

**Submission  
No 51**

**INQUIRY INTO THE CLOSURE OR DOWNSIZING OF  
CORRECTIVE SERVICES NSW FACILITIES**

**Organisation:** Aboriginal Legal Access Program CDW, Community Legal  
Centres NSW

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20 November 2012

The Director  
Select Committee on the Closure or Downsizing of Corrective Services NSW  
Facilities  
Parliament House  
Macquarie St  
Sydney NSW 2000

Via email: [csclosureinquiry@parliament.nsw.gov.au](mailto:csclosureinquiry@parliament.nsw.gov.au)

Dear Director

**SUBMISSION TO: INQUIRY INTO THE CLOSURE OR DOWNSIZING OF  
CORRECTIVE SERVICES NSW FACILITIES**

Community Legal Centres NSW Inc. (**CLCNSW**) is pleased to provide a submission in relation to the *'Inquiry into the closure or downsizing of Corrective Services NSW facilities'* (**the Inquiry**).

CLCNSW is the peak body for Community Legal Centres (CLCs) in NSW. CLCs are independent community-based organisations that provide free legal information and advice to the most marginalised members of the community. CLCNSW has 40 member organisations including generalist and specialist CLCs. It plays a critical role in the law and justice sector in NSW. It supports and represents CLCs in a range of government and community forums. Our submission is informed by the work CLCs do, in particular with people who are in prisons or coming out of prisons, as well as with local Aboriginal communities.

This submission focuses on Terms of Reference (e), (h), and (i).

**Summary of Recommendations:**

1. There be significant expansion of culturally safe community offender management programs, and, that offenders who *need* to be incarcerated are done so in facilities that are; a) close to their homes, and b) provide culturally safe evidence based rehabilitation programs.

2. There be culturally appropriate measures taken to significantly increase access to parole for Aboriginal and Torres Strait Islander peoples. That support is given by trained Aboriginal caseworkers to assist Aboriginal inmates in every process to enter into probation. This support is to include culturally appropriate explanations of the relevant information and processes that grant access to parole for offenders, thereby increasing access to parole programs for Aboriginal and Torres Strait Islander inmates.
3. Increase the numbers of non-violent offenders being managed in the community, and adequately fund CSNSW to increase the resources, and the number of Probation and Parole Officers to meet both the needs of the offenders and those of the community, ensuring that case loads for PPOs are low, and that both offenders and PPOs have many options to a) support the success of the offenders to meet the criteria in their community service orders, and b) to ensure that the work of PPOs is driven by the appropriate incentives.
4. To reduce revocation rates of those sentenced through the 'Drug Court' to community-based supervision, and, to reduce failures of community service orders; there be the implementation of a program that reforms the punishment mechanism of offenders on probation and parole to one that is swift, certain and appropriate to the misdemeanour.
5. That there be Aboriginal Cultural Awareness Training for all government staff throughout the term of their employment.

### Comments on terms of reference

#### (e) **The impact on staff and their families, and on families of Indigenous inmates, of any closure or downsizing**

Moving offenders who pose little or no risk to public safety into non-custodial sentencing arrangements can be a cheaper method to manage offenders, as the cost of incarceration is less than the cost of managing offenders in the community. If combined with the expansion of community offender services, as outlined in CSNSWs' *Into Future*<sup>1</sup>, the closure or downsizing of prisons can have positive effects on Aboriginal and Torres Strait Islander inmates, and their families. Kinship is a defining feature of Aboriginal and Torres Strait Islander communities. Generally, Aboriginal and Torres Strait Islander communities have strong networks, which means that they support each other, including those who may have been convicted of crimes.

For Aboriginal and Torres Strait Islander offenders that pose a significant risk to public safety, it is desirable that they are engaged in **culturally appropriate** and **evidence based** rehabilitation programs within prison, and that their place of incarceration is as close to their home as possible. Where appropriate, contact with their families and their community is important to the wellbeing of Aboriginal and

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<sup>1</sup> Into Future, CSNSW, September 2012

Torres Strait Islander offenders. The Social Health Reference Group for the National Aboriginal and Torres Strait Islander Health Council and National Mental Health Working Group (2004) which was responsible for developing the National Strategic Framework for Aboriginal and Torres Strait Islander People's Mental Health and Social and Emotional Wellbeing 2004–2009 describes the differences between the concepts of 'social and emotional wellbeing' used in Aboriginal and Torres Strait Islander settings, and the term 'mental health' used in non-Aboriginal settings. The concept of *mental health* comes more from a clinical perspective and is focused more on the individual, whereas generally within Aboriginal and Torres Strait Islander settings place significant importance of connection to land, culture, spirituality, ancestry, family and community, and how these affect the individual. *Social and emotional wellbeing problems cover a broad range of problems that can result from unresolved grief and loss, trauma and abuse, domestic violence, removal from family, substance misuse, family breakdown, cultural dislocation, racism and discrimination, and social disadvantage.*<sup>2</sup>

### **Recommendation 1:**

There be significant expansion of culturally safe community based sentencing options, and that offenders who need to be incarcerated are done so in facilities that are both; a) close to their homes, and b) provide evidence based rehabilitation programs.

We refer the Committee to the NSW Law Reform Commission Report 96, *Sentencing: Aboriginal Offenders*, with particular reference to Chapter 5: Sentencing Options.

### **Aboriginal and Torres Strait Islander Access to Parole**

"The 'Royal Commission Into Aboriginal Deaths In Custody' (RCIADIC), found that

the Aboriginal use of parole in New South Wales is extremely limited. Since the introduction of the *Sentencing Act 1989* – the so called "truth in sentencing" legislation – the number of offenders who served parole has dropped from 56% of the prison population to 31.8% ...<sup>3</sup>

In response to this finding, the RCIADIC recommended that Corrective Services authorities ensure that Aboriginal offenders are not denied opportunities for probation and parole by virtue of the lack of trained support staff or infrastructure to ensure monitoring of such orders."<sup>45</sup> Corrective Services NSW (CSNSW)

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<sup>2</sup> Social Health Reference Group, 2004, p. 9

<sup>3</sup> Report 96, 'Sentencing: Aboriginal offenders', Sydney: New South Wales Law Reform Commission, 2000, at 141.

<sup>4</sup> RCIADIC Report, Recommendation 119, vol 3 at 117.

<sup>5</sup> Report 96, 'Sentencing: Aboriginal offenders', Sydney: New South Wales Law Reform Commission, 2000, at 141.

acknowledges that, in rural areas, a different organisational structure will be necessary.

## **Recommendation 2:**

There be culturally appropriate measures taken to significantly increase access to parole for Aboriginal and Torres Strait Islander peoples. That support is given by trained Aboriginal caseworkers to assist Aboriginal inmates in every process to enter into probation. This support is to include culturally appropriate explanations of the relevant information and processes that grant access to parole for offenders, thereby increasing access to parole programs for Aboriginal and Torres Strait Islander inmates.

### **(h) The process used to identify any public sector employment opportunities that could be re-located to rural and regional communities to replace job losses due to the closure or downsizing of a Corrective Services NSW facility**

Increasing the numbers of non-violent offenders being supervised in the community requires the expansion of services that will meet all of the obvious, and not so obvious needs.

From an employment perspective, the real opportunities for staff effected by the closure or downsizing of prisons is in the significant expansion of services that meet the needs of offenders being supervised in the community,

“Taking a flexible approach to what qualifies as “home” for home detention has other advantages. For example, accommodating a small group of offenders in a community house overcomes some of the difficulties of operating the home detention program in large geographical areas with sparse populations.”<sup>6</sup>

However, agencies that provide supervision to offenders being managed in the community **need** to be well funded, as unmanageable caseloads, a lack of resources, and inadequate options for Probation and Parole Officers (PPOs) can lead to higher recidivism rates.

In reflecting on the US experience, Michael Jacobson, current President of the VERA Institute of Justice, states:

“Over the last few decades both the probation and parole systems have worked with the wrong incentives. There is almost every incentive in both these systems to violate as many people as they can, to get them off their caseloads, and send them back to prison. And in some ways, it’s a rational response to the system they (Parole Officers) find themselves in.

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<sup>6</sup> Ibid

It's a way for (probation and parole) agencies and officers to manage risk, to deal with overwhelming caseloads, and it's a way for them to deal with a complete lack of resources that they have. They are by far two of the most under-resourced parts of the criminal justice system, and, from a policy maker point of view, and from a budget maker's point of view, the thing about those parts of the system, is that you can never really starve them because they will always spend the taxpayers money in prison and jails. They [corrections] can't spend it on probation and parole (because) they have no money; there are very few well-funded probation and parole agencies... But they will spend billions of dollars, which they do, on prison and jails. ... one of the things I have been saying for years, is in a lot of ways is: "No one in government can spend money like a parole officer; they do it every day, they do it in an incredibly unsupervised, unoversightable way, they make those decisions to violate someone, anywhere from 10 to 100s' of times a year... and it not only costs, in the aggregate, I would argue, many billions of dollars, but there is not a shred of empirical evidence that it does anything to protect the public safety. In fact, there is probably more evidence, and we've just done some work on this at the New York State Parole at VERA, that the opposite is true."<sup>7</sup>

Sending people back to prison for an accumulation of technical violations (as opposed to serious violent new crimes) due to a lack of resources and options for PPOs a fiscally irresponsible policy as the practice fuels incarceration rates and produces excessive spending of taxpayer dollars for a relatively benign effect on public safety.

In 2007, a survey conducted for Community Offender Services (COS) District Offices in rural and remote areas of NSW, demonstrates the driving factors behind the lack of access to community based sentencing options in rural and remote areas<sup>8</sup>:

"The barriers identified by all areas included remoteness, lack of access to public transport and where it was available the cost involved in using it, seasonal employment particularly in regard to completion of CSO's, the lack of other services within the community including mental health, AOD (Alcohol & Other Drugs) counselling and general counselling services, the inability of small offices to provide offender management programs because of a lack of suitable facilitators locally and again the problem of transport. An interesting fact was that in the three areas where PDC (Periodic Detention Centre) was available the nearest centres were 55kms, 115kms, and 180kms away respectively and there was no adequate public transport to get people there, it therefore was rarely used."<sup>9</sup>

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<sup>7</sup> Michael Jacobson, Speech, 23 March 2010. See: Appendix 1.

<sup>8</sup> 'Barriers to the Availability of Community Based Sentencing Options (and completion thereof) for Offenders in Rural and Remote areas of New South Wales, Arianne van der Meer, Peter Townsend and Phil Hartmann, 2006, Australian Journal of Correctional Staff Development

<sup>9</sup> Ibid

### **Recommendation 3:**

Increase the numbers of non-violent offenders being managed in the community, and adequately fund CSNSW to increase the resources, and the number of Probation and Parole Officers to meet both the needs of the offenders and those of the community, ensuring that case loads for PPOs are low, and that both offenders and PPOs have many options to a) support the success of the offenders to meet the criteria in their community service orders, and b) to ensure that the work of PPOs is driven by the appropriate incentives.

#### **(i) Any other related matters.**

#### **Closing the gap between the actual time of the offence/ parole breach, and the actual time that punishment is administered.**

There is a key oversight in the NSW criminal justice system by policy makers and legislatures in regards to offenders in community management. It concerns the delay between when punishment is administered for accumulated offences by offenders whilst on probation/parole, and the actual time the offence took place.

In the minds of offenders, “receiving punishment 3 months after committing an offence, is like punishing a child for spilling milk 6 weeks after cleaning up the mess”<sup>10</sup>. The Hon Judge Steven S. Alms in project HOPE addresses the time lag between the crime and the punishment with swift, certain and immediate punishment for parole breaches, with sentences that are proportionate to the offence.<sup>11</sup> When incarceration is the strategy for rehabilitation, as well as punishment for the crime, it is probably not the length of the incarceration, but the connection between the crime and the punishment that assists offenders to break their cycle of offending.

In 2004, the Honourable Steven S. Alm of Hawai'i's First Circuit Court, implemented a new style of probation in an attempt to change the problem of violations and recidivism among Hawai'i's probationers. The existing style of Probation As Usual (PAU) had a poor record of individuals making it to their probation appointments on time, staying off of drugs, and refraining from criminality upon being released. In PAU, probationers repeatedly violated the terms of their probation for extended periods of time without consequences due to court dates deferred up to a year. In theory, individuals that experience immediate consequences were less likely to repeat offences. Judge Alm incorporated this theory by creating a modified system of monitoring and sentencing probationers named HOPE (Hawai'i Probation Opportunity with Enforcement).<sup>12</sup>

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<sup>10</sup> Judge Steven S. Alms, speech on 23rd March 2010.

<sup>11</sup> “Found at: <http://www.hopeprobation.org/wp-content/uploads/2010/10/HOPE-Probation-final.pdf>

<sup>12</sup> Ibid

## Recommendation 4:

To reduce revocation rates of those sentenced through the 'Drug Court' to community based supervision, and, to reduce failures of community service orders; there be the implementation of a program that reforms the punishment mechanism of offenders on probation and parole to one that is swift, certain and appropriate to the misdemeanour.

## Systemic Racism

It is well documented that in the criminal justice system, Aboriginal people are the most over represented group of people in Australia. BOSCAR estimates that more than 80 per cent of Indigenous defendants currently appearing in court will at some stage return, most within less than 2 year<sup>13</sup>. The over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system provides the basis to critique the current punitive trends as being racial and class biases, skewing who goes into prison. This is evident by Aboriginal and Torres Strait Islander incarceration rates.

Systemic racism in the criminal justice systems is not isolated to Australia, however, as far as international standards are concerned, Australian Aboriginal and Torres Strait Islander incarceration rates are shameful, and represent deep systemic racism:

“... the incarceration rate of our Mob, (is) 5 times higher than that of South Africa under the apartheid regime.”<sup>14</sup>

The overwhelming majority of prisoners are poor, and their prior employment levels are exceptionally low. Related to these observations “are criticisms of the criminal justice system for being racist in its day-to-day operations of arresting, indicting, convicting and sentencing offenders”.<sup>15</sup>

Over the two centuries since colonisation, the criminal justice system has frequently served further to entrench the disadvantage of Aboriginal people. Rather than protecting them from unlawful violence, the legal system often criminalised and subjugated Aboriginal people.<sup>16</sup> Aboriginal people have also faced legal,

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<sup>13</sup> Reducing Indigenous Contact with the Court System December 2010

<sup>14</sup> Tiga Bayles, Biri Guba Elder, manager of Brisbane's 98.9FM radio station

<sup>15</sup> *Downsizing Prisons*. Michael Jacobson. 2005. Page 43

<sup>16</sup> The experiences of Aboriginal people have been depicted in several studies, for example, E Eggleston, *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria, South Australia and Western Australia*, (ANU Press, Canberra, 1976); K Hazelhurst, *Ivory Scales: Black Australians and the Law*, (UNSW Press, Kensington, 1987); P Hanks and B Koen-Cohen, *Aboriginies and the Law: Essays in Memory of Elizabeth Eggleston* (Allen and Unwin, Sydney, 1984); G Bird, *The "Civilising Mission": Race and the Construction of Crime* (Monash University, Melbourne, 1987); J Basten et al, *The Criminal Justice System* (Australian Legal Workers Grou, 1982).



institutionalised racism, in relation to freedom of movement, employment, education and welfare.<sup>17</sup>

Aboriginal imprisonment rates rose 48% in NSW between 2001 and 2008, to 2,249 individuals<sup>18</sup>. As of June 2012, there are 2,172 Aboriginal and Torres Strait Islanders behind bars<sup>19</sup>, which is approximately 22.5% of the NSW prison population. Aboriginal people make up 2.6% of the NSW general population.<sup>20</sup>

#### **Recommendation 5:**

That there be annual Aboriginal Cultural Awareness Training for all government staff throughout the full term of their employment.

#### **Further information**

Thank you again for the opportunity to respond to this Inquiry. For further information or to discuss this submission in detail, please contact Zachary Armytage, Aboriginal Legal Access Program, Community Development Worker, on (02) 9212 7333 or email [zachary\\_armytage@clc.net.au](mailto:zachary_armytage@clc.net.au)

Yours sincerely

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Director  
Community Legal Centres NSW

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<sup>17</sup> M Lucashenko, *Policy and Politics in the Indigenous Sphere: An Introduction for Bureaucrats* (Aboriginal Politics and Public Sector Management, Griffith University, June 1996) <[www.cad.gu.edu.au/capsm/Lukashen.htm](http://www.cad.gu.edu.au/capsm/Lukashen.htm)>

<sup>18</sup> "Why are Indigenous Imprisonment Rates Rising?" Jacqueline Fitzgerald BOCSAR, Issue paper 41, 2009

<sup>19</sup> ABS, *Corrective Services, Australia*, June 2012

<sup>20</sup> NSW, Corben, S. (2010) *NSW Inmate Census 2009*, Sydney: Corrective Services NSW