

14 September 2017

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

By email: indigenous-incarceration@alrc.gov.au

Dear Executive Director,

Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

1. Women's Legal Service NSW (WLS NSW) thanks the Australian Law Reform Commission for the opportunity to comment on the discussion paper for the inquiry into the incarceration rates of Aboriginal and Torres Strait Islander Peoples.
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 Indigenous 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. WLS NSW also 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 a Legal Education and Advice in Prison (LEAP) for Women program. There are high levels of unmet need amongst prisoners for civil and family law services. LEAP addresses this need by providing and facilitating access to legal services for incarcerated women, many of whom are Aboriginal and Torres Strait Islander.



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6. This submission will focus on the following aspects of the inquiry:
 - 6.1 Sentencing and Aboriginality;
 - 6.2 Sentencing options;
 - 6.3 Prison programs, parole and unsupervised release;
 - 6.4 Fines and driver licences;
 - 6.5 Women offenders;
 - 6.6 Access to justice issues; and
 - 6.7 Police accountability.
7. This submission highlights that Aboriginal and Torres Strait Islander women in prison are often victims/survivors of family violence, sexual assault and child abuse and have complex histories of trauma which, when compounded with other factors such as poverty and homelessness, can lead to the offending behaviour.

Use of language

8. 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.
9. The term “family violence” is intended to include domestic and family violence.
10. 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.
11. We note that some people prefer to identify as victims of violence and others as survivors of violence. When we use the term “victim” this is intended to mean both victims and survivors.

Introduction

Overview

12. Aboriginal and Torres Strait Islander women represent 34% of the adult women prison population, at 30 June 2016.¹ Aboriginal and Torres Strait Islander people are incarcerated

¹ Australian Bureau of Statistics, *Prisoners in Australia 2016* (8 December).

at 14 times the rate of non-Indigenous people² and Aboriginal women are the fastest growing group in NSW prisons.

13. 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.³
14. WLS NSW is concerned about the extent to which courts are informed of the pathways to prison for women. The high number of women in custody who have experienced child sexual abuse, sexual assault and family violence leads us to conclude that it is likely these issues have not been raised in court.
15. Legal reform is needed to reduce the criminalisation and over-incarceration of Aboriginal and Torres Strait Islander peoples, particularly women. There must be a whole-of-system approach which addresses the underlying causes and drivers of the offending behaviour with a greater focus on prevention and early support.
16. In summary, we recommend:
 - 16.1 Implementation of the recommendations in the WLS NSW report *Women Defendants to AVOs: What is their experience of the justice system?*
 - 16.1.1 Improved data be collected and made available by key agencies in the domestic violence sector in order to build a further evidence base on the experience of women defendants to AVOs.
 - 16.1.2 The NSW Bureau of Crimes Statistics and Research (BoCSaR) undertake a discrete project into the experience of women defendants to AVOs in the justice system.
 - 16.1.3 The NSW Police continue to strengthen their policies and procedures around identification of the "primary victim" in domestic violence incidents, and provide continuous training about the nature and dynamics of domestic violence.
 - 16.1.4 The NSW government take into account in its Domestic and Family Violence reforms that women defendants to AVOs may, in fact, be victims, rather than perpetrators of violence.
 - 16.2 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.

² Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2011), 5, <<http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2011/key-indicators-2011-overview-booklet.pdf>>.

³ Rowena Lawrie, 'Speak Out Speak Strong: Rising imprisonment rates of Aboriginal women' (2003) 5(24) *Indigenous Law Bulletin*.

- 16.3 Each state and territory should develop and implement a women's strategy that responds to the unique needs of women in custody.
- 16.4 Culturally safe, strengths based, trauma-informed programs which respond to the specific needs of Aboriginal and Torres Strait Islander women prisoners should be developed and readily available to all Aboriginal and Torres Strait Islander women in prison who would like to access these programs, including those on remand.
- 16.5 Fine default should not result in the imprisonment of the defaulter.
- 16.6 Offensive language should not remain a criminal offence.
- 16.7 State and territory governments should provide alternative penalties to court ordered fines, such as driving, counselling or educational programs which help people to address issues which may be linked to the fine default. The alternative penalties should be reasonable and proportionate to the fine that would have otherwise been imposed.
- 16.8 Birth certificates should be issued to Aboriginal and Torres Strait Islander people for free on application.
- 16.9 Additional funding should be provided to Link-Up to assist Aboriginal and Torres Strait Islander people to reunite with their family, country and community and to support them through their healing journey.
- 16.10 A whole-of-system approach focused on prevention and early support to reduce the high rates of incarceration of Aboriginal and Torres Strait Islander Peoples.
- 16.11 Federal, state and territory governments should:
 - 16.11.1 increase funding for community controlled Aboriginal and Torres Strait Islander legal services, including specialist Aboriginal and Torres Strait Islander Women's Legal Services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services;
 - 16.11.2 increase funding for specialist Aboriginal and Torres Strait Islander women's programs within mainstream specialist women's legal services; and
 - 16.11.3 fund legal services to provide specific assistance to people in prison, particularly Aboriginal and Torres Strait Islander women, including in civil and family law matters.
- 16.12 Police should engage in an open and ongoing forum with local Aboriginal and Torres Strait Islander communities. Police Aboriginal Consultative Committees should be well supported and promoted.

Sentencing and Aboriginality

Question 3.1: Noting the decision in Bugmy v The Queen [2013] HCA 38, should state and territory governments legislate to expressly require courts to consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples when sentencing Aboriginal and Torres Strait Islander offenders? If so, should this be done as a sentencing principle, a sentencing factor, or in some other way?

17. WLS NSW is aware that following *Bugmy v The Queen [2013] HCA 38* the Aboriginal Legal Service NSW/ACT has been coordinating “community context reports” with community perspectives and statistics on cultural, historical and social matters for use in courts.⁴
18. We acknowledge the enormity of this work and the vital importance of ensuring Aboriginal and Torres Strait Islander voices of diverse genders, ages and backgrounds within each community are reflected in these living documents.
19. Jackson comments that the *Bugmy* decision “does not address gender”.⁵ She also refers to the 2001 Aboriginal and Torres Strait Islander Social Justice Commissioner’s report in which Commissioner, Dr William Jonas AM, noting the high rates of incarceration of Aboriginal and Torres Strait Islander women, says:

*“Aboriginal women remain largely invisible to policy makers and program designers with very little attention devoted to their specific situation and needs. This is of critical importance, particularly because of the impact that imprisonment has on Indigenous families and communities (especially through separation from children).”*⁶
20. Aboriginal and Torres Strait Islander women continue to “remain invisible to policy makers and program designers with very little attention devoted to their specific situation and needs” and this must be addressed.
21. We also acknowledge the vital importance of prevention and early support strategies which is discussed further below.
22. It is important that courts are better informed about the pathways to prison for women and in the context of this inquiry, Aboriginal and Torres Strait Islander women in particular, as a result of family violence, including sexual assault.
23. 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

⁴ Aboriginal Legal Service NSW/ACT, *Annual Report 2014/15*, 7

<<http://www.alsnswact.org.au/media/BAhbBlSHOGZmSSJAMjAxNi8wMS8yOC8yMI80MI8yNV8yM19MT1dfUkVTX0FCT1JJR0IOQUxFTVHQUxfU0VSVkiDRS5wZGYGOgZFVA>>.

⁵ Lucy Jackson, ‘Sentencing Indigenous Women After Bugmy’ (2015) 40(3) *Alternative Law Journal* 73.

⁶ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, 15

<http://www.humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport01/sjreport.pdf>.

problems and pathways to offending".⁷ As Herman explains, drugs are a coping mechanism, providing relief and a form of escape from reality.⁸

24. Helping women to address their trauma is key to reducing recidivism. Trauma includes trans-generational trauma as a result of the ongoing trauma experienced as a result of colonisation, dispossession and the Stolen Generations. In addition to the trauma experienced as a result of loss of identity, belonging, community, country connection and impact on wellbeing, many Aboriginal and Torres Strait Islander people have also experienced trauma as a result of sexual and/or physical abuse which occurred following the forced removal of children from their families. We also acknowledge the trauma resulting from the high rates of family violence perpetrated against Aboriginal and Torres Strait Islander women, including sexual assault. Aboriginal and Torres Strait Islander women are 35 times more likely to be hospitalised due to family violence related assaults, than non-Indigenous females.⁹
25. After being subjected to severe family violence, including sexual assault, over an extended period of time some Aboriginal and Torres Strait Islander women may react with violence against their partner or another person they perceive will hurt them, often through self-defence. In our experience, women tell us that criminal charges are laid against them for an incident of violence they have perpetrated against the primary aggressor after being subjected to a long history of violence for which there have often not been charges laid against the primary aggressor. This is also reflected in a report WLS NSW published in 2014 discussed below: *Women Defendants to AVOs: What is their experience of the justice system?*
26. 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.

27. 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.

⁷ Mary Stathopoulos et al, 'Addressing women's victimisation histories in custodial settings', (2012) 13 *Australian Centre for the Study of Sexual Assault*, 6.

⁸ Judith Herman, *Trauma and recovery* (Pandora, 1994) cited in Mary Stathopoulos (2012) , 6.

⁹ Productivity Commission Steering Committee for the Review of Government Services, *Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009) 26.

28. 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 jurisdictions relating to protection order proceedings¹⁰ and can also be used in family law proceedings.

Women Defendants to AVOs: What is their experience of the justice system?

29. WLS NSW undertook an exploratory study of its 2010 experience of representing women who were defendants to Apprehended Domestic Violence Order ('AVO') proceedings in order to better understand what appeared to WLS NSW, and a growing body of anecdotal reports from other agencies, to be a growing phenomenon.
30. The research was limited by a number of factors and is not a random sample of all NSW cases. However the results illustrate some of the systemic issues experienced by women AVO defendants. Given the number of cases examined and the particular expertise of WLS this report should be of use for the broader legal community.¹¹
31. The study findings include that over two-thirds of WLS NSW women clients defending AVOs reported that they were the victims of violence in their relationships. Fewer than 40% of these clients had a final AVO made against them when the case came before the court.¹²
32. Many of the women defending AVOs reported that when police had been called after a violent incident, they felt that their version of events had not been viewed as credible compared with the other party, due to the circumstances of their heightened stress and anxiety.
33. Other women reported that they believed the other party had deliberately initiated AVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future.
34. In the majority of cases where women were defending AVOs, the other party's complaint related to a single incident only.¹³ Threats were the acts most commonly complained of by the other party. Where there was physical violence in several of these cases injuries to the other party could be indicative of self-defence, such as scratching or biting on the arm or hand.¹⁴ Fear was more commonly expressed by WLS NSW women clients than the other party.¹⁵

¹⁰ For example, *Family Violence Protection Act 2008 (Vic) s 73*.

¹¹ The study was in relation to the experience of over 90 women clients who were defendants in Apprehended Domestic Violence Order ('AVO') proceedings in local courts in NSW in 2010, including Bankstown, Blacktown, Penrith, Sutherland, Waverley, Campbelltown and Mount Druitt Local Courts. In 12.5% of matters, the client was Aboriginal and/or Torres Strait Islander. See Women's Legal Services NSW, *Women defendants to AVOs: What is their experience of the justice system?* (2014) 5, 8 and 10 <<http://www.wlsnsw.org.au/wp-content/uploads/womendefAVOsreport.pdf>>

¹² Ibid 15.

¹³ Ibid 13.

¹⁴ Ibid 13.

¹⁵ "In the majority of police applications for the client's protection (70.6%) the client expressed fears for herself. However, police fears for clients were only expressed 31.3% of the time.... The other party expressed fears for themselves in their application 56.9% of the time, while the applicant officer expressed fears in 40.2% of cases." Ibid 12-13.

35. Associated criminal charges were laid against women clients in 18 cases (17.8%) primarily for assault (55.6%) or property damage (44%). Charges were laid against the other party in two cases (2%) for assault.¹⁶
36. Although further research is needed to determine the frequency with which inappropriate AVOs are pursued against women defendants, it is clear from the study that in a number of cases, the applications initiated against women defendants appeared unnecessary for the protection of the other party.
37. This report made the following recommendations which in our view remain relevant:
 - 37.1 Improved data be collected and made available by key agencies in the domestic violence sector in order to build a further evidence base on the experience of women defendants to AVOs.
 - 37.2 The Bureau of Crimes Statistics and Research (BoCSaR) undertake a discrete project into the experience of women defendants to AVOs in the justice system.
 - 37.3 The NSW Police continue to strengthen their policies and procedures around identification of the 'primary victim' in domestic violence incidents, and provide continuous training about the nature and dynamics of domestic violence.
 - 37.4 The NSW government take into account in its Domestic and Family Violence reforms that women defendants to AVOs may, in fact, be victims, rather than perpetrators of violence.
38. No data seems to be included regarding the misidentification of the primary victim and primary aggressor in the NSW BoCSaR *Outcome evaluation of NSW's Safer Pathway Program: Victims' Experiences*¹⁷ or the Executive Summary of the *Review of the Women's Domestic Violence Court Advocacy Service implementation of actions 1.3 & 2.2 of the Domestic Violence Justice Strategy*.¹⁸ It would be useful if data from the NSW Safer Pathways reforms could include the collection and publishing of data about the misidentification of the primary victim and primary aggressor.

Recommendation 1:

Implementation of the recommendations in the WLS NSW report *Women Defendants to AVOs: What is their experience of the justice system?*

- I. Improved data be collected and made available by key agencies in the domestic violence sector in order to build a further evidence base on the experience of women defendants to AVOs.

¹⁶ Ibid 14.

¹⁷ NSW Bureau of Crime Statistics and Research, 'Outcome evaluation of NSW's Safer Pathway Program: Victims' Experiences' (2012) 202 *Crime and Justice Bulletin* <<http://www.bocsar.nsw.gov.au/Documents/CJB/Report-2017-Outcome-evaluation-of-NSWs-Safer-Pathway-Program-Victims-Experiences-CJB202.pdf>>.

¹⁸ Women's Domestic Violence Court Advocacy Service, *Review of the Women's Domestic Violence Court Advocacy Service implementation of actions 1.3 & 2.2 of the Domestic Violence Justice Strategy: Executive Summary* (2017) <<http://www.wdvcasnw.org.au/pdf/DVJS-Executive-Summary.pdf>>.

- II. The NSW Bureau of Crimes Statistics and Research (BoCSaR) undertake a discrete project into the experience of women defendants to AVOs in the justice system.
- III. The NSW Police continue to strengthen their policies and procedures around identification of the 'primary victim' in domestic violence incidents, and provide continuous training about the nature and dynamics of domestic violence.
- IV. The NSW government take into account in its Domestic and Family Violence reforms that women defendants to AVOs may, in fact, be victims, rather than perpetrators of violence.

Sentencing Options

Question 4.4: Should there be any pre-conditions for such amendments, for example: that non-custodial alternatives to prison be uniformly available throughout states and territories, including in regional and remote areas?

39. WLS NSW is a consultant member of the Corrective Services NSW Women's Advisory Council which has called for alternatives to custody for women offenders, particularly women who commit non-violent offences.¹⁹
40. Aboriginal and Torres Strait Islander 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.²⁰
41. Of the 1033 incarcerated women in December 2016, 43.5% were on remand. Of these, 30% were Aboriginal.²¹ We are aware of occasions when women have been on remand for a period longer than the period of imprisonment ordered.
42. There should be an increased focus on rehabilitation and alternatives to custody for women offenders. 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.²²

¹⁹ Corrective Services NSW Women's Advisory Council, *Submission to the NSW Law Reform Commission Review Crimes (Sentencing Procedure) Act 1999 Special categories of offenders – Women* (October 2012) <http://www.womenslegalnsw.asn.au/downloads/law-reform/2013_WAC_LRCNSW_Specialcategoryofoffenders_Women.pdf>.

²⁰ Mary Stathopoulos et al, above n 7, 3. See also Peta MacGillivray and Eileen Baldry, 'Australian Indigenous Women's Offending Patterns', *Indigenous Justice Clearinghouse* (2015) 19, 11 who note "evidence of high levels of charges and court appearances for vehicle and traffic breaches, justice and shoplifting offences".

²¹ Community Restorative Centre, *Brochure on the Miranda Project* (2017) <<https://www.crcnsw.org.au/wp-content/uploads/2017/06/Miranda-Program-brochure.pdf>>.

²² 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).

43. 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."*²³

44. 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."*²⁴

45. Women tell us they want to be able to access safe, stable long-term housing and long-term drug and alcohol rehabilitation programs. We submit such support would in some cases prevent offending as well as reduce recidivism.

46. In NSW, the Miranda Project is an example of a diversionary program which helps women to address issues underlying offending, such as alcohol and drug misuse, a lack of financial support and difficulties with emotional self-regulation. It is focused on helping women to connect with the community and increasing their resilience to prevent re-offending.²⁵ A specific program is being developed for Aboriginal women in NSW.

47. It is of vital importance that there is adequate funding to ensure such programs are available to women when they need to access them.

48. Imprisonment of women and particularly pregnant women and women caring for children should be as a last resort.

49. If a mother is imprisoned, 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.²⁶ In NSW, only women with a minimum security classification can have their children live with them in custody. This program should also be available to women with higher security classifications.

50. 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

²³ Ibid.

²⁴ Ibid.

²⁵ The Miranda Project is an initiative of the Corrective Services NSW Women's Advisory Council and is a project of the Community Restorative Centre. It is modelled on women's centres in the United Kingdom that have been evaluated and found to have positive impacts on women's lives. It is a first for NSW and Australia. See Community Restorative Centre NSW, *About the Miranda Project* <<https://www.crcnsw.org.au/miranda-project/about/>>.

²⁶ Corrective Services NSW, *17. Mothers & Children's Program*, <http://www.correctiveservices.justice.nsw.gov.au/Documents/Related%20Links/library/womens-handbook-online-version1_Part2.pdf>.

children to live with them were less likely to return to prison than mothers who were separated from their children.²⁷ It also found that mothers may be “*considerably more motivated to succeed*” in educational and substance misuse programs.²⁸

51. The report also found that there was no evidence of harm to children residing with their mothers in prison.²⁹ Furthermore, several studies have found children’s coping skills were also enhanced and “problematic behaviour” was reduced by maintaining contact with their incarcerated parents.³⁰

The impact of the incarceration of women on child removal

52. 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.
53. It is estimated that around 80% of Aboriginal and Torres Strait Islander women in prisons are mothers.³¹ Prior to their imprisonment, they were often the primary caregiver of their own children as well as the children of extended family members.³²
54. 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.³³ As at 30 June 2015 there were 6, 427 Aboriginal children and young people in out-of-home care in NSW.³⁴
55. Once the mother is released from custody she often faces significant difficulty in having the children returned to her care.

Recommendation 2:

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.

²⁷ 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*, 3 <http://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren_programs.pdf>.

²⁸ Ibid, 4.

²⁹ Ibid, 3.

³⁰ 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, 33.

³¹ Human Rights Law Centre and Change the Record Coalition, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment* (May 2017), 13 <<https://www.hrlc.org.au/news/2017/5/10/over-represented-overlooked-report>>, citing Juanita Sherwood and Sacha Kendall, ‘Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison’ (2013) 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85.

³² Ibid.

³³ Australian Institute of Family Studies, *Children and Care Resource Sheet* (June 2015), <<https://aifs.gov.au/cfca/publications/children-care>>.

³⁴ Family and Community Services (FACS) NSW, *FACS Statistics: Objective 1 – Improving the lives of children and young people*, Dashboard 9 on children and young people in out of home care, <<http://www.facs.nsw.gov.au/facs-statistics/objective-1>>.

Prison programs, parole and unsupervised release

Proposal 5.2: There are few prison programs for female prisoners and these may not address the needs of Aboriginal and Torres Strait Islander female prisoners. State and territory corrective services should develop culturally appropriate programs that are readily available to Aboriginal and Torres Strait Islander female prisoners.

Question 5.2: What are the best practice elements of programs for Aboriginal and Torres Strait Islander female prisoners to address offending behaviour?

56. In view of the complex histories of trauma and victimisation of Aboriginal and Torres Strait Islander women, programs should be culturally safe, strengths based, trauma informed and delivered through an Aboriginal Healing Framework.³⁵
57. The Aboriginal Inmate Committee,³⁶ the Aboriginal Advisory Council³⁷ and Elders should be consulted during the development of prison programs which are intended to respond to the specific needs of Aboriginal and Torres Strait Islander women prisoners.
58. Our experience is that it is not uncommon for prisoners to be moved between different prisons within a short period of time. This reduces the opportunities for prisoners to access and participate in prison programs. It also impacts on their ability to see their family, including their children and to stay connected to their counsellor if they have accessed counselling while in prison.
59. Aboriginal and Torres Strait Islander people have raised with us if there could be opportunities to use technology for family and community to communicate with inmates, for example, through audio-visual link or ipad or tablet. As currently happens with phone calls, an inmate could provide a list of people to the prison. Seeing family and community is important. Having access to technology that enables an inmate to see as well as speak with family and community is particularly important where inmates are moved from prison to prison and often a long way away from family and community. We note the New Zealand Women's Strategy includes access to technology to facilitate contact with family.

"Audio Visual Links at prisons and Community Corrections sites are providing a new way for women in prison to keep in touch with their whānau. These virtual visits allow mothers to see and talk to their children who may live far away and cannot visit in person."³⁸

³⁵ According to Catherine Caruana, the core characteristics of an Aboriginal Healing Framework include: Indigenous ownership of the program design and evaluation, a holistic and multidisciplinary approach, the centrality of culture and spirituality, the program is informed by history, the use of preventative and therapeutic strategies and the commitment to healing. See Catherine Caruana, 'Healing services for Indigenous people' (September 2010) 17 *Family Relationships Quarterly*.

³⁶ Corrective Services NSW, *Operations Procedures Manual: Section 7.19 on Aboriginal Inmate Committees*, <<http://www.correctiveservices.justice.nsw.gov.au/Documents/custodial-op-proc-manual/OPM%20Sec%207.19%20ABORIGINAL%20INMATE%20COMMITTEES%20v1.3.pdf>>.

³⁷ Similarly, Corrective Services NSW has established an Aboriginal Advisory Council comprising of Aboriginal people with significant standing in the community who meet regularly to help inform policy development and implementation.

³⁸ New Zealand Department of Corrections, *Change Lives Shape Futures: Wahine – E Rere Ana Ki Te Pae Hou: Women's Strategy 2017-2021*, (June 2017) 21

<http://www.corrections.govt.nz/_data/assets/pdf_file/0006/894228/Corrections_Womens_Strategy_August_2017_web.pdf>.

60. If primary caregivers of children are imprisoned they should be able to record stories for the children which can be provided to the children. This was successfully piloted at Emu Plains Correctional Centre.³⁹
61. Stathopoulos et al have found that women offenders held on remand do not have the opportunity to participate in rehabilitation programs.⁴⁰ This should be changed so that prisoners on remand can participate in a range of prison programs.
62. Some girls and women tell us that it is safer for them to be in custody, as it is an escape from violence.
63. In particular, many Aboriginal and Torres Strait Islander girls and young women we work with in Juvenile Justice Centres and other Correctional Centres have been regularly forced to choose between violence or homelessness. Many have also experienced significant physical and sexual violence as children and they identify that being in prison is the first time they have had a sense of control over their lives.
64. 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.

Women's Strategy

65. On 28 August 2017, the New Zealand Department of Corrections launched a Women's Strategy for 2017-2021 which focuses on: providing women with interventions and services that meet their unique risks and needs; managing women in ways that are trauma-informed and empowering and; managing women in a way that reflects the importance of relationships to women.⁴¹
66. Similarly, the Victorian Department of Justice released a women's correctional services framework in 2007. The guiding principles are: strengthening relationships, addressing varied and complex needs, providing respect and safety, creating opportunities, supporting continuity, responding to diversity, and informed by best practice.⁴²

Recommendation 3:

Each state and territory should develop and implement a women's strategy that responds to the unique needs of women in custody.

³⁹ Heath Aston, 'Stories with a happy ending', *Sydney Morning Herald*, 2 May 2010, <<http://www.smh.com.au/nsw/stories-with-a-happy-ending-20100501-u0a5.html>>.

⁴⁰ Mary Stathopoulos et al, above n 7.

⁴¹ New Zealand Department of Corrections, above n 37, 8.

⁴² Victorian Government Department of Justice, 'better pathways in practice: the women's correctional services framework' (2007), <https://assets.justice.vic.gov.au/corrections/resources/f47a521a-2b3b-4dbf-811b-277b6cfab33f/better_pathways_framework.pdf>.

Counselling

67. Many of WLS NSW clients are victims/survivors of family violence, sexual assault and child abuse. Their first disclosures of violence may be made while in prison. As mentioned earlier, helping women to address their trauma is key to reducing recidivism.
68. Ready access to counselling in prison for those who would like to access it is important. A pilot was delivered to provide victims counselling in Dillwynia from November 2011 and Wellington Correctional Centre from May 2012.⁴³
69. 198 of the 235 participants in the pilot program were victims of either family violence or sexual assault and many had experienced multiple acts of violence.⁴⁴ Women participants reported a much more systematic pattern of abuse throughout their life.⁴⁵ After receiving counselling, the participants had lower levels of depression, anxiety and stress.⁴⁶
70. WLS NSW supports the evaluation's recommendation that the pilot program of victims counselling be extended to more correctional centres and welcomes Victims Services NSW and Corrective Services NSW's commitment to extend counselling to all inmates in custody as soon as possible. It is important that all women in Correctional Centres in NSW be able to access counselling when they choose to do so wherever they are located. Individuals should be able to request a support person attend the sessions with them.
71. If a woman engages in counselling in custody and then is moved to another prison all steps should be taken to ensure she can retain the same counsellor with whom she has started to build a relationship of trust. If face-to-face visits are not possible, audio-visual links ('AVL') should be prioritised. These do not necessarily need to take place in the AVL suites commonly used for legal appointments and court appearances. We would recommend another space which is a safe, quiet space conducive to a counselling session where technology is available such that the person can see the counsellor. We also recommend that a person who has been in custody have the option to be able to continue to see the counsellor they have been seeing in custody once they are released from custody.
72. WLS NSW also supports the development of a group counselling program.⁴⁷
73. Victims Services in NSW has recognised the value of providing a space for victims to meet others who have been through similar situations.⁴⁸ Victims Services currently funds "group work" programs that provide group counselling for victims of crime. However,

⁴³ Victims Services NSW, *An evaluation of the counselling in prison trial* (August 2015), 7, <http://www.victimsservices.justice.nsw.gov.au/Documents/eval_counselling-in-prison.pdf>.

⁴⁴ Ibid, 62.

⁴⁵ Ibid, 35.

⁴⁶ Ibid, 62.

⁴⁷ Women's Legal Service NSW, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to Issues paper 10: Advocacy and Support and Therapeutic Treatment Services*, November 2015, 4 <<http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Submission-to-RC-Issues-Paper-10-Advocacy-and-Support-fa.pdf>>.

⁴⁸ Victims Services NSW, *Submission into the Statutory Review of the Victims Rights & Support Act 2013* (2016), <<http://www.justice.nsw.gov.au/justicepolicy/Documents/Review%20-%20Victims%20Rights%20and%20Support%20Act%202013%20Submissions/Victims%20Services.pdf>>.

they recommend legislative amendments to better facilitate the funding of such programs.⁴⁹

74. We acknowledge that group counselling programs may be less confronting and isolating for Aboriginal and Torres Strait Islander women to talk about their shared experiences of trauma and welcome and encourage further work in this area.
75. It is particularly important to have programs which specialise in working with Aboriginal and Torres Strait Islander women with lived experience in prison. Some Aboriginal and Torres Strait Islander women tell us that if they have spent time in custody they may feel shame or judgment about this and so do not feel comfortable accessing support services such as counselling, including group healing programs on their release. They tell us their offending history makes them feel less deserving of support and that they are different to what they perceive to be a more "deserving victim". This belief may be reinforced through their interaction with police, court systems and support services. This again highlights the need for education about women's pathways into prison.
76. While the federal, state and territory governments are doing important work responding to and addressing family violence, it is a significant failing that women with lived experience in prison are invisible in the National Plan to Reduce Violence against Women and their Children ('National Plan') and the related Action Plans.⁵⁰ WLS NSW, amongst many others, has repeatedly advocated for the inclusion of women with lived experience in prison in the National Plan.⁵¹
77. Australia's National Research Organisation for Women's Safety (ANROWS) has found that despite the limited data, "*research has shown that there is a strong connection between being a female offender and being a victim of crime*".⁵² ANROWS is currently researching the relationship between women prisoners' experiences of victimisation and their engagement with the criminal justice system, which is due to be completed in January 2018.⁵³

Parenting and drug and alcohol programs

78. 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.

⁴⁹ Ibid.

⁵⁰ Department of Social Services, *The National Plan to Reduce Violence against Women and their Children 2010-2022* (2011), <<https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>>.

⁵¹ For example, Women's Legal Services Australia, *Submission to the Senate Standing Committees on Finance and Public Administration's Inquiry into Domestic Violence and Gender Inequality* (2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/DV_and_Gender_Inequality/Submissions>.

⁵² ANROWS, *Invisible women, invisible violence: Understanding and improving data on the experiences of domestic and family violence and sexual assault for diverse groups of women* (December 2016), 30 <http://media.aomx.com/anrows.org.au/DiversityData_UPDATED191216.pdf>.

⁵³ ANROWS, 'The forgotten victims: Prisoner experience of victimisation and engagement with the criminal justice system - Project Summary', <<https://anrows.org.au/node/1289>>.

79. Substance dependency may arise from past trauma and violence. A range of accessible treatment programs which are readily available should be developed to provide people with an opportunity to address their alcohol and/or drug misuse, including any underlying catalysts.

Pre and post-release support

80. Meaningful and appropriate referrals to services should be made prior to a woman's release from custody to ensure she has access to safe and affordable housing and other supports, such as drug and alcohol counselling or residential programs.⁵⁴ In addition to access to transitional housing it is essential that long-term safe and stable housing be available. These supports are particularly important if a mother is to have her children returned to her care.

81. There should also be programs that focus on helping women to transition into the community following release from prison. Women often tell us that they return to their community but are offered little support by way of programs they can access. This can be particularly harmful when women have made their first disclosure of family violence, sexual assault or child abuse in custody but are offered little if any support on exiting prison.

82. The WIPAN pilot mentoring program which was in place from May 2010 to November 2011 demonstrates the positive impacts of supporting women post-release.⁵⁵ An evaluation of the pilot 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"*.⁵⁶ This is significant given that *"93% of these women were recidivists and/or serial recidivists"*.⁵⁷

Recommendation 4:

Culturally safe, strengths based, trauma-informed programs which respond to the specific needs of Aboriginal and Torres Strait Islander women prisoners should be developed and readily available to all Aboriginal and Torres Strait Islander women in prison who would like to access these programs, including those on remand.

Fines and driver's licences

Proposal 6.1: Fine default should not result in the imprisonment of the defaulter. State and territory government should abolish provisions in fine enforcement statutes that provide for imprisonment in lieu of unpaid fines.

83. It is highly concerning that there are Aboriginal and Torres Strait Islander people being incarcerated because they are unable to pay their fines, due to poverty. Furthermore,

⁵⁴ See, for example, NSW Women in Prison Advocacy Network (WIPAN), *Dreaming of a safe home - Consumers and community workers' perspectives on housing and support needs of women leaving prison in NSW* (August 2012).

⁵⁵ Women in Prison Advocacy Network (WIPAN), *The Report: The Pilot WIPAN Mentoring Program 2009-2011* (August 2012), 6.

⁵⁶ Ibid.

⁵⁷ Ibid.

penalties for unpaid fines and driving offences can be a barrier for some Aboriginal and Torres Strait Islander women reporting family violence to police.

84. Ms Dhu was a young Aboriginal woman who died in police custody due to injuries related to family violence. She was arrested and detained for unpaid fines, at the same time that her partner was arrested for breaching a family violence order.⁵⁸ The coroner who conducted the inquest into Ms Dhu's death recommended legislative change so that a warrant authorising imprisonment is not an option for enforcing payment of fines.⁵⁹
85. In Western Australia, the 2016 Morgan Review found that fine default imprisonment disproportionately affects Aboriginal women, with Aboriginal women comprising 64% of women fine defaulters at the time of the review.⁶⁰
86. In New South Wales, although a person cannot be imprisoned for failing to pay a fine under section 125 of the *Fines Act 1996* (NSW), a person may be imprisoned for failing to comply with a community service order served on them as a result of the fine default.

Recommendation 5:

Fine default should not result in the imprisonment of the defaulter.

Question 6.4: Should offensive language remain a criminal offence? If so, in what circumstances?

87. Offensive language should not be a criminal offence. It is concerning that people are often charged with the offence following interactions with the police.

Recommendation 6:

Offensive language should not remain a criminal offence.

⁵⁸ Calla Wahlquist, 'Ms Dhu endured inhumane treatment by police before death in custody – coroner', *The Guardian* (Australia), 16 December 2016, <<https://www.theguardian.com/australia-news/2016/dec/16/ms-dhu-endured-inhumane-treatment-by-police-before-death-in-custody-coroner>>

⁵⁹ Coroner's Court of Western Australia, *Inquest into the death of Ms Dhu*, (December 2016), <http://www.coronerscourt.wa.gov.au/I/inquest_into_the_death_of_ms_dhu.aspx?uid=1644-2151-2753-9965>

⁶⁰ WA Office of the Inspector of Custodial Services, 'Fine defaulters in the Western Australian prison system' (April 2016), vi <[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914182a267c7268541194a448257fd20032c2e4/\\$file/4182.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914182a267c7268541194a448257fd20032c2e4/$file/4182.pdf)>.

Question 6.6: Should state and territory governments provide alternative penalties to court ordered fines? This could include, for example, suspended fines, day fines and/or work and development orders.

Proposal 6.2 Work and Development Orders were introduced in NSW in 2009. They enable a person who cannot pay fines due to hardship, illness, addiction, or homelessness to discharge their debt through: community work; program attendance; medical treatment; counselling; or education, including driving lessons. State and territory governments should introduce work and development orders based on this model.

88. The Work and Development Orders system has merit insofar as it allows people to discharge their debt through counselling or education, including driving lessons. There should be a range of appropriate options available to people, and this should include the ability to participate in a healing program for Aboriginal and Torres Strait Islander people.
89. There should also be an option to participate in mentoring programs such as the Tribal Warrior Aboriginal Corporation's Mentoring Program which connects young Aboriginal and Torres Strait Islander people to their community and culture.⁶¹ Local police have reported that it has been highly successful in reducing recidivism.⁶²
90. Consideration needs to be given to ensure other alternative penalties, such as community work, are mutually beneficial to both parties, and reasonable and proportionate to the fine that would have otherwise been imposed.
91. WLS NSW, along with many other organisations, has been advocating for free birth certificates for Aboriginal and Torres Strait Islander people.⁶³
92. We understand that some government and non-government organisations in NSW enter an arrangement with the NSW Registry of Births, Deaths and Marriages to provide Aboriginal and Torres Strait Islander people in NSW a birth certificate for free.⁶⁴
93. This requires Aboriginal and Torres Strait Islander people in NSW to be aware of such a program and how they can access it. Another barrier to Aboriginal and Torres Strait Islander people accessing a birth certificate is that a person's birth may not have been registered and there are fears there will be negative consequences resulting from this.

⁶¹ Tribal Warrior Association, *How it works* (2017), <<http://tribalwarrior.org/tribal-warrior-mentoring-program/>>.

⁶² Ibid.

⁶³ For example, Women's Legal Service NSW, *Submission in response to the Inquiry into Reparations for the Stolen Generations in NSW* (October 2015)

<<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/51954/0033%20Women%27s%20Legal%20Services%20NSW.pdf>>. See also NSW Legal Assistance Forum Fines and Traffic Law Working Group's Reports to the National Legal Assistance Forum at <http://www.nlaf.org.au/cb_pages/fines_and_traffic_law.php>. The Fines and Traffic Law Working Group includes the Aboriginal Legal Services NSW/ACT, the Roads and Maritime Services and the Department of Justice and Attorney General amongst others.

⁶⁴ For example, Pathfinders' National Aboriginal Birth Certificate Program, see <<http://www.pathfinders.ngo/projects/aboriginal-birth-certificate-project/>>. See also, NSW Government 'Free Birth Certificates for Vulnerable People', 3 August 2017, <<http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/free-birth-certificates-for-vulnerable-people.aspx>>.

94. The NSW Fines and Traffic Law Working Group have noted that the cost of a birth certificate is a barrier which prevents people from obtaining a driver's licence, particularly Aboriginal and Torres Strait Islander people.⁶⁵ This can lead to people being issued fines due to driving without a licence. WLS NSW continues to recommend that free birth certificates be issued to Aboriginal and Torres Strait Islander people on application.
95. WLS NSW has worked with Aboriginal and Torres Strait Islander clients in prison who due to the impact of past government policies are disconnected from their families, country and communities and wish to learn more about their background and culture. Additional funding should be provided to Link-Up to assist Aboriginal and Torres Strait Islander people to reunite with their family and community and to support them through their healing journey.
96. This recommendation is aligned with Recommendation 27 of the NSW Legislative Council General Purpose Standing Committee No. 3's report on *Reparations for the Stolen Generations in New South Wales: Unfinished business* published on 23 June 2016.⁶⁶

Recommendation 7:

State and territory governments should provide alternative penalties to court ordered fines, such as driving, counselling or educational programs which help people to address issues which may be linked to the fine default. The alternative penalties should be reasonable and proportionate to the fine that would have otherwise been imposed.

Recommendation 8:

Birth certificates should be issued to Aboriginal and Torres Strait Islander people for free on application.

Recommendation 9:

Additional funding should be provided to Link-Up to assist Aboriginal and Torres Strait Islander people to reunite with their family, country and community and to support them through their healing journey.

⁶⁵ See Legal Aid NSW, *Submission to the Victorian Law Reform Commission Inquiry into Birth Registration and Birth Certificates* (November 2012), <http://www.lawreform.vic.gov.au/sites/default/files/Submission_9_CP_Legal_Aid_NSW_16-11-12.pdf>.

⁶⁶ NSW Legislative Council General Purpose Standing Committee No.3, *Reparations for the Stolen Generations in New South Wales: Unfinished business*, 23 June 2016, <<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6064/Reparations%20for%20the%20Stolen%20Generations%20in%20NSW%20-%20Report%2034%20-%2023%20June%202016.pdf>>.

Women offenders

Question 9.1: What reforms to laws and legal frameworks are required to strengthen diversionary options and improve criminal justice processes for Aboriginal and Torres Strait Islander female defendants and offenders?

97. Beyond diversionary options and the improvement of criminal justice processes we have discussed above, there should be a greater focus on prevention and early support. Research of early support programs in the United States has found that such programs help to reduce criminality and contact with the criminal justice systems, and improve educational, material, employment, health, and parenting outcomes. These social benefits also provide a strong economic return. An analysis undertaken by the London School of Economics in 2007 found that for high risk participants in a Nurse-Family Partnership program, the program returned \$5.70 (US) on every dollar spent.⁶⁷
98. It is particularly important that early awareness raising and support programs are established to prevent young Aboriginal and Torres Strait Islander girls and women from entering custody in the first place. Wrap around services are required both to prevent young Aboriginal and Torres Strait Islander girls and women from entering custody as well as if they do offend to prevent re-offending.
99. There is a link between socio-economic disadvantage and offending behaviour by Aboriginal and Torres Strait Islander prisoners. A 2015 study by the Australian Institute of Health and Welfare found that 60% of Aboriginal and Torres Strait Islander people entering prison had been unemployed in the 30 days prior to entering prison and 27% had been homeless in the four weeks prior to imprisonment.⁶⁸ The incarceration of Aboriginal and Torres Strait Islander people directly impacts on their children, as 53% had children who depended on them for their basic needs.⁶⁹
100. As previously mentioned, social framework evidence may be helpful to assist the court to understand the underlying causes of offending behaviour and the pathways to prison for Aboriginal and Torres Strait Islander women who have complex histories of victimisation.

Recommendation 10:

A whole-of-system approach focused on prevention and early support to reduce the high rates of incarceration of Aboriginal and Torres Strait Islander Peoples.

⁶⁷ Tim Moore and MyFanwy McDonald, 'Acting early, changing lives: How prevention and early action saves money and improves wellbeing' (2013) 17-18. <http://www.benevolent.org.au/~media/Benevolent/Think/Actingearlychanginglives%20pdf.ashx>

⁶⁸ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2015* (November 2015) xi
<<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129553682>>.

⁶⁹ Ibid.

Access to justice issues

Question 11.1: What reforms to laws and legal frameworks are required to strengthen diversionary options and specialist sentencing courts for Aboriginal and Torres Strait Islander peoples?

101. The Youth Koori Court in Western Sydney was established as a pilot in February 2015 with the assistance of the Aboriginal Legal Service NSW/ACT.⁷⁰ It involves Elders and family members and focuses on helping the young Aboriginal and/or Torres Strait Islander person to address issues underlying the offending through a program.⁷¹ The program promotes cultural connections, school attendance or employment and helps the young person to find stable accommodation and address any health, drug or alcohol issues.⁷² WLS NSW supports the expansion and ongoing funding of the Youth Koori Court.
102. According to Legal Aid NSW, a proposal to establish a Koori Court as a Division of the District Court of New South Wales was made to the Attorney General of New South Wales in March 2016.⁷³ WLS NSW supports the establishment of a specialist sentencing court for Aboriginal and Torres Strait Islander adult offenders in NSW which is focused on providing support to prevent re-offending.

Question 11.2: In what ways can availability and access to Aboriginal and Torres Strait Islander legal services be increased?

103. It is vital that Aboriginal and Torres Strait Islander community controlled legal services are adequately funded, including specialist Aboriginal and Torres Strait Islander Women's Legal Services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services.
104. Funding should also be available to ensure wrap around services are provided in addition to legal services.
105. There is also a role for specialist Aboriginal and Torres Strait Islander women's programs within mainstream specialist women's legal services.
106. It is important that women, including Aboriginal and Torres Strait Islander women, have a choice of legal services to access.
107. The federal, state and territory governments should provide funding for specific legal services targeted to women in prison, including Aboriginal and Torres Strait Islander women, and particularly for civil and family law matters. The Law Council of Australia

⁷⁰ Aboriginal Legal Service NSW/ACT, *First Koori Court for NSW*, (November 2014) <http://www.alsnswact.org.au/news_items/142>.

⁷¹ Children's Court of NSW, *Youth Koori Court Fact Sheet*, <http://www.childrenscourt.justice.nsw.gov.au/Documents/Youth%20Koori%20Court%20A4_Accessible.pdf>.

⁷² Ibid.

⁷³ Legal Aid NSW, *Response to Questions on Notice and Supplementary Submission to the Legislative Council General Purpose Standing Committee No. 3* (March 2016), 4

<<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryOther/Transcript/9850/Answers%20to%20question%20on%20notice%20-%20Legal%20Aid%20NSW%20-%20received%2015%20March%202016.PDF>>.

recognised this service gap in its consultation paper on prisoners and detainees, as part of the Justice Project.⁷⁴

108. In early 2009, WLS NSW, Warringa Baiya Aboriginal Women's Legal Centre and Western Sydney Community Legal Centre (formerly Hawkesbury-Nepean Community Legal Centre)⁷⁵ established the Legal Education and Advice in Prison (LEAP) program for women to facilitate access to family and civil law services for women in prison, particularly Aboriginal and Torres Strait Islander women. LEAP provides legal services to the three correctional centres for women in metropolitan Sydney: Silverwater Women's, Dillwynia and Emu Plains. LEAP does not receive any dedicated funding and operates from the core resources of the services.
109. LEAP provides culturally appropriate services to Aboriginal and Torres Strait Islander women through the Indigenous Women's Legal Program based at WLS NSW and Warringa Baiya Aboriginal Women's Legal Centre. The service is provided by women solicitors who are also domestic violence and trauma informed.
110. LEAP solicitors provide monthly legal advice clinics at the three correctional centres, which includes follow up services, casework and representation. The LEAP program also aims to increase prisoner's awareness of legal rights and responsibilities through community legal education.
111. LEAP received the 2009 NSW Law and Justice Foundation Community Legal Centre Award.
112. LEAP partners were involved in the Legal Literacy in Prison Pilot project at Silverwater Women's Correctional Centre in 2013, which has resulted in the regular inclusion of legal literacy material in education classes in all NSW correctional centres.
113. 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, victim support, family law, care and protection and housing.
114. LEAP solicitors initially experienced resistance from Corrective Services. Concerns were raised that women prisoners may be more difficult to manage after attending legal appointments focused on traumatic events, such as victim of crime experiences or removal of children. Whilst staff changes and attitudes still present a barrier to consistent service delivery at times, Corrective Services strongly supports LEAP work as reflected by increased referral numbers, warm referrals and collaborative casework. Information about LEAP is also included in materials distributed to inmates, such as the Women's Handbook.
115. Through our involvement on a number of committees relating to the rights of women prisoners we have successfully advocated for WLS NSW and Warringa Baiya Aboriginal Women's Legal Centre to be included on the Common Auto Dial List (CADL) list in NSW

⁷⁴ Law Council of Australia, *The Justice Project: Prisoners and Detainees Consultation Paper* (August 2017), 5 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Prisoners%20and%20Detainees.pdf>>.

⁷⁵ In 2016, the Hawkesbury-Nepean Community Legal Centre merged with the Macquarie Legal Centre and Mt Druitt and Area Community Legal Centre to form the Western Sydney Community Legal Centre.

Women's Correctional Centres. This means women in custody can call us directly for free legal advice. This is another important way to access free legal help.

116. 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 are interconnected with the criminal law issues. This can prevent the successful reintegration of people after they are released.⁷⁶

117. It is also important that legal assistance services are funded to continue working with women post release, particularly regarding their civil and family law matters.

118. As a statewide service WLS NSW often continues to act for clients after their release. Maintaining this relationship has resulted in women calling 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.

Recommendation 11:

Federal, state and territory governments should:

- a. increase funding for community controlled Aboriginal and Torres Strait Islander legal services, including specialist Aboriginal and Torres Strait Islander Women's Legal Services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services;
- b. increase funding for specialist Aboriginal and Torres Strait Islander women's programs within mainstream specialist women's legal services; and
- c. fund legal services to provide specific assistance to people in prison, particularly Aboriginal and Torres Strait Islander women, including in civil and family law matters.

Police Accountability

Question 12.1: How can police work better with Aboriginal and Torres Strait Islander communities to reduce family violence?

Question 12.2 How can police officers entering into a particular Aboriginal or Torres Strait Islander community gain a full understanding of, and be better equipped to respond to, the needs of that community?

119. Every police officer should be responsible for understanding the issues facing the local Aboriginal and Torres Strait Islander communities and for building a relationship of trust and accountability with them.

⁷⁶ Law Council of Australia, above n 74, 40.

120. Police should engage in an open and ongoing forum with communities where Aboriginal and Torres Strait Islander people can safely raise any concerns and provide input on police initiatives as currently occurs effectively in Redfern in NSW.

121. We understand there are Police Aboriginal Consultative Committees across NSW. It is important this engagement occurs across each local area command and is well supported and promoted.

122. The Aboriginal Community Liaison Officer (ACLO) can support police to build positive relationships between police and Aboriginal and Torres Strait Islander communities, however this responsibility must be shared across the police force.

Recommendation 12:

Police should engage in an open and ongoing forum with local Aboriginal and Torres Strait Islander communities. Police Aboriginal Consultative Committees should be well supported and promoted.

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

Yours faithfully,

Women's Legal Service NSW

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Senior Community Access Officer

Janet Loughman
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