

**Submission
No 49**

SUPPORT FOR NEW PARENTS AND BABIES IN NEW SOUTH WALES

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Date Received: 24 November 2017

24 November 2017

Legislative Assembly Committee on Community Services
NSW Legislative Assembly
Parliament House, Macquarie Street
Sydney NSW 2000

By email: communityservices@parliament.nsw.gov.au

Dear Committee Members,

Inquiry into Support for New parents and Babies in New South Wales

1. Women's Legal Service NSW (WLS NSW) thanks the NSW Legislative Assembly Committee on Community Services for the opportunity to comment on support for new parents and babies in NSW.
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.



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5. This submission will address the following terms of reference:
 - 5.1 The adequacy of current services and structures for new parents, especially those who need extra support, to provide a safe and nurturing environment for their babies.
 - 5.2 Changes to current services and structures that could improve physical health, mental health and child protection outcomes.
6. This submission will focus on women and children experiencing homelessness and family violence, women whose children are at risk of being removed from their care, and pregnant women and mothers in prison.
7. In summary, we recommend:
 - 7.1 Fund health justice partnerships to train health workers to identify family violence and provide appropriate referrals to legal support for pregnant women and new mothers experiencing family violence.
 - 7.2 Increase funding for specialist and culturally safe women's refuges and emergency accommodation and support services to help victims-survivors of family violence find safe, affordable and permanent housing options.
 - 7.3 Better promotion and implementation of the FACS 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.
 - 7.4 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.
 - 7.5 Establish accountability mechanisms to ensure that FACS and NGO child protection workers must inform parents 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.
 - 7.6 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, including in rural, regional and remote areas.
 - 7.7 Increase the availability of programs that support mothers and children to live together in prisons, wherever it is safe and appropriate to do so. Where these programs are not available, mothers and children should be supported to maintain a connection.

- 7.8 Increase the availability and funding of support programs for pregnant women and women with children in custody to address their trauma, mental health and drug and/or alcohol issues. Increase the provision of appropriate referrals prior to a mother's release from custody to ensure she and her children have access to safe and affordable housing and other supports.
- 7.9 State/territory and federal 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.

Terminology

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. The term "early support" is used 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.

Pregnancy and domestic violence

12. 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.¹

¹ Australian Bureau of Statistics (2017), *Personal Safety Survey, Australia, 2016*.
<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>

13. International research has also found that violence often begins during pregnancy or becomes more severe during pregnancy and into the first month of motherhood.² Aboriginal and Torres Strait Islander women and young women are at a greater risk of experiencing family violence during pregnancy.³
14. 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.⁴
15. 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.
16. 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.⁵ 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.
17. Redfern Legal Centre and Sydney Local Health District's Aboriginal Health Justice Partnership provide legal help to Aboriginal and Torres Strait Islander patients at the Royal Prince Alfred Hospital. Family violence matters represented almost half of all legal advice provided, followed by debt, child protection, tenancy issues and family law matters.⁶ For example, a lawyer provided urgent advice at the hospital to a new mother experiencing family violence, in order to keep her and her baby safe.⁷

² Australian Institute of Family Studies (2015), *Domestic and family violence in pregnancy and early parenthood: Overview and emerging interventions*, <https://aifs.gov.au/cfca/publications/domestic-and-family-violence-pregnancy-and-early-parenthood>

³ Ibid.

⁴ Ibid.

⁵ Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: Australia Access to Justice and Legal Needs*, Vol 7, 2012, p192

⁶ Redfern Legal Centre (2015), *Aboriginal Health Justice Partnership: Evaluation of first six months of operation*

<https://rlc.org.au/sites/default/files/attachments/RLC%27s%20Health%20Justice%20Partnership%20with%20the%20RPA.pdf>

⁷ Ibid.

Recommendation 1:

Fund health justice partnerships to train health workers to identify family violence and provide appropriate referrals to legal support for pregnant women and new mothers experiencing family violence.

Women and children experiencing family violence and homelessness

18. Family violence is often the cause of homelessness. The *National Plan to Reduce Violence against Women and their Children 2010-2022* recognises that escaping violence is the most common reason provided by people who seek help from specialist homelessness services.⁸ Victim-survivors of family violence, who are primarily women and children, should be assisted in finding safe, affordable, permanent housing options as quickly as possible.
19. Given that victims-survivors of family violence may need to leave their home at very short notice there will, however, always be a need for emergency accommodation and women's refuges. It is important that there are culturally safe specialist women's services, including specialist Aboriginal women's refuges.
20. Women with children who are experiencing family violence are often in a difficult position. Women who stay in violent relationships often do so to protect their children from the perpetrator rather than leaving their children alone with the perpetrator. Yet children who are exposed to family violence are at risk of being removed by the Department of Family and Community Services (FACS). If women leave violent homes with their children, children are also at risk of removal as a result of homelessness. Once children are removed, inappropriate housing can be a barrier to restoration due to a lack of safe and affordable housing options.
21. The current FACS Housing Pathways policy is that a parent may be considered for priority access to social housing if she/he can provide evidence which demonstrates that "the lack of appropriate accommodation is impacting their ability to have children restored".⁹ However, we have heard from community members that assessments of social housing applications appear to be based on the parent's current circumstances, such as whether a child is in their care at the time.

Recommendation 2:

Increase funding for specialist and culturally safe women's refuges and emergency accommodation and support services to help victims-survivors of family violence find safe,

⁸ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, 2012, https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf

⁹ NSW Department of Family and Community Services (2016), *Priority access to social housing and evidence requirements*, <http://www.housingpathways.nsw.gov.au/additional-information/fact-sheets/child-protection-caseworker-factsheet>

affordable and permanent housing options.

Recommendation 3:

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.

Early integrated social and legal support for parents with children at risk of removal

22. 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.
23. Out-of-home care (OOHC) for children and young people cost \$1 billion in 2015–16.¹⁰ By comparison, FACS spent \$319 million in 2015-16, and \$251 million in 2014-15 under its “Targeted Early Intervention Program”. This program aims to provide help before the crisis point. The 2016–17 State Budget allocated \$319 million for this program.¹¹
24. 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 Reforms.¹²
25. Research in Canada has also found that the health and social situations of mothers involved with child protection services deteriorates after their children are taken into care.¹³ Wall-Wieler et al highlight the importance of mothers receiving additional supports after children are removed so that their experiences after the loss of a child do not become a barrier to reunification.
26. Following the Tune Review into Out-of-home-care (OOHC) in NSW, the NSW Government recognised investment is “crisis driven” rather than focused on early support or family preservation and restoration services.¹⁴ It also recognised that to improve outcomes for

¹⁰ NSW Auditor-General, *Report on Family and Community Services*, 29-30
<https://www.audit.nsw.gov.au/publications/latest-reports/volume-six-2016-facs>

¹¹ Ibid 32.

¹² Australian Research Alliance for Children and Youth (2015), *Better Systems, Better Chances: A review of research and practice for prevention and early intervention*
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:
http://www.community.nsw.gov.au/_data/assets/pdf_file/0014/320036/literature_review_on_restoration.pdf

¹³ Wall-Wieler, E., Roos, L., Bolton, J., Brownell, M., Nickel N., Chateau, D., ‘Maternal health and social outcomes after having a child taken into care: population-based longitudinal cohort study using linkable administrative data’, *J Epidemiol Community Health* 2017, p1-7.

¹⁴ NSW Government, *Their Futures Matter: A new approach – Reform directions from the Independent Review of Out of Home Care in NSW*, 2016.

children at risk of being removed, 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.¹⁵

27. If funded, community legal centres are well placed to develop and provide a model of practice which would include a lawyer, a social worker and an Aboriginal specialist worker to respond to the over-representation of Aboriginal and Torres Strait Islander children in OOHC.
28. It has been the experience of several of our clients that FACS did not contact them to offer early support and the opportunity to address issues of concern prior to the sudden removal of their child. It is particularly traumatic when babies are removed from their mother's care in hospital immediately after birth. See, for example, the case study below.

Case Study

Jacquie (not her real name) is under eighteen and had just given birth to a healthy baby who she was breastfeeding. When she was younger and living in another state she had to live with a relative for a while because of safety concerns in her family.

The day after she gave birth FACS came to the hospital and told her they were placing the baby in the care of the Minister and that she could not take her baby with her when she was discharged. FACS indicated that they had no concerns about her capacity as a mother, but they did have safety concerns about her family.

Jacquie had not had any contact with FACS prior to this time and nor had she been referred to early support services throughout her pregnancy. Further, no one had ever told her that they were concerned about where the baby would be living.

29. We reiterate the importance of health justice partnerships which train health workers to identify the risk of family violence and provide early support to pregnant women and mothers, including by referring them to legal services to keep them and their children safe.
30. The NSW Parliamentary Inquiry into Child Protection found that

The Department [FACS] should be working more effectively with these families to identify whether support services can be provided to address child protection concerns after they have

¹⁵ NSW Government (2016), *Their Futures Matter: A new approach – Reform directions from the Independent Review of Out of Home Care in New South Wales*, 4-5
https://www.facs.nsw.gov.au/_data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf

*been identified. In this regard, there should be a focus on identifying whether restoration of that child is possible, assuming any safety concerns are adequately addressed.*¹⁶

31. We note that FACS have some dedicated prenatal caseworkers in at least three districts in NSW who engage and support mothers during their pregnancy. Where there has been positive engagement with the programs, we have found them to be both responsive and proactive in assisting our clients. However, little is known about this program and there is a real fear, particularly within Aboriginal and Torres Strait Islander communities, that by engaging with services children will be removed from their parents' care. We recommend that there be better community education about these programs and that prenatal caseworkers are available across all districts.
32. The 2008 Special Commission of Inquiry into Child Protection Services in NSW ('Wood Inquiry') found that the key to reducing risk to children is *"sufficiently resourcing flexible prevention and early intervention services so as to reduce the numbers of children and young people who require the state to step in to keep them safe"*.¹⁷

33. The Wood Inquiry also found

*A range of complex and often chronic factors characterise many of the families coming into contact with the child protection system such as low income, unemployment, substance abuse, limited social supports, imprisonment, domestic violence, and mental health issues. Many of these factors are inter-related. The elimination or reduction of each of these factors would significantly lower the number of children and young people reported as being at risk of harm.*¹⁸

34. Further, 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.¹⁹
35. Since 2014, Legal Aid NSW has been working in partnership with Community Legal Centres ('CLCs') in NSW as well as the Aboriginal Legal Services NSW in a project called Care Partners to provide early legal advice to parents and primary caregivers where child protection concerns have been raised. The focus was initially a narrow focus on legal advice relating to some early support tools - parent responsibility contracts, parent capacity orders and alternative dispute resolution (ADR) processes for contact disputes.

¹⁶ NSW Parliament Portfolio Committee No. 2 – Health and Community Services (2016), *Report of the Child Protection Inquiry*, 70 <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2396>

¹⁷ The Hon James Wood (2008), *Report of the Special Commission of Inquiry into Child Protection*, November 2008, Executive Summary at i.

¹⁸ The Hon James Wood (2008), *Report of the Special Commission of Inquiry into Child Protection*, November 2008, Note 74 at i-ii

¹⁹ Northern California Training Academy (2009), *The importance of family engagement in child welfare services*, <http://academy.extensiondlc.net/file.php/1/resources/LR-FamilyEngagement.pdf>

Of those CLCs which were funded, most were provided funding for one day a week for this service. The current scope of work by Care Partners has expanded. However, fewer CLCs receive funding to provide the service. We recommend the decision to cut funding to some geographically based CLCs be reconsidered and that funding be significantly increased.

36. WLS NSW, like other community legal centres (CLCs) has been concerned that there has been little use of the early support tools by FACS. We have raised this issue with FACS and are now meeting regularly with FACS, the Aboriginal Legal Service NSW/ACT, other CLCs Legal Aid and the Family Violence Prevention Legal Services.
37. There is a need for cultural change within FACS and the child protection sector so that workers understand the importance of parents 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.

Early holistic support for Aboriginal and Torres Strait Islander parents

38. 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.²⁰ As at 30 June 2015 there were 6, 427 Aboriginal children and young people in OOHC in NSW.
39. 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.
40. 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.
41. FACS' practice standards require "*culturally responsive practice with Aboriginal communities*".²¹ 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.²² The evaluation concluded that though the standards created

²⁰ Australian Institute of Family Studies, *Children and Care Resource Sheet* (June 2015),

<https://aifs.gov.au/cfca/publications/children-care>

²¹ Department of Family and Community Services (FACS), *Care and Protection: Practice Standards*, 7,

https://www.facs.nsw.gov.au/_data/assets/file/0018/332244/practice_standards.pdf

²² Parenting Research Centre of the University of Melbourne and the Social Policy Research Centre of the University of New South Wales (2016), *Practice First Evaluation Report – Prepared for NSW Department of Family and Community Services*, 3

https://www.facs.nsw.gov.au/_data/assets/pdf_file/0003/412662/Full-report-Practice-First-Evaluation-Final-Report.PDF

organisational culture towards child-centre practice, it did not change child protection outcomes which would require wider service reform in FACS.²³

42. 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.
43. 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 best interests considerations are paramount (Rec 47). Further, in determining best interests 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).
44. 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 parenting programs.
45. 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.²⁴
46. 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 would support Recommendation 36 of the

²³ Ibid 9.

²⁴ See Mudgin-Gal Aboriginal Corporation, *Seeding Hope* at: <http://www.redfernfoundation.org.au/mudgingal.pdf>

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.

47. There are a number of specific prevention and early support services for Aboriginal and Torres Strait Islander families such as programs under the Aboriginal Child, Youth and Family Strategy, services under the Aboriginal Maternal and Infant Health Strategy and Aboriginal Child and Family Centres.²⁵ However, the 2017 NSW Parliamentary Inquiry into Child Protection heard from stakeholders that there are a number of barriers which prevent Aboriginal peoples from accessing such services, including the fear that engagement in early support services may lead to the removal of their child.²⁶
48. The 2017 NSW Parliamentary Inquiry into Child Protection recommended (Rec 18):

*That the NSW Government commit to working across NSW with Aboriginal communities, as well as Aboriginal organisations such as Grandmothers Against Removals, to provide a far greater degree of Aboriginal self-determination in decisions on supporting families, child protection and child removals.*²⁷

Recommendation 4:

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.

Recommendation 5:

Establish accountability mechanisms to ensure that FACS and NGO child protection workers must inform parents 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.

Women at risk of imprisonment

49. 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

²⁵ NSW Parliament Portfolio Committee No. 2 – Health and Community Services (2016), *Report of the Child Protection Inquiry*, 127 <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2396>

²⁶ Ibid.

²⁷ Ibid xiii.

the initial time of removal and care planning, this increases the chance of successful restoration.²⁸

50. 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.²⁹

51. 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.”³⁰

52. 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.”

Recommendation 6:

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, including in rural, regional and remote areas.

Women in prison, particularly Aboriginal and Torres Strait Islander Women

53. Aboriginal and Torres Strait Islander women represent 34% of the adult women prison population, at 30 June 2016,³¹ and are the fastest growing group in NSW prisons. It is estimated that around 80% of Aboriginal and Torres Strait Islander women in prisons are mothers.³² Prior to their imprisonment, they were often the primary caregiver of their own children as well as the children of extended family members.³³

²⁸ Child Welfare Information Gateway (2011), 'Family reunification: What the evidence shows', *Issue Brief June 2011* www.childwelfare.gov/pubs/iisue_briefs/family_reunification/family_reunification.pdf

²⁹ 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).

³⁰ 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).

³¹ Australian Bureau of Statistics, *Prisoners in Australia 2016* (8 December).

³² Human Rights Law Centre and Change the Record Coalition (2017), *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, 13 <https://www.hrlc.org.au/news/2017/5/10/over-represented- overlooked-report> citing Juanita Sherwood and Sacha Kendall (2013), 'Reframing Space by Building Relationships: Community Collaborative

54. 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.³⁴ Of the 1033 incarcerated women in December 2016, 43.5% were on remand. Of these, 30% were Aboriginal.³⁵ We are aware of occasions when women have been on remand for a period longer than the period of imprisonment ordered.
55. 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.
56. We encourage FACS and NSW Corrective Services to provide meaningful support and programs to pregnant women in custody so that the child(ren) can remain with the mother, wherever it is safe and appropriate to do so.
57. 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.³⁶ In NSW, only women with a minimum security classification can have their children live with them in custody.
58. Several studies have found children's coping skills were enhanced and "problematic behaviour" was reduced by maintaining contact with their incarcerated parents.³⁷ A 2016 report found that there was no evidence of harm to children residing with their mothers in prison.³⁸

Participatory Action Research with Aboriginal Mothers in Prison' 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85.

³³ Ibid.

³⁴ Mary Stathopoulos et al, 'Addressing women's victimisation histories in custodial settings', (2012) 13 *Australian Centre for the Study of Sexual Assault*, 3. See also Peta MacGillivray and Eileen Baldry (2015), 'Australian Indigenous Women's Offending Patterns', *Indigenous Justice Clearinghouse* 19, 11 who note "evidence of high levels of charges and court appearances for vehicle and traffic breaches, justice and shoplifting offences".

³⁵ Community Restorative Centre (2017), Brochure on the Miranda Project

<https://www.crcnsw.org.au/wp-content/uploads/2017/06/Miranda-Program-brochure.pdf>

³⁶ Corrective Services NSW, Mothers & Children's Program,

http://www.correctiveservices.justice.nsw.gov.au/Documents/Related%20Links/library/womens-handbook-online-version1_Part2.pdf

³⁷ Julie-Anne Toohey (2012), 'Children and Their Incarcerated Parents: Maintaining Connections – How Kids' Days at Tasmania's Risdon Prison Contribute to Imprisoned Parent-Child Relationships', *The Australian and New Zealand Critical Criminology Conference 2012*, 33.

³⁸ 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

59. The report also found that mothers who participated in programs that allowed their children to live with them were less likely to return to prison than women who were separated from their children.³⁹ Our clients consistently tell us that maintaining a relationship with children while in prison is an important factor that can contribute to reducing recidivism. The report also found that mothers may be “*considerably more motivated to succeed*” in educational and substance misuse programs.⁴⁰
60. 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 a tablet. As currently happens with phone calls, an inmate could provide a list of people to the prison.
61. 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.
62. We note that in New Zealand, mothers in prison can access audio visual links to see and talk to their children who may live far away and cannot visit in person.⁴¹ Another way that parents in prison can connect with their children, if they are not living with them, is to record stories which can be provided to their children. This was successfully piloted at Emu Plains Correctional Centre.⁴²
63. Where a child is unable to remain with their mother in custody, we support an assessment of *all* placement options as it is the experience of some of our clients in custody that where there are no risk of significant harm issues in relation to the mother, the child may be placed with a violent father or a paternal relative who may alienate the children from the mother.
64. There are additional concerns when the mother and children are Aboriginal or Torres Strait Islander and the father is not. The importance of cultural identity and connections are not necessarily given adequate attention.

Recommendation 7:

Increase the availability of programs that support mothers and children to live together in prisons, wherever it is safe and appropriate to do so. Where these programs are not

³⁹ Ibid.

⁴⁰ Ibid 4.

⁴¹ New Zealand Department of Corrections (June 2017), *Change Lives Shape Futures: Wahine – E Rere Ana Ki Te Pae Hou: Women's Strategy 2017- 2021*, 21
http://www.corrections.govt.nz/_data/assets/pdf_file/0006/894228/Corrections_Womens_Strategy_August_2017_web.pdf

⁴² 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>

available, mothers and children should be supported to maintain a connection.

65. When a vulnerable parent is in custody it is an ideal time to offer treatment and support programs and encourage contact between mothers and children in an environment where they are free of fear and offenders. These programs should also be available to those on remand.
66. Helping women to address their trauma, including trans-generational trauma as a result of the ongoing trauma experienced as a result of the Stolen Generations, is key to reducing recidivism. Reducing recidivism for mothers in prison is important so as to limit disruption to the care of children.
67. It is essential that meaningful and appropriate referrals are made prior to a mother's release from custody to ensure she and her children have access to safe and affordable housing and other supports, such as drug and alcohol counselling or residential programs. Access to rehabilitation programs must be increased, especially in regional, rural and remote areas where access is currently very limited.
68. State/territory and federal governments should also 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 recognised this service gap in its consultation paper on prisoners and detainees, as part of the Justice Project.⁴³
69. In early 2009, WLS NSW, Warringa Baiya Aboriginal Women's Legal Centre and Western Sydney Community Legal Centre (formerly Hawkesbury-Nepean Community Legal Centre)⁴⁴ 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, Emu Plains and Dillwynia. LEAP does not receive any dedicated funding and operates from the core resources of the services.
70. 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.
71. LEAP solicitors provide monthly legal advice clinics at the three correctional centres, which includes follow up services, casework and representation. The LEAP program also

⁴³ Law Council of Australia, The Justice Project: Prisoners and Detainees Consultation Paper (August 2017), 5 [https://www.lawcouncil.asn.au/files/web-pdf/Justice Project/Consultation Papers/Prisoners and Detainees.pdf](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Prisoners%20and%20Detainees.pdf)

⁴⁴ 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.

aims to increase prisoner's awareness of legal rights and responsibilities through community legal education.

72. 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.
73. Since 2009, LEAP has provided legal advice to hundreds of women in prison including mothers and pregnant women, many of whom need assistance in the areas of family violence, sexual assault, victim support, family law, care and protection and housing.
74. As part of the LEAP program WLS NSW is actively working with Corrective Services, including through the Mothers and Children Program to facilitate early legal referrals for mothers and pregnant women in custody.
75. 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.⁴⁵
76. 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.
77. 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 8:

Increase the availability and funding of support programs for pregnant women and women with children in custody to address their trauma, mental health and drug and/or alcohol issues. Increase the provision of appropriate referrals prior to a mother's release from custody to ensure she and her children have access to safe and affordable housing and other supports.

Recommendation 9:

State/territory and federal 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.

⁴⁵ Law Council of Australia, above n 43, p40.

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

Yours faithfully,

Women's Legal Service NSW

Janet Loughman
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