14 May 2018

Ms Elspeth Dyer
Committee Manager
Committee on Law and Safety
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

File ref: LA18/1225.01

Dear Ms Dyer,

Inquiry into the adequacy of youth diversionary programs in NSW

Thank you for inviting the Aboriginal Legal Service (NSW/ACT) to appear before the Committee on Law and Safety to give evidence concerning the inquiry. I write in response to your letter dated 3 May 2018.

Please find enclosed a copy of the transcript of the oral evidence of Ms Hopgood and Mr Higgins with corrections by hand, in compliance with the limiting provisions of Standing Order 293 as referred to in your correspondence.

Questions on notice

1. The ALS have had an opportunity to review the submission prepared by the NSW Bar Association referred to in the first question taken on notice at page 43 and concurs that there is an urgent need to develop programs specifically for Aboriginal girls and young women in custody.

   By way of background, Juniperina Juvenile Justice Centre (JJC) opened in 2005 and was described at the time as the first of its kind, with the Education Department running an onsite school to enable girls to continue their schooling as well as to provide them with skills training. It was located in Lidcombe in the Sydney metropolitan area. The centre also comprised rooms with cots for young mothers with babies and a gymnasium. In 2016, Juvenile Justice NSW decommissioned the Juniperina JJC following substantial increases in the adult prison population and the site was transferred to Corrective Services to be used as an adult female correctional

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centre. As a consequence, female juvenile detainees were moved to refurbished units at Reiby JJC, alongside male juvenile detainees who are held in a separate unit. Reiby JJC, which is located at Airds near Campbelltown, has not been used to detain female juveniles since 1994. There are currently no centres that exclusively detain female juveniles in NSW. We also note that girls and young women in regional areas may be managed up to five days in any of the male centres located throughout NSW pending court appearances and prior to being transferred to Reiby JJC, as per Juvenile Justice NSW Policy. It is difficult to determine what, if any access, young women and girls would have to programs provided in male custodial settings.

While the ALS is aware that programs have been developed for Aboriginal young people by Juvenile Justice NSW more generally, it is not clear which of those, if any, cater to the specificity of the needs and experiences of young Aboriginal girls. Although female juvenile detainees comprise a less significant proportion of the juvenile detainee population overall, Aboriginal and Torres Strait Islander females are consistently overrepresented therein. The anecdotal experience of the ALS confirms the observations and conclusions of a variety of research reports that programs provided in custodial settings are often organised around the needs of male detainees with special provisions adopted or "added on" for female detainees. The ALS agrees with the recommendation of the NSW Bar Association that it is "vital to ensure that programs not merely replicate male-oriented or non-Indigenous-oriented initiatives, but are both gender-sensitive and culturally appropriate". The development and delivery of such programs must be a considered a priority at all levels of government as part of a comprehensive strategy geared towards early intervention – especially when seen in the context of the most recent surge of women in custody nationally by 77%, of which indigenous women account for most of that growth.

In order to develop and implement programs that are gender-sensitive and culturally appropriate, factors that are specific to female Aboriginal and Torres Strait Islander girls and young women must be taken into account, preferably in consultation with local communities. Again, the ALS agrees with the submission of the NSW Bar Association that the following factors, for example, should be taken into account:

(a) The role of young women as a primary parent and the impact of custody on family and maternal responsibilities;
(b) The high rates of family violence experienced disproportionately by Aboriginal and Torres Strait Islander girls and women;
(c) The disadvantaged status of indigenous females based on all key indicators; and
(d) The experience of intergenerational trauma and the continuing impacts of dispossession, colonisation and discrimination as it is experienced by indigenous women and girls.

Any such programs should be genuinely rehabilitative, trauma-responsive and based on best practice.[1] In addition, services must be targeted to deal with the impact of

[1] For example, *Statement of Conditions and treatment in Youth Justice Detention*, Australian Children's Commissioners and Guardians, November 2017.

custody on matters such as childcare, housing, drug and alcohol withdrawal as well as the overall physical and mental needs of all indigenous girls and women held in detention.

2. The ALS welcomes the Report of Royal Commission into the Protection and Detention of Children in the Northern Territory and strongly encourages all levels of government to recognise the relevance of the Report to the youth justice systems and care and protection systems that operate in NSW. The Commission recommended a large number of reforms to address the failed child protection, youth justice and detention systems in the Northern Territory. Some of the key recommendations the ALS would encourage urgent consideration of in NSW include:

   - Raising the age of criminal responsibility to 12 years of age and only allowing children under 14 years of age to be detained for serious crimes.
   - Developing long-term strategies that address child protection and prevention of harm to children.
   - Establishing a network of family support services to provide place-based services to families.
   - A paradigm shift in youth justice to increase diversion and therapeutic approaches.
   - Developing a new model of bail and secure detention accommodation.
   - Specific and appropriate mechanisms and supports for detainees to maintain connection with family while in detention, such as communicating using video technology, be developed and promoted.
   - Increasing engagement with and involvement of Aboriginal Organisations in child protection, youth justice and detention including targeted funding.

   The ALS encourages the implementation of any such reforms in NSW to be undertaken in consultation with Aboriginal and Torres Strait Islander communities, organisations and other relevant stakeholders.

3. To further clarify the evidence provided by Ms Hopgood in regard to the gaps in the protections to limit the circumstances under which a child's criminal history may be disclosed, Ms Hopgood has provided the following: there is some ambiguity surrounding the disclosure of admissions or statements made by children, or to children, during a process which falls within the ambit of the *Young Offenders Act NSW* (1997) (YOA). Section 67 of the YOA provides that "any statement, confessions, admission or information made or given by a child during the giving of a caution or a conference under this Act is not to be admitted in evidence in any subsequent criminal or civil proceedings". Anecdotally, however, it has been argued that this section refers to the giving of the actual caution, not any admission or statement made as part of the cautioning process more broadly.

   In our view, admissions or statements made in the context of children participating in any part of a process pursuant to the YOA should not be disclosed or used as evidence against them, and it is antithetical to the purpose of the Act for section 67 to be interpreted in any other way.

We refer the Committee to gaps protecting the disclosure of the criminal records of juveniles in the context of spent convictions. At present, if a child is sentenced for an offence listed in section 7 of the *Criminal Records Act NSW* (1991) that conviction can never be spent unless the offence is otherwise dealt with pursuant to the YOA. This is the case even if a court has sentenced a child to a penalty that does not carry a conviction, or has otherwise chosen not to impose a conviction under section 14 of the *Children's Criminal Procedure Act NSW* (1987).

An example of offending behaviour caught by the breadth of section 7 includes "consensual" sex between two young persons (for example, where one young person is 15 years of age and is therefore not recognised at law as capable of consenting to sex).

Another example is "consensual" 'sexting' between two young persons. These offences will nonetheless be disclosed on a National Police Check. This can have a significant impact on the successful rehabilitation and reintegration of a child throughout their life, including the accessibility of employment opportunities, and is not compatible with the diversion of such children and young persons from the criminal justice system.

Thank you again for inviting representatives of the ALS to give evidence before the Committee of Law and Safety.

Please do not hesitate to contact Ms Julia Grix on [redacted] should the Committee require any further information about any maters of relevance to the important work of this Inquiry.

Yours sincerely

[redacted]

Lesley Turner
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Aboriginal Legal Service (NSW/ACT) Limited