or%20during%20pregnancy~24>

88. International research has also found that violence often begins during pregnancy or becomes more severe during pregnancy and into the first month of motherhood.³⁸ Aboriginal and Torres Strait Islander women and young women are at a greater risk of experiencing family violence during pregnancy.³⁹
89. Family violence during pregnancy can lead to negative health outcomes for the mother, foetus and child such as low birth weight, premature labour and miscarriage, foetal stress and/or trauma. The mother is more likely to experience depression, trauma and anxiety and family violence during pregnancy can have long-term negative impacts on the wellbeing of the child.⁴⁰
90. It is important that antenatal and post-natal health workers and midwives are trained to identify the risk of family violence and provide early support to pregnant women and mothers. Health justice partnerships are a way to provide that training and facilitate referrals to legal services and promote an integrated, multidisciplinary response.
91. Health justice partnerships are where health and legal assistance services work together to provide a person with holistic early support to prevent problem escalation. Health justice partnerships recognise that addressing a person's legal needs appropriately can assist in improving their health. Research conducted by the Law and Justice Foundation of NSW found that people are more likely to tell a health professional about a legal problem than a lawyer.⁴¹ By basing a lawyer in a health setting such as a hospital or health centre the lawyer can train health professionals to recognise legal issues their clients may have and promote referrals for legal advice. The lawyer can also refer clients to health services, including counselling.
92. Women's Legal Service NSW has been working in partnership with Women's Health Centres for over 30 years to deliver safe and accessible legal services to women. We provide regular legal advice clinics at Women's Health Centres in Liverpool, Blacktown and Penrith, helping to provide holistic early support to women.

Recommendation 13

Fund health justice partnerships to train health workers to identify family violence and provide appropriate referrals to early legal support and for legal services to refer to counselling and other support services.

³⁸ Australian Institute of Family Studies, *Domestic and family violence in pregnancy and early parenthood: Overview and emerging interventions*, 2015 accessed at: <https://aifs.gov.au/cfca/publications/domestic-and-family-violence-pregnancy-and-early-parenthood>

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: Australia Access to Justice and Legal Needs*, Vol 7, 2012, p192.

The system elements

Early targeted support, advice and case management

93. International best practice demonstrates the benefits of serious commitment to early support, particularly where mothers have experienced family violence; or where trauma, social exclusion and poverty are the causes of child protection concerns.
94. The value of investing in early support is well documented in the research commissioned by the Department of Family and Community Services as part of the Targeted Earlier Intervention Reforms⁴² as well as research undertaken by Their Futures Matter.
95. It has been recognised that to improve outcomes for children at risk of being removed from their families, there is need for sustained treatment for parental mental health issues, addressing family violence, treatment and support to prevent and treat drug and alcohol abuse and ensuring access, engagement and educational attainment for children and young people.⁴³
96. In cases where parental substance abuse has been identified as a contributing factor it is important to recognise that substance dependency may arise from past trauma and violence. Every effort should be made to develop a range of accessible treatment programs to provide parents with a genuine opportunity to address their alcohol and/or drug misuse, including any underlying catalysts.⁴⁴
97. In addition to early access to support services, parents and primary caregivers would benefit from referrals for free early legal advice.
98. In our experience the early support tools developed to be used by FACS and NGO child protection services as part of the 2014 Safe Home for Life Reforms, such as parent responsibility contracts and parent capacity orders, are used infrequently by FACS. We fear this has been in part because FACS is unable to offer a parent responsibility contract where corresponding support services are not available and accessible. There also needs to be a cultural shift within FACS and the NGO child protection sector so that workers understand the importance of parents/primary caregivers receiving social and legal support at an early stage to promote the safety of the children, inform parents and primary caregivers of concerns and how to address the risks of the children being removed from their families. This would also require a change in practice such that workers make referrals to the appropriate social and legal services.

⁴² Australian Research Alliance for Children and Youth, *Better Systems, Better Chances: A review of research and practice for prevention and early intervention*, 2015 accessed at: http://www.community.nsw.gov.au/__data/assets/pdf_file/0008/335168/better_systems_better_chances_review.pdf See also, Neha Prasad & Marie Connolly, *Factors that affect the restoration of children and young people to their birth families*, published by ABSEC, ACWA and the NSW Government 2013, accessed at: http://www.community.nsw.gov.au/__data/assets/pdf_file/0014/320036/literature_review_on_restoration.pdf

⁴³ NSW Government, *Their Futures Matter: A new approach – Reform directions from the Independent Review of Out of Home Care in New South Wales*, 2016, p4-5 https://www.facs.nsw.gov.au/__data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf

⁴⁴ Northern California Training Academy, *The importance of family engagement in child welfare services*, 2009 accessed at: <http://academy.extensiondlc.net/file.php/1/resources/LR- FamilyEngagement.pdf>

Women's Legal Service NSW

99. Services should not wait to refer families for legal advice until a child is removed from the care of the family. Early legal advice can help parents, primary caregivers and families to identify and address issues before they escalate. Early legal advice can help prevent the trauma that would otherwise be experienced by the child, family and FACS workers when a removal of a child is required.
100. Access to early legal advice and social support can help to address power imbalances between families and child protection services as well as enable a collaborative response to child protection concerns, with child protection services being held accountable for providing the necessary supports for parents/primary caregivers and children.
101. Community legal centres, including specialist women's legal services, are independent from government, based within and connected to community and have specialist expertise in working with vulnerable people.
102. If funded, community legal centres are well placed to develop and provide a multidisciplinary model of practice which could include a lawyer, a social worker and other specialist workers, including Aboriginal specialist workers to provide holistic, integrated, intensive early support to families. Aboriginal and Torres Strait Islander community controlled legal services should also be adequately funded to undertake intensive early support in such matters.

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

Yours faithfully,

Women's Legal Service NSW

Liz Snell

Law Reform & Policy Co-ordinator