

**Submission
No 5**

SUPPORT FOR CHILDREN OF IMPRISONED PARENTS IN NEW SOUTH WALES

Organisation: sista2sista, University of Technology Sydney

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Submission to the Special Commission of Inquiry into the Support for the Children of Imprisoned Parents in New South Wales

Dear Chairman, The Honourable Matthew Mason-Cox,

1. This submission arises from the findings of an Australian Research Council (ARC) Project that I lead on the criminal sentencing of Aboriginal women in New South Wales with the assistance of researcher Gemma Sentence. This research is guided by a group of Aboriginal women from organisations and services that provide support for Aboriginal women in NSW. The group is known as *sista2sista*. A significant rationale for this research is that Aboriginal women, especially mothers and grandmothers, are disproportionately and increasingly removed from their communities and separated from their families through imprisonment and that this has life-long consequences for their families, especially their children. Often the imprisonment of Aboriginal women will have a devastating impact upon Aboriginal children as their mothers and grandmothers are not only their primary caregivers, but also their mentors, knowledge holders and story tellers. This removal can have a detrimental impact on a child's identity, well-being and relationship with their family, community and culture.



2. As part of the ARC research, we have interviewed and surveyed over 160 Aboriginal women in six NSW correctional centres during 13 visits over 10 months in 2019. We have conducted focus groups with 40 lawyers from the NSW Aboriginal Legal Service who represent Aboriginal women in cities and towns in various parts of NSW and interviewed 10 judicial officers at all levels of NSW criminal courts and in both metropolitan and regional areas.
3. This submission will address a number of specific observations and findings from the ARC research that relate to the Terms of Reference of the Inquiry into the Support for the Children of Imprisoned Parents in New South Wales ('the Inquiry') as well as summarise a number of overall findings and recommendations.
4. First, Aboriginal women in NSW prisons collectively convey the importance of family to their wellbeing. Their role and position in their families are central to their kinship and cultural responsibilities. Aboriginal mothers, who constitute over 80% of Aboriginal women whom we interviewed, identified their primary role as a mother and caregiver. This role extends to Aboriginal grandmothers who are often primary caregivers and cultural teachers to grandchildren. For Aboriginal mothers and grandmothers, their predominant concern about imprisonment was not for their own wellbeing but for their children's wellbeing. Inversely, lawyers in our focus groups communicated that the most effective intervention to prevent recidivism for their Aboriginal women clients was the birth of children or grandchildren and receiving support, especially from Aboriginal women's services, to bring up their children. Lawyers also noted how interventions from government child protection services can set back Aboriginal women's progress by removing her self-determination in her family life.



5. Second, Aboriginal women in prison consistently told us that criminal courts determining their sentence and bail matters do not recognise and account for their role as mothers. By failing to aver to their responsibilities as mothers, courts can order sentences that are inappropriate to the circumstances of the woman, her family and her rehabilitation by virtue of:
 1. The sentence failing to be condign and individualised to reflect the strengths of the woman as a mother, caregiver and cultural leader; and
 2. The sentence not promoting the best outcome for the mother's rehabilitation because separation from children often sets Aboriginal woman back in her recovery and wellbeing.

6. There was a wide-reaching sentiment among the Aboriginal women in prison that their roles as mothers and grandmothers, as well as aunties and big sisters who also play strong roles in the lives of children in Aboriginal culture, was not accounted for by courts. One Aboriginal mother we surveyed wrote that she has seven children and it is "a harder job than jail [sic]" but the judge did not understand her commitment to her children or the effect that prison would have on her family. Another woman noted that she has five children, including one with a terminal illness and others with high mental health needs, yet "the system doesn't care about that". In another survey it was commented that sentencing courts should have "Empathy towards the impact on the women & there [sic] close family aka children & parents." We heard from mothers with several children in their sole care that they did not have the opportunity to arrange any transition for their children before being locked up for the first time. Some judicial officers who we interviewed commented that they would like more discretion to account for the hardship imprisonment places on Aboriginal children but were constrained by the "exceptional hardship" rule in *R v Caradonna* (2001) 118 A Crim R 312 at [25]–[26]; *R v Edwards* (1996) 90 A Crim R 510.

7. Third, a significant number of Aboriginal mothers raised in interviews that their key grievance with imprisonment was that they were placed in correctional centres hundreds



of kilometres away from their families. As a result, their children could not physically visit them. Furthermore, there was no video communication technology to enable them to see their children remotely. Some children made efforts to attend court hearings to see their mother on video link as this was their only means to confirm that their mother was alright. Mothers had heard from other family members that their children were distressed and unsettled from the lack of contact with them. In terms of phone calls, mothers often did not have funds available to make calls to children. The number of free local calls are restricted (approx. 1-2 per week) and they could not access free long-distance or mobile calls.

8. Fourth, Aboriginal mothers in prisons, no matter how short the remand or sentence, commonly had child protection authorities become involved in their child's life or had the fear that they would become involved. We heard many stories about incarceration leading to children being removed by the Department of Family and Community Services because their primary carer has been imprisoned. In almost all of our interviews, Aboriginal mothers raised with us their concerns that they had not been able to locate their child since she/he had been taken into care while in prison and could not make contact with their child. The placement of children into out-of-home care in some cases led to children of Aboriginal mothers in prison, or their partners, self-harming and taking their lives, children entering into criminal activity and detention and children dropping out of school.
9. Aboriginal mothers' concerns about child removals were compounded by their stress in relation to the payment of expenses, bills and rent. Even if the Aboriginal mother's child/ren were not taken into care while they were in custody, mothers feared that they may not be able to provide their children with a stable environment when they came out and children would become involved in the child protection system as a consequence of poverty. Often the mothers were in prison for short periods and on minor charges or on remand awaiting trial or sentence. During their brief time in prison, many Aboriginal



women told us that they had lost secure housing, employment and training opportunities and/or the care of their children on an ongoing basis.

10. Whilst each Aboriginal woman has shared unique and individual stories of separation, they have collectively described this separation and removal of children as traumatising. Women have expressed that removal from their families has caused them anxiety, fear, depression, anger and distress because of the worry about their children. The impact of family separation and disconnection has been highlighted extensively in the *Bringing Them Home Report* of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families in 1997 in which it was established that forced child removal and consequent family separation causes intergenerational trauma. We submit that this current NSW Inquiry attend to the unique impacts that removal of an Aboriginal parent, especially a mother, have on Aboriginal children due to the historical scars of family separations.

11. Finally, prison in itself creates trauma for Aboriginal mothers that affects their wellbeing, including after they are released and when they return to their children. The trauma can directly arise from events while in prison. One Aboriginal woman we spoke with told us she had miscarried in prison and was not offered support by staff. Other women were denied requests for treatment for infections, such as toothaches which resulted in severe pain and ongoing dental issues. Women told us about self-harming due to the stresses of the prison environment. They commonly spoke about the lack of treatment for anxiety and depression and the restricted access to pre-existing medication.

12. We heard that Aboriginal grandmothers and aunts who look after children and families while the mother is locked up have the responsibility of supporting, caring for and healing children as well as the mother when she returns. They undertake the role of reconnecting the family and helping the woman to meet her obligations to the court while accommodating her caring responsibilities. The strength of Aboriginal family members in



this process needs to be acknowledged, valued and assisted. Their role is more significant than the potential of any institutional program.

13. Overall, our findings point to the need for policies, practices and services that redress the growing rates of imprisonment for Aboriginal mothers, provide enhanced access to children for those Aboriginal mothers in prison, and post-release support for families. The recommendations from our research with Aboriginal mothers in prison are as follows:

- a. Aboriginal mothers and other family members who are primary carers should remain in the community to care for their children, especially given that most are serving short prison terms, are sentenced for minor offences or are on remand awaiting trial (without conviction) or sentence. Measures to give effect to community-based sentences for Aboriginal mothers include:
 - i. Amending the sentencing and bail legislation to provide that in sentencing Aboriginal mothers or determining their bail applications, courts have especial consideration to the hardship encountered by Aboriginal and Torres Strait Islander children when an Aboriginal mother is imprisoned with a view to privileging community-based sentences over imprisonment, or bail orders over remand, for Aboriginal mothers or Aboriginal women with children in their care;
 - ii. The courts and the State Parole Authority in setting bail and parole conditions respectively should recognise the responsibilities inherent in the “caring” role of Aboriginal women when setting conditions; and



- iii. Introducing Aboriginal family reports (similar to victim impact statements) to testify to the effects of imprisonment on Aboriginal children and provide information on culturally appropriate community-based options for the family that would also promote rehabilitation and/or wellbeing for the Aboriginal mother. These reports should be procured from an Aboriginal organisation and funded by the government.
 - b. Provide rehabilitative and healing residential facilities in communities for Aboriginal mothers that can accommodate children. Such facilities would ideally be run by Aboriginal women and incorporate cultural values and ethics.
 - c. In regions across NSW, provide Aboriginal mothers in prison with a purpose-built and culturally safe open facility in which their children can reside with them.
 - d. Provide Aboriginal mothers in prison with daily free local, mobile and distant phone calls with children and facilitate visits from children.
 - e. Assist Aboriginal mothers to locate and communicate with children who are in out-of-home care.
 - f. Place Aboriginal mothers in correctional centres near their families to enable children to visit their mothers.
 - g. Support Aboriginal mothers to keep their homes while in prison so they can return to their families and provide a stable environment for children.
 - h. Provide parent programs available for all Aboriginal mothers, grandmothers, aunts and big sisters in prison and in the community. These programs should be delivered and run by Aboriginal-owned services and designed and delivered by Aboriginal staff.



- i. Provide community-based healing programs and supports for Aboriginal families when Aboriginal parents return from prison to their families. These programs should be delivered run by Aboriginal-owned services and designed and delivered by Aboriginal staff.

- j. Provide support to extended Aboriginal family members (e.g. grandmothers and aunts) who care for children while the parent is imprisoned and assist in reconnecting the family when the parent is returned. Support may include travel costs, compensation for lost work time and expenses relating to the children’s needs.

We would be happy to appear before the committee or otherwise provide further information about the findings of the ARC project and related research to the Inquiry.

Best regards for your work on this important Inquiry,

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