

SUPPORT FOR CHILDREN OF IMPRISONED PARENTS IN NEW SOUTH WALES

Organisation: NSW Coalition of Aboriginal Regional Alliances

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NSW Coalition of Aboriginal Regional Alliances

Committee on Children and Young People

Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Committee

Please find attached the NSW Coalition of Aboriginal Regional Alliances submission to the Parliamentary Inquiry into Support for Children of Imprisoned Parents in NSW.

If you have any questions please do not hesitate to contact [REDACTED]
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Kind Regards,

Des Jones
Chairperson

NSW Coalition of Aboriginal Regional Alliances

Chairperson: Des Jones **Deputy Chairperson:** Mark Davies



NSW Council of Aboriginal Regional Alliances (NCARA) Submission to Parliamentary Inquiry into Support for Children of Imprisoned Parents in NSW

Recommendations to the Inquiry

- Investigate and make recommendations on the specific impacts of parental imprisonment on Aboriginal children and young people including disconnection from family, community and culture.
- Fully consider the findings and recommendations of the Pathways to Justice the Australian Law Reform Commission (ALRC) Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples.
- Fully consider the findings and recommendations of the Family is Culture independent review of Aboriginal children and young people in out of home care, particularly in relation to the lack of access Aboriginal children and young people in out of home care have to imprisoned parents.

About NCARA

Local Decision Making (LDM) is an initiative under OCHRE (the NSW Government plan for Aboriginal affairs) underpinned by the principle of self-determination, and aims to ensure that Aboriginal communities have a genuine voice in determining what and how services are delivered to their communities.

NCARA is made up of Chairpersons or delegates from Regional Alliances participating in Local Decision Making. NCARA and the NSW Government have an Accord that commits to working in partnership to meet the following outcomes:

- Decreasing the number of Aboriginal youth entering the juvenile justice system, including incarceration rates and recidivism; and
- Improving early childhood outcomes for Aboriginal children under 5, giving consideration to school-readiness, participation in pre-school education, health outcomes and family engagement.

NCARA has ongoing negotiations with the NSW Government to address its significant concerns regarding Aboriginal people's experience with law and justice in NSW, including Incarceration.

NCARA and the regional alliances also have a key role in advocating for better services and service delivery to the Aboriginal community.

Impact on children and young people

There are often unintended consequences of imprisonment, including the impact on families and children. Many people lose employment and without a source of income cannot maintain their housing. In turn children lose a stable environment and risk being taken into out of home care. Expenses relating to visiting, phone calls and providing support also compounds the financial stress experienced by families when a parent is imprisoned.

Police procedures during arrest can have critical impacts on children particularly when it is the first point of contact between children and the justice system. There is no support for children present at a parent's arrest, even when it is a violent and traumatic for them.

In the report *Indigenous Incarceration Unlock the Facts* PWC Indigenous Consulting highlights that children with parents in prison are more likely to come into contact with the justice system later in life and that children are three times as likely to be removed from their families if a parent is, or has been incarcerated. The report also points to the Quilty article *The Magnitude of Experience of Parental Incarceration in Australia* which estimates that 20 per cent of Aboriginal children have at least one parent in prison at any time.

Links to out of home care

According to the Department of Communities and Justice NSW *Improving the lives of children and young people* reporting at 30 June 2018, in NSW there were 6,766 Aboriginal children and young people in out of home care (39 per cent of all children and young people in out of home care). NCARA believes that reducing the imprisonment rates of Aboriginal people will have a significant impact on reducing this number. Imprisonment and out of home care are interconnected - Aboriginal people who were in out of home care are more likely to be imprisoned as juveniles and adults.

In the Pathways to Justice ALRC recognised the impact imprisonment has on children. It states "Acknowledging the high rate of removal of Aboriginal and Torres Strait Islander children into out-of-home care and the recognised links between out-of-home care, juvenile justice and adult incarceration, the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children (Recommendation 15–1).

The ALRC suggests that the "impact that incarceration of a primary care giver has on his or her children—at least in areas of Australia that have inadequate or no alternatives to imprisonment—should be taken into account by sentencing courts" and that the "impact of incarceration on children are of sufficient importance for governments to consider reviewing the scope and application of the 'exceptional circumstances' sentencing consideration."

Most Aboriginal children whose mothers are imprisoned at the time of their birth do not have the vital early access to their birth mothers and frequently are placed directly into care without consultation with families. While there are some facilities that allow young children to live with imprisoned mothers, the access is limited and decisions made on who can access the facilities is often based on highly subjective criteria.

It is always preferred that Aboriginal children remain with Aboriginal families and communities otherwise they can lose their connection with family and culture. Particularly in the case of children with imprisoned parents family group conferences should be held to ensure parents and family members have a say where children are placed.

While there are Aboriginal Child Placement Principles there is not enough effort put into placing children with family and as raised in the Family is Culture report considerable barriers to Aboriginal careers. When children are removed priority should be given to finding family members. If a child's family is unable to provide care than it is paramount that the child's connection with family and the Aboriginal culture is maintained and that this is monitored through their case management.

Family is Culture independent review of Aboriginal children and young people in out of home care

The report recommends that the Department of Communities and Justice develop policy guidance for caseworkers about the issue of contact with parents in custody (Recommendation 104). NCARA is strongly supportive of this recommendation and other issues raised in the report, including:

- Children in out of home care are often not being supported to see incarcerated parents. Aboriginal children must be supported to maintain this contact.
- Unrealistic restoration goals are often set which cannot be met by imprisoned parents.
- Case management for imprisoned parents and their children, particularly those in out of home care must be improved and targeted supports always available, formalised through children's case plans.
- There is also inadequate post release planning and support. Referrals are needed to ensure parents released from custody and their children have access to safe and affordable housing and employment or financial support.

As the report raises the Department of Communities and Justice should ensure that its practice reflects evidence-based knowledge about the protective benefits of a child's placement with family and kin (Recommendation 86).

Reducing the rates of imprisonment

Alternatives to imprisonment

NCARA believes that people should not be imprisoned for non-violent/non-serious crimes such as shoplifting and drug and alcohol offences, particularly parents and expectant parents. There are a number of alternatives to imprisonment including mandated treatment programs, home detention and electronic monitoring. The successful Work and Development Order program which assists in paying off fines could also be adapted to address minor offences. Currently many Aboriginal defendants are not offered these alternatives.

The Australian Law Reform Commission report, Pathways to Justice, recommendation 7–1 states that state and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations and community organisations to improve access to community-based sentencing options for Aboriginal and Torres Strait Islander offenders, by:

- Expanding the geographic reach of community-based sentencing options, particularly in regional and remote areas;
- Providing community-based sentencing options that are culturally appropriate; and
- Making community-based sentencing options accessible to offenders with complex needs, to reduce reoffending.

In Indigenous imprisonment in NSW: A closer look at the trend the NSW Bureau of Crime Statistics and Research (BOCSAR) states that “the number of Indigenous offenders receiving a prison sentence could be reduced by more than 700 a year if half of those currently given short prison sentences for Assault occasioning Actual Bodily Harm, Common Assault, Stalking/Intimidation, Breaching an Apprehended Violence Order, Breaching a s.9 Bond or Breaching a s.12 Bond were placed on Intensive Correction Orders or Home Detention.” According to the report home detention “has been found to be more effective than a short prison sentence in deterring future offending”. The report also discusses the benefits of electronic monitoring.

Bail

Greater access to bail and easier to understand bail conditions are essential to reducing imprisonment. Aboriginal people are often on remand for lengthy periods when bail is not granted, losing housing, jobs and often having children taken into out of home care before a conviction is even recorded. Those on remand also have limited access to services and programs, particularly exit planning services. The BOCSAR report also raises barriers to bail including homelessness and lack of treatment services.

When bail is granted the conditions can be unrealistic and difficult to meet and to interpret and understand. Bail conditions and court orders should be written in plain English and support on how to meet the conditions should be given.