

**Submission
No 19**

**SUPPORT FOR CHILDREN OF IMPRISONED PARENTS IN NEW SOUTH
WALES**

Organisation: Women's Legal Service NSW

Date Received: 28 February 2020

28 February 2020

Mr Leon Last
Committee Manager
Parliament House
Macquarie Street
Sydney NSW 2000

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

Dear Mr Last,

Inquiry into Support for Children of Imprisoned Parents in New South Wales

1. Women's Legal Service NSW (**WLS NSW**) thanks the Committee on Children and Young People (**the Committee**) for the opportunity to comment on the inquiry into Support for Children of Imprisoned Parents in New South Wales (**the Inquiry**).

About Women's Legal Service 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 provides regular family and civil law advice, casework and education services to women in NSW correctional centres. Much of our work with women in prison relates to the care and contact arrangements for children and young people.
4. We have also provided advice and casework services to young women in Youth Justice detention and note the specific needs of young people as parents or expectant parents in youth detention. Additionally, many of the clients that we work with in adult correctional centres are in the vulnerable 18-24 year age range, with recent youth detention and/or child protection experiences, both as being a child removed and/or having had their own children removed.
5. WLS NSW is also an active member of key stakeholder groups relating to the needs and experiences of prisoners and their families and communities, including:
 - 5.1 Corrective Services NSW Women's Advisory Council (**CS WAC**).
 - 5.2 Corrective Services NSW Legal Practitioners Consultation Group.
 - 5.3 Women's Justice Network Board.



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- 5.4 Community Legal Centres New South Wales Prisoner's Rights Working Group.
- 5.5 Australia's National Research Organisation for Women's Safety (ANROWS) Misidentification of Domestic and Family Violence Aggrieved/Respondents in Australia Reference Group.
- 5.6 New South Wales Legal Assistance Forum Prisoner's Forum and Prisoner's Legal Information Team.
- 5.7 Department of Communities and Justice Women as Parents in Prison Forums.
6. WLS NSW acknowledges the significant and disproportionate harm and loss experienced by First Nations people in both the criminal justice system and the child protection system. All laws, policies and procedures must be continually reviewed to ensure that they are culturally safe and not perpetuating further harm through systemic racism. Any actions arising from the Inquiry must be reviewed by First Nations people to ensure cultural safety.
7. WLS NSW welcomes the Committee's interest in the experiences of children and young people with imprisoned parents or caregivers. We also acknowledge the longer term consideration of this issue by the Parliament of New South Wales, including the Legislative Council Standing Committee on Social Issues *1997 Report into Children of Imprisoned Parents (the NSW Parliament 1997 Report)*¹.
8. We acknowledge the importance of funding services to work directly with children and young people. We ask that the Committee also recognise the importance of appropriately funding specialist women's services to advise and support women to be safe and protective caregivers or to have regular and meaningful contact with their children. There are strongly recognised links in keeping children and young people in the care of parents, particularly mothers, to reduce the rates of intergenerational child removal and incarceration. This is discussed in more detail below.
9. In summary, we recommend:
 - 9.1 The Department of Communities and Justice provide funding on an ongoing basis for the Legal Education and Advice for women program as recommended in *Safe State: Acting to end sexual, domestic and family violence*.
 - 9.2 Imprisonment of women and particularly pregnant women and women caring for children should be as a last resort.
 - 9.3 A women's centre model be established in NSW to provide holistic and gendered support to divert women away from the criminal justice system, including specific funding for residential support.
 - 9.4 The Department of Communities and Justice develop guidelines for the issuing of local leave permits, with a particular emphasis on expanding opportunities for women to be released to care for children of any age, and to seek legislative amendment where required for this purpose.
 - 9.5 The Mothers and Children's Program be expanded to correctional centres across NSW to provide opportunities for First Nations women to remain on country with their children and to also be available to women on remand and women on higher security classifications.
 - 9.6 Corrective Services NSW amend their Female Placement Guide to prioritise placements for women prisoners near children and young people.

¹ Parliament of New South Wales Legislative Council, Standing Committee on Social Issues, *A Report into Children of Imprisoned Parents*, Report Number 12, July 1997.

- 9.7 The Department of Communities and Justice review the Intake Screening Questionnaire to ensure that it captures all relevant information relating to the care arrangements, safety and cultural identity of children and young people.
- 9.8 The Intake Screening Questionnaire specifically seek information about domestic violence and safety concerns relating to persons who are caring for children or may seek to obtain care of the children or young people whilst their mother or carer is in custody.
- 9.9 The Intake Screening Questionnaire include a prompt to refer parents and carers for legal advice.
- 9.10 The Department of Communities and Justice consult with stakeholders, including legal practitioners, about the proposal to allocate caseworkers to individual correctional centres.
- 9.11 In care proceedings, the Department of Communities and Justice or the delegated Funded Service Provider be responsible for ensuring that parents and carers in custody are served in a timely fashion and where possible service, particularly of initiating processes, occur in person to allow the parent or carer the opportunity to ask questions.
- 9.12 If a parent or carer in custody is not represented in care proceedings, the Department of Communities and Justice or the delegated Funded Service Provider be responsible for seeking an order pursuant to Section 77 of the *Crimes (Administration of Sentences) Act 1999* for the attendance of the parent or carer at court on each occasion.
- 9.13 In family law proceedings, where an Independent Children's Lawyer is appointed, they be responsible to ensure that an unrepresented parent or carer in custody has been served and for seeking an order pursuant to Section 77 of the *Crimes (Administration of Sentences) Act 1999* for the attendance of the parent or carer at court on each occasion.
- 9.14 The Department of Communities and Justice prepare a review of all agencies and programs providing support to children and young people to have contact with a parent in custody to identify gaps.
- 9.15 The Department of Communities and Justice engage with stakeholders and develop information packs and videos about what to expect at child contact visits in correctional centres. These packs to be separately designed for children and young people, parents and carers (to be played on prison television channels) and for caseworkers, legal practitioner and judicial officers.
- 9.16 Greater investment in the use of video visits, including identifying community based and culturally safe organisations who can facilitate free contact visits with children, carers and other family members in the community.
- 9.17 The Department of Communities and Justice to expand the use of and cover the costs of all telephone and video visits between children and young people and their parents or carers in custody.
- 9.18 The Office of the NSW Advocate for Children and Young People, the NSW Ombudsman or another body provide independent oversight of children and young people's decision making regarding contact with a parent or carer in custody, including investigative and reporting functions.

Our work with women in prison

Legal Education and Advice in Prison (LEAP) for women program

10. For more than a decade WLS NSW has provided unfunded specialist family and civil law services to women in prison via the Legal Education and Advice in Prison (LEAP) for women program. LEAP received the 2009 NSW Law and Justice Foundation Community Legal Centre Award.
11. The LEAP program is a partnership between WLS NSW and Wirringa Baiya Aboriginal Women's Legal Centre and Western Sydney Community Legal Centre and delivers advice, casework and education services to women in the Sydney metropolitan correctional centres. LEAP assists women prisoners in realising and enforcing their human rights, in particular their rights in accessing justice. LEAP prioritises access for First Nations women.
12. The program was established due to the high levels of unmet need amongst women in custody for civil and family law services, the majority of whom have experienced child sexual abuse, sexual assault and family violence.
13. All LEAP lawyers and community workers are women and they provide a culturally safe, holistic, sexual, domestic and family violence informed, trauma informed and gendered service.
14. WLS NSW also has a free call number on the prison Common Auto Dial List (CADL #21) and anyone incarcerated in a women's correctional centre can make a free ten minute call to request advice and assistance. Neither LEAP or the CADL #21 service has ever received dedicated funding. They operate from core WLS NSW (and the partner community legal centre) resources and are always under threat.² The majority of referrals are made by Corrective Service NSW (**CSNSW**) staff.
15. LEAP and the CADL #21 service have provided legal advice and assistance to hundreds of women in NSW prisons, mostly in relation to locating and contacting children and victims support.
16. Our work with women in prison in relation to their children ranges from advocacy with caseworkers and family members to get photos and updates about children and young people or copies of relevant paperwork to representing women in court applications for matters like contact and the restoration of children, and unfortunately sometimes when children are being adopted. We have assisted women to reconnect with children they have not spoken to for years and to have children returned to their care post release. We have also assisted pregnant women in custody to keep their babies or to identify a safe and appropriate placement in the community until their release.
17. Sexual, domestic and family violence are often the pathway to prison for women and a key risk factor in the removal of children from their care. Family violence is also a leading cause of homelessness for women and children and a lack of safe and affordable housing can leave women at risk of imprisonment. Women need access to specialist legal and therapeutic services in custody to ensure that these patterns

² The Law Council of Australia recognised the service gap in funding for specific legal services targeted to women in prison, particularly for civil and family law matters in its consultation paper on prisoners and detainees, as part of the Justice Project: Law Council of Australia, *The Justice Project: Prisoners and Detainees Consultation Paper* (August 2017), p.3, 37-40 accessed at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Prisoners%20and%20Detainees.pdf>

of violence and risk are safely explored and addressed. Failure to address these family and civil law needs can prevent the successful reintegration into the community after they are released.³

Post release and statewide support

18. WLS NSW also provides statewide support to women post release and we work with some clients on multiple matters over many years. Once establishing a relationship of trust with WLS NSW in custody, women also return to our service, contacting us early in their legal problems so we can help them resolve their legal issues before they escalate. Women call 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 First Nations women who may have family and community obligations requiring them to move between locations to assist with looking after children and family members.
19. Access to early legal advice and other support can be crucial in supporting family preservation. There may be barriers to families engaging with the Department of Communities and Justice (**DCJ**) or a non-government funded service provider (**FSP**) that could lead to the removal of children, which could be overcome through parents or carers having access to legal advice and support from independent and trusted community legal services such as WLS NSW.

Recommendation: One

The Department of Communities and Justice provide funding on an ongoing basis for the Legal Education and Advice for women program as recommended in *Safe State: Acting to end sexual, domestic and family violence*.

Women in NSW correctional centres

Statistics about women in prison

20. Since the NSW Parliament 1997 Report the number of women in NSW correctional centres has almost tripled to approximately 1,000 and the number of women on remand has nearly quadrupled to about 400.⁴ Almost a third of women in NSW correctional centres are First Nations women.⁵
21. The majority of women in prison in NSW are mothers, but a smaller percentage of women were the primary carer of their children immediately prior to their incarceration. We understand that CSNSW has access to statistics about the number of children of prisoners, including a gendered breakdown on the patterns of visits to male and female parents and carers, but this information does not appear to be readily available. We recommend the regular publication of statistics on the number of children and young people of parents and carers in custody.

³ Law Council of Australia, *The Justice Project Final Report – Prisoners and Detainees*, 2018, p21 accessed at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Prisoners%20and%20Detainees%20%28Part%201%29.pdf>

⁴ Parliament of New South Wales Legislative Council Standing Committee on Social Issues, *A Report into Children of Imprisoned Parents*, July 1997, p.29; 111 and NSW Bureau of Crime Statistics and Research, *New South Wales Custody Statistics*, Quarterly Update December 2019 accessed at:

https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx

⁵ Ibid.

Women's pathways to prison

22. The majority of our clients in custody have been raped and assaulted by numerous people since childhood. They have been raised in poverty and experience family violence, systemic racism, addiction, cognitive impairment, homelessness, unemployment, mental illness and poor literacy. They have had early and ongoing contact with police, child protection authorities and other state interventions.
23. Many women we have contact with in custody have also been misidentified as perpetrators of violence in circumstances where they are the primary victim. The experience of misidentification and criminalisation, often arising from breaching Apprehended Violence Orders (**AVO**), contributes to the loss of their children. This is an avoidable tragedy and we call on all statutory authorities to continually conduct safety and risk assessments and scrutinise domestic and family violence and sexual violence contexts to ensure that they have correctly identified the primary aggressor.
24. It is difficult to estimate the numbers of women in custody who have been misidentified as offenders of personal violence. Some guidance may be taken from an exploratory study undertaken by WLS NSW into our work representing women who were defendants in Apprehended Domestic Violence Order (**ADVO**) proceedings. Results of this review showed in 2010:
- Two-thirds of our clients defending ADVOs reported they were victims of violence in their relationships.
 - Fewer than 40% of these clients had a final ADVO made against them when the case came before the court.
 - Many of the women defending ADVOs 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.
 - Other women reported that they believed the other party had deliberately initiated ADVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future.
 - In the majority of cases where women were defending ADVOs, the other party's complaint related to a single incident only. 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.⁶
25. The NSW Coroner has commented on *"the importance of viewing domestic violence holistically, as episodes in a broader pattern of behaviour rather than as incidents in isolation of one another"*.⁷ The Domestic Violence Death Review Team has recommended the NSW Police Force reviews how it captures data on domestic violence so that police can *"view the incident holistically and in the context of the history of the parties and relationship"* and *"make informed decisions as to what action to take in the context of the incident they are dealing with"*.⁸
26. Any such holistic assessment will also require a commitment to trauma informed, sexual, domestic and family violence informed, culturally safe, LGBTIQ+ aware and disability aware practices. Women have told us that they have not disclosed information relevant to the context of their arrest, for example, they have been sexually assaulted prior to their alleged offending, but unable to disclose this to police, lawyers,

⁶ Julia Mansour, *Women Defendants to AVOs: What is their experience of the justice system*, (Women's Legal Service NSW, Sydney, 2014) accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/womendefAVOsreport.pdf>

⁷ NSW Government, *NSW Domestic Violence Death Review Team Report 2015-17*, Sydney, 2017, page v

⁸ Ibid, Recommendation 2.1.

psychologists or courts due to a range of factors such as shame, fear and culture or not being offered the opportunity to speak with a female officer or practitioner.

Women in prison as mothers and carers

27. It is our experience that many of our clients in custody are overwhelmingly concerned about the safety and wellbeing of their children and that in the majority of these cases domestic violence has been a key contributor to the removal or loss of children.
28. There is growing evidence that maintaining relationships, particularly with children and young people, is a critical way to reduce women's reoffending. Clients consistently tell us that their children are a prime motivator to "go straight" or to end associations with others who may trigger patterns of risk exposure or offending. This is supported by a 2016 report which found that women who participated in programs that allowed their children to live with them were less likely to return to prison than mothers who were separated from their children.⁹ It also found that mothers may be "considerably more motivated to succeed" in educational and substance misuse programs.¹⁰
29. CSNSW in their *Family Matters Strategy (2018-2021)* state that "[t]hrough strategic partnerships with non-government organisations, CSNSW is supporting greater positive family contact between offenders and their families."¹¹ CSNSW goes on to say that this is in line with their broader objectives to "reduce reoffending and the likelihood of intergenerational crime" and to ensure that "working with families is not seen as 'something else' but is part of the mainstream work of CSNSW."¹²
30. We note the relevance of a number of the NSW Government Premier's Priorities:

Protecting our most vulnerable children - Decrease the proportion of children and young people re-reported at risk of significant harm by 20 per cent by 2023.

Reducing recidivism in the prison population - Reduce adult reoffending following release from prison by five per cent by 2023.

Reducing domestic violence reoffending - Reduce the number of domestic violence reoffenders by 25 per cent by 2023.

Increasing permanency for children in out-of-home care - Double the number of children in safe and permanent homes by 2023 for children in, or at risk of entering, out-of-home care.¹³

31. We also refer to the *Family is Culture Independent Review of Aboriginal Children and Young People in OOHC (Family is Culture Review)*, which considered the issue of imprisoned parents and noted "FACS' policy provides some very brief guidance about organising contact with parents in correctional centres."¹⁴ The Family is Culture Review goes on to state that during their data analysis "it also became apparent that parents' incarceration had an impact on case planning and the parents' ability to work towards restoration."¹⁵

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

¹⁰ Ibid, p4.

¹¹ Corrective Services NSW, *Family Matters Strategy (2018-2021)*, 2018, p. 4.

¹² Ibid.

¹³ NSW Government Premier's Priorities, accessed at: <https://www.nsw.gov.au/improving-nsw/premiers-priorities/>

¹⁴ Family is Culture, *Independent Review of Aboriginal Children and Young People in OOHC*, 2019, p.328.

¹⁵ Ibid.

32. In concluding that casework practice with respect to incarcerated parents needs to be improved, the Family is Culture Review recommended:

***Recommendation 104:** The Department of Communities and Justice should develop policy guidance for caseworkers about the issue of contact with parents in custody. This guidance should include a discussion of the types of contact that can be facilitated between children and incarcerated parents, how to arrange the contact in practice, advice about methods of liaison with correctional services and information about facilities to enable contact in individual correctional centres.¹⁶*

Keeping women out of prison

Imprisonment as a last resort

33. Where it is safe to do so, children should be cared for within their family and kinship networks.
34. Imprisonment of women and particularly pregnant women and women caring for children should be as a last resort. Flexible and accessible, non-custodial, non-net-widening alternatives to prison should be available throughout NSW, including in rural, regional and remote areas.
35. During sentencing, courts should consider primary caregiving responsibilities for children and young people, any history of violence experienced and any history of mental health and substance abuse. This is consistent with the United Nations Bangkok Rules.¹⁷
36. A key conclusion of the NSW Parliament 1997 Report was:

A sentence of imprisonment on a primary carer of children should only be imposed when all possible alternatives have been exhausted. The courts should always seek community-based alternatives, particularly in the case of offenders who have committed non-violent offences.¹⁸

37. It is well understood that any custodial sentence, even a short period of time on remand, can have a detrimental impact on women and their families and communities. Lord Farmer's 2019 review of women in prison in the United Kingdom, *The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime (the Farmer Review)*, identified that:

Healthy, supportive relationships are not just a 'nice to have' for every woman in the criminal justice system. They are utterly indispensable if she is to turn away from criminality and contribute positively to society: relationships she can rely on are a 'must-have' for her rehabilitation.¹⁹

38. The Farmer Review also concluded that relationships are women's most prevalent 'criminogenic need' and that:

¹⁶ Ibid, p.329.

¹⁷ 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) accessed at: <https://undocs.org/A/RES/65/229>

¹⁸ Parliament of New South Wales Legislative Council Standing Committee on Social Issues, *A Report into Children of Imprisoned Parents*, July 1997, p.iii.

¹⁹ UK Ministry of Justice, Lord Farmer, *Importance of strengthening female offenders' family and other relationships to prevent reoffending and reduce intergenerational crime*, 2019, p.4.

Unsurprisingly therefore, whether they are serving a sentence in the community or in custody, issues around women's relationships directly affect their likelihood of reoffending significantly more frequently than is the case with men.²⁰

39. Having a parent or primary carer in custody is also detrimental to children and young people. There is a growing understanding that having a mother in custody has a much greater detrimental impact on the development of a child than having a father in custody. Recent analysis of longitudinal, intergenerational, population-based Child Development Study data in NSW, confirmed the intergenerational transmission of antisocial behaviour and criminality and also found that *"maternal history of violent offending had the greatest association with child conduct problems, followed by non-violent offending."*²¹
40. Penal Reform International have also identified the importance of laws and policies which are consistently and adequately responsive to the needs of children who have parents in conflict with the law and they recommend:

States should create and implement law and policy to ensure that the best interests of the child are a primary consideration in relation to all actions that may affect children whose parents are in conflict with the law. This should take effect at all stages of judicial and administrative decision-making including arrest, pre-trial measures, trial and sentencing, imprisonment, release and reintegration into the family and community

Efforts should be made to avoid sending primary caregivers to pre-trial detention or to impose a sentence of imprisonment. This means a person's caring responsibilities must be identified prior to deciding on pre-trial measures, passing sentence or determination on early and temporary release. It also means that viable alternatives to detention must be developed where they are lacking.²²

Sentencing options and diversion from custody

41. WLS NSW strongly supports initiatives to divert women from a custodial sentence.
42. We understand that CSNSW intends to shortly announce funding for diversionary initiatives, including opportunities to provide programs pursuant to Section 11 of the *Crimes (Sentencing Procedure) Act 1999*, which defers sentencing to allow an offender the opportunity to demonstrate their capacity to engage in rehabilitation or treatment.
43. WLS NSW believes that women would particularly benefit by being deferred into a program such as the Miranda Project, which provides gendered and holistic diversionary and post-prison support.²³ The Miranda Project is influenced by women's centres in the United Kingdom, which also provide gendered and holistic support to women across a range of issues and which have assisted to reducing reoffending.²⁴
44. Baroness Corston in her report *Women with Vulnerabilities in the Criminal Justice System*, recommended a national expansion of women's centres as a community-based alternative to prison.²⁵

²⁰ Ibid.

²¹ Stacy Tzoumakis et al, "Parental offending and children's conduct problems", *AIC Trends & Issues in Crime and Criminal Justice*, No 571 March 2019, p. 8.

²² Penal Reform International, *The rights of children when their parents are in conflict with the law*, August 2012, p.4, accessed at <https://cdn.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-3-v4.pdf>

²³ The Miranda Project, accessed at: <https://www.crcnsw.org.au/miranda-project/>

²⁴ Sarah Scott and Sarah Frost, DMSS Research, *Why Women's Centres Work: An Evidence Briefing*, 2018, accessed at: https://www.tavinstitute.org/wp-content/uploads/2019/05/Women-and-Girls-Briefing-Report-Final-_web.pdf

²⁵ Ibid.

45. In June 2018 the Ministry of Justice in the United Kingdom released their *Female Offender Strategy*, which included a commitment to:

*£2 million of funding explicitly for female offenders who have experienced domestic abuse...£1.5m will be invested to support the development of community-based provision for female offenders, such as residential support.*²⁶

46. The Ministry of Justice also committed to developing a pilot for five residential sites to support women in the community and reduce the number of women serving short custodial sentences, with the ultimate goal being the closure of prisons.²⁷

47. There may also be opportunities to divert women from custody via the issue of local leave permits under Section 26 of the *Crimes (Administration of Sentences) Act 1999*. For example, to be released to care for young children:

26(l) in the case of a female inmate who is the mother of a young child or young children, enabling the inmate to serve her sentence with her child or children in an appropriate environment.

48. This section could also be amended to provide for additional circumstances in which a local leave permit may be issued, such as to participate in a therapeutic or treatment program.

Recommendation: Two

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

Recommendation: Three

A women's centre model be established in NSW to provide holistic and gendered support to divert women away from the criminal justice system, including specific funding for residential support.

Recommendation: Four

The Department of Communities and Justice develop guidelines for the issuing of local leave permits, with a particular emphasis on expanding opportunities for women to be released to care for children of any age, and to seek legislative amendment where required for this purpose.

Best practice if women must be incarcerated

Accommodation for children in correctional centres

49. We have worked with a number of clients accommodated with their pre-school aged children within the Mothers and Children's Unit at Emu Plains Correctional Centre. This has been a beneficial experience for our clients and their children. The opportunity to maintain continuity of care of children is essential to prospects of retaining children post release. Unfortunately, many of our clients have been ineligible to reside in this Unit, due to factors such as security classification and being on remand.

²⁶ UK Ministry of Justice, *Female Offender Strategy*, June 2018, p.8.

²⁷ Ibid.

50. In their review of the experiences of women on remand, the Inspector of Custodial Services concluded that the Mothers and Children's program should be expanded to women on remand.²⁸ This was also a recommendation in the NSW Parliament 1997 Report.²⁹ We support this proposal and also an expansion of the program to include women on higher security classifications.
51. We also note the evidence that for First Nations women "keeping their baby is much harder, because of the stigma arising from their disadvantage and from simply being Aboriginal, in a society that stigmatizes Aboriginal people."³⁰

Prioritise placement near children and young people

52. Many of our clients are often incarcerated a long way from home. This causes great distress and disruption to relationships with children and young people and other family members. First Nations women are further harmed by being off country and away from community. The Inspector of Custodial Services has identified that CSNSW policy "does not prioritise the need for placement near family and children within their guide for female placement."³¹

Recommendation: Five

The Mothers and Children's Program be expanded to correctional centres across NSW to provide opportunities for First Nations women to remain on country with their children and to also be available to women on remand and women on higher security classifications.

Recommendation: Six

Corrective Services NSW amend their Female Placement Guide to prioritise placements for women prisoners near children and young people.

Identifying children and their care arrangements

Intake Screening Questionnaire

53. Ideally arrangements for children and young people will be clarified and resolved at the time of arrest.
54. It is also important for CSNSW at intake to carefully identify any children or young people in the prisoner's life and to confirm care arrangements, including the status of any current litigation relating to the care of the children and young people.
55. The Intake Screening Questionnaire (**ISQ**) is the CSNSW tool used when a person is received into custody. Between 2014-2016 WLS NSW was part of a small group of CS WAC members and CSNSW staff who formed a working group to review the experiences of women in prison in relation to court ordered contact. One of the action items of this Court Ordered Contact Working Group (**COCWG**) was to review

²⁸ Inspector of Custodial Services, *Women on Remand*, February 2020, p. 17.

²⁹ Parliament of New South Wales Legislative Council Standing Committee on Social Issues, *A Report into Children of Imprisoned Parents*, July 1997, Recommendation 62, p. 137.

³⁰ Jane Walker et al, "Residential programmes for mothers and children in prison: Key themes and concepts", *Criminology & Criminal Justice*, 2019, p. 5

³¹ Inspector of Custodial Services, *Women on Remand*, February 2020, p. 16.

the ISQ to assess how usefully it obtained information about the location and care arrangements for children and young people.

56. The COCWG recommended that additional questions be included in the ISQ to obtain information about current litigation relating to the care arrangements for children and young people, the status of legal representation for any such matters and whether the parent or carer was working with child protection caseworkers, either from DCJ or a FSP.
57. WLS NSW understands that ultimately these additional questions were not included in the ISQ due largely to the existing length of the ISQ.
58. WLS NSW is also concerned that some children and young people end up in the care of someone who has previously perpetrated domestic violence against them or their mothers or carers. We have assisted women who are highly distressed that their children are now living with violent men who have sometimes been out of their lives for many years due to domestic violence. For example, this can happen when there are no orders about the care arrangements for children and any previous AVOs have expired. It is also our experience that these women face significant difficulties getting the children returned to their care post release and on occasion the children have been removed from NSW and their whereabouts unknown.

Recommendation: Seven

The Department of Communities and Justice review the Intake Screening Questionnaire to ensure that it captures all relevant information relating to the care arrangements, safety and cultural identity of children and young people.

Recommendation: Eight

The Intake Screening Questionnaire specifically seek information about domestic violence and safety concerns relating to persons who are caring for children or may seek to obtain care of the children or young people whilst their mother or carer is in custody.

Recommendation: Nine

The Intake Screening Questionnaire include a prompt to refer parents and carers for legal advice.

Communication between DCJ and FSPs and parents and carers

59. It would greatly assist opportunities for parents and carers to participate in litigation about their children and for contact arrangements to be made, if DCJ or the FSP with case management had access to information about the parent's location, including when they are transferred to a different correctional centre. We have assisted clients to reconnect with DCJ or a FSP who had formed the view that the parent was disinterested in staying in contact with their child, when the parent had actually just been unable to contact the relevant person to inform them that they were in custody. This may in part be resolved with greater access to child protection workers if based in correctional centres as outlined below.
60. We are also aware of a number of matters where mothers have been unable to participate in court events because they have not been served with court documents or because arrangements have not been made for them to appear by audio-visual link. On other occasions complex and distressing documents relating to the removal of children have been served without explanation or support.
61. WLS NSW is aware that DCJ is currently reviewing the merit of allocating child protection caseworkers to each correctional centre. We can see potential benefits to this proposal, such as, serving documents in

person, locating children and providing updates, supporting applications for safe housing post release and arranging intensive support in custody and linked up post release case management, including for parents who do not currently have their children in their care, but are working towards their restoration.

62. We do have some questions and reservations, including:

- How will FSPs be included? A lot of our work is negotiating with FSPs with case management responsibility, rather than DCJ caseworkers. We would suggest that DCJ will need to commit to incorporating new obligations into funding agreements with FSPs regarding engagement with parents in custody. It would also be helpful to include specific contact arrangements for a parent or carer in custody in care plans when guardianship orders are sought, as we find that guardians are often very reluctant to engage with parents around contact if they are in custody and the nature of guardianship orders means that there is no DCJ or FSP case management oversight.
- How will the significant power imbalance between marginalised parents and carers and DCJ be addressed? We are very concerned about the prospect of a client attending a meeting with a DCJ caseworker in custody without first having access to legal support and advice. The power imbalance between individuals and the State who have or are removing your children will be magnified when you are locked up with severely restricted opportunities to act with agency, cultural safety and support.
- Will DCJ commit to funding independent, gendered, trauma informed, domestic violence informed, culturally safe, LGBTIQ+ aware and disability aware legal services to parents and carers in prison? Currently there are very few and largely unfunded family and civil law services providing advice and casework services to parents and carers in correctional centres. Having caseworkers attached to each correctional centre is likely to significantly increase the need for legal advice and assistance.

Recommendation: Ten

The Department of Communities and Justice consult with stakeholders, including legal practitioners, about the proposal to allocate caseworkers to individual correctional centres.

Recommendation: Eleven

In care proceedings, the Department of Communities and Justice or the delegated Funded Service Provider be responsible for ensuring that parents and carers in custody are served in a timely fashion and where possible service, particularly of initiating processes, occur in person to allow the parent or carer the opportunity to ask questions.

Recommendation: Twelve

If a parent or carer in custody is not represented in care proceedings, the Department of Communities and Justice or the delegated Funded Service Provider be responsible for seeking an order pursuant to Section 77 of the *Crimes (Administration of Sentences) Act 1999* for the attendance of the parent or carer at court on each occasion.

Recommendation: Thirteen

In family law proceedings, where an Independent Children's Lawyer is appointed, they be responsible to ensure that an unrepresented parent or carer in custody has been served and for seeking an order pursuant to Section 77 of the *Crimes (Administration of Sentences) Act 1999* for the attendance of the parent or carer at court on each occasion.

Contact with children and young people

Barriers to contact

63. Our clients instruct that there are many barriers to maintaining regular contact with their children.
64. Contact between children and young people and their parents or carers in custody must always be safe and in the best interests of the children. Sometimes contact with a parent or carer in custody cannot occur due to concerns about safe and appropriate contact or there may be an AVO or court order in place preventing contact.
65. More often contact does not occur due to practicalities arising from things like geographic location, timing and the cost of calls and transport. It can also relate to the attitude of caseworkers, carers, legal practitioners and judicial officers towards facilitating contact with a parent or carer in custody.
66. Many visits do not go ahead due to the distance between correctional centres and where children and young people are living. Whilst face to face contact may be preferred in most cases, meaningful contact can occur via regular telephone and video calls. Opportunities for regular contact will also be increased as CSNSW implement long discussed plans for tablets or laptops in cells.
67. Clients also raise concerns about their own suitability or capacity to have contact with their children. They may not have had contact for some time or feel shame and anxiety about reconnecting with children. Many things could assist with this, such as purpose built contact facilities³², activity and reading packs, free letter writing kits including paper, stamps and envelopes with literacy support. Also, programs to assist parents with skills in engaging and re-engaging with children in their lives. Many of our clients self-identify that they do not feel competent as parents because of their own disrupted childhoods. CSNSW could also expand the range of available programs, with a focus on parenting and safety, including for people on remand.
68. If face to face visits are not possible, caseworkers and legal practitioners must be focused on how best to support marginalised children and young people, by ensuring that they and their carers in the community can access user friendly and free means to have telephone and video visits with a parent or carer in custody.
69. There is evidence that children's coping skills are also enhanced and "*problematic behaviour*" was reduced by maintaining contact with their incarcerated parents.³³

Ascertaining the views and wishes of children and young people

70. One of the biggest challenges we regularly face in arranging contact between children and young people and a parent or carer in custody is a current carer or case management caseworker stating that the child or young person does not want contact or is distressed by the suggestion of contact. Rarely is any evidence of an independent assessment provided to show that children and young people have been afforded a genuine opportunity to safely explore whether they would like contact with their parent or carer in

³² We welcome the news that Emu Plains Correctional Centre is being repurposed to become a dedicated Mothers and Children's and work-readiness facility from late-2020, accessed at:
<https://www.correctiveservices.justice.nsw.gov.au/better-prisons>

³³ 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*, p33.

custody, which would include information about preparing for contact visits, choice about how and when contact occurs and support about managing multiple parents and carers.

71. This could be addressed by developing uniform protocols for an independent, age appropriate check in with children and young people about whether they would like contact with a parent or carer in custody. To be effective this may require oversight from the Office of the NSW Advocate for Children and Young People³⁴, NSW Ombudsman or another appropriate body.

Recommendation: Fourteen

The Department of Communities and Justice prepare a review of all agencies and programs providing support to children and young people to have contact with a parent in custody to identify gaps.

Recommendation: Fifteen

The Department of Communities and Justice engage with stakeholders and develop information packs and videos about what to expect at child contact visits in correctional centres. These packs to be separately designed for children and young people, parents and carers (to be played on prison television channels) and for caseworkers, legal practitioner and judicial officers.

Recommendation: Sixteen

Greater investment in the use of video visits, including identifying community based and culturally safe organisations who can facilitate free contact visits with children, carers and other family members in the community.

Recommendation: Seventeen

The Department of Communities and Justice to expand the use of and cover the costs of all telephone and video visits between children and young people and their parents or carers in custody.

Recommendation: Eighteen

The Office of the NSW Advocate for Children and Young People, the NSW Ombudsman or another body provide independent oversight of children and young people's decision making regarding contact with a parent or carer in custody, including investigative and reporting functions.

We would welcome the opportunity to give evidence at a hearing.

If you would like to discuss any aspect of this submission, please contact [REDACTED]

Yours faithfully,

Women's Legal Service NSW

Philippa Davis
Principal Solicitor

³⁴ The principles of the Office of the NSW Advocate for Children and Young People include: "*the views of children and young people are to be given serious consideration and taken into account*", accessed at: <https://www.acyp.nsw.gov.au/about>